

XI. SPECIAL PROVISIONS

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A. AMENDED CLAIMS

A claimant may request and authorize (amend) historical changes to their claim prior to the printing of a Water Court decree ([Rule 34 W.R.C.E.R.](#)). Amendments must be submitted in writing. The department has developed an [Amendment Form](#) (Exhibit XI-1) which is the preferred instrument for amending a claim.

If an amendment is submitted after a decree is issued, the amendment must be processed by the Water Court (if a claimant finds errors after notice of a decree is received, the claimant should object to their water right during the objection period—see “Post Decree Revisions” (Section XIII.E)). All amendments submitted before the printing of the decree should be processed by the department as described below.

The following requirements were implemented by the Supreme Court Water Right Adjudication Rules on July 15, 1987. Any amendments received prior to that date will be acceptable even if they do not contain the requirements in “Amended Claims: Who May Amend” ([Section XI.A.1](#)) and “Contents of Amendments” ([Section XI.A.2](#)) below.

Amendments are required under the following circumstances, but may be used to change any element: [Rule 34\(b\), W.R.C.E.R.](#)

- An adjustment by a claimant to a claim not presently being examined;
- An adjustment by a claimant based on additional information acquired after the initial filing;
- An adjustment to flow rate, volume, priority date, or acres. Acceptable clarifications to these elements are described in the section on each element.

1. Who May Amend. Amendments received after July 14, 1987, will only be accepted from a current owner of the claim as listed in the department records or a legally authorized representative. The amendment may not be submitted by a non-owner, such as a tenant, ranch manager, or a forest service employee. [Rule 34\(c\)\(2\), W.R.C.E.R.](#)

If the current owner does not match the department records, contact the claimant to determine when the change in ownership occurred. If the transaction took place before July 1, 2008, supply the owner with a Water Right Ownership Update ([Form 608](#)). If the transaction occurred after July 1, 2008, and was not updated through the automated ownership update process, further research may be required including geocode assignment. An amendment from a non-record owner cannot be implemented until the database reflects current ownership.

Remember, an amendment is a sworn statement of facts within the affiant’s personal knowledge. If there is a new owner (of record or not) who was not around prior to July 1, 1973, he/she cannot swear to their personal knowledge of pre-July 1, 1973 use. Depending on the facts and reasonableness, if such an amendment is received, consider adding a free text amendment issue remark noting the affiant did not own the

property prior to 1973. The affiant can, however, attach an affidavit of a neighbor or prior owner who does have personal knowledge of pre-July 1, 1973 use to support the amendment.

Amendments received from persons other than the owner listed in the department records will be added to the claim file, but the information will NOT be entered into the database. Add an amendment (AM) issue remark to the department's examination worksheet:

Example: A20 AN AMENDMENT WAS SUBMITTED ON **MM/DD/YYYY** WHICH HAS NOT BEEN IMPLEMENTED. THIS AMENDMENT WAS NOT SUBMITTED BY THE OWNER LISTED IN THE DNRC RECORDS.

Multiple Owners. If an amendment is submitted by one owner for a claim involving multiple owners, remind the affiant that the amendment must be signed and notarized by **ALL** current owners (this statement is on the Amendment Form above the signature).

Send copies of the completed amendment along with an [Amendment Agreement Form](#) (Exhibit XI-2) to the other owners. Request the other owners review the amendment and if in agreement, sign and notarize the Amendment Agreement Form. Alternatively, multiple owners can sign and notarize a copy of the amendment. *All owners need to be noticed of the amendment and show agreement if the amendment is to be implemented.* Place the original and all documents showing agreement in the claim file. Be sure copies of the amendment are clearly marked "COPY" to avoid uncertainty on the scanned record. [Rule 34\(c\)\(2\), W.R.C.E.R.](#)

If not all signatures are obtained, add the following amendment (AM) issue remark to the department's examination worksheet: [Rule 34\(f\)\(4\), W.R.C.E.R.](#)

Example: A21 AN AMENDMENT WAS SUBMITTED ON **MM/DD/YYYY**, REQUESTING TO AMEND THE **PLACE OF USE**. THE AMENDMENT HAS NOT BEEN IMPLEMENTED AS IT HAS NOT BEEN SIGNED BY ALL OWNERS OF DNRC RECORD.

If an owner protests the amendment in writing, place the amendment and protest in the file but do NOT enter the amended information into the database. Add the following amendment (AM) issue remark to the department's examination worksheet:

Example: A25 AMENDMENT WAS SUBMITTED ON **MM/DD/YYYY**. THE AMENDMENT WAS NOT IMPLEMENTED DUE TO DISAGREEMENT AMONG THE OWNERS OF RECORD.

2. Contents of Amendments. Amendments must be submitted in writing. The department has developed an [Amendment Form](#) (Exhibit XI-1) which is the preferred instrument for amending a claim. However, a hand written/typed request which satisfies all of the amendment requirements is legally acceptable. All amendments

received after July 14, 1987 must contain: [Rule 34\(c\), W.R.C.E.R.](#)

- the date the amendment was received;
- the claim number of the claim being amended (a separate amendment form for each claim is preferred but not required);
- **a map.** If the place of use or point of diversion is amended, request the claimant provide a map showing the new POU or POD. Amendments to the maximum acres may also necessitate an amendment to the POU;
- reasons for the amendment (preferred but not required); and
- notarized signature of all current owners listed in the department's records. The notarized signature of a legally authorized representative is acceptable.

If proper notarized signatures of all record owners are requested and cannot be obtained or there is no response, do not process the amendment. Add the following amendment (AM) issue remark to the department's examination worksheet:

Example: A19 AN AMENDMENT WAS SUBMITTED ON **MM/DD/YYYY** REQUESTING TO AMEND THE **VOLUME TO 2.00 ACRE-FEET.** DNRC REQUESTED A SIGNED AND NOTARIZED AMENDMENT FORM BE SUBMITTED. THE AMENDMENT HAS NOT BEEN IMPLEMENTED AS IT HAS NOT BEEN PROPERLY FILED.

In order to qualify for prima facie status like the original Statement of Claim, an amendment must include the same type of supporting documentation for particular elements, just as the original claim did. This can include maps, letters, affidavits, or other documents.

3. Processing Amendments. Processing of amendments depends on where the particular basin is in the decree process. [Rule 34\(d\), W.R.C.E.R.](#)

a. Amendment Received before Basin Examination. Review the amendment for clarity of intent and be sure it contains all requisite items. Complete the following steps: [Rule 34\(d\)\(1\), W.R.C.E.R.](#)

- Date-stamp the amendment and all attached documents with the date received.
- Make sure the claim number being amended is clearly identified on the amendment and on all attached documentation. If the amendment is in letter form, write the claim number in the upper right-hand corner.
- Arrange all documentation in chronological order in the claim file.

- In the database, change the element(s) as amended. Change the element's origin to 'Amended' in the database.
- Add an appropriate amendment (AM) information remark. The date in the remark should be the date the amendment was received. [Rule 34\(f\)\(2\)](#), [W.R.C.E.R.](#)

Examples: A5 THE **PERIOD OF USE** WAS AMENDED BY THE CLAIMANT ON **MM/DD/YYYY**.

A15 THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON **MM/DD/YYYY**: **FLOW RATE, VOLUME, MAXIMUM ACRES, PLACE OF USE**. (Note: Two or more elements can be coded.)

- Send the amendment and all attachments to [Records](#) with a [routing slip](#) indicating the amendment and the attached materials should be scanned and filed with the claim to await examination.

Amendments Received Prior To July 15, 1987. These amendments, when encountered during examination, will be considered acceptable even if they do not contain the requirements above. At a minimum, the amendment must be in writing with a claim number, signature, and date. Check that the amended elements have been properly entered into the database. Add the necessary amendment information remark to the examination worksheet to document the amendment.

b. Amendment Received during Basin Examination. For amendments received during basin examination, complete the following steps: [Rule 34\(d\)](#), [W.R.C.E.R.](#)

- Process the amendment as in "Processing Amendments: Amendments Received before Basin Examination" ([Section XI.A.3.a](#)) above.
- After entering the amended information in the database, generate a new examination worksheet and proceed with examination. Document the examination process chronologically to make the file easy to follow in the future. If the amendment drastically alters the water right, see "Amended Claims: Examining Amendments" ([Section XI.A.4](#)).
- Amendments received during basin examination should be retained with other examination materials until the completion of the basin, at which time all materials will be scanned by Records.

c. Amendment Received after Basin Examination and Prior to Printing Decree. Amendments received after a basin is examined may be processed up until the time the basin is "locked down" in the database as the Water Court prepares to issue a decree. Depending on the stage of preparation, follow these guidelines:
Prior to Summary Report. Contact a supervisor to confirm whether the

amendment can be incorporated into the summary report prior to printing. If so, process the amendment as in “Amendment Received during Basin Examination” ([Section XI.A.3.b](#)) above. If the amendment cannot be incorporated into the summary report, follow the procedures described in “Amendment Received Prior to Decree” (directly below).

Prior to Decree. Contact a supervisor (or the specialist acting as the primary contact between the office/team and the water master) to confirm whether the amendment can be incorporated into the decree prior to printing. If so, process the amendment as in “Amendment Received during Basin Examination” ([Section XI.A.3.b](#)) above. It may be necessary to contact a database administrator to enter data in the database Notify the Water Master reviewing the Summary Report and request a Summary Report abstract for the Water Court. If the amendment cannot be processed for inclusion in the decree, see “Amendment Received after Decree Issued” ([Section XI.A.3.d](#)) below. Add the following amendment issue remark: [Rule 34\(d\)\(1\), W.R.C.E.R.](#)

Example: A28 AN AMENDMENT WAS SUBMITTED ON **MM/DD/YYYY** TO **AMEND THE PLACE OF USE AND MAXIMUM ACRES.** THIS AMENDMENT WAS NOT SUBMITTED IN TIME FOR DNRC TO PROCESS PRIOR TO ISSUANCE OF THE WATER COURT **DECREE.**

d. Amendment Received After Decree Issued. Claimants wishing to amend or correct an error with their claim in a decreed basin should be directed to file an [objection](#) with the Water Court if the objection list has not been published. If an objection list has been noticed, the claimant should file a motion to amend. See “Post-Decree Assistance” (Section XIII) for further details on communicating with the Water Court. [Rule 34\(d\)\(2\), W.R.C.E.R.](#)

4. Examining Amendments. Amendments will become part of the claim and will be examined following procedures for the purpose. [Rule 34\(e\), W.R.C.E.R.](#)

Occasionally an amendment may be submitted which so completely changes the claim that it could be considered a totally different water right from what was originally filed. Bring such instances to the attention of a supervisor for guidance. For example, amending an exempt claim (defined in Section II) to a non-exempt use or amending a claim to add another use may be a legal issue. Process the amendment as described in “Amendment Received during Basin Examination” ([Section XI.A.3.b](#)) above, and add the following amendment (AM) issue remark to the examination worksheet: [Rule 34\(f\)\(4\), W.R.C.E.R.](#)

Example: A27 AN AMENDMENT WAS SUBMITTED **MM/DD/YYYY** TO AMEND THE **POINT OF DIVERSION, PLACE OF USE, PRIORITY DATE, SOURCE, FLOW RATE, AND PURPOSE.** THE AMENDMENT SUBSTANTIALLY CHANGES THE ORIGINALLY FILED

STATEMENT OF CLAIM. (See also Consolidation of POU, POD, Sources, VII.G.)

B. IMPLIED CLAIMS
[Rule 35, W.R.C.E.R.](#)

1. What and Why. An "Implied Claim" is a claim authorized by the Water Court to be separated and individually identified when the statement of claim includes multiple rights.

Each water right should have been filed on a separate claim form. When it appears that a single claim contains more than one right, certain steps will be taken to determine if an implied claim should be generated. Only the Water Court can authorize the generation of an implied claim. [Rule 35\(a\)\(b\), W.R.C.E.R.](#)

Evidence of the existence of additional rights may appear on the claim form as multiple priority dates, sources, or purposes. Evidence may also exist in the attached maps and documentation. Usually evidence from the attachments must be fairly strong before considering sending the claim to the Water Court for review.

Information and data not included on or attached to the statement of claim, or filed before April 30, 1982, will not be considered for generation of an implied claim by the Water Court.

2. Request for Authorization Process Pre-Decree.

a. Request to Create an Implied Claim. Whenever a single claim appears to contain more than one right, review the claimant's other claims:

- If the claimed additional right is already on a separate claim, document this on both examination worksheets. Do not proceed further in the implied claim process.
- If there is doubt whether an additional right exists or about it being on another claim, contact the claimant. [Rules 35\(b\) and 44, W.R.C.E.R.](#)
 - If the claimant confirms there is no additional right or it is covered by another claim, document this on the claim examination worksheet. This ends the implied claim review of this claim.
- If the claimant does not respond to contact, or if the information gained is incomplete or inconclusive, do not proceed further in the implied claim process. Document the results in the claim file and apply the pertinent issue remarks to the claim.
- If the claimant confirms multiple rights and wants to pursue an implied claim and pay any required fees, send a "Request for Authorization to Create an Implied Claim" ([Figure XI-1](#)) with the complete claim file to the Water Court. Be sure to "cc" the claimant on the correspondence with the Water Court.

- If uncertain the additional water right is covered by another claim, send both claim files to the Water Court. If the water master denies the “Request to Create an Implied Claim”, include the request and the denial in the claim file. This ends the implied claim review for this claim.

b. Request for Authorization of an Implied Claim. Policies and procedures in affect during and shortly after the claim filing period allowed the department to generate implied claims *without* Water Court authorization. For any implied claims which do not contain Water Court authorization and it is confirmed that more than one right is involved, send a “Request for Authorization of an Implied Claim” ([Figure XI-2](#)) and all claim files to the Water Court. Be sure to “cc” the claimant on the correspondence with the Water Court.

3. Generating an Implied Claim Pre-Decree. When the Water Court has authorized an implied claim, transfer the additional right to a separate statement of claim form. The implied claim will usually be completed by the claimant or according to their direction and authorization. It may be necessary for the claimant to submit an amendment for the original claim. [Rule 35\(b\),\(c\),\(d\), W.R.C.E.R.](#)

All items on the statement of claim form should be completed, including the map and documentation. If documentation from the original claim is extensive, reference the original claim file in the general comments area of the implied claim examination worksheet.

The claimant's notarized signature is required, unless otherwise ordered by the Water Court. Request filing fees, if appropriate, pursuant to [§85-2-225, MCA](#), and [Rule 35 W.R.C.E.R.](#)

Place the implied claim in a labeled manila letter-sized file folder. A copy of the Request for Authorization and Water Court authorization should be included in both the original and implied claim files.

a. Implied Claim Fees. Implied claims are subject to the same fee requirements as an original Statement of Claim. See “Checking for Correct Data Entry: Checking Fee Paid” (Section VI.A.3) and [§85-2-225, MCA](#) for further detail on claim fees. [Rule 35\(d\)\(1\), W.R.C.E.R.](#)

If the maximum (\$480) in filing fees has not been met already, the claimant will owe an additional \$40 per implied claim, unless the implied claims are exempt-multiple use (instream or groundwater domestic and stock on the same source). If the original claim was filed late and is not an exempt right, the implied claim will get the same late filing date and be subject to the same \$150 late claim processing fee (see Late Claims in [Section XI.C](#)).

FIGURE XI-1

(State of Montana letterhead)

REQUEST FOR AUTHORIZATION TO CREATE AN IMPLIED CLAIM

TO: Montana Water Court

FROM: [Name], Water Resources Specialist
[Location] Water Resources [Regional/Unit] Office

DATE: [Date]

RE: Claim No. [000000-00]

This irrigation claim has two points of diversion. The first diversion is a diversion dam for a water spreading system. The second diversion is a dam and storage reservoir from which the claimant pumps for his sprinkler system.

The 1910 priority date fits the water spreading system but not the sprinkler system. According to the claimant, water was first pumped from Bear Creek in 1966 to flood irrigate. After trying different types of irrigation, including different types of sprinklers, a pivot system was installed in 1971.

In summary, this claim appears to contain two water rights. One right is for a water spreading system with a 1910 priority date. The other right is for a sprinkler system with a 1966 priority date. The complete file for this claim is enclosed. Please review and determine whether an implied claim should be generated. Thank you for your consideration in this matter.

Enclosure

cc: [CLAIMANT]

FIGURE XI-2

(For Implied Claims Created Without Water Court Authorization)

(State of Montana letterhead)

REQUEST FOR AUTHORIZATION OF AN IMPLIED CLAIM

TO: Montana Water Court

FROM: [Name], Water Resources Specialist
[Location] Water Resources [Regional/Unit] Office

DATE: [Date]

RE: Claim No. [000000-00]

The above claim was received April 27, 1982, as a timely filed statement of claim. Supporting documentation included notices of appropriation for:

- * 8 cfs - Big Hole River - September 20, 1901
- * 100 miners inches - Milky Spring - July 3, 1897

According to policy in affect during and shortly after the claim filing period, authorization from the Water Court to create implied claims was not required. Therefore, on November 22, 1982, during the clarification process, the July 3, 1897 right was separated and implied claim 41D 000000-00 was created.

At this time, I would like to request the Water Court's approval of implied claim 41D 000000-00. Enclosed for your review are both claim files.

Thank you for your consideration in this matter.

Enclosures

cc: [CLAIMANT]

b. Failure to Pay Implied Claim Fee. If a fee is required, the appropriate fees must be collected in order to process the implied claim. If the claimant does not submit the appropriate fee, DO NOT process the implied claim. Document in the claim file that an implied claim was requested and authorized by the Water Court, but the filing fee for the implied claim was not submitted. File the Request and the Water Court's authorization in the claim file. This ends the implied claim process for this claim.

c. Processing Once All Requirements are Met. Once all implied claim requirements have been met, in the upper right corner of the new claim form write the date the original claim was received (see [Figure XI-3](#)). Stamp or write IMPLIED CLAIM at the top of the claim form. Write the date the implied claim is generated on the label described below.

Complete the following items at the top left corner of the claim form. See [Figure XI-3](#) for proper placement of these items.

- claim number
- basin number
- climatic area code (irrigation claims only)
- filing fee collected, if any
- processing fee, if any

Attach a label over Item 2 (person completing form) on the claim form. This label states the claim has been authorized by the Water Court and refers to the original claim number. Its format is shown in [Figure XI-3](#).

4. Processing of Implied Claims Pre-Decree. Enter the information from the implied claim into the database (see "Claim Examination Documents\Implied Claims" on the Adjudication Shared Drive for instruction on creating a new water right) and generate an examination worksheet. Examine the implied claim following procedures for the purpose. In addition, add information remarks to both the implied claim and the original claim to reference each other. [Rule 35\(d\), W.R.C.E.R.](#)

Add the following implied claim (CI) information remark to the examination worksheet of the **implied** claim:

Example: C5 THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. **000000-00**.

Add the following implied claim (CI) information remark to the examination worksheet of the **original** claim: [Rule 35\(e\)\(2\), W.R.C.E.R.](#)

Examples: R15 IMPLIED CLAIM NO. **00000000** WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

R16 THE IMPLIED CLAIMS LISTED FOLLOWING THIS STATEMENT WERE AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. **00000000, 00000000, 00000000**.

Remember to add each child claim number to the child tab for the parent claim in the database.

Once examination is complete, file the claim with other completed files in the basin. Be sure the new claim is added to the claim roster for the basin. If other basin files have already been scanned, this new claim should be routed to Records with appropriate scanning and filing instructions.

Outstanding Requests. As examination of the basin nears completion (prior to summary preparation), check for any outstanding requests for implied claims at the Water Court. If the Water Court is unable to process the outstanding request, add the appropriate implied claim (CI) issue remark (C8 or C9). If an implied claim is authorized and time allows before the Summary Report is issued, examine the claim following procedures for the claimed purpose.

Examples: C8 PURSUANT TO 1982 POLICY, THIS IMPLIED CLAIM WAS GENERATED BASED ON INFORMATION IN CLAIM NO. **000000-00**. CURRENT POLICY NOW REQUIRES IMPLIED CLAIMS BE AUTHORIZED BY THE WATER COURT. ON **MM/DD/YYYY**, A REQUEST FOR AUTHORIZATION TO CREATE AN IMPLIED CLAIM WAS SENT TO THE WATER COURT. AS OF **MM/DD/YYYY**, NO RESPONSE HAS BEEN RECEIVED FROM THE WATER COURT.

C9 IT APPEARS MORE THAN ONE WATER RIGHT MAY BE INVOLVED. ON **MM/DD/YYYY**, A REQUEST FOR AUTHORIZATION TO CREATE AN IMPLIED CLAIM WAS SENT TO THE WATER COURT. AS OF **MM/DD/YYYY**, NO RESPONSE HAS BEEN RECEIVED FROM THE WATER COURT.

5. Processing of Implied Claims Post-Decree. If the Water Court requests the department's assistance in creating an implied claim in a decreed basin, comply with the Court's Order. Usually such a request is for technical assistance only. Send the Court the results (per the order) in memorandum and map form. The claim file should also be returned to the Court upon completing the request for assistance. Note only authorized staff may make post-decree database changes or corrections authorized by the Court. See "Post Decree Assistance" (Section XIII) for further information.

C. LATE CLAIMS
[Rule 36, W.R.C.E.R.](#)

A late claim is an untimely filed claim for an existing water right forfeited pursuant to the “conclusive presumption of abandonment” under [§85-2-226, MCA](#), and then remitted under [§85-2-221, MCA](#), by the 1993 Legislature. Late claims were filed with the department after 5:00 p.m. April 30, 1982 and physically submitted or postmarked on or before July 1, 1996. Late claims are subject to certain terms and conditions pursuant to [§§85-2-221\(3\), 85-2-222](#) and [85-2-225, MCA](#), which applies to late claim processing fees and exempt claim filing fees for claims filed after April 30, 1982. See also [Rule 36\(a\), W.R.C.E.R.](#)

Claimants who did not file a claim by 5:00 PM, April 30, 1982 had the opportunity to file a claim with the department through July 1, 1996. To be accepted, the claim had to be physically submitted to the department or postmarked in the U.S. mail on or before the July 1, 1996 deadline. The department will no longer accept late claims. If a late claim is submitted, it should be returned to the claimant. [Rule 36\(b\), W.R.C.E.R.](#)

Closed Basins. Pursuant to reserved water right compacts ratified by the legislature prior to July 1, 1993 (effective date of SB310 - late claim legislation), certain basins were closed to the filing of late claims. Basins which were closed pursuant to compacts are:

- Basin 42A: Rosebud Creek moratorium in effect. No late claims could be filed.

If a late claim is filed in a basin which is closed pursuant to a reserved water right compact, add the following late claim (LC) issue remark to the claim:

Example: L10 THIS LATE CLAIM IS IN A DRAINAGE WHICH MAY BE CLOSED TO FURTHER APPROPRIATION PURSUANT TO A COMPACT RATIFIED BY THE LEGISLATURE PRIOR TO JULY 1, 1993.

1. Examining Late Claims. As of July 1, 1996, all late claims are afforded a conditional remission of forfeiture, (i.e., claimants were allowed to file late claims but with conditions), and therefore, will be examined following procedures for the claimed purpose. [Rule 36\(c\), W.R.C.E.R.](#)

Shortly after the July 1, 1996 deadline, a review of all late claims was conducted by the department. It was then that late claims were identified as either “A”, “B”, or exempt. [Rule 36\(a\), W.R.C.E.R.](#)

Check the date received and information in the claim file to ensure the claim is late. During the clarification period, amendments were often submitted on claim forms. The date the amended claim was received may have been entered into the database instead of the date the original claim was received.

a. “A” Late Designation. Late claims were designated as “A” when: [Rule 36\(d\)\(1\), W.R.C.E.R.](#)

- the claim was placed in the U.S. mail and postmarked on or before 5:00 p.m. April 30, 1982, (i.e., not physically at the DNRC prior to 5:00 p.m. April 30, 1982) or
- if there was no evidence of the date of mailing, but there was evidence of execution (e.g., date the claim was notarized) on or before 5:00 p.m., April 30, 1982, *and* the claim was received by the department on or before May 7, 1982.

All such “A” claims should have the following late claim (LC) information remark:

Example: L5 CLAIM FILED LATE **MM/DD/YYYY**. AS MANDATED BY SECTION [85-2-221\(3\), MCA](#), THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL FEDERAL AND INDIAN RESERVED WATER RIGHTS.

“A” late claims retain the claimed priority date, but are subordinate to federal and Indian reserved water rights. Note that the “A” late designation is on the examination worksheet and in the Historical tab in the database.

b. “B” Late Designation. “B” late claims are all other claims, EXCEPTING exempt claims, physically submitted to the department or postmarked after May 7, 1982 and on or before July 1, 1996. “B” late claims should have the following late claim (LC) information and issue remarks: [Rule 36\(d\)\(2\), W.R.C.E.R.](#) and the October 1, 2003 Water Court Order on Late Claim Remarks.

Examples: L6 CLAIM FILED LATE **MM/DD/YYYY**. AS MANDATED BY SECTION [85-2-221\(3\), MCA](#), THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL FEDERAL AND INDIAN RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

L7 CLAIM FILED LATE **MM/DD/YYYY**. IN ADDITION TO BEING SUBORDINATE TO ALL FEDERAL AND INDIAN RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS CLAIM MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION [85-2-221, MCA](#).

“B” late claims receive an *enforceable priority date* of June 30, 1973. Note this on the examination worksheet and in the Enforceable Date field (under the Priority Date element) in the database when a claim receives the “B” late designation in the Historical tab.

c. Exempt Claims. Exempt claims filed after 5:00 p.m. April 30, 1982 and physically submitted or postmarked on or before July 1, 1996, which were exempt from the filing requirements in [§85-2-222, MCA](#), are NOT considered to be late claims. The Department allowed water users to fill out and submit to the Department a Form 627 wherein they could describe on a paper record for the Department to keep exempt rights that were not filed in the adjudication, but a Form 627 did not amount to an official “filing” of their exempt rights, those described exempt rights were not included in the adjudication of water rights, and the use of Form 627 was discontinued in 2008. SB 355 of the 2013 Session provides a petition process before the Water Court for owners of existing rights exempt from filing who did not voluntarily file their exempt claims to request a judicial determination from the Water Court of their existing exempt rights claims.

Exempt claims are:

- Stockwater use directly from source (no manmade diversion);
- Stockwater use from a groundwater source;
- domestic use (including single and multiple domestic, and lawn and garden use) from a groundwater source, or
- domestic use (including single and multiple domestic, and lawn and garden use) directly from instream (no manmade diversion).

NOTE: Domestic use as defined by statute includes single household use, multiple domestic use, and lawn and garden use. All of these purposes would be exempt from the filing requirements.

Late filed exempt claims should have the following late claim (LC) information remark, instead of any late claim issue remark:

Example: L8 CLAIM FILED **MM/DD/YYYY**. THIS RIGHT IS AN EXEMPT RIGHT VOLUNTARILY FILED UNDER SECTION [85-2-222, MCA](#).

d. Fees for Late Filed Claims. All late filed claims, including “A” and “B” designated late claims and exempt claims, are subject to the initial claim filing fee as set in [§85-2-225, MCA](#). In addition, all “A” and “B” designated late claims are each required to pay a \$150 late claim processing fee. This late claim processing fee DOES NOT apply to late filed exempt claims.

This late claim processing fee must be paid to the department. If no fee is collected, the appropriate fee insufficient (FI) issue remark must be added to the examination worksheet:

Example: F35 PROCESSING FEE INSUFFICIENT TO COVER LATE CLAIM. TOTAL AMOUNT DUE \$150.00.

Most late filers paid this fee when they filed their late claims. For those that did not, part of the administrative process included two statewide attempts to collect such fees in the late 1990's. If a claimant decides now that the claim isn't worth the fee, they may be willing to withdraw the late claim (see [Section XI.E](#)).

If the fee insufficient issue remark is on the water right, notify the claimant of the issue and processing fee in the claimant contact letter sent at the conclusion of examining the ownership.

If a late filed exempt claim is found to NOT be exempt, note this on the examination worksheet and attempt to collect the \$150 late claim processing fee. If the fee is not collected, add the fee insufficient (FI) issue remark:

- Examples:
- F25 FILING FEE INSUFFICIENT TO COVER LATE CLAIM. TOTAL AMOUNT DUE **\$40.00**.
 - F30 FILING FEE INSUFFICIENT TO COVER LATE CLAIMS. TOTAL AMOUNT DUE **\$80.00** FOR CLAIM NOS. **000000-00, 000000-00**.
 - F35 PROCESSING FEE INSUFFICIENT TO COVER LATE CLAIM. TOTAL AMOUNT DUE \$150.00.

D. OWNERSHIP UPDATES
[Rule 38, W.R.C.E.R.](#)

The DNRC Water Right Ownership Update process is the mechanism used to update the department's water right ownership records when a change in ownership has occurred based on [§85-2-403](#) and [§§85-2-421](#) through [85-2-426, MCA](#) (effective July 1, 2008). Also see "Claim Examination: Owner Name and Address" (Section VI.B) for additional discussion on ownership.

This process does not legally transfer water rights or legally determine water right ownership, but is simply the process the department is statutorily authorized to use to update the department's centralized ownership records. It is designed to reflect the legal changes in ownership as documented in the varied legal instruments used to transfer ownership of real property. As of July 1, 2008, the process is linked to Department of Revenue data, which in theory is based on the legal instrument of transfer. [Rule 38\(a\), W.R.C.E.R.](#)

Administrative Guideline No. 14, "DNRC Water Right Ownership Update Guideline" revised 2009, contains the procedures for processing ownership updates by the department. This guideline is available from New Appropriation staff. Ownership updates are categorized as: total ownership updates, divided interest ([Form 641](#)), exempt (reserved) ([Form 642](#)), and severed ([Form 643](#)):

- *Total* (100%) ownership updates occurring after July 1, 2008 are to be processed electronically through an update to the Water Right Database from the Department of Revenue Database. The two systems are linked through the geocodes of the parcels of record—**geocodes are critical**. Updates occurring before July 1, 2008, are processed by hand using [Form 608](#), and must be entered in the database by department staff.
- *Divided* interest ("split") ownership updates, where only a portion of the right is transferred, require the filing of [Form 641](#) with the department. The water right is divided among the owners—this can be very specific in the deed or proportional based on the historical place of use. (See procedures on splitting water rights. Exhibit XI-3)
- *Exempt (reserved)* ownership updates require the filing of [Form 642](#) with the department. This situation involves a land transaction but the water rights are not sold with the land. The water right is exempted (reserved) from the land transaction.
- *Severed* ownership updates require the filing of [Form 643](#) with the department. This situation involves the removal of a water right from the land but there is no land sale. The water right is severed from the land.

1. New Owner Determined but Claim Lacks Ownership Update. If a change of ownership has occurred prior to July 1, 2008, and no ownership update (Form

608) has been filed, contact either the former owner or new owner with instructions on filing an ownership update. Ownerships updated for transactions after July 1, 2008 are automated. The file should contain a copy of the ownership acknowledgement.

Important - Until an ownership update has been properly filed, instructions or amendments from new owners should not be implemented. Accept (date stamp) and document information by the new owner, but do not incorporate it until the ownership update is received. In the reverse situation where amendments or instructions from previous owners are filed before an ownership update is received but after the land sale is completed, do not process the amendments (this would be evident on the AllCad layer in Water Rights Mapper). A determination may be made to discuss an amendment/change with the new owner. If the new owner agrees, an [Amendment Agreement Form](#) or other sworn affidavit can be completed by the new owner. This is sufficient to proceed with processing. In either event, keep the information in the claim file, document the circumstances, and add the appropriate remarks.

Add the appropriate ownership or amendment issue or information (OW) remark to the examination worksheet (see Section V: Ownership or Transfers for additional remarks):

- Examples:
- O50 AS OF **MM/DD/YYYY**, THIS WATER RIGHT APPEARS TO BE OWNED BY **JOHN L. AND JANE W. DOE, 1111 DOE DR., BIG CITY, MT 55555-5555** .
 - O55 ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF **MM/DD/YYYY**, THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY **JOHN DOE**.
 - O56 ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF **MM/DD/YYYY** A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY **JOHN DOE**.
 - O85 **MONTANA** COUNTY RECORDS AS OF **MM/DD/YYYY** SHOWS PLACE OF USE IS OWNED BY **DOE BROTHERS**.

2. Extended Claim Identification Numbers. Prior to July, 2005, when a water right was split, each portion was assigned a different extended ID number. The first split might retain the original claim number and the subsequent portions received the claim number with a different extended number (e.g., 1297907-00 for the first portion, 1297907-01 for the second portion, 1297907-02 for the third portion, etc).

Current procedures for generating split claims involves leaving the original claim number with one portion, and assigning distinct new claim numbers to each of the other portions of the claim. These distinct numbers are acquired from the database when

creating a new claim during the split process. See Administrative Guideline No.14 for detailed instructions on the process.

3. Geocodes. All water rights are assigned a geocode based on the POU. The county assigns the geocode for each parcel and that information is passed to the Department of Revenue. This information is served to the public through the [Montana Cadastral Mapping Program](#) system. Automation of ownership to DNRC depends on the geocode assignment to the water right and must be accurate. See “Owner Name and Address: Geocodes” (Section VI.B.4).

E. WITHDRAWAL OF A CLAIM

A withdrawn claim is a claim removed from the adjudication process by the claimant ([Rule 37 W.R.C.E.R.](#)). Claimants withdraw claims for numerous reasons, the most common reasons being intent to develop water in the future, a right has been abandoned, or the right duplicates another right. Withdrawn claims are included in the Water Court decree.

1. Request to Withdraw Claim. The complete request, either as an affidavit or on the preferred [Request to Withdraw Statement of Claim Form](#) (Exhibit XI-4), will be: [Rule 37\(a\), W.R.C.E.R.](#)

- in writing
- dated
- contain the notarized signatures of all current owners of the right as listed in the department records*
- indicate the reason(s) for withdrawal (optional)

*If property owners are identified that differ from department records, an ownership update should occur by statute. This includes federal and state entities. As an alternative, the non-record owner could submit a Withdrawal Agreement Form prior to the withdrawal being processed.

If there are deficiencies, contact the claimant. See “Processing Withdrawn Claims” ([Section XI.E.2](#)) below.

All requests to withdraw a claim or ownership interest in a claim for a decreed water right should be forwarded to the Water Court for processing.

a. Multiple Owners. If a request to withdraw is submitted by one owner for a claim involving multiple owners, remind the affiant that the request must be signed and notarized by **ALL** current owners (this statement is on the Request to Withdraw Statement of Claim Form above the signature). [Rule 37\(a\)\(2\), W.R.C.E.R.](#)

Send copies of the completed request to withdraw along with a [Withdrawal Agreement Form](#) (Exhibit XI-5) to the other owners. Request the other owners review the request to withdraw and if in agreement, sign and notarize the Withdrawal Agreement Form. Alternatively, the multiple owners can sign and notarize a copy of the Request to Withdraw Statement of Claim form. *All owners need to be noticed of the request and show agreement if the withdrawal is to be implemented.* Place the original and all documents showing agreement in the claim file. Be sure copies of the request for withdrawal are clearly marked "COPY" to avoid uncertainty on the scanned record.

If not all signatures are obtained, add the following withdrawn claim (TC) issue remark to the department’s examination worksheet:

Example: T55 A REQUEST TO WITHDRAW SUBMITTED **MM/DD/YYYY** WAS NOT SIGNED BY ALL OWNERS OF RECORD. DNRC REQUESTED THE OTHER OWNERS SUBMIT A SIGNED AND NOTARIZED WITHDRAWAL FORM. AS OF **MM/DD/YYYY**, A WITHDRAWAL FORM HAS NOT BEEN SUBMITTED BY ALL OWNERS OF RECORD, THEREFORE, THIS REQUEST TO WITHDRAW HAS NOT BEEN PROCESSED.

If one of the owners protests the request to withdraw in writing, place the request and protest in the file. Do NOT implement the request to withdraw. Add a free text issue remark to the department's examination worksheet:

Example: TCIS A REQUEST TO WITHDRAW STATEMENT OF CLAIM WAS SUBMITTED ON **MM/DD/YYYY**. THE REQUEST WAS NOT IMPLEMENTED DUE TO DISAGREEMENT AMONG THE OWNERS OF RECORD.

b. Non-Record Owner. When a new owner NOT listed in the department records requests to withdraw one or more claims, first determine when the change in ownership occurred.

If the transfer took place prior to July 1, 2008, the new owner should file a [Form 608](#) with the department before the request to withdraw can be considered. If the transfer occurred after July 1, 2008, further research may be required to determine why a water right may not have automatically transferred to the new owner (geocode assignment, division of water right, etc). See Administrative Guideline No. 14 for procedures in this situation.

c. Request to Withdraw an Interest in a Claim. Occasionally one of many owners on a claim wishes to remove themselves as an owner of the claim. They can file a 'Request to Withdraw Interest in Statement of Claim,' but it is not encouraged. This process should be used only when an owner wishes to relinquish their interest in the claim. This process should not be used as a way to correct ownership or transfer ownership. The withdrawal of interest will be made part of the file and an ownership information remark added:

Example: OW JOHN SMITH HAS WITHDRAWN HIS INTEREST IN THIS FROM THE WATER RIGHT ON MM/DD/YYYY. NO OWNERSHIP UPDATE WAS FILED.

Filing a withdrawal of interest will remove an owner. Be aware such requests have the potential to reduce the overall water right. All co-owners must agree if the request to withdraw interest reduces the overall water right. Unless all co-owners sign off, the claim should not be reduced and an issue remark similar to the following should be added to the claim.

Example: T60 WITHDRAWAL OF INTEREST IN WATER RIGHT CLAIM WAS RECEIVED ON MM/DD/YYYY THE REDUCTION IN VOLUME, ACERAGE, and FLOW RATE HAS NOT BEEN IMPLEMENTED AS WRITTEN AUTHORIZATION HAS NOT BEEN RECEIVED FROM ALL CO-OWNERS. THESE ELEMENTS MAY BE EXCESSIVE.

If all co-owners sign off on the reductions to the claim, implement the reductions and add an information remark similar to the following:

Example: T4 ON MM/DD/YYY MARGIE HAIKKA FILED A REQUEST TO WITHDRAW OWNERSHIP INTEREST IN THIS CLAIM. THE FOLLOWING ELEMENTS WERE REDUCED BASED UPON THIS REQUEST AND THE AGREEMENT OF ALL REMAINING CO-OWNERS: FLOW RATE AND VOLUME.

If an examiner encounters such a situation during the examination process, they must review the request with a supervisor.

2. Previously Terminated/Withdrawn Claims. Withdrawal procedures varied from 1979 to the present. Prior to June 29, 1982, some claims were *terminated* by the department because they were grossly incomplete, were filed on incorrect forms, or lacked the required filing fees. After a June 29, 1982 letter from the Water Court, no claims were terminated without the claimant's written authorization – amounting to a withdrawal rather than a termination. “Termination” has become primarily a New Appropriation action. The Water Court recently moved from using the term ‘termination’ in its orders to that of ‘dismissed’. Review all previously terminated/withdrawn claims to determine if the claim was withdrawn properly per “Request to Withdraw” (Section XI.E.1) and “Determining Valid Withdrawals” below.

a. Determining Valid Withdrawals. A request to withdraw must clearly indicate which claim is being withdrawn and must clearly indicate withdrawal. Requests meeting the following signature requirements are considered properly withdrawn and can be examined as such.

- Prior to March 30, 1983, the signatures of all current owners were required. The signatures did not need to be notarized.
- After March 30, 1983, the notarized signatures of all current owners were required.
- Federal Agency Claims: A notarized signature is required for a withdrawal request submitted after July 15, 1987. Prior to July 15, 1987, a request to withdraw a claim by a federal agency will be considered valid if not notarized.

3. Processing Withdrawn Claims. Withdrawals received before or during basin examination will be reviewed for completeness as noted above in “Request to Withdraw Claim” ([Section XI.E.1](#)). Also review the request for reasonableness. For example, the claimant may submit a request to withdraw in error, believing they have claims in duplicate when this is not the case. Process a request to withdraw upon receipt.

If the request meets the requirements in “Request to Withdraw Claim” ([Section XI.E.1](#)): [Rule 37\(b\), W.R.C.E.R.](#)

- Stamp the withdrawal request with the date of receipt;
- Change the status from “Active” to “Withdrawn” in the “Create and Maintain Water Right Detail” screen in the database.
- Add the appropriate withdrawn claim (TC) information remark (the date in the remark is date received):

Examples: T5 THIS CLAIM WAS WITHDRAWN FROM THE ADJUDICATION PROCESS AT THE REQUEST OF THE CLAIMANT ON **MM/DD/YYYY**.

T9 THIS CLAIM WAS WITHDRAWN PURSUANT TO ARTICLE VII(C) OF THE CHIPPEWA CREE TRIBE-MONTANA COMPACT. **000000-00**.

If the request does not meet the requirements:

- Do not process the Request to Withdraw Statement of Claim;
- Place the request in the file and add the appropriate withdrawn claim (TC) issue remark (T55 or TCIS above) to the examination worksheet.

Duplication or Replacement. When claims have been withdrawn because of duplication add the appropriate withdrawn claim (TC) information remark to the examination worksheet:

Examples: G24 THIS CLAIMED WATER RIGHT HAS BEEN WITHDRAWN AS IT WAS DUPLICATED BY WATER RIGHT NO. **000000-00**.

Processing Improperly Terminated/Withdrawn Claims. For any claim found to have been terminated or withdrawn without meeting the requirements noted above, contact the claimant. If the claimant wishes to withdraw the claim, this may be done using the current procedure as in “Request to Withdraw a Claim” ([Section X.E.1](#)) and “Processing Withdrawn Claims ([Section X.E.2](#)).

If the claimant does not wish to withdraw the claim or does not respond to claimant contact, the claim is not considered terminated. Change the status to “Active.” The claim will be examined as a normal claim using the relevant procedures for the purpose.

4. Withdrawals Received After Examination Complete. If the basin is in Summary Report, check with a supervisor to determine if there is time to process the withdrawal before issuance of the decree. Notify the Water Master reviewing the Summary Report and send a Summary Report abstract to the Master for review. Requests to withdraw received by the department after the issuance of a decree should be forwarded to the Water Court (see “Post-Decree Assistance,” Chapter XIII).

5. Reinstatement of Withdrawn Claims. Withdrawn claims can be reinstated upon request of all the owners any time during the examination process. All elements will need to be examined. If this occurs during Summary Report review, notify the Water Master reviewing the Summary Report and send a Summary Report abstract to the Master for review, after reinstatement and examination.

Any time a request is made to reinstate a withdrawn claim in a decreed basin, the claim file and the request should go to the Water Court for processing. See the contact procedures in “Post Decree Assistance” (Chapter XIII).

6. Examining Withdrawn Claims. Examination is necessary **to make sure the withdrawal was processed correctly.** Withdrawn claims will be examined since the examination of withdrawn claims count toward the HB22 benchmarks. The first step in examining a withdrawn claim is to determine if the claim was properly withdrawn. After making this determination, the degree of examination will depend on the circumstances. Standards should be run on withdrawn claims.

a. Guidelines for Specific Types of Claims. The following situations are guidelines for examination of withdrawn claims—review an approach with a supervisor for consistent basin-wide examination.

- Properly withdrawn claims for 1962-1973 wells that have a groundwater certificate (filed a Form 602) for the same well need no further examination.
- Properly withdrawn claims where the reason for withdrawal was post-1973 water use need no further examination.
- Properly withdrawn claims for purposes exempt from the filing process need no further examination:
 - Stockwater use directly from source (no man-made diversion)
 - Stockwater use from a groundwater source
 - Domestic use (including single and multiple domestic, and lawn and garden use) from a groundwater source

- Domestic use (including single and multiple domestic, and lawn and garden use) directly from instream (no man-made diversion)
- Properly withdrawn claims for irrigation where the claimant indicated it was no longer in use or never used should have some degree of examination. If it is apparent no historical irrigation has taken place, no claimant contact is needed. If it is apparent that some historical irrigation has taken place, claimant contact should be made (unless the present owner is the one who withdrew the claim). The claimant or new owner may want to reinstate. [Rule 44, W.R.C.E.R.](#) and Section IV.F.
- Properly withdrawn claims for “other uses” should have some degree of examination. Claimant contact should be made. The claimant or new owner may want to reinstate. [Rule 44, W.R.C.E.R.](#) and Section IV.F.
- Claims withdrawn as a result of HB22 fees should have some degree of examination. Claimant contact should be made. The claimant or new owner may want to reinstate. The claimant should be made aware of the HB22 fee and it should be collected. [Rule 44, W.R.C.E.R.](#) and Section IV.F.

7. Decree Abstract Format for Withdrawn Claims. Withdrawn claims are those with a ‘withdrawn’ status rather than an ‘active’ status in the database. The decree abstract for a withdrawn claim will look like an ‘active’ decree abstract, but will have all elements suppressed except **owner’s information, purpose, source, and a T5 remark**. An example of a withdrawn claim decree abstract is shown as [Figure XI-4. Rule 37\(d\)\(1\)-\(4\), W.R.C.E.R.](#)

FIGURE XI-4

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**TEMPORARY PRELIMINARY DECREE
TETON RIVER
BASIN 41O
ABSTRACT OF WATER RIGHT CLAIM**

IMPORTANT NOTICE

YOUR WATER RIGHT AS SHOWN ON THIS ABSTRACT MAY HAVE CHANGES FROM YOUR WATER RIGHT AS CLAIMED OR AMENDED. AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC) DURING THE EXAMINATION PROCESS. THESE CHANGES ARE AUTHORIZED BY THE MONTANA SUPREME COURT WATER RIGHT CLAIMS EXAMINATION RULES OR BY ORDER OF THE WATER COURT.

OBJECTIONS MAY BE FILED ACCORDING TO THE PROCEDURES OUTLINED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF TEMPORARY PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

Water Right Number: 41O 158011-00 STATEMENT OF CLAIM
Version: 1 -- ORIGINAL RIGHT
Status: WITHDRAWN

Owners: FRANCES E SALMOND
PO BOX 606
CHOTEAU, MT 59422

JAMES M SALMOND
PO BOX 606
CHOTEAU, MT 59422

Priority Date:
Enforceable Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Maximum Acres:

Source: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS WITHDRAWN FROM THE ADJUDICATION PROCESS AT THE REQUEST OF THE CLAIMANT ON 03/18/2002.

THE DNRC EXAMINATION OF THIS CLAIM FOUND NO SIGNIFICANT FACTS, DATA, OR ISSUES TO REPORT TO THE WATER COURT.

FIGURE XI-4 (cont.)

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A BETTER UNDERSTANDING OF YOUR CLAIMED WATER RIGHT CAN BE OBTAINED BY COMPARING YOUR RIGHT WITH OTHER CLAIMS IN THE BASIN. FOR EXAMPLE, COMPARE PRIORITY DATES, FLOW RATES, VOLUMES, OR ACRES IRRIGATED. ALSO, YOUR WATER RIGHT MAY BE SUBJECT TO WATER RIGHTS IN ADJOINING BASINS OR SUBBASINS AS WELL AS BEING SUBJECT TO OTHER RIGHTS ON YOUR SOURCE OF SUPPLY. FINALLY, YOUR WATER RIGHT MAY BE SUBJECT TO INDIAN RESERVED AND FEDERAL RESERVED WATER RIGHTS.

COMPLETE DETAILS REGARDING THE DNRC EXAMINATION RESULTS AND RELATED MATERIALS CAN BE REVIEWED AT THE OFFICE LOCATIONS IDENTIFIED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF TEMPORARY PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

SEE GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR FURTHER EXPLANATION OF YOUR CLAIMED WATER RIGHT. THESE FINDINGS CAN BE FOUND AS INDICATED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF TEMPORARY PRELIMINARY DECREE AND NOTICE OF AVAILABILITY." IF YOU NEED OBJECTION FORMS, OR HAVE QUESTIONS ABOUT WATER COURT PROCEDURES OR CHANGES TO YOUR RIGHT, YOU CAN CONTACT THE WATER COURT BY CALLING 1-800-624-3270 (WITHIN MONTANA ONLY) OR 1-406-586-4364, OR BY WRITING TO P.O. BOX 1389, BOZEMAN, MT 59771-1389.

F. CHANGE IN APPROPRIATION RIGHT
[Rule 39, W.R.C.E.R.](#)

A Change in Appropriation Right based on [§85-2-402, MCA](#), is a change in the point of diversion, place of use, purpose, or place of storage of a water right. This section briefly covers the change application process ([Form 606: Application to Change a Water Right](#)) and discusses problems relating to examining the claim underlying a change.

The New Appropriations staff has sole jurisdiction over the processing and approval of any Application to Change a Water Right. To the extent necessary for the examination of existing rights, aspects of this process are discussed here. For further detail on the process, see the Change Authorization Manual or New Appropriation staff.

The claim should reflect the water right as it existed prior to July 1, 1973. A separate Change file and database record (Change Authorization version) should reflect the change information. The pre-1973 claimed right will be examined, decreed, and subject to objections on its own merit. (Note: There was a time period when the Statement of Claim was overwritten with the information from the Change. No separate version was created. The Water Court is aware of this and attributes this to the process at the time.) [Rule 39\(a\), W.R.C.E.R.](#)

Why are Changes relevant to examination? If an examination presents questions concerning historic point of diversion, place of use, purpose, or place of storage, and there is a Change Authorization version for the claim – the answers may be found in the Change file. Also, issues may become clearer after a review of the Change file. If no questions arise concerning the historic use of these elements, then no review of the Change file may be necessary. However, some review is necessary to confirm that the claim and Change are correctly connected.

Geocodes: The geocodes must be validated for the place of use reflected in a change authorization.

1. Change Applications (Form 606). An Application to Change a Water Right may be filed on permits, certificates, claims, Powder River declarations, and exempt rights. When an Application to Change a Water Right is received, a Change Authorization version will be created in the database and will contain the elements of the water right as changed. In a basin currently being examined, the New Appropriations staff will ask for the claim to be examined (in past, some New Appropriation staff may have done an informal examination). The change version of the water right is tied to the application screen in the database through the Application tab on the Water Right Detail screen.

2. Post-1973 Changes to Pre-1973 Rights. These can be divided into two groups: a Form 606 Application to Change a Water Right *was not filed* or a Form 606 *was filed*.

a. Post-1973 Changes for Which No Form 606 was Filed.

These instances will only be identified through pertinent issue remarks as each claim in the basin is examined. Sometimes documentation will indicate a post-June 30, 1973 change. Sometimes the aerial photographs will show evidence of a post-June 30, 1973 change. Depending on the results of the examination, any number of issue remarks may be applicable. Add the appropriate issue remark to the examination worksheet (below is just one element that may warrant an issue remark): [Rule 39\(c\)\(2\), W.R.C.E.R.](#)

Examples: P79 IT APPEARS THAT AN UNAUTHORIZED POST-JUNE 30, 1973 CHANGE IN POINT OF DIVERSION MAY BE REFLECTED IN THIS CLAIM.

P80 THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 POINT OF DIVERSION WAS IN THE **NENENE** SEC **36** TWP **99N** RGE **99W** **MONTANA** COUNTY.

b. Post-1973 Changes for Which a Form 606 was Filed. Many

Form 606s were filed between July 1, 1973 and April 30, 1982 before the related claim was filed. For late filed claims, that period extends from July 1, 1973 to July 1, 1996. During this earlier period, especially July 1, 1973 through April 30, 1982, there was much confusion by claimants as to what should be included in their statements of claim. Many included the post-1973 changes in their claims. [Rules 39\(b\) and 39\(c\)\(2\), W.R.C.E.R.](#)

3. Examining Claims with Changes. Efforts have been made to match the claim and Form 606. Because of errors or lack of detailed information in the claim file or Change file or both, some Form 606's may have been matched with the wrong claim. The first step when examining the claim is to double-check that the Form 606 and claim are matched correctly.

When examining a claim with an associated change, the status of the change may be noted in the General Comments area on the examination worksheet for information purposes—no remark is required in the database as the status of Change applications is now tracked through the Application screen. Many of the change authorization remarks have been archived (CA01 thru CA13). This is controlled by the New Appropriation Program. See “Change Remarks Denoting a Change and the Change Status” below ([Section XI.F.3.d](#)).

Check to see if the Application to Change a Water Right or Change Authorization indicates more than one past use. If so, check all claims belonging to the claimant to make sure the change has been linked to the appropriate claim properly. Notify the New Appropriations staff if certain claims were overlooked.

a. Claim Shows the Right as it was before 1973 and File Contains a Form 606. In the past, completed Changes have been incorporated into the claim database record (i.e., the data was overwritten). If the examination worksheet shows the changed data and a Change Authorization version has not been created, coordinate with New Appropriation in the creation and updates to the water right versions (the original and change authorization version).

Review the claim and the Change file. If they don't make sense relative to each other, contact the claimant. If the claim appears to require an amendment, see Amended Claims ([Section XI.A](#)).

If the Change file appears to be in error, document findings in the claim file. Bring the problem to the attention of the New Appropriations staff.

Examine the claim using relevant procedures for a pre-July 1, 1973 purpose as outlined in this manual.

b. Claim Shows Post-1973 Changes and the File Contains a Form 606. Contact the claimant. Explain that it was intended for the claim to reflect pre-1973 information and the Form 606 was to show the post-1973 changes. Request information on the right as it existed before July 1, 1973. [Rules 39\(b\) and 39\(c\)\(2\), W.R.C.E.R.](#)

If the claimant amends the claim, proceed as in "Post-1973 Changes to Pre-1973 Rights: Post-1973 Changes for Which No Form 606 was Filed" ([Section XI.2.a](#)). If the claimant does not wish to amend the claim to reflect pre-1973 data, a two-fold examination will have to be done:

- Examine the claim as submitted.
- To the extent possible using the information available, determine what the right looked like before July 1, 1973.

Add any appropriate issue remarks to the department's examination worksheet. The remark type and items addressed will vary with the situation.

Examples: P340 THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 PLACE OF USE WAS IN SEC **36** TWP **99N** RGE **99E** MONTANA COUNTY.

P80 THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 POINT OF DIVERSION WAS IN THE **NENENE** SEC **36** TWP **99N** RGE **99W** MONTANA COUNTY.

PUIS THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS PRIOR TO JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 PURPOSE WAS MINING.

c. Claim Shows Post-1973 Changes and No Form 606 in File.

Contact the claimant. Explain that it was intended for the claim to reflect pre-1973 information. Request information on the right as it existed before July 1, 1973. Also suggest the claimant contact New Appropriations staff in order to submit an Application to Change a Water Right so that the claimant can acquire a legal right to the change. [Rules 39\(b\) and 39\(c\)\(2\), W.R.C.E.R.](#)

If the claimant amends the claim to reflect pre-1973 use, proceed with normal claim examination.

If the claimant does not wish to amend the claim to reflect pre-1973 data, a two-fold examination will have to be done as outlined in "Examining Claims with Changes: Claim Shows Post-1973 Changes and the File Contains a Form 606" ([Section XI.F.3.b](#)) above. Add any appropriate issue remarks to the department's examination worksheet. The remark type and items addressed will vary with the situation.

Examples: P345 THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES A POST-JUNE 30, 1973 CHANGE IN PLACE OF USE.

P80 THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 POINT OF DIVERSION WAS IN THE **NENENE SEC 10 TWP 12N RGE 03W LEWIS AND CLARK** COUNTY.

PUIS THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 PURPOSE WAS MINING.

CA20 IT APPEARS THAT AN UNAUTHORIZED POST-JUNE 30, 1973 CHANGE IN **POINT OF DIVERSION** MAY BE REFLECTED IN THIS CLAIM.

d. Remarks Denoting a Change and the Change Status. Prior to 2001, change authorization remarks were added to the database of the water rights being changed to identify the current status of an Application or Authorization. Remarks CA01 thru CA13 have been archived. These types of remarks, CA01 thru CA13, should be removed (along with any free-text CT remarks), as the application screen now tracks the authorization to change status. See Change Authorization (CT) in Chapter V for

current remark status.

Other change remarks were referenced using a CT remark code. CT remarks will print on the decree abstract. If these remarks are not needed, be sure to remove them.

G. CERTIFICATION CASES

Certification cases arise in two situations: 1) When a water distribution controversy arises claimants may petition the District Court to certify the matter to the Chief Water Judge ([§85-2-406\(2\)\(b\), MCA](#)). 2) DNRC may certify questions to the Water Court pursuant to [§85-2-309\(2\), MCA](#)

The Water Court then consolidates the claims into a case and may issue an order to the DNRC to examine the claims. Certification cases take priority over all other adjudication matters. The department reports its findings to the Water Court. The Chief Water Judge makes a determination and provides that decision to the District Court or to the DNRC.

The Court will make a determination whether to issue a 'mini' decree pr wait and include the certified water rights in the basin decree. See Chapter XIII: Post-Decree Assistance for further information on the treatment of decreed water rights.

Once the certification proceedings are completed by the Water Court, if the claim was certified pursuant to [§85-2-406\(2\), MCA](#), the Water Court will return its decision to the district court. If the claim was certified pursuant to [§85-2-309\(2\), MCA](#), the claim is returned to the DNRC for further processing.

Claims examiners should not change the elements of a claim if the claim has been certified to the Water Court. If claims examiners need clarification regarding examination of a claim that has been adjudicated through a pre-decree certification, they should write a Memorandum to the Water Court requesting direction. The Court will issue an Order indicating the proper treatment of the claim by the DNRC.

The Water Court will add a remark to a claim included in a certification proceeding similar to the following:

THE FOLLOWING ELEMENT(S) OF THIS WATER RIGHT CLAIM WAS/WERE MODIFIED PRE/POST DECREE BY THE MONTANA WATER COURT IN CERTIFICATION ACTION **WC-XXXX** PURSUANT TO SECTION 85-2-406(2)(b), MCA: (**FLOW RATE, VOLUME, PERIOD OF DIVERSION**) SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

AND of a pre-decree certification, the following or similar remarks will be added by the Court:

Examples: A5 THE **PERIOD OF USE** WAS AMENDED BY THE CLAIMANT ON **MM/DD/YYYY**.

A15 THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON **MM/DD/YYYY**: **FLOW RATE, VOLUME, MAXIMUM ACRES, PLACE OF USE**.

H. CLAIMS THAT PRESENT SPECIAL ISSUES

Some claims by the nature or size of water use involved may present issues that are beyond the scope of the standard procedures delineated in this manual. Examples might include the storage facilities on the main stem of the Missouri River (e.g., Canyon Ferry Reservoir), navigation claims, irrigation claims for Hungry Horse Reservoir, major municipalities (e.g., Billings), large hydropower projects (e.g., Cochran Dam), and interstate or international diversions of water. Because these claims may have major effects on basins other than the basin being examined, these must be brought to the attention of a supervisor, who must bring them to the attention of the Bureau Chief.

Examine the claim to the extent possible. Consult a supervisor in making the determination whether an individual claim fits in this category. The rule of thumb is that if the claimed appropriation has substantial interbasin water or policy impacts, the claim should be referred to the Bureau Chief.

When you have questions about handling unusual situations, such as partial claim withdrawals, withdrawals of interests, large claims, unusual purposes, etc., start the examination with the section of the manual most pertinent to the issue.

Other than the dictates of the Supreme Court Water Right Claim Examination Rules and the Water Use statutes in Montana Code Annotated, there is considerable latitude in exploring solutions to problems such as these, providing all research is completed, a supervisor has reviewed the work, and full and formal approval is granted before implementing a solution.

