

X. OTHER USES CLAIMS

This chapter describes the procedures unique to the examination of Other Uses claims. Other Use claims will be examined following procedures outlined in Chapter VI: Claim Examination and Chapter VII: Irrigation, **except** as noted in this chapter regarding purpose, place of use, flow rate, and volume, period of use, point of diversion, and means of diversion for instream or inlake appropriations ([Rule 26 W.R.C.E.R.](#)).

The following elements are discussed in this chapter:

- A. General Discussion
- B. Purpose
- C. Flow Rate and Volume
- D. Place of Use
- E. Point of Diversion and Means of Diversion for Instream and Inlake Appropriations
- F. Period of Use

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A. GENERAL DISCUSSION

Other Uses claims will be examined following procedures outlined in “Claim Examination” (Chapter VI) and “Irrigation” (Chapter VII), **except** as noted in this chapter regarding purpose, place of use, flow rate, volume, period of use, point of diversion, and means of diversion for instream or inlake appropriations ([Rule 26 W.R.C.E.R.](#)).

Examiners will often have to rely on their judgment to determine the extent to which Other Use claims should be examined. The following sections are intended to assist the examiner in making those judgments.

B. PURPOSE

1. Identifying Purpose. The Other Uses category is a catch-all for all historic water uses that are not irrigation, stockwater, or domestic claims. As a result, this category combines a number of very different types of water use. Purposes may include, but are not limited to per [Rule 27 W.R.C.E.R.](#):

Agricultural Spraying	(AS)	Municipal	(MC)
Commercial	(CM)	Navigation*	(NV)
Dewatering*	(DW)	Observation & Testing	(OT)
Erosion Control*	(EC)	Oil Well Flooding	(OF)
Fire Protection	(FP)	Pollution Abatement*	(PA)
Fish and Wildlife	(FW)	Power Generation	(PG)
Fish Raceways	(FR)	Recreation	(RC)
Flood Control*	(FC)	Sale*	(SL)
Industrial	(IN)	Sediment Control*	(SC)
Institutional	(IS)	Storage*	(SG)
Mining	(MN)	Wildlife	(WI)

*See Questionable Purposes below (Section [X.B.2.d](#))

See the Standard Purpose List (Figure VI-1) for defined standardized purposes. These broad categories allowed for a wide variety of water uses within a single category. Similar or identical uses of water were often claimed under different purpose categories. For example, water for an ore concentrator may have been claimed as a mining use by one claimant, but as an industrial use by another. Determine a consistent purpose by comparing the claim form, a returned questionnaire, and any information obtained from claimant contact to the purposes listed in Figure VI-1. In some instances, it may be necessary to clarify the purpose in the Purpose Clarification field in the Maintain Purpose Record in the database. Additional information beyond the clarification can be noted in a free text purpose (PU) information remark.

2. Examining Purpose. Review the purpose stated on the claim form and the submitted documentation to confirm that the water has been used historically for the claimed purpose. Outside data sources are often needed to supplement the information in the claim file. Although USDA aerial photographs and Water Resource Survey data are useful tools for examining an irrigation claim, their value when

examining Other Uses claims may be limited. Review any available and relevant data sources such as:

- City directories
- Local historical records
- Mining indexes
- Applicable NRIS GIS data
- Reliable internet resources

Examination may require claim specific research, claimant contact or an on-site visit at the invitation of the claimant, as available data sources do not typically address historical water use for Other Use purposes. Contact the claimant if:

- the purpose cannot be determined from the claim file
- the water use is for a purpose other than that claimed
- the purpose cannot be substantiated
- several purposes are indicated on the claim as multiple uses of the right. (Fire protection is considered an incidental use.)

Claimant contact must occur upon completing examination of the ownership if the purpose is modified by rule, and issue remark exists, or is unclear. [Rules 27\(c\) and 44 W.R.C.E.R.](#) and Section IV.F.

a. Other Use Claim Questionnaires. Questionnaires for general purpose types have been developed: Commercial, Fish and Wildlife, Industrial, Mining, Municipal, Power Generation and Wildlife (Exhibits X-1 through X-7). Completed questionnaires can provide information about the history, status, and operation of the system, and whether the claimed flow rate and volume are reasonable. [Rule 27 \(d\) W.R.C.E.R.](#)

If an Other Uses claim lacks sufficient data to be adequately examined, a questionnaire should be sent to the claimant with a cover letter (Exhibit IV-8). Alternatively, the claimant can be contacted by phone or in a personal interview (see “Examination Materials and Procedures: Claimant Contact Techniques” in Section IV.F). Pump and reservoir questionnaires may also be sent to claimants of Other Uses claims. Combine the mailing of all questionnaires to minimize the number of times a claimant is contacted.

It is recommended questionnaires be completed for all claims of 100 gpm or greater. Questionnaires may be completed for claims less than 100 gpm at the examiner's discretion. Questionnaires may be modified to avoid requesting information already available in the claim file or from other sources easily accessible by the examiner.

Multiple Owners. If multiple owners are involved, the questionnaire should be sent to all owners of record. If the questionnaire is undeliverable (return mail), the questionnaire may then be sent to owners identified through Cadastral information. In the event questionnaires completed by multiple owners are in conflict, consult with a

supervisor. Options may include the claimants splitting the water right (per Administrative Guideline No. 14 “DNRC Ownership Update Guideline”) or adding a free text issue remark:

Example: GIIS DOMESTIC QUESTIONNAIRES WERE RECEIVED FROM MULTIPLE OWNERS ON THE FOLLOWING DATES: MM/DD/YYYY, MM/DD/YYYY. THE DOMESTIC QUESTIONNAIRE INFORMATION HAS NOT BEEN INCORPORATED INTO THE CLAIMED INFORMATION DUE TO DISAGREEMENT AMONG THE OWNERS.

b. Municipal. Municipal uses are generally associated with towns and cities providing water within a service area. The specific purposes are varied and could include households, businesses, parks, golf courses, cemeteries, industrial, treatment plants, etc. (see 1987 list of municipalities, exhibit X-11.) [Rule 27\(e\), W.R.C.E.R](#)

For claims with a purpose of municipal use by a city, town or other public or private entity that operates a public water supply system, specific criteria must be met pursuant to [§85-2-227\(4\), MCA](#).

- A “community water system” is defined as a public water supply system that serves at least 15 service connections used by year-round residents, or that regularly serves at least 25 year-round residents per [§75-6-102\(3\), MCA](#).
- A “public water supply system” is defined as a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections, or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year per [§75-6-102\(14\), MCA](#).

The claimant must meet one of the following specific criteria before the claim meets the presumption of non-abandonment:

- The right must have been at least partially used historically, plus *one* of the following:
 - a filtration waiver under the federal Safe Drinking Water Act has been obtained;
 - the diversion or conveyance structures for the future municipal use has been acquired, constructed, or regularly maintained;
 - a formal study has been conducted and prepared by a registered professional engineer or qualified consulting firm which includes a specific assessment that using the water right for municipal supply is feasible and that the amount of the water right is reasonable for foreseeable future needs;

- o the municipality has maintained facilities connected to the municipal water supply system to provide emergency or supplemental water.

If one of these criteria are met, add the following general information (GI) remark to the water right:

Example: G20 THIS WATER RIGHT IS PRESUMED TO NOT BE ABANDONED PURSUANT TO [§85-2-227, MCA](#).

The above criteria were added to [§85-2-227, MCA](#) in 2005. These criteria were not requested with the original statement of claim. If there is evidence indicating the claim is no longer in use, either partial or entirely, the examiner should first request the above criteria from the claimant before making any determination regarding abandonment. The Municipal Questionnaire (Exhibit X-2) can be customized to suit the situation. Per [Rule 27 \(e\) W.R.C.E.R.](#), the department will NOT add an issue remark regarding non-use if one of the above criteria are met, and specifies the addition of the G20 remark in this situation.

If NO criteria are met, evidence of non-use may be considered. See “Claim Examination: Purpose: Purpose Issues: Claimed Purpose Not Perfected” (Section VI.C.3.f) and apply the applicable issue remarks.

c. Fish and Wildlife, Wildlife, and Recreation. For claims with a purpose of fish and wildlife, wildlife, or recreation, with the exception of Murphy Rights ([Section X.C.3.d](#)), add one of two issue remarks to the department's examination worksheet, per [Rule 27 \(h\)\(5\),\(6\) W.R.C.E.R.](#)

*Add the following issue remark to claims that **did not receive a factual or legal issue remark** as a result of the examination process:*

Example: P724 BECAUSE THIS CLAIM DID NOT RECEIVE A FACTUAL OR LEGAL ISSUE REMARK DURING THE CLAIMS EXAMINATION PROCESS, THE WATER COURT WILL NOT HOLD A HEARING ON THIS CLAIM UNDER *Matter of the Adjudication of Existing Rights in Basin 411*, 2002 MT 216, 311 Mont. 327, 55 P.3d 396 UNLESS A VALID OBJECTION IS FILED UNDER SECTION [85-2-233, MCA](#), OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER [RULE 8, W.R.ADJ.R.](#)

*Add the following issue remark to claims that **did receive a factual or legal issue remark** as a result of the claims examination process: Do not add this remark if the issue remark is a notice issue remark such as a G34.*

Example: P725 THE WATER COURT WILL HOLD A HEARING ON THIS CLAIM TO DETERMINE ITS VALIDITY SUBJECT TO SECTION [85-2-248, MCA](#), AND *Matter of the Adjudication of Existing Rights in Basin 411*, 2002 MT 216, 311 Mont. 327, 55 P.3d 396. A HEARING

MAY ALSO BE HELD ON THIS CLAIM IF A VALID OBJECTION IS FILED UNDER SECTION [85-2-233, MCA](#), OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER [RULE 8, W.R.ADJ.R.](#)

To comply with the April 17, 2013 *Supplemental Order* from judge McElyea, the following procedures must be followed for fish and wildlife, wildlife, or recreation for examination and post-decree. 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 the *Supplemental Order*. 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. Review with a supervisor any questions.

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

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)(l)(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:

Example: 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:

Example: 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.

Example: 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:

Example: 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:

Example: 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)(l)(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:

Example: 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:

Example 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)(I). 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)(I)(ii)(A) and (II).

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:

All wildlife pothole lake claims should have volume **decreed as claimed.**

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

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. See *Judge Lessley's June 17, 1985 Order Exhibit IX-1*

d. Questionable Purposes. The following are guidelines for uses which are considered questionable. Other Uses not listed here should be brought to the attention of a supervisor.

- Water Use/Water Management—Dewatering, Erosion Control, Flood Control (dikes, levees, impoundments), Navigation. If it is not clear whether the claim describes one of these water uses or water management practices, contact the claimant. After confirming a questionable use exists, add the following purpose (PU) issue remark to the department's examination worksheet:

Example: P630 THIS CLAIMED PURPOSE IS QUESTIONED AS A BENEFICIAL USE OF WATER EXISTING PRIOR TO JULY 1, 1973.

For these questionable uses, do not examine the flow rate and volume. The flow rate and volume of such claims will be decreed as claimed. When a value for flow rate or volume is claimed but not examined, add the appropriate issue remark to the department's examination worksheet:

Examples: F85 THE CLAIMED FLOW RATE WAS NOT EXAMINED AS NO FLOW RATE GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIM EXAMINATION RULES.

V25 THE CLAIMED VOLUME WAS NOT EXAMINED AS NO VOLUME GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIM EXAMINATION RULES.

- Standardization—Dewatering, Erosion Control, Pollution Abatement, Sediment Control. These uses are questioned as beneficial uses *unless* the water is used for a specific purpose such as irrigation, mining, industrial, etc. For example, a pollution abatement claim may be used for watering a sawdust pile at a lumber mill. In this situation, the purpose should be standardized to industrial (IN) with information added to the Purpose Clarification field in the database. Document the source of the information on the examination worksheet.

- Sale or Storage. Occasionally, a claim will be for the purpose of ‘storage’ without any other associated purpose. In recent history, claims have been amended to a purpose of ‘sale’. Bring such claims to the attention of a supervisor to determine a course of action. The supervisor may need to involve the Bureau Chief.

3. Changing the Purpose. If the claim file (and when available, a completed questionnaire) provides a clear picture of historical water use, the claimed purpose description should reflect that use. A claimed purpose may be modified per [Rule 27 \(g\) W.R.C.E.R.](#) to one of the listed purpose descriptions in Figure VI-1 in order to standardize purposes. Make such a change by crossing out the claimed purpose on the examination worksheet and writing in the standardized purpose. Document the change on the worksheet by placing an asterisk in the brackets to the left of the purpose element. Document the basis for changing the purpose in the General Comments area of the worksheet.

The claimed purpose of a water right will not be changed during the department’s examination unless:

- amended by the claimant; [Rule 27\(g\)\(1\), W.R.C.E.R.](#)
- modified by rule (clarified) by the department with claimant contact if the claimed intent is unclear; [Rule 33\(c\), W.R.C.E.R.](#)
- modified by rule (clarified) by the department to identify similar purposes consistently. [Rules 27\(g\)\(2\) and 33\(b\)\(2\), W.R.C.E.R.](#)

If the purpose claimed is unclear, see “Claim Examination: Purpose: Examining Claimed Purpose: Changing the Purpose” (Section VI.C.2.b).

4. Multiple Uses. The multiple use of a water right occurs when the same historical appropriation has been claimed for different purposes by the original claimant. All claims in an ownership should be reviewed to identify any multiple uses of a right per [Rule 27 \(f\)](#) and [Rule 41 W.R.C.E.R.](#) A multiple use is determined through review of an index (e.g., Summary Preparation Indexes 4 and 5), submitted documentation, and the intent of each claim. See “Claim Examination: Purpose: Multiple Uses” (Section VI.C.4) for procedures.

C. FLOW RATE AND VOLUME

The flow rate and volume for Other Uses varies greatly depending on the specific purpose. *Only those aspects explicitly addressed in [Rule 29 W.R.C.E.R.](#) pertaining to Other Uses flow rate and volume are discussed in this section. Refer to “Claim Examination” (Chapter VI) and “Irrigation” (Chapter VII) for additional procedures.*

The flow rate is the rate at which water has been diverted, impounded, or withdrawn from the source. The flow rate will be decreed in cubic feet per second (cfs) or gallons per minute (gpm).

The volume is the amount of water that has been diverted, impounded, or withdrawn from the source over the year for the claimed purpose, and is measured in acre-feet (AF).

Claimant contact must occur upon completing examination of the ownership if the flow rate or volume is modified by rule; an issue remark exists, or is unclear. [Rules 29\(e\) and 44, W.R.C.E.R.](#)

1. Identifying Claimed Flow Rate and Volume. Using the procedures in "Irrigation: Flow Rate" (Section VII.B) and "Volume" (Section VII.C), check the claim form and documentation. Check for correct conversion into standard units of measure (see "General Procedures: Standard Measurements of Water," Section III.B). If incorrect units have been claimed, but the documentation in the claim file indicates the correct units, the correction can be made on the examination worksheet per [Rule 33\(b\) W.R.C.E.R.](#)

For claims involving prior decreed rights, the flow rate (or volume, if decreed) on the claim form and examination worksheet should not exceed the decreed flow rate (or volume) as documented. For filed and use rights, claimed flow rates and documentation that do not match will not be considered in conflict unless the differences are unreasonable.

Runoff. During the filing period, some claimants wrote "runoff" on their claim forms to describe the flow rate. Typically this was done for intermittent (non-perennial flowing) sources to describe why no specific flow rate was claimed. The term may have been added by the department during initial data entry as an information remark. This remark is no longer needed and should be deleted during examination. See “Irrigation: Flow Rate: Flow Rate Issues: No Flow Rate Claimed” (Section VII.B.5.f).

2. Examining Claimed Flow Rate and Volume. Flow rates and volumes will be decreed as claimed, amended, or modified by rule. The claimed flow rate and volume will be examined using the information in the claim file, outside data sources, [water use guidelines](#) for the claimed purpose, and information gained through claimant contact. If necessary, an on-site visit may be conducted at the claimant’s invitation (see “Examination Materials and Procedures: Investigation Techniques: On-site Visits” in Section IV.G.3). Contact the claimant if a guideline cannot be determined, the claimed amount exceeds the guideline or there are errors, inconsistencies, or insufficient data ([Rule 29 \(e\) W.R.C.E.R.](#)).

For claimed flow rates and volumes that will be decreed, there are two underlying considerations that should be kept in mind. First, has the claimed flow rate or volume actually been diverted? Second, is the claimed flow rate or volume reasonable for the specific purpose? If the answer to either question is no, further information should be pursued to determine what is reasonable and accurate. This thought process should form the basis for examining all claims.

Unique Features or Aspects. Any unique features or aspects of the flow rate or volume may be identified on the department's examination worksheet using a flow rate (FR) or volume (VM) information remark. See "Claim Examination Remarks" (Chapter V) for additional flow rate and volume remarks describing unique aspects or features.

Examples: F75 CASE NO. **0000**, **MONTANA COUNTY** DECREES THIS RIGHT AS AN UNDIVIDED **ONE-THIRD** INTEREST IN A SINGLE WATER RIGHT FOR **2.50 CFS**.

VM CASE NO. 0000, MONTANA COUNTY, DECREES ONE-THIRD INTEREST OF THE DOE LAKE STORAGE RIGHT.

a. Changing Flow Rate or Volume. The claimed flow rate or volume will not be changed during examination unless: [Rule 29\(i\) W.R.C.E.R.](#)

- amended by the claimant; [Rule 29\(i\)\(1\), W.R.C.E.R.](#)
- modified by rule by the department; [Rule 29\(i\)\(2\) W.R.C.E.R.](#); See [Rules 29\(b\)\(2\)-\(5\), 29\(c\)\(1\)\(i\), and 29\(g\)\(2\), W.R.C.E.R.](#)
- to standardize units of measure [Rules 29\(i\)\(4\) and 4\(b\), W.R.C.E.R.](#) Section III.B;
- to apply standards [Rule 29\(b\), W.R.C.E.R. Section X.C.3](#); or
- modified by rule (clarified) by the department without claimant contact if the claimed intent is clear of with clamant contact if the claimed intent is unclear. [Rules 33\(b\)\(7\), and 33\(c\), W.R.C.E.R.](#)

A flow rate or volume may only be modified as specified in [Rule 29 \(i\) W.R.C.E.R.](#) Place an asterisk in the brackets to the left of the appropriate element to denote the changes. Document the basis of the change on the examination worksheet. Standardization of units of measure should also be noted as modified by rule ([Rule 4 W.R.C.E.R.](#)).

b. Claimant Contact. For system types receiving a flow rate and/or volume in the Water Court decree, claimant contact may be required. In conjunction with the examination criteria in this section, the claimant should also be contacted whenever the claimed flow rate and/or volume is unclear, has apparent discrepancies, or appears unreasonable. The contact may have one of several outcomes: [Rules 29\(e\), and 44, W.R.C.E.R.](#)

- Information discussed confirms the claimed flow rate or volume. Document the information supporting the claimed amount.

- A flow rate or volume different from that claimed is substantiated which the claimant wishes to have replace the claimed data. The claim can be changed by an amendment from the claimant.
- If the issue is unresolved, e.g., data is insufficient to confirm the claimed flow rate or volume, or data support an actual flow rate or volume different from the one claimed, add a flow rate (FR) or volume (VM) issue remark to the department's examination worksheet. See "Other Uses Flow Rate and Volume Issues" below ([Section X.C.4](#)).

c. Data Sources and Procedures. There are several data sources and procedures that may help identify Other Use claims appearing to claim a flow rate and volume that are reasonable and customary: [Rule 29\(a\), W.R.C.E.R.](#)

- Claim File. A careful review of the claim file may provide enough information to determine a reasonable and customary flow rate or volume. For example, if it is clear the only use of a water right in a commercial establishment is for personal hygiene, a claimed flow rate of 400 gpm exceeds what is reasonable and customary; a flow rate (FR) issue remark may apply (see "Other Uses Flow Rate and Volume Issues," [Section X.C.4](#) below).
- Questionnaires. When the claim file does not provide sufficient data to support a claimed flow rate or volume exceeding what seems reasonable and customary for the claimed purpose, a questionnaire (Exhibits VI-6, VII-3, VII-5, X-1 through X-7) should be sent to the claimant along with a cover letter (Exhibit IV-8). Alternatively, the claimant can be contacted by phone or in a personal interview (see "Examination Materials and Procedures: Claimant Contact Techniques" in Section IV.F). [Rule 27\(d\), W.R.C.E.R.](#)
- Published Literature. Any relevant literature in the public domain may also be used by the examiner. This type of material can be site-specific or general:
 - Site Specific: Information on the water uses of large hydropower projects, mining, industrial facilities, and municipal water systems can often be found in industry publications, environmental impact statements, and other government agency records. Such sources of information should be located and reviewed whenever significant amounts of water are claimed.

- General:
 - The EPA has developed guidelines on the daily water requirement for resorts, trailer parks, schools, theaters, stores, motels, hospitals, etc. (“EPA Water Requirement Guidelines”, Exhibit X-12). Use these guidelines to identify reasonable and customary volumes, and to determine if claimant contact is necessary.
 - BLM guidelines on the requirements of mining operations should also be reviewed (“BLM Mining Water Requirement Guidelines”, Exhibit X-13). These, combined with information provided by a returned mining questionnaire, may help determine approximate water use requirements for a specific mining operation.
 - [USGS](#) flow data may be available for some of the larger streams in a basin. This may serve as a check on claimed flow rates on diversions from those, and upstream, sources.
 - DNRC’s Planning Guide for Water Use, [Form 615](#).
- Average Stream Flow Estimation Methods. The application of an average stream flow estimation technique, such as those mentioned below, is simply a tool which can be used to determine reasonableness. If the claimed flow rate is substantiated by other means, it is not necessary to apply these methods.

The approximate average annual flow (discharge) of a stream can be determined by using the Orsborn method, which is described in Exhibit X-14. Other techniques are available: [A Method for Estimating Mean and Low Flows of Streams in National Forests of Montana](#) (Exhibit X-15) and [A Method for Estimating Mean Annual Runoff of Ungaged Streams Based on Basin Characteristics in Central and Eastern Montana](#) (Exhibit X-16). See [Water Availability References](#) for other resources.

The claim should meet one of the following general criteria before applying any one of the three average annual flow techniques:

- source is surface water;
- claim does not involve a pump or onstream reservoir;
- drainage area is under 200 square miles;
- claim is for mining, power generation, or fish raceways at 100 gpm or more, or
- any Other Use purpose at 2.5 cfs or more.

If the criteria above are met, create a drainage area map using ArcGIS. Calculate the average annual discharge (QAA). Once the QAA has been determined, retain the calculation worksheet and drainage area map as part of the file. Document the QAA on the examination worksheet. If there is a significant difference

between the claimed flow rate and the QAA, see “Other Uses Flow Rate and Volume Issues” below ([Section X.C.4](#)).

d. Feasibility Checks. Claims that will be decreed both a flow rate and a volume should be checked for feasibility. A feasible volume and a comparison statistic are calculated under the volume element on the examination worksheet. The Feasible Volume shows the maximum volume possible if water were diverted at the claimed flow rate throughout the claimed period of use (year round use equals 366 days).

Compare the Feasible volume to the claimed volume. When the claimed flow rate (Q) or period of use has been amended or modified by rule, recalculate the maximum feasible volume (V) using the following equations:

- For cfs: Feasible V = Q x days used x 1.9834711
- For gpm: Feasible V = (Q x days used)/226.28542

When the claimed volume exceeds the maximum feasible volume, standards will apply the following volume (VM) issue remark to the review and decree abstract. If the claimant wishes to resolve the issue remark, flow rate, volume, and period of use should be discussed with the claimant in order to determine which may be in error.

Example: V24 THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS **3.20** ACRE-FEET PER YEAR.

Review the Comparison Statistic under the volume element on the examination worksheet. This calculates the number of hours per day it takes to deliver the claimed volume. A value greater than 10 hours per day may indicate an issue with the volume, flow rate, or period of use. If the claimed volume, flow rate or period of use is amended or modified by rule, recalculate the 'comparison stat' to confirm the claim is reasonable.

- Comparison Stat = (claimed volume/feasible volume) x 24 hours/day

When a claimed volume exceeds the guideline, the claim file should be reviewed for information supporting the claimed volume. If the claimed volume is not supported by information in the claim file, add a volume (VM) issue remark to the department's examination worksheet:

Example: V85 VOLUME MAY BE EXCESSIVE. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN **24.0** HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THIS FIGURE.

e. Non-consumptive Uses. Add a volume (VM) information remark to the department's examination worksheet when the claimed volume is greater than 15 acre-feet and it is clear the amount of water consumed is negligible. It may be

necessary to review outside data sources and/or request the claimant complete a questionnaire in order to make this determination. Examples of claims which may require a volume (VM) information remark include power generation (hydropower), flood control, placer mining, fish raceways, and navigation claims.

Example: V20 THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

f. Large Claims. Claims describing a flow rate of 15 cfs or more, and/or a volume of 15,000 acre-feet or more should be brought to the attention of a supervisor who will determine if any special steps need to be taken in examining such claims. It is not necessary to refer claims listing large flow rates and volumes when those figures are obviously based on a claimant's misconceptions about units of water measurement—in such cases, follow procedures for standardizing flow rate and volume in “Irrigation: Flow Rate” (Section VII.B), “Irrigation: Volume” (Section VII.C.) or “General Procedures: Standard Measurements of Water” (Section III.B).

3. Specific Flow Rate and Volume Examination Criteria. This section contains guidelines, where applicable, for different types of Other Uses systems. Claimed flow rates or volumes below a guideline will generally be accepted, but may be examined further if there is an apparent error or conflicting data. A guideline overview is depicted in [Table X-1](#).

a. Other Uses Claims without Reservoirs. Due to the wide variety of purposes within the Other Uses category, there are no precise flow rate or volume guidelines in the Water Right Claim Examination Rules ([Rule 29](#)) for most Other Uses claims.

Other Use claims that do not involve a reservoir *and* are not mining, fire protection, municipal, or agricultural spraying will be decreed a flow rate and a volume as claimed, amended, or modified by rule. **The flow rate guideline is the capacity of the diversion and conveyance system. The volume guideline is what is reasonable and customary** ([Rule 29 \(b\)\(1\), W.R.C.E.R.](#)). Other Uses involving purposes of mining, fire protection, municipal, and agricultural spraying are discussed in [Section X.C.3.f](#) through [X.C.3.i](#) below.

For Other Use claims involving **pumps**, see “Irrigation: Flow Rate: Flow Rate Criteria: Pumps” (Section VII.B.3.d).

For Other Use claims involving **gravity flow pipelines**, see “Irrigation: Flow Rate: Flow Rate Criteria: Gravity Flow Pipelines” (Section VII.B.3.e).

For Other Use claims involving **ditches and canals**, see “Irrigation: Flow Rate: Flow Rate Criteria: Ditches and Canals” (Section VII.B.3.f).

Table X-1: Other Uses Flow Rate and Volume Guidelines
(If listed below, follow flow rate and volume in Sections VI and VII.)

No Reservoir	Flow Rate Decreed	Flow Rate Guideline	Volume Decreed	Volume Guideline	Rule	Remark
Mining	Yes	Capacity of Diversion & Conveyance	No	None	29(b)(2)	VF016 CG11 CG12
Fire Protection	Yes	Capacity of Diversion & Conveyance	No	None	29(b)(3)	VF014
Municipal*	Yes	Capacity of Diversion & Conveyance	Yes	250 Gallons per capita per day	29(b)(4)	
Agricultural Spraying*	Yes	Capacity of Diversion & Conveyance	Yes	2 AF/year: no reservoir 4 AF/year: with reservoir	29(b)(5)	
Others*	Yes	Capacity of Diversion & Conveyance	Yes	Reasonable & Customary	29(b)(1)	
On-Stream Reservoir	No	None	Yes	>15AF Maximum Storage plus estimate of evaporation* *	29(c)(1)	FF007
Off-Stream Reservoir*	Yes	Capacity of Diversion & Conveyance OR Reasonable & Customary	Yes	>15AF Maximum Storage plus estimate of evaporation* *	29(c)(1)	
Murphy Rights*	Yes		Yes		29(f)	P600
Instream Use Inlake Use*	Yes	Minimum amount necessary to sustain purpose	Yes	Minimum amount necessary to sustain purpose	29(d)	V145
USA Pothole Lake	No	None	Yes	Capacity of the pothole lake	June 17, 1985 Court Order***	F37

*Feasibility Check required ([Section X.C.2.d](#)).

**A claimed volume less than 15AF will generally be accepted.

***See Exhibit IX-1 6/17/1985 Order Judge Leslie

b. Other Uses Claims with Reservoirs. Flow rate and volume guidelines and procedures for Other Use claims involving reservoirs are based on whether the reservoir is onstream or offstream. Refer to "Claim Examination: Reservoirs" (Section VI.H) for general reservoir procedures.

Flow Rate: Onstream Reservoirs. A flow rate will not be decreed per [Rule 29 \(c\) \(1\) W.R.C.E.R.](#) Change the claimed flow rate to null (no value) and add an asterisk in the brackets to the left of the flow rate element of the examination worksheet. The basis of the change must be documented on the examination worksheet. Standards will add the following flow rate information remark to the review and decree abstract:

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

If the claim uses other than stored water from the onstream reservoir, such as diversions upstream from the reservoir, a flow rate will be decreed. Examine the claimed flow rate using the procedures specific to the means of diversion as noted above in "Other Uses Claims Without Reservoirs" (Sections VII.B.3.d, VII.B.3.e, VII.B.3.f).

Flow Rate: Offstream Reservoirs. A flow rate will be decreed as claimed, amended or modified by rule for Other Uses involving offstream reservoirs where control (i.e., ownership of the point of diversion) of the reservoir is part of the right. **The flow rate guideline is the capacity of the diversion and conveyance system** ([Rule 29 \(c\) \(1\) \(i\) W.R.C.E.R.](#)). If the reservoir system is shared by more than one claimant, the **flow rate guideline will be that which appears reasonable and customary** for the specific purpose ([Rule 29 \(c\) \(1\) \(i\) W.R.C.E.R.](#)).

Volume: All Reservoirs. A volume will be decreed as claimed, amended, or modified by rule for Other Uses involving reservoirs where control (i.e., ownership of the point of diversion) of the reservoir is part of the right. The **volume guidelines** are:

- For systems with a claimed volume **less than 15 acre-feet, the claimed volume will generally be accepted** ([Rule 29 \(c\) \(1\) \(ii\) \(A\) W.R.C.E.R.](#)). Collect reservoir data as outlined in "Claim Examination: Reservoirs" (Section VI.H).
- For systems with a claimed volume **greater than 15 acre-feet**, the volume guideline will be the **maximum storage capacity plus the estimate of evaporation** ([Rule 29 \(c\) \(1\) \(ii\) \(B\) W.R.C.E.R.](#)). See "Evaporation Losses" (Exhibit X-8) for procedures on determining an estimation of evaporation. Collect reservoir data as outlined in "Claim Examination: Reservoirs" (Section VI.H).

If the claimed volume is greater than 15 AF and cannot be examined using the procedures outlined in this section, or the volume is a quantity raising doubts about being reasonable for the purpose, contact the claimant. If claimant contact is inconclusive, add the following volume (VM) issue remark to the department's

examination worksheet: [Rules 29 \(e\) and 44, W.R.C.E.R.](#)

Example: V111 THE CLAIMED VOLUME CANNOT BE CONFIRMED DUE TO LACK OF DATA.

c. Other Use Claims—Pothole Lake Claims by USA.

Flow Rate: No flow rate will be decreed for this type of claim. Change the claimed flow rate to null (no value) and add an asterisk in the brackets to the left of the flow rate element on the examination worksheet. Document the basis of the change on the examination worksheet. Add a flow rate (FR) information remark:

Example: F37 THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNTS NECESSARY TO SUSTAIN THIS PURPOSE. THIS RIGHT SHALL CONTINUE TO BE UTILIZED IN ACCORDANCE WITH HISTORICAL PRACTICES.

Volume: A volume will be decreed for this type of claim filed by the USA (i.e., BLM, Fish and Wildlife Service, or Forest Service). Volumes for these claims are retained and decreed pursuant to a June 17, 1985 and August 7, 1987 Orders (Exhibit IX-1) from the Water Court. Examine the claimed volumes using the procedures in “Other Uses Claims with Reservoirs” ([Section X.C.3.b](#)) above and the procedures in “Claim Examination: Reservoirs and Groundwater Pits” (Section VI.H.).

d. Murphy Rights. The 1969 Montana Legislature granted the Montana Fish and Game Commission the authority to file on un-appropriated waters on twelve streams primarily to maintain flows necessary for fish and wildlife habitat (Section 89-801(2), RCM (1969)(repealed 1973)). The flow rate and volume filed by the Montana Department of Fish, Wildlife, and Parks on "Murphy Right" streams will be decreed as claimed, amended, or modified by rule ([Rule 29 \(f\) W.R.C.E.R.](#)). [Table X-2: Murphy Right Streams](#) lists the Murphy Right streams and the affected reach. The stream reaches are also depicted in Exhibit X-17 as both a list and a map. The map is also available on the Adjudication Shared Drive.

If examining a claim where the source is listed in [Table X-2](#), compare the claimed legal land description to that of the Murphy Right Stream. A Murphy Right Stream shapefile is available in WRMapper.

Add the following purpose (PU) information remark to the examination worksheet:

Example: P600 THIS RIGHT IS SUBJECT TO ALL PRIOR RIGHTS. THE FLOW RATE AND VOLUME REPRESENT THE CLAIMED NEEDS OF THE STATE DEPARTMENT OF FISH WILDLIFE AND PARKS TO MAINTAIN STREAM FLOWS FOR THE PRESERVATION OF FISH AND WILDLIFE HABITAT. THE CLAIMED AMOUNTS ARE MADE A MATTER OF RECORD BUT ARE SUBJECT TO CHANGE SHOULD THE COURT DETERMINE THAT THOSE WATERS ARE

NEEDED FOR USES DETERMINED TO BE MORE BENEFICIAL TO THE PUBLIC. SEE R.C.M. §89-801 (1947), NOW REPEALED BY SEC. 46, CH. 452, LAWS 1973.

Murphy rights DO NOT receive P724 or P725 issue remarks. See Section VI.C.3.a. Murphy Rights were recognized as a valid appropriation prior to 1973 whereas other fish and wildlife claims were questioned as a beneficial use until the Bean Lake cases were decided. Fish and wildlife claims, other than Murphy Rights, now receive issue remarks mandated by the last of the Bean Lake cases. See Section 89-801(2), RCM (1969) (repealed 1973); in re-Adjudication of Dearborn Drainage Area, 234 Mont. 331, 766 P.2d 228, (1988); and in re-Adjudication of Existing Rights to the Use of All Water, 2002 MT 216, 311 Mont. 327, 55 P.3d 396.

Check the claimed flow rate and volume against the filed appropriation and stream flow records. If there are no discrepancies, a KEEP/CLAIMED flag should be noted on the examination worksheet for both flow rate and volume. If discrepancies exist, add a flow rate (FR) issue remark:

Example: F220 THE CLAIMED FLOW RATE EXCEEDS THE ESTIMATED AVERAGE ANNUAL FLOW OF THE SOURCE (**3.50 CFS**).

e. Instream Uses. For all remaining instream and inlake Other Uses claims (excluding claims filed by the Montana Department of Fish Wildlife & Parks on Murphy Right streams), the **flow rate and volume guideline is the minimum amount necessary to sustain the specific purpose** ([Rule 29 \(d\) W.R.C.E.R.](#)).

Standards will apply the following volume (VM) information remark to the review and decree abstract:

Example: VF012 THE FLOW RATE AND VOLUME ARE LIMITED TO THE MINIMUM AMOUNTS NECESSARY TO SUSTAIN THIS PURPOSE. THIS RIGHT SHALL CONTINUE TO BE UTILIZED IN ACCORDANCE WITH HISTORICAL PRACTICES.

In order to make it clear there has been no method developed to determine what 'minimum flow or volume' is necessary for these claims, add the following issue remarks as well:

Example: F85 THE CLAIMED FLOW RATE WAS NOT EXAMINED AS NO FLOW RATE GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIM EXAMINATION RULES.

V25 THE CLAIMED VOLUME WAS NOT EXAMINED AS NO VOLUME GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIMS EXAMINATION RULES.

f. Mining. For an overview on mining practices and general water requirements in Montana, see “BLM Mining Water Requirement Guidelines” (Exhibit X-13) which includes a reprint from a BLM Technical Manual and an internal DNRC document. Other useful websites for researching mining activity include the [DEQ Abandoned Mine Query System](#) and the [Montana Bureau of Mines and Geology](#). The [NRIS](#) website has several abandoned mine shapefiles available for download into WRMapper.

Flow Rate: **The flow rate guideline is the capacity of the diversion and conveyance system** ([Rule 29 \(b\) \(2\) \(i\) W.R.C.E.R.](#)). Examine claimed flow rates using the procedures in “Other Uses Claims: Flow Rate and Volume: Examining Claimed Flow Rate and Volume” ([Section X.C.2](#)) and in “Other Uses Claims: Flow Rate and Volume: Specific Flow Rate and Volume Examination Criteria: Other Uses Claims Without Reservoirs” ([Section X.C.3.a](#)).

Volume: A volume will not be decreed for mining claims ([Rule 29 \(b\) \(2\) \(ii\) W.R.C.E.R.](#)). Change the claimed volume to null (no value) and add an asterisk in the brackets to the left of the volume element of the examination worksheet. Document the basis for the change on the examination worksheet. Standards will apply the following volume (VM) information remark to the review and decree abstract: [Rule 27 \(c\)\(4\), W.R.C.E.R.](#)

Example: VF016 THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

g. Fire Protection. A claim may indicate a purpose of fire protection as the main purpose or as an incidental, secondary purpose.

Flow Rate—Fire Protection Only Purpose: **The flow rate guideline will be the capacity of the diversion and conveyance system** ([Rule 29 \(b\) \(3\) \(i\) W.R.C.E.R.](#)). Examine the claimed flow rate using the procedures in “Other Uses Claims: Flow Rate and Volume: Examining Claimed Flow Rate and Volume” ([Section X.C.2](#)) and in “Other Uses Claims: Flow Rate and Volume: Specific Flow Rate and Volume Examination Criteria: Other Uses Claims without Reservoirs” ([Section X.C.3.a](#)).

Volume—Fire Protection Only Purpose: A volume will not be decreed for fire protection purposes when it is the primary purpose ([Rule 29 \(b\) \(3\) \(ii\) W.R.C.E.R.](#)). Change the claimed volume to null (no value) and add an asterisk in the brackets to the left of the volume element of the examination worksheet. Document the basis of the change on the examination worksheet. Standards will apply the following volume (VM) information remark to the review and decree abstract:

Example: VF014 THE VOLUME OF THIS RIGHT IS LIMITED TO THE MINIMUM AMOUNTS NECESSARY FOR FIRE PROTECTION PURPOSES.

Flow Rate—Fire Protection as an Incidental Use: For claims where fire protection is identified as an incidental use, Water Court authorization as called for in “Special Provisions: Implied Claims” ([Section XI.B](#)) is not necessary when two purposes are claimed *and* one of the purposes is fire protection. Whenever fire protection is claimed

as an incidental use, examine the claim according to the primary purpose. Identify this incidental use by adding the following purpose (PU) information remark to the department's examination worksheet:

Example: P555 THIS WATER RIGHT IS INCIDENTALLY USED FOR FIRE PROTECTION.

Volume—Fire Protection as an Incidental Use: Examine the volume according to the primary purpose.

Table X-2: Murphy Right Streams

Source	County	Reach*
Big Spring Creek	Fergus	From mouth in T17N, R16E, Sec 26 to State Fish Hatchery in T14W, R19E, Sec 5
Blackfoot River	Missoula, Powell	From mouth in T13N, R18W, Sec 21 to mouth of its North Fork in T14N, R12W, Sec 9
Flathead River	Flathead	From mouth in T27N, R20W, Sec 34 to the Canadian border in T37N, R22W, Sec 4 & 5, including section commonly known as the North Fork of Flathead River
Flathead River, Middle Fork	Flathead	From mouth in T31N, R19W, Sec 7 to mouth of Cox Creek in T27N, R12W (a non-sectioned township)*
Flathead River, South Fork	Flathead, Powell	From mouth at Hungry Horse Reservoir in T26W*, R16W Sec (unknown)* to its source at the junction of Danaher and Youngs Creeks in T20W, R13W, Sec 36
Gallatin River	Gallatin	From mouth in T2N, R2E, Sec 9 to the junction of its East Fork in T2N, R3E, Sec. 27
West Gallatin River	Gallatin	From the Beck & Border Ditch intake in T2S, R4E, Sec 14 to where it leaves the Yellowstone Park boundary in T9S, R5E, Sec 18
Madison River	Gallatin, Madison	From mouth in T2N, R2E, Sec 17 to Hebgen Dam in T11S, R3E, Sec 23
Missouri River	Broadwater, Lewis & Clark, Cascade	From its junction with the Smith River in T19N, R2E, Sec 9 to Toston Dam in T4N, R3E, Sec 7
Rock Creek	Granite, Missoula	From mouth in T11N, R17W, Sec 12 to the junction of its East and West Forks in T6N, R15W, Sec 31
Smith River	Cascade, Meagher	From mouth of Hound Creek in T17N, R3E, Sec 20 to the Fort Logan Bridge in T11N, R5E, Sec 31
Yellowstone River	Park, Stillwater, Sweetgrass	From the North-South Carbon-Stillwater county lines in T3S, R21E, Sec 10 to where it leaves the Yellowstone Park boundary in NT9S*, R8E, Sec 23

*As written Section 89-801, RCM 1947 (1969)

h. Municipal. Claims with a purpose of municipal use by a city, town or other public or private entity that operates a public water supply system, a flow rate and volume will be decreed.

Flow Rate: **The flow rate guideline for municipal claims is the capacity of the diversion and conveyance system** ([Rule 29 \(b\) \(4\) \(i\) W.R.C.E.R.](#)). Examine the claimed flow rate using the procedures in “Other Uses Claims: Flow Rate and Volume: Examining Claimed Flow Rate and Volume” ([Section X.C.2](#)) and in “Other Uses Claims: Flow Rate and Volume: Specific Flow Rate and Volume Examination Criteria: Other Uses Claims without Reservoirs” ([Section X.C.3.a](#)).

If the claimed flow rate is not substantiated by information in the claim file, a Municipal Questionnaire (Exhibits X-2) should be sent to the claimant along with a cover letter (Exhibit IV-8). Alternatively, the claimant can be contacted by phone or in a personal interview (see “Examination Materials and Procedures: Claimant Contact Techniques” in Section IV.F). It may be appropriate to also send additional questionnaires or to customize the Municipal Questionnaire to gain additional information about the system.

If the claimed flow rate cannot be substantiated, add a flow rate (FR) issue remark to the department's examination worksheet:

Example: F150 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE PUMP CAPACITY. AVAILABLE DATA SUPPORT A FLOW RATE OF **98.50 GPM**.

Also see “Other Uses: Purpose: Examining Purpose: Municipal Uses” ([Section X.B.2.b](#)) for criteria to determine the presumption of non-abandonment.

Volume: **The guideline is 250 gallons per capita per day (GPCD)** ([Rule 29 \(b\) \(4\) \(ii\) W.R.C.E.R.](#)). Information on the population of municipalities can usually be obtained through the [Census Bureau](#) or the [Montana Department of Commerce--Census and Economic Information Center](#). Historical population data is available in "[Population of Incorporated Places* \(Cities/Towns\) in Montana, 1890 to 2000](#)". Another resource is the local Chamber of Commerce. See “Municipal Water Needs” (Exhibit X-18) for explanation of the derivation of this guideline.

If the claimed volume is not substantiated by information in the claim file or from a completed questionnaire, calculate a volume using the guideline. Use 1970 census data to determine the population figure for calculating the GPCD (or use the year when the municipality had the greatest population prior to 1970).

Compare this calculated volume to the claimed volume. If the claimed volume exceeds the calculated guideline, and the volume is not decreed in a historical district court decree, the volume will be reduced to the guideline. Document the reduction by placing an asterisk in the brackets to the left of the volume element on the examination

worksheet. Add the following volume (VM) remarks to the department's examination worksheet:

Examples: V5 THE VOLUME OF THIS WATER RIGHT HAS BEEN REDUCED TO THE GUIDELINE OF **0.00** ACRE FEET PER YEAR. THIS VOLUME MAY BE CONTESTED BY PROPER OBJECTION.

V135 THE CLAIMED VOLUME MAY BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME IS **600** GALLONS PER CAPITA PER DAY (GPCD) BASED ON THE **1980** CENSUS POPULATION OF **2,518** PEOPLE.

If no documentation is submitted or submitted data is insufficient to confirm a volume, add a volume (VM) issue remark to the department's examination worksheet. See "Other Uses Flow Rate and Volume Issues" ([Section X.C.4](#)).

Multiple Claims. If the municipal purpose involves multiple claims in a manifold system and the combined volume in GPCD is excessive, see "Place of Use: Supplemental Other Uses Right" below ([Section X.D.4](#)).

i. Agricultural Spraying. This purpose can include, but is not limited to, pesticide or fertilizer applications. The spraying may occur, but is not limited to manual equipment, tractor-mounted equipment, or by aerial application.

Flow Rate: **The claimed flow rate guideline for agricultural spraying is the capacity of the diversion and conveyance system ([Rule 29 \(b\) \(5\) \(i\) W.R.C.E.R.](#)).** Examine the claimed flow rate using the procedures in "Other Uses Claims: Flow Rate and Volume: Examining Claimed Flow Rate and Volume" ([Section X.C.2](#)) and in "Other Uses Claims: Flow Rate and Volume: Specific Flow Rate and Volume Examination Criteria: Other Uses Claims without Reservoirs" ([Section X.C.3.a](#)).

Volume: **The volume guideline for agricultural spraying is 2 AF per year if no reservoir is involved. The guideline is 4 AF per year if a reservoir is involved ([Rule 29 \(b\) \(5\) \(ii\) W.R.C.E.R.](#))** (Section X.C.3.a and X.C.3.b above do not apply for examining the volume). When a claimed volume exceeds the guideline, review the file for any data in support of the claimed volume. If no supporting documentation is in the claim file, contact the claimant. Determine approximately how many acres per year are sprayed. To check the claimed volume, assume that 20 gallons/acre is used.

If the claimed volume is greater than 20 gallons/acre, add a volume (VM) issue remark (such as V70, V100, V130) to the department's examination worksheet.

Example: V100 THE CLAIMED VOLUME **APPEARS TO/MAY** BE EXCESSIVE FOR THE CLAIMED PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

j. Prior Decreed Flow Rates or Volumes. Flow rates or volumes based on historical district court decrees will be decreed as claimed, amended, or modified by rule. The flow rate or volume will not be reduced to the guideline ([Rule 29 \(g\) \(1\) W.R.C.E.R.](#)).

If the volume was decreed in a prior decree, add a volume (VM) information remark to the examination worksheet:

Examples: V10 THIS VOLUME WAS PREVIOUSLY DECREED IN CASE NO. **0000**, **MONTANA** COUNTY.

F45 ENTIRE FLOW OF THE SOURCE AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

Individual Claim Exceeds Prior Decreed Amount: If a claim's flow rate or volume is greater than the prior decreed amount, add the appropriate flow rate (FR) or volume (VM) issue remark to the examination worksheet. (An implied claim may be involved if the claimant historically used the difference between the claimed and decreed amount.)

Examples: F90 THE CLAIMED FLOW RATE EXCEEDS THE **150** MINER'S INCHES OF **DOE CREEK** DECREED IN CASE NO. **0000**, **MONTANA** COUNTY.

V30 THE CLAIMED VOLUME EXCEEDS THE **1,750** ACRE-FEET DECREED IN CASE NO. **0000**, **MONTANA** COUNTY.

Exceeds the Guideline: A prior decreed flow rate or volume will be compared to the guideline for the claimed purpose. If a claimed flow rate or volume exceeds the guideline, add an issue remark to the department's examination worksheet. See "Other Uses Flow Rate and Volume Issues" ([Section X.C.4](#)).

Decreed Rights Exceeded: Prior decreed rights are recorded as described in "Irrigation: Flow Rate: Recording Documentation" (Section VII.B.5). When a prior decreed right is found to be exceeded by the combined flow rate of claims based on a single right ([Rule 29 \(h\) W.R.C.E.R.](#)), add a decree exceeded (DE) issue remark to the department's examination worksheet:

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 **150** MINER'S INCHES DECREED IN CASE NO. **0000**, **MONTANA** COUNTY. **000000-00, 000000-00, 000000-00**.

k. Filed and Use Right Flow Rates or Volumes. Flow rates or volumes will be reduced to the guideline unless information in the claim file clearly substantiates the claim or information is obtained to support the flow rate or volume ([Rule 29 \(g\) \(2\) W.R.C.E.R.](#)).

When a claimed flow rate is reduced to the guideline, add the following flow rate (FR) information remark to the examination worksheet:

Example: 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.

When a claimed volume is reduced to the guideline, add the following volume information remark to the examination worksheet:

Example: V5 THE VOLUME OF THIS WATER RIGHT HAS BEEN REDUCED TO THE GUIDELINE OF **0.00** ACRE FEET PER YEAR. THIS VOLUME MAY BE CONTESTED BY PROPER OBJECTION.

4. Other Uses Flow Rate and Volume Issues. Note any pertinent flow rate or volume issues discovered during the examination on the department's examination worksheet using a flow rate (FR) or volume (VM) remark, as appropriate. [Rule 29 \(j\)\(5\), W.R.C.E.R.](#)

a. Flow Rate Excessive. When a flow rate will be decreed and the claimed flow rate appears excessive for the circumstances of the claim (e.g., diversion and conveyance, purpose), add a flow rate (FR) issue remark to the department's examination worksheet. The claimant must be notified of any issue remarks.

Examples: F145 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM. AVAILABLE DATA SUPPORT A FLOW RATE OF **2.50 CFS**.

F220 THE CLAIMED FLOW RATE EXCEEDS THE ESTIMATED AVERAGE ANNUAL FLOW OF THE SOURCE (**3.50 CFS**).

F225 THE CLAIMED FLOW RATE **APPEARS TO/MAY** BE HIGH FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

F240 THE CLAIMED FLOW RATE CANNOT BE CONFIRMED DUE TO A LACK OF DATA.

F230 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE REASONABLE AND CUSTOMARY FLOW RATE FOR THIS PURPOSE. AVAILABLE DATA SUPPORT AN ACTUAL FLOW RATE OF **2.41 CFS**.

- F231 US BUREAU OF MINES CIRCULAR NO. **0000 (YYYY)** LISTS THE DIVERSION CAPACITY FOR THIS ORE PROCESSING FACILITY AT **400 GPM**.
- F245 THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF **30 GPM**.
- F250 INFORMATION IN THE CLAIM FILE DESCRIBES A HISTORIC FLOW RATE OF **35 MINER'S INCHES** AND A VOLUME OF **40** ACRE-FEET PER YEAR.
- F255 ACCORDING TO INFORMATION IN THE CLAIM FILE, THE CLAIMED FLOW RATE EXCEEDS THE CAPACITY OF THE CONVEYANCE SYSTEM.
- F260 THE FLOW RATE FOR THIS WATER RIGHT WAS MEASURED AS **112 GPM** DURING A FIELD INVESTIGATION CONDUCTED ON **MM/DD/YYYY**.
- F220 THE CLAIMED FLOW RATE EXCEEDS THE ESTIMATED AVERAGE ANNUAL FLOW OF THE SOURCE (**3.50 CFS**).

b. Volume Excessive. When a claimed volume appears excessive for the circumstances of the claim (e.g., diversion and conveyance, purpose, reservoir capacity), add a volume (VM) issue remark to the department's examination worksheet. The claimant must be notified of any issue remarks.

- Examples: V40 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS **2.9** TIMES THE CAPACITY OF THE RESERVOIR.
- V70 THE CLAIMED VOLUME EXCEEDS THE **2.50** ACRE-FEET GUIDELINE FOR THIS PURPOSE. ITS ACCURACY CANNOT BE CONFIRMED DUE TO LACK OF DATA.
- V75 THE CLAIMED VOLUME EXCEEDS THE **2.00** ACRE-FEET GUIDELINE FOR THIS PURPOSE. AVAILABLE DATA SUPPORT A VOLUME OF **1.80** ACRE-FEET.
- V77 VOLUME APPEARS TO BE EXCESSIVE FOR A **BUCKET** MEANS OF DIVERSION.

- V85 VOLUME MAY BE EXCESSIVE. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN **24.0** HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THIS FIGURE.
- V86 THE CLAIMED FLOW RATE OR VOLUME MAY BE INCORRECT. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN **24.0** HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THESE FIGURES.
- V100 THE CLAIMED VOLUME **APPEARS TO/MAY** BE EXCESSIVE FOR THE CLAIMED PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.
- V111 THE CLAIMED VOLUME CANNOT BE CONFIRMED DUE TO LACK OF DATA.
- V115 THE CLAIMED VOLUME APPEARS TO EXCEED THE REASONABLE AND CUSTOMARY VOLUME FOR THIS PURPOSE. AVAILABLE DATA SUPPORT A VOLUME OF **4.80** ACRE FEET PER YEAR.
- V120 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. AVAILABLE DATA SUGGEST THE ACTUAL VOLUME IS **1.20** ACRE-FEET PER YEAR.
- V130 THE CLAIMED VOLUME EXCEEDS THE **2.00** ACRE-FEET GUIDELINE FOR AGRICULTURAL SPRAYING.
- V135 THE CLAIMED VOLUME MAY BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME IS **600** GALLONS PER CAPITA PER DAY (GPCD) BASED ON THE **1980** CENSUS POPULATION OF **2,518** PEOPLE.
- S160 THE COMBINED CLAIMED VOLUME FOR THE FOLLOWING CLAIMS IS **1720** GALLONS PER CAPITA PER DAY (GPCD) BASED ON THE **1980** CENSUS POPULATION OF **1896** PEOPLE AND A TOTAL CLAIMED VOLUME OF **3657** ACRE-FEET. THIS APPEARS EXCESSIVE FOR THE CLAIMED PURPOSE. **000000-00, 000000-00, 000000-00, 000000-00**.

c. Claimed Flow Rate or Volume Appears Inadequate. If the claimed flow rate or volume appears inadequate for the specific purpose or compared to available data, add a flow rate (FR) or volume (VM) issue remark to the department's examination worksheet:

Examples: F185 THE CLAIMED FLOW RATE APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

V45 THE CLAIMED VOLUME APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

d. No Flow Rate or Volume Claimed. If no flow rate or volume was claimed, add a flow rate (FR) or volume (VM) issue remark to the department's examination worksheet. If a flow rate or volume is not claimed, check that the value is expressed as null (no value) and a KEEP/CLAIMED flag is designated on the worksheet.

Examples: F190 NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

V90 NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS **2.00** ACRE-FEET PER YEAR.

V95 NO VOLUME HAS BEEN CLAIMED.

e. Claimed Flow Rate or Volume not Numerically Quantified. Where a claimed flow rate or volume is to be decreed and the claim states "ALL" or a portion of "ALL" (e.g., "1/2 of ALL"), follow the procedures as described in "Irrigation: Flow Rate: Flow Rate Issues: Claimed Flow Rate Not Numerically Quantified" (Section VII.B.4.b) and "Irrigation: Volume: Volume Issues: Claimed Volume Not Numerically Quantified" (Section VII. C.4.e).

D. PLACE OF USE (POU)
[Rule 28, W.R.C.E.R.](#)

The place of use for Other Uses claims will be defined by a legal land description. Typically, acres were not identified on Other Use claims. However, if a claim has a specified number of acres for purposes such as municipal (e.g., cemetery), commercial (e.g., golf course), or agricultural spraying, the acres should be retained.

Claimant contact must occur upon completing examination of the ownership if the place of use is modified by rule; an issue remark exists, or is unclear. [Rules 28\(a\)\(2\) and 44, W.R.C.E.R.](#) and Section IV.F.

1. Identifying Claimed Place of Use. Identify the claimed place of use on an Other Uses claim using the same procedures outlined in "Irrigation: Place of Use" (Section VII.D.1). The place of use for Other Use purposes will be identified and described to the nearest reasonable and concise legal land description ([Rule 28 \(a\) W.R.C.E.R.](#)). [Rule 28, W.R.C.E.R.](#) refers the claims examiner to [Rule 12, W.R.C.E.R.](#) for direction on examining place of use in addition to the specifics included in [Rule 28, W.R.C.E.R.](#), see also Section VIII.D.

It may be necessary to contact the claimant in order to determine the place of use. At the invitation of the claimant, an on-site visit may be conducted. See "Examination Materials and Procedures: Investigation Techniques: On-site Visits" (Section IV.G.3) for further information. [Rules 289a\)\(2\) and 44., W.R.C.E.R.](#)

Additional Legal Land Descriptions. Government lots, subdivisions, certificates of survey, homestead entry surveys, and mineral surveys, when available, are useful supplements when identifying or examining Other Use POUs. These descriptions may be added to a conventional $\frac{1}{4}\frac{1}{4}\frac{1}{4}$ section, township, and range legal land description directly on the examination worksheet as a clarification of a claimed POU. In some instances, a place of use (PL) information remark may best describe the location. Detailed discussion of these additional legal land descriptions is given in "Claim Examination: Additional Legal Land Descriptions" (Section VI.E). [Rule 28\(c\)\(2\), W.R.C.E.R.](#)

The degree to which legal land descriptions can be modified by rule ([Rule 33 \(b\)\(1\),\(4\), W.R.C.E.R.](#)) without benefit of claimant contact depends on the quality of the claimant's map, and outside data sources (plat books, aerial photos, realty transfer certificates, etc.). The claimant's intent must be clearly established by their map or other information in the claim file, preferably both.

When adding such legal land descriptions, make certain that portions of the historical place of use are not excluded. For example, if it is not clear the place of use falls entirely within a mineral survey, add a place of use (PL) remark to the examination worksheet. See "Standard Examination Remarks: Place of Use" (Section V) for appropriate remarks.

2. Examining Place of Use. Examine the place of use of an Other Uses claim using one or more of the following data sources: [Rule 28\(a\)\(1\), W.R.C.E.R.](#)

- Claim information
- USGS topographic maps
- Orthophotoquads
- USDA aerial photographs
- Water Resources Survey information
- U.S. National Forest Service maps
- Bureau of Land Management maps
- Returned questionnaires
- Industry publications
- City directories
- Mining histories
- Records of other government agencies
- Web resources

If a claimed place of use cannot be substantiated by an outside data source, add a place of use (PL) issue remark to the examination worksheet:

Example: P335 USDA AERIAL PHOTOGRAPH NO. **1379-48**, DATED **MM/DD/YYYY**, SHOWS NO EVIDENCE OF **FISH RACEWAYS** AT THE CLAIMED PLACE OF USE.

Unique Features or Aspects. Any unique aspects or features of the place of use may be identified using a place of use (PL) information remark: [Rule 28\(c\)\(3\), W.R.C.E.R.](#)

Examples: P215 THE PLACE OF USE IS **THE TOWN OF DOE.**

THE PLACE OF USE IS **EAST OF DOE ROAD.**

THE PLACE OF USE IS **THE SURFACE AREA OF DOE RESERVOIR AT THE TOP OF THE FLOOD POOL.**

Agricultural Spraying. If the claimed POU is confirmed by the claimant's map, the claimed POU parcel descriptions should be accepted. If the boundaries of the sprayed area are vague, or it is known that spraying occurs on property other than the claimant's, contact the claimant. The claimant may choose to submit an amendment to accurately reflect the historical place of use. If claimant contact is inconclusive and the place of use appears reasonable, add a place of use (PL) information remark to the examination worksheet:

Examples: PL THE PLACE OF USE IS IN TWP 98N RGE 98E AND TWP 99N RGE 99E, MONTANA COUNTY.

PL THE PLACE OF USE IS FROM TWP 98N TO TWP 99N AND RGE 98E TO RGE 99E, MONTANA COUNTY.

P205 THE PLACE OF USE IS THE GENERAL AREA WITHIN A **FIVE** MILE RADIUS OF THE POINT OF DIVERSION.

If the place of use appears to be unreasonable, add a place of use (PL) issue remark to the examination worksheet:

Example: PLIS THE PLACE OF USE IS QUESTIONABLE. THE CLAIMED PLACE OF USE IS FOR ALL OF BEAVERHEAD COUNTY.

Overlapping Ownership. Ownership issues may be identified using the AllCad layer in WRMapper. If an ownership issue is identified, refer to “Irrigation: Place of Use: Place of Use Issues” (Section VII.D.4) of “Claim Examination: Owner Name and Address: New Owner Determined but File Lacks Ownership Update” (Section VI.B.3). This analysis includes examining claims for the possibility that they may overlap with federal or state ownership of the place of use.

3. Changing Place of Use. The claimed legal land description will not be changed during the department’s examination per [Rule 28 \(b\) W.R.C.E.R.](#) unless:

- amended by the claimant; [Rule 28\(b\)\(1\), W.R.C.E.R.](#)
- modified by rule (clarified) by the department to the nearest reasonable and concise legal land description [Rules 28\(b\)\(2\) and 33\(b\)\(4\)\(i\), W.R.C.E.R.](#) and [Section X.D.1](#);
- modified by rule (clarified) and revised so that the POU and POD legal land descriptions for instream surface water use will be the same [Rule 28\(b\)\(3\), W.R.C.E.R.](#) and [Section X.E.2](#); or
- modified by rule (clarified) by the department without claimant contact if the claimed intent is clear or with claimant contact if the claimed intent is unclear. [Rules 33\(b\)\(1\), \(4\), and 33\(c\), W.R.C.E.R.](#)

4. Supplemental Other Uses Rights. Supplemental rights occur when the place of use of more than one water right overlap. The supplemental water rights must have the **same purpose** and **ownership**.

a. Identifying Supplemental Rights. Supplemental rights are identified by examining the POUs of an ownership. Use WRMapper to determine all rights within an ownership which overlap in any way. To be considered supplemental, they can overlap entirely, in part, or in series, e.g., Parcel A overlaps Parcel B which overlaps Parcel C. This is more common for mining and municipal purposes. [Rule 40, W.R.C.E.R.](#)

Add the following supplemental right (SR) information remark to the examination worksheet for all supplemental Other Uses claims (do not record supplemental Other Use water rights in the Related Rights tab):

Example: S135 WHENEVER THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE COMBINED TO SUPPLY WATER FOR THE CLAIMED PURPOSE, EACH IS LIMITED TO THE HISTORICAL FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE. **000000-00, 000000-00, 000000-00, 000000-00.**

b. Supplemental Right Issues. Supplemental right issues may exist involving flow rate and volume. When the combined flow rate and/or volume of supplemental rights exceeds the guideline for their purpose by a factor of two or more, add a supplemental right (SR) issue remark ([Rule 40\(c\)\(2\), W.R.C.E.R.](#)) to the examination worksheet for each claim:

Examples: S155 THE COMBINED FLOW RATE FOR THIS GROUP OF SUPPLEMENTAL RIGHTS EXCEEDS THE FLOW RATE GUIDELINE FOR **MINING** PURPOSES BY A FACTOR OF **TWO**.

S160 THE COMBINED CLAIMED VOLUME FOR THE FOLLOWING CLAIMS IS **1720** GALLONS PER CAPITA PER DAY (GPCD) BASED ON THE **1980** CENSUS POPULATION OF **1896** PEOPLE AND A TOTAL CLAIMED VOLUME OF **3657** ACRE-FEET. THIS APPEARS EXCESSIVE FOR THE CLAIMED PURPOSE. **000000-00, 000000-00, 000000-00, 000000-00.**

S165 THE COMBINED CLAIMED **VOLUME/FLOW RATE** FOR THIS GROUP OF SUPPLEMENTAL RIGHTS IS **480.00 ACRE-FEET/300 GPM** WHICH CANNOT BE CONFIRMED DUE TO LACK OF DATA.

S170 THE COMBINED CLAIMED VOLUME FOR THIS GROUP OF SUPPLEMENTAL RIGHTS IS **1,480.00 ACRE-FEET**. DATA IN THE CLAIM FILE INDICATES A MAXIMUM USE OF **810.00** ACRE- FEET PER YEAR.

5. Geocodes. Geocodes were initially assigned to water rights as either a one-to-one match or a one-to-many match based on the legal land description. At times, the legal land description associated with a water right was described very broadly, encompassing several parcels that may not have been within the true place of use. As a result, geocodes must be verified as belonging to the claimed place of use. Any geocodes assigned initially to the water right are listed below the place of use element on the examination worksheet.

Determine valid geocodes by using the AllCad layer in WRMapper or the [Montana](#)

[Cadastral Mapping Program](#) information. Indicate a valid geocode with a 'Y' on the examination worksheet. (See assignment of Geocodes memo, Exhibit VI-18.)

Once a place of use has validated geocodes, cross off any geocodes not associated with the place of use on the examination worksheet. In the database, delete these records from the Geocode tab under the Create and Maintain Water Rights screen.

Geocode issues. Every effort should be made to validate geocodes.

- If a geocode cannot be conclusively determined as belonging partially or wholly within the place of use, the geocode should have a 'N' designation (not validated). If an ownership update occurs involving any geocode with a designation of an 'N', the water right will require further research before the ownership update can occur.
- If a geocode is designated as valid ('Y') and it is found to be in error, change the 'Y' to an 'N' on the examination worksheet and document the resources and/or research in making the determination. In the database, in order to remove an incorrectly validated geocode, first change the 'Y' to an 'N' and then save. The record can then be deleted.
- If a legal land description is found to be in error, review the geocodes. If any changes are made to the legal land description (i.e., a correction to the township, range or section occurs based on the claimant's map, for example), it may be determined that a geocode may need to be deleted or added.
- If the place of use is amended, review the geocodes. It may be determined that a valid geocode needs to be deleted, or a geocode not initially associated with the water right needs to be added.
- Water rights which have been reserved (exempted) from the land, such as those belonging to homeowner's associations, municipalities, and certain other entities that provide service but do not own the place of use, just the water right, will not have any associated geocodes. If a geocode is assigned, delete it from the Geocode tab in the database.

E. POINT OF DIVERSION AND MEANS OF DIVERSION FOR INSTREAM AND INLAKE APPROPRIATIONS.

1. Point of Diversion. Examination procedures for point of diversion are described in "Claim Examination: Point of Diversion" (Section VI.F). *Only those aspects explicitly addressed in [Rule 31 W.R.C.E.R.](#) pertaining to Other Uses point of diversion and means of diversion for instream and inlake appropriations are discussed in this section.*

Claimant contact must occur upon completing examination of the ownership if the point of diversion or means of diversion is modified by rule; an issue remark exists, or is unclear. [Rule 44, W.R.C.E.R.](#) and Section IV.F.

When examining instream or inlake claims, the point of diversion legal land description will be the same as the legal land description of the place of use. [Rule 31\(a\), W.R.C.E.R.](#)

Add the following point of diversion information remark to the department's examination worksheet: [Rule 31\(c\), W.R.C.E.R.](#)

Example: P10 THIS RIGHT FOR **INSTREAM/INLAKE** USE APPLIES FROM **DOE DAM IN MONTANA COUNTY DOWNSTREAM TO THE CONFLUENCE OF THE NORTH FORK OF DOE CREEK WITH THE JONES RIVER IN MONTANA COUNTY.**

2. Changing the Point of Diversion or Means of Diversion.

Point of Diversion: The claimed point of diversion may be changed by the department during the examination to make the point of diversion and place of use identical. It may be necessary to change either the point of diversion or place of use legal land descriptions. Changes in legal land descriptions may be based on the claimant's map, USGS maps, U.S. National Forest Service maps, Bureau of Land Management maps, or an aerial photograph. Conflicting data or a confusing claim file may make it necessary to contact the claimant for clarification. [Rule 31\(b\), W.R.C.E.R.](#)

Authorized changes may be made directly on the worksheet. When the claimed point of diversion is changed so that the review or decree abstract will differ from the claim form or amendment, place an asterisk in the brackets to the left of the point of diversion element on the examination worksheet.

Means of Diversion: The means of diversion may be changed by the department during the examination to identify the means of diversion as "Instream" or "Inlake".

Authorized changes will be made directly on the worksheet. When the claimed means of diversion is changed so that the review or decree abstract will differ from the claim form or amendment, place an asterisk in the brackets to the left of the point of diversion element on the examination worksheet. [Rule 31\(d\), W.R.C.E.R.](#)

F. PERIOD OF USE

The period of use is the timeframe within a calendar year when water is used for the claimed purpose. The period of use will be identified on the review and decree abstract as the earliest month/day to the latest month/day. See “Claim Examination: Period of Use” (Section VI.K) for general discussion of period of use. *Only those aspects explicitly addressed in [Rule 30 W.R.C.E.R.](#) pertaining to Other Uses period of use are discussed in this section.*

Claimant contact must occur upon completing examination of the ownership if the period of use is modified by rule; an issue remark exists, or is unclear. [Rules 30\(b\) and 44, W.R.C.E.R.](#) and Section IV.F.

1. Identifying the Claimed Period of Use. Check that the period of use on the claim form does not exhibit clerical errors by the claimant and is consistent with the documentation, if applicable. Also check that the claimed period of use has been properly entered into the database. The period of use on the examination worksheet may be slightly longer than claimed due to the limitation of the database prior to 2001. Correct the database to match the claimed period of use. No asterisk is necessary as the intent of the claim is not being changed.

If the claimed period of use is unclear or cannot be identified for a purpose whose guideline is not year-round, add a period of use (PE) issue remark:

Example: P135 THE CLAIMED PERIOD OF USE EXCEEDS THE USUAL PERIOD OF USE FOR THE CLAIMED PURPOSE WHICH IS **MARCH 15 TO NOVEMBER 15**.

2. Period of Use Guidelines. No specific period of use guidelines have been developed for Other Use claims. The claimed period of use will be compared to what is usual and customary for the claimed purpose. The data sources and materials used to examine the purpose will be used to establish the usual and customary period of use for the claimed purpose. [Rule 30\(a\)\(1\), W.R.C.E.R.](#)

Formerly Decreed Period of Use: When an Other Use claim is based on a decree which specifically identifies a period of use for the claimed purpose, the decreed dates will be the guideline.

3. Examining Period of Use. The usual and customary period of use for Other Uses claims will vary depending on the specific purpose identified. Examine the claimed period of use for reasonableness. Also review any documentation that may note conditions or limitations to the period of use. [Rule 30\(a\)\(1\), \(2\), W.R.C.E.R.](#)

a. Changing Claimed Period of Use. The period of use will not be changed as a result of the examination unless:

- amended by the claimant; [Rule 30\(c\)\(1\), W.R.C.E.R.](#)

- modified by rule (clarified) by the department without claimant contact if the claimed intent is clear or with claimant contact if the claimed intent is unclear. [Rules 30\(c\)\(2\), 33\(b\)\(1\), and 33\(c\), W.R.C.E.R.](#)

4. Period of Use Issues. Note any pertinent issues discovered during the examination on the department's examination worksheet. See "Claim Examination: Period of Use: Period of Use Issues" (Section VI.K.4). An issue may be identified as: [Rule 3\(d\)\(4\), W.R.C.E.R.](#)

- No period of use claimed;
- Claimed period of use differs significantly from that which is usual and customary for the specific purpose identified;
- Insufficient information available to determine the usual and customary period of use for the purpose identified;
- Period of use on the claim form differs significantly from period of use specified in the documentation;
- Feasibility during winter months.

