

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

The Department of Natural Resources and Conservation (DNRC) is responsible for the management, development, conservation, and use of some of Montana's natural resources. Department divisions, and fiscal and staffing resources, are shown below.

<u>Bureau/Division</u>	<u>Budget</u>		<u>Staff (FTEs)</u>	
	<u>FY 96</u>	<u>% of Total</u>	<u>FY 96</u>	<u>% of Total</u>
Central Management Program	1,788,000	7.1	20.0	4.1
Land Administration Program	1,617,000	6.4	30.5	6.3
Centralized Services Division	1,274,000	5.1	22.0	4.5
Oil and Gas Conservation Division	1,058,000	4.2	18.0	3.7
Conservation and Development Division	1,443,000	5.7	18.5	3.8
Water Resources Division	5,633,000	22.4	112.5	23.2
Reserved Water Rights Compact Commission	505,000	2.0	11.0	2.3
Forestry Program	11,780,000	46.9	251.6	52.0
TOTAL	\$25,099,000	100.0%	484.1	100.0%

source: LFA, 1995.

The DNRC contains eight divisions, four of which are included in this study. Divisions with environmental compliance/enforcement programs are described below.

CONSERVATION AND RESOURCE DEVELOPMENT DIVISION

The mission of DNRC's Conservation and Resource Development Division is to provide technical, administrative and financial assistance to local governments, state agencies, and private citizens for the conservation, development, protection, and management of the state's natural resources. Budget, funding source, and staffing information for the division and its programs is provided below.

Conservation District Program

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Conservation District Program.

Primary constitutional and statutory authorities (see Appendix B):

- 76-15-102. Policy. It is state policy to conserve soil and soil resources to control and prevention soil erosion and other for other benefits.
- 76-15-105. Duties of the department. The department shall offer assistance to conservation districts, keep district supervisors informed, coordinate district programs, secure the cooperation and assistance of the United States and of agencies of this state in the work of the

districts, disseminate information, encourage the formation of districts in areas where their organization is desirable.

Supplemental and/or related state authorities:

- None

Related federal authorities:

- None

Specific enforcement authority:

- None

Primacy and jurisdictional agreements:

- None

2. Program Goals. Based on the above-referenced guidance, the Conservation District Program has identified the following program goals:

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| <ol style="list-style-type: none"> 1. Provide administrative, technical, financial and legal assistance to all conservation districts. 2. Coordinate conservation district activities with state and federal agencies. 3. Provide grants to CD's for projects satisfying natural resource management mandates. 4. Assist with pollution control, education and watershed demonstration projects. 5. Provide riparian management education and information to landowners. 6. Coordinate rangeland resource programs and management efforts with private landowners, state agencies and federal agencies. 7. Coordinate private and public natural resource management efforts. | <ol style="list-style-type: none"> 8. Assist in administering the Private Forest Stewardship Assistance Program. 9. Assist Resource Conservation and Development Areas in addressing rural development on a regional basis. 10. Organize natural resource conservation education activities. 11. Assist in watershed planning. 12. Assist in sustainable and small scale agriculture activities. 13. Participate in the state-wide conservation district capacity building effort to assist conservation districts in building leadership. |
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3. Program Activities. Five members of the division staff work basically full-time on conservation district issues. The division does not have the staff to assign individuals to one program. With a total of 58 districts covering the state, issues arise continuously. Individual staff assist several conservation districts with separate and different issues and thus must develop a certain level of expertise in many areas. Types of projects include; watershed projects, water quality activities, rangeland resource management, saline seep, streambank erosion control projects, timber management, youth education, City-County Planning Board coordination, mining impact activities, water reservation activities, weed control, urban activities, rural economic development, project funding, etc.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs</u>	<u>Avg. Years Staff Retntn.</u>	<u>1995 Ongoing Projects/Sites</u>	<u>Avg. Acres/ Site</u>	<u>Avg. # of new proj./yr</u>
Overall Conservation District Program Activities	\$1,017,024	5.0	12	Not Applicable	N/A	N/A

Fees and Charges. The Conservation District Program has no authority to impose any fee, penalty, or other charge on members of the regulated community.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses</u>
Permit Application Fees:	Not Authorized		
Permit Renewal Fees:	Not Authorized		
Additional MEPA Fees:	Not Authorized		
Noncompliance Penalties:	Not Authorized		
TOTAL:		\$00.00	

4. Regulated Communities. The Conservation District Program interacts with one clearly defined regulated community--conservation districts--authorized under 76-15-101, MCA *et seq.* There are 58 conservation districts covering the state. Each district is made up of 5 locally elected supervisors and 2

supervisors appointed from the incorporated cities within the district boundary. The number of districts is projected to stay the same.

5. Philosophical Approach to Compliance. DNRC staff emphasize cooperation with conservation districts and specific individuals and strives to work problems out with minimal conflict. Program staff believe that their strong emphasis on education has worked extremely well.

6. Compliance Tools Available and Used. The menu of tools used by the Conservation District Program to achieve their natural resource/environmental mandates is shown beginning on the next page. There is very little regulatory authority given to this program. What authority exists is included in section 76-15 parts 1 through 8, MCA. Mostly the statutes reference department responsibilities which translates into a certain amount of authority. The strongest authority program staff have is the department's role in the removal of a supervisor. This is very seldom used. The program stresses cooperation and the districts rely heavily on program advice and follow it closely. In a way the program staff believes that their advice has become the over riding authority even though they do not have direct authority by law.

7. Incentives for Compliance. According to program staff, the greatest incentive for compliance with the DNRC's rules and regulations is the capable assistance and advice the districts receive that assists them in the proper management of their programs and responsibilities. Additionally, the department passes through funding for district administrative activities if the district's mill levees do not cover costs. The department also administers the district's project grant funding.

8. History of Compliance. Here again, program staff emphasize that neither they nor the districts have relied heavily on formal enforcement. However, with increases in population come increased pressures on the state's natural resources and problems on the district level are definitely increasing. Many issues the districts are involved in are sensitive. Also, with the growing interest in local control, districts are increasingly looked at as an effective tool to implement programs on the local level.

9. "Violations." Again program staff emphasize that they do not have much enforcement power and the program has never taken a formal enforcement action. The informal actions taken focus on education and technical assistance.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- CONSERVATION DISTRICT PROGRAM

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Education/Information/T.A.:	Education and technical assistance are routine duties of program staff.	All program staff	Routine
Comp. Planning/Withdrawals: Not authorized			
Permits/Certifications/Bonds: Not authorized			
Monitoring/Inspections: Not Authorized			
Administrative Notices/Orders: Removal of District Supervisor	A supervisor may be removed by the DNRC upon notice and hearing for neglect of duty or malfeasance in office.	DNRC Director	0
Admin. Penalties/Sanctions: Not authorized			
Civil Judicial Action: Not authorized			
Criminal Judicial Action: Not authorized			

Discovery of Violations. Violations are identified through concerns expressed to the DNRC by district directors or private individuals.

Violations Discovered, by method, 1995

<u>Group</u>	<u>Agency Review of Total Monitoring Reports</u>	<u>Self-Reporting of Violation</u>	<u>Inspection</u>	<u>Citizen Complaint</u>
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Specific information not available

10. Considerations in Calculating Penalties. The Conservation District Program does not have a formal written enforcement policy or penalty calculation policy. The DNRC would consider the frequency of violations in an enforcement action but violations are rare and this has not occurred.

11. Resolution of Noncompliances. When concerns or issues are brought to the attention of program staff, they either respond directly relying on their experience and expertise or on their staff attorney or outside experts. Actual enforcement actions of local regulations are handled by the local districts when individuals are involved.

12. Current Compliance Priorities. Priorities and goals are the same. The over riding priority is to provide professional, timely service to all districts.

13. Compliance Relationships with Other Agencies.

Oversight. No entity outside of the DNRC has oversight of this program.

Partnerships. The division works very closely with all state, federal, and local governments, and other organizations that are involved in natural resource management activities. Partnership building with these groups is an important ongoing effort within the division.

Delegated Authority. District regulations are adopted and enforced by the district as provided by statute. The department does not delegate any authority to the districts.

Grazing District Program

1. Constitutional and Statutory Goals. The following list provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Grazing District Program.

Primary constitutional and statutory authorities (see Appendix B):

- **Grass Conservation Act**, 76-16-101, MCA *et seq.* requires the DNRC to assist in carrying out the purposes of the chapter, act in an advisory capacity with the boards of county commissioners, and supervise and coordinate the formation and operation of grazing districts. The DNRC may also act in an advisory capacity with boards of county commissioners.
- 76-16-104, MCA. The DNRC shall act in an advisory capacity with County commissioners to carry out the Act.
- 76-16-105, MCA. The DNRC may require the appearance of any person needed, hold hearings

regarding grazing districts, require needed reports from districts, etc.

Supplemental and/or related state authorities:

- None

Related federal authorities:

- None

Specific enforcement authority:

- 76-16-325
- 76-16-211

Primacy and jurisdictional agreements:

- None

2. Program Goals. Based upon the above-referenced guidance, the Grazing District Program has identified the following program goals:

1. Provide advice and assistance to grazing districts as requested regarding operation under state law.
2. Provide standard forms for grazing district operations and collect annual financial reports.
3. Supervise grazing district operations, including processing of appeals to grazing district decisions,
4. Cooperate with and provide advice to grazing districts and state and federal agencies regarding conservation and use of grazing lands.

3. Program Activities. The Grazing District Program activities include attendance at approximately 15 grazing district meetings per year to address operational issues and questions; provision of four to six legal opinions to grazing districts annually regarding district operations under state law; provision of advice and assistance to the Montana Association of State Grazing Districts at their spring and fall meetings regarding district operations; review and approval of 6 to 12 range improvement loans per year (some of which involve grazing district permittees); and ongoing participation in and occasional funding of riparian management and conservation education efforts including riparian management workshops, range tours, educational videos, etc.

Approximately 1/3 FTE split between a Resource Specialist and Administrative Support position in Miles City is available to address day to day grazing district support needs. The Conservation and Resource Development Division Administrator, the Conservation Districts Bureau Chief and a department staff attorney are provided as needed for grazing district supervision and legal issues. Since budgeted funds are limited to approximately \$12,000, grazing program support requirements are usually subsidized by other programs.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs</u>	<u>Avg. Years Staff Retntn.</u>	<u>1995 Ongoing Projects/Sites</u>	<u>Avg. Acres/ Site</u>	<u>Avg. # of new proj./yr</u>
Overall Grazing District Operations	\$12,000	.2	12	Not applicable	N/A	N/A

source: Beck, 1996.

Fees and Charges. The department assesses fees to grazing districts of 10 cents per animal unit based on the number of units per year for which the districts authorize permits. 76-16-106, MCA authorizes fees of up to 15 cents per animal unit.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed</u>	<u>Uses</u>
Permit Application Fees:	Not Authorized	0		
Permit Renewal Fees:	Not Authorized	0		
Additional MEPA Fees:	Not Authorized	0		EIS/EA prep.
Non-Compliance Penalties:	Not Authorized	0		
Animal Unit Fees:	Varies	\$12,000		General Support ¹
TOTAL:		\$12,000		

Notes:

1. These funds are used to provide administrative support to districts, printing grazing district forms, and providing legal advice to districts.

4. Regulated Communities. The Grazing District Program interacts with one clearly defined regulated community--grazing districts--provided for under 76-15-101, MCA *et seq.* There are currently 28 operational grazing districts located in the eastern half of Montana. Two districts are currently inactive and investigating the possibility of merging or dissolving. In recent years, several other grazing districts have inquired regarding the process for dissolution. A primary factor for the interest in dissolution seems to be the establishment of individual allotments replacing common grazing pastures in many districts. Although many districts play a strong role in grazing management within their boundaries, some have seen their roles decrease.

5. Philosophical Approach to Compliance. DNRC staff emphasize cooperation with grazing districts and specific individuals and they strive to work problems out with minimal conflict. Program staff believe that their strong emphasis on education has worked extremely well.

6. Compliance Tools Available and Used. There is very little regulatory authority given to the grazing program. DNRC compliance and regulatory authority is spelled out in 76-16-104, 105, 304, 325, and 406, MCA. Much of the department's authority over grazing districts relates to assurance that the proper process and statutes have been followed by individual districts. Examples include formation and dissolution of districts, transfers of land and grazing preferences, and amendments of bylaws. The department also has the authority to consider appeals to individual district decisions and to issue orders of compliance to districts. Ultimately, the department could temporarily assume management of a district and require election of new directors if, after a hearing, it appeared the current directors refuse to perform the duties of their office. During the last 5 years, the department has addressed one appeal, but has not intervened in direct district management or required election of new directors. The menu of tools used by the Grazing District Program to achieve their natural resource/environmental mandates is shown beginning on the next page.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- GRAZING DISTRICTS PROGRAM

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Education/Information/T.A.:	Education and technical assistance are routine duties of program staff.	All program staff	Routine
Comp. Planning/Withdrawals: Not authorized			
Permits/Certifications/Bonds: Not authorized			
Monitoring/Inspections: Not authorized			
Administrative Notices/Orders: *Hearings, records, testimony *District Dissolution *Removal of officers	<p>The DNRC may hold a hearing, request records, or require the appearance of any person when the DNRC determines that there is a need for such action or upon receipt of an appeal by any person affected by the decision of a grazing district.</p> <p>The DNRC may dissolve a grazing district whenever a district ceases to function and the DNRC determines that reinstatement and future district operation is not feasible.</p> <p>If district directors refuse to perform their required duties, the DNRC may, upon notice and hearing, summarily remove them and operate the district its until now officers are elected.</p>	DNRC Director DNRC Director DNRC Director	0 0 0
Admin. Penalties/Sanctions: Not authorized			
Civil Judicial Action: Payment of animal unit fees	The department may compel the payment of fees by the district through a writ of mandate or other appropriate remedy.	DNRC Director	0
Criminal Judicial Action: Not authorized			

7. Incentives for Compliance. According to program staff, the greatest incentives for compliance with grazing district statutes is the value which all affected livestock producers receive from cooperative management of grazing lands of mixed ownership. Additionally, low interest range improvement loans are available to producers who implement sound range management practices, including cooperative practices which involve grazing lands of mixed ownership.

8. History of Compliance. Grazing district complaints usually stem from individual's concerns over grazing district administration of grazing preferences within the district. Most concerns or complaints are addressed by providing verbal or written clarification regarding direct statutory requirements or legal opinions as to interpretation of statute. State and federal land management policies have had increasing impact on grazing limitations and requirements.

Issues relating to grazing on lands of mixed ownership have evolved over the years. Initially, grazing management was undeveloped and grazing districts were challenged with adjudication of grazing privileges on intermingled federal, state and private lands based on determination of viable base ranch property. Today, state and federal agencies have assumed a much larger role in managing grazing use on their respective properties. To a large degree, large pastures grazed in common have been replaced with allotments grazed by only one permittee. As a result, grazing districts increasingly place their attention on coordination with state and federal land managers regarding government grazing policy instead of coordination of day-to-day grazing activities within large common pastures. In some cases the original grazing district statutes do not accurately reflect modern grazing practices.

9. "Violations." The division receives complaints or concerns on a regular basis. Most issues can be resolved by phone or in writing. No formal enforcement action has been required.

Discovery of Violations. Violations are identified by concerns expressed to the DNRC by concerned district directors or private individuals.

Violations Discovered, by method, 1995

<u>Group</u>	<u>Total</u>	<u>Agency Review of Monitoring Reports</u>	<u>Self-Reporting of Violation</u>	<u>Citizen Inspection</u>	<u>Complaint</u>
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Specific information not available.

10. Considerations in Calculating Penalties. The Grazing District Program does not have a formal written enforcement policy or penalty calculation policy. The DNRC would consider the frequency of violations in an enforcement action but violations are rare and this has not occurred.

11. Resolution of Noncompliances. No enforcement action has been taken. The department's authority is fairly limited except in specific areas. Most issues are resolved by action of the appropriate Grazing District Board. Program staff are often involved with the board in deciding the appropriate action.

12. Compliance Priorities. Agency staff have identified the following priorities for the Grazing District Program.

- Provide legal opinions and advice as requested by districts.
- Review and approve exchanges and transfers as requested.
- Process requests for mergers and dissolutions of districts as requested.

13. Compliance Relationships with Other Agencies.

Oversight. No entity outside of the DNRC has oversight of this program.

Partnerships. The DNRC works cooperatively with the Bureau of Land Management and the Montana Association of State Grazing Districts. The division also works closely with all natural resource/land management agencies. These would include the Bureau of Land Management, Forest Service, Natural Resource Conservation Service, Fish Wildlife and Parks, local governments and Conservation Districts.

Delegated Authority. None.

FORESTRY DIVISION

The Forestry Division is responsible for planning and implementing forestry programs statewide. Forestry responsibilities include protecting Montana's natural resources from wildfire, regulating forest practices, and providing a variety of services to private forest landowners. Specific programs include:

Fire and Aviation Management: Protecting 50 million acres of state and private forest and watershed lands from wildfire through a combination of direct protection and County support.

Forest Practice Regulation: Enforcing Montana's streamside management zone regulations and monitoring the voluntary best management practices program on all forests on Montana.

Administering Montana's Fire Hazard Reduction Law: Ensuring that the fire hazard created by logging and other forest management operations on private forest lands is adequately reduced, or that additional fire protection is provided until the hazard is reduced.

Providing Forestry Services: Providing technical forestry assistance to private landowners, businesses and communities.

Tree and Shrub Nursery: Growing and selling seedlings for conservation and reforestation plantings on state and private lands in Montana.

Budget, funding source, and staffing information for the Forestry Division is provided below. The programs noted in **bold** type contain regulatory programs, thus are included in this study.

Funding Source, FY 96

<u>Program/Activity</u>	<u>General</u>	<u>State</u>	<u>Landowner</u>	<u>Total</u>	
	<u>Fund</u>	<u>Special</u>	<u>Assessment</u>	<u>Federal</u>	<u>Funds</u> <u>FTE</u>
Fire and Aviation Management	3,512,200		1,717,900	492,200	5,722,300 129.5
Nursery		230,100			230,100 7.3
Private Slash Removal	137,900	300,000			437,900 12.3
Other Services	834,900			100,000	934,900 8.3
Service Forestry	467,800			484,300	962,100 17.0
TOTAL (FY 96)	4,952,800	530,100	1,717,900	1,076,500	8,277,300 174.5
TOTAL (FY 90)¹	5,192,100	1,259,100	1,125,700	432,900	8,009,800 225.2

Notes:

1 FY 90 budget information included the Forest Management Program. This program was recently transferred to the DNRC's Trust Land Management Division

source: Artley, 1996.

Legislative History

Events important to the compliance/enforcement elements of the Service Forestry Program are summarized below. Program staff were unable to provide this information for the Fire and Aviation Program before study completion.

- 1910 The Biennial Report of the State Forester first mentions need for fire hazard reduction.
- 1913 State Forester recommends some form of slash burning restrictions
- 1919 Legislature passes bill requiring slash/brush burning within 1 year of creation
- 1927 Slash law modified to include practices to reduce negative effects of burning on tree regeneration, and to require hazard reduction work to cost \$0.15 per thousand board feet (mbf) or less
- 1929 All hazard reduction work was done by the State for the fifteen cents per mbf
- 1941 Slash fee raised to \$0.25 per mbf
- 1947 Slash fee raised to \$0.75; law revised to be forerunner of current law.
- 1950s-
- 1970s State reduces its role in doing on-the-ground work; bond rate gradually rises.
- 1976 State gets out of on-the-ground hazard reduction work all together, except for necessary enforcement actions
- 1979 Hazard reduction bond rate reaches \$6.00 per mbf (same as current rate)
- 1989 Legislature passes HB 678, requiring the Department to provide Best Management Practices (BMP) information to private forest owners and operators to help protect water quality.
- 1991 Legislature passes the Streamside Management Zone (SMZ) law
- 1993 SMZ rules become effective

Service Forestry Program

The Service Forestry Program provides services to various client groups to help them comply with state forestry laws and achieve their own forestry-related objectives. Those served include individuals, local governments, corporations, other agencies, and the general public. Services include the following:

- administering state laws for control of timber slash on private lands;
- administering state laws for control of forest practices within Streamside Management Zones on federal state and private lands;
- providing information on Forestry Best Management Practices;
- giving technical advice on private forest management, urban tree management and insect and disease control; and
- producing tree and shrub seedlings for conservation plantings and reforestation.

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of DNRC's Service Forestry Program.

Primary constitutional and statutory authorities (see also Appendix B:

- **Montana Constitution, Art. II, sec. 3** states that all persons have a right to a clean and healthful environment. **Art. IX** refers to maintaining and improving a clean and healthful environment, protecting the environmental life support system, and preventing unreasonable depletion and degradation of natural resources.
- **The Hazard Reduction Act (Slash Law)** (MCA 76-13-401, et. seq.) directs the department to oversee slash treatment operations and to certify that abatement of hazards has occurred.
- **Best Management Practices Notification Act (BMP Law)** (MCA 76-13-104, et. seq.) require notification of proposed forest practices on private land, and subsequent provision of BMP information to the proponent.
- **Stream Management Zone Act (SMZ Law)** (MCA 77-5-301, et seq.) provides standards for the forest practices in SMZs on federal, state, and private land in Montana and authorizes the department to enforce standards.

Supplemental and/or related state authorities:

- **The Montana Environmental Policy Act** (MCA 75-1-101, et seq.)
- **Montana Stream Protection Act (SPA)**
- **Montana Floodplain and Floodway Management Act**
- **Montana Natural Streambed and Land Preservation Act**
- **Lakeshore Protection Act**
- **Montana Water Quality Act**

Related federal authorities:

- **National Environmental Policy Act (NEPA)**
- **Federal Clean Water Act**

Service Forestry administrative rules:

- ARM 26.6.601-.610 (SMZ only)

Specific enforcement authority:

- MCA 76-13-410, 76-13-412, 76-13-413 (for HRA Law)
- MCA 77-5-305 (for SMZ Law)
- ARM 26.6.610-610 (for SMZ law)

Primacy and jurisdictional agreements: None

2. Program Goals. The Service Forestry Programs provide services to various client groups to help them comply with state forestry laws and achieve their own forestry-related objectives. Goals, by program, are listed below:

Timber Slash Program Goals:

1. All fire hazard caused by logging residues, road construction, or other cuttings on private forest lands are abated to a level that meets DNRC standards.
2. DNRC provides timely, consistent and fair services of overseeing slash-treatment and certifying compliance.

- All purchases of forest products are in compliance with legal provisions for reporting purchases withholding bonds and fees, and transmitting money to DNRC.

Forest Practices Program Goals:

- Montana loggers and forest landowners avoid damage to soil, water and wildlife by effectively applying Best Management Practices (BMPs) to forestry operations.

Forest Practices Program Goals (cont.):

- Forestry operations within Streamside Management Zones (SMZs) are conducted in a manner which conserves the integrity of SMZs and avoids unnecessary damage to soil, water and wildlife habitat.
- DNRC services for reviewing operating plans, providing information about forest practices, and overseeing forestry operations in SMZs are timely, consistent and fair.
- DNRC education projects concerning forest practices cause all of Montana's forest landowners and operators to understand forest resource protection concepts and be able to apply those concepts.

Program staff note that goals can be best understood through examination of the DNRC's "Standards and Guidelines," located in the Timber Slash and Forest Practices manuals, respectively. A "standard" is a level of performance that DNRC employees must meet: they are dictated by state laws and administrative policy. A "guideline" is the way the Bureau suggests that a DNRC employee meet or satisfy the standard.

The Biennial Program Plan contains the overall goals of the program. What the program hopes to accomplish, how it hopes to accomplish it, and when it should be accomplished are all addressed in this plan.

The Annual Work Plan assigns specific tasks listed in the Program Plan to certain individuals and requires those individuals to report on the progress they have made in each of their assigned tasks. At mid-year, and at the end of the fiscal year, reports are compiled to show what has been accomplished, what remains to be accomplished, and also reflects budgetary income and expenditures. The Fiscal Year End Report is the starting place for determining the next Biennial Program Plan.

3. Program Activities. The three major Service Forestry Program activities are: 1) hazard reduction (HRA), 2) best management practices (BMPs), and 3) streamside management zones (SMZs). Program staff are located in the main office in Missoula, as well as 15 units (field offices). Each field office reports to one of 6 Land Offices: Central (Helena), Eastern (Miles City), Northeastern (Lewistown), Northwestern (Kalispell), Southwestern (Missoula), and Southern (Billings). The resources available for these activities, and demands placed upon those resources, are described in more detail below.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs¹</u>	<u>Avg. Years Staff Retn.²</u>	<u>1995 Ongoing Projects/Sites</u>	<u>Avg. Acres/Site³</u>	<u>Avg. # of new proj./yr²</u>
Haz Red. Agrmnts. ¹	\$429,000	11.9	6.3	6,100 ²	NA	2,500 ³
Best Mgt. Practs ⁴	206,900	3.5	3.6	6,100	NA	2,500
Stream Mgt. Zone ⁴	56,100	1.5	2.8	1200	NA	620

Notes:

- 35% of total HRA funds come from loggers and landowners, collected at the point of sale; the remainder is general fund monies.
- 1,950 of the total 1995 ongoing Hazard Reduction Agreements (HRAs) were Master HRAs.
- Slightly less than 1/3rd of the average number of new HRAs annually are Master HRAs.
- 100% of these funds are General Fund monies.

source: Artley, 1995; Lennon, 1996.

Fees and Charges. By statute, Service Forestry Program revenues from fees and charges are deposited into the Slash Special Revenue account. The amounts of the nonvariable fees are set in statute. Additional information on fees and charges is presented in the table below.

<u>Type</u>	<u>Authorized Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses</u>
Permit Fees:			
Haz. Red. Agreement Issuance Fee	\$25	\$41,000	Program Funding
Master HRA Issuance Fee	varied ¹	17,600	Program Funding
Renewal Fees: (none)			
Annual Fees: (none)			
Noncompliance Penalties:			
SMZ Penalties	\$100-\$1,000	\$17,450	Forestry Stewardship Activities
Other:			
Forestry Extension Service Fee	\$0.15/mbf ²	\$87,500	Extension Services
TOTAL:		\$163,550	

Notes:

- 1 Assessed at 100% of department cost to administer Agreement; contractor is billed annually to collect.
- 2 15 cents per 1,000 board feet is assessed of the contractor or purchaser of forest products from a timber sale. The assessment cannot exceed \$20,000 per year.

source: Artley, 1996; Lennon, 1996.

4. Regulated Communities. The Service Forestry Program typically deals with three regulated communities, each subject to a different law, and a great deal of overlap between them. These regulated communities are described below.

The regulated community under the **Hazard Reduction Act** includes anyone (1) clearing rights of way (except temporary logging roads, (2) cutting forest products, building haul roads, and/or carrying out timber stand improvement activities on private lands. Purchasers of such forest products are also part of the regulated community in that they must insure the persons they are purchasing forest products from have complied with hazard reduction regulations.

Persons encouraged to use **Best Management Practices** are those involved in timber sale planning and harvest., associated road construction, and other related activities. The Department estimates there were approximately 6,000 persons engaged in such activities in 1995, mostly in western Montana.

Persons subject to the requirements related to **Streamside Management Zones** include those conducting timber sale activities in areas where such activities should be modified due to potential effects on aquatic resources. The Zone extends at least 50 feet (slope distance) from the ordinary high water mark of a water body, and further where there are wetlands or where steep or erosive soils require additional width.

5. Philosophical Approach to Compliance. The DNRC philosophy regarding compliance is that information, education, and assistance are the means by which most resource protection will be obtained. Aggressive follow-up of enforcement actions will result for the cases when the natural resource has been threatened and information/education did not bring the desired result.

6. Compliance Tools Available and Used. Compliance is ensured through a combination of inspections, area monitoring, education, and performance bonds. In addition, training workshops have been held throughout the state and the timber industry has been very active in promoting these efforts. Public complaints notifying the state of possible violations also play a role.

The Service Forestry Program has written policies for inspection compliance, as well as enforcement actions, that are contained in Standards and Guidelines manuals for each program.

The menu of tools used by the Service Forestry Program to achieve their natural resource/environmental mandates is shown beginning on the next page. Abbreviations used in the “Authority” column refer to the following:

Admin..	Division Administrator
Field	field staff
staff	program staff
NA	Not Applicable
unk.	unknown

7. Incentives for Compliance. For the HRA law, a unique system is in place where the landowner is watching the operator to ensure compliance and the operator is watching the mills to ensure compliance. The landowner wants the slash cleaned up. Often to an extent that exceeds state standards. If the operator fails to comply, the state is often notified. Furthermore, when the operator (logger) delivers logs to the mill, money is withheld on a per-unit basis for fees and a performance bond. When compliance is achieved, the bond is refunded to the operator. If the “slash” account has discrepancies, the operator generally notifies the state of the error. The state is then alerted of a potential compliance problem at the mills and can monitor reporting requirements with a minimum of effort.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HAZARD REDUCTION (Slash)

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (FY 95)
<p>HAZARD REDUCTION (SLASH): Education/Information/T.A.:</p> <p>HRA Fact Sheet</p> <p>Workshops</p>	<p>(Informational brochures are distributed at meetings, fairs, demonstrations, during personal contacts, and with BMP Receipt of Notifications.)</p> <p>This is a two-sided flier informing private forest land owners and operators of the need for hazard reduction and answers to frequently-asked questions. Landowners and operators opening new HRAs receive an info packet.</p> <p>Over the last two years, the department has held numerous training workshops around the state. They are geared toward logging professionals, mill operators, representatives of other agencies, and the general public. They are often held in cooperation with other agencies and groups, and include information on Best Management Practices (BMPs) and Streamside Management Zones (SMZs).</p>	<p>field/staff</p> <p>field/staff</p> <p>field</p>	<p>NA</p> <p>2000</p> <p>15</p>
<p>Comp. Planning/Withdrawals: Hazard Reduction Standards</p>	<p>Slash hazards must be reduced to generate no more than a 4-foot flame length (as measured through use of a computerized fire behavior model). The Department uses a booklet of photos and data of slash conditions to determine compliance with the State standard.</p>	<p>field</p>	<p>NA</p>

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HAZARD REDUCTION (Slash)

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (FY 95)
<p>HAZARD REDUCTION (cont.) Permits/Certifications: Hazard Reduc. Agreements (HRAs)</p> <p>- HRA Bond</p> <p>Master Hazard Reduction Agrmnt.</p> <p>- MHRA Bond</p>	<p>Persons cutting forest products, constructing roads to cut forest products or conduct timber stand improvements on private lands must provide for the reduction or management of the fire hazard created by first entering into an "agreement" with the department. This agreement, commonly referred to as an HRA, provides for the reduction of the fire hazard and a performance bond (see below) to ensure compliance. It also contains critical information needed by the Department in order to carry out its responsibilities under the law. Includes notification to state of when proposed forest practice will begin. Typical duration of Agreement is 2 years. An Agreement generally is not finalized until BMP risk rating occurs. Hazard reduction preparations must be completed within 18 months of initiation of harvest.</p> <p>Money is withheld by the primary log purchaser and remitted to the state. After an operator completes the necessary slash treatment, an inspection is conducted by the state, and the bond is returned, if compliance is achieved. If compliance is not achieved, the bond is withheld and the state may then direct the work at the operator's expense with the performance bond funds. Bonds are calculated at \$6.00/1,000 board feet (mbf) of volume harvested. Bond amounts vary widely.</p> <p>Generally issued to companies with significant fee lands or to companies conducting significant harvest (i.e. >500,000 board feet) on non-industrial private forest land. These companies generally employ professional foresters, who manage the slash hazard. Under a MHRA, companies are required to pay 100% of DNRC cost for administration plus the \$0.15/mbf.</p> <p>To obtain an MHRA, a company must post a bond to DNRC of \$6.00/mbf of untreated slash, plus \$6.00/mbf for estimated harvest for current year.</p>	<p>field</p> <p>staff</p> <p>field\staff</p> <p>staff</p>	<p>1,652</p> <p>1,652</p> <p>±800</p> <p>±800</p>

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HAZARD REDUCTION (Slash)

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (FY 95)
HAZARD REDUCTION (cont.): Monitoring/Inspections: Monthly Purchaser Reports Contractor Audit Mill Audit HRA Closure Inspections Program Tracking	Purchasers of forest products must report monthly to the state on purchases and remit withheld funds at that time. May be conducted to determine volume of forest products harvested by a contractor. Contractor must cooperate. In order to ensure compliance by purchasers of forest products, audits may be conducted on suspect (those that present frequent compliance problems) mills are provided by state and program standards. Most HRAs are inspected routinely for slash compliance. While on-site, inspectors also review for SMZ compliance, and may conduct BMP post-harvest review (see below). The department uses a variety of monitoring and reporting methods. Numbers of new HRAs, as well as status of current agreements, are continually tracked. Purchaser reports are received monthly and continually tracked. Reports can be generated summarizing the timber harvest in the state. Much of this information is gained through the inspection process. BMP and SMZ compliance is continually monitored through inspection process and reports can be generated on past histories of operators. Reports are also generated summarizing compliance problems and workload levels.	staff staff staff field staff	2,400 1 1,410 12
Administrative Notices/Orders: Certificate of Clearance/Bond Release Noncompliance Letter/Call	Issued upon completion of work covered under Agreement; releases contractor from further liability/responsibility under the Agreement. If a purchaser does not submit withheld money and required reports on or before the 15th day of the following month, the operator is notified that he/she is out of compliance, and given 15 days to submit all money and reports then due.	field field	1,410 unk.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- HAZARD REDUCTION (Slash)

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (FY 95)
<p>HAZARD REDUCTION (cont.): Administrative Penalties/Sanctions: State Does Work at Contractor Exp.</p> <p>Withholding of Bond</p> <p>Confiscation of Bond Penalties</p> <p>Penalty Waiver</p> <p>Lien on Products/Land</p>	<p>If a person fails to comply with Hazard Reduction regulations, and fails to comply within 30 days after being notified to do so, the department may complete, direct, or authorize the fire hazard reduction or management at the expense of the contractor or the owner. Bonds can be held until operator comes into compliance, or the state decides to confiscate the bond.</p> <p>Occurs if contractor fails to comply.</p> <p>A penalty may be issued if payment and reports are not received within 15 days of issuance of a noncompliance letter. Penalty amounts are 5% of the amount due. The department may also assess interest (10%/yr.) on any unpaid balance.</p> <p>Penalty may be waived if operator demonstrates the delay in compliance was reasonable, and not due to negligence.</p> <p>The cost and expense of the fire hazard reduction or management work, plus 20% of the cost and expense of the work as a penalty, constitutes a lien upon the forest products cut or produced from the land, and on the real and personal property of contractor. If payment of the sum demanded is not made to the department within 10 days of its written demand, the department begins legal action to recover the debt.</p>	<p>field</p> <p>field</p> <p>staff</p> <p>staff</p> <p>staff</p> <p>Admin.</p>	<p>60</p> <p>NA</p> <p>60</p> <p>5</p> <p>2</p> <p>2</p>
<p>Civil Judicial Action:</p>	<p>Court actions are pursued to ensure directives are followed and penalties are paid. They may consist of temporary restraining orders, injunctions, writs of mandate, or pursuit of liens on property or products. Proceedings are conducted in the District Court of the county wherein the land is located.</p>	<p>Admin.</p>	<p>2</p>
<p>Criminal Judicial Action:</p>	<p>Conviction of a violation is a misdemeanor; conviction carried a fine of between \$100 and \$1,000. Proceedings are conducted in the District Court of the County where the land is located.</p>	<p>Admin.</p>	<p>None</p>

STATE COMPLIANCE/ENFORCEMENT TOOLS -- BEST MANAGEMENT PRACTICES (BMPs)

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
<p>BEST MANAGEMENT PRACTICES: Education/Information/T.A.: BMP Information: - Forestry BMP Booklet - BMP video BMP Audit Results Workshops/Training Sessions Technical Assistance</p>	<p>Law requires state to provide BMP info and to encourage their use and implementation. Full-color; produced in 1991; 33 pages related to BMPs for roads, streamside management, timber harvest, hazardous substances, and stream crossings. Covers forestry and water quality; intended audience is forest landowners and contractors. Audit results are published and evaluated to determine problem areas every 2 years. (see general discussion of workshops, in the preceding, "Hazard Reduction," matrix. Evaluations are made when an application for an HRA is received. Sites are given a rating for risk to the soil and water resources and site visits are performed on the high-risk logging operations. During site visits, Service Foresters give technical assistance on compliance with the SMZ law and promote use of BMPs. The Department also gives technical assistance upon request and as part of the promotion of the BMP program.</p>	<p>field/staff field field staff field/staff field</p>	<p>NA 2,000 500 0 15 122</p>
<p>Comp. Planning/Withdrawals: BMP Updates</p>	<p>In FY 97, DNRC is scheduled to form working group to review current BMPs for possible revision.</p>	<p>staff</p>	<p>NA</p>
<p>Permits/Certifications: Operator Notification Revised Notification Receipt of Notification Termination of Requirement for Consultation</p>	<p>Any person proposing forest practices on private land must first notify the Department. Notification must include the location of forest practices in relation to watershed features. (This can be fulfilled via application for Hazard Reduction Agreement (HRA) -- see preceding matrix, or by submission of an operating plan. Required if proposed changes in forest practices substantially alters the potential watershed disturbance. Must be sent to operator and owner within 7 days of receipt of notification. Includes information on; BMPs, conservation district requirements related to stream crossings, and other information, as well as either approval of proposal, or requirement for on-site consultation prior to harvest. If the department and the operator are not able to schedule an on-site consultation within the time limits, or at another mutually agreeable rime, the requirement for a consultation is terminated. The operator may then proceed with forest practices immediately upon the expiration of the time limits.</p>	<p>field field field field</p>	<p>2,500 unk. 2,500 unk.</p>

STATE COMPLIANCE/ENFORCEMENT TOOLS -- BEST MANAGEMENT PRACTICES (BMPs)

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
<p>BEST MGMNT PRACTICES. (cont.): Monitoring/Inspections: Field Forester Site Visits</p> <p>- Pre-Harvest Visits - Post-Harvest Visits BMP Audits</p>	<p>Purpose is to give guidance and to ask for voluntary compliance, coupled with informal BMP monitoring on selected high-risk sites. A site visit is requested by the Department if; the proposed sale is in a high-priority location for watershed resources, a consultation could contribute to improved watershed management, and the department has sufficient resources to conduct the consultation. In FY 95, BMP program goals were to do pre-harvest and post-harvest visits on 5% of the 122 total sites, concentrating on non-industrial private forest (NIPF) operations. Staff visit must occur within 10 days of requesting the operator for a site visit, and no less than 10 days prior to proposed initiation of operations. (see above) (see above) Conducted every 2 years (beginning in 1990) by teams of experts. Reports are issued summarizing results, and comparing results to previous audits.</p>	<p>field</p> <p>aud. teams</p>	<p>122 56 NA</p>
<p>Administrative Notices/Orders: (not authorized)</p>			
<p>Administrative Penalties/Sanctions: (not authorized)</p>			
<p>Civil Judicial Action: (not authorized)</p>			
<p>Criminal Judicial Action: (not authorized)</p>			

STATE COMPLIANCE/ENFORCEMENT TOOLS -- STREAM MANAGEMENT ZONE (SMZ)

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
STREAMSIDE MANAGEMENT ZONE: Education/Information/T.A.: SMZ Fact Sheet Guide to SMZ Law and Rules Voluntary Wildlife Guidelines Brochure	2-sided flier providing a summary of who the SMZ law applies to, and answers to frequently asked questions. 35-page, full-color, booklet providing detailed information on how to interpret SMZ requirements (text and diagrams). 4-page brochure covering voluntary wildlife habitat management guidance for Streamside Management Zones; includes importance of snags, as well as suggestions related to choosing trees to omit from harvest, based upon wildlife values (i.e. "leave-trees"). Published in 1996.	field field field	2,000 2,000 None
Comp. Planning/Withdrawals: Prohibited Activities	The following practices are prohibited in a Streamside Management Zone (SMZ): clear cutting; broadcast burning; operation of wheeled or tracked vehicles (except on established roads); construction of roads (except where necessary for stream or wetland crossing); handling, storage, application, or disposal of hazardous or toxic materials in a manner that pollutes streams, lakes or wetlands, or that may cause damage or injury to humans, land, animals, or plants; side-casting or road material into a stream, wetland, or watercourse; and deposit of slash in streams or other water bodies. Exceptions are granted through approval of "Alternative Practices" (see below).	NA	NA
Permits/Certifications: Requests for Alternative Streamside Management Practices Approval of Alternative Practices	Requests for alternative practices ("alternative" to management standards stated in 77-5-3051 MCA) are given technical review and site visits. The merits of the request are evaluated along with the proposed mitigation measures. Environmental Assessments are completed and reviewed. If a request is granted, it is often with conditions that help protect the integrity of the SMZ. Requests are granted if they meet the intent of the law and do not significantly diminish the functions of the Streamside Zone.	appl./field field	60 29
Monitoring/Inspections: Site Inspections	Conducted in conjunction with HRA inspections, or as a result of complaints, random discovery, or other reports of violations.	field	730

STATE COMPLIANCE/ENFORCEMENT TOOLS -- STREAM MANAGEMENT ZONE (SMZ)

Tools Authorized, by Category	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
STREAM MGMNT ZONE (cont.): Administrative Notices/Orders: Verbal Warnings Formal (written) Warning	Issued when the forester discovers a minor technical problem with little or no damage or mitigation required, and the forester is reasonably certain that corrective and or preventative action will be taken in the future. Issued to document violations and damage and instruct mitigation/work. Generally, they are given to first-time offenders, those unaware of laws, and for minor damage or easily correctable conditions.	field field	unk. 52
Administrative Penalties/Sanctions: Notice of Violation - Order to Mitigate for Damage - Cease Order - Opportunity for Hearing - Rescinding of Order Civil Penalties	Issued upon serious offenses, or with significant damage, to repeat violators, or when warnings have expired and repair actions have not been completed in a reasonably timely manner. Typically includes an Order to Mitigate or an Order to Cease and Repair. When the department determines that an owner or operator has violated the SMZ law and has caused damage to watershed or wildlife resources, the department may serve an order requiring the person responsible for the conduct of forest practices to undertake necessary site rehabilitation within a reasonable, stated time frame. The order must specify the nature of the violation and the damage or unsatisfactory condition resulting from the violation. The department may include in an order a provision that the owner or operator immediately cease causing further damage and take immediate action to alleviate the damage or to prevent future damage. The order becomes final unless, within 30 days after the notice is mailed, the person named requests in writing a hearing before the department. Upon receipt of such a request, the department schedules a hearing. If the department finds that a violation has not occurred, or that site rehabilitation is not warranted, it rescinds the Order. Penalties may be assessed for any and all violations, and are generally sought when Orders are issued. The maximum penalty amount is \$1,000 per violation, with each day of violation considered a separate violation.	staff field field appl./field unk. Admin.	7 5 2 0 0 5
Civil Judicial Action:	The department may instigate an action for injunctive relief, if orders are not complied with. The decision to do so occurs if administrative remedies have been exhausted.	Admin.	None
Criminal Judicial Action: (not authorized)			

8. History of Compliance. Trends in compliance with Service Forestry Program rules and requirements are described and illustrated below.

Compliance with **Hazard Reduction** requirements has shown improvement over the last 15 years, as the number of state takeovers of hazard reduction activities has stayed relatively constant or declined, while the number of active HRAs more than doubled in the same time period. Relevant data for **calendar years** are shown below.

	<u>CY 1985</u>	<u>CY 1990</u>	<u>CY 1995</u>	<u>10-yr. Avg.</u>
Million Board Feet Harvested (private lands)	561.3	611.9	693.2	634.8
Active HRAs	1,790	2,681	4,555	2,779
State takeovers	69	66	54	68

source: Artley, 1996.

Compliance with **Best Management Practices** requirements has improved over the last five years, as shown below.

	<u>1990</u>	<u>1992</u>	<u>1994</u>
Number of sites evaluated	44	46	46
Application of practices that meet or exceed BMP requirements	78%	87%	91%
Application of high-risk practices that meet or exceed BMP requirements	53%	72%	79%
Number of sites with at least one major departure in BMP application	61%	43%	37%
Average number of departures in BMP application per site	9	5.6	3.9
Number (proportion) of practices providing adequate protection	80%	90%	93%
Number (proportion) of high-risk practices providing adequate protection	58%	77%	83%
Number (proportion) of sites having at least one major/temporary or minor/prolonged impact	64%	37%	28%
Average number of impacts per site	8	4.6	3

source: Montana Division of State Lands, 1995.

The **Streamside Management Zone** law was passed in 1991, and rules were approved in 1993, thus there is not much historical information related to compliance with this law.

9. "Violations." Although the Service Forestry Program may be notified of possible violations by various methods such as citizen complaints, other agency reports, or self reports, it is the responsibility of the state to determine when violations occur. Therefore, violations are identified through on-site inspections by program staff and/or documented evidence, such as mill audits.

As noted in the "tools" matrix, forestry-related operations may out of compliance, correct the problem, and not be issued a violation nor penalized. The Service Forestry Program defines a "violation" upon issuance of a formal warning, or a Notice of Violation and Order. There is no specific definition of a significant violation.

During the 1995 calendar year, the Service Forestry Program issued 60 Hazard Reduction violations and 52 warnings or orders which amounted to 167 SMZ violations. Of the violations issued in 1995, there were 12 repeat violators. All violations (warnings and orders) are issued through the Field Offices.

Hazard Reduction violations result in state takeover of hazard reduction activities. This may involve the use of State personnel and equipment to complete hazard reduction on the noncompliant sites, or the State may choose to contract out such work.

As shown in the following list, the most common violations related to **Streamside Management Zones** are operating equipment in the SMZ and failing to adequately mark the width of the Zone. Most violations were issued to non-industrial timberland owners. Abbreviations under the “Description of Violation” column refer to the following:

Width	Failure to clearly mark the Streamside Management Zone (SMZ)
Burn	Broadcast Burning
Equip.	Operating wheeled or tracked vehicles (except on established roads)
Clear-cut	Clear cutting in the SMZ
Road	Road construction (except where necessary for crossings)
Hazard	Handling, storage, application, or disposal of hazardous or toxic materials in a manner that pollutes streams, lakes, or wetlands, or that may cause damage or injury to humans, land, animals, or plants
Side-cast	Side-casting of road material (e.g. ditch cleaning debris, etc.) into streams or other water bodies
Slash	Depositing slash in streams or other water bodies.

1995 Streamside Management Zone Violations, by Type and Status

Month Issued	NON Operator	Type of Operator	Desc. of Violation	Penalty Assessed	Status at Year End	Significant Violation?
<u>Pending in FY 95:</u>						
Aug. '94	Nonindustrial		width, equip., clrcut., road, slash	court action	pending	Yes
March '95	Nonindustrial		width, equipment, clear-cut	court action	pending	Yes
March '95	Nonindustrial		width, equip., clear-cut, slash	court action	pending	Yes
May '95	Nonindustrial		equipment, slash	court action	pending	Yes
May '95	Nonindustrial		equipment, clear-cut, slash	court action	pending	Yes
June '95	Nonindustrial		width, equipment, clear-cut	court action	pending	Yes
<u>Issued in FY 95:</u>						
July '94	Nonindustrial		width, equipmentNo	resolved	No	No
July '94	Nonindustrial		slash	No	resolved	No
July '94	Nonindustrial		width, equipmentNo	resolved	No	No
July '94	Nonindustrial		equip, side-cast, slash	No	resolved	No
Aug. '94	Nonindustrial		equipment	No	resolved	No
Aug. '94	Nonindustrial		width, equip, clear, road, slash	Court	pending	Yes
Aug. '94	Nonindustrial		equipment	No	resolved	No
Sept. '94	Nonindustrial		equip, hazard, side-cast	No	resolved	No
Sept. '94	Agency		width, burning	No	resolved	No
Sept. '94	Agency		equipment, slashNo	resolved	No	No
Dec. '94	Nonindustrial		road, slash	No	resolved	No
Dec. '94	Agency		width, equip.	No	resolved	No
Dec. '94	Nonindustrial		equipment	No	resolved	No
Dec. '94	Industrial		clear-cut	No	resolved	No

Jan. '95	Nonindustrial	width, slash	No	resolved	No
Jan. '95	Industrial	width, clear-cut	No	resolved	No
Jan. '95	Nonindustrial	width, equipment, slash	No	resolved	No
Jan. '95	Nonindustrial	road	No	resolved	No
Jan. '95	Nonindustrial	slash	No	resolved	No
Jan. '95	Nonindustrial	road	No	resolved	No
Feb. '95	Nonindustrial	equipment	No	resolved	No
Feb. '95	Nonindustrial	equip., clear-cut, road, slash	No	resolved	No
March '95	Nonindustrial	width, equip., clear-cut, slash	court	pending	Yes
March '95	Nonindustrial	width, equipment, clear-cut	court	pending	Yes
March '95	Nonindustrial	width, equipment, clear-cut	No	resolved	No
March '95	Nonindustrial	width, equip., clear-cut	No	resolved	No
March '95	Nonindustrial	equipment, slashNo	resolved	No	
April '95	Nonindustrial	equipment, slashNo	resolved	No	
April '95	Nonindustrial	width, equipmentNo	resolved	No	
April '95	Nonindustrial	width, equip., slash	No	resolved	No
April '95	Nonindustrial	equipment, slashNo	resolved	No	
April '95	Nonindustrial	equipment	No	resolved	No
April '95	Nonindustrial	clear-cut, slash	No	resolved	No
May '95	Nonindustrial	equip., clear-cut, slash	No	resolved	No
May '95	Nonindustrial	equipment, slasbourt	pending	Yes	
May '95	Nonindustrial	width, equipmentNo	resolved	No	
May '95	Agency	width, equipmenNo	resolved	No	
May '95	Nonindustrial	equip., clear-cut, slash	court	pending	Yes
May '95	Industrial	road	No	resolved	No
May '95	Nonindustrial	width, equip., clear-cut, slash	\$17,450	resolved	Yes
May '95	Industrial	clear-cut	No	resolved	No
June '95	Nonindustrial	width, clear-cut, slash	No	resolved	No
June '95	Nonindustrial	width, equip., clear-cut, road	No	resolved	No
June '95	Nonindustrial	width, equipment, clear-cut	court	pending	Yes
June '95	Nonindustrial	equip., roads, side-cast, slash	No	resolved	No
June '95	Nonindustrial	width, equipmentNo	resolved	No	
June '95	Non-Industrial	width, equipmentNo	resolved	No	
June '95	Agency	equipment	No	resolved	No
June '95	Non-Industrial	width, equipment, slash	No	resolved	No
June '95	Non-Industrial	width, equipment, clear-cut	No	resolved	No
June '95	Non-Industrial	equipment, slashNo	resolved	No	

Notes:

¹ The six pending actions in FY 95 involved three non-industrial operators whose cases will be resolved through District Court actions.

source: Artley, 1995, 1996; Lennon, 1996.

Discovery of Violations. Over the long term, most violations in the Service Forestry Program are discovered through inspection or citizen complaint, as shown below.

Violations Discovered, by method, 1995

<u>Group</u>	<u>Total</u>	<u>Agency Review of Monitoring Reports</u>	<u>Self-Reporting of Violation</u>	<u>Inspection</u>	<u>Citizen Complaint</u>
Hazard Red.	60	None	0	60	None
Best Mgt. Pract.	NA	NA	NA	NA	NA
Stream Mgt. Zone	<u>52</u>	<u>11</u>	<u>2</u>	<u>36</u>	<u>3</u>
TOTAL	112	11	2	96	3

source: Artley, 1996.

10. Considerations in Calculating Penalties. The department’s Standards and Guidelines for the HRA and SMZ programs provide guidance in calculating penalties; these are summarized on the next page. The BMP program is voluntary, thus no penalties are authorized.

Hazard Reduction Act (HRA): The contractor is to do the necessary hazard reduction work within 18 months following the start of the cutting operation. If they fail to do so, the State may take over the hazard reduction responsibilities, and do the work at cost, plus 20%, as a penalty. The State may also assign the responsibility to another party, or elect to provide additional forest fire protection in the area until the hazard has been naturally reduced to an acceptable level.

If a purchaser (mill) does not submit withheld money and reports, the state may initiate a lien upon the real property of the purchaser and initiate proceedings to enjoin further processing of all wood products until all money is paid and reports are submitted. A penalty of 5% must be assessed. The State may impose interest of 10%/year on any balance remaining unpaid. The purchaser may be required to post a bond to the State to ensure faithful compliance.

Streamside Management Zone (SMZ): Penalties are assessed using a mathematical formula that considers the base amount, cooperation, prior knowledge, damage to resources, and extent to which damage can be repaired and avoid future damage, described as follows:

$$\text{Penalty} = \text{Base } \$ (\text{Coop} \times \text{Prior}) + [(\text{Base } \$ \times \text{Damage}) - (\text{Base } \$ \times \text{Damage} \times \text{Repairability})]$$

Base A value of \$25 or \$50 is assigned, depending upon the type of violation

Coop A value of 1 or 2 is assigned whether the person is making all feasible steps necessary to correct the violation for which the penalty is being assessed.

Prior A value of 0.5 to 5.0 is assigned whether the person had prior knowledge or prior violations, after reviewing DNRC records of violations and operation notifications.

Damage A value of 0 to 10 is assigned as a measure of the extent or relative adverse effect of the violation.

Repairability A decimal value between 0 and 1 is assigned as a measure of how difficult it will be to repair the damage resulting from the violation, compared to the total damage if the violation was left uncorrected.

11. Resolution of Noncompliances. With the bonding system to ensure compliance, very close to 100% of the noncompliance cases get resolved. If a mill fails to report and send required bond money, the operation will be shut down by court order until requirements are met. There has been only a few

cases that the state hasn't collected amounts due, because the mill permanently ceased to operate and had no assets to collect the amount due.

The SMZ program has been operating for three years and many of the operations with forest practices that are covered under the law are just beginning to be inspected. Most of the landowners or operators that are responsible for the identified violations have been willing to perform the requested mitigation or to repair any damage. We have only a half dozen operations that have not been resolved and are currently proceeding with legal action and civil penalties to resolve the noncompliance.

12. Current Compliance Priorities. Agency staff have identified the following priorities for the Service Forestry Program:

- Seek voluntary compliance and site rehabilitation through warning, conference, or other appropriate means.
- Most resource protection can be obtained through information, education and assistance.
- All fire hazard caused by logging residues, road construction, or other cutting on private forest lands are abated to a level that meets DNRC standards.
- When the natural resource has been threatened and the information/education does not bring the desired result, aggressive follow-up of enforcement actions should be taken.

Short-term priorities (i.e. next 12 months, or so) for the Service Forestry Program include:

- Initiate BMP development and revision.
- Participate in Forest Practices and slash orientation workshops for landowners, and other education projects, in cooperation with other agencies and organizations.
- Complete 1996 BMP Audits and reports.
- Develop information brochure on alternative fuel reduction treatments.

13. Compliance Relationships with Other Agencies.

Oversight. None.

Partnerships. Although the BMP law is considered voluntary, both State and Federal agencies have agreed to practice and monitor BMPs on their respective lands. The program maintains an MOU with the Forest Service and the Bureau of Land Management with respect to the SMZ law, and it appears to be working. At the time of this writing, there is no agreement between state agencies, primarily due to recent reorganization. However, when a SMZ violation occurs on state lands, the Service Forestry Program is notified, and the local field forester responsible for SMZ compliance inspects the site and recommends appropriate actions.

Program informational brochures also include references to requirements of the Natural Streambed and Land Preservation Act (310 Permit Program), and the Montana Water Quality Act, which are implemented by other agencies.

Delegated Authority. None.

Fire and Aviation Program

Functionally, the Fire and Aviation Program protects the natural resources of the state from destruction by fire. There are over 50 million acres of state and private owned lands which are protected through plans or as required by law. Over 5 million are protected by the DNRC Fire and Aviation Program, almost 2 million acres are subcontracted to federal agencies for fire protection services and over 45 million acres are protected under the state/county cooperative fire protection network. There are approximately 245,000 acres of unprotected forest land in Montana at this time.

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Fire and Aviation Program.

Primary constitutional and statutory authorities (see Appendix B):

- 76-13-101, MCA. The purpose of the statutes is to provide for the protection and conservation of forest resources.
- 77-5-103, MCA. The department shall take such action as is authorized to prevent and extinguish forest, brush, and grass fires and enforce the laws pertaining to those fires.

Supplemental and/or related state authorities:

- Uniform Fire Code adopted pursuant to 50-3-102, 50-3-103, and 50-61-120, MCA.

Related federal authorities:

- Granger-Thye Act of 1950 Section 5; 16 U.S.C. 572
- Reciprocal Fire Protection Act of 1955; 42 U.S.C. 1856a
- Secretary of Agriculture Fire Authorization Act of 1975; P.L.94-148; 16 U.S.C. 565a 1-3
- Rural Development Act of 1972; P.L. 92-419
- Robert T. Stafford Disaster Relief & Fire Emergency Assistance Act; P.L. 93-288
- Cooperative Forestry Assistance Act of 1978; P.L. 95-313

- P.L. 101-624 U.S.C.
- Federal Aviation Regulations

Specific enforcement authority:

- 76-13-104, MCA. Functions of the department include giving technical advice concerning forest fire protection.
- 76-13-121, MCA. Burning permits required.
- 76-13-122 through 125, MCA. Specific violations are misdemeanors.
- 76-13-201 et seq, MCA. Provision of fire protection services.
- 76-13-408, MCA. Fire hazard reduction agreement and bond required.
- 76-5-104 through 106, MCA. Firewarden authority.
- Sections 26.6.209 through 26.6.215 and Sections 26.6.218 through 26.6.222, ARM

Primacy and jurisdictional agreements:

- Master agreements with the following entities:
 - U.S. Forest Service
 - U.S. Bureau of Land Management
 - National Park Service
 - U.S. Bureau of Indian Affairs
 - Various Tribal Governments

2. Program Goals. Based on the above-referenced guidance, the Fire and Aviation Program has identified the following program goals:

1. Ensure firefighter's safety.
2. Hold 95% of all fires to 10 acres or less in size.
3. Reduce the number of person-caused fires.

3. Program Activities. The Fire and Aviation Program is broken down into 6 distinct activities.

- **Equipment Development and Support** - This section acquires, develops, warehouses, maintains, inventories and inspects fire equipment and supplies.
- **Fire Prevention** - The purpose of this section is to reduce the number and severity of wildfires occurring each year. The prevention program is made up of three parts: engineering through prescribed fire and fuel management, education, and enforcement measures.

- **Fire Training** - The DNRC wildland fire training program is a performance-driven program designed and mandated to "provide training to state firefighters and other cooperators requiring training".
- **Aviation** - The Aviation section provides mission-capable aircraft and aircraft support for all DNRC functions.
- **Pre-suppression/Suppression/Fire Coordination** - This section includes all activities required in preparation to detect and suppress forest and range fires in Montana on state and private ownerships.
- **Fire Administration** - The section is responsible for overall management of the DNRC fire management program. The goal of the program is to protect the natural resources of the state from destruction by fire.

Additional information on these activities is provided below.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs*</u>	<u>Avg. Years Staff Retntn.</u>	<u>1995 Ongoing Projects/Sites</u>	<u>Avg. Acres/ Site</u>	<u>Avg. # of new proj./yr</u>
Equipment Devlpmt and Support	\$568,174	9.5	Unknown	N/A	N/A	N/A
Fire Prevention	\$139,807	3.0	Unknown	N/A	N/A	N/A
Fire Training	\$135,215	2.28	Unknown	N/A	N/A	N/A
Aviation	\$426,254	5.8	Unknown	N/A	N/A	N/A
Pre-Supp/Supp and Coordination	\$3,979,586	103.67	Unknown	N/A	N/A	N/A
Fire Administration	\$173,371	2.0	Unknown	N/A	N/A	N/A

source: Program Plan, 1996.

Fees and Charges. The Fire and Aviation Program receives the following fees from the regulated community. Additionally, they are authorized and do collect fees to reimburse fire suppression services where authorized.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed</u>	<u>Uses</u>
Permit Application Fees:	Not authorized	\$0		
Permit Renewal Fees:	Not authorized	\$0		
MEPA Fees:	Not authorized	\$0		
Noncompliance Penalties:	Not authorized	\$0		
Fire Protection Fees:	Varies ¹	\$1.6 million		Funds basic program
Cost Reimbursement for fire suppression:	Varies	\$85,000		General fund
PROGRAM TOTAL:		\$1.6 million		

1. \$20 for the first 20 acres and \$0.17 for each additional acre of forest land. See 76-13-201, MCA for details on forest land covered by these fees.

4. Regulated Communities. The laws regarding forest fires of the state apply to all citizens or other legal entities within the state. Burn permits also help identify specific members of the regulated community.

5. Philosophical Approach to Compliance. Prevention is the best enforcement tool. An aggressive education and information program can influence people's behavior and thereby reduce violations.

6. Compliance Tools Available and Used. The menu of tools used by the Fire and Aviation Program to achieve their natural resource/environmental mandates is shown beginning on the next page.

7. Incentives for Compliance. According to program staff, the greatest incentive for compliance with DNRC's rules and regulations is a citizen's sense of moral and civic responsibility. Their program has identified and officially recognized individuals and organizations that have provided exceptional assistance and cooperation during extreme fire seasons.

8. History of Compliance. Program staff indicate that this is difficult to determine because the program lacks adequate resources to track the number of violations reported.

9. "Violations." As noted above, this information is not available.

Discovery of Violations. Violations of the forest fire rules and regulations are identified as the result of on-site inspections or responses to calls from concerned citizens. Detection of violations by program fire patrol units is also a common occurrence.

Violations Discovered, by method, 1995

<u>Group</u>	<u>Total</u>	<u>Agency Review of Monitoring Reports</u>	<u>Self-Reporting of Violation</u>	<u>Inspection</u>	<u>Citizen Complaint</u>
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Specific information not available.

10. Considerations in Calculating Penalties. The Fire and Aviation Program has no formal penalty calculation for violations. There are categories of violations based on whether a specific violation is administrative or criminal, and based on the seriousness of the violation.

11. Resolution of Noncompliances. While no formal records are kept regarding violations or their resolution, the program attempts to bring violators into compliance through informal contacts and only occasionally will the program staff resort to notification of local law enforcement agencies.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- FIRE AND AVIATION PROGRAM

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)¹
Education/Information/T.A.	Presenting or providing fire protection information, education, and technical assistance is a normal, routine duty of program field foresters.	All field offices	Routine
Planning or Withdrawals: Restrict activities, e.g., campfires, smoking, etc., in areas of high fire hazard. Closure of state forests.	Area restrictions or closures depend on the severity of the fire hazard.	Division Administrator Governor	0 0
Permits/Certifications/Bonds Burning permits	Burning permits are required during the forest fire season of May 1 through September 30 plus extensions if any.	All field offices	10,000 Approx
Monitoring/Inspections:	Field foresters routinely monitor and inspect the forests throughout their normal activities. Attention is increased as the fire danger increases.	All field offices	Routine
Administrative Notices/Orders:	Administrative action will be taken if an individual refuses to voluntarily comply with program regulations and statutes. Program staff actions may include notification of local law enforcement agencies.	Division Administrator All field offices	0

Notes:
¹ There were fewer fires during the 1995 fire season than any other season on record. 1995 data may therefore be misleading. For example, the very active 1994 fire season saw many forest restrictions imposed throughout the state.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- FIRE AND AVIATION BUREAU

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used (95)¹
Admin. Penalties/Sanctions: Not authorized ²			0
Civil Judicial Action:	An individual who negligently causes a forest fire can be required to reimburse the program for fire suppression costs.	Department Director	0
Criminal Judicial Action: Not authorized			0

Notes:

² The program is not authorized to impose or collect any penalties. They must rely on local law enforcement agencies.

12. Current Compliance Priorities. The DNRC Fire and Aviation Management Program has identified priorities which revolve around protection of life and property, and the natural resources of Montana, with special emphasis in Wildland Urban Interface areas. This protection responsibility includes approximately 5.12 million acres of direct protection as well as 45 million acres of protection responsibility through the State/County Cooperative Fire Protection program.

13. Compliance Relationships with Other Agencies.

Oversight. There is no oversight of this program by other agencies.

Partnerships. The Fire and Aviation Program has interagency agreements with various fire service entities and federal government agencies. These agreements are working well. For example during particularly dangerous fire seasons the program works closely with all cooperating agencies to implement the restrictions and closure process as it applies to lands under the program's jurisdiction.

Delegated Authority. 76-13-102 and 76-13-202, MCA authorize the State Land Board to recognize fire protection agencies for the purposes of providing forest fire protection in Montana. In addition to the DNRC, officially recognized agencies with fire protection authority include the U.S. Forest Service, the Bureau of Land Management, the Bureau of Indian Affairs, and the Flathead Agency, Confederated Salish and Kootenia Tribe. Additionally,, the DNRC annually delegates authority by statute to approximately 400 fire wardens from the DNRC and cooperating agencies that assist the DNRC with enforcement of Montana's Forest Fire Rules and Regulations.

OIL AND GAS CONSERVATION DIVISION

The Oil and Gas Conservation Division administers the Montana oil and gas conservation laws to promote conservation and prevent waste in the recovery of these resources through regulation of exploration and production of oil and gas. To meet this goal, the division: 1) issues drilling permits; 2) classifies wells; 3) establishes well spacing units and pooling orders; 4) inspects drilling; production, and seismic operations; 5) investigates complaints; 6) does engineering studies; and 7) collects and maintains complete well data and production information.

The oil and gas state special revenue account funds this program. Revenue is derived from fees paid for drilling permits, a tax on oil and gas production, interest earnings, and miscellaneous fees for photocopy and other services.

*A copy of this table is not available electronically.
For a paper copy, please contact the EQC Office.*

source: LFA 1995

Legislative History

Significant legislation and administrative rule changes for the Oil and Gas Conservation Division are summarized below.

Year	Legislation
1953	Oil and Gas Conservation Act passed- established Oil and Gas Commission.
1971	Oil and Gas Commission changed to Board of Oil and Gas Conservation and allocated to DNRC for administrative purposes.
1979	Board given Natural Gas Policy Act responsibilities.
1985	Governor's office authorized to prepare Programmatic Environmental Impact Statement in conjunction with the Board to incorporate MEPA compliant procedures into permitting process. PEIS adopted by Board in 1989.
1987	Board authorized to negotiate a primacy delegation from U.S. EPA to the Board for Underground Injection Control Program (UIC). Board given exclusive jurisdiction over Class II injection wells. Civil and criminal penalties established for violations of Board rules and orders.
1989	Legislature establishes Oil and Gas Production Damage Mitigation Account and provides statutory appropriation to allow expenditures for proper plugging and restoration of well sites.
1990	Drilling permit procedures changed to provide public notice of proposed wells located in previously undeveloped areas, provision for hearing to resolve protests.

- 1992 Administrative rules adopted to implement PEIS recommendations. Administrative rules to implement UIC program adopted.
- 1993 Individual and Statewide well bonds increased from \$5,000/\$10,000 to \$10,000/\$25,000, respectively; shallow single well bond established at \$5,000.
- 1993 Board given responsibility for production increment determination to implement Horizontal and Enhanced Recovery Tax Incentive Act. Administrative rules adopted in 1994.
- 1996 Amended UIC rules adopted, effective May 10, 1996.

Oil and Gas Conservation Program

The Board of Oil and Gas Conservation is charged with administering Montana's oil and gas laws. The purpose of the board is to prevent waste and promote conservation in the recovery of oil and gas through the regulation of exploration and production.

1. Statutory Goals. The following provides a guide to the statutory, federal, and rule authority for the activities of the Board of Oil and Gas Conservation (BOGC or board).

Primary statutory authorities (see Appendix B):

- **Montana Oil and Gas Conservation Act (1953)** (MCA 82-11-, et. seq.) provides for the
- **Underground Gas Storage Reservoirs** (82-10-300, et. seq.)
- **Abandoned Oil and Gas Wells-Reclamation** (82-1-100 et. seq.)

Supplemental and/or related state authorities:

- **The Montana Environmental Policy Act** (MCA 75-1-101, et seq.)
- **Clean Water Act of Montana** (MCA 75-5-101, et. seq.)

Related federal authorities

- **Underground Injection Control** -(42 U.S.C.300f

et. seq. Currently EPA administered)

Pending delegation to BOGC under section 1425 of Safe Drinking Water Act

Oil and Gas administrative rules:

- ARM 36.22.101 et.seq

Specific enforcement authority:

- MCA 82-11-111, 82-11-123 & 124, 82-11-147 through 149.
- ARM 36.22.1200 et. seq. and 36.22.1300 et. seq.

Primacy/jurisdictional agreements:

- Bureau of Land Management -spacing of wells and pooling of interests.
- U.S. EPA -Administration of UIC program

2. Program Goals. Based on the above-referenced guidance, the Oil and Gas Conservation Program goals include the following:

1. **Conservation of the oil and gas resource** - maximization of the ultimate recovery from a given oil or gas reservoir by encouraging proper well spacing, institution of timely enhanced recovery projects and use of good oil field production.
2. **Prevention of waste** -includes both the minimization of physical waste and the prevention of economic waste, such as drilling too many wells to recover the existing resource.
3. **Protection of correlative oil and gas rights**--each owner of oil and gas must be given the opportunity to recover its fair share of the resource.
4. **Prevent contamination of or damage to surrounding land or underground strata.**

3. Program Activities. One third of the board's staff is dedicated to direct enforcement and compliance activities. The board maintains 5 full time field inspectors and a supervisory inspector. Inspectors are assigned to geographic areas. The other administrative staff members spend an estimated 15 -30% of available time on compliance issues. Much of this staff time is spent monitoring and assuring receipt of production and well status reports, completion reports and well logs submitted in compliance with the board's rules. The professional staff generally spend a similar amount of time reviewing permit requests and other proposals to perform well work for compliance with spacing orders and other board rules. Program resources and demands are described in more detail on the following page.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs*</u>	<u>Avg. Years Staff Retntn.</u>	<u>1995 Ongoing Projects/Sites</u>	<u>Avg. Acres/ Site</u>	<u>Avg. # of new proj./yr**</u>
Inspections:						
Producing wells				4,114	N.A.	152
Drilling Inspection				268	N.A.	256
Plugging inspections		—	—	243	N.A.	235
Total inspections		6.0	9.9	4,625	N.A.	643
Permits		2.0	9.7		267	267
TOTAL	\$1,057,909	16.0*	11.85 years	4892	N.A.	910

*Total division current staff

** estimates based on 1994 Annual Review and 1995 Quarterly Bulletins

source: 1994 Annual Review and 1995 Quarterly Bulletins, Richmond, 1996.

Fees and Charges. Program revenues are derived from a license tax, a 0.03% tax on oil and gas production. Other sources of income include drilling permit fees.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses</u>
Drilling permit fees:			
0 to 3500 feet --	\$25	-	-
3501 to 7500 --	\$75	-	-
below 7500 --	\$150	-	-
Total permit fees		\$12,000	operating expenses
License Tax*	0.03% of production value	\$717,000	operating expense
Other		24,500	operating expense
Noncompliance Penalties:	varied	\$5,000	general fund
TOTAL:		\$753,500**	

*Privilege and License tax revenue depends on oil and gas price and is highly variable.

** Does not include penalties which are general fund revenue, not program revenue.

source: Richmond, 1996.

4. Regulated Communities. The owners, operators, or producers of oil and gas wells and the mineral Owners are the "regulated communities". The number of regulated entities in FY 95 was approximately 240 oil producers and 177 gas producers. Some oil producers may also operate natural gas wells and vice versa. The number of mineral owners is not directly known; the federal and state governments are the largest mineral owners, followed by some large owners such as the successors in interest to the land grant railroads. In contrast, some small tracts may have scores of people owning extremely small fractional interests.

5. Philosophical Approach to Compliance. Both the board and staff make efforts to promote cooperative approaches to compliance. Compliance assistance takes first priority but occasional enforcement actions are necessary.

6. Compliance Tools Available and Used. The board adopted an enforcement policy for its staff at its February 3, 1994 meeting. The menu of tools used by the BOGC is illustrated beginning on the next page.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- BOARD OF OIL AND GAS CONSERVATION

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
<p>Education/Information/T.A.: Presentations at informal gatherings, board hearings, professional societies.</p> <p>Informal Discussions w/ operators</p> <p>On-Site Technical Assistance</p>	<p>Upon request and when scheduled for board meetings (Includes both staff and third party presentations at Board meetings)</p> <p>Field inspections, board meetings, phone contact.</p> <p>Field inspections (Note: only a small number of field inspections are performed with operating personnel present --times used base on 5% of inspections)</p>	<p>Prof. Staff</p> <p>Prof Staff</p> <p>Field Insp</p>	<p>8</p> <p>daily</p> <p>200</p>
<p>Comprehensive Planning/Withdrawals</p>	<p>Not Authorized</p>	<p>Not Applicable</p>	<p>Not Applicable</p>
<p>Permits/Reports/Bonds: Application for permit to drill.</p> <p>Well drilling reports</p> <p>Well Logs</p> <p>MEPA Review</p> <p>Bonding</p>	<p>Notice of intention to drill must include information identifying the area where the proposed activity will occur.</p> <p>Within 30 days after the completion of a well drilled for oil or gas a completion report must be filed with the board.</p> <p>Owner or operator must keep petrophysical log sufficient to determine formation tops from total depth to the base of the surface casing unless waived by administrator.</p> <p>MEPA review is conducted for all proposed wells</p> <p>The owner or operator of a single well or multiple wells must provide a penal bond for the performance of the duty to properly plug each dry or abandoned well and to restore the surface of the location as required by board rules. (number reported is the number of <u>new</u> bonds approved during 1995)</p>	<p>N.A.</p> <p>N.A.</p> <p>N.A.</p> <p>staff</p> <p>staff</p>	<p>267</p> <p>210</p> <p>N.A.</p> <p>267</p> <p>39</p>

STATE COMPLIANCE/ENFORCEMENT TOOLS -- BOARD OF OIL AND GAS CONSERVATION

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
<p>Monitoring/Inspections:</p> <p>Informal</p> <p>Self Monitoring</p> <p>Site Inspections</p> <p>Complaint Generated Inspections</p> <p>Violation Avoidance</p>	<p>Ad hoc</p> <p>Well completion reports/well logs are required (number reported is based on receipt of Form #4 -completion report)</p> <p>Field staff conduct ongoing inspections using unannounced routine inspections. Inspectors place high priority on the witnessing of plugging operations, setting of surface casing to protect fresh water, and similar events during drilling and production operations. Goal is one inspection per well per year; however, gas wells are usually low priority and are not usually inspected annually.</p> <p>Upon receipt of complaint.</p> <p>If staff notice specific problems that can be immediately corrected (Note: inspectors will give oral warnings if an operator's representative is present and problem can be resolved quickly)</p>	<p>N.A.</p> <p>N.A.</p> <p>Field Insp.</p> <p>Field Insp</p> <p>staff</p>	<p>N.A.</p> <p>210</p> <p>4500</p> <p>25</p> <p>250</p>
<p>Administrative Notices/Orders/Penalties:</p> <p>Oral or informal written notices of violation</p> <p>Written Warnings</p> <p>Formal Written Violations</p> <p>Administrative Penalties</p>	<p>Orally confirmed to operator during inspection or sent to operator after inspection, if problems are discovered; includes steps necessary to correct them, and a time frame to do so.</p> <p><i>Written notice issued by field inspector, mailed to operator by supervisor</i></p> <p><i>Notice issued by supervisor, send certified mail.</i></p> <p>Violation or threatening to violate the statute, rules, or order of the board the Board authorized to assess administrative penalties up to a maximum of \$125,000</p>	<p>Field Insp</p> <p>Field Insp</p> <p>Super-visor</p> <p>Admin-istrator</p>	<p>450</p> <p>196</p> <p>15</p> <p>0</p>

STATE COMPLIANCE/ENFORCEMENT TOOLS -- BOARD OF OIL AND GAS CONSERVATION

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
<p>Admin. Penalties/Sanctions:</p> <p>Pipeline Severance</p> <p>Shutdown Order</p> <p>Bond Forfeiture</p>	<p>An order to the oil and gas purchaser that production from a certain property(ies) may not be purchased <i>(May be delegated to staff under some circumstances)</i></p> <p><i>An order to immediately cease all production/drilling activities</i></p> <p>Failure to properly plug and abandon wells (<i>Failure to properly plug includes not permanently plugging the wellbore and/or not reclaiming the disturbed area to its original grade and productive capacity</i>)</p>	<p>Board</p> <p>Board</p> <p>Board</p>	<p>1</p> <p>1</p> <p>1</p>
<p>Civil Judicial Action:</p> <p>Civil Penalties</p> <p>Civil Court/Injunction/Restraining Order</p>	<p>Board has the authority to pursue civil penalties of at least \$75 and not more than \$10,000 a day for each violation it that person violates any rule or order of the Board. Each day of violation constitutes a separate violation.</p> <p>Board can pursue if violation or threatened violation facts warrant. <i>Board may also pursue recovery of costs if it must use state funds to perform)</i></p>	<p>Board</p> <p>Board</p>	<p>1</p> <p>1</p>
<p>Criminal Judicial Action:</p> <p>Criminal Penalties</p>	<p>A person who willingly violates any lawful rule or order of the board or if that person, for the purpose of evading any law, rule or order of the board, knowingly and willfully makes or causes to be made a false entry or statement in a report or omits or caused to be omitted from the record, account, or memorandum full, true, and correct entries, etc. Board and County Attorney discretion.</p>	<p>Board or County Attorney</p>	<p>1</p>

source: Richmond, 1996.

7. Incentives for Compliance. According to program staff, the greatest incentives for compliance with BOGC rules and regulations are the cooperative efforts of the board, staff, and regulated community in combination with field inspections . BOGC works closely with the regulated community to ensure proper drilling, plugging, and well operation.

Agency-Generated. BOGC conducts an ongoing inspection program using unannounced routine inspections. Board requires copies of third party service invoices or reports for independent verification of certain important procedures. Informal discussion and contact with the regulated community provide a forum of interactive compliance.

The state is a member of the Interstate Oil and Gas Compact Commission. The IOGCC provides a forum for interaction between state regulators, federal program managers and the regulated community. Board and staff attend and participate in IOGCC activities. IOGCC provides recommended rules and statutes for state consideration, training for regulatory personnel, and peer review of state programs.

Industry-Generated. The Montana Petroleum Association and the Northern Montana Oil and Gas Association provide education opportunities for its members through a guest speakers, informal agency seminars, and direct mailing of regulatory information and discussion of compliance issues to membership. Mineral owner groups perform a very similar service to their members. The two active mineral owners association are the Montana Land and Mineral Owners Association and the Northeast Montana Land and Mineral Owners Association. The American Petroleum Institute (API) establishes criteria for a industry standard practices which include regulatory and compliance guidance for industry. Independent Producers Association of Mountain States (IPAMS) and the Independent Petroleum Association of America (IPAA) have Montana representatives and disseminate information on current regulatory issues to their membership. Several Board members are actively involved in one (or more) of these organizations.

Other. The Society of Petroleum Engineers, the Montana Geological Society, Montana Association of Professional Landmen and similar professional groups provide a forum for discussion and review of the technical aspects of regulatory and compliance issues. Both board members and the board’s professional staff are active members of such groups.

8. History of Compliance. The BOGC generally issues 200 violations annually. In 1995 the board forfeited 2 bonds.

Trends in compliance with BOGC rules and requirements are illustrated below.

	Inspection Items	Signif. Noncompl.¹	Other Noncompl.²
1995	4892	10	196
1990	5343	6	224
1985	6641	None	70³

¹ Significant noncompliance is defined as a non compliance that resulted in an administrative hearing before the Board of Oil and Gas Conservation.

² Other noncompliance is defined as written notifications of noncompliance.

³ Only one field inspector’s records are available for 1985; at the time 3 inspectors were employed.

source: Richmond, 1996.

9. "Violations." During the 1995 calendar year, BOGC issued: 13 formal written notices of violations and 196 written warnings.

The FY 95 list of BOGC violations (both issued and pending) is shown below.

<u>1995 BOGC Violations, by Type and Status</u>						
<u>Month NOV Issued</u>	<u>Type of Operator</u>	<u>Desc. of Violation</u>	<u>Penalty Assessed</u>	<u>Status at Year End</u>	<u>Significant Violation?</u>	
1/95	Operator	Failure to file bond**	resolved	y*		
1/95	Operator	Failure to restore location	yes	bond forfeited	y	
7/95	Operator	Shut in wells, no production	no	bond limited to existing wells	y	
7/95	Operator	Failure to complete well and cleanup location	no	pending	y	
7/95	Operator	Failure to reclaim pit	no	resolved	y	
11/95	Operator	Failure to file change of operator	no	Shut -in Order	y	
11/95	Operator	Failure to plug and restore	yes	bond forfeited	y	
11/95	Operator	Failure to cleanup spills	no	pending	y	
11/95	Operator	Failure of restore location	no	resolved	y	
11/95	Operator	Failure to file change of operator	yes	fined \$500	y	

*Note: All violations which must be brought to the Board as a show cause matter are considered significant. In some cases the underlying violation is minor, but repeated staff attempts to resolve the issue have been unsuccessful.

**only a monetary fine or bond forfeiture is reported here as a penalty.

source: Richmond, 1996.

Discovery of Violations. Most violations are discovered through on site inspections as shown below.

Violations Discovered, by method, 1995

<u>Group</u>	<u>Total</u>	<u>Agency Review of Monitoring Reports</u>	<u>Self-Reporting of Violation</u>	<u>Inspection</u>	<u>Citizen Complaint</u>
Owner/Operator	196	3	0	192	1

source: Richmond, 1996.

10. Considerations in Calculating Penalties. In the oil and gas program there is not a calculation formula.

11. Resolution of Noncompliances. According to program staff, on average, 95% of the violations are resolved informally with a field visit and advice with an informal notice or warning. The remaining 5% the violations are resolved administratively through administrative hearings before the board. Over its history, the board has recommended one case for criminal prosecution.

12. Current Compliance Priorities. Agency staff have identified the following short-term priorities for the oil and gas program: resolution of landowner complaints, witnessing drilling of surface hole and cementing surface casing, witnessing plugging of wells, and plugging orphaned wells using agency and grant moneys. Reviewing shut-in well status and implications for long time future liability; review current bonding requirements and regulatory procedures financial assurance.

13. Compliance Relationships with Other Agencies.

Oversight. The Underground Injection Control program has oversight requirements by U.S. EPA..

Partnerships. BOGC has direct enforcement responsibilities that generally do not require MOU's or procedural agreements with other agencies to proceed with enforcement matters. The Board does have MOU's with the Bureau of Land Management on spacing hearing, forced pooling and similar activities that effect federal lands. An MOU with DNRC addresses primarily data and information sharing. An MOU is proposed with EPA to cover UIC program activities.

Delegated Authority. None

WATER RESOURCES DIVISION

The mission of DNRC's Water Management Division is to administer and enforce Montana's water well, floodplain management, water measurement, dam safety, and water right programs in an efficient and effective manner. Budget, funding source, and staffing information for the division and its programs is provided below.

<u>Funding Source FY 96</u>					
<u>Program</u>	<u>General Fund¹</u>	<u>RIT</u>	<u>Federal</u>	<u>Other</u>	<u>Total Funds</u>
Board of Water					
Well Contractors	\$52,000				
Flood Plain Management	52,800				
Water Measurement	37,300				
Dam Safety	205,740				
Water Rights	<u>2,443,433</u>	NA	NA	NA	NA
Total (FY 96)	\$2,609,966				

Notes:

1. The department did not differentiate between general funds and RIT funds.

Legislative History

Events important to the compliance/enforcement elements of the Water Resources Division are summarized below.

- 1889 Original state constitution holds all apportioned water to be a public use.
- 1960's Board of Water Well Contractors (BWWC) created.
- 1970's New state constitution ratified protecting existing water rights.
 Permit system for all new water uses enacted - general revision of the water use laws.
 Water reservation process enacted.
 Water rights adjudication process enacted.
 Floodplain and Floodway Management Act enacted.
- 1980's Water marketing legislation enacted.
 BWWC moved to DNRC.
 U.S. Army Corps of Engineers study identifies 35 unsafe high hazard dam in Montana.
 Dam Safety Act enacted.
 Instream flow pilot study created.
- 1990's Water Measurement program created and two watercourses identified as chronically dewatered.
 Instream flow legislation enacted.

Board of Water Well Contractors (BWWC) Program

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the BWWC Program.

Primary constitutional and statutory authorities (see Appendix B):

- **37-43-101. Purpose** - to reduce and minimize the waste and contamination of ground water resources and to protect the health and general welfare by providing a means for the development of the natural resource of underground water in an orderly, sanitary, and reasonable manner.

Supplemental and/or related state authorities:

- 85-2-505, MCA, Montana Water Use Act - Waste and contamination of ground water prohibited.
- 85-2-514, MCA, Inspection of wells
- 85-2-516, MCA, Well logs
- 85-2-517, MCA Reports by water well drillers
- 75-11-201 et. seq. MCA, Montana Underground Storage Tank Installer Licensing and Permitting Act

Related federal authorities:

- None

Specific enforcement authority:

- 37-43-202, MCA, Powers and Duties
- 37-43-309, MCA, Complaints and Investigations
- 37-43-310, MCA, Disciplinary Procedure
- 37-43-312, MCA, Penalties
- 37-43-313, MCA, Disciplinary Authority
- 37-43-314, MCA, Injunctions
- ARM 36.21.101
- ARM 36.21.201 and 202
- ARM 36.21.401 thru 414
- ARM 36.21.501 thru 506
- ARM 36.21.601 thru 680
- ARM 36.21.701 thru 703
- ARM 36.21.801 thru 810

Primacy and jurisdictional agreements:

- None

2. Program Goals. Based on the above-referenced guidance, the BWWC Program has identified the following program goals:

1. Prevent the waste and contamination of Montana's ground water resource.
2. Protect the public health and general welfare through the orderly, sanitary and reasonable development and conservation of the ground water source.
3. Administer and enforce the BWWC's statutory authority for licensing and disciplinary actions.
4. Enforce BWWC administrative rules for minimum construction standards for water well and monitoring wells.
5. Respond to all complaints or inquiries in a timely manner.
6. Initially attempt to resolve conflicts between consumers and driller/contractors at the local level on an informal basis.
7. Utilize Department Regional Office staff to conduct "quick" on-site investigations when requested by BWWC.
8. Field investigate all filed written complaints concerning apparent well construction violations.
9. Take prompt justified or necessary action after each case is reviewed and adequately discussed.
10. Take prompt administrative or judicial action to enforce the statutes or Board rules when necessary.

3. Program Activities. The major activity of the board's program is the regulation and licensing of water well and monitoring drillers. The board's one authorized FTE is filled by the board's program manager who performs all daily duties and responsibilities of the board under the general direction of the BWWC. The manager's time is spent 70% on aggressively resolving complaints, which involves extensive statewide travel; 20% on licensing functions, which involves continuing education requirements, bond changes, driller/contractor status, testing and grading of exams, and licensing renewals; 10% on board meeting agenda items, board meetings and decisions; and 10% on the board's newsletter. This activity is described in more detail in the following table and notes.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs¹</u>	<u>Avg. Years Staff Retntn.</u>	<u>1995 Ongoing Projects/Sites</u>	<u>Avg. Acres/ Site²</u>	<u>Avg. # of new proj./yr³</u>
Regulation and Licensing of Drillers	\$52,000	1	7	400	N/A	N/A

NOTES:

1. Numerous other department employees and board members assist the BWWC in fulfilling its daily duties and responsibilities as follows:
 - a. Water Rights/Water Operations Bureau Secretary - is assigned to the board's program manager to type all correspondence, handle all in and out mail, print licenses, assist in taking Board meeting minutes, and tape all formal hearings and public rule-making hearings.
 - b. Water Operations Bureau Chief - oversees the budgeting and daily administrative supervision of the board's program manager.
 - c. Department Legal Counsel - one staff attorney is assigned to the BWWC and is responsible for assisting the Board with disciplinary actions, appeals of Board orders, filing of injunctions, attends Board meetings on an as needed basis, provides statutory and administrative rule interpretation when requested, and assists with new administrative and amendment rules and certain correspondence.
 - d. Department Regional Office Managers and Water Resources Specialists - when requested by the Board's Program Manager perform on-site field investigation checks on rule variances, exempt permits, unlicensed drillers and complaints.
 - e. Board members (5) - Board members usually attend four to six Board meetings each year, some serve on rule subcommittees, and individually become involved with special projects and complaints, which may consume considerable time.
2. The total of 400 sites visited during 1995 includes: 150 well drilling sites; 100 visits to homeowners after the well is drilled; and 150 other meetings and contacts.
3. The average number of new site visits has been fairly consistent the past few years, however the number has more than doubled from five years ago due to the Board's aggressive stance on resolving complaints and making more driller/homeowner contacts.

source: Guse, 1996.

Fees and Charges. The BWWC program has the following authority by statute to set administrative rule fees, collect bonds and seek court penalties.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses</u>
Application/examination			
Contractors	\$275	\$3,575	Board expenses
Drillers	165	900	Board expenses
Monitoring Constructor	165	2,400	Board expenses
Re-Examination			
Contractor	125	250	Board expenses
Driller	75	225	Board expenses
Monitoring Constructor	75	75	Board expenses
Renewal			
Contractor	140	25,000	Board expenses
Driller	90	3,060	Board expenses
Monitoring Constructor	140	15,960	Board expenses
Late Renewal	55	550	Board expenses
Duplicate Cert/Lic.	40	0	Board expenses
Change/Cont. Name	40	0	Board expenses
Change/Resp. Cont.	40	0	Board expenses
Copies/Rules-laws	.20/page	150	Board Expenses
Additional MEPA Fees:	Not Authorized	0	EIS/EA prep.
Noncompliance Penalties:	Up to \$500	0	***
TOTAL:		\$52145	

4. Regulated Communities. The BWWC has statutory authority over all drillers and contractors. The program maintains a list of all licensed water well drillers and contractors and monitoring well contractors.

5. Philosophical Approach to Compliance. Generally, compliance is reasonably ensured by periodic unannounced well site field inspections, investigations of complaints, review of all filed well log reports, and required continuing educational training courses. Many alleged violations and complaints are brought to the attention of the board by other licensed driller and contractors or the general public. Also, the BWWC has a strong education, technical assistance program. Finally, it is the board's policy to aggressively pursue and resolve complaints as soon as reasonably possible.

6. Compliance Tools Available and Used. The menu of tools used by the BWWC Program to achieve their natural resource/environmental mandates is shown beginning on the next page.

7. Incentives for Compliance. According to the board and program manager, the greatest incentives for compliance with the board rules and regulations are maintaining a professional water well or monitoring business and preserving in good standing their driller's license to continue their livelihood. There is considerable peer pressure in some areas of the state where drillers are concentrated for drillers to comply. The board occasionally receives complaints from licensees concerning mainly unlicensed drillers, improper construction methods, or possible aquifer contamination.

Additionally, board rule, ARM 36.21.413A, requires a minimum of four hours of continuing education each year before their license is renewed. An average of 50 hours of qualifying education is available each year. Usually 10-12 hours can be obtained just by attending each annual drillers association convention. The continuing education requirement is a required incentive to gain new information and knowledge or a refresher course in the various aspects of the drilling industry.

Another incentive to comply is the statutory bonding requirement. If for some reason the board requires the bond be forfeited for repairing a well, it makes it increasingly difficult for the contractor/constructor to obtain another bond or its equivalent to meet the bonding requirements. A contractor/constructor cannot legally operate without a current bond or its equivalent to be approved by the board.

8. History of Compliance. It is the board's position, as directed by statute, that enforcement and compliance is "reasonably" being met with the resources available to the board. Data on complaints collected by the board indicates a significant reduction in the number of well owner/driller complaints in recent years as compared to previous years. This reduction is attributed to increased field inspections, quick response to complaints, increased disciplinary authority (1993 law), upgrading continuing education programs, new license orientation, and improved communication with contractors and drillers. If the past three years of activity remains similar, the board can annually expect about 50 complaints that will need investigation to some degree, and at least two disciplinary actions regarding probation or suspension of licensees.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- BOARD OF WATER WELL CONTRACTORS PROGRAM

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used (95)
<p>Education/Information/T.A.: * Formal Continuing Education</p> <p>* Written Material</p> <p>* Informal Education and Technical Assistance</p>	<p>Four hours of continuing education is required before annual renewal of a driller's license. Courses are offered throughout the year at various locations.</p> <p>A brochure and a quarterly newsletter is prepared by the BWWC and available to all licensed drillers as well as the general public.</p> <p>Assistance and information is provided to all drillers and the general public from the Board and DNRC staff on a routine basis.</p>	<p>Board members and Program Manager</p>	<p>50 Hours Offered</p> <p>Routine</p> <p>Routine</p>
<p>Comp. Planning/Withdrawals: *</p> <p>Not authorized</p>			
<p>Permits/Certifications/Bonds:</p>	<p>Bonding is required by statute before well driller licensing. The bonds may be used to remedy defects in wells.</p>	<p>Board and Program Manager</p>	<p>24</p>
<p>Monitoring/Inspections:</p>	<p>Inspections are conducted throughout the year as a result of complaints or as random unannounced visits at the drill site or at the business location.</p>	<p>Program Manager</p>	<p>250</p>
<p>Administrative Notices/Orders:</p>	<p>Board administrative notices are issued as a result of construction violations that need correction. If the violator refuses to comply or for other disciplinary reasons, the Board will conduct a formal show cause hearing, issue a proposed order, and then a final order. The final order is appealable and enforceable in District Court.</p>	<p>Board</p>	<p>5 to 10 Notices</p> <p>0 Orders</p>
<p>Admin. Penalties/Sanctions: * Penalties are not authorized</p> <p>* Sanctions</p>	<p>Penalty for late application for annual license renewal. Also, a driller's bond may be forfeited if the driller refuses to correct a construction violation.</p>	<p>Board and Program Manager</p>	<p>0</p>
<p>Civil Judicial Action: * Enforce Final Orders * Injunctions * Collect Misdemeanor Penalty</p>	<p>Civil judicial action may be taken by the Board if all other informal and administrative compliance tools fail to bring the violator into compliance.</p>	<p>Board</p>	<p>0</p>

STATE COMPLIANCE/ENFORCEMENT TOOLS -- BOARD OF WATER WELL CONTRACTORS PROGRAM

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used (95)
Criminal Judicial Action: Not Authorized			

9. "Violations." The following information is presented to illustrate the fact that violations in this program are decreasing.

Year	Licensed Drillers	Complaints	Field Investigations	Construction Violations	Enforcement Actions
1993	300	165	51	2	4 ¹
1994	323	212	53	2	1 ²
1995	327	62	36	0	0

Notes:

1. Three drillers were placed on probation and one license was revoked.
2. One license was suspended and two drillers were taken off probation. Discovery of Violations. Violations are brought to the attention of the Board or Board's Program Manager through telephone calls or written formal concerns or complaints from licensed drillers/contractors/constructors, members of the public or the Department's Water Resources Division Regional staff. Some violations are also detected in the review of filed well log reports.

Violations Discovered, by method, 1995

Group	Total	Agency Review of Monitoring Reports	Self-Reporting of Violation	Inspection	Citizen Complaint
Water Wells	85	5	10	10	60
Monitoring Wells	9	0	4	3	2

10. Resolution of Noncompliances. Any driller/contractor/constructor found not to be in compliance with a board order, statutory requirement, or administrative construction rule is promptly dealt with as each case may warrant. In general, few cases are found in violation of a board order. Most violations consist of being unlicensed or improper construction of the well. Unlicensed persons are first contacted and brought into license compliance or a court injunction is filed in district court to stop the violation and penalties may also be pursued. Most construction violations are corrected promptly by the licensee. In some cases suspension, probation or revocation of the license is necessary.

11. Considerations in Calculating Penalties. Penalties are provided for in MCA, 37-43-312, which consist of not more than \$500 or up to six months in jail, or both. Although this is a deterrent to violators who are unlicensed, the major deterrent to licensees is the forfeiture of their bond or equivalent, or probation, suspension or revocation of their license. The BWWC takes into account the significance of the violation based on potential impacts to human health and safety and the resource and the frequency of violations by a specific violator.

12. Current Compliance Priorities. The board has identified the following compliance priorities for the BWWC Program.

- Respond to all complaints or inquiries in a timely manner.
- Attempt to resolve conflicts without a filed written complaint, mainly between consumers and driller/contractors at the local level on an informal basis. The Board's Program Manager deals with these cases.
- Utilize department regional office staff to conduct quick on-site investigations when requested by the program manager to catch unlicensed drillers, collect data quickly, or process rule variances.
- Investigate all filed written complaints, typically from a consumer against a driller/contractor. These complaints are sent to the driller/contractor for a written response to the complaint. The program manager conducts on-site field investigations of all apparent well construction violations and prepares a report for the board.

- Take prompt action by the board after each case is reviewed and discussed as necessary in each specific case. Board action could be a decision that no well construction standards were violated; a definite violation(s) was determined and the driller/contractor is ordered to correct the construction violation; or disciplinary action will be pursued as provided in the statutes. All involved parties are informed of the board's decisions.
- Take prompt administrative or judicial action to enforce the statutes and board rules when necessary by utilizing department legal staff or local county attorneys to initiate show-cause orders and hearings, or district court prosecution, injunctions or penalties. The board has revoked licenses, placed driller/contractors on probation, and prosecuted unlicensed drillers in district court.

13. Compliance Relationships with Other Agencies.

The board will usually work closely with the Department of Environmental Quality, Department of Natural Resources and Conservation, or Montana Bureau of Mines and Geology to resolve related violations concerning water quality/quantity issues, and technical water availability and aquifer concerns. Since the board has a representative from each of these three agencies, the relationship works fairly well in a cooperative manner. There is no federal oversight over the BWWC Program and the board does not delegate any authority to any other entity.

Dam Safety Program

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Dam Safety Program.

Primary constitutional and statutory authorities (see Appendix B):

- **85-15-115. Purpose.** (1) The legislature finds that dams provide a variety of benefits to the state of Montana. These benefits include the regulation of streamflows for flood control; water storage for irrigation, for municipal, industrial, and stock water consumption, and for hydropower generation; improved opportunities for flatwater recreation; and improved fisheries. Additionally, dams play a crucial role in maintaining the vitality of Montana's economy. The state therefore has a legitimate and compelling interest in encouraging the construction of dams that conform to the water storage policy provided in 85-1-703.
 (2) The legislature further finds that one impediment to the construction of new dams is the potential liability associated with dam construction and operation. The legislature

understands the inherent risks to public safety associated with dam construction and operation but finds that compliance with the Montana Dam Safety Act reduces those risks to an acceptable level."

Supplemental and/or related state authorities:

- None

Related federal authorities:

- None

Specific enforcement authority:

- MCA 85-15-108, Entry Upon Land; 85-15-215, Emergency Repairs; 85-15-216, Permit Cancellation 85-15-503, Civil Penalty
- ARM 36.14.101 et seq

Primacy and jurisdictional agreements:

- None

2. Program Goals. Based upon the above-referenced guidance, the Dam Safety Program has identified the following program goals:

1. Regulate the operation and maintenance of high hazard dams.
2. Regulate the repair and new construction of high hazard dams.
3. Determine the classification of dams by analyzing their downstream hazards.
4. Conduct dam safety workshops.
5. Update and maintain a dam inventory.
6. Maintain technical expertise of staff through training.

3. Program Activities. The DNRC Dam Safety Program regulates 89 high-hazard dams. This regulation includes classification of dams as high-hazard, ensuring proper construction through the use of construction permits, and ensuring that the dam is properly maintained through required inspections.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs*</u>	<u>Avg. Years Staff Retntn.</u>	<u>1995 Ongoing Projects/Sites</u>	<u>Avg. Acres/Site</u>	<u>Avg. # of new proj./yr**</u>
General Program	\$205,740	2	3.5			
Hazard Classifications				10	N/A	10
Operation Permits				25	N/A	20
Construction Permits				5	N/A	6
Complaint Investigation				15	N/A	15

* Does not include .5 FTE Bureau Chief or 1 FTE Regional Office Engineer.

** Refers approximately to last 5 years.

source: Siroky, 1996.

Fees and Charges. Fees and penalties allowed under the statutes are required to be deposited into the general fund.

<u>Type</u>	<u>Amount</u>	Typical Annual <u>Total</u>	<u>Allowed Uses</u>
Hazard Classification	\$125	\$1,500	General fund
Permit Application	Not Authorized	N/A	
Permit Renewal	Not Authorized	N/A	
Additional MEPA Fees:	Not Authorized	N/A	EIS/EA prep.
Noncompliance Penalties:	Up to \$1,000/day	<u>0</u>	General Fund
TOTAL:		\$1,500	

4. Regulated Communities. Any dam that impounds at least 50 acre feet in volume and would likely cause a loss of life if it failed is required to have an operating permit. Any owner of a high-hazard dam is a member of the regulated community. Dams smaller than 50 acre feet are "regulated" only on a complaint basis and if the dam presents a danger to life or property.

5. Philosophical Approach to Compliance. The program defines its approach to compliance with the following phrase: Success in reasonable steps. Reluctance of owners to comply with the requirements of the law is most often economically based. The repairs required to bring a dam up to safety standards are often quite costly. When repairs can be accomplished over a period of time, rather than all at once, the staff works with owners to develop a reasonable schedule of repairs, while still maintaining the integrity of the dam. There is continual effort to work within the economic means of the owner. Unreasonable repair demands may lead to an owners inaction and jeopardize the reservoir resource. Program staff continually communicate with dam owners through letters, telephone conversations, and personal visits. This constant communication is the program's primary method of enforcement. For the occasional reluctant owner where there is a risk of dam failure, the program has the strict enforcement provisions on which to fall back.

6. Compliance Tools Available and Used. The menu of tools used by the Dam Safety Program to achieve their natural resource/environmental mandates is shown beginning on the next page.

7. Incentives for Compliance. According to program staff, the greatest incentives for compliance with DNRC's rules and regulations are the penalties associated with noncompliance, the potential use of grant and loan programs, and the statutory liability protection for permitted dams.

8. History of Compliance. The number of high-hazard dams has remained fairly constant over the past 10 years. The program staff see no increase in the number of regulated dams because of the increase in the cost of dam construction. The program saw a brief increase in the number of violation in 1985 and in 1995 due to permit deadlines.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- DAM SAFETY PROGRAM

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Education/Information/Technical Assistance: * Routine education and technical assistance * Formal Training Seminar	Program staff routinely provide information and technical assistance to dam owners, private engineers, the general public, and other state and federal agencies. Program staff organize one day long educational seminar each year regarding dam safety issues.	Staff Staff	Routine 1
Comp Planing/Withdrawals: Not Authorized			
Permits/Certifications/Bonds: * Hazard Classifications * Construction Permits * Operation Permits	A person proposing to construct a dam 50 acre feet or larger must apply for a hazard classification determination from the DNRC. If the dam is determined to be a high-hazard dam, a construction permit will be required. After construction, the owner must apply to the DNRC for an operating permit. This permit will be granted if the dam and the operation plan complies with the Dam Safety Act.	Program Staff Program Staff Program Staff	15 5 25
Monitoring/Inspections:	Periodic inspections, once every five years at least, are required for all high-hazard dams. Additional inspection are required during dam construction.	Dam Owner	25
Administrative Notices/Orders:	Failure to correct a problem in accordance with DNRC requirements may lead to administrative notice or order.	Division Administrator	0
Admin. Penalties/Sanctions: * Penalties Not Authorized * Sanctions	An unsafe situation may require the DNRC to order a dam breached or require that the reservoir level be reduced or repaired. The DNRC may also undertake emergency repairs. Additionally, the DNRC may cancel a high-hazard operating permit for failure to comply with the statutes and regulations.	Division Administrator	10

STATE COMPLIANCE/ENFORCEMENT TOOLS -- DAM SAFETY PROGRAM

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Civil Judicial Action:	A dam owner who fails to comply with the Dam Safety Act is subject to a \$1000 per day fine.	Division Administrator	0
Criminal Judicial Action: Not Authorized			

9. "Violations." The Dam Safety Program defines a violation as any variance from the requirements including both structural deficiencies and permit noncompliance.

Discovery of Violations. Violations are identified by staff visits, engineer and owner inspections, and public complaints.

Violations Discovered, by method, 1995¹

<u>Group</u>	<u>Total</u>	<u>Agency Review of Monitoring Reports²</u>	<u>Self-Reporting of Violation</u>	<u>Inspection³</u>	<u>Citizen Complaint</u>
Operating Permits	12	2	0	7	3
Unsafe Dams	20	0	0	4	16

Notes:

1. All figures approximate for 1995. Exact data not readily available.
2. Staff review of formal private engineer's inspection reports.
3. These are not formal inspections, which are covered above, but rather staff field visits.

10. Considerations in Calculating Penalties. There is no official formula for calculating penalties. However, violations are generally categorized into two types: structural deficiencies and permit noncompliance. A structural deficiency is more serious as to likely impacts to life or property and the penalty would be more severe. Additionally, while the program has not experienced a frequent violator, frequent violations would likely dictate a more severe enforcement response.

11. Resolution of Noncompliances. Of the 89 regulated dams, 71 have operating permits. All of the 18 nonpermitted dams are pending approval and were scheduled to have permits issued in 1995. None of the nonpermitted dams are considered unsafe. Additionally, over 14 high-hazard dams are being repaired or about to be repaired due to program staff enforcement.

12. Current Compliance Priorities. Program staff have identified the repair of structural deficiencies having the highest risk or endangerment to life or property as priorities for the Dam Safety Program.

13. Compliance Relationships with Other Agencies.

Not all high-hazard dams are regulated by the DNRC. The Federal Energy Regulatory Commission regulates power generation dams, and the federal government oversees federal dams or other dams on federal property. Relationships with the federal government are generally good.

Floodplain Management Program

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Floodplain Management Program.

Primary constitutional and statutory authorities (see Appendix B):

- **76-5-101. Findings.** The recurrent flooding of a portion of the state's land resources causes loss of life, damage to property, disruption of commerce and governmental services, and unsanitary conditions and the public interest necessitates management and regulation of flood-prone lands and waters in a manner consistent with sound land and water use management practices.
- **76-5-102. Policy and purposes.** Guide development of floodway areas; recognize the right and need of watercourses to periodically carry more than the normal flow of water; provide state coordination and technical assistance; coordinate federal, state, and local management activities; encourage local governmental units to manage

flood-prone lands; and provide the DNRC authority to carry out a comprehensive floodway management program for the state.

Supplemental and/or related state authorities:

- None

Related federal authorities:

- 44 CFR chp 1 Subpart B of the National Flood Insurance Program

Specific enforcement authority:

- MCA 76-5-301, Land Use Regulations;
76-5-302, Delegation to Local Government
- ARM - 36.15.209

Primacy and jurisdictional agreements:

- None

2. Program Goals. Based on the above-referenced guidance, the Floodplain Management Program has identified the following program goals:

1. Conduct community assessment visits of 60 (50%) communities to evaluate compliance with the Flood Insurance Program each fiscal year.
2. Provide state priorities for floodplain and floodway delineations to the U.S.D.A. Natural Resources Conservation Service and U.S. Army Corps of Engineers and assist in the mapping projects undertaken by these agencies.
3. Identify flood prone areas to be mapped by regional office engineers and assist during the mapping process.
4. Formally adopt floodplain and floodway delineations with local communities and facilitate local community administration.
5. Provide assistance to Disaster and Emergency Services during flooding disasters.

3. Program Activities. In brief, the Floodplain Management Program manages both the state Floodplain Management Program and the National Flood Insurance Program. The responsibility for issuing permits remains with local governments for both programs. The DNRC is responsible for administering the programs and for general oversight of the local programs. DNRC staff individually conduct visits and contacts to approximately 50% of the 122 communities with floodplain programs each year.

Each local program's administration and enforcement provisions are reviewed by program staff. Field compliance and office documentation such as permits issued are also reviewed. Any success or problems are discussed with the local community's Floodplain Administrator.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs¹</u>	<u>Avg. Years Staff Retntn.</u>	<u>1995 Ongoing Projects/Sites</u>	<u>Avg. Acres/ Site</u>	<u>Avg. # of new proj./yr²</u>
Community Assistance Program	\$52,800 ³	0.9	5.5	122	N/A	60
Floodplain and Floodway Delineations	4,300 ⁴	0.1	5.5	2	N/A	1-3

Notes:

1. Does not include administrative, attorney, or Bureau Chief positions.
2. Refers approximately to last 5 years.
3. Federal money. Some of these funds are used for floodplain delineation.
4. State money.

source: Siroky, 1996.

Fees and Charges. The program receives no fees or other charges from the regulated community.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses</u>
Permit Fees	Not Authorized	0	
Permit Renewal Fees	Not Authorized	0	
Additional MEPA Fees:	Not Authorized	0	EIS/EA prep.
Noncompliance Penalties:	Not Authorized	0	
TOTAL:		\$0	

4. Regulated Communities. The regulated community for the Floodplain Management Program includes any county, city, or town with a delineated 100-year floodplain. If a local government has a delineated 100-year floodplain in its jurisdiction and the local government fails to adopt a floodplain ordinance, the regulatory authority remains with the DNRC.

5. Philosophical Approach to Compliance. DNRC staff maintains regular contact with local governments. This promotes a good working relationship. The DNRC will provide assistance in rectifying any problems that develop but continued noncompliance will jeopardize the communities eligibility for federal disaster aid and flood insurance.

6. Compliance Tools Available and Used. The menu of tools used by the Floodplain Management Program to achieve their natural resource/environmental mandates is shown beginning on the next page.

7. Incentives for Compliance. According to program staff, the greatest incentives for compliance with DNRC's rules and regulations are as follows. Communities that fail to adopt and enforce a floodplain management ordinance required by the NFIP jeopardize their eligibility to receive any disaster assistance, financial or otherwise, from the federal government in the event of a flood disaster. The DNRC is required to issue building permits and oversee development of delineated floodplain and floodway if the local government fails to adopt and enforce flood ordinances. Home owners cannot receive federal federally guaranteed home loans within delineated floodplain if the local government fails to adopt flood ordinances. Additionally, banks and other lending institutions have adopted their own policies concerning nonfederal loans for buildings within flood prone areas.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- FLOODPLAIN MANAGEMENT PROGRAM

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Education/Information: * Lender/Agent Seminars * Floodplain Administrator Workshops * Semi-Annual Newsletter * Technical Bulletins * Technical Assistance Phone Calls Written	Providing education, information, and technical assistance is the main function of the program.	Program Staff	3 4 2 7 3000+ 210
Comp.Planning/Withdrawals: Not Authorized			
Permits/Certifications/Bonds:	The DNRC has limited authority to issue floodplain development permits. This usually occurs at the local government level unless the local government is under sanction and the permit authority has reverted back to the DNRC.		3
Monitoring/Inspections:	Community evaluations each year for approximately 50% of communities with floodplain management programs.	Program Staff	60
Administrative Notices/Orders: * Public Notices of Floodplain Delineations * Other Written Notifications	The DNRC is required to inform the public regarding floodplain delineations. Additionally, the DNRC is required to notify communities and individuals when a development represents a potential violation of floodplain regulations.	Program Staff Program Staff	3 12

STATE COMPLIANCE/ENFORCEMENT TOOLS -- FLOODPLAIN MANAGEMENT PROGRAM

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Admin. Penalties/Sanctions: * Penalties Not Authorized * Sanctions	The DNRC is required to take floodplain management authority from a local government if the local government fails to adopt or enforce required floodplain ordinances.	DNRC Director	7 Counties
Civil Judicial Action: Not Authorized	The DNRC is not authorized to take civil judicial action but program staff do provide technical support to local government attorneys about 25 times each year.		
Criminal Judicial Action: Not Authorized			

8. History of Compliance. Program staff indicate that the number of floodplain management violations has been increasing due to an increase in both population and the resulting development pressure within flood prone areas.

9. "Violations." There are approximately 12 violations or potential violations that occur every in the Floodplain Management Program. Due to the fact that the local government is responsible for administering the local floodplain management program, the DNRC does not document all potential violations.

On average, 10 of the 12 violations are due to construction projects being initiated prior to the issuance of a floodplain development permit from the local administrator. These violations are remedied at the local level by requiring the property owner to obtain a permit as soon as possible. Usually 1 violation will result from a project being completed without a permit. Again, the property owner is required to obtain a permit and to ensure that the completed project meets the floodplain management requirements. Project removal is possible if the project can not be brought into compliance. An additional possibility is that, after further review, the area that has been developed, or that is about to be developed, may be determined not to be in the floodplain. In that case no floodplain development permits are required.

Discovery of Violations. Violations are identified by on-site inspections, review of reports, citizen complaints, or local identification.

Violations Discovered, by method, 1995

<u>Group</u>	<u>Total</u>	<u>Agency Review of Monitoring Reports</u>	<u>Self-Reporting of Violation</u>	<u>Inspection</u>	<u>Citizen Complaint</u>
General Violations	12	0	4	2	6

10. Considerations in Calculating Penalties. There is no official formula use to calculate penalties. However, the DNRC will consider the following factors in selecting an enforcement response:

- Location of the violation, e.g., in the flood fringe or the floodway itself;
- Potential impacts resulting from the violation in the event of a 100-year flood, giving special attention to negative health and safety impacts;
- Identity of the violator, was the violator a unit of government or an individual;
- If after two written contacts the problem is not corrected, the floodplain administrator will turn the problem over to local legal staff.

11. Resolution of Noncompliances. See the information above under number “ 9. Violations”.

12. Current Compliance Priorities. Program staff have identified floodplain management violations that impact human health or present a threat to life or property as priorities for the Floodplain Management Program.

13. Compliance Relationships with Other Agencies.

Oversight. There is federal oversight in that most of the money for the program comes from the federal government. Additionally, the federal regulations serve as minimum standards. State floodplain regulations that are more stringent than federal regulations supersede federal regulations.

Partnerships. The DNRC also works closely with the Federal Emergency Management Agency and the Montana Disaster and Emergency Services in flooding problems. Additionally, the National Flood Insurance Program provides flood insurance to those areas enforcing floodplain regulations.

Delegated Authority. The DNRC does not delegate any authority to local governments. State law grants local governments the authority to adopt floodplain ordinances.

Water Measurement Program

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Water Measurement Program.

Primary constitutional and statutory authorities (see Appendix B):

- **85-2-150. Chronically dewatered watercourse -- identification.** The department shall identify chronically dewatered watercourses or portions of watercourses.

Supplemental and/or related state authorities:

- 85-2-113(4), MCA Department powers and duties include the authority to require measuring devices on chronically dewatered watercourses.

Related federal authorities:

- None

Specific enforcement authority:

- MCA 85-2-122, Penalties
- ARM 36.13.401

Primacy and jurisdictional agreements:

- None

2. Program Goals. Based on the above-referenced guidance, the Water Measurement Program has identified the following program goals:

1. Identify chronically dewatered watercourses.
2. Monitor compliance of the requirement for headgates and measuring devices within two years of chronically dewatered designation.

3. Program Activities. The DNRC is required to identify chronically dewatered watercourses. Once identified as chronically dewatered, measuring devices are required on all water diversions.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs*</u>	<u>Avg. Years Staff Retntn.</u>	<u>1995 Ongoing Projects/Sites</u>	<u>Avg. Acres/Site</u>	<u>Avg. # of new proj./yr**</u>
General Program	\$37,300	1	2.5	3	N/A	3-5 Streams

* Does not include administrative, attorney, Bureau Chief positions.

** Refers approximately to last 5 years.

source: Siroky, 1996.

Fees and Charges. The program receives no fees or other charges from the regulated community.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses</u>
Permit Fees	Not Authorized	0	
Permit Renewal Fees	Not Authorized	0	
Additional MEPA Fees:	Not Authorized	0	EIS/EA prep.
Noncompliance Penalties ¹ :	\$1,000/day	0	
TOTAL:		\$0	

Notes:

1. Any penalties collected must be deposited into the DNRC enforcement fund.

4. Regulated Communities. The regulated community for the Water Measurement Program would be individuals diverting water from a watercourse that has been identified as chronically dewatered. The DNRC would use water right and water use permit records to identify those individuals. Currently two watercourses have been identified as chronically dewatered: Mill creek near Livingston and the Musselshell River.

5. Philosophical Approach to Compliance. Program staff work with water users to achieve compliance through workshops and technical assistance. Judicial enforcement will be initiated only after the prescribed administrative process has been exhausted. Compliance is facilitated by public participation in the chronically dewatered identification process. A decision by the DNRC to declare a watercourse chronically dewatered is preceded by a report addressing several factors relating to water use and impacts. Information for the report is developed through public meetings as well as researching data and information concerning the watercourse, including stream flow records, water rights, water uses, and the extent, duration, and frequency of dewatering.

6. Incentives for Compliance. According to program staff, the greatest incentive for compliance with DNRC's rules and regulations is an understanding by water users that with water measurement and better water management, more water is available for all water users. Additionally, the statutory penalties provide a financial incentive as does the program's technical assistance.

7. Compliance Tools Available and Used. The menu of tools used by the Water Measurement Program to achieve its natural resource/environmental mandates is shown beginning on the next page.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- WATER MEASUREMENT PROGRAM

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Education/Information/Technical Assistance:	Understanding that compliance after chronically dewatered designation is largely dependant on public involvement during the identification process, program staff concentrates on providing the maximum amount of education, information, and assistance early in the process. On-site public meetings are held at every stage of the identification process and a written final study is published.	Program Staff	Routine
Comp. Planning/Withdrawal: Not Authorized			
Permits/Certifications/Bonds: Not Authorized			
Monitoring/Inspections:	After identification as a chronically dewatered watercourse, program staff will monitor and inspect diversion devices to ensure compliance with the requirements.	Program Staff	0 ¹
Administrative Notices/Orders:	DNRC staff will probably issue an administrative order to those water users who, after informal communications and warnings, fail to comply with statutory requirements.	Division Administrator	0
Admin. Penalties/Sanctions: Not Authorized			0
Civil Judicial Action:	A person who violates a provision of the water use statutes may be prosecuted for a misdemeanor offense. The maximum penalty is \$1,000 per day.	Division Administrator	0
Criminal Judicial Action: Not Authorized			0

Notes:

¹ No enforcement action was taken in 1995 because the two year post-identification period had not expired on either identified watercourse.

8. History of Compliance. Because the two year deadline for the installation of measuring devices has just been reached on one watercourse, the DNRC has not yet been required to enforce compliance with the water measurement law. Measuring devices are required on Mill Creek by April 15, 1996 and on the Musselshell River by April 1, 1997.

9. Discovery of Violations. The DNRC anticipates that violations will be identified through on-site inspections, review of water measurement reports, and citizen complaints.

10. Considerations in Calculating Penalties. Currently the DNRC has no written enforcement policy for the Water Measurement Program. The DNRC Administrative Policy No. 3, *Conflict Resolution and Enforcement Actions Under the Water Use Act*, will control any enforcement action taken by the Water Measurement Program. This administrative policy prioritizes various violations and recommends appropriate enforcement action for each level of violation.

11. Resolution of Noncompliances. This is not applicable since no enforcement action has taken place.

12. Current Compliance Priorities. Agency staff have identified the two watercourses currently identified as chronically dewatered as priorities for the program.

13. Compliance Relationships with Other Agencies. Program staff indicate that, while they have no formal relationship with other agencies, they enjoy a good working relationship with the Department of Fish, Wildlife & Parks and local government entities.

Water Rights Program

1. Constitutional and Statutory Goals. The following provides a guide to the constitutional, statutory, federal, and rule authority for the activities of the Water Rights Program.

Primary constitutional and statutory authorities (see Appendix B):

- **Constitution Article IX, Section 3:** "(1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.
(2) The use of all water appropriated for beneficial use, the right of way over the lands of others for [improvements] necessarily used in connection therewith, and the sites for reservoirs shall be held to be a public use.
(3) All waters are subject to appropriation for beneficial uses as provided by law.
(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.
- **85-2-101. Declaration of policy and purpose.** The legislature declares that any use of water is a public use and that the waters within the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided in this chapter.

Supplemental and/or related state authorities:

- None

Related federal authorities:

- None

Specific enforcement authority:

- MCA 85-2-114, Judicial Enforcement;
- 85-2-115, Entry on Land;
- 85-2-116, Legal Assistance;
- 85-2-122, Penalties
- MCA Enforcement Authority Continued:
- 85-2-314, Revocation or modification of Permit
- 85-2-402(10) Revocation or Modification of Change Authorizations
- 85-2-431, Penalty (Failure to file water right transfer)
- 85-2-505, Waste and contamination of ground water
- 85-2-507(6) Limiting withdrawals - modification of order
- 85-2-514, Inspection of wells
- 85-2-250, Penalties
- A Water Rights Bureau policy entitled "*Conflict Resolution and Enforcement Action Under the Water Use Act*" is used to address water right compliance issues.

Primacy and jurisdictional agreements:

- None

2. Program Goals. Based upon the above-referenced guidance, the Water Rights Program has identified the following program goals:

1. Administer the Montana Water Use Act passed in March 1973, which includes administering laws which govern the diversion, withdrawal, and use of water.
2. Establish and maintain a centralized water rights record of permits, certificates, declarations, applications, and other water right documents filed with the department.
3. Document, protect, preserve, and develop Montana's water for the state and its citizens.
4. Determine if water use malpractice exists and mobilize remedies to alleged malpractice.
5. Provide information and assistance as part of the statewide adjudication to the water judges in their adjudication of claims.

3. Program Activities.

<u>Program Activities</u>	<u>FY 96 Budget</u>	<u>FY 96 FTEs*</u>	<u>Avg. Years Staff Retn.</u>	<u>1995 Ongoing Projects/Sites</u>	<u>Avg. Acres/ Site</u>	<u>Avg. # of new proj./yr**</u>
Complaints	\$89,295	2.2	19.6	95	N/A	N/A
New						
Appropriations	1,063,421	26.2	14.8	4080	N/A	N/A
Records						
Management	633,182	15.6	10.4	250,000	N/A	N/A
Adjudication	576,358	14.2	10.6	7,271	N/A	N/A
Other	81,177	2.0	17			

* Does not include administrative, attorney, or Bureau Chief positions.

** Refers approximately to last 5 years.

source: Holman, 1996.

Fees and Charges. An application fee is collected for all permit and change applications. In addition, a notice of completion fee is collected for issuing water right certificates for ground water development. A water right transfer fee is also collected. The total amount of fees collected during FY 95 was \$284,867.

<u>Type</u>	<u>Amount</u>	<u>Typical Annual Total</u>	<u>Allowed Uses</u>
Permit Application Fees:	\$100	\$63,000	General Program Support
Notice of Completion Fees:	25	80,000	
Water Right Transfer Fees:	varies ¹	135,000	
Other Fees: ²	varies	6,000	
Additional MEPA Fees:	Not authorized	0	
Non-Compliance Penalties:	1,000/day	0	
TOTAL:		284,000	

Notes:

1. \$25 for the first transfer and \$5 for each additional transfer up to a maximum of \$50.

2. Other fees include exempt rights, objections, renewal for temporary changes, and copying fees.

4. Regulated Communities. Any appropriator of water is a member of the regulated community. This includes about 181,000 water users who have water rights permits, water right claims, water right certificates, or reserved water rights.

5. Philosophical Approach to Compliance. The means employed to handle complaints are outlined in the *Conflict Resolution and Enforcement Action Under the Water Use Act* policy. The DNRC relies almost exclusively on formal complaints before it actively pursues compliance of a water rights violation. The DNRC prefers to not meddle with those uses of water that may technically be violations, but are not deemed adverse to the well-being of the affected interests. The DNRC expects the complaining party to make a call on a junior user if the complaining party alleges their senior rights are adversely affected. In this way communication and resolution is promoted at the local level and among the affected interests. The policy also encourages mediation whenever possible to resolve complaints. The DNRC disseminates information and tries to educate water users on how water law may apply to their situation and how the department's enforcement policy works. The public often relies on the DNRC to assist with problem solving. When the violator makes significant strides to comply, the DNRC resists levying fines.

The requirement for a formal complaint reduces the incidents where a person fabricates a water rights complaint in order to coerce the DNRC to serve on behalf of the complainant.

In some situations when a violation is occurring, a senior user will forego complaining and enforcement because he wants to get-along with his neighbor. For many senior water users, it's more important to preserve social unity, sustain an effective dialogue, and maintain a congenial demeanor. They refrain from complaining if a complaint may lead to economic adversity and discontent for their neighbors.

6. Compliance Tools Available and Used. One of the preventative measures employed by the DNRC is sending letters and notices to users advising them of a senior's approaching appropriation of water. Informal meetings and telephone calls are useful avenues to advise water users of potential violations. The DNRC provides senior users with information so they can inform junior users of impending water shortages or to make a call on a junior user. The exchange of information with permittees is usually productive in that they generally cease appropriating and yield to the senior water rights. The administrative water right holders understand that if they violate the provisions of their permit, the DNRC has authority to revoke or modify the permit.

Violations involving existing water rights are generally more difficult to handle. The final adjudication of existing water rights has not concluded. Consequently the extent of the existing water right is not finally determined. With uncertain existing water rights, a district court will usually become involved when it is petitioned by a complainant to determine who and what water can be appropriated to resolve a local conflict.

The DNRC is less inclined to commit time and resources on issues involving existing water rights that will likely migrate to the jurisdiction of the district court or the water court. When an existing water right is in dispute, the DNRC is reluctant to use its staff to petition the district court for relief for one of the parties. The DNRC feels the parties have the same opportunity and sufficient understanding of the issues to file suit in district court. The DNRC chooses to not provide legal counsel or serve as a filter or buffer on behalf of a party engaged in a dispute that will ultimately require district court action.

In all situations involving either administrative or existing water rights, the DNRC encourages disputing parties to mediate and offers information and records to help settle conflicts. The DNRC always encourages people to contact regional offices for explanation of water rights law and records. If the DNRC investigates a formal complaint and determines a violation is occurring, the alleged violator is advised of the potential consequences for violating. When a violator understands the repercussions of a violation, they usually listen and find a means to cease violating.

Some major tools that assist the DNRC in their approach to effective water rights enforcement tools are shown in the table on the next page.

STATE COMPLIANCE/ENFORCEMENT TOOLS -- WATER RIGHTS PROGRAM

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Education/Information/T.A.: * Formal Activities * Other Activities	The program sponsors workshops where the public learn about water rights, water distribution, water measurement and related activities. Providing information and technical assistance is a large part of the program staff's daily responsibilities.	Program Staff Program Staff	15 Routine
Comp. Planning/Withdrawals: Not Authorized			
Permits/Certifications/Bonds: * Application Review * Notice of Pending Applications * Contested Case Hearings * Application Approval or Modification	The Water Rights staff reviews many applications that are not approved. The failure of the applicants to prove the criteria for issuance of a permit or change is a tool that teaches the applicants what compliance is required for water use. Notices of pending applications are sent to water users advising them of the potential development. About 600 applications are received annually. Individual notice is provided to an estimated 2 persons for each application. The Water Rights Bureaus schedules approximately 35 contested case hearings annually. Notices are sent to water users who object to applications that may impact their water use. When the statutory criteria have been met the DNRC will approve or approve with modification an application.	Regional Managers Program Staff Hearings Examiner Regional Managers	200 1260 2 350

STATE COMPLIANCE/ENFORCEMENT TOOLS -- WATER RIGHTS PROGRAM

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
<p>Monitoring/Inspections:</p> <ul style="list-style-type: none"> * Field Investigations * Claims examinations * Verification of Permits and Changes 	<p>The Water Rights Bureau conducts an estimated 100 field investigations annually. From the filed investigations issues and problems with compliance may be observed.</p> <p>Claim examination inquiries where the public exchanges information with DNRC staff on water rights and the prior appropriation system;</p> <p>The Water Rights staff verifies water use developments annually. A development that is not completed in accordance with is noted and arrangements to achieve compliance with the developer are made.</p>	<p>Regional Staff</p> <p>Program Staff</p> <p>Regional Staff</p>	<p>100</p> <p>7270</p> <p>200</p>
<p>Administrative Notices/Orders:</p> <ul style="list-style-type: none"> * Informal meetings * Informal Contacts with individual water users * Informal Mediation * Show Cause Hearings 	<p>This activity includes attendance by DNRC staff at annual meetings for irrigation districts and companies.</p> <p>The Water Rights staff throughout the regional offices likely converse with 80 water users daily. Over a year many water rights issues, questions and concerns are addressed.</p> <p>The Water Rights Bureau attempts to resolve conflicts and issues regarding water right conflicts through informal mediation. Frequently the mediation will include an explanation of the law and how it is to be followed.</p> <p>An estimated 2 show-cause hearings are held by the Department annually. Notice and parties are acquainted with water right issues at these hearings.</p>	<p>Program Staff</p> <p>Program Staff</p> <p>Regional Managers</p> <p>Hearings Examiner</p>	<p>15</p> <p>20,000</p> <p>150</p> <p>2</p>
<p>Admin. Penalties/Sanctions:</p> <ul style="list-style-type: none"> * Penalties Not Authorized * Sanctions Permit Termination 	<p>The Water Rights staff terminates several permits for failure of the permittee to develop in accordance with the granted permit annually.</p>	<p>Central Office Staff</p>	<p>110</p>

STATE COMPLIANCE/ENFORCEMENT TOOLS -- WATER RIGHTS PROGRAM

Tools Authorized	"Trigger" (When Used?)	Authority to Complete	Times Used? (95)
Civil Judicial Action:	A person who violates a provision of the water use statutes may be prosecuted for a misdemeanor offense. The maximum penalty is \$1,000 per day.	Division Administrator	1
Criminal Judicial Action: Not Authorized			

7. Incentives for Compliance. According to program staff, the greatest incentives for compliance with DNRC's rules and regulations are the potential fines that may be levied if a violation occurs. The possibility of revocation triggers water users to comply also. The various education efforts are useful in promoting compliance. The only financial incentive is probably the fine that may be levied upon a violator. There are no financial or administrative incentives that are offered to users as a bonus for complying with the law. As noted under number 5, "Philosophical Approach to Compliance," there are some situations when a violation is occurring and a senior user will forego complaining and enforcement because he wants to get-along with his neighbor. For many senior water users, it's more important to preserve social unity, sustain an effective dialogue, and maintain a congenial demeanor. They refrain from complaining if a complaint may lead to economic adversity and discontent for their neighbors.

8. History of Compliance. The cataloging of enforcement and compliance situations is not centralized. Each regional office maintains files of complaints received and the correspondence and activity associated with resolving the issue. In addition several of the complaints that require guidance and assistance from the central office staff may have files prepared and referenced for related or repeated offenses.

The general feeling is that compliance remains a problem. Many if not most water users may be violating some part of the law. However, with the potential fine of \$1,000 per day, the ability to resolve issues and achieve compliance appears to be improving. The number of complaints is probably not increasing. However, the amount of seasonal moisture is probably inversely related to the number of complaints received by the department.

9. "Violations." The regional office may receive 500 phone calls or letters alleging violations annually. However, the bulk of the complaints are resolved by telephone. The number that require several contacts, correspondence or investigation are estimated to be about 95 annually.

Discovery of Violations. Violations are identified through various means including: complaints received from the public, staff observations, unusual information included in an application or an objection, informal discussions with water users, testimony or evidence presented at a hearing, questions by water users asked at various events, inspection of aerial photos or pictures as part of a verification of a water use, and investigation of other types of violations. This information is not conveniently available or catalogued. The bulk of violations are discovered from public complaints of alleged wrongful water use. Several violations are discovered by staff traveling and conducting field investigations. Frequently the field investigation will identify a situation, issue or violation totally unrelated to the purpose and exercise of the water right under investigation. For example, the flow rate for a diversion may be measured, and the investigator observes an uncontrolled flowing well while traveling to the field site. The field investigation will likely find no problem with a flow rate, but the waste of water from an uncontrolled flowing well is likely a violation of the law.

10. Considerations in Calculating Penalties. No official formula exists for calculating penalty amounts, but the DNRC Water Rights Program considers the severity of the violation based on potential violation impacts. The frequency of the violation is not considered in selecting the enforcement response. If the violator will not correct the violation, the DNRC will seek judicial enforcement.

11. Resolution of Noncompliances. Individuals who have been found to not be in compliance with statutory requirements may be levied a fine. The department has levied about 5 fines since the fine was implemented into the law. In all but one situation, compliance occurred almost immediately after the fine was levied. In the one case, department action was effectively stayed because district jurisdiction related to the other matters involving the case took precedent.

12. Current Compliance Priorities. Agency staff have identified the following priorities for the Water Rights Program.

- Developing an effective and efficient water rights transfer procedure.
- Investigating potential options for improving the efficiency of the water rights change process.

13. Compliance Relationships with Other Agencies.

Oversight. There is no oversight group that shares compliance responsibilities for water right conflicts and violations with the department.

Partnerships. The rules and responsibilities of the Water Rights Bureau's enforcement program are stated in Administrative Policy No. 3, *Conflict Resolution and Enforcement Action Under the Water Use Act.* Other agencies or divisions such as the Department of Fish, Wildlife & Parks; the Department of Natural Resources and Conservation, Trust Land Management Division; and the Department of Environmental Quality, who deal with water right issues, are aware of the Water Rights Program's enforcement authority. They frequently contact the DNRC staff for clarification of situations that may fall under the policy. Some agencies also take preventive measures to assist the public with avoiding a violation such as sending letters to water users and requesting to have remarks placed on permits and changes that may be issued by the DNRC.

Delegated Authority. The regional offices have considerable authority in determining what and how enforcement should be achieved. They frequently consult with central management staff in Helena to receive guidance and assistance in resolving violations.