

RULEMAKING TO IMPLEMENT HB 685: FEASIBILITY ALLOWANCES UNDER NONDEGRADATION POLICY



Water Pollution Control Advisory Council

January 29, 2026

Presented by:

Katie Makarowski, Water Quality Standards and Modeling Section



PRESENTATION SUMMARY

1. Background

2. Overview of rulemaking package

Share proposed administrative rule amendments with the Water Pollution Control Advisory Council at least 30 days prior to the first publication to comment on the proposed action (75-5-307(1), MCA)

3. Rulemaking Timeline

4. Questions, Comments





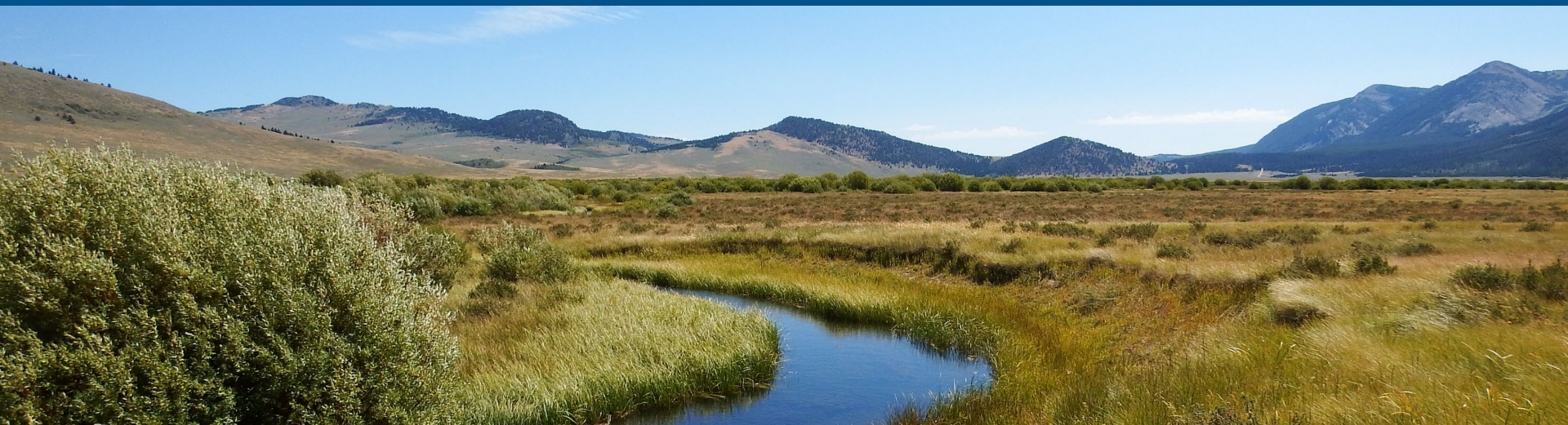
BACKGROUND

HOUSE BILL 685

Passed by 69th Montana Legislature in 2025

Provides for feasibility allowances under the Nondegradation Policy

Final bill text is available at www.legmt.gov
(bill sponsor: Representative Steve Fitzpatrick)



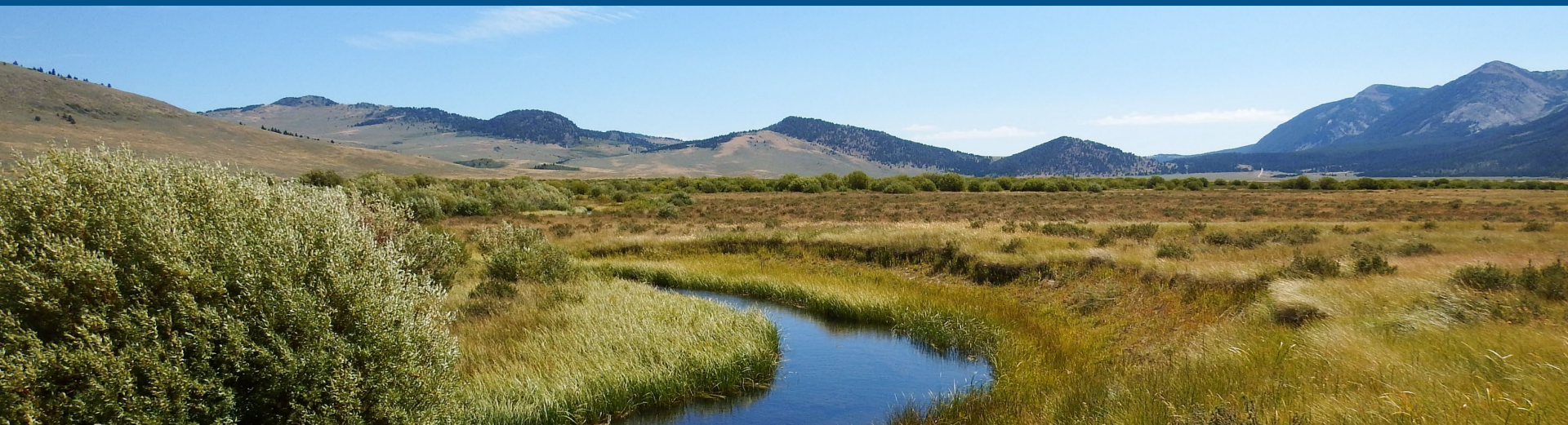
NONDEGRADATION POLICY & RULES

Nondegradation is a core component of water quality standards.

Provides a framework for maintaining and protecting water quality that has already been achieved.

Three tiers of protections:

- 1) existing uses
- 2) **high-quality waters**
- 3) outstanding resource waters



HOUSE BILL 685

Changed the terminology used to describe authorizations issued by the department to lower the quality of high-quality waters from “authorizations to degrade” to “feasibility allowances”

Removed the requirement that feasibility allowance applicants affirmatively demonstrate to the department that the proposed activity’s economic or social benefit exceeds the costs to society of allowing degradation.

Added language that a feasibility allowance applicant must affirmatively demonstrate that a proposed project will result in important economic or social development “in the area that the high-quality waters are located.”

HOUSE BILL 685

Directed the department to amend ARM 17.30.707 and ARM 17.30.708

Amendments to ARM 17.30.201 and ARM 17.30.706 are also necessary to implement the directives of HB 685





OVERVIEW OF RULEMAKING PACKAGE

AMEND

ARM 17.30.201 PERMIT APPLICATION, DEGRADATION AUTHORIZATION, AND ANNUAL PERMIT FEES

Overview of change

- Replace the term “authorizations to degrade” with the term “feasibility allowances”

Reason

- To add references to feasibility allowances to comply with HB 685
(HB 685 changed terminology used in several statutes to describe authorizations issued by the department to lower the quality of high-quality state waters from “authorizations to degrade” to “feasibility allowances.”)



AMEND

ARM 17.30.706 INFORMATIONAL REQUIREMENTS FOR NONDEGRADATION SIGNIFICANCE/AUTHORIZATION REVIEW

Overview of change

- Replace the term “authorizations to degrade” with “feasibility allowances”
- Amend (8) to add “in the area that the high-quality waters are located” and remove “that exceeds the costs to society of allowing the proposed change in water quality”

Reason

- To add references to feasibility allowances to comply with HB 685
- To reflect the addition of “in the area that the high-quality waters are located” at 75-5-303(3)(b), MCA, by HB 685
- To reflect the removal of “that exceeds the costs to society of allowing the proposed change in water quality” at 75-5-303(3)(b), MCA, by HB 685



AMEND

ARM 17.30.707 DEPARTMENT PROCEDURES FOR NONDEGRADATION REVIEW

Overview of change

- Replace the term “authorizations to degrade” with “feasibility allowances”
- Amend (4)(a) to add “in the area that the high-quality waters are located” and remove “that exceeds the benefit to society of maintaining existing high-quality waters and exceeds the costs to society of allowing degradation of high-quality waters” and “which outweighs any costs to society of allowing the proposed change in water quality”
- Amend (4)(b) to change “must” to “may” weigh “the social and economic importance to the public of allowing the proposed project... against the cost to society associated with a lowering of water quality”

Reason

- To add references to feasibility allowances to comply with HB 685
- To reflect the addition of “in the area that the high-quality waters are located” and removal of “that exceeds the costs to society of allowing the proposed change in water quality” at 75-5-303(3)(b), MCA, by HB 685
- To more closely align with language remaining at 75-5-301(5)(b)(ii), MCA, to establish criteria for “weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality.”

AMEND

ARM 17.30.708 DEPARTMENT PROCEDURES FOR ISSUING PRELIMINARY AND FINAL DECISIONS REGARDING AUTHORIZATIONS TO DEGRADE

Overview of change

- Replace the term “authorizations to degrade” with “feasibility allowances”
- Amend 2(b) to add “in the area that the high-quality waters are located”

Reason

- To add references to feasibility allowances to comply with HB 685
- To reflect the addition of “in the area that the high-quality waters are located” at 75-5-303(3)(b), MCA, by HB 685





RULEMAKING TIMELINE

RULEMAKING TIMELINE

2025 - Conceptual review and initial drafting

January 20, 2026 - Provide materials to WPCAC

January 29, 2026 - Rulemaking presentation to WPCAC

March 3, 2026 - File proposal notice with SOS

March 6, 2026 - Proposal notice published in MAR

March 6 – April 21, 2026 - Public Comment Period

April 21, 2026 - Public Hearing

Respond to comments; modify adoption notice

August 5, 2026 - File adoption notice with SOS

August 7, 2026 - Adoption notice published in MAR

* Dates subject to change

WPCAC = Water Pollution
Control Advisory Council

SOS = Secretary of State

MAR = Montana

Administrative Record



THANK YOU!

KATIE MAKAROWSKI

kmkarowski@mt.gov

(406) 444-3639