

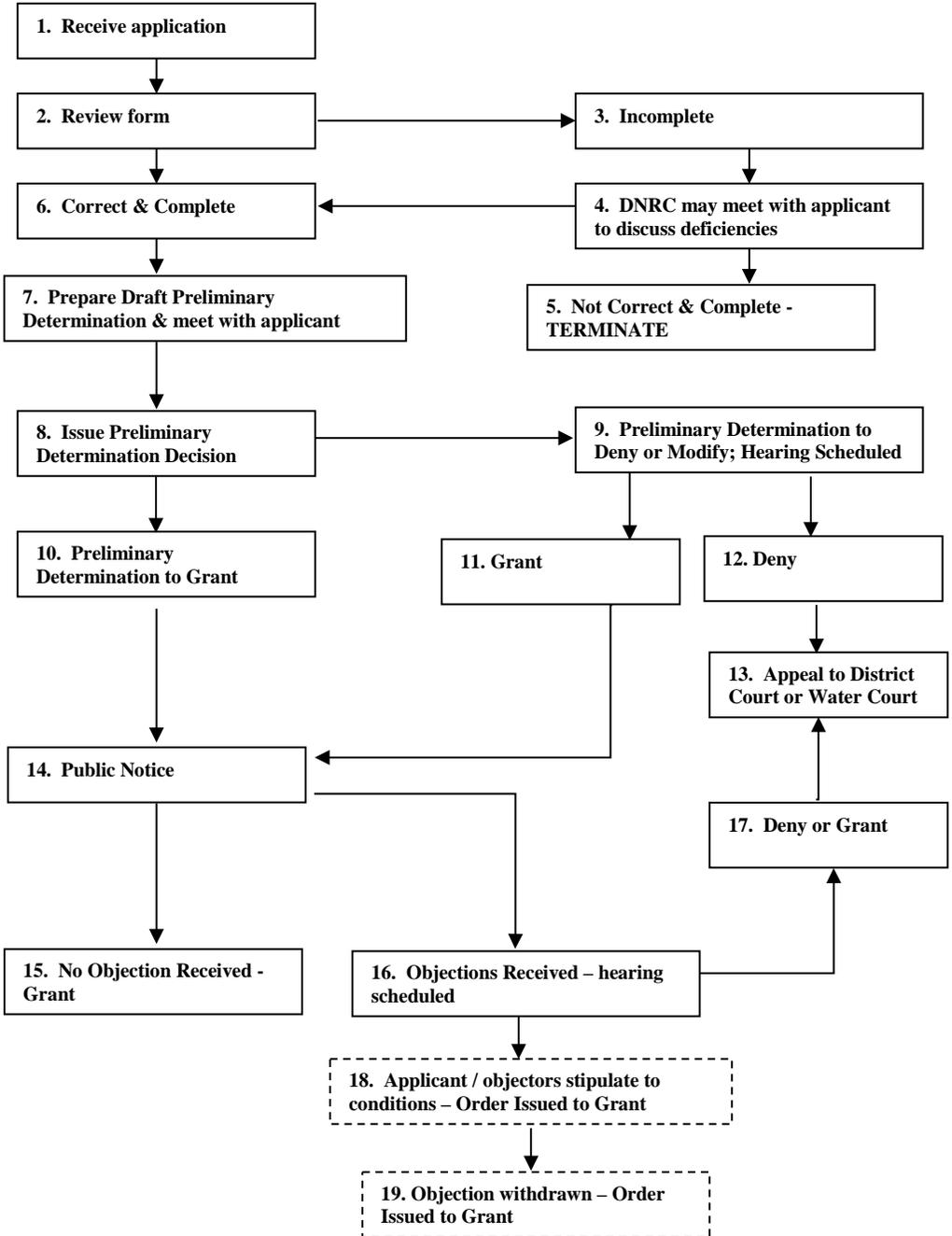
WATER RIGHTS in MONTANA



february
2018

Water Policy Interim Committee
P.O. Box 201704
Helena, MT 59620-1704
Phone (406) 444-3742
leg.mt.gov/water

Flowchart for Permit and Change Applications



Temporary Permits

A person may request a temporary permit to appropriate water if the use of water is for a limited period of time (36.12.101(78), ARM). Temporary uses include water needed for oil or gas exploration or in highway construction. An application for a temporary permit is processed in the same manner as a provisional permit. The applicant must prove the same criteria listed under section 85-2-311, MCA. A temporary permit has an expiration date based on the period requested by the applicant and will expire on that date. A Certificate of Water Right is not issued for a temporary permit.

Interim Permits

An interim permit to appropriate water allows an applicant to begin constructing and using water pending final approval or denial of the provisional permit (36.12.104, ARM). An interim permit may be issued unless substantial information indicates that the criteria for issuing a provisional permit under section 85-2-311, MCA, cannot be met. An interim permit is issued pending final approval or denial by the department of the application for a regular permit.

Changes in Water Use

To protect all water rights, prior approval from the DNRC is required before changing any water right or water reservation in any of the following ways (section 85-2-402, MCA):

1. point of diversion;
2. place of use;
3. purpose of use; or
4. place of storage.

The holder of a water right must submit the current Application for Change of Appropriation Water Right, form 606, to the DNRC. An applicant may change up to the historic amount of water diverted and the historic consumptive use. Therefore, an applicant must first provide information proving the water right to be changed was used and the extent of the historic use. The application must contain information

about the proposed change and evidence pertaining to the criteria that must be met. There are specific rules that define what must be included in an application in order for the DNRC to deem an application correct and complete. If the DNRC deems the application correct and complete, the department will begin evaluating the application and draft a preliminary decision to grant or deny the change. In order for the DNRC to grant a change application, the applicant must provide by a preponderance of the evidence that the criteria for issuance of an authorization to change a water right are met (see related box). An application to change a water right follows the same general process for notice and hearing as a permit to appropriate water. Upon completion of the change, the appropriator must file a Notice of Completion of Change of Appropriation Water Right, form 618, notifying DNRC that the authorized change is completed.

The 2017 Legislature clarified that a change in irrigation method is not a change in the appropriation right and would not trigger the DNRC change process.

An applicant submitting a change in purpose or place of use of an appropriation to divert 4,000 or more acre-feet of water a year and 5.5 or more cubic feet a second will be required to prove the criteria set out in section 85-2-402(4), MCA. If a proposed change in purpose or place of use for a diversion results in 4,000 or more acre-feet and 5.5 or more cubic feet a second of water being consumed, the applicant must prove the criteria in section 85-2-402(5), MCA. If the change involves the transport of water out of state, the applicant must prove the criteria listed in section 85-2-402(6), MCA, and obtain legislative approval.

Criteria for Issuance of an Authorization
to Change a Water Right
Section 85-2-402(2), MCA

The applicant for a change in an appropriation water right has the burden to prove by a preponderance of the evidence that the criteria for issuance of an authorization are met. These criteria include:

1. The proposed use will not adversely affect the use of other water rights or other planned developments for which a permit or certificate has been issued or water has been reserved.
2. The proposed means of diversion, construction, and operation of the appropriation works are adequate.
3. The proposed use of the water is a beneficial use.
4. The applicant owns or has permission from the person who owns the property where the water is to be used.

If a valid objection pertaining to WATER QUALITY is received, the applicant must also prove one of the following.

1. The water quality of an appropriator will not be adversely affected.
2. The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, MCA.

An applicant for salvaged water must also prove that the proposed water-saving method will salvage at least the amount of water asserted by the applicant.

Temporary Change in Appropriation Water Right

An appropriator may temporarily change a water right with DNRC approval (section 85-2-407, MCA). The temporary change may be approved for up to 10 years with an opportunity to renew for 10 more years, although there is no limit on the number of renewals. An appropriator must file an Application for Change of Appropriation Water Right, form 606, and a Temporary Change Addendum, form 606TCA, identifying the proposed change and how long it will be needed. The applicant must also provide evidence to meet the same criteria as an authorization to change listed above. If granted, the temporarily changed appropriation has the same priority date as the existing water right.