Water Rights in Montana

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Acknowledgment

Water Rights in Montana is a compilation of two previous citizen guides discussing Montana water rights—the Montana Department of Natural Resources and Conservation's *Water Rights in Montana* and the Environmental Quality Council's and Montana University System Water Center's *Wading into Montana Water Rights.* We would like to thank the authors of the latter guide, Michelle Bryan and Professor Gerald L. Westesen, for their significant contribution to this publication.

Disclaimer

Water Rights in Montana should not be used as a legal reference. When in doubt, always refer to the MONTANA CODE ANNOTATED or the Department of Natural Resources and Conservation ADMINISTRATIVE RULES.[1] When making any legal judgments on the adequacy or completeness of procedure, always consult state agency legal staff.

[1] Terms that are capitalized and underlined are further defined or explained in the glossary at the end of the publication.

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).

Because 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 . . .* (section 85-2-422, MCA) (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 that 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. In Montana, the term "beneficial use" means, generally, a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.

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

> *[a]ll 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 by enacting Title 85, chapter 2, MCA.

Montana Water Use Act

The provisions of Title 85, chapter 2, MCA, commonly referred to as the Montana Water Use Act, were the most comprehensive change in Montana's water rights 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 Montana Department of Natural Resources and Conservation (DNRC), the Montana Water Court, the District Courts, and the Legislative Environmental Quality Council (EQC).

The DNRC administers the portions of the Montana Water Use Act that relate to water uses after June 30, 1973. The DNRC trains water commissioners and determines water measuring techniques. The 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 the DNRC that may arise in connection with processing permit or change applications or in disputes filed in the District Courts. A District Court can issue injunctive relief while it certifies water rights issues to the Water Court for a decision. The 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 EQC:

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

Adjudication of Existing Water Rights

Historical Evolution

Montana first ventured into organizing existing water rights by conducting an adjudication in the Powder River Basin. Initiated in 1973, the burden of collecting and investigating CLAIMS fell to the DNRC. Investigations often

involved onsite visits, aerial photo interpretations, and interviews. In 1979, after 6 years of intensive field work, completion of the first BASIN appeared distant. Decidedly, to adjudicate its remaining 84 basins in a timely manner, Montana needed a more efficient system.

Consequently, the 1979 Legislature passed Senate Bill No. 76 (SB 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.

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 (sections 3-7-101 and 3-7-102, MCA).

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 Court Judge (current or retired) from a DISTRICT within the water division (sections 3-7-201 and 3-7-301, MCA). Water Judges cannot examine water claims occurring beyond the boundaries of their divisions (section 3-7-501, MCA).

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 (sections 3-7-204 and 3-7-221, MCA).

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 (section 85-2-243(1), MCA).

RESERVED WATER RIGHTS COMPACT COMMISSION (RWRCC)

Unique circumstances arise when federal entities 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 (section 85-2-701, MCA).

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 the DNRC conduct adjudication according to this prioritization. With 100 or more signatures, claimants may also petition the Water Judge to designate a priority basin (section 85-2-218(2), MCA). 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; or
- adjudication proceedings nearing issuance of a decree (section 85-2-218(1), MCA).

How Does the Adjudication Process Work?

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 (section 85-2-212, MCA). Later,

the court extended the filing deadline to April 30, 1982. The DNRC received more than 200,000 claims by this closing date.

Public Notice. To ensure that 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 court houses and DNRC field offices (section 85-2-213, MCA).

EXEMPTIONS. Existing water rights claims for livestock and domestic uses from instream flows or GROUND WATER 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 these water rights. The burden of proof remains with the owner. 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:

- the name and address of the claimant;
- the name of the WATERCOURSE from which a right was claimed;
- the quantities and times of claimed water use;
- a description of the point of DIVERSION and place of claimed water use;
- the purpose of use and the number of acres irrigated, if applicable;
- an approximate starting date of beneficial use; and
- supporting evidence, such as maps, plats, aerial photos, or decrees (section 85-2-224, MCA).

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 were made before the 1996 closing date. The Water Court allows late claims but places them subordinate to:

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

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, the DNRC contacts the claimant to resolve any errors. After examining all claims in a basin, the DNRC issues a "Summary Report" to the Water Judge who uses the information in composing the basin decree.

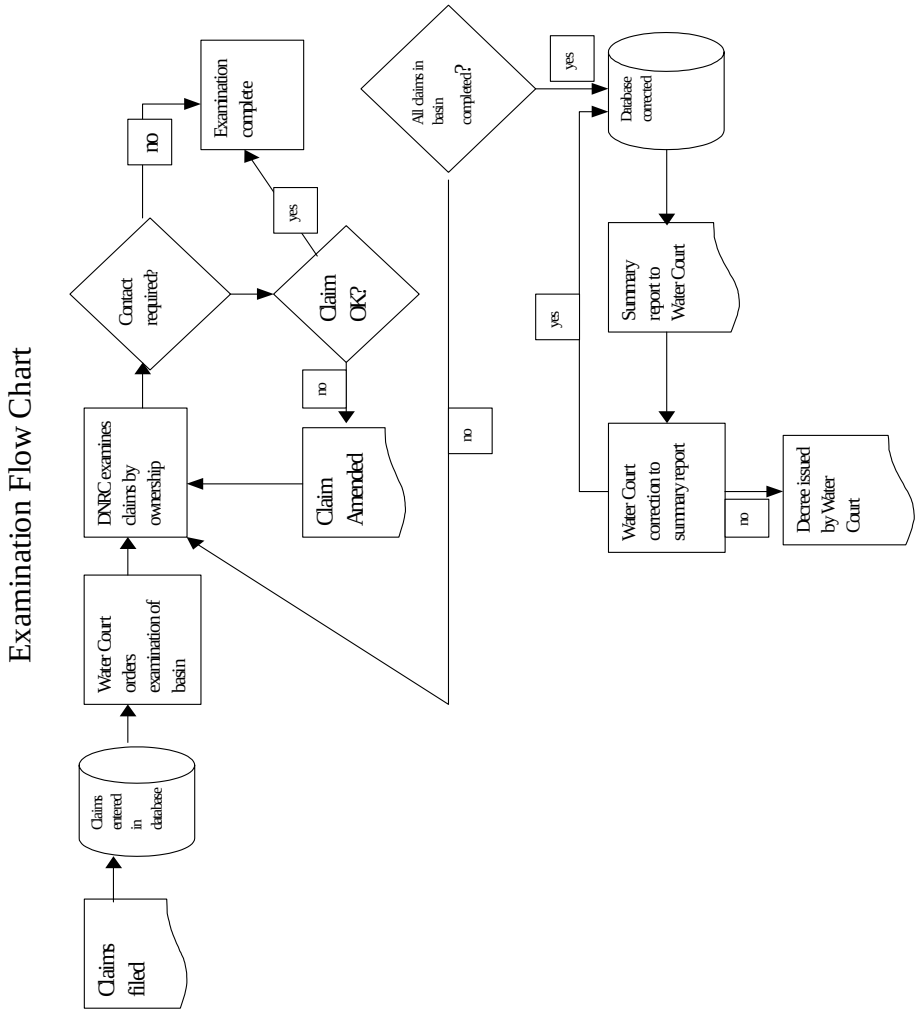
Temporary Preliminary Decree

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 Water Judge incorporates it into a preliminary decree (section 85-2-231(1) and (4), MCA).

Preliminary Decree

In basins with either no reserved rights claims or 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 (section 85-2-231(2), MCA).



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 (section 85-2-232(1) and (3), MCA). Water users are encouraged to review the decree and file objections if they feel that their own 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 counterobjection period.

Hearing

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:

- the DNRC;
- any person named in the decree; or
- any INTERESTED PERSON (section 85-2-233(1) and (2), MCA).

Final Decree

After resolving all objections, the Water Judge issues a final decree. If no objections arise, the preliminary decree automatically becomes final (section 85-2-234(1), MCA). Because the Water 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 (section 85-2-234(6), MCA).

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

What Is the Current Status of the Adjudication Process?

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

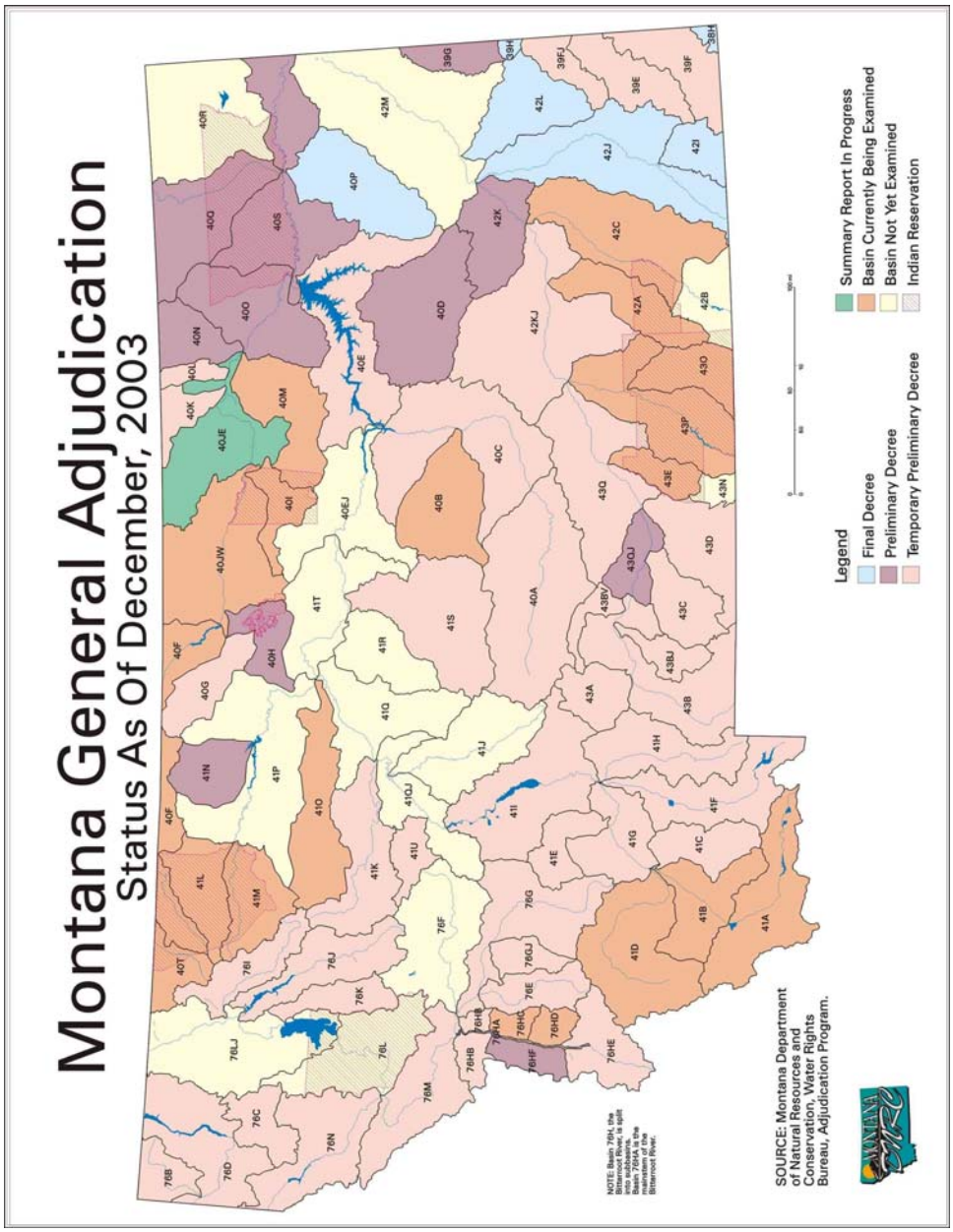
Temporary Preliminary Decrees	36 basins/2 subbasins	89,176 claims
Preliminary Decrees	11 basins/1 subbasin	23,135 claims

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 the 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 December, 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.
NOTE: Basin 76H, the Bitterroot River, is split into subbasins 76HA, 76HB, 76HC, 76HD, 76HE, 76HF, 76HG, 76HH, 76HI, 76HJ, 76HK, 76HL, 76HM, 76HN, 76HO, 76HP, 76HQ, 76HR, 76HS, 76HT, 76HU, 76HV, 76HW, 76HX, 76HY, 76HZ, 76HAA, 76HAB, 76HAC, 76HAD, 76HAE, 76HAF, 76HAG, 76HAH, 76HAI, 76HAJ, 76HAK, 76HAL, 76HAM, 76HAN, 76HAO, 76HAP, 76HAQ, 76HAR, 76HAS, 76HAT, 76HAU, 76HAV, 76HAW, 76HAX, 76HAY, 76HAZ, 76HBA, 76HBB, 76HBC, 76HBD, 76HBE, 76HBF, 76HBG, 76HBH, 76HBI, 76HBJ, 76HBK, 76HBL, 76HBM, 76HBN, 76HBO, 76HBP, 76HBQ, 76HBR, 76HBS, 76HBT, 76HBU, 76HBV, 76HBW, 76HBX, 76HBY, 76HBZ, 76HCA, 76HCB, 76HCC, 76HCD, 76HCE, 76HCF, 76HCG, 76HCH, 76HCI, 76HCJ, 76HCK, 76HCL, 76HCM, 76HCN, 76HCO, 76HCP, 76HCQ, 76HCR, 76HCS, 76HCT, 76HCU, 76HCV, 76HCW, 76HCX, 76HCY, 76HCZ, 76HDA, 76HDB, 76HDC, 76HDD, 76HDE, 76HDF, 76HDG, 76HDH, 76HDI, 76HDJ, 76HDK, 76HDL, 76HDM, 76HDN, 76HDO, 76HDP, 76HDQ, 76HDR, 76HDS, 76HDT, 76HDU, 76HDV, 76HDW, 76HDX, 76HDY, 76HDZ, 76HEA, 76HEB, 76HEC, 76HED, 76HEE, 76HEF, 76HEG, 76HEH, 76HEI, 76HEJ, 76HEK, 76HEL, 76HEM, 76HEN, 76HEO, 76HEP, 76HEQ, 76HER, 76HES, 76HET, 76HEU, 76HEV, 76HEW, 76HEX, 76HEY, 76HEZ, 76HFA, 76HFB, 76HFC, 76HFD, 76HFE, 76HFF, 76HFG, 76HFH, 76HFI, 76HFJ, 76HFK, 76HFL, 76HFM, 76HFN, 76HFO, 76HFP, 76HFQ, 76HFR, 76HFS, 76HFT, 76HFU, 76HFV, 76HFW, 76HFX, 76HFY, 76HFZ, 76HGA, 76HGB, 76HGC, 76HGD, 76HGE, 76HGF, 76HGG, 76HGH, 76HGI, 76HGJ, 76HGK, 76HGL, 76HGM, 76HGN, 76HGO, 76HGP, 76HGQ, 76HGR, 76HGS, 76HGT, 76HGU, 76HGV, 76HGW, 76HGX, 76HGY, 76HGZ, 76HHA, 76HHB, 76HHC, 76HHD, 76HHE, 76HHF, 76HHG, 76HHH, 76HHI, 76HHJ, 76HHK, 76HHL, 76HHM, 76HHN, 76HHO, 76HHP, 76HHQ, 76HHR, 76HHS, 76HHT, 76HHU, 76HHV, 76HHW, 76HHX, 76HHY, 76HHZ, 76HIA, 76HIB, 76HIC, 76HID, 76HIE, 76HIF, 76HIG, 76HIH, 76HII, 76HIJ, 76HIK, 76HIL, 76HIM, 76HIN, 76HIO, 76HIP, 76HIQ, 76HIR, 76HIS, 76HIT, 76HIU, 76HIV, 76HIW, 76HIX, 76HIY, 76HIZ, 76HJA, 76HJB, 76HJC, 76HJD, 76HJE, 76HJF, 76HJG, 76HJH, 76HJI, 76HJJ, 76HJK, 76HJL, 76HJM, 76HJN, 76HJO, 76HJP, 76HJQ, 76HJR, 76HJS, 76HJT, 76HJU, 76HJV, 76HJW, 76HJX, 76HJY, 76HJZ, 76HKA, 76HKB, 76HKC, 76HKD, 76HKE, 76HKF, 76HKG, 76HKH, 76HKI, 76HKJ, 76HKK, 76HKL, 76HKM, 76HKN, 76HKO, 76HKP, 76HKQ, 76HKR, 76HKS, 76HKT, 76HKU, 76HKV, 76HKW, 76HKX, 76HKY, 76HKZ, 76HLA, 76HLB, 76HLC, 76HLD, 76HLE, 76HLF, 76HLG, 76HLH, 76HLI, 76HLJ, 76HLK, 76HLL, 76HLM, 76HLN, 76HLO, 76HLP, 76HLQ, 76HLR, 76HLS, 76HLT, 76HLU, 76HLV, 76HLW, 76HLX, 76HLY, 76HLZ, 76HMA, 76HMB, 76HMC, 76HMD, 76HME, 76HMF, 76HMG, 76HMH, 76HMI, 76HMJ, 76HMK, 76HML, 76HMM, 76HMN, 76HMO, 76HMP, 76HMQ, 76HMR, 76HMS, 76HMT, 76HMU, 76HMV, 76HMW, 76HMX, 76HMY, 76HMZ, 76HNA, 76HNB, 76HNC, 76HND, 76HNE, 76HNF, 76HNG, 76HNH, 76HNI, 76HNJ, 76HNK, 76HNL, 76HNM, 76HNN, 76HNO, 76HNP, 76HNQ, 76HNR, 76HNS, 76HNT, 76HNU, 76HNV, 76HNW, 76HNX, 76HNY, 76HNZ, 76HOA, 76HOB, 76HOC, 76HOD, 76HOE, 76HOF, 76HOG, 76HOH, 76HOI, 76HOJ, 76HOK, 76HOL, 76HOM, 76HON, 76HOO, 76HOP, 76HOQ, 76HOR, 76HOS, 76HOT, 76HOU, 76HOV, 76HOW, 76HOX, 76HOY, 76HOZ, 76HPA, 76HPB, 76HPC, 76HPD, 76HPE, 76HPF, 76HPG, 76HPH, 76HPI, 76HPJ, 76HPK, 76HPL, 76HPM, 76HPN, 76HPO, 76HPP, 76HPQ, 76HPR, 76HPS, 76HPT, 76HPU, 76HPV, 76HPW, 76HPX, 76HPY, 76HPZ, 76HQA, 76HQB, 76HQC, 76HQD, 76HQE, 76HQF, 76HQG, 76HQH, 76HQI, 76HQJ, 76HQK, 76HQL, 76HQM, 76HQN, 76HQO, 76HQP, 76HQQ, 76HQR, 76HQS, 76HQT, 76HQU, 76HQV, 76HQW, 76HQX, 76HQY, 76HQZ, 76HRA, 76HRB, 76HRC, 76HRD, 76HRE, 76HRF, 76HRG, 76HRH, 76HRI, 76HRJ, 76HRK, 76HRL, 76HRM, 76HRN, 76HRO, 76HRP, 76HRQ, 76HRR, 76HRS, 76HRT, 76HRU, 76HRV, 76HRW, 76HRX, 76HRY, 76HRZ, 76HSA, 76HSB, 76HSC, 76HSD, 76HSE, 76HSF, 76HSG, 76HSH, 76HSI, 76HSJ, 76HSK, 76HSL, 76HSM, 76HSN, 76HSO, 76HSP, 76HSQ, 76HSR, 76HSS, 76HST, 76HSU, 76HSV, 76HSW, 76HSX, 76HSY, 76HSZ, 76HTA, 76HTB, 76HTC, 76HTD, 76HTE, 76HTF, 76HTG, 76HTH, 76HTI, 76HTJ, 76HTK, 76HTL, 76HTM, 76HTN, 76HTO, 76HTP, 76HTQ, 76HTR, 76HTS, 76HTT, 76HTU, 76HTV, 76HTW, 76HTX, 76HTY, 76HTZ, 76HUA, 76HUB, 76HUC, 76HUD, 76HUE, 76HUF, 76HUG, 76HUH, 76HUI, 76HUJ, 76HUK, 76HUL, 76HUM, 76HUN, 76HUO, 76HUP, 76HUQ, 76HUR, 76HUS, 76HUT, 76HUU, 76HUV, 76HUW, 76HUX, 76HUY, 76HUZ, 76HVA, 76HVB, 76HVC, 76HVD, 76HVE, 76HVF, 76HVG, 76HVH, 76HVI, 76HVJ, 76HVK, 76HVL, 76HVM, 76HVN, 76HVO, 76HVP, 76HVQ, 76HVR, 76HVS, 76HVT, 76HVU, 76HVV, 76HVW, 76HVX, 76HVY, 76HVZ, 76HWA, 76HWB, 76HWC, 76HWD, 76HWE, 76HWF, 76HWG, 76HWH, 76HWI, 76HWJ, 76HWK, 76HWL, 76HWM, 76HWN, 76HWO, 76HWP, 76HWQ, 76HWR, 76HWS, 76HWT, 76HWU, 76HWV, 76HWW, 76HWX, 76HWY, 76HWZ, 76HXA, 76HXB, 76HXC, 76HXD, 76HXE, 76HXF, 76HXG, 76HXH, 76HXI, 76HXJ, 76HXK, 76HXL, 76HXM, 76HXN, 76HXO, 76HXP, 76HXQ, 76HXR, 76HXS, 76HXT, 76HXU, 76HXV, 76HXW, 76HXX, 76HXY, 76HXZ, 76HYA, 76HYB, 76HYC, 76HYD, 76HYE, 76HYF, 76HYG, 76HYH, 76HYI, 76HYJ, 76HYK, 76HYL, 76HYM, 76HYN, 76HYO, 76HYP, 76HYQ, 76HYR, 76HYS, 76HYT, 76HYU, 76HYV, 76HYW, 76HYX, 76HYY, 76HYZ, 76HZA, 76HZB, 76HZC, 76HZD, 76HZE, 76HZF, 76HZG, 76HZH, 76HZI, 76HZJ, 76HZK, 76HZL, 76HZM, 76HZN, 76HZO, 76HZP, 76HZQ, 76HZR, 76HZS, 76HZT, 76HZU, 76HZV, 76HZW, 76HZX, 76HZY, 76HZZ

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 ground water after June 30, 1973, must obtain a Permit to APPROPRIATE Water or file a Notice of Completion of Ground Water 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; the physical availability of water within 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 pits or reservoirs located on nonperennial 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 may begin immediately. Within 60 days of completion, an Application for PROVISIONAL Permit for Completed Stockwater Pit or Reservoir, form 605, must be submitted to the DNRC. A provisional permit, subject to prior water rights, will then be issued. If the reservoir adversely affects prior water rights, the DNRC can revoke the permit or require an applicant to modify the reservoir.

Ground Water

A person does not need to apply for a permit to develop a well or a ground water spring with an anticipated use of 35 gallons a minute or less, not to exceed 10 acre-feet a 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 the 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 Ground Water Development, form 602, along with a filing fee to the DNRC. The priority date of the water right is the date that the DNRC receives the completed form 602. The 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 ground water. Also, a person must have exclusive property rights in the ground water 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 a minute or 10 acre-feet a year of ground water is required to obtain a Permit to Appropriate Water before any development begins or water is used. A permit may be required to appropriate ground water in an area designated as a controlled GROUND WATER AREA, depending on the terms of the ground water area. A list of the controlled ground water areas is on pages 27 and 28.

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 ground water area, or they can be located within the boundaries of a controlled ground water area if the provisions of the order do not restrict the development of replacement wells.
- The existing well may 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 may not exceed 35 gallons a minute or 10 acre-feet a year.
- The old and new well must be from the same ground water source.

If these conditions are met, the DNRC 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 ground water 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, may not exceed the flow rate or volume authorized by the water rights for the public water supply system.

Special Ground Water 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 a minute or 10 acre-feet a year, a Permit to Appropriate Water is required. A combined appropriation is defined as “an appropriation of water from the same source aquifer by two or more groundwater developments, that are physically manifold into the same system” (ARM 36.12.101(7)).

APPROPRIATIONS OVER 3,000 ACRE-FEET

A person proposing to appropriate more than 3,000 acre-feet of ground water a 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 may not exceed 120,000 gallons a day for one project.
- The lease does not require prior approval by the DNRC. However, 30 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 2 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 a 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 the following:

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 a 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 applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

An applicant is required to prove one of the following criteria if a valid objection is filed:

1. The DISCHARGE PERMIT holder has the ability to satisfy EFFLUENT limitations of a permit issued in accordance with Title 75, chapter 5, part 4, MCA.

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

3. The proposed use will not adversely affect the ability of a discharge permitholder to satisfy effluent limitations in accordance with Title 75, chapter 5, part 4, MCA.

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 water resources regional office. See pages 33 and 34.

The applicant must submit information or data showing that the criteria will be met. The applicant may: (1) include streamflow data collected by the U.S. Geological Survey or the U.S.D.A. Natural Resources Conservation Service; or (2) use recognized and established estimation methods, actual streamflow measurements, photographs showing that 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, or DNRC or any other credible source.

Additional criteria must be addressed if the application is for appropriations of 4,000 or more acre-feet and 5.5 or more CUBIC FEET PER SECOND (cfs). 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 that the 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. The DNRC will review the application to ensure that it is correct and

complete and process the application as outlined on page 19. Applications are reviewed in the order that they are received. It may take 12 to14 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, the 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 that 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 DNRC will provide the applicant the necessary materials to accomplish the public notice process. The applicant must also mail notification of the application to existing water users listed in the DNRC records indicating those areas that 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 the objector's property, water rights, or interests would be adversely affected by the proposed appropriation. If no objections are received and the applicant proves the issuance criteria, the permit is granted.

If correct and complete objections are received and cannot be resolved, the DNRC conducts a hearing. After evaluation of the evidence and testimony given at the hearing, the hearings 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 the DNRC on the proposed decision. If no exceptions are filed or after oral arguments are heard, the 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 the DNRC in processing the permit. The DNRC may assess a fee to the applicant to fund preparation of the EIS. See section 85-2-124, MCA.

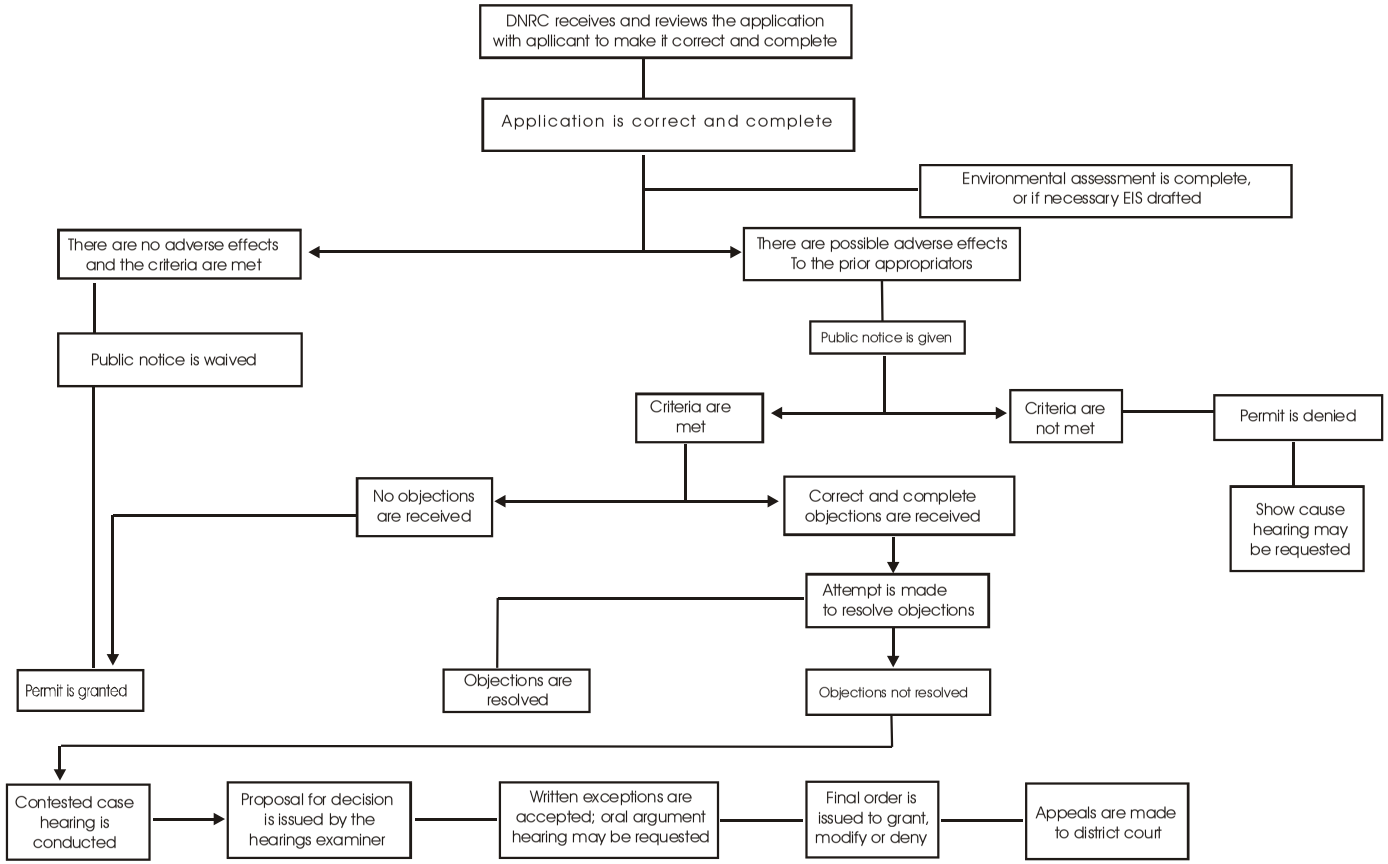
2. Any Permit to Appropriate Water that the DNRC issues is provisional. It is junior to all prior existing water rights and subject to the final Water Court determination or adjudication of those rights. It also is junior to prior DNRC permitted water rights and prior water reservations, except as otherwise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

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 the 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 the 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, the DNRC will grant an extension for a reasonable period of time.

Water Permit Application Process



Step 4 - Certificate of Water Right

After the project is completed, the DNRC will review the project completion notice and determine whether the project was completed in substantial accordance with the permit. The 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.
3. The basin in which the permit lies has been adjudicated, and the final decree is 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 listed 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 15 through 20.

Changes in Water Use

To protect all water rights, prior approval from the 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; or
4. place of storage.

A person must submit an Application for Change of Appropriation Water Right, form 606, to the 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 below are met. An application for change follows the same general process for notice and hearing as outlined on pages 8 and 9. Upon completion of the change, the appropriator must file a Project Completion Notice for Change of a Water Right, form 618, notifying the 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 or more acre-feet of water a year and 5.5 or more cubic feet per second 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 or more acre-feet and 5.5 or more cubic feet per second 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 criteria 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 has been 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 one of the following:

1. The water quality of an appropriator will not be adversely affected.

2. The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, MCA.

An applicant for salvaged water must also prove:

1. 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 that it will be needed. The applicant must also provide evidence to meet the same criteria as an authorization to change listed above. 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 may not 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 is 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 pages 21 and 22 plus one additional criterion: 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 the DNRC within 60 days of filing the deed. The purpose of filing the form is to help maintain a reliable record of water rights ownership. In addition, it will allow the owner to receive notification of actions by the DNRC and the Water Court. The completed form and filing fee must be submitted to the 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, the 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 DNRC. 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 the senior appropriator's water right before a JUNIOR APPROPRIATOR receives any (section 85-2-401, MCA).

Each Montana District Court supervises water use within its JURISDICTION (section 85-5-101, MCA). 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% of the water rights on a watercourse);
- application by both the DNRC and one or more water rights holders on a watercourse; or
- application of the board(s) of one or more IRRIGATION DISTRICTS (sections 85-5-101 and 85-5-107, MCA).

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 (section 85-5-102, MCA).

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

Dispute Resolution

If a water user feels that a water right is being adversely affected by the actions of another water user, the DNRC urges the parties to first talk to each other to see if the matter can be settled. If the matter cannot 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" regarding the water, documenting the "call", and filing a formal written complaint to the 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 DNRC's web page—
http://www.dnrc.mt.gov/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 of the state or by the United States or any of its agencies. The DNRC administers the reservation application process.

In 1978, the Board of Natural Resources and Conservation (Board) granted water reservations in the Yellowstone River Basin to 8 municipalities, 14 CONSERVATION DISTRICTS, and 6 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 conservation district office.

In 1992, the Board issued an order granting water reservations in the upper Missouri River Basin above Fort Peck Dam to 17 municipalities, 15 conservation districts, and 4 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 streamflows 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 the Montana Department of Fish, Wildlife, and 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 pages 21 and 22, from the DNRC and must benefit fisheries.

To date, the method used most often is to lease water to the FWP. The FWP staff actively seek interested senior water rights 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 rights holders by helping them develop salvage water projects and assess water savings and by assisting with the necessary authorizations to change the water rights involved in a leasing agreement. As a result, the water rights holder continues to own the water right, receives financial compensation, and makes a valuable contribution to maintaining Montana's natural heritage. For more information, contact the FWP's Water Resource Program Manager at (406) 994-6824 or e-mail at kawilliams@montana.edu.

Controlled Ground Water Areas

A controlled ground water area may be proposed by the 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 ground water users when the petitioners feel that a controlled ground water area is necessary. A petition must allege facts showing one or more of the following:

1. Ground water withdrawals are in excess of RECHARGE to the aquifer.
2. Excessive ground water 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. Ground water levels or pressures are declining or have declined excessively.
5. Excessive ground water withdrawals would cause contaminant migration.
6. Ground water withdrawals adversely affecting ground water quality are occurring or are likely to occur.
7. Water quality within the ground water area is not suited for a specific beneficial use as defined by section 85-2-102(2)(a), MCA.

A controlled ground water 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 if any new well will impair or interfere with existing water rights.

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

Twelve controlled ground water areas have been designated in Montana:

1. The South Pine Controlled Ground Water Area contains portions of Prairie, Wibaux, and Fallon Counties.
2. The Larson Creek Controlled Ground Water Area lies in Ravalli County west of Stevensville.
3. The Hayes Creek Controlled Ground Water Area is located southwest of Missoula in Missoula County.
4. The Warm Springs Ponds Controlled Ground Water Area in Deer Lodge County is located east of Anaconda.
5. The Rocker Controlled Ground Water Area in Silver Bow County is located west of Rocker.
6. The Bozeman Solvent Site Controlled Ground Water Area is located in the city of Bozeman and surrounding area.
7. The Old Butte Landfill/Clark Tailings Controlled Ground Water Area is located 1 mile southwest of the city of Butte in Silver Bow County.
8. The Idaho Pole Company Site Controlled Ground Water Area is located in Gallatin County northeast of the city of Bozeman.
9. The North Hills Controlled Ground Water Area is located in Lewis and Clark County north of the city of Helena.

10. The BNSF Somers Site Controlled Ground Water Area is generally located to the east of the town of Somers in Flathead County.
11. The Paradise Controlled Ground Water Area is generally located 5 miles southeast of Plains and one-half mile northwest of Paradise in Sanders County.
12. The Sypes Canyon Controlled Ground Water Area is generally located on the west flank of the Bridger Range north of Bozeman in Gallatin County.

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

Yellowstone Controlled Ground Water Area

The Yellowstone Controlled Ground Water Area is the 13th controlled ground water 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 ground water development adjacent to the park in an effort to preserve the park's natural hydrothermal features. Ground water developments are restricted within this area. The restrictions apply to ground water appropriations with a priority date on or after January 1, 1993. Anyone wanting to appropriate ground water in this area after January 31, 1994, must apply for a permit from the DNRC. Depending on the rate and volume of ground water needed and the temperature of the ground water 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. The DNRC provides the meters necessary to gather data.

The compact requires the DNRC to send the NPS a copy of each permit application, including a map and well log. The 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 ground water specifically described in the compact.

Additional information and a map of the Yellowstone Controlled Ground Water 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 because of water availability problems, overappropriation, 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 rights 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 are closed to certain new appropriations of water.
2. There are also temporary closures in the Bitterroot Basin and the Clark Fork Basin.
3. The Legislature authorized the 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, the DNRC must receive a petition signed by at least 25% 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 Montana Department of

Environmental Quality. The petition must show that during certain times of the year, one of the following occurs:

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 section 75-5-301(l), MCA.
6. Issuance of permits would adversely affect holders of a discharge permit issued in accordance with Title 75, chapter 5, part 4, MCA, in their ability to satisfy effluent limitations.

If the DNRC determines that rules should be adopted to close a 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 the DNRC. A petition must be filed with the appropriate fee, and the petitioner also must pay reasonable processing costs.

Compact Closures

Under section 85-2-701, MCA, the RWRCC 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 the 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 ground water.

2. The Chippewa Cree Tribe of the Rocky Boy's Indian Reservation-Montana Compact has two moratoriums on new state appropriations and tribal water rights, effective April 15, 1997. The moratoriums are 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 United States 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 United States 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 28, 1997, closes the following basins:
    - mainstem of the Missouri River to new storage;
    - IMPOUNDMENTS upstream from the UMNW&SR;
    - Missouri River Basin upstream of the UMNW&SR to new appropriations in any month in which the water volume designated for the “available water supply” has been exhausted.

5. The United States 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 areas 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 its 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 22, 1999, are on all surface water and ground water 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 composed of Basins 40F, 40G, 40H, 40I, 40J, 40K, 40L, 40M, 40N, and 40O both above the Western Crossing (of the Milk River from 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 the DNRC to determine the specifics of the restrictions on these sources. The NPS compact also established the Yellowstone Controlled Ground Water Area, which set up restrictions on appropriating ground water. Information on controlled ground water areas is presented on pages 26 through 29.

Sources of Information

All water right forms required by the DNRC are available at any of the eight water resources regional offices listed below, the Helena Central Office, or from the Internet at http://www.dnrc.mt.gov/wrd/home.htm.

DNRC Offices

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

Water Resources Regional Offices

BILLINGS:
Airport Industrial Park
371 Rimtop Dr.
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 Dr., Suite C
Bozeman, MT 59715
Phone: (406) 586-3136
Fax: (406) 587-9726

Serving: Gallatin, Madison, and Park Counties

GLASGOW:
222 6th St. 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 6th Ave.
P.O. Box 1828
Havre, MT 59501-1828
Phone: (406) 265-5516
Fax: (406) 265-2225

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

HELENA:
1424 9th Ave.
P.O. Box 201601
Helena, MT 59620-1601
Phone: (406) 449-0944
Fax: (406) 442-9315

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 Northeast Main St., 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 and 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.

601 Haggarty Lane
P.O. Box 1389
Bozeman, MT 59771-1389
Phone: (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
Phone: (406) 444-3742
Fax: (406) 444-3971
E-mail: eqc@mt.gov
http://www.leg.mt.gov/css/lepo/2003_2004/default.asp

Montana University System Water Center

101 Huffman Building
Montana State University-Bozeman
Bozeman, MT 59717
Phone: (406) 994-6690
Fax: (406) 994-1774
E-mail: wwwrc@montana.edu
http://water.montana.edu

Printed Material

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

	Cost:
Montana Water Law (2003)	$ 5
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
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 1 cubic foot of water in 1 second and is equivalent to flow rates of:

448.80 gpm
1.98 acre-feet a 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 1 acre to a depth of 1 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.mt.gov/wrd/home.htm.

Form No.	Title	Fee
Form 600	Application for Beneficial Water Use Permit	$400
Form 600A or 600B	Supplement to Application for Beneficial Water Use Permit	None
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 Ground Water Appropriations	None
Form 602	Notice of Completion of Ground Water 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. (For a replacement well that exceeds 35 GPM $100 or 10 AC-FT or a municipal well that exceeds 450 GPM; or a reservoir in the same source; or to move or add stock tanks to an existing system.)	$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 for each additional water right updated, up to a maximum of $300)	$50
Form 608A	Addendum to Water Right Ownership Update-Proportional Transfer (for each 608A filed, up to a maximum of $200)	None
Form 610A or 610B	Application for Reservation of Water (fee plus DNRC 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	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 to the Department of Natural Resources and Conservation for Controlled Ground Water Area (fee plus DNRC costs of giving notice, holding hearing, etc.)	$400
Form 631	Petition for Closure of a Highly Appropriated 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	$400

	water basin or subbasin (fee plus DNRC costs of giving notice, holding hearing, etc.)	
Form 634	Replacement Well Notice	$50
Form 635	Redundant Well Construction Notice	$50

Glossary of Terms

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

acre-foot — the volume of water that will cover 1 acre to a depth of 1 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.

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.

biennium — a 2-year period.

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

compact — a legal agreement between Montana and a federal agency and/or 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 that 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 concept of state government.

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

cubic foot per second (cfs) — a rate of water flow that will supply 1 cubic foot of water in 1 second.

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

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 over by a District Court Judge.

diversion — an open, physical alteration of a stream's flow away from its natural course.

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.

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.

impoundment — gathering and enclosure, 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 such as preservation of fish or wildlife habitat.

interested person — a person 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.

miner's inch — by Montana law, 1 cfs is approximately equal to 40 miner's inches.

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

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

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

preponderance of the evidence — convincing evidence that shows that 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.

recharge — the resupply of water to rivers or aquifers.

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

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.

waste or wasteful use — means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use. The term "waste" as it relates to ground water does not include:

- the withdrawal of reasonable quantities of ground water in connection with the construction, development, testing, or repair of a well or other means of withdrawal of ground water;

- the inadvertent loss of ground water because of breakage of a pump, valve, pipe, or fitting, if reasonable diligence is shown by the person in effecting the necessary repair;

- the disposal of ground water without further beneficial use that must be withdrawn for the sole purpose of improving or preserving the use of land by draining the same or that must be removed from a mine to permit mining operations or to preserve the mine in good condition;

- the disposal of ground water used in connection with producing, reducing, smelting, and milling metallic ores and industrial minerals or that is displaced from an aquifer by the storage of other mineral resources; and

- the management, discharge, or reinjection of ground water produced in association with a coal bed methane well.

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

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.

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

Persons with disabilities who need an alternative accessible format of this document should contact:

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P.O. Box 201601
Helena, MT 59620-1601
Phone: (406) 444-6601
Fax: (406) 444-053
TDD: (406) 444-6873