

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

INTERIM WATER POLICY COMMITTEE

September 11 & 12, 2008

House Bill 831 Update  
(new information in **BOLD**)

I. Applications Received under HB 831

- a. **Twenty-seven** applications received (see attached table)
- b. **Nine** were filed under 85-2-360(6), they are refilled applications that were returned after the TU v. DNRC decision was issued. Will retain original priority date.
- c. **Five** applications have been terminated for lack of response to deficiency letter (90-days)

II. Administrative Rules

- a. Net Depletion: effective February 1, 2008.
- b. Filing Fees: effective February 15, 2008.
- c. Correct and Complete Objections: effective March 28, 2008.
- d. **Mitigation for Adverse Affect: effective September 12, 2008. Clarifies that mitigation projects may be used to meet the adverse affect criteria statewide, including out-side of closed basins.**
- e. Contested Case Hearings: Rules updating the existing hearing procedures are being drafted and are expected to be published this winter. These rules would affect all permits and change applications are not limited to closed basins.
- f. Hearings conducted under MCA 85-2-310 and 314: A hearing may be requested by an applicant where the Department has proposed to modify or deny a permit or change application through the issuance of a Statement of Opinion where no contested case hearing with objectors was held. In addition, where the Department proposes to revoke a permit or change authorization, the water right holder as an opportunity for hearing. Rules establishing the procedures for conducting these hearings will be drafted over the next 6 months.
- g. Correct and Complete Application Rules: Original rules became effective January 1, 2005. Through two years of operating under the rules, needed clarifications and updates have been identified. Drafting will begin later this fall.
- h. Historic Consumptive Use: An applicant for a change in appropriation water right is required to identify the historic diverted flow rate and the historic consumptive use of the existing appropriation water right. With more original owners and persons knowledgeable of the historic use and operation passing on, new owners are having great difficulty in providing information on historic use. What part of the historic use was consumed by the crop is especially difficult to estimate. The Department's technical and program staff have developed a guideline for estimating historic consumptive use. **The Department has scheduled public meetings to present the proposed guideline and discuss comments and questions from interested persons and professionals before developing a proposed rule. Public meetings are**

scheduled as follows: 1) Sept. 16, 2008, 1:00 PM Yogo Inn, Lewistown; 2) Sept. 19, 2008, 10:00 AM, Broadway Inn, 1609 W. Broadway, Missoula; and 3) Sept. 22, 2008, 1:00 PM, DPHHS Auditorium, 111 N Sanders, Helena, MT. Notice will be sent to those on our existing rule mailing list. The Draft Historic Consumptive Use Proposal is available at: <http://www.dnrc.mt.gov/wrd/>.

III. Recruitment of New Staff Associated with HB 831

- a. Attorney position was hired and will begin June 16, 2008.
- b. Geohydrologist hired October 1, 2008.
- c. Water Resource Specialist hired February 4, 2008.
- d. Water Resource Technician was hired and will begin June 16, 2008

IV. HB39 – Automation of Water Right Ownership (effective July 1, 2008)

- a. Passed in the 2007 Session to automate updating the ownership of water rights
- b. In order to maintain current ownership records, DNRC and DOR have matched legal land description records and are entering geocode numbers into the water right records. [over 90% match of geocodes to water rights]
- c. DOR Contract with Tyler, Inc to add water right fields to DOR Orion system is in place. Specifications Document for the water right development portion completed and approved August 7, 2008. **Development will begin this month.**
- d. As property changes hands, DOR will send new owner names with their geocodes so DNRC can electronically update the water right with the new owner's name. DNRC will then pass back the water right number(s) for the parcel to upload into Cadastral system.
- e. DOR has modified the Realty Transfer Certificate (RTC) to accommodate the HB39 requirements. **The form is available on their website. Paper version is being printed and will be sent by DOR to all Clerk and Recorders and Title Companies when printed.** The "Certification of Water Right Ownership Update" form is a part of the RTC and is completed.
- f. Montana Realtors Association **have added** the language of 85-2-424(7), MCA below to their Buy-Sell Agreement forms. Modification of form completed.

(7) Any written agreement to transfer land that has appurtenant water rights on record with the department must contain the following disclosure or words of a similar nature:

**"WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:**

By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could result in a penalty against the transferee and rejection of the deed for recording."

APPLICATIONS REC'D UNDER HB831

Sept. 11, 2008

Basin	App. No	App Type	Applicant Name	Rec'd Date	To Hydrologist	Deff. Letter Sent	Deemed C.C.	EA Completed	P. N. Sent to C.O.	P. N. Sent To Applicant	Published Noticed	Objection Received	Sent to Hearing Unit	Hearing Date	Regional Office
41B	*30028374	600	SITZ RANCH MANAGEMENT PARTNERSHIP	6/19/2007	8/16/2008	8/21/2007	9/21/2007	9/19/2007	10/4/2007	9/10/2007	10/24/2007	10/30/2007	12/27/2007	8/5/2008	Helena
41B	*30028375	600	SITZ RANCH MANAGEMENT PARTNERSHIP	6/19/2007	8/16/2008	8/21/2007	9/21/2007	9/19/2007	10/4/2007	9/10/2007	10/24/2007	10/30/2007	12/27/2007	8/5/2008	Helena
41I	30028560	600	GLACIER POINT HOME OWNERS	7/2/2007	7/9/2007	8/2/2007	10/19/2007	11/27/2007	11/29/2007	11/30/2007	12/13/2007	12/13/2007	2/7/2007	12/09/08	Helena
41I	30028566	606	GLACIER POINT HOME OWNERS	7/2/2007	7/9/2007	8/14/2007	10/26/2007	11/28/2007	11/29/2007	11/30/2007	12/13/2007	1/10/2007	2/7/2007	12/09/08	Helena
76H	30028713	600	HELMER, JIM W & SKERGAN, PATRICIA	7/23/2007	8/14/2007	9/17/2007	11/28/2007	11/28/2007	11/28/2007	11/29/2007	12/6/2007	12/11/2007	2/8/2007	6/12/08	Missoula
41G	*30029173	600	HOLLOWTOP PARTNERS LLC	8/22/2007	9/6/2007	9/26/2007		Terminated-No response-90 days							Bozeman
41H	30029944	600	MAUS, RICHARD H	11/1/2007	11/9/2007	2/25/2008	4/28/2008	11/15/2007	5/6/2008	5/7/2008	5/24/2008	**6/16/08	8/1/2008		Bozeman
41H	30029946	606	MAUS, RICHARD H	11/1/2007	11/9/2007	2/25/2008	4/28/2008	11/15/2007	5/6/2008	5/7/2008	5/24/2008	**6/16/08	8/1/2008		Bozeman
76H	30030100	600	MACLAY, TOM	11/14/2007	12/5/2007	3/6/2008	6/23/2008								Missoula
76H	30030098	606	MACLAY, H BRUCE & MARY B	11/14/2007	12/5/2007	3/6/2008	6/23/2008								Missoula
76G	30031047	600	NORTHWOODS GROUP, LLC	2/5/2008	2/12/2007	3/12/2008			Terminated-No response						Helena
41I	30041569	600	FRONTIER VILLAGE	3/19/2008	3/21/2008	3/27/2008			Terminated-No response						Helena
41I	*30041631	600	SIMMONS, BARRY J & KELLY	3/26/2008	3/31/2008	4/24/2008			Terminated-No response						Helena
41I	30041632	606	SIMMONS, BARRY J & KELLY	3/26/2008	3/31/2008	6/6/2008			Withdrawn						Helena
41G	30041762	600	HOLLOWTOP PARTNERS LLC	4/14/2008	4/15/2008	6/20/2008									Bozeman
41h	30042354	600	ROSS PEAK, LLC	6/6/2008	5/2/2008	6/26/2008									Bozeman
41H	30042543	600	UTILITY SOLUTIONS LLC	6/20/2008	7/1/2008										Bozeman
41H	30042544	606	UTILITY SOLUTIONS LLC	6/20/2008	7/1/2008										Bozeman
41H	30042545	606	UTILITY SOLUTIONS LLC	6/20/2008	7/1/2008										Bozeman
41H	30042546	606	UTILITY SOLUTIONS LLC	6/20/2008	7/1/2008										Bozeman
41B	*30042919	600	SCHUETT FARMS, SCHUETT, DAVID	8/5/2008	8/8/2008										Helena
41B	*30042920	600	SCHUETT FARMS, SCHUETT, DAVID	8/5/2008	8/8/2008										Helena
41B	*30042921	600	SCHUETT FARMS, SCHUETT, DAVID	8/5/2008	8/8/2008										Helena
41B	*30042922	600	SCHUETT PARTNERSHIP	8/5/2008	8/8/2008										Helena
41B	*30042923	600	SCHUETT PARTNERSHIP	8/5/2008	8/8/2008										Helena
76H	30043132	600	TOWN OF STEVENSVILLE	8/25/2008											Missoula
76H	30043133	606	TOWN OF STEVENSVILLE	9/3/2008											Missoula

\*Refiled Application under 85-2-360(6) retains original priority date  
 \*\* Objections withdrawn

600 = Permit Application  
 606 = Change Application