



# ENVIRONMENTAL QUALITY COUNCIL

WATER POLICY INTERIM  
COMMITTEE  
MAY 11, 2010  
EXHIBIT 2

PO BOX 201704  
HELENA, MONTANA 59620-1704  
(406) 444-3742

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| GOVERNOR BRIAN SCHWEITZER<br>DESIGNATED REPRESENTATIVE<br>MIKE VOLESKY | HOUSE MEMBERS<br>CHAS VINCENT--Chair<br>SUE DICKENSON<br>JULIE FRENCH<br>MIKE MILBURN<br>CARY SMITH<br>FRANKE WILMER | SENATE MEMBERS<br>BRADLEY MAXON HAMLETT--Vice Chair<br>JIM KEANE<br>RICK RIPLEY<br>JIM SHOCKLEY<br>MITCH TROPILA<br>BRUCE TUTVEDT | PUBLIC MEMBERS<br>JEFF PATTISON<br>BRIAN CEBULL<br>DIANE CONRADI<br>MARY FITZPATRICK | COUNCIL STAFF<br>JOE KOLMAN, Research Analyst<br>SONJA NOWAKOWSKI, Research Analyst<br>HOPE STOCKWELL, Research Analyst<br>CYNTHIA PETERSON, Secretary<br>TODD EVERTS, Legislative Environmental Analyst |
|--|--|---|--|--|
|--|--|---|--|--|

April 19, 2010

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.

The WPIC meets in Helena May 11 and 12. The agenda includes an update on the work of the Reserved Water Rights Compact commission and continued discussion of exempt wells and mitigation.

Please contact me if you have questions.

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**WATER COURT**  
**ADJUDICATION PROGRESS REPORT TO THE EQC PURSUANT TO § 85-2-281,**  
**MCA**

Submitted by C. Bruce Loble, Chief Water Judge  
 April 14, 2010

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 its docket 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 | Sources  | Claims in Decree | Remaining Claims to Resolve   |
|-------|--|------------------|---|
| 40A   | Musselshell River above Roundup                          | 5,812            | 153   |
| 40E   | Missouri River between Musselshell River & Fort Peck Dam | 3,010            | 206   |
| 40G   | Sage Creek   | 943              | 225   |
| 40H   | Big Sandy Creek  | 797              | 50  |
| 40O   | Milk River Below Whitewater Creek                        | 3,306            | 1,157   |
| 40M   | Beaver Creek, Tributary of Milk River                    | 2,942            | Decree issued 3/20/2009<br>Objections Received -<br>Counter-objection<br>deadline is May 10, 2010 |
| 40R   | Big Muddy Creek  | 2,029            | Decree issued 1/28/2010<br>Objection Deadline is<br>July 27, 2010                                 |
| 40S   | Missouri River Below Ft. Peck Dam                        | 2,966            | 335   |
| 41C   | Ruby River   | 2,183            | 190   |
| 41D   | Big Hole River   | 3,892            | 2,162   |
| 41G   | Jefferson River  | 2,407            | 219   |
| 41I   | Missouri River upstream of Holter Dam                    | 5,168            | 224   |
| 41K   | Sun River  | 2856             | 110   |
| 41O   | Teton River  | 2,541            | 930   |

|   |  |       |  |
|---|--|-------|--|
| 41QJ  | Missouri River from Holter Dam to Sun River                          | 2,584 | 699  |
| 42B   | Tongue River above & including Hanging Woman Creek                   | 1,345 | 515  |
| 42C   | Tongue River below Hanging Woman Creek                               | 4,708 | 1,185  |
| 42K   | Yellowstone River between Tongue and Powder Rivers                   | 1,479 | 166  |
| 42KJ  | Yellowstone River between Bighorn and Tongue Rivers                  | 4,767 | 603  |
| 43A   | Shields River  | 3,395 | 135  |
| 43B   | Yellowstone River above & including Bridger Creek                    | 4,860 | 304  |
| 43E   | Pyror Creek  | 630   | Decree issued 2/25/2010<br>Objection Deadline is<br>August 24, 2010    |
| 43O   | Little Big Horn River  | 1,176 | Decree issued 3/25/2010<br>Objection Deadline is<br>September 21, 2010 |
| 43Q   | Yellowstone River between Clarks Fork Yellowstone and Bighorn Rivers | 2,473 | 175  |
| 76HF  | Bitterroot River - Westside Subbasin                                 | 3,774 | 213  |
| United States Forest Service - Montana Compact — Several Objections Still Pending - Discovery and Pre-hearing Deadlines have been Set |  |       |  |
| United States Bureau of Land Management - Montana Compact — All Objections Withdrawn  |  |       |  |

The Water Court has completed most of its review of the current Summary Reports (basically draft decrees) generated by the DNRC following completion of the DNRC basin water right claim examination duties. Now that the DNRC has completed most of its ownership update efforts in the Summary Report basins, the Water Court anticipates issuing decrees, perhaps as often as one a month, in the approximate order of the following basin list:

| Basin Designation | Source   | Approximate Number of Claims |
|-------------------|--|------------------------------|
| 41Q               | Missouri River from Sun River to Marias River          | 4,127                        |
| 40J               | Milk River between Fresno Reservoir & Whitewater Creek | 12,871                       |
| 41B               | Beaverhead River                                       | 2,222                        |
| 41J               | Smith River  | 2,719                        |

|              |   |        |
|--------------|---|--------|
| 76F          | Blackfoot River   | 3,699  |
| 40B          | Flatwillow Creek  | 3,677  |
| 41R          | Arrow Creek   | 2,173  |
| 41T          | Missouri River Between Marias River to and including Bullwacker Creek | 3,050  |
| Eight Basins | Approximate Number of Claims in Prospective Decrees                   | 34,538 |

In response to the 2009 legislative mandate to generate “vacancy savings” and the Supreme Court Administrator’s suggestion, 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. A half time position that was kept vacant for several months to help generate vacancy savings was filled in March.

The chief water judge participated in three public meetings held in Havre, Glasgow, and Malta on March 30 and 31, 2010. The Havre and Glasgow meetings were water right conferences organized by the Montana Watercourse. The Malta event was a Water Court sponsored public meeting to explain the counter-objection process for the Beaver Creek (Basin 40M) Decree. Approximately 140 people attended all three meetings.

**DNRC REPORT TO EQC  
HB22 ADJUDICATION PROGRESS  
April, 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 April, 1 2010      **40,623**
  - 
  - Claims examined by Purpose
    - o Irrigation                      9367      23%
    - o Stock                            22956     57%
    - o Domestic                       4882      12%
    - o Other                            3418     8%
- 40,623**

**Claims remaining to be examined                      16,477**

**Summary Reports to Water Court**

**Date Issued**

|   |                    |
|---|--------------------|
| Union Creek (part of 76F)                                   | May 19, 2005       |
| Teton River (41O)   | August 15, 2005    |
| Big Hole River (41D)  | October 31, 2006   |
| Tongue River, below hanging Woman Creek (42C)               | August 7, 2007     |
| Blackfoot River (76F)                                       | August 14,         |
| 2007  |                    |
| Missouri River, from Holter Dam to Sun River (41QJ)         | August 15, 2007    |
| Tongue River, above Hanging Woman (42B)                     | December 5, 2007   |
| Pryor Creek (43E)   | August 18, 2008    |
| Smith River (41J)   | September 1, 2008  |
| Beaver Creek (40M)  | September 1, 2008  |
| Flatwillow Creek (40B)                                      | September 11, 2008 |
| Milk River (40J)  | December 5, 2008   |
| Little Big Horn River (43O)                                 | February 6, 2009   |
| Big Muddy Creek (40R)                                       | April 6, 2009      |
| Missouri River, Sun River to Marias River (41Q)             | June 16, 2009      |
| Beaverhead River (41B)                                      | August 14, 2009    |
| Arrow Creek (41R)   | October 23, 2009   |
| Missouri River, from Marias River to Bullwacker Creek (41T) | November 17, 2009  |

**Decrees Issued by Water Court**

**Date Issued**

**Number of Claims**

|                           |            |       |
|---------------------------|------------|-------|
| Teton River (41O)         | 12/29/2005 | 2,500 |
| 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        |
| <b>Pryor Creek (43E)</b>           | <b>2/25/2010</b> | <b>629</b>   |
| <b>Little Big Horn River (43O)</b> | <b>3/17/2010</b> | <b>1,176</b> |

Above decrees scanned and available at:

[http://www.dnrc.mt.gov/wrd/water\\_rts/adjudication/default.asp](http://www.dnrc.mt.gov/wrd/water_rts/adjudication/default.asp)

| <b>BASINS BY COMPLETION DATE<br/>- DNRC WORK PLAN 2009</b> |  |                         |                                 |      |
|--|--|-------------------------|---------------------------------|------|
| BASIN<br>COUNT   | BASIN NAME   | WORK STATUS             | Estimated<br>Completion<br>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 |
| 16   | Frenchman Creek Re-Examination (40L)               | Examination in progress | 3                               | 2010 |

**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  
**2010 season completed water court assistance for 38 streams**  
Automated indexes are now in use

**Post Decree Assistance (July thru Mar 2010)**

| Case type      | case count | work hours      |
|----------------|------------|-----------------|
| Certified case | <b>1</b>   | <b>202.5</b>    |
| 85-2-248       | <b>262</b> | <b>2366</b>     |
| Case           | <b>38</b>  | <b>805</b>      |
| General assist |            | <b>1202.5</b>   |
| Total hours    |            | <b>4,576.00</b> |

**Expenses**

|              |                    |                        |
|--------------|--------------------|------------------------|
| YTD FY 2010: | Operating Costs    | \$ <b>186,210.74</b>   |
|              | Personnel Services | \$ <b>1,412,515.81</b> |
|              | Total              | \$ <b>1,598,726.55</b> |
|              | Budget             | \$ <b>2,375,917.00</b> |

**Billing System**

108,000 bills mailed Dec 27, 2005  
Estimated revenue generated \$6.2 million  
Revenue received \$5.216 million

**Appeals**

5,059 Appeals received  
4774 appeals resolved to date (1128 denied, 3646 resolved with fee correction)  
285 appeals remain

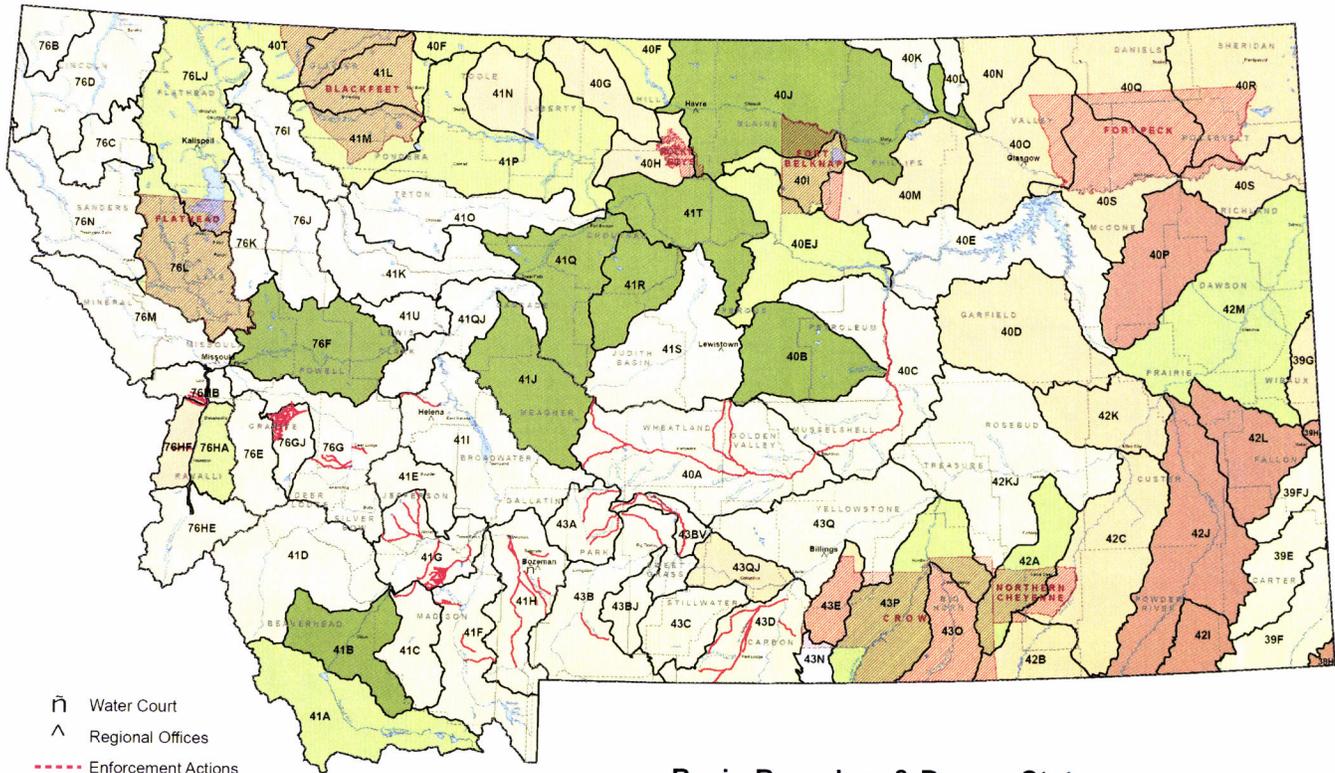
**HB39 Automate Ownership updates (effective July 1, 2008)**

- 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.
- Re-Examination of basin 40L includes 402 claims not counted towards claim examination progress

**-DNRC is scrubbing data and validating geocodes for input, estimated completion date June 2010.**

# Basin Location and Adjudication Status

3/26/10



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

## Basin Boundary & Decree Status

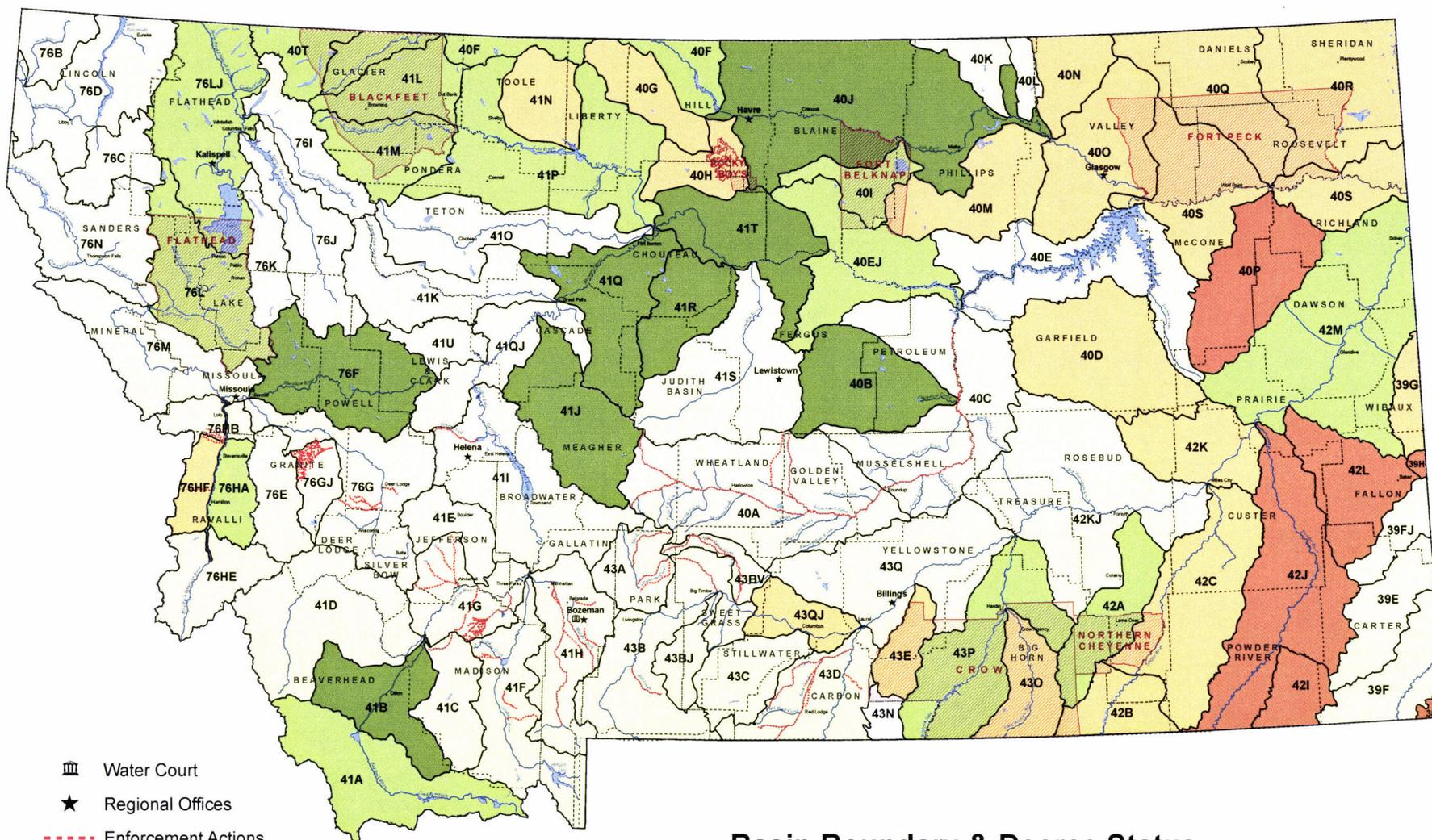
- |                         |                      |
|-------------------------|----------------------|
| ■ Currently Examining   | □ Temporary Decree   |
| ■ Summary Report Issued | □ Preliminary Decree |
| □ Not Yet Examined      | ■ Final Decree       |


 Water Resources Division  
 March 2010  
 Montana State Plane NAD 83

CI2255 0105hsxa.

# Basin Location and Adjudication Status

3/26/10



- Water Court
- Regional Offices
- Enforcement Actions
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- RESERVATIONS

## Basin Boundary & Decree Status

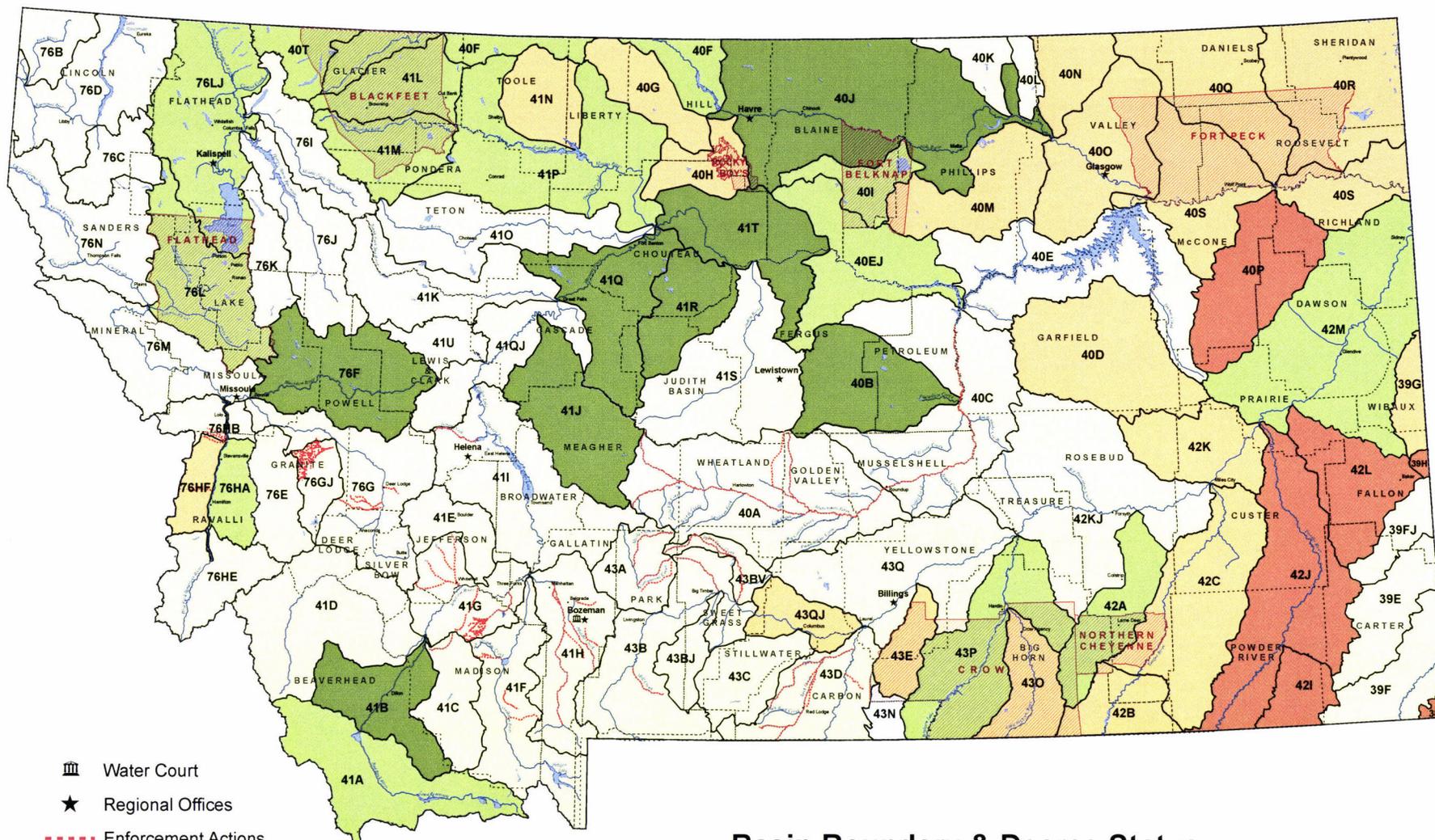
- |                       |                    |
|-----------------------|--------------------|
| Currently Examining   | Temporary Decree   |
| Summary Report Issued | Preliminary Decree |
| Not Yet Examined      | Final Decree       |



Water Resources Division  
 March 2010  
 Montana State Plane NAD 83

# Basin Location and Adjudication Status

3/26/10



- 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  
March 2010  
Montana State Plane NAD 83