

MEMORANDUM

TO: Water Policy Interim Committee

FROM: John E. Tubbs, Administrator

DATE: September 11, 2008

RE: WPIC Proposed Legislation LC 5020

I thank the committee for providing the opportunity for additional comment on its legislation drafts. We have the following limited comments on LC5020.

LC5020: Preliminary Determinations and Informal Objection Process

§85-2-307, MCA

- Add a cross reference to §85-2-310, MCA where the case of a preliminary determination to deny is addressed.

§85-2-310, MCA

- Move subsection (1) to after current subsection (5). Subsection (1) addresses when the decision should issue after both kinds of hearing (preliminary determination to grant/deny) and should follow the description of the preliminary determination to deny hearing.
- Subsection (1) – Strike the term "proposal." The Department's goal is to issue a final decision within the timeframes:

(1) The department shall deny or grant with or without conditions a permit under 85-2-311 or a change in appropriation right under 85-2-402 within 90 days after the administrative record is closed.

- Under subsection (5) - Clarify that the "department may consider *without hearing* the proposed conditions ..." The Department may consider conditions and issue the permit or change in appropriation without a hearing. If the Department does not accept the conditions of the settlement, the application would proceed to hearing under §85-2-309, MCA.