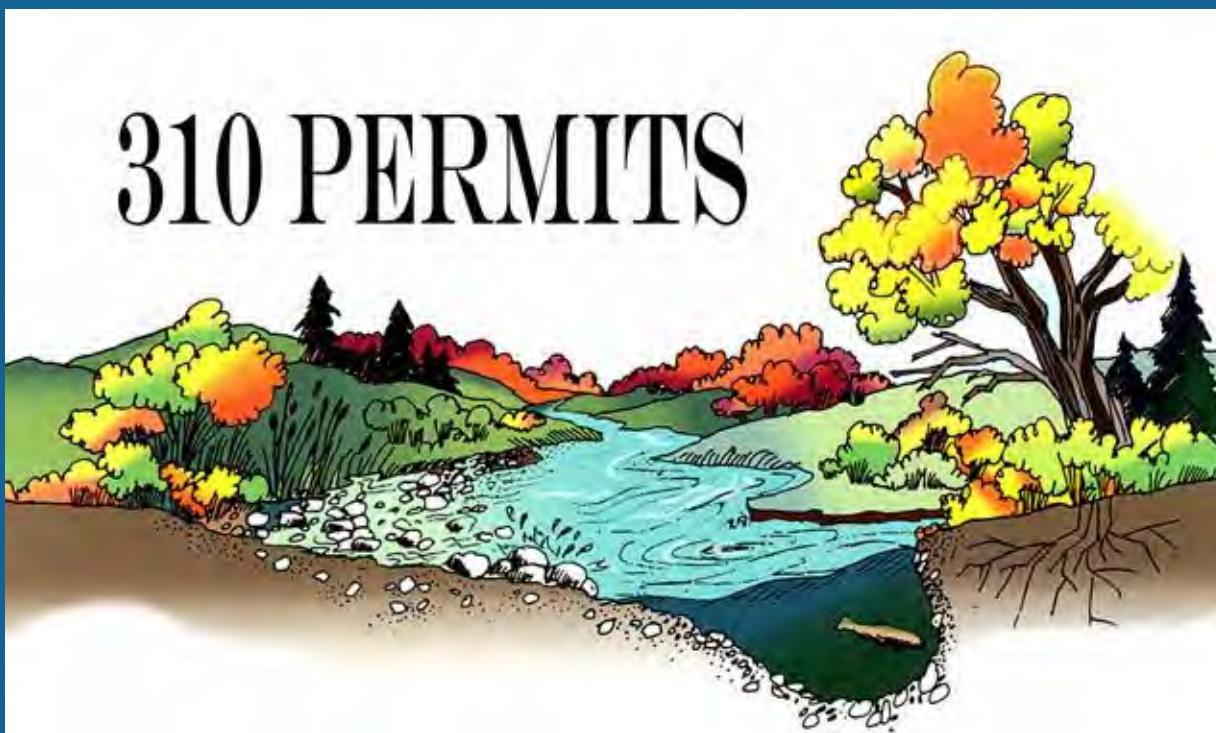


310 PERMITS



Montana's Natural Streambed and Land Preservation Act

So you got a 310
permit
application....

Now What?

Let's Talk Records!

It's important to keep complete and accurate records

Hardcopy files
and
Electronic Files

File Information

Paper File should have

- Permit name
- stream/waterbody name
- name of applicant
- possibly name of FWP biologist and/or supervisor area

Electronic file

- should be named the same
- should be filed by year

File Contents

In the file (paper or electronic)

- Application/Emergency notice/Complaint
- team member report
- any email or mailed correspondence with any of the team members, including applicant
- any notes that pertain to the file
- any correspondence from other permitting agencies
- photographs from the site inspection
- Permit (keep a copy of the original while awaiting signed permit)

310 Procedures

Outlined in:

- The Law-MCA 75-7
- Administrative Rules of Montana
- Local Rules-Each CD finalizes and conducts public hearings, then approves

PURPOSE OF THE LAW

- Protection of streams and land adjacent to them
- Preservation of streams in their natural or existing state
- Minimization of soil erosion except as necessary and appropriate after consideration of all factors

PURPOSE OF THE LAW

- Needs of irrigation and agricultural uses
- Need to protect the use of water for beneficial purposes

APPLICABILITY

Law applies to:

- **Perennial-flowing streams**
- **Perennial streams affected by dewatering or drought**
- **Immediate banks**
- **Non governmental projects**

**What types of
projects require a
310 Permit?**

Channel Changes/Dredging



CULVERTS



BRIDGES



DAMS , RESERVOIRS, PONDS



NEW DIVERSIONS AND DIVERSION MAINTENANCE



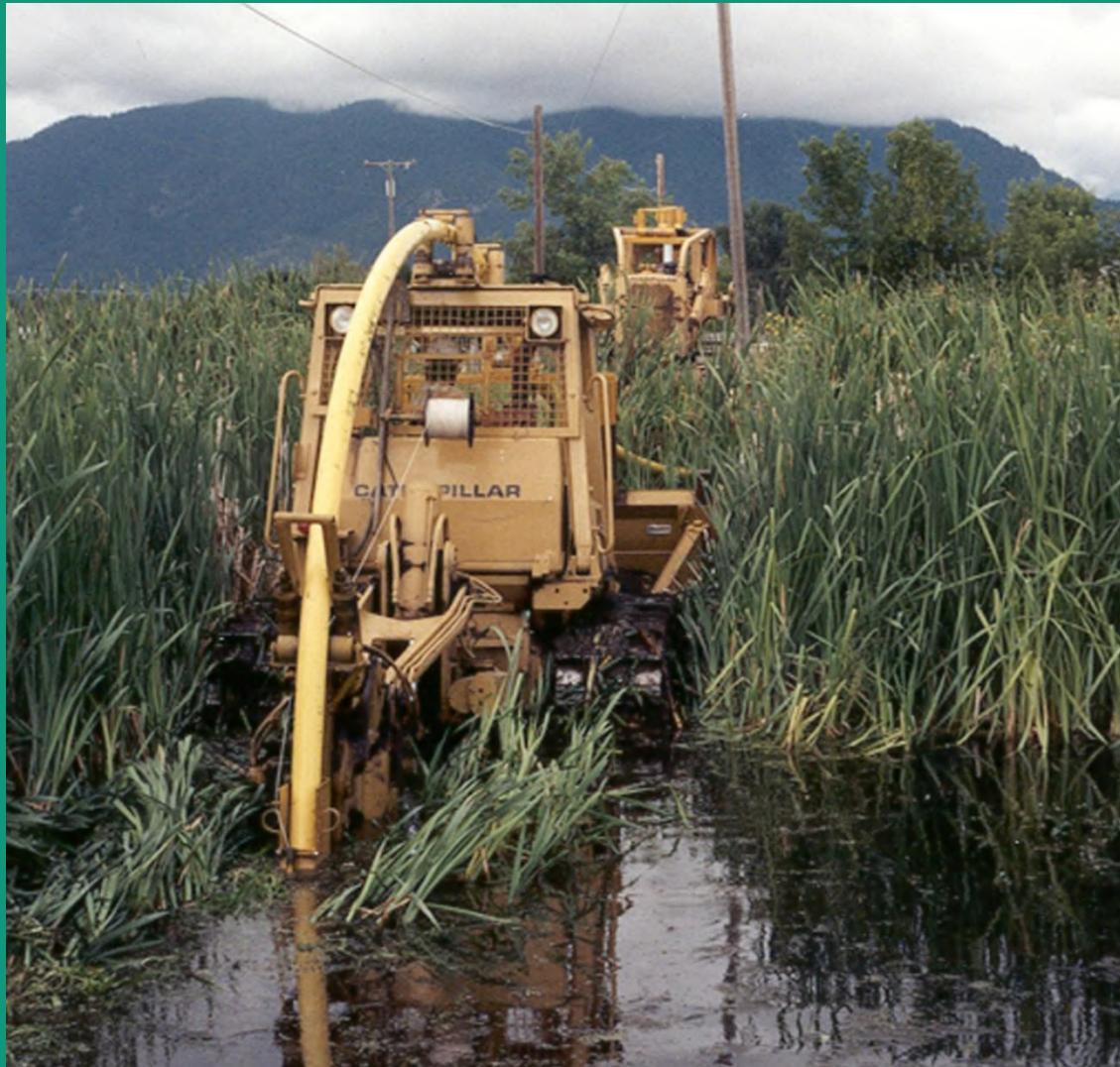
STREAM BANK PROTECTION PROJECTS



FORDS



TRENCHING IN PIPELINES OR OTHER UTILITIES



Boat Ramps / Docks



APPLICATION PROCESS

A complete 310 application includes

- ▶ a plan and/or drawing
- ▶ a site map
- ▶ Signature of applicant and landowner

APPLICATION PROCESS

- **Incomplete applications may be rejected**
- **Applications are reviewed and accepted at district meetings or by an approved staff member**
- **An on-site inspection may be required**

The Form 270-AKA The Joint Application

<small>Revised: 6/5/15 (210 form 270). Form may be downloaded from www.dnrc.mt.gov/licenses-and-permits/stream-permitting</small>	AGENCY USE ONLY: Application # _____ Date Received _____ Date Accepted _____ / Initials _____ Date Forwarded to DFWP _____																																
<i>This space is for all Department of Transportation and SPA 124 permits (government projects).</i> Project Name _____ Control Number _____ Contract letting date _____ MEPA/NEPA Compliance <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, #14 of this application does not apply.																																	
JOINT APPLICATION FOR PROPOSED WORK IN MONTANA'S STREAMS, WETLANDS, FLOODPLAINS, AND OTHER WATER BODIES																																	
<p>Use this form to apply for one or all local, state, or federal permits listed below. The applicant is the responsible party for the project and the point of contact unless otherwise designated. "Information for Applicant" includes agency contacts and instructions for completing this application. To avoid delays, submit all required information, including a project site map and drawings. Incomplete applications will result in the delay of the application process. Other laws may apply.</p> <p>The applicant is responsible for obtaining all necessary permits and landowner permission before beginning work.</p>																																	
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center; width: 10%;">✓</th> <th style="text-align: center; width: 40%;">PERMIT</th> <th style="text-align: center; width: 40%;">AGENCY</th> <th style="text-align: center; width: 20%;">FEE</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>310 Permit</td> <td>Local Conservation District</td> <td>No fee</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>SPA 124 Permit</td> <td>Department of Fish, Wildlife and Parks</td> <td>No fee</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Floodplain Permit</td> <td>Local Floodplain Administrator</td> <td>Varies by city/county (\$25 - \$500+)</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Section 404 Permit, Section 10 Permit</td> <td>U. S. Army Corps of Engineers</td> <td>Varies (\$0 - \$100)</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>318 Authorization</td> <td>Department of Environmental Quality</td> <td>\$250 (318); \$400 - \$20,000 (401)</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>401 Certification</td> <td>Department of Natural Resources and Conservation, Trust Lands Management Division</td> <td>\$50, plus additional fee</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Navigable Rivers Land Use License, Lease, or Easement</td> <td></td> <td></td> </tr> </tbody> </table>		✓	PERMIT	AGENCY	FEE	<input type="checkbox"/>	310 Permit	Local Conservation District	No fee	<input type="checkbox"/>	SPA 124 Permit	Department of Fish, Wildlife and Parks	No fee	<input type="checkbox"/>	Floodplain Permit	Local Floodplain Administrator	Varies by city/county (\$25 - \$500+)	<input type="checkbox"/>	Section 404 Permit, Section 10 Permit	U. S. Army Corps of Engineers	Varies (\$0 - \$100)	<input type="checkbox"/>	318 Authorization	Department of Environmental Quality	\$250 (318); \$400 - \$20,000 (401)	<input type="checkbox"/>	401 Certification	Department of Natural Resources and Conservation, Trust Lands Management Division	\$50, plus additional fee	<input type="checkbox"/>	Navigable Rivers Land Use License, Lease, or Easement		
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A. APPLICANT INFORMATION																																	
NAME OF APPLICANT (person responsible for project): _____																																	
Has the landowner consented to this project? <input type="checkbox"/> Yes <input type="checkbox"/> No																																	
Mailing Address: _____																																	
Physical Address: _____																																	
Day Phone: _____ Evening Phone: _____ E-Mail: _____																																	
NAME OF LANDOWNER (if different from applicant): _____																																	
Mailing Address: _____																																	
Physical Address: _____																																	
Day Phone: _____ Evening Phone: _____ E-Mail: _____																																	
NAME OF CONTRACTOR/AGENT (if one is used): _____																																	
Mailing Address: _____																																	
Physical Address: _____																																	
Day Phone: _____ Evening Phone: _____ E-Mail: _____																																	
B. PROJECT SITE INFORMATION																																	
NAME OF STREAM or WATER BODY at project location Nearest Town _____																																	
Address/Location: _____ Geocode (if available): _____																																	
_____ 1/4 _____ 1/4 _____ 1/4, Section _____, Township _____, Range _____ County _____ Longitude _____, Latitude _____																																	
The state owns the beds of certain state navigable waterways. Is this a state navigable waterway? Yes or No. If yes, send copy of this application to appropriate DNRC land office – see Information for Applicant.																																	

PROCESS

- ▶ CD Receives Application
- ▶ Initially Reviews and Accepts or Rejects
 - ▶ Some CD employees are given that responsibility
 - ▶ The date of receipt and date of acceptance can be different
 - ▶ Can be rejected for lack of information
- ▶ The Clock Starts When Application is Accepted
 - ▶ Notify FWP within 10 days
 - ▶ FWP has 5 days to request an inspection
 - ▶ FWP participation is required, but is advisory to the Board of Supervisors

SITE INSPECTION PROCESS

- ▶ Within 20 days of FWP request, schedule inspection
- ▶ On-site review team consists of
 - ▶ District representative
 - ▶ Montana Fish, Wildlife and Parks representative
 - ▶ Landowner or landowner's representative
- ▶ Any of the parties may waive participation on inspections
- ▶ Members submit Team Report (recommendations) for review at the next district meeting

SITE INSPECTION PROCESS

“We like to think of the site inspection process as a “value added” feature. We come out and talk with landowners about their projects and the potential for impact on the stream.” LCCD Chair, Jeff Ryan



Considerations:

- **Law requires supervisors to determine:**
 - **The purpose of the project**
 - **If the project is reasonable**
 - Law sets forth criteria to determine reasonableness
 - Information gathered on application
 - Team Member Reports has checklists

Following the Site Inspection:

- **15-day waiting period after supervisors decision (permit)-may be waived if all team members agree**
- **A team member may ask for arbitration if they disagree with board's decision (5 days for FWP, 30 for applicant)**
- **They may also choose to take any disagreement to district court**
- **The Applicant has 30 days to appeal the decision**

TO REVIEW:

From acceptance date:

- 10 days to notify FW&P
- 5 days for FWP to respond
- 20 days from FWP request for inspection to have inspection
- Team has 30 days from inspection to make recommendation to CD
- 60 days from acceptance to make decision

DECISION PROCESS

- Within 60 days of application acceptance, the district will:
 - Approve
 - Modify
 - Deny
- 60 day period can be extended to collect further information.

CONSIDERATIONS

Effects:

- On ***soil erosion*** and ***sedimentation***, considering the methods available to complete the project and the nature and economics of the various alternatives
- On *flooding or erosion problems upstream or down*

CONSIDERATIONS, CONTINUED

- On *stream channel alteration*
- On *stream flow, turbidity, and water quality* caused by materials used or by removal of ground cover
- On *fish and aquatic habitat*
- *Reasonable alternatives to reduce disturbance or better accomplish the purpose*

EMERGENCIES

What is emergency activity?

- In the Model Rules, emergency means:
 - Unforeseen event or combination of circumstances that call for immediate action to safeguard life, including human or animal, or property, including growing crops, without giving time for the deliberate exercise of judgment or discretion under the act

EMERGENCIES

- Landowner or operator must notify Conservation District within 15 days

FORM 275-THE EMERGENCY NOTICE

Form 275 (Rev. 2/15/17) (file name 2752017)

Emergency # _____

STATE OF MONTANA
NATURAL STREAMBED AND LAND PRESERVATION ACT
NOTICE OF EMERGENCY
(This is not a permit application)

When emergency action has been taken to safeguard life, property, or crops the following information must be received by the conservation district within 15 days of the activity. **Please note:** The emergency provisions of the 310 Law do not apply to other permits, authorizations, or certifications that may be required for this activity. This notification does not imply landowner permission. The applicant is responsible for acquiring all other authorizations necessary to carry out this work and for obtaining landowner permission.

1. Name of applicant _____
Address _____ Telephone No. _____
City/State/Zip _____ E-mail address _____
2. Name of landowner where activity occurred (if different from applicant): _____
Address _____ Telephone No. _____
City/State/Zip _____ E-mail address _____
3. Location of activity
Stream name _____ County _____
Location _____ Section _____ Township _____ Range _____
Latitude/Longitude, if known _____
4. Date emergency action was taken _____
5. Explanation of emergency causing the need for the actions described above.
(attach additional sheets if necessary)

EMERGENCY PROCESS

Applicant completes Form 275, and returns it to the Conservation District within 15 days following the activity

Within 5 days of determining activity to be a “project”, the CD should forward to FWP

Within 20 days of receipt of the notice of emergency, an on-site inspection is held

Each team member may give recommendations. The board reviews the inspection report and makes a decision. Applicant is notified within 60 days of submitting Form 275

EMERGENCY DECISIONS

TO BE COMPLETED BY CONSERVATION DISTRICT

1. Date notice of emergency received _____
2. Does the action taken meet the definition of a project? _____
- 2a. If no, date person notified _____
- 2b. If yes, date notice sent to Department _____
 3. Team inspection requested. (Must request on site inspection within 20 days of notice.)
Date _____
4. Date of inspection _____
5. Action taken
 - Approved (no further action required by applicant)
 - Modified (applicant must submit form 270 within 90 days to mitigate damages from emergency action)
 - Denied (applicant must submit form 270 within 90 days to remove project)
 - Project does not meet definition of an emergency.
6. Special recommendations or considerations:

VIOLATIONS/COMPLAINTS

A **Violation** of the Act occurs when:

- a) A project is initiated without written consent of the Board of Supervisors;
- b) An entity performs activities outside the scope of written consent of Supervisors;
- c) A person violates emergency procedures or places junk vehicles in the stream.

COMPLAINTS



What is a complaint?

- May be written, or simply phoned in. May or may not be anonymous
- Any person may file a complaint alleging violation of the Act.
- Supervisors or their designated representative shall investigate the complaint to collect evidence such as photos, interviews and correspondence

FORM 274-THE COMPLAINT FORM

Form 274

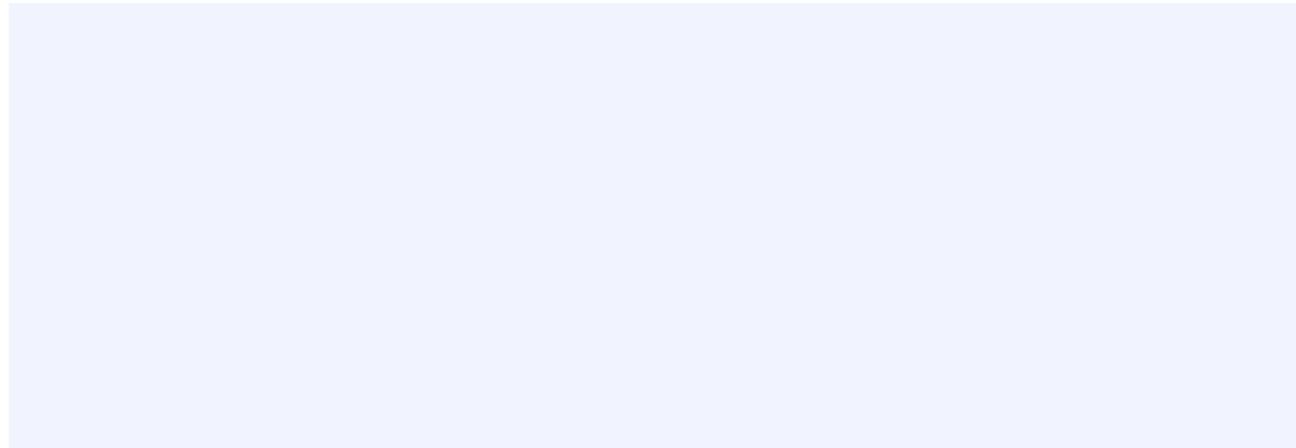
Complaint # _____
Date rec'd _____
Application # _____

STATE OF MONTANA
NATURAL STREAMBED AND LAND PRESERVATION ACT
OFFICIAL COMPLAINT

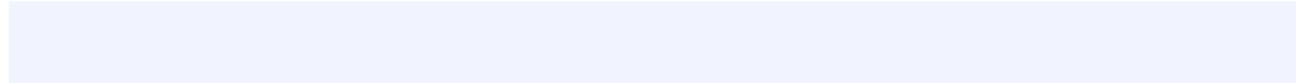
1. Alleged Violator _____
Address _____ City _____
State _____ Zip _____ Phone _____

2. Location of activity: Name of perennial stream _____
_____ Section _____ T _____ R _____

3. Nature of complaint. Please give specific written description of the activity and draw a sketch of the site. Please note any landmarks. Provide photos if available.



4. Verification of alleged violation. Please state whether you have personally viewed the site of the alleged violation, and the date of the viewing. If you have not viewed the site, please state the basis that forms your belief that a alleged violation is occurring.



COMPLAINTS PROCESS

- **Notification to the alleged violator, by mail, certified mail or telephone that a complaint has been received to arrange an inspection of the site. This notification usually includes “cease and desist” wording.**
- **Site inspection is scheduled with FWP, CD and alleged violator**
- **The alleged violator will be notified within 15 days of the decision if it is determined that no violation has occurred.**

The Site Inspection

Some
inspections can
be a little less
fun than
others....



COMPLAINT PROCESS PT.2

- **If attempts at voluntary compliance are unsuccessful, the evidence gathered and all supporting documents can be submitted to the county attorney for enforcement**
- **The county attorney is authorized to enforce the act and may prosecute if action of the individual requires**
- **Optional Enforcement Model can be adopted by CD**

THE DECISION

- A decision on any of these must be made at a board meeting with a quorum
- Meeting must be publicly noticed as per law
- The inspection team, if present, presents their recommendation
- They may also table the permit pending more information
- If the team has requested, the board can waive the 15 day waiting period
- Supervisors sign the Form 273

THE DECISION

- For Applications, board votes to approve, approve with modifications or deny
- For Emergencies, board approves work or requires a permit for follow-up work
- For Complaints, board decides whether activity was a violation or not

WHAT'S NEXT?

- Send the permit to applicant for signature
- Applicant has 15 days to return permit
- Include any modifications
- The permit is not valid until it has been signed and returned to the CD
- Forward a copy of the permit to the FWP for their records
- At this point, if you use the 310 Database, finish entering the information in it

WHAT'S NEXT?

For Emergencies

- a letter outlining the decision of the board should be sent
- If the board determined that a permit application should be filed to mitigate work done, include the application with the letter along with details that the board is requesting be fixed

For Complaints

- A letter detailing the decision of the board and direction moving forward should be mailed to the alleged violator

DISPUTE RESOLUTION

- Arbitration vs. Judicial Review
- Applicant may request arbitration to solve by signing the arbitration agreement before or within 30 days of the decision
- If they sign this agreement, they waive the right to judicial review
- Applicant may request judicial review by filing a petition in the district court within 30 days of receipt of the decision
- Other team members may seek resolution only through arbitration by signing the arbitration agreement within 5 working days of receipt of decision
- Arbitration agreement is outlined on Form 271
- May also be done with a meeting or meetings of the team members and supervisors to attempt resolution

Partner Agencies

- Fish Wildlife and Parks
- Army Corps of Engineers
- Flood Plain Administrators
- DNRC Navigable Rivers
- DEQ

Communication between partners, especially in regard to inspections, is helpful.

**For forms and more
information:**

[http://dnrc.mt.gov/divisions/cardd/
conservation-districts/the-310-law](http://dnrc.mt.gov/divisions/cardd/conservation-districts/the-310-law)

**Contact Jason Garber for more
information-406-444-4340 or
email Jason.garber@mt.gov**