

ENFORCEMENT – DISTRICT COURT GUIDE
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**General Information
and
Overview of Enforcement Proceedings**

WATER RIGHT ENFORCEMENT OVERVIEW

I. Montana Water Law Overview – Four Basic Principles

- a. Prior Appropriation Doctrine – “first in time is first in right;”
- b. Water may not be wasted;
- c. Use it or lose it;
- d. Water users can’t change the use of water if that change adversely affects another water user.

II. District Court’s Role in Enforcing Montana Water Rights

- a. Before 1973, no central recording system existed - Water rights could be obtained by beneficial use or notice of appropriation. These water rights may also have been previously adjudicated in a District Court Decree.
- b. District Courts enforced their own water right decrees through the statutory process of appointing a water commissioner.
- c. The Montana Water Court was created to preside over the statewide adjudication of existing (Pre-1973) water rights.
- d. Post-1973 water rights
 - i. DNRC issues post-1973 water right permits and change authorizations for pre-1973 rights. District court water commissioners have jurisdiction over these changes and permits, which are incorporated into Montana Water Court tabulations for enforcement.
- e. Compacts
 - i. The Montana Reserved Water Right Compact commission negotiates Federal and Indian Reserved Water Rights. Compacted rights are incorporated into Montana Water Court decrees, and any reserved rights that are not compacted will be filed as state-based rights and addressed in the general stream adjudication.
- f. Summary
 - i. District Courts currently enforce both pre-1973 District Court decrees and Montana Water Court decrees, which include historical filed rights and use rights, as well as post-1973 permits and change permits issued by DNRC.

III. Differences between District Court decrees and Water Court decrees

a. District Court Decrees

- i. May not include all users on the stream at that time - District Court decrees may not include filed or use rights, including all subsequent junior rights.
- ii. May not include the entire stream.
- iii. Many decrees were issued in the late 1800s and early 1900s, so ownership changes are difficult to track.
- iv. The language is often difficult to interpret and administer.

b. Montana Water Court Decrees

- i. A temporary, preliminary or final decree from the Water Court is a product of years of adjudication work, examination by DNRC, and proceedings in the Water Court.
- ii. A decree will include water rights adjudicated in historical District Court decrees, use rights, filed rights, permits and changes. It will also reflect current ownership.
- iii. DNRC maps all headgates and pump sites.
- iv. Tabulations are produced, documenting all the water rights in an enforcement area and organizing them by priority date, ownership and diversion site.

IV. Enforcement of Water Right Decrees

- a. Water right decrees are enforced through District Court appointment of a water commissioner, who:
 - i. Calculates priority date limits for water use depending on stream flow and water availability;
 - ii. Regulates diversions and monitors headgates and pump sites to ensure compliance;
 - iii. Keeps records of water use and issues reports to District Court.

V. Procedure to Begin Enforcement of Water Right Decrees

- a. The process begins with a petition filed with the District court by owners of 15% of the water rights affected by the decree. § 85-5-101, MCA.

- b. If the water users can't obtain 15%, the decision to appoint a commissioner is at the District Court's discretion.

VI. Water Commissioners in Montana

- a. Keep daily records of water distribution;
- b. Have authority to enter upon any ditch, canal or other source and to visit, inspect and adjust headgates;
- c. Have arrest authority (use of which is discouraged);
- d. Are required to maintain worker's compensation;
- e. Bill all costs and compensation to water users based on proportion of water distribution;
- f. Have a duty to distribute water pursuant to the provisions of the decree, permit, certificate or change authorization;
 - i. Failure to perform their duty is contempt of court. §85-5-109, MCA
- g. Water users who fail to comply with the orders of the Court and the water commissioner may be held in contempt of court;
- h. Water users who are dissatisfied with the distribution by the water commissioner may file a petition with the District Court, which may substitute another commissioner, issue instructions to the commissioner, or find the commissioner in contempt of court;
- i. On ditches and streams where commissioners are appointed, water users are required to install headgates and measuring devices before they may receive water;
- j. The jurisdiction of the commissioner typically does not go beyond the headgate or pump site on the stream.

VII. Water Users' other options for enforcement of their water rights

- a. Talking to the upstream junior user to attempt resolution of the issue;
- b. Filing a complaint at DNRC requesting the agency to pursue voluntary compliance;
- c. Petitioning the District Court for appointment of a water mediator;
- d. Litigation such as a TRO and a preliminary injunction;
- e. County Attorneys can prosecute violations of the Montana Water Use Act.

GENERAL ORDER OF PROCEEDINGS

- 1. The Water User petitions the District Court to Enforce a Water Court Decree and Appoint a Water Commissioner.**
 - See Petition to Enforce Water court Decree and Appoint Water Commissioner, p. 22
- 2. The District Court Requests an Enforcement Tabulation from the Water Court.**
 - See Request for Enforcement Tabulation, p. 10
- 3. The District Court Grants the Petition to Enforce the Water Court Decree and appoints a water commissioner.**
 - See Order Granting Petition to Enforce Water Court Decree and Appointing a Water Commissioner, p. 12
- 4. Once a Water Commissioner is appointed, the Water Commissioner must file with the clerk of the District Court an Oath of Office and a Bond, executed by the Commissioner with two or more sureties.**
 - See Water Commissioner Bond; Oath; Oath of Sureties, pp. 17, 18, 19
- 5. Upon receipt of the Water Commissioner's Report, the clerk of the District Court notifies the water users of the amount of fees and expenses the water user will be assessed.**
 - See Statement for Delivery of Water, p. 15
- 6. If a water user is not satisfied with the distribution of water, the Commissioner's Report, or the apportionment of fees and expenses, he/she may file a Complaint with the District Court.**
 - See Complaint by Dissatisfied Water User, p. 24

LETTER FROM WATER COURT TO DISTRICT COURTS

October 1, 2014

Dear Judge (or Court Administrator, or Law Clerk, or whomsoever):

The Montana Water Court has the responsibility to furnish tabulations of water rights when a district court grants a petition for enforcement of a water rights decree. A tabulation is a list of water rights in order by priority date, describing all pertinent elements of all water rights within a certain basin or portion of a basin. It is the document that the water commissioner uses to do the job. When the first enforcement order is entered for a stream, we work with the DNRC to provide a comprehensive tabulation. That task can take months. When a water user files an enforcement petition, she usually needs the water that day, not after a long wait.

The delay is primarily due to mapping and checking points of diversion and ditch names. We may be able to produce a useable tabulation promptly but it will be a basic version, without maps or ditch names. As long as everyone understands that a quickly produced tabulation will have inconsistent ditch names and may have inaccurate points of diversion, the quick tabulation can be used until the better one is ready. A tabulation for a two-decree basin is more likely to have errors than a tabulation for a one-decree basin. The priority dates, flow rates, and periods of use will be correct. The Commissioner will work out ditch names and points of diversion in the field.

To address the problem of delay in start-up enforcement projects, we want to anticipate where water users will seek new enforcement orders. We may be able to get a head start on the hot spots so that if an enforcement petition is granted, we can have a tabulation ready in time to be useful that season.

If you or your staff know of any rivers or creeks in your district that have not had an enforcement order and where there is local talk about filing an enforcement petition, or where there is serious controversy over water distribution, we would like to know about it. Please call or e-mail the Water Court at (800) 624-3270 or watercourt@mt.gov to let us know where the hot spot is located.

District Court Forms

ENFORCEMENT FORMS

NOTE: The forms provided are generic forms. Please make changes as needed to fit the case. If you are enforcing water rights under a district court decree, the forms will probably need extensive changes. Please note that for streams where a water court decree has never been enforced, preparing a tabulation of water rights will take some time.

The water court may be able to provide a basic list of adjudicated rights in a few days. A more detailed and accurate list with maps, referred to as a Red Book Tabulation, may take several months to complete because the DNRC has to compile a list of all claims, permits, certificates, ditch names, and points of diversion, and map them.

Enforceable decrees include district court decrees, as well as temporary preliminary decrees and preliminary decrees from the Water Court. Water Court decrees are enforceable when all objections to the rights on the subject stream have been resolved. When a Water Court decree is ready for enforcement, it is more complete than any of the old District Court decrees. District Court decrees were often entered for parts of a stream, or did not include every water user, and usually have not been updated since entered. Water Court decrees include all pre-1973 rights on the stream and tributaries, plus federal and Indian reserved water rights. With the help of the DNRC, the Red Book will include all post-1973 permits as well. MCA §85-2-406(2) does not contemplate enforcing pre-1973 District Court decrees once the water court decree becomes enforceable.

Call the Water Court at 1-800-624-3270 and ask for one of the enforcement water masters if you have questions.

IN THE MATTER OF THE PETITION OF)
_____ CREEK WATER USERS) Cause No.
TO ENFORCE WATER COURT DECREE)
AND APPOINT A WATER COMMISSIONER)

REQUEST FOR ENFORCEMENT TABULATION

The Court received a petition to enforce a portion of the [Temporary Preliminary][Preliminary] Decree issued _____[Date] by the Montana Water Court in the _____ [River][Creek], Basin No. ____.

Pursuant to Rule 31, W.R.Adj.R., this Court requests that the Montana Water Court provide an appropriate tabulation of all water rights and their relative priorities on the following portion of [the] _____ [River][Creek] for the purpose of enforcing a portion of the Water Court decree:

[Specify the reach of the creek or river where the decree will be enforced and say whether or not tributaries are included. You may use the appropriate portion of the following.]

Water rights in the _____ River basin diverted or beneficially used from the _____ [River][Creek] from its confluence with [the] _____ [River][Creek] to its confluence with [the] _____ [River][Creek];

OR

the entire _____ [River][Creek] from and between its headwaters and its confluence with [the] _____ [River][Creek] and the mainstem of the _____ [River][Creek];

OR

from and between its confluence with [the] _____
[River][Creek] to the U.S.G.S. gaging station at _____.

OR

Please include the following tributaries: [All] [insert names of tributaries included].

DATED this _____ day of _____, 20__.

District Court Judge

IN THE MATTER OF THE PETITION OF)
_____ CREEK WATER USERS) Cause No.
TO ENFORCE WATER COURT DECREE)
AND APPOINT A WATER COMMISSIONER)

**ORDER GRANTING PETITION TO ENFORCE WATER COURT DECREE
AND APPOINTING WATER COMMISSIONER**

On the ___ day of _____, 20___, the holders of valid water rights in the _____ River petitioned this court, pursuant to Sections 3-7-212, 85-2-406(4), and 85-5-101, MCA, to enforce a portion of the _____ Decree issued in _____ by the Montana Water Court in Basin number _____, the _____ River basin. The portion of the decree to be enforced is (Describe the enforcement project by stream name, what part of the stream, and what tributaries are included.):

This court requested the Montana Water Court to provide an appropriate tabulation or list of all rights and their relative priorities.

The court took the petitioners' request to appoint a water commissioner under advisement pending receipt of a tabulation of water rights.

On _____, 20___, the Water Court submitted a Tabulation of Water Rights, prepared with the assistance of the Montana Department of Natural Resources and Conservation (DNRC).

Accordingly, IT IS HEREBY ORDERED:

The _____ Decree of the Montana Water Court for Basin _____ shall be enforced within the area described above.

That _____ is hereby appointed water commissioner.

The water commissioner and any water commissioner(s) subsequently appointed

by this court shall have the powers and duties of the office as provided by law.

The water commissioner and any water commissioner(s) subsequently appointed by this court shall measure and distribute the water rights set forth in the Tabulations of Water Rights and associated lists provided by the Montana Water Court.

Any water user owning or using any of the waters of the stream or ditch or extension of the ditch who is dissatisfied with the method of distribution of the waters of the stream or ditch by a water commissioner and who claims to be entitled to more water than he is receiving, or to a right prior to that allowed him by the water commissioner or water commissioners, may file a written complaint, duly verified, setting forth the facts of the claim. §85-5-301, Montana Code Annotated

No water user may use or store any water flowing in the above described area of the _____ River except: (1) as distributed by a water commissioner delivering water rights set forth in the Tabulation of Water Rights and associated lists; or (2) as distributed by the water commissioner distributing stored water purchased from _____.

The compensation of the water commissioner is hereby fixed in the sum of _____ per _____ for services actually rendered. During the term of his or her appointment, each water commissioner must keep a daily record of the amount of water distributed to each water user pursuant to the Tabulation of Water Rights and associated lists, and the water commissioner must file a summary of the records with the Clerk of Court at the end of the irrigation season, or as otherwise directed by the court. § 85-5-107, Montana Code Annotated

All persons using water rights set forth in the Tabulation of Rights and related lists are required to have and maintain suitable headgates. At some suitable place on the delivery system, and each of their ditches, as near the _____ River as practicable, the water user shall place and maintain a proper headgate and measuring device to allow for the measurement of flow rates of the water flowing in the delivery system, ditch, or ditches, on or before _____, 20___. The water

commissioner(s) shall not apportion or distribute any water to any diversion where a proper headgate and measuring device are not installed and maintained.

The water commissioner's term shall commence upon appointment and end on _____, 20__, unless sooner terminated by order of this court. Each water commissioner appointed by this court shall sign and file with the Clerk of this court the usual and customary constitutional oath of office before commencing the discharge of his or her duties as water commissioner, and shall likewise file with the Clerk, after approval by the court, a good and sufficient bond executed by the water commissioner with two or more sureties or a bonding company, in the sum of _____ Dollars (\$_____) for each water commissioner to insure the faithful discharge of his duties.

It is the obligation and responsibility of the water users and water commissioner to make certain that worker's compensation insurance exists for the water commissioner or to provide certification of independent contractor status. Worker's compensation insurance is the obligation of the water users *pro rata* in the same proportion as responsibility for the water commissioner's compensation. Before taking office, the water commissioner must file proof of worker's compensation insurance coverage. The water commissioner may have the cost of worker's compensation insurance separately billed at the time of appointment.

DATED this _____ day of _____, 20__.

District Judge

CLERK OF DISTRICT COURT

Re: Statement for Delivery of Water

Dear Water User:

This Statement is for the delivery of water under rights decreed by the Montana Water Court, as set forth in a Tabulation of Existing Rights that was submitted to Judge _____. Judge _____ appointed a water commissioner to distribute this decreed water during the period of (insert). Water users are responsible to pay for their proportionate shares of the water distributed. Water used before (date commissioner appointed) or after (date commissioner's appointment ended) was not delivered by the Water Commissioner, and therefore is not subject to a charge.

The water commissioner submitted report of costs incurred in the distribution of the water rights. Your proportionate share of the cost is: \$____.00

This cost is calculated by dividing the amount of water distributed to you by the total amount of water distributed. That percentage figure is then applied to the total cost incurred by the water commissioner.

If you have any objections to the report of the commissioner or the apportionment of this cost, you must make the objection in this court within 20 days from the date of mailing this notice. The Court will set a hearing on your objection.

If you do not file an objection, the amount is due to be paid to the Clerk of the District Court within 30 days from the date of mailing this notice.

Thank you for your attention to this matter.

**Water Commissioner Filings
and Information**

MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY

IN THE MATTER OF THE PETITION OF _____)
CREEK WATER USERS) Cause No.
TO ENFORCE WATER COURT DECREE)
AND APPOINT A WATER COMMISSIONER)

WATER COMMISSIONER BOND

We, _____, as principal, and _____ and _____, as sureties, are held and firmly bound to the State of Montana, in the sum of _____ (\$____.00), for the payment of which we bind ourselves this _____ of _____, 20____.

The condition of this obligation is such that by an Order of the District Court of _____ County, made and entered on the _____ day of _____, 20____, the above bonded was appointed to the office of Water Commissioner for _____, in the above-entitled cause, upon executing a bond in the sum of _____ (\$____.00).

Now, therefore, if the said _____ as Water Commissioner shall faithfully execute the duties of his/her trust according to law, and shall well, truly, and faithfully perform all official duties of the office of Water Commissioner required by the law of the State of Montana, then this obligation will be void and of no effect, otherwise it shall remain in full force and effect.

Principal

Surety

Surety

MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY

IN THE MATTER OF THE PETITION OF)
_____ CREEK WATER USERS) Cause No.
TO ENFORCE WATER COURT DECREE)
AND APPOINT A WATER COMMISSIONER)

WATER COMMISSIONER OATH

I DO SOLEMNLY SWEAR that I will support, protect and defend the Constitution of the United States, and the State of Montana; that I will faithfully and honestly discharge the duties of Water Commissioner in accordance with the Water Court decree entered above, that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act of duty pertaining to my office, other than the compensation allowed me by the Court, SO HELP ME GOD.

Subscribed and Sworn before me at _____, Montana, this ____ day of _____, 20__.

SEAL

Clerk of District Court

WORKERS COMP ARRANGEMENT FOR WATER COMMISSIONERS

NOTE: Water commissioners must have worker's compensation coverage before beginning work. The district court can allow the commissioner to bill before the distribution season begins. §85-5-204(3), MCA.

- 1. Short Term Policy:** The policies will be written for the period that the coverage is needed (the duration of the commissioner's appointment), with the water commissioner electing minimum coverage based on a \$900 monthly wage.
 - 2. Binding Effective Date:** The binding effective date is the day following the date when 3 items have been received in the Workers Comp Office:
 - a. any previous policy reconciled (payroll reports received & payment received) if applicable
 - b. completed application
 - c. deposit & expense constant payment (at least \$390).
 - 3. Expiration Date:** This will be the date following the expected last day of work for each water commissioner. Coverage will not be extended past the expiration date. Commissioners must specifically identify the time frame they expect for coverage.
 - 4. Deposit Method Policy:** This policy requires a down payment of 20% of the premium and the full expense constant, or fixed cost. The total is to be paid up front, but the remaining premium can be paid at year end following a commissioner's reimbursement by the water users.
 - 5. Six Month Payroll Reporting Frequency:** A payroll report will be mailed out 6 months after the effective date, and needs to be returned as soon as possible. Commissioners will be billed for the remaining premium less the deposit (approximately \$360), which Workers Comp agrees can be paid following Commissioner reimbursement, but by year end. If the policy expires or is cancelled before 6 months, the payroll report will go out at that earlier time, and the premium will be billed, possibly for a shorter time period, once the payroll report is received and processed in the Workers Comp Office.
- The number that will be under the Commissioner's name will be the number on the right side of the form on their name. The system will provide them with their elected wage amount – probably the minimum of \$900.
- 6. Nonrenewable:** The policy will not renew, so there is no need for the Commissioners to remember to call the Workers Comp Office to have the policy cancelled, unless their working months are unexpectedly decreased. They will automatically be billed the remaining premium minus the deposit once the payroll report is returned to the Workers Comp Office.
 - 7. Contact:** Karen Buddow, (406) 495 5112; or Rabecca Lindal, (406) 495 5260.

Water User Filings and Information

IN THE MATTER OF THE PETITION OF)
_____ CREEK WATER USERS) Cause No.
TO ENFORCE WATER COURT DECREE)
AND APPOINT A WATER COMMISSIONER)

**PETITION TO ENFORCE WATER COURT DECREE AND
APPOINT WATER COMMISSIONER**

This petition is brought under Sections 3-7-212, 85-2-406(4), and 85-5-101, MCA. The holders of at least fifteen percent (15%) of the water rights on _____ Creek petition the District Court for an order to enforce the _____ Decree issued by the Montana Water Court for the portion of Basin _____ described as:

Water rights in the _____ River basin diverted or beneficially used from _____ (Creek) (River):

between its confluence with the _____ (Creek) (River) and its confluence with _____ (Creek) (River)

(OR) from its headwaters to its confluence with _____ (Creek) (River) with _____ (Creek) (River);

(OR) the entire _____ (Creek) (River) from its headwaters and its confluence with _____ (Creek) (River); and the mainstem of _____ (Creek) (River);

(OR) from its confluence with the _____ (Creek) (River) to the U.S.G.S. gauging station at _____.

The following tributaries are included in this petition: *(Here list the tributaries where you seek enforcement, or write "All", or "None.")*

We respectfully request that the Court: (1) refer this matter to the Montana Water Court pursuant to section 85-2-406(4), MCA; and (2) request that the Water Court provide the

appropriate tabulations or lists of all existing rights and their relative priorities which are needed to enforce the Water Court decree on the above identified source.

We request that this Court appoint _____ as a water commissioner to enforce the Water Court decree on _____ Creek.

Respectfully submitted this ____ day of _____ 20____.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

COMPLAINT BY DISSATISFIED WATER USER

A dissatisfied water user may file a complaint according to Section 85-5-301, Montana Codes Annotated. *“A person owning or using any of the waters of the stream or ditch or extension of the ditch who is dissatisfied with the method of distribution of the waters of the stream or ditch by the water commissioner or water commissioners and who claims to be entitled to more water than he is receiving or to a right prior to that allowed him by the water commissioner or water commissioners may file his written complaint, duly verified, setting forth the facts of the claim. . . .”*

Use additional pages if necessary.

Name of Party Filing Complaint:

Address:

City:

State:

Telephone:

1. Identify your water right(s) being affected, including DNRC water right numbers and priority date(s).

2. Identify your source of water including the USGS named stream, tributary, and ditch.

3. Identify the location of your diversion and your place of use.

4. Who is your Water Commissioner?

5. Describe the nature of the problem and why you are dissatisfied with your water commissioner's method of distribution.

Why do you believe you are entitled to additional water?

I declare under penalty of perjury and under the laws of the State of Montana that the foregoing is true and correct.

Signature: _____ Date: _____

Mail/Deliver to: Clerk of the District Court

WATER RIGHT DISPUTE OPTIONS

Controversy over water rights is common in Montana, especially in times of drought. When a water right controversy arises, the parties should first talk to each other to see if the matter can be settled. It is surprising how many water disputes can be settled once the parties just start talking.

If you are a water user whose water rights are being adversely affected by the actions of another water user, and you cannot resolve the matter with the offending water user yourself, you have the following options, and possibly others, available to you under Montana law. Which option is best for you depends on your circumstances, how fast you want the matter settled, and how much you are willing to spend. You should consider consulting an attorney to find out which option is best for you.

1. You can talk to the other water user.
2. You can file an action in district court asking for a temporary restraining order and preliminary injunction. This may be the fastest way to obtain relief, but it is also the most expensive, as for most water users it will require hiring an attorney. This option often polarizes the parties. See Mont. Code Ann. §27-19-101, 201, 314.
3. If there is a pre-July 1, 1973 district court decree, or a Water Court decree (temporary preliminary decree, preliminary decree, or a portion of either, as modified after objections are resolved), you can petition the district court to have a water commissioner appointed. Under some circumstances, the DNRC can petition for a water commissioner or can join in your petition. A water commissioner distributes water according to a decree. Any disputes about water distribution can be brought up to your local district court judge. Mont. Code Ann. §85-5-301. How soon a water commissioner would be appointed depends on your district court and whether the water rights in the decree have been tabulated. See Mont. Code Ann. §85-5-101. The commissioner is paid by the water users. If you have a decreed water right, this can be a less expensive way to settle a water distribution problem.
4. If not all existing (pre-July 1, 1973) water rights have been conclusively determined by the Water Court, any party to the controversy may petition the district court to certify the matter to the Chief Water Judge for a determination of the existing rights that are involved in the controversy. Mont. Code Ann. §85-2-406(2)(b). The district court retains exclusive jurisdiction to grant injunctive or other relief as necessary and appropriate pending adjudication of the existing water rights certified to the water judge. Certified controversies must be given priority over all other adjudication matters. The water judge returns the decision to the district court with a tabulation (list) of the existing rights and their relative priorities.
5. You can petition the district court for the appointment of a water mediator. It is important to know that a mediator does not have the power to order any water user to do anything. A mediator can help you to work out solutions. The DNRC has a list of mediators who have

attended its educational programs specifically offered for water mediators. This option may be the best way for water users to start talking about a solution as an alternative to expensive and time-consuming litigation. How fast a mediator would be appointed depends on your local district court. Although this may not represent the fastest solution, it can leave you on good terms with your neighbor when the matter is finally settled. See Mont. Code Ann. §85-5-110

6. You can contact the nearest DNRC Regional Office. The DNRC has jurisdiction over water users wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or otherwise violating provisions of the Montana Water Use Act. Mont. Code Ann. §85-2-114. If your situation involves your water not reaching your point of diversion, the DNRC requires you to contact the offending party to make a call for your water, document the call, and file a formal written complaint. Although the DNRC can fine violators of the Water Use Act and take them to court to make them stop, the necessary investigations and decisions to take enforcement action may not come soon enough to solve your immediate problem. Whether the DNRC takes enforcement action depends on the facts of your situation, and on budget and staff limitations. You should be prepared to initiate enforcement on your own.

You may have other options available to you depending on your particular circumstances.

Websites for DNRC and the Water Court:

<http://www.dnrc.state.mt.us/wrd/home.htm>

<http://courts.mt.gov/water/default.mcp>

Additional Resources

ENFORCEMENT STATUTES

Title 85 Chapter 2 District Court Supervision of Water Distribution

85-2-406. District court supervision of water distribution. (1) The district courts shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision must be governed by the principle that first in time is first in right.

(2) (a) A district court may order the distribution of water pursuant to a district court decree entered prior to July 1, 1973, until an enforceable decree is entered under part 2 of this chapter or the matter has been adjudicated under the procedure set forth in subsection (2)(b).

(b) When a water distribution controversy arises upon a source of water in which not all existing rights have been conclusively determined according to part 2 of this chapter, any party to the controversy may petition the district court to certify the matter to the chief water judge. If a certification request is made, the district court shall certify to the chief water judge the determination of the existing rights that are involved in the controversy according to part 2 of this chapter. The district court from which relief is sought shall retain exclusive jurisdiction to grant injunctive or other relief that is necessary and appropriate pending adjudication of the existing water rights certified to the water judge. Certified controversies must be given priority over all other adjudication matters. After determination of the matters certified, the water judge shall return the decision to the district court with a tabulation or list of the existing rights and their relative priorities.

(3) A controversy between appropriators from a source that has been the subject of a final decree under part 2 of this chapter must be settled by the district court. The order of the district court settling the controversy may not alter the existing rights and priorities established in the final decree except to the extent the court alters rights based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits issued by the department, the court may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy must be appended to the final decree, and a copy must be filed with the department. The department must be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

(4) A temporary preliminary decree or preliminary decree or a portion of a temporary preliminary decree or preliminary decree as modified after objections and hearings is enforceable and administrable according to its terms. If an action to enforce a temporary preliminary decree or preliminary decree is commenced, the water judge shall upon referral from the district court establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all existing rights and their relative priorities.

(5) A person whose existing rights and priorities are determined in a temporary preliminary decree or preliminary decree or a person exercising a suspension under [85-2-217](#) and part 7 of this chapter may appeal a determination made pursuant to subsection (2).

Title 85 Chapter 5
Water Commissioners and Water Mediators

Part 1. Appointment and Duties

Part 2. Charges and Expenses

Part 3. Rights and Duties of Water Users

Part 4. Water Ditches Under Joint or Corporate Control

PART 1

85-5-101. Appointment of water commissioners. (1) Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, including temporary preliminary, preliminary, and final decrees issued by a water judge, it is the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree, in the exercise of the judge's discretion, to appoint one or more commissioners. The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates, permits, and changes in appropriation right issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may appoint a water commissioner.

(2) When the existing rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued under chapter 2 of this title, the judge of the district court may, upon application by both the department of natural resources and conservation and one or more holders of valid water rights in the source, appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have stored waters distributed by the water commissioners appointed by the district court. The court may order the commissioner or commissioners appointed by the court to distribute stored water when and as released to water users entitled to the use of the water.

(4) At the time of the appointment of a water commissioner or commissioners, the district court shall fix their compensation, require a commissioner or commissioners to purchase a workers' compensation insurance policy and elect coverage on themselves, and require the owners and users of

the distributed waters, including permittees, certificate holders, and holders of a change in appropriation right, to pay their proportionate share of fees and compensation, including the cost of workers' compensation insurance purchased by a water commissioner or commissioners. The judge may include the department in the apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

(5) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir that is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district where the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute stored water to the irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. A commissioner's compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of the stored water. In all other matters, the provisions of this chapter apply so long as they are consistent with this subsection.

(6) A water commissioner appointed by a district court is not an employee of the judicial branch, a local government, or a water user.

(7) A water commissioner who fails to obtain workers' compensation insurance coverage required by subsection (4) is precluded from receiving benefits under Title 39, chapter 71, as a result of the performance of duties as a water commissioner.

85-5-102. Appointment of chief commissioner. When the judge of the district court appoints two or more commissioners to admeasure and distribute the waters mentioned in [85-5-101](#), the judge may appoint one of them as chief commissioner and empower the chief commissioner to exercise direction and control over the other commissioners in the discharge of their duties. The judge may depose the person appointed as chief commissioner from that position and appoint another as chief commissioner whenever it appears to the judge that better service may be given to the water users by making the change.

85-5-103. Oath and bond. Each water commissioner appointed by the court shall subscribe and file with the clerk of the district court an oath of office before commencing the discharge of duties as commissioner and shall file with the clerk a bond executed by the commissioner, with two or more sureties, in a sum that the judge of the court may designate, to ensure the faithful discharge of the commissioner's duties.

85-5-104. Term of office. A water commissioner holds office for the time during the irrigation season of each year that may be designated by the judge in the order making the appointment. The judge may fix the date of the commencement of the term and may, in in the judge's discretion or when requested in writing by at least three persons entitled to the use of the waters, change the term for closing of the commissioner's service.

85-5-105. Power and duty to distribute water. Upon the issuance of an order, the water commissioner or commissioners have authority and it is the commissioner's or commissioners' duty to admeasure and distribute to the users of water, as their interests may appear and be required, the stored and supplemental water stored and as released by the department of natural resources and conservation under provisions of Title 85, chapter 1, to be diverted into and through a stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules as decreed water rights are admeasured and distributed. The water commissioner or commissioners and the owners and users of the stored and supplemental water are bound by and are subject to the provisions of this chapter. However, the admeasurements and distribution of the stored and supplemental water may not interfere with decreed water rights. The purpose of Title 85, chapter 5, parts 1 through 3, is to provide a uniform, equitable, and economical distribution of adjudicated, stored, and supplemental waters.

85-5-106. Maintenance and repair of ditches or systems. Upon written request of the owners of at least 51% of the water rights in any adjudicated ditch or single water system, the judge of the district court may empower the commissioner to maintain and keep in reasonable repair such water ditch or water system at the expense of the owners thereof, and for such purposes the commissioner shall have authority to enter and work upon any ditch, canal, aqueduct, or other source of conveying the waters affected by the decree and the right-of-way thereof and to visit, inspect, and adjust all headgates or other means of distribution of such waters.

85-5-107. Record of distribution of water. (1) Each water commissioner shall keep a daily record, unless a different recording schedule is ordered by the district judge, of the amount of water distributed to each water user and shall file a summary of the record with the clerk of the court monthly or seasonally, at the discretion of the district judge during the judge's term of service. The report must show in detail the total amount of water distributed to each water user during the month or the season and the cost of distributing the water, based upon the water commissioner's or commissioners' daily salary, other costs of the water commissioner or commissioners approved by the district judge, and the proportionate amount of water distributed. When two or more water commissioners serve under the same decree or decrees by order of the judge, they may file a joint summary of their records with the clerk of the court, or the chief commissioner, if one has been appointed by the judge, may file a summary on behalf of all of them.

(2) If the district court judge determines that it is necessary to establish a billing cycle prior to a distribution season, as provided in [85-5-204](#), the report or reports must serve as the basis for the amounts billed.

85-5-108. Authority and arrest power. For the purposes of carrying out the provisions of Title 85, chapter 5, parts 1 through 3, each commissioner appointed by the court has the authority to enter upon any ditch, canal, aqueduct, or other source for conveying the waters affected by the decree and to visit, inspect, and adjust all headgates or other means of distributing the waters and has the same powers as a sheriff or constable to arrest any person interfering with the distribution made by the commissioner, to be dealt with according to law.

85-5-109. Failure to perform duty as contempt of court. If a commissioner fails to perform any of the duties imposed upon the commissioner by the order of the judge of the district court, the commissioner is guilty of contempt of court.

85-5-110. Appointment of water mediators -- duties. (1) The judge of the district court may appoint a water mediator to mediate a water controversy in a decreed or nondecreed basin under the following circumstances:

- (a) upon request of the governor;
- (b) upon petition by at least 15% of the owners of water rights in a decreed or nondecreed basin; or
- (c) in the discretion of the district court having jurisdiction.

(2) A water mediator appointed under this section may:

- (a) discuss proposed solutions to a water controversy with affected water right holders;
- (b) review options related to scheduling and coordinating water use with affected water right holders;
- (c) discuss water use and water needs with persons and entities affected by the existing water use;
- (d) meet with principal parties to mediate differences over the use of water; and
- (e) hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

(3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall pay all or a majority of the costs of the water mediator as determined equitable by the district court having jurisdiction.

(4) The governor may use funds appropriated under [75-1-1101](#) to pay the costs of a water mediator.

(5) This section does not allow a water mediator to require any valid water right holder to compromise or reduce any of the holder's existing water rights.

(6) If an appropriator voluntarily ceases to use all or part of an appropriation right or voluntarily ceases to use an appropriation right according to its terms and conditions as a result of the efforts of a mediator appointed under this section, the appropriator may not be considered to have abandoned all or any portion of the appropriation right.

85-5-111. Water commissioner and mediator education. The department of natural resources and conservation, in cooperation with the Montana supreme court, the Montana water courts, the district courts of Montana, the Montana university system, and other appropriate state and federal agencies, shall develop an educational program for water commissioners and mediators that includes:

- (1) an annual seminar on commissioner and mediator duties, mediation techniques, and water measuring techniques;
- (2) preparation and, as necessary, revision of a water commissioner and mediator manual; and
- (3) an outreach program that identifies persons who might serve as water commissioners or mediators.

PART 2

85-5-201. Distribution of water and related expenses. (1) Each water commissioner appointed by the judge of the district court for the purpose of distributing water has the authority to determine the appropriate quantity and distribute to the parties interested, under a decree, permit, certificate, or change in appropriation right, the water to which those who are parties to the decree or holders of a permit, certificate, or change in appropriation right, or privy to a permit, certificate, or change in appropriation right, are entitled, according to their priority as established by the decree, permit, certificate, or change in appropriation right.

(2) The water commissioner may incur necessary expenses in the making of headgates or dams for the distribution of the waters if the parties fail or refuse to do so. Expenses associated with making headgates or dams for the distribution of water must be assessed against and paid by the party or parties for whom the ditch or ditches were repaired or the dams or headgates were made. In the discretion of the court, the costs or expenses may be assessed against the land upon which or for the benefit of which the expense had been incurred.

(3) (a) At the district court's discretion, a water commissioner may bill water users prior to the beginning of a distribution season for the purpose of offsetting costs associated with distributing water and water commissioner duties by submitting the information necessary for the billing to the clerk of the district court. A billing issued prior to the beginning of a distribution season:

- (i) must be assessed on a per-user basis;
- (ii) must be based on the report provided for in [85-5-107](#) for the prior year; and
- (iii) may not exceed 80% of the amount that was provided to the district court pursuant to [85-5-107](#) for the prior distribution season on a per-user basis.

(b) Upon receipt of the information from the water commissioner, the clerk of district court shall proceed as provided in [85-5-204](#).

85-5-202. Repair expenses. The judge may allow as a charge any expenses necessarily incurred by the water commissioner in the discharge of duties in the employment of extra labor for the repair of dams, headgates, ditches, or flumes when immediate action is necessary to preserve the rights of the parties entitled to the waters of a stream or when the judge has, in the order appointing the commissioner, required the commissioner to repair ditches and keep in repair necessary headgates, ditches, or flumes. The water commissioner shall report all expenses, and the cost must be taxed against the party or parties for whose benefit the expenses were incurred. In the discretion of the court, the costs or expenses may be assessed against the land upon which or for the benefit of which the expense had been incurred.

85-5-203. Telephone expenses. The judge may also allow as a charge reasonable expenses incurred by a water commissioner in telephoning to the judge for instructions in cases of emergency. When there are two or more commissioners acting under the judge's order, reasonable expenses incurred in communicating with each by telephone or with the judge of the district court, in order to carry on the distribution of the waters harmoniously and in accordance with the decree, shall be deemed a necessary expense. These expenses shall be reported by the water commissioner or commissioners at

the close of the season and shall be taxed against all the water users affected by the decree or decrees ratably in proportion to the whole amount of water distributed to them during the season.

85-5-204. Apportionment of fees and expenses. (1) Upon the filing of the report by the water commissioner or water commissioners, the clerk of court shall notify by letter each person mentioned in the report:

- (a) of the amount the water user is made liable for by the report;
- (b) that objections to the report and the amount taxed against the water user may be made by any person interested in the report or the amount assessed against the water user within 20 days after the date of the mailing of the notice; and
- (c) that, unless objections are filed, an order will be made by the judge of the district court finally fixing and determining the amount due from each of the water users.

(2) The affidavit of the clerk that the clerk has mailed a notice to each person mentioned in the report at the person's last-known post-office address, in the usual manner, must be considered prima facie evidence that the person received the notice provided for in this section.

(3) At the discretion of the district judge, the water commissioner may issue a bill prior to the beginning of a distribution season for the purpose of offsetting costs associated with distributing water and water commissioner duties by submitting the information necessary for the billing to the clerk of the district court. The bill for each water user may not exceed 80% of the amount that was provided to the district court pursuant to [85-5-107](#) for the prior distribution season.

(4) If the cost of distributing water during a distribution season is less than the amount that was collected through a bill issued prior to a distribution season, the water commissioner shall refund the money to the water user based on the amount of water that the water user received during the distribution season. The water commissioner shall submit a refund report, along with proof that any refunds were issued, to the clerk of district court for filing.

85-5-205. Objections to expenses -- hearing. At the expiration of the 20 days' notice, as provided for in the preceding section, if objections to said report have been filed or a motion to retax the same has been made, the court or judge shall fix a time for the hearing of such objections or motion to retax, which time of hearing shall be as soon as the judge or a court can conveniently hear the same. Any person objecting to said report shall be entitled to at least 5 days' notice of the date and time of such hearing. At such hearing the court or judge shall hear and determine the motion or objections and shall make an order fixing and determining the amount found due from each of said water users to such commissioner or commissioners. In case no objections are filed within the 20 days, as hereinbefore provided for, such order shall be made as a matter of course, and in either case said order shall be final determination of the matter.

85-5-206. Effect of order fixing fees. After the order of the court fixing the fees and compensation and expenses of the water commissioner is final, the order has the force and effect of a judgment against the person to whom the water was or will be distributed and for whose benefit it was used or will be used. When the expenses of a commissioner or commissioners has been assessed against the land for which the service of the commissioner or commissioners has been rendered, the assessment is a lien against the land. The lien has the same effect as a judgment. The lien may be executed in the

same manner as a judgment upon order of the court. The water commissioner, at the water commissioner's discretion, may withhold further determinations of quantity or distribution of water to any person entitled to the water until the person has paid all fees, compensation, and expenses of the water commissioner or commissioners fixed by the court and apportioned and charged to the person, including bills sent prior to the beginning of a distribution season. The commissioner may withhold the determination of quantity and distribution of water from any land against which there exists any lien that is the result of lack of payment pursuant to this section until the lien has been fully discharged.

PART 3

85-5-301. Complaint by dissatisfied user. (1) A person owning or using any of the waters of the stream or ditch or extension of the ditch who is dissatisfied with the method of distribution of the waters of the stream or ditch by the water commissioner or water commissioners and who claims to be entitled to more water than the person is receiving or to a right prior to that allowed the person by the water commissioner or water commissioners may file a written complaint, duly verified, setting forth the facts of the claim.

(2) Upon receipt of the complaint, the judge shall fix a time for the hearing of the petition and shall direct that notice be given to the parties interested in the hearing as the judge considers necessary. At the time fixed for the hearing, the judge shall hear and examine the complainant and other parties who appear to support or resist the claim and examine the water commissioner or water commissioners and witnesses regarding the charges contained in the complaint.

(3) Upon the determination of the hearing, the judge shall make findings and issue an order that the judge considers just and proper. If it appears to the judge that the water commissioner or water commissioners have not properly distributed the water according to the provisions of the decree, permit, certificate, or change in appropriation right, the judge shall give the proper instructions for distribution of the water.

(4) The judge may remove any water commissioner and appoint a new water commissioner if the judge determines that the interests of the parties in the waters mentioned in the decree, permit, certificate, or change in appropriation right will be best served by appointing a new water commissioner. If it appears to the judge that the water commissioner has willfully failed to perform the water commissioner's duties, the water commissioner may be proceeded against for contempt of court, as provided in contempt cases. The judge shall make an order regarding the payment of costs of the hearing that the judge determines is just and proper.

85-5-302. Maintenance of headgates and measuring devices. All persons using water from any stream or ditch for which a water commissioner is appointed are required to have suitable headgates at the point where a ditch taps a stream and shall also, at some suitable place on the ditch and as near the head as practicable, place and maintain a proper measuring box, weir, or other appliance for the measurement of the waters flowing in the ditch. If a person fails to place or maintain a proper measuring appliance, it is the duty of the water commissioner not to apportion or distribute any water

through the ditch. The commissioner shall notify all parties interested by certified mail or in person 1 week before making the annual repair or cleaning of a stream or ditch or performing necessary labor or expenses to divert water to a ditch. The sending of a certified letter to the last-known post-office address of any interested party is prima facie evidence of the fact that the party was duly notified. Any work in the way of repairing a ditch made necessary by an emergency may be done without notice when injury would result from a delay.

PART 4

85-5-401. Determination of water rights between partners, tenants in common, and corporate stockholders. If a water ditch used for irrigating purposes is owned by a partnership, tenants in common, or corporation and there is any dispute between the respective owners, tenants in common, or stockholders respecting the use and division of the waters flowing in the ditch, any partner, tenant in common, or stockholder may commence an action in any court of competent jurisdiction to determine the rights of the respective parties to the use of the waters and may join in the petition a request for the appointment of a water commissioner to apportion and distribute the waters of the ditch according to the rights of the respective owners, tenants in common, or stockholders during the pendency of the action.

85-5-402. Appointment of commissioner prior to final decree. After the filing of the complaint in an action under [85-5-401](#), the court may, upon 5 days' notice to the other parties to the action, appoint a commissioner to divide and distribute the waters of the ditch to the respective parties, according to their respective rights, during the pendency of the action. The court may, upon good cause shown, appoint a commissioner without notice, and when a commissioner is appointed without notice, any party to the action may, on 5 days' notice to the plaintiff, move the court or judge to vacate the appointment or to modify the order as to the distribution of the waters of the ditch. The court or judge, on hearing, may affirm, vacate, or modify the order previously made. Each water commissioner appointed shall subscribe to an oath of office before commencing the discharge of duties.

85-5-403. Division of water. It shall be the duty of the water commissioner to divide the waters of said ditch between the owners, tenants in common, or stockholders in proportion to their respective rights, as set forth in the complaint or in such other manner or proportion as the court or judge may direct.

85-5-404. Authority of commissioner. Such commissioner shall have authority to enter upon said ditch; open, close, and set headgates; and do whatever else is necessary to apportion and distribute the waters of said ditch to the respective parties according to their respective rights.

85-5-405. Compensation and expenses. The court shall fix the compensation of the commissioner and the term of employment and shall make an order apportioning the amount of compensation among the several owners, tenants in common, or stockholders of the ditch, according to their respective rights and interest in the ditch. The amounts apportioned must be taxed as costs in the action against the respective parties.

85-5-406. Interference with actions of commissioner. A person opening or closing a headgate after being set by the commissioner or who in any manner interferes with the commissioner in the discharge of the commissioner's duties is guilty of contempt of court and may be proceeded against for contempt of court as provided in contempt cases.

85-5-407. Appointment of water commissioner after final decree. When the rights of the respective parties in an action to the use of the waters flowing in a ditch are adjudicated, the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 10% of the waters of the ditch, may, in the exercise of the judge's discretion, appoint a water commissioner to divide, apportion, and distribute the waters of the ditch to the respective parties according to their respective rights as set forth in the decree. When a commissioner is appointed under the provisions of this chapter to apportion and distribute the waters of the stream from which the water flowing in a ditch is taken, the commissioner shall, when directed by the judge or court, apportion and distribute the waters of the ditch according to the decree by which the rights of the respective owners were adjudicated.

85-5-408. Apportionment of costs. (1) When a commissioner is appointed upon the application of an owner or owners of a ditch, the court may fix the compensation of the commissioner and the term of the commissioner's employment. The court shall make an order apportioning the amount of compensation among the several owner or owners, tenants in common, or stockholders of the ditch according to their respective rights and interest. The order has the effect of a judgment against the person to whom the water was admeasured and for whose benefit it was used. When, in the discretion of the court, an order of apportionment of expense is made against the land for which the water was used, it has the effect of a lien against the land to which the apportionment was made. Execution may issue upon the order as upon a judgment by direction of the court, upon the application of any person interested in the order.

(2) When a commissioner is appointed under the provisions of this chapter to distribute the waters of the stream from which the waters flowing in a ditch are taken and to apportion and distribute the waters of the ditch according to the rights of the respective owners of the waters, the judge, in the judge's discretion, may, in addition to the apportionment taxed against the respective owners of the waters of the stream, apportion and tax the amount, if any, that the owners of the ditch shall pay in addition to the amount taxed under the provisions of this chapter.

GLOSSARY

ACRE-FOOT – The quantity of water needed to cover one acre to a depth of one foot.

ADJUDICATION – Simply stated adjudication means “a court decision”. Applied to water law it is the judicial procedure that settles claims and quantifies rights and priorities.

ANNUAL FLOOD – The highest peak discharge of a stream in a water year

APPROACH VELOCITY – Required velocity of water just upstream of measuring device to ensure proper conditions for accurate measurement.

APPROPRIATED WATER – Water from a stream, reservoir, or other source reserved for a specific use under state water right laws.

AQUIFER – Rock or sediment which is saturated and sufficiently permeable to transmit economic quantities to wells and springs.

AVERAGE ANNUAL RUNOFF (YIELD) – The average of water-year runoff for a total period of record; measured in volume.

BASIN – A physiographic region bounded by a drainage divide; consists of a drainage system comprised of streams and often natural or man-made lakes. (Also called drainage basin or watershed).

BENEFICIAL USE – The use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agriculture (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power and recreational uses. A beneficial use also includes the use of water for leasing under special provisions of Montana Codes Annotated § 85-2-141.

BOND – A sum of money filed by a water commissioner with the clerk of district court to insure the faithful discharge of their duties.

CLAIM – The “statement of existing water right claim” in accordance with Senate Bill 76, the adjudication statute, is a filing made to document an existing (pre-July 1, 1973) water right as ordered by the Montana Supreme Court. The statement of claim is accorded prima facie status.

CONFLUENCE – The place where tributaries, streams, or rivers meet.

CONJUNCTIVE USE – Planned management of surface water and groundwater resources as an interrelated system.

CONSUMPTIVE USE – The difference between the total quantity of water withdrawn and the quantity of water returned to the source (e.g. the loss of water by evaporation to the atmosphere; the consumption of water by man, animals, and plants; and the incorporation of water into the products of industry or food processing).

CREEK – A small stream of water that serves as the natural drainage course for a drainage basin. The term is relative according to size. Some creeks in a humid region would be called rivers if they occurred in an arid region.

CREST – 1.) The top of a dam, dike, or spillway. 2.) The highest elevation reached by floodwaters flowing in a channel.

CUBIC FEET PER SECOND (CFS) – A unit expressing rate of discharge, typically used in measuring streamflow. One cubic foot per second is equal to the discharge in a stream of a cross section one foot wide and one foot deep, flowing with an average velocity of one foot per second; equal to 448.8 gallons per minute.

CURRENT METER – A mechanical or electromagnetic instrument used to measure velocity and determine discharge in a stream or ditch.

DAM – A structure of earth, rock, concrete or other material designed to retain water, creating a pond, lake, or reservoir.

DECREE – The judgment of a court; an official order or settlement. As related to Montana water law, a court adjudication of pre-July 1, 1973 existing water rights in a particular river basin.

- Temporary Preliminary Decree – a listing of state-based claims in a particular river basin issues by the Montana Water Court as a temporary listing of rights pending the addition of federal water right claims.
- Preliminary Decree – A listing of state-based and federal reserved rights in a particular river basin.
- Final Decree – A finalized record and adjudication of all rights in a basin, allowing for sound administration of water rights. (All decrees are subject to objections and hearings before being finalized).

DISCHARGE – Flow of surface water in a stream or the flow of ground water from a spring, ditch, or flowing artesian well.

DITCH RIDER – An employee of an irrigation district, water users' association, or some other private entity that facilitates the measurement and distribution of water for that entity.

DITCH RIGHT – A right that allows someone to bring water through a ditch to their own land across someone else's land. Ditch rights are separate from water rights. One can have a water right without having a ditch right and vice versa, although this occurs infrequently. Ditch rights are obtained either by permission of the landowner, or by condemnation in a court with compensation. Owners of ditch rights can go onto land of the landowner and repair and maintain the ditch, without notice. However, the access must be reasonable and necessary for maintenance of the ditch and cannot exceed the historical access.

DIVERSION – The transfer of water from a stream, lake, aquifer, or other source of water by a canal, pipe, or other conduit to another watercourse or to the land, as in the case of an irrigation system.

DRAINAGE – Downward movement of water through the soil. When this happens quickly, the drainage is “good,” “fast,” or the soil is “well-drained.” When it happens slowly, the drainage is said to be “bad,” “slow,” or soil is “poorly drained.” Most plant roots need oxygen as well as water, and soil that remains saturated deprives roots of necessary oxygen.

DRAINAGE DIVIDE – A natural ridge on the land surface which divides one drainage area from another.

EPHEMERAL STREAM – A stream that flows only part-time, usually during snow melt periods or following rainstorms.

EXISTING WATER RIGHTS – As defined by the Montana Water Use Act, water rights that originated before July 1, 1973, the effective date of the Montana Water Use Act.

FLOW – The rate of water discharged from a source; expressed in units of volume per units of time.

FLOW RATE – How fast water is taken from a source, or how fast it flows past a point. (e.g., gallons per hour or minute, cubic feet per second, etc.)

FLUME – A shaped, open-channel flow structure that forces flow to accelerate and is used to measure flow in a channel.

FREE-FLOW CONDITION – When the flow condition downstream of a measuring device does not influence the measurement at the upstream end. Free flow is critical for accurate measurements of flumes and weirs.

GAGING STATION – A particular site on a stream, canal, lake, or reservoir where hydrologic data is collected.

GALLONS PER MINUTE (GPM) – A unit expressing rate of discharge, typically used in measuring well capacity.

GROUNDWATER - Any water beneath the land surface or beneath the bed of a stream, lake or reservoir and which is not part of the surface water.

HEADGATE – A structure installed at the point of diversion to regulate flow

IN-LINE FLOW METER – A meter often permanently installed in a pipe or closed conduit that measures the volume of water flowing through the pipe.

INSTREAM FLOWS – The water left in a stream to maintain the existing water quality or aquatic resources and associated wildlife and riparian habitat. Instream use – Uses of water within the stream

channel (e.g. fish and other aquatic life, recreation, navigation, and some types of hydroelectric power production).

INTERBASIN TRANSFER – The diversion of water from one drainage basin to another drainage basin.

IRRIGABLE LAND – Land possessing favorable soil, topographic, drainage, and climactic conditions and an adequate water supply capable of economically supporting irrigation.

IRRIGATION DISTRICT – A quasi-public governmental organization created by petition and court decree to operate an irrigation system in a defined area that includes the operation of works, delivery of water, and administration of the organization. It is overseen by a board that is elected by the members of the district.

IRRIGATION RETURN FLOW – Irrigation water not consumed which is returned to a surface or groundwater supply. Once it returns to the stream it belongs to, the stream is subject to distribution in accord with the priorities on the stream.

LATERAL DITCH – Lateral ditches normally divert water from a main canal or ditch which has its heading from a river or natural stream channel.

MINER’S INCHES - A unit expressing flow rate. 40 Montana statutory miner’s inches is equivalent to 1 cubic foot of water per second (cfs).

NATURAL FLOW – The naturally occurring water that creates in-channel flows. Natural flows do not include water imported from other basins, water stored in a reservoir, or artificially added ground water. Natural flows may include tributary streams, springs, bank storage, and return flow.

OFFSTREAM USE – Water withdrawn from a surface water source for uses such as irrigation, municipal water supply, steam electric generation, etc.

PERENNIAL STREAM – A stream that flows from source to mouth throughout the year.

PERIOD OF USE – The time period during each year that the holder of a valid water right is allowed to use water.

PLACE OF USE – The location where the water is used.

POINT OF DIVERSION – The location at which water is physically diverted by man-made works from the source of water. Points of diversion are identified by legal land descriptions in Montana water rights.

PRIOR APPROPRIATION DOCTRINE – A legal theory of water law and a system of water rights management which allocated water between users based on a priority of water use. It is often defined as a water system where “first in time is first in right.” An individual’s right to a specific quantity of

water depends on when the use began and the amount of water used at that point in time. The first person to use the water from a source established the first right, the second person established the next right, and so on. During dry years, the person with the first right has the first chance to use the available water. The holder of the second right (a junior right to the first right) would have the second chance, and so on. The traditional elements of a valid appropriation are:

1. Intent to apply water to a beneficial use;
2. An actual diversion of water from the natural source;
3. Application of the water to a beneficial use within a reasonable time;
4. The right to conditions as they exist at the time of appropriation.

PRIORITY DATE – The date a water right was first established. The priority date is used to disperse water according to seniority.

RUNOFF – The amount of precipitation appearing in surface streams, rivers, and lakes; defined as the depth to which a drainage area would be covered if all of the runoff for a given period of time were uniformly distributed over it.

SEEPAGE – Water lost or gained in a stream or ditch as the result of interaction with shallow ground water through porous soils.

SPRING – a naturally occurring source of water issuing from the ground

STAFF GAGE – Either vertical or inclined. Used to measure water-surface elevations.

STORED WATER – Water diverted to and retained within a reservoir and then released for some beneficial use.

STREAM – Any body of running water moving under gravity flow through clearly defined natural channels.

STREAMFLOW – The discharge that occurs in a natural channel. Although the term “discharge” can be applied to the flow in a canal, the word “streamflow” uniquely describes the discharge in a surface stream.

SURFACE WATER – Water above the surface of the land including, but not limited to, lakes, rivers, streams, wetlands, wastewater, flood water, and ponds.

TOTALIZER – A flow meter with the built-in capability to sum or totalize volume continually.

TRIBUTARY – A stream that contributes its water to another stream or body of water.

WATER BUDGET – An accounting of the inflows and outflows of water to and from a system.

WATER RIGHT – A legal right to use a specified amount of water for beneficial purposes.

WATERSHED (DRAINAGE BASIN) – The land area (or catchment) which captures precipitation and conveys it to a particular water body. It is bounded by ridges or divides. A large watershed like that of the Bitterroot River, is made up of the watersheds of all its tributaries, such as Mill Creek.

WATER YEAR – The 12-month period of October 1 – September 30 and designated by the calendar year in which it ends.

WATER YIELD – The surface runoff from a drainage basin; precipitation minus the evapotranspiration; usually measured in cubic feet per second or acre-feet per square mile. For groundwater, the volume of water pumped from a well in a given period of time; usually measured in gallons per minute.

WEIR – A structure placed in a canal, stream, or ditch to measure the rate of flow of water. In its simplest form, a weir consists of a bulkhead with an opening of fixed dimensions cut into its top edge.

WELL – A pit, hole, or shaft sunk into the earth to tap an underground source of water.