

## II. DEFINITIONS

The following terms are used in this manual. The definitions are often from the Rule 2 of the [Montana Supreme Court Water Rights Claim Examination Rules \(W.R.C.E.R.\)](#) with additional definitions from other reputable sources. For additional definitions concerning post June 30, 1973 terms, see [§85-2-102, MCA](#) (per [Rule 2 \(b\), W.R.C.E.R.](#)).

"Abstract" means the computer printout of each claim of an existing water right showing the information submitted on the original or amended statement of claim, any changes authorized by the Montana Supreme Court Water Right Claim Examination Rules (W.R.C.E.R) or by the Water Court, remarks noting any obvious factual or legal issues presented by the claim, and other remarks explaining the nature and extent of the claimed water right.

"Acreage" means the number of irrigated acres.

"Adjudication" means the judicial determination of water rights that existed prior to July 1, 1973, including the total or partial abandonment of existing water rights occurring at any time before the entry of the final decree.

"Adjudication Fee" means the fee imposed upon water users by House Bill 22 which passed during the 2005 legislative session. It was a fee based on number of water rights, purpose and volume. Bills were sent out in December 2005. During the 2007 Legislative session, the funding for House Bill 22 was shifted to the general fund and the adjudication fee was discontinued.

"Adjudication Specialist Team" means a team of up to 8 specialists and one supervisor whose sole responsibility is the examination of statements of claim and the preparation of a Summary Report in a basin. There are 3 teams located in Helena.

"Amended Claim" means the contents of a submitted claim as altered or changed by the claimant as to any matter contained in the original claim and as allowed by the Montana Supreme Court Claim Examination Rules.

"Animal Unit" means a measurement of livestock numbers. For example, one cow and calf pair is one animal unit, three pigs are one animal unit, five sheep are one animal unit and one horse is 1.5 animal units.

"Appropriate" means to divert, impound or withdraw a quantity of water for a beneficial use.

"Appurtenant Land" means the land which a water right benefits or belongs to.

"ASD" means Adjudication Shared Drive. This location houses materials commonly used by all adjudication specialists statewide.

“Associate Water Judge” means a water judge appointed by the Chief Justice of the Montana Supreme Court to work on cases as assigned by the Chief Water Judge as provided for in [Title 3, Chapter 7, Part 2, MCA](#) .

“Associated Rights” means a statement of claim uses the same development (well, reservoir, point of diversion) as 1) a federal reserved water right claim, 2) a new appropriation (post-July 1, 1973 water right), or 3) an exempt right. The adjudication program does not associate the *place of use* involving statements of claim and post-July 1, 1973 water rights.

“Basin Code” means the respective number/letter combination used to identify each of the 85 basins in Montana (e.g. 43QJ) according to the [Atlas of Water Resources of Montana](#) prepared by the Montana Water Resources Board.

“Benchmarks” means the number of statements of claim to be completely examined by specified years as set in HB 22. See [§85-2-271, MCA](#).

“Beneficial Use” means a use of water recognized as beneficial prior to July 1, 1973 and used for the benefit of the appropriator, other persons, or the public and may include but not be limited to irrigation, stock, domestic, fish and wildlife, industrial, mining, municipal, power generation, and recreational uses.

“Centralized Record System” means the original, electronic, microfilm or scanned records of all claims of existing rights, permits, certificates, applications, and other documents filed with the Department.

“Certificate” means in the Adjudication program, a Certificate of Water Right will be issued to all water right owners after a final decree is issued. (A Certificate of Water Right in the New Appropriations program is issued for groundwater appropriations under 35 gallons per minute not to exceed 10 acre-feet per year. These may cover stock, domestic, or irrigation or, ‘other’ purposes)

“Change in Appropriation Right” means a change made in accordance with [§85-2-402, MCA](#) after July 1, 1973.

“Claim” or “Statement of Claim” means a sworn statement of an existing water right, as defined in [§85-2-224, MCA](#), filed with the department upon order of the Montana Supreme Court.

“Claimant” means any individual, association, partnership, corporation, state agency, political subdivision, Tribe, the United States or any agency of the United States, or any other entity, who has filed a statement of claim or is successor in interest to a statement of claim as identified in the centralized records system.

“Claimant Contact” means communication between the department and a claimant or claimant's authorized representative regarding the claimed water right.

"Clarification" means the process by which elements of a water right are made more complete, clear, concise and interpretable without changing the intent of the claimed information.

"Climatic Area" means areas defined by differing climatic and geographic conditions containing similar crop consumptive use data as delineated by the United States Department of Agriculture, Natural Resource Conservation Service.

"Consolidation of Claims" means a change in historical water usage has taken place.

"Control" means having ownership, or if under lease, having the right to determine the release or storage of water.

"Dam Height" means the vertical distance from the lowest point of the dam crest to the lowest point on the natural ground along the downstream toe of the dam.

"Data Sources" means those sources of information against which claimed water use is compared in the claim examination process. Examples can include aerial photographs, Water Resource Surveys, and developed and approved guidelines for specific water uses.

"Decree Abstract" means the abstract that is part of Water Court issued decree. The decree abstract contains the original or amended claim information, changes authorized by the Water Right Adjudication Rules or the Water Court, Water Court ordered data, and remarks.

"Decreed Right" means a claimed water right determined in a court decree prior to the commencement of this adjudication or after commencement of this adjudication as provided in [§85-2-216, MCA](#).

"Department" means the Montana Department of Natural Resources and Conservation.

"Developed Spring" means a spring with some man-made development at or below the point of extrusion which brings additional flow to the surface which would not naturally be available for use and is classified as groundwater.

"Duplicate Water Right" means more than one statement of claim having all the same elements and documentation.

"Enforceable priority date" means a priority date of June 30, 1973, or later, which is administratively assigned to late claims that are subordinate to valid, timely filed claims and certain permits in accordance with [§85-2-221\(3\)\(f\), MCA](#).

"Error Check Report" means a database report which checks for examination errors at the conclusion of the examination of a statement of claim.

"Examination" means the process under the W.R.C.E.R. of examining, gathering information, and reporting data, facts, and issues pertaining to the claims of existing water rights. Prior to the adoption of the W.R.C.E.R. on July 15, 1987, this process was referred to as "verification".

"Examination Worksheet" means a database generated worksheet used to guide an examiner through the examination of a statement of claim.

"Exempt Water Right" means an existing water right for which a statement of claim did not have to be filed pursuant to [§85-2-222, MCA](#). This includes 1) domestic use based on instream use with no man-made diversion, 2) domestic use based on a groundwater source, 3) stockwater based on instream use with no man-made diversion, 4) stockwater use based on a groundwater source, 5) appropriations of groundwater put to use between January 1, 1962 and July 1, 1973 with a notice filed under the 1961 Ground Water Code.

"Existing Water Right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

"Factual Issues" means unclear information or issues with a statement of claim that are factual in nature, such as numbers of acres irrigated or quantity of water used. Such issues result in issue remarks being added to claims during examination.

"Field Investigation" means an on-site inspection, under [§85-2-243, MCA](#), of physical evidence and features relating to the individual elements of a claimed water right.

"Filed Appropriation Right" means a water right which has been filed and recorded in the office of the county clerk and recorder as provided by statute prior to July 1, 1973.

"Filing Fees" means fees imposed for filing statements of claims as described in [§85-2-225, MCA](#).

"Final Decree" means the final Water Court determination of existing water rights within a basin or subbasin, as described in [§85-2-234, MCA](#).

"Flow Rate" means the rate at which water has been diverted, impounded, or withdrawn from the source for beneficial use.

"GIS" means geographical information system, which is software used to facilitate the collection, management and analysis of spatially referenced information and the associated attributes. It is the basis of the DNRC's Water Right Mapper program used during examination of statements of claim.

"Groundwater" means any water under the surface of the land including the water under the bed of any stream, lake, reservoir, or other body of surface water. Section 89-2911, R.C.M. 1947 (1961 Groundwater Code).

"Guideline" means an estimate of reasonable use to be used as the benchmark for initiating further department review or claimant contact under the W.R.C.E.R. The estimate of reasonable water use is derived from technical data and recommendations of the department and adopted by the Water Court.

"Historical Irrigation" means irrigation that took place for the first time before July 1, 1973.

"Historical Right" means an existing water right claim.

"Household" means the dwelling, house, or other domestic facilities where a person, family or social unit lives.

"Implied Claim" means a claim authorized by the Water Court to be separated and individually identified when a statement of claim includes multiple rights.

"Index" means a database report generated by specific elements of a water right claim, such as owner, source, point of diversion. A series of indexes are generated at the conclusion of basin examination. The indexes are used as a tool to proof examination results during summary report preparation prior to a Summary Report being sent to the Water Court.

"Interior Drainage" means an area in which water drains into a depression from which water only escapes by evapotranspiration or subsurface drainage. The scale varies from a small kettle in a glaciated area to a large playa lake, such as the Great Salt Lake in Utah.

"Irrigation" means the application of water to the land to eliminate the moisture limitation to crop production. (Soil Conservation Service, 1979.)

"Irrigation District" means a statutory district created pursuant to [Title 85, Chapter 7, MCA](#) for the purpose of supplying irrigation water and other uses to its members.

"Lake" means a naturally occurring inland body of water.

"Late Claim" means a claim 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](#).

"Legal Issues" means unclear information of a legal nature discovered during examination of a statement of claim. For example, non-use may raise the legal issue of abandonment or no evidence of use may raise the legal issue of non-perfection of the water right being examined.

"Legal Land Description" means the description given to a parcel of land in terms of, but not limited to, quarter section, section, township, range, and county.

"Mapper" means a customized ArcGIS project designed and created to assist in mapping water rights throughout the state of Montana. Mapper allows the user to perform all the spatially related tasks inherent to examining water right claims.

"MCA" means Montana Code Annotated, which is a compilation of existing law. MCA is arranged by title, chapter, part and section. Title 85 of MCA contains the statutes and the Water Use Act that guide the department's role in the adjudication of existing water rights.

"McCarran Amendment" means an enactment in 1952 which is a waiver of sovereign immunity for federal and tribal reserved water rights acquired under federal law. Under this law, these rights can be subject to comprehensive adjudication proceedings in state court. 43 U.S.C. Section 666 (1988)

"Means of Diversion" means the structures, facilities, or methods used to appropriate water from the source of supply. For instream or inlake appropriations, the means of diversion is "instream" or "inlake".

"Microfilm Record" means a photographic film record on a reduced scale of all paper documents related to a water right.

"Multiple Use" means the same appropriation used for more than one purpose by a single owner.

"Natural Overflow" means the water which results in the flooding of land adjoining a stream during high flow with no man-made diversion involved.

"Natural Subirrigation" means a naturally occurring high water table condition that supplies water for crop use.

"Non-consumptive" means a beneficial use of water that does not cause a reduction in the source of supply.

"On-site visit" means an informal field investigation conducted at a claimant's invitation.

"Other Uses" means all uses of water for beneficial purposes other than stockwater, domestic, and irrigation uses.

"Owner" means any person, according to [§85-2-102, MCA](#), who has title or interest in water rights or properties.

"Ownership Update" means the updating of the department's water right ownership records pursuant to [§§85-2-421 through 85-2-426, MCA](#). The department's ownership update form or the automated records update do not transfer water rights or legally determine water right ownership. The department's centralized ownership records are updated by what is reflected on the legal documents that actually transfer water rights. (Updated version from Supreme Court Rules due to a procedural change by statute.)

"Period of Diversion" means the period in a calendar year when water is diverted, impounded or withdrawn from the source.

"Period of Use" means the period in a calendar year when water is used for a specified beneficial use.

"Permit" means an authorization to use water, issued by the state, specifying conditions such as type, quantity, time and location of use. Permits are issued for uses after July 1, 1973, for surface water appropriations, or any groundwater uses over 35 gallons per minute or 10 acre-feet.

"Place of Use" (POU) means the lands, facilities, or sites where water is beneficially used.

"Point of Diversion" (POD) means the location or locations where water is diverted from the source. For instream or inlake appropriations, the point of diversion is the portion of the source in which the instream or inlake use occurs.

"Preliminary Decree" means the preliminary Water Court determination of existing water rights within a basin or subbasin as described in [§85-2-231, MCA](#), which precedes the final decree.

"Priority Date" means the allocation date, or date of first use associated with a beneficial use of water which determines ranking among water rights, usually expressed by day, month, and year.

"Redundant Water Right" means a claim in which many of the elements are the same on more than one statement of claim. Most often, the priority date is different.

"Regional/Unit Office" means a branch office established by the department to provide water right information and assistance to the public or public agencies.

"Remarks" means statements added to the decree abstract by the department or the water court to limit or define a water right, to explain unique aspects of the water right, and to identify potential factual and/or legal issues. Remarks that limit, define, or explain unique aspects of a claim are "clarifying" or informational remarks and appear on the abstract under the element they clarify or at the end of the abstract if they contain general information. Remarks that identify potential factual or legal issues are "issue" remarks and appear in the issue remark box at the end of the abstract. Review abstracts "issue" remarks are underlined and appear under a certain element or at the end of the abstract.

"Reserved Water Rights" means a right to use water that is expressly or impliedly reserved by treaty, an act of Congress, or an executive order based on Federal law.

"Reservoir" means a storage facility, created or augmented by man-made means, that impounds and stores water for beneficial use.

"Review Abstract" is a database generated report of the examination results. It is used as a tool to inform the claimant of their water right and any additional facts and findings, including potential issues.

"SB76" means Senate Bill 76. The bill was passed in the 1979 legislature and called for the adjudication of all the remaining basins in the state, excluding the Powder River basins. It divided Montana into four water divisions and called for four judges, commonly known as the Water Court, to adjudicate all existing water rights in a statewide proceeding.

"Scanned Record" means a digitally scanned record of paper documents related to a water right.

"Service List" means the list of persons notified of all future hearings or proceedings relevant to a specific claim or case. This list may include the claimants and their representatives, any objectors and their representatives, any persons filing a notice of intent to appear and their representatives, any counter-objectors and their representatives, any intervenors and their representatives, and other persons receiving courtesy notification.

"Source" means the specific supply from which water is taken for a beneficial use.

"Split Claim" means the division of one water right claim into two or more separate claims. When a claim is split, one portion of the claim maintains the original claim number and the other separated portions are assigned new claim numbers.

"Spring" means a naturally occurring extrusion of groundwater upon the land surface. See "developed spring" and "undeveloped spring" for further definition.

"Standards" means the database application of specific guidelines to certain elements of a statement of claim at the conclusion of examining a claim.

"State Based Rights" means water rights based on state law rather than Federal law. Reserved rights claimed by Indian tribes or Federal agencies are based on Federal law. Generally, private or state claims are based on state law.

"Subbasin" means a designated area that drains surface water to a common point within a basin.



"Summary Report" means the department's report to the Water Court consisting of individual abstracts, the claimed and clarified data and a summary organized in indexes of the department's examination findings for each claim within a basin or subbasin.

"Supplemental Rights" means separate water rights for the same purpose, owned by the same claimant, and used on overlapping places of use.

"Surface water" means water occurring at or on the surface of the ground, including but not limited to any river, stream, creek, ravine, coulee, undeveloped spring, lake and other source of water.

"Temporary Preliminary Decree" means a Water Court decree, prior to the issuance of the preliminary decree, as necessary for the orderly administration of existing water rights pursuant to [§85-2-231, MCA](#).

"Type of Historical Right" refers to the historical basis of an existing water right as a decreed right, filed appropriation right, reserved right or use right.

"Undeveloped Spring" means the flow from the spring is not increased by some development at its point of extrusion from the ground and is classified as surface water.

"Use Right" means a claimed existing water right perfected by appropriating and putting water to beneficial use without written notice, filing, or decree.

"Volume" means the amount of water which has been diverted, impounded, or withdrawn from the source over a period of time for beneficial use, usually measured in acre-feet per year.

"Waste And Seepage" Waste water means the loss of water through the design or operation of an appropriation of water distribution facility. Seepage is the movement of water through a porous soil; its origin could be from another's waste or occurring naturally.

"Water Court" means the water division of the state courts presided over by water judges responsible for adjudicating existing water rights in Montana as provided for in [Title 3, Chapter 7, MCA](#).

"Water Judge" means a judge responsible for adjudicating existing water rights as provided for in [Title 3, Chapter 7, Part 2, MCA](#).

"Water Master" means a person appointed by a water judge to assist in the adjudication of existing water rights as provided for in [Title 3, Chapter 7, Part 3, MCA](#), and [Rule 53 of the Montana Rules of Civil Procedure](#).

"Water Reservations" means a water right held by a government entity for future use or instream flow.

"Water Resources Survey" (WRS) means a survey of water resources and water rights in Montana on a county basis by the former state engineer's office or water resources board, predecessors of the department.

"Water Spreading" means surface flood irrigation involving the diversion of occasional (flood or runoff) surface water from natural, usually non-perennial, water courses by means of dams, dikes, or ditches, or a combination of these. It differs from conventional irrigation because it is totally dependent on and regulated by the availability of water, not crop needs.

"Well" means any artificial opening or excavation in the ground, however made, by which groundwater can be obtained or through which it flows under natural pressure or is artificially withdrawn. Section 89-2911, R.C.M. 1947 (1961 Groundwater Code).

"Winters Doctrine" states that when the United States withdrew land from the public domain to establish an Indian reservation (Ft. Belknap), it also impliedly withdrew sufficient water to satisfy the purpose for which the lands were withdrawn. The doctrine applies to any land withdrawn for a federal purpose (Indian reservations, national parks, national forests). The doctrine did not quantify the amount of water involved. *Winters v. United States*, 207 U.S. 564 (1908).



