



ADMINISTRATIVE RULES OF MONTANA



36.25.1108 HISTORICAL USES IN NAVIGABLE WATERWAYS

- (1) Persons using the bed of a navigable river adjudicated before October 1, 2011, without written authorization from the department prior to October 1, 2011, that wish to continue the use must complete an application prescribed by the department and provide the application to the department by July 15, 2017.
- (2) Persons using the bed of a river adjudicated as navigable after December 7, 2012, without prior written authorization from the department, that wish to continue their use must complete an application prescribed by the department and submit the application to the department within five years of the date that the department issues a public notice that the river has been adjudicated as navigable. The requirements of this rule do not apply to:
 - (a) footprints related to hunting, fishing, or trapping;
 - (b) footprints that existed prior to November 8, 1889;
 - (c) footprints for which the applicant can show an easement obtained from a state agency prior to December 7, 2012, or the date of adjudication, whichever is later; or
 - (d) footprints associated with a power site regulated pursuant to Title 77, chapter 4, part 2, MCA.
- (3) The authorization shall only include the footprint of the historical use of the navigable river by the applicant or the applicant's predecessor in interest.
- (4) The department shall determine if authorization of the use and footprint for which application is made will be a lease, license, or easement according to the criteria in ARM 36.25.1106.
- (5) The department shall issue authorization for a lease, license, or easement for an historic use if the applicant provides the following:
 - (a) an application fee of \$50;
 - (b) a notarized affidavit on a form prescribed by the department demonstrating:
 - (i) the applicant or the applicant's predecessor in interest used the bed of a river that has been determined navigable in compliance with ARM 36.25.1101(13), and that the use continues; and
 - (ii) the historic use of the acreage covered by the footprint which occurred prior to December 7, 2012, or the date the river was adjudicated as navigable, whichever is later;

- (c) evidence demonstrating the use for which authorization is sought and describing the footprint of the historic use. Such evidence may include any combination of:
 - (i) aerial photographs;
 - (ii) a 310 permit issued prior to construction of the historic use;
 - (iii) construction or engineering documents;
 - (iv) a GPS survey;
 - (v) a professional survey by a registered land surveyor; or
 - (vi) a water right pertinent to the structure to be permitted; and
 - (d) the authorization for easements is approved by the board. Leases and licenses may be approved by the department.
- (6) The lease or license shall automatically terminate should the lessee or licensee fail to make annual payment of the lease or license fee. No easement shall be issued if the easement applicant fails to pay the full market value of the easement footprint.
 - (7) The department, at its discretion, may make a site inspection of the use for which authorization is sought.
 - (8) The department shall waive the survey requirements of 77-2-102, MCA, if the department determines that there is sufficient information available to define the boundaries of the proposed use for the purposes of recording the easement or issuing a license or lease.
 - (9) The applicant for authorization of an historic use may request to relocate the use within the navigable river, subject to the requirements of ARM 36.25.1107.
 - (10) The department is exempt from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2, MCA, for issuance of an authorization for historic uses.

Authorizing statute(s): 77-1-1112, 77-1-1117, 77-2-102, MCA

Implementing statute(s): 77-1-1112, 77-2-102, MCA

History: NEW, 2012 MAR p. 2475, Eff. 12/7/12.