



## OUT-OF-STATE USE ADDENDUM

### §85-2-311(4), MCA and §85-2-402(6), MCA

When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water. The following criteria must be met before out-of-state use may occur. *Please note, an Application for Change of a Water Right for out-of-state use may have an additional requirement of approval by the legislature, which may include one or more public hearings.* Label all attachments with the question number.

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### Application for Beneficial Water Use (§85-2-311(4), MCA)

Provide ***clear and convincing evidence*** sufficient to prove the following.

1. Water is physically available at the proposed point of diversion in the amount that you seek to appropriate.
2. Water can reasonably be considered legally available during the period in which you seek to appropriate, in the amount requested, based on the records of the department and other evidence provided to the department. Determine legal availability is determined using an analysis involving the following factors: (A) identification of physical water availability; (B) identification of existing legal demands of water rights on the source of supply throughout the area of potential impact by the proposed use; and (C) analysis of the evidence on physical water availability and the existing legal demands of water rights, including but not limited to a comparison of the physical water supply at the proposed point of diversion with the existing legal demands of water rights on the supply of water.
3. The water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected.
4. The proposed means of diversion, construction, and operation of the appropriation works are adequate.
5. The proposed use of water is a beneficial use.
6. You have a possessory interest or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use, or if the proposed use has a point of diversion, conveyance, or place of use on National Forest System lands, you have any written special use authorization required by federal law to occupy, use, or traverse National Forest System lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water under the permit.

7. If a valid objection is filed that contains substantial credible information establishing to the satisfaction of the department that the criteria for issuance related to water quality (§85-2-311(1)(f) to §85-2-311(1)(h), MCA) may not be met, be prepared to prove the following.
  - 7.1. The water quality of a prior appropriator will not be adversely affected.
  - 7.2. The proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1), MCA.
  - 7.3. The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, MCA, will not be adversely affected.
8. The proposed out-of-state use of water is not contrary to water conservation in Montana.
9. The proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.



## Application to Change a Water Right (§85-2-402(6), MCA)

Provide *clear and convincing evidence* sufficient to prove the following.

1. The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued.
2. The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for:
  - 2.1. a change in appropriation right for instream flow pursuant to 85-2-320, MCA or 85-2-436, MCA;
  - 2.2. a temporary change in appropriation right for instream flow pursuant to 85-2-408, MCA; or
  - 2.3. a change in appropriation right pursuant to 85-2-420, MCA, for mitigation or marketing for mitigation.
3. The proposed use of water is a beneficial use.
4. You have a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on National Forest System lands, you have any written special use authorization required by federal law to occupy, use, or traverse National Forest System lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This does not apply to:
  - 4.1. a change in appropriation right for instream flow pursuant to 85-2-320, MCA, or 85-2-436, MCA;
  - 4.2. a temporary change in appropriation right for instream flow pursuant to 85-2-408, MCA; or
  - 4.3. a change in appropriation right pursuant to 85-2-420, MCA, for mitigation or marketing for mitigation.
5. If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted in your application.
6. If a valid objection is filed that contains substantial credible information establishing to the satisfaction of the department that the criteria for issuance of may not be met, be prepared to prove the following.
  - 6.1. The water quality of an appropriator will not be adversely affected.
  - 6.2. The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, MCA, will not be adversely affected.
7. The proposed out-of-state use of water is not contrary to water conservation in Montana.
8. The proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

