

MONTANA WATER FACTS

Stream and river miles - 176,750

Montana contains 3 headwaters watersheds

St. Mary's River (Hudson Bay)

Columbia River (Pacific Ocean)

Missouri River (Gulf of Mexico)

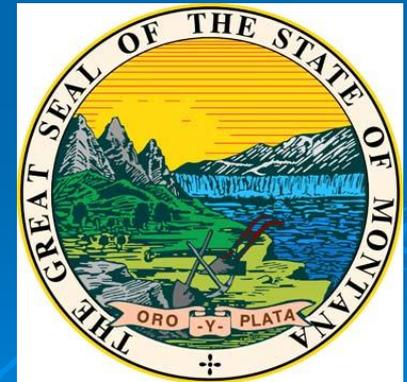
Irrigation water accounts for 97.6% of water withdrawals



Domestic use : 44% Ground Water 56% Surface Water

MONTANA WATER RIGHTS ADMINISTRATION

- 1972 Constitution declared “all waters of the state are the property of the state for the use of its people”
- A water right is the right to use the water beneficially
- Appropriation Doctrine - First in time is first in right
- Use it or lose it
- A legal water right:
 - Is a property right
 - Is protected by the constitution
 - Has value - can be bought and sold
 - Can be severed from the land
 - Cannot be taken away without due process



MONTANA WATER USE ACT - JULY 1, 1973

- Adjudication - process to account for water rights appropriated before July 1, 1973
- Set up a system for new appropriations of water and making changes on existing water rights
- DNRC became the record keeper of water rights
- Allowed for a Water Reservation process



ADJUDICATION

- Water court established 1979 – Bozeman
- Exclusive jurisdiction over “existing” water right
(Rights put to use prior to July 1, 1973)
- Process helps to establish Montana’s water use
against claims by downstream states
- Process establishes priority on sources
- DNRC examines claims in accordance with Supreme Court
Rules
- Issue remarks are often the basis of objections
(Court resolves all issue remarks)
- Decree will be issued in all 85 river basins in Montana
- Objections filed
- Water master resolves issues
- Water Judge adopts, modifies, or rejects master’s report
- Yellowstone River Basin – Final – 3; Temporary Preliminary
Decrees – 11; Preliminary 6; Examined 1; Not examined - 3



NEW WATER USES

- Permit

Any surface water

Ground water greater than 35 gpm or 10 acre-feet

- Certificate

Ground water 35 gpm or less or 10 acre-feet or less

- Change of Use

Point of diversion

Place of Use

Purpose

Place of Storage

Change cannot exceed historic beneficial use



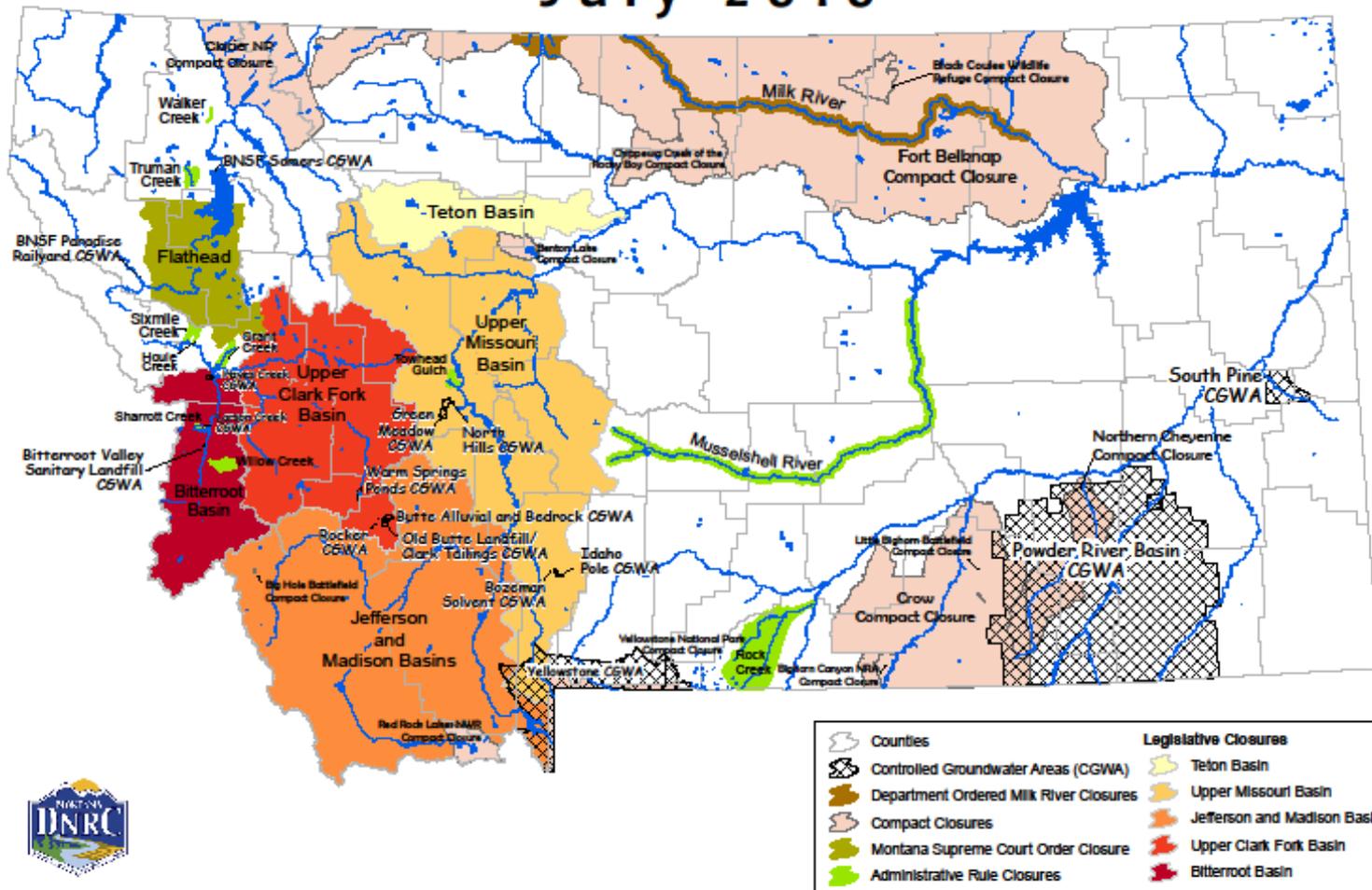
CONTROLLED AREAS

- ROCK CREEK
- CROW COMPACT
- POWDER RIVER
Ground water
- SOUTH PINES
Ground water
- NATIONAL PARK
SERVICE COMPACT



Surface water tributaries and Yellowstone River
Ground water control area

Montana Basin Closures and Controlled Groundwater Areas July 2010



Map created by MT DNRC WRD on 07/26/10.

WATER RESERVATIONS

- Preserve water for future use

- Government Entities could apply

Yellowstone River
Upper Missouri
Lower Missouri &
Little Missouri

Yellowstone River

Municipalities

Priority Date

12-15-1978 @ 12:30 PM

- Livingston
- Big Timber
- Columbus
- Laurel
- Billings
- Miles City
- Glendive
- Broadus



WATER RESERVATIONS

MT Dept. of Fish, Wildlife and Parks

- Instream Flow Above the Mouth of the Bighorn at the Yellowstone River - The priority date of the water reservation is December 15, 1978 @4:13 PM
- Instream Flow Below the Mouth of the Bighorn at the Yellowstone River - The priority date of the water reservation is December 15, 1978 @4:21 PM
- Many Tributaries to the Yellowstone River from the headwaters to its discharge in North Dakota have specific identified amounts



WATER RESERVATIONS

Conservation Districts

Priority Date -12-15-1978 @ 4:18 PM

- Park
- Sweet Grass
- Stillwater
- Carbon
- Yellowstone
- Big Horn
- Treasure
- Rosebud
- North Custer
- Powder River
- Prairie
- Dawson
- Richland
- Little Beaver





DISCUSSING WATER RIGHTS—A MONTANA PASTIME

ENFORCEMENT

- Pre-July 1, 1973 ,offender - File a restraining order with District Court
- Pre-July 1, 1973, offender – Petition District Court to certify the matter to the Water Court
- If Basin has a Water Court Decree
 - Petition District Court (15% of water rights or District Court discretion)
 - Appointment of Water Commissioner – Have authority to enter upon any ditch, canal or other source and to visit, inspect, and adjust headgates
 - Commissioner monitors diversions to ensure compliance
 - Commissioner records issues reports to District Court
- Petition District Court for water mediator
- Contact DNRC Water Resources Office
 - Jurisdiction: post July 1, 1973 water rights; wasting water; using water unlawfully; preventing water from going to a senior water user; or otherwise violating the Montana Water Use Act

Yellowstone River Compact

January 1, 1950

Montana – North Dakota - Wyoming



- Establishment of Yellowstone River Commission
- Interstate Tributaries

Clarks Fork Yellowstone River	WY – 60%	Montana – 40%
Big Horn River (except Little Big Horn River)	WY – 80%	Montana – 20%
Tongue River	WY – 40%	Montana – 60%
Powder River	WY – 42%	Montana – 58%

- North Dakota – Yellowstone River

All existing rights recognized & shall remain unimpaired

Entitled to water below Intake, Montana on proportionate share basis of irrigated acres

- Tributary streams originating in MT or ND situated entirely in state and flow into Yellowstone below Intake are allocated to respective state
- Montana currently in litigation with Wyoming concerning water allocations



Northern Cheyenne Compact

Ratified May 20, 1991

Priority Date: October 1, 1881

- Tribal stockwater, domestic & municipal existing uses protected
- Tongue River – 32,500 Acre-Feet – direct flow, storage and exchange water
- Rosebud Creek – Agriculture Uses – 1,800 AF for 600 Acres
Additionally 19,530 AF for Irrigation, but cannot adversely affect existing state based water rights
 - North of reservation – 8,100 AF
 - South of Reservation 540 AF
 - Moratorium by DNRC on permit issuance
- Ground water – right to alluvial ground water of Tongue River & Rosebud Creek
- Big Horn Reservoir (Yellowtail) Storage
30,000 AF for any beneficial either on or off Reservation
- State of Montana administers all state based rights within Reservation

Crow Compact

Ratified June 22, 1999 - Priority Date: May 7, 1868



- Tribal Rights
 - (43P) Bighorn River – 500,000 AF – Natural Flow
 - (43O) Bighorn Lake – 300,000 AF
 - 150,000 AF Storage allocation may be put to use in addition to natural flow and 150,000 AF may be used to supplement natural flow
- Bighorn River and Pryor Creek basins closed to new water uses
- Rosebud Creek and Clark Forks Fork Yellowstone & tributaries closed on the reservation
- New or changes in water use by Tribe cannot adversely affect existing uses
- Shortages must be shared pro rata to irrigated acres
- Tribe administers rights on the Reservation (Use within 9 Basins & Ceded Strip)
- DNRC administers water right off the Reservation
 - State based water rights - with a priority date of June 22, 1999, or earlier are completely protected
 - Tribal Water Right development after that date
 - Tribal Water Right changes in use or transfer of any portion after that date