



ADMINISTRATIVE RULES OF MONTANA



36.12.101 DEFINITIONS

In addition to definitions provided for in 85-2-102, MCA, and unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

- (1) "Act" means the Montana Water Use Act, Title 85, chapter 2, parts, 1 through 4, MCA.
- (2) "Amount" refers to both a flow rate in gallons per minute (GPM), or cubic feet per second (CFS), and a volume of water in acre-feet (AF).
- (3) "Animal unit (AU)" means a measurement of livestock numbers:
 - (a) one beef cow = 1 AU
 - (b) one dairy cow = 1.5 AU
 - (c) one horse = 1.5 AU
 - (d) three pigs = 1 AU
 - (e) five sheep = 1 AU
 - (f) 300 chickens = 1 AU
- (4) "Applicant" means the "person," as defined in 85-2-102, MCA, who files a permit or change application with the department.
- (5) "Application" for purposes of ARM 36.12.120 through 36.12.122, 36.12.1301, 36.12.1401, 36.12.1501, and 36.12.1601 means an application for beneficial water use permit, Form No. 600, or an application to change a water right, Form No. 606.
 - (a) For the purposes of ARM 36.12.117 "application" means an application filed under 85-2-302, 85-2-316, 85-2-402, 85-2-407, 85-2-408, and 85-2-429, MCA.
- (6) "Aquifer" means a geologic structure or unit that contains saturated and permeable material capable of yielding water in usable quantities.
- (7) "Aquifer system" means a series of hydraulically connected aquifers whose horizontal and vertical extents could be limited by formation contacts, faults, surface water bodies, and less permeable materials.
- (8) "Associated right" means multiple water rights filed by the same or different appropriators that share the same point of diversion, place of use, or place of storage.
- (9) "Basin closure area" means a hydrologic drainage basin area within which applications for certain water use permits cannot be accepted. Basin closure areas can be designated by statute, administrative rule, or in compacts.

- (10) "Certificate of survey number" means the official number given a parcel of land created by a registered land survey as filed with the county clerk and recorder.
- (11) "CFS" means a flow rate of water in cubic feet per second and is equivalent to 448.8 gallons per minute. Applications for a flow rate of less than one CFS will be converted to gallons per minute.
- (12) "Change authorization" or "change" means an approval by the department to make a change in appropriation right as defined by 85-2-102, MCA, and allowed by 85-2-402, MCA.
- (13) "Claim" means a statement of claim filed pursuant to 85-2-221, MCA, for a water right established prior to July 1, 1973.
- (14) "Combined appropriation" means an appropriation of water from the same source aquifer by two or more groundwater developments, the purpose of which, in the department's judgment, could have been accomplished by a single appropriation. Groundwater developments need not be physically connected nor have a common distribution system to be considered a "combined appropriation." They can be separate developed springs or wells to separate parts of a project or development. Such wells and springs need not be developed simultaneously. They can be developed gradually or in increments. The amount of water appropriated from the entire project or development from these groundwater developments in the same source aquifer is the "combined appropriation."
- (15) "Cone of depression" means a cone-shaped depression of water table or pressure surface developing around a pumping well.
- (16) "Consumptive use" means the annual volume of water used for a beneficial purpose, such as water transpired by growing vegetation, evaporated from soils or water surfaces, or incorporated into products that does not return to ground or surface water.
- (17) "Contested case" means a proceeding before the department in which a determination of legal rights, duties, or privileges of a party is required to be made after an opportunity for hearing pursuant to Title 2, chapter 4, part 6, MCA. A contested case includes, but is not limited to: a proceeding and hearing on an objection to application pursuant to 85-2-309, MCA; a show cause proceeding and hearing involving revocation or modification of a permit or change in appropriation right pursuant to 85-2-314, MCA; and a show cause proceeding conducted following a preliminary determination to deny or preliminary determination to grant with modifications pursuant to 85-2-310, MCA.
- (18) "Controlled groundwater area" means an area that has additional management controls applied to new groundwater uses pursuant to 85-2-506 through 85-2-508, MCA.
- (19) "Dam" means an artificial barrier created by man-made means designed to form a basin to hold water and create a pond or reservoir.
- (20) "Deep percolation" means water that percolates below the root zone and infiltrates a deeper aquifer that is not used by other appropriators or connected to a surface water source.
- (21) "Director" means the director of the department or the director's designee.
- (22) "Domestic use" means those water uses common to a household including:
 - (a) food preparation;
 - (b) washing;

- (c) drinking;
 - (d) bathing;
 - (e) waste disposal;
 - (f) cooling and heating; and
 - (g) garden and landscaping irrigation up to five acres.
- (23) "Drainage device" means a mechanism capable of draining or releasing substantially the full capacity of a reservoir.
- (24) "Element" means the factors which describe a water right including, but not limited to:
- (a) the priority date;
 - (b) source of supply;
 - (c) point of diversion;
 - (d) means of diversion;
 - (e) period of diversion;
 - (f) flow rate;
 - (g) volume;
 - (h) acreage;
 - (i) purpose;
 - (j) place of use;
 - (k) period of use;
 - (l) storage capacity; and
 - (m) storage location.
- (25) "Evapotranspiration" means the loss of water from the soil both by evaporation and by transpiration from living plants.
- (26) "Flow rate" is a measurement of the rate at which water flows or is diverted, impounded, or withdrawn from the source of supply for beneficial use, and commonly measured in cubic feet per second (CFS) or gallons per minute (GPM).
- (27) "General abstract" means a department-generated document that reflects certain water right elements from the department's database.
- (28) "GPM" means a flow rate of water in gallons per minute.
- (29) "Hearing examiner" means the person or persons assigned by the director to hear the contested case.
- (30) "Household" means the dwelling, house, or other domestic facilities where an individual, family, or social unit lives.

- (31) "Hydraulically connected" means a saturated water-bearing zone or aquifer in contact with surface water or other water-bearing zone where rate of exchange of water between the two sources depends on the water level of the water-bearing zone or aquifer.
- (32) "Hydrologic system" means the overall movement of water, including snow and ice, above, on, or below the earth's surface.
- (33) "Irrigation use" means the controlled application of water to land to supply water requirements not satisfied by rainfall.
- (34) "Means of diversion" means the type of structures, facilities, or methods used to appropriate, impound, or collect water.
- (35) "Median year" means that water flow would be at the 50th percentile. Half of the years would have had higher flows and the other half would have had lower flows.
- (36) "Multiple domestic use" means a domestic use by more than one household or dwelling characterized by long-term occupancy as opposed to guests.
- (37) "Net depletion" for the purposes of 85-2-360, MCA, means the calculated volume, rate, timing, and location of reductions to surface water resulting from a proposed groundwater appropriation that is not offset by the corresponding accretions to surface water by water that is not consumed and subsequently returns to the surface water.
- (38) "Notice area" means a geographic area determined by the department which may include water rights affected by an application.
- (39) "Off-stream reservoir" means a reservoir that is not located on the source of supply and is supplied with water from a diversion means such as a pipe, headgate and ditch, or other means.
- (40) "On-stream reservoir" means a reservoir that is located on the source of supply.
- (41) "Owner of record" means a person who, according to the department's records, is the current owner of a water right.
- (42) "Ownership update" means the updating of the department's water right ownership records by the filing of an ownership update form, Form No. 608, pursuant to 85-2-421 through 85-2-426, MCA. The department's form does not transfer water rights or legally determine water right ownership. It only updates the department's centralized ownership records as reflected by the legal documents that actually transfer water rights.
- (43) "Party" means an applicant, objector, petitioner, respondent, or other person named, admitted, or entitled to a contested case hearing pursuant to Title 85, chapter 2, parts 3 and 4, MCA.
- (44) "Period of diversion" means the period in a calendar year when water is diverted, impounded, or withdrawn from the source of supply. It is described by the earliest month and day and the latest month and day water is diverted during each year.
- (45) "Period of use" means the period in a calendar year when water is used for specified beneficial use. It is described as the earliest month and day and the latest month and day the water is beneficially used during each year.
- (46) "Place of use (POU)" means the land, facility, or site where water is beneficially used.
- (47) "Point of diversion (POD)" means the location or locations where water is diverted from the source of supply.

- (48) "Pit," "pit-dam," or "pond" means a body of water that is created by man-made means, which stores water for beneficial use.
- (49) "Place of storage" means a reservoir, pit, pit-dam, or pond.
- (50) "Potentially affected area" for the purposes of 85-2-361, MCA, means, as referred to in basin closure rules and in the context of a hydrogeologic assessment, the area or estimated area where groundwater will be affected by a proposed project. The identified area is not required to exceed the boundaries of the drainage subdivisions established by the Office of Water Data Coordination, United States Geological Survey, and used by the Water Court, unless the applicant chooses to expand the boundaries.
- (51) "Possessory interest" means the right to possess, use, or exert some interest or form of control over specific land. It is the legal right to possess or use property by virtue of an interest created in the property, though it need not be accompanied by fee title, such as the right of a tenant, easement holder, or lessee.
- (52) "Primary diversion" means the initial point from which a diversion means will remove or impound water from the source of supply.
- (53) "Priority date" means the clock time, day, month, and year assigned to a water right application or notice upon department acceptance of the application or notice. The priority date determines the ranking among water rights.
- (54) "Proceeding" means all events in a contested case following issuance of a hearing notice and appointment of hearing examiner, including prehearing conferences, hearings, interlocutory orders, and the decision of the hearing examiner on the merits.
- (55) "Project completion notice" means a notice by the appropriator on a form provided by the department that the project works are completed, and water is being appropriated in substantial accordance with the terms of the permit, including any reduction or modification of the permit pursuant to 85-2-313, MCA, or change authorization.
- (56) "Recreational use" includes but is not limited to swimming, boating, water sports, and fishing.
- (57) "Reservoir" means a pond, pit, or pit-dam, created by man-made means that impounds and stores water.
- (58) "Return flow" means that part of a diverted flow which is applied to irrigated land and is not consumed and returns underground to its original source or another source of water, and to which other water users are entitled to a continuation of, as part of their water right. Return flow is not wastewater. Rather, it is irrigation water seeping back to a stream after it has gone underground to perform its nutritional function. Return flow results from use and not from water carried on the surface in ditches and returned to the stream.
- (59) "Secondary diversion" means a diversion that is not from the source of supply but is a diversion that is used after the water is diverted from the source of supply at the primary diversion. For example, a pump in a ditch or reservoir is a secondary diversion.
- (60) "Seepage water" means that part of a diverted flow which is not consumptively used and which slowly seeps underground and eventually returns to a surface or groundwater source, and which other water users can appropriate, but have no legal right to its continuance. Typical examples of seepage water include underground losses from an irrigation ditch or pond.

- (61) "Senior water right" means a water right with a priority date that is earlier in time than another water right.
- (62) "Service" or "serve" means personal service or service by first class United States mail, postage prepaid and addressed to a person's last known address. Proof of service shall be made by the person making such service. Service by mail is complete upon the placing of the item to be served in the mail. Agencies of the state of Montana may also serve by depositing the item to be served with the mail and distribution section, General Services Division, Department of Administration.
- (63) "Show cause" means a contested case before the department in which a person aggrieved by a proposed action of the department is given the opportunity to present evidence and testimony to show why the proposed action should not be taken. A show cause proceeding conducted following a preliminary determination to deny or preliminary determination to grant with modifications pursuant to 85-2-310, MCA, shall be conducted as an informal contested case proceeding pursuant to 2-4-604, MCA.
- (64) "Source aquifer" means an aquifer or aquifer system from which water is diverted for a beneficial use.
- (65) "Source of supply" means the specific surface or groundwater source from which water is diverted for a beneficial use.
- (66) "Spring" means a hydrologic occurrence of water involving the natural flow of water originating from beneath the land surface and arising to the surface of the ground. A developed spring is groundwater if some physical alteration of its natural state occurs at its point of discharge from the ground, such as simple excavation, cement encasement, or rock cribbing. An undeveloped spring is surface water if no development occurs at its point of discharge and the appropriation is made from the waters flowing on the surface of the ground.
- (67) "Staff" means a person employed or retained by the department.
- (68) "Stock use" means the use of water for livestock, including but not limited to cattle, horses, pigs, sheep, llamas, and animals owned and controlled on game farms. It does not include domestic animals such as dogs and cats or wild animals.
- (69) "Substantial accordance" means that an appropriation has been completed in compliance with the terms of a permit, including any reduction or modification pursuant to 85-2-313, MCA, or change authorization. Substantial accordance may allow for minor deviation from those terms if the department determines the deviation will not cause injury to other appropriators or otherwise does not require a change authorization.
- (70) "Supplemental rights" means separate water rights for the same purpose, owned by the same water user, and used on overlapping places of use.
- (71) "Surface water" means all water of the state at the surface of the ground, including but not limited to any river, stream, creek, ravine, coulee, undeveloped spring, lake, and other natural surface source of water regardless of its character or manner of occurrence.
- (72) "Temporary authorization or temporary change" means an authorization to change granted pursuant to 85-2-407 and 85-2-408, MCA, for a specific period of time and with an automatic expiration date.
- (73) "Temporary emergency appropriation" means the temporary beneficial use of water necessary to protect lives or property by reason of fire, storm, earthquake or other disaster, or unforeseen

combination of circumstances which call for immediate action. An appropriation made necessary due to drought conditions is not a temporary emergency appropriation.

- (74) "Transitory diversion" means a movable diversion that will divert water from several nonspecific points along a source of supply.
- (75) "Tributary" means the following:
 - (a) a surface water source feeding another surface water source; or
 - (b) groundwater hydraulically connected to a surface water source.
- (76) "Unnamed tributary" means a surface water stream, coulee, or draw, which is not named on a United States Geological Survey (USGS) or Water Resources Survey (WRS) map.
- (77) "Use of water for the benefit of the appropriator" means:
 - (a) the amount of water reasonably needed for the intended purpose;
 - (b) the amount of water needed for conveyance to the intended purpose; and
 - (c) water used for instream flow.
- (78) "Verification" or "verify" means the process used by the department to determine whether completion of an appropriation of water and a project completion notice are in substantial accordance with the terms, conditions, restrictions, and limitations of the permit, including any reduction or modification pursuant to 85-2-313, MCA, or change authorization.
- (79) "Volume" means the acre-feet of water per year. Twelve acre-inches or 325,851 gallons are equal to one acre-foot.
- (80) "Wastewater" means that part of a diverted flow which is not consumptively used and which returns as surface water to any surface water source, and which other water users can appropriate, but have no legal right to its continuance. A typical example is an irrigator who turns into the individual furrows traversing the irrigator's field from the head ditch more water than can seep into the ground. The water that stays on the surface and is not absorbed into the earth and which remains at the end of the furrow and is collected in a wastewater ditch is wastewater.
- (81) "Water flow estimating technique" means a mathematical method of estimating flow generally accepted by the department. This may be accomplished by correlating measurements of diversion system components with actual water use to estimate flow rate or volume of water used. An example is the use of measurements of power consumed by a pump to estimate the amount of water delivered by a pump. Another flow estimating technique would be to apply specific formulas developed by professional hydrologists based on climatic, basin, or stream channel characteristics to estimate stream flow.
- (82) "Water measuring device" means equipment that directly measures water flow in open or closed channels and conduits. Examples would be flow meters, weirs, flumes, and bucket and stop watch.
- (83) "Water Resources Survey (WRS)" means a survey by county of water resources and water rights in Montana by the former State Engineer's Office or Water Resources Board, predecessors of the department.
- (84) "Water saving method" means a change to the actual water use system or management of water use in which the modification being made would decrease the amount of water needed to accomplish the same result. Water saving methods might include:

- (a) changing from a ditch conveyance to a pipeline;
 - (b) lining an earthen ditch with concrete or plastic; and
 - (c) changing management of a water system to decrease water consumption.
- (85) "Zone of influence" means the horizontal extent of the cone of depression.

Authorizing statute(s): 2-4-201, 85-2-113, 85-2-308, 85-2-370, MCA

Implementing statute(s): 85-2-113, 85-2-301 through 85-2-319, 85-2-321 through 85-2-323, 85-2-329 through 85-2-331, 85-2-335 through 85-2-338, 85-2-340 through 85-2-344, 85-2-351, 85-2-360, 85-2-361, 85-2-362, 85-2-364, 85-2-368, 85-2-370, 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-410 through 85-2-413, 85-2-418, MCA

History: NEW, Eff. 7/5/73; AMD, Eff. 2/4/75; AMD, 1987 MAR p. 1560, Eff. 9/11/87; AMD, 1992 MAR p. 1615, Eff. 7/31/92; AMD, 1993 MAR p. 1335A, Eff. 6/25/93; AMD, 2004 MAR p. 3036, Eff. 1/1/05; AMD, 2006 MAR p. 1387, Eff. 6/2/06; AMD, 2007 MAR p. 508, Eff. 3/26/07; AMD, 2007 MAR p. 1098, Eff. 8/10/07; AMD, 2008 MAR p. 140, Eff. 2/1/08; AMD, 2008 MAR p. 567, Eff. 3/28/08; AMD, 2011 MAR p. 2043, Eff. 10/1/11; AMD, 2012 MAR p. 2071, Eff. 10/12/12; AMD, 2014 MAR p. 2956, Eff. 12/12/14; AMD, 2018 MAR p. 451, Eff. 2/24/18; AMD, 2019 MAR p. 1865, Eff. 10/19/19; AMD, 2023 MAR p. 1872, Eff. 1/1/24; AMD, 2025 MAR, Notice No. 2025-157, Eff. 10/1/25.