

310 Law Mini Trainings: Determining Jurisdiction

Determining if a proposed project is within 310 jurisdiction is one of the most challenging components of administering the 310 Law. Authority for a conservation district to take jurisdiction of a stream as it pertains to the 310 Law is found in Montana code ([MCA 75-5-103](#)), the Administrative Rules of Montana ([ARM 36.2.402](#)), and a conservation district Adopted Rules ([Model Adopted Rules](#)). In general, the 310 Law applies to private entities conducting a project on Montana's perennially flowing streams.

Landownership and Applicants Under 310 Law Jurisdiction

The 310 Law applies to all private entities, whether on private property or on public property, as long as it is within a conservation district boundaries. For example, a private organization conducting a project on state or federal lands would require a 310 permit whereas a project conducted by a city, county, or state agency would need a 124 permit through Montana Fish Wildlife and Parks. Similarly, the 310 Law applies to projects conducted by a private entity within a Tribal reservation, but only if the land is privately owned and not Tribal lands.

Projects Under 310 Law Jurisdiction

[MCA 75-5-103](#) defines a "project" as a physical alteration or modification that results in a change in the state of a natural, perennial-flowing stream or river, its bed, or its immediate banks. Additionally, "Immediate banks" means the area above the mean high water mark and directly adjacent to the stream which when physically altered or modified has the potential to affect the state of the stream. ([ARM 36.2.402](#)). If an activity is being conducted by a private entity and has the potential to impact a perennial stream, the conservation district may consider it a project under the 310 Law and require a permit.

Streams Under 310 Law Jurisdiction

As stated in the Model Adopted Rules, for a stream to be considered under the 310 Law, it must be a natural waterway and contain continuous natural flows. Flood channels, side channels, and streams that have been physically altered are still considered natural waterways; however, artificial or man-made waterways are not. Additionally, streams that do not contain continuous flows due to man-made causes or extreme drought are still considered perennial.

Frequently Asked Questions:

Q: How far back from a stream does the 310 Law apply?

A: There is no specific distance from a stream because the potential impacts of a project and therefore where the 310 law applies will vary by activity, topography, stream characteristics, etcetera. Each proposed project must be viewed individually, considering all the factors of that site and that activity to determine if the 310 law applies.

Q: Does a project on a dry streambed need a 310 permit?

A: The project will need to be permitted if the currently dry streambed could be considered a natural waterway with continuous flow in the absence of human-caused restrictions or extreme drought. See the Adopted Rules, Rule 5, for more information.

Q: What resources can a conservation district use to determine 310 jurisdiction?

A: A Conservation district can use any relevant information to determine jurisdiction including, but not limited to, maps, hydraulic surveys, landowner statements, historical data, or water rights records.