

MODEL RULES

[Note: Before adoption, the CD should remove the word “Model”]

For

Conservation Districts, Grazing Districts, and Counties

[Note: CD should insert name here and remove statement above]

to

Implement the Natural Streambed and Land

Preservation Act of 1975

Chapter No. 463, Montana Session Laws 1975;

Title 75, Chapter 7, MCA

Senate HB 310, 1975 Legislature

Amended by 1977 Legislature

Amended by 1979 Legislature

Amended by 1987 Legislature

Amended by 1995 Legislature

Amended by 2003 Legislature

Amended by 2019 Legislature

Compiled by

Montana Department of Natural Resources & Conservation

in consultation with

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Introduction

Several changes to the 310 law occurred in the 2003 and 2019 legislative sessions. These law changes require a change in conservation district rules.

The document is a guide, developed by DNRC and the 310 committee, to be used as a model to assist conservation districts in developing local rules to administer the 310 law. For convenience sake, this model contains language from the natural streambed and land preservation act, the Administrative Rules of Montana, and contains options for the conservation district that can be revised or adopted as presented here. The Administrative Rules of Montana are indicated by [ARM] and the law is indicated by [LAW]. This language should not be changed. Optional sections are in bold and are indicated by [Optional].

Conservation districts have the authority to meet or exceed the state standards, but any changes to the state minimum standards must be necessary, reasonable, and have its foundation in the law. In other words, conservation districts cannot change the law by adopting rules that conflict or change the law or Administrative Rules of Montana.

This document has no legal status. However, after a conservation district has formally adopted local rules, they become law.

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RULE 1. TITLE.

- (1) These rules may be cited as the _____ (**name of Conservation District, Grazing District or County**) rules for implementation of the Natural Streambed and Land Preservation Act of 1975, as amended, commonly referred to as the 310 law.

Explanation:

Most rules normally contain a short title such as the above. The name of the local district or county adopting the rules will be inserted in the blank space. Remove additional words in parenthesis. Adoption recommended.

RULE 2. POLICY.

- (1) It is the policy of the _____ (**Name of Conservation District, Grazing District or County**) that the natural rivers and streams, and the lands and property immediately adjacent to them, within this (**district or county**) are to be protected and preserved to be available in their natural or existing, state, and to prohibit unauthorized projects, and in so doing to keep soil erosion and sedimentation to a minimum, except as may be necessary and appropriate after due consideration of all factors involved. [LAW]
- (2) Further, it is the policy of this (**district / county**) to recognize the needs of irrigation and agricultural use of the rivers and streams of the state of Montana and to protect the use of water for any useful or beneficial purpose as guaranteed by the constitution and laws of the State of Montana. [LAW]
- (3) The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Natural Streambed and Land Preservation Act of 1975. In recognition of the legislature’s intent, it is the district’s intent that the requirements of this Act and implementing rules provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources. [LAW]

Explanation:

Section (3) added to incorporate 2003 legislative change to 75-7-102. Section (1) and (2) are from 75-7-102. Insert district or county name in (1) and remove additional words. Choose either “district” or “county” in (2) and remove additional words.

RULE 3. PURPOSE.

- (1) The purpose of these rules is to provide guidance to all concerned parties regarding the administration of The Natural Streambed and Land Preservation Act in the _____ (**name of Conservation District, Grazing District, or County**); and to specify procedures for compliance with the policy contained in Rule 2.

Explanation:

Add name and remove additional words in parenthesis.

RULE 4. DEFINITIONS.

Unless the context otherwise requires, the following definitions are applicable to these rules:

- (1) "Act" means The Natural Streambed and Land Preservation Act. [ARM]
- (2) "Activity" or "activities" means a proposed physical alteration or modification to a natural perennial-flowing stream or river, its bed, or its immediate banks.
- (3) "Applicant" means any person presenting notice of a project to the supervisors. [LAW]
- (4) "Application" means a notice of proposed project on a form provided under Rule 7, Forms, and containing all of the required information.
- (5) "Bed" means the channel occupied by a stream. [ARM]
- (6) "Channel" means the area of a stream measured from mean high water mark to mean high water mark. [ARM]
- (7) "Department" means the Montana Department of Fish, Wildlife & Parks. [LAW]
- (8) "District" means:
 - (a) a conservation district under Title 76, Chapter 15, MCA, in which the project will take place;
 - (b) a grass conservation district under Title 76, Chapter 16, MCA where a conservation district does not exist; or
 - (c) the board of county commissioners in a county where a district does not exist. [(8)(a-c) LAW]
- (9) "Directly affected person" means a person who by means of an affidavit establishes that as a result of the proposed action the person's property or water rights will more likely than not be impacted by soil erosion, sedimentation, flooding, or channel alteration, or the stream flow, turbidity or water quality will more likely than not be altered at or near the person's property or diversion point, or that the fish or aquatic habitat in the stream in which the person has a management interest will more likely than not be altered by the project. For purposes of this definition, person includes a government entity.
- (10) "Emergency" means an unforeseen event or combination of circumstances that call for immediate action to safeguard life, including human or animal, or property, including

growing crops without giving time for the deliberate exercise of judgment or discretion under the Act. [ARM]

- (11) "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 a stream. [ARM]
- (12) "Extreme Drought" means a prolonged period of less than normal precipitation such that the lack of water causes a hydrologic imbalance as designated by the National Oceanic and Atmospheric Administration as, at least, abnormally dry.
- (13) "Livestock grazing activities" means grazing animals.
- (14) "Mean high water mark" means the line that water impresses on the land for sufficient periods to cause physical characteristics that distinguish the area below the line from above it. Characteristics of the area below the line include, when appropriate, deprivation of the soil of substantially all terrestrial vegetation and destruction of its agricultural value. [ARM]
- (15) "Natural perennial-flowing stream" means a stream, which in the absence of diversion, impoundment, appropriation, or extreme drought, flows continuously at all seasons of the year and during dry as well as wet years. [ARM]
- (16) "Permit" means the written consent of the supervisors authorizing a proposed project.
- (17) "Person" means any individual, corporation, firm, partnership, association, or other legal entity, not covered under 87-5-502, MCA. [LAW]
- (18) "Physical alteration or modification" means human-caused actions resulting in the placement, removal, or disturbance of materials of any nature or character.
- (19) "Plan of Operation" or "annual maintenance plan" means an annual plan for a project of recurring nature that, if approved by the supervisors, authorizes a specific activity for a period not to exceed 10 years. [ARM]
- (20) "Project" means an activity that results in a change in the state of a natural, perennial-flowing stream or river, its bed, or its immediate banks.
 - (a) Project does not include:
 - (i) an activity for which a plan of operation has been submitted to and approved by the district. Any modification to the plan must have prior approval of the district.
 - (ii) customary and historic maintenance and repair of existing irrigation facilities that do not significantly alter or modify the stream in contravention of 75-7-102, MCA.
 - (iii) livestock grazing activities. [(20)(a)(i-iii)LAW]

- (21) "Stream" means any natural perennial-flowing stream, or river, its bed, and immediate banks, and its channels **and includes the entire stream from its mouth to its source even if portions go dry periodically**. The term does not include a stream or river that has been designated by district rule as not having significant aquatic and riparian attributes in need of protection or preservation under 75-7-102, MCA. **[combined ARM & LAW & OPTIONAL]**
NOTE: The words in bold are optional.
- (22) "Supervisors" means a board of supervisors of a conservation district, the directors of a grass conservation district, or the board of county commissioners where a proposed project is not within a district. **[LAW]**
- (23) "Team" means one representative of the supervisors, one representative of the department, and the applicant or the applicant's representative. **[LAW]**
- (24) "Written consent of the supervisors," means a written decision of the supervisors approving a project and specifying activities authorized to be performed in completing the project. **[LAW]**

Explanation:

Definitions repeat those found in 75-7-103 and ARM, 36.2.402. Those definitions not indicated as **[LAW]** or **[ARM]** are added to clarify how the CD will administer the law.

All the words or phrases that are defined above appear in the law or administrative rules. CDs may add definitions to the list.

Changes to (20) were made to reflect 2003 legislative changes and (20)(iii) was added for the same reason. The new (13) describes what is meant by the term "livestock grazing activities," which was added ((20)(iii)) in the 2003 legislative session.

RULE 5. APPLICABILITY.

- (1) The district will make determinations on the applicability of these rules, the Act, and the streams covered under the Act. **[ARM]**
- (2) These rules apply to projects on a natural perennial-flowing stream, or portions thereof, including its bed, immediate banks, and channels, unless the stream has been designated as not having significant aquatic and riparian attributes in need of protection. The district considers a stream to flow perennially if it dries up periodically due to man-made causes, or extreme drought. **[ARM]**
- (3) A person who is directly affected by the supervisors' determination of the applicability, interpretation or implementation of the law, these rules, a written consent, or a designation of stream, or a portion of a stream, may request a declaratory ruling under Rule 20, Declaratory Ruling. A person may not request a declaratory ruling under Rule 20 for a

final action of the supervisors' approval, modification, or denial of a proposed project or an emergency action. [LAW]

- (4) These rules do not apply to ditches, intermittent streams, or wetlands not associated with the bed or immediate banks of a stream. [ARM]
- (5) In order for a stream to be covered under the Act, it must:
 - (a) be a natural waterway.
 - (i) Natural rivers or streams that have been rechanneled for road construction, flood control, irrigation, or other public works are considered natural waterways.
 - (ii) Natural rivers or streams that are used as part of an irrigation deliver system as allowed under 85-2-411, MCA, are considered a natural waterway, but only if those natural streams had perennial flow prior to diverting water through them.
 - (iii) Artificial or man-made waterways that have been constructed for the purposes of conveying water for any purpose are not considered a natural waterway.
 - (iv) Flood channels, high water channels, and side channels of natural, perennial-flowing streams are considered part of a stream if water naturally enters the channels during high water or normal flow.
 - (b) contain continuous natural flows.
 - (i) Water diverted into a natural channel for the withdrawal or diversion downstream shall not be considered part of the natural flow of a stream;
 - (ii) Water feeding a natural channel from any ground water source, tributary, springs, or other natural source, shall be considered part of the natural flow.
 - (iii) Water stored in a reservoir that maintains or raises the flow of a stream shall be considered natural flow.
 - (iv) Streams that dry up because of diversion, impoundments, appropriation, or extreme drought shall be considered to have continuous natural flows.
- (6) The district will use **(the most current/or insert date)** USGS 7.5 minute quadrangle maps to initially determine jurisdiction. If the need arises, the district may use, but is not limited to, the following information to make its determinations:

Or

 - (6) **The district may use, but is not limited to, the following information to make its determinations:**
 - (a) USGS maps;
 - (b) Water Resource Surveys;
 - (c) Water rights records;
 - (d) Landowner and resident interviews;
 - (e) Hydrology reports;
 - (f) On-site evaluations to gather information on geomorphology, vegetation, insects; past human activity;
 - (g) Historical information;
 - (h) Aerial photos;
 - (i) Stream flow data; or
 - (j) Any other relevant information.

- (7) The district, either on its own motion, or if petitioned to review the designation of a stream, will use the factors set forth in this rule to make a determination.
- (8) Persons dissatisfied with the supervisors' determination may petition with district to make a declaratory ruling, as outlined in Rule 20, Declaratory Ruling. [LAW]
- (9) **The following streams within the District have been designated as natural perennial-flowing streams, and are therefore subject to the jurisdiction of these rules. The listing may not be all-inclusive. The District may add or delete streams from this list, either on its own motion or upon petition of any directly affected persons. Seasonally dry channels are covered if the lack of flow is caused by diversion or other human-caused actions. [OPTIONAL]**

(a) **list streams [Optional]**

Explanation:

As requested by several CDs, this Rule has been expanded to provide more guidance in making determinations of jurisdiction when questions arise. The district may adopt all or part of this option or revise portions of this option. Conservation district can include additional information to clarify where the law is applied in their district if necessary. For (6), choose the option that best fits your conservation district and delete the extra (6). If you choose the first (6), insert a date or chose "the most current" and delete the extra words.

If a district has designated specific streams as perennial, insert the names in (9). If your district does not list streams, delete all of (9).

If this option is revised, legal review is advised.

RULE 6. AQUATIC AND RIPARIAN ATTRIBUTES - EXCLUSIONS

- (1) This rule describes the process for excluding natural perennial-flowing streams from district jurisdiction where there is no need for protection under 75-7-102, MCA. The process for determining whether a stream is a natural perennial-flowing stream is described in Rule 5, Applicability.
- (2) Upon the district's motion or upon request of a person, the district may adopt a rule to exclude a stream or portion thereof from its jurisdiction upon finding that a perennial-flowing stream does not have significant aquatic or riparian attributes in need of protection or preservation. [ARM]
 - (a) In order to make a determination, the district shall hold a public meeting as outlined in Rule 11, Public Participation, to gather information relative to the aquatic or riparian attributes of a stream. [ARM]

- (b) If after a public meeting, the district determines that a stream has no aquatic or riparian attributes, the district may adopt its rule excluding the stream, or portion thereof, from its jurisdiction. [ARM]

Explanation:

If a district has perennial-flowing streams that are excluded, these could be added here, too. The process described here, to exclude perennial-flowing streams, is different from the process to determine if a stream is perennial. (1) was added to clarify this. If a district has criteria it uses to determine if a stream has “aquatic or riparian attributes in need of protection,” it should be added here.

RULE 7. FORMS.

(1) The district and the applicant shall use the following forms.

- (a) Form 270 – Notice of Proposed Project is the application form to be submitted by the applicant to the supervisors for project review. The Joint Application for Proposed Work on Streams, Wetlands, Floodplains, and Other Water Bodies is considered Form 270.
- (b) Form 271 – Arbitration Agreement to be used by team members who are requesting to resolve disputes through arbitration.
- (c) Form 272 – Team Member Report for team members to submit project recommendations to the supervisors.
- (d) Form 273 – Supervisors’ Decision, or permit, to convey district’s decision to the applicant and team members.
- (e) Form 274 – Official Complaint Form for a person to notify the district of an activity taking place without written consent of the supervisors.
- (f) Form 275 – Emergency Report for a person to notify the district of projects undertaken during an emergency to safeguard life, property, or growing crops. [ARM]

(2) The district will accept forms generated by other districts, however, additional information may be required of the applicant. [Optional]

Explanation:

Section (2) is optional. If your district will not accept forms from other CDs, omit (2).

Conservation districts can change the standard state forms as long as all the information on the standard form is included. If a conservation district does change a form, a copy must be sent to DNRC.

RULE 8. PROJECT REVIEW.

- (1) A person planning to engage in a project that will physically alter or modify a stream or river, its bed or immediate banks, must receive a permit prior to undertaking the project. [ARM] To receive a permit, a person must follow the application process.
- (2) The district shall review all projects to ensure they are achieved in a manner consistent with the policy set forth in the Act. The supervisors in making its decision to deny, approve, or modify an application, shall determine the purpose of the project and whether the applicant is using a reasonable means of accomplishing the project. [ARM] The application review and decision process is outlined in 75-7-112, and these rules.

Explanation:

Required.

RULE 9. APPLICATION PROCESS.

- (1) The applicant is responsible for providing sufficient information for the supervisors to make a reasonable determination to approve, modify, or deny the application. Incomplete applications may not be accepted. To be complete, the information submitted must be credible and all of the necessary parts of the form filled in with the required information. Information to be provided by the applicant, must include, but is not limited to:
 - (a) The location of the project;
 - (b) The purpose of the project;
 - (c) A detailed description of how the project will be accomplished;
 - (d) Project plans and drawings;
 - (e) Maps of the project site;
 - (f) Proposed dates of project development or construction;
 - (g) Length of time to complete the project; and
 - (h) If required by the district, engineering plans. [ARM]
- (2) The supervisors may require an applicant to provide additional information for projects that appear, from a review of the application, to have the potential to impact the flow characteristics of the stream.
 - (a) The following additional information may be required if requested by the district:
 - (i) Names and addresses of landowners that may be potentially impacted by the proposed project;
 - (ii) A description of the potential impacts to the stream from the project wherever they may reasonably be expected to occur;
 - (iii) Design drawings(s) that clearly depict the plan, profile, and typical cross-section views of the proposed activity;
 - (iv) Engineering designs;

- (v) Project alternatives considered; and
 - (vi) Any other information needed to make an informed decision.
- (b) If required, the information required in subsections (2)(a)(i) and (ii) must be developed with the assistance of a person with experience in identifying potential impacts to stream flow characteristics. The information required in subsection (2)(a)(iii) must be developed with the assistance of a person with experience in the design or construction of projects. Information required in subsections (2)(a)(i) through (iii) must be accompanied by a certified statement from the person who assisted with the development of the information documenting the person's engineering education and/or qualifications to provide assistance under (2)(a)(iv) must be provided.
- (3) Notice of Proposed Project/Permit Application
- (a) The notice of proposed project (permit application) shall be made on Form 270. The application may be either hand delivered or it may be mailed to the supervisors at the district office.
 - (i) The application will be officially accepted by the district or its representative if the application is complete and is for a project located in a stream or river or the lands immediately adjacent as described in these rules. The time frame specified in these rules begins upon acceptance of the application.
 - (b) Plans of Operation. If a person is submitting an application for an activity that is conducted annually, such as maintenance of a bridge, culvert, or irrigation structure, the applicant may submit a plan of operation to the district. The district may approve the annual activity for a period of up to 10 years as described in Rule 10, Decision. Plans of operation that have been approved are subject to annual inspection by the district. In addition to indicating on Form 270 that the activity will be done on an annual basis, the applicant will provide the following information to the conservation district:
 - (a) The reason for on-going activity and why it is necessary;
 - (b) Time of year -- the dates for which the activity will start and be completed each year, including the number of days the activity will take place;
 - (c) Where the activity will take place;
 - (d) How often the activity will take place;
 - (e) An explanation, in detail, of how the activity will take place; and
 - (f) An explanation of how the applicant will keep soil erosion and sedimentation to a minimum.
 - (c) The district or the district's representative shall, within 10 working days of accepting an application, send a copy of the application to the Department.
 - (d) Where a single land use activity, such as a timber sale, involves multiple locations of a single overall project, such as the placement of several culverts, application for all proposed stream alterations in conjunction with land use activity may be

made on a single application. The application shall include a map and legal description of all the multiple locations of the projects.

- (e) If, at any time during the review process, the supervisors determine that the proposal is not a project or that these rules are otherwise inapplicable to the activity, the applicant will be notified in writing that written consent of the supervisors is not necessary.

(4) Formation of a Team

- (a) The department shall, within 5 working days of receipt of the application, inform the supervisors whether the Department requests an on-site inspection by a team.
- (b) The supervisors shall call a team together within 20 days of receipt of the request of the department for an on-site inspection. A member of the team shall notify the supervisors, in writing within 5 working days after a notice of inspection if the team member waives participation in the inspection.
 - (i) If the Department does not request an on-site inspection within the time specified in the subsection, the supervisors may approve, modify, or deny the project.
- (c) Each member of the team shall recommend, within 30 days of the date of inspection approval, modification, or denial of the project to the supervisors, using the Team Member Report (Form 272).
 - (i) The applicant may waive participation in this recommendation. A non-response is considered a waiver.
- (d) The supervisors may extend, at the request of any team member, the time limits provided in this rule, when, in their determination, the time provided is not sufficient to carry out the purposes of the Act and these rules. The time extension may not exceed one year from the date of acceptance of the application. The applicant must be notified of the initial time extension within 60 days of the date of acceptance of the application and must be notified within 7 working days of the supervisors' action granting the extension.

Explanation:

Subsection (1) repeats ARM and is mandatory, Subsection (2) provides flexibility or options for a district to request more information if needed, Subsection (3) is derived from 75-7-112. **Note:** Revisions to the law in 1995 eliminated the need for a board meeting to determine whether an application is for a project. The law says a supervisor can designate someone to officially accept an application. To be accepted, an application must be complete and for a project as designated by these rules. If there is any doubt, the application should be accepted and a team inspection scheduled, if requested by DFWP. If the board determines at any time during the process that these rules don't apply to the application, the applicant may be notified that a 310 permit is not required.

The board can still choose to "accept" applications at their regular board meetings. In this case, alternate language can be used for (3)(a)(i) such as: Form 270 will be officially accepted by the district at its regularly scheduled board meeting if the application is complete and is for an activity that will alter or modify a stream.

Paragraph (3)(d) provides an option to simplify applications for multiple activities. Only one application need be filed where each activity is part of an overall project conducted by the same applicant. **Note:** CDs must follow time frames outlined in law. Timeframes may be extended, but require a motion to do so. Be sure to record in minutes that a decision was made to extend timeframes.

A written record of all decisions must be made and kept in the 310 files. It is a good idea to also note conversations with dates.

RULE 10. DECISION.

- (1) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members within 60 days of the date of application, of their decision. **[LAW]** A permit shall be provided on the Supervisors' Decision Form 273.
- (2) The team, in making its recommendation, and the supervisors, in denying, approving, or modifying a project, shall determine:
 - (a) the purpose of the project; and
 - (b) whether the project is a reasonable means of accomplishing the purpose of the proposed project. To determine if the project is reasonable, the following must be considered:
 - (i) the effects of soil erosion and sedimentation, considering the methods available to complete the project and the nature and economics of the various alternatives;
 - (ii) whether there are modifications or alternative solutions that are reasonably practical that would reduce the disturbance to the stream and its environment and better accomplish the purpose of the proposed project;
 - (iii) whether the proposed project will create harmful flooding or erosion problems upstream or downstream;
 - (iv) the effects on stream channel alteration;
 - (v) the effects on stream flow, turbidity, and water quality caused by materials used or by removal of ground cover; and,
 - (vi) the effect on fish and aquatic habitat. **[(2) (a & b (i-vi) LAW]**

- (3) If the supervisors determine that a proposed project or part of a proposed project should be modified, they may condition their approval upon the modification. [LAW]
- (4) The supervisors may not approve or modify a proposed project unless the supervisors determine that the purpose of the proposed project will be accomplished by reasonable means. [LAW]
- (5) Decisions to approve, modify, or deny an application must be made by a concurrence of a majority of the supervisors.
- (6) The applicant must notify the supervisors in writing within 30 days of receipt of the permit if the applicant wishes to proceed with the project in accordance with the permit. No work may begin on a project before the end of the fifteen-day waiting period unless all team members and the district give written permission. [LAW]
- (7) Unless otherwise stated, the term of a permit is one year from the date of the supervisor's decision. An applicant may request, and the district may approve a one-year extension if for any reason the project could not be completed within the initial term of the permit.
- (8) A plan of operation may be approved for activities of a recurring nature for a period not to exceed 10 years. In order to qualify for an approved plan of operation, the activities must occur in the same location and in the same manner on an annual basis. No time extensions will be given on annual maintenance permits. When the term of a permit for an annual maintenance permit has expired, a person must submit a new application.

Explanation:

This section follows decision process outlined in the law. (6) was updated to reflect HB383 in the 2019 legislature extending appeal timeframe from 15 to 30 days. (10) from the previous model rule was moved to a new section, Public Participation, Rule 11, which consolidates rules pertaining to public participation. **Note:** (8) deals with decisions pertaining to plans of operation, applicant must provide all the information required in Rule 9, application process. A CD may approve a multi-year project based on a number of conditions and may require the applicant to notify the CD when work starts and ends. Care should be given when modifying a project .

RULE 11. PUBLIC PARTICIPATION

- (1) All business of the supervisors shall be conducted in an open meeting after reasonable notice has been given.
- (2) A team inspection is not a meeting of the supervisors, however, the public may participate in a team inspection if the landowner has given permission. The district is not responsible for securing this permission or providing transportation to the site.

- (3) Unless privacy interests of an applicant outweigh the public's right to know, all district records are available to the public. The district chair shall make determinations regarding privacy issues in accordance with applicable statutes.
 - (a) The district chair may close a meeting during the time of a meeting that the discussion relates to a matter of individual privacy and then if and only if the district chair determines that the demands of individual privacy clearly exceed the merit of public disclosure. The individual about whom the discussion pertains may waive the right to privacy. In that event, the meeting shall remain open.
- (4) The district shall keep minutes of its meetings and decisions under these rules.
- (5) Conduct of Regular Meetings/Public Information Meetings
 - (a) Before a meeting is held to take final action on a notice of proposed project, the supervisors shall give reasonable notice to the applicant and other persons who may be directly affected by decision.
 - (i) Notice of regular, special, and public information meetings shall be given a minimum of 5 days in advance of the meeting by posting the notice in 5 conspicuous places, or by advertising in the local media, by a news story, or by posting a notice on the district's website.
 - (ii) The district may require the applicant to give written notice to any person the district determines may be directly affected by a proposed project.
 - (b) Meetings shall be conducted at the discretion of the Chair under normal rules of meeting procedure. All directly affected persons, including the applicant, shall be provided an opportunity to state their case and to present relevant evidence supporting their positions. At the discretion of the Chair, each directly affected person may also ask relevant questions of another directly affected person.
- (6) The district may hold a public informational meeting when the supervisors determine a proposed project to be controversial, or where additional information is desired prior to final action by the supervisors. If the matter is of significant interest to the public, members of the public shall be given the opportunity to comment on the proposed project prior to final action by the supervisors.
- (7) The district may hold a public hearing to gather information relative to making an initial designation of a perennial-flowing stream.
- (8) Adopting Rule Changes/Public Hearings to Remove Perennial Streams
 - (a) The district shall conduct a public hearing before adopting any major changes in these rules.

- (b) The district shall conduct a public hearing, if petitioned, to gather information about whether a natural perennial-flowing stream has significant aquatic and riparian attributes in need of protection or preservation under 75-7-102.
 - (c) Notice of public hearing to be conducted under (6)(a), and (b), shall be given by publication of a notice in a newspaper of general circulation in the area at least twice with an interval of at least 14 days between the two publication dates. The first notice must be published at least 28 days prior to the hearing.
- (9) Hearings for Declaratory Rulings.
- (a) Hearings for declaratory rulings shall be conducted in accordance with the Act and Rule 20, Declaratory Ruling.
 - (b) Notice of hearing for declaratory rulings shall be given as described in this (6)(c) of this rule.

Explanation:

Subsection (5)(a) sets guidelines for a CD for providing this notice for meetings. If your CD has received different guidance from a county attorney or other legal advisor, substitute timeframes given by them. Note: It is extremely rare that a meeting would be closed to discuss a 310 permit. Unless, your district is certain that there is a legal reason to close a meeting, keep them open. CDs must keep minutes as prescribed by the open meeting laws and provide an opportunity for the public to participate in CD decisions. An open mike session must be provided for the public to participate in all CD business. This section was added to consolidate public participation issues.

RULE 12. PROJECT CONSTRUCTION.

The following standards shall apply to all projects:

- (1) Projects must be designed and constructed using methods that minimize:
 - (a) adverse impacts, both upstream and downstream;
 - (b) future disturbance to the stream. [(1) (a – b) ARM]
- (2) All disturbed areas must be managed during construction and reclaimed after construction to minimize erosion. [ARM]
- (3) Temporary structures used during construction must be designed to handle high flows reasonably anticipated during the project construction period. Temporary structures must be completely removed from the stream channel at the conclusion of construction and the area must be restored to a natural and stable condition. [ARM]
- (4) Channel alterations must be designed to retain original stream length or otherwise provide hydrologic stability. [ARM]

- (5) Streambank vegetation must be protected except where removal is necessary for completion of a project. When removal of vegetation is necessary, it must be kept to a minimum and revegetated as soon as possible. [ARM]
- (6) Riprap, rock, or other material used in a project must be of adequate size, shape, and must be properly placed to protect the streambank from erosion. [ARM]
- (7) The district may:
 - (a) limit the time and duration of construction to minimize impacts to the stream or associated aquatic life;
 - (b) require the applicant to submit engineering designs; when in the district's judgment, the project's complexity requires greater assurance of project stability to minimize impacts to the stream;
 - (c) require the applicant to provide project completion documentation, which may include photographs. [(8) (a-c) ARM]
- (8) A person may not place road fill material in a stream. [ARM]
- (9) A person may not place debris or other materials in a stream where it can erode or float back into the stream. [ARM]
- (10) Projects may not permanently prevent fish migration. [ARM]
- (11) **For streambank stabilization projects, the district encourages the use of methods that preserve or enhance natural stream habitat and function.**
 - (a) **Applications proposing the use of riprap or other hard streambank stabilization methods shall include information establishing that due consideration has been given to methods that use organic materials (e.g., root wads, riparian vegetation, biodegradable geotextile fabrics, tree revetments) as the primary means of stabilization and that such methods are not practicable because:**
 - (i) **Sufficient long term durability would not be achievable;**
 - (ii) **Hydrodynamic considerations make it likely that the project would not meet its intended purpose;**
 - (iii) **The project would result in the same or greater impact on channel stability, flooding, erosion, and/or aquatic habitat; or**
 - (iv) **Economical considerations prevent the use of such methods.**
 - (b) **Live vegetation used in a project must remain viable and functional for one year after completion of the project. The district may perform follow-up inspections**

of projects involving live vegetation and may require that dead vegetation be replaced. [(12) (a) (i-iv) and (b) Optional]

- (12) **Instream woody debris should only be removed from the stream when necessary to complete a project or if significant property damage is imminent. If it is necessary to remove instream woody debris, the amount that is removed must be kept to a minimum. [Optional]**
- (13) **All permanent stream crossings (e.g., bridges, culverts) should, at a minimum, span the width of the stream at the mean high water mark. [Optional]**
- (14) **The applicant must notify the district in writing, either within 15 days of completion of the project, or prior to the end of the permit period, whichever comes first. [Optional]**

Explanation:

These standards repeat ARM 36.2.410. Adoption Mandatory expect where noted. (12 – 14) are optional. General standards such as the above will aid applicants in knowing what will be required of them in the construction of a project. If the district has other specific requirements for project approval, it is recommended that the district add to this section. Examples would be stipulations typically included in the supervisors decision form, such as standard requirements for projects such as bridge spans, culverts, fords, dredging, riprap size and materials, retaining walls, use of BMPs. Use care in developing standards to ensure that standards do not change the law. Generally, the CD may not prohibit activities, but may set standards for approval to avoid certain impacts.

RULE 13. DISPUTE RESOLUTION.

- (1) Any permit decision or decision regarding an emergency may be reviewed by an arbitration panel or by judicial review in the district court in the county where the project is located. Judicial review of an arbitration panel’s decision may be made under the provisions of MCA, Title 27, Chapter 5, Part 3 of the uniform arbitration act and must be brought in the county where the action is proposed to occur.
- (2) The applicant may request arbitration as the method to resolve disputes by signing an arbitration agreement either before the application review process or within 30 days of receipt of the supervisors’ decision.
 - (a) If an applicant signs an arbitration agreement prior to the application review process, the applicant waives their right to judicial review.
- (3) The applicant may request judicial review of the supervisors’ decision by filing a petition in district court within 30 days of receipt of the supervisors’ decision.
- (4) Any other team members may seek formal dispute resolution only through arbitration by signing an arbitration agreement within 5 working days of receipt of the supervisors’ decision.

- (5) The arbitration agreement is outlined on Form 271 and contains provisions for the appointment of arbitrators; the exercise of power by the arbitrators; the hearing process; and fees and expenses of arbitration.
- (6) An applicant's choice of the judicial review remedy prevails over any other team member's request for arbitration.
- (7) Subsection (1) does not preclude more informal means of dispute resolution. A meeting or meetings, to include, at a minimum, all of the team members and the supervisors, may be scheduled, at the discretion of the supervisors, at any time in order to discuss and attempt to resolve disputes. This subsection does not relieve the team member(s) wishing to dispute a permit decision of the duty to submit a request for arbitration or file a petition for a judicial review in district court in compliance with subsection (3) or any party from any other provision of the statute.
- (8) An appeal of the determination made by judicial review may be made to the Montana Supreme Court.
- (9) Judicial review of an arbitration panel's decision may be made to district court under the Uniform Arbitration Act (Title 27, Chapter 5, Part 3, MCA).

Explanation:

- (3) This Rule replaces old model Rule 13, Arbitration due to 2003 law change. This section restates the law, but not necessarily verbatim, as in other sections of the rules. Adoption recommended. (2) and (3) were updated to reflect 2019 law change, HB383 extending the appeal deadline from 15 to 30 days. This section restates the law, but not necessarily verbatim, as in other sections of the rules. Adoption recommended.

RULE 14. INSPECTION OF PROJECTS - PROJECT FOLLOW-UP.

- (1) The supervisors, team members, or their designated representative may inspect any project during or after construction to insure that the conditions of the permit were followed and to provide technical assistance to the applicant.
- (2) The district shall notify the landowner prior to entering land to inspect a project, either orally or in writing.
- (3) The district may require the applicant to provide photo documentation of the project. [ARM]

Explanation:

CDs may follow up on projects to ensure compliance and this rules stipulates that, as well as the permission required.

RULE 15. EMERGENCIES.

- (1) Except as provided in this rule, the provisions of these rules shall not apply to those actions that are necessary to safeguard life or property, including growing crops, during periods of emergency. The person responsible for taking action under this rule shall notify the supervisors in writing within 15 days of the action taken as a result of an emergency. **[LAW]**
- (2) The emergency notice given under subsection (1) must be provided on Form 275 and must contain the following information;
 - (a) the location of the action taken;
 - (b) a general description of the action taken;
 - (c) the date on which the action was taken; and
 - (d) an explanation of the emergency causing the need for the action taken.
- (3) The supervisors will determine if the action taken meets the definition of emergency as defined in Rule 4 (10). Violations of the emergency procedures are subject to provisions of Rule 17, Penalty/Restoration.
- (4) If the supervisors determine that the action taken meets the definition of a project, the supervisors shall send one copy of the Notice within 5 working days of its receipt, to the department. **[LAW]**
- (5) A team, called together as described in Rule 10, shall make an on-site inspection within 20 days of receipt of the emergency notice. **[LAW]**
- (6) Each member of the team shall recommend in writing, within 30 days of the date of the emergency notice, approval, modification or denial of the project. **[LAW]**
- (7) The supervisors shall review the emergency project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members of their decision within 60 days of receipt of the emergency notice.
 - (a) If an action is approved no further action is necessary in the part of the district or the applicant.
 - (b) In an emergency action that has been modified, the applicant must submit written notice on Form 270 to mitigate possible damages to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency situation. Notice under this subsection must be filed within 90 days after the supervisors' decision.
 - (c) A person who has undertaken an emergency action that is denied shall submit written notice on Form 270 to obtain approval to remove the project to avoid further damages to the stream caused by the emergency action and to achieve a long-term solution, if feasible, to the emergency situation. Notice under this

subsection must be filed within 90 days after the supervisors' decision. [(7)(a-c)
LAW]

- (8) Disagreements with the supervisors' decision may be formally resolved according to Rule 13, Dispute Resolution.
- (9) The failure of a person to perform the following, subjects the person to civil and criminal penalties:
 - (a) failure to provide emergency notice under subsection (1);
 - (b) failure to submit a notice of the project under subsection (7)(b) and (7)(c); or
 - (c) failure to implement the terms of a supervisors' decision for the purpose of mitigating the damage to the stream caused by the emergency action and of achieving a permanent solution, if feasible, to the emergency situation. [(9)(a-c)
LAW]

Explanation:

Repeats or clarifies 75-7-113 of the Act. Subsection (8) revised due to 2003 legislative changes. Other minor changes were made for consistency.

RULE 16. COMPLIANCE WITH OTHER LAWS.

- (1) Approval for proposed projects or alternate plans does not relieve the applicant of the responsibility of complying with Title 76, Chapter 5, MCA, floodway management and regulation where designated floodplains or designated floodways have been established in accordance with that chapter. [**LAW]**
- (2) These rules shall not impair, diminish, divest, or control any existing or vested water rights under the laws of the state of Montana or the United States. [**LAW]**
- (3) The issuance of written consent of the supervisors does not relieve the applicant of the responsibility to obtain other permits or landowner permissions that may be necessary to undertake a project.

Explanation:

A 310 permit is a separate approval needed to work in or near a stream. The applicant is responsible for complying with all laws. The joint application provides information for the applicant to inquire to other agencies about other requirements.

RULE 17. PENALTY - RESTORATION.

- (1) Except for emergency action, a project engaged in by any person without prior approval, or an activity performed outside the scope of written consent of the

supervisors, is a public nuisance and subject to proceedings for immediate abatement. [LAW]

- (2) A person who initiates a project without the written consent of the supervisors, performs activities outside the scope of written consent of the supervisors, places a junked motor vehicle in a streambed or bank, or violates the emergency procedures of Rule 16 or the Act is:
 - (a) guilty of a misdemeanor and upon conviction, the person shall be punished by a fine not to exceed \$500; or
 - (b) subject to a civil penalty not to exceed \$500 for each day that person continues to be in violation. [(2)(a-b) LAW]
- (3) Each day of a continuing violation constitutes a separate violation. The maximum civil penalty is the jurisdictional amount for purposes of 3-10-301. A conservation district may work with a person who is subject to a civil penalty to resolve the amount of the penalty prior to initiating an enforcement action in justice's court to collect a civil penalty. [LAW]
- (4) In addition to the criminal fine or civil penalty provided in subsection (2), the person:
 - (a) shall restore, at the direction of the court, the damaged stream, as recommended by the supervisors, to as near its prior condition as possible, or;
 - (b) is civilly liable for the amount necessary to restore the stream. The amount of the liability may be collected in an action instituted pursuant to 3-10-301 (justice court) if the amount of liability does not exceed \$7,000. If the amount of liability for restoration exceeds \$7,000, then the action must be brought in district court. [(4)(a-b) LAW]
- (5) Any person may report a violation of these rules or of the Act to the county attorney or to the supervisors.

Explanation:

This section was revised due to 2003 legislative changes.

RULE 18. COMPLAINT PROCEDURE.

When a conservation district receives a complaint alleging a violation, the conservation district will follow the steps below:

- (1) Request that the complainant submit a written complaint on Form 274. The complaint should specify the nature of the alleged violation, who is involved, where it is taking place, and when it occurred.

- (2) Contact the alleged violator either by telephone or in writing and advise the person of the complaint and that a field investigation will take place. Inform the violator that if a violation is occurring, it must cease immediately.
- (3) Conduct a field investigation, collect evidence, and document the time, date, location, nature of activity, and the person(s) involved in activity. The district will acquire information to confirm or deny that the complaint was valid complaint and whether there is a violation of that Act. If the field investigation does not verify a violation, the district will notify the complainant and the alleged violator, in writing, of the districts findings.
- (4) If a field investigation affirms a violation, the district will send a letter certified with return-receipt requested, setting forth the results of investigation, the course of action required to rectify the violation, and a deadline date for taking the corrective action. If the violator acknowledges the district's request and is willing to work with the district to correct the violation, the district may postpone issuing an Order assessing a civil penalty or forwarding the complaint to the county attorney. If the violator is not responsive to the letter and is not cooperative in correcting the violation, the supervisors may proceed with the violation in accordance with 75-7-123 and may issue a cease and desist order.

Explanation:

This is a new complaint procedure. CD may revise this section to reflect its process.

Note: Districts should follow-up on all complaints, even if it is not written or is unsigned. Most districts try to secure voluntary compliance with the act when violations have been found. If your district uses a different procedure, it should replace this section. It is advisable for districts to review this section with its county attorney. Adoption of a complaint procedure is recommended.

RULE 19. ORDERS ON VIOLATIONS.

- (1) If the district determines that issuance of an Order is appropriate, the district shall send a letter to the violator, enclosing an order assessing a civil penalty not to exceed \$500 per violation per day. The letter will identify the specific violation, the district finding on noncompliance, the required corrective action, and time frames for compliance, the date the civil penalty commences, and the district's intent to seek judicial enforcement of the civil penalty if it is not paid. If the violator takes corrective action within the required time frame, the district may waive the order for civil penalty.
- (2) If a violator fails to respond to the order, or to take corrective action, the district may seek judicial enforcement by turning the matter over to the county attorney or other legal service provider for the district.

Explanation:

New Rule added to reflect CD's authority to follow up on complaints and violations.

RULE 20. DECLARATORY RULING.

- (1) A person who is directly affected by the supervisors' determination of applicability, interpretation, or implementation of the law, these rules, a written consent, or a designation of a stream, including a portion of a stream, and who disagrees with a determination may petition the supervisors for a declaratory ruling. [LAW]
- (2) Upon receipt of the petition, the supervisors' will determine whether the matter constitutes significant public interest.
- (3) If the issue raised in the petition for a declaratory ruling is of significant interest to the public, the supervisors shall provide a reasonable opportunity for interested persons and the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling. [LAW]
- (4) If the issue raised in the petition for a declaratory ruling is not of significant interest to the public, the supervisors shall provide a reasonable opportunity for the petitioner to submit data, information, or arguments, orally or in written form, prior to making a ruling. [LAW]
- (5) Data and information may be submitted at a hearing before the supervisors. Data and information submitted to the supervisors outside of the hearing process must be made available for public review prior to the hearing being conducted before the supervisors. [LAW]
- (6) A proceeding held under this section is not a contested case proceeding. A declaratory ruling under this section is not subject to the provisions of the Montana Administrative Procedures Act. No party may cross examine any party submitting data and information to the supervisors, but all data and information must be verified by the party submitting it. [LAW]
- (7) This rule may not be interpreted or construed to allow a person to petition for a declaratory ruling under this section for an administrative review of a decision of the supervisors to grant, deny, or condition a written consent for a project or a project undertaken during an emergency. Review of these decisions is exclusively provided for in 75-7-121 as it pertains to arbitration or judicial review. [LAW]

Explanation:

This section added because of the 2003 legislative change. This Rule and Rule 22 describe the process to make a formal, binding decision regarding questions of jurisdiction.

RULE 21. PROCESS FOR DECLARATORY RULING.

- (1) A directly affected person must submit a petition that states how and why the person is directly affected by the district's action and the specific question or initial determination made by the district to be addressed in the declaratory ruling
- (2) Within 30 days of the filing of a petition, the district shall appoint a hearing officer, who may be a supervisor, to conduct the declaratory ruling hearing. The hearing officer will regulate the course of the hearing, and with a concurrence of the district, set the time, place and date of the hearing.
- (3) Within 30 days of appointment of a hearings officer, the district shall set a date for a hearing to gather information and data, allow public comment, and allow the public to submit written comment. The hearing may be continued if necessary. The district shall provide notice of the hearings as described in Rule 11, Public Participation. A quorum of the supervisors must be present at the hearing. The district shall maintain a record of the petition, notices, all information and data gathered, any proposed findings of fact and conclusions of law.
- (4) The hearing officer will make a recommendation to the supervisors for their approval and adoption within 60 days of the conclusion of the hearings process. The district may extend this time frame if necessary.
- (5) The hearing officer and the supervisors shall consider information provided by the petitioning party to be persuasive unless the information is overcome by a preponderance of all available information presented at the hearing.
- (6) A declaratory ruling, consisting of findings of fact and conclusions of law, must be made by a concurrence of a majority of the board. Only those supervisors present during the hearing will participate in the decision.

Explanation:

New Rule added due to 2003 legislative changes.

RULE 22. JUDICIAL REVIEW OF DECLARATORY RULING

- (1) A directly affected person or an interested person dissatisfied with a declaratory ruling may seek judicial review in district court. The district court review shall be only on information and data established on record before the district. A district determination may be reversed or modified if the declaratory ruling is:
 - (a) in violation of a constitutional or statutory provision;
 - (b) in excess of the statutory authority of the supervisors;
 - (c) affected by error of law; or
 - (d) arbitrary or capricious, characterized by abuse of discretion, or a clearly unwarranted exercise of discretion. [(1)(a-d) LAW]

- (2) Any aggrieved person who was a party to the declaratory ruling proceedings who is dissatisfied with the district court determination may seek judicial review by an appeal to the Montana Supreme Court. [LAW]

Explanation

This section describes the appeal process for a declaratory ruling by the district and was included to reflect 2003 legislative changes.

RULE 23. SURETY BONDS.

- (1) **The supervisors may require the project applicant to furnish, prior to the commencement of a project and as a condition of the written consent of the supervisors, a sufficient surety bond approved by the supervisors, conditioned upon the proper reclamation of the streambed and land involved in the project and conformance with any conditions in the project permit.**
- (2) **Once an applicant has posted a sufficient surety bond and prior to the release of that bond, the supervisors shall inspect the applicant's completed project for proper reclamation and conformance with any conditions placed on the applicant's project permit. If the project passes inspection, the supervisors shall release the surety bond.**
- (3) **If an applicant's project is not properly reclaimed and does not properly conform to conditions placed on the applicant's project permit, and the applicant refuses after receiving a written warning containing notice of all deficiencies to properly reclaim the area in question or conform the project to the conditions on the permit, the supervisors shall, after granting the applicant an opportunity for a hearing before them, refuse to release said bond and shall take such legal action as is necessary to use such bond to the extent required to have the project properly reclaimed or to have all conditions of the approved project plan or permit met.**
[Optional]

Explanation:

This section can be used if the district wants to require surety bonds prior to approval of certain projects. If the district adopts this rule, it is recommended to specify under what condition that district would require a bond (for example, for mining activities, large construction projects, etc.). The district may also want to specify how the amount of the bond will be determined. Adoption optional.