



# MONTANA FISH, WILDLIFE & PARKS

## COMMERCIAL FISH POND LICENSE APPLICATION

\$10.00 Application Fee & Annual Renewal Fee

(Individuals applying for a new Commercial Fish Pond License should use this form.)

*Revised May 2009*

A Commercial Fish Pond License entitles the holder to sell live fish or gametes within Montana. In addition to the license in order to sell live fish or gametes the applicant must obtain an annual Fish Health Certificate from FWP. An annual report of all fish/gamete transactions is required annually along with a \$500 Corporate Surety Bond. The License must be renewed annually, renewal fee is \$10.

### Applicant:

Owner's Name (*Print*) \_\_\_\_\_

ALS# or Date of Birth \_\_\_\_\_

Co-Owners \_\_\_\_\_

Business Name \_\_\_\_\_

Email Address \_\_\_\_\_

Mailing Address \_\_\_\_\_

City / State / Zip \_\_\_\_\_

Phone Number \_\_\_\_\_

FWP receives requests for mailing lists. Do you want your name included on lists provided by FWP to requestors?

Yes: \_\_\_\_\_ No: \_\_\_\_\_

### Location and Ownership Information

Legal Description of Pond or Facility Location T \_\_\_\_\_ R \_\_\_\_\_ Sec \_\_\_\_\_

County \_\_\_\_\_ FWP Region \_\_\_\_\_

Has this pond or facility previously been licensed by FWP? \_\_\_\_\_

If previously licensed, list name of licensee or license number. \_\_\_\_\_

Do you own or lease the land? \_\_\_\_\_

Attach a copy of a U.S. Geological Survey topographic map showing the exact location of this pond. No aerial photos.

**Facility Description:**

Has this pond or facility already been constructed? \_\_\_\_\_

Water source: \_\_\_\_\_

Are fish present in this pond or facility? \_\_\_\_\_ Species: \_\_\_\_\_

Are any fish pathogens or parasites known to occur in this facility or the water source? \_\_\_\_\_

If yes, explain: \_\_\_\_\_

On a separate sheet of paper or the back of this application, provide a description of this facility (number of ponds, tanks, etc.) including a map and detailed directions to the facility. Please put your name at the top of the separate sheet of paper.

**Fish Species Information:**

Species Requested: \_\_\_\_\_

Proposed Source of Fish: \_\_\_\_\_

*Fish maybe obtained from any legal source. No fish or fish eggs may be imported into Montana without an import permit issued by FWP.*

Proposed Use of Fish: \_\_\_\_\_

**General Information:**

Pond Information: Has pond been constructed? No \_\_\_\_\_ Yes \_\_\_\_\_

Was this pond created by artificial means? No \_\_\_\_\_ Yes \_\_\_\_\_

How was it constructed? Dam \_\_\_\_\_ Excavated \_\_\_\_\_ Diversion \_\_\_\_\_

Other \_\_\_\_\_ Describe: \_\_\_\_\_

Pond surface area: \_\_\_\_\_ (acres)

Ponds larger than 500 acres cannot be licensed and your application will be denied.

Are there Inlets: Yes: \_\_\_\_\_ No: \_\_\_\_\_

Describe water source and method of delivery to pond:

Are there outlets: Yes: \_\_\_\_\_ No: \_\_\_\_\_

Describe where outlet water drains: \_\_\_\_\_

Is this an instream pond? Yes: \_\_\_\_\_ No: \_\_\_\_\_

If yes, does any tributary spring or stream support game fish or species of special concern? Yes \_\_\_\_\_ No \_\_\_\_\_

Please provide documentation verifying that game fish or species of special concern do not occur in the tributary, spring or stream that this instream pond is on and that this pond does not pose an unacceptable risk to game fish or fish species of special concern in adjacent waters. Verification must be in the form of a formal report from an FWP-approved professional fisheries consultant, or other reliable data and documentation (FWP survey/inventory data, university studies, scientific journal articles).

If an instream pond, describe stream flow:      None \_\_\_\_\_      Dry \_\_\_\_\_      Intermittent \_\_\_\_\_      Perennial \_\_\_\_\_

**Water Rights**

If you already have a water right for the pond, you must attach a General Abstract (available from DNRC, see examples provided) that includes the reservoir record for the pond. Contact DNRC if your right does not include a reservoir record.

If your water right for this pond does not include a "fishery" or "fish and wildlife" purpose and the water right priority date is January 1, 2000 or more recent, you must apply to add a Fish & Wildlife purpose to your water right (DNRC 606 Form). A "fishery" or "fish and wildlife" purpose is not necessary for ponds with priority dates prior to January 1, 2000.

- \_\_\_\_\_ **600 Form for surface water – DNRC permit must be attached.**
- \_\_\_\_\_ **602 Form for groundwater – APPLICATION STAMPED AS RECEIVED BY DNRC OR GROUNDWATER CERTIFICATE MUST BE ATTACHED.**
- \_\_\_\_\_ **606 Form to add a place of storage to a current water right. DNRC AUTHORIZATION TO CHANGE MUST BE ATTACHED.**

FWP will not issue a fish stocking permit for impoundments created with the 1981 stockwater pond exception (MCA 85-2-306(6)) if the stockwater exception was issued after Dec 31, 1999. This exception was created for stock-only reservoirs. Persons desiring ponds for fish should apply to add a fisheries purpose to the stockwater right.

**Certification:**

I certify that I am the owner or legal leasee of the property on which this pond or facility is located and have secured, applied for or am exempt from all other necessary permits and water rights for this pond.

\_\_\_\_\_  
**Signature of Applicant Date**

\_\_\_\_\_  
**Date**

Send completed application with all attachments to the Regional Fisheries Manager at the Montana Fish, Wildlife and Parks Regional Office in the FWP region in which this pond or facility is located. Upon approval of your application, you must furnish a \$500 corporate surety bond to FWP pursuant to MCA 87.

**\*\*\*\*\* STOP \*\*\*\*\***

**BEFORE MAILING YOUR APPLICATION**

**Please check that all required attachments are included with your completed application:**

- U.S.G.S. topographic map with pond location identified. An 8 ½"x11" photocopy of the area with the pond is acceptable.
- Directions and road map to pond site with local address and phone number.
- Lease agreement unless you own the property on which the pond is located.
- Copy of general abstract for the pond water right or copy of water right permit or change application is acceptable. Water rights for irrigation, livestock and/or domestic use will not be accepted without a reservoir record.
- For instream (on stream) ponds: verification of presence/absence of fish species of concern in tributaries to the pond and adjacent waters.
- \$10.00 Application fee.

**Private pond applications without all required information will be returned to you.**

## PRIVATE FISH POND PERMITTING

Based on state law first passed in 1945, Montana Fish, Wildlife & Parks (FWP) administers private fish pond licensing. Regulations are intended to allow the stocking of private fish ponds while ensuring that public resources are not adversely affected by unwanted fish, fish diseases, that nuisance aquatic species are not planted into ponds where they can escape or be introduced into state waters, and that habitat of wild fish is not harmed. Most of Montana's streams support wild fish without artificial stocking, and the introduction of unwanted fish species or the diversion of water for artificial ponds could potentially impact the natural ecological balance.

Many streams suffer from de-watering by consumptive water uses that have been legal in Montana for over 100 years. Additional water withdrawals can compound an already serious problem for wild fish and their habitat. Pond builders should be aware of and be sensitive to the fact that water withdrawals for new fish ponds may negatively impact downstream public resources including wild fish. All private fish ponds consume some water. Every effort should be made to eliminate or minimize the use of stream surface water or alluvial groundwater for ponds.

Following is a brief overview of the private fish pond permitting process:

1. Obtain a private pond application from the internet at [fwp.mt.gov](http://fwp.mt.gov) or the nearest FWP office. If applying for a commercial fish pond license, obtain the commercial pond license application from the same site or location. Any additional questions should be directed to your Regional Fisheries Manager.
2. A private fish pond permit applicant must have a water right appropriate for the size and location of the pond. For existing ponds, the applicant's General Abstract from DNRC must include a "Reservoir Record" that is consistent with the size and location of the pond (see Abstract examples).
  - For existing ponds that have a valid Reservoir Record and a priority date prior to January 1, 2000 a private pond permit can be issued without a specific "fishery" or "fish and wildlife" purpose for the water body included in the water right.
  - For ponds with a water right priority date of January 1, 2000 or later, the water right must include a "fishery" or "fish and wildlife" purpose to obtain a fish pond permit.
  - Any impoundment created via the "stockwater exemption" in the Water Use Act (85-2-306(3), MCA) must obtain a new water right for fishery purposes if the stockwater exception was issued January 1, 2000 or later.
3. Most private ponds will require acquisition of water rights through application with the state Department of Natural Resources and Conservation (DNRC), 406-444-6610. One of three applications may be required:
  - a. **Beneficial Water Use, Form 600 – THE WATER RIGHT MUST BE ISSUED BY DNRC BEFORE FWP WILL ISSUE A FISH STOCKING PERMIT.**
    - required if your proposed pond impounds surface water or impounds more than 10 acre-feet of groundwater
    - required if you have a diverted spring or well flow rate into the pond that exceeds 35 gpm or the appropriated volume exceeds 10 acre-feet

**b. Notice of Completion of Groundwater Development, Form 602 – THE FORM MUST BE STAMPED AS RECEIVED BY DNRC OR THE GROUNDWATER CERTIFICATE ISSUED BEFORE FWP WILL ISSUE A FISH STOCKING PERMIT.**

- required if your pond is a groundwater pit with a capacity of less than 10-acre feet
- any use of groundwater less than 10 acre-feet requires a DNRC 602 Form

**c. Application to Change a Water Right– THE CHANGE IN WATER RIGHT MUST BE AUTHORIZED BY DNRC BEFORE FWP WILL A ISSUE FISH STOCKING PERMIT.**

- Required to add a place of storage or a purpose of use (See “Water Rights in Montana” a booklet available from DNRC)

4. FWP cannot issue fish stocking permits until it is certain that legal water rights exist (if needed) for the pond or reservoir. It may take up to 210 days or longer for DNRC to process a correct and complete water right application, and be advised that FWP may file an objection to a requested water right if it is determined that the withdrawal will pose an unacceptable risk to fish in adjacent public/state waters. Please contact DNRC and your local County Conservation District before you begin any construction on your pond. It is recommended that you submit your fish pond application to FWP after you have completed your water right permitting process.
5. Ponds will not be permitted to stock fish if they are likely to flood or if they pose an unacceptable risk to game fish or species of special concern.
6. On stream ponds will not be permitted unless it can be demonstrated that there is no threat to game fish or species of special concern in adjacent waters. You must provide documentation verifying that game fish or species of special concern do not occur in the tributary, spring or stream for your instream (on stream) pond, and that your pond does not pose an unacceptable risk to game fish or species of special concern in adjacent waters. Verification must be in the form of a formal report from an FWP-approved professional fisheries consultant (contact FWP for a current list), or other reliable data and documentation (FWP survey/inventory data, university studies, scientific journal articles). A list of game fish and species of special concern is attached for your information.
7. Submit your completed pond application and all necessary attachments to the regional FWP office. Allow a minimum of 6-8 weeks for processing your application. FWP is required by law to prepare an environmental assessment (EA) of any proposal to introduce fish into a pond and must provide a minimum 14-day public comment period on potentially controversial proposals or proposals which may have impacts that require mitigation. At least one site visit is necessary as part of the EA process.
8. The FWP regional office will contact you to conduct a pond inspection as part of the environmental assessment process and to ensure that the pond is properly screened to prevent fish from entering or escaping the pond. This inspection is conducted after completion of all pond construction activities and filling of the pond with water.
9. The Regional FWP office issues private fish pond permits.
10. Commercial fish pond licenses are issued through the FWP headquarters office in Helena, following review of the application by the FWP Fish Health Committee. However, applicants for commercial fish pond licenses must follow the same procedure

as for a private fish pond license application. Applications for commercial fish ponds must be submitted to the FWP office in the region in which the pond is located.

11. Only approved species of fish may be stocked in the pond. Fish may not be stocked until a private pond permit is issued. Only fish species approved and obtained from a lawful source may be stocked. Pond owners are responsible for obtaining the required import permits to obtain fish from out-of-state sources.

Normally, fish approved for stocking will be limited to those species presently occurring in the drainage. In some instances applications to stock ponds with fish will be denied, and in other cases there may be special restrictions to protect native or sport fish species in an area. Only species that will not pose a threat to any threatened or endangered species, or species of special concern will be approved. To reduce the potential for introduction of fish diseases and exotic aquatic nuisance species, FWP encourages pond owners to obtain fish for their ponds from private fish hatcheries in Montana. An import permit is required of a pond owner to bring fish into Montana from another state.

Because FWP is funded by general license dollars, department biologists cannot provide technical assistance to private pond owners unless free public access is provided. There are private fisheries consultants who can provide any necessary technical assistance. Contact FWP headquarters (444-2449) for more information and a list of possible consultants.

Submit a completed application form, along with all required attachments to the Fisheries Manager in your region. Tentative approval may be provided before pond construction is completed. A permit will not be issued for any pond prior to final inspection and determination that the pond is in compliance with permit conditions. The statutes regarding private fish ponds are included for your information. Please remember that it is our responsibility to protect Montana's valuable public fisheries. We appreciate your cooperation in this permitting process.

## FWP ADMINISTRATIVE REGIONS

### STATE HEADQUARTERS

MT Fish, Wildlife & Parks  
1420 East 6th Avenue  
PO Box 200701  
Helena, MT 59620-0701  
406-444-2449

TELEPHONE DEVICE  
FOR THE DEAF  
406-444-1200

### REGION 1

490 North Meridian Rd  
Kalispell, MT 59901  
406-752-5501

### REGION 2

3201 Spurgin Rd  
Missoula, MT 59804  
406-542-5500

### BUTTE Area Res Office (BARO)

1820 Meadowlark Ln  
Butte, MT 59701  
406-494-1953

### REGION 3

1400 South 19th  
Bozeman, MT 59718  
406-994-4042

### HELENA Area Res Office (HARO)

930 Custer Ave W  
Helena, MT 59620  
406-495-3260

### REGION 4

4600 Giant Springs Rd  
Great Falls, MT 59405  
406-454-5840

### REGION 5

2300 Lake Elmo Dr  
Billings, MT 59105  
406-247-2940

### LEWISTOWN Area Res Office (LARO)

333 Airport Rd  
Lewistown, MT 59457  
406-538-4658

### REGION 6

1 Airport Rd  
Glasgow, MT 59230  
406-228-3700

### HAVRE Area Res Office (HvARO)

2165 Hwy 2 East  
Havre, MT 59501  
406-265-6177

### REGION 7

352 I-94 Business Loop  
PO Box 1630  
Miles City, MT 59301  
406-234-0900

## Montana Private Fish Pond Laws

**87-4-603. Fish pond license for artificial lake or pond -- records.** (1) A person who owns or lawfully controls an artificial lake or pond or a private fish pond may apply to the director for a fish pond license. The holder of a private fish pond license may stock the fish pond with fish procured from a lawful source. The department may designate the species of fish that may be released in the pond and otherwise condition the license if there is a possibility of fish escaping from the pond into adjacent streams or lakes. The license holder may take fish from the lake or pond in any manner. Before a license holder may sell fish or eggs or fry from the lake or pond, the license holder shall furnish a corporate surety bond to the state for \$500, conditioned to the effect that the license holder will not sell fish or spawn from any of the public waters of this state or violate the conditions of the license and also conditioned to the effect that the license holder will submit an annual report on transactions to the director.

(2) (a) "Artificial lake or pond" or "private fish pond", as used in this section, means a body of water that is:

(i) created by artificial means or by a diversion of water that does not exceed 500 acres in surface area; or

(ii) an instream pond that does not exceed 500 acres with a tributary spring or stream that does not support game fish or fish species of special concern; and

(iii) not determined by the department to pose an unacceptable risk to game fish or fish species of special concern in adjacent waters.

(b) The term does not include all other natural ponds or bodies of water, including streams or rivers and impoundments or reservoirs of or on a natural stream, river, lake, or pond.

(3) An applicant for licensing of an instream private fish pond shall present to the department verification that game fish or fish species of special concern do not occur in the tributary, spring, or stream and that the instream private fish pond does not pose an unacceptable risk to game fish or fish species of special concern in adjacent waters. Verification must be in the form of:

(a) a formal report from a department-approved professional fisheries consultant; or

(b) other reliable data and documentation.

(4) The department may condition the license to require the construction, implementation, and maintenance of measures or devices to prevent fish in an artificial lake or pond from escaping into adjacent waters.

(5) (a) A licensee who sells fish or eggs shall keep accurate records of:

(i) the species and quantities of fish or eggs sold or purchased;

(ii) dates of sales or purchases;

(iii) names of purchasers or sellers; and

(iv) locations to or from which fish or eggs are transferred.

(b) On or before January 31 of each year, a licensee who sells fish or eggs shall file a report with the department, on forms made available by the department, summarizing the records required under subsection (5)(a).

(6) A person who owns or controls an artificial lake or pond may request an inspection by the department to ascertain the presence of disease in fish or the illegal introduction of fish species. Whenever the department has reasonable cause to believe that a fish species in the body of water may have been illegally introduced or may have a disease that may affect fish in another body of water, the department shall notify the landowner or landowner's agent by mail or in person of the intention to enter upon the land and shall enter only after notice has been given to the landowner or agent or after every reasonable effort has been made to notify the landowner and receive permission to enter upon the land. Thereafter, the department may enter upon land under the provisions of this subsection for the purposes of inspecting the pond or the body of water, the species of fish in the pond or the body of water, the presence of disease in a fish species, the construction of any impoundment, dam, or fish barrier, and the physical connection of an artificial lake or pond to an adjacent natural lake, pond, or body of water, including a stream or river. The department is responsible for actual damages to any property.

(7) If the department finds an illegal introduction of fish or the presence of disease in fish in a licensed fish pond, an artificial lake or pond, or a natural lake, pond, or body of water, the department shall consult with the landowner or the landowner's agent to determine the appropriate action unless an emergency

exists. In an emergency situation, the department may order or take appropriate action to address any threat to the state's fisheries resources, including quarantine or destruction of fish, eggs, or the source of a disease. Whenever privately owned fish are destroyed and the private owner is not responsible for an illegal introduction or the introduction of fish with a disease, the department may replace the destroyed fish without charge to the private owner. A landowner or agent who has granted permission for the department to enter is not considered responsible for an illegal introduction of fish or disease unless proved otherwise.

**History:** En. Sec. 14A, Ch. 238, L. 1921; re-en. Sec. 3695, R.C.M. 1921; amd. Sec. 6, Ch. 77, L. 1923; amd. Sec. 1, Ch. 43, L. 1929; re-en. Sec. 3695, R.C.M. 1935; amd. Sec. 1, Ch. 125, L. 1949; amd. Sec. 28, Ch. 511, L. 1973; amd. Sec. 32, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-306; amd. Sec. 9, Ch. 376, L. 1989; amd. Sec. 1, Ch. 425, L. 1995; amd. Sec. 1, Ch. 108, L. 1999.

**87-4-605. Records and report of whitefish sales by fishing license holders.** A holder of a fishing license who catches whitefish for speculative purposes, for market, or for sale shall keep a record and make an annual report to the department of the number of whitefish sold and the date of each sale. The annual report shall be submitted to the appropriate department regional office within 15 days of the end of the license year.

**History:** En. Sec. 2, Ch. 52, L. 1979.

**87-4-606. Term of license -- license not transferable.** (1) A licensee who sells fish or eggs under [87-4-603](#) shall renew the license annually. The license expires on January 31 of the year succeeding the year of issuance. Application for renewal must be made before a license expires. The department shall renew the license if the licensee has not violated any condition upon which the license was granted.

(2) A licensee who does not sell fish or eggs is not required to renew his license. However, a new license is required when a licensee proposes to plant a new species or stock a pond not designated in the original license.

(3) A fish pond license granted under [87-4-603](#) is not transferable.

**History:** En. Sec. 10, Ch. 376, L. 1989.

**87-4-607. Revocation of fish pond license.** (1) A fish pond license may be revoked for failure to operate or use the pond according to the terms or conditions of the license or state statutes, rules, or orders covering importation, transportation, or introduction of fish or eggs.

(2) If the department discovers a violation under this section, it may institute revocation proceedings after providing reasonable notice and opportunity for a hearing to the licensee. After hearing and upon proof of the violation, the department may revoke the fish pond license.

**History:** En. Sec. 11, Ch. 376, L. 1989.



# Fish Species In Montana

<u>Native Species of Special Concern</u>	<u>Native Species</u>	<u>Non-Native Species</u>
<b>Game Fish of Special Concern</b>	<b>Game Fish</b>	<u>Game Fish</u>
Arctic Grayling (Candidate for Listing) Paddlefish Pallid Sturgeon (Endangered) White Sturgeon (Endangered) Bull Trout (Threatened) Westslope Cutthroat Trout Yellowstone Cutthroat Trout Columbia Basin Redband Trout Sauger	Burbot Channel Catfish Northern Pike Shovelnose Sturgeon Lake Trout Mountain Whitefish Pygmy Whitefish	Largemouth Bass Smallmouth Bass Striped Bass Tiger Muskellunge Chinook Salmon Coho Salmon Kokanee Salmon Splake Brook Trout Brown Trout Golden Trout Rainbow Trout Walleye Lake Whitefish
<b>Non-Game Fish of Special Concern</b>	<b>Non-Game Fish</b>	<b>Non-Game Fish</b>
Sicklefin Chub (Candidate for Listing) Sturgeon Chub (Candidate for Listing) Pearl Dace Northern Redbelly X Finescale Dace Shortnose Gar Shorthead Sculpin Spoonhead Sculpin Blue Sucker Trout-Perch	Bigmouth Buffalo Smallmouth Buffalo River Carpsucker Creek Chub Flathead Chub Lake Chub Longnose Dace Northern Redbelly Dace Iowa Darter Freshwater Drum Goldeye Plains Killifish Brassy Minnow Fathead Minnow Plains Minnow Western Silvery Minnow Peamouth Northern Pikeminnow Shorthead Redhorse Mottled Sculpin Slimy Sculpin Torrent Sculpin Emerald Shiner Golden Shiner Redside Shiner Sand Shiner Brook Stickleback Stonecat Longnose Sucker Mountain Sucker White Sucker	Rock Bass White Bass Bluegill Sunfish Black Bullhead Yellow Bullhead Common Carp Grass Carp Utah Chub Cisco Black Crappie White Crappie Goldfish Sailfin Molly Shortfin Molly Mosquitofish Central Mudminnow Red Belly Pacu Yellow Perch Piranha Variable Platyfish Pumpkinseed Gizzard Shad Golden Shiner Spottail Shiner Rainbow Smelt Green Sunfish Green Swordtail

## **DNRC Water Rights Bureau Fish, Wildlife, and Recreation Ponds**

Montana Department of Natural Resources and Conservation  
Water Rights Bureau  
48 North Last Chance Gulch  
P.O. Box 201601  
Helena, MT 59620-1601  
(406) 444-6610  
Fax: (406)444-0533  
<http://www.dnrc.mt.gov/wrd>

### **New Appropriations of Water**

The Montana Water Use Act of 1973 established a permit system for new uses. Any person planning a new or additional development for a beneficial use of water from surface water or groundwater after June 30, 1973, must obtain a Permit to Appropriate Water or file a Notice of Completion of Groundwater Development to get a Certificate of Water Right. The permit system is administered by the DNRC. Beneficial uses of water include domestic, stock, irrigation, lawn and garden, mining, municipal, industrial, commercial, agricultural spraying, fisheries, wildlife, and recreation.

### **Surface Water**

A person must apply for and receive a Permit to Appropriate Water before beginning to construct diversion works or diverting water from a surface water source. Those seeking a permit must plan ahead--the application process takes time to complete. The applicant for a permit must provide the following evidence: the design and operation of the proposed system; water is physically available in the source; the effects of the proposed use on existing water rights; and an analysis of the effects of existing water rights on the water supply within the source.

The exception to this law is for small livestock reservoirs or pits located on non-perennial flowing streams (streams that do not flow continuously year round). If the pit or reservoir will hold less than 15 acre-feet of water with an annual appropriation of less than 30 acre-feet and will be located on a parcel of land 40 acres or larger, construction can begin immediately. Within 60 days of completion, an Application for Provisional Permit for Completed Stockwater Pit or Reservoir, form 605, must be submitted to DNRC. A provisional permit, subject to prior water rights, will then be issued. If the reservoir adversely affects prior water rights, DNRC can revoke the permit or require an applicant to modify the reservoir.

### **Groundwater**

A person does not need to apply for a permit to develop a well or a groundwater spring with an anticipated use of 35 gallons per minute or less, not to exceed 10 acre-feet per year. The first step is to drill the well or develop the spring. A Well Log Report, form 603, is completed by the driller and sent to DNRC within 60 days. A copy is also given to

the well owner. After the development is put to use, the owner submits a Notice of Completion of Groundwater Development, form 602, along with a filing fee to DNRC within 60 days. The priority date of the water right is the date DNRC receives the completed Form 602. DNRC will review the form to ensure that it is correct and complete. A person must have possessory interests in the property where the water right is put to a beneficial use or written notification 30 days prior to the intent to appropriate groundwater. Also, a person must have exclusive property rights in the groundwater development works or written consent from the person with the property rights. A Certificate of Water Right will then be issued to the owner for the specified use.

Anyone anticipating to use more than 35 gallons per minute or 10 acre-feet per year of groundwater is required to obtain a Permit to Appropriate Water before any development begins or water is used. A permit may be required to appropriate groundwater in an area designated as a controlled Groundwater area, depending on the terms of the groundwater area. Contact DNRC for a list of the controlled groundwater areas.

## **Special Groundwater Circumstances**

### Combined Appropriation

When a person combines an appropriation of two or more wells or developed springs from the same source and uses more than 35 gallons per minute or 10 acre-feet per year, a Permit to Appropriate Water is required. A combined appropriation is defined as "an appropriation of groundwater by means of two or more groundwater developments in the same source aquifer that are physically manifold into the same system."

### Appropriations over 3,000 Acre-Feet

A person proposing to appropriate more than 3,000 acre-feet of groundwater per year must receive legislative approval for the specific appropriation. This law does not apply to appropriations for municipal use, public water supplies, or the irrigation of cropland owned and operated by the applicant.

## **How the Permit System Works**

A prospective water user must follow the procedure described below to acquire a water use permit.

### **Step 1 -Application Form**

A potential new water user must first obtain an Application for Beneficial Water Use Permit, form 600. This form requests information describing the intended use, place of use, point of diversion, source of supply, amount of water to be used, diversion facilities, and other particulars of the proposed appropriation. In addition, the applicant must provide evidence that the criteria for issuance of a permit are met. These criteria are outlined in the Criteria Addendum of the application form. An application fee must be submitted with the application. Forms and instructions are available from any county clerk and recorder or water resources regional office.

The applicant must submit information or data showing that the criteria will be met. The applicant may include: stream flow data collected by the U.S. Geological Survey,

U.S.D.A. Natural Resources Conservation Service or use recognized and established estimation methods; actual streamflow measurements; photographs showing water is physically available during months and years of low flow; signed statements acknowledging stream flow conditions; field studies; and hydrologic reports. This information may be developed by the applicant or obtained, if available, from the U.S. Geologic Survey, U.S.D.A. Natural Resources Conservation Service, DNRC, or any other credible source.

Additional criteria must be addressed if the application is for appropriations of 4,000 acre-feet or more and 5.5 cubic feet per second (cfs) or more. If the appropriation is for an out-of-state use, the applicant must also address criteria set out in Section 85-2-311(4), MCA.

### **Criteria for Issuance of a Permit**

#### *Section 85-2-311 (1), MCA*

The applicant for a water use permit to appropriate less than 4,000 acre-feet per year and 5.5 cfs has the initial burden to prove by a preponderance of the evidence that the criteria for issuance of a permit are met. These include:

1. Water is physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate.
2. Water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested.
3. The water rights of a prior appropriator under an existing water right, a certificate, a permit, or state water reservation will not be adversely affected.
4. The proposed means of diversion, construction, and operation of the appropriation works are adequate;
5. The proposed use of water is a beneficial use.
6. The applicant has possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

*If a valid objection pertaining to water quality is received, an applicant must also prove:*

7. The water quality of a prior appropriator will not be adversely affected,
8. The proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1), MCA, or
9. The proposed use will not adversely affect the ability of a discharge permit holder to satisfy effluent limitations in accordance with Title 75, Chapter 5, Part 4.

### **Step 2 – Application Review**

Issues that could affect applications for permits are:

- Any proposed appropriation that may significantly affect the quality of the human environment will require an environmental impact statement (EIS). The purpose of the EIS is to document environmental and human impacts, evaluate

alternatives, and provide for public review and comment. Information developed during the EIS process will aid DNRC in processing the permit. DNRC may assess a fee to the applicant to fund preparation of the EIS, under Section 85-2-124, MCA.

- Any permit to Appropriate Water that DNRC issues is provisional. It is junior to all prior existing water rights and subject to the final Water Court determination or adjudication of those rights. It also is junior to prior DNRC permitted water rights and prior water reservations, except as otherwise provided by law.

### **Step 3 – Project Completion on a Perfected Permit**

Upon receiving the permit, the applicant's next step is to construct the project, divert the water, and put the water to the intended use as outlined in the permit. A Project Completion Notice for Permitted Water Development, form 617, must be submitted to DNRC before the deadline specified in the permit or any authorized extension of time. The permit will be terminated by operation of law if the applicant fails to file a project completion notice by the deadline.

### **Step 4 – Certificate of Water Right**

DNRC will review the project completion notice and determine whether the project was completed in substantial accordance with the permit. DNRC will issue a Certificate of Water Right when:

1. The project has been completed,
2. The water has been used according to the terms of the permit, and
3. The basin in which the permit lies has been adjudicated and the final decree issued.