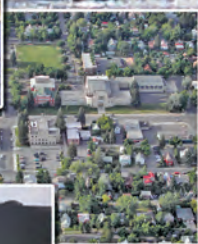


# Guide to Montana Water Management

## Who Does What with **WATER** **RESOURCES?**





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# Introduction

Montana's greatest natural treasure is the water resource. The rivers, streams, lakes and groundwater have shaped the stories of our rich history of mining, agriculture, recreation and quality of life. The impacts of water use in the state over time have created new stories. Tomorrow's stories will unfold as future demands on water from growing urban centers and energy development as well as climate change impact water quality and quantity. It is incumbent on Montana citizens to protect this resource, to satisfy current uses, and to meet the growing water demands.

As a concerned citizen, professional or community leader, it is important to understand the government's role in managing water. Montana's water is managed through a complex system of federal, state and local authorities. Water management involves people who allocate water supplies, issue permits, regulate the resource according to state and federal laws, and enforce laws when violations occur. Management also includes legislative and administrative decision-making. Lack of water management would result in greater contamination of drinking water, more pollutants in surface water, and a greater likelihood of water being unavailable to all users – from fish to farmers and from recreationists to rural and urban drinking water systems. The goal of this guide is to provide an overview of Montana water law and how water is managed in the state.

Because every layer of government plays some part in water management, effective water management requires communication and collaboration among diverse individuals, interest groups, and government officials.



# The Federal Role

Federal authority for water management is implied in the U.S. Constitution, although water is never mentioned by name. The federal role comes from several specified powers:

- **Commerce power** – U.S. Congress has jurisdiction over all navigable waters of the United States. The commerce power includes flood protection and watershed development.
- **Proprietary power** – Congress has unlimited authority to control the use of federal public lands. The property clause allows construction of federal reclamation projects and regulates electrical power generated at federal dams.
- **Treaty-making power** – Only the federal government has authority to enter into treaties with foreign nations and American Indians. The treaty-making power is one basis for the reserved water rights of Indian tribes in Montana.
- **General welfare power** – The federal government has authority to provide for the general welfare of the United States and its citizens “for the common benefit,” rather than for only “local purposes.”
- **Equitable apportionment** – When controversies arise among states over water, the U.S. Supreme Court has the power to decide the controversy.
- **Interstate compacts** – These negotiated agreements or compacts appropriate water that cross state boundaries. The compacts must be ratified by Congress.

In Montana, the federal government is involved with water management in multipurpose projects such as Hungry Horse, Yellowtail and Canyon Ferry Dams (Bureau of Reclamation) and Fort Peck Reservoir (Army Corps of Engineers); irrigation projects like the Yellowstone and Milk River Irrigation Districts (Bureau of Reclamation); wildlife refuges such as the Charles Russell National Wildlife Refuge (U.S. Fish and Wildlife Service); and water and wastewater treatment facilities managed by municipal governments (regulated by the Environmental Protection Agency).

**Navigable Waters** – A water body qualifies as a “navigable water of the United States” if it meets any of the tests set forth in 33 C.F.R. (Code of Federal Regulations) Part 329 (e.g., the water body is (a) subject to the ebb and flow of the tide, and/or (b) the water body is presently used, or has been used in the past, or may be susceptible for use [with or without reasonable improvements] to transport interstate or foreign commerce).

**Federal Reserved Water Rights**– In January 1908, the United States Supreme Court defined federal reserved water rights in the *Winters v. United States* decision involving members of the Fort Belknap Reservation in Northern Montana and non-Indian irrigators in the Milk River drainage. The court decided that when federal lands were withheld from settlement and reserved for some purpose, water rights were also reserved.

Federal lands with reserved water rights in Montana include seven Native American reservations; land managed by the Forest Service;

national parks and monuments managed by the National Park Service; wild and scenic rivers and other lands managed by the Bureau of Land Management.

Three issues dominate quantification of federal reserved water rights: uses for which the right can be exercised, the quantity of the right, and the priority date of the right. In Montana these issues are negotiated and stated in a compact that is then ratified by the holder of the federal water right, the Montana legislature, and the U.S. Congress. A reserved water right exists whether or not it is actually in use.

**Equitable Apportionment**– States are obligated to share interstate waters. If the actions of one state harm or reduce another state’s share of interstate waters, the affected state may ask the Supreme Court to apportion, or distribute, the water resource.



## Federal Laws

The primary federal laws that influence Montana water management are:

- **Clean Water Act (CWA)** – The CWA, enacted in 1972, gave states the authority to protect the chemical, biological and physical aspects of the nation’s water bodies. CWA regulates the discharge of pollutants into waters by establishing national standards and permit guidelines. The federal Environmental Protection Agency (EPA) oversees the act’s implementation.
- **Safe Drinking Water Act (SDWA)** – The SDWA was passed in 1974 to protect drinking water from contamination. The purpose of SDWA is to establish national enforceable standards for the quality of drinking water distributed by public water systems, and to guarantee that they monitor to ensure compliance with these standards.

Some overlap exists between these two statutes. However, the SDWA is concerned with public health associated with safe drinking water while the CWA has a broader goal of clean, fishable, and swimmable waters. Both statutes set minimum standards for water quality that must be met by all states. In Montana, both laws are administered by the Montana Department of Environmental Quality (DEQ) on non-reservation lands. The federal EPA or tribe administers the laws on tribal lands.

- **Flood Control Act (FCA)** –This refers to a series of federal laws, all of which grew out of the need for a national response to the impacts of costly floods. The FCA has been amended and supplemented over time from the first Act passed in 1917. The FCA of 1944 granted authority to Army Corps of Engineers to seek Congressional authorization for water development projects for purposes such as navigation, flood control and irrigation.
- **Endangered Species Act (ESA)** – The ESA was enacted in 1973 to protect and restore imperiled species and the ecosystems upon which they depend. The ESA provides a program for the conservation of threatened and endangered plants and animals and habitats. In Montana, the lead federal agency for implementing the ESA is the U.S. Fish and Wildlife Service.

EPA <http://cfpub.epa.gov/watertrain/>

# The Federal Agencies & Their Responsibilities

## Department of Agriculture

**Farm Service Agency** – administers cost share programs for farmers that improve water quality, soil stabilization, and irrigation systems. <https://www.fsa.usda.gov>

**Natural Resources Conservation Service** – assists private landowners with watershed protection, flood prevention, soil and water conservation, and soil inventories; conducts snow surveys, land-use inventories, cropland studies, and wetland assessments. [www.nrcs.usda.gov](http://www.nrcs.usda.gov)

**Forest Service** – conducts watershed management within ten national forests in Montana, and manages three wild and scenic river reaches within its forest boundaries. [www.fs.fed.us](http://www.fs.fed.us)

## Department of the Army

**Corps of Engineers** – authorizes permits for private projects affecting navigable waters; administers large multipurpose reservoirs for navigation, flood control, hydroelectric generation, and flood damage reduction. [www.usace.army.mil](http://www.usace.army.mil)

## Department of Commerce

**Economic Development Administration** – provides public works grants for community water development. [www.eda.gov](http://www.eda.gov)

**National Oceanic and Atmospheric Administration** – issues information on weather, river, and climactic conditions; maintains a flood warning system. The National Weather Service at NOAA forecasts weather and issues weather warning and watches. [www.noaa.gov](http://www.noaa.gov)

## Department of Energy

**Bonneville Power Administration** – markets electric power for the 31 hydroelectric projects of the federal Columbia River Power System, including the Libby and Hungry Horse dams in Montana, and mitigates loss of fish and wildlife caused by this system; operates transmission systems. [www.bpa.gov](http://www.bpa.gov)

**Western Area Power Administration** – distributes and markets hydro power from federal facilities outside of the Columbia River basin in a 15 state region, including Montana; operates transmission lines. [www.wapa.gov](http://www.wapa.gov)

## Department of Homeland Security

**Federal Emergency Management Agency** – delineates flood plains, publishes maps, and administers the National Flood Insurance Program, a Federal program enabling property owners in participating communities to purchase insurance protection against losses from flooding. [www.fema.gov](http://www.fema.gov)

## Department of Housing and Human Development

Provides financial aid for local water resource projects such as water and wastewater improvements through Community Development Block Grants for “entitlement communities” with populations of over 50,000. [www.hud.gov](http://www.hud.gov)

## Department of Interior

**Bureau of Indian Affairs** – protects water rights of Indian tribes and promotes productive water use. [www.bia.gov](http://www.bia.gov)

**Bureau of Land Management** – administers federally-owned lands and use of natural resources, including water, on these lands. [www.blm.gov](http://www.blm.gov)

**Bureau of Reclamation** – designs, constructs, and operates water projects; conducts river basin water management studies; coordinates water conservation efforts. [www.usbr.gov](http://www.usbr.gov)

**National Park Service** – protects water resources (reserved water rights) and conducts water resource studies in Montana’s national monuments, battlefields, and national parks. [www.nps.gov](http://www.nps.gov)

**U.S. Fish and Wildlife Service** – reviews comprehensive water plans and projects for impacts on fish and wildlife habitat and populations; works to recover endangered fish and wildlife species; manages hatcheries; studies fish disease. [www.fws.gov](http://www.fws.gov)

**U.S. Geological Survey** – researches the source, quantity, distribution, movement, and availability of surface and groundwater for national water data network and technical reports. [www.usgs.gov](http://www.usgs.gov)

## Environmental Protection Agency

Works with states to establish and enforce standards for water quality and drinking water; provides grants for drinking water and water pollution control facilities. [www.epa.gov](http://www.epa.gov)

## Federal Energy Regulatory Commission

Issues licenses for hydroelectric projects and transmission lines. [www.ferc.gov](http://www.ferc.gov)

# The State Role

The framers of Montana’s 1972 Constitution made it clear that a close relationship exists between the state’s natural resources and a high quality of life. Article IX of the Constitution identified this important relationship by designating the state government as custodian of Montana’s water resources.

Section One of Article IX assigned shared responsibility for protection and improvement of Montana’s water to “the state and each person...for present and future generations.” The Montana legislature bears responsibility for “the administration and enforcement of this duty,” including protection of “environmental life support systems” and for preventing “unreasonable depletion and degradation of natural resources.” In addition, the Constitution established the governmental framework for water use, appropriation, channelization, damming, conveyance, regulations, protection, treatment, and monitoring.

Water rights, which regulate water use, are singled out in Section Three of Article IX: “All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.” It clarifies that all uses of water, regardless the nature, are considered public uses. Further, it declares all waters within state boundaries (groundwater, surface water, flood waters, and atmospheric waters) are the property of the state “for the use of its people.”

## Montana Water Use Act of 1973

The 1972 Montana Constitution envisioned strong state supervision of water rights, with language to provide for their administration, control, and regulation, and to establish a system of centralized records.

In response, the Legislature enacted Title 85, Chapter 2, Montana Code Annotated (MCA), generally referred to as the Montana Water Use Act of 1973. The act changed the water rights administration in several significant ways:

1. All water rights existing prior to July 1, 1973 are to be finalized through a statewide adjudication process in state courts.
2. A permit system was established for obtaining water rights for new or additional water developments.
3. An authorization system was established for changing water rights.
4. A centralized records system was established.
5. A system was provided to reserve water for future consumptive uses and to maintain minimum instream flows for water quality and fish and wildlife. (*MT DNRC. Water Rights in Montana, April 2012.*)

## Montana Water Law

The fundamentals of Montana's water right system are:

1. Montana's water belongs to the state for the use of its people. Therefore, water right holders do not own the water; they possess the right to use the water.
2. Doctrine of Prior Appropriation (first in time, first in right) guides Montana's water right system.
3. "Use it or lose it." A water right holder must use the water or risk losing the right to it.
4. The water diverted must be for a beneficial use, and all beneficial uses are equal under the law.
5. A water right is a property right and can be separated from the land.
6. Any change in the purpose, place of use, place of storage, or place of diversion of a water right must first be approved by the MT Department of Natural Resources and Conservation (DNRC).

### Doctrine of Prior Appropriation –

A person's right to use the water depends on when that use first began. Whoever diverted the water first for a beneficial use has priority over other later water users. First in time is first in right summarizes the Doctrine of Prior Appropriation. "Senior users" have the right to fulfill their water right before "junior users." For example a water right holder with a dated right of 1890 for 1 cubic foot per second (cfs) may get more water in dry years than a water right holder with a right for 25 cfs with a date of 1940.

**Beneficial Use** – The use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.

**Consumptive use** – A beneficial use of water that reduces supply, such as irrigation or municipal use.

**Instream flow** – Water left in a stream for nonconsumptive uses such as preservation of fish and wildlife habitat.

**Adjudication** – a judicial process for settling pre-July 1, 1973 statements of claims filed for water rights. The process establishes priority date and amount of water claimed for beneficial use. Adjudication focuses on the legal right to put water to use; it does not address the physical supply or availability of water in Montana. Montana Water Court has exclusive jurisdiction over the adjudication of water rights claims.

**Decree** – a final product of basin adjudication. To reach completion, a decree progresses through several stages: examination, temporary preliminary / preliminary decree, public notice, hearings and final decree. After resolving all objections and finally resolving all issue remarks, the Water Judge issues a final decree.

## Montana Water Rights

Several state entities play a role in administering Montana water rights and the statewide adjudication.

### Montana Department of Natural Resources and Conservation (DNRC)

- Administers the portions of the Montana Water Use Act that relate to water uses after June 30, 1973
- Trains water commissioners
- Provides technical information and assistance to the Water Court on historical water rights claims (pre-July 1, 1973)
- Maintains a central water rights record system

### Montana Water Court –

- Adjudicates pre- July 1, 1973 water rights
- Decides any legal issues referred from the District Court on pre-July 1, 1973 water rights
- Assists District Courts with enforcement

### District Courts –

- Can issue injunctive relief while it certifies water rights issues to the Water Court
- Appoints Water Commissioners for enforcement
- Manages enforcement of water rights

### Reserved Water Rights Compact Commission (Commission) –

- Negotiates settlements with federal agencies and Indian tribes claiming federal reserved water rights within the State of Montana
- Negotiates on behalf of the Governor's Office and represents the interests of State water users

### Attorney General –

- The Water Court may join the Attorney General to intervene, on behalf of the state, in the adjudication of water right claims that are being decreed by the Water Court

### Legislature – Provides policy direction and laws for the administration of waters

- *Water Policy Interim Committee (WPIC)* – permanent, joint bipartisan committee that studies water issues in order to develop a clear policy direction and necessary legislation to guide Montana’s water policy that ensures fair and reasonable use of Montana’s water resource as demands on water increase while supplies remain the same or decrease
- *Environmental Quality Council* – contributes policy oversight to the administration of state water rights by advising and updating the legislature and overseeing institutions dealing with water, and communicates with the public on matters of water policy

*(Water Rights Adjudication in Montana, DNRC pamphlet. February 2008.)*

## Parts of a Water Right

Each water right has these components:

- Owners
- Priority date
- Type of historic right (decreed, filed or use right)
- Purpose (and irrigation type where appropriate)
- Flow rate (if appropriate for purpose)
- Volume (if appropriate for purpose)
- Maximum acres (for irrigation, lawn and garden)
- Source name and type
- Point(s) and mean(s) of diversion (including reservoir specifics if appropriate)
- Period of use
- Place of use

## Types of Water Rights

There are several types of water rights in Montana. The type of water right depends on when they were acquired and what rules were applied at that time. Each right is equally valid and enforceable in accordance with its priority date.<sup>1</sup>

- **Use Rights** – rights acquired by appropriating water and putting it towards a beneficial use. Use rights refer only to rights prior to July 1, 1973. No recording or approval from an agency was required. Approximately 67% of the water rights filed in Montana’s statewide adjudication are use rights. The priority date of use rights is generally the date the water was first put to beneficial use.
- **Filed Rights** – rights filed with the local county Clerk and Recorder’s Office under an optional system that was first statutorily recognized in 1885 and which continued until the July 1, 1973 effective date of the Water Use Act of 1973.
- **Murphy Rights** – rights filed by Montana Fish & Game Commission on unappropriated waters of 12 streams to maintain instream flows for preservation of fish and wildlife habitat. Priority dates are 1970 or 1971.
- **Decreed Rights** – rights that were initially use or filed rights that have been adjudicated (decreed) by a district court. These rights are more certain in their existence, because a district court previously reviewed the evidence and decided, at the time of the decree that a water right existed. Today water rights are adjudicated in the Water Court.
- **Court Approved Rights on Adjudicated Streams** – rights approved by a district court after 1921 on an adjudicated stream.
- **Groundwater Rights from 1962 to July 1, 1973** – In 1961, the Montana Legislature set up an exclusive method for acquiring a right to appropriate groundwater. On July 1, 1973, the groundwater code was repealed and the Montana Water Use Act now governs groundwater appropriations.
- **Federal and Indian Reserved Rights** – rights to use water implied from an act of Congress, a treaty, or an executive order establishing a tribal or federal reservation. The amount of water reserved depends on the purpose for which the land was reserved. In Montana, reserved water rights have been claimed for seven Indian reservations, for national parks, forests and wildlife refuges, and for federally designated wild and scenic rivers.<sup>2</sup>

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<sup>1</sup>*Basic Montana Water Law*. Handout prepared by Doney, 1990 and modified and updated by Loble, 1999 and 2003.

<sup>2</sup>MT DNRC. Water Rights in Montana, April 2012.



## New Appropriations of Water

The Montana Water Use Act established a permit system for new uses of water. After June 30, 1973, anyone planning to appropriate water for a new or expanded beneficial use is required to secure a beneficial use permit. The permit system is administered by the DNRC. Permits are required for both surface water and groundwater appropriations.

- **Surface Water-** Before beginning to construct diversion works or diverting water from a surface water source, a permit is required. There are some exceptions to this requirement for small livestock pits or reservoirs located on non-perennial flowing streams. Those seeking a permit should plan ahead—the application process takes time to complete.
- **Groundwater-** A new appropriation for groundwater that uses more than 35 gallons per minute (gpm), or 10 acre-feet a year requires a permit from DNRC before development begins or water is used. New or expanded development of groundwater from a well or spring that uses less than 35 gpm and does not exceed 10 acre-feet per year is exempt from the permitting process. In these cases, the owner has a 60-day window to submit a Notice of Completion of Ground Water Development to the DNRC before putting the water to use. The owner then receives a Certificate of Water Right for the specified use. Additional exemptions to the groundwater permitting process allow for the development of groundwater by local governmental fire agencies for emergency fire protection, and non-consumptive geothermal heating or cooling exchange applications.

## Closed Basins and Controlled Groundwater Areas

Montana has authority to close river basins to new appropriations of surface water to protect existing water rights and/or public health. Montana can also limit groundwater development from certain aquifers to protect existing water rights and/or public health by designating controlled groundwater areas. Many of the river basins in western Montana are closed to new surface water appropriations for any use. Additionally, groundwater permits may only be issued if the applicant can show, through a hydrologic study, that the new appropriation will not harm those with senior water rights. If adverse effects are expected, the applicant must provide a plan to counteract the adverse effects, either through acquisition of a surface water right or through a recharge plan. There are five different type of closures.

- **Controlled Groundwater Areas** – DNRC may designate them, another state or local agency may petition for one, or water users on the source may petition for one.
- **Permitted Surface Water Basin Closures by Rule** – DNRC may adopt Administrative Rules to close a drainage basin. DNRC must receive a petition from either the DEQ or at least 25% or 10 users in the drainage basin (whichever is less).

- **Department Ordered Milk River Closures** – The legislature has given DNRC the authority to order closures within the Milk River basin.
- **Legislative Closures** – By law the legislature can preclude permit applications in a chosen drainage basin.
- **Compact Closures** – A controlled groundwater area or other closure may be created during a compact negotiation. Compact Closures are authorized by the legislature when the compact is ratified.

## Montana Water Quality

The federal Clean Water Act (CWA) is the basis of surface water quality protection in the United States. Authority to implement CWA programs has been delegated from EPA to Montana DEQ, giving that agency authorization to establish water quality standards and a permit program to control the discharge of pollutants into state waters. A series of legislative actions dating back to 1907 has resulted in a collection of statutes known as the Montana Water Quality Act which forms the basis for water quality protection in the state.

Montana DEQ receives guidance on administrative policies and rules from the Board of Environmental Review, a Governor-appointed, quasi-judicial body. One important function of the Board is to adopt water quality standards (WQS) that identify the maximum allowable levels of alteration during use of state waters. WQS are either numeric or narrative.

*(Legislative Environmental Policy Office. A Guide to Montana Water Quality Regulation. Revised 2012- Jason Mohr. [www.leg.mt.gov/content/Publications/Environmental/2012-water-quality-guide.pdf](http://www.leg.mt.gov/content/Publications/Environmental/2012-water-quality-guide.pdf))*

DEQ oversees a number of programs, tools and permits dealing with surface and groundwater protection. Among these are:

- **Total Maximum Daily Load (TMDL)**– a tool for implementing water quality standards and based on the relationship between pollutant sources and water quality conditions. A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards. It allocates pollutant loadings among point and non-point sources and is most often expressed as a mass per unit loading of the pollutant, e.g., tons/year of sediment.

### Point Source Pollution –

Has a single, identifiable source of contamination that enters the environment through a confined conveyance such as a ditch, tunnel, smokestack, or pipe.

### Non-point Source Pollution –

Comes from various sources such as runoff from land, precipitation, atmospheric deposition, drainage, seepage or hydrologic modification. The runoff picks up and carries away natural and man-made contaminants as it moves, then finally deposits them into receiving bodies of water - lakes, rivers, wetlands, coastal waters and groundwaters.

- **Montana Pollutant Discharge Elimination System (MPDES) Program** – controls point source discharges of wastewater such that water quality in the receiving streams is protected. Small Municipal Separate Storm Sewer Systems (MS4's) in Montana must obtain General MS4 Permits when proposing construction, industrial, mining, or other defined activity that has a discharge of storm water into surface waters. MS4's in Montana include: the city of Billings and Yellowstone County, the city of Missoula and Missoula County; and the city of Great Falls and Cascade County. Also included are MS4s serving a population of at least 10,000 and located in the cities of Bozeman, Butte, Helena and Kalispell. Other MPDES permits include permits for pollution from construction activities (318 permit), mining, industrial activities, concentrated animal feeding operations, fish farms, pollution discharge to groundwater and many others. For a complete list of permits and programs, visit the DEQ website, <http://deq.mt.gov/wqinfo>.
- **Public Water Supply Program** – regulates public drinking water and wastewater treatment facilities in Montana, licenses operators of certain public drinking water and wastewater treatment facilities, and is responsible for maintaining public health through a safe and adequate supply of drinking water. This function is achieved by technical review, licensing, certifications, compliance monitoring, training and technical assistance.

## Other Water Related Permits and Programs

A system of permits, certificates, ordinances and regulatory rules has been set in place to protect Montana water quality. Although too complex to deal with in this publication, some of the more common regulatory tools and programs that are administered at the state and local levels are identified below. Learn more by visiting the agencies' websites.

*Conservation Districts* administer the 310 Law and grant 310 Permits for work in or near a year-round (perennial) stream on private or public land. These permits protect the stream and adjoining landowners from damage.

*Local floodplain administrators* handle Floodplain Development Permits that deal with any construction within the designated 100 year floodplain.

*Montana Department of Agriculture - Groundwater Protection Program* samples groundwater and surface water across the state to determine the presence of pesticides and fertilizers. The program has a permanent network of 42 monitoring wells for monitoring all shallow groundwater systems in the state. In addition, investigative and special projects are conducted in vulnerable areas, watersheds, and urban environments.

*MT Fish, Wildlife & Parks* oversees the Stream Protection Act and issues SPA 124 Permits for agency or government projects that may affect the bed or banks of any stream in Montana.

*US Army Corps of Engineers* is in charge of the Clean Water Act 404 Permits that deal with any activity that will result in discharge or placement of dredged or fill materials into “waters of the United States,” and with Federal Rivers and Harbors Act Section 10 Permits, that deal with construction in or over federally listed navigable water of the US.

## State Water Plan

The Legislature has determined that in order to achieve the public policy objectives specified in § 85-1-101 MCA “and to protect the waters of Montana from diversion to other areas of the nation, it is essential that a comprehensive, coordinated multiple-use water resource plan be progressively formulated to be known as the ‘state water plan’” (§ 85-1-101(10) MCA). Responsibility for developing the state water plan lies with the department (DNRC), with instructions to gather from any source, reliable information relating to Montana’s water resources and prepare from the information a continuing comprehensive inventory of the water resources of the state. As directed by the Legislature in § 85-1-203 MCA, the state water plan must set out a progressive program for the conservation, development, utilization, and sustainability of the state’s water resources, and propose the most effective means by which these water resources may be applied for the benefit of the people, with due consideration of alternative uses and combination of uses. Sections of the plan must be completed for the Missouri, Yellowstone, and Clark Fork River basins, submitted to the 2015 legislature, and updated at least every 20 years.

These basin-wide plans must include:

- An inventory of consumptive and non-consumptive uses associated with existing water rights
- A continuing inventory of the state’s groundwater
- An analysis of the effects of drought and increased depletions on water availability
- An estimate of surface and groundwater needed to satisfy future demands
- Proposals for the best means to satisfy existing water rights and new water demands, such as options for water storage
- Possible sources of water to meet the needs of the state
- Legislation necessary to address water resource concerns in these basins

# The State Agencies & Authorities & Their Responsibilities

## Montana Department of Agriculture

Monitors groundwater and surface water for pesticides and fertilizer as mandated by the Montana Agricultural Chemical Groundwater Protection Act. <http://agr.mt.gov>

## Montana Fish, Wildlife & Parks

Administers programs to protect and restore fish habitat, instream flows, and water quality for support of fishing opportunities; works to protect and improve wildlife habitat; maintains state parks and recreation sites; provides educational programs to adults and young people, including “Aquatic Project WILD.” <http://fwp.mt.gov>

## Department of Environmental Quality

Administers federal pollution control programs that protect public health; issues permits for municipal, industrial and agricultural discharges; monitors chemical and geological quality of streams and lakes; administers funds for municipal wastewater treatment improvements; administers a non-point source water pollution management program; promotes wellhead protection program; reviews sanitary and environmental aspects of proposed housing subdivisions. <http://deq.mt.gov>

## Department of Natural Resources and Conservation

Maintains a centralized record of water rights; assists the Montana Water Court with its statewide adjudication of water rights; develops the state water plan; prepares technical studies on surface and groundwater availability; administers the state water reservation statute; administers the state dam safety act; rehabilitates and operates state-owned water storage projects; conducts a floodplain management program; trains water commissioners; manages state trust lands for timber and other uses; represents Montana in interstate and international proceedings regarding water use and allocation; and administers numerous grant programs. <http://dnrc.mt.gov>

## Department of Transportation

Secures floodplain permits from counties when crossing waters of the US that pass through delineated floodplains; designs, installs and maintains structures dealing with surface water runoff (culverts, bridges, storm drains, etc.) and irrigation; mitigates for erosion from roadways into waterways; secures water rights and permits when mitigating wetlands. <http://www.mdt.mt.gov>

## State Historic Preservation Office

Monitors impacts of water-related development on cultural history. <http://www.mhs.mt.gov/shpo>

## Montana Bureau of Mines and Geology

Established in 1919 as a non-regulatory agency within the Montana University System. Offices at Montana Tech in Butte and Montana State University-Billings. Collects and publishes information relative to the geology and minerals of Montana. In addition to geologic mapping, the Ground Water Investigation Program (GWIP) gathers hydro geologic data on groundwater in areas of high concern and the Ground Water Assessment Program (GWAP) maps distribution and quality of state aquifers. [www.mbm.mtech.edu](http://www.mbm.mtech.edu)

## Montana Environmental Quality Council

A 17-member council created by the 1971 Montana Environmental Policy Act. Oversees state environmental programs for the Montana legislature; analyzes and interprets environmental trends; and advises the legislature on the adequacy of the state's water policy. <http://www.leg.mt.gov/lepo.asp>

## Montana State Library's Geographic Information Program

Mandated by the Montana Land Information Act, the mission is to create, record, acquire, store and disseminate geographic information for the state of Montana. The Natural Resource Information System and the Water Information System are segments of the program.

<http://www.geoinfo.montanastatelibrary.org>

## Montana Water Court

The 1979 Legislature created the Montana Water Court to expedite and facilitate the statewide adjudication of over 219,000 state law-based water rights (generally rights with a pre-July 1, 1973 priority date) and Indian and Federal reserved water rights claims. The Water Court has exclusive jurisdiction over the adjudication of water rights claims. <http://courts.mt.gov/water>

## Montana University System

Provides scientific and educational expertise, research, outreach, and education from the Montana State University (MSU) campuses at Bozeman, Billings, Great Falls and Havre; the University of Montana (UM) campuses at Missoula, Helena, Butte and Dillon, and community and tribal colleges. [www.mus.edu](http://www.mus.edu)

## Reserved Water Rights Compact Commission

Negotiates settlements with federal agencies and Indian tribes that claim federal reserved water rights within Montana. <http://dnrc.mt.gov/rwrcc>

## The Extension Service

Headquartered at Montana State University, but operating through 56 county extension offices and seven Indian reservations, this service provides assistance and training on many water quality issues, develops public information materials and connects researchers and educators on the MSU campus with Extension faculty throughout the state. [www.msuextension.org](http://www.msuextension.org)

## Water Policy Interim Committee

Studies topical water quality and quantity issues to develop policy direction and necessary legislation to guide Montana's water policy.  
<http://leg.mt.gov/css/Committees/interim/2013-2014/Water-Policy/>





# The Local Role

The geography and communities of Montana are diverse. No uniform approach to water management dictated from above would be appropriate across the state. Consequently a large number of decisions that directly or indirectly affect water resources have devolved to local government. Some are legal requirements; for example, conservation district boards review proposals for activities that would affect streams, and issue “310 permits” under state law. Other local actions are more discretionary. In adopting their growth policies, for example, county commissions can choose to incorporate various kinds of measures to protect water resources in the development process. Water management is an important responsibility for local governments. The information below is a synopsis of local government or local group responsibilities towards water.

## Local Government & Authorities & Their Responsibilities

### Local Health Departments

Responsible for protecting public health from communicable disease, including water-borne disease that can be transmitted through ground and surface water. Assess potential public health problems, adopt policies and practices to prevent pollution and clean up contamination. Enforce public health standards, including some regarding drinking water and wastewater.

### City & County Commissions and Boards

Direct local water management through shaping and administering county growth policies, subdivision regulations and other land use/protection measures.

### Conservancy Districts

Formal political subdivisions of state formed by public petition and governed by an elected Board of District Directors. Conservancy Districts can cross county boundaries to promote and manage the conservation, development, and utilization of land and water for beneficial uses including but not limited to prevention and control of flooding, erosion and sedimentation, domestic, irrigation, livestock, and industrial water supply, recreation, and fish and wildlife. They have authority to adopt rules, issue bonds to finance works, collect fees for services, enter into contracts and agreements, and participate in federal programs. See MCA 85-9-101 to 85-9-632 for more information.

## Conservation Districts (CD)

Exist in all Montana counties to address local water resource needs. Guided by a locally-elected board of directors, a CD addresses special water problems, regulates stream management, issues 310 Permits and educates citizens about land-use practices and pollution prevention. <http://www.macdnet.org>

## Regional Resource Authorities (RRA's)

Similar to Conservancy Districts, these may be created through public petition and election process, with a governing body appointed by county commissioners. RRA's have the power to, among other things, issue bonds or notes for the purpose of funding projects, purchase and hold lands, make grants and loans of money, property, and services for public purposes, impose fees or assessments for services provided, enter into inter-local agreements or other agreements with the federal government.

## Water Quality Districts

Local water quality districts (LWQD) serve to protect, preserve, and improve the quality of surface and groundwater within the district. LWQD's operate with a board of directors and funding from county fees. LWQD's research local water quality, answer citizen inquiries and conduct public outreach programs. Under some circumstances, they can take on regulatory authority. Four LWQD's operate in Montana today: Lewis and Clark, Gallatin and Missoula Counties, and Butte/Silver Bow. Flathead, Lake, and Ravalli counties have explored the possibility of district formation.

## County Water and Sewer Districts

Districts with taxing authority, operate under the authority of county government, established for the purpose of developing and operating public water or sewer systems, or both.

## Water Commissioners

Local water users can petition for a water commissioner after the water rights in a basin have been verified by the Montana Water Court. The commissioner ensures that daily water allocations in the basin occur in accordance with the users' rights. The local district court appoints the commissioner, and oversees his work.

## Irrigation Districts

Subdivisions of government that supply water to irrigators within a specified region. Citizens may establish one by petitioning the court. Members of the district elect a Board of Directors to make policy, hire, manage, and make management decisions based on legal regulations and self-adopted bylaws. All district members pay taxes to construct and maintain the water project, usually a storage reservoir or canal system, supplying their district. Most federal irrigation projects are managed by irrigation districts.

## Water User Associations

Non-profit corporations that manage mostly state or local irrigation projects. If they manage state-owned projects, they are bound to terms of water-use contracts prepared by the DNRC. The State of Montana holds the water rights of these projects. If not associated with state-owned projects, water user associations (sometimes called Ditch or Canal Companies) develop their own operating rules. The Middle Creek Water Users' Association (oversees water use from Hyalite Reservoir) is an example of a state-owned project near Bozeman. The Livingston Ditch Association, near Livingston, is not associated with a state-owned project.

## Ditch or Canal Companies

Private companies set up by local irrigators to share the cost and maintenance of the ditch system servicing their collective lands. Ditch companies vary greatly in membership and acreage, and often address the water needs of many individual water rights holders.

## Flathead Basin Commission

Established by the Montana Legislature in 1983 to “protect the existing high quality of the Flathead basin aquatic environment . . .” and to “encourage economic development and use of the basin’s resources to the fullest extent without compromising the high quality of the Flathead Basin’s aquatic environment”. The Commission is charged with accomplishing its mission by collaborating with local governments and other stakeholders in the Basin and British Columbia and by creating a cooperative, non-regulatory approach to protecting the economic value and environmental resources of the Basin. <http://flatheadbasincommission.org/>



# Multi-Jurisdictional Authorities

Water enters and leaves Montana across its boundaries. The state participates in a number of multi-jurisdictional organizations to optimize water management. The major entities are listed below.

## International & Multi-State Authorities

### International Joint Commission

Administers the Boundary Waters Treaty of 1909, resolves water and other natural resource allocation issues shared by states and provinces along the 49th Parallel. In Montana, the Commission oversees the equitable apportionment of the St. Mary and Milk Rivers between Montana and Alberta, and Lodge Creek, Battle Creek, and the Frenchman River between Montana and Saskatchewan. <http://www.ijc.org/>

### Missouri River Association of States and Tribes (MoRAST)

Formed by Governors of Missouri basin states and the Mni Sose Intertribal Water Rights Coalition to: help resolve issues of concern to the basin states and tribes; to serve as a forum to foster communication; and to facilitate the management of water resources, fish and wildlife while considering the impacts to the economic, historical, cultural, and social resources. <http://www.mo-rast.org/>

### Missouri River Natural Resources Committee

Comprised of representatives from seven Missouri basin state wildlife agencies to make recommendations to the US Army Corps of Engineers about dam operations on the river. <http://www.mrnrc.com>

### Northwest Power & Conservation Council

Representatives from the four Columbia River basin states develop and maintain a regional power plan and a fish and wildlife program to balance the Northwest's environment and energy needs. <http://www.nwcouncil.org/>



## Western States Water Council

Representatives appointed by the governors of 18 western states work to build mutual interests and support for the protection and management of water in the West. <http://www.westernstateswater.org>

## Yellowstone River Compact Commission

Charged with apportioning the waters of the Yellowstone River and its tributaries. Includes Montana, North Dakota and Wyoming. <http://yrcc.usgs.gov/>



# Creating Solutions

In addition to legal processes and government agencies, less formal efforts bring a variety of people together to resolve conflicts over water and to explore creative solutions to problems of quality and flow.

- **Coalitions for Local Watershed Planning:** People across Montana have created coalitions of local governments, state and federal agencies, businesses, and local citizens to deal with water quality and quantity issues. One example is The Blackfoot Challenge, a forum that promotes cooperative resource management of the Blackfoot River, its tributaries and adjoining lands.
- **Watershed Groups:** These citizen groups are as diverse as the communities they serve, and participate directly in watershed level decision making and problem solving, as well as initiating local cleanups, conservation and watershed education, and data gathering/ecosystem research projects.
- **Montana Watershed Coordination Council:** This council serves to build and unite watershed communities by bringing people and information together. The council is comprised of private organizations and staff from many local, state, and federal natural resource agencies. <http://www.mtwatersheds.org>
- **Montana Wetland Council:** This advisory group, whose membership is open to the public, agencies, and interest groups, seeks to direct the development and implementation of a Montana wetlands strategy. Its mission is to conserve and restore Montana's wetlands and riparian ecosystems through the cooperation of public and private interests. <http://www.deq.mt.gov/wqinfo/wetlands/wetlandscouncil.mcp>
- **Special Interest Groups:** Agriculture, recreation, industry and fisheries have a stake in how water is managed. Reflecting this diversity, a variety of special interest groups develops creative solutions related to issues that affect Montana's water.

- **Water Measurement Program:** Water measurement is the most fundamental tool in water management and the first step in gaining information necessary to manage the resource. The Montana Water Measurement Program was established by the 1991 legislature and is designed to identify watercourses where chronic dewatering significantly impairs beneficial uses and to resolve conflicts between competing water uses such as agriculture, fisheries, industrial, municipal and recreation. In addition to following the formal mandate, the program works cooperatively with various watershed groups, providing technical assistance in the form of irrigation water measurement, stream flow measurement and modeling. The Department of Natural Resources and Conservation operates this program.
- **Mediation Options:** When local water conflicts arise, mediation can sometimes help resolve the conflict. Benefits of mediation may include: cost and time savings over lawsuits and direct involvement of the parties in developing and accepting solutions. The Water Mediator Program of the US District Court of Montana appoints mediators to reconcile water controversies when requested by the Governor's office or by petition from water users. DNRC maintains a list of trained water mediators. Montana Water Court also retains a list of mediators with a background in water law, water right issues, and mediation who can help the court and water users settle pre-1973 water rights.





# General Resources

Bureau of Mines and Geology Groundwater Information Center –  
<http://mbmggwic.mtech.edu/>

Montana Association of Conservation Districts – [www.macdnet.org](http://www.macdnet.org)

Montana Audubon – <http://mtaudubon.org/issues/wetlands/planning3.html>  
“A Planning Guide for Protecting Montana’s Wetlands and Riparian Areas”

Montana Department of Environmental Quality (DEQ) –  
<http://deq.mt.gov/wqinfo>

Montana Department of Natural Resources and Conservation (DNRC) –  
[www.dnrc.mt.gov](http://www.dnrc.mt.gov)  
“Water Rights in Montana, November 2012” – <http://leg.mt.gov/content/publications/environmental/2012-water-rights-handbook.pdf>  
“A Guide to Stream Permitting in Montana” – <http://dnrc.mt.gov/permits/streampermitting/guide.asp>

Montana Legislative Services – <http://leg.mt.gov/css/Services%20Division/default.asp>  
“A Guide to Montana Water Quality Regulation” Updated 2012  
<http://leg.mt.gov/content/Publications/Environmental/2012-water-quality-guide.pdf>

Montana Natural Resource Information System – <http://nr.is.mt.gov/>

Montana Watercourse – [www.mtwatercourse.org](http://www.mtwatercourse.org)

Montana Watershed Coordination Council – [www.mtwatersheds.org](http://www.mtwatersheds.org)

Montana Water Court – <http://courts.mt.gov/water/default.mcp>  
“Basic Montana Water Law,” Ted J. Doney, Esq. 1990, Modified and Updated  
by C. Bruce Loble, Chief Water Judge  
1999, 2003 and 2010.

Montana Wetland Council – <http://deq.mt.gov/wqinfo/wetlands/>

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