

Understanding Abstracts for Statements of Claim in Montana

The Montana Claims Examination Manual, Rule 2(a), defines an abstract as “the computer printout of each claim of an existing water right showing the information submitted on the original or amended statement of claim, any changes authorized by these rules or by the water court, remarks noting any obvious factual or legal issues presented by the claim, and other remarks explaining the nature and extent of the claimed water right.”

Abstracts are generated by the Department of Natural Resources and Conservation (DNRC) and are updated to reflect Water Court changes to the claim or Department examination of the claim.

An abstract will typically contain the following elements of a water right:

1. Owner and address
2. Purpose
3. Source
4. Type of irrigation system(for irrigation claims)
5. Priority date
6. Type of historical right
7. Flow rate
8. Volume
9. Maximum acres
10. Period of use
11. Point of diversion
12. Means of diversion
13. Reservoir (if applicable)
14. Place of use.

An abstract also includes the basin code, water right identification number, surface water or groundwater designation, climatic area for irrigation, and period of diversion. This article describes these elements as they are reflected on an abstract for a statement of claim. All definitions of water right elements described in this article are generally drawn from Rule 2 of the Montana Claims Examination Manual, and portions of several different abstracts are used as examples below.

Over 200,000 water right claims have been filed in Montana’s general stream adjudication, and their abstracts reflect their status as statements of claim. Abstracts are also generated for water right permits, certificates, and reservations. This is designated on an abstract after the basin code and water right identification number:

GENERAL ABSTRACT

**Water Right
Number:** 41F 78415 00 STATEMENT OF CLAIM

The version type indicates whether the abstract is showing the original right, post-decree modifications from the Montana Water Court, or a change authorization. Version status indicates whether an abstract is active, or a different status such as dismissed or withdrawn.

Version: -- ORIGINAL RIGHT
Version Status: ACTIVE

"Owner" means any person, according to Section 85-2-102, MCA, who has title or interest in water rights or properties. The claim owner is reflected with a mailing address:

Owners: USA (DEPT OF INTERIOR BUREAU OF LAND MGMT)
5001 SOUTHGATE DR
BILLINGS, MT 59101 4669

"Priority Date" means the allocation date, or date of first use associated with a beneficial use of water which determines ranking among water rights, usually expressed by day, month, and year. The priority date is shown with its enforceable priority date, and the type of historical right will indicate whether the claim's historical basis was a filed right, use right, or based upon a pre-1973 District Court decree. Most claims will show the priority date and enforceable priority date as the same:

Priority Date: September 6, 1966
Enforceable Priority Date: September 6, 1966

**Type of Historical
Right:** FILED

Late claims (those filed pursuant to Section 85-2-221, MCA) will show an enforceable priority date of June 30, 1973:

Priority Date: May 10, 1889
Enforceable Priority Date: June 30, 1973

**Type of Historical
Right:** DECREE

The purpose of a right will indicate whether its use includes irrigation, stock, domestic, municipal, industrial, or another purpose such as fishery or fish and wildlife.

Purpose (use): FISH AND WILDLIFE
Maximum Flow Rate: 1050 CFS
Maximum Volume: 351883.00 AC-FT
Source Name: MADISON RIVER
Source Type: SURFACE WATER

"Flow Rate" means the rate at which water has been diverted, impounded, or withdrawn from the source for beneficial use. Historically, flow rate was measured in miner's inches. The official unit of measurement for water in Montana is cubic feet per second, or CFS. Section 85-2-103, MCA. 40 miner's inches equals one CFS, or 448.83 gallons per minute. Flows under 1 cfs or 40 miner's inches are measured in gallons per minute and larger flows are measured in cubic feet per second. A flow rate is not decreed for onstream reservoirs or livestock drinking from a stream or ditch.

Volumes are quantified in acre-feet per year. An acre-foot is the amount of water necessary to cover one acre with one foot of water. One acre-foot is about 325,000 gallons. No volume is decreed for direct flow irrigation claims or for many stock claims.

The source name is the natural source from which water is diverted or otherwise taken for a beneficial use, and the source type reflects whether the right is for surface or ground water.

Source Name: NORTH MEADOW CREEK
Source Type: SURFACE WATER

"Point of Diversion" (POD) means the location or locations where water is diverted from the source.

Points of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Typ	Rge	County
1		SWNENE	30	4S	1W	MADISON
Period of Diversion:	APRIL 1 to OCTOBER 4					
Diversion Means:	HEADGATE					

Period of Use: APRIL 1 TO OCTOBER 4

Purpose (use): IRRIGATION

For instream or inlake appropriations, the point of diversion is the portion of the source in which the instream or inlake use occurs. Period of use is generally defined as the time from the

first use of the year through the last use of the year, and period of diversion indicates the time that water is diverted for beneficial use. For many rights that do not involve storage, period of use and period of diversion may be the same.

Points of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
7			17	2N	2E	GALLATIN
Period of Diversion: JANUARY 1 to DECEMBER 31						
Diversion Means: INSTREAM						
31			6	1N	1E	JEFFERSON
Period of Diversion: JANUARY 1 to DECEMBER 31						
Diversion Means: INSTREAM						
49			18	1N	2W	JEFFERSON
Period of Diversion: JANUARY 1 to DECEMBER 31						
Diversion Means: INSTREAM						
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"Place of Use" (POU) means the lands, facilities, or sites where water is beneficially used. For irrigation, the place of use will be shown with the maximum irrigated acres.

Purpose (use): IRRIGATION

Place of Use: (3 total records)

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1	81.00		SE	29	4S	1W	MADISON
2	41.00		W2SW	28	4S	1W	MADISON
3	10.00		NWNW	33	4S	1W	MADISON
Total:	132.00						

For a municipal well, the place of use may be depicted as follows:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			S2	25	2N	1E	GALLATIN
	Subdivision: MILWAUKEE LAND CO SECOND ADD (
2			SE	26	2N	1E	GALLATIN
	Subdivision: MILWAUKEE LAND CO SECOND ADD (
3			NE	35	2N	1E	GALLATIN
	Subdivision: MILWAUKEE LAND CO SECOND ADD (
4			NW	36	2N	1E	GALLATIN
	Subdivision: MILWAUKEE LAND CO SECOND ADD (

An instream stock right will be depicted this way if the stock use extends along a stretch of a stream or river that encompasses multiple quarters or sections in a legal description:

Purpose (use):		STOCK					
Place of Use: (10 total records)							
ID	Acres	Govt Lot	Qtr.Sec	Sec	Twp	Rge	County
1			N2N2SE	29	1N	4E	GALLATIN
2			SENESE	29	1N	4E	GALLATIN
3			SWNESE	29	1N	4E	GALLATIN
4			SENWSE	29	1N	4E	GALLATIN
5			SWNWSE	29	1N	4E	GALLATIN
6			SESENE	29	1N	4E	GALLATIN
7			NWSENE	29	1N	4E	GALLATIN
8			SWSENE	29	1N	4E	GALLATIN
9			SESWNE	29	1N	4E	GALLATIN
10			NESWNE	29	1N	4E	GALLATIN

An instream flow right for fisheries will have a place of use that details the different reaches on which the flow rate is claimed, similar to the description for the instream stock right. The place of use parcels listed should not be used to add up the flow rate. The flow rate for the claim is designated under the maximum flow rate and maximum volume fields of the abstract. The place of use should be used to interpret the specific stream reaches where the instream flow would be protected for that particular claim. The place of use for an instream flow right for fisheries is reflected this way:

ID	Acres	Govt Lot	Qtr.Sec	Sec	Twp	Rge	County
1			SE	10	5S	1W	MADISON
2			SW	11	5S	1W	MADISON
3				14	5S	1W	MADISON
4				15	5S	1W	MADISON
5				22	5S	1W	MADISON
6				23	5S	1W	MADISON
7				27	5S	1W	MADISON
8				34	5S	1W	MADISON
9				3	6S	1W	MADISON
10				4	6S	1W	MADISON
11				8	6S	1W	MADISON
12				9	6S	1W	MADISON
13				17	6S	1W	MADISON
14				20	6S	1W	MADISON
15				29	6S	1W	MADISON
16				30	6S	1W	MADISON
17				31	6S	1W	MADISON
18				32	6S	1W	MADISON
19				5	7S	1W	MADISON
20				6	7S	1W	MADISON
21				8	7S	1W	MADISON
22				17	7S	1W	MADISON
23				20	7S	1W	MADISON
24				28	7S	1W	MADISON
25				29	7S	1W	MADISON
26				33	7S	1W	MADISON
27				34	7S	1W	MADISON

The place of use for instream flow rights is described by section, township and range for each parcel that the stream crosses, rather than by a remark with the source name and the

beginning and end points of the stream reach because the POU has to be reflected in the database by legal description in order for that right to appear in database search results. Otherwise, when people search for all the water rights within a particular section, township and range, the instream flow right wouldn't appear.

The point of diversion and place of use for instream and inlake claims are clarified during examination:

RULE 31. POINT OF DIVERSION (POD) AND MEANS OF DIVERSION FOR INSTREAM OR INLAKE APPROPRIATIONS. The department's examination of the claimed POD for instream or inlake other uses claims shall follow the procedures described in Rule 8, W.R.C.E.R. In addition, the following procedures will apply to the examination of the POD for such claims. (a) For instream water use, the legal land description of the POD will be the same as the legal land description of the POU. (b) The claimed POD may be revised by the department so that the POD and POU legal land descriptions for instream water use will be the same. (c) A clarifying remark should be added to the point of diversion to provide a general geographic description of the instream reach claimed and to promote the public's ability to understand the extent of the claim. Example: THIS RIGHT FOR INSTREAM USE APPLIES FROM SMITH DAM IN JONES COUNTY DOWNSTREAM TO THE CONFLUENCE OF THE NORTH FORK OF ROCK CREEK WITH THE GREEN RIVER IN MACON COUNTY. (d) For all instream or inlake surface appropriations, the claimed means of diversion will be changed during the department's examination to "INSTREAM" or "INLAKE."

Abstracts include parcel-specific geocodes to assist the Montana Department of Natural Resources and the Montana Department of Revenue in keeping ownership for water rights current.

Geocodes/Valid: 06110536201040000 - Y

The last field in an abstract may contain remarks, including informational remarks and issue remarks.

Remarks:

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

CLAIMS 41F-W133728-00, 41F-W133729-00 AND 41F- W133730-00 ARE ALL FOR THE SAME SINGLE WATER RIGHT. THREE CLAIMS WERE FILED TO SHOW THE DIFFERENT QUANTITIES OF WATER USED DURING THREE DISTINCT SEASONAL USES. CLAIM 41F-W133728-00 IS FOR JUNE 1 TO JULY 15, 41F-W133729-00 IS FOR JANUARY 1 TO MAY 31, AND 41F-W133730-00 IS FOR JULY 15 TO DECEMBER 31.

Remarks are added by the department or the Water Court to limit or define a water right, to explain unique aspects of a water right, and to identify potential factual and legal issues. Remarks that limit, define, or explain unique aspects of a claim are “clarifying” or informational remarks and appear on the abstract under the element they clarify or at the end of the abstract if they contain general information. Remarks that identify potential factual or legal issues are “issue” remarks and appear in the issue remark box at the end of the abstract. Because issue remarks must be resolved by the Montana Water Court pursuant to Section 85-2-248, MCA, and also because objectors often use issue remarks to decide whether to object to a claim, these remarks are some of the most important aspects of an abstract.