

*Adjudication
Reexamination
Guide Book*

Oct. 2016

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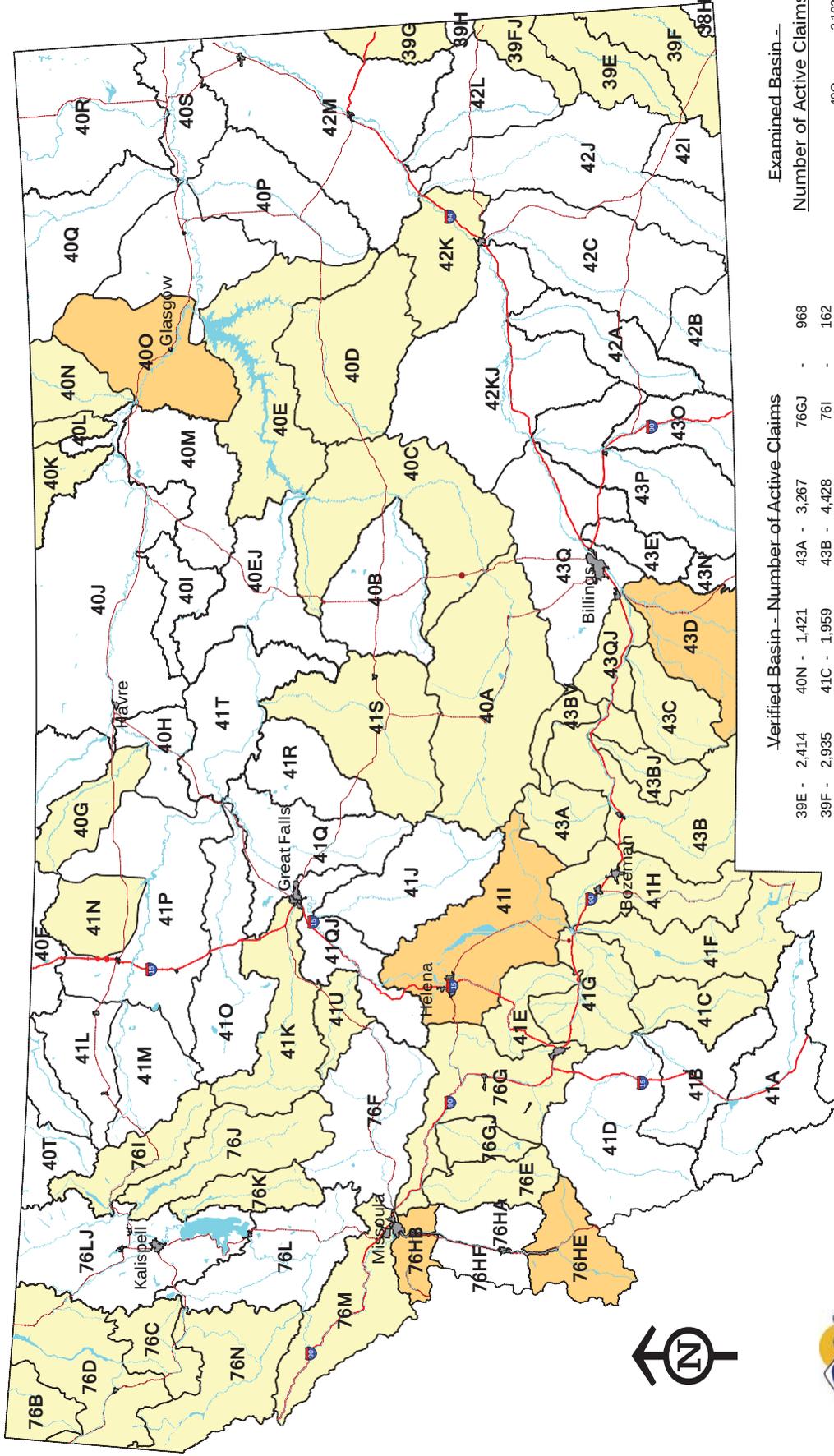
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Montana - All Basins Falling Within Re-Examination Order



Basin Code	Verified Basin - Number of Active Claims	Examined Basin - Number of Active Claims
39E - 2,414	40N - 1,421	43A - 3,267
39F - 2,935	41C - 1,959	43B - 4,428
39FJ - 977	41E - 1,151	43BJ - 803
39G - 704	41F - 3,026	43BV - 717
40A - 5,497	41G - 2,297	43C - 1,709
40C - 3,672	41H - 5,026	43QJ - 1,120
40D - 2,917	41K - 2,697	43P - 96
40E - 2,972	41N - 1,457	43E - 243
40G - 903	41S - 5,160	43D - 1,413
40K - 3,779	41U - 854	43O - 667
40L - 408	42K - 1,441	43N - 4,479
		42A - 968
		42B - 162
		42C - 109
		42KJ - 562
		42M - 2,403
		42N - 1,201
		42P - 968
		42Q - 162
		42R - 109
		42S - 562
		42T - 2,403
		42U - 1,201
		42V - 968
		42W - 162
		42X - 109
		42Y - 562
		42Z - 2,403
		42AA - 1,201
		42AB - 968
		42AC - 162
		42AD - 109
		42AE - 562
		42AF - 2,403
		42AG - 1,201
		42AH - 968
		42AI - 162
		42AJ - 109
		42AK - 562
		42AL - 2,403
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		42AN - 968
		42AO - 162
		42AP - 109
		42AQ - 562
		42AR - 2,403
		42AS - 1,201
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		42AU - 162
		42AV - 109
		42AW - 562
		42AX - 2,403
		42AY - 1,201
		42AZ - 968
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		42BB - 109
		42BC - 562
		42BD - 2,403
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		42CG - 562
		42CH - 2,403
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		42CN - 2,403
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		42CX - 109
		42CY - 562
		42CZ - 2,403
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		42NZ - 562
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		42OE - 562
		42OF - 2,403
		42OF - 1,201
		42OG - 968
		42OG - 162
		42OH - 109
		42OH - 562
		42OI - 2,403
		42OI - 1,201
		42OJ - 968

*The order and dates of completion of each basin are subject to change, within the overall timeframe

Summary Draft Plan					
Basin	Claims in Decree	Cumulative	Proposed Examination Complete	Proposed Summary Report	
76GJ	968	968	10/15/2015	10/15/2015	
43D	2485	3453	4/15/2016	4/15/2016	
40A	5497	8950	3/1/2016	3/1/2016	
10,000 40C	3672	12622	3/1/2016	3/1/2016	10,000 by 6/30/2017
41G	2297	14919	6/1/2017	6/1/2017	
41H	5026	19945	10/15/2017	10/15/2017	
40L	408	20353	3/1/2018	3/1/2018	
43A	3267	23620	6/1/2018	6/1/2018	
43B	4428	28048	10/1/2018	10/1/2018	
43BV	717	28765	3/1/2019	3/1/2019	
30,000 41I	4698	33463	5/1/2019	5/1/2019	30,000 by 6/30/2019
76G	4479	37942	11/1/2020	11/1/2020	
41C	1959	39901	2/1/2020	2/1/2020	
41F	3026	42927	3/1/2020	3/1/2020	
41E	1151	44078	4/1/2020	4/1/2020	
43BJ	803	44881	5/1/2020	5/1/2020	
43C	1709	46590	7/15/2020	7/15/2020	
76D	1413	48003	9/1/2020	9/1/2020	
76M	2403	50406	10/1/2020	10/1/2020	
41U	854	51260	11/1/2020	11/1/2020	
41K	2697	53957	12/15/2020	12/15/2020	
76HB	994	54951	2/1/2021	2/1/2021	
76HE	1323	56274	3/1/2021	3/1/2021	
76E	667	56941	4/1/2021	4/1/2021	
60,000 40K	3779	60720	6/1/2021	6/1/2021	60,000 by 6/30/2021
40G	903	61623	9/1/2021	9/1/2021	
41N	1457	63080	10/1/2021	10/1/2021	
41S	5160	68240	12/15/2021	12/15/2021	
76C	243	68483	2/1/2022	2/1/2022	
76K	562	69045	3/1/2022	3/1/2022	
76N	1201	70246	4/1/2022	4/1/2022	
39E	2414	72660	6/1/2022	6/1/2022	
39F	2935	75595	7/15/2022	7/15/2022	
39FJ	977	76572	9/1/2022	9/1/2022	
40D	2917	79489	10/12022	10/12022	
43QJ	1120	80609	11/1/2022	11/1/2022	
76B	96	80705	12/15/2023	12/15/2023	
39G	704	81409	2/1/2023	2/1/2023	
40E	2972	84381	3/1/2023	3/1/2023	
42K	1441	85822	4/1/2013	4/1/2013	
76I	162	85984	5/1/2013	5/1/2013	
90,000 76J	109	86093	6/1/2023	6/1/2023	90,000 by 6/30/2023

Totals represent active claim status.

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FILED

DEC 14 2012

Montana Water Court

MONTANA WATER COURT

ORDER ADDRESSING REEXAMINATION

I. Background

Verification was the process used by the Department of Natural Resources and Conservation (DNRC) prior to the adoption of the Water Right Claim Examination Rules. When the Water Right Claim Examination Rules were adopted (effective July 15, 1987), they were not applied to previously verified claims. Verified claims moved through the objection and litigation phases without further review. Questions were raised regarding whether reexamination of verified claims was necessary due to potential differences between claims reviewed under the Water Right Claim Examination Rules and claims reviewed under the verification process.

The 2005 Legislature authorized the Water Court, upon proper petition or upon the Court's own initiative, to prioritize basins for DNRC claim examination and to direct the DNRC to reexamine claims that were verified and not previously subject to the Water Right Claim Examination Rules. §§ 85-2-270 and 271, MCA. In accordance with § 85-2-271(3)(b), MCA, the Water Court ordered the DNRC to reexamine Basin 40L, Frenchman Creek drainage, a tributary of the Milk River, which was reviewed under the verification process. December 4, 2009 Order Directing DNRC to Reexamine Claims in Basin 40L. One purpose of reexamining Basin 40L was to gather information regarding whether previous review of claims under the verification process generated significant, practical differences from review of claims under the Water Right Claim Examination Rules.

Based on the results of the Basin 40L reexamination, DNRC submitted a memorandum and proposal to the Water Court regarding reexamination of verified claims (hereinafter DNRC proposal). The DNRC proposal outlined standards and indexes to run through the state water right database to update elements of verified claims and make elements more consistent with claims currently examined under the Water Right Claim Examination Rules. The proposal attempted to address elements that “may not have been as closely scrutinized during verification.” DNRC proposal, p. 1.

In 2009, the Legislative Audit Division conducted an assessment of operations within the water rights adjudication process. The audit report was made available in June 2010. One of the objectives of the audit was to address the difference between verified and examined claims. June 2010 Performance Audit Report to the Montana Legislature, p. 6. The audit determined the difference between verified and examined claims was not significant enough to justify a complete reexamination. p. 9. According to the report, a complete reexamination would be inconvenient for water users and the time and resources necessary for reexamination would not be justified by the results. p. 14. Although the audit determined reexamination should be avoided, it did not conclude that no action should be taken. The report concluded the DNRC and Water Court should work together to develop procedures to address elements subject to a higher degree of error to improve accuracy, reliability and consistency. p. 15.

In September 2012, a committee of Water Court and DNRC staff was formed to address the reexamination issue. The committee included Water Court staff – Chief Water Judge C. Bruce Loble, Associate Water Judge Russ McElyea, Court Administrator Sandra Palakovich, Senior Water Masters Colleen Coyle, Kathryn Lambert, and Douglas Ritter, Water Masters Bina Peters and Anna Stradley – and DNRC Water Adjudication Bureau Chief John Peterson and DNRC Operations Manager Jan Langel. Generally, the committee agreed a complete reexamination should not be undertaken. However, it was

agreed certain elements or issues that were not subject to consistent review should be examined by DNRC to eliminate potential problems for water users.

II. Adoption of DNRC Proposal

The committee discussed implementing the DNRC proposal. According to the committee, instead of limiting review to claims in verified basins, the DNRC proposal could be applied to all claims in decrees issued prior to March 28, 1997 that are not a final decree. Decrees issued after March 28, 1997 will not be issued again prior to Final Decree. *See* § 85-2-233(1)(d). It is presumed that decrees issued prior to March 28, 1997 will be issued again. Moreover, elements of claims issued in decrees prior to March 28, 1997, if subject to standardization, would appear in another decree and water users would have notice of the standardized elements. Instead of a complete DNRC reexamination between decrees, claims should be subject to a limited review. The review would focus on elements that were not scrutinized as closely during verification and issues that, if not reviewed, could cause problems for water users.

Based on feedback from the committee, corrections were made to the DNRC proposal to reflect current standards and procedures. The DNRC proposal (as modified) is attached as Exhibit A. The DNRC proposal contains three parts. The first part contains general guidelines for running standards. The second part describes specific standards to run through the database. The third part identifies summary indexes to run through the database. A majority of the committee agreed the DNRC proposal should be adopted.

The committee concluded the DNRC proposal should not apply standards and indexes to elements that have been modified by the Water Court through prior adjudication proceedings. To prevent improperly standardizing elements that have already been litigated, the database should identify litigated elements. Any element of a claim that has been litigated by the Water Court shall not be subject to standardization or further DNRC review. To identify whether an element has been subject to litigation, the

objection list issued for the previous decree should be reviewed. An element of a claim that appeared on the objection list should not be subject to modification based on implementation of the DNRC proposal. Additionally, an element that was modified as a result of Water Court proceedings and marked by an asterisk should not be subject to modification based on implementation of the DNRC proposal.

III. Identification of Additional Issues Requiring Further DNRC Review

In addition to the DNRC proposal, the committee identified five issues requiring further review: (1) decree exceeded; (2) filed and use rights predating district court decrees; (3) over-filed notices of appropriation; (4) claims with multiple uses; and (5) standardization and identification of point of diversion, source, and ditch name. Like the implementation of the DNRC proposal, review of these issues should apply to all claims in decrees issued prior to March 28, 1997. Both Water Court and DNRC committee members reported that review of these issues is important to achieve enforceable decrees.

According to the committee, issues one through four were not subject to consistent review. In some basins, these issues may not have been identified at all. Inconsistent review of decree exceeded, filed and use rights predating decrees, over-filed notices of appropriation and multiple uses may create problems for future enforcement of Water Court decrees.

Point of diversion, source and ditch name have been identified as elements that, if not subject to further review, may cause confusion for water users and could lead to problems for enforcement of Water Court decrees. Knowing the accurate locations and common or shared points of diversion and sources, as well as proper ditch names, will help eliminate unnecessary confusion among water users when a Water Court decree is enforced.

DNRC review of these five issues will help ensure the Water Court decrees will be useable and readily enforceable. Therefore, the committee concluded that in addition to the DNRC proposal, these five issues should be reviewed using

current DNRC examination procedures. If further review identifies decree exceeded issues, filed and use rights that predate decrees, over-filed notices of appropriation, and claims with multiple uses, the corresponding issue remark or information remark should be added to the affected claims. If point of diversion, source, or ditch name are modified as a result of DNRC review, the following issue remark should be added to the abstracts of modified claims:

[ELEMENT(S) WAS/WERE] MODIFIED AS A RESULT OF DNRC REVIEW
UNDER MONTANA WATER COURT ORDER DATED DECEMBER 14, 2012.

IV. Fish and Wildlife, Wildlife, and Recreation Claims

The committee members also discussed the application of guidelines concerning the flow rate and volume of fish and wildlife, wildlife, and recreation claims. Rule 29 of the Water Right Claim Examination Rules contains guidelines for the examination of flow rate and volume of other uses including fish and wildlife, wildlife, and recreation claims. The rule can be broken into four parts, claims diverted without a reservoir, claims diverted with an offstream reservoir, claims with an onstream reservoir, and instream claims (excluding Murphy Rights).

1. Claims Diverted and Without a Reservoir

Rule 29(b)(1) applies to fish and wildlife, wildlife, and recreation claims diverted but without a reservoir. The flow rate guideline is the capacity of the diversion and conveyance system and the volume is “that which appears reasonable and customary for the specific purpose...” Rule 29(b)(i) and (ii), W.R.C.E.R.

2. Claims Diverted With an Offstream Reservoir

Rule 29(c) applies to fish and wildlife, wildlife, and recreation claims diverted with an offstream reservoir. The flow rate guideline is the capacity of the diversion and conveyance system or if the diversion and conveyance system is shared by more than one claimant, the guideline is that which appears reasonable and customary for the specific purpose. Rule 29(c)(1)(i), W.R.C.E.R. If the volume is less than 15 Acre Feet, it is

generally accepted as claimed. If the volume is greater than 15 Acre Feet the guideline is maximum storage capacity plus the estimate of evaporation. Rule 29(c)(1)(ii), W.R.C.E.R.

3. Claims Diverted With an Onstream Reservoir

Rule 29(c), W.R.C.E.R. also addresses fish and wildlife, wildlife and recreation claims diverted with an onstream reservoir. These claims do not receive a quantified flow rate; an information remark is added stating “A specific flow rate has not been decreed for use from this onstream reservoir.” Rule 29(c)(1), W.R.C.E.R. The volume guideline is the same as for claims with offstream reservoirs. *See* Rule 29(c)(1)(ii).

4. Instream Claims Excluding Murphy Rights

The flow rate and volume guideline for instream fish and wildlife, wildlife, and recreation claims excluding Murphy Rights is “the minimum amount necessary to sustain the specific purpose.” Rule 29(d), W.R.C.E.R.

The guidelines set forth in Rule 29 use language that is difficult to apply consistently. Phrases such as “that which appears reasonable and customary” and “the minimum amount necessary to sustain the specific purpose” are susceptible to a wide variety of interpretations resulting in potential confusion and unfairness to both claimants and objectors. Because there is currently no statewide standard that can be applied to meet these guidelines, flow rate and volume have appeared in decrees with no quantified flow rate or volume. Despite the lack of clear guidelines, flow rate and volume should not appear in decrees as unquantified. This practice is not in compliance with Rule 29 and will make administration of these rights difficult in the future and may ultimately require that these claims be remanded to the Water Court for additional review.

To avoid these problems, the committee agreed that, notwithstanding previous DNRC policy, for all previously verified and examined claims as well as currently examined claims, when the guideline cannot be determined, the claimed flow rate and volume of fish and wildlife, wildlife, and recreation claims should remain as claimed

(excluding flow rates of claims with onstream reservoirs) and an issue remark should be added as shown below:

THE FLOW RATE AND VOLUME OF THIS CLAIM WAS NOT SUBJECT TO A STANDARDIZED STATEWIDE EXAMINATION AND REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED [FLOW RATE AND] VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THE [FLOW RATE AND] VOLUME WILL BE DECREED AS CLAIMED.

V. Examination of Late Claims

By Order of the Montana Supreme Court, the final deadline for filing a Statement of Claim was April 30, 1982. Failure to file a Statement of Claim by April 30, 1982 established a conclusive presumption of abandonment. See §§ 85-2-221 and 226, MCA. However, in 1993, the Montana Legislature amended § 85-2-221, MCA, to allow late filings until July 1, 1996. Claims filed after April 30, 1982 but on or before July 1, 1996 are considered "late claims."

Several decrees were issued prior to the amendment allowing late claims. As a result, late claims were not examined and were not included in several decrees. Therefore, all late claims in basins for which a Temporary Preliminary Decree or Preliminary Decree was issued and late claims were not examined should be subject to DNRC examination so they can be included in the decrees.

VI. Conclusion and Direction to DNRC

A complete reexamination of verified claims is not practical or necessary. As recommended in the audit report, the DNRC and Water Court worked together to create a plan that balances the need for accuracy and consistency with fairness to water users and consideration of time and cost necessary for the implementation of the plan. Applying the DNRC proposal and reviewing claims for the five additional issues identified by the committee covers issues and elements that did not receive consistent review and are essential to the enforceability, consistency and accuracy of the decrees. Review of the five issues and implementation of the DNRC proposal applies to claims issued in

Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997 without having to undertake a complete reexamination prior to the issuance of the next decree. Additionally, this Order addresses the examination of previously unexamined late claims and clarifies procedures for examining flow rate and volume of fish and wildlife, wildlife, and recreation claims in all decrees issued after this Order. Therefore, it is

ORDERED that DNRC shall implement the proposed standards and indexes identified in the DNRC proposal (Exhibit A) for all claims in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997.

ORDERED that the proposed standards identified in the DNRC proposal shall not apply to any element of a claim that has already been litigated by the Water Court. Any element of a claim that appeared on the objection list shall be considered litigated and shall not be subject to modification based on implementation of the DNRC proposal. Any element of a claim that is marked by an asterisk (added by the Water Court) has also been litigated and shall not be subject to modification based on the DNRC proposal.

ORDERED that DNRC shall review all claims in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997, for decree exceeded issues, filed and use rights that predate district court decrees, over-filed notices of appropriation, and multiple uses. If DNRC identifies decree exceeded issues, filed and use rights that predate district court decrees, over-filed notices of appropriation, or multiple uses, DNRC shall add the corresponding issue remark or information remark to the affected claims.

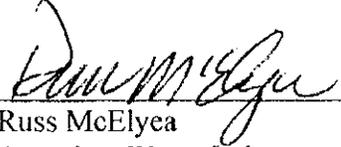
ORDERED that for all claims in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997, DNRC shall standardize the legal description for points of diversion and shall identify and standardize source names and ditch names. If point of diversion, source, or ditch name are modified as a result of this review, the issue remark specified in Section III shall be added to the abstract of each modified claim.

ORDERED that for all fish and wildlife, wildlife, and recreation claims in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997 and in basins currently being examined, for which the flow rate or volume guideline cannot be determined, the flow rate and volume shall remain as claimed (excluding flow rates of claims with onstream reservoirs) and the issue remark specified in Section IV shall be placed on the claims.

ORDERED that DNRC shall examine all late claims filed in basins for which a Temporary Preliminary Decree or Preliminary Decree was issued and late claims were not examined.

ORDERED that DNRC review and revise its procedures to comply with this order.

DATED this 14 day of December, 2012.


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PROPOSED STANDARDS

I. Current General Guidelines for running standards:

- ◆ Standards are to be run against just the post decree abstract of the water right for the specified owner, decree, or water right number.
- ◆ The only water right types standards are run against include Statement of Claim, Interstate Transfer Claims and Irrigation District Claims. All Status values are included.
- ◆ The options for running standards include by owner within a given (input) basin, by water right, or by decree. All rules about which water rights apply are taken into consideration for each option.
- ◆ No “modified in this version” flags will be set when making changes to data as specified by standards.
- ◆ The “Standards Applied” checkbox that previously existed on the version screen will be moved to the water rights screen. This checkbox will be set to indicate that standards have been applied to this water right, so that standards are not run again against the same water right. The only real issue with running standards again is that it may create more than one identical remark for a water right. Volume and flow rate description fields will not be duplicated, but any issues remarks created by standards could be repeated if standards are applied more than once.
- ◆ Standards can only be run against a non-decreed water right. A decreed water right is any water right that is included as part of a decree where the decree has an event of Decree Issued.
- ◆ Standards against an owner will also require the input of the basin, so that standards are only run against non-decreed water rights owned by the given owner, in the requested basin.

II. Details of the Standards program:

1. Flow rates should be expressed in either gallons per minute (GPM) or cubic feet per second (CFS) units. Flow rates less than one CFS should be converted to GPM. Flow rates greater than 1 CFS should be expressed in CFS (448.8 GPM = 1 CFS).

Standards Action:

- Apply to all water rights.
 - Modify the flow rates to the correct units, according to the rules above, but do not change a flow rate with a unit of ‘POF’. When converting the flow rate values, round to 2 decimal places.
 - If no flow rate is listed, but the water right shows flow rate units, remove the flow rate units.
2. For onstream reservoirs; if the historical right type is filed or use, and there is no keep flag on the flow rate (Keep Modified by Water Court), then the following remark is added to the water right. Also, the flow rate is set to zero, the flow rate units to null, and its origin to modified by rule.

“No flow rate has been decreed for this use from this onstream reservoir.”

Standards Action:

- Apply to water rights that have an on-stream reservoir, have a historical right type of "FILE" or "USE", and do not have a keep flag (KMRL, KMWC, KAME, KCLA, KDEC) on the flow rate.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F2.)

3. For irrigation claims; when the method of irrigation is water spreading, and there is no onstream reservoir, and the historical right type is filed or use, then the following remark is added to the water right. Also, set the flow rate to zero, the flow rate units to null, and its origin to modified by rule.

"A specific flow rate has not been decreed because this use consists of direct flow water spreading."

Standards Action:

- Apply to water rights that have a purpose of 'IR', an irrigation type of 'D', a historical right type of "FILE" or "USE", and do not have an onstream reservoir.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F3.)

4. For irrigation claims; when the method of irrigation is natural subirrigation, and there is no onstream reservoir, and the historical right type is filed or use, then the following remark is added to the water right. Also, the flow rate is set to zero, the flow rate units is set to null, and its origin to modified by rule.

"No flow rate has been decreed for this use of natural subirrigation."

Standards Action:

- Apply to water rights that have a purpose of 'IR', an irrigation type of 'N', and a historical right type of "FILE" or "USE", and do not have an onstream reservoir.
- Set the flow rate in the version record to NULL

- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F4.)

5. For irrigation claims; when the method of irrigation is natural overflow, and there is no onstream reservoir, and the historical right type is filed or use, then the following remark is added to the water right. Also, the flow rate is set to zero, the flow rate units to null, and its origin to modified by rule.

“No flow rate has been decreed for this natural overflow method of irrigation.”

Standards Action:

- Apply to water rights that have a purpose of ‘IR’, an irrigation type of ‘O’, and a historical right type of “FILE” or “USE”, and do not have an onstream reservoir.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F5.)

6. For irrigation claims, except the following:

- water spreading systems (ie: irrigation type of ‘D’)
- systems involving reservoirs (ie: water right has a reservoir record)
- claims decreed a volume (ie: historical right type = decreed and water right has a V10 Remark)
- claims where the volume has a keep flag (ie: volume element origin is KMRL, KMWC, KAME, KCLA, or KDEC)

add the following remark.

“The total volume of this water right shall not exceed the amount put to historical and beneficial use.”

Standards Action:

- Apply to water rights that have a purpose of ‘IR’, unless any of the exceptions listed above apply.
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE

- Set the value in the volume description field of the version record to the text above. (On the pop-list, it is marked as V9.)

6A. For irrigation claims with a reservoir record and a V9 remark.

add the following remark.

“The total volume of this water right shall not exceed the amount put to historical and beneficial use.”

Standards Action:

- Apply to water rights that have a purpose of ‘IR’, that have a reservoir record and a V9 remark.
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE

6B. If purpose is irrigation and a reservoir record and type of irrigation is not water spreading and the claimed volume is greater than 15 acre-feet, and the claimed volume is greater than the volume guideline for the climatic area (see list below) then add the following remark.

“The volume of this water right appears to be excessive for the claimed purpose. The claimed volume is greater than **(guideline)** acre-feet per acre per year.”

Climatic Area = 1; guideline = **11.4** acre-feet per acre per year

Climatic Area = 2; guideline = **10.2** acre-feet per acre per year

Climatic Area = 3; guideline = **9.4** acre-feet per acre per year

Climatic Area = 4; guideline = **8.5** acre-feet per acre per year

Climatic Area = 5; guideline = **7.2** acre-feet per acre per year

7. For stock claims; when the S/G code does not = G or there is no reservoir, or the major type is surface water and pump, or the major type is surface water and pipeline, AND NO KEEP FLAG ON THE FLOW RATE, change the flow rate to zero, the flow rate units to null, and its origin to as modified by rule, and add the following remark.

"A specific flow rate has not been decreed because this use consists of stock drinking directly from the source, or from a ditch system. The flow rate is limited to the minimum amount necessary to sustain this purpose."

Standards Action:

- Apply to water rights that have a purpose of stock, unless the S/G code = G or reservoir, AND NO KEEP FLAG ON THE FLOW RATE.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F9.)

- 7A. For stock claims; when onstream reservoir, and there is no 'keep' flag on the flow rate, change the flow rate to zero, the flow rate units to null, and its origin to as modified by rule, and add the following remark (FF007new rules).

"A specific flow rate has not been decreed for this use from this onstream reservoir. The flow rate is limited to the minimum amount historically necessary to sustain this purpose."

Standards Action:

- Apply to water rights that have a purpose of stock and onstream reservoir, when there is no 'keep' flag on the flow rate.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as FF007.)

8. For stock claims; when the owner is not USA, the volume is set to zero, and its origin to as modified by rule, and the following remark is added to the water right.

"This water right includes the amount of water consumptively used for stock watering purposes at the rate of 30 gallons per day per animal unit. Animal units shall be based on reasonable carrying capacity and historical use of the area serviced by this water source."

Standards Action:

- Apply to water rights that have a purpose of stock, unless the owner has a customer type value of 'FEDA', 'LOCA', or 'RESV', (meaning owner is USA).
- Set the volume in the version record to NULL

- Set the volume element origin in the version record to MRLE
- Set the value in the volume description field of the version record to the text above. (On the pop-list, it is marked as V10.)

9. For stock claims; when the owner is USA, and there is no reservoir, and no keep flag on the volume origin, set the volume to zero, and its origin to as modified by rule, and then the following remark is added to the water right.

"This water right includes the amount of water consumptively used for stock watering purposes at the rate of 30 gallons per day per animal unit. Animal units shall be based on reasonable carrying capacity and historical use of the area serviced by this water source."

Standards Action:

- Apply to water rights that have a purpose of stock, when the owner has a customer type value of 'FEDA', 'LOCA', or 'RESV', (meaning owner is USA), unless there is a reservoir record or a keep flag (KMRL, KMWC, KAME, KCLA, KDEC) on the volume element origin.
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE
- Set the value in the volume description field of the version record to the text above. (On the pop-list, it is marked as V10.)

10. For mining claims; when there is no reservoir, and no keep flag on the volume origin, then the following remark is added to the water right and the volume origin is set to as modified by rule.

"This water right is limited to the volume of water historically used for mining purposes."

Standards Action:

- Apply to water rights that have a purpose of 'MN', unless the water right has an element origin value on the volume origin of KMRL, KMWC, KAME, KCLA, or KDEC, or unless the water right has a reservoir record.
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE
- Set the value in the volume description field of the version record to the text above. (On the pop-list, it is marked as V11.)

11. For fire protection claims; when there is no keep flag on the volume origin, add the following remark (VF014) to the water right and set the origin for volume to as modified by rule.

“The volume of this right is limited to the minimum amounts necessary for fire protection purposes.”

Standards Action:

- Apply to water rights that have a purpose of ‘FP’, unless the water right has an element origin value on the volume origin of KMRL, KMWC, KAME, KCLA, or KDEC.
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE

Set the value in the volume description field of the version record to the text above. (VF014)

12. For irrigation claims; when the historical right type is decree, and the flow rate is greater than 17 gpm/acre (claimed flow rate in gallons per minute divided by the total claimed acres), and there is no keep flag on the flow rate, then the following remark is added to the water right.

“The claimed flow rate exceeds the 17 gpm per acre guideline and cannot be confirmed due to lack of data. The flow rate equals (the result of the above calculation) gpm per acre.”

Standards Action:

- Apply to water rights that have a purpose of ‘IR’ and a historical right type of ‘DECR’, and a flow rate > 17gpm/acre, unless the right has an element origin value on the flow origin of KMRL, KMWC, KAME, KCLA, or KDEC.
- Add a formatted remark to this water right with a remark category code of FRI2 (flow rate issue standards) a remark code (frlb_cd) of FRSS, and variable that matches the above text.

13. For irrigation claims, when the type of right is filed or use, and the flow rate is greater than 17 gpm/acre (claimed flow rate in gallons per minute divided by the total claimed acres), and there is no keep flag on the flow rate:

- Then the flow rate is reduced in the database to the calculated standard (claimed acres times 17 gpm). Flows greater than 448.8 gpm will be converted and stored in the database as cfs, otherwise store the rate in gpm.
- Then the flow rate origin is changed to “modified by rule.”
- Then the following remark is added to the water right.

“The flow rate of this water right has been reduced to this 17 gpm per acre guideline. The flow rate may be contested by proper objection.”

Note: 448.8 gallons per minute = 1 cubic foot per second.

Standards Action:

- Apply to water rights that have a purpose of 'IR' and a historical right type of 'FILE' or 'USE', and a flow rate > 17gpm/acre, unless the right has an element origin value on the flow origin of KMRL, KMWC, KAME, KCLA, or KDEC.
- Set the flow rate in the version record to the calculated standard
- Set the flow rate units in the version record to the appropriate value (either GPM or CFS)
- Set the flow rate element origin in the version record to MRLE
- Add a formatted remark to this water right with a remark category code of FR2 (flow rate information standards) a remark code (frlb_cd) of FRNS, and variable that matches the above text.

14. For all claims; when the volume is greater than zero, calculate the feasible volume ((the period of use in days times the flow rate in gpm times 1440) divided by 325,851 = acre-feet). The flow rate standards (13 & 14) must be applied before running the volume check. If the claimed volume is greater than the feasible volume, then the following remark is added to the water right.

"The claimed volume exceeds the maximum feasible volume. Based on the flow rate and period of use, the maximum volume possible is (the result of the above calculation) acre-feet per year."

Note: 325,851 gallons = 1 acre-foot

Standards Action:

- Apply to all water rights that have a volume amount, when the volume amount is greater than the calculated feasible volume.
- Set the flow rate in the version record to the calculated standard
- Add a formatted remark to this water right with a remark category code of VM12 (volume issue standards) a remark code (frlb_cd) of V24, and variable that matches the above text.

15. For irrigation claims; when the type of irrigation is water spreading, and the historical right type is filed or use and there is no keep flag on the volume, then check the claimed volume to see if it is greater than the volume guideline for the climatic area (volume guideline times the claimed acres). If yes;

- Then reduce the volume in the database to the standard calculated volume.
- Then change the origin of the volume to “as modified by rule.”
- Then add the following remark to the water right.

“The volume of this water right has been reduced to the (guideline) acre-feet per acre guideline for water spreading. The volume may be contested by proper objection.”

Climatic Area = 1; guideline = 2.3 acre-feet per acre per year

Climatic Area = 2; guideline = 2.0 acre-feet per acre per year

Climatic Area = 3; guideline = 1.9 acre-feet per acre per year

Climatic Area = 4; guideline = 1.7 acre-feet per acre per year

Climatic Area = 5; guideline = 1.4 acre-feet per acre per year

Standards Action:

- Apply to water rights that have a purpose of ‘IR’, an irrigation type of ‘D’, a historical right type of ‘FILE’ or ‘USE’, and a volume that is > the volume guideline for the climatic area, unless the right has an element origin value on the volume origin of KMRL, KMWC, KAME, KCLA, or KDEC.
- Set the volume in the version record to the standard calculated volume
- Set the volume element origin in the version record to MRLE
- Add a formatted remark to this water right with a remark category code of VM2 (volume information standards) a remark code (frlb_cd) of V5, and variable that matches the above text.

16. For all water right claims; if the maximum volume in the water right detail screen does not equal the volume in the purpose record, then change the volume in the purpose record to equal the volume in the water right detail screen.

Standards Action:

- Apply to all water rights where the volume in the version record does not equal the volume of the purpose records.

- Set the volume in the first purpose record so that the sum volume for all purposes equals the volume in the version record.

17. For all water right claims; if any parcel id numbers are skipped (003, 005), then renumber the parcels so they are in consecutive order.

Standards Action:

- Apply to all water rights with skipped numbers in the parcel (place of use (puse_id_seq)) records.
- Renumber the parcel (place of use records) to be consecutive.

18. For all water right claims; all point of diversion ids shall be numbered to start with 1 and numbered consecutively. Ditch names identified by diversion number would need to follow their corresponding diversion id.

Standards Action:

- Apply to all water rights with skipped numbers in the point of diversion records (podv_no).
- Renumber the point of diversion records to be consecutive.
- Ditch numbering to follow.....

19. For all water right claims; if the period of diversion in the water right detail screen does not equal the period of use in the purpose record, then change the period of diversion to match the period of use, unless the period of diversion has a "keep, modified by rule" origin.

Standards Action:

- Apply to all water rights when the period of diversion (appropriation) does not equal the sum of the period of use records for the water right purposes, and the period of diversion is not equal to KMRL.
- Reset the period of diversion so that its begin date matches the earliest begin date of the period of uses and its end date matches the latest end date of the period of uses.

ELEMENTS MODIFIED BY WATER COURT WOULD NOT BE CHANGED BY STANDARDS.

Changes will NEVER be made to elements modified by water court. A second original version would be created; standards would then be applied ensuring no changes to the original claim. The program would be written to exclude the "modified by water court" elements.

III. Summary indexes that will be needed:

Reserved Rights- Make sure that the type of right is changed from statement of claim to reserved right. Verify the correct remark is added to the reserved right.

Remarks- Standardize old legacy remarks, convert obsolete remarks, change free text remarks to formatted remarks.

In the re-exam of basin 40L, only 87 remarks appeared, 410 were added during re-exam. The majority of the remarks were placed on period of diversion, point of diversion, place of use, purpose, ownership, means of diversion and priority date.

Decree Exceeded- Identify all decree exceeded claims and notify claimants; check for consistency in original appropriator name.

Reservoir Index- Verify period of diversion. Standardize reservoir names and reservoir information.

Examination as we know it today did not take place on reservoirs during verification. Most major elements concerning reservoirs were not documented and many assumptions were made. No reservoir work sheets appear in verification files.

Source Index- Source name standardization is essential. This was not a high priority during verification. For decree exceeded issues and future enforcement purposes this is a must.

Ditch Index- Ditch name standardization is essential. This was not a high priority during verification. Verify point of diversion consistency, accurate legal descriptions are crucial for future enforcement purposes.

Implied Claims- Verify correct remark is applied to implied claims and their parent right. Were implied claims verified or just generated and accepted?

Point of Diversion – Sort the PODs by TRS and eliminate gaps. During verification very little time was spent locating actual PODs and confirming correct legal's ($\frac{1}{4}$ $\frac{1}{4}$).

Place of Use- Sort the POD's by TRS and eliminate gaps.

Reexamination Introduction and General Procedures

Introduction:

The [Water Court Order Addressing Reexamination](#), dated December 14, 2012, orders the DNRC to [partially reexamine approximately 90,000 claims](#) in Temporary Preliminary Decreed basins that were decreed prior to current examination standards. The reexamination order identifies the following five [action items](#) for reexamination [in preparation for the court's issuance of supplemental decrees in basins with Temporary Preliminary Decrees](#):

1. **Decree Exceeded**
2. **Filed and use rights predating district court decrees**
3. **Over-claimed** filed notices of appropriation
4. **Claims with multiple uses**
5. **Standardization and identification of point of diversion, source, and ditch name**

In addition to the five ordered elements, the reexamination order directs the review of the [four](#) following elements:

1. **Supplemental Order Regarding Fish and Wildlife, Wildlife and Recreation Claims**
2. **Second Amended Order on Period of Diversion and Reservoirs**
3. **Examination of late claims**
4. [Application of claim standards](#)

In addition to the reexamination order, the court has also directed the [examination of BLM reserved claims](#), as directed in Judge Loble's September 23, 2009 order.

The DNRC will reexamine claims in a process that is similar to the summary review preparation explained in chapter 12 of the claim examination manual, where indexes and [reviews](#) are performed to bring the elements listed above into compliance with their respective orders. This guidebook is an overview on the reexamination process with details addressing each item above in the following pages.

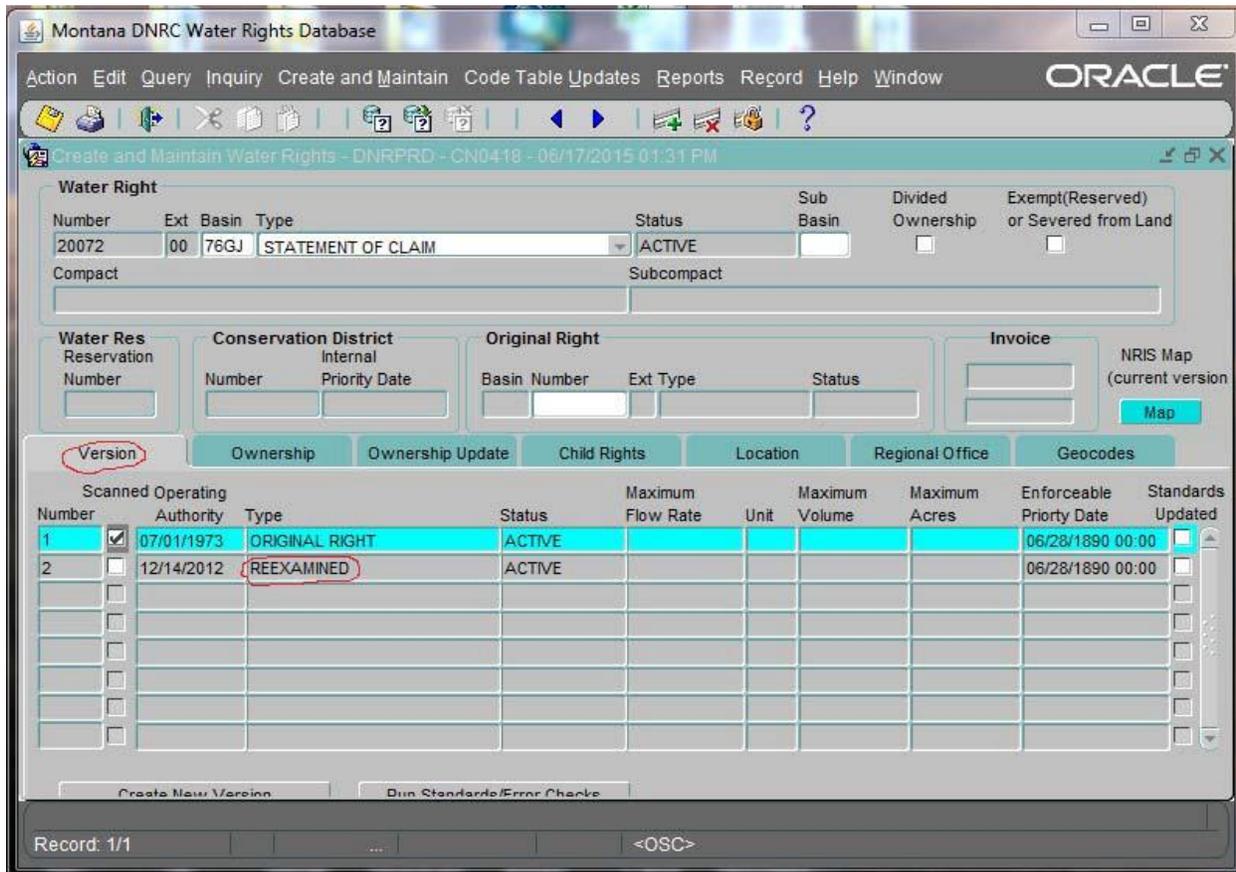
The DNRC is authorized by the water court to only change the water right elements in bold listed above. **The DNRC will not change elements in the database that are not included in the Reexamination Order. Also, the DNRC will not change elements that are flagged in the database as *SUSTAINED* or *WATER COURT, MODIFIED BY*.** These elements are also locked from editing in the water rights database. See general procedures in the following paragraphs for more information.

Withdrawn, Terminated, and Dismissed Claims:

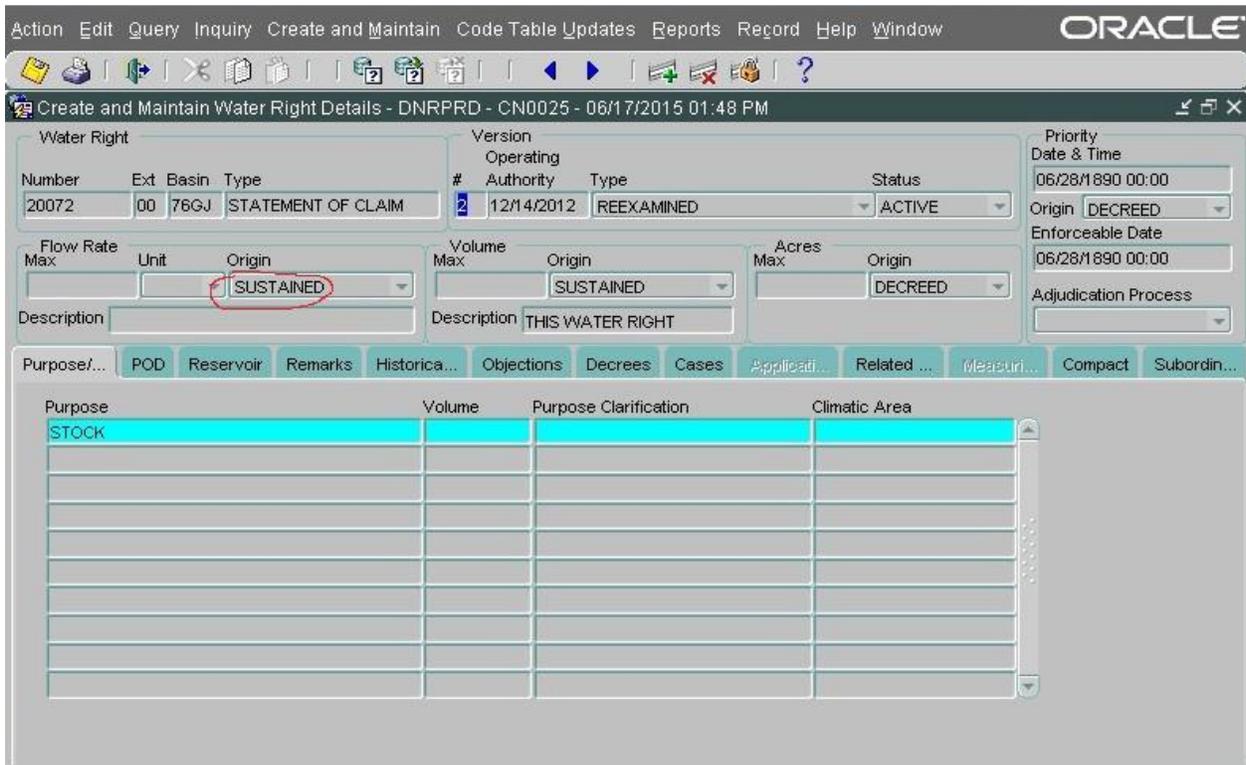
An additional important note, the reexamination only applies to claims with an active status in the database. **The reexamination effort will not include Withdrawn, Terminated, or Dismissed water right numbers.** If Withdrawn, Terminated, or Dismissed water right numbers are included in any of the review datasets, please delete or disregard.

Database Updates:

A reexamination version of the database exists to facilitate changes to the reexamined elements without changing the original version of the water right (see the example on the next page). The database administrator will add the reexamination version to the database prior to the reexamination of a basin. **Make all changes associated with reexamination in the reexamination version.** The reexamination version has a December 14, 2012 operating authority date, consistent with the date of the reexamination order. See the example below.



An additional modification to the database is the *SUSTAINED* origin (see the example on the next page). Database fields with a *SUSTAINED* or *WATER COURT, MODIFIED BY* origin are locked to editing to maintain a decision granted by the water court regarding a particular element in a previous decree. **The DNRC will only issue remark Sustained or Modified elements, if that element is identified as incorrect by the DNRC, and the issue remark will assist the court in the distribution of the right.** An example of a *Sustained* element in the database is shown on the next page.



Work Flow:

The database administrator will populate reexamination versions and generate review indexes for a basin upon request of the basin supervisor. These indexes can be printed or viewed electronically based on the basin supervisor’s preference. The order that the indexes will generally be in the following order:

1. Point of diversion, source and ditch name geospatial project
2. Remarks index
3. Multiple use index
4. Decree exceeded index
5. Over-filed notices of appropriation
6. Filed and use rights pre-dating a decree
7. Fish and wildlife, wildlife and recreation flow rate and volume
8. Period of Diversion and Reservoir index
9. Examination of BLM Reserved Claims

The above numbered order of indexes is negotiable. Workflow and order of indexes may vary by basin depending on priorities, number and complexity of claims in the basin, and number of staff available.

The basin supervisor will request additional indexes to review the summary report once the initial reexamination of a basin is completed. The purpose of the second set of indexes is to review and increase the accuracy of the reexamination work performed.

The basin supervisor will issue a summary report to the water court upon completion of the summary review. The summary report is a PDF compilation of all water right abstracts in the basin, listed by water right number. The court will then appoint a water master to review the summary report. Any questions regarding the work performed will be emailed to the basin supervisor who may distribute these questions to staff, as needed. The purpose of the court's questions is to seek to understand the summary report and correct any errors prior to issuing the next decree in the basin.

Documentation:

All work performed during reexamination needs to be tracked. All changes to major elements of a water right need to be documented in the file on a review abstract!!

The reviewer of a reexamination index will record corrections to a claim in a comments field of a spreadsheet or in the margins of a printed index, depending on whether or not a paper or electronic format is being used. The basin supervisor will save records of spreadsheets and indexes of the work performed either as hard copies or as electronic files in the basin data folder of the adjudication shared drive (*G:ADJUDICATION/Basin Data*). These records will serve as a reference to answer any questions that the court might have while reviewing the summary report.

Any change made to an element listed on a *Review Abstract of Water Right* needs to be documented in the file!! All claimant contact should also be recorded in the file!! The staff making changes to a water right is responsible for documenting those changes on a pdf copy of the *Review Abstract of Water Right* using the comment tool in Adobe Reader. **Updating the code of an existing remark is not a change to an abstract element because the text of the remark will remain the same on the review abstract. This action should be recorded only in an index, as explained in the paragraph above.**

Abstract Commenting Instructions:

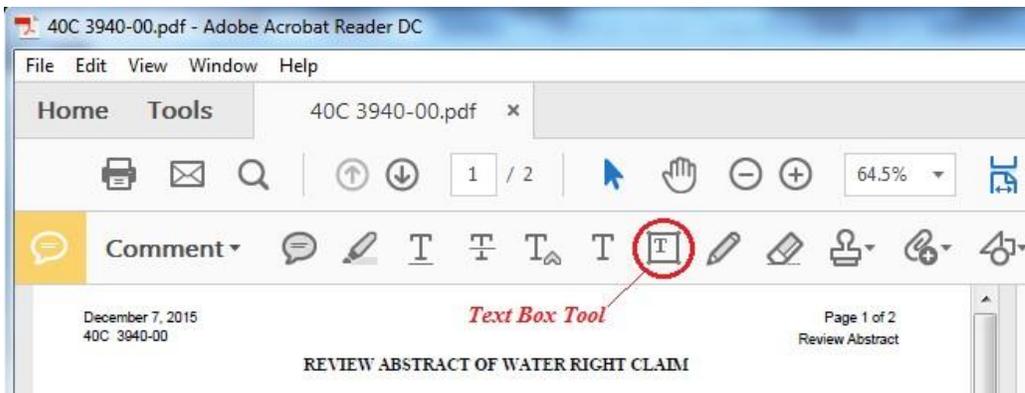
- 1) Navigate to the adjudication shared drive in the following location: *G:\ADJUDICATION\Basin Data\40C\Review Abstracts* (drive letter may vary by office). (The basin number will be different depending on which basin you are working in, the rest of this location will stay the same).
- 2) Search the abstract folder for your claim number to see if it has already been saved by someone else.
- 3) If it has already been saved, open the existing copy. If it has not, create a review abstract from the database and save it under the following format: 40C 112993-00. **NO OTHER FORMATS PLEASE!! This will avoid duplicates!** Use -A, -B, -C after the extension of the water right number, etc. if an exception should arise where you need additional abstracts (e. g. 40C 112993-00-A). **Please do not save blank abstracts to the folder. Only abstracts with comments should be saved to the folder so at the end of the basin we are not unnecessarily filing blank abstracts.**
- 4) **NEVER DELETE COMMENTS MADE BY PREVIOUS EXAMINERS!!**

- Document the changes made to the claim by using the “commenting tools” **Always add your initials and date to each comment.** (e. g. MAH 11/30/2015). Be sure to elaborate on the changes that you have made so others can understand what the change was. For example, you changed the point of diversion and added a P88; your comment should look something like the following: “P88 added for point of diversion; the legal land description was modified from Sec 30 to Sec 31 based on claimants map”. This example is a thorough explanation that explains the changes to another examiner, the water court, or the claimants. Another example is included in the graphic on the next page

Source:	- UNNAMED TRIBUTARY OF LODGEPOLE CREEK, NORTH FORK					
Source Type:	SURFACE WATER					
Point of Diversion and Means of Diversion:						
<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWSE	28	18N	32E	GARFIELD
Period of Diversion:	APRIL 1 TO OCTOBER 31		Changed Period of Diversion to year round bc 12/07/2015			
Diversion Means:	DAM					

Commenting Tool & Things to Remember:

- Commenting tools can be found by hitting the “tools” option at the top of the document in Adobe Reader and choosing the comment option. Insert text by using the Text Box Icon:



Note: the text box tool is not the same as the plain text tool (T); it is preferable to use the text box tool instead to the plain text tool as the text box is easier to manipulate on the abstract.

- Use a color other than red or black. To change the color of the text in the typewriter box- highlight the text and hit Ctrl + E this will pop up a properties box and you can change the color from here. You can make this the default color by clicking on the comment in the tracker box at the right of the document, right click on the typewriter symbol, choose properties, and click the box that says *Make Default Properties*. This will keep the color that you have chosen for every comment.
- Stay within the printable margins of the PDF to ensure the whole comment will be scanned at the end of the basin.

- 4) Save the edited PDF.
- 5) If you have any questions you can ask the reexamination basin supervisor.
- 6) **There is no need to print the abstract for the files**, this process will track changes made to the claims and they will be combined and printed at the end of the basin so there is only one abstract per claim file. **The exception to this is if you are documenting notes or changes on an abstract after abstracts have been printed and filed for a basin (typically this occurs after the summary report is submitted to the court).**
- 7) **If you are documenting changes after the abstracts have been filed and the basin has been scanned, print the abstract with your updated comment, and send the abstract to records to be scanned. Make sure the abstract then makes it to the file.**
- 8) Claimant Contact can also be recorded on the pdf abstract.

Claimant Contact:

Contact the claimants to notify them of all changes made to major elements of a water right. The major elements of a water right are those elements with a bold heading on the review abstract. Most changes occurring during reexamination will warrant contact. The DNRC will typically contact the claimant at the end of reexamination basin in order to utilize an automated process where water right abstracts are ordered from the database administrator in a batch to be sent to the claimants of record with a standard letter.

In some instances, the DNRC may send letters regarding complex issues, such as the first three reexamination action items (decree exceeded, filed and use rights predating a decree, and over-claimed filed notices of appropriation), in the middle of the basin reexamination to provide claimants more time to work with the DNRC to resolve issues. The *Review Specific Reexamination Contact Letter Example* is included in the reexamination folder of the shared drive in the following location: *G:ADJUDICATION/Reexamination/Review Specific Contact Letter Example*. Drive letter varies by office.

Always use the letter templates from the shared drive or seek supervisor approval for instances where a unique letter may be required. This requirement is to ensure that all basin correspondence is consistent within the bureau. Also, **always include your name and direct phone number for the claimants to contact you directly for questions.**

Send a follow up letter and updated abstract to the claimant if a reexamination element is changed or a reexamination issue remark is added or removed after initial contact. Follow-up letters do not have to be on one of the templates mentioned previously. **Always make a photo copy of any letters sent to be added to the files!**

Amendments:

The process in place for claimants to make corrections and address issue remarks for a water right claim is to submit a DNRC amendment form. Amendment forms are available on the web at: <http://dnrc.mt.gov/divisions/water/adjudication>. Amendments do not require a notarized signature but must be signed by all water right owners of record to be legally valid.

Given the prior decreed status of reexamination claims, **amendments to reexamination claims will not be processed by the DNRC in reexamination basins, but will receive issue remarks to notify the court of the requested changes, and will be reviewed by the water court after the issuance of the preliminary decree. Amendments that address and potentially resolve issue remarks should be encouraged despite the addition of amendment issues.** See the section on issue remarks below. See the section on amendments to the *Source Name, Point of Diversion, Means of diversion, or Ditch Name* below, as the DNRC may be able to modify these elements using information in the amendment.

When amendments are received, stamp the form with the date received, add the appropriate amendment issue remarks as detailed below, and enter the date received into the date field of the amendment remarks. **All amendments will receive at least one of the issue remarks shown below to notify the court regarding unprocessed changes contained in the amendment!**

Amendment Issue Remarks:

Place the following issue on claims that receive amendments to all elements except for the *Place of Use*:

- A29** AN AMENDMENT WAS SUBMITTED ON 04/08/2015 REQUESTING TO AMEND THE FLOW RATE AND PRIORITY DATE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

Place the following issue remark on claims that receive amendments to the *Place of Use*:

- A24** AN AMENDMENT WAS SUBMITTED ON 04/08/2015 REQUESTING TO AMEND THE PLACE OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED BY THE COURT AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

Use the A24 and an A29 issue remarks in combination on claims that receive amendments to the *Place of Use*!!

Amendments including Source Name, Point of Diversion, Means of Diversion, or Ditch Name: The department has the ability correct the *Source Name, Point of Diversion, Means of diversion, or Ditch Name* by Rule, based on information included in an amendment. Review the amendment for accuracy prior to making changes. Flag the element or elements as *Modified by Rule* in the database, add or retain the P88 issue remark (see pg. 45), and add the following additional issue remark to the claim:

- A23** AN AMENDMENT WAS SUBMITTED ON 04/02/1972 REQUESTING TO AMEND THE POINT OF DIVERSION. THE AMENDMENT WAS NOT PROCESSED AS THIS ELEMENT WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS.

Add the A23 issue remark in addition to the A24 or A29 issue remarks described above.

Withdrawing a Water Right:

Withdrawals of Statements of Claim in reexamination basins require court approval because of the decreed status of these claims. Therefore, requests to withdraw a statement of claim should be submitted directly to the court by the claimant on the courts withdrawal form. The form is located on the shared drive in the reexamination folder of the adjudication shared drive. The claimant can also request this form directly from the court.

Reinstating a Withdrawn Claim:

A withdrawn Statement of Claim may be reinstated by the water court upon request by the claimant. See the Motion to Reinstate a Withdrawn Statement of Claim form in the reexamination folder of the Adjudication shared drive.

Examination of Late Claims:

Most late claims not included in a temporary preliminary decree will have received a basic examination in compliance with the examination standards at the time they were performed. **If review of the scanned file documents, original decree, and objection list determines that a late claim was not examined**, examine the claim according to the standards detailed in the claims examination manual.

Make any examination changes to the reexamination version in the database. See the claims examination manual for claims examination instructions. Amendments to non-decreed late claims may be processed differently. Please contact supervisor or bureau chief for guidance. The decrees and objection lists are available by basin at the following web location:

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

Implied, Split, and Senate Bill 355 Exempt Claims:

All active implied, split, and Senate Bill 355 exempt claims should have a reexamination version in the database and be included in the datasets of the reexamination reviews. Please contact your supervisor if it appears that a reexamination version is lacking a claim.

BLM Reserved Claims Examination:

The Water Court directed the department to apply the 2009 BLM order to the reexamination process. The order directs the DNRC to completely examine all United States Bureau of Land Management (BLM) claims in accordance with the water right claim examination rules outlined in the DNRC water right claims examination manual. This process is described later in this guidebook (see table of contents).

Reexamination Action Item #1: Decree Exceeded

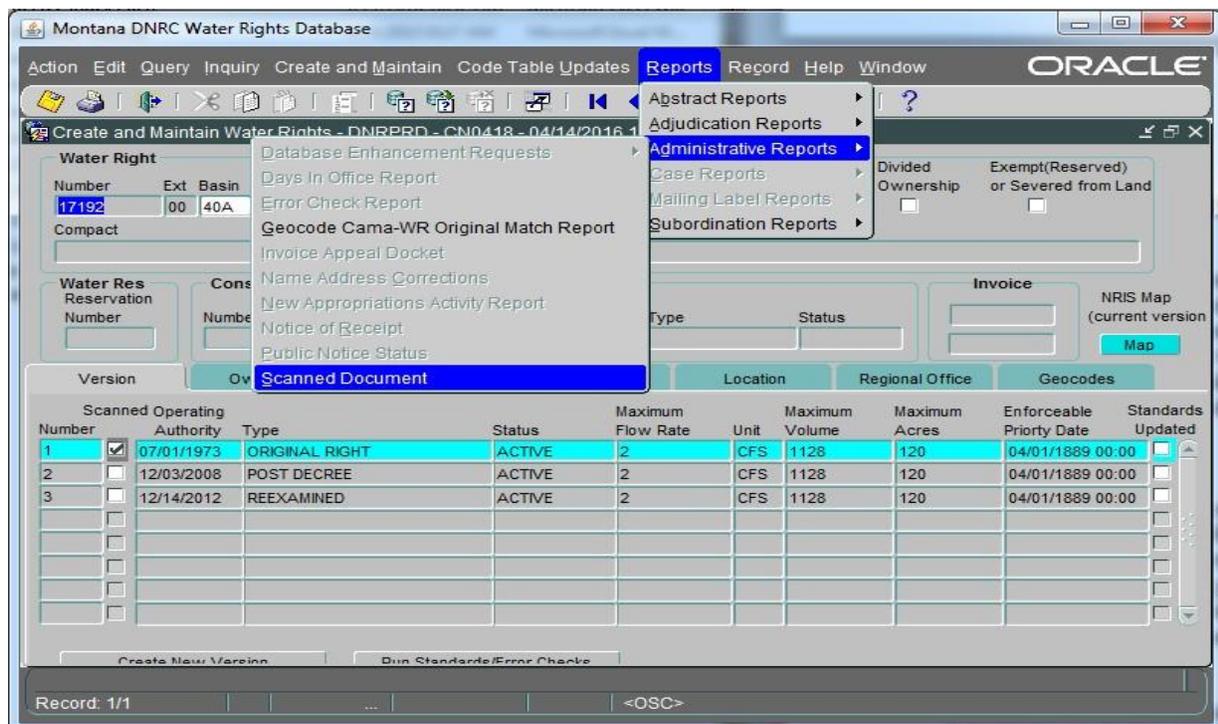
Overview:

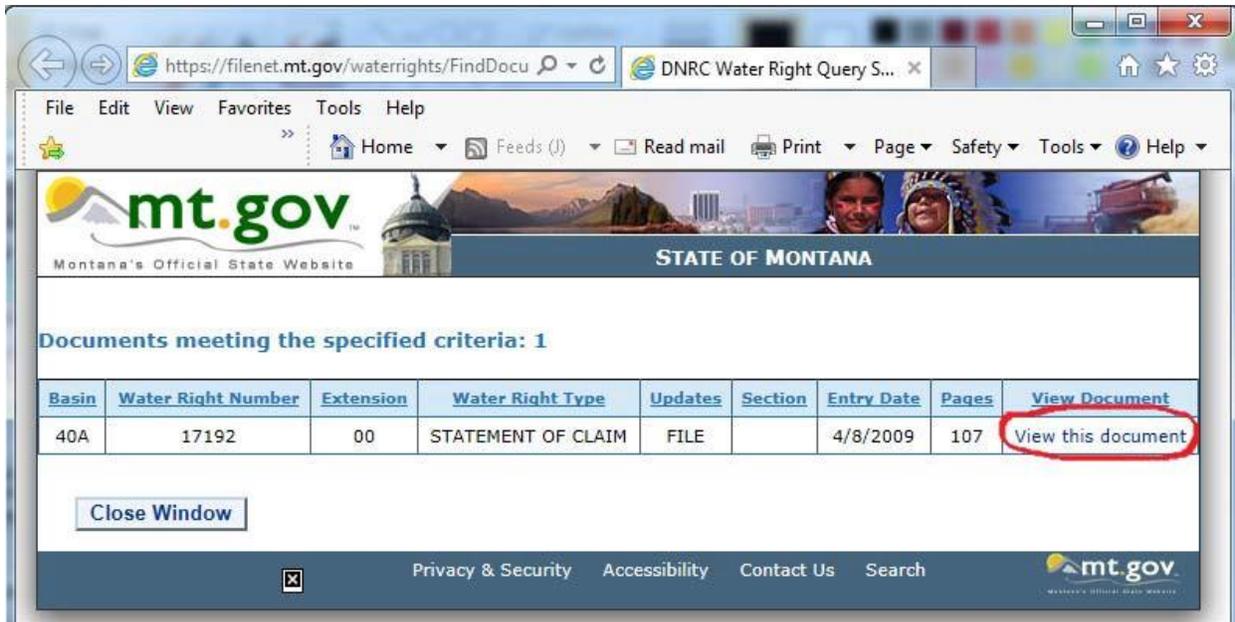
The Water Court’s reexamination Order dated December 14, 2012, orders that the DNRC will identify decree exceeded claims in all **reexamination** basins. A decree exceeded situation is where the flow rate of a single claim, or combined flow rates of multiple claims with a decreed historical type of right exceeds, the flow rate quantified in the base historic decree being claimed. The **DNRC will identify decree exceeded situations by comparing the claimed flow rates of water rights with a decreed type of right against the total flow rates available of their respective historic decreed appropriations.**

Process:

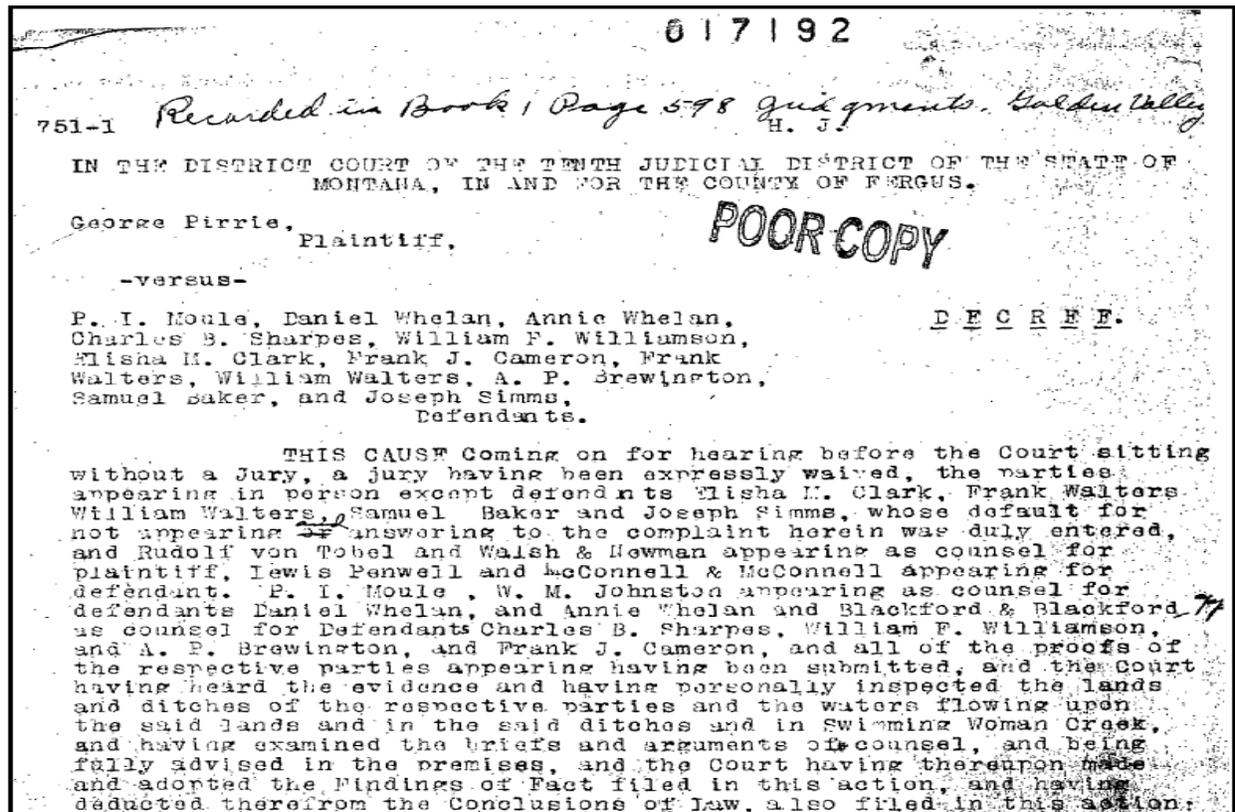
The multiple use index (Action Item #4, next section in this guidebook) **should be completed prior to completing this action item.** To perform this comparison, identify the decreed appropriations for all water rights in the basin with a decreed type of right, enter this information into the historical tab in the database, and then request this data in a spreadsheet from the database administrator.

Request or create a spreadsheet with **all active decreed type water rights in the basin.** Terminated, withdrawn, and dismissed claims should not be included in the dataset. Enter each decreed water right number in the database, identify the claimed decreed appropriation in the scanned documents and enter the decree information into the Historical Data tab of the reexamination version in the database. Accessing scanned documents is depicted in the following two examples.





You can usually find the decreed documentation for a claim within a few pages in the scanned document, after the claim form. Identify the decreed documentation by the court heading, as shown in the example below.



The example below depicts a claimed decreed appropriation for a water right. Not all claimed decreed appropriations will be this clearly identified. **Sometimes, identifying the appropriation being claimed may require reading the master’s report or matching the claimed priority date and flow rate with the decreed documentation in the file.** If the claimed decreed appropriation cannot be identified, add an issue remark to the claim. See the section on *Additional Issue Remarks Related to the Decree Exceeded Review*.

12. That the defendant, P. I. Houle, his heirs, executors, administrators and assigns, as against the plaintiff and all the other defendants, and his and their respective heirs, executors administrators and assigns, and subject to the prior rights of the plaintiff and of the several defendants hereinbefore in this decree respectively mentioned and described, is entitled to the use of the next 120 inches of the waters of said Swimming Woman Creek, measured as required by the statutes aforesaid, by virtue of an appropriation by his predecessor in interest, Andrew T. Jackson, made on the 1st day of April, 1889, and known in the trial of this action as the "Jackson right."

Enter as much information as possible into the Historical Data tab including the decree county, Filing date (or date done in open court if no filing date), Case #, source, appropriator, Priority Date, Miners Inches, and flow description (only needed for non-quantified flow rates and decreed volumes).

The screenshot shows the Oracle-based Montana DNRC Water Rights Database interface. The main window title is "Montana DNRC Water Rights Database" and the application is "ORACLE". The current screen is "Create and Maintain Water Right Details - DNRPRD - CNO418 - 04/14/2016 01:18 PM".

The interface is divided into several sections:

- Water Right Section:** Includes fields for Number (17192), Ext (00), Basin (40A), Type (STATEMENT OF CLAIM), Version # (3), Authority (12/14/2012), Type (REEXAMINED), Status (ACTIVE), Priority Date & Time (04/01/1889 00:00), Origin (DECREED), Enforceable Date (04/01/1889 00:00), and Adjudication Process.
- Flow Rate Section:** Includes Max (2), Unit (CFS), Origin (SUSTAINED), Volume Max (1128), Origin (SUSTAINED), and Acres Max (120), Origin (SUSTAINED).
- Navigation Tabs:** Purpose/..., POD, Reservoir, Remarks, **Historical...**, Objections, Decrees, Cases, Applicati..., Related ..., Measuri..., Compact, Subordin...
- Courthouse Filing Information (Historical Filing):**
 - County: FERGUS
 - Right Type: DECREED, Origin: DECREED
 - Filing Date: 07/23/1903
 - Case/Document #: 751
 - Decreed Appropriator: ANDREW T. JACKSON
 - Source: SWIMMING WOMAN CREEK
 - Decreed Priority Date: 4, 1, 1889
 - Miners Inches: 120
 - Flow Description: (empty)
- Claim Filing Information:**
 - Date Received: 05/21/1981
 - Late Designation: (empty)
 - Fee Owed:
 - Implied Claim:
 - Exempt Claim:
- Historical Data for Changes:**
 - Flow Rate: (empty), Unit: (empty)
 - Diverted Volume: (empty)
 - Consumptive Volume: (empty)

At the bottom, there is a status bar with "Enter value for County", "Record: 1/1", and navigation buttons like "List of Valu..." and "<OSC>".

Once the Historical Data tab is completed for all decreed water rights in a basin, request a spreadsheet containing this data from the database administrator (if you have not already created it yourself). The required data fields to request from the database administrator for the decree exceeded index include: water right number, purpose, decree date (historical filing date), case number, historical source, claimed source, decreed priority date; decreed appropriator, decreed miners inches, claimed flow rate. Another option is to enter the decreed information in your previous spreadsheet and copy this information into the database. This method takes an extra minute or less but saves having to request the data a second time from the database administrator, and allows you to review all of the data entered as you go through the list

Sort the spreadsheet by case number, historical source, claimed source, decreed priority date, claimed priority date, decreed appropriator, decreed flow rate, and claimed flow rate. Compare the decreed appropriations to the corresponding claimed flow rates to identify claims that exceed the historic decreed appropriation. An example is included below the next paragraph.

Only count the highest flow rate for multiple use claims that all have quantified flow rates once. A multiple use is a historical appropriation claimed twice by the same claimant for two separate purposes; see the multiple uses section of this guidebook for more information. For an example, an irrigation claim and a domestic claim are multiple uses of the same right. The irrigation claim has a flow rate of 1 CFS and the domestic claim has a flow rate of 20 GPM. In this scenario you would only count the 1 CFS as the quantified total.

WRNUMBER	PURPOSE	COUNTY	CASE DATE	CASE	APPROPRIATOR	SOURCE	PRIDATE	DCRD IN	FLOW	UNIT	CLMD IN	ISSUE	COMMENTS
43D 17198 00	IRRIGATION	CARBON	8/21/1903	275	F. B. THOMPSON	ROCK CREEK	1896-07-07	145	1.13	CFS	45.00		
43D 31103 00	IRRIGATION	CARBON	8/21/1903	275	F. B. THOMPSON	ROCK CREEK	1896-07-07	145	2.50	CFS	100.00		
											145.00		
43D 141 00	IRRIGATION	CARBON	8/21/1903	275	G. W. DULEN	ROCK CREEK	1896-07-07	155	1.50	CFS	60.00	D5	
43D 3524 00	IRRIGATION	CARBON	8/21/1903	275	G. W. DULEN	ROCK CREEK	1896-07-07	155	1.25	CFS	50.00	D5	
43D 3992 00	IRRIGATION	CARBON	8/21/1903	275	G. W. DULEN	ROCK CREEK	1896-07-07	155			31.00	D5	
43D 31097 00	IRRIGATION	CARBON	8/21/1903	275	G. W. DULEN	ROCK CREEK	1896-07-07	155	1.25	CFS	50.00	D5	
43D 30043248	IRRIGATION	CARBON	8/21/1903	275	G. W. DULEN	ROCK CREEK	1896-07-07	155			14.00	D5	
											205.00		

The example above shows that there are 205 inches claimed against the 155 inch G. W. Dulen right, appropriated July 7, 1896. This is a decree exceeded situation. In this situation, you would add a D5 issue remark to the reexamination version in the database. You would enter all of the water right numbers into the D5 remark that exceed the decreed appropriation (as shown below), including multiple use stock claims with null flow rates (which there are none of in this example).

D5 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 155 MINER'S INCHES DECREED IN CASE NO. 275, CARBON COUNTY. 43D 141-00, 43D 3524-00, 43D 3992-00, 43D 31097-00, 43D 30043248.

Enter water right numbers in the following format, as shown in the example above: basin number, water right number, and extension number (e. g. 43D 141-00). Enter the numbers in numeric order. The issue remarks on each water right in the decree exceeded relationship should all list the same numbers. Claim number 30043248, shown above, does not need a -00 extension

because it is a current standard database format. These numbers are referred to as thirty million numbers.

For single claims exceeding a decreed appropriation, use the issue remark below.

F90 THE CLAIMED FLOW RATE EXCEEDS THE 50 MINERS INCHES OF OHEARN CREEK DECREED IN CASE NO. 374, SWEET GRASS COUNTY.

Additional issue remarks related to decree exceeded review:

Identify and apply additional issue remarks related to the decree exceeded review when a claim does not include a copy of the decree, the claim and decree information conflict (such as: the priority date claimed does not match the priority date in the claimed decreed appropriation), or flow rates are not specified in the claim or the decree. For decree documentation issues, see the list of issue remarks below.

P355 THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

P390 THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED DECREE IS JUNE 10, 1896.

P460 THE PRIORITY DATE MAY BE QUESTIONABLE. THE SOURCE DESCRIBED IN CASE NO. 0000, MONTANA COUNTY, IS INCONSISTENT WITH THE CLAIMED SOURCE.

For claims with a decreed historical type of right where no flow rate is claimed or the decree does not specify a flow rate, add one of the following issue remarks:

F91 CASE NO. 0000, MONTANA COUNTY, DOES NOT SPECIFY A FLOW RATE; CLAIMED FLOW RATE RETAINED.

F92 CASE NO. 0000, MONTANA COUNTY, DECREES A FLOW RATE OF 150 MINER'S INCHES; NO FLOW RATE WAS CLAIMED.

F93 CASE NO. 0000, MONTANA COUNTY, DOES NOT SPECIFY A FLOW RATE; NO FLOW RATE HAS BEEN CLAIMED.

Consult the basin supervisor or quality control if issues related to the decree exceeded review other than those described above are identified.

Reexamination Action Item #2: Filed and Use Rights Predating a District Court DecreeOverview:

The Water Court's Reexamination Order dated December 14, 2012, orders that the DNRC will identify filed and use rights predating district court decrees in all verified basins. **Filed and use rights post-dating district court decrees will not be identified.** The DNRC will add the following issue remark to the abstracts of filed and use rights predating a decree:

P370 THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A **USE RIGHT/FILED APPROPRIATION ON SOCK CREEK** WITH A PRIORITY DATE PREDATING CASE NO. 0000, **CARBON COUNTY**.

This legal issue remark is based on the fact that prior to decreeing a water source, the Montana District Courts would notice the water uses on a source to achieve a comprehensive decree. Filed and use water rights on decreed streams may be legally invalid. This issue remark will be placed on all filed and use rights predating a source that includes multiple decreed rights. This issue remark will not be placed on claims that occur on streams where the decree lists only one or two appropriations. Such cases may be litigation between parties rather than comprehensive water decrees.

Process:

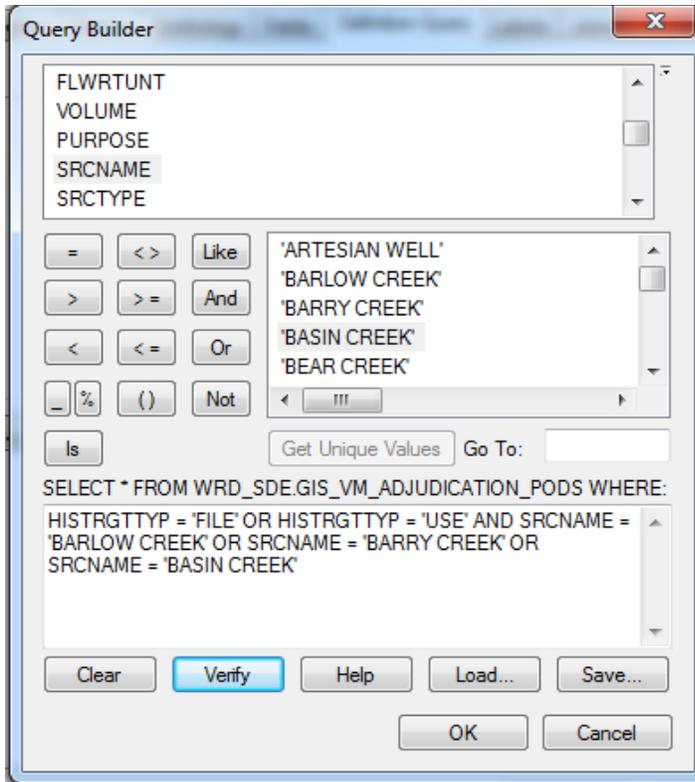
Identify all filed and use rights predating district court decrees in ArcMap by comparing adjudication point of diversion centroid data to the National Hydrography Dataset (NHD) streams layer.

Complete the decree exceeded analysis prior to the analysis of filed and use rights on decreed streams in a reexamination basin so that decree date, case number, and county are already in the database for populating the variables in the above issue remark.

First, identify all streams in the basin with a comprehensive decree. Query the adjudication point of diversion centroid data to retrieve water rights with a historic right type equal to decreed. [The query string to enter into the query builder is: HISTRGTTYP = 'DECR'](#) .

Overlay the decreed points of diversion on the NHD layer. The location of the decreed points of diversion indicates the decreed sources or portions of sources in a basin, based on claimed information in the water rights database. Be aware that some of the centroids may not be the actual location of a claims diversion if there is an issue or the legal description is incorrectly entered in the database, [or the centroid ¼, ¼, ¼ is incorrect](#). Check copies of decrees in claim files to verify a decreed source. Complete copies of decrees are typically available in county court houses, and sometimes in the Water Resources Division Regional Offices.

Next, identify all filed and use rights that claim decreed sources with priority dates predating the decree. In ArcMap, query the Adjudication point of diversion centroid data equal to filed and use rights on each named decreed source. This will be a compound query that looks like the following example on the next page.



Sort the attribute table of the queried data by source name and priority date. Add the case number and decree date fields next to the source column. You can get this from the decree index for the basin. Add a comments field to the attribute table denoting the needed P370 remarks for all claimed priority dates predating the case date. Be aware of the potential for duplicate source names in a basin. Compare the filed and use centroid layer to the decreed centroid layer to eliminate non-decreed or duplicated source names.

Reexamination Action Item #3: Over-Claimed Filed Notices of Appropriation

Overview:

An over-filed Notice of Appropriation situation is where the flow rate of a water right or water rights exceeds the flow rate listed on the historical court house filed notice of appropriation. Claims exceeding the historical flow rate of a filed notice of appropriation will receive an issue remark identifying the situation for the court. The identification of over-filed notices of appropriation and the application of issue remarks is explained under *Process*, below.

Terminated, dismissed, and withdrawn claims should all be omitted from the over-filed notice of appropriation search as they are not included in the reexamination process. **Claims that meet the definition of exempt uses (instream uses for livestock and domestic or groundwater used for livestock and domestic purposes) should be excluded from this analysis. Exempt claims will be issue remarked only in a multiple use situation and are not part of the data-set provided for this review.**

Process:

The multiple use index (Action Item #4, next section in this guidebook) **should be completed prior to completing this action item.** Create or request from the database administrator, a spreadsheet of all active filed rights in a basin. The spreadsheet should include all of the following data fields: water right number, purpose, priority date, source name, and flow rate. Sort the spreadsheet by source name, priority date, flow rate, and owner name.

Go through the spreadsheet and identify water rights that may be claiming a common filed notice of appropriation. Matching source names, priority dates, and flow rates are all indications that claims may be claiming the same filed notice of appropriation. The index should look similar to the example below:

Basin	WR#	PRIORITY_DT	ENF_PRIORITY_DT	PURPOSE	HIST_T YPE	MODV_CD	S/G	SOURCE	FLOW	UNT
76GJ	27387-00	1866-08-07	1866-08-07	STOCK	FILE	FL	S	FLINT CREEK, NORTH FORK		
76GJ	101699-00	1867-12-31	1867-12-31	IRRIGATION	FILE		S	LOWER WILLOW CREEK, SOUTH FORK	8.75	CFS
76GJ	146801-00	1869-11-05	1869-11-05	IRRIGATION	FILE		S	FROST CREEK	1.25	CFS
76GJ	30424-00	1869-11-05	1869-11-05	IRRIGATION	FILE		S	ALKALI SLOUGH CREEK	1.25	CFS

Retrieve the scanned documents for each claim that may be sharing filings and compare the filed notices of appropriation to check to see they are copies of the same filing. Add the combined flow rates of water rights that share the same filings and compare the total claimed flow rate to the flow rate written on the notice appropriation. Note each over-claimed appropriation in the spreadsheet.

Multiple uses of a flow rate of a filed notice of appropriation are not an over-claimed situation. For example, two water rights claimed by the same claimant for the same filed 2 CFS for two

separate purposes are multiple uses of the historic water right; meaning that they share and alternate the 2 CFS claimed and do not exceed the filing. Such multiple use situations do not require an issue remark but should be noted as multiple-use in the spreadsheet. See the multiple use section of this guidebook for more details regarding multiple use relationships.

Add the following issue remark to single claims involved in an over-filed notice of appropriation situation:

F245 THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATEDS A FLOW RATE OF 1.00 CFS.

When the combined flow rates of claims based on the same filed notice of appropriation exceed the flow rate written on the filing, add the following issue remark:

G36 THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 76GJ 30424-00, 76GJ 146801-00.

Add all of the claim numbers involved in the over-filed notice of appropriation into the claim field at the end of the G36 remark and repeat for every claim in the group. **Exempt claims will only be added to a G36 remark if it is a multiple use of a non-exempt claim that is included in an over-filed situation, as identified in the related rights tab of the database.**

Situations may also arise where the filed notice of appropriation does not list a flow rate but a claim or claims may have a flow rate quantified. If only one claim in the basin includes the filed notice of appropriation that does not list a flow rate; no issue remark will be added to the claim. If multiple claims include the filing that does not list a flow rate as supporting documentation, add the following free-text issue remark:

GIIS THE CLAIMS LISTED AT THE END OF THIS STATEMENT CLAIM THE SAME NOTICE OF APPROPRIATION. THE CLAIMED NOTICE OF APPROPRIATION DOES NOT SPECIFY A FLOW RATE. 41G 1234-00, 41G 1235-00.

Reexamination Action Item #4: Claims with Multiple Uses

Overview:

The Water Court’s Reexamination Order dated December 14, 2012, orders that the DNRC will identify claims with multiple uses in all [reexamination](#) basins. Multiple uses of a water right occur when the same historic appropriation has been claimed for different purposes by the original claimant. Identify multiple uses by the supporting documentation in the files being identical for two claims of different purposes. **Water rights containing the same supporting documentation are not a multiple-use if the claim forms submitted to the DNRC do not have the same owner name.** The current owner does not have to be the same.

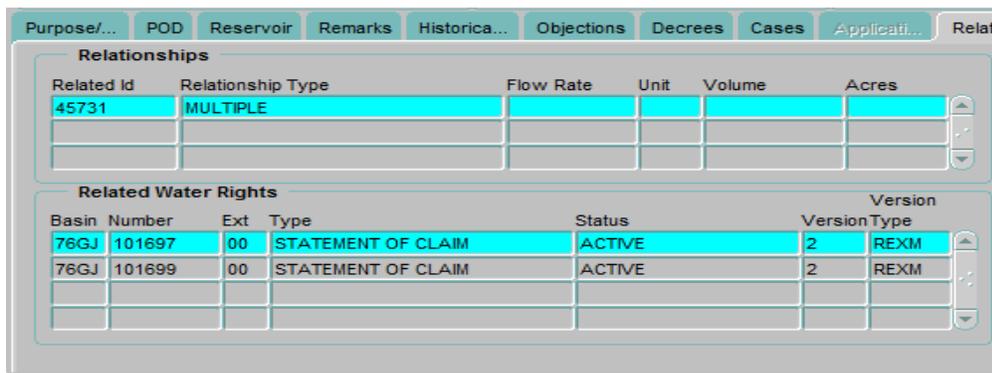
Process:

Complete this action item prior to the decree exceeded and over-claimed filed notices of appropriation action items. Determine multiple uses by reviewing an [index provided by the basin supervisor](#) at the start of the reexamination of a basin or a specific multiple use index sorted by the database administrator by priority date, type of right, source, purpose, and owner.

Review the multiple use index for claims with the same priority date and type of right for possible multiple use relationships. Claim numbers close in number sequence with matching ownerships, matching flow rates, and matching points of diversion can all be additional clues that water rights are multiple uses. Compare the supporting documentation of water rights with matching priority dates, types of right, and original claimants (claim form owner) to confirm multiple use relationships. The index should look similar to the one below:

Basin	WR#	PRTY_DT	ENF_PRTY_DT	USE_CD	HIST_TYPE	FLOW	UNT	SOURCE_NAME	OWNER	PRTY_DT
76GJ	128447	1866-05-15	1866-05-15	IRRIGATION	DECR	1.25	CFS	LOWER WILLOW CREEK	BIGNELL, JOSEPH S	5/15/1866
76GJ	128447	1866-05-15	1866-05-15	IRRIGATION	DECR	1.25	CFS	LOWER WILLOW CREEK	BIGNELL, PATRICIA C	5/15/1866
76GJ	128457	1866-05-15	1866-05-15	STOCK	DECR			LOWER WILLOW CREEK	BIGNELL, JOSEPH S	5/15/1866
76GJ	128457	1866-05-15	1866-05-15	STOCK	DECR			LOWER WILLOW CREEK	BIGNELL, PATRICIA C	5/15/1866

Enter multiple use relationships in the water rights data base under the related rights tab and enter the claim numbers of all rights involved.



The database will automatically print a multiple use information remark on the review abstract of each water right once a multiple use relationship is created in the related rights tab.

June 16, 2015 76GJ 101697-00							Page 2 of 2 Review Abstract
Place of Use:							
<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSE	24	9N	14W	GRANITE
2			SWSESE	24	9N	14W	GRANITE
3			E2NE	25	9N	14W	GRANITE
4			N2SE	30	9N	13W	GRANITE
5			S2NW	30	9N	13W	GRANITE
<hr/>							
Remarks:							
<p>THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT, RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.</p>							
<p>101697-00 101699-00</p>							

Document each multiple use relationship in a comments column on the spreadsheet to record the work that was done. Also make a note of the addition of the multiple use remark on a copy of the review abstract for the file. This spreadsheet may be used in future indexes.

Reexamination Action Item #5: Standardization and Identification of Point of Diversion, Source, and Ditch Name

Overview:

Item 5 of the reexamination order directs the standardization and identification of point of the diversion, source, and ditch name, as well as the addition of secondary points of diversion (when secondary diversions are identified). See the secondary diversion section in this chapter. The means of diversion will also be standardized in some instances for water distribution purposes (see the means of diversion section in this chapter). Standardizing these elements eliminates unnecessary confusion among water users and assists in the future enforcement of a water rights decree.

The standard for points of diversion in a reexamination basin is that all point specific diversions will have the most concise legal description. A point specific diversion a diversion originates at a specific location, such as a headgate, pump, dike, dam, or pit (this list is not exhaustive). A concise legal description is a description that breaks the number of quarter sections down to the most precise location.

For point specific descriptions, the most precise description will typically be refined to three quarter sections. For non-specific diversions, such as livestock direct from source or fish and wildlife claims, the number of quarter sections may be fewer.

The standard for wells and springs is three quarter sections. The physical locations of wells and springs do not need to be scrutinized. The legal descriptions of diversions from wells and springs will be checked to ensure that they possess three quarter sections. Also, **the court has prohibited the DNRC from making changes to all springs, except to correct or refine (addition of quarter sections) the legal description!**

Furthermore, points of diversion for claims from common ditches should all list the same legal description, ditch name (if applicable) and X, Y coordinates. Also, the source names of water rights should be standardized so that all claims on a source have the same name. Standard source names are identified from the USGS 1:24,000 topographical map, Water Resources Survey, and claim forms.

If the Source Name, Point of Diversion, Means of Diversion, Ditch Name or Reservoir Record of a water right is modified as a result of DNRC review during reexamination, add the following issue remark to the abstract, per court order:

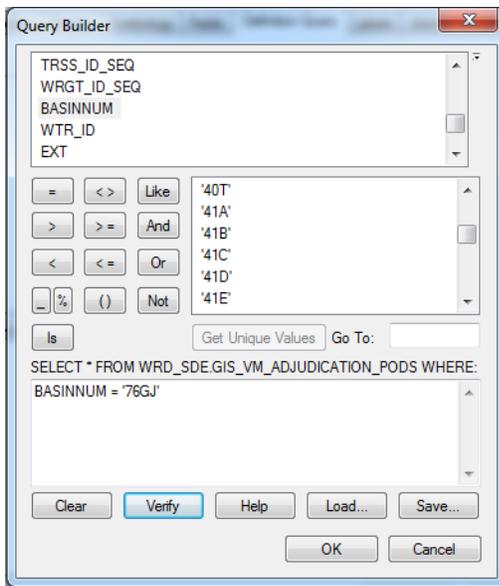
P88 SOURCE NAME/POINT OF DIVERSION/MEANS OF DIVERSION/DITCH NAME/RESERVOIR RECORD MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Use the full element titles in the remark variable, as shown in the gray box above. For example, type the words Point of Diversion instead of POD or just the word diversion.

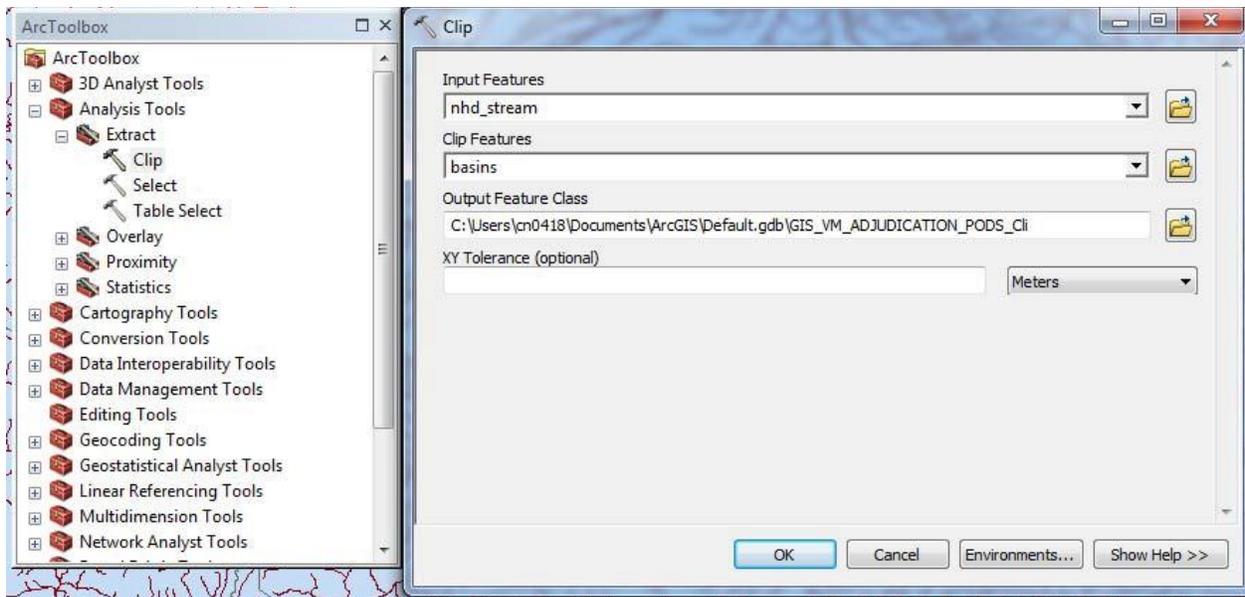
Process:

This review is performed in ArcMap and requires intermediate ArcMap skills. The adjudication and regional offices have people that are proficient in ArcMap if assistance is needed in performing the basic functions of this review. The method of this review is to compare individual points of diversions of claims to ArcMap feature data, Water Resources Survey information (data in ArcMap), and aerial photography to standardize the point of diversion for each water right in a reexamination basin.

To begin the geospatial analysis of the point of diversion, source, ditch name, and secondary points of diversion, create a project in ArcMap. Add the basins, adjudication points of diversion, and NHD layers from the adjudication drive (Reexamination\GIS folder). Add the ArcMap base map (current air photo) and the quad maps, townships, sections, and quarter sections from Mapper or GWRAT (drag and drop from an open Mapper OR GWRAT project). Query the centroid data to retrieve all water rights in the reexamination basin. See the following example.



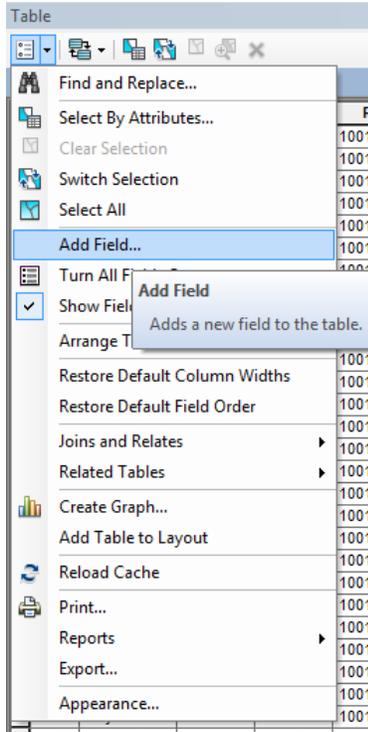
Clipping and exporting your shapefiles to the basin boundary is the most efficient way of utilizing this data. Clipping makes a cookie cutter layer in the shape of the basin boundary and speeds up data processing time. The basin shapefile will have to be queried for the desired basin, as shown in the previous image.



Source Names:

Start standardizing source names. Turn on the NHD source names by right clicking on the layer in the table of contents and selecting “label features”. The NHD layer has source names stored in the attribute data. These names typically match what is labeled on the USGS topo map. The hierarchy for standardizing sources is as follows: sources named on the quad map will receive the quad map name; sources not named on the quad map will receive the water resources survey name; if no name on the water resources survey (available by county on the adjudication website), check the claim files of water rights associated with a source for colloquial names and use the most common colloquial name.

Compare the names in the NHD layer to the USGS topo map, water resources survey, and other claims on the source. If the name in the NHD layer agrees with the topo map, move on to the next source. If the NHD has no name, check the water resources survey. If the water resources survey has a name, enter this name in the source name column of the NHD attribute comments field added to the point of diversion layer in the table options menu (see example on next page). Since a Comments field doesn’t currently exist in the attribute table, add one in the table options menu.



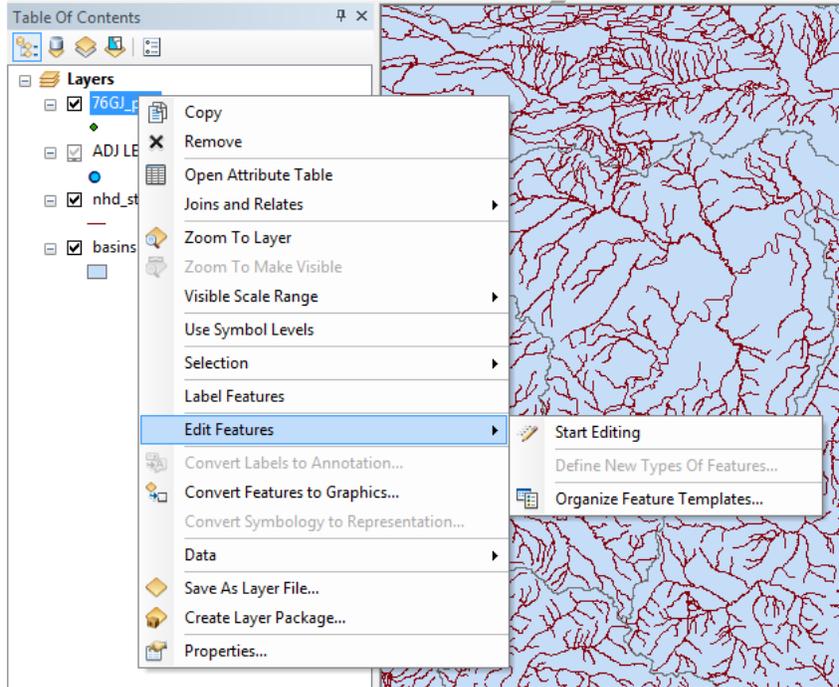
If the water resources survey does not list a name, check the other points of diversion on the source. If the claimed points of diversion show the same source name, add this name to the attribute data for the appropriate line segment. If no name appears on any of the available data sources, the source name will be unnamed tributary of the next down-gradient named source.

You may encounter situations where the source names on the claims on a source agree with the Water Resources Survey and not the USGS topo map. In these instances the source names should remain as claimed (must be agreement amongst the claims). Refer to chapter 6 of the DNRC Water Rights Claims Examination Manual for a complete set of instructions on naming sources.

Once a standardized source name is decided on, add the name to the NHD layer for easy comparison with claimed source names of individual points of diversion. Identify and label all standard source names in the basin in your ArcMap project before moving on to identifying and correcting individual points of diversion. Names do not need to be added to the NHD layer to streams without water right centroids.

Once the NHD layer has the standardized source names, check all points of diversion for correct source name. Identify needed corrections to the source name in a comments field added to the point of diversion layer in the table options menu. Edits will have to be added to the comments field in an editing session. Centroids with incorrect legal descriptions off of the source can be moved in the ArcMap project and noted in the comments field.

COMMENTS
POD WAS OFF THE SOURCE. MOVED TO SESESW
CHANGE SOURCE NAME TO MARSHALLL CREEK PER TOPO



Points of Diversion:

Using the same ArcMap project and point of diversion layer as described in the Source instructions above, look for general point of diversion errors such as: points outside the basin, unrefined legal descriptions, and points not on the source. Document any needed changes in a comments field, added to the attribute table of the shapefile as described above.

For points of diversion associated with ditches, ensure that all points of diversion for a common ditch have the same legal description. Overlay the Water Resources Survey Ditch shapefile with the points of diversion layer and move centroids for ditches to the head of the ditch or canal. Compare the location of the ditch as shown on the ditch shapefile with the photo available in ArcMap. The photos are typically more accurate than the ditch shapefile. Identify any needed point of diversion corrections in the comments field of the diversion shapefile.

Not all points of diversion need to be looked at on the map of the ArcMap project. [Points of diversion for wells and livestock springs with three quarter sections will be assumed to be correct. Only correct these claims if they are lacking quarter sections.](#) Livestock direct from source claims with centroids that fall within the general location of the claims source will be assumed to be correct. Sorting the attribute table by the quarter section column will reveal all legal descriptions that may need additional quarter sections.

Make changes to the legal land descriptions of points of diversion in the database that require modification based on the location of the diversion identified on the current air photo. Caution should be exercised when making changes to points of diversion legal land descriptions of claims that are located greater than a $\frac{1}{4}$, $\frac{1}{4}$, $\frac{1}{4}$, section away from the diversion or conveyance identified on the current air photo. **The point of diversion for a claim in the database needs to represent the location of the claimed diversion as it was claimed, prior to 1973.**

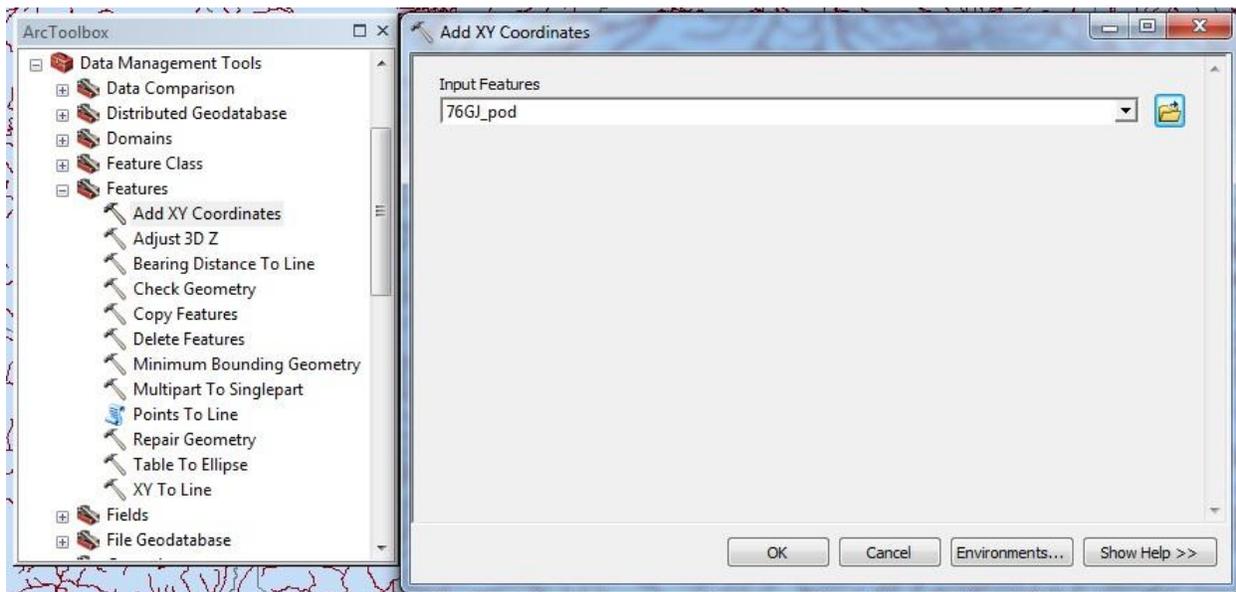
There are basically two ways to avoid moving a point of diversion to a post-1973 location by mistake.

1. If available, check an older photo source (water resources survey photos or 1978-1982) to confirm the diversion identified on the current air photo.
2. If older photography is unavailable or inconclusive, add a point of diversion issue remark. Following are a couple of examples. A PDIS free-text issue may also be used.

P40 THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWSWSW SEC 36 TWP 99N RGE 99W MONTANA COUNTY.

P49 THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE WELL CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Once the correct location of the point of diversion is identified in the ArcMap project, **it is essential that each point is “snapped”** (placed in exactly the same location) onto the previous point, which is a function in ArcMap that is typically a default setting. This is essential for generating identical x, y coordinates at the end of the end of this project. Add x, y coordinates in the appropriate fields of the layer using the x, y tool. See the example on the next page.



Send the database administrator an Excel copy of the x, y coordinates at the end of the project and these will be entered in the database.

Place of Use Issues Related to Point of Diversion:

During the review of the point of diversion element, you will encounter claims that have matching points of diversion and places of use that are both in the same location and are incorrect. Correcting the point of diversion leaves the place of use in the wrong location. There are two resolutions to this issue depending on the scenario:

1. The use of water is for *Livestock Direct from Source*:
 - Correct the place of use legal land description to match the point of diversion, by rule. **The Court has approved our ability to clarify the place of use on livestock direct claims only.**
2. The use of water is not for *Livestock Direct from Source*:
 - Add a free text place of use (code PLIS in the database) issue remark. the following is an example:

PLIS THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE NENWNW SEC 34 TWP 8N RGE 27E MUSSELHELL COUNTY.

Sustained/Water Court Modified POD's:

Occasionally, you will run across points of diversion in the project that need their point of diversion legal descriptions modified but are *Sustained* or *Water Court, Modified by* in the point of diversion element origin in the database. Elements with *Sustained* or *Water Court, Modified by* origins cannot and should not be edited in the database (for staff with higher database editing permissions).

Issue remark these situations if the point of diversion is not within a ¼, ¼, ¼, (for point specific diversions, such as a headgate) section of the actual location of the diversion on the aerial photo. A full list of point of diversion issues starts on pg. 195 of the claims examination manual. A code of PDIS may be used in the database to place a free-text issue remark on a claim in unique situations.

Means of Diversion:

The means of diversion is not included as an action item in the reexamination order. The means of diversion will be changed to provide clarification to the claim for water distribution, or in relation to corrections to source, points of diversion and ditch names. Claims sharing the same diversion structure (multiple use claims or claims from the same named ditch) should all have consistent means of diversion. Water rights with a means of diversion in the attribute table equal to 'Multiple' or 'Unknown' should be researched for a more standard means. The following issue remark may be applied to claims where the means of diversion cannot be identified:

D50 THE CLAIMED MEANS OF DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Ditch Names:

The DNRC will name ditches that have a name on the USGS quad, water resources survey, or a common colloquial name. The hierarchy for naming ditches is as follows: ditches named on the

quad map will receive the quad map name; ditches not named on the quad map will receive the water resources survey name; if no name on the water resources survey, check the claim files of water rights associated with a ditch for colloquial ditch names and use the most common colloquial name for the ditch. Ditches shown on the water resources survey with the same name (Stump Ditches) will receive the same name.

Match points of diversion with ditches and ensure that all centroids for a ditch are snapped to head of the ditch where it taps the source. Label the ditch name in the ditch name field of the point of diversion shapefile. Denote that the name was added and note any needed legal description changes in the comments field of the point of diversion shapefile. Some water rights may already have ditch names that were added during an enforcement action. Check to make sure that the enforcement ditch name and the legal description matches the labeled ditch in the ditch layer. Check with the enforcement administrator before changing an enforcement ditch name.

Add ditch names with legal descriptions in the Create and Maintain Diversion/Ditch Names screen of the database. Each ditch name should be followed by the name 'ditch' or 'canal' (e.g. Carter Ditch or Simpson Canal). Enter the ditch name into the Diversion/Ditch Name field of the POD tab in the Create and Maintain Water Rights Screen in the database for all water rights identified on a named ditch. A List of Values will pop up if there are multiple ditches. Select the ditch with the correct legal description.

Important note: the DNRC is allowed to make changes to *Sustained or Water Court, Modified By* ditch names because the ditch name element is not considered a major decreed element of a water right. Making edits to the ditch name field requires enhanced database rights possessed by adjudication supervisors and quality control.

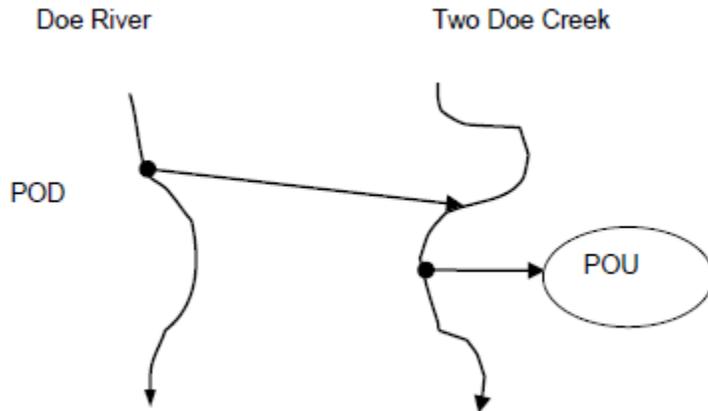
Reservoir Records:

When the point of diversion of an on-stream reservoir is modified, change the legal description of the reservoir record as well. Change the element origin in the data base to *Rule, Modified By*. Include *Reservoir Record* in the P88 remark variable.

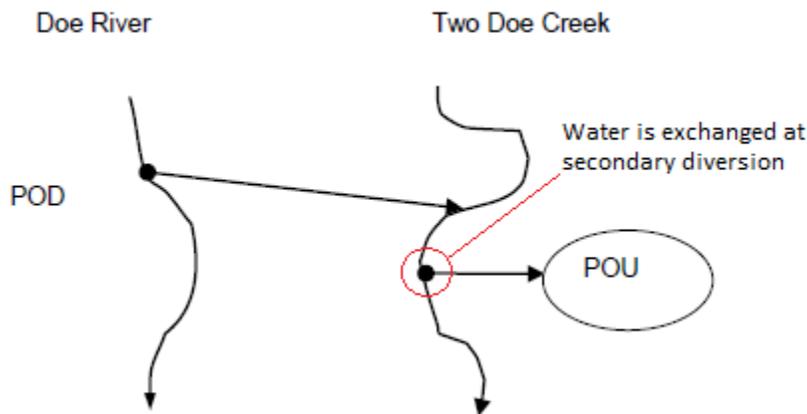
Secondary Points of Diversion:

Secondary diversions will be assigned to a water right when the claim file indicates a secondary diversion that involves another named source or stored water. The purpose of these diversions is to indicate a natural carrier situation or stored water from a reservoir (differentiate between stored water and flow through reservoirs – see reservoir section in chapter 6 of the exam manual). Secondary diversions are not typically listed on the claim form but are often shown on the claim map. Be sure to add a conveyance remark when adding a secondary point of diversion in the database.

A natural carrier situation is where water from one source enters another, flows downstream and is picked up by another ditch. See the example on the next page.



The simplest explanation of an exchange situation is where a primary source is exchanged for a secondary source. The secondary source is then conveyed to the place of use via a secondary diversion and conveyance. See the example below.



The legal description for a natural carrier secondary diversion, in most cases, is the location where the secondary ditch diverts from the natural carrier. Generally, secondary points of diversion will not be assigned for lateral ditches off a main ditch or for ditches that cross a source without a diversion structure. **Pumps or other means of diversion occurring after the primary pint of diversion will also not be added to claims as secondary diversions. Lateral ditches will only be identified as secondary points of diversion in specific situations, at the direction of the Bureau Chief.**

Assign a secondary diversion in the database in the POD tab under the preceding primary diversion so that the abstract lists primary and secondary diversions together. **Do not sort the diversions in a list of multiple diversions once a secondary record is entered as the database will list the secondary below all primary diversions.** Sort the diversion list and then insert the secondary under the corresponding primary diversion.

Add a ditch name to legal description describing the location of the secondary diversion if applicable. Add a conveyance remark into the database to describe the secondary diversion, such as the C119 below:

C119 WATER DIVERTED FROM DOE CREEK IS CONVEYED TO TWO DOE CREEK WHICH IS USED AS A NATURAL CARRIER TO SECONDARY POINT(S) OF DIVERSION, DIVERSION NO(S). 2 AND 3.

Add a free-text remark with the remark code CV for other secondary diversion scenarios like the following example:

CV WATER DIVERTED FROM DOE CREEK IS EXCHANGED FOR WATER FROM TWO DOE CREEK AT A SECONDARY HEADGATE LOCATED IN THE SWSWNW OF SEC 36 TWP 9N RGE 10W, BEAVERHEAD COUNTY.

If a secondary point of diversion is identified, a conveyance remark is mandatory!

Reexamination Standards and Indexes: Period of Diversion and Reservoir Information

Overview and Process:

As a part of the Water Court's Reexamination Order dated December 14, 2012, the Court ordered that the DNRC shall implement all standards proposed in the order. Of these standards, the Court proposed that the DNRC standardize the period of diversion for all claims in reexamination basins. The subsequent period of diversion order dated November 10, 2014 sets the standard for the period of diversion element on reexamination claims. Below is a summary of the process of standardizing the period of diversion for different types of claims as directed by the order. The order is included for reference at the end of this chapter.

Standardization of Period of Diversion:

Claims with Surface Water Pits, Groundwater Pits, and Reservoirs with a Volume >15 AF:

Send a Reservoir Information Worksheet along with a letter requesting reservoir information. If the claimant identifies the period of diversion, the DNRC shall add the period of diversion to the abstract and remove the P164 information remark from the abstract. Add claimant provided reservoir information in the Reservoir tab of the database.

If no response, estimate reservoir information using available sources including pre-1973 and post-1973 photo sources and Dam Safety Bureau information, add a period of diversion equal to the Period of Use, [change the period of diversion element in the database to *Modified by Rule*](#), and add the P168 issue remark to the claim. [See the remark below. As an alternate method, this step can be performed before the step above so that the estimated reservoir data and the P168 is already in the database if reservoir worksheets are not returned or the data is inconclusive.](#)

P168 THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

An alternate method is to:

Add the following information remark if the reservoir worksheet is added to the file:

R75 SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

Add the following information remark if the reservoir information is obtained from another source (i.e. Army Corps or Dam Safety Bureau)

R76 SEE THE DAM SAFETY BUREAU INFORMATION IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

Add the following information remark if the reservoir is estimated:

R56 THE CAPACITY, DAM HEIGHT, MAXIMUM DEPTH, AND SURFACE AREA HAVE BEEN ESTIMATED BY DNRC.

It is appropriate to use the R56 information remark in combination with either the R75 or R76 information remarks when DNRC estimates supplement information provided by the claimants. If the reservoir element of the claim is *Sustained* or *Water Court, Modified by*, add the estimates as a comment on the review abstract, using the documentation procedures described on pg. 28.

Claims with Surface Water Pits, Groundwater Pits, and Reservoirs with a Vol. = to or < 15 AF:

Change the Period of Diversion to year-round (01/01-12/31), remove the P164, [change the period of diversion element in the database to Modified by Rule](#), and add the following information remark to the claim:

P162 THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.

All Other non-reservoir, non-pit claims including natural lakes:

Check to ensure that the Period of Diversion matches the Period of Use and has the following information remark in the database:

P164 STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

For claims with Period of Use issue remarks:

Add the following Period of Diversion issue remark:

P166 THE PERIOD OF DIVERSION MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF THE PERIOD OF USE ISSUE.

For claims with existing Period of Diversion remarks:

The *Second Amended Period of Diversion – Statewide* on pg. 2, states that the order does not apply to existing period of diversion remarks in one-decree basins decreed prior to October 2008, such as the P161 below.

P161 WHEN THIS CLAIM WAS ORIGINALLY DECREED, THE PERIOD OF DIVERSION WAS NOT INCLUDED AS AN ELEMENT OF THE CLAIM. IN 2008, THE PERIOD OF DIVERSION ELEMENT WAS ADDED TO ALL CLAIM ABSTRACTS. IT IS NOT CERTAIN IF THE PERIOD OF DIVERSION DATES ADDED TO THIS CLAIM ACCURATELY REFLECT THE HISTORICAL PERIOD OF DIVERSION. MORE INFORMATION IS REQUIRED.

These instructions apply to basins with preliminary decrees only and not to reexamination basins. The P161 should be removed and replaced with the correct remarks for a claims category, as detailed in the instructions above, unless the period of diversion is *Sustained*. **If the period of diversion is Sustained, leave the P161 on the claim!**

IN THE WATER COURT OF THE STATE OF MONTANA

SECOND AMENDED ORDER ON PERIOD OF DIVERSION - STATEWIDE

On December 11, 2008 this Court issued a statewide Order providing instructions to the Department of Natural Resources and Conservation (DNRC) on examination of period of diversion. The DNRC was instructed to comply with the provisions of Exhibit A, attached to that Order. That Order provided that after a period of implementation, the Water Rights Adjudication Bureau Chief would advise if Exhibit A required refinement. DNRC has suggested changes to its examination process. Accordingly, this Order revises Exhibit A and supersedes the Amended Order on Period of Diversion-Statewide issued December 11, 2008.

The DNRC prepares a summary report of each claimed water right including, where appropriate, a period of diversion. Rules 5(a) and 5(a)(3)(vi), W.R.C.E.R.

Period of diversion is the "period in a calendar year when water is diverted, impounded, or withdrawn from the source." Rule 2(a)(50), W.R.C.E.R.

Period of use is the "period in a calendar year when water is used for a specified beneficial use." Rule 2(a)(51), W.R.C.E.R.

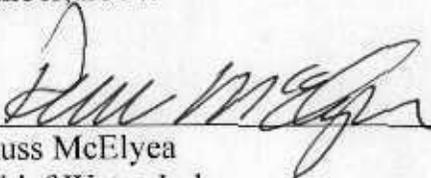
After consulting with the DNRC, the Court concludes it is appropriate to simplify the process of identifying a period of diversion on all water right claim abstracts.

IT IS HEREBY ORDERED:

1. The DNRC, during its claims examination process, shall examine all existing water right claims to determine the inclusive period of diversion dates for each claim; and, when necessary, the DNRC shall contact the claimant for further information;

2. The DNRC shall examine the period of diversion in accordance with Amended Exhibit A;
3. The Water Court will adjudicate the period of diversion in accordance with Exhibit B;
4. This Amended Order supersedes the Court's December 11, 2008 Amended Order on Period of Diversion - Statewide and any similar directions provided to the DNRC between December 11, 2008 and the date of this Order.

DATED this 10th day of November, 2014.



Russ McElyea
Chief Water Judge

John Peterson, Bureau Chief
Water Rights Adjudication Bureau
PO Box 201602
Helena, Montana 59620-1602

**Amended Exhibit A
DNRC Period of Diversion Claim Examination**

Instructions to the DNRC:

Period of diversion dates shall be printed on all abstracts generated for existing water right claims. The DNRC shall program the database to automatically add a P164 information remark to the bottom of all abstracts generated for claims. The P164 remark will be similar to the following:

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

In basins decreed after September 2014:

The period of diversion dates for all claims involving surface and ground water pits and reservoirs shall be printed on all claim abstracts as follows:

1. For claims involving surface water pits and reservoirs with a claimed volume greater than 15.00 AF:
 - a. The DNRC shall contact the claimant to determine the period of diversion pursuant to Rule 10(b), W.R.C.E.R. DNRC shall notify claimants that if they do not respond to the DNRC's enquiry, the DNRC will add a period of diversion to their claim that matches the period of use.
 - b. If the claimant identifies the period of diversion, the DNRC shall add the period of diversion to the abstract and remove the P164 information remark from the abstract.
 - c. If the claimant contact is inconclusive or the period of diversion dates are not identified, the DNRC shall add a period of diversion to the claim that matches the period of use, add a P160A issue remark to the claim, and remove the P164 information remark from the abstract.
 - d. The P160A issue remark will be similar to the following:

**THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR
THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH
THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO PERIOD OF
DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED
AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE
REMOVED FROM THIS CLAIM.**

2. For claims involving groundwater pits with any volume, and surface or ground water pits and reservoirs with a claimed volume of 15.00 AF or less:

- a. The period of diversion shall be year round, a P162 information remark shall be added to the abstract, and the P164 information remark removed from the abstract.
- b. The P162 information remark will be similar to the following:

THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.

3. For all other claims, including non-reservoir claims and natural lakes, the period of diversion dates shall be the same as the period of use.
4. For claims where the DNRC has placed any period of use issue remarks on an abstract, the DNRC shall also add a period of diversion issue remark similar to the following:

THE PERIOD OF DIVERSION MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF THE PERIOD OF USE ISSUE.

5. P161 issue remarks shall not be placed on claim abstracts in basins decreed after October 2008.

In basins decreed prior to October 2008:

Claims in basins decreed prior to October 2008 were handled in the following manner. This Order **does not** apply retroactively to those claims.

1. Period of diversion dates were printed on all previously decreed basin abstracts.
2. A P161 issue remark was added to the bottom of all abstracts except:
 - a. Non-reservoir claims where period of diversion was equal to period of use;
 - b. Onstream reservoir claims where period of diversion was equal to period of use and was from January 1 to December 31;
 - c. Reservoir claims in basins 41D, 41O, 41QJ, 42B, 42C and 76FA.
3. The P161 issue remark is similar to the following:

WHEN THIS CLAIM WAS ORIGINALLY DECREED, THE PERIOD OF DIVERSION WAS NOT INCLUDED ON THE ABSTRACT OF THIS CLAIM. IN 2008, THE PERIOD OF DIVERSION WAS ADDED. IT IS NOT CERTAIN IF THE PERIOD OF DIVERSION DATES ON THIS CLAIM ACCURATELY REFLECT THE HISTORICAL PERIOD OF DIVERSION. MORE INFORMATION IS REQUIRED.

Exhibit B

Period of Diversion Adjudication

Water Court Procedures:

In basins decreed after October 2008 (42A, 43E, 43O, 43P, 41A, 40R, 40T, 40F, 40I, 40J, 40M, 41L, 41P, 41M, 41B, 76 LJ, 40B, 76 HA, 76L, 41J, 76F, 41Q, 41T, 40EJ, 41R, 42M, 43N):

1. During Summary Review, the Water Master will verify that period of diversion dates and appropriate information and issue remarks appear on all abstracts.
2. During adjudication, the Water Master will resolve all P160 issue remarks.

In one decree basins (41O, 41D, 41QJ, 76FA, 42B, 42C, 43Q, 42KJ, 76HF, 40Q, 40S, 40H, 38H, 39H, 40P, 42I, 42J, 42L, 39G, 40D, 40G, 40N, 41N, 42K, 43QJ, 40O):

1. The Water Master will resolve P161 issue remarks when resolving objections, issue remarks, or when other reasons bring the claim to the Court's attention.

In two decree basins (41F, 41S, 41U, 43BV, 76B, 76C, 76D, 76E, 76GJ, 76I, 76J, 76K, 76M, 76N, 39E, 39F, 39FJ, 40A, 40E, 40L, 41E, 41H, 41K, 43B, 43BJ, 43C, 76G, 43A, 40K, 41G, 40C, 41C, 76HB, 43D, 76HE, 41I):

1. The Water Master will resolve P161 issue remarks when the second decree is issued or, if appropriate, while resolving objections, issue remarks, or when other reasons bring the claim to the Court's attention.

When making claimant contact, the Water Master may use the questionnaire provided in Exhibit C.

Exhibit C

PERIOD OF DIVERSION

The Period of Diversion is the period in the calendar year when water is diverted into a reservoir (off stream) or impounded by a reservoir (on stream). It is distinct from the Period of Use which is the period in the calendar year when water is put to a beneficial use. The Period of Diversion and Period of Use may be the same, they may overlap, or they may be completely different. The Period of Diversion claimed must reflect the use of this claim prior to July 1, 1973.

I/we hereby request the Period of Diversion listed below for water right claim _____.

The Period of Diversion for this claim is January 1 to December 31.

The Period of Diversion for this claim is the same as the Period of Use that appeared on the Abstract of Water Right Claim in the Water Court's most recent Decree of this claim.

Other (explain) _____

Signature Date

Signature Date

Signature Date

Signature Date

**THIS FORM MUST BE SIGNED BY ALL RECORD CLAIM OWNERS AND RETURNED TO THE MONTANA WATER COURT
PO Box 1389
Bozeman, MT 59711-1389**

Reexamination Standards and Indexes: Fish and Wildlife, Wildlife and Recreation Claims

Overview and Process:

As a part of the Water Court's Reexamination Order dated December 14, 2012, the Court ordered the reexamination of the flow rate and volume elements for all Fish and Wildlife, Wildlife and Recreation claims. The subsequent order regarding Fish and Wildlife, Wildlife and Recreation claims, dated April 17, 2013, sets the standard for the flow rate and volume elements of these claims. This memorandum summarizes the process of examining the flow rates and volumes for claims with a purpose of Fish and Wildlife, Wildlife and Recreation, as directed by the order. Please refer to the supplemental order issued April 17, 2013 if additional clarification is needed.

Category 1. Claims Diverted without a Reservoir. Rule 29(b)(1).

How to Examine Flow Rate: If the capacity of the diversion and conveyance system cannot be confirmed or there is no information regarding capacity of the diversion and conveyance system in the claim file, add the following issue remark:

F80 THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

If information supporting the flow rate exists in the claim file and supports the flow rate, leave the flow rate unchanged and unremarked. If information supporting the claimed flow rate is received from the claimant, remove the above issue remark from the claim.

How to Examine the Volume: the volume guideline is what is "reasonable and customary" for a specific purpose. If information exists in the file showing that the volume is "reasonable and customary", leave the volume unchanged and unremarked. Add the following issue remark if the file lacks information supporting the volume:

V150 THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Under Rule 29(g)(ii), the flow rate or volume of Filed and Use rights can be reduced with the presence of supporting documentation. This does not apply to claims with a Decreed historical type of right. If the flow rate or volume is reduced, mark the element as 'Rule, Modified By' in the data base and add the appropriate information remarks to the database:

F32 THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO THE GUIDELINE OF 99.00 GPM. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

V15 THE VOLUME OF THIS CLAIM HAS BEEN REDUCED TO THE GUIDELINE OF 104.00 ACRE-FEET PER YEAR. THE VOLUME MAY BE CONTESTED BY PROPER OBJECTION.

Category 2. Claims Diverted with an On-stream Reservoir. Rule 29(c).

How to Examine Flow Rate: no flow rate will be decreed for all Fish and Wildlife, Wildlife and Recreation claims from an on-stream Reservoir. Ensure that the means of diversion is a dam and run Standards in the water rights database. Standards will remove the flow rate and add the following information remark:

FF007 A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

How to Examine Volume: when the volume is 15 acre-feet or less, leave as claimed and do not remark. When the volume is greater than 15 acre-feet, the volume guideline is storage capacity plus the estimate of evaporation. Leave the volume unchanged and unremarked if it is less than or equal to the guideline. See the DNRC Water Rights Claim Examination Manual Exhibits for reservoir evaporation estimate. Add the following issue remark to claims where the volume exceeds the volume guideline:

V155 CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Category 3. Claims Diverted with Off-stream Reservoirs and Off-stream Man-made Pits. Rule 29(c).

How to Examine Flow Rate: the flow rate examination of off-stream reservoirs and man-made pits is the same process as Category 1 above. Follow the instructions for Category 1.

How to Examine Volume: the volume examination of off-stream reservoirs and man-made pits is the same process as Category 2 above. Follow the instructions for Category 2.

Category 4. Instream Flow Claims (includes undeveloped springs):

How to Examine Flow Rate and Volume: The guideline for the flow rate and volume for instream claims is the minimum amount necessary to sustain the specific purpose. In the absence of evidence substantiating flow rate and volume, leave the flow rate and volume as claimed and add the following issue remark:

V145 A GUIDELINE FOR THE FLOW RATE AND VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND FLOW RATE AND VOLUME REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE AND VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE AND VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

If information substantiating the flow rate and volume exists in the claim file or is obtained from the claimant, leave the flow rate and volume unchanged and unremarked.

Category 5. Inlake Claims:

The examination of the flow rates and volumes of inlake claims is the same process as Category 2, above. Follow the instructions under Category 2.

Category 6. Pothole Lakes:

How to Examine Flow Rate: Not covered by rule; a flow rate for claims in this category will not be decreed.

How to Examine Volume: Since Pothole lake claims are not covered by Rule, the flow rate and volume will be decreed as claimed and no examination remarks apply. Leave the flow rate and volume unchanged and unremarked.

Sustained Null Flow Rates and Volumes:

Situations may be encountered where a sustained flow rate and or volume of *null* needs to be reinstated per instructions of the fish and wildlife order. Since a sustained flow rate or volume field is not editable in the database, add the following issue remark to the claim:

V147 PURSUANT TO WATER COURT ORDER, IF NO OBJECTIONS TO THIS CLAIM ARE FILED, THE CLAIMED FLOW RATE OF 000.00 GPM OR CFS/VOLUME OF 000.00 ACRE-FEET/FLOW RATE OF 000.00 GPM OR CFS AND VOLUME OF 000.00 ACRE-FEET WILL BE REINSTATED.

Occasionally, the claimed flow rate or volume, if reinstated, would be excessive for the diversion or storage capacity. An example would be a 500 GPM flow out of a 1 inch diameter pipe. In this situation, add the following issue remark instead of the remark above:

V146 THE CLAIMED FLOW RATE OF 000.00 GPM OR CFS/VOLUME OF 000.00 ACRE-FEET/FLOW RATE OF 000.00 GPM OR CFS AND VOLUME OF 000.00 ACRE-FEET APPEARS TO BE EXCESSIVE FOR THE CLAIMED MEANS OF DIVERSION/PURPOSE.

MONTANA WATER COURT

**SUPPLEMENTAL ORDER REGARDING FISH AND WILDLIFE, WILDLIFE,
AND RECREATION CLAIMS**

-STATEWIDE 2013-

The Water Court has received a number of inquiries from Department of Natural Resources (DNRC) personnel and Water Masters regarding examination and post-decree handling of fish and wildlife, wildlife, and recreation claims. The Water Court's December 14, 2012 *Order Addressing Reexamination* addressed some of the issues pertaining to these claims.

The purpose of this *Supplemental Order* is to provide additional guidance regarding examination and post-decree treatment of fish and wildlife, wildlife, and recreation claims. This *Supplemental Order* differs from the December 14, 2012 *Order Addressing Reexamination*. To eliminate any confusion, this *Supplemental Order* supersedes Part IV of the December 14, 2012 *Order Addressing Reexamination*.

Listed below are common variations of fish and wildlife, wildlife, and recreational claims. Some variations of these claims are covered by existing claims examination rules, while some are not. Where a rule covers a particular right and application of the rule is clear, apply the rule. Where a rule is unclear, or it does not appear to fit the claim under review, follow this *Supplemental Order*.

There will inevitably be instances where application of a rule is uncertain, and this *Supplemental Order* does not provide sufficient guidance. In these circumstances, remember that a claim is *prima facie* evidence of its content and historical beneficial use

is the measure of a water right. Apply common sense and good judgment based on your experience.

CATEGORY I. Claims diverted without a Reservoir. Rule 29(b)(1).

Examples of types of diversions falling within this category of claim may include: spring boxes, developed springs, diversion dams, headgates, wells, pumped diversions, gravity flow or other pipelines, any right using a man-made diversion resulting in a measurable flow rate, including wildlife drinking directly from any of these systems.

- How to Examine Flow Rate:

Under Rule 29(b)(1)(i), the flow rate guideline is the capacity of the diversion and conveyance system. If the capacity of the diversion and conveyance system cannot be determined, then leave flow rate as claimed and issue remark as follows:

F80 THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

If you have information on the actual capacity of the diversion and conveyance system and the flow rate is equal to or lower than the actual capacity, then leave the claimed flow rate unchanged and unremarked.

If you have information on the capacity of the diversion and conveyance system and the claimed flow rate exceeds this capacity, then consult the statement of claim or information obtained from claimant contact to determine if the claimed flow rate is justified. If it is justified, then leave the flow rate unchanged and unremarked.

If the flow rate cannot be justified after seeking additional information, reduce flow rate as required by Rule 29(g). This reduction should only occur for filed and use rights, or decreed rights with no decreed flow rate. If reduced, attach the proper flow rate remark per Rule 29(g)(2)(ii).

- How to Examine Volume:

Under Rule 29(b)(1)(ii), the volume guideline is defined as what is “reasonable and customary” for a specific purpose. Volume should remain as claimed in the absence of substantial information that claimed volume is unreasonable. If volume is left as claimed, use the following remark:

V150 THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Do not use this remark if you have otherwise determined the claimed volume is within the “reasonable and customary” guideline.

CATEGORY II. Claims Diverted with an On-stream Reservoir. Rule 29(c).

- How to Examine Flow Rate:

Under Rule 29(c)(1), flow rates for these rights are not decreed. Add a remark stating no flow rate decreed.

FF007: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

- How to Examine Volume:

Proceed in accordance with Rule 29(c)(1)(ii)(A) and (B).

When volume is less than 15 acre-feet, leave as claimed and do not remark.

When the claimed volume exceeds 15 acre-feet, the volume guideline is maximum storage capacity plus the estimate of evaporation. Leave the volume unchanged and unremarked if it is less than or equal to the guideline.

If volume exceeds this guideline for non-decreed rights, or decreed rights without a decreed volume, then consult the statement of claim or information obtained from claimant contact to determine if the claimed volume is justified. If it is justified, then leave the volume unchanged and unremarked.

If the volume cannot be justified after seeking additional information, then remark as follows:

V155 CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Do not remark volume for decreed rights with a decreed volume.

CATEGORY III. Claims Diverted with an Off-stream Reservoir. Rule 29(c). (Also includes off-stream manmade pits).

- How to Examine Flow Rate:

Under Rule 29(c)(1)(i), the flow rate guideline is the capacity of the diversion and conveyance system.

If you have information on the actual capacity of the diversion and conveyance system and the flow rate is equal to or lower than the actual capacity, then leave the claimed flow rate unchanged and unremarked.

If you have information on the capacity of the diversion and conveyance system and the claimed flow rate exceeds this capacity, then consult the statement of claim or information obtained from claimant contact to determine if the claimed flow rate is justified. If it is justified, then leave the flow rate unchanged and unremarked.

If the flow rate cannot be justified after seeking additional information, reduce flow rate as required by Rule 29(g). This reduction should occur only for filed and use rights, and decreed rights with no decreed flow rate. If reduced, attach the proper flow rate remark per Rule 29(g)(2)(ii).

If there is no information concerning capacity of diversion and conveyance system, or the system is shared by more than one claimant, the flow rate guideline is that which is reasonable and customary for the specific purpose. Under these circumstances, flow rate should remain as claimed. If flow rate is left as claimed, use the following remark:

F80 THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

- How to Examine Volume:

Proceed in accordance with Rule 29(c)(1)(ii)(A) and (B).

When volume is less than 15 acre-feet, leave as claimed and do not remark.

When the claimed volume exceeds 15 acre-feet, the volume guideline is maximum storage capacity plus the estimate of evaporation. Leave the volume unchanged and unremarked if it is less than or equal to the guideline.

If volume exceeds the guideline for non-decreed rights, or decreed rights without a decreed volume, then consult the statement of claim or information obtained from claimant contact to determine if the claimed volume is justified. If it is justified, then leave the volume unchanged and unremarked.

If the volume cannot be justified after seeking additional information, then remark as follows:

V155 CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Do not remark volume for decreed rights with a decreed volume.

CATEGORY IV. Instream Flow Claims. Rule 29(d). (Also includes undeveloped springs).

- How to Examine Flow Rate and Volume:

The guidelines in Rule 29(d) state that flow rate and volume are the minimum amounts necessary to sustain the specific purpose.

Determining the minimum amount necessary to sustain a specific purpose can be subjective. In the absence of substantial evidence that claimed flow rate or volume departs from the guideline, flow rate and volume should remain as claimed. If flow rate and volume are left as claimed, use the following issue remark:

V145 A GUIDELINE FOR THE FLOW RATE AND VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND FLOW RATE AND VOLUME REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE AND VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE AND VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Do not use this remark if you have otherwise determined that the claimed flow rate and or volume are correct.

CATEGORY V. Inlake Claims. Not Covered by Rule. Apply Rule 29(c).

- How to Examine Flow Rate:

These claims are not specifically covered by rule. Treat these claims the same as on-stream reservoir claims in CATEGORY II. Proceed by applying Rule 29(c)(1). Because these claims are instream, no flow rate will be decreed.

- How to Examine Volume:

These claims are not specifically covered by rule. Treat these claims the same as on-stream reservoir claims in CATEGORY II. Proceed in accordance with Rule 29(c)(1)(ii)(A) and (B).

CATEGORY VI. Pothole lakes. Not Covered by Rule.

This category generally covers impoundments without surface inflow and includes natural pits, manmade pits without surface inflow, and groundwater pits.

- How to Examine Flow Rate:

Not Covered by Rule. Potholes do not have a flow rate. No flow rate should be decreed for these claims.

- How to Examine Volume:

An Order issued by Judge Lessley on August 7, 1987 provides volume should be quantified as claimed on federal wildlife pothole lake claims. Volume for these rights is not otherwise covered by rule. Judge Lessley's August 7, 1987 Order is hereby expanded to include all wildlife pothole claims, not just wildlife pothole claims made by the United States. This means all wildlife pothole lake claims should have volume decreed as claimed.

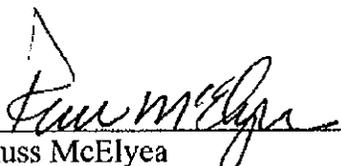
Application of Judge Lessley's 1985 and 1987 Orders.

As discussed in CATEGORY VI above, the Order issued by Judge Lessley on August 7, 1987 pertaining to federal claims for wildlife water rights in pothole lakes will remain in effect, and should continue to be applied.

Judge Lessley issued a related Order on June 17, 1985. It specifies that volumes will be established as claimed for federal wildlife claims for all lakes and reservoirs. The Water Right Claim Examination Rules cited above were adopted by the Montana Supreme Court after Judge Lessley's 1985 Order. In some instances, those Rules, and the provisions of this Supplemental Order, contradict Judge Lessley's June 17, 1985 Order. Accordingly, Judge Lessley's June 17, 1985 Order is partially superseded and no longer applies to federal fish and wildlife, wildlife, and recreation claims with a lake or reservoir.

IT IS SO ORDERED.

DATED this 17 day of April, 2013.



Russ McElyea
Associate Water Judge

John Peterson
Adjudication Program Manager
Montana DNRC
PO Box 201602
Helena MT 59620-1602

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Reexamination Standards and Indexes: BLM Reserved Claims ExaminationOverview:

The Water Court has directed us to apply the 2009 BLM order to the reexamination process. The order directs the DNRC to completely examine all United States Bureau of Land Management (BLM) claims in accordance with the water right claim examination rules outlined in the DNRC water right claims examination manual.

Follow the instructions outlined in the claims examination manual for each BLM reserved claim under the chapter corresponding to the purpose claimed. The 2009 BLM order is included in this chapter. The spreadsheet attached at the end of this section lists the BLM claims needing examination in each reexamination basin. The spreadsheet may not be an exhaustive list. The reexamination basin supervisor should run a check for all BLM reserved claims prior to performing this work.

Page 106 of the claims examination manual contains some general information regarding BLM claims.

Remarks:

The 2009 BLM order directs the application of particular remarks as follows:

Add the following issue remark to the abstract of BLM claims claiming a reserved right under Public Water Reserve No. 107 (generally identified by a claimed priority date of April 17, 1926):

P720 THIS CLAIM IS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

Add the following issue remark to the abstract of BLM claims claiming a priority date other than April 17, 1926:

P734 THIS CLAIM WAS FILED AS A RESERVED WATER RIGHT. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

BLM Reserved Claims in Reexamination Basins:

39E 60816 00	40K 70378 00	40K 70510 00
40E 64908 00	40K 70379 00	40K 70526 00
40E 65200 00	40K 70382 00	40K 70528 00
40E 65202 00	40K 70383 00	40K 70530 00
40K 69659 00	40K 70387 00	40K 70533 00
40K 69664 00	40K 70389 00	40K 70578 00
40K 69667 00	40K 70393 00	40K 70579 00
40K 69670 00	40K 70395 00	40K 70582 00
40K 69674 00	40K 70396 00	40K 70589 00
40K 69677 00	40K 70397 00	40K 70590 00
40K 69688 00	40K 70399 00	40K 70592 00
40K 69690 00	40K 70401 00	
40K 69692 00	40K 70402 00	
40K 69694 00	40K 70403 00	
40K 69821 00	40K 70406 00	
40K 69823 00	40K 70408 00	
40K 69825 00	40K 70409 00	
40K 69827 00	40K 70416 00	
40K 69830 00	40K 70418 00	
40K 69832 00	40K 70419 00	
40K 69834 00	40K 70421 00	
40K 69836 00	40K 70422 00	
40K 69838 00	40K 70426 00	
40K 69840 00	40K 70428 00	
40K 69842 00	40K 70432 00	
40K 69844 00	40K 70434 00	
40K 69846 00	40K 70436 00	
40K 69847 00	40K 70437 00	
40K 69849 00	40K 70439 00	
40K 69851 00	40K 70441 00	
40K 69853 00	40K 70446 00	
40K 69855 00	40K 70451 00	
40K 69857 00	40K 70453 00	
40K 69859 00	40K 70455 00	
40K 70327 00	40K 70457 00	
40K 70330 00	40K 70461 00	
40K 70332 00	40K 70462 00	
40K 70334 00	40K 70464 00	
40K 70336 00	40K 70479 00	
40K 70337 00	40K 70484 00	
40K 70341 00	40K 70486 00	
40K 70342 00	40K 70487 00	
40K 70344 00	40K 70488 00	
40K 70346 00	40K 70490 00	
40K 70347 00	40K 70492 00	
40K 70352 00	40K 70495 00	
40K 70359 00	40K 70496 00	
40K 70361 00	40K 70499 00	
40K 70364 00	40K 70501 00	
40K 70372 00	40K 70502 00	
40K 70374 00	40K 70507 00	

FILED

SEP 23 2009

Montana Water Court

MONTANA WATER COURT

**ORDER ON DNRC EXAMINATION OF BLM
RESERVED WATER RIGHT CLAIMS
- STATEWIDE 2009 -**

On September 8, 2005, this Court issued a consolidated order directing the Department of Natural Resources and Conservation (DNRC) to examine all United States Bureau of Land Management (BLM) water right claims in accordance with the Water Right Claim Examination Rules. The order also directed DNRC to place a specific issue remark on reserved water right claims filed by the BLM based upon Public Water Reserve No. 107. The order was issued for basins 40B, 40R, 41A, 41B, 41D, 41J, 41M, 41P, 41QJ, 42C, 76F, and 76HA. The order should apply statewide.

Any BLM claim asserting a reserved water right will be examined in accordance with this order. Accordingly, it is

ORDERED that the DNRC shall examine all BLM claims in accordance with the current Water Right Claim Examination Rules. Basically, the claims will be examined as if they were filed under state law.

ORDERED that if any BLM claims assert a reserved water right under Public Water Reserve No. 107 (generally identified by a claimed priority date of April 17, 1926), the DNRC shall also add the following or similar issue remark to the claim abstract:

P720 THIS CLAIM IS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

ORDERED that if any BLM claims asserting a reserved water right under Public Water Reserve No. 107 are transferred to a private entity, the DNRC shall examine the transferred claim in accordance with the Water Right Claim Examination Rules, as amended, and add the following or similar issue remark to the abstract:

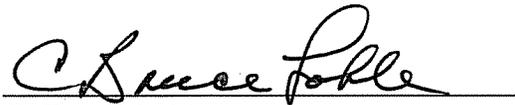
P730 THIS CLAIM WAS ORIGINALLY FILED AS A RESERVED RIGHT BY THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT, AND WAS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. THIS CLAIM WAS SUBSEQUENTLY TRANSFERRED TO A PRIVATE ENTITY. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION, OR WHETHER THIS CLAIM MAY BE TRANSFERRED TO A PRIVATE ENTITY AND RETAIN THE ELEMENTS ASSOCIATED WITH A RESERVED RIGHT, OR WHETHER THE ELEMENTS OF THIS CLAIM MUST BE MODIFIED TO REFLECT ITS HISTORICAL BENEFICIAL USE.

ORDERED that this Order supersedes any previous order on Public Water Reserve No. 107.

ORDERED that if any BLM claim asserts a reserved water right with a priority date other than April 17, 1926, the DNRC shall add the following or similar issue remark to the abstract:

P734 THIS CLAIM WAS FILED AS A RESERVED WATER RIGHT. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

DATED this 23 day of September, 2009.



C. Bruce Loble
Chief Water Judge

Jim Gilman, Adjudication Bureau Chief
Montana DNRC - WRD
PO Box 201602
Helena, MT 59620-1602

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Reexamination Standards and Indexes: Remarks

Overview:

As a part of the reexamination process, the DNRC will perform a remarks summary index on each reexamination basin, as instructed by the court in the reexamination order. The work in this index includes: standardizing old legacy remarks, changing free-text remarks to formatted remarks, transferring database data stored in remarks to the appropriate fields in the database (such as supplemental rights stored in a remark instead of in the related rights tab), removing ‘junk’ remarks, such as: “*This claim is in Trudy’s desk*”.

See the Summary Preparation Instructions in the Reexamination folder of the Adjudication shared drive for specific remark index review instructions. Address questions regarding remarks that are related to specific scenarios to the basin supervisor.

Reexamination Remarks:

As discussed in the introduction of this guidebook, the P88 was created per the re-examination order for the purpose of noticing claimants of DNRC changes related to review of the point of diversion, source, means of diversion, and ditch name elements of a water right. If any changes are made to the point of diversion including legal land description, source, ditch name, addition of secondary POD a P88 must be added to the re-examination version. The remark reads:

P88 ELEMENT(S) WAS/WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

For *Fish and Wildlife, Wildlife and Recreation* claims, the following issue remarks were created:

V146 THE CLAIMED FLOW RATE OF 000.00 GPM OR CFS/VOLUME OF 000.00 ACRE- FEET/FLOW RATE OF 000.00 GPM OR CFS AND VOLUME OF 000.00 ACRE- FEET APPEARS TO BE EXCESSIVE FOR THE CLAIMED MEANS OF DIVERSION/PURPOSE.

V147 PURSUANT TO WATER COURT ORDER, IF NO OBJECTIONS TO THIS CLAIM ARE FILED, THE CLAIMED FLOW RATE OF 000.00 GPM OR CFS/VOLUME OF 000.00 ACRE- FEET/FLOW RATE OF 000.00 GPM OR CFS AND VOLUME OF 000.00 ACRE- FEET WILL BE REINSTATED.

See the section on *Fish and Wildlife, Wildlife and Recreation* for specific directions on when to use these remarks.

Commissioner Remarks:

Additionally, a new category of remark was created; the CM (Commissioner type remark). The purpose of the CM remark is to convert information remarks that have direct impact to water distribution so that enforcement staff is aware of water distribution situations. CM remarks are broken up into the following categories: CMGI (prints at the bottom of the abstract for general commissioner information), CMDI (prints under *Point of Diversion* on the abstract); CMFI (prints under *Flow Rate*); CMVI (prints under *Volume*).

Remark placement: the purpose of the different CM categories is to retain the remark's location on the abstract. Generate a review abstract of water right to view which element a remark will print under. Additional commissioner remark categories may be created in the future at the request of the court to accommodate additional abstract element positions for the CM category remarks.

It is not necessary to convert standard remarks like the C121 conveyance remark below to CM type remarks as the enforcement administrator will query for this type of remark.

C121 WATER DIVERTED FROM DOE CREEK IS CONVEYED TO MAD DOE CREEK WHICH IS USED AS A NATURAL CARRIER TO CONVEY WATER TO THE PLACE OF USE.

P126 THIS RIGHT IS LIMITED TO HIGH OR FLOOD WATERS OF DOE CREEK.

See the following examples of CM remarks below:

Before: PR1Z AS SPECIFIED BY THE PARTIES FEBRUARY 13, 1991 STIPULATION, ALTHOUGH WATER RIGHT W128446-00 HAS THE SAME PRIORITY DATE AS THE FOLLOWING WATER RIGHTS, IT IS JUNIOR TO ALL OF THESE RIGHTS: W103430-00, W107762-00, W107765-00 AND W120946-00

After: CMGI AS SPECIFIED BY THE PARTIES FEBRUARY 13, 1991 STIPULATION, ALTHOUGH WATER RIGHT 128446-00 HAS THE SAME PRIORITY DATE AS THE FOLLOWING WATER RIGHTS, IT IS JUNIOR TO ALL OF THESE RIGHTS: 76GJ 103430-00, 76GJ 107762-00, 76GJ 107765-00 AND 76GJ 120946-00

Before: PE1Z CASE NO. 4445 GRANITE COUNTY DECREES THAT USE OF ALL WATER FROM THIS SOURCE ALTERNATES BETWEEN THIS RIGHT AND W107580-00 EVERY TWO DAYS.

After: CMGI CASE NO. 4445 GRANITE COUNTY DECREES THAT USE OF ALL WATER FROM THIS SOURCE ALTERNATES BETWEEN THIS RIGHT AND 76GJ 107580-00 EVERY TWO DAYS.

Converting Information Remarks to Data:

At the time of the initial decree for the reexamination basins many of the data features now displayed could not accurately be displayed at the time. These types of remarks should be converted when encountered. Examples of information remarks that contain information that can now be displayed in the current data base but could not at the time of the first decree are described below.

THE ACTUAL PERIOD OF USE FOR THIS WATER RIGHT IS FROM APRIL 15 TO JUNE 16. COMPUTER PROGRAM LIMITATIONS DO NOT ALLOW THE CORRECT PERIOD OF USE TO BE PRINTED ABOVE. *Update period of diversion element in database.*

ACRES LOT BLK QTR SEC TWP RGE COUNTY 001 40.00 SWNW 26 10N 13E GRANITE 002 40.00 SWSW 26 10N 13E GRANITE 003 40.00 SESW 26 10N 13E GRANITE 004 40.00 NESW 26 10N 13E GRANITE 005 40.00 NWSW 26 10N 13E GRANITE 006 40.00 NENE 27 10N 13E GRANITE 007 40.00 SENE 27 10N 13E GRANITE 008 16.00 NWNE 27 10N 13E

GRANITE 009 16.00 SWNE 27 10N 13E GRANITE. (Update period of use element in database.

CLAIM RECEIVED BY MAIL, POSTMARKED 07/01/96: Update historic tab and ensure proper late claim remark added.

SPRING

BUCKET

WASTE AND SEEPAGE

(Update the above in point of diversion tab in database)

Removing Unnecessary Information Remarks:

At the time of verification, information remarks were used for many different purposes. As a result, information remarks may not always be relevant to the adjudication process. If remarks are encountered that are irrelevant to the elements of a water right, they should be removed. This only applies to information remarks and not issue remarks. Only remove issue remarks as a part of a reexamination review such as the decree exceeded review where prior incorrect decree exceeded issue remarks exist on a claim. Some examples of irrelevant issue remarks are identified below:

“WATER RIGHT NO. ASSIGNED TO MISSOULA ON 07/16/96”.

“WATER RIGHT LOCATED AT HEAD SHED”.

“FILE IS IN HOLDING TANK IN TRUDIES OFFICE 12/05/00.”

“PRELIMINARY DECREE.”

Adding Missing Remarks:

Occasionally, you will encounter claims in the remarks index that contain claim number references. Check that all claim numbers referenced in the remark also contain the same remark.

For example, the following remark shows up in all of the claims referenced except for claim 43D 29361-00:

O60 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 43D 23158-00, 43D 23159-00, 43D 29361-00, 43D 29362-00, 43D 29363-00, 43D 29364-00, 43D 29365-00, 43D 29366-00.

In this example, it is appropriate to add the remark to claim 43D 29361-00, at the request and permission of the court. This procedure should be followed for all remarks with claim lists.

Converting Issue Remarks to Information:

During the reexamination of basin 76GJ, multiple issue remarks were identified that state the following:

THIS USE MAY CONSUME SOME WATER, BUT UNTIL THAT AMOUNT IS QUANTIFIED, IT IS PRESUMED THAT THE USE IS NON-CONSUMPTIVE.

Upon seeing these remarks, the court requested that the DNRC convert these to information remarks as they did not define the text of these remarks to be a factual or legal issue. Moving forward in basin reexamination, **we will be converting issue remarks with text that is identical or similar in meaning to the non-consumptive remark above to information remarks.** Check with your supervisor if you come across a variation of the remark above that may contain a factual or legal issue.

In General, the DNRC will not analyze issue remarks for conversion to information, except for the remark listed above. We will only convert additional issues to information upon request of the court.

Senate Bill 355 Exempt Claims

Overview and Process:

In adjudication, exempt claims are water rights that have been exempted by the state legislature from being filed with the DNRC. However, the state legislature passed Senate Bill 355 in 2013, to provide a process for Montana land owners to file exempt claims with the DNRC. Exempt claims will be examined by the DNRC according to the rules and guidelines specified in claims examination manual as well as specific instructions for processing Senate Bill 355 exempt claims in the SB 355 information folder of the adjudication shared drive.

In **reexamination basins**, SB 355 claims can be processed as soon as they are received. Exempt claims **outside of reexamination basins** will be processed based on the objection phase of that basin or if a motion to expedite is filed. Exempt filings that are not time specific will be examined as time allows. Processing instructions are included later in this section.

Senate Bill 355 exempt claim data will also be included in the reexamination datasets of each individual review, as these claims will be included in upcoming reexamination basin decrees. Senate Bill 355 exempt claims should be modified and reexamined according to the standards outlined in each for each individual reexamination process as outlined in this guidebook. A certain amount of caution should be exercised when making modifications to exempt claims since they may have already received an examination. Contacting the adjudication staff person that examined the claim may be necessary in some circumstances prior to making modifications. The exempt claims process is subject to change in future legislation.

Definition of an Exempt Claim under MCA Statute:

85-2-222. Exemptions -- petition for determination. (1) Claims for existing rights for livestock and individual uses as opposed to municipal domestic uses based upon instream flow or ground water sources and claims for rights in the Powder River basin included in a declaration filed pursuant to the order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, or under sections 3 and 4 of Chapter 485, Laws of 1975, are exempt from the filing requirements of [85-2-221\(1\)](#).

Municipal: Any use associated with a municipal water system which may include individual right for a cemetery, parks, golf course, etc. (Pg. 260, *DNRC Water Right Claim Examination Manual*). According to the Meriam-Webster Dictionary, a *Municipality* is a primarily urban political unit having corporate status and usually powers of self-government. Therefore a ranch with more than one dwelling would qualify as an exempt use because the use of water is individual as opposed to municipal (public entity).

FAQ's on What Constitutes an Exempt Use:

Is groundwater use for single-domestic use for 50 GPM exempt?

Answer: yes, the statute does not specify or limit flow rates.

Is a Ranch with multiple dwellings exempt?

Answer: yes, this would still be considered a single as opposed to municipal domestic use.

How do we define municipal domestic uses?

Answer: domestic use of water including lawn and garden irrigation distributed by a public/political entity (towns, counties, etc.)

Do multiple dwellings on the same well, such as a ranch with more than one dwelling, qualify as municipal domestic?

Answer: no, the use of water is individual as opposed to municipal (public entity).

Is domestic use for a mobile home park exempt?

Answer: no, the manual defines mobile home park use as *Commercial* which is not an *individual* use.

How do we find groundwater filings that aren't exempt?

Answer: filed by a municipality or for a commercial use. Flow rates and volumes may be higher but may not necessarily be clear indicators of non-exempt filings.

If a ranch has two sources of water for domestic purposes, can one exempt form be filed?

Answer: no, each source of water should have an individual filing.

Are groundwater pits for stock or domestic use exempt?

Answer: yes, Exempt statute provides for domestic and stock use for groundwater and does not exclude pits as a means of diversion. Groundwater filing provisions apply for priority dates between 1962 and 1973.

SB-355 Key Points

- (1) If an exempt filing for ground water is filed between 1962 and 1973 and no GW form was filed at the Court House, the priority date will be the date it is received at the DNRC office.
- (2) If an issue remark is added and a review abstract printed, the issue remark can't be resolved by DNRC Staff until ordered by Court.
- (3) If a claim does not meet the definition of exempt right it should not be accepted. These types of claims should be returned if received by mail or not accepted in person at the Regional Office.
- (4) Exempt filings within reexamination basins must have the petition sent to the Court but examination can begin immediately.
- (5) The E1 issue remark is added to exempt claims filed after the decree issuance, but before the actual close of the objection period so public notice can be achieved through the basin objection list. Place the E1 issue remark on exempt claims upon initial entry into the database. The E1 reads:

E1 THIS CLAIM IS A S.B. 355 EXEMPT CLAIM FILING THAT DID NOT APPEAR IN THE BASIN 41B DECREE ISSUED 05/09/2013. ANY OBJECTIONS TO THIS CLAIM MUST BE FILED BY THE CLOSE OF THE NOTICE OF INTENT TO APPEAR PERIOD IN THIS BASIN.”

- (6) The E2 issue remark is added to exempt claims filed before the next decree issuance in a reexamination basin. Place the E2 issue remark on exempt claims upon initial entry into the database. The E2 reads:

E2 THIS EXEMPT CLAIM WAS FILED ON 01/02/2016. THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41B DECREE ISSUED 05/09/1993.

Outline of Processing Instructions from Court (this process is subject to change):

Claim file original documents should all remain in the claim file at all times. It is important to unite the original court order granting active status, and the filed stamped copy of the petition, with the claim file as fast as possible. Scanning of claim file contents should be accomplished at both the DNRC and Court’s convenience and should not occur until the Court’s Order Granting Petition is in the claim file. As the frequency of these filings increases, a proper and consistent handling process will become critical.

At this time, Section 85-2-222(5), MCA specifically bars the DNRC from resolving issue remarks on exempt claims filed through this process. It has been determined that generating a “Review Abstract” in the database initiates the statutory bar against issue remark resolution. Consult with your regional manager to determine proper claim file handling procedures for claims requiring expedited public notice per Section 85-2-233(6), MCA.

1. **One decree basins that have already been decreed. (e.g. 40B, 41J, 76F, etc.)**
 - a. Exempt claims in these basins require expedited handling. These claims should receive examination and (customer paid for) public notice within a reasonable time frame after initial claim filing.
 - i. DNRC and Water Court processing steps are as follows:
 1. DNRC collects all needed information from claimant to complete claim filing process.
 2. DNRC creates claim number record in the database.
 3. DNRC scans and emails the Court petition to the Water Court.
 4. The Court will docket the Petition.
 5. The Court will issue an Order granting active status in the adjudication and directing the DNRC to examine the claim per Section 85-2-243, MCA.
 6. The Court’s order will include a deadline for claim examination and the publishing of notice at the Claimant’s cost.
 7. The original order and file stamped petition(s) will be sent to the DNRC office where the claim file(s) are being kept.
 8. A copy of the Order will be mailed to the Claimant(s).

9. Send the claim file to scanning after the Order is received at your convenience.
 10. After claim examination and public notice have been accomplished, the Court will resolve any objections and issue remarks on the exempt claim. Only at this point will the claim be fully decreed and enforceable.
- ii. DNRC Claim File Handling Reminders
1. DNRC should keep the original claim filing at the regional office and begin examination as soon as practicable. Scan the claim file after the arrival of the Court's Order granting the petition.
 2. The Court's order will include a deadline for claim examination and the publishing of notice at the Claimant's cost. If the deadline is not met, the DNRC should send a short memo to the Court stating as much and the Court will take action up to and including termination of the claim.
- b. It has also been determined that claims filed after decree issuance, but before the actual close of the objection period, can be publicly noticed through the basin objection list. Allowing for this will require communication between the Court and DNRC regional office. Assuming the DNRC is able to complete claim examination by around the close of the objection period or shortly after the counter-objection period begins, the claims should be able to be included on the objection list.
- i. The steps followed are largely the same as other pre-one decree basins, but compressed given a looming deadline is present from the beginning.
 1. DNRC collects all needed information from claimant to complete claim filing process.
 2. DNRC creates claim number record in the database.
 3. DNRC scans and emails the Court petition to the Water Court.
 4. The Court will docket the Petition.
 5. The Court will issue an Order granting active status in the adjudication and directing the DNRC to examine the claim per Section 85-2-243, MCA.
 6. Because of the timeliness issue, after consulting with the Court regarding time availability, the DNRC should begin examining immediately.
 7. Remember to put the E1 issue remarks on these claims to ensure they are on the objection list. **These are the only claims that require the E1 issue remark. The E1 only applies to claims in basins with an open notice period.**
 8. **The E2 should be used in this category in basins with a closed notice period.**
 9. The Court's order will set a rolling examination deadline based on the actual close of the basin wide objection period.

10. The original order and file stamped petition(s) will be sent to the DNRC office where the claim file(s) are being kept.
 11. A copy of the Order will be mailed to the Claimant(s).
 12. Send the claim file to scanning after the Order is received and the claim is fully examined.
 13. Only at this point will the claim be fully decreed and enforceable.
- ii. DNRC Claim File Handling Reminders
1. See Section 1(a)(ii) as it applies to basins with this status as well.
 2. The timely completion of claim examination will allow these claims to on the basin wide objection list, satisfying the notice requirements fully. In order to ensure the claim is on the objection list, the DNRC will add an all elements issue remark to provide notice to other water users of the claims existence. Objections and issue remarks will be resolved like any other timely filed claim in the basin.
 3. If the Claimant is not participating or some other delay gives rise to the exempt claim not being fully examined and prepared for timely decree, the DNRC should file a memo with the Court explaining why. The Court will issue an order directing the claimant to publish notice at his own cost per Section 85-2-233(6), MCA.
- 2. One decree basins not yet decreed. (e.g. 76LJ, 76L, 43P, etc.)**
- a. Exempt claims filed in these basins will be publicly noticed through the preliminary decree issuance, assuming the DNRC is able to complete claim examination within established deadlines.
 - i. DNRC and Water Court processing steps are as follows:
 1. DNRC collects all needed information from claimant to complete claim filing process.
 2. DNRC creates claim number record in the database.
 3. DNRC scans and emails the Court petition to the Water Court.
 4. The Court will docket the Petition.
 5. The Court will issue an Order granting active status in the adjudication and directing the DNRC to examine the claim per Section 85-2-243, MCA.
 6. The Court's order will NOT specify a deadline for claim examination, but will direct the claimant to work expediently with the DNRC to meet current DNRC deadlines for summary reports, etc.
 7. The original order and file stamped petition(s) will be sent to the DNRC office where the claim file(s) are being kept.
 8. A copy of the Order will be mailed to the Claimant(s).
 9. Send the claim file to scanning after the Order is received at your convenience.

10. After claim examination and the decree objection process have been accomplished, the Court will resolve any objections and issue remarks on the exempt claim. Only at this point will the claim be fully decreed and enforceable.
- ii. DNRC Claim File Handling Reminders
 1. See Section 1(a)(ii) as it applies to basins with this status as well.
 2. The timely completion of claim examination will allow these claims to participate in the typical decree issuance notice periods, satisfying the notice requirements fully. Objections and issue remarks will be resolved like any other timely filed claim in the basin.
 3. The DNRC has established deadlines for completion of summary reports and decree issuance in these basins. If the Claimant is not participating or some other delay gives rise to the exempt claim not being fully examined and prepared for timely decree, the DNRC should file a memo with the Court explaining why. The Court will respond accordingly.
3. **Two decree basins. (e.g. 76G, 40E, 41H, etc.)**
 - a. Two decree basins gave rise to the option to publicly notice now at the Claimant's cost or to wait for the preliminary decree issuance and publicly notice the exempt claim through that process.
 - i. If the Claimant elects to expedite the handling of his/her claim and pay for public notice, the DNRC should keep claim file and all originals at the regional office and begin examination upon receipt of the Court's Order. The Claimant should be encouraged to explain why they want the claim(s) expedited on the petition so the Court knows if any external deadlines exist relating to property transactions, distribution controversies, or any other real property disputes affected by the claim(s) being filed.
 - ii. If the Claimant elects to wait for the Preliminary Decree, DNRC should send a copy of the petition to the Water Court. The entire file can be scanned when it's sent to new storage after the Water Court has issued its order. The original will be sent to the DNRC office.
 1. Remember to put the E2 issue remark on these claims to provide notice that the right wasn't included in the initial decree for that basin.
 - iii. Staff should recognize that, based on the petition handling request, there are two separate paths followed for two decree basins.
 1. DNRC collects all needed information from claimant to complete claim filing process.
 2. DNRC creates claim number record in the database.
 3. DNRC scans and emails the petition to the Court.
 4. The Court will docket the Petition.

5. The Court will issue an Order granting active status in the adjudication and directing the DNRC to examine the claim per Section 85-2-243, MCA.
 6. Where expedited handling is requested, the Court's order will set both a DNRC examination deadline (approx. 4 months), and a public notice deadline (also approx. 4 months). Where it is not requested, no specific deadline will be set.
 7. The original order and file stamped petition(s) will be sent to the DNRC office where the claim file(s) are being kept.
 8. A copy of the Order will be mailed to the claimant(s).
 9. If the claimant requests expedited handling, send the claim file to scanning after the Order is received at your convenience, but examination should be completed by the deadline ordered by the Court. After examination is complete, send the claim file to the Water Court.
 10. After public notice by the claimant has been accomplished, the Court will resolve any objections and issue remarks on the exempt claim. Only at this point will the claim be fully decreed and enforceable.
- iv. DNRC Claim File Handling Reminders
1. The DNRC has only just begun to establish deadlines for completion of summary reports and decree issuance in these basins. When these deadlines are established, the DNRC can begin its timely examination of non-expedited exempt claims in these basins. The Court will set no deadlines specific to exempt claims at this time.
 2. Where expedited handling is requested, the timely completion of claim examination will allow this claim to proceed forward towards public notice per Section 85-2-233(6), MCA.
 3. Expedited handling requests may be rejected by the Court in consultation with the DNRC where second decree issuance is imminent. In that case, the exempt claim filing should be examined in preparation for the second decree issuance. (See Section 2 – One decree basins not yet issued for general guidelines.)

Summary Report Review

Overview:

The department will perform a limited summary review process that ensures the reexamination action items have been completed. Many of the reexamination action items are a type of summary review and therefore not necessary to replicate. As a part of this process, the reexamination basin supervisor will request certain indexes for review. The indexes below are required but others may be requested if unique problems arise. Check with basin supervisor when unique issues arise in a basin.

1. Point of diversion properly assigned to ditch name
 - a. Check to ensure that all diversions from the same named ditch have the same legal descriptions; correct any that do not comply
 - b. Check to ensure that a diversion for the same named ditch have consistent means of diversion
2. Checking commissioner remarks to ensure they are related to water distribution—See remarks section in this guidebook
3. Check to ensure non-consumptive issue remarks were converted to information remarks—See remarks section of this guidebook for more information
4. Computer generated information remarks index (CGI remarks)
 - a. Database administrator runs list of remarks that may have been incorrectly handled by the database and for claims missing CGI remarks
 - b. Department checks the list for consistency
5. Review draft summary for errors (the items below are examples)
 - a. Check for duplicate information remarks
 - b. Check remarks for spelling and correct water right number format
 - c. Source name, means of diversion and ditch name all make sense
 - d. Other errors?

Other lists and indexes may be performed in each basin to address specific and unique problems. Check with basin supervisor when unique issues arise in a basin. The basin supervisor may develop an index to address unique issues.