

DNRC WRD HB 114 RULEMAKING

Nate Ward, Water Rights Bureau Chief



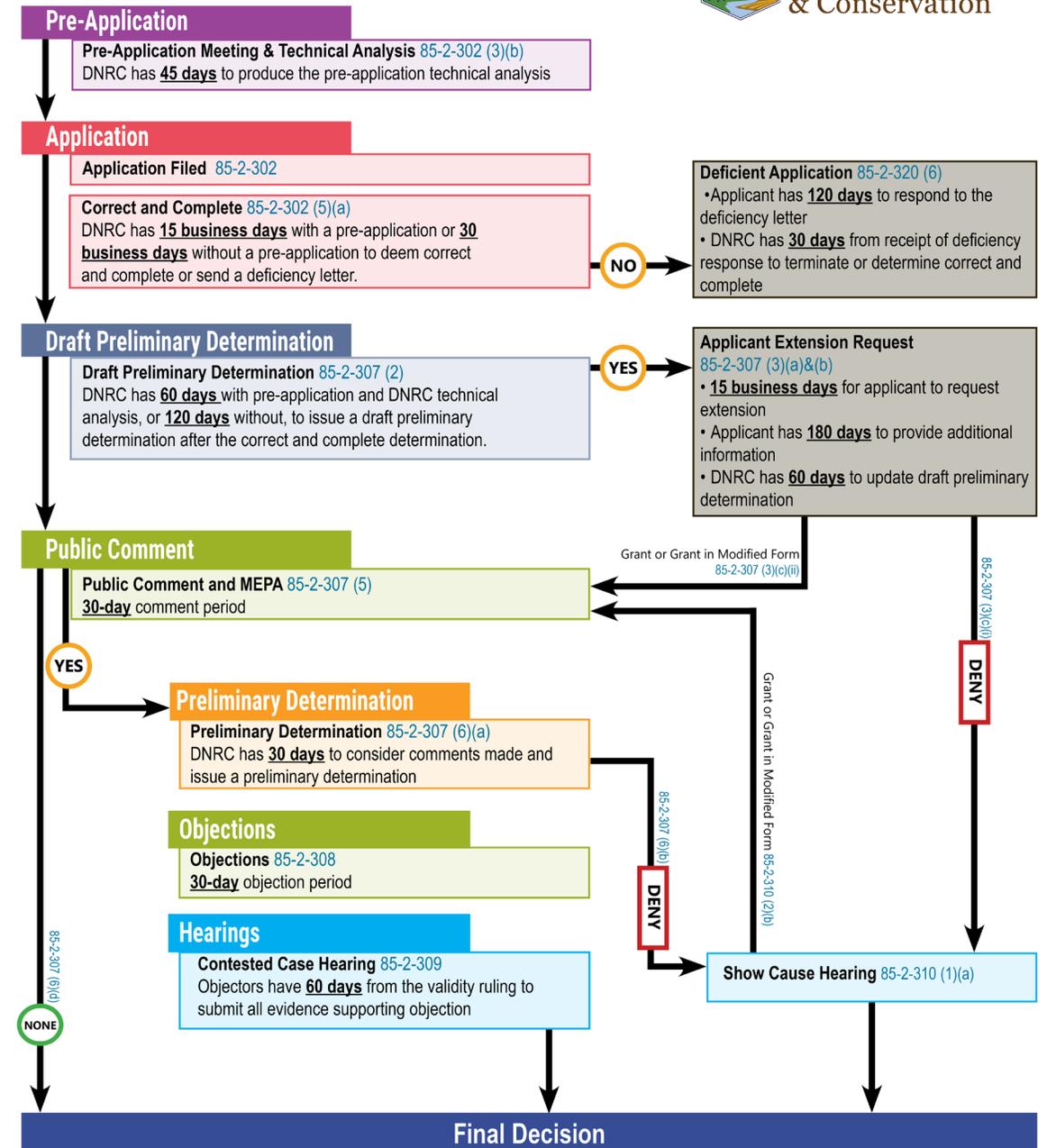


AGENDA

- 114 overview
- Rule packages
- How it fits together
- Technical Analyses- how it fits the process
- Timelines for rulemaking
- Guiding principals
- Rules package summary
- Significant changes
- Moderate changes

HB 114 PERMIT AND CHANGE OVERHAUL

- Consensus recommendation by Working Group
- More timely processes- shortens timeframes from 360 days to 105 days
- Incentivizes a pre-application meeting to improve application quality and process transparency
- Frontload necessary analyses, reducing costs to water rights applicants
- Clear statutory timelines
- Allows DNRC to consider and address public comments on decision documents prior to the hearings process



RULES PACKAGES AND RATIONALE

- 2023
68th Legislature 2023

HB0114



AN ACT REVISING THE APPLICATION PROCESS AND DEPARTMENT CONSIDERATION OF A PERMIT OR CHANGE IN AN APPROPRIATION RIGHT; REVISING TIMELINES FOR DEPARTMENT CONSIDERATION OF AN APPLICATION FOR A WATER RIGHT OR A CHANGE OF WATER RIGHT; REVISING NOTICE; PROVIDING FOR PRELIMINARY DETERMINATIONS OF A WATER RIGHT APPLICATION OR A CHANGE OF WATER RIGHT; PROVIDING FOR PUBLIC COMMENT; REVISING THE OBJECTIONS PROCESS; REVISING DEPARTMENT HEARINGS; EXTENDING RULEMAKING AUTHORITY; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 85-2-302, 85-2-307, 85-2-308, 85-2-310, AND 85-2-401, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

HB 114 implementation
Necessary to implement the robust timelines

- 2023
68th Legislature 2023

SENATE BILL NO. 72
INTRODUCED BY S. FITZPATRICK
BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE POWERS, DUTIES, TERMS, DESIGNATIONS,
6 APPOINTMENTS, OPERATIONS, AND JURISDICTION OF THE WATER COURT; PROVIDING FOR THE
7 GOVERNOR'S APPOINTMENT OF WATER JUDGES; PROVIDING FOR WATER COURT JURISDICTION
8 OVER WATER DISTRIBUTION; REVISING THE APPOINTMENT OF WATER COMMISSIONERS;
9 DESIGNATING WATER JUDGES TO WATER DIVISIONS; PROVIDING THAT WATER JUDGES ENFORCE
10 FINAL DECREES; PROVIDING FOR A WATER COURT ADMINISTRATOR; REVISING THE POWERS AND
11 DUTIES OF WATER MASTERS; REVISING THE PROCESS TO PETITION FOR DEPARTMENT ACTION ON
12 UNPERFECTED WATER RIGHTS; REVISING JUDICIAL REVIEW OF CERTAIN CONTESTED CASES;
13 PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-4-702, 3-1-

Permit and Change Verification
Reviewed by SWG 2023

36.12.1902 CHANGE APPLICATION - HISTORIC USE

(1) The description of the historic information is related to a date that is dependent on the type of water right being changed. The following dates are applicable for each type of water right:

- (a) historic information for a statement of claim must be described as it was used prior to July 1, 1973, unless the Water Right Claim was subject to a previous change in which case it is the date of completion of the change;
- (b) historic information for a provisional permit must be described as it was used at the filing date of the completion notice;
- (c) historic information for a certificate of water right must be described as it was used at the filing date of the completion notice;
- (d) historic information for an exempt or nonfiled water right must be described as it was completed prior to July 1, 1973; and
- (e) when a change application has been granted on or after July 1, 1973, the department may request additional historic information for a statement of claim as it was used prior to July 1, 1973.

Other WRD rule cleanup

HOW IT ALL FITS TOGETHER



PERMIT TECHNICAL ANALYSES

Checklist- identifies the applicable technical analyses for the unique application type. Found on the website.

Forms

Website

DNRC guidance- internal facing, consistency

Scientific Report- Internal facing on how we conduct studies; our standard; applicants can follow, but are not required (HOW DNRC IS GOING TO DO IT)

Rule- Technical analyses for PA for source type- 36.12.1302
- Tells you what analyses need to be conducted

Statute- identifies the criteria (e.g., physical availability)

TIMELINE





HB 114 RULEMAKING GUIDING PRINCIPLES

- Necessary for implementation of HB 114
- Improved flow of rules to follow the application process
- Adding clarity by removing repetition of statute
- Common terms or well-established technical terms in scientific literature will not be defined in rule
- Additional rule changes necessary will be addressed with future rules packages

RULES PACKAGE SUMMARY

Strike

- 36.12.1301
- 36.12.1701
- 36.12.1705
- 36.12.1901

Add

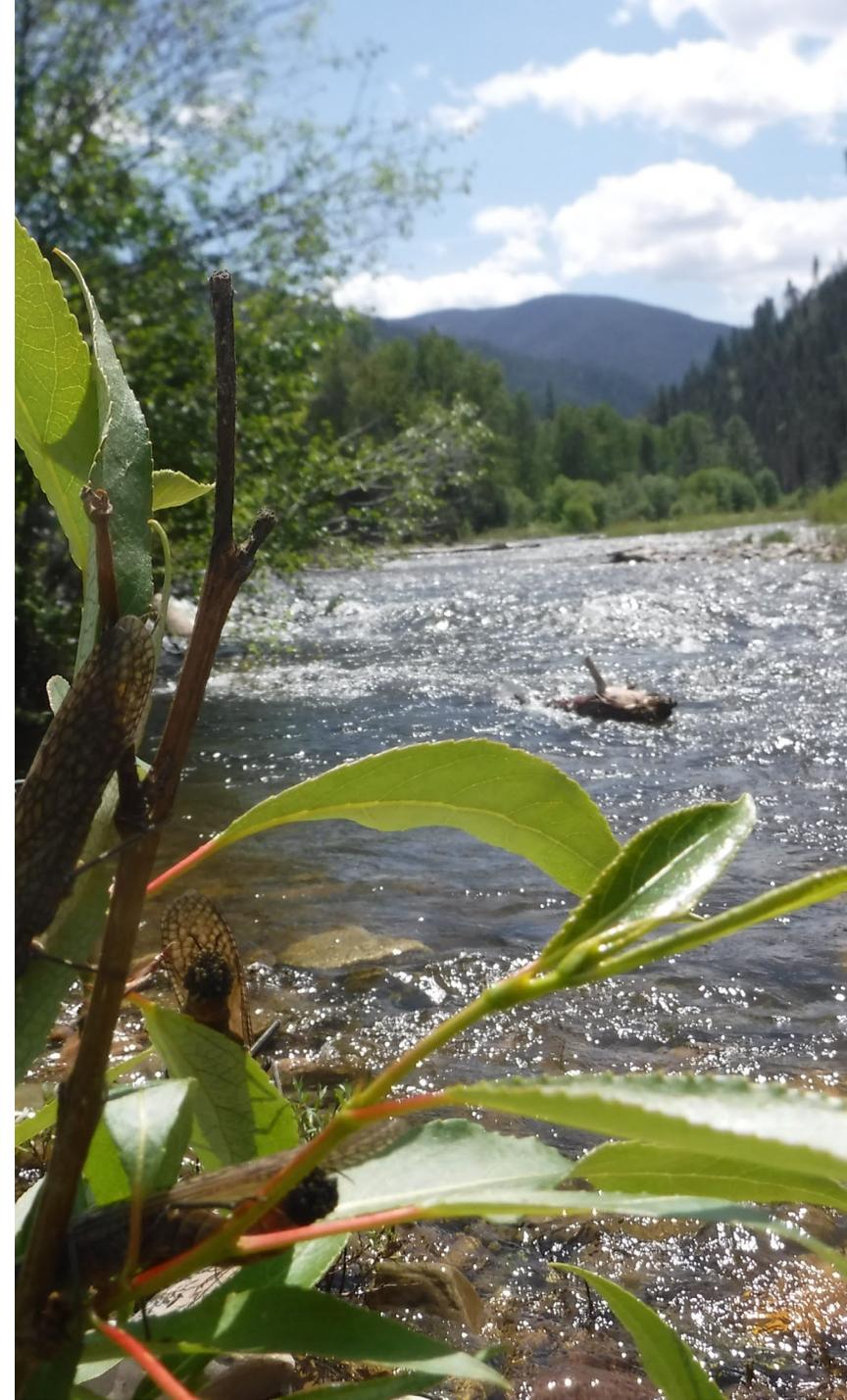
- 36.12.123
- 36.12.1302
- 36.12.1303
- 36.12.1304
- 36.12.1305

Modify

- 36.12.101
- 36.12.102
- 36.12.103
- 36.12.110
- 36.12.111
- 36.12.112
- 36.12.113
- 36.12.115
- 36.12.116
- 36.12.121
- 36.12.1401
- 36.12.1501
- 36.12.1601
- 36.12.1702
- 36.12.1703
- 36.12.1704
- 36.12.1706
- 36.12.1707
- 36.12.1801
- 36.12.1903
- 36.12.1904

SIGNIFICANT CHANGES

- Striking 36.12.1301: Important elements being incorporated into 1304 & 1305
- 36.12.1303: New rules addressing technical analyses
- 36.12.1304: Filing a permit form and application acceptance
- 36.12.1305: Filing a change application form and application acceptance
- 36.12.1702: Modifying to address source type/condition of source
- 36.12.1705: Striking and incorporating comparison language into 1704



MODERATE CHANGES

36.12.1401: Incorporating Draft PD into modification process

36.12.1601: Removing rule references of required information

36.12.1703: Moving evaluation of drawdown from physical availability to adequacy of diversion

36.12.1704: Consolidating physical/legal comparison with 1705

36.12.1801: Clarifying that if a water user is not changing how they use water, no need to explain new beneficial use

36.12.1904: Clarifying that the Department will compare drawdown in production well(s) to determine if well is adequate for proposed appropriation



QUESTIONS?

