

# How Is Water Managed in the Event of Water Shortages?

In order to put water to a beneficial use in Montana, a person must have a water right. Water rights in Montana are administered using the prior appropriation doctrine. The prior appropriation doctrine states that who is “first in time is first in right.” The person with the earliest water right on a water source receives the most senior *priority date*. A water right with an early or senior priority date has more value in times of water scarcity than a water right with a later or more junior priority date. The holder of the earliest priority date has first chance to use the available water to the limits of their right. The second earliest priority date holder would have the next chance to use the remaining water, and so on.

Water shortages are not uncommon in the semi-arid landscape Montanans call home. How is water distribution handled when water is scarce? Water management on many of Montana’s waterways is a complex process that requires cooperation among water users and water managers to work successfully. In some watersheds, water users have worked together to develop Drought Management Plans in the event of water shortages. A Drought Management Plan is a voluntary process in which water users agree upon specific management measures to limit water use and share sacrifice in the event of shortages. Listed below are some basic first steps water users commonly use to minimize shortages:

- voluntarily conserving water
- improving the efficiency of water delivery systems
- cutting back on their diversions so that all users are able to divert at least some of their needed supply.

If these voluntary measures are ineffective or inadequate to address shortages in supply, a water user always has the option of implementing more formal measures to exercise his or her water right.

When a *senior water right* holder is unable to obtain enough water to meet his right, he can “call” the water of a *junior water right* holder. By placing a call, the senior user is asking specific water users with later priority dates to limit or stop water diversions. When disputes arise over the administration of water rights, there are a number of remedies available to water users. For example, a water user can file an action in district court requesting a temporary restraining order and preliminary *injunction*. This process is the fastest way to obtain relief, but it is also the most expensive.

If a water source is subject to a water rights decree, water users may petition the district court to appoint a water commissioner to administer water rights according to priority based upon the decree.



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Mediation may also be a useful tool for the resolution of water disputes between water users. A water user may petition the court for the appointment of a water mediator. The Water Court has special Water Masters who are trained and qualified as competent water mediators. Mediators do not have the power to order water users to do anything; however, they are often able to negotiate and propose solutions to these disagreements.

The specific type of relief available through the court system depends on the types of water rights that exist within the dispute. If you have questions about which specific remedies are available depending upon the status of your water rights, contact the DNRC or the Water Court to find out which remedies are available to you. In areas where not enough water exists to satisfy existing rights, new uses may be prohibited by rule or by statute.

The state of Montana has the ability to control or close river basins and *groundwater* sources to certain new water appropriations when there are problems involving water use and health. There are four types of closures:

1. A Controlled Groundwater Area (CGWA) may be designated to protect water quantity or quality. Certain local government entities or 1/3 of water rights holders in the proposed area can petition for a CGWA. The DNRC may also propose an area for designation and may then designate a CGWA by administrative rule assuming the criteria for establishing

a CGWA are met (see Fact Sheet # 4: *Can Groundwater Meet the Demand for New Water Uses in Montana?*).

2. The DNRC may also adopt an administrative rule closing a basin or restricting new uses in a basin. In order for the DNRC to adopt an administrative rule closing a basin it must first receive a petition from the Department of Environmental Quality, or from 25 percent or ten (whichever is less) of water users in the basin. The closure can only occur when certain conditions threatening the water supply exist.
3. Statutory closures are created by the Montana Legislature. These closures typically limit permit applications in basins that are over appropriated.
4. Compact closures can occur when the Reserved Water Rights Compact Commission negotiates compacts with tribes and federal agencies resulting in closures of certain water sources (see Fact Sheet #9: *What Are Federal or Tribal Reserved Water Rights* for more information).

