



**TO:** Chairman Lang and Welborn  
EQC Members, WPIC Members

**FROM:** Amanda Kaster, Director

**DATE:** September 8-9 and 20-21

**RE:** 2023 Proposed Legislation

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The following is a list of DNRC's proposed legislation that has been approved through the Executive Planning Process for introduction to the 2023 Legislature. The Department would appreciate your review of these proposals and consideration for pre-introduction.

#### **Trust Land Management Division**

1. Expand MEPA categorical exclusions  
**Issue:** MEPA requirements for certain no/low impact activities creates burdensome red tape for the Department and project proponents.

**Proposal:** Expand, clarify, and standardize the use of categorial exclusions to satisfy MEPA for certain low/no-impact activities, including authorizing the repair, maintenance, or replacement of pre-existing infrastructure, routine herbicide applications, fencing, certain water developments, such as placement of stock water tanks and pipelines, training exercises, and land transactions when no change in use is anticipated.
2. Revise laws relating to the state land bank fund; extending the period for encumbering proceeds to purchase replacement lands.  
**Issue:** It is difficult to find suitable replacement lands from the sale of cabin sites and land banking parcels in the current real estate climate.

**Proposal:** Extend from 10 to 15 years the statutory deadline for reinvesting land banking and cabin site sale revenues
3. An act amending the laws relating to application for easements on state lands; modifying survey requirements for right-of-way applications; creating categorical exclusions for certain pre-existing easement purposes  
**Issue:** The sunset of the historic road ROW statute in the last session eliminated some efficiencies in MEPA, and other requirements for certain ROW applications.

**Proposal:** This bill will re-create efficiencies in the now-sunset historic road right of way statute by allowing the department to waive survey requirements for the issuance of a right-of-way deed if the department determines that there is sufficient information available to define the boundaries of the right-of-way for the purposes of recording the easement, and providing an exemption from the requirements of Title 22, chapter 3, part 4, and Title 75, chapter 1, parts 1 and 2 (antiquities and environmental protection) and 77-2-107 (Involvement of lessee when land subject to prior lease).

4. Modernize advertising requirements

**Issue:** Several TLMD transactions specifically require local newspaper ads. For many things this is appropriate and effective, but for certain projects and audiences using alternate methods could be faster and less expensive.

**Proposal:** Generally revise MCA to modernize advertising requirements throughout Title 77. Existing statute requires advertising only in local newspapers. For some audiences and locations, more modern media is available reaching a broader audience such as the website. TLMD will work with various stakeholders to find the most effective and low-cost solutions. This change to MCA will implement Red Tape Relief Initiative.

## Conservation and Resource Development Division

1. Consolidate Flathead Basin Commission and Upper Columbia Conservation Commission creating the Western Montana Conservation Commission

**Issue:** There are over 150 Commissions, Councils, and Boards administratively attached to the 20 agencies within the state government structure. Administration of Governor and Agency appointments to these commissions represents a massive workload that can be reduced by consolidation of entities with similar missions, duties, and geographic scale.

The Flathead Basin Commission and Upper Columbia Conservation Commission share the same state (DNRC) staff and work toward conservation priorities focused on protection of aquatic resources. There is sufficient geographical overlap between the two commissions that makes this consolidated commission possible and beneficial to the natural resources and economic vitality of the Upper Columbia Basin.

**Proposal:** Combine the Flathead Basin Commission and Upper Columbia Conservation Commission into a single Western Montana Conservation Commission using the broad natural resource mission of FBC and the geographical scope of the Upper Columbia Conservation Commission. Reduce the number of appointed Commissioners to a total of 15 voting members from the 14 identified under 2-15-3310 MCA (Upper Columbia Conservation Commission), and 15 identified under 2-15-3330 (Flathead Basin Commission). Require participation of natural resource agency staff with sufficient knowledge and position responsibilities/authorities to inform natural resource decisions affecting the commission's purpose. Provide for rulemaking authority.

2. Clarify Range Improvement Loan Program application process, allow interest to be earned on RILP State Special Revenue Account

**Issue:** The Act detailing the Rangeland Improvement Loan Program at requires applications to be reviewed and ranked by "...conservation district supervisors...". This has been taken to mean the conservation district supervisors where the project occurs and loan applications are reviewed and approved at conservation districts monthly meetings. However, the Rangeland Resources Committee at 2-15-3305, MCA also has among its membership three (3) conservation district supervisors and the Rangeland Improvement Loan program occurs under the Rangeland Resources chapter in statute and provide for review and ranking. The dual review and ranking add additional time to process loan applications for the private operations that seek financing for projects.

**Proposal:** This bill seeks to clarify that the Rangeland Resources Committee (only) provides for the review and ranking of RILP loan applications for the department. Also, the Rangeland Improvement Loan state special revenue account at 17-2-102 is not invested to earn interest, it should be.

3. Improve Irrigation District financing laws

**Issue:** Current law only allows *private irrigation projects* to access the irrigation loan program at 85-1-617(5), MCA. There are Irrigation districts that are public entities (Special Districts) and cannot access the irrigation loan program.

**Proposal:** This legislation would open the loan program to Irrigation Districts as qualifying entities. The Irrigation Districts would need to demonstrate ability to repay the loan just as private irrigation projects do.

4. Repeal Coalbed Methane Statute(s)

**Issue:** The coal bed methane protection program was established to compensate private landowners or water right holders for damage caused by coal bed methane development. All funds from the Coalbed Methane Protection State Special Revenue Account have been appropriated, however, since the program was not repealed, the transfer could not be completed.

**Proposal:** Repeal the Coalbed Methane Protection Act at 76-15-901, MCA. This will allow the appropriation made by the 67<sup>th</sup> legislature from the Coalbed Methane State Special Revenue Account to be completed.

5. Exempt certain DNRC Grants from Environmental Review

**Issue:** In the 2023 biennium the combined state and federal appropriation to DNRC's Conservation and Resource Development Division (CARDD) grant programs increased by an order of magnitude, from tens of millions of dollars to hundreds of millions of dollars. At the same time, CARDD fully implemented a rigorous MEPA program to assure the act was being followed. This included rulemaking to identify categorical exclusions, actions

of a special nature, and programmatic environmental assessments to minimize the resultant workload to our expanded MEPA program. CARDD finds that many more of its grant programs have the types of grants that would qualify for categorical exclusion or could be defined as actions of a special nature. However, even though some of CARDDs grants have been addressed with categorical exclusions, and more yet could use the tools of rulemaking to minimize the workload of environmental review, each individual grant that qualifies for Categorical Exclusion or an Action of a Special Nature still has a perfunctory step in the MEPA process requiring determination, noticing, approval, and publication. With CARDD's many hundreds of grants, these can be identified for exclusion under the MEPA statute, thus eliminating hundreds of daily exclusion routines.

**Proposal:** Identify the grants within CARDD that routinely qualify as categorical exclusions, actions of a special nature, or that may be covered under a programmatic environmental assessment and exclude them from MEPA.

### **Director's Office**

1. Generally Revise Dates for Transfers

**Issue:** The current statute language in 15-38-301, 76-15-106, 80-7-1016 and 85-2-280, MCA, direct the date for fund transfers to occur "On July 1." Because the July 1<sup>st</sup> date precedes the date fiscal year processing is completed each year (around the third or fourth week in July), the department is unable to accurately determine the ending unencumbered cash balances in the accounts. As a result, the department is unable to comply with law as it is written.

**Proposal:** Revise the date for transfers to occur from "On July 1" to "By August 15" in the following MCA: 15-38-301, 76-15-106, 80-7-1016 and 85-2-280. The new date of "By August 15" provides sufficient time to complete fiscal year processing and calculate accurate transfer amounts.

### **Water Resources Division**

1. Direct hire contractors for water projects

**Issue:** In 2017, DOA revised their limits on professional services from \$20,000 to \$50,000 to be able to directly negotiate for professional services (Architects, Engineers, and Land Surveyors). Title 85 was not revised to be consistent (85-1-219).

**Proposal:** To Title 85 limits for direct solicitation for water projects. Increase the dollar limits to direct hire contractors from \$20,000 to \$50,000, to align with the changes to similar language in Title 18.

2. Blackfeet Mitigation (Fund 02305)

**Issue:** 85-20-1504 has language to disperse the interest and income on the escrow, but not the existing cash.

**Proposal:** DNRC wants to expand the statutory appropriation language in that section of law so that we can disperse the cash.

3. Post-final decree system of judicial administration of water rights

**Issue:** There is a need to clearly define the roles of judicial administration of water rights to ensure a smooth transition to post-adjudication water management.

**Proposal:** Stakeholder Working Group associated with the Comprehensive Water Review has a proposal for the continuation of the Water Court.

4. Water Rights Permits and Change Process

**Issue:** Currently the DNRC Water Permit and Change Process is inefficient, does not provide certainty to applicants, and is not timely.

**Proposal:** Stakeholder Working Group associated with the Comprehensive Water Review has a proposal to decrease the processing timelines from 360 days to a minimum of 105 days and provide information and technical analyses to the applicant earlier on in the process for more certainty for the applicant.