



ADMINISTRATIVE RULES OF MONTANA



36.16.102 DEFINITIONS

Unless the context requires otherwise, in these rules:

- (1) "Act" means the Montana Water Use Act, Title 85, chapter 2, parts 1 through 4, MCA.
- (2) "Applicant" means an entity that has submitted an application to reserve water pursuant to 85-2-316 and 85-2-331, MCA.
- (3) "Application for permit" means an application for beneficial water use permit, form no. 600.
- (4) "Department" means the Department of Natural Resources and Conservation provided for in 2-15-3301, MCA.
- (5) "Direct benefits" means all benefits to the reservant derived from applying reserved water to the use for which it is granted.
- (6) "Direct costs" means all costs to the reservant resulting from applying reserved water to beneficial use for the purpose granted.
- (7) "Diversionary use" means a water use occurring outside of a stream channel or requiring development of a project in order to apply water to a beneficial use. This includes stockwater use and development of projects that will augment an instream use.
- (8) "Economic feasibility" means that indirect and direct project benefits exceed indirect and direct project costs.
- (9) "Entity" means the state, any political subdivision or agency of the state, or the United States or any agency of the United States that is qualified to reserve water pursuant to 85-2-316 and 85-2-331, MCA.
- (10) "Financial feasibility" means that financing for a water reservation project can be secured and that project costs will be recovered:
 - (a) from project revenues generated over the project life;
 - (b) through available subsidies; or
 - (c) from any combination of (a) and (b).
- (11) "Firm yield" means the volume of water, including reasonable carry-over storage that will be available from a storage facility during a specified critical dry period to meet water needs under a predetermined demand schedule. Reasonable carry-over storage is determined on a case-by-case basis by considering such factors as type of beneficial use; relation of amount of the carry-over

storage to project size; the impacts of water shortage on project operation; and other demands on the water resource.

- (12) "Indirect benefits" means the benefits of applying reserved water to beneficial use that accrue to other uses or to parties other than the reservant.
- (13) "Indirect costs" means the costs of applying reserved water to beneficial use that accrue to other uses or to parties other than the reservant.
- (14) "Instream use" means a water use that requires water to remain within a stream channel and does not require the development of a project in order to apply water to a beneficial use.
- (15) "Irrigable lands" means lands with the soil, topographic, and water supply conditions needed to sustain irrigated agriculture on an economically feasible basis under foreseeable economic conditions.
- (16) "Management plan" means a detailed plan that accompanies a reservation application and that will be used to guide a reservant in the application of reserved water to beneficial use.
- (17) "Modify" means to alter a term or condition of an order establishing a water reservation issued pursuant to 85-2-316 and 85-2-331, MCA.
- (18) "Net benefits" means indirect and direct benefits less indirect and direct costs.
- (19) "Objective" means the purpose, the need, the amount, and the public interest of a water reservation.
- (20) "Period of use" means the time period in a calendar year, expressed in days and months, during which reserved water will be used.
- (21) "Periodic review" means the department review required to determine whether the objectives of a reservation are being met.
- (22) "Project" means any water storage and/or diversion facility. Water storage and/or diversion facilities include, but are not limited to:
 - (a) dams;
 - (b) water spreading systems;
 - (c) diversion canals;
 - (d) laterals;
 - (e) waste and drainage canals;
 - (f) dikes;
 - (g) wells;
 - (h) pumping units;
 - (i) mains;
 - (j) pipelines;
 - (k) power generators; and
 - (l) waterworks systems needed for application of reserved water to beneficial use.

- (23) "Qualified reservant" means any entity to which a reservation may be reallocated or transferred.
- (24) "Reallocate" means to convey an instream flow reservation or a portion of an instream flow reservation from a reservant to another qualified reservant.
- (25) "Reservant" means an entity that has been granted a reservation of water pursuant to 85-2-316 and 85-2-331, MCA.
- (26) "Reservation term" means the period of years established by an order during which reserved waters must be applied to beneficial use.
- (27) "Revoke" means to repeal all or a portion of a water reservation.
- (28) "Subordinate" means to place a water reservation with a senior priority date to a permit in a lower position than the permit in the prior appropriation system of "first in time-first in right".
- (29) "Substantial accordance" means compliance with the terms of a reserved water use authorization, allowing for minor variations from those terms if the variation will not cause injury to other appropriators or otherwise does not warrant changing the department's water use records. A variation may reduce the authorized rate, volume or acres irrigated but in no way can they be increased under the reserved water use authorization.
- (30) "Transfer" means for a reservant to convey ownership of all or any part of a reservation to a qualified reservant.
- (31) "Volume" means a quantity of water expressed in acre-feet per year.

Authorizing statute(s): 85-2-113, MCA

Implementing statute(s): 85-2-101, 85-2-316, 85-2-331, 85-2-605, MCA

History: NEW, Eff. 3/7/76; AMD, 1986 MAR p. 1584, Eff. 9/26/86; AMD, 1988 MAR p. 2396, Eff. 11/11/88; AMD, 1994 MAR p. 1297, Eff. 5/13/94; AMD, 2015 MAR p. 1909, Eff. 10/30/15.