

What Is Water Rights Adjudication?



Water Fact Sheet #7

Italicized terms are defined in Fact Sheet #10

When a judge hears a case and makes a decision, the matter is said to have been *adjudicated*. *Water rights adjudication* refers to the settling of *statements of claim* filed for water rights. Adjudication establishes all *existing water rights* in the state, and provides essential protection to all Montana water users. The adjudication process establishes the *priority date* and the amount of water claimed by users for *beneficial use*. It does not, however, provide any information regarding water supply or the availability of water in Montana.

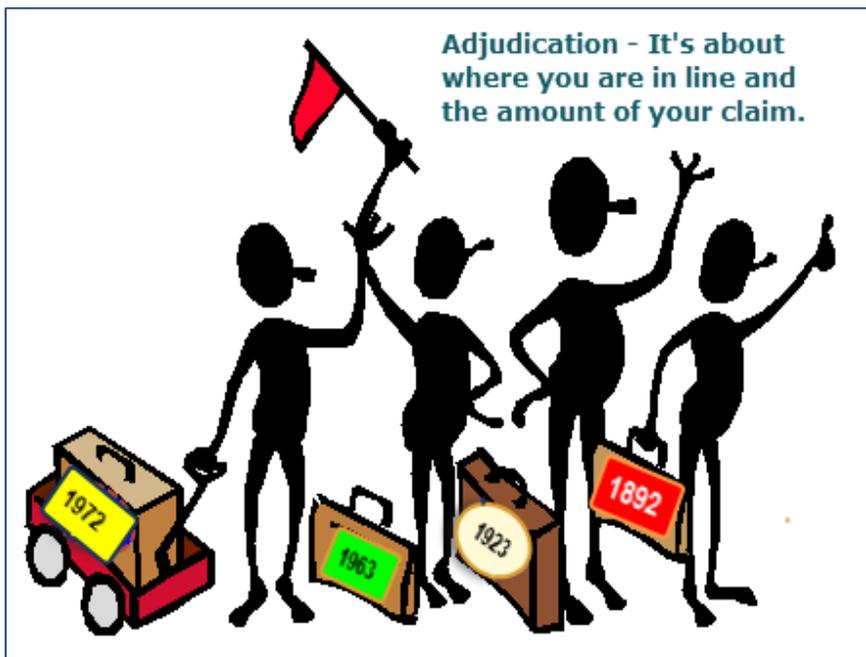
Prior to 1973, a person could gain a right to use water simply by putting that water to beneficial use. As a result, no one knew how many water rights there were or exactly how much water had been *claimed* by users. In passing the 1973 *Montana Water Use Act*, (Act) the Legislature recognized that the amounts, ownership, and priority dates for all existing water rights needed to be more clearly defined. To accomplish this, the Act required that all water rights existing prior to July 1, 1973, were to be adjudicated in state courts. The Act also established a per

mit system for obtaining new water rights, and an authorization system for changing water rights. In addition, the Act established a central system for all water rights records.

In 1979, the Act was modified to establish a special court, known as the *Water Court* to adjudicate all existing water rights in a statewide proceeding.

*The adjudication process does **not** provide any information regarding **water supply** or the **availability** of water in Montana.*

In June of 1979, the Montana Supreme Court issued an order requiring every person declaring ownership of an existing water right to file a statement of claim with the Department of Natural Resources and Conservation (DNRC) no later than January 1, 1982. The Court later extended the deadline to April 30, 1982. Existing water rights not filed by the deadline were assumed to have been abandoned. Certain stock and domestic water claims were exempt from the Court's order.



By the April 30, 1982, deadline, over 200,000 claims for existing pre-1973 water rights were received. Because adjudication of these claims cannot occur all at once, the claims are being handled systematically for each of Montana's 85 river basins (Figure 1). The adjudication process starts with DNRC staff examining each statement of claim for completeness and accuracy according to rules established by the Montana Supreme Court. Discrepancies are then reported to the claimants and the Water Court. The reports are also made available to the public.

Basin Location and Adjudication Status

February 3, 2015

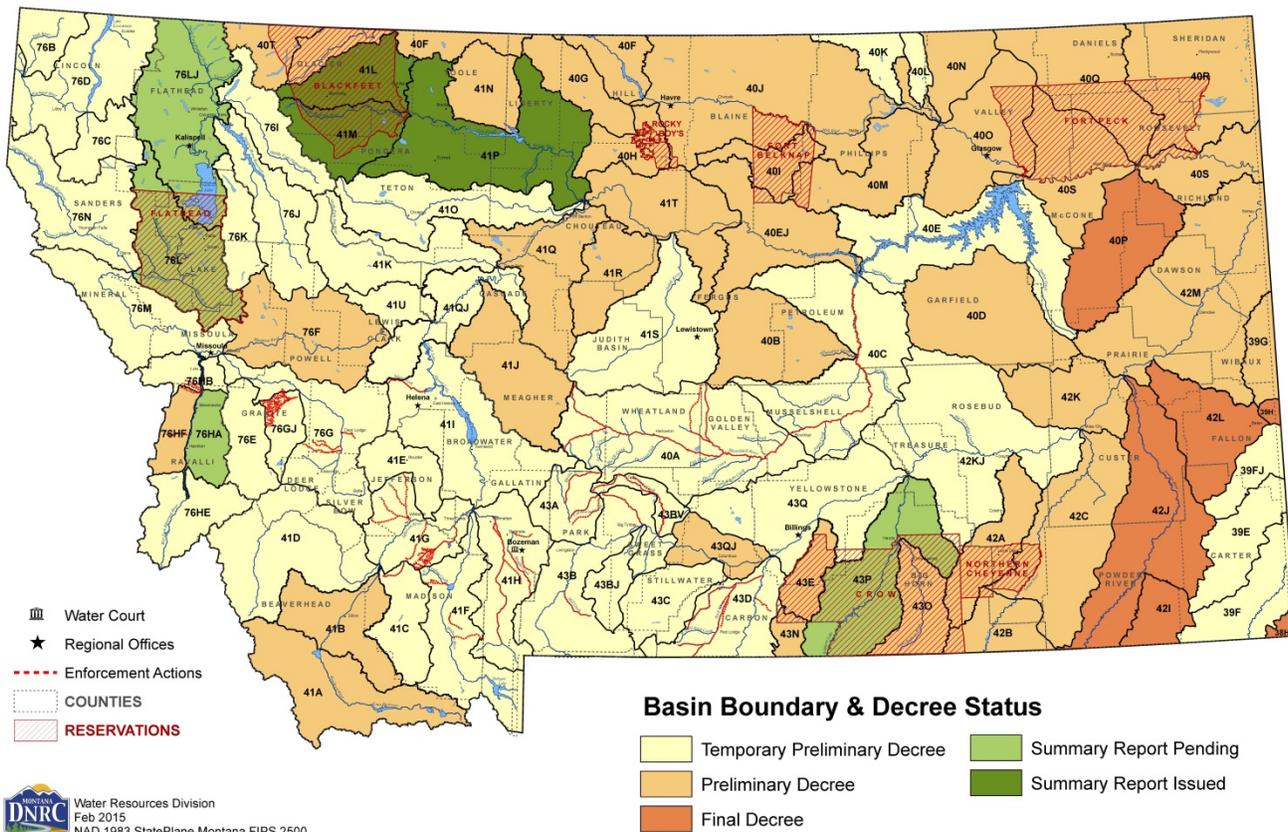


Figure 1-Basin location and adjudication status within Montana

The water judge, with the help of a water master, hears and decides all objections to the filed claims. After all objections have been resolved, the water judge issues a *decree* or ruling. Once a final decree is issued, the DNRC will release a Certificate of Water Right to each person decreed an existing water right. Water rights dated after July 1, 1973, are administered through the DNRC water rights permitting process and are therefore not subject to the adjudication process. By 1985, the first 20 water basins had been decreed.

The 2005 Montana Legislature passed House Bill 22 (HB22) to help speed up the adjudication process.

HB22 called for the DNRC to evaluate the remaining 57,000 claims by June 30, 2015. In March of 2014 DNRC completed the examination of the 57,000 claims.

HB22 also set a target date for the Water Court to issue an initial decree for all basins in Montana by June 30, 2020. To assist the Water Court in meeting this target, the DNRC must provide the Court summary reports on the remaining basins to be decreed. In addition, HB22 requires the Water Court and the DNRC to provide progress reports to the Environmental Quality Council on a regular basis.