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## Montana Legislative Services Division

### Legal Services Office

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TO: Environmental Quality Council  
FROM: Helen Thigpen, Staff Attorney  
RE: Summary of Recent Rulemaking Activity  
DATE: February 28, 2014

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The following is a brief summary of administrative rules that were recently proposed or adopted by DEQ, FWP, and DNRC. Staff provides regular updates on rulemaking at the following website: <http://leg.mt.gov/css/Committees/Interim/2013-2014/EQC/Rules/rules-table.asp>.

#### A. Department of Environmental Quality

- **For electronic access to DEQ rule notices visit:**  
<http://deq.mt.gov/dir/legal/default.mcp>

#### *Pending Administrative Rules:*

- **Water Quality - Numeric Nutrient Standards - Degradation Authorization – Specific Restrictions for Surface Water Mixing Zones - Standard Mixing Zones for Surface Water.** MAR Notice No. 17-356. The Board of Environmental Review (BER) is proposing to adopt Department Circular DEQ-12A for numeric nutrient standards for total nitrogen and total phosphorous. DEQ-12A is proposed to be incorporated into the surface water quality classifications and the nondegradation rules. A detailed description of the BER's proposal is provided in the proposal notice, which may be accessed at the following website: <http://www.leg.mt.gov/css/Committees/Interim/2013-2014/EQC/Rules/rules-table.asp>. A public hearing is scheduled for March 24, 2014, at 2:00 p.m., in Room 111, Metcalf Building, 1520 East Sixth Ave., Helena, Montana. An informal question and answer session will be held earlier in the day, prior to the hearing for MAR notice number 17-355. Public comment will be accepted through April 1, 2014.
- **Water Quality - Nutrient Standards Variances.** MAR Notice No. 17-355. The Department is proposing to adopt rules for variances from the base numeric nutrient standards that are proposed to be adopted by the BER in MAR notice number 17-356. A public hearing is scheduled for March 24, 2014, at 10:00 a.m., in Room 111 of the Metcalf Building, 1520 E. Sixth Ave., Helena, Montana. An informal question and answer session will be held immediately prior to the hearing. Public comment will be accepted through April 1, 2014.

- **Water Quality - Adoption by Reference - Plans for Public Water Supply or Public Sewage System.** MAR Notice No. 17-354. The BER is proposing to amend its subdivision rules to update the references to DEQ-1, “Standards for Water Works,” and DEQ-3, “Standards for Small Water Systems,” to the 2014 editions. The amendments are being proposed to make the design standards consistent with the standards provided in the Recommended Standards for Water Works (also known as the 10 States Standards). The BER is also proposing to incorporate the 2014 editions of DEQ-10, “Standards for the Development of Springs for Public Water Systems” and DEQ-16, “Standards for Hauled Water Cisterns for Noncommunity Public Systems.” In addition, the BER is proposing to amend its rules regarding plans for public water supply or public sewage systems. A more detailed description is provided in the proposal notice. A public hearing is scheduled for March 7, 2014, at 1:30 p.m., in Room 111, Metcalf Building, 1520 East Sixth Ave., Helena, Montana. Public comment will be accepted through March 13, 2014.
- **Air quality - incorporation by reference - publication dates.** MAR Notice No. 17-353. The BER is proposing to amend the air quality rules to adopt the current editions of federal and state statutes, regulations, and rules that are incorporated by reference into the air quality rules. A public hearing is scheduled for March 10, 2014, at 1:30 p.m., in Room 40, Metcalf Building, 1520 East Sixth Ave., Helena, Montana. Public comment will be accepted through March 27, 2014.
- **Water quality - temporary water quality standards.** MAR Notice No. 17-352. The BER is proposing to extend the temporary water quality standards for Daisy Creek, from its headwaters to its confluence with the Stillwater River in the Yellowstone River drainage area, to June 4, 2019. Current law allows water quality standards to be effective for a maximum of 20 years. The current rules are set to expire on June 4, 2014. The extension would allow the temporary standards to be in effect for the entire 20-year period. A public hearing is scheduled for February 20, 2014, at 1:30 p.m., in Room 40, Metcalf Building, 1520 East Sixth Ave., Helena, Montana. Public comment will be accepted through February 27, 2014.

*Administrative Rules Adopted after January 2014 EQC Meeting:*

None

**B. Department of Fish, Wildlife, and Parks**

- **For electronic access to FWP rule notices visit:**  
<http://fwp.mt.gov/news/publicNotices/armRules/>

*Pending Administrative Rules:*

- **Unauthorized Placement of Fish into Public Waters.** MAR Notice No. 12-403. The Commission is proposing to adopt new rules regarding the placement of live fish into the state’s waters without the authorization of the Department. The rules outline the

Department's response to the unauthorized placement of fish into state waters. The rules will require the Department to prepare an action plan for responding to an unauthorized species and outlines various management actions available to the agency. Several public hearings are scheduled throughout the state, beginning with a hearing on February 24 at 7:00 p.m. at the Department's Region 1 office in Kalispell. Public comment will be accepted through March 21, 2014.

- **Gray Wolf Management.** MAR Notice No. 12-401. The Commission is proposing to amend the rules pertaining to gray wolf management. The Commission is proposing to clarify references within the rules to the delisting of wolves; clarify the Commission's authority to establish harvest seasons; remove language addressing specific management objectives and tools; clarify the Department's responsibility and oversight of wolf conservation and management; and clarify rules in response to SB 200 (2013), which allows lethal control by landowners. Several hearings were held throughout the month of December. Comments were accepted through December 20, 2013.

***Administrative Rules Adopted after January 2014 EQC Meeting:***

- **State Land Access Tax Credit.** MAR Notice No. 12-402. On February 27, 2014, the Commission published notice of the adoption of new rules regarding the state land access tax credit, which was established pursuant to HB 444 (2013). The program allows a private landowner to receive a tax credit for providing public access to a parcel of state land. Public comment was accepted through December 27, 2013. The Department received a total of 33 comments in response to the proposal. The proposed rules were adopted with modifications on February 27, 2014.
- **Recreational Use on Lake Alva, Harpers Lake, and Lake Marshall.** MAR Notice No. 12-385. On May 9, 2013, the Commission published a proposal notice to amend the rules regarding recreational use on Lake Alva, Harpers Lake, and Lake Marshall. The Commission proposed to amend the rules to provide a controlled no-wake speed on Lake Alva and to limit Harpers Lake and Lake Marshall to manually operated watercraft and watercraft powered by electric motors. The Commission held a public hearing on June 5, 2013. The Commission extended the comment period on September 5, 2013, and proposed an alternative for Lake Alva. The Commission accepted public comment through September 20, 2013. The Commission adopted the rules on January 30, 2014, as originally proposed.

**C. Department of Natural Resources and Conservation**

- **For electronic access to DNRC rule notices visit:**  
<http://dnrc.mt.gov/PublicInterest/Notices/Default.asp>

***Pending Administrative Rules:***

- **Appointment of hearing examiners and temporary leases.** MAR Notice No. 36-22-177. The Department is proposing to amend its rules regarding the appointment of

hearing examiners in contested case matters to provide that the Director may not assign a person to be a hearing examiner if the person was involved in the preliminary determination on the application. The Department is also proposing to amend its rules regarding temporary leasing to clarify how the Department will determine consumptive volume for irrigation. A public hearing is scheduled for February 27, 2014, at 10:00 a.m., in the Fred Buck Conference Room, Water Resources Building, 1424 Ninth Ave., Helena, Montana. Public comment will be accepted through February 27, 2014.

***Administrative Rules Adopted after January 2014 EQC Meeting:***

None

**NOTE: Combined Appropriation Rule**

- **Water Rights - Definition of Combined Appropriation.** MAR Notice No. 36-22-176. On August 22, 2013, the Department published notice of a proposal to amend the definition of a “combined appropriation”. The Environmental Quality Council objected to the proposal on September 13, 2013. The Department withdrew the proposal on November 4, 2013, to “further evaluate and propose rules regarding water right combined appropriation”. On December 26, 2013, the Department published another notice to amend the “combined appropriation” definition. The EQC objected to the second proposal notice on January 9, 2014, and the DRNC withdrew its proposal on January 30, 2014. No further rules have been proposed.