



Montana Legislative Services Division

Legal Services Office

TO: Water Policy Interim Committee
FROM: Helen Thigpen, Staff Attorney
DATE: August 18, 2015
RE: Legislative Administrative Rule Review Report

Pursuant to 5-5-231, MCA, the Water Policy Interim Committee is responsible for reviewing administrative rules within its jurisdiction. This report has been prepared for informational purposes only; it does not represent any action or opinion of the Water Policy Interim Committee and does not preclude additional action that may be taken pursuant to the Montana Administrative Procedure Act (Title 2, chapter 4, MCA).

MAR NOTICE NUMBER: 36-22-181

AGENCY/BOARD: Department of Natural Resources and Conservation

RULE CLASSIFICATION (e.g. substantive/interpretative/emergency/temporary):
Substantive

SUBJECT: Water reservations

NOTICE DESCRIPTION (e.g. proposal notice/adoption notice): Notice of public hearing on proposed amendment and repeal

SUMMARY OF RULE(S): The Department of Natural Resources and Conservation (DNRC) is proposing to amend and repeal administrative rules pertaining to water reservations. Pursuant to 85-2-316, MCA, "The state, any political subdivision or agency of the state, or the United States or any agency of the United States may apply to the department to acquire a state water reservation for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time that the department designates." (See also 85-2-331, MCA, for water reservations within the Missouri River basin and Little Missouri River basin).

The water reservation rules proposed to be amended are: 36.16.101 through 36.16.104, 36.16.105B, 36.16.106 through 36.16.107A, 36.16.110, 36.16.113, 36.16.114, and 36.16.118 through 36.16.120. The DNRC is proposing several revisions to these rules, including the following: (1) remove references to the board of natural resources and conservation; (2) remove and clarify defined terms; (3) increase application fees from \$100 to \$1,500; (4) clarify application content requirements; (5) revise the timeframe for "correct and complete" determinations by the department; (6) revise application requirements; (7) clarify department responsibilities regarding environmental impact statements; (8) clarify fees and costs for application review by the department; (9) clarify provisions related to changes and transfers; (10) clarify provisions related to the reallocation of instream reservations to qualified reservants; and (11) clarify department review of reservation objectives.

The DNRC is also proposing to repeal ARM 36.16.107B, 36.16.117, 36.16.121, and 36.16.122. The DNRC indicates that the proposed repeal will “provide clarification and guidance regarding water reservation applications and actions on those applications . . .” Further explanation regarding the repeal of these rules was not provided in the statement of reasonable necessity, although it appears that removal of references to the former board of natural resources and conservation necessitated repeal of some of the rules and that several requirements are being transferred to existing rules.

NOTES (e.g. hearing dates): A hearing is scheduled on the above referenced rules on September 10, 2015, at 10:30 a.m., at the Department of Natural Resources and Conservation, Water Resources Building, 1424 Ninth Avenue, Helena, MT.

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