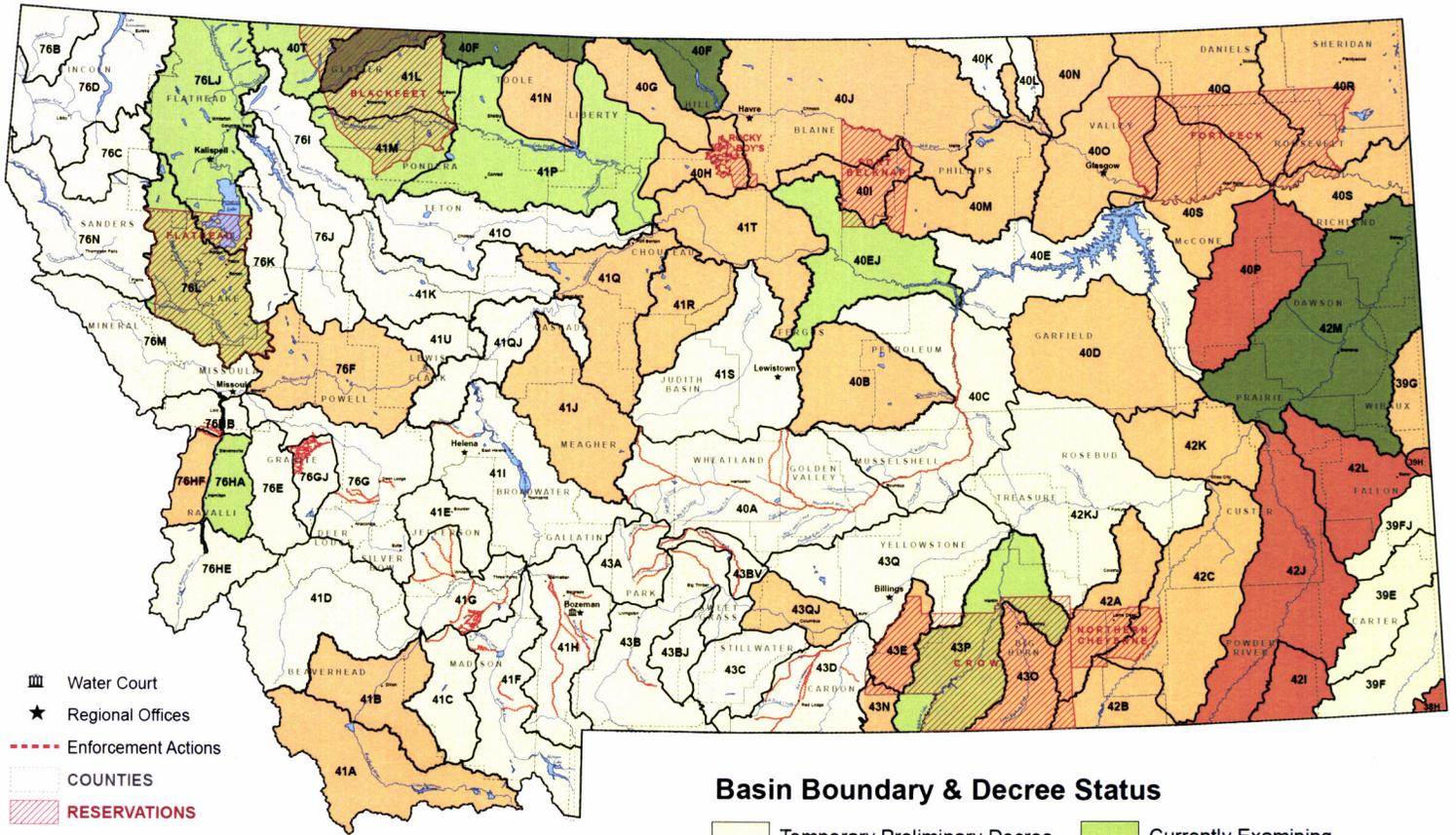


Basin Location and Adjudication Status

7/17/2013



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

Basin Boundary & Decree Status

- Temporary Preliminary Decree
- Preliminary Decree
- Final Decree
- Currently Examining
- Summary Report Issued

Water Resources Division
 July 2013
 Montana State Plane NAD 83

| Decrees Issued by Water Court | Date Issued | Number of Claims |
|--|--------------------|-------------------------|
| Teton River (41O) | 12/29/2005 | 2,541 |
| Union Creek (part of 76F) | 3/10/2006 | 42 |
| Big Hole River (41D) | 4/6/2007 | 3,892 |
| Missouri River (41QJ) | 2/6/2008 | 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 |
| Big Muddy Creek (40R) | 1/28/2010 | 2,029 |
| Pryor Creek (43E) | 2/25/2010 | 629 |
| Little Big Horn River (43O) | 3/17/2010 | 1,176 |
| Missouri River from Sun River to Marias River (41Q) | 5/27/2010 | 4,127 |
| Milk River between Fresno Res & Whitewater (40J) | 6/24/2010 | 12,897 |
| Smith River (41J) | 12/16/2010 | 2,719 |
| Blackfoot River (76F) | 2/10/2011 | 3,717 |
| Flatwillow Creek (40B) | 5/5/2011 | 3,677 |
| Arrow Creek (41R) | 6/23/2011 | 2,179 |
| National Bison Range Compact | 9/30/2011 | 97 |
| Missouri River, from Marias River to Bullwhacker Creek (41T) | 4/19/2012 | 3,073 |
| Crow Tribe of Indians Montana Compact | 1/28/2013 | NA |
| Beaverhead River (41B) | 5/9/2013 | 2,238 |
| Red Rock River (41A) | 5/9/2013 | 2,861 |
| Rosebud Creek (42A) | 5/23/2013 | 1,220 |
| Shoshone River (43N) | 6/13/2013 | 165 |
| Peoples Creek (40I) | 6/20/2013 | 686 |

Above decrees scanned and available at:

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

| BASINS BY COMPLETION DATE - DNRC WORK PLAN FY 2013 | | | | |
|---|---|-------------------------|---------------------------|------|
| BASIN COUNT | BASIN NAME | WORK STATUS | Estimated Completion Date | |
| 1 | Flathead R below Flathead Lake (76L) | Summary Report pending | 1 | 2015 |
| 2 | Big Horn R below Greybull R (43P) | Summary Report pending | 5 | 2014 |
| 3 | Flathead River (76LJ) | Examination in progress | 9 | 2014 |
| 4 | Cut Bank River (41L) | Summary Report pending | 6 | 2014 |
| 5 | St. Mary River (40T) | Summary Report pending | 11 | 2013 |
| 6 | Two Medicine River (41M) | Summary Report pending | 2 | 2014 |
| 7 | Marias River (41P) | Examination in progress | 10 | 2013 |
| 8 | Missouri R between Bullwhacker & Musselshell (40EJ) | Summary Report pending | 9 | 2013 |
| 9 | Bitterroot R, E side (76HA) | Examination in progress | 10 | 2014 |
| 10 | Frenchman Creek Re-Examination (40L) | Summary Report pending | 7 | 2014 |

Assistance for District Court Enforcement of Water Court Decrees

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
 2010 season completed water court assistance for 38 streams
 2011 season completed water court assistance for 38 streams
 2012 season completed water court assistance for 40 streams
2013 season completed water court assistance for 42 streams

Post Decree Assistance (July- FY2014)

| Case type | case count | work hours |
|----------------|------------|--------------|
| Certified case | | |
| | 2 | 303 |
| 85-2-248 case | | 10 |
| General assist | | 62.5 |
| Total hours | | 375.5 |

Post Decree assistance primarily involves working with claimants and the Water Court to help resolve issue remarks on water rights. This assistance is generated through the on motion process (85-2-248) and objections by water users resulting in a case. Assistance includes meeting with claimants, conducting field investigations, mapping, and providing recommendations and technical reports pertaining to individual cases. In addition, assistance is requested by the Water Court to help with certified cases before and after the initial decree phase. Unique requests to help the Water Court resolve specific cases such as large basin mapping projects, and other technical requests fall within the general assistance category.

HB39 Automate Ownership updates (effective July 1, 2008)

- Department staff continue to validate water right geocodes for property transfers that occurred from November 2010 thru January 2012.
- In 2010, 3,821 ownerships were updated involving 9,460 water rights
- In 2011, 6,245 ownerships were updated involving 15,765 water rights.
- In 2012 8,729 ownerships were updated involving 20,496 water rights.
- In 2013 8,208 ownerships were updated involving 19,305 water rights.
- So far this fiscal year, 718 ownerships have been updated involving 1,525 water rights.**

WATER COURT AND ADJUDICATION STATUS UPDATE

SEPTEMBER 2013

I. Backlog of Cases.

The backlog of cases has been reduced sharply since creation of the Associate Water Judge position in 2012. The majority of remaining cases involve basin-wide objections by federal agencies. See figure 1 attached to this report.

II. Status of Compacts.

There are nine water right compacts that have been through the entire approval process, including review by the Water Court. Two compacts are currently before the Court and eight additional compacts may be sent to the Court in the future (see attached).

III. Staffing at the Water Court.

The Water Court has ten water masters, a court administrator and six clerks of court, law clerks and clerical staff. We currently have 6.75 positions unfilled, including four water master positions and an Associate Water Judge. Advertising for four positions has already occurred and interviews have occurred or are presently scheduled.

IV. Work Plan for Court

Court staff has undertaken a comprehensive review of procedures, staffing, and practices at the Court to identify opportunities to achieve more productivity and efficiency. The result is a new work plan which will be steadily implemented over the next 12 months. As tasks on the plan are completed, additional items for improvement will be added.

V. Timetable for Completion of The Adjudication

House Bill 22 was passed in 2005. It established milestones and objectives for the adjudication. Among those were completion of claims examination by 2015 and issuance of all interim decrees by 2020 (resolution of objections and issue remarks from those decrees will not be complete by 2020). The DNRC and Water Court are on a path to achieve both of those milestones.

The more difficult question is when the adjudication will be complete. Completion means all final decrees have been issued and are enforceable. The present estimate for completion is 2028. That forecast is based on assumptions that may or may

not be accurate. Those assumptions include lower objections rates on second decrees, no litigation in the Water Court over federal or Indian reserved rights, no changes to the current legislative framework, no McCarran amendment challenges, resolution of other federal challenges to the process without changing the Court's workload, no changes to the number of issue remarks placed on claims, and adequate funding for both the Water Court and the DNRC.

Accordingly, completion of the adjudication in 2028 is an estimate only. Completion of that goal is subject to variables beyond the control of the Water Court and the DNRC.

VI. SB 355 and Exempt From Filing Rights

History

Montana's adjudication of water rights began in 1973. In its original configuration, the adjudication process required claimants to prove the validity of their rights. The process also included all stock water and domestic claims in the State. Initial progress adjudicating water rights was slow. In 1978, the DNRC made a number of recommendations to expedite the adjudication. Among these were recommendations to institute a statewide mandatory claim filing deadline, grant prima facie status to all claims, and to postpone adjudication of certain stock water and domestic claims.

At the time these recommendations were made, it was estimated that 500,000 water rights existed in Montana, and that approximately half of these water rights were stock water and domestic claims. The DNRC theorized that postponing adjudication of these claims would expedite the process by enabling claimants and judges to focus on larger water rights first.

Variations of these recommendations were adopted by the Legislature in 1979. Among the new statutes adopted was MCA 85-2-222 which exempted certain water rights from the statewide mandatory claim filing process. The rights exempted were "existing rights for livestock and individual as opposed to municipal domestic uses based upon instream flow or groundwater sources." These water rights became known as exempt from filing rights.

There has been significant progress made since these changes to the adjudication process. As the adjudication matured, decrees issued by the Water Court began to be enforced throughout the State. The Water Court also began reviewing compacts for

federal and Indian reserved water rights. At the same time, the Court began receiving requests from water users asking for recognition of their exempt from filing rights.

New Legislation

In 2011, the Montana Legislature asked the Water Court and the Adjudication Advisory Committee to make recommendations regarding potential legislation for inclusion of exempt from filing water rights in the adjudication process.

The product of this request was SB 355 which was enacted in 2013.

SB 355 allows for filing of previously exempt stock water and domestic claims. It contains the following significant provisions:

- The claimant must file a claim form with the DNRC and pay a filing fee.
- The claimant must also file a petition with the Water Court.
- The claimant must provide and pay for notice required by MCA 85 – 2 – 233(6).
- New stock water and domestic claims filed under SB 355 have the same prima facie status as other claims.
- Failure to file does not result in forfeiture of an existing water right.
- Failure to file results in subordination of the existing right to all other water rights except similar unfiled claims.

The legislation takes effect October 1, 2013.

Claims must be filed 90 days prior to issuance of a final decree. Although the Water Court intends to issue notice of upcoming final decrees, the Court also recommends filing previously exempt stock water and domestic claims as soon as possible. After the claims are filed and notice has been provided, the Water Court will need to resolve any objections prior to issuance of the final decree

Public Outreach

The Water Court has taken a number of steps to make the public aware of SB 355 and its implementation.

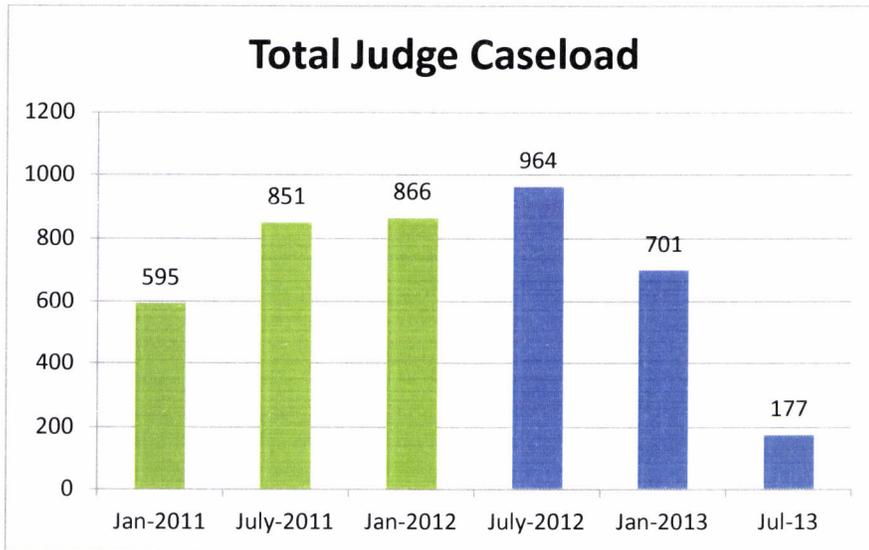
Information will be available on DNRC and Water Court websites. This information will include claim forms, draft petitions and FAQ's.

The Water Court has already made public presentations to realtor groups, the stock growers, farm bureau federation and water user groups within basins. This public outreach will continue up to the effective date and beyond.

Figure 1

Judge Caseload

| | Jan-2011 | July-2011 | Jan-2012 | July-2012 | Jan-2013 | Jul-13 |
|-------|----------|-----------|----------|-----------|----------|--------|
| CWJ | 595 | 851 | 866 | 801 | 580 | 59 |
| AWJ | | | | 163 | 121 | 118 |
| Total | 595 | 851 | 866 | 964 | 701 | 177 |



- Single Judge at Water Court
- Addition of Associate Water Judge

- * Numbers indicate claim counts. Multiple claims can be in a given case.
- * Backlog should be complete by end of 2013.

Figure 2

Compact Status

| Case | Description | Status |
|------------|--|---------------|
| wc-92-01 | Fort Peck Compact | Completed |
| wc-93-01 | Northern Cheyenne Compact | Completed |
| wc-94-01 | National Park Service Compact | Completed |
| wc-2000-01 | Rocky Boy's Compact | Completed |
| wc-2000-02 | US F&WS Red Rock Lakes Compact | Completed |
| wc-2000-03 | US F&WS Benton Lake Compact | Completed |
| wc-2002-04 | US F&WS Black Coulee Compact | Completed |
| wc-2007-03 | USFS Compact | Completed |
| wc-2008-10 | BLM_Montana Compact | Completed |
| wc-2011-01 | US Fish and Wildlife Service, National Bison Range Compact | Open at Court |
| wc-2012-06 | Crow Compact | Open at Court |
| | Blackfeet Tribe of the Blackfeet Reservation | Pending |
| | Confederated Salish and Kootenai Tribes of the Flathead Reservation | Pending |
| | Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation | Pending |
| | Turtle Mountain Chippewa | Pending |
| | US Bureau of Land Management, Upper Missouri River Breaks National Monument | Pending |
| | US Department of Agriculture - USDA Agricultural Research Service Livestock & Range Laboratory, Sheep Experiment Station | Pending |
| | US Fish and Wildlife Service Bowdoin National Wildlife Refuge | Pending |
| | US Fish and Wildlife Service Charles M. Russell National Wildlife Refuge | Pending |