A BACKGROUND ON WATER RIGHTS
DNRC WATER RESOURCES DIVISION

January 18, 2022
Dr Anna Pakenham Stevenson
Water Division Administrator
Montana Constitution: Article IX, Section 3

(1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.

(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.

(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.

(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.
WATER RIGHT AUTHORITIES

Montana Legislature
- Set state water policy
- Designate closed basins

Judicial Branch
Water Court
- Adjudicates pre-1973 claims
- Produces enforceable decrees
- Aids District Court in water distribution

District Court
- Enforcement through judicial proceedings
- Appoints & directs Water Commissioners

Executive Branch
MT DNRC (Water Resources Division)
- Water quantity and measurement
- Development of water post 1973
- Examine/process pre-1973 claims
- Centralized record keeping and databases
- Technical assistance
- Compact Implementation
Water Resources Division

- Water Rights
- Water Management
- Water Projects
- Water Operations
- Compacts

MT Constitution | Branches of Governance | Water Resources Division | Water Rights | Records | New Appropriations | Adjudication

MT State Water Plan
Water Resources Regional Offices

• Water Resources Division Main Line: (406)-444-6601
• Billings: (406) 247-4415
• Bozeman: (406) 586-3136
• Glasgow: (406) 228-2561
• Havre: (406) 265-5516
• Helena: (406) 444-6999
• Kalispell: (406) 752-2288
• Lewistown: (406) 538-7459
• Missoula: (406) 721-4284

*Regional office coverage areas are county based
• DNRC StAGE-State Based Stream Gaging Program
• Real Time Stream gaging
• Support water administration
• 172 gages in place
• Smaller tributary streams
• GIS based
• Complementary to USGS system
DNRC Water Rights

- New Water Rights (Sections 85-2-306, -311, MCA)
- Changes (Section 85-2-402, MCA)
- Ownership updates (Sections 85-2-424, - 431, MCA)
- Record keepers of all water rights (Sections 85-2-112(3), 85-2-101 MCA)

- Water Rights in Montana Handbook
- Water Resource Survey Books
Permitting Process

New Water Right

- Water is Physically Available
- Water is Legally Available
- No Adverse Effect
- Adequacy of Diversion
- Beneficial Use
- Possessory Interest

Change Existing Right

- Historical Use
- No Adverse Effect
- Adequacy of Diversion
- Beneficial Use
- Possessory Interest

Permit & Change Application Processing Times

Ownership Updates- SB55

~ 3800 Ownership Updates since October 1, 2021

Early analysis of property seller data:
~ 69% of updates will require a deficiency letter

Significant Outreach Efforts
Ongoing conversations & training with real estate professionals

SB55 FAQs
Transparency

- Stakeholder Engagement

- Published factsheets
  - Stakeholder Engagement and Factsheets

- DNRC processing manuals available on website:
  - Permit Manual
  - Change Manual
Centralized Record System

- MCA 85-2-112(3): “the department [DNRC] shall . . . establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, claims of existing rights, applications, and other documents filed in its office under this chapter.”

- MCA 85-2-101: The legislature declares that this system of centralized records recognizing and establishing all water rights is essential for the documentation, protection, preservation, and future beneficial use and development of Montana's water for the state and its citizens and for the continued development and completion of the comprehensive state water plan.
Water Rights Records

Second largest active records collection in state government

• Over 6,600 boxes containing over 425,000 files

Started with filming all water rights on microfiche in 1973

• Claims and new rights

Transitioned to scanning all files in 2005

• Everything previously filmed was scanned

Currently working towards a completely digital record

• No paper files kept for new applications
• Future: all water rights documents on one location
Water Rights Information System

- "Project Trident" – convert DNRC’s end-of-life database to modern technology.
- Capitalize on opportunity to improve functionality and make enhancements.
- Accommodating previously out-of-scope functionality by leveraging existing contractors.
- This work is foundational in setting the stage for DNRC to leverage other tools and technologies toward better more efficient public service.
Water Rights Query System (WRQS) & Website

- WRQS allows the public to query all water rights in the state
  - The external facing WRQS will be overhauled to increase functionality for the public
  - Simple and advanced search by most water right elements
  - Access to maps, abstracts, versions, and the full scanned file
  - [Water Right Query System](http://wrqs.dnrc.mt.gov)

- DNRC is contracting to update the website
  - Provide improved resources and information to stakeholders
  - Keyword searchability for efficiency
  - Transitioning to digital form submission (e.g., 602’s)
Adjudication

- Recognizes and confirms water rights as of July 1, 1973
- DNRC conducts the technical analysis and examination of claims to assist the Water Court
- Far more expensive and time consuming than contemplated
As of 1/6/2022 DNRC has examined 76,981 claims, which exceeds the benchmark of 65,000 claim by 6/30/2022.

The next benchmark is 85,000 by 6/30/23.

DNRC is already within 9,000 claims of this benchmark.
Post Decree Assistance

◦ In 2021, DNRC invested on average 392 hours a month in post decree assistance with a total of 4,706 hours for the year.

◦ This process includes extensive research, field investigations, claimant interviews, memorandums, and mapping.

◦ DNRC may provide testimony in the Water Court and District Court cases. Some cases go on to the Montana Supreme Court.
DNRC has provided detailed GIS maps and tabulations to the District Courts, Water Court, water commissioners, and the general public to make informed decisions.
THANK YOU

For Additional Information
Anna Pakenham Stevenson 406.444.6605
www.DNRC.MT.GOV/divisions/Water