

# Montana Water Use Act

## - *Things to Consider*



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# OVERVIEW

- What is the Montana Water Use Act?
- Select history of conservation and water rights
- Floodplain management
- Things to consider when developing and implementing passive restoration projects...



# MONTANA WATER USE ACT

- Provisions of Title 85, Chapter 2, MCA (1973)
- All water rights existing prior to July 1, 1973, are to be finalized through a statewide adjudication process in state courts.
- A permit system, administered by DNRC, was established for obtaining water rights for new water developments post 1973.
- An authorization system was established for changing existing water rights.

# MONTANA WATER USE ACT

## DEFINITIONS

- **Appropriate:** to divert, impound, or withdraw ...a quantity of water for a beneficial use. (MCA)
- **Beneficial Use:** a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; or a use of water for aquifer recharge or mitigation; or a use of water for an aquifer storage and recovery project as provided in 85-2-368. (MCA)
- **Legal Availability:** the physical availability of water, minus legal water demands on a given source.
- **Consumptive Use:** the annual volume of water used for a beneficial purpose, such as water transpired by growing vegetation, evaporated from soils or water surfaces, or incorporated into products that does not return to ground or surface water. (ARM)
- **Impoundment or Dam:** an artificial barrier created by human-made means designed to form a basin to hold water and create a pond or reservoir (generally >0.1 acre-foot). (ARM)

# MONTANA WATER USE ACT

## NEW SURFACE WATER PERMITS

A person or organization must apply for and receive a permit to appropriate water before beginning to construct diversion works or diverting water from a surface water source. The applicant for a permit must provide the following evidence:

- the physical availability of water at the point of diversion during the requested period of diversion;
- the legal demands on the source;
- the effects of the proposed use on existing water rights;
- an analysis of the effects of existing water rights on the water supply within the source;
- an explanation of how the requested flow rate and volume was determined and that the amounts are the amounts necessary for the beneficial use.

# MONTANA WATER USE ACT

## BASIN CLOSURES

Due to the over appropriation of physically available surface water resources, some basins or sub-basins have been closed to most new appropriations by legislative directives, administrative actions by DNRC, and compact stipulations.

As such, a change in use of an existing water right is often the only means of developing “new” appropriations of water in a closed basin.



# MONTANA WATER USE ACT

## BASIN CLOSURES - EXAMPLES

### Upper Clark Fork Basin

- Exempt groundwater developments (<10 acre-feet)
- Groundwater permits with a mitigation plan
- Applications for a permit to appropriate surface water to conduct aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977
- Applications to store water, when legally available

### Upper Missouri Basin

- Limited groundwater developments (see above)
- Non-consumptive uses of water
- Applications to store water during high spring flows

# WATER RIGHTS AND CONSERVATION

- Conjunctive management of water (e.g. HB 831, 2007)
- Water rights for instream flow and wetland protection
- Stream restoration generally does not require a water right, so long as water is not appropriated for a beneficial use...
- Conservation and efficiency can mean different things, especially in regards to considerations of scale **and** between different interest groups.
- Recent legislative bills regarding naturally occurring beaver dams
- 2015 MT State Water Plan (DNRC Water Management Bureau)
- **DNRC Water Rights Bureau is currently formulating guidelines in regards to passive restoration and natural storage of the state's water resources, pursuant to existing laws and rules.**

# FLOODPLAIN MANAGEMENT

- Geomorphic concepts vs. floodplain regulations (FEMA)
- Local administration
- Floodplain mapping
- Changing / correcting Maps
- Floodplain permitting



# THINGS TO CONSIDER...

*Does my project need a water right?*

- Impoundments of water >0.1 acre-feet
- Does the project put water to a beneficial use?
- Consumptive use of water, especially in closed basins
- Potential calls for water by senior water right holders
- Incremental approaches to project development
- Floodplain permitting
- Talk to DNRC early and often!
- Don't use the word "dam"!!



# Questions?



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