



ADMINISTRATIVE RULES OF MONTANA



17.24.751 PROTECTION AND ENHANCEMENT OF FISH, WILDLIFE, AND RELATED ENVIRONMENTAL VALUES

- (1) No surface or underground mining operation may be conducted which is likely to jeopardize the continued existence of endangered or threatened species listed by the secretary of the interior or which is likely to result in the destruction or adverse modification of designated critical habitat of such species in violation of the Endangered Species Act of 1973, as amended (16 USC 1531, et seq.) , or which would result in the unlawful taking of a bald or golden eagle, its nest, or any of its eggs, as a result of the mining operation. The operator shall promptly report to the department and the U.S. Fish and Wildlife service the presence in the permit area of any listed threatened or endangered species or critical habitat thereof, any plant or animal listed as threatened or endangered by Montana, or any bald or golden eagle roost site, seasonal concentration area, or breeding territory of which the operator becomes aware and which was not previously reported to the department. Upon notification, the department shall consult with appropriate state and federal fish and wildlife agencies and shall thereafter identify whether and under what conditions the operator may proceed. The U.S. Fish and Wildlife service's threatened and endangered species-specific protective measures must be implemented when so determined by the department in consultation with the U.S. Fish and Wildlife service.
- (2) In addition to the requirements of 82-4-231(10)(j), MCA, the operator shall:
 - (a) ensure that the design and construction of electric powerlines and other transmission facilities used for or incidental to the strip or underground mining operations on the permit area are adequate to minimize collisions and electrocutions of raptors, waterfowl, and other wildlife species. All powerlines must be constructed in accordance with "Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996 (Avian Power Line Interaction Committee, 1996)", which is incorporated by reference into this rule, or alternative guidance manuals approved by the department. For informational purposes, this document is on file at the Helena office of the department;
 - (b) locate and operate haul and access roads to avoid or minimize impacts to important fish and wildlife species or other species protected by state or federal law;
 - (c) design and construct fences, overland conveyers, and other potential structures to permit passage of large mammals, except where the department determines that such requirements are unnecessary;
 - (d) fence, cover, or use other appropriate methods to exclude wildlife from ponds that contain hazardous concentrations of toxic-forming materials;
 - (e) consult with appropriate state and federal fish and wildlife and land management agencies to ensure that reclamation will provide for habitat needs of various wildlife species in accordance with the approved postmining land use. Pursuant to 82-4-231(10)(j) and 82-4-

232(9), MCA, special attention must be given to inanimate elements such as rock outcrops, boulders, rubble, dead trees, etc., that may have existed on the surface prior to mining, and to plant species with proven nutritional and cover value for fish and wildlife. Plant groupings and water sources must be distributed to fulfill the requirements of fish and wildlife;

- (f) restore, consistent with 82-4-231(10)(j), 82-4-232(9), and 82-4-233, MCA, or avoid disturbance to wetlands, riparian vegetation along rivers and streams and bordering ponds and lakes, and other habitats of unusually high value for fish and wildlife, and, where practicable, enhance such habitats; and
- (g) afford protection to aquatic communities by avoiding stream channels (see ARM 17.24.651) or by restoring stream channels as required in ARM 17.24.634.

Authorizing statute(s): 82-4-205, MCA

Implementing statute(s): 82-4-227, 82-4-231, 82-4-232, 82-4-233, MCA

History: NEW, 1980 MAR p. 725, Eff. 4/1/80; AMD, 1989 MAR p. 30, Eff. 1/13/89; TRANS, from DSL, 1996 MAR p. 3042; AMD, 2004 MAR p. 2548, Eff. 10/22/04; AMD, 2024 MAR p. 258, Eff. 2/10/24.