

## **House Bill 831 (2007) -- Ground Water Appropriations in Closed Basins**

### **When and where do the new requirements of HB 831 apply?**

- Closed basins: Upper Missouri, Teton, Upper Clark Fork, Madison/Jefferson, and Bitterroot
- The sideboards outlined in HB 831 apply to applications for a new water right when ground water is the water source that will be used.

### **Will HB 831 affect a person's ability to develop a domestic well?**

- HB 831 will only affect the ability to develop a domestic or stock well if that well will produce more than 35 gallons per minute (gpm) or use more than 10 acre feet per year.
- The exemption contained in 85-2-306 for individual wells (less than 35 gpm/10 ac ft) still exists in statute

### **What are the steps that an applicant must follow as the result of HB 831?**

#### Step 1

- An applicant must complete a hydrogeologic assessment to determine whether or not the proposed ground water development will have a net depletion on surface water.

#### Step 2A - no net depletion

- If the hydrogeologic assessment determines that there will not be net depletion to surface water the applicant proceeds through the existing new appropriation statutes to acquire a beneficial use permit.

#### Step 2B - net depletion

- If the hydrogeologic assessment determines that there will be net depletion the applicant must determine whether or not that net depletion will result in adverse affect to a prior appropriator (senior water right).

#### Step 3A - No adverse affect

- If the applicant determines there is no adverse affect to a prior appropriator (senior water right) the application moves through the existing DNRC new appropriations process to acquire a beneficial use permit.

#### Step 3B - Adverse affect

- If the applicant determines that there will be adverse affect to a prior appropriator the applicant has two options
  - Terminate the application; or
  - Develop a mitigation plan or aquifer recharge plan that will offset the amount of net depletion that results in adverse affect.

#### Step 4 - Mitigation or Aquifer Recharge plan

- HB 831 provides specific guidance on what, at a minimum, must be included in a plan to offset adverse affect.
- There are many options for an applicant with regard to these plans – an applicant can purchase a water right from another user, change an existing water right to a different beneficial use, point of division, or place of use, or manipulate the timing of a new use to name a few.

#### Step 5 - Submit the entire "package" of information to DNRC

- The applicant submits all of the information that they deem necessary to defend the application. The information, at a minimum, must include the hydrogeologic assessment

#### Step 6 - Public Notice

- The department analyzes the information submitted by an applicant (application, hydrogeologic assessment, mitigation or aquifer recharge plan (if necessary), an application for

a change in appropriation right (if necessary to implement a mitigation or aquifer recharge plan), and any other information the applicant feels is appropriate or necessary to determine whether or not the application is correct and complete.

- If the application is correct and complete then public notice is given pursuant to existing law and there is an opportunity for prior appropriators to object to the application or the new water right.
- If the application is not correct and complete the application package is returned to the applicant.

#### Step 7 – Department determination

- If DNRC does not receive an objection to the application the applicant proceeds under the existing new appropriations laws to acquire a beneficial water use permit.
- If DNRC does receive an objection to the application the applicant proceeds under the existing new appropriations laws, including a hearing if necessary to address an objector's issues, to acquire a beneficial use permit.
- The applicant is still required to meet the minimum requirements of existing law (85-2-311 or 85-2-402) in order to receive a permit. If the applicant does not meet these minimum criteria then the application must be denied.

#### **Does HB 831 require new water quality standards?**

- HB 831 requires DNRC and DEQ to coordinate permitting. DNRC still deals with water quantity issues and DEQ deals with water quality issue.
- It does require that an entity that is going to use sewage from a system requiring a water quality permit (5000 gallons per day or more) as part of an aquifer recharge plan (introducing water into an aquifer) must meet, at a minimum, level two treatment standards for the removal of nitrogen in the effluent.
- An entity that is going to inject sewage directly into the aquifer must meet the more stringent requirements of either primary drinking water standards or nondegradation requirements at the point of discharge.

#### **Does every ground water application in a closed basin have to comply with HB 831?**

- HB 831 only applies to applications for ground water that are filed on or after the effective date of the act.
- Pending applications must be processed pursuant to law and rule that was in place when the application was submitted.

#### **What happens to applications that were returned as a result of the TU v. DNRC decision?**

- Applicants may resubmit their application provided the application meets the requirements of HB 831.
- The applicant can use any of their existing science and may have to conduct additional science to meet the requirements of HB 831.
- If the application is approved the priority date associated with the beneficial use permit will be the date of application that was returned as a result of the TU v. DNRC decision.

For additional information contact:

Krista Lee Evans, Research Analyst, Legislative Services Division  
406-444-1640 or [kevens@mt.gov](mailto:kevens@mt.gov)