



HB 432: Exceptions to the Change Process

This bill draft is a product of DNRC's **Comprehensive Water Review Stakeholder Working Group**, which spent the past interim collaborating on policy recommendations for water resource administration in Montana.

One of the core values of the Comprehensive Water Review Stakeholder Working Group was **finding creative ways to facilitate new uses of water while also protecting existing water rights**. Nowhere is the inherent tension of this value more apparent than in the change authorization process, which can be used to change the place of use, point of diversion, purpose of use, or place of storage of a water right. The DNRC is responsible for ensuring that the need for an efficient and streamlined change process is balanced against appropriate protections for existing users.

In thinking about how to improve the change process, the stakeholder working group looked for circumstances where the time, money, and risk of undergoing the change process is disproportionately **high** for applicants and the potential for harm to existing users is **low** – in other words, circumstances where the change process can be streamlined for applicants to reduce time and costs without significant risk of harm to existing users. The working group identified the following three areas:

1. REPLACEMENT WELLS IN CLOSE PROXIMITY TO ORIGINAL WELLS

- **What does this provision do?** Current statute provides an exception to the full change process for replacement wells (i.e., a new well in place of an old well), but the exception is tacked to flow rate and volume limitations (35 GPM/10 AF for all uses except municipal use, which is limited to a flow rate of 450 GPM). This bill would remove the flow rate/volume limit and instead apply a proximity limitation of 200 feet maximum distance between an old well and a replacement well.
- **Who does this provision help?** The bill will allow more water users to access the streamlined process, easing the expense and hassle of replacing infrastructure that no longer works. The replacement well provision is not limited to a specific water right type or purpose, and the proposed update increases the number of water users that will qualify for its use.
- **How are other water users protected?** The bill is actually *more* protective to surrounding water users than current statute. Location is a more meaningful limitation than rate/volume when ensuring that there will be no adverse effect to nearby well and surface water diversions. The closer a replacement well is to the original well, the less likely it is that there will be any difference in impact.

2. MUNICIPALITIES CHANGING PLACE OF USE TO MATCH SERVICE AREA

- **What does this provision do?** The bill creates a new and expedited path for cities or county water and sewer districts to expand the place of use associated with their existing water rights as they increase their service area.
- **Who does this provision help?** The streamlined change allows municipalities to more nimbly respond to growth and development pressures. It also allows for new development to access the benefits of the public water supply system.

- **How are other water users protected?** The provision is limited to use by a municipality or water and sewer district that has not yet used the full volume authorized under its permit(s) or water reservation. (A water reservation is a special type of water right intended to allow public water supply systems to gradually “grow into” their water right as demand increases with population growth). Water service providers using this provision are limited to the same flow rate and volume as previously authorized and can only expand the place of use consistent with the boundaries of an approved growth policy, land use plan, or service area boundary.

ADDING STOCK TANKS TO AN EXISTING WATER RIGHT

- **What does this provision do?** Currently, adding stock tanks to a water right requires a water user to go through the full change authorization process. This bill creates an exemption to the change process for agricultural producers, allowing a water user to instead add the stock tanks and then file a notice of the stock tank change with DNRC.
- **Who does this provision help?** This provision provides flexibility for the agricultural industry. It will also allow livestock producers to take better advantage of federal funding. In the past, mismatched federal funding cycles and change authorization timelines have caused livestock producers to miss out on federal grant opportunities.
- **How are other water users protected?** The bill contains sideboards to ensure that no expansion of the right occurs through the addition of stock tanks, providing that the user may not exceed their historical flow rate, volume, or number of stock.

In addition to the protections built in above, this bill provides public notice and objection opportunities for those who feel that service area expansions or stock tank additions will create adverse effect. This bill creates a clear process for objections and ensures timely due process if an objection is filed.