

From: Abigail St. Lawrence
To: [Mohr, Jason](#)
Cc: [Steve Snezek](#)
Subject: Re: WPIC bill draft on legal availability and change applications
Date: Tuesday, August 21, 2018 12:39:14 PM

Jason-

The issue my clients have had in change applications is not legal availability analysis under 85-2-311, as that's not a criteria that's considered during the change process. The biggest issues are how return flow analysis and general historical use analysis under Admin. R. Mont. 36.12.1902 is applied. Specifically, what is happening is that the water right to be changed has to be proven up in all elements and is not given prima facie status, even if it is an adjudicated right, whereas in determining adverse effect, the potentially impacted rights are assumed to be used at the max allowed in the paper right.

While I hate to get too specific in statute, I propose to take the historical use element out of rule and add it as an additional criteria, including a statement that adjudicated rights are given prima facie status, similar to the status granted to filed claims under 85-2-227. I would also add language under 85-2-402(2)(a) that applicants have the option to demonstrate that potentially adversely impacted rights are different than what appears in the claim file. I'd be happy to work with you on this language in more detail, so please don't hesitate to get in touch. Thanks.

-Abby

PS—I'm copying Steve Snezek with MBIA on this email so that he is in the loop.

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From: "Mohr, Jason" <JasonMohr@mt.gov>
Date: Tuesday, August 7, 2018 at 7:50 AM
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Cc: "Bills, Erin" <Erin.Bills@mt.gov>

Subject: WPIC bill draft on legal availability and change applications

On July 17, the Water Policy Interim Committee voted unanimously to ask interest groups and stakeholders for your ideas concerning bill draft LCw004, "Clarify that legal availability analysis does not determine adverse effects as criteria in a water right change application."

Please send any suggestions (or general comments) you may have to me by Aug. 24. I'll draft as many options as necessary.

Please note that I'm working remotely until Aug. 16, so email is the best way to contact me until then.

Thanks,

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