

HB441: Alignment of Provisional Water Rights with Final Decree

Section 1 §85-2-313(1)	<p>Clarifies that provisional permits are subject to the final decree in the basin where the permit is located. This is a clarification from the previous language that tied the process to “final determination,” which is not commonly used but is equivalent to the final decree.</p> <p>Language that set forth the process to reduce, modify, or revoke permits not in accordance with final decree was removed and clarified in other sections of the bill.</p>
§85-2-313(2)	<p>New subsection that provides for a notice of availability and opportunity to petition for the reduction, modification, or revocation of provisional permits after issuance of final decree.</p> <p>This subsection defines two types of notices: notice to owners of record of existing water rights and provisional permits within decreed basins and notice to other interested persons who request the service.</p>
§85-2-313(3)	<p>New subsection that clarifies the petition process.</p> <p>Subsection (3)(a) states existing water right owners (pre- July 1,1973, rights) may file a correct and complete petition. If they do, it must be within 180 days of the notice, and they must serve the petition to all owners of record of the permit.</p> <p>Subsection (3)(b) provides for the deficiency review process.</p> <p>Subsection (3)(c) provides for notice of a correct and complete petition to petitioner and permit owners. It also provides for a process for the permit owner to file a response, which includes serving the response on the petitioner.</p> <p>Subsection (3)(d) says petitioner must prove by a preponderance of the evidence</p> <ul style="list-style-type: none">• The necessity of the reduction, modification, or revocation• The permit would have been denied or modified if the final decree were available <p>Subsection (3)(e) gives the department 120 days to make a decision as to whether unappropriated or legally available water existed at the time the permit was issued. Subsection (3)(d)(i) provides for a show cause hearing if decision is to reduce, modify, or revoke.</p>
§85-2-313(4)	<p>New subsection that clarifies a certificate of water right is issued in accordance with 85-2-315 if no petition is filed.</p>
Section 2 §85-2-315(1)	<p>In addition to the department verifying whether an appropriation was completed in substantial accordance with the terms of the permit, this section establishes the department will also verify any reduction or modification resulting from the petition process under 85-2-313.</p>

	<p>Establishes that DNRC will issue a certificate of water right after it has verified that the appropriation was completed in accordance with the terms of the permit, including a reduction or modification resulting from the petition process under 85-2-313.</p> <p>Establishes that if the department determines the appropriation was not completed in accordance with the terms of the permit, including a reduction or modification resulting from the petition process under 85-2-313, the department may provide notice to the permittee and hold a show cause hearing.</p>
§85-2-315(2)	This subsection clarifies that a certificate of water right is issued for change in appropriation right that has been verified or modified pursuant to 85-2-402.
§85-2-315(3)	<p>This subsection establishes that a certificate of water right will be sent to owners and duplicates will be maintained in a centralized database.</p> <p>The language for this subsection is not new. It is being moved from current 85-2-315(1).</p>
<p>Section 3 §85-2-402(9)</p>	<p>The modifications to this subsection are intended to make clear that the department must verify whether the appropriation was completed in substantial accordance with terms of change in appropriation right.</p> <p>Also establishes the different pathways and considerations for verifying changes based on the water right type:</p> <ul style="list-style-type: none"> • (9)(a) is for changes to existing water rights (Pre-July 1, 1973, rights). The department verifies if the change is in accordance with the findings of the final decree. The department will reverify these elements if the change authorization was previously verified before issuance of final decree. • (9)(b) is for changes to provisional permits. The department verifies if the change is in accordance with any modification or reduction of the underlying permit pursuant to 85-2-313. The department will reverify these elements if the change authorization was previously verified before completion of the petition process.
§85-2-402(10)	<p>The modifications to this subsection add the items that will trigger a show case hearing. Elements of change in appropriation are not in substantial accordance with the existing water right in the final decree or reduction or modification of permit pursuant to 85-2-313.</p> <p>This change is necessary to make clear that due process exists if a change authorization is impacted by final decree or a reduction, modification, or revocation under 85-2-313.</p>
<p>Section 4 [New Section 1]</p>	A new section that says the secretary of state will provide notice of this act to tribal governments.