

HB 114

Water Right Permit and Change Application Process Updates

Webinar, January 4, 2024, 10:00 am -12:00 pm



Agenda

Process Overview & Application Pathways

- Mallory Scharf, New Appropriations Program Manager, Water Rights Bureau

Technical Analyses Resources

- Melissa Brickl, Groundwater Section Supervisor, Water Sciences Bureau

Options Prior to Submittal of an Application

- Kerri Strasheim, Regional Manager, Bozeman Regional Office

Variances, Amendments, and Waivers

- Steven B. Hamilton, Regional Manager, Lewistown Regional Office

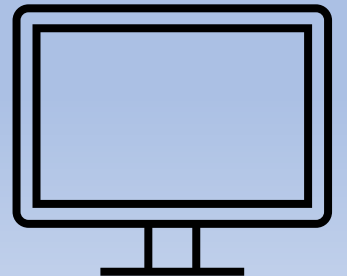
Positive Outcomes from New Process

- Kathy Olsen, Regional Operations Manager



Webinar Format

- Submit questions throughout presentations using the Q&A Zoom function.
- Questions will be addressed at the end of the presentation; you can also use the 'Raise Hand' Zoom function to submit questions at this time.
- Some questions may require DNRC follow-up; these will be addressed via email in coming days.
- A recording of this presentation will be made available on the DNRC website.



A scenic view of a winding river in a grassy field with mountains in the background. The river flows from the top left towards the center, curving to the right. The banks are covered in green and brown vegetation. In the foreground, there are some yellow wildflowers and a large rock. The sky is blue with some light clouds.

Background

- Origins of Process Overhaul
- Statutory Changes in HB 114
- Administrative Rule Changes

Process Overview & Application Pathways

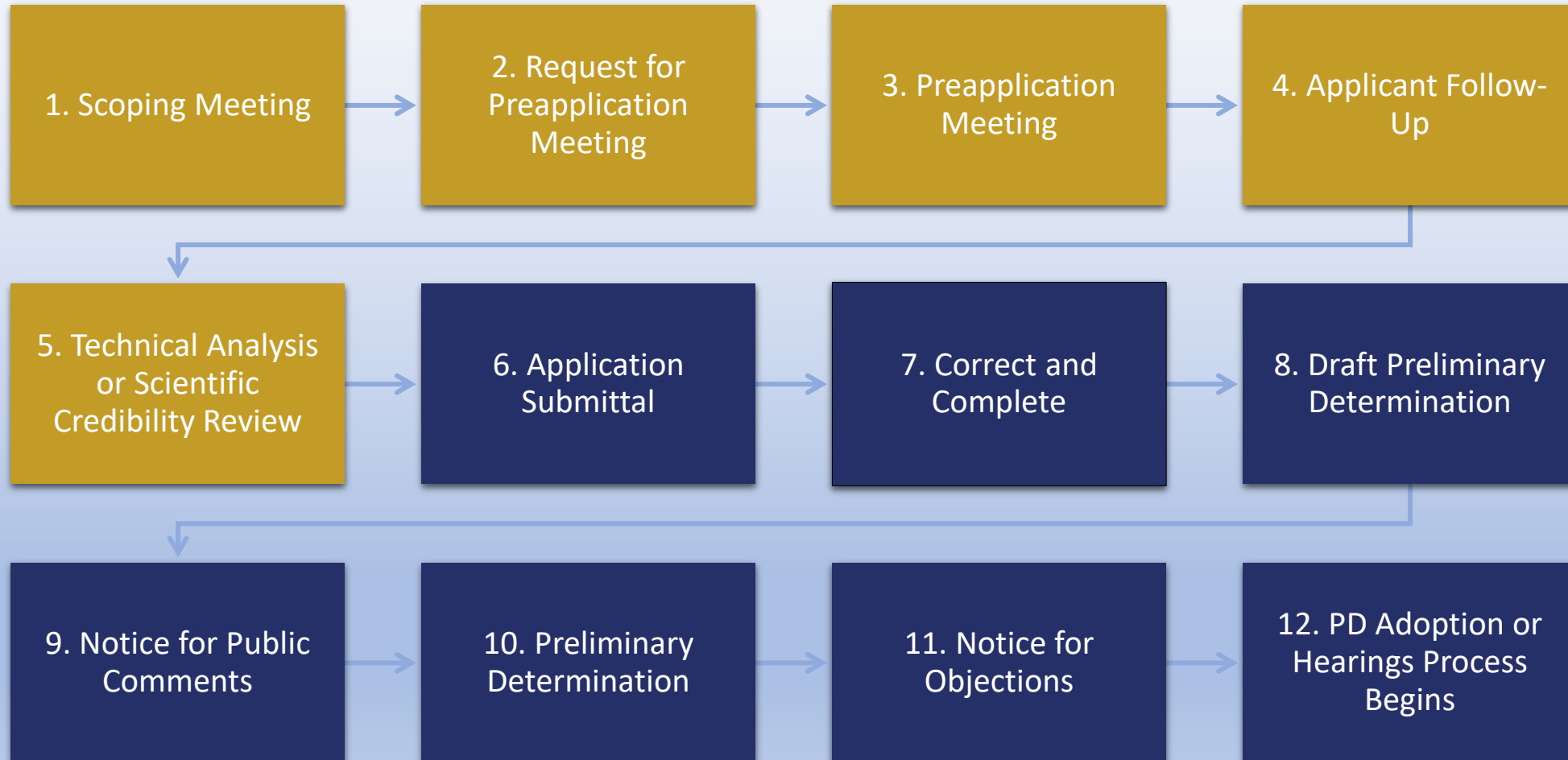
- Key Changes
- Process Steps
- Timelines & Fees
- Application Pathways
- Considerations for Selecting a Pathway



Process Overview – Key Changes

1. Formal preapplication meeting, with technical analyses completed prior to application submittal.
2. Technical analyses completed by DNRC or Applicant.
3. Faster DNRC timelines, plus expedited timelines if preapplication meeting occurred; no black holes in timelines.
4. All decisions will start as draft preliminary determinations.
5. New 30-day public comment period; objection period only if public comments were received.

Process Steps



Application Processing Timelines

Action	Deadline <u>with</u> Preapplication	Deadline <u>without</u> Preapplication
Application deemed correct & complete or deficiency letter sent (after application receipt)	15 business days	30 business days
Correct & complete determination or application termination (after receipt of a deficiency response)	30 days	30 days
Draft preliminary determination sent to applicant (after correct & complete)	60 days	120 days

Updated Fees

Form	Fee <u>with</u> Preapplication (\$500 of fee specified will be due during preapplication period)	Fee <u>without</u> Preapplication
Permit application in a closed basin	\$1600	\$2900
Permit application in an open basin	\$1200	\$2500
Change application	\$1500	\$2500

Table is limited to fees for permit and change applications. For a full list of fees, refer to Form 613 – Fee Schedule for Water Use in Montana.

Application Pathways

Four potential application pathways:

- Preapplication Meeting with DNRC-Completed Technical Analyses
- Preapplication Meeting with Applicant-Completed Technical Analyses
- No Preapplication Meeting with DNRC-Completed Technical Analyses
- No Preapplication Meeting with Applicant-Completed Technical Analyses

Timelines and fees are based on whether a preapplication meeting occurred. The decision for DNRC or Applicant to complete technical analyses drives what occurs at various stages in the process.

Considerations for Selecting a Pathway

Benefits of Preapplication Meetings:

- Frontloaded technical analyses prior to application submittal
- Opportunity to discuss process or identify red flags
- Expedited timelines and reduced filing fees

Benefits of DNRC-Completed Technical Analyses:

- No scientific credibility review needed
- Time and money savings for Applicants

Applicants should consider their expertise and resources when selecting a pathway.



Technical Analyses Resources

- Technical Analysis Guide
- Updated Form No. 633
- Flow Measurement Calculator (old Form 649)





Technical Analysis Guide

Department of Natural Resources and Conservation (DNRC)

Overview

This guide identifies the Technical Analysis required for the application required under the Administrative Rules of Montana (ARM) 36.12.1303 in support of the water rights criteria assessment as required in §§ 85-2-311 and -402, Montana Code Annotated (MCA), summarizes the standard practices for each of the technical analyses, and defines the process the Department will use to evaluate the Scientific Credibility of Applicant-supplied Technical Analysis.

3 Sections of the Technical Analysis Guide:

- Technical Analysis List
- Technical Analysis Standard Practice
- Scientific Credibility Review

<https://dnrc.mt.gov/docs/water/Water-Rights-Forms/Technical-Analysis-Guide-21DEC2023.pdf>

Technical Analysis List

	Area of Potential Impact Analysis	Surface Water Analysis	Groundwater Analysis for Changes	Hydrogeologic Report	Groundwater Analysis for Depleted Surface Water	Analysis of Depleted Surface Water	Surface Water Depletion Analysis	Surface Water Accretion Analysis	Mitigation Net Effect Analysis	Return Flow Analysis	Aquifer Recharge to Identified Water Sources	Evaluation of Impacts to Surface Water	Historical Use Analysis	Area of Potential Impact Analysis	Surface Water Analysis
1. Permit: Surface Water	X	X													
2. Change: Surface Water			X	X											
2.a. Irrigation, POU or Purpose Change					X										
2.a.i. Water Rights Impacted by Change in Return Flow						X									
2.b. Mitigation Purpose							X								
2.c. Aquifer Recharge Purpose							X	X							
3. Permit: Groundwater										X	X	X	X		
3.a. Closed Basin															X
4. Change: Groundwater			X												
4.a. POD Change														X	X
4.b. POU Change														X	
4.c. Irrigation, POU or Purpose Change									X						
4.c.i. Water Rights Impacted by Change in Return Flow								X	X						
4.d. Mitigation Purpose										X					
4.e. Aquifer Recharge Purpose										X	X				



Technical Analysis Standard Practice

The Department recommends that applicants completing their own Technical Analyses utilize the following resources. The Administrative Rules of Montana ([ARM](#)) can be found on the State of Montana Secretary of State website. The Permit and Change manuals and other Standard Practice documents can be found on the Department website on the Water Right Forms and Resources page.

Resources to help the Applicant complete each technical analysis:

- Manuals (permit and change)
- Administrative Rules of Montana
- DNRC Standard Practices
- Region-Specific Technical Memos
- Links to helpful resources (e.g., USGS webpage)

Example of Listed Resources

Analysis of the Area of Potential Impact

- Permit Manual, Criteria Based Guidance- Legal Availability of Permits
- ARM 36.12.1704

Analysis of the Area of Potential Impact of Depleted Surface Water

- Permit Manual, Criteria Based Guidance- Legal Availability of Permits
- ARM 36.12.1704

Analysis of the Potentially Impacted Surface Water Sources

- ARM 36.12.1903
- Change Manual, Criteria-Based Guidance- Adverse Effect for Changes

Groundwater Technical Analyses

- Physical and Legal Availability of Groundwater Technical Memorandum, dated April 22, 2019
- Numerical Groundwater Modeling Guidance Technical Memorandum, dated October 7, 2019

Historical Use Analysis

- ARM 36.12.1902
- Change Manual, Criteria-Based Guidance: Historical Use Section
- Technical Standard Practices
 - Technical Memorandum: Distributing Conveyance Loss on Multiple User Ditches

Net Depletions to Surface Water

- Net Surface Water Depletion from Ground Water Pumping Technical Memorandum, dated July 6, 2018
- Surface Water Depletion for Regional Bedrock Aquifers Technical Memorandum, dated September 16, 2019



Scientific Credibility Review

1.) Methodology

- Evaluate the procedures, models, and/or equations selected to complete analyses.

2.) Quality of the Analysis

- Evaluate the accuracy, completeness, and validity of the implemented methods.

3.) Relevance of the Data Used

- Are conclusions/results reasonable when compared to existing publications, nearby projects, published values, and other reputable resources.

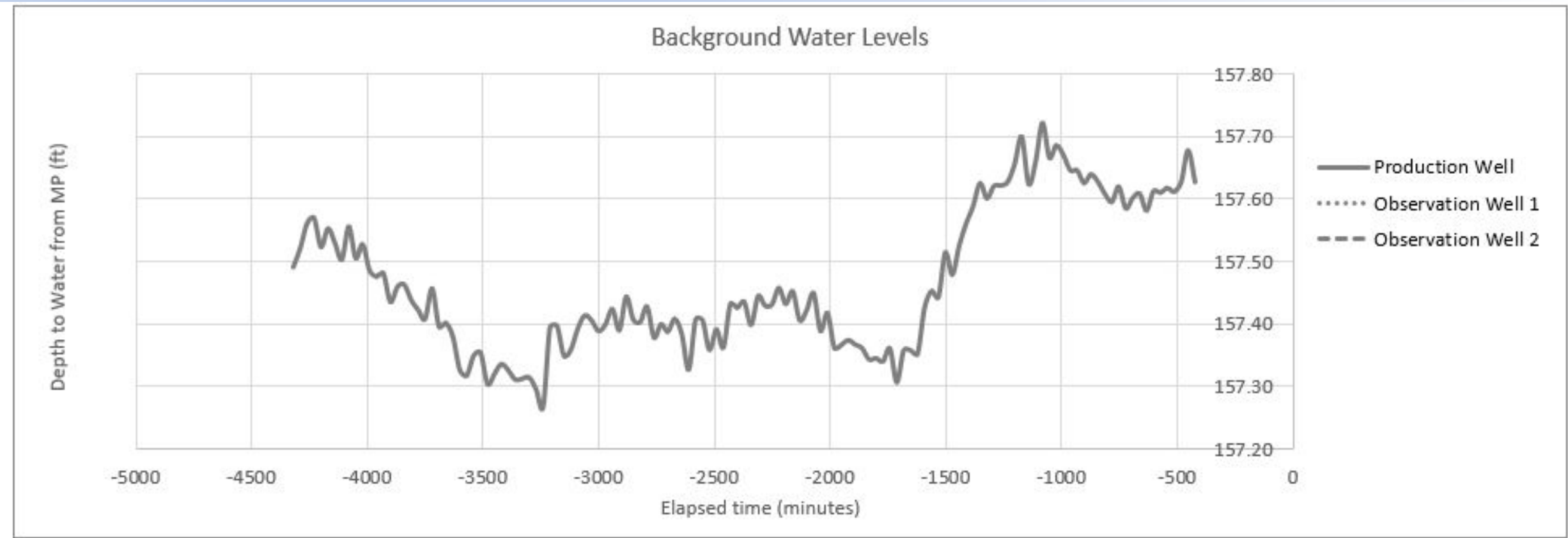
****If the Applicant deviates from DNRC standards listed in Section 2, they must prove why their methodology is scientifically substantial and credible.**

ARM 36.12.121 Aquifer Testing Requirements

Significant Updates:

- Provides testing procedures for eight-hour drawdown and yield tests [(3) (a) (d) (h)].
- Clarifies when eight-hour drawdown and yield tests are required [(3) (c) (e) (i-iii)].
- States the pumping rate must be maintained through the duration of the test and may not depart from the average pumping rate by more than 5% [(3) (a)].





New graphs tab that plots background, drawdown and recovery water levels and discharge.

Montana DNRC Flow Measurement Calculator

Include all requested data collected on this form. If requested data was not collected, enter "N/A" in the cell and include brief explanation of why the data was not collected.

Utilize references from USGS below to follow standards for collecting discharge via the midsection method:

Rantz, S.E., and others, 1982, Measurement and computation of streamflow: U.S. Geological Survey Water-Supply Paper 2175, v. 2, 631 p.

Turnipseed, D.P., and Sauer, V.B., 2010, Discharge Methods for Small Streams, U.S. Geological Survey, Reston, Virginia.

MIDSECTION METHOD
USGS Methodology
(> or = 20 sections, 0.6 depth)

Measurement Number: _____
Date: _____
Time: _____
Measurement taken by: _____

Total Discharge (Calculated): ----- cfs
Select Method from Drop Down List: 0.6-depth method

Distance	Width	Depth	Velocity at 0.6 Depth	Mean Velocity (Calculated)	Area (Calculated)	Discharge (Calculated)
				0	0	-----
				0	0	-----
				0	0	-----
				0	0	-----
				0	0	-----
				0	0	-----
				0	0	-----
				0	0	-----
				0	0	-----
				0	0	-----

Montana DNRC Flow Measurement Calculator:

The user must enter measurements according to the structure type including:
-Gage Reading (Ha) (upstream)
-Throat Width
-Head
-Bottom/floor width
-Crest Length

If using a Parshall Flume structure, determine if the flume is under submerged conditions using the the Submerged Parshall Flume calculation tab. If there is no submergence condition, use this tab for Free Flow conditions.

Formulas for Free Flow calculations taken

HYDRAULIC STRUCTURES

Measurement Number: _____
Date: _____
Time: _____
Measurement taken by: _____

Select structure from dropdown list (below)
Parshall Flume

Gage Reading (Ha) _____ ft
Throat Width _____ ft

Free Flow or Submerged Conditions: Free Flow

FLOAT-AREA METHOD

Measurement Number: _____
Date: _____
Time: _____
Measurements taken by: _____

Length of Run in Number of Seconds

1st run _____
2nd run _____
3rd run _____

Upstream Downstream

Top Width (ft) _____
Bottom Width (ft) _____

Upstream Downstream

Average Depth _____

Coefficient Lookup Check: Depth ----- Coefficient -----

Float Velocity in feet per second (fps) -----

Average Water velocity ----- fps
Average Width ----- ft
Average Depth ----- ft

Cross Sectional Area (Sq. ft.) -----

Flow rate ----- cfs
----- gpm

VOLUMETRIC METHOD

Measurement Number: _____
Date: _____
Time: _____
Measurements taken by: _____

Stream/Source: _____

Size of Container: _____ gallons

Time to fill: 1st fill _____ seconds
2nd fill _____ seconds
3rd fill _____ seconds

Flow Rates (calculated): 1st fill ----- gpm
2nd fill ----- gpm
3rd fill ----- gpm

Flow Rate: Average ----- gpm

Calculate free flow - no adjustment for submergence
Parshall Flume 0.00 cfs

Submerged Parshall Flume

Measurement Number: _____
Date: _____
Time: _____
Measurement taken by: _____

Upstream Gage Reading (Ha) _____ ft
Downstream Gage Reading (Hb) _____ ft
Throat Width (W) _____

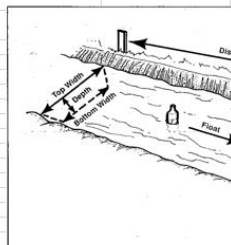
Submergence
S (Hb/Ha) = -----
Submergence limit, St? -----
Submerged? -----

Lookup parameters
W = ----- ft
Cs = -----
nf = -----
ns = -----

Calculation
Flow rate: ----- cfs

Coefficients for Converting Float Velocity to Water Velocity

Average Depth in ft.	Coefficient
Less than 1	0.66
1	0.66
2	0.68
3	0.70
4	0.72
5	0.74
6	0.76
9	0.77
12	0.78
15	0.79
20	0.80
Greater than 20	0.80



Flow Measurement Calculator

Options prior to Submittal of an Application

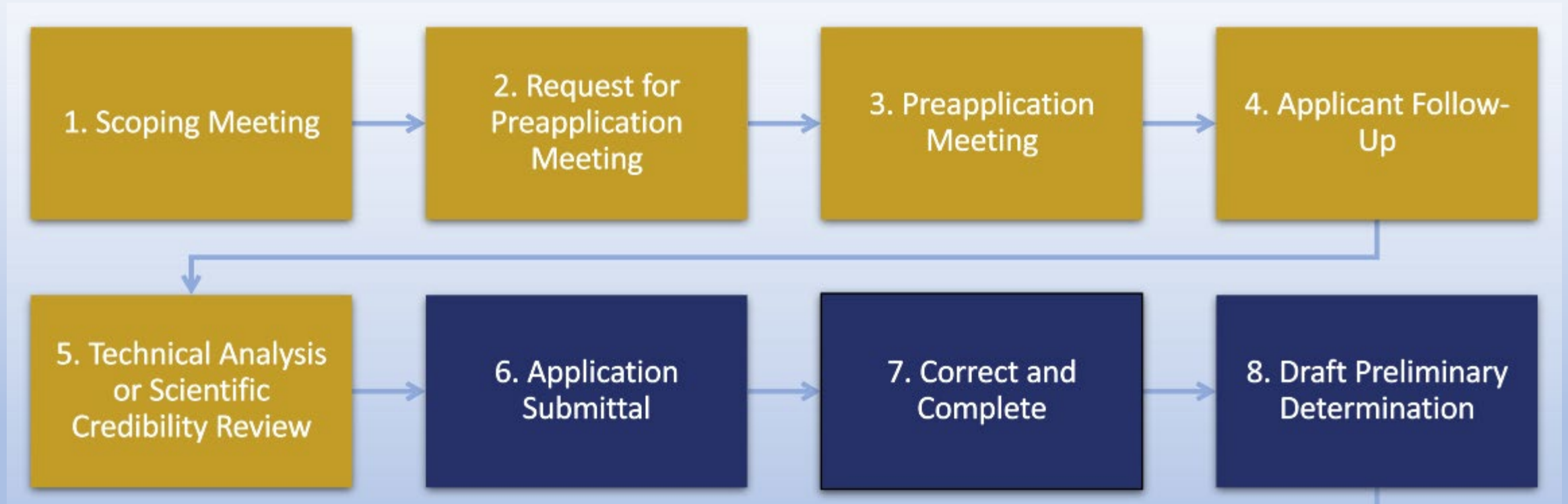
- Scoping Meetings
- Preapplication Meetings



Scoping Meetings

- The DNRC highly encourages scoping meetings to discuss project ideas and water rights options, no matter which pathway is chosen.
- Requests will generally go through regional office staff, as in the past process.
- The DNRC reserves the right to determine a pre-application meeting a scoping meeting if not enough preparation is in place.
- Reasons to consider an informal scoping meeting:
 - Identifying possible options
 - Figuring out appropriate aquifer testing or measurement plans
 - Awareness of possible challenges

Preapplication Process Steps



Preapplication Meetings - Overview

- Preapplication meetings are now very formal. Applicant needs to have a high level of project preparation prior to a preapplication meeting.
- New Administrative Rule (ARM 36.12.1302) requires that a preapplication meeting request be in writing with a certain minimum amount of information provided ahead of time. ([Optional Form Available](#))
- The DNRC will be scheduling meetings approximately one month out upon request, to allow for research and preparation regarding the water rights or project details ahead of the preapplication meeting – Regional Office staff and Water Sciences Bureau staff will be present at every meeting (New Appropriations staff may also join meetings).

Preapplication Meeting Process Overview

- Written Meeting Request to DNRC Regional Office
- Meeting and preapplication form(s) started
- Information gathering timeline
- Submittal to DNRC of completed preapplication form(s) and fee(s)
- DNRC review
- DNRC work product back to Applicant

New Rule Language – Written Request

NEW RULE II – PREAPPLICATION MEETING – ARM 36.12.1302

(2) A written request for a preapplication meeting must identify the following elements of the proposed permit or change in appropriation:

- (a) the flow rate and volume of water required;
- (b) the point of diversion;
- (c) the place of use;
- (d) the source of water;
- (e) the purpose;
- (f) for changes, the water right(s) proposed to be changed;
- (g) for changes, an explanation of historical use of the right(s) proposed for change;
- (h) any proposed places of storage, if applicable; and
- (i) for applications proposing a new well or wells, the well depth(s) and location.

Preapplication Meeting

- DNRC and Applicant will walk through appropriate preapplication meeting form. A preapplication form has been designed to be all-inclusive and extremely detailed to properly inform DNRC of the application and identify any questions or challenges to resolve ahead of time.
 - [Permit Form Version](#)
 - [Change Form Version](#)
- Applicant (or someone with legal signing authority for Applicant) must sign form at some point.
- Determination on who is performing the technical analyses.
- If possible, DNRC staff will send a form copy with Applicant at conclusion of meeting, but if not possible, DNRC will deliver form within three days after the meeting.

Preapplication Meeting to Submittal of Fee

- Applicant will have 180 days from the time of the initial meeting to submittal of the preapplication form and fee (\$500) with all required information.
 - Possibility of additional meeting in this timeframe if clarification needed.
- Applicant uses this time to gather any identified needed information from the meeting.
- OR Applicant uses this time to perform the technical analyses.

Preapplication Form and Fee Submitted

- DNRC staff have 5 days from receipt of form in the regional office to determine if submittal is complete.
- DNRC staff notifies Applicant of determination by conclusion of Day 5 and specifies the 45-day timeline (from receipt) for DNRC work product to be returned to Applicant, if submittal is complete.
 - Either the required technical analyses performed by DNRC
 - Or the DNRC scientific credibility review of the Applicant technical analyses
- Generally, the Applicant has 180 days from the receipt of the DNRC work product to submit the associated application for HB 114 expedited timelines.

Combined Application Timing

- Two preapplication meetings will be required to receive the full fee discount.
- Permit Application is first through the preapplication process.
- Mitigation water amounts needed and other possible items necessary for consideration in the associated change process are identified.
- The change preapplication process will start once Applicant has gathered all necessary information.
- The combined application must be filed with DNRC within 180 days of the change DNRC work product delivery date.
- Technical analyses by DNRC expires within one year.

Variations, Amendments, and Waivers

- Variations – A new formalized process
- Amendments – No more major or minor
- Waivers – Back in the olden days



Variations – A shiny new process, now formalized in ARM

Variance availability is limited...

- Applicants can apply for a variance from only two sections of ARM:
 - ARM 36.12.121 (Aquifer Testing)
 - ARM 36.12.1702 (Physical Surface Water Availability)

Applying for a variance is easy

- Simply file a Variance Request (Form 653) with the appropriate Regional Office.
- It's important to file the request at the appropriate time.
- https://dnrc.mt.gov/_docs/water/Water-Rights-Forms/653.pdf



VARIANCE REQUEST
ARM 36.12.123
Form No. 653 (Revised 01/2024)

For Department Use Only



INSTRUCTIONS

Use this form to request a variance from the requirements of ARM 36.12.121 or 36.12.1702, as provided for in ARM 36.12.123.

Submit this completed form to the appropriate regional office by the deadline for completion of the preapplication meeting form or if a preapplication meeting is not held, include this request with your filed application or as part of a deficiency response.

Application # _____ Basin _____
Received Date _____
Received By _____

Applicant Name _____
Mailing Address _____
City _____ State _____ Zip _____
Home Phone _____ Other Phone _____
Email: _____

Representative Name (if other than Applicant) _____
 Representative is Consultant Representative is Attorney Representative is Other (describe) _____
Mailing Address _____
City _____ State _____ Zip _____
Home Phone _____ Other Phone _____
Email: _____

Identify from which section(s) of ARM 36.12.121 or 36.12.1702 you are requesting a variance. Refer to the rule for a full list of requirements in these sections.

- ARM 36.12.121 Aquifer Testing Requirements
- (2)(a) map
 - (2)(b) well logs of production and observation wells
 - (2)(c) electronic Form No. 633
 - (3)(a) constant pumping rate
 - (3)(b) pumping rate equal to or greater than proposed flow rate
 - (3)(c) pumping requirements for multiple well systems
 - (3)(d) measurement and recording of pumping rate
 - (3)(e) pumping duration and drawdown and yield tests
 - (3)(f) observation well monitored
 - (3)(g) background groundwater levels monitored
 - (3)(h) water level measurement precision

Explain the specific variance you are requesting and the reason for requesting it. Also identify your proposed alternative testing methodology or aquifer test data, if applicable. Attach additional sheets if necessary.

- ARM 36.12.1702 Physical Surface Water Availability
- (1)(b) perennial and intermittent stream measurement
 - (4) other source type measurements

Explain the specific variance you are requesting and the reason for requesting it. Also identify your proposed alternative measurement methodology, if applicable. Attach additional sheets if necessary.

How Does A Variance Work?

A Variance Request must be filed on time

- If there was a Pre-Application Meeting, it must be postmarked or electronically sent by the deadline established at the Pre-Application Meeting
- If there was not a Pre-Application Meeting, it should be filed with the application or can be part of a deficiency response.
- A Variance Request not submitted on time cannot be granted.

Variance Requests will be processed promptly

- A Grant or Deny of the Variance will come within 30 days of the written request.


What allows a Variance to be granted?

- The variance will be granted only if the application materials and data provide enough information to complete the technical analysis and evaluate criteria.


Application Amendment – No more Major vs. Minor

Any element of an application can be modified up to the issuance of a draft PD

- Modification will result in a reset of statutory timelines for application processing.
- If there **was** a preapplication meeting and the modification **does not** require the department to update the technical analysis, the reduced Pre-Application timelines **will** still apply.
- If there **was** a Pre-Application meeting and the modification **does** require the Department to update the technical analysis, the reduced Pre-Application timelines **will not** apply.
- https://dnrc.mt.gov/_docs/water/Water-Rights-Forms/655.pdf



APPLICATION AMENDMENT FORM
ARM 36.12.1401
Form No. 655 (Revised 01/2024)



Application # _____
Rec'd Date _____

INFORMATION
Use this form to modify an element of a permit or change application.

An applicant may modify an element of a permit or change application prior to the department's issuance of a draft preliminary determination. If the draft preliminary determination is to deny or to grant with modifications, the applicant may modify their application after the draft preliminary determination has been issued, only if they have been granted an extension of time under §85-2-307, MCA, and may only modify it one time under this provision (ARM 36.12.1401).

Modification of an element will reset the statutory timelines for application processing identified in §85-2-302 and -307, MCA. If the applicant completed a preapplication meeting and the modification does not require the department to update its technical analyses, the reduced preapplication timelines shall still apply. If the applicant completed a preapplication meeting and the modification requires the department to update any of its technical analyses, the reduced preapplication timelines shall no longer apply. In addition to resetting timelines, the priority date of a permit application will be changed to the date the last modification was made if a modification changes the nature or scope of the permit application information (ARM 36.12.1401).

Application Number _____
Applicant Name _____
Name of individual completing Form, (If other than applicant) _____
Name _____
Mailing Address _____ City _____ State _____ Zip _____
Phone Number _____ Email Address _____

I am amending the following elements: (please check all that apply)

<input type="checkbox"/> Purpose	<input type="checkbox"/> Period of diversion
<input type="checkbox"/> Point of diversion	<input type="checkbox"/> Period of use
<input type="checkbox"/> Place of use	<input type="checkbox"/> Volume
<input type="checkbox"/> Flow rate	<input type="checkbox"/> Other: _____

Describe in detail the proposed amendment(s) checked above. Use additional sheets if necessary.

I declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct.

Printed Name _____
Applicant / Representative Signature _____ Date _____
Printed Name _____
Applicant / Representative Signature _____ Date _____

NOTE: Form must be signed by the applicant or an individual with legal power of attorney representing applicant

An Application Amendment will change the Priority Date

The priority date will change to the date of the last modification if it changes the nature or scope of the application information. These include...

- Increase in Flow Rate
- Increase in Acreage
- Source of Water Supply is changed
- Period of use is expanded (unless it using a reservoir that doesn't affect the impact of the project)
- Increase in Volume
- Expanded Period of Diversion
- Point of Diversion is changed
- Place of Use is Changed
- Purpose is changed

**If the Draft PD is to Deny or to Grant with Modifications,
one amendment is allowed**

- Only one amendment is allowed in this case
- This requires an extension of time of up to 180 days for the applicant under MCA 85-2-307 (7).

Waivers of Timelines – Out with the old...

- Waiver of Statutory Timelines (Form 639) can only be used on applications Pre-HB114.
- This waiver and form will not be used in the new process and rules.

In an unrelated waiver news...

- While not related to HB 114 or the new process, the Waiver of Adverse Effect as noted in MCA 85-2-402 (19) sunset on September 30, 2023.

Positive outcomes from the new process...

- Consistency in expectations
- Bigger, better conversations between the Department and Applicant before application is submitted
- Fewer surprises for all - transparency
- Shorter timelines for processing
- New 30-day public comment period gives the Department an opportunity for clarity of decision





Questions?

Use the "Raise Hand" button to ask a question verbally.
Use the Q&A Function to submit a written question.