

# MONTANA'S WATER RIGHTS CHANGE PROCESS

# Water Rights Basics

- Property right to the use of water, not to the water itself
- First in time, First in Right
- Beneficial Use
- Use it or lose it

# Water Rights Changes

- Historically (pre-July 1, 1973)—could change purpose, place of use, point of diversion
  - Other water user could sue to show adverse effect on water rights
- Post-July 1, 1973: Section 85-2-402:
  - DNRC approval necessary for a change in purpose, place of use, point of diversion, place of storage
  - Burden on the Applicant to show no adverse effect

# Change Process Nuts and Bolts

- Applicant files application (may go through pre-application meeting with DNRC)
- DNRC has 180 days to review application/issue deficiency letter
- Applicant has 90 days to respond to deficiency letter
- DNRC will make “correct and complete” determination, then has 120 days to make a preliminary determination of grant or deny.
- If PD is to approve, DNRC provides other water users 15 to 60 days to object.
- If PD is to deny Applicant may request a hearing
- After final DNRC decision, opportunity for judicial review

# What is your water right?

Actual Use defines the measure and limit of a water right

March 29, 2007  
76F 132521-00

Page 1 of 4  
General Abstract

STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION  
1424 9TH AVENUE P.O. BOX 201931 HELENA, MONTANA 59623-1931

## GENERAL ABSTRACT

**Water Right Number:** 76F 132521-00 STATEMENT OF CLAIM  
**Version:** 1 -- ORIGINAL RIGHT  
**Version Status:** ACTIVE

**Owners:** BIGNELL RANCH CO  
4601 OVANDO-HELMVILLE RD  
HELMVILLE, MT 59843-9121  
ALFONSO A ANGELO  
PO BOX 109  
OVANDO, MT 59854

TRANSFER PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT WILL BE SPLIT INTO SEPARATE OWNERSHIPS AFTER FINAL DECREE.

**Priority Date:** MAY 20, 1894  
**Enforceable Priority Date:** MAY 20, 1894

**Type of Historical Right:** DECREED

**Purpose (use):** IRRIGATION

**Maximum Flow Rate:** 3.50 CFS

**Maximum Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

**Maximum Acres:** 248.00

**Source Name:** SPRING CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

ID	Cont.Lot	Qtr.Sec	Sec.	Twp	Rge	County
1			SE	15N	11W	POWELL

**Period of Diversion:** APRIL 1 TO OCTOBER 15

**Diversion Means:** HEADGATE

**Ditch Name:** CEDAR FALLS DITCH

**Purpose (Use):** IRRIGATION

**Irrigation Type:** FLOOD

**Climatic Area:** 4 - MODERATELY LOW

**Volume:** 208.31 AC-FT

**Period of Use:** APRIL 1 to OCTOBER 15

**Place of Use:**

ID	Acres	Cont.Lot	Qtr.Sec	Sec.	Twp	Rge	County
1	87.00		SW	33	15N	12W	POWELL
2	161.00		W2	4	14N	12W	POWELL
<b>Total:</b>	<b>248.00</b>						

**Remarks:**

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS OF THE CLAIMANT'S TOTAL ACRES. EACH RIGHT IS LIMITED TO THE 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.

132511-00 132512-00 132513-00 132517-00 132518-00 132521-00 68060-00

THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 8/29/92: MAXIMUM ACRES AND PLACE OF USE.

WATER DIVERTED FROM SPRING CREEK IS CONVEYED IN THE MURPHY DITCH THROUGH DONEY LAKE TO HOYT CREEK. HOYT CREEK RUNS INTO WARREN CREEK AND THE WATER IS THEN CONVEYED THROUGH THE MCNALLY DITCH TO THE PLACE OF USE.

USDA AERIAL PHOTOGRAPH (NO'S) 178-38, DATED 08/10/1979, APPEARS TO INDICATE 175 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

NOTICE OF WATER RIGHT TRANSFER RECEIVED 08/28/92.

NOTICE OF WATER RIGHT TRANSFER RECEIVED 10/05/92.

WATER RIGHT OWNERSHIP UPDATE RECEIVED 03/14/00.

# Adverse Effect

- Key Issue in a water rights change
  - Heavily grounded In **Historic Use**

# What is an Adverse Effect to a Water Right?

- **Short Answer:** Anything that impeded the ability of a water right owner to make use of the water right.
- Typically:
  - disruption in timing of flow (return flow)
  - Diminution of flow (expanded consumptive use)
  - Disruption of historic pattern of use

# Historic Use

- “historic Use” = “Pre-July 1, 1973”
- 2 Pieces to Historic Use:
  - Consumptive Use (lost to the source)
  - Diverted Use
- Challenge: Documenting the quality and extent of Pre-July 1, 1973 use

# Methods of Proof

- Prior to November 2012:
  - Jig saw puzzle—aerial photos, Water Resource Survey, old-timer recollections, water commissioner records, NRCS crop-consumption formulas
  - Time intensive, very expensive, lengthy review process
- Current practice:
  - DNRC will calculate historic consumptive/diverted use
  - Still looks like a jig-saw puzzle

# How does the statewide adjudication process affect water right changes?

- Short answer: It doesn't, directly.
- DNRC's Fallback:

“If historic use is reduced under adjudication proceedings pursuant to title 85, Chapter 2, Part 2 MCA, this authorization will be limited to a lesser amount. “