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Water Rights in Montana

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Montana Department of Natural
Resources and Conservation
P.O. Box 201601
Helena, MT 59620-1601
Phone (406) 444-6610
www.dnrc.state.mt.us/wrd/home.htm

Legislative Environmental - Quality
Council
P.O. Box 201704
Helena, MT 59620-1704
Phone (406) 444-3742
http://www.leg.state.mt.us/css/lepo/

Montana University System Water Center
101 Huffman Building
Montana State University
Bozeman, MT 59717
Phone (406) 994-6690
http://www.water.montana.edu/

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Disclaimer

Water Rights in Montana should not be used as a legal reference. When in doubt, always refer to the Montana Code or the Department of Natural Resources Administrative Rules. When making any legal judgments on the adequacy or completeness of procedure, always consult state agency legal staff.

Background of Water Rights in Montana

Few elements reach so deeply into the human existence as water. Our economic endeavors, recreational excursions, and very well being depend on the quality and abundance of this resource. Yet, which persons can use water? In what amount? At what time? Such questions lead us into the realm of water rights — a blend of laws, regulations, and traditions that govern the distribution of Montana's water among its many users.

So who owns Montana waters? Montana waters, in all their varied forms and locations, belong to the state. This ownership, however, exists on behalf of all state citizens. The Montana Constitution explains that:

[a]ll surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people . . . (Article IX, Section 3(3)) (emphasis added).

Since Montana waters belong to the state, water rights holders ***do not own*** the water itself. Instead, they possess a ***right to use*** the water, within state guidelines. Accordingly, Montana law notes:

[a] "water right" means the right to use water . . . (MCA §85-2-422) (emphasis added).

Water rights in Montana are guided by the prior appropriation doctrine, that is, first in time is first in right. A person's right to use a specific quantity of water depends on when the use of water began. The first person to use water from a source established the first right, the second person could establish a right to the water that was left, and so on. During dry years, the person with the first right has the first chance to use the available water to fulfill their right. The holder of the second right has the next chance. Water users are limited to the amount of water that can be beneficially used.

The water rights process — with all its discrepancies and conflicts — was a major topic at the 1972 Montana Constitutional Convention. Policymakers recognized the overwhelming need for improved record

keeping and regulation. First, the Convention incorporated all past water rights into the new Montana Constitution:

> *all existing [water] rights . . . are hereby recognized and confirmed* (Article IX, Section 3(1)).

Existing rights included any right originating on or before July 1, 1973. Whether a use right, decreed right, or filed right, each was now equally valid. By recognizing all rights, the state upheld the prior appropriation doctrine and over a hundred years of precedent.

To strengthen state supervision, the Convention next charged the Montana Legislature with providing:

> *the administration, control, and regulation of water rights and . . . a system of centralized records* (Article IX, Section 3(4)).

The legislature responded with the Montana Water Use Act (WUA) (MCA §85-2-101 et seq.).

Montana Water Use Act

The Montana Water Use Act (Title 85, Chapter 2, MCA) of 1973 was the most comprehensive change in Montana's water right laws in the state's history. The act (effective July 1, 1973) changed the water rights administration significantly in a number of ways.

1. All water rights existing prior to July 1, 1973, are to be finalized through a statewide adjudication process in state courts.

2. A permit system was established for obtaining water rights for new or additional water developments.

3. An authorization system was established for changing water rights.

4. A centralized records system was established. Prior to 1973, water rights were recorded, but not consistently, in county courthouses throughout the state.

5. A system was provided to reserve water for future consumptive uses and to maintain minimum instream flows for water quality, and fish and wildlife.

Water Rights Administration

Four state entities play a role in administering Montana water rights: the Department of Natural Resources and Conservation (DNRC), the Montana Water Court, the district courts, and the Legislative Environmental Quality Council (EQC).

DNRC administers the portions of the Montana Water Use Act that relates to water uses after June 30, 1973. DNRC trains water commissioners and water measuring techniques. DNRC, also provides technical information and assistance to the Water Court, which is responsible for adjudicating water rights that existed before July 1, 1973. The Water Court decides any legal issues certified to it by DNRC that may arise in connection with permit or change applications, or in disputes filed in the district courts. A district court can issue injunctive relief while it certifies water right issues to the Water Court for decision. DNRC also maintains a central records system for all permits, changes, and certificates issued after June 30, 1973, and for all existing water rights filed as part of the statewide adjudication.

The EQC contributes policy oversight to the administration of state water rights. Among its roles, the council:

- advises and updates the legislature on water rights developments;
- oversees policies of the DNRC and other institutions who deal with state water; and
- communicates with the public on matters of water policy (MCA §85-2-105).

Adjudication of Existing Water Rights

Historical evolution:

Adjudication of the Powder River Basin was Montana's first venture into organizing existing water rights. Initiated in 1973, the burden of collecting and investigating claims fell to the Department of Natural Resources and Conservation (DNRC). Investigations often involved on-site visits, aerial photo interpretations, and interviews. In 1979, despite six years of intensive field work, completion of the first basin was distant. Decidedly, to adjudicate its remaining eighty-four basins in a timely manner, Montana needed a more efficient system.

Consequently, the 1979 legislature passed Senate Bill 76 amending the adjudication procedures originally established by the Montana Water Use Act. Rather than adjudicating existing water rights one basin at a time, the legislature opted for a comprehensive general adjudication of the entire state. Existing water rights are those that originated legally before July 1, 1973, the effective date of the Montana Water Use Act.

Who Administers the Adjudication Process?

MONTANA WATER COURT

SB 76 divided the Montana Water Court into four water divisions, according to the geographical drainages of the state:

- the Lower Missouri River,
- the Upper Missouri River,
- the Yellowstone River, and
- the Clark Fork River (MCA §3-7-101-102).

WATER JUDGES

Division Judges. Within each division, a water judge presides, appointing water masters to assist in the adjudication process. A water judge must be a district judge (current or retired) from a district within the water

division (MCA §3-7-201, 301). Water judges cannot examine water claims occurring beyond the boundaries of their divisions (MCA §3-7-501).

Chief Water Judge. The chief justice of the Montana Supreme Court appoints a chief water judge to supervise all division water judges and guide statewide adjudication. Ultimately, the Montana Supreme Court monitors all water judges, water masters, and Water Court personnel (MCA §3-7-204, 221).

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

The DNRC and its regional offices assist the Water Court throughout adjudication by:

- providing information and technical support to the water judges;
- providing information and technical support to persons filing claims; and
- upon the request of a water judge, conducting field investigations of claims (MCA §85-2-243(1)).

RESERVED WATER RIGHTS COMPACT COMMISSION

Unique circumstances arise when federal entities and/or Indian tribes assert reserved water claims in a basin. Separate from general adjudication, Montana may form a compact with the entity or tribe. In such cases, the RWRCC negotiates on behalf of the governor (MCA §85-2-701).

How is the order of adjudication determined?

Each biennium, the Montana Legislature gives priority to specific basins within each water division. The water judges and DNRC conduct adjudication according to this prioritization. With 100 or more signatures, claimants may also petition the water judge to designate a priority basin (MCA §85-2-217(2)). To receive priority in adjudication, a basin must involve:

- recurring water shortages resulting in urgent water rights controversies;
- federal or Indian water rights negotiations nearing completion; and/or
- adjudication proceedings nearing issuance of a decree (MCA §85-2-217(1)).

How does the adjudication process work?

CLAIMS

In 1979, the Montana Supreme Court issued a "Water Rights Order," requiring all persons claiming existing water rights to file with the DNRC by January 1, 1982. Failure to file by the deadline would result in presumption of abandonment of the right (MCA §85-2-212). Later, the court extended the filing deadline to April 30, 1982. DNRC received more than 200,000 claims by this closing date.

Public Notice. To assure all claimants knew of adjudication requirements, the court dispersed its "Water Rights Order" through:

- printings in state newspapers,
- mailings with property taxes, and
- notices in county courthouses and DNRC field offices (MCA §85-2-213).

Exemptions. Existing water right claims for livestock and domestic uses from instream flows or groundwater sources are exempt from the adjudication process. If claims were not filed, exempt rights can be placed in DNRC's central records for notice purposes. The owner must submit a completed Notice of Water Right, form 627, with the appropriate filing fee. The filing of Form 627 does not constitute a recognition or an admission by the State of such water rights. The burden of proof of these water rights remains with the owners. Once the water right is entered into the records, the owner will receive notice of any actions on the source of supply that may affect the water right.

Criteria. Each statement of claim had to include:

- name and address of the claimant;
- name of watercourse from which a right was claimed;
- quantities and times of claimed water use;
- description of point of diversion and place of claimed water use;
- purpose of use;
- approximate starting date of beneficial use; and
- supporting evidence such as maps, plats, aerial photos, or decrees (MCA §85-2-224).

Late Claims. Although the "Water Rights Order" considered unfiled claims abandoned, the 1993 legislature passed a law authorizing late claims through July 1, 1996. Around 4,500 late claims slipped in before the 1996 closing date. All remaining unclaimed rights are permanently forfeited (MCA §85-2-213(3)). The Water Court allows authorized late claims, but places them subordinate to:

- federal and Indian compacts with Montana,
- timely filed claims, and event
- some newly permitted rights (MCA §85-2-221(3)).

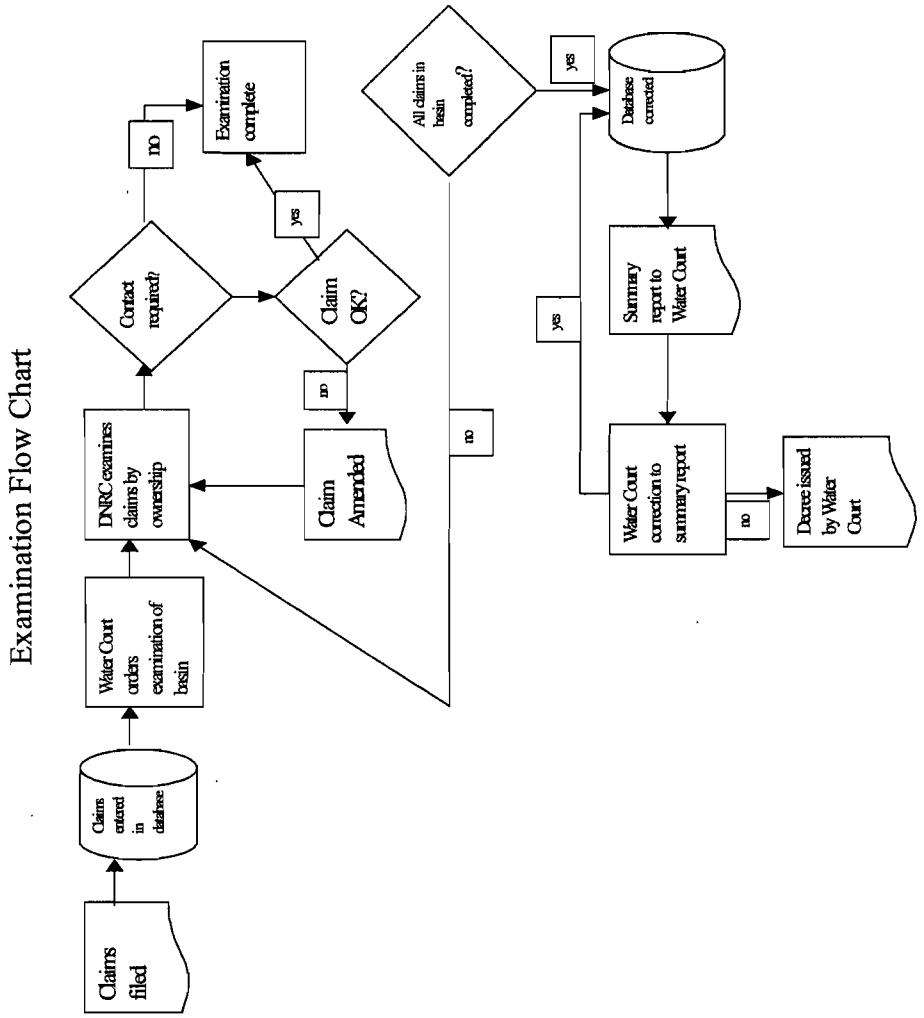
DECREES

A decree is the final product of a basin adjudication. To reach completion, a decree progresses through several stages: examination ➔ temporary preliminary/preliminary decree ➔ public notice ➔ hearings ➔ and final decree.

Examination

Before the Water Court evaluates a basin, DNRC staff must verify that each claim is complete, accurate, and reasonable. If an examination

uncovers excessive claims or other discrepancies, DNRC contacts the claimant to resolve any errors. After examining all claims in a basin, DNRC issues a "Summary Report" to the water judge, who uses the information in composing the basin decree.



Temporary Preliminary Decree

When basin adjudication involves reserved water rights negotiations, the process can become complex. Thus, a water judge may issue a temporary preliminary decree defining all claimed rights except reserved ones. Once a compact concludes, the judge incorporates it into a preliminary decree (MCA §85-2-231(1), (4)).

Preliminary Decree

In basins with either: (1) no reserved rights claims or (2) concluded compacts, the Water Court issues a preliminary decree based on:

- statements of claim,
- the DNRC "Summary Report," and
- if applicable, reserved water rights compacts (MCA §85-2-231(2)).

Public Notice

Notice of issuance of every temporary preliminary or preliminary decree is given to all parties who may be affected by the decree, along with notice of the time period for objecting to the rights or compacts, or both, in the decree. This notification consists of direct mailings and publication in area newspapers (MCA §85-2-232(1), (3)). Water users are encouraged to review the decree and file objections if they feel their claims, or claims belonging to others in the basin, are in error or contain incorrect information. Following the expiration of a decree's objection period, each party whose claim received an objection must be given notice of the filing of that objection. This notice triggers a 60-day objection counter period.

Hearings

Persons disagreeing with a decree have 180 days to file an objection. Accordingly, the division judge will hold a hearing to reevaluate all disputed areas. Any of the following parties may object:

- DNRC,
- any person named in the decree, or
- any interested person (MCA §85-2-233(1)-(2)).

Final Decree

After resolving all objections, the water judge issues a final decree. If no objections arise, the preliminary decree automatically becomes final (MCA §85-2-234(1)). Because the judge adjusts existing rights according to the overall needs of a basin, the quantity of a decreed water right may differ from the original claim. For each water rights holder, the decree states:

- flow rate,
- priority date,
- beneficial use,
- time and place of use,
- source of water, and
- place and means of diversion (MCA §85-2-234(6)).

In turn, DNRC issues a "Certificate of Water Right" to each decreed rights holder, filing a copy in its centralized records system (MCA §85-2-236).

What is the current status of the adjudication process?

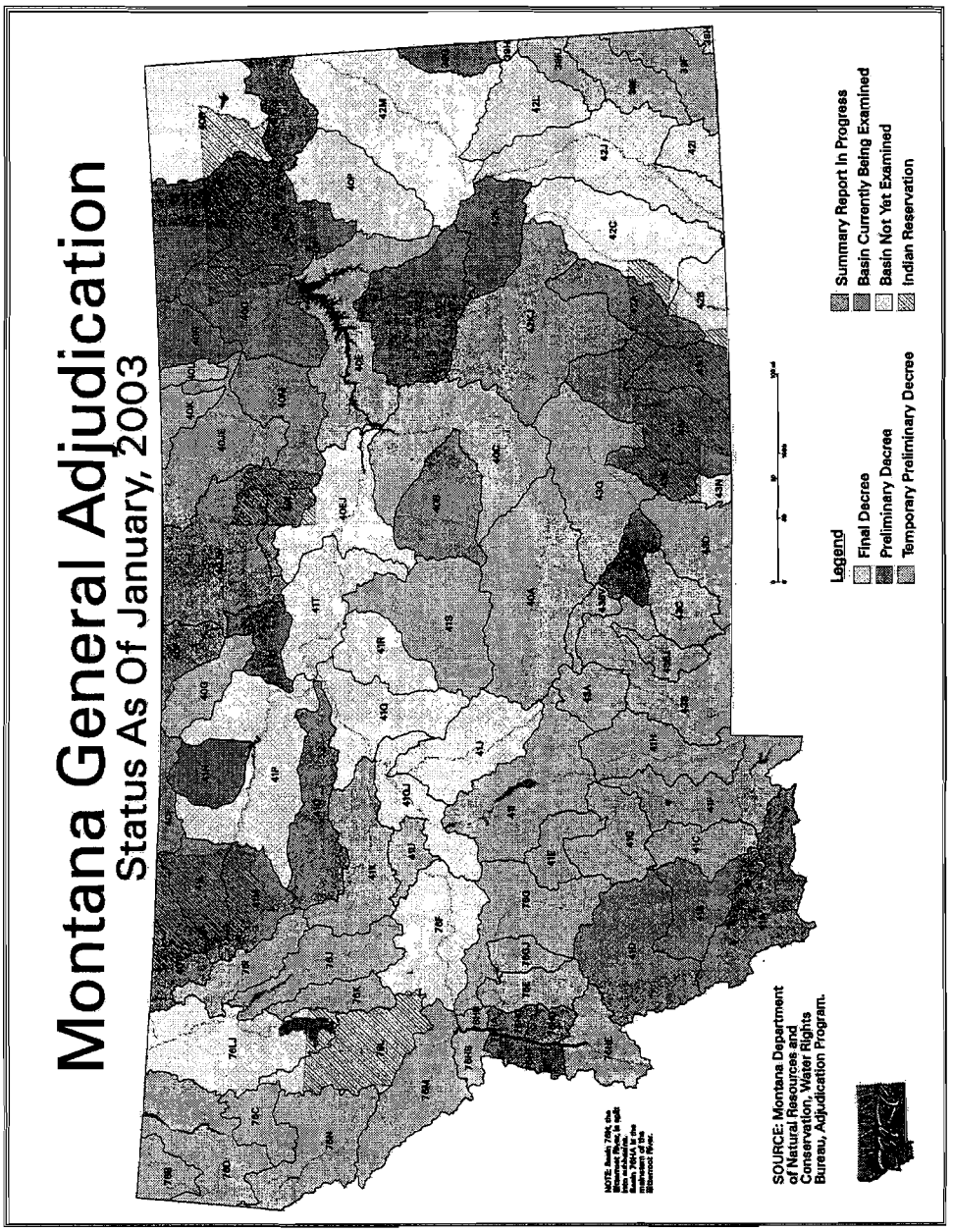
The following information summarizes the status of the adjudication process as of November 2003.

Temporary Preliminary Decrees	36 basins/2 subbasins	89,176 claims
Preliminary Decrees	11 basins/1 subbasin	23,135 claims
Final Decrees	6 basins	16,354 claims
Basins Being Examined	17 basins	43,614 claims
Unexamined Claims	15 basins	46,379 claims

Total	**85 basins**	**218,658 claims**

Two of the six final decrees were administratively adjudicated by DNRC before the Water Court was created by the legislature in 1979.
To date, the RWRCC has negotiated and the Montana Legislature has ratified these compacts:

Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation-State of Montana	1985
Northern Cheyenne Tribe-State of Montana	1992
United States National Park Service-State of Montana *(Big Hole National Battlefield, Glacier National Park, Yellowstone National Park, Bighorn Canyon National Recreation Area, and Little Bighorn Battlefield National Monument)*	1994
Chippewa Cree Tribe of the Rocky Boy's Reservation-State of Montana	1997
United States Bureau of Land Management-State of Montana *(2 Units - Bear Trap Canyon Public Recreation Site and Upper Missouri National Wild and Scenic River)*	1997
United States Fish and Wildlife Service-State of Montana *3 Units –1) Benton Lake National Wildlife Refuge 2)Black Coulee National Wildlife Refuge 3)Red Rock Lake National Wildlife Refuge (1999)*	1997
Crow Tribe-State of Montana	1999
Fort Belknap Indian Reservation - State of Montana	2001


Montana General Adjudication
Status As Of January, 2003
Legend
Final Decree
Preliminary Decree
Temporary Preliminary Decree
Summary Report In Progress
Basin Currently Being Examined
Basin Not Yet Examined
Indian Reservation
SOURCE: Montana Department of Natural Resources and Conservation, Water Rights Bureau, Adjudication Program.

New Appropriations of Water

The Montana Water Use Act of 1973 established a permit system for new uses of water. Any person planning a new or additional development for a beneficial use of water from surface water or groundwater after June 30, 1973, must obtain a Permit to Appropriate Water or file a Notice of Completion of Groundwater Development to get a Certificate of Water Right. The permit system is administered by the DNRC. Beneficial uses of water include domestic, stock, irrigation, lawn and garden, mining, municipal, industrial, commercial, agricultural spraying, fisheries, wildlife, and recreation.

Surface Water

A person must apply for and receive a Permit to Appropriate Water before beginning to construct diversion works or diverting water from a surface water source. Those seeking a permit must plan ahead — the application process takes time to complete. The applicant for a permit must provide the following evidence: the design and operation of the proposed system; water is physically available in the source; the effects of the proposed use on existing water rights; and an analysis of the effects of existing water rights on the water supply within the source.

The exception to this law is for small livestock reservoirs or pits located on non-perennial flowing streams (streams that do not flow continuously year round). If the pit or reservoir will hold less than 15 acre-feet of water with an annual appropriation of less than 30 acre-feet and will be located on a parcel of land 40 acres or larger, construction can begin immediately. Within 60 days of completion, an Application for Provisional Permit for Completed Stockwater Pit or Reservoir, form 605, must be submitted to DNRC. A provisional permit, subject to prior water rights, will then be issued. If the reservoir adversely affects prior water rights, DNRC can revoke the permit or require an applicant to modify the reservoir.

Groundwater

A person does not need to apply for a permit to develop a well or a groundwater spring with an anticipated use of 35 gallons per minute or less, not to exceed 10 acre-feet per year. The first step is to drill the well or develop the spring. A Well Log Report, form 603, is completed by the driller and sent to Bureau of Mines and Geology within 60 days. A copy is also given to the well owner. Within 60 days after the development is put to use, the owner submits a Notice of Completion of Groundwater Development, form 602, along with a filing fee to DNRC. The priority date of the water right is the date DNRC receives the completed Form 602. DNRC will review the form to ensure that it is correct and complete. A person must have possessory interests in the property where the water right is put to a beneficial use or written notification 30 days prior to the intent to appropriate groundwater. Also, a person must have exclusive property rights in the groundwater development works or written consent from the person with the property rights. A Certificate of Water Right will then be issued to the owner for the specified use.

Anyone anticipating to use more than 35 gallons per minute or 10 acre-feet per year of groundwater is required to obtain a Permit to Appropriate Water before any development begins or water is used. A permit may be required to appropriate groundwater in an area designated as a controlled groundwater area, depending on the terms of the groundwater area. A list of the controlled groundwater areas is on page 18.

Replacement Wells

If an existing well fails and a new well is constructed a person can retain the priority date of the existing well. A form 634 can be filed if the new well meets the following requirements.

- The old and new wells must be located outside the boundaries of a controlled groundwater area or they can be located within the boundaries of a controlled groundwater area if the provisions of the order do not restrict the development of replacement wells.
- The existing well must no longer be used and must be abandoned.
- The flow rate and volume of water must be equal to or less than the amounts used from the old well and cannot exceed 35 gallons per minute or 10 acre-feet per.
- The old and new well must be from the same groundwater source.

If these conditions are met, the Department can issue an Authorization to Change a Water Right.

Redundant Wells

When a public water supply system constructs a backup well a form 635 can be filed if the backup well meets the following requirements.

- The backup well must withdraw water from the same groundwater source as the original well(s).
- The backup well must be required by a state or federal agency.

The flow rate and volume of all wells, including backup wells cannot exceed the flow rate or volume authorized by the water rights for the public water supply system

Special Groundwater Circumstances

Combined Appropriation

When a person combines an appropriation of two or more wells or developed springs from the same source and uses more than 35 gallons per minute or 10 acre-feet per year, a Permit to Appropriate Water is required. A combined appropriation is defined as "an appropriation of groundwater by means of two or more groundwater developments in the same source aquifer that are physically manifold into the same system."

Appropriations over 3,000 Acre-Feet

A person proposing to appropriate more than 3,000 acre-feet of groundwater per year must receive legislative approval for the specific appropriation. This law does not apply to appropriations for municipal use, public water supplies, or the irrigation of cropland owned and operated by the applicant.

Leasing Water Rights for Road Construction

Water needed for road construction and dust control can be leased from an individual who holds a valid Montana water right. This statute was specifically designed to assist Montana's road construction contractors with water use compliance. The restrictions include the following.

- The lease can run for up to 90 days and applies to diversions of water that do not exceed 60,000 gallons a day or the amount of the existing right, whichever is less.
- A combination of short-term leases cannot exceed 120,000 gallons a day for one project.
- The lease does not require prior approval by the DNRC. However, thirty-days prior to the use of water, the lessee must publish a notice of the proposed use in the local newspaper or mail individual notices to the potentially affected water users in the area of the proposed point of diversion.
- At least two days prior to water use the lessee must submit a copy of the public notice and a copy of the lease agreement to the DNRC.

An existing water user whose right is not being satisfied may make a complaint to the DNRC and could cause the short-term lease to end. However, if it is shown that there is no adverse effect on the existing water user's right, the lessee can continue to divert water.

How the Permit System Works

A prospective water user must follow the procedure described below to acquire a water use permit.

Criteria for Issuance of a Permit
Section 85-2-311(1), MCA

The applicant for a water use permit to appropriate less than 4,000 acre-feet per year and 5.5 cfs has the initial burden to prove by a preponderance of the evidence that the criteria for issuance of a permit are met. These include:

1. Water is physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate.

2. Water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested.

3. The water rights of a prior appropriator under an existing water right, a certificate, a permit, or state water reservation will not be adversely affected.

4. The proposed means of diversion, construction, and operation of the appropriation works are adequate.

5. The proposed use of water is a beneficial use.

6. The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, Chapter 5, Part 4.

An applicant for salvaged water must also prove:

7. The proposed water-saving method will salvage at least the amount of water asserted by the applicant.

8. The proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(l), MCA, or

9. The proposed use will not adversely affect the ability of a discharge permit holder to satisfy effluent limitations in accordance with Title 75, Chapter 5, Part 4.

Step 1 - Application Form

A potential new water user must first obtain an Application for Beneficial Water Use Permit, form 600. This form requests information describing the intended use, place of use, point of diversion, source of supply, amount of water to be used, diversion facilities, and other particulars of the proposed appropriation. In addition, the applicant must provide evidence that the criteria for issuance of a permit are met. These criteria are outlined in the Criteria Addendum of the application form. An application fee must be submitted with the application. Forms and instructions are available from any county clerk and recorder or water resources regional office, see pages 26 and 27.

The applicant must submit information or data showing that the criteria will be met. The applicant may include: streamflow data collected by the U.S. Geological Survey, U.S.D.A. Natural Resources Conservation Service, or use recognized and established estimation methods; actual streamflow measurements; photographs showing water is physically available during months and years of low flow; signed statements

acknowledging streamflow conditions; field studies; and hydrologic reports. This information may be developed by the applicant or obtained, if available, from the U.S. Geological Survey, U.S.D.A. Natural Resources Conservation Service, DNRC, or any other credible source.

Additional criteria must be addressed if the application is for appropriations of 4,000 acre-feet or more and 5.5 cubic feet per second (cfs) or more. If the appropriation is for an out-of-state use, the applicant must also address criteria set out in Section 85-2-311(4), MCA.

Step 2 - Application Review

The date DNRC receives the original permit application will be the priority date assigned to the appropriation. This date is important because of the "first in time is first in right" principle in Montana water law. DNRC will review the application to ensure it is correct and complete and process the application as outlined on page 11. Applications are reviewed in the order they are received. It may take 12-14 months to begin initial review. The estimated processing time after an application is correct and complete is 210 days. At the same time, an environmental review is made to determine whether the proposed project will have significant environmental impacts and whether an environmental impact statement is needed. If an application is not correct and complete, DNRC shall notify the applicant of any defects in the application. The applicant has 90 days to make the application correct and complete. If an application is not correct or complete within 30 days of DNRC notification, the priority date will change to the date the application is correct and complete. An application that is not correct or complete within 90 days will be terminated

If there is potential for adverse effect, the applicant must publish notice of the application once in a newspaper of general circulation in the area of the source. The applicant must also mail notification of the application to existing water users listed in the DNRC records indicating those areas which might be affected by the supply source. Local water users have an opportunity to file an Objection to Application, form 611, with the required fee on or before the deadline specified in the published notice. All objections must be based on specific criteria. An objector has standing

only if their property, water rights, or interests would be adversely affected by the proposed appropriation. If no objections are received and the applicant proves the criteria, the permit is issued.

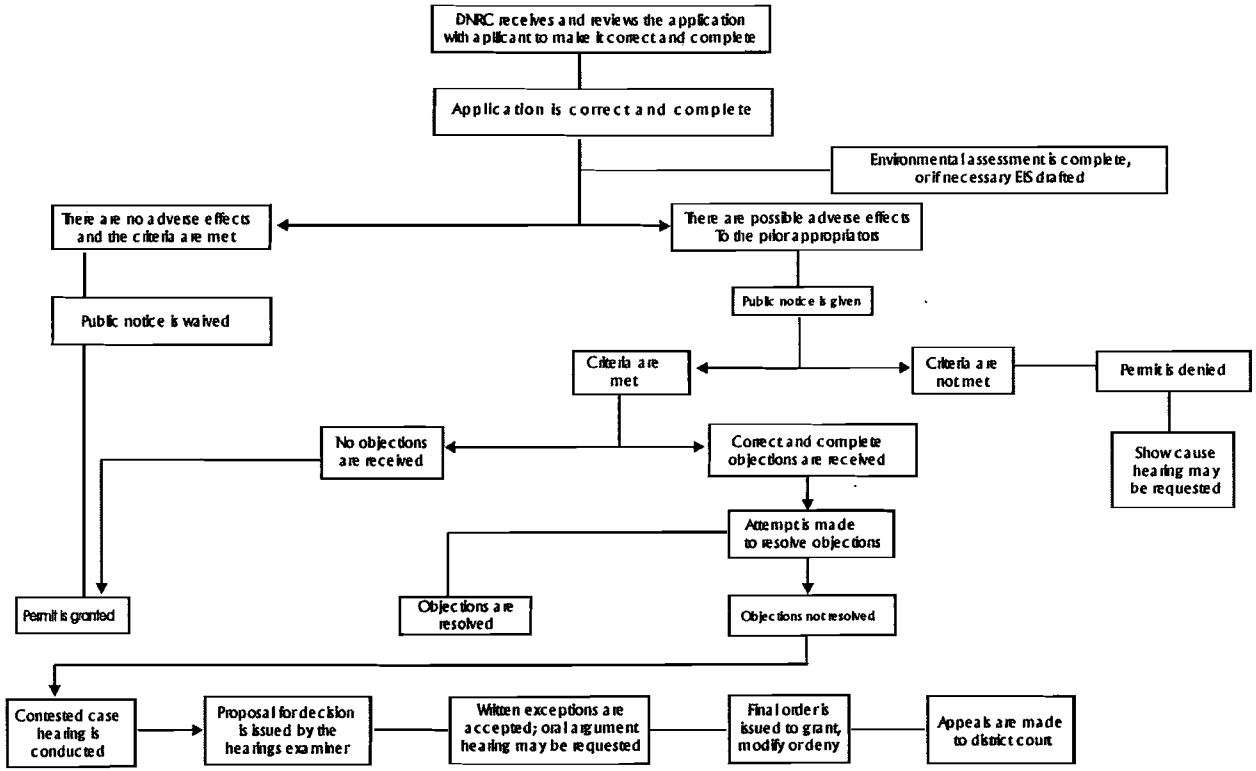
If correct and complete objections are received and cannot be resolved, DNRC conducts a hearing. After evaluation of the evidence and testimony given at the hearing, the hearing examiner issues a proposal for decision to grant, modify, or deny the permit. Within 20 days, parties adversely affected by the proposal can file written exceptions to the proposal for decision. The exceptions may request presentation of briefs or oral argument before DNRC on the proposed decision. If no exceptions are filed or after oral arguments, DNRC issues a final order. A final order may be appealed to district court.

Issues that could affect applications for permits are

1. Any proposed appropriation that may significantly affect the quality of the human environment will require an environmental impact statement (EIS). The purpose of the EIS is to document environmental and human impacts, evaluate alternatives, and provide for public review and comment. Information developed during the EIS process will aid DNRC in processing the permit. DNRC may assess a fee to the applicant to fund preparation of the EIS, under Section 85-2-124, MCA.

2. Any Permit to Appropriate Water that DNRC issues is provisional. It is junior to all prior existing water rights and subject to the final Water Court determination or adjudication of those rights. It also is junior to prior DNRC permitted water rights and prior water reservations, except as otherwise provided by law

Water Permit Application Process



Step 3 -Project Completion on a Perfected Permit

Upon receiving the permit, the applicant's next step is to construct the project, divert the water, and put the water to the intended use as outlined in the permit. When this is finished, the permittee must provide DNRC with a certified statement describing how the appropriation has been completed. This includes submitting a Project Completion Notice for Permitted Water Development, form 617, to DNRC before the deadline specified in the permit or any authorized extension of time. If the permittee fails to file a project completion notice by the deadline, the permit will be terminated by operation of law

When unforeseen circumstances prevent completion of the project before the deadline, the permittee may submit an Application for Extension of Time, form 607. If the permittee shows good cause that a continuous effort has been made to complete the project, DNRC will grant an extension for a reasonable period of time

Step 4 - Certificate of Water Right

After the project is completed, DNRC will review the project completion notice and determine whether the project was completed in substantial accordance with the permit. DNRC will issue a Certificate of Water Right when

1. The project has been completed
2. The water has been used according to the terms of the permit, and
3. The basin in which the permit lies has been adjudicated and the final decree issued.

The priority date of a certificate is the same as on the original permit.

Temporary and Interim Permits

A person may request a temporary permit to appropriate water if the use of water is for a limited period of time. Temporary uses include water needed for oil or gas exploration or in highway construction. An application for a temporary permit is processed in the same manner as a

provisional permit. The applicant must prove the same criteria under Section 85-2-311, MCA. A temporary permit has an expiration date based on the period requested by the applicant and will expire on that date. No Certificate of Water Right is issued for a temporary permit

An interim permit to appropriate water allows an applicant to begin constructing and using water pending final approval or denial of the provisional permit. An interim permit may be issued unless substantial information indicates that the criteria for issuing a provisional permit under Section 85-2-311, MCA, cannot be met. The issuance of an interim permit does not guarantee issuance of a provisional permit; that decision remains subject to the procedures and criteria identified on pages 8-12.

Changes in Water Use

To protect all water rights, prior approval from DNRC is required before changing an existing water right, permit, certificate, or water reservation in any of the following ways

1. Point of diversion
2. Place of use.
3. Purpose of use
4. Place of storage.

A person must submit an Application for Change of Appropriation Water Right, form 606, to DNRC and include information on the water right to be changed and the proposed change. In addition, the Supplement to Application for Change of Appropriation Water Right, form 606A or 606B, must provide evidence that the criteria for issuance of an Authorization to Change Appropriation Water Right listed on page 15 are met. An application for change follows the same general process for notice and hearing as outlined on page 11. Upon completion of the change, the appropriator must file a Project Completion Notice for Change of a Water Right, form 618, notifying DNRC that the authorized change is completed.

The applicant submitting a change in purpose or place of use of an appropriation to divert 4,000 acre-feet or more of water per year and 5.5

cubic feet per second or more will be required to prove the criteria set out in Section 85-2-402(4), MCA. If a proposed change in purpose or place of use for a diversion results in 4,000 acre-feet or more and 5.5 cubic feet per second or more of water being consumed, the applicant must prove the criteria in Section 85-2-402(5), MCA. If the change involves the transport of water out of state, the applicant must prove the criteria listed in Section 85-2-402(6), MCA, and obtain legislative approval.

Criteria for Issuance of an Authorization to Change Appropriation Water Right
Section 85-2-402(2), MCA

The applicant for a change in an appropriation water right has the burden to prove by a preponderance of the evidence that the criteria for issuance of an authorization are met. These include:

1. The proposed use will not adversely affect the use of other water rights or other planned developments for which a permit or certificate has been issued or water reserved.

2. The proposed means of diversion, construction, and operation of the appropriation works are adequate.

3. The proposed use of water is a beneficial use.

4. The applicant owns or has permission from the person who owns the property where the water is to be used.

If a valid objection pertaining to water quality is received, the applicant must also prove:

5. The water quality of an appropriator will not be adversely affected, or

6. The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, Chapter 5, Part 4.

An applicant for salvaged water must also prove:

7. The proposed water-saving method will salvage at least the amount of water asserted by the applicant.

Temporary Change in Appropriation Water Right

An appropriator may temporarily change a water right with DNRC approval. The temporary change may be approved for up to 10 years with an opportunity to renew for 10 more years. An appropriator must file an Application for Change of Appropriation Water Right, form 606, and a Temporary Change Supplement, form 606T, identifying the proposed change and how long it will be needed. The applicant must also provide evidence to meet the same criteria as an authorization to change listed on page 15. The temporarily changed appropriation has the same priority date as the existing water right

In 1995 the legislature provided for the protection of fishery resources by allowing the owner of an existing consumptive use water right to change its purpose temporarily to instream flow. The owner must file an application, as described in the preceding paragraph. The owner may voluntarily change the purpose to instream flow or lease the water right and change the purpose to protect the fishery resource. All temporary change authorizations for instream flow purposes issued prior to June 30, 2005 remain valid until the expiration date of the temporary change. However, they cannot be renewed or extended after that date.

Salvaged Water

A water user who saves water through conservation may retain the right to the salvaged water for a beneficial use. The salvaged water is that portion of the water made available through the implementation of water-saving methods. For example, lining a ditch or canal to reduce seepage or replacing a ditch with a pipeline to eliminate delivery losses are considered water-saving methods, if the water consumed becomes less. If the salvaged water is to be used for any purpose or in any place not associated to the original appropriation, DNRC approval is required. The appropriator must file an Application for Change of Appropriation Water Right, form 606, and must meet the criteria for issuance of an authorization to change listed on page 15 plus one additional criterion:

that the proposed water-saving method will salvage at least the amount of water asserted by the applicant

Ownership of a Water Right

A water right is appurtenant to the land on which it is used. Anyone who transfers ownership of land with a water right is required under the law to file a Water Right Ownership Update, form 608, with DNRC within 60 days of filing the deed. The purpose of filing the form is to help maintain a reliable record of water right ownership. In addition, it will allow the owner to receive notification of actions by DNRC and the Water Court. The completed form and filing fee must be submitted to DNRC.

A water right may also be severed from the land and sold or retained independently from the land. If the land is sold but the water right is retained, DNRC does not need to be notified. If the water right alone is transferred to a new owner, the ownership update must be filed with the department. In either case, for the water right to be used again elsewhere, the owner must file an Application for Change to change at least the water right's place of use.

Water Right Distribution

Whether exercising a century-old, existing water right or a newly permitted water right, an appropriator must observe standard rules of use. From time of use, to place of use, to type of use, these rules guide the distribution of Montana waters.

In Montana, water rights distribution follows the traditional "first in time, first in right" philosophy. Accordingly, a senior appropriator may completely fulfill her/his water right before a junior appropriator receives any (MCA §85-2-401).

Each Montana district court supervises water use within its jurisdiction (MCA §85-5-106). In its oversight capacity, a court may appoint one or more water commissioners to measure, record, and distribute water rights on a watercourse. Such appointments result upon:

- petition of water rights holders (owning at least 15 percent of the water rights on a watercourse);
- application by both DNRC and one or more water rights holders on a watercourse; or
- application of the board(s) of one or more irrigation districts (MCA §85-5-101, 107).

When a court appoints two or more water commissioners on a watercourse, one may be designated chief commissioner. A chief commissioner supervises the other commissioner(s) in distributing water rights (MCA §85-5-102).

Upon petition of water rights holders (owning at least 51 percent of the water rights on a watercourse), the court may direct a commissioner to maintain/repair ditches, canals, and other structures necessary to distribute water rights. Owners are responsible for all maintenance expenses (MCA §85-5-106).

Dispute Resolution

If you feel your water right is being adversely affected by the actions of another water user, DNRC urges the parties to first talk to each other to see if the matter can be settled. If the matter can not be settled, there are various options under Montana law for resolution. These options include petitioning the district court to appoint a water commissioner; filing a temporary restraining order or preliminary injunction in district court; making a "call" for your water, documenting the "call", and filing a formal written complaint to DNRC; and other specific district court actions. Which option is best depends on the particular circumstance, how fast the matter needs to be settled, and the cost of the action. For specific details of each option, refer to the Water Right Enforcement Options handout available at the water resources regional offices or on our web page http://www.dnrc.state.mt.us/wrd/home.htm

Water Reservations

Water may be reserved for future beneficial uses or to maintain minimum streamflows or quality of water, but only by the State of Montana or any political subdivisions or agencies thereof, or by the United States or any of its agencies. Water reservations are administered by the Department of Natural Resources and Conservation.

In 1978 the Board of Natural Resources and Conservation (Board) granted water reservations in the Yellowstone River basin to eight municipalities, fourteen conservation districts, and six state and federal agencies. These water reservations have a priority date of December 15, 1978. Individuals within a conservation district who are interested in using water under the local district's water reservation should contact the district office

In 1992 the Board issued an Order granting water reservations in the upper Missouri River basin above Fort Peck Dam to seventeen municipalities, fifteen conservation districts, and four state and federal agencies. These water reservations have a priority date of July 1, 1985

In 1994 the Board granted water reservations in the lower Missouri River basin below Fort Peck Dam with a priority date of July 1, 1985, to nine municipalities, eight conservation districts, and one state agency. The Board also granted reservations in the Little Missouri River basin with a priority date of July 1, 1989, to two municipalities, three conservation districts, and one state agency.

In both the Yellowstone and Missouri River Basins, water reservations were granted for municipal, irrigation, stock water, and instream flows for fish and wildlife and water quality protection

Instream Use and Leasing

Most water rights involve taking water out of streams for irrigation, domestic, or other consumptive uses. These diversions can reduce stream flows during times of drought, which in turn can stress local

fisheries. In the 1980s and 1990s, the Montana Legislature realized this concern and created laws that allow water that is diverted for consumptive uses to be transferred temporarily (up to 30 years) to an instream use.

There are three ways to convert an existing consumptive use water right to instream use. A person may lease all or a portion of a water right to Montana Fish, Wildlife & Parks (FWP), lease the water right to another party interested in holding the right for the fishery, or convert the water right to an instream use without a lease. Any conversion to an instream use requires a temporary change authorization, see page 14, from DNRC and must benefit fisheries.

To date, the method used most often is to lease water to FWP. FWP staff actively seek interested senior water right holders who no longer wish to use all of their appropriated water (possibly through increased water conservation) and have a desire to contribute water to maintain fish populations during critical times of drought. In priority areas, FWP staff will work with water right holders by helping them develop salvage water projects, assess water savings, and assist with the necessary authorizations to change the water rights involved in a leasing agreement. As a result, the water right holder continues to own the water right, receives financial compensation, and makes a valuable contribution for maintaining Montana's natural heritage. For more information, contact FWP's Water Resource Program Manager at (406) 994-6824 or e-mail at kawilliams@montana.edu.

Controlled Groundwater Areas

Controlled groundwater areas may be proposed by DNRC on its own motion, by petition of a state or local public health agency, or by a petition signed by at least 20 or one-fourth, whichever is less, of groundwater users where the petitioners feel a controlled groundwater area is necessary. A petition must allege facts showing one or more of the following

1. Groundwater withdrawals are in excess of recharge to the aquifer.

2. Excessive groundwater withdrawals are very likely to occur in the near future because withdrawals have consistently increased in the area.
3. There are significant disputes within the area concerning priority of rights, amounts of water being used, or priority of type of use.
4. Groundwater levels or pressures are declining or have declined excessively.
5. Excessive groundwater withdrawals would cause contaminant migration.
6. Groundwater withdrawals adversely affecting groundwater quality are occurring or are likely to occur
7. Water quality within the groundwater area is not suited for a specific beneficial use defined by Section 85-2-102(2)(a), MCA.

A controlled groundwater area may be designated if any of these criteria are established. It may also be designated to ensure public health, safety, or welfare, if there is wasteful use of water or undue interference with existing wells, or any new well that will impair or interfere with existing water rights.

Upon receipt of a petition, DNRC will notice concerned parties and hold public hearings to gather comments and information. After notice and public hearing, DNRC will issue an order. If the order declares a permanent or temporary controlled groundwater area, the order will contain the specific control provisions

Nine controlled groundwater areas have been designated in Montana.

1. The South Pine Controlled Groundwater Area contains portions of Prairie, Wibaux, and Fallon Counties
2. The Larson Creek Controlled Groundwater Area lies in Ravalli County west of Stevensville.
3. The Hayes Creek Controlled Groundwater Area is located southwest of Missoula in Missoula County
4. The Warm Springs Ponds Controlled Groundwater Area in Deer Lodge County is located east of Anaconda
5. The Rocker Controlled Groundwater Area in Silver Bow County is located west of Rocker.
6. The Bozeman Solvent Site Controlled Groundwater Area is located in the city of Bozeman and surrounding area

7. The Old Butte Landfill/Clark Tailings Controlled Groundwater Area is located one mile southwest of the city of Butte in Silver Bow County.
8. The Idaho Pole Company Site Controlled Groundwater Area is located in Gallatin County northeast of the city of Bozeman.
9. The North Hills Controlled Groundwater Area is located in Lewis and Clark County north of the city of Helena.
10. The BNSF Somers Site Controlled Groundwater Area is generally located to the east of the town of Somers in Flathead County.

The Petition to the Department of Natural Resources and Conservation for Controlled Groundwater Area, form 630, is available from DNRC. A petition must be filed with the appropriate fee and the petitioner(s) must also pay reasonable costs of processing the petition.

Yellowstone Controlled Groundwater Area

The Yellowstone Controlled Groundwater Area is the ninth controlled groundwater area. It was established under the compact negotiated between the U.S. National Park Service (NPS) and Montana under Section 85-20-401 MCA and became effective January 31, 1994. It is located north and west of Yellowstone National Park and was established to regulate groundwater development adjacent to the park in an effort to preserve the park's natural hydrothermal features. Groundwater developments are restricted within this area. The restrictions apply to groundwater appropriations with a priority date on or after January 1, 1993. Anyone wanting to appropriate groundwater in this area after January 31, 1994, must apply for a permit from DNRC. Depending on the rate and volume of groundwater needed, and the temperature of the groundwater at the wellhead, different restrictions apply. All applicants must provide a statement of whether the proposed water use requires water with a temperature of 60 Fahrenheit or more. All permits issued require meters to be installed for measuring the total volume of water used. Annual water usage must be reported to the Montana Bureau of Mines and Geology in Butte. DNRC provides the meters necessary to gather data.

The compact requires DNRC to send NPS a copy of each permit application, including a map and well log. NPS has 30 days to file an

objection to the application and 60 days to file an objection to the well log report if it determines that the proposed appropriation is hydrologically connected to surface water or groundwater specifically described in the compact.

Additional information and a map of the Yellowstone Controlled Groundwater Area can be obtained by contacting the Bozeman Water Resources Regional Office (406-586-3136) or the Helena Central Office (406-444-6610).

Closure of Highly Appropriated Basins

Montana has closed some of its river basins to certain types of new water appropriations due to water availability problems, over appropriation, and a concern for protecting existing water rights. Sections 85-2-319 and 85-20-401, MCA, legislatively authorize the closure of basins to certain new appropriations through the adoption of administrative rules and negotiation of reserved water right compacts.

Legislative Closures

1. The Upper Missouri River Basin, the Jefferson and Madison River Basins, the Teton River Basin, and the Upper Clark Fork River Basin to certain new appropriations of water.
2. There are also temporary closures in the Bitterroot Basin and the Clark Fork Basin.
3. The State legislated DNRC to study and close sources of water in the Milk River basin. Currently portions of the mainstem Milk River, all of Miners Coulee, Halfbreed Coulee, Bear Creek, and their tributaries are closed to certain appropriations.
4. The following basins are administratively closed to new appropriations of water during certain times of the year: Grant Creek, Houle Creek, and Sixmile Creek in Missoula County; Sharrott Creek and Willow Creek in Ravalli County; Walker Creek and Truman Creek in Flathead County; Rock Creek in Carbon County; Towhead Gulch in Lewis and Clark County; and Musselshell River in Meagher, Wheatland, Golden Valley, Musselshell, Petroleum, Garfield, and Rosebud Counties

Administrative Rule Closures

The law also provides for the closure of highly appropriated basins through the adoption of administrative rules. In order to adopt rules, DNRC must receive a petition signed by at least 25 percent or 10 (whichever is less) of the users of water from the source of supply within the specific basin or receive a petition from the Department of Environmental Quality. The petition must show that during certain times of the year:

1. There is no unappropriated water in the source of supply;
2. The rights of prior appropriators would be adversely affected by further appropriation;
3. Further new uses would interfere with other planned uses for which a permit has been issued or water has been reserved;
4. The water quality of an appropriator would be adversely affected by the issuance of permits;
5. Further use would not be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(l), MCA; or
6. Issuance of permits would adversely affect holders of a discharge permit issued in accordance with Title 75, Chapter 5, Part 4 in their ability to satisfy effluent limitations.

If DNRC determines that rules should be adopted to close the basin, notice will be provided and a public hearing held on the rules. Depending on the evidence and testimony submitted, the rules could close a basin:

1. To all new appropriations of water, or to only consumptive uses;
2. During all times of the year, or only during certain times of the year;
3. To all types of uses, or to only specific types of uses.

Petition For Closure of a Highly Appropriated Basin, form 631, is available from DNRC. A petition must be filed with the appropriate fee, and the petitioner(s) also must pay reasonable processing costs.

Compact Closures

Under Section 85-2-701 MCA, the Reserved Water Rights Compact Commission has negotiated seven compacts with Indian Tribes and federal agencies. These compacts have closed certain sources of water to new appropriations.

1. The Northern Cheyenne/Montana Compact required DNRC to order a moratorium on the issuance of permits in the basin of Rosebud Creek, a tributary to the Yellowstone River in Big Horn and Rosebud Counties. The moratorium, effective May 20, 1991, is for surface water and alluvial groundwater.

2. The Chippewa Cree Tribe of the Rocky Boy's Reservation/Montana Compact has two moratoriums on new state appropriations and Tribal water rights, effective April 14, 1997.
   A 10-year moratorium on new state permits from sources in the Big Sandy Creek Basin (excluding Sage Creek and Lonesome Lake Coulee) and in the Beaver Creek drainage, and
   A 5-year moratorium on the development of Tribal consumptive uses from surface water in the Beaver Creek drainage. (During this time a monitoring network of recording stations will gather data to determine whether Beaver Creek gains or loses flow between the confluence of the east and west forks of the creek and the downstream boundary of the reservation.)

3. The U. S. Fish and Wildlife Service/Montana Compact applies to Benton Lake National Wildlife Refuge and Black Coulee National Wildlife Refuge. As of July 17, 1997, the following basins have been closed to further appropriations or reservations of water for consumptive use:
   Black Coulee watershed, and
   Lake Creek watershed, including the unnamed tributaries of Benton Lake.
   The United States Fish and Wildlife Service-Red Rock Lakes/Montana Compact includes a closure of appropriations for consumptive use in the drainage basins upstream of the most downstream point on the Refuge. Certain exceptions apply.
4. The U. S. Bureau of Land Management/Montana Compact applies to the Upper Missouri National Wild and Scenic River (UMNW&SR) and

the Bear Trap Canyon Public Recreation Site. The compact, ratified March 27, 1997, closes the following basins:

The mainstem of the Missouri River to new storage impoundments upstream from UMNW&SR

The Missouri River basin upstream of UMNW&SR to new appropriations in any month in which the water volume designated for the "available water supply" has been exhausted.

5. The U. S. National Park Service/Montana Compact applies to Glacier National Park, Big Hole National Battlefield and the portion of Yellowstone National Park that is in Montana. As a result of the compact, the following streams will be closed to new appropriations when the total appropriations reach a specified level.

   Big Hole National Battlefield

   North Fork of the Big Hole River and tributaries, including Ruby and Trail creeks (these streams are currently partially closed under the Jefferson/Madison Basin Closure).

   Glacier National Park (significant water remains available for new appropriations)

   Middle Fork of the Flathead River

   North Fork of the Flathead River

   Yellowstone National Park (significant water remains available for new appropriations on all but Soda Butte Creek)

   Bacon Rind, Buffalo, Cottonwood, Coyote, Crevice, Dry Canyon, Hellroaring, Little Cottonwood, Slough, Snowslide, Soda Butte, and Tepee creeks

   Gallatin, Madison, and Yellowstone rivers

6. The Crow Tribe/Montana Compact closes basins within the Crow Tribe Reservation, the Bighorn River Basin, and Pryor Creek Basin to new appropriations under state law. The basin closures, effective June 16, 1999, are on all surface water and groundwater requiring a permit under state statute.

7. The Fort Belknap/Montana Compact closure extends, in the Milk River Basin, from the Eastern Crossing of the Milk River (into the United States from Canada) to the confluence between the Milk River and the Missouri River comprised of Basins 40F, 40G, 40H, 40I, 40J, 40K, 40L, 40M, 40N, and 40O both above the Western Crossing (of the

Milk River form the United States into Canada) and below the Eastern Crossing. Certain exceptions apply. The closure does not apply to development of the Fort Belknap tribal water right as provided for in the compact.

Persons wishing further information on any of these compact closures should contact DNRC to determine the specifics of the restrictions on these sources. The NPS compact also established the Yellowstone Controlled Groundwater Area, which set up restrictions on appropriating groundwater. Information on controlled groundwater areas is presented on page 18.

Sources of Information

All water right forms required by DNRC are available at any of the eight water resources regional offices listed below or the Helena Central Office. Most are also available at your local county clerk and recorder's office.

DNRC Offices

Montana Department of Natural Resources and Conservation
Water Resources Division
Water Rights Bureau
1424 Ninth Avenue
P.O. Box 201601
Helena, Montana 59620-1601
406-444-6610
Fax: 406-444-0533
www.dnrc.state.mt.us/wrd/home.htm

Water Resources Regional Offices

BILLINGS
1371 Rimtop Drive
Billings, MT 59105-1978
Phone: 406-247-4415
Fax: 406-247-4416

Serving: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Prairie, Rosebud, Stillwater,

Sweet Grass, Treasure, and Yellowstone Counties

BOZEMAN
151 Evergreen Drive, Suite C
Bozeman, MT 59715
Phone: 406-586-3136
Fax: 406-587-9726

Serving: Gallatin, Madison, and Park Counties

GLASGOW
222 Sixth Street South
P.O. Box 1269
Glasgow, MT 59230-1269
Phone: 406-228-2561
Fax: 406-228-8706

Serving: Daniels, Dawson, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan, Valley, and Wibaux Counties

HAVRE
210 Sixth Avenue
P.O. Box 1828
Havre, MT 59501-1828
Phone: 406-265-5516
Fax: 406-265-2225

Serving: Blaine, Choteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole Counties

HELENA
1424 9th Avenue
P.O. Box 201601
Helena, MT 59620-1601
Phone: 406-444-6999
Fax: 406-444-9317

Serving: Beaverhead, Broadwater, Deer Lodge, Jefferson, Lewis and Clark, Powell, and Silver Bow Counties

KALISPELL
109 Cooperative Way, Suite 110
Kalispell, MT 59901-2387
Phone: 406-752-2288
Fax: 406-752-2843

Serving: Flathead, Lake, Lincoln, and Sanders Counties

LEWISTOWN
613 NE Main Street, Suite E
Lewistown, MT 59457-2020
Phone: 406-538-7459
Fax: 406-538-7089

Serving: Cascade, Fergus, Golden Valley, Judith Basin, Meagher, Musselshell, Petroleum, and Wheatland Counties

MISSOULA
Town & Country Shopping Center
1610 S. 3rd St. West, Suite 103
P.O. Box 5004
Missoula, MT 59806-5004
Phone: 406-721-4284
Fax: 406-542-1496

Serving: Granite, Mineral,

Missoula, and Ravalli Counties

Montana Water Court

The Montana Water Court in Bozeman can provide information about issued decrees, objections, or hearings on pre-July 1, 1973, water rights in the statewide adjudication.
Montana Water Court
601 Haggarty Lane
P.O. Box 1389
Bozeman, Montana 59771-1389
406-586-4364 or (toll-free number) 800-624-3270
Fax: 406-522-4131

Legislative Environmental Quality Council
State Capitol, Room 171
P.O. Box 201704
Helena, MT 59620-1704
ph: 406/444-3742, fax: 406/444-3971
e-mail: teverts@state.mt.us
WEB: www.leg.state.mt.us/css/lepo/

Montana University System Water Center
101 Huffman Building
Montana State University
Bozeman, MT 59717
ph: 406/994-6690, fax: 406/994-1774
e-mail: wwwrc@montana.edu

WEB: http://water.montana.edu

Printed Material

The following publications are available from DNRC, its regional offices, or local libraries through interlibrary loans with the Montana State Library.

	Cost:
Montana Water Law (2003)	$ 5.00

Water Rights in Montana	None
A Guide to Stream Permitting in Montana	None
Application Guidelines for the Renewable Resource Loan and Grant Program	None
Board of Water Well Contractors (Codes and Rules)	$ 4.00
Water Well Drilling For the Prospective Well Owner	None
Is Your Dam Above Homes, Highways, or Other Structures?	None

Water Conversion Table

FLOW RATE is the rate at which water is diverted or withdrawn from the source. It is measured in gallons per minute (gpm) or cubic feet per second (cfs). One cfs is a rate of water flow that will supply one cubic foot of water in one second and is equivalent to flow rates of:

448.80 gpm
1.98 acre-feet per day
40.00 miner's inches in Montana (11.22 gpm)

VOLUME is the amount of water diverted over a specific period of time each year. One acre-foot is the volume of water that will cover one acre to a depth of one foot and is equal to:
43,560 cubic feet or 325,851 gallons

Water Right Forms and Fees

These water right forms are available at the water resources regional offices or the central office in Helena. Most are also available at your local county clerk and recorder's office. Many of these forms are available on the DNRC website at www.dnrc.state.mt.us/wrd/home.htm.

Form No.	Title	Fee
Form 600	Application for Beneficial Water Use Permit	$400
Form 600A or	Supplement to Application for Beneficial	None

600B	Water Use Permit	
Form 600INS	Information and Instructions for Application for Beneficial Water Use Permit	None
Form 600ACF or 600BCF	Supplement to Application for Beneficial Water Use Permit–Upper Clark Fork River Basin Groundwater Appropriations	None
Form 602	Notice of Completion of Groundwater Development	$50
Form 603	Well Log Report	None
Form 605	Application for Provisional Permit for Completed Stockwater Pit or Reservoir	$50
Form 606	Application for Change of Appropriation Water Right ($25.00 for a replacement well or reservoir in the same source, or to move or add stock tanks)	$400
Form 606A or 606B	Supplement to Application for Change of Appropriation Water Right	None
Form 606ASW	Supplement to Application for Change of Appropriation Water Right: For Salvage Water	None
Form 606T	Temporary Change Supplement to Application for Change of Appropriation Water Right	None
Form 607	Application for Extension of Time	$100
Form 608	Water Right Ownership Update ($10.00 for each additional water right updated, up to a maximum of $300.00)	$50
Form 608A	Addendum to Water Right Ownership Update-Proportional Transfer (for each 608A filed, up to a maximum of $200.00)	None
Form 610A or 610B	Application for Reservation of Water (fee plus department costs of giving notice, holding hearing, etc.)	$200

Form 611	Objection to Application	$25
Form 613	Fee Schedule for Water Use in Montana	None
Form 615	Water Conversion Table	None
Form 617	Project Completion Notice for Permitted Water Development	None
Form 618	Project Completion Notice for Change of a Water Right	None
Form 625	Water Right Correction (no fee if due to departmental error)	None
Form 626	Application for Renewal of Temporary Water Right Change	$100
Form 627	Notice of Water Right (exempt from the adjudication filing requirements)	$50
Form 630	Petition for Controlled Groundwater Area to the Department of Natural and Conservation. (fee plus department costs of giving notice, holding hearing, etc.)	$400
Form 631	Petition for Closure of a Highly Appropiated Basin. Petition to the Department of Natural Resources and Conservation to adopt rules to reject permit applications, or modify, or condition permits issued in a highly appropriated water basin or subbasin (fee plus department costs of giving notice, holding hearing, etc.)	$400
Form 634	Replacement Well Notice.	$50.00
Form 635	Redundant Well Construction Notice	$50.00

GLOSSARY OF TERMS

abandonment — intentional, prolonged nonuse of a water right, resulting in its loss.

acre-foot — the volume of water that will cover one acre to a depth of one foot.

adjudication — a judicial procedure decreeing the quantity and priority date of all existing water rights in a basin.

Administrative Rules of Montana (ARM) — a collection of state agency rules used in the implementation of federal and state codes.

adverse — unfavorable.

appeal — to transfer a case from a lower to a higher court for a new hearing.

append — to add or attach.

appropriate — to capture, impound, or divert water from its natural course and apply toward a beneficial use.

basin — the area drained by a river and its tributaries; a watershed.

beneficial use — a condition applied to the use of prior appropriation water right, commonly including: agricultural, domestic, municipal, industrial, recreational, fish/wildlife, and water leasing purposes.

biennium — a two-year period.

chronically dewatered stream — a stream where diversion frequently depletes much of the water.

claim — an assertion that a water right exists, usually occurring during the adjudication process.

claimant — person filing a claim.

common law — all the statutes and case law of England before the American Revolution.

compact — a legal agreement between Montana and (1) a federal agency and/or (2) an Indian tribe determining the distribution of federally and/or tribally claimed water rights.

compliance — obeying and achieving the conditions of a rule, permit, order, or law.

conservation district — a political subdivision of state government, possessing both public and private attributes, that primarily distributes irrigation water in a given region, and may also administer electric power generation, water supply, drainage, or flood control.

constitution — the highest form of state law, agreed upon by the people of the state, establishing the fundamental character and conception of state government.

consumptive use — a beneficial use of water that reduces supply, such as irrigation or municipal use.

contiguous — next to; adjoining.

cubic foot per second (cfs) — a rate of water flow that will supply one cubic foot of water in one second.

decreed water right — a water right issued by the court upon adjudication of a stream.

degradation — a lowering of water quality.

diggings — an site of mining or other excavation.

diminution — a decrease in quantity.

discharge permit — an authorization from the Montana Department of Environmental Quality that allows the discharge of waste within specific parameters.

district — one of the territorial areas into which a state is divided for judicial purposes; each district has a district court presided by a district judge.
diversion — an open, physical alteration of a stream's flow away from its natural course.

due diligence — steadily working toward completion within a reasonable period.

effluent — an outflow of waste.

exemption — freedom from a rule or obligation that applies to others.

existing right — a Montana water right originating on or before July 1, 1973; subject to adjudication.

flow rate — that rate at which water is diverted from a source.

forfeit — to lose the right to.

ground water — any water beneath the land surface, bed of a stream, lake, or reservoir.

ground water area — an area enclosing a single, distinct body of ground water.

hybrid — a combination of riparian and appropriation doctrines.

impound — to gather and enclose, as in a reservoir.

injunction — a court order prohibiting a specific act or commanding the undoing of some wrong or injury.

instream flow — water left in a stream for nonconsumptive uses like recreation or preservation of wildlife habitat.

interested persons — persons with a real property interest, water right, or other economic interest that may be directly affected.

irrigation district — a subdivision of government, managed by a board of directors, that supplies water to irrigators within a specified region.

junior appropriator — a secondary user on a watercourse, holding a water right inferior to previous (senior) users.

jurisdiction — the geographic area in which a court has authority.
litigation — a lawsuit or other legal action.

mediation — a private, informal dispute resolution process where a neutral third party guides negotiation of a solution.

miner's inch — by Montana law, 1 cfs=40 miner's inches.

misdemeanor — an offense punishable by fine or penalty, but not imprisonment.

Montana Codes Annotated (MCA) — a collection of Montana laws and regulations classified by subject.

Montana Reports (Mont.) — a published record of all Montana Supreme Court decisions.

nonperennial stream — a stream that does not flow continuously year round.

oversight — watchful care, supervision.

perfected water right — a valid water right, exhibiting intent→diversion→beneficial use; once perfected, a right receives a priority date and becomes legally absolute.

permit — an authorization to use water, issued by the state, specifying conditions like type, quantity, time, and location of use.

precedent — a course of action that serves as an example for a later one.

preponderance of evidence — convincing evidence that shows the facts are more probable than not.

priority date — the official date of an appropriation, generally the date of established intent; used in determining seniority among water users.

provisional — temporary.

quantify — to determine of the volume of a water right, typically in acre-feet.

reasonable use — a condition applied to the use of riparian water rights, determined in comparison to the uses of other riparians on the same watercourse.

recharge — the resupply of water to rivers or aquifers.

remand — to send back with instructions for further proceedings.

reserved water right — a special water right accompanying federal lands or Indian reservations, holding a priority date originating with the creation of the land.

riparian — bordering a water body.

salvage — water made available through water-saving methods.

senior appropriator — an original user on a watercourse, holding a water right superior to all subsequent (junior) users.

surface water — water above the land surface, including lakes, rivers, streams, wetlands, wastewater, flood water, and ponds.

valid — recognized by law; legal and enforceable.

volume — amount of water diverted over a specific period of time.

water master — an attorney versed in water law who serves at the discretion of the Water Court.

water quality — chemical, physical, and biological characteristics of water that determine its suitability for a particular use.

water reservation — a water right reserved by a government entity for future use or instream flow.

watercourse — any naturally occurring stream or river, not including ditches, culverts, or other manmade waterways.

watershed — a geographic area that includes all land and water in a drainage system.

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Department of Natural Resources and Conservation
Water Resources Division
48 North Last Chance Gulch
P.O. Box 201601
Helena, MT 59620-1601
Phone: 406-444-6603/Fax: 406-444-0533/TDD: 406-444-6873

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Montana Department of
Natural Resources and Conservation
1424 9th Avenue
P.O. Box 201601

Helena, Montana 59620-1601

www.dnrc.state.mt.us/wrd/home.htm

Legislative Environmental Quality Council
State Capitol, Room 171
P.O. Box 201704
Helena, MT 59620-1704
ph: 406/444-3742, fax: 406/444-3971
e-mail: teverts@state.mt.us
WEB:www.leg.state.mt.us/css/lepo/

Montana University System Water Center
101 Huffman Building
Montana State University
Bozeman, MT 59717
ph: 406/994-6690, fax: 406/994-1774
e-mail: wwwrc@montana.edu
WEB: http://water.montana.edu

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