

DEFINITIONS

6. Arbitrary and Capricious

"A decision is arbitrary if it comes about seemingly at random or by chance or as a capricious and unreasonable act of will. It is capricious if it is the product of a sudden, impulsive and seemingly unmotivated notion or action." [City of Livingston v. Park Conserv. Dist.](#), 2013 MT 234, ¶ 10, 371 Mont. 303, 307 P.3d 317 (citation omitted).

A review by a district court or the Montana Supreme Court "of an action under the 'arbitrary and capricious' standard does not permit a reversal merely because the record contains inconsistent evidence or evidence which might support a different result. Rather, the decision being challenged must appear to be random, unreasonable or seemingly unmotivated, based on the existing record." [Silva v. City of Columbia Falls](#), 258 Mont. 329, 335, 852 P.2d 671, 675.

A. Deference to Agency Interpretations

- This Court will defer to an agency's legal determination where that agency is interpreting a statute that it has been authorized by the legislature to administer. [Lewis v. B&B Pawnbrokers, Inc.](#), 1998 MT 302, ¶ 43, 292 Mont. 82, 968 P.2d 1145.
- We give deference to an agency's interpretation of a statute via its administrative rules unless the interpretation produces an absurd result. [Synek v. State Comp. Mut. Ins. Fund.](#), 272 Mont. 246, 251, 900 P.2d 884, 887 (1995).
- The court must show deference and respect to the interpretations given the statute by the officer and agencies charged with administration. The persuasiveness of an administrative interpretation of a statute depends upon the thoroughness evident in its consideration, the validity of its reasoning and its consistency with earlier and later pronouncements of the same agency. [State by Dep't of Highways v. Midland Materials Co.](#), 204 Mont. 65, 70-71, 662 P.2d 1322, 1325 (1983).
- An interpretation of federal law by the federal agency that administers it is afforded great deference. [BNSF Ry. C. v. Feit](#), 2012 MT 147, ¶ 29, 365 Mont. 359, 281 P.3d 225.
- The principle of granting judicial deference to the interpretation given to a statute by an executive agency charged with its enforcement is appropriate when the statute is ambiguous. [Helena Aerie No. 16, F.O.E. v. Mont. Dep't of Revenue](#), 251 Mont. 77, 82, 822 P.2d 1057, 1058 (1991).
- Where the intent of the statutes is unclear, deference will be given to the agency's interpretation. Where it appears that the legislative intent is clearly contrary to agency interpretation, the court will not hesitate to reverse on the basis of "abuse of

discretion." Those challenging the agency interpretation have the burden of showing that their rights were substantially prejudiced by an arbitrary or capricious or clearly erroneous agency decision. [Carruthers v. Board of Horse Racing of Dep't of Commerce](#), 216 Mont. 184, 187-88, 700 P.2d 179, 181 (1985).

- The general rule is that because of the expertise an agency has in the area it administers, the interpretation of statutes administered by the agency is given great deference by the courts. It is a well-accepted rule of statutory construction that the long and continued contemporaneous and practical interpretation of a statute by the executive officers charged with its administration and enforcement constitutes an invaluable aid in determining the meaning of a doubtful statute. Where such an interpretation has stood unchallenged for a considerable length of time it will be regarded as a great importance in arriving at the proper construction of a statute. This "deference" is analogous to an agency or officer's interpretation of a statute to estoppel, due to the reliance by the public and those having an interest in the interpretation of the law. Thus, the foregoing rule of deference applies, generally speaking, where the particular meaning of a statute has been placed in doubt, and where a particular meaning has been ascribed to a statute by an agency through a long and continued course of consistent interpretation, resulting in an identifiable reliance. Even then, such administrative interpretations are not binding on the courts; rather, they are entitled to "respectful consideration." Accordingly, the test of time and reliance may nevertheless yield to a judicial determination that construction is nevertheless wrong, based on "compelling indications." [Mont. Power Co. v. Mont. PSC](#), 2001 MT 102, ¶¶ 23-25, 305 Mont. 260, 26 P.3d 91. See also [City of Great Falls v. Mont. Dept. of Pub. Serv. Regulation](#), 2011 MT 144, ¶¶ 10-11, 361 Mont. 69, 254 P.3d 595.
- An administrative agency's quasi-legislative authority may be challenged pursuant to Montana statute. However, where the challenger does not meet the burden of proof, deference to the agency's decision is appropriate. [Lohmeier v. State](#), 2008 MT 307, ¶¶ 27-28, 346 Mont. 23, 192 P.3d 1137.
- In determining whether the agency correctly interpreted its own rules, procedures, or policies, the agency's interpretation should be afforded great weight, and the court should defer to that interpretation unless it is plainly inconsistent with the spirit of the rule. The agency's interpretation of the rule will be sustained so long as it lies within the range of reasonable interpretation permitted by the wording. [Knowles v. State ex rel. Lindeen](#), 2009 MT 415, ¶ 22, 353 Mont. 507, 222 P.3d 595.

B. No Deference Warranted

- The Public Service Commission's interpretation of the statute requires no

"deference" per se. However practical the Commission's construction of the statute may appear, the statute as a whole, or in particular, certainly has not been subjected to any meaningful long and continued contemporaneous interpretation. Thus, the Commission's interpretation of the statute has simply not stood unchallenged for a considerable length of time and, obviously, has not been relied on by any party having an interest in the interpretation of the law. Thus, consistent with our standard of review, we shall focus our discussion and analysis on whether the Commission's interpretation of the statute was correct as a matter of law.

Mont. Power Co. v. Mont PSC, 2001 MT 102, ¶127, 305 Mont. 260, 26 P.3d 91.

- In reviewing conclusions of law under the Montana Administrative Procedures Act, we determine whether the agency's interpretation of the law is correct. The conservation district argues that its decisions are entitled to deference. However, while long-standing statutory interpretations by agencies are entitled to "respectful consideration," and we have acknowledged the value of the conservation district's expertise, no discretion is involved when a tribunal arrives at a conclusion of law—the tribunal either correctly or incorrectly applies the law. Bitterroot River Protective Ass'n v. Bitterroot Conservation Dist., 2008 MT 377, ¶ 18, 346 Mont. 507, 198 P.3d 219.
- This Court is not bound to an agency's definition of a statutory term. Mont. Dep't of Revenue v. Priceline.com, Inc., 2015 MT 241, ¶ 14, 380 Mont. 352, 354 P.3d 631 (citing Denke v. Shoemaker, 2008 MT 418, ¶ 39, 347 Mont. 322, 198 P.3d 284 (stating that Montana courts review an agency's interpretation of law for correctness)).
- Although we give deference to the interpretation given a statute by the officers or agency charged with its administration, this does not mean that courts must rubberstamp any interpretation the agencies may give a statute. Rules of statutory construction have no application if the language of the statute is clear and unambiguous. It has always been our rule that it is the province of the courts to construe and apply the law as they find it and to maintain its integrity as it has been written by a coordinate branch of the state government. When the terms of the statute are plain, unambiguous, direct and certain, it speaks for itself and there is no room for construction. Bay v. Dep't of Admin., Pub. Employee's Retirement Div., 212 Mont. 258, 265, 688 P.2d 1, 4 (1984).
- The construction of a statute by the person or agency responsible for its execution should be followed unless there are compelling indications that the construction is wrong. D'Ewart v. Neibuer, 228 Mont. 335, 340, 742 P.2d 1015, 1018 (1987).

C. Less Deference May be Warranted

The Montana Supreme Court has suggested that less deference is owed to agency interpretations that are "inconsistent or recent." [Pennaco Energy, Inc. v. Mont. Bd. of Env't'l](#)

[Review](#), 2008 MT 425, ¶ 25, 347 Mont. 415, 199 P.3d 191. However, in [Pennaco](#), the Montana Supreme Court was not persuaded that the agency's decision "should be afforded decreased deference by virtue of the fact that it [was] a reversal of an earlier decision." [Pennaco](#), ¶ 39.