

# WATER RIGHT BASICS AND TOOLS TO ACCOMMODATE CHANGE

Montana Department of Natural Resources and  
Conservation

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# SUMMARY OF DISCUSSION

- Water administration and management.
- Entities responsible for water right administration.
- Basic water law principles.
- Legal environment and constraints in Upper Missouri.
- Tools currently available to develop and reallocate water.
- Consideration of additional opportunities to meet future water demands.

# MONTANA WATER RIGHTS ADMINISTRATION

- Principle agencies responsible for administration.
  - Department of Natural Resources and Conservation (DNRC)
    - New water rights or changes to existing water rights; records.
  - Montana Water Court
    - Adjudication of pre-1973 water rights. Adjudication process is active in the Great Falls region.
  - District Courts
    - Enforcement of water rights

# What is a Water Right?

- A right to use water.
- A property right allocated by the State for individual use.
- Appurtenant to the land on which it's used.
- A property right that can be bought and sold. It can be severed from the land it's appurtenant to. Has value.
- Protected by the constitution.

# *Montana Water Law: Basic Principles*

- **Doctrine of Prior Appropriation**
  - ✓ First in time is first in right
  - ✓ No priority of use in Montana
  - ✓ Limited to beneficial use (no waste)
  - ✓ Limited to historic use (no expansion)
  - ✓ Use it or lose it!
  - ✓ No provision for the protection of minimum stream flows (without a water right)

# CONSTRAINTS

- PHYSICAL AND LEGAL WATER SUPPLY
  - Tributaries often over-allocated due to irrigation and instream flow water rights/reservations.
  - Missouri River mainstem over-allocated due to hydropower water rights at Great Falls. Excess water available for only two months on average.
- LEGISLATIVE BASIN CLOSURES
  - Jefferson and Madison River Basin Closures – MCA 85-2-341
  - Upper Missouri River Basin Closure – MCA 85-2-343
  - Teton River Basin Closure – MCA 85-2-330
- MARIAS RIVER BASIN IS NOT CLOSED BUT LEGAL WATER AVAILABILITY IS SCARCE

# DNRC Water Right Change Process

- Reallocation of existing supply.
- DNRC's Water Right Change Process is the most common tool in developing water in Upper Missouri
  - Authorization required to change a point of diversion, place of use, purpose, or storage.
  - Drop-for-Drop.

# ADDITIONAL TOOLS

- Water Marketing (buying/selling water rights)
- Water Sharing/Pooling
- Water Reservations (MCA 85-2-316)
- Water Right Enforcement (MCA 85-2-406; 85-5-101)
- Federal Contract Water (Canyon Ferry and Tiber)
- Water Leasing Program (MCA 85-2-141)
- Efficiency Upgrades and Conservation Measures
- Eminent Domain (condemnation of water rights)

# What Are Other Opportunities?

- Water Banking
  - An institutional mechanism used to facilitate the legal transfer and market exchange of developed water to new uses
  - A brokerage that brings together willing buyers and sellers
  - Driven by market forces
  - Functional at the watershed level
- Storage of High Spring Flows
- Groundwater Investigations
  - Can we benefit from further understanding of GW boundaries, movement, timing and surface water connection?

