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.





Process Overview & Application Pathways

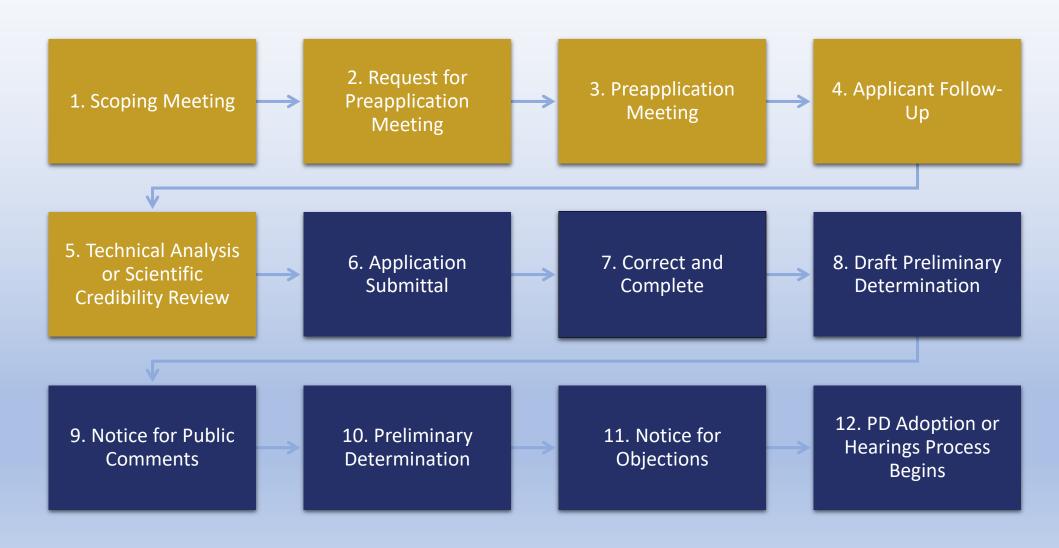
- Key Changes
- Process Steps
- Timelines & Fees
- Application Pathways
- Considerations for Selecting a Pathway



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 <u>draft</u> 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 with 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





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

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Change					^									
2.a.i. Water Rights Impacted						x								
by Change in Return Flow														\square
2.b. Mitigation Purpose							Х							
2.c. Aquifer Recharge Purpose							Х	Х						
Permit: Groundwater									Х	Х	Х	Х		
3.a. Closed Basin													Х	
4. Change: Groundwater			Х											
4.a. POD Change										Х				Х
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Change in Return Flow					_ ^	^								
4.d. Mitigation Purpose							Х							
4.e. Aquifer Recharge Purpose							Х	Х						



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
 - o 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)].



Form No. 633 Instructions:

The required entries, according to ARM 36.12.121, have red text with grey cells.

Failure to complete the requirements of Form No. 633 may require a variance from ARM 36.12.121.

Where information is not available or does not apply, "NA" may be used.

A reasonable effort to record data at the required time intervals will result in a deviation decided adequate by the administering department.

The required cells in the Information, Background Levels, Discharge, Drawdown and Recovery tabs are editable.

Separate Form No. 633s must report drawdown and yield data for additional production wells with the Information, Discharge, and Drawdown tabs completed according to test length.

This spreadsheet is password protected to protect formatting and structure. To make any necessary changes to a sheet, the passsword is Form633.

Information Tab:

TAB over from the first cell next to Water-Right Applicant header, or current cell, to edit the next required cell.

All production and observation well(s) information needed can be found on respective well log(s).

One observation well is required to be completed in the same source aquifer as the production well and close enough to the production well so that drawdown is measurable.

More observation wells may be recorded as needed at the discretion of the applicant.

Static Water Level (swl) in the Production Well Water-Level Data section is the swl prior to the aquifer test start time.

The MP Elevation requires an entry of surveyed elevations (preferred), or an elevation from a topographic map or Google Earth.

Greg Cells Require User Input Water-Right Applicant:					DNRC Application #:	ř ·	DEQ Application #:	
Applicant Address:					County:		DES Application #.	9
Test Site Location:			Section:		Township (#, N/S):		Range (#, E/W):	.5
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Discharge Tab:

Discharge to be measured several times per hour during the first 3 hours of pumping and thereafter several times per hour if discharge fluctuates and requires frequent adjustment; otherwise, hourly measurements for the first 24-hours of the aquifer test are acceptable if discharge remains constant and requires little or no adjustment.

After 24 hours, discharge measurements are required to be taken every three hours for the remainder of the aquifer test.

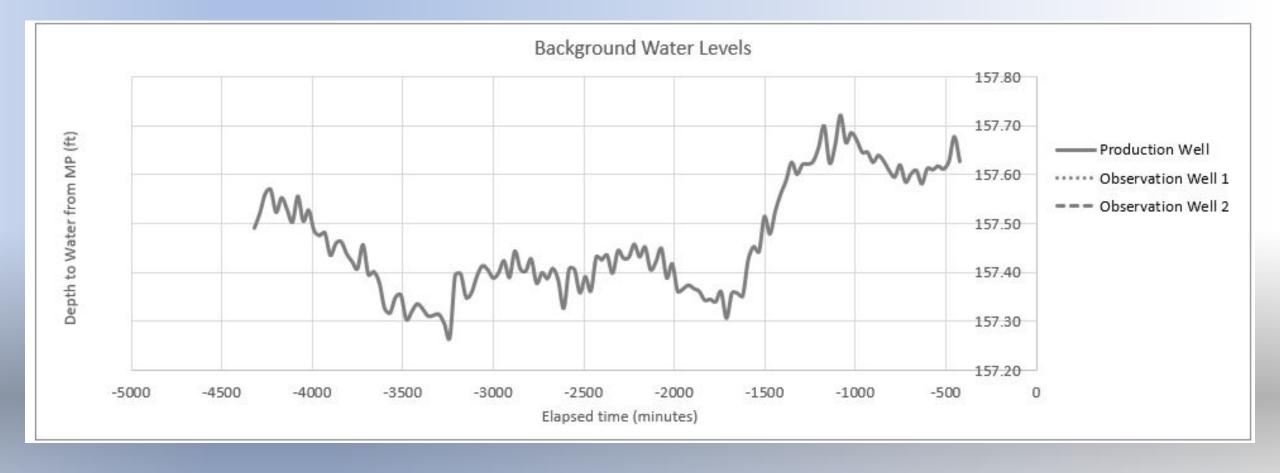
Discharge must be reported in gallons per minute (gpm) if using flow meter; in cumulative gallons or thousands of gallons if using totalizing meter (specify units); or 0.01 foot if using flume or weir.

Proposed pumping rate must be demonstrated by one production well or multiple production wells with additional eight-hour drawdown and yield tests.

Pumping rates may not depart from the average pumping rate by more than +/- 5%.

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Auto-population of cells: drawdown, residual drawdown, discharge deviation, which is the deviation from the average measured discharge (percent).



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

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Options prior to Submittal of an Application

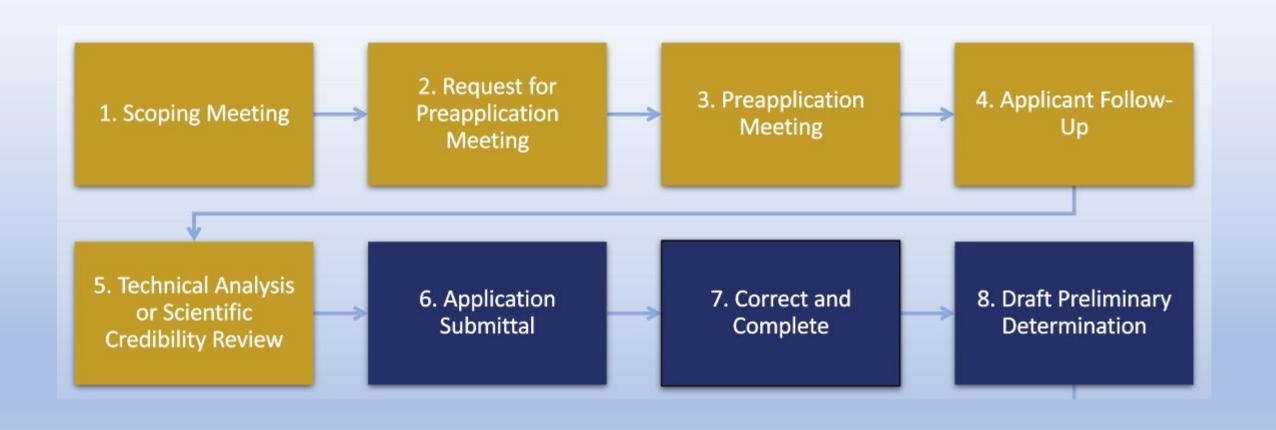
- Scoping Meetings
- Preapplication Meetings



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.

Variances, Amendments, and Waivers

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



Variances – 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

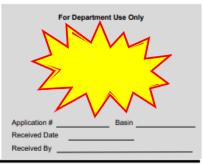
- Simply file a Variance Request (Form 653)
 with the appropriate Regional Office.
- It's important to file the request at the appropriate time.
- https://dnrc.mt.gov/_docs/water/Water-Rights-Forms/653.pdf



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.



Applicant Name			
Mailing Address			
City		Zip	
Home Phone			
Email:			
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Representative is Consultant Representative i	s Attorney Representativ	e is Other (describe)	
Mailing Address			
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DNC VARIANCE REQUEST			

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 <u>was not</u> 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 <u>cannot</u> 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 <u>was</u> a preapplication meeting and the modification <u>does not</u> require the department to update the technical analysis, the reduced Pre-Application timelines <u>will</u> still apply.
- If there <u>was</u> a Pre-Application meeting and the modification <u>does</u> require the Department to update the technical analysis, the reduced Pre-Application timelines <u>will not</u> apply.
- https://dnrc.mt.gov/_docs/water/Water-Rights-Forms/655.pdf



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.