



A BACKGROUND ON WATER RIGHTS

DNRC WATER RESOURCES DIVISION

January 18, 2022

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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)

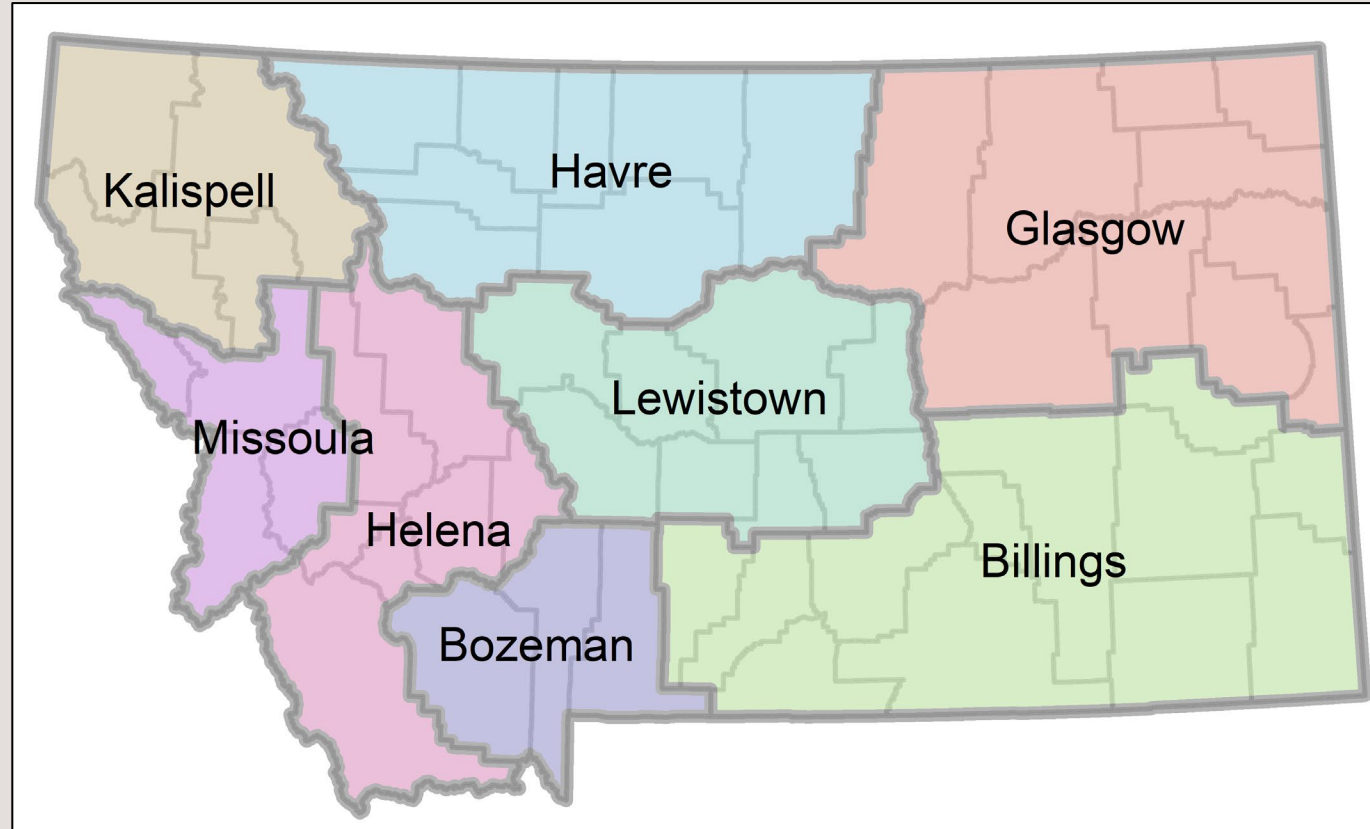
- Water quantity and measurement
- Development of water- post 1973
- Examine/process pre-1973 claims
- Centralized record keeping and databases
- Technical assistance
- Compact Implementation

Water Resources Division



MT State Water Plan

Water Resources Regional Offices

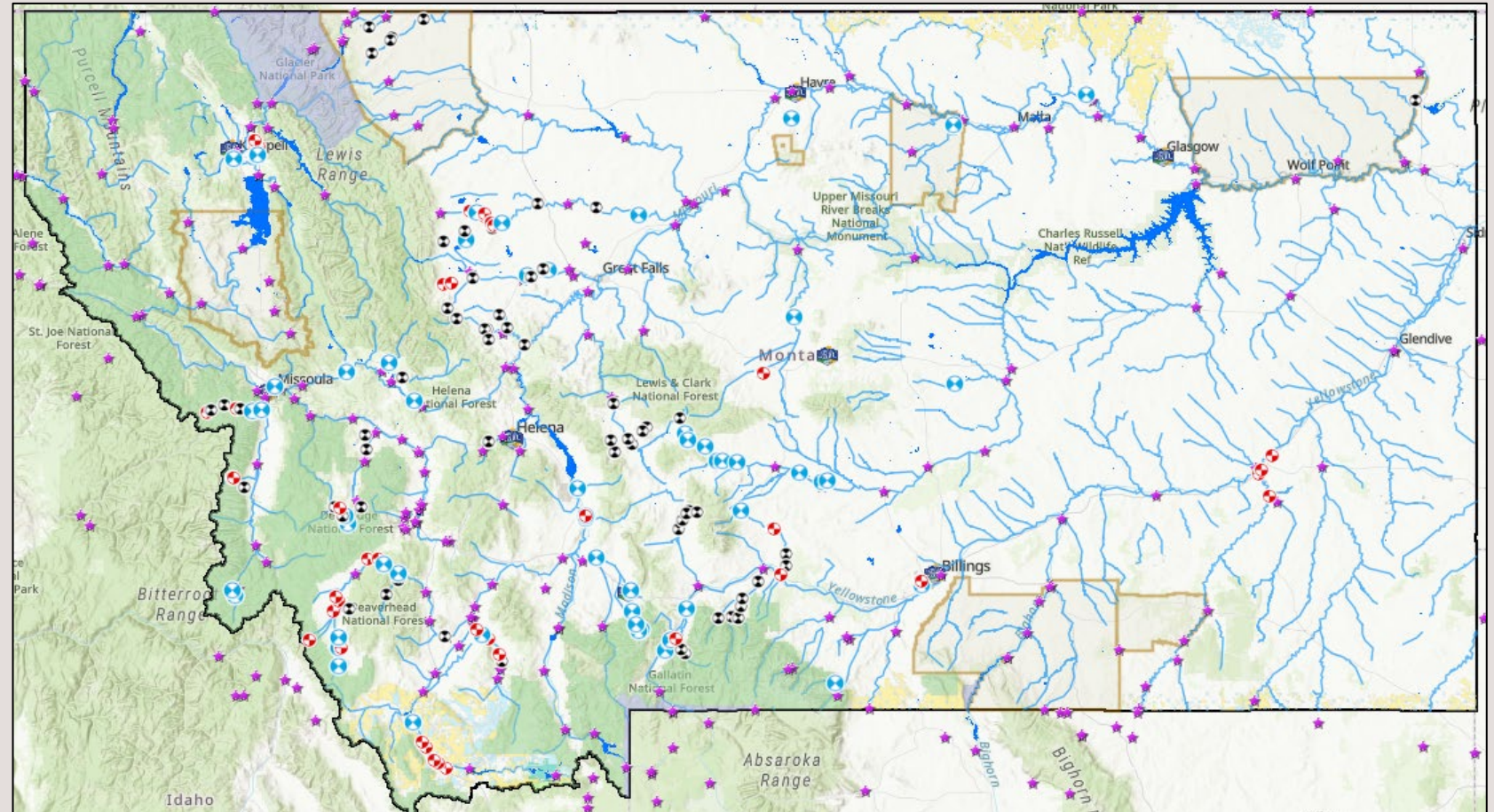


- Water Resources Division
Main Line: (406)-444-6601
- Billings: (406) 247-4415
- Bozeman: (406) 586-3136
- Glasgow: (406) 228-2561
- Havre: (406) 265-5516
- Helena: (406) 444-6999
- Kalispell: (406) 752-2288
- Lewistown: (406) 538-7459
- Missoula: (406) 721-4284

*Regional office coverage areas are county based

Water Measurement

- 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
- <https://gis.dnrc.mt.gov/apps/stage/gage-report/>



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

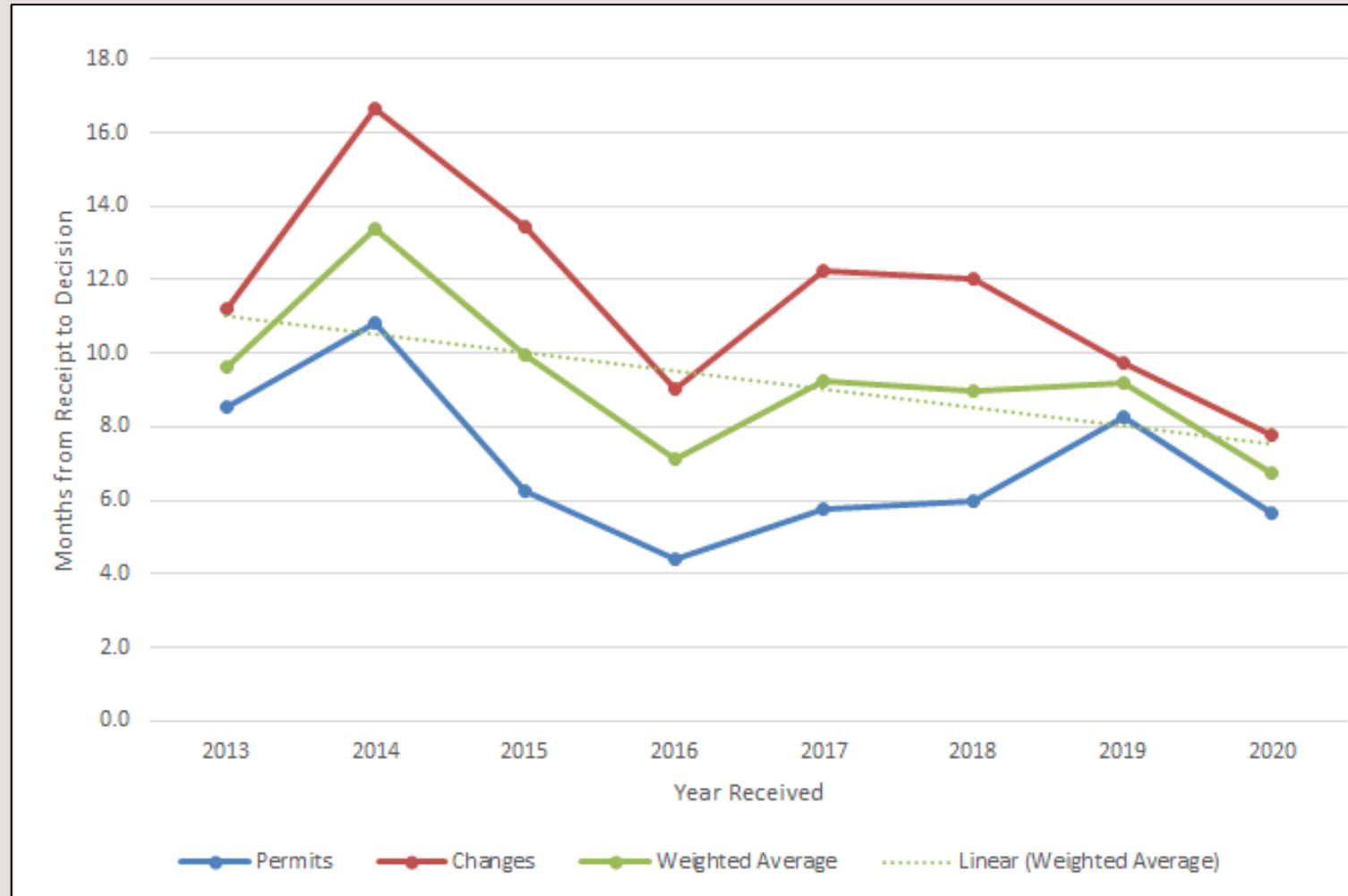
Beneficial Use

Possessory Interest



Water Rights Forms: <http://dnrc.mt.gov/divisions/water/water-rights/water-right-forms>

Permit & Change Application Processing Times



<http://dnrc.mt.gov/divisions/water/stakeholder-engagement>

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](#)



2021 Water Right Ownership Changes OVERVIEW & FREQUENTLY ASKED QUESTIONS

Last updated: January 2022

BACKGROUND

The 2021 MT Legislature passed [Senate Bill 55](#) which was signed into law by Governor Gianforte on April 20, 2021; these changes took effect October 1, 2021. The passing of this bill resulted in many changes that impact water right ownership. These changes include:

- When filing an ownership update form, **additional history of water right ownership** (e.g., the "recorded chain of conveyance" back to a DNRC record owner) **may now need to be provided by the water right holder**. Previously, only the latest recorded deed was required when filing an ownership update form.
- When Montana Department of Natural Resources and Conservation (DNRC) receives notification of a property transfer from the Montana Department of Revenue (DOR), DNRC may process the ownership update if the transferor listed from DOR matches the current owner in DNRC records. **If those names do not match, the full recorded chain of conveyance is required**, along with a paper ownership update form.
- Once an ownership update deficiency letter is sent, the **water right holder has 60 days** to submit the complete water right ownership.
- Once DNRC has received an ownership update form or notification of a property transfer from DOR, DNRC staff have 30 days to update the ownership or, if information is incomplete, send a deficiency letter to the water right owner on file. **The ownership update cannot be processed until the full chain of conveyance is provided.**
- **A processing fee is still required.** The penalty for not paying the required fee increased to \$300 plus the recovery cost (including but not limited to attorney's fees).

KEY TERMS

Chain of Conveyance = the full history of the water right (property ownership records which may or may not mention water rights) from the record owner to the current owner

Deficiency Letter = when there is incomplete information for a water right, DNRC staff are now required to send a letter stipulating what is missing from the record and requesting information from the water right owner on file

DNRC Record Owner = the current owner who is listed in DNRC records of a given water right, which can be found on the water right query system

Water Right Query System = an online tool to query water right records (link in additional resources section below)

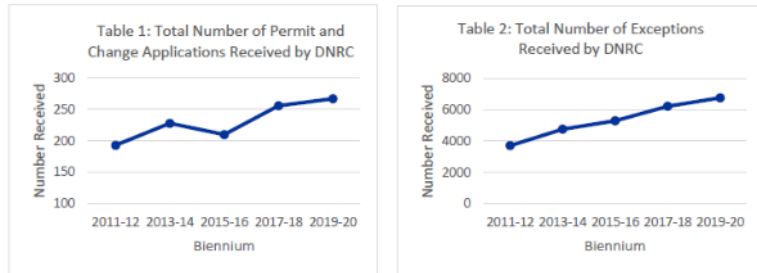


Water Right Application Processing Factsheet

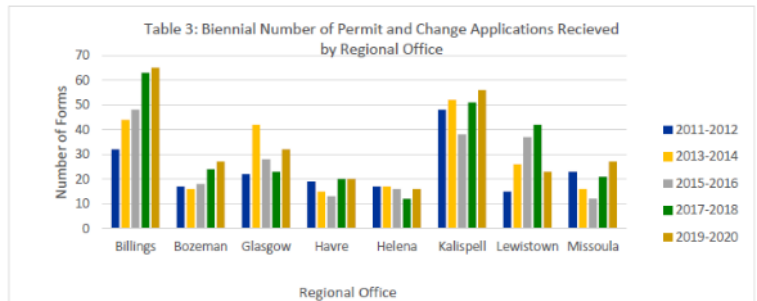
Spring 2021 (data current through April 30, 2021)

The Department of Natural Resources and Conservation's (DNRC) Water Resources Division (WRD) is responsible for water right administration Statewide. Over the last decade, DNRC has seen a steady increase in water right filings, especially in the high growth regions across the State. The purpose of this factsheet is to provide data on the number of water right filings received and pending across the State to establish a baseline understanding that will inform the development of improvements to application processing times.

1. **Permits, Changes, and Exceptions: Statewide.** Over the last decade, filings for permit and change applications have increased on average five percent per year (Table 1), and permit exception filings have increased nearly eight percent annually during that same period (Table 2).



2. **Permit and Change Applications Received and Pending: Regional Trends.** Differing geographic and hydrologic conditions, changing demographics, and a variety of other factors statewide influence the number and types of water right applications filed across DNRC's eight [regions](#). For example, a greater variety of new permit application types are filed in basins open to new appropriations, while we see a greater number of complex change and combination permit-change applications with associated mitigation plans in [closed basins](#). The open-versus-closed basin dichotomy is only one factor influencing regional variation in the number and types of applications received and pending, and subsequent processing timelines. See Tables 3 and 4.



Spring 2021

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Transparency

◦ Stakeholder Engagement

- <http://dnrc.mt.gov/divisions/water/stakeholder-engagement>

◦ Published factsheets

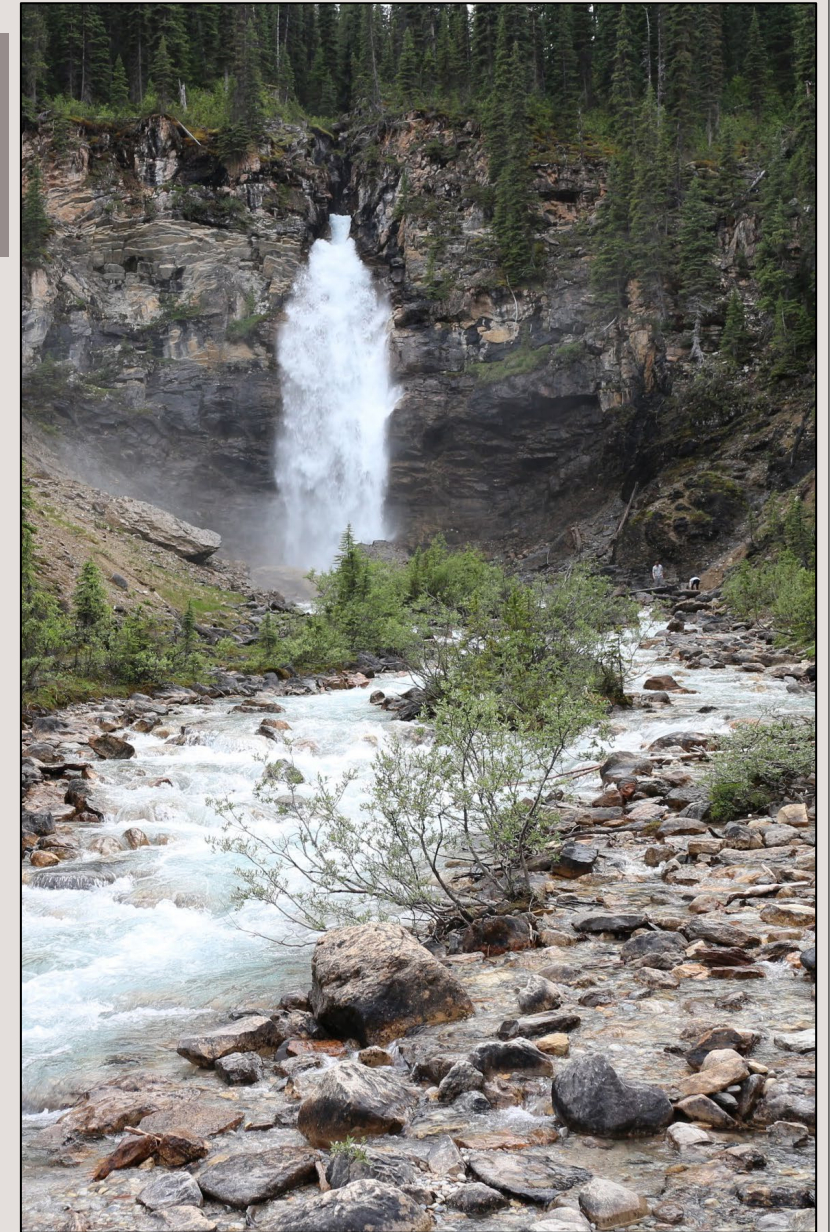
- [Stakeholder Engagement and Factsheets](#)

◦ 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

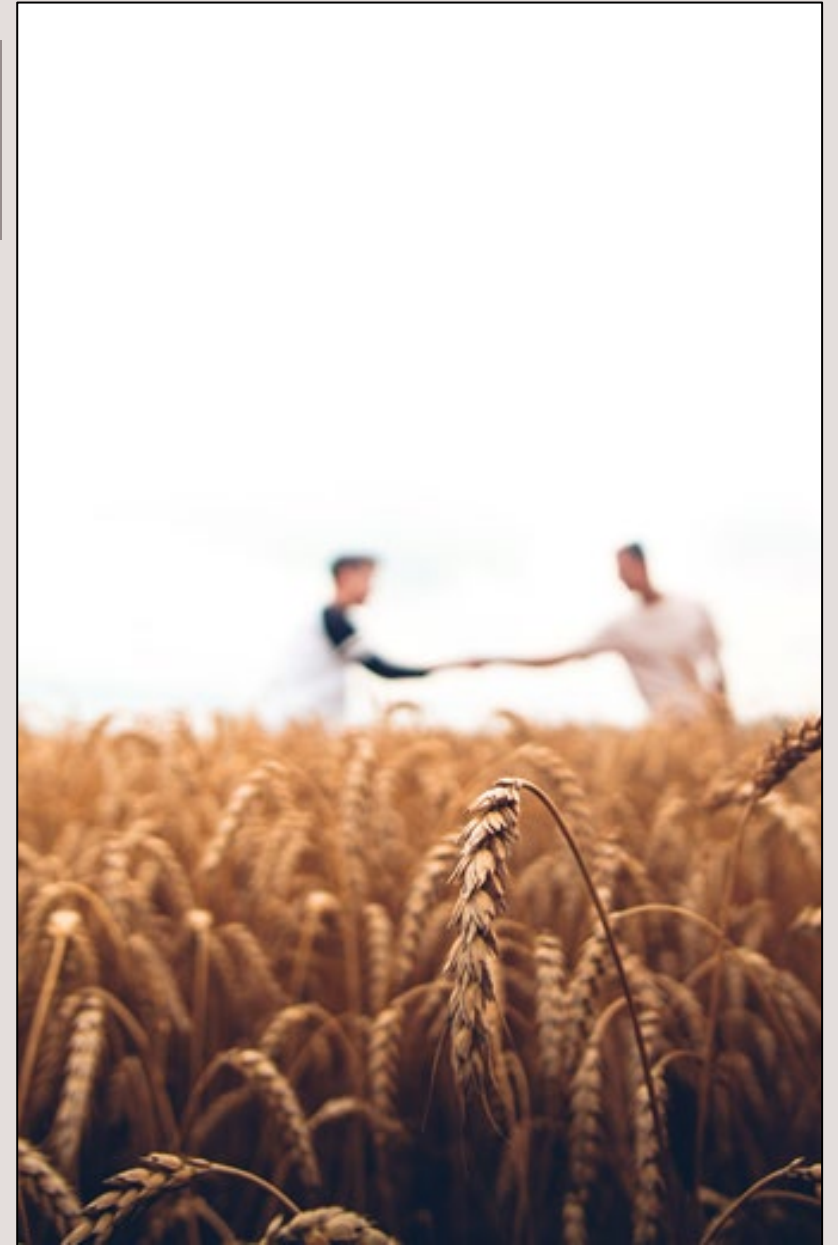
- Claims and new rights

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)



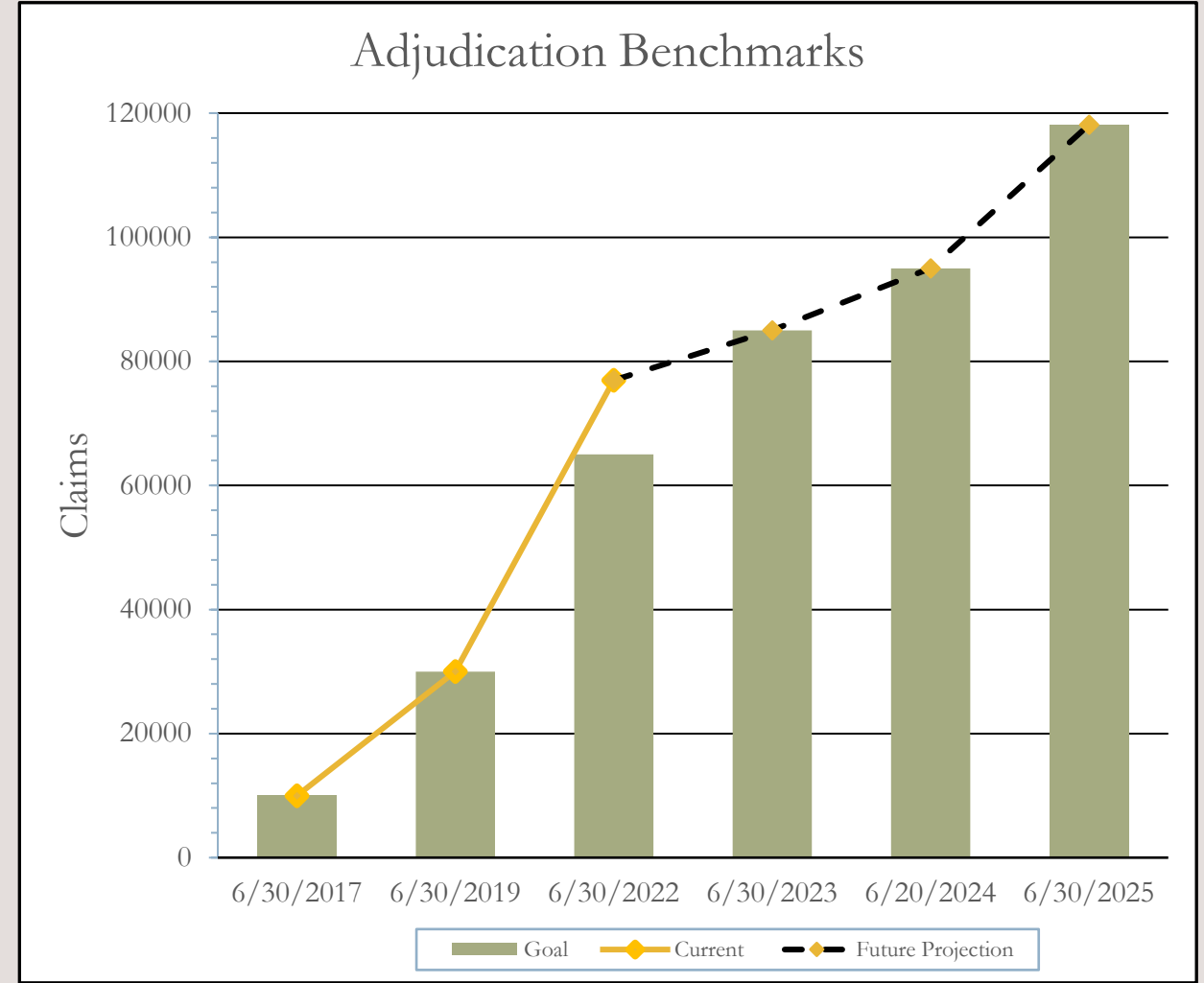
Adjudication

- 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
- <http://dnrc.mt.gov/divisions/water/adjudication>



Benchmarks

- 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.



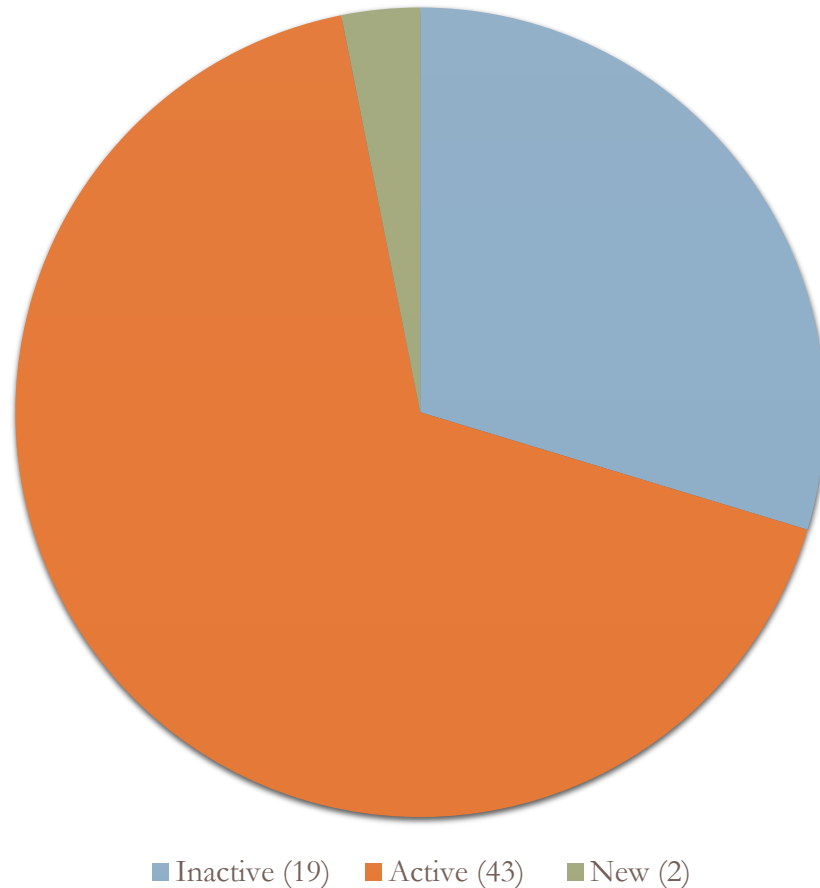


Post Decree Assistance

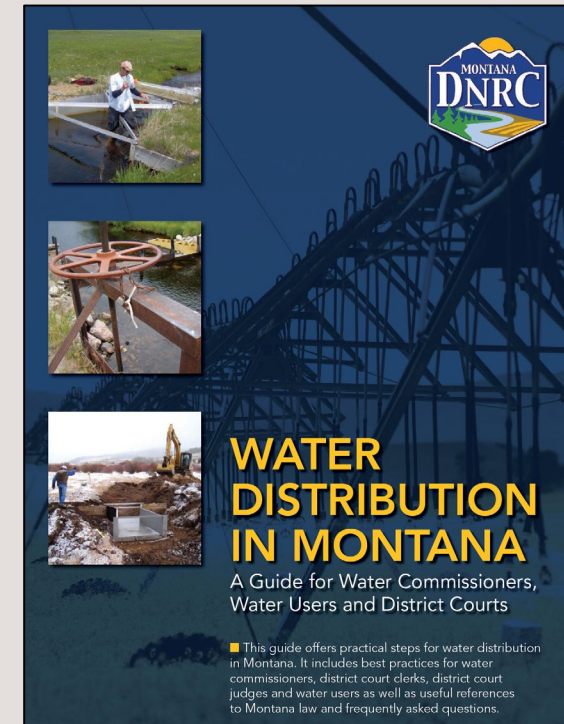
- In 2021, DNRC invested on average 392 hours a month in post decree assistance with a total of 4,706 hours for the year.
- This process includes extensive research, field investigations, claimant interviews, memorandums, and mapping.
- DNRC may provide testimony in the Water Court and District Court cases. Some cases go on to the Montana Supreme Court.

Enforcement

Enforcement Projects



- 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