

Department of Natural Resources and Conservation
Montana Water Court
Position: Support

SB57 Fact Sheet

SB 57 addresses the work to be done in the next phase of the adjudication process.

The goals for the next phase of the adjudication include:

- Completion of the initial decree phase in conformance with 85-2-270 MCA. Completion of the initial decree phase means the Water Court will issue a preliminary or temporary preliminary decree for all basins in Montana by June 30, 2020;
- DNRC completing reexamination of approximately 90,000 claims in verified basins by July 1, 2023;
- DNRC staff will continue to provide post decree assistance to the Montana Water Court in resolution of issues identified during the examination of the water right claims
- DNRC staff will continue to provide water court decree information for enforcement projects throughout the state, which currently number 45 involving 10,440 points of diversion. Staff will also assist with new enforcement projects anticipated to arise on streams with known water distribution problems.

SB 57 will provide the Water Court and DNRC with the resources necessary to carry out the next phase of the adjudication and meet the goals established by the legislature in 85-2-270 by creating a transfer of funding to the Adjudication Account from the General Fund. Those goals and purpose include:

“85-2-270. (Temporary) Findings -- purpose. (1) The purpose of 85-2-271, 85-2-280 through 85-2-282, and this section is to:

(a) complete claims examination and the initial decree phase;

(b) reexamine claims in basins that were verified and were not subject to the supreme court examination rules when the water court has received a petition and issued an order pursuant to 85-2-282 or the water court has issued an order on its own initiative; and

(c) ensure that the product of the adjudication is enforceable decrees.

(2) With adequate funding, it is realistic and feasible for the department to complete claims examination and reexamination of verified basins for which the water court has received a petition and issued an order pursuant to 85-2-282 or the water court has issued an order on its own initiative by June 30, 2015. It is also realistic and feasible for the water court to issue a preliminary or temporary preliminary decree by June 30, 2020, for all basins in Montana. (Terminates June 30, 2020--sec. 18, Ch. 288, L. 2005; sec. 11, Ch. 319, L. 2007.)”

This bill identifies legislative benchmarks for reexamination of the approximately 90,000 water claims in verified basins as well as new reporting requirements for both the Water Court and DNRC. The benchmarks are a result of DNRC and the Water Court developing a coordinated work plan for the next phase of the adjudication. Similar to HB 22, if these benchmarks are not met, money for the water adjudication will not be included in DNRC's base budget.

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The work involved on the 90,000 claims is a partial examination and application of a computer-based standards program to bring claims examined early in the adjudication in line with current examination standards. The reexamination of these claims was anticipated in the current version of 85-2-271 (2). 85-2-271 (2) reads *"There are approximately 98,000 claims that were verified that may be reexamined using the supreme court examination rules if the water court receives a petition and issues an order as provided in 85-2-282 or the water court issues an order on its own initiative."*

The Water Court issued an order requiring reexamination in 2012. The need for the reexamination was identified by the Legislature in a 2010 Legislative Audit Report. The planned reexamination was developed jointly by the DNRC and the Water Court pursuant to the recommendations in the Legislative Audit Report. DNRC has met every legislative benchmark to date and completed examination of all 57,000 previously unexamined water right claims in 2014.

During the timeframe identified within the proposed performance benchmarks, DNRC staff will also examine exempt rights filed for stock and individual domestic uses. The number of filings is unknown but is expected to be substantial in certain areas of the state.

Moving forward DNRC will carry out these duties with 15.5 fewer DNRC FTE (39 to 23.5) than those funded under HB 22 in 2005.

SB 57 was amended to make it clear that when determining the amount of the required to transfer each year, the remaining fund balance in the fund would be taken into consideration so that the transfer isn't larger than it needs to be to provide enough cash to cover the legislative appropriations.