



ENVIRONMENTAL QUALITY COUNCIL

WATER POLICY INTERIM
COMMITTEE
JANUARY 13, 2010
EXHIBIT 1

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GOVERNOR BRIAN SCHWEITZER DESIGNATED REPRESENTATIVE	HOUSE MEMBERS	SENATE MEMBERS	PUBLIC MEMBERS	COUNCIL STAFF
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To: Water Policy Interim Committee
From: Joe Kolman
Re: Water Adjudication Reports

December 28, 2009

EQC Members,

Attached are the adjudication reports from the Montana Water Court and the Department of Natural Resources and Conservation. Section 85-2-281, MCA, requires the Water Court and the DNRC to report to the EQC on the progress of the adjudication process until 2020.

As part of the ongoing coordination between the EQC and the Water Policy Interim Committee, the EQC agreed at the start of this interim that the court and the agency provide written reports to both committees, as well as oral presentations to the WPIC.

Please contact me if you have questions.

Joe Kolman

**DNRC REPORT TO EQC
HB22 ADJUDICATION PROGRESS
January, 2010**

Claims Examination Progress

- First benchmark 8,000 claims by 12-31-2006
- Second benchmark 19,000 claims by 12-31-2008
- **Third benchmark 31,000 claims by 12-31-2010**
- Claims examined July 2005 thru November, 30 2009 39,250

- Claims examined by Purpose
 - o Irrigation 9132 23%
 - o Stock 22287 57%
 - o Domestic 4649 12%
 - o Other 3282 8%

39250

Claims remaining to be examined **17,750**

Summary Reports to Water Court

- Union Creek (part of 76F)
- Teton River (41O)
- Big Hole River (41D)
- Tongue River, below hanging Woman Creek (42C)
- Blackfoot River (76F)
- Missouri River, from Holter Dam to Sun River (41QJ)
- Tongue River, above Hanging Woman (42B)
- Pryor Creek (43E)
- Smith River (41J)
- Beaver Creek (40M)
- Flatwillow Creek (40B)
- Milk River (40J)
- Little Big Horn River (43O)
- Big Muddy Creek (40R)
- Missouri River, Sun River to Marias River (41Q)
- Beaverhead River (41B)**
- Arrow Creek (41R)**
- Missouri River, from Marias River to Bullwacker Creek (41T)**

Date Issued

- May 19, 2005
- August 15, 2005
- October 31, 2006
- August 7, 2007
- August 14, 2007
- August 15, 2007
- December 5, 2007
- August 18, 2008
- September 1, 2008
- September 1, 2008
- September 11, 2008
- December 5, 2008
- February 6, 2009
- April 6, 2009
- June 16, 2009
- August 14, 2009**
- October 23, 2009**
- November 17, 2009**

Decrees Issued by Water Court

- Teton River (41O)
- Union Creek (part of 76F)
- Big Hole River (41D)
- Missouri River (41QJ)

Date Issued

- 12/29/2005
- 3/10/2006
- 4/6/2007
- 2/6/2008

Number of Claims

- 2,500
- 42
- 3,892
- 2,584

Tongue River (42C)	2/28/2008	4,710
Tongue River (42B)	2/28/2008	1,345
Forest Service Compact	5/19/2008	262
BLM-Montana Compact	3/6/2009	2
Beaver Creek (40M)	3/20/2009	2,942

Above decrees scanned and available at:

http://www.dnrc.mt.gov/wrd/water_rts/adjudication/default.asp

BASINS BY COMPLETION DATE - DNRC WORK PLAN 2009				
BASIN COUNT	BASIN NAME	WORK STATUS	Estimated Completion Date	
1	Flathead R below Flathead Lake (76L)	Examination in progress	12	2009
2	Big Horn R below Greybull R (43P)	Examination in progress	3	2010
3	Rosebud Creek (42A)	Examination in progress	6	2010
4	Shoshone River (43N)	To be Examined	9	2010
5	Milk River above Fresno (40F)	Summary prep pending	3	2011
6	Flathead River (76LJ)	Examination in progress	9	2011
7	Cut Bank River (41L)	Summary prep pending	6	2012
8	St. Mary River (40T)	Summary prep pending	7	2012
9	Yellowstone R below Powder R (42M)	Examination in progress	8	2012
10	Red Rock River (41A)	Examination in progress	2	2013
11	Peoples Creek (40I)	Summary prep pending	6	2013
12	Two Medicine River (41M)	Summary prep pending	8	2013
13	Marias River (41P)	Examination in progress	10	2013
14	Missouri R between Bullwacker & Musselshell (40EJ)	Examination in progress	3	2015
15	Bitterroot R, E side (76HA)	Examination in progress	6	2015

District Court Enforcement Actions

2005 season completed water court assistance for 23 streams
 2006 season completed water court assistance for 23 streams
 2007 season completed water court assistance for 26 streams
 2008 season completed water court assistance for 32 streams
 2009 season completed water court assistance for 36 streams
 Automated indexes are now in use

Post Decree Assistance (July thru Nov 2009)

<u>Case type</u>	<u>case count</u>	<u>work hours</u>
Certified case	1	81
85-2-248	82	1738
Case	10	54.5

<u>General assist</u>	<u>72.5</u>
Total hours	2242

Expenses

YTD FY 2010:	Operating Costs	\$ 112,702.73
	Personnel Services	<u>\$ 677,255.79</u>
	Total	\$ 789,958.52
	Budget	\$ 2,375,917.00

Billing System

108,000 bills mailed Dec 27, 2005
Estimated revenue generated \$6.2 million
Revenue received \$5.202 million

Appeals

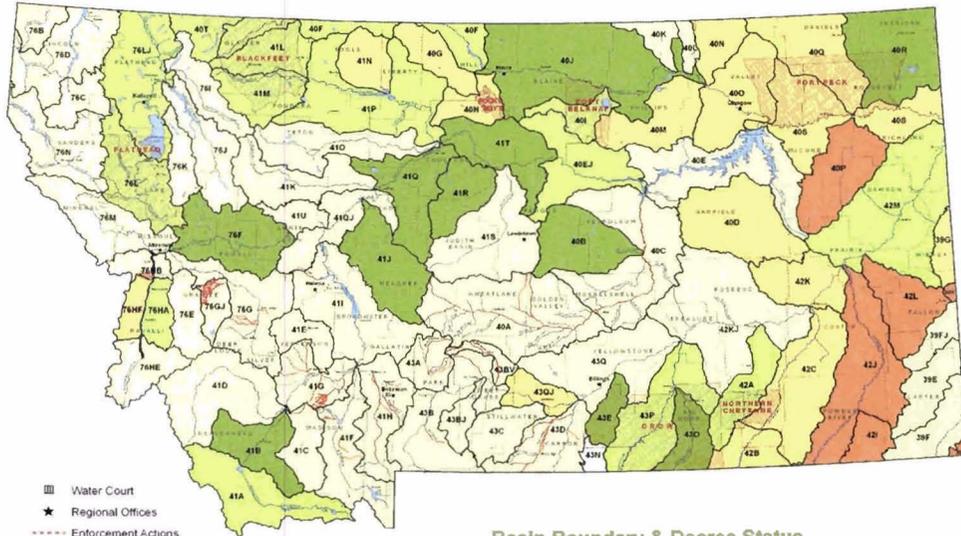
5,048 Appeals received
4505 appeals resolved to date (1118 denied, 3387 resolved with fee correction)
543 appeals remain

HB39 Automate Ownership updates (effective July 1, 2008)

- Contract is finalized and Tyler Inc is developing the program for DOR to pass thru new property owner names to DNRC for updating water right records.
- Geocodes were loaded into DNRC database in June 2008.
- State-wide ownership update export to DNRC was received 12-4-2009.
- DNRC is scrubbing data for input, estimated completion date June 2010.

Basin Location and Adjudication Status

11/20/09



- Water Court
- Regional Offices
- Enforcement Actions
- COUNTIES
- RESERVATIONS

Basin Boundary & Decree Status

Currently Examining	Temporary Decree
Summary Report Issued	Preliminary Decree
Not Yet Examined	Final Decree

Water Resources Division
November 2009
Montana State Plane NAD 83

WATER COURT ADJUDICATION PROGRESS
REPORT TO THE EQC PURSUANT TO § 85-2-281, MCA
 Submitted by C. Bruce Loble, Chief Water Judge
 December 9, 2009

The Water Court's primary focus is to work through its existing inventory of water right claims that have unresolved objections, issue remarks, motions to amend, and claims certified to the Water Court by the DNRC or District Courts. The Court's goal is to draw down its current caseload to clear the decks for the large number of claims that are moving through the DNRC claim examination pipeline and which are scheduled to be incorporated into Water Court decrees within the next few years. Currently, the Water Court is primarily working on water right claims in the following basins:

Basin	Source See Attached Map	Claims in Decree	Remaining Claims to Resolve
40A	Musselshell River above Roundup	5,812	149
40E	Missouri River between Musselshell River & Fort Peck Dam	3,010	204
40H	Big Sandy Creek	797	83
40O	Milk River Below Whitewater Creek	3,306	1,280
40M	Beaver Creek, Tributary of Milk River	2,942	0 (1 Peck License January 22, 2010)
40Q	Poplar River	2,080	18
40S	Missouri River Below Ft. Peck Dam	2,966	348
41C	Ruby River	2,183	192
41D	Big Hole River	3,892	2,236
41G	Jefferson River	2,407	143
41I	Missouri River upstream of Holter Dam	5,168	218
41O	Teton River	2,541	1,093
41QJ	Missouri River from Holter Dam to Sun River	2,584	819
42B	Tongue River above and including Hanging Woman Creek	1,345	570
42C	Tongue River below Hanging Woman Creek	4,708	1,189
42KJ	Yellowstone River between Bighorn and Tongue Rivers	4,767	673

43B	Yellowstone River above & including Bridger Creek	4,860	303
43Q	Yellowstone River between Clarks Fork Yellowstone and Bighorn Rivers	2,473	212
76HF	Bitterroot River - Westside Subbasin	3,774	222
United States Forest Service - Montana Compact -- Several Objections Still Pending Scheduling Conference set for December 17, 2009			
United States Bureau of Land Management - Montana Compact -- All Objections Withdrawn Final Documents Due January 6, 2010			

In preparing to issue additional decrees, the Water Court is reviewing eleven Summary Reports (basically draft decrees) which were generated by the DNRC after completing its basin water right claim examination duties. The Water Court has completed the review of most of these Summary Reports, but is holding up the issuance of any new decrees until the Department of Revenue and the DNRC complete the automation of the ownership update process. Until the state's centralized water right ownership record system can provide current names and addresses of the actual water right owners in the affected basins, the Water Court is reluctant to issue new decrees.

The Water Court has been advised that the automation process will not be completed soon. The DNRC has been requested to manually update the ownership records in the Summary Report basins beginning in Basin 40R. Once each basin ownership update is complete, the Water Court will then issue a decree in that basin, hopefully beginning in January 2010. Assuming each basin update is timely completed thereafter, the decrees in the Summary Report basins might be issued as often as one a month in the approximate order of the following basin list:

Basin Designation	Source	Approximate Number of Claims
40R	Big Muddy Creek	2,028
43E	Pryor Creek	625
43O	Little Big Horn River	1,176
41Q	Missouri River from Sun River to Marias River	4,118
41J	Smith River	2,711
76F	Blackfoot River	3,690
40B	Flatwillow Creek	3,633

40J	Milk River between Fresno Reservoir & Whitewater Creek	12,881
41B	Beaverhead River	2,163
41R	Arrow Creek	2,167
41T	Missouri River Between Marias River to and including Bullwacker Creek	3,063
Eleven Basins	Approximate Number of Claims in Prospective Decrees	38,255

The Water Court is working with the DNRC claim examination staff and the United States water adjudication staff to gather additional information to complete the examination of claims for private stock water rights on federal lands. The Water Court is also working with interested parties to identify flow rate and volume guidelines to apply to instream claims, other than Department of Fish, Wildlife, & Parks "Murphy" Rights.

On December 4, 2009, the Water Court directed the DNRC to reexamine approximately 418 claims in Frenchman Creek (Basin 40L), a tributary of the Milk River. The Frenchman Creek (Basin 40L) water right claims were the subject of a Temporary Preliminary Decree issued in 1985.

In anticipation of the DNRC completing its claim examination benchmarks prior to the statutory June 30, 2015 deadline, the Water Court has requested the DNRC to discuss the prospective transfer of four DNRC water adjudication FTEs in FY 2013 to the Water Court.

In response to the 2009 legislative mandate to generate "vacancy savings," the Water Court has still not filled a half time FTE position. In response to the suggestion of the Office of the Supreme Court Administrator, a few Water Court staff members have continued scaling back their hours to slightly less than full time to help the Judicial Branch meet its vacancy savings goals.

