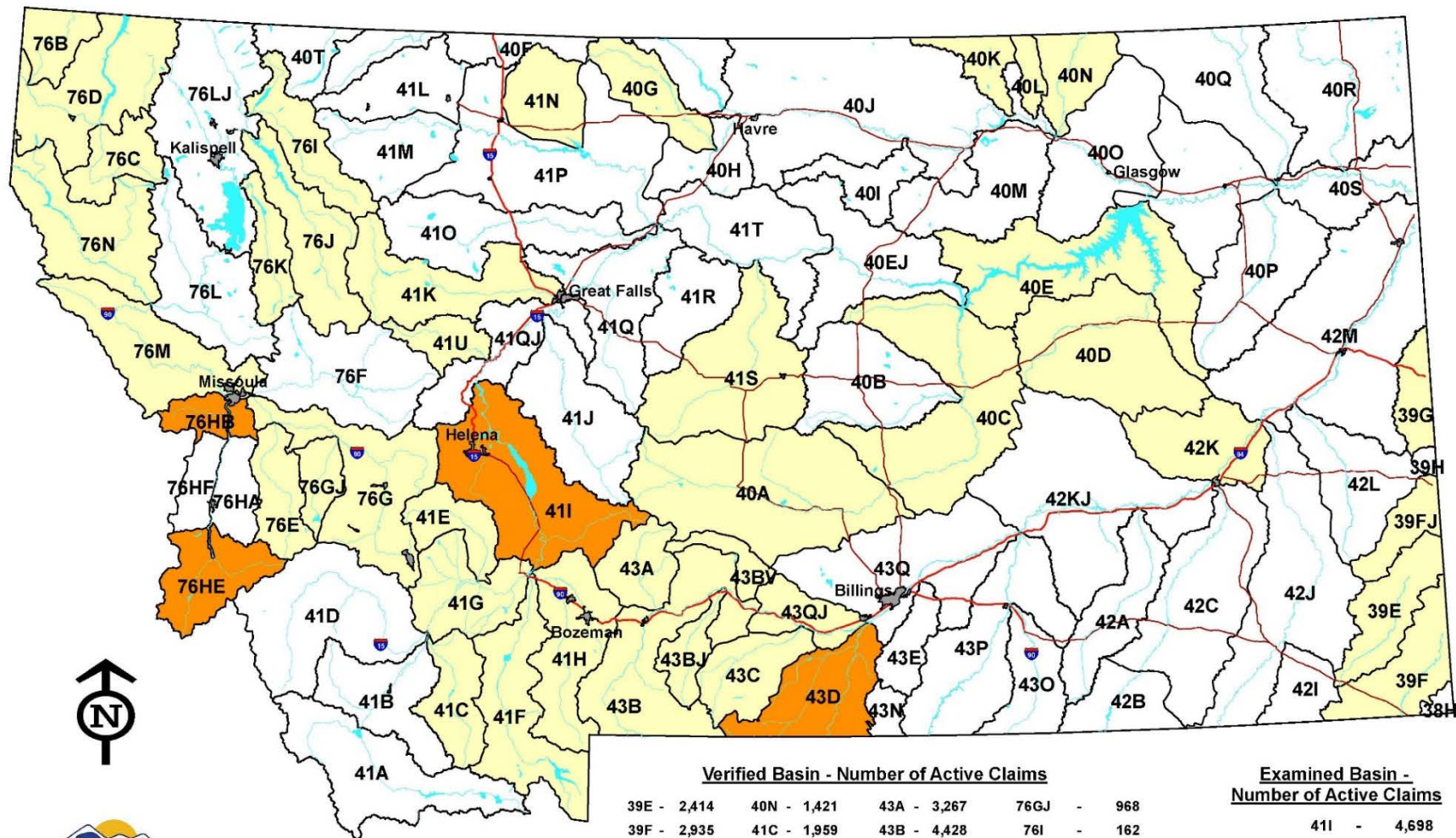


Table of Contents

<u>Reexamination Map</u>	1
<u>Reexamination Summary Draft Plan</u>	2
<u>Reexamination Order</u>	3
<u>General Procedures</u>	23
<u>Reexamination Action Item #1: Claims with Multiple Uses</u>	32
<u>Reexamination Action Item #2: Over-Filed Notices of Appropriation</u>	34
<u>Reexamination Action Item #3: Decree Exceeded</u>	36
<u>Reexamination Action Item #4: Filed and Use Rights Predating a District Court Decree</u>	41
<u>Reexamination Action Item #5: Point of Diversion, Source, and Ditch Name</u>	42
<u>Reexamination Standards and Indexes: Period of Diversion and Reservoir Information</u>	53
<u>Period of Diversion Order</u>	56
<u>Reexamination Standards and Indexes: Fish and Wildlife, Wildlife and Recreation Claims</u>	62
<u>Fish and Wildlife, Wildlife and Recreation Order</u>	65
<u>BLM Reserved Claims Process</u>	73
<u>BLM Order</u>	74
<u>Order Regarding Reexamination Issue Remarks</u>	76
<u>Reexamination Standards and Indexes: Remarks</u>	77
<u>Exempt Claim Filing Information</u>	81
<u>Summary Report Review</u>	86

Montana - All Basins Falling Within Re-Examination Order



Verified Basin - Number of Active Claims

39E - 2,414	40N - 1,421	43A - 3,267	76GJ - 968
39F - 2,935	41C - 1,959	43B - 4,428	76I - 162
39FJ - 977	41E - 1,151	43BJ - 803	76J - 109
39G - 704	41F - 3,026	43BV - 717	76K - 562
40A - 5,497	41G - 2,297	43C - 1,709	76M - 2,403
40C - 3,672	41H - 5,026	43QJ - 1,120	76N - 1,201
40D - 2,917	41K - 2,697	76B - 96	<i>Claims Total: 78,014</i>
40E - 2,972	41N - 1,457	76C - 243	
40G - 903	41S - 5,160	76D - 1,413	
40K - 3,779	41U - 854	76E - 667	
40L - 408	42K - 1,441	76G - 4,479	

Examined Basin - Number of Active Claims

41I - 4,698
43D - 2,485
76HB - 994
76HE - 1,323
Claims Total: 9,500

- Verified Basin w/Preliminary or Temporary Preliminary Decree
- Examined Basin w/Preliminary or Temporary Preliminary Decree

0 12.5 25 50 75 100 Miles
Map Scale - 1:1,800,000

Misty Hauer - March 20, 2018

Summary Draft Plan

	Claims in Basin	Decree	Cumulative	Proposed Summary Report
	76GJ	968	968	10/30/2015
	43D	2485	3453	5/24/2016
	40A	5497	8950	1/12/2017
10,000	40C	3672	12622	1/12/2017 10,000 by 6/30/2017
	40L	408	13030	5/31/2017
	41G	2297	15327	7/27/2017
	41N	1457	16784	10/6/2017
	41H	5026	21810	1/23/2018
	76E	667	22477	1/23/2018
	43B	4428	26905	5/15/2018
30,000	43A	3267	30172	6/15/2018 30,000 by 6/30/2019
	39G	704	30876	7/15/2018
	39E	2414	33290	8/1/2018
	39FJ	977	34267	9/1/2018
	39F	2935	37202	12/15/2018
	40K	3779	40981	2/15/2019
	40G	903	41884	6/15/2019
	40N	1,421	43305	7/15/2019
	76J	109	43414	10/15/2019
	43BV	717	44131	1/1/2020
	40D	2917	47048	4/1/2021
	40E	2972	50020	6/1/2020
	76D	1413	51433	8/1/2020
	41K	2697	54130	12/15/2020
	42K	1441	55571	2/1/2021
60,000	41S	5160	60731	5/1/2021 60,000 by 6/30/2021
	41U	854	61585	6/1/2021
	41I	4698	66283	7/1/2021
	76G	4479	70762	9/1/2021
	41C	1959	72721	11/1/2021
	41F	3026	75747	2/1/2022
	41E	1151	76898	4/1/2022
	43BJ	803	77701	6/1/2022
	43C	1709	79410	8/1/2022
	76M	2403	81813	9/1/2022
	76HB	994	82807	11/1/2022
	76HE	1323	84130	12/1/2022
	76C	243	84373	2/1/2023
	76N	1201	85574	3/1/2023
	43QJ	1120	86694	4/1/2023
	76B	96	86790	4/1/2023
	76I	162	86952	5/1/2023
90,000	76K	562	87514	6/1/2023 90,000 by 6/30/2023

Totals represent active claim status

Montana Water Court
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DEC 14 2012

Montana Water Court

MONTANA WATER COURT

ORDER ADDRESSING REEXAMINATION

I. Background

Verification was the process used by the Department of Natural Resources and Conservation (DNRC) prior to the adoption of the Water Right Claim Examination Rules. When the Water Right Claim Examination Rules were adopted (effective July 15, 1987), they were not applied to previously verified claims. Verified claims moved through the objection and litigation phases without further review. Questions were raised regarding whether reexamination of verified claims was necessary due to potential differences between claims reviewed under the Water Right Claim Examination Rules and claims reviewed under the verification process.

The 2005 Legislature authorized the Water Court, upon proper petition or upon the Court's own initiative, to prioritize basins for DNRC claim examination and to direct the DNRC to reexamine claims that were verified and not previously subject to the Water Right Claim Examination Rules. §§ 85-2-270 and 271, MCA. In accordance with § 85-2-271(3)(b), MCA, the Water Court ordered the DNRC to reexamine Basin 40L, Frenchman Creek drainage, a tributary of the Milk River, which was reviewed under the verification process. December 4, 2009 Order Directing DNRC to Reexamine Claims in Basin 40L. One purpose of reexamining Basin 40L was to gather information regarding whether previous review of claims under the verification process generated significant, practical differences from review of claims under the Water Right Claim Examination Rules.

Based on the results of the Basin 40L reexamination, DNRC submitted a memorandum and proposal to the Water Court regarding reexamination of verified claims (hereinafter DNRC proposal). The DNRC proposal outlined standards and indexes to run through the state water right database to update elements of verified claims and make elements more consistent with claims currently examined under the Water Right Claim Examination Rules. The proposal attempted to address elements that "may not have been as closely scrutinized during verification." DNRC proposal, p. 1.

In 2009, the Legislative Audit Division conducted an assessment of operations within the water rights adjudication process. The audit report was made available in June 2010. One of the objectives of the audit was to address the difference between verified and examined claims. June 2010 Performance Audit Report to the Montana Legislature, p. 6. The audit determined the difference between verified and examined claims was not significant enough to justify a complete reexamination. p. 9. According to the report, a complete reexamination would be inconvenient for water users and the time and resources necessary for reexamination would not be justified by the results. p. 14. Although the audit determined reexamination should be avoided, it did not conclude that no action should be taken. The report concluded the DNRC and Water Court should work together to develop procedures to address elements subject to a higher degree of error to improve accuracy, reliability and consistency. p. 15.

In September 2012, a committee of Water Court and DNRC staff was formed to address the reexamination issue. The committee included Water Court staff - Chief Water Judge C. Bruce Loble, Associate Water Judge Russ McElyea, Court Administrator Sandra Palakovich, Senior Water Masters Colleen Coyle, Kathryn Lambert, and Douglas Ritter. Water Masters Bina Peters and Anna Stradley - and DNRC Water Adjudication Bureau Chief John Peterson and DNRC Operations Manager Jan Langel. Generally, the committee agreed a complete reexamination should not be undertaken. However, it was

agreed certain elements or issues that were not subject to consistent review should be examined by DNRC to eliminate potential problems for water users.

II. Adoption of DNRC Proposal

The committee discussed implementing the DNRC proposal. According to the committee, instead of limiting review to claims in verified basins, the DNRC proposal could be applied to all claims in decrees issued prior to March 28, 1997 that are not a final decree. Decrees issued after March 28, 1997 will not be issued again prior to Final Decree. *See* § 85-2-233(1)(d). It is presumed that decrees issued prior to March 28, 1997 will be issued again. Moreover, elements of claims issued in decrees prior to March 28, 1997, if subject to standardization, would appear in another decree and water users would have notice of the standardized elements. Instead of a complete DNRC reexamination between decrees, claims should be subject to a limited review. The review would focus on elements that were not scrutinized as closely during verification and issues that, if not reviewed, could cause problems for water users.

Based on feedback from the committee, corrections were made to the DNRC proposal to reflect current standards and procedures. The DNRC proposal (as modified) is attached as Exhibit A. The DNRC proposal contains three parts. The first part contains general guidelines for running standards. The second part describes specific standards to run through the database. The third part identifies summary indexes to run through the database. A majority of the committee agreed the DNRC proposal should be adopted.

The committee concluded the DNRC proposal should not apply standards and indexes to elements that have been modified by the Water Court through prior adjudication proceedings. To prevent improperly standardizing elements that have already been litigated, the database should identify litigated elements. Any element of a claim that has been litigated by the Water Court shall not be subject to standardization or further DNRC review. To identify whether an element has been subject to litigation, the

objection list issued for the previous decree should be reviewed. An element of a claim that appeared on the objection list should not be subject to modification based on implementation of the DNRC proposal. Additionally, an element that was modified as a result of Water Court proceedings and marked by an asterisk should not be subject to modification based on implementation of the DNRC proposal.

III. Identification of Additional Issues Requiring Further DNRC Review

In addition to the DNRC proposal, the committee identified five issues requiring further review: (1) decree exceeded; (2) filed and use rights predating district court decrees; (3) over-filed notices of appropriation; (4) claims with multiple uses; and (5) standardization and identification of point of diversion, source, and ditch name. Like the implementation of the DNRC proposal, review of these issues should apply to all claims in decrees issued prior to March 28, 1997. Both Water Court and DNRC committee members reported that review of these issues is important to achieve enforceable decrees.

According to the committee, issues one through four were not subject to consistent review. In some basins, these issues may not have been identified at all. Inconsistent review of decree exceeded, filed and use rights predating decrees, over-filed notices of appropriation and multiple uses may create problems for future enforcement of Water Court decrees.

Point of diversion, source and ditch name have been identified as elements that, if not subject to further review, may cause confusion for water users and could lead to problems for enforcement of Water Court decrees. Knowing the accurate locations and common or shared points of diversion and sources, as well as proper ditch names, will help eliminate unnecessary confusion among water users when a Water Court decree is enforced.

DNRC review of these five issues will help ensure the Water Court decrees will be useable and readily enforceable. Therefore, the committee concluded that in addition to the DNRC proposal, these five issues should be reviewed using

current DNRC examination procedures. If further review identifies decree exceeded issues, filed and use rights that predate decrees, over-filed notices of appropriation, and claims with multiple uses, the corresponding issue remark or information remark should be added to the affected claims. If point of diversion, source, or ditch name are modified as a result of DNRC review, the following issue remark should be added to the abstracts of modified claims:

(ELEMENT(S) WAS/WERE] MODIFIED AS A RESULT OF DNRC REVIEW
UNDER MONTANA WATER COURT ORDER DATED DECEMBER 14, 2012.

IV. Fish and Wildlife, Wildlife, and Recreation Claims

The committee members also discussed the application of guidelines concerning the flow rate and volume of fish and wildlife, wildlife, and recreation claims. Rule 29 of the Water Right Claim Examination Rules contains guidelines for the examination of flow rate and volume of other uses including fish and wildlife, wildlife, and recreation claims. The rule can be broken into four parts, claims diverted without a reservoir, claims diverted with an offstream reservoir, claims with an onstream reservoir, and instream claims (excluding Murphy Rights).

1. Claims Diverted and Without a Reservoir

Rule 29(b)(1) applies to fish and wildlife, wildlife, and recreation claims diverted but without a reservoir. The flow rate guideline is the capacity of the diversion and conveyance system and the volume is "that which appears reasonable and customary for the specific purpose ... " Rule 29(b)(i) and (ii), W.R.C.E.R.

2. Claims Diverted With an Offstream Reservoir

Rule 29(c) applies to fish and wildlife, wildlife, and recreation claims diverted with an offstream reservoir. The flow rate guideline is the capacity of the diversion and conveyance system or if the diversion and conveyance system is shared by more than one claimant, the guideline is that which appears reasonable and customary for the specific purpose. Rule 29(c)(1)(i), W.R.C.E.R. If the volume is less than 15 Acre Feet, it is

generally accepted as claimed. If the volume is greater than 15 Acre Feet the guideline is maximum storage capacity plus the estimate of evaporation. Rule 29(c)(1)(ii), W.R.C.E.R.

3. Claims Diverted With an Onstream Reservoir

Rule 29(c), W.R.C.E.R. also addresses fish and wildlife, wildlife and recreation claims diverted with an onstream reservoir. These claims do not receive a quantified flow rate; an information remark is added stating "A specific flow rate has not been decreed for use from this onstream reservoir." Rule 29(c)(1), W.R.C.E.R. The volume guideline is the same as for claims with offstream reservoirs. *See* Rule 29(c)(1)(ii).

4. Instream Claims Excluding Murphy Rights

The flow rate and volume guideline for instream fish and wildlife, wildlife, and recreation claims excluding Murphy Rights is "the minimum amount necessary to sustain the specific purpose." Rule 29(d), W.R.C.E.R.

The guidelines set forth in Rule 29 use language that is difficult to apply consistently. Phrases such as "that which appears reasonable and customary" and "the minimum amount necessary to sustain the specific purpose" are susceptible to a wide variety of interpretations resulting in potential confusion and unfairness to both claimants and objectors. Because there is currently no statewide standard that can be applied to meet these guidelines, flow rate and volume have appeared in decrees with no quantified flow rate or volume. Despite the lack of clear guidelines, flow rate and volume should not appear in decrees as unquantified. This practice is not in compliance with Rule 29 and will make administration of these rights difficult in the future and may ultimately require that these claims be remanded to the Water Court for additional review.

To avoid these problems, the committee agreed that, notwithstanding previous DNRC policy, for all previously verified and examined claims as well as currently examined claims, when the guideline cannot be determined, the claimed flow rate and volume of fish and wildlife, wildlife, and recreation claims should remain as claimed

(excluding flow rates of claims with onstream reservoirs) and an issue remark should be added as shown below:

THE FLOW RATE AND VOLUME OF THIS CLAIM WAS NOT SUBJECT TO A STANDARDIZED STATEWIDE EXAMINATION AND REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED [FLOW RATE AND] VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THE [FLOW RATE AND] VOLUME WILL BE DECREED AS CLAIMED.

V. Examination of Late Claims

By Order of the Montana Supreme Court, the final deadline for filing a Statement of Claim was April 30, 1982. Failure to file a Statement of Claim by April 30, 1982 established a conclusive presumption of abandonment. *See* §§ 85-2-221 and 226, MCA. However, in 1993, the Montana Legislature amended § 85-2-221, MCA, to allow late filings until July 1, 1996. Claims filed after April 30, 1982 but on or before July 1, 1996 are considered "late claims."

Several decrees were issued prior to the amendment allowing late claims. As a result, late claims were not examined and were not included in several decrees. Therefore, all late claims in basins for which a Temporary Preliminary Decree or Preliminary Decree was issued and late claims were not examined should be subject to DNRC examination so they can be included in the decrees.

VI. Conclusion and Direction to DNRC

A complete reexamination of verified claims is not practical or necessary. As recommended in the audit report the DNRC and Water Court worked together to create a plan that balances the need for accuracy and consistency with fairness to water users and consideration of time and cost necessary for the implementation of the plan. Applying the DNRC proposal and reviewing claims for the five additional issues identified by the committee covers issues and elements that did not receive consistent review and are essential to the enforceability, consistency and accuracy of the decrees. Review of the five issues and implementation of the DNRC proposal applies to claims issued in

Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997 without having to undertake a complete reexamination prior to the issuance of the next decree. Additionally, this Order addresses the examination of previously unexamined late claims and clarifies procedures for examining flow rate and volume of fish and wildlife, wildlife, and recreation claims in all decrees issued after this Order. Therefore, it is

ORDERED that DNRC shall implement the proposed standards and indexes identified in the DNRC proposal (Exhibit A) for all claims in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997.

ORDERED that the proposed standards identified in the DNRC proposal shall not apply to any element of a claim that has already been litigated by the Water Court. Any element of a claim that appeared on the objection list shall be considered litigated and shall not be subject to modification based on implementation of the DNRC proposal. Any element of a claim that is marked by an asterisk (added by the Water Court) has also been litigated and shall not be subject to modification based on the DNRC proposal.

ORDERED that DNRC shall review all claims in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997, for decree exceeded issues, filed and use rights that predate district court decrees, over-filed notices of appropriation, and multiple uses. If DNRC identifies decree exceeded issues, filed and use rights that predate district court decrees, over-filed notices of appropriation, or multiple uses, DNRC shall add the corresponding issue remark or information remark to the affected claims.

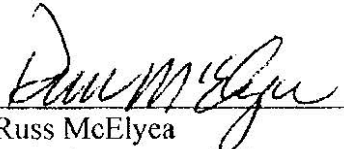
ORDERED that for all claims in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997, DNRC shall standardize the legal description for points of diversion and shall identify and standardize source names and ditch names. If point of diversion, source, or ditch name are modified as a result of this review, the issue remark specified in Section III shall be added to the abstract of each modified claim.

ORDERED that for all fish and wildlife, wildlife, and recreation claims in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997 and in basins currently being examined, for which the flow rate or volume guideline cannot be determined, the flow rate and volume shall remain as claimed (excluding flow rates of claims with onstream reservoirs) and the issue remark specified in Section IV shall be placed on the claims.

ORDERED that DNRC shall examine all late claims filed in basins for which a Temporary Preliminary Decree or Preliminary Decree was issued and late claims were not examined.

ORDERED that DNRC review and revise its procedures to comply with this order.

DATED this 14 day of December, 2012.


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PROPOSED STANDARDS

I. Current General Guidelines for running standards:

- ◆ Standards are to be run against just the post decree abstract of the water right for the specified owner, decree, or water right number.
- ◆ The only water right types standards are run against include Statement of Claim, Interstate Transfer Claims and Irrigation District Claims. All Status values are included.
- ◆ The options for running standards include by owner within a given (input) basin, by water right, or by decree. All rules about which water rights apply are taken into consideration for each option.
- ◆ No "modified in this version" flags will be set when making changes to data as specified by standards.
- ◆ The "Standards Applied" checkbox that previously existed on the version screen will be moved to the water rights screen. This checkbox will be set to indicate that standards have been applied to this water right, so that standards are not run again against the same water right. The only real issue with running standards again is that it may create more than one identical remark for a water right. Volume and flow rate description fields will not be duplicated, but any issues remarks created by standards could be repeated if standards are applied more than once.
- ◆ Standards can only be run against a non-decreed water right. A decreed water right is any water right that is included as part of a decree where the decree has an event of Decree Issued.
- ◆ Standards against an owner will also require the input of the basin, so that standards are only run against non-decreed water rights owned by the given owner, in the requested basin.

II. Details of the Standards program:

1. Flow rates should be expressed in either gallons per minute (GPM) or cubic feet per second (CFS) units. Flow rates less than one CFS should be converted to GPM. Flow rates greater than 1 CFS should be expressed in CFS (448.8 GPM = 1 CFS).

Standards Action:

- Apply to all water rights.
 - Modify the flow rates to the correct units, according to the rules above, but do not change a flow rate with a unit of 'POF'. When converting the flow rate values, round to 2 decimal places.
 - If no flow rate is listed, but the water right shows flow rate units, remove the flow rate units.
2. For onstream reservoirs; if the historical right type is filed or use, and there is no keep flag on the flow rate (Keep Modified by Water Court), then the following remark is added to the water right. Also, the flow rate is set to zero, the flow rate units to null, and its origin to modified by rule.

"No flow rate has been decreed for this use from this onstream reservoir."

Standards Action:

- Apply to water rights that have an on-stream reservoir, have a historical right type of "FILE" or "USE", and do not have a keep flag (KMRL, KMWC, KAME, KCLA, KDEC) on the flow rate.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F2.)

3. For irrigation claims; when the method of irrigation is water spreading, and there is no onstream reservoir, and the historical right type is filed or use, then the following remark is added to the water right. Also, set the flow rate to zero, the flow rate units to null, and its origin to modified by rule.

"A specific flow rate has not been decreed because this use consists of direct flow water spreading."

Standards Action:

- Apply to water rights that have a purpose of 'IR', an irrigation type of 'D', a historical right type of "FILE" or "USE", and do not have an onstream reservoir.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F3.)

4. For irrigation claims; when the method of irrigation is natural subirrigation, and there is no onstream reservoir, and the historical right type is filed or use, then the following remark is added to the water right. Also, the flow rate is set to zero, the flow rate units is set to null, and its origin to modified by rule.

"No flow rate has been decreed for this use of natural subirrigation."

Standards Action:

- Apply to water rights that have a purpose of 'IR', an irrigation type of 'N', and a historical right type of "FILE" or "USE", and do not have an onstream reservoir.
- Set the flow rate in the version record to NULL

- Set the flow rate units in the version record to NULL
 - Set the flow rate units in the version record to NULL
 - Set the flow rate element origin in the version record to MRLE
 - Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F4.)
5. For irrigation claims; when the method of irrigation is natural overflow, and there is no onstream reservoir, and the historical right type is filed or use, then the following remark is added to the water right. Also, the flow rate is set to zero, the flow rate units to null, and its origin to modified by rule.

"No flow rate has been decreed for this natural overflow method of irrigation."

Standards Action:

- Apply to water rights that have a purpose of 'IR', an irrigation type of 'O', and a historical right type of "FILE" or "USE", and do not have an onstream reservoir.
 - Set the flow rate in the version record to NULL
 - Set the flow rate units in the version record to NULL
 - Set the flow rate element origin in the version record to MRLE
 - Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F5.)
6. For irrigation claims, except the following:
- water spreading systems (ie: irrigation type of 'D')
 - systems involving reservoirs (ie: water right has a reservoir record)
 - claims decreed a volume (ie: historical right type = decreed and water right has a V10 Remark)
 - claims where the volume has a keep flag (ie: volume element origin is KMRL, KMWC, KAME, KCLA, or KDEC)

add the following remark.

"The total volume of this water right shall not exceed the amount put to historical and beneficial use."

Standards Action:

- Apply to water rights that have a purpose of 'IR', unless any of the exceptions listed above apply.
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE

- Set the value in the volume description field of the version record to the text above. (On the pop-list, it is marked as V9.)

6A. For irrigation claims with a reservoir record and a V9 remark.

add the following remark.

"The total volume of this water right shall not exceed the amount put to historical and beneficial use."

Standards Action:

- Apply to water rights that have a purpose of 'TR', that have a reservoir record and a V9 remark.
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE

6B. If purpose is irrigation and a reservoir record and type of irrigation is not water spreading and the claimed volume is greater than 15 acre-feet, and the claimed volume is greater than the volume guideline for the climatic area (see list below) then add the following remark.

"The volume of this water right appears to be excessive for the claimed purpose. The claimed volume is greater than (guideline) acre-feet per acre per year."

Climatic Area = 1; guideline = **11.4** acre-feet per acre per year

Climatic Area = 2; guideline = **10.2** acre-feet per acre per year

Climatic Area = 3; guideline = **9.4** acre-feet per acre per year

Climatic Area = 4; guideline = **8.5** acre-feet per acre per year

Climatic Area = 5; guideline = **7.2** acre-feet per acre per year

7. For stock claims; when the S/G code does not = G or there is no reservoir, or the major type is surface water and pump, or the major type is surface water and pipeline, AND NO KEEP FLAG ON THE FLOW RATE, change the flow rate to zero, the flow rate units to null, and its origin to as modified by rule, and add the following remark.

"A specific flow rate has not been decreed because this use consists of stock drinking directly from the source, or from a ditch system. The flow rate is limited to the minimum amount necessary to sustain this purpose."

Standards Action:

- Apply to water rights that have a purpose of stock, unless the S/G code = G or reservoir, AND NO KEEP FLAG ON THE FLOW RATE.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F9.)

- 7A. For stock claims; when onstream reservoir, and there is no 'keep' flag on the flow rate, change the flow rate to zero, the flow rate units to null, and its origin to as modified by rule, and add the following remark (FF007 new rules).

"A specific flow rate has not been decreed for this use from this onstream reservoir. The flow rate is limited to the minimum amount historically necessary to sustain this purpose."

Standards Action:

- Apply to water rights that have a purpose of stock and onstream reservoir, when there is no 'keep' flag on the flow rate.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as FF007.)

8. For stock claims; when the owner is not USA, the volume is set to zero, and its origin to as modified by rule, and the following remark is added to the water right.

"This water right includes the amount of water consumptively used for stock watering purposes at the rate of 30 gallons per day per animal unit. Animal units shall be based on reasonable carrying capacity and historical use of the area serviced by this water source."

Standards Action:

- Apply to water rights that have a purpose of stock, unless the owner has a customer type value of 'FEDA', 'LOCA', or 'RESV', (meaning owner is USA).
- Set the volume in the version record to NULL

- Set the volume element origin in the version record to MRLE
- Set the value in the volume description field of the version record to the text above. (On the pop-list, it is marked as V10.)

9. For stock claims; when the owner is USA, and there is no reservoir, and no keep flag on the volume origin, set the volume to zero, and its origin to as modified by rule, and then the following remark is added to the water right.

"This water right includes the amount of water consumptively used for stock watering purposes at the rate of 30 gallons per day per animal unit. Animal units shall be based on reasonable carrying capacity and historical use of the area serviced by this water source."

Standards Action:

- Apply to water rights that have a purpose of stock, when the owner has a customer type value of 'FEDA', 'LOCA', or 'RESV', (meaning owner is USA), unless there is a reservoir record or a keep flag (KMRL, KMWC, KAME, KCLA, KDEC) on the volume element origin.
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE
- Set the value in the volume description field of the version record to the text above. (On the pop-list, it is marked as V10.)

10. For mining claims; when there is no reservoir, and no keep flag on the volume origin, then the following remark is added to the water right and the volume origin is set to as modified by rule.

"This water right is limited to the volume of water historically used for mining purposes."

Standards Action:

- Apply to water rights that have a purpose of 'MN', unless the water right has an element origin value on the volume origin of KMRL, KMWC, KAME, KCLA, or KDEC, or unless the water right has a reservoir record.
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE
- Set the value in the volume description field of the version record to the text above. (On the pop-list, it is marked as V11.)

11. For fire protection claims; when there is no keep flag on the volume origin, add the following remark (VF014) to the water right and set the origin for volume to as modified by rule.

"The volume of this right is limited to the minimum amounts necessary for fire protection purposes."

Standards Action:

- Apply to water rights that have a purpose of 'FP', unless the water right has an element origin value on the volume origin of KMRL, KMWC, KAME, KCLA, or KDEC.
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE

Set the value in the volume description field of the version record to the text above. (VF014)

12. For irrigation claims; when the historical right type is decree, and the flow rate is greater than 17 gpm/acre (claimed flow rate in gallons per minute divided by the total claimed acres), and there is no keep flag on the flow rate, then the following remark is added to the water right.

"The claimed flow rate exceeds the 17 gpm per acre guideline and cannot be confirmed due to lack of data. The flow rate equals (the result of the above calculation) gpm per acre."

Standards Action:

- Apply to water rights that have a purpose of 'IR' and a historical right type of 'DECREE', and a flow rate > 17gpm/acre, unless the right has an element origin value on the flow origin of KMRL, KMWC, KAME, KCLA, or KDEC.
- Add a formatted remark to this water right with a remark category code of FR12 (flow rate issue standards) a remark code (frlb_cd) of FRSS, and variable that matches the above text.

13. For irrigation claims, when the type of right is filed or use, and the flow rate is greater than 17 gpm/acre (claimed flow rate in gallons per minute divided by the total claimed acres), and there is no keep flag on the flow rate:

- Then the flow rate is reduced in the database to the calculated standard (claimed acres times 17 gpm). Flows greater than 448.8 gpm will be converted and stored in the database as cfs, otherwise store the rate in gpm.
- Then the flow rate origin is changed to "modified by rule."
- Then the following remark is added to the water right.

"The flow rate of this water right has been reduced to this 17 gpm per acre guideline. The flow rate may be contested by proper objection."

Note: 448.8 gallons per minute = 1 cubic foot per second.

Standards Action:

- Apply to water rights that have a purpose of 'IR' and a historical right type of 'FILE' or 'USE', and a flow rate > 17gpm/acre, unless the right has an element origin value on the flow origin of KMRL, KMWC, KAME, KCLA, or KDEC.
- Set the flow rate in the version record to the calculated standard
- Set the flow rate units in the version record to the appropriate value (either GPM or CFS)
- Set the flow rate element origin in the version record to MRLE
- Add a formatted remark to this water right with a remark category code of FR2 (flow rate information standards) a remark code (frlb_cd) of FRNS, and variable that matches the above text.

14. For all claims; when the volume is greater than zero, calculate the feasible volume ((the period of use in days times the flow rate in gpm times 1440) divided by 325,851 = acre-feet). The flow rate standards (13 & 14) must be applied before running the volume check. If the claimed volume is greater than the feasible volume, then the following remark is added to the water right.

"The claimed volume exceeds the maximum feasible volume. Based on the flow rate and period of use, the maximum volume possible is (the result of the above calculation) acre-feet per year."

Note: 325,851 gallons = 1 acre-foot

Standards Action:

- Apply to all water rights that have a volume amount, when the volume amount is greater than the calculated feasible volume.
- Set the flow rate in the version record to the calculated standard
- Add a formatted remark to this water right with a remark category code of VM12 (volume issue standards) a remark code (frlb_cd) of V24, and variable that matches the above text.

15. For irrigation claims; when the type of irrigation is water spreading, and the historical right type is filed or use and there is no keep flag on the volume, then check the claimed volume to see if it is greater than the volume guideline for the climatic area (volume guideline times the claimed acres). If yes;

- Then reduce the volume in the database to the standard calculated volume.
- Then change the origin of the volume to "as modified by rule."
- Then add the following remark to the water right.

"The volume of this water right has been reduced to the (**guideline**) acre-feet per acre guideline for water spreading. The volume may be contested by proper objection."

Climatic Area = 1; guideline = **2.3** acre-feet per acre per year

Climatic Area = 2; guideline = **2.0** acre-feet per acre per year

Climatic Area = 3; guideline = **1.9** acre-feet per acre per year

Climatic Area = 4; guideline = **1.7** acre-feet per acre per year

Climatic Area = 5; guideline = **1.4** acre-feet per acre per year

Standards Action:

- Apply to water rights that have a purpose of 'IR', an irrigation type of 'D', a historical right type of 'FILE' or 'USE', and a volume that is > the volume guideline for the climatic area, unless the right has an element origin value on the volume origin of KMRL, KMWC, KAME, KCLA, or KDEC.
- Set the volume in the version record to the standard calculated volume
- Set the volume element origin in the version record to MRLE
- Add a formatted remark to this water right with a remark category code of VM2 (volume information standards) a remark code (frlb_cd) of V5, and variable that matches the above text.

16. For all water right claims; if the maximum volume in the water right detail screen does not equal the volume in the purpose record, then change the volume in the purpose record to equal the volume in the water right detail screen.

Standards Action:

- Apply to all water rights where the volume in the version record does not equal the volume of the purpose records.

- Set the volume in the first purpose record so that the sum volume for all purposes equals the volume in the version record.

17. For all water right claims; if any parcel id numbers are skipped (003, 005), then renumber the parcels so they are in consecutive order.

Standards Action:

- Apply to all water rights with skipped numbers in the parcel (place of use (puse_id_seq)) records.
- Renumber the parcel (place of use records) to be consecutive.

18. For all water right claims; all point of diversion ids shall be numbered to start with 1 and numbered consecutively. Ditch names identified by diversion number would need to follow their corresponding diversion id.

Standards Action:

- Apply to all water rights with skipped numbers in the point of diversion records (podv_no).
- Renumber the point of diversion records to be consecutive.
- Ditch numbering to follow.....

19. For all water right claims; if the period of diversion in the water right detail screen does not equal the period of use in the purpose record, then change the period of diversion to match the period of use, unless the period of diversion has a "keep, modified by rule" origin.

Standards Action:

- Apply to all water rights when the period of diversion (appropriation) does not equal the sum of the period of use records for the water right purposes, and the period of diversion is not equal to KMRL.
- Reset the period of diversion so that its begin date matches the earliest begin date of the period of uses and its end date matches the latest end date of the period of uses.

ELEMENTS MODIFIED BY WATER COURT WOULD NOT BE CHANGED BY STANDARDS.

Changes will NEVER be made to elements modified by water court. A second original version would be created; standards would then be applied ensuring no changes to the original claim. The program would be written to exclude the "modified by water court" elements.

III. Summary indexes that will be needed:

Reserved Rights- Make sure that the type of right is changed from statement of claim to reserved right. Verify the correct remark is added to the reserved right.

Remarks- Standardize old legacy remarks, convert obsolete remarks, change free text remarks to formatted remarks.

In the re-exam of basin 40L, only 87 remarks appeared, 410 were added during re-exam. The majority of the remarks were placed on period of diversion, point of diversion, place of use, purpose, ownership, means of diversion and priority date.

Decree Exceeded- Identify all decree exceeded claims and notify claimants; check for consistency in original appropriator name.

Reservoir Index- Verify period of diversion. Standardize reservoir names and reservoir information.

Examination as we know it today did not take place on reservoirs during verification. Most major elements concerning reservoirs were not documented and many assumptions were made. No reservoir work sheets appear in verification files.

Source Index- Source name standardization is essential. This was not a high priority during verification. For decree exceeded issues and future enforcement purposes this is a must.

Ditch Index- Ditch name standardization is essential. This was not a high priority during verification. Verify point of diversion consistency, accurate legal descriptions are crucial for future enforcement purposes.

Implied Claims- Verify correct remark is applied to implied claims and their parent right. Were implied claims verified or just generated and accepted?

Point of Diversion - Sort the PODs by TRS and eliminate gaps. During verification very little time was spent locating actual PODs and confirming correct legal's (¼ ¼ ¼).

Place of Use- Sort the POD's by TRS and eliminate gaps.

Reexamination Introduction and General Procedures

Introduction:

The Water Court Order Addressing Reexamination, dated December 14, 2012, orders the DNRC to partially reexamine approximately 90,000 claims in Temporary Preliminary Decreed basins that were decreed prior to current examination standards. The reexamination order identifies the following five action items for reexamination in preparation for the court's issuance of supplemental decrees in basins with Temporary Preliminary Decrees:

1. **Decree Exceeded**
2. **Filed and use rights predating district court decrees**
3. **Over-claimed filed notices of appropriation**
4. **Claims with multiple uses**
5. **Standardization and identification of point of diversion, source, and ditch name**

In addition to the five ordered elements, the reexamination order directs the review of the four following elements:

1. **Supplemental Order Regarding Fish and Wildlife, Wildlife, and Recreation Claims**
2. **Second Amended Order on Period of Diversion and Reservoirs**
3. **Examination of late claims**
4. **Application of claim standards**

In addition to the reexamination order, the court has also directed the examination of BLM reserved claims, as directed in Judge Loble's September 23, 2009 order.

The DNRC will reexamine claims in a process that is similar to the summary review preparation process explained in chapter 12 of the claim examination manual, where indexes and reviews are performed to bring the elements listed above into compliance with their respective orders. This guidebook is an overview on the reexamination process with details addressing each item above in the following pages.

The DNRC is authorized by the Water Court to only change the water right elements that are bolded in the list above. **The DNRC will not change elements in the database that are not included in the Reexamination Order. Also, the DNRC will not change elements that are flagged in the database as *SUSTAINED* or *WATER COURT, MODIFIED BY*.** These elements are locked from editing in the water rights database. See general procedures in the following paragraphs for more information.

Withdrawn, Terminated, and Dismissed Claims:

An additional important note, the reexamination only applies to claims with an active status in the database. **The reexamination effort will not include Withdrawn, Terminated, or Dismissed water right numbers.** If Withdrawn, Terminated, or Dismissed water right numbers are included in any of the review datasets, please delete or disregard.

Database Updates:

A reexamination version of the database exists to facilitate changes to the reexamined elements without changing the original version of the water right (see the example on the next page). The database administrator will add the reexamination versions to the database prior to the reexamination of a basin. **Make all changes associated with reexamination in the reexamination version.** Severs, newly filed exempt claims, late claims, withdrawn, terminated, and dismissed claims **will not** have a reexamination version. The reexamination version has a December 14, 2012 operating authority date, consistent with the date of the reexamination order. See the example below.

Scanned	Operating	Number	Authority	Type	Status	Maximum Flow Rate	Unit	Maximum Volume	Maximum Acres	Enforceable Priority Date	Standards Updated
<input checked="" type="checkbox"/>		1	07/01/1973	ORIGINAL RIGHT	ACTIVE					06/28/1890 00:00	<input type="checkbox"/>
<input type="checkbox"/>		2	12/14/2012	REEXAMINED	ACTIVE					06/28/1890 00:00	<input type="checkbox"/>

An additional modification to the database is the *SUSTAINED* origin (see the example on the next page). Database fields with a *SUSTAINED* or *WATER COURT, MODIFIED BY* origin are locked to editing to maintain a decision granted by the Water Court regarding a particular element in a previous decree. **The DNRC will only issue remark *Sustained* or *Water Court Modified* elements, if that element is identified as incorrect by the DNRC, and the issue remark will assist the court in the distribution of the right.** An example of a *Sustained* element in the database is shown on the next page.

Oracle
Create and Maintain Water Right Details - DNRPRD - CN0025 - 06/17/2015 01:48 PM

Water Right
Number: 20072, Ext: 00, Basin: 76GJ, Type: STATEMENT OF CLAIM

Version
Operating #: 2, Authority: 12/14/2012, Type: REEXAMINED, Status: ACTIVE

Flow Rate
Max: , Unit: , Origin: SUSTAINED

Volume
Max: , Origin: SUSTAINED, Acres Max: , Origin: DECREED

Description: THIS WATER RIGHT

Priority
Date & Time: 06/28/1890 00:00, Origin: DECREED, Enforceable Date: 06/28/1890 00:00, Adjudication Process:

Purpose/... POD Reservoir Remarks Historica... Objections Decrees Cases Applicati... Related ... Measuri... Compact Subordin...

Purpose	Volume	Purpose Clarification	Climatic Area
STOCK			

Work Flow:

The database administrator will populate reexamination versions and generate review indexes for a basin upon request of the basin supervisor. These indexes can be printed or viewed electronically based on the basin supervisor's preference. The indexes will generally be in the following order:

1. Point of diversion, source and ditch name geospatial project
2. Remarks index
3. Multiple use index
4. Decree exceeded index
5. Over-filed notices of appropriation
6. Filed and use rights pre-dating a decree
7. Fish and wildlife, wildlife and recreation flow rate and volume
8. Period of Diversion and Reservoir index
9. Examination of BLM Reserved Claims

The above numbered order of indexes is negotiable. Workflow and order of indexes may vary by basin depending on priorities, number and complexity of claims in the basin, and number of staff available.

The basin supervisor will request additional indexes to review the summary report once reexamination of a basin is completed. The purpose of the second set of indexes is to review and increase the accuracy of the reexamination work performed.

The basin supervisor will issue a summary report to the Water Court upon completion of the summary review. The summary report is a PDF compilation of all water right abstracts in the basin, listed by water right number. The court will appoint a water master to review abstracts of newly filed exempt claims and late claims. Any questions regarding the examination work performed on newly filed exempt claims and late claims will be emailed to the basin supervisor who may distribute these questions to staff, as needed. The purpose of the court's review is to correct any errors in examination prior to issuing the next decree in the basin.

Documentation:

All work performed during reexamination needs to be tracked. All changes to major elements of a water right need to be documented in the file on a review abstract!!

The reviewer of a reexamination index will record corrections to a claim in a comments field of a spreadsheet or in the margins of a printed index, depending on whether or not a paper or electronic format is being used. The basin supervisor will save records of spreadsheets and indexes of the work performed either as hard copies or as electronic files in the basin data folder of the adjudication shared drive (*G:ADJUDICATION/Basin Data*). These records will serve as a reference to answer any questions that the court might have while reviewing the summary report.

Any change made to an element listed on a Review Abstract of Water Right needs to be documented in the file!! All claimant contact should also be recorded in the file!! The staff making changes to a water right is responsible for documenting those changes on a pdf copy of the *Review Abstract of Water Right* using the comment tool in Adobe Reader. **Updating the code of an existing remark is not a change to an abstract element because the text of the remark will remain the same on the review abstract. This action should be recorded only in an index, as explained in the paragraph above.**

Abstract Commenting Instructions:

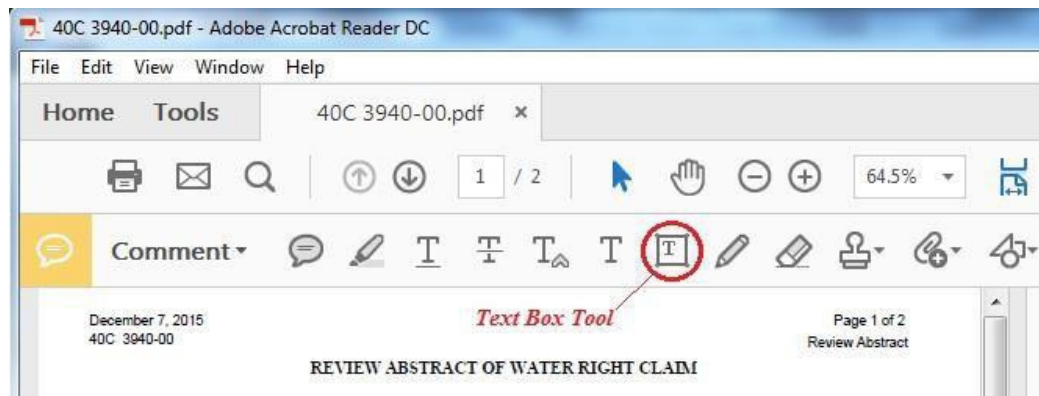
- 1) Navigate to the adjudication shared drive in the following location: *G:\ADJUDICATION\Basin Data\40C\Review Abstracts* (drive letter may vary by office). (The basin number will be different depending on which basin you are working in; the rest of this location will stay the same).
- 2) Search the abstract folder for your claim number to see if it has already been saved by someone else.
- 3) If it has already been saved, open the existing copy. If it has not, create a review abstract from the database and save it under the following format: 40C 112993-00. **NO OTHER FORMATS PLEASE!! This will avoid duplicates!** Use -A, -B, -C after the extension of the water right number, etc. if an exception should arise where you need additional abstracts (e. g. 40C 112993-00-A). **Please do not save blank abstracts to the folder. Only abstracts with comments should be saved to the folder so at the end of the basin we are not unnecessarily filing blank abstracts.**
- 4) **NEVER DELETE COMMENTS MADE BY PREVIOUS EXAMINERS!!**

- 5) Document the changes made to the claim by using the “commenting tools” **Always add your initials and date to each comment.** (e. g. MAH 11/30/2015). Be sure to elaborate on the changes that you have made so others can understand what the change was. For example, you changed the point of diversion and added a P88; your comment should look something like the following: “P88 added for point of diversion; the legal land description was modified from Sec 30 to Sec 31 based on claimant’s map”. This example is a thorough explanation that explains the changes to another examiner, the water court, or the claimants. Another example is included in the graphic below:

Source:	- UNNAMED TRIBUTARY OF LODGEPOLE CREEK, NORTH FORK					
Source Type:	SURFACE WATER					
Point of Diversion and Means of Diversion:						
<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWSE	28	18N	32E	GARFIELD
Period of Diversion: APRIL 1 TO OCTOBER 31				Changed Period of Diversion to year round bc 12/07/2015		
Diversion Means:		DAM				

Commenting Tool & Things to Remember:

- 1) Commenting tools can be found by hitting the “tools” option at the top of the document in Adobe Reader and choosing the comment option. Insert text by using the Text Box Icon:



Note: the text box tool is not the same as the plain text tool (T); it is preferable to use the text box tool instead to the plain text tool as the text box is easier to manipulate on the abstract.

- 2) Use only Black. To change the default color to black in the typewriter box- highlight the text and hit Ctrl + E this will pop up a properties box and you can change the color from here. You can make this the default color by clicking on the comment in the tracker box at the right of the document, right click on the typewriter symbol, choose properties, and click the box that says *Make Default Properties*. This will keep the color that you have chosen for every comment.
- 3) Stay within the printable margins of the PDF to ensure the whole comment will be scanned at the end of the basin.

- 4) Save the edited PDF.
- 5) If you have any questions you can ask the reexamination basin supervisor.
- 6) **There is no need to print the abstract for the files**, this process will track changes made to the claims and they will be combined and printed at the end of the basin so there is only one abstract per claim file. **The exception to this is if you are documenting notes or changes on an abstract after abstracts have been printed and filed for a basin (typically this occurs after the summary report is submitted to the court).**
- 7) **If you are documenting changes after the abstracts have been filed and the basin has been scanned, print the abstract with your updated comment, and send the abstract to records to be scanned. Make sure the abstract then makes it to the file.**
- 8) Claimant Contact can also be recorded on the pdf abstract.

Claimant Contact:

Contact the claimants to notify them of all changes made to major elements of a water right. The major elements of a water right are those elements with a bold heading on the review abstract.

Most changes occurring during reexamination will warrant contact. The DNRC will typically contact the claimant at the end of reexamination basin in order to utilize an automated process where water right abstracts are ordered from the database administrator in a batch to be sent to the claimants of record with a standard letter.

In some instances, the DNRC may send letters regarding complex issues, such as the first three reexamination action items (decree exceeded, filed and use rights predating a decree, and over-claimed filed notices of appropriation), in the middle of the basin reexamination to provide claimants more time to work with the DNRC to resolve issues. The *Review Specific Reexamination Contact Letter Example* is included in the reexamination folder of the shared drive in the following location: *G:ADJUDICATION/Reexamination/Review Specific Contact Letter Example*. Drive letter varies by office.

Always use the letter templates from the shared drive or seek supervisor approval for instances where a unique letter may be required. This requirement is to ensure that all basin correspondence is consistent within the bureau. Also, **always include your name and direct phone number for the claimants to contact you directly for questions.**

Send a follow up letter and updated abstract to the claimant if a reexamination element is changed or a reexamination issue remark is added or removed after initial contact. Follow-up letters do not have to be on one of the templates mentioned previously. **Always make a photo copy of any letters sent to be added to the files!**

Amendments:

The process in place for claimants to make corrections and address issue remarks for a water right claim is to submit a DNRC amendment form. Amendment forms are available on the web at: <http://dnrc.mt.gov/divisions/water/adjudication>. Amendments do not require a notarized signature but must be signed by all water right owners of record to be legally valid.

Given the prior decreed status of reexamination claims, **amendments to reexamination claims will not be processed by the DNRC in reexamination basins but will receive issue remarks to notify the court of the requested changes and will be reviewed by the water court after the issuance of the preliminary decree. Amendments that address and potentially resolve issue remarks should be encouraged despite the addition of amendment issues.** See the section on issue remarks below. See the section on amendments to the *Source Name, Point of Diversion, Means of diversion, or Ditch Name* below, as the DNRC may be able to modify these elements using information in the amendment.

When amendments are received, stamp the form with the date received, add the appropriate amendment issue remarks as detailed below, and enter the date received into the date field of the amendment remarks. **All amendments will receive at least one of the issue remarks shown below to notify the court regarding unprocessed changes contained in the amendment!**

Amendment Issue Remarks:

Place the following issue on claims that receive amendments to all elements except for the Place of Use:

A29 AN AMENDMENT WAS SUBMITTED ON 04/08/2015 REQUESTING TO AMEND THE FLOW RATE AND PRIORITY DATE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

Place the following issue remark on claims that receive amendments to the Place of Use:

A24 AN AMENDMENT WAS SUBMITTED ON 04/08/2015 REQUESTING TO AMEND THE PLACE OF USE. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED BY THE COURT AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

Use the A24 and an A29 issue remarks in combination on claims that receive amendments to the Place of Use!!

Amendments including Source Name, Point of Diversion, Means of Diversion, or Ditch Name:

The department has the ability correct the *Source Name, Point of Diversion, Means of diversion, or Ditch Name* by Rule, based on information included in an amendment. Review the amendment for accuracy prior to making changes. Flag the element or elements as *Modified by Rule* in the database, add/or retain the P88 issue remark (see pg. 45), and add the following additional issue remark to the claim:

A23 AN AMENDMENT WAS SUBMITTED ON 04/02/1972 REQUESTING TO AMEND THE POINT OF DIVERSION. THE AMENDMENT WAS NOT PROCESSED AS THIS ELEMENT WAS MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS.

Add the A23 issue remark in addition to the A24 or A29 issue remarks described above.

Withdrawing a Water Right:

Withdrawals of Statements of Claim in reexamination basins require court approval because of the decreed status of these claims. Therefore, requests to withdraw a statement of claim should be submitted directly to the court by the claimant on the courts withdrawal form. The form is in the reexamination folder on the adjudication shared drive. The claimant can also request this form directly from the court.

Reinstating a Withdrawn Claim:

A withdrawn Statement of Claim may be reinstated by the water court upon request by the claimant. See the *Motion to Reinstate a Withdrawn Statement of Claim* form in the reexamination folder of the Adjudication shared drive.

Examination of Late Claims:

Most late claims not included in a temporary preliminary decree will have received a basic examination in compliance with the examination standards at the time they were performed.

If review of the scanned file documents, original decree, and objection list determines that a late claim was not examined, examine the claim according to the standards detailed in the claims examination manual.

Make any examination changes to the original version in the database. See the claims examination manual for claims examination instructions. Amendments to non-decreed late claims may be processed differently. Please contact supervisor or Bureau Chief for guidance. The decrees and objection lists are available by basin at the following web location: <http://dnrc.mt.gov/divisions/water/adjudication>

BLM Reserved Claims Examination:

The Water Court directed the department to apply the 2009 BLM order to the reexamination process. The order directs the DNRC to completely examine all United States Bureau of Land Management (BLM) claims in accordance with the water right claim examination rules outlined in the DNRC water right claims examination manual. This process is described later in this guidebook (see table of contents).

Interbasin/Misbasined Claims:

Interbasin and misbasined claims analysis will occur for each reexamination basin following the Historic and Administrative Adjudication basin boundaries. Withdrawn and dismissed interbasin and misbasined claims will appear in the reexamination decree without a reexamination version or review. Active interbasin and misbasined claims that fall within the reexamination order will have a reexamination version created and review conducted. Active interbasin and misbasined claims that do not fall within the reexamination basins, such as basin 41B, will be included in the reexamination decree without additional review or a reexamination version.

The database administrator will conduct a search of adjacent basins for interbasin transfer claims using an established pre-decree check of the following database remark codes: T10, T15, T21, TI, TI1Z. Adjudication staff will additionally review the following remark codes as a double check, to ensure that no interbasin claims are missed: CIIS, CLIS, DE1Z, DE2Z, G32, G33, G34, G36, G971, GA2Z, GI3Z, GIIS, LC1Z, PL3Z, PLIS, TC2Z, T20, and T21. These checks will be completed after the standard reexamination indexes but prior to the issuance of the summary report to the water court.

Implied and Split Claims:

Because most split and implied claims are generated by the Water Court, all elements of implied and split claims are considered *Sustained* and cannot be changed in the database because they are locked down. Ditch name and XY coordinates if needed should be generated for these claims. All action items outlined in the reexamination order will be applied to the parent claim. If corrections are needed to the child claim, apply the appropriate issue remarks.

Reexamination Action Item #1: Claims with Multiple Uses

Overview:

The Water Court's Reexamination Order dated December 14, 2012, orders that the DNRC will identify claims with multiple uses in all reexamination basins. Multiple uses of a water right occur when the same historic appropriation has been claimed for different purposes by the original claimant. Identify multiple uses by the supporting documentation in the files being identical for two claims of different purposes. **Water rights containing the same supporting documentation are not a multiple use if the claim forms submitted to the DNRC do not have the same original owner name.** The current owner does not have to be the same.

Process:

Complete this action item prior to the decree exceeded and over-claimed filed notices of appropriation action items. Determine multiple uses by reviewing an index provided by the basin supervisor at the start of the reexamination of a basin or a specific multiple use index sorted by the database administrator by priority date, type of right, source, purpose, and owner.

Review the multiple use index for claims with the same priority date and type of right for possible multiple use relationships. Claim numbers close in number sequence with matching ownerships, matching flow rates, and matching points of diversion can all be additional clues that water rights are multiple uses. Compare the supporting documentation of water rights with matching priority dates, types of right, and original claimants (claim form owner) to confirm multiple use relationships. The index should look similar to the one below:

Bas in	WR#	PRTY_DT	ENF_PR TY_DT	USE_CD	HIST_ TYPE	FLO W	UNT	SOURCE_NAME	OWNER	PRTY_DT
76GJ	128447	1866-05-15	1866-05-15	IRRIGATION	DECR	1.25	CFS	LOWER WILLOW CREEK	BIGNELL, JOSEPH S	5/15/1866
76GJ	128447	1866-05-15	1866-05-15	IRRIGATION	DECR	1.25	CFS	LOWER WILLOW CREEK	BIGNELL, PATRICIA C	5/15/1866
76GJ	128457	1866-05-15	1866-05-15	STOCK	DECR			LOWER WILLOW CREEK	BIGNELL, JOSEPH S	5/15/1866
76GJ	128457	1866-05-15	1866-05-15	STOCK	DECR			LOWER WILLOW CREEK	BIGNELL, PATRICIA C	5/15/1866

Enter multiple use relationships in the water rights data base under the related rights tab and enter the claim numbers of all rights involved.

Purpose/...	POD	Reservoir	Remarks	Historica...	Objections	Decrees	Cases	Applicati...	Relate
Relationships									
Related Id	Relationship Type		Flow Rate	Unit	Volume	Acres			
45731	MULTIPLE								
Related Water Rights									
Basin Number	Ext	Type	Status	Version					
76GJ	101697	00	STATEMENT OF CLAIM	ACTIVE	2	REXM			
76GJ	101699	00	STATEMENT OF CLAIM	ACTIVE	2	REXM			

The database will automatically print a multiple use information remark on the review abstract of each water right once a multiple use relationship is created in the related rights tab.

June 16, 2015
76GJ 101697-00

Page 2 of 2
Review Abstract

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SWSE	24	9N	14W	GRANITE
2			SWSESE	24	9N	14W	GRANITE
3			E2NE	25	9N	14W	GRANITE
4			N2SE	30	9N	13W	GRANITE
5			S2NW	30	9N	13W	GRANITE

Remarks:

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT, RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

101697-00 101699-00

Document each multiple use relationship in a comments column on the spreadsheet to record the work that was done. Also make a note of the addition of the multiple use remark on a copy of the review abstract for the file. This spreadsheet may be used in future indexes.

Additional Issues:

You may run into circumstances where claims contain the same documentation and appear to be multiple uses but claim different sources or priority dates. Add the following multiple use issue remark to the claims involved:

M20 THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 40A 12345-00, 40A 123456-00

In addition, the M20, add a priority date issue remark to the claim in this situation that has information differing from the base documentation. See the following list of remarks for examples:

P390 THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE NOTICE OF APPROPRIATION IS JUNE 10, 1921.

P455 THE PRIORITY DATE MAY BE QUESTIONABLE. THE SOURCE/PRIORITY DATE DESCRIBED ON THE FILED NOTICE OF APPROPRIATION IS INCONSISTENT WITH THE CLAIMED SOURCE/PRIORITY DATE.

Reexamination Action Item #2: Over-Claimed Filed Notices of Appropriation

Overview:

An over-filed Notice of Appropriation situation is where the flow rate of a water right or water rights exceeds the flow rate listed on the historical court house filed notice of appropriation. Claims exceeding the historical flow rate of a filed notice of appropriation will receive an issue remark identifying the situation for the court. The identification of over-filed notices of appropriation and the application of issue remarks is explained under *Process*, below.

Terminated, dismissed, and withdrawn claims should all be omitted from the over-filed notice of appropriation search as they are not included in the reexamination process. **Claims that meet the definition of exempt uses (instream uses for livestock and domestic or groundwater used for livestock and domestic purposes) should be excluded from this analysis. Exempt claims will be issue remarked only in a multiple use situation and are not part of the data-set provided for this review.**

Process:

The multiple use index **should be completed prior to completing this action item**. Create or request from the database administrator, a spreadsheet of all active filed rights in a basin. The spreadsheet should include all the following data fields: water right number, purpose, priority date, source name, and flow rate. Sort the spreadsheet by source name, priority date, flow rate, and owner name.

Go through the spreadsheet and identify water rights that may be claiming a common filed notice of appropriation. Matching source names, priority dates, and flow rates are all indications that claims may be claiming the same filed notice of appropriation. The index should look similar to the example below:

HISTORIC_TY	PRIORITY_DATE	OWNERS	WR_NUMBER	PURPOSE	WR_TYPE	FLOW_RT	VOL	SOURCE	
FILE	1955-08-30	CLARK, MICHAEL J	43A-15818-00	IR	STOC	4 CFS		ANTELOPE CREEK	
FILE	1907-08-15	NEWMOONRANCHLLC,	43A-107168-00	IR	STOC	2 CFS		BRACKETT CREEK	
FILE	1912-07-16	NEWMOONRANCHLLC,	43A-107169-00	IR	STOC	2 CFS		BRACKETT CREEK	
FILE	1900-10-23	DANAHER, NANCY B	43A-191872-00	IR	STOC	1 CFS		BULLRUN CREEK	
FILE	1900-10-23	DANAHER, THOMAS H	43A-191872-00	IR	STOC	1 CFS		BULLRUN CREEK	
FILE	1885-08-10	BAVER, BEVERLY S	43A-192716-00	IR	STOC	139.13 GPM		CACHE CREEK	
FILE	1885-08-10	LANDIS, WILLIAM W	43A-192716-00	IR	STOC	139.13 GPM		CACHE CREEK	
FILE	1886-05-12	BAVER, BEVERLY S	43A-192718-00	IR	STOC	1.14 CFS		CACHE CREEK	
FILE	1886-06-01	WADDELL, R RICHARD	43A-191810-00	IR	STOC	1.71 CFS		CACHE CREEK	

Retrieve the scanned documents for each claim that may be sharing filings and compare the filed notices of appropriation to check to see they are copies of the same filing. Add the combined flow rates of water rights that share the same filings and compare the total claimed flow rate to the flow rate written on the notice appropriation. Note each over-claimed appropriation in the spreadsheet.

Multiple uses of a flow rate of a filed notice of appropriation are not an over-claimed situation. For example, two water rights claimed by the same claimant for the same filed 1.5 CFS for two separate purposes are multiple uses of the historic water right; meaning that they share and alternate the 1.5 CFS claimed and do not exceed the filing. Such multiple use situations do not require an issue remark but should be noted as multiple-use in the spreadsheet. See the multiple use section of this guidebook for more details regarding multiple use relationships.

Add the following issue remark to single claims involved in an over-filed notice of appropriation situation:

F245 THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 1.00 CFS.

When the combined flow rates of claims based on the same filed notice of appropriation exceed the flow rate written on the filing, add the following issue remark:

G36 THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 76GJ 30424-00, 76GJ 146801-00.

Add all the claim numbers involved in the over-filed notice of appropriation into the claim field at the end of the G36 remark and repeat for every claim in the group. **Exempt claims will only be added to a G36 remark if it is a multiple use of a non-exempt claim that is included in an over-filed situation, as identified in the related rights tab of the database.**

Situations may also arise where the filed notice of appropriation does not list a flow rate, but a claim or claims may have a flow rate quantified. If only one claim in the basin includes the filed notice of appropriation that does not list a flow rate; no issue remark will be added to the claim. If multiple claims include the filing that does not list a flow rate as supporting documentation, add the following free-text issue remark:

GHIS THE CLAIMS LISTED AT THE END OF THIS STATEMENT CLAIM THE SAME NOTICE OF APPROPRIATION. THE CLAIMED NOTICE OF APPROPRIATION DOES NOT SPECIFY A FLOW RATE. 41G 1234-00, 41G 1235-00.

Additional Issue Remarks:

You may encounter situations where additional issue remarks may be needed to address priority date issues. Following is a list of some of the more common priority date issues related to this index. Ask your supervisor or Bureau Chief if unique situations arise.

P355 THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

P390 THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE NOTICE OF APPROPRIATION IS JUNE 10, 1921.

P455 THE PRIORITY DATE MAY BE QUESTIONABLE. THE SOURCE/PRIORITY DATE DESCRIBED ON THE FILED NOTICE OF APPROPRIATION IS INCONSISTENT WITH THE CLAIMED SOURCE/PRIORITY DATE.

Reexamination Action Item #3: Decree Exceeded

Overview:

The Water Court's Reexamination Order dated December 14, 2012, orders that the DNRC to identify decree exceeded claims in all reexamination basins. A decree exceeded situation (D5 issue remark) is where multiple claims with a decreed historical type of right exceeds the flow rate quantified in the base historic decree being claimed. The DNRC will identify decree exceeded situations by comparing the claimed flow rates of water rights with a decreed type of right against the total flow rates available of their respective historic decreed appropriations.

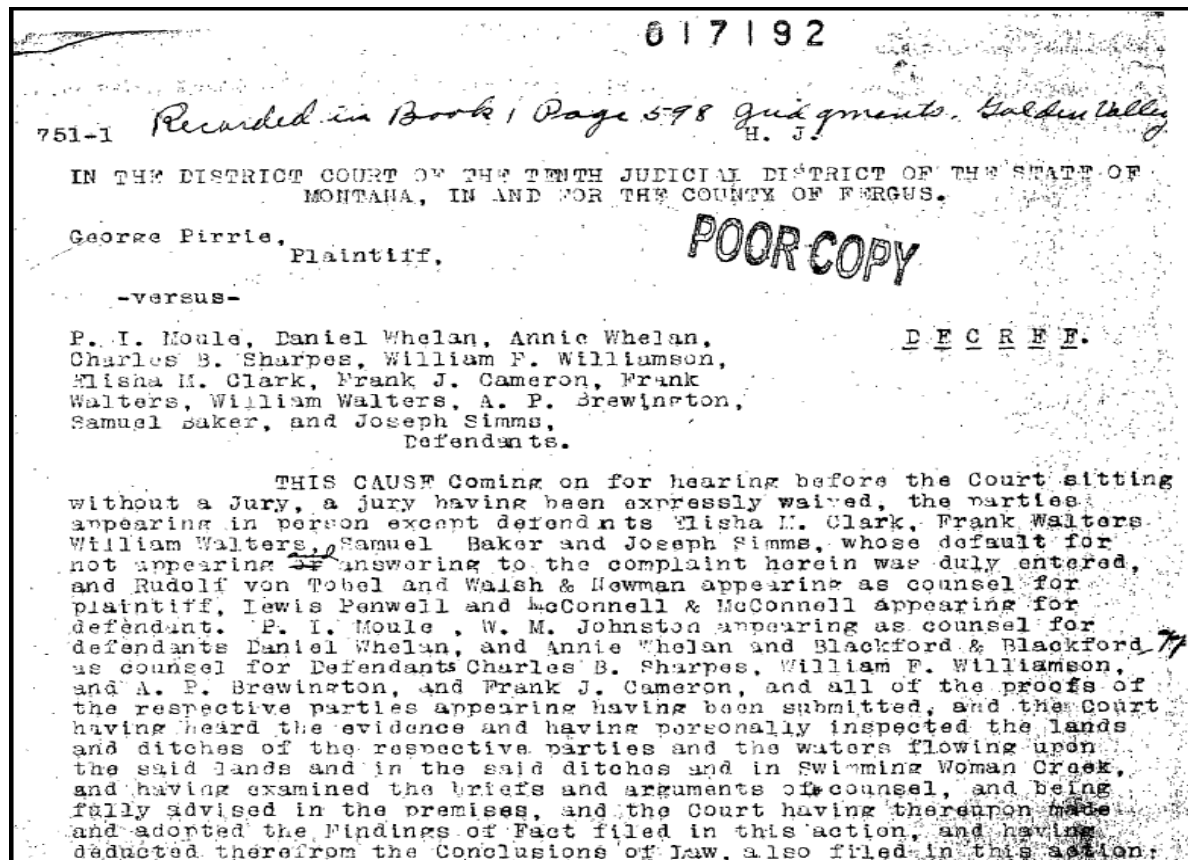
Process:

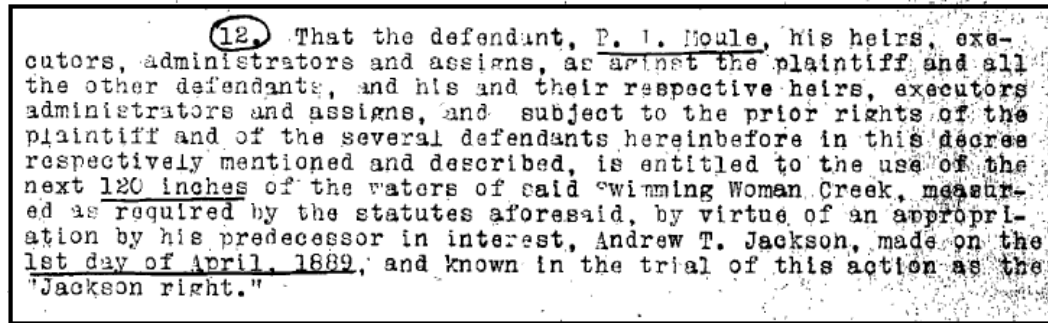
The multiple use index **should be completed prior to completing this action item**. Create a spreadsheet with **all active decreed type water rights in the basin**. Terminated, withdrawn, and dismissed claims should not be included in the dataset. This data set can easily be created using the adjudication POD layer for the basin begin reviewed. The data should be converted to an Excel spreadsheet and formatted like the example below. The spreadsheet should be sorted by priority date, source, purpose and owner in that order. Columns for case number, appropriator, decreed flow rate and comments need to be added to the spreadsheet. Research and enter data into the spreadsheet by looking at the scanned documents in the database and comparing the historic decrees where necessary. Accessing scanned documents is depicted in the following two examples.

Number	Scanned	Operating Authority	Type	Status	Maximum Flow Rate	Unit	Maximum Volume	Maximum Acres	Enforceable Priority Date	Standards Updated
1	<input checked="" type="checkbox"/>	07/01/1973	ORIGINAL RIGHT	ACTIVE	2	CFS	1128	120	04/01/1889 00:00	<input type="checkbox"/>
2	<input type="checkbox"/>	12/03/2008	POST DECREE	ACTIVE	2	CFS	1128	120	04/01/1889 00:00	<input type="checkbox"/>
3	<input type="checkbox"/>	12/14/2012	REEXAMINED	ACTIVE	2	CFS	1128	120	04/01/1889 00:00	<input type="checkbox"/>



You can usually find the decreed documentation for a claim within a few pages in the scanned document, after the claim form. Identify the decreed documentation by the court heading, as shown in the example below.





The example above depicts a claimed decreed appropriation for a water right. Not all claimed decreed appropriations will be this clearly identified. **Sometimes, identifying the appropriation being claimed may require reading the master's report or matching the claimed priority date and flow rate with the decreed documentation in the file.** If the claimed decreed appropriation cannot be identified, add an issue remark to the claim. See the section on *Additional Issue Remarks Related to the Decree Exceeded Review*.

Only count the highest flow rate for multiple use claims that have quantified flow rates. A multiple use is a historical appropriation claimed twice by the same claimant for two separate purposes; see the multiple uses section of this guidebook for more information. For an example, an irrigation claim, and a domestic claim are multiple uses of the same right. The irrigation claim has a flow rate of 1 CFS and the stock claim has a flow rate of 1 CFS. In this scenario you would only count the 1 CFS as the quantified total not 2 CFS. In the example below, the JB Francis appropriation of 90 miner's inches has an irrigation claim for all 90 inches and a stock claim on the same appropriation. This is not a decree exceeded situation. However, when a decreed exceeded scenario includes claims with multiple use, all claims will receive the D5 issue remark

WRNUMBER	OWNERS	PRIDATE	FLOW RATE		VOL/UM	POR POS	SRCNAME	MEANS	DTCH_NM	Case #	Appropriator	Decreed Flow	Comments
43A 167034 00	WOOSLEY LAND AND LIVESTOCK LLC	1892-06-01	1.00	CFS	0.00	IR	CACHE CREEK	HG	ROBINSON DITCH				
43A 191813 00	R RICHARD WADDELL; SHARON L WADDELL	1893-06-10	5.25	CFS	0.00	IR	CACHE CREEK	HG	ARMSTRONG DITCH	2717	John Maddox	210 MI	OK
43A 131386 00	BEVERLY S BAVER	1893-06-25	336.60	GPM	0.00	IR	CACHE CREEK	HG	ROBINSON-FRANCIS-GJERDE DITCH	2717	Joshua Woosley	30 MI	OK
43A 191822 00	R RICHARD WADDELL; SHARON L WADDELL	1896-05-30	1.25	CFS	0.00	IR	CACHE CREEK	HG	ARMSTRONG DITCH				
43A 191929 00	ROBINSON RANCH	1898-06-25	4.25	CFS	0.00	IR	CACHE CREEK	HG	ROBINSON DITCH				
43A 166978 00	WOOSLEY LAND AND LIVESTOCK LLC	1898-07-01	0.00		0.00	ST	CACHE CREEK	LS		2717	J. B. Francis	90 MI	OK
43A 167036 00	JUDITH L FRASER	1898-07-01	1.50	CFS	0.00	IR	CACHE CREEK	HG	ARMSTRONG DITCH	2717	F. J. Maddox	60 MI	ADD D5 ISSUE REMARK
43A 191814 00	R RICHARD WADDELL; SHARON L WADDELL	1898-07-01	1.50	CFS	0.00	IR	CACHE CREEK	HG	ARMSTRONG DITCH	2717	F. J. Maddox	60 MI	ADD D5 ISSUE REMARK
43A 167038 00	WOOSLEY LAND AND LIVESTOCK LLC	1898-07-01	2.25	CFS	0.00	IR	CACHE CREEK	HG		2717	J. B. Francis	90 MI	OK
43A 191821 00	R RICHARD WADDELL; SHARON L WADDELL	1899-06-20	1.25	CFS	0.00	IR	CACHE CREEK	HG	ARMSTRONG DITCH				
43A 191606 00	EDWARD F SKILLMAN; NEADA SKILLMAN	1902-06-05	0.00		0.00	ST	CANYON CREEK	HG					OK
43A 191597 00	EDWARD F SKILLMAN; NEADA SKILLMAN	1902-06-05	1.00	CFS	0.00	IR	CANYON CREEK	HG					OK
43A 185961 00	505 VENTURES LLC	1903-06-05	0.00		0.00	ST	CANYON CREEK	LS		2717	David B. Christie	100 MI	MU WITH 185830

The example above shows that there are 120 inches claimed against the 60-inch F.J. Maddox decreed amount appropriated July 1, 1898. This is a decree exceeded situation. In this situation, you would add a D5 issue remark to the reexamination version in the database. You would enter all the water right numbers into the D5 remark that exceed the decreed appropriation (as shown below), including multiple use stock claims with null flow rates.

D5 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 60 MINER'S INCHES DECREED IN CASE NO. 2717, CARBON COUNTY. 43A 167036-00, 43A 191814-00.

Enter water right numbers in the following format, as shown in the example above: basin number, water right number, and extension number (e. g. 43D 141-00). Enter the numbers in numeric order. The issue remark on each water right in the decree exceeded relationship should all list the same numbers.

After data is entered in the spreadsheet and appropriate issue remarks identified, the information should be entered into the database. Not all decreed rights will have information to enter. The information researched and entered in the spreadsheet should be transferred to the database. The Historical Data tab in the reexamination version should be populated with information including the Decree, County, Filing Date (or date done in open court if no filing date), Case #, Source, Appropriator, Priority Date, Miners Inches, and flow description (only needed for non-quantified flow rates and decreed volumes).

Additional Issue Remarks Related to the Decree Exceeded Review:

Identify and apply additional issue remarks related to the decree exceeded review when a claim does not include a copy of the decree, the claim and decree information conflict (such as: the priority date or source name claimed does not match the priority date or source name specified in the claimed decreed appropriation), or flow rates are not specified in the claim or the decree. For decree documentation issues, see the list of issue remarks below.

P355 THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM.

P390 THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED DECREE IS JUNE 10, 1896.

P460 THE PRIORITY DATE MAY BE QUESTIONABLE. THE SOURCE DESCRIBED IN CASE NO. 0000, MONTANA COUNTY, IS INCONSISTENT WITH THE CLAIMED SOURCE.

If a single claim is identified with a decreed historical type of right that exceeds the decreed appropriation supporting the claimed flow rate, use the issue remark below. This scenario may be encountered when researching potential decreed exceed situations.

F90 THE CLAIMED FLOW RATE EXCEEDS THE 50 MINERS INCHES OF OHEARN CREEK DECREED IN CASE NO. 374, SWEET GRASS COUNTY.

For claims with a decreed historical type of right where no flow rate is claimed, or the decree does not specify a flow rate, add one of the following issue remarks:

F91 CASE NO. 0000, MONTANA COUNTY, DOES NOT SPECIFY A FLOW RATE; CLAIMED FLOW RATE RETAINED.

F92 CASE NO. 0000, MONTANA COUNTY, DECREES A FLOW RATE OF 150 MINER'S INCHES; NO FLOW RATE WAS CLAIMED.

F93 CASE NO. 0000, MONTANA COUNTY, DOES NOT SPECIFY A FLOW RATE; NO FLOW RATE HAS BEEN CLAIMED.

If multiple claims claim a decreed appropriation that does not specify a flow rate and it appears that there may be a decree exceeded situation, add a free-text decree exceeded issue remark such as the following example:

DEIS CASE NO. 5513, BEABERHEAD COUNTY DOES NOT SPECIFY A FLOW RATE. THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT MAY BE FILED ON THE SAME FORMERLY DECREED RIGHT AND APPEAR TO EXCEED THE ENTIRE FLOW OF THE CLAIMED SOURCE. 41B 88314-00, 41B 88315-00, 41B 88316-00, 41B 88318-00, 41B 88319-00, 41B 88320-00, 41B 88327-00, 41B 88328-00, 41B 88329-00, 41B 88330-00, 41B 88331-00

Consult the basin supervisor or Bureau Chief if issues related to the decree exceeded review other than those described above are identified.

Reexamination Action Item #4: Filed and Use Rights Predating a District Court Decree

Overview:

The Water Court's Reexamination Order dated December 14, 2012, orders that the DNRC will identify filed and use rights predating district court decrees in all verified basins. **Filed and use rights post-dating district court decrees will not be identified.** The DNRC will add the following issue remark to the abstracts of filed and use rights predating a decree:

P373 THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A **USE RIGHT/FILED APPROPRIATION ON SOCK CREEK** WITH A PRIORITY DATE **PREDATING CASE NO. 0000, CARBON COUNTY**. IF NO OBJECTIONS ARE FILED TO PRIORITY DATE OR TYPE OF HISTORICAL RIGHT, THESE ELEMENTS WILL BE DECREEED AS SHOWN ON THIS ABSTRACT AND THIS REMARK WILL BE REMOVED.

This legal issue remark is based on the fact that prior to decreeing a water source, the Montana District Courts would notice the water uses on a source to achieve a comprehensive decree. Filed and use water rights on decreed streams may be legally invalid. This issue remark will be placed on all filed and use rights predating a source that includes multiple decreed rights. This issue remark **will not** be placed on claims that occur on streams where the decree lists only one or two appropriations. Such cases may be litigation between parties rather than comprehensive water decrees. **In addition, the P373 remark will not be placed on exempt domestic and stock claims.**

Process:

First using a GIS project, identify all streams in the basin with a comprehensive decree. Query the adjudication point of diversion centroid data to retrieve water rights with a historic right type equal to decreed. The query string to enter in the query builder is: HISTRGTTYP = 'DECR'.

Overlay the decreed points of diversion on the National Hydrography Dataset (NHD) layer and USGS quads. The location of the decreed points of diversion indicates the decreed sources or portions of sources in a basin, based on claimed information in the water rights database. Complete decrees should be obtained during the decree exceeded analysis. Decrees can be found at County Court Houses, and sometimes at Water Resources Division Regional Offices or the Montana Water Court.

Next, identify all filed and use rights that are on a decreed source with a priority date predating the decree historic district court decree. A shapefile should be created for all filed and use rights with a priority date predating the latest date of the historic District Court decree in the basin. Often there are several decrees in a basin which need to be referenced for the correct case date and sources included.

Add a comments field to the attribute table denoting the needed P370 remarks. Overlay the new filed and use right shape file with the decreed type of right shapefile on the NHD and quad layer. In most cases it should be apparent what source of water was included in the historic District Court Decree based on the decreed right shape file. However, it may not be clear if certain tributaries were included in a historic District Court Decree. The Decree should be referenced for decreed sources before an issue is placed on the filed or use claims.

Reexamination Action Item #5: Standardization and Identification of Point of Diversion, Source, and Ditch Name

Overview:

The Water Court's Reexamination Order dated December 14, 2012, orders the DNRC to standardize and identify the point of diversion, source, and ditch name, as well as the addition of secondary points of diversion when identified. The means of diversion will also be standardized for water distribution purposes. Standardizing these elements eliminates confusion among water users and assists in the future enforcement of a water rights decree.

The standard for all point specific diversions will have the most concise legal description. A point specific diversion is a diversion that originates at a specific location, such as a headgate, pump, dike, dam, or pit, etc. A concise legal description is a description that breaks the number of quarter sections down to the most precise location.

Do not sort points of diversion or places of use on reexamination claims so that existing remarks that reference these elements will remain correct!!

For point specific descriptions, the most precise description will typically be refined to three quarter sections. For non-specific diversions, such as livestock direct from source or fish and wildlife claims, the number of quarter sections may be fewer or even whole sections.

The standard for wells and springs is three quarter sections. The physical locations of wells and springs do not need to be scrutinized. The legal descriptions of diversions from wells and springs will be checked to ensure that they possess three quarter sections. Also, **the court has prohibited the DNRC from making changes to all spring points of diversion, means of diversion, and source names; except to refine the legal description to the 1/4, 1/4, 1/4.**

Furthermore, points of diversion for claims from common ditches should all list the same legal description, ditch name (if applicable) and X, Y coordinates. Also, the source names of all water rights (except for springs) should be standardized so that all claims on a source have the same name. Standard source names are identified from the USGS 1:24,000 topographical map, Water Resources Survey, and claim forms.

If the Source Name, Point of Diversion, Means of Diversion, Ditch Name, Reservoir Record, or Place of Use of a water right is modified as a result of DNRC review during reexamination, add the following issue remark to the abstract, per court order:

P88 SOURCE NAME, POINT OF DIVERSION, MEANS OF DIVERSION, DITCH NAME, RESERVOIR RECORD, AND PLACE OF USE WAS/WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

Use the full element titles in the remark variable, as shown in the gray box above. For example, type the words Point of Diversion instead of POD or just the word diversion.

Situations where a P88 is not necessary because of a database error occurred are:

- Removing the extra or second Unnamed Tributary of Unnamed Tributary of from the source name.
- Modifying Livestock Direct from Source on Wildlife claims to Wildlife Direct from source.
- Copying spring, subirrigation, etc. from the 1st POD ID to the other POD IDs.

Building your basin project and data

Access water rights database data from the DNRC intranet. The following web address:

<https://portal.dnrc.mt.gov/directors-office/it/gis/data-library/Water%20Resources/Water%20Adjudication/>

The data menu options look like this on the website: Choose the Adjudication LegalLand PODs.lyr pod layer.

Water Adjudication

by Dysart, Jacob — last modified Apr 23, 2018 01:07 PM

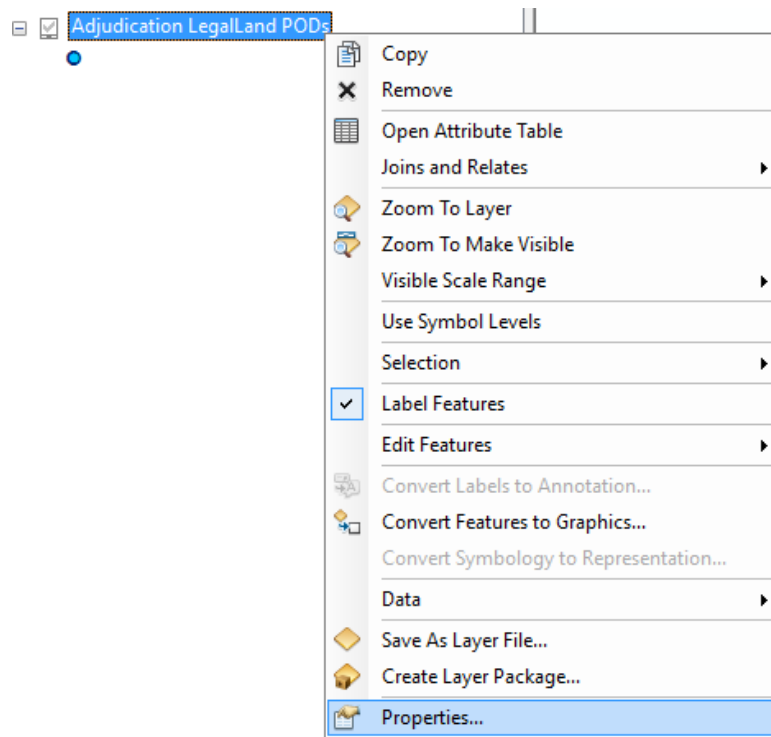
[Up one level](#)

Title	Size	Modified
 Adjudication LegalLand PODs.lyr	14.0 KB	May 01, 2017 11:16 AM
 Adjudication LegalLand POUs.lyr	12.0 KB	May 01, 2017 11:16 AM
 ReExamination PODs.lyr	12.0 KB	Oct 16, 2017 12:15 PM
 WRMapper Compilation - Claimed.lyr	10.0 KB	May 01, 2017 11:16 AM
 WRMapper Compilation - Ditches.lyr	9.0 KB	May 01, 2017 11:16 AM
 WRMapper Compilation - Diversions.lyr	13.5 KB	May 01, 2017 11:16 AM
 WRMapper Compilation - Examined.lyr	10.5 KB	May 01, 2017 11:16 AM
 WRMapper Compilation - WRS.lyr	10.5 KB	May 01, 2017 11:16 AM

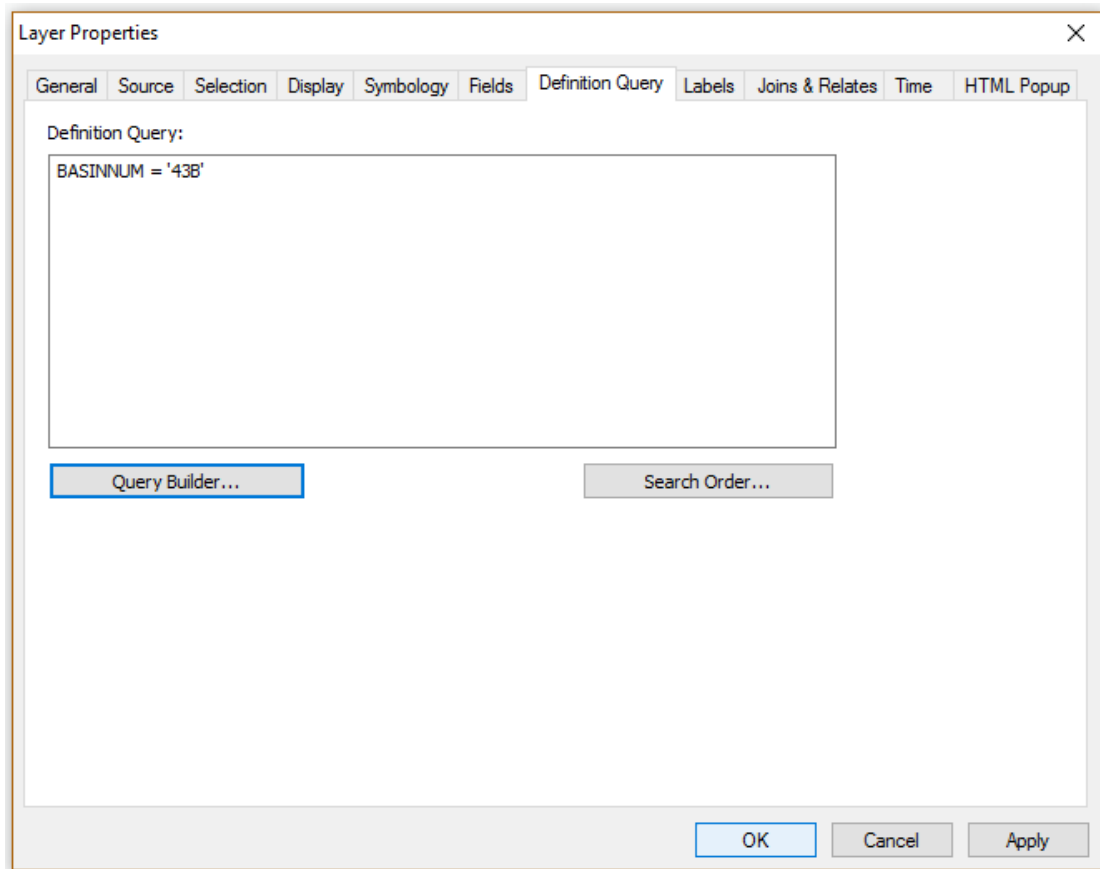
How to build your project:

Once the layer is downloaded add it is in an arc project then create the POD shapefile.

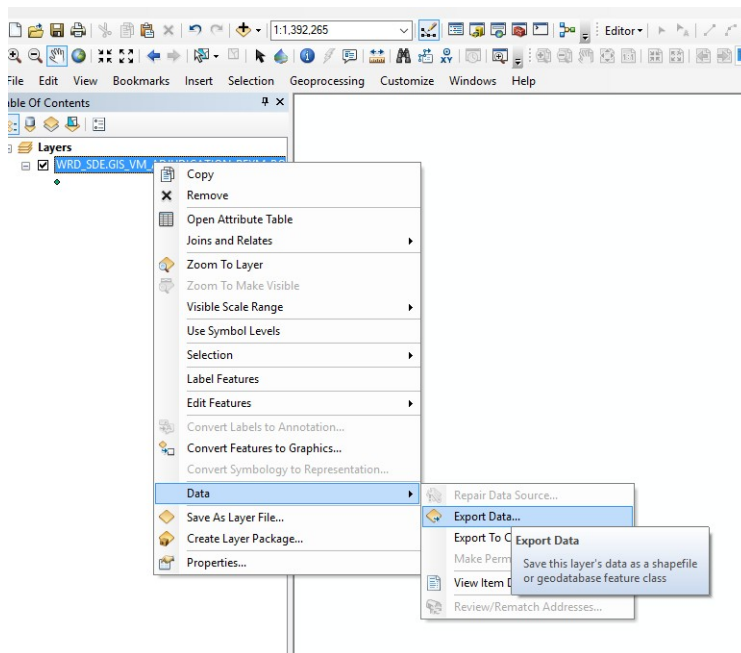
1. In the table of contents of your arc project, right click on the *Adjudication LegalLand PODs.lyr* and select properties.



2. In the properties box, click on the definition query tab and add the following query string using the corresponding basin number for your basin and then hitOK:

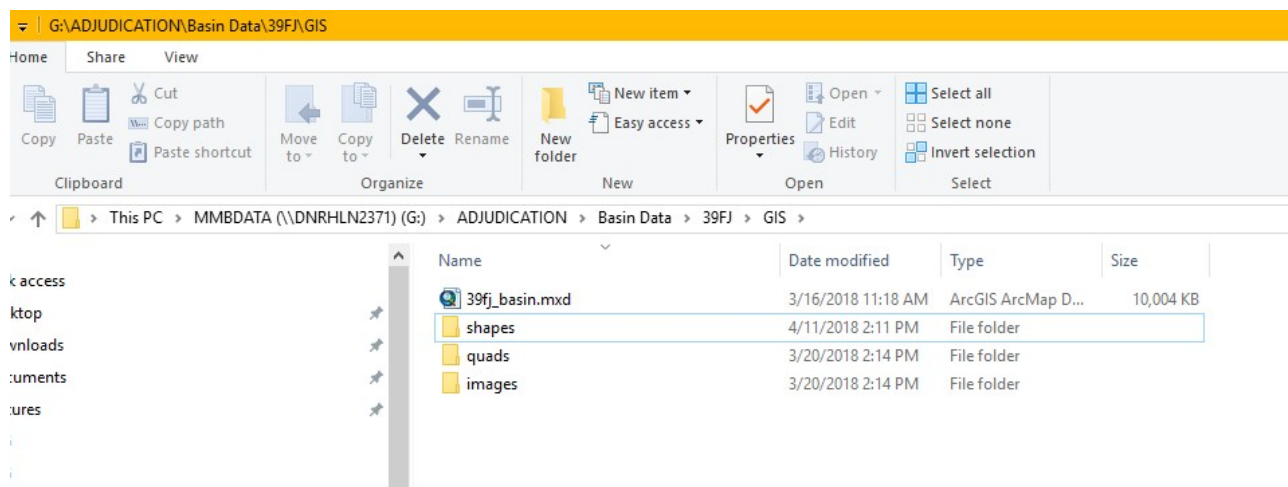


- Open the attribute table by right clicking on the layer and select Open Attribute table. You should now only see water right numbers in your basin.
- Next, create a shapefile by right clicking on the layer “*LegalLand PODs.lyr*” and selecting “Data” and “Export Data”. Save it to the proper file and add it to the project. Remove the *LegalLand PODs.lyr* from the table of contents and use the shapefile to edit the attribute table.
Remember do not delete or hide any of the columns in the attribute table.

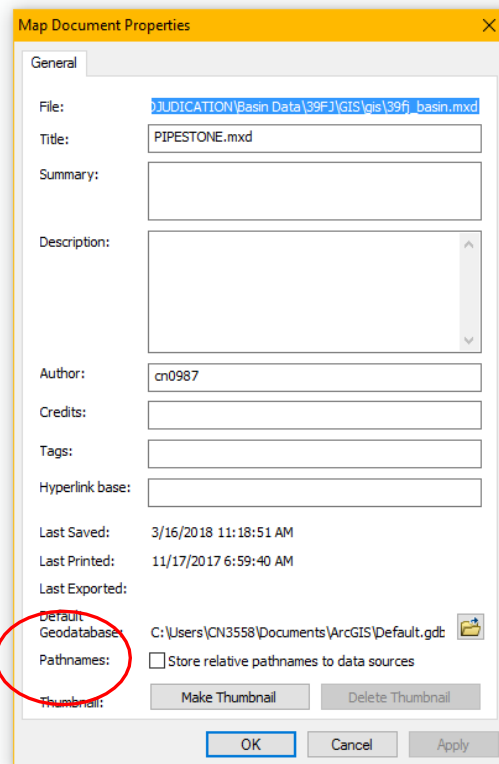


IMPORTANT REMINDERS

- Remember to keep all data organized and saved in the Basin folder:
G:\ADJUDICATION\BasinData\39FJ\GIS



- To keep the project intact (keep all data links connected) go to file and in the drop down choose properties and general, click on Store relative pathnames to data sources.



- Add the following layers to your project: cadastral, quarter sections, sections, township/range, basin boundary, topo maps, aerial photos, ditch, and NHD. Other layers can be added to the project as needed (WRS, '79 photos, basemap, etc.).
- All aerial photos and topo maps must be downloaded separately and stored in the project folder. Other layers can be added to the project as needed (WRS, '79 photos, basemap, etc.).
- DO NOT** remove or hide any columns in the attribute table. Otherwise, when saved, this information is lost forever. Do add additional columns to add "comments" of what was changed. For example, the ditch name, POD legals that were modified, P88 added, means of diversion, source, any issues or informational remarks added or removed.
- If more than one person is working on a basin project, be sure to divide the PODs up by area and source.
- Remove all the dismissed, withdrawn, terminated, compact and inactive claims from the attribute table. These are not looked at for reexamination.

Source Names:

Part of the POD project is to standardize and make sure the source names are correct. Turn on the NHD source names by right clicking on the layer in the table of contents and selecting "label features". The NHD layer has source names stored in the attribute data.

The NHD layer is used as an additional source only, to look at when trying to identify a source, and the names typically match what is labeled on the USGS topo map. The hierarchy for standardizing sources is as follows: sources named on the quad map will receive the quad map name; sources not named on the quad map will receive the water resources survey name; if no name on the water resources survey (available by county on the adjudication website), check the claim files of water rights associated with a source for colloquial names and use the most common colloquial name.

If the water resources survey does not list a name, check the other points of diversion on the source. If the claimed points of diversion show the same source name, add this name to the attribute data for the appropriate line segment. If no name appears on any of the available data sources, the source name will be unnamed tributary of the next down-gradient named source.

Where the source names on the claims on a source agree with the Water Resources Survey and not the USGS topo map, the source names should remain as claimed (must be agreement amongst the claims). Refer to chapter 6 of the DNRC Water Rights Claims Examination Manual for a complete set of instructions on naming sources.

Once a standardized source name is decided on, add the name to the NHD layer for easy comparison with claimed source names of individual points of diversion. Identify and label all standard source names in the basin in the ArcMap project before moving on to identifying and correcting individual points of diversion. Names do not need to be added to the NHD layer to streams without water right centroids.

Once the NHD layer has the standardized source names, check all points of diversion for correct source name. Be sure to document all changes in the attribute table and using the Pdf documentation procedure outlined in the guidebook.

COMMENTS
POD WAS OFF THE SOURCE. MOVED TO SESESW
CHANGE SOURCE NAME TO MARSHALL CREEK PER TOPO

Points of Diversion:

Using the same ArcMap project and point of diversion layer as described in the Source instructions above, look for general point of diversion errors such as: points outside the basin, unrefined legal descriptions, and points not on the source. Document any needed changes in a comments field, added to the attribute table of the shapefile as described above.

For points of diversion associated with ditches, ensure that all points of diversion for a common ditch have the same legal description. Overlay the Water Resources Survey Ditch shapefile with the points of diversion layer and move centroids for ditches to the head of the ditch or canal. Compare the location of the ditch as shown on the ditch shapefile with the photo available in ArcMap. The photos

are typically more accurate than the ditch shapefile. Identify any needed point of diversion corrections in the comments field of the diversion shapefile.

Not all points of diversion need to be looked at on the map of the ArcMap project. Points of diversion for wells and livestock springs with three quarter sections will be assumed to be correct. Only correct these claims if they are lacking quarter sections. Livestock direct from source claims with centroids that fall within the general location of the claims source will be assumed to be correct. Sorting the attribute table by the quarter section column will reveal all legal descriptions that may need additional quarter sections.

Make changes to the legal land descriptions of points of diversion in the database that require modification based on the location of the diversion identified on the current air photo. **Caution should be exercised** when making changes to points of diversion legal land descriptions of claims that are located greater than a ¼, ¼, ¼, section away from the diversion or conveyance identified on the current air photo. **The point of diversion for a claim in the database needs to represent the location of the claimed diversion as it was claimed, prior to 1973.**

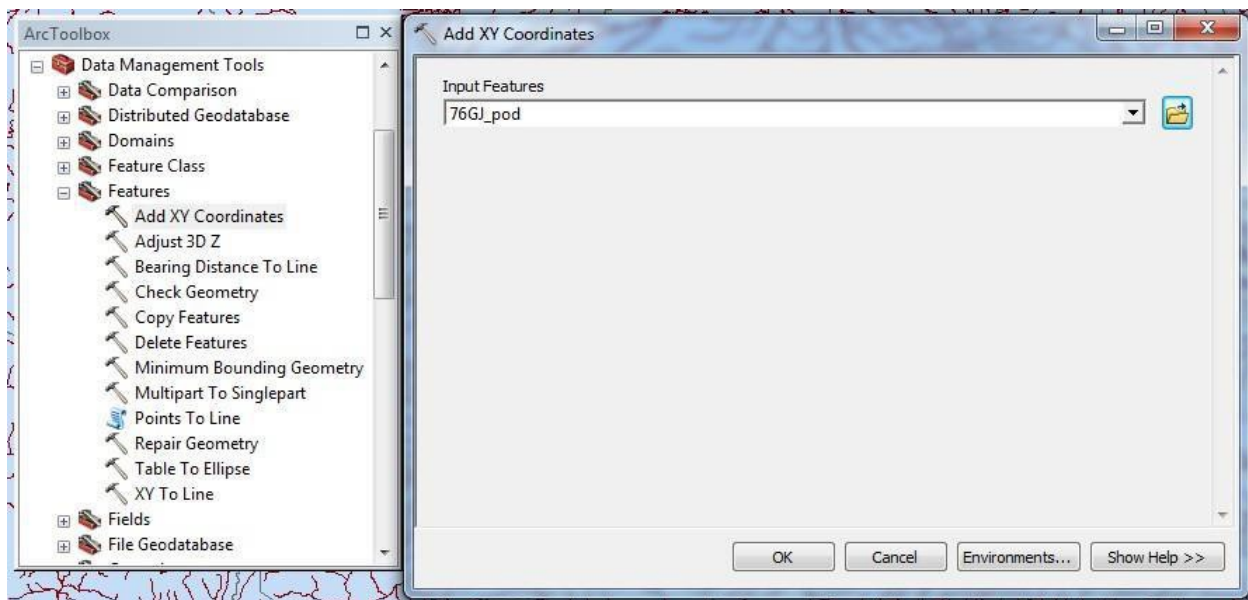
When making changes greater than a ¼, ¼, ¼, section, this could be suggestive of a post 1973 change. Note, not all changes greater than a ¼, ¼, ¼ are post 1973 changes. The Specialist should use their knowledge and evidence gathered about basin trends, what is going on with other claims in the drainage for clues. If available, check an older photo source (water resources survey photos or 1978-1982) to confirm the diversion identified on the current air photo. Are there a lot of newer subdivisions or center pivots on the current aerial photos compared to the historical photos? Does the point of diversion match the claimed map? Care should be taken before identification of a possible post 1973 claim.

If older photography is unavailable or inconclusive, or review of drainage trends point to a post 1973 change in the point of diversion, an issue remark could be added. The following are a couple of examples. A PDIS free-text issue may also be used.

P40 THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWSWSW SEC 36 TWP 99N RGE 99W MONTANA COUNTY.

P49 THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE WELL CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Once the correct location of the point of diversion is identified in the ArcMap project, **it is essential that each point is “snapped”** (placed in the same location) onto the previous point, which is a function in ArcMap that is typically a default setting. This is essential for generating identical x, y coordinates at the end of the end of this project. Add x, y coordinates in the appropriate fields of the layer using the x, y tool



Send the database administrator an Excel copy of the x, y coordinates at the end of the project and these will be entered in the database.

Place of Use Issues Related to Point of Diversion:

During the review of the point of diversion element, you will encounter claims that have matching points of diversion and places of use that are both in the same location and are incorrect. Correcting the point of diversion leaves the place of use in the wrong location. There are two resolutions to this issue depending on the scenario:

1. The use of water is for *Livestock Direct from Source* or *Wildlife Direct from Source*:
 - When the Point of Diversion has been modified by rule, correct the place of use legal land description to match the point of diversion and add *Place of Use* to the P88 remark.
2. The use of water is not for *Livestock Direct from Source* or *Wildlife Direct from Source*:
 - Add a free text place of use (code PLIS in the database) issue remark. This is common for reservoirs needing legal land description corrections for the point of diversion; the following is an example:

PLIS THE PLACE OF USE APPEARS TO NEED MODIFICATION BASED ON THE DNRC CORRECTION TO THE POINT OF DIVERSION. THE CORRECT PLACE OF USE LEGAL LAND DESCRIPTION APPEARS TO BE THE NENWNW SEC 34 TWP 8N RGE 27E MUSSELSHELL COUNTY.

Sustained, Water Court Modified, Split/Imp POD's:

Occasionally, points of diversion in the project need points of diversion legal descriptions modified but are *Sustained* or *Water Court, Modified by* in the point of diversion element origin in the database. Elements with *Sustained* or *Water Court, Modified by* origins cannot and **should not** be edited in the database (for staff with higher database editing permissions).

Issue remark these situations if the point of diversion is not within a ¼, ¼, ¼, (for point specific diversions, such as a headgate) section of the actual location of the diversion on the aerial photo. A full list of point of diversion issues starts on pg. 195 of the claims examination manual. A code of PDIS may be used in the database to place a free-text issue remark on a claim in **unique situations only**.

Split and Implied claims:

The points of diversion for split and implied (that have undergone a previous decree) claims are also locked to editing in the data base. However, the point of diversion centroids for split and implied claims ***should*** be moved to the correct location to generate accurate X, Y coordinates. If a point of diversion for a split or implied claim is incorrect, document the needed change on a pdf abstract, following the documenting instructions in the General Procedures section of this guidebook, as the database does not allow the addition of issue remarks in split or implied claims.

Means of Diversion:

The reexamination order does not include means of diversion as an action item and will only be changed to provide clarification to the claim for water distribution, or in relation to corrections to source, points of diversion and ditch names. Claims sharing a diversion structure (multiple use claims or claims from the same named ditch) should all have consistent means of diversion. Water rights with a means of diversion of *Multiple* or *Unknown* should be researched for a more standard means. A P88 remark applies to changes to the means of diversion. Add the following issue remark to claims where the means of diversion cannot be identified:

D50 THE CLAIMED MEANS OF DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

Ditch Names:

The DNRC will name ditches that have a name on the USGS quad, water resources survey, or a common name. The hierarchy for naming ditches is as follows: ditches named on the quad map will receive the quad map name; ditches not named on the quad map will receive the water resources survey name; if no name on the water resources survey, check the claim files of water rights associated with ditch names and use the most common name for the ditch. Ditches shown on the water resources survey with the same name (Stump Ditches) will receive the same name.

Match points of diversion with ditches and ensure that all centroids for a ditch are snapped to head of the ditch where it taps the source. Label the ditch name in the ditch name field of the point of diversion shapefile. Denote that the name was added and note any needed legal description changes in the comments field of the point of diversion shapefile. Some water rights may already have ditch names that were added during an enforcement action. Check to make sure that the enforcement ditch name and the legal description matches the labeled ditch in the ditch layer. Check with the enforcement administrator before changing an enforcement ditch name.

Add ditch names with legal descriptions in the Create and Maintain Diversion/Ditch Names screen of the database. Each ditch name should be followed by the name 'ditch' or 'canal' (e.g. Carter Ditch or Simpson Canal). Enter the ditch name into the Diversion/Ditch Name field of the POD tab in the Create and Maintain Water Rights Screen for all water rights identified on a named ditch. A List of Values will pop up if there are multiple ditches. Select the ditch with the correct legal description.

DNRC will create a ditch layer to be used in the final GIS basin project. This layer will be created by the specialists working on the basin-wide GIS project. The main ditches will be drawn from the headgates on the source for the first 100 yards or so. The idea is to show the direction of the water flow. Once this is drawn, it should be converted to a shapefile and stored in the basin folder under the GIS project to be included in the final basin GIS project.

Important note: the DNRC can make changes to *Sustained* or *Water Court, Modified By* ditch names because the ditch name element is not considered a major decreed element of a water right. Making edits to the ditch name field requires enhanced database rights.

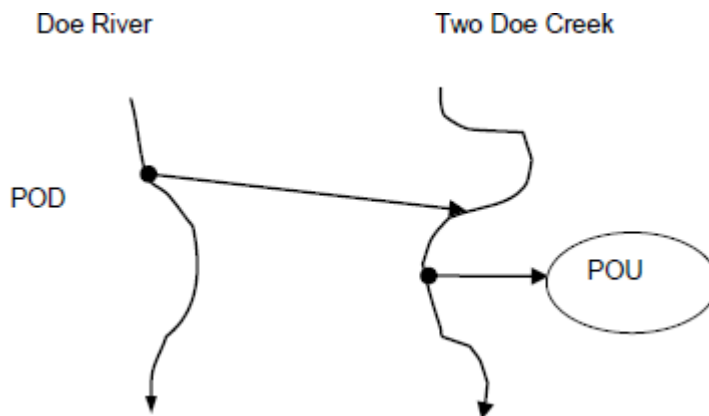
Reservoir Records:

When the point of diversion of an on-stream reservoir is modified, change the legal description of the reservoir record as well. Change the element origin in the data base to *Rule, Modified By*. Include *Reservoir Record* in the P88 remark variable.

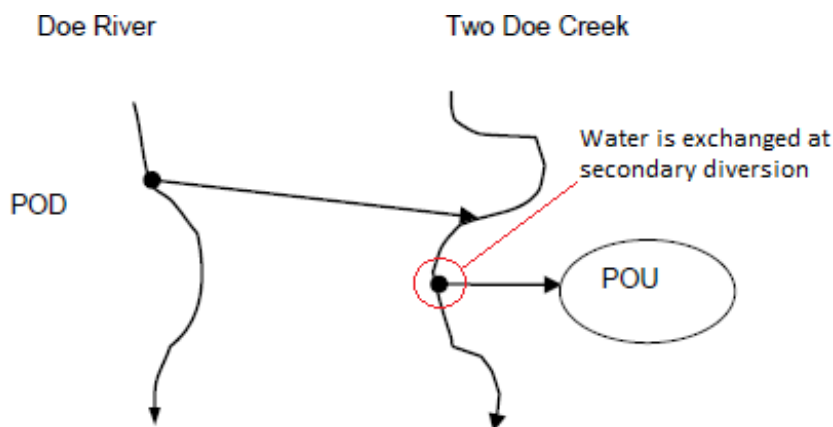
Secondary Points of Diversion:

Secondary diversions will be assigned to a water right when the claim file indicates a secondary diversion that involves another named source or stored water. The purpose of these diversions is to indicate a natural carrier situation or stored water from a reservoir (differentiate between stored water and flow through reservoirs – see reservoir section in chapter 6 of the exam manual). Secondary diversions are not typically listed on the claim form but are often shown on the claim map. Be sure to add a conveyance remark when adding a secondary point of diversion in the database.

A natural carrier situation is where water from one source enters another, flows downstream and is picked up by another ditch. See the example on the next page.



The simplest explanation of an exchange situation is where a primary source is exchanged for a secondary source. The secondary source is then conveyed to the place of use via a secondary diversion and conveyance. See the example below.



The legal description for a natural carrier secondary diversion, in most cases, is the location where the secondary ditch diverts from the natural carrier. Generally, secondary points of diversion will not be assigned for lateral ditches off a main ditch or for ditches that cross a source without a diversion structure. **Pumps or other means of diversion occurring after the primary point of diversion will also not be added to claims as secondary diversions. Lateral ditches will only be identified as secondary points of diversion in specific situations, at the direction of the Bureau Chief.**

Assign a secondary diversion in the database in the POD tab under the preceding primary diversion so that the abstract lists primary and secondary diversions together. **Never sort the points of diversion!**

Add a ditch name to legal description describing the location of the secondary diversion if applicable. Add a conveyance remark into the database to describe the secondary diversion, such as the C119 below:

C119 WATER DIVERTED FROM DOE CREEK IS CONVEYED TO TWO DOE CREEK WHICH IS USED AS A NATURAL CARRIER TO SECONDARY POINT(S) OF DIVERSION, DIVERSION NO(S). 2 AND 3.

Add a free-text remark with the remark code CV for other secondary diversion scenarios like the following example:

CV WATER DIVERTED FROM DOE CREEK IS EXCHANGED FOR WATER FROM TWO DOE CREEK AT A SECONDARY HEADGATE LOCATED IN THE SWSWNW OF SEC 36 TWP 9N RGE 10W, BEAVERHEAD COUNTY.

If a secondary point of diversion is identified, a conveyance remark is mandatory!

Final Reminders

1. Look at the remarks on the claim while working in each water right. Be sure the issue remarks are still valid, and the descriptive remarks are correct or needed. For example, if there is a remark saying the ditch name is squirrel ditch and squirrel ditch is in the POD tab, this remark can be removed as it is repetitive.
2. **DO NOT** change or hide the fields in the attribute tables except to add the comment field. When the table is saved with hidden fields they cannot be unhidden.
3. Be sure to document on the Pdf abstract what and why something was changed, by whom and when it was changed. Years from now, this can save a lot of time and confusion as to why something was changed. Remember this PDF is the examination worksheet in reexamination.
4. When a ditch is added to the POD tab, be sure to choose the ditch from the list of values with the correct legal description. If it is not in the list of values, it will have to be added and check with a supervisor on how to add the ditch name properly to the database, so it shows up in the list of values.
5. Check before the project is started if there are claims in the basin that are in an enforcement project. It is important to review the comments that were added in the project for the source, point of diversion, means of diversion and ditches. These may or may not be valid and can be earmarked for review to see if they need to be removed during the summary review process.

Reexamination Standards and Indexes: Period of Diversion and Reservoir Information

Overview and Process:

As a part of the Water Court's Reexamination Order dated December 14, 2012, the Court ordered that the DNRC shall implement all standards proposed in the order. Of these standards, the Court proposed that the DNRC standardize the period of diversion for all claims in reexamination basins. The subsequent period of diversion order dated November 10, 2014 sets the standard for the period of diversion element in reexamination basins. Below is a summary of the process of standardizing the period of diversion for different types of claims as directed by the order. The order is included for reference at the end of this chapter.

If you cannot see the reservoir to estimate the reservoir then add the following issue remark and do nothing more with the claim:

R100 EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

Standardization of Period of Diversion:

The reservoir index must first be split into those reservoirs that are less than or equal to 15AF and those greater than 15 AF. To do this, the **claimed volume** from the scanned documents or claim files must be looked at and entered the spreadsheet. Sort the spreadsheet based on the claimed volume and follow the steps accordingly below.

Claims with Surface Water Pits and Reservoirs with a Volume Greater than 15 AF:

Change the period of diversion to the same as the period of use, add a **P168**, and remove the P164.

Change the period of diversion element in the database to *Modified by Rule*. Period of diversion was not an element on the original claim forms.

P168 THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH THE PERIOD OF USE. IF NO OBJECTIONS ARE RECEIVED TO THE PERIOD OF DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE REMOVED FROM THIS CLAIM.

Estimate the reservoir capacity using available sources including pre-1973 and post-1973 photo, sources and Dam Safety Bureau information. Place this information into the reservoir tab. **Note: if the reservoir tab or the period of diversion is sustained or modified by the Water Court see the following directions.**

- Reservoir Tab: measure the reservoir as normal but put all the information on the PDF abstract in the basin folder (dam height, depth, size, capacity). This information is then available for the water court when needed. Process the period of diversion.

- Period of diversion tab: if the period of diversion is *sustained* or *modified by the court*, do nothing to the period of diversion. Process the reservoir.
- If both the reservoir and the period of diversion are sustained or modified by the Water Court then do nothing to the claim and move on.

Add the following information remark if the reservoir is estimated:

R56 THE CAPACITY, DAM HEIGHT, MAXIMUM DEPTH, AND SURFACE AREA HAVE BEEN ESTIMATED BY DNRC.

Add the following information remark if the reservoir information is obtained from another source (i.e. Army Corps or Dam Safety Bureau)

R76 SEE THE DAM SAFETY BUREAU INFORMATION IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

If the reservoir is sustained or modified by the water court do not add the R56, R75, or R76 to the claim.

It is appropriate to use the R56 information remark in combination with either the R75 or R76 information remarks when DNRC estimates supplement information provided by the claimants. All letters for the basin are sent at the end of the completion of the reexamination of the basin.

If the Water Court has already sent out a period of diversion worksheet but the period of diversion origin is marked as Decreed, then treat the period of diversion as if the origin says Modified by Water Court. This will avoid sending the same request to the claimant twice.

If the claimant makes contact and provides the requested reservoir information: Implement the claimant's information, add the information remark below, and send the reservoir worksheet to the file. The element should remain coded as modified by rule and remove the P168.

R75 SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

Claims with Surface Water Pits and Reservoirs with a Volume Less than or equal to 15 AF, or Groundwater Pits with any Volume:

Change the Period of Diversion to year-round (01/01-12/31), remove the P164, change the period of diversion element in the database to *Modified by Rule* (whether it was changed by DNRC), and add the following information remark to the claim:

P162 THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.

- Again, if the period of diversion is *sustained* or *modified by the court*, do nothing to the period of diversion. Move on.

All Other Non-Reservoir, Non-Pit Claims, Including Natural Lakes:

Check to ensure that the Period of Diversion matches the Period of Use and has the following information remark in the database:

P164 STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

For Claims with Period of Use Issue Remarks:

Add the following Period of Diversion issue remark:

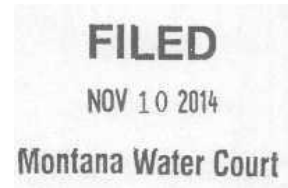
P166 THE PERIOD OF DIVERSION MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF THE PERIOD OF USE ISSUE.

For Claims with Existing Period of Diversion Remarks:

You may run into claims that have existing remarks, such as the P161, below. These remarks should be removed and replaced with the appropriate remarks for their period of diversion category. **If the period of diversion is *Sustained* or *Water Court Modified by*, then LEAVE the P161 on the claim.**

P161 WHEN THIS CLAIM WAS ORIGINALLY DECREED, THE PERIOD OF DIVERSION WAS NOT INCLUDED AS AN ELEMENT OF THE CLAIM. IN 2008, THE PERIOD OF DIVERSION ELEMENT WAS ADDED TO ALL CLAIM ABSTRACTS. IT IS NOT CERTAIN IF THE PERIOD OF DIVERSION DATES ADDED TO THIS CLAIM ACCURATELY REFLECT THE HISTORICAL PERIOD OF DIVERSION. MORE INFORMATION IS REQUIRED.

Montana Water Court
PO Box 1389
Bozeman, MT, 59771-1389
(406) 586-4364
1-800-624-3270 (IN-STATE)
FAX: (406) 522-4131



IN THE WATER COURT OF THE STATE OF MONTANA

SECOND AMENDED ORDER ON PERIOD OF DIVERSION – STATEWIDE

On December 11, 2008 this Court issued a statewide Order providing instructions to the Department of Natural Resources and Conservation (DNRC) on examination of period of diversion. The DNRC was instructed to comply with the provisions of Exhibit A, attached to that Order. That Order provided that after a period of implementation, the Water Rights Adjudication Bureau Chief would advise if Exhibit A required refinement. DNRC has suggested changes to its examination process. Accordingly, this Order revises Exhibit A and supersedes the Amended Order on Period of Diversion-Statewide issued December 11, 2008.

The DNRC prepares a summary report of each claimed water right including, where appropriate, a period of diversion. Rules 5(a) and 5(a)(3)(vi), W.R.C.E.R.

Period of diversion is the "period in a calendar year when water is diverted, impounded, or withdrawn from the source." Rule 2(a)(50), W.R.C.E.R.

Period of use is the "period in a calendar year when water is used for a specified beneficial use." Rule 2(a)(51), W.R.C.E.R.

After consulting with the DNRC, the Court concludes it is appropriate to simplify the process of identifying a period of diversion on all water right claim abstracts.

IT IS HEREBY ORDERED:

- I. The DNRC, during its claims examination process, shall examine all existing water right claims to determine the inclusive period of diversion dates for each claim; and, when necessary, the DNRC shall contact the claimant for further information;

2. The DNRC shall examine the period of diversion in accordance with Amended Exhibit A;
3. The Water Court will adjudicate the period of diversion in accordance with Exhibit B;
4. This Amended Order supersedes the Court's December 11, 2008 Amended Order on Period of Diversion - Statewide and any similar directions provided to the DNRC between December 11, 2008 and the date of this Order.

DATED this 10th day of November, 2014.


Russ McElyea
Chief Water Judge

John Peterson, Bureau Chief
Water Rights Adjudication Bureau
PO Box 201602
Helena Montana 59620-1602

Amended Exhibit A
DNRC Period of Diversion Claim Examination

Instructions to the DNRC:

Period of diversion dates shall be printed on all abstracts generated for existing water right claims. The DNRC shall program the database to automatically add a P164 information remark to the bottom of all abstracts generated for claims. The P164 remark will be similar to the following:

**STARTTNG IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST
CLAIM ABSTRACTS, INCLUDING THIS ONE.**

In basins decreed after September 2014:

The period of diversion dates for all claims involving surface and ground water pits and reservoirs shall be printed on all claim abstracts as follows:

1. for claims involving surface water pits and reservoirs with a claimed volume greater than 15.00 AF:
 - a. The DNRC shall contact the claimant to determine the period of diversion pursuant to Rule 10(b), W.R.C.E.R. DNRC shall notify claimants that if they do not respond to the DNRC's enquiry, the DNRC will add a period of diversion to their claim that matches the period of use.
 - b. If the claimant identified the period of diversion, the DNRC shall add the period of diversion to the abstract and remove the P164 information remark from the abstract.
 - c. If the claimant contact is inconclusive or the period of diversion dates are not identified, the DNRC shall add a period of diversion to the claim that matches the period of use, add a P160A issue remark to the claim, and remove the P164 information remark from the abstract.
 - d. The P160A issue mark will be similar to the following:

**THE CLAIMANT DID NOT IDENTIFY THE PERIOD OF DIVERSION FOR
THIS RIGHT. A PERIOD OF DIVERSION HAS BEEN ADDED TO MATCH
THE PERIOD OF USE. IF NO OBJECTJONS ARE RECEIVED TO ~~PERIOD~~ OF
DIVERSION OR PERIOD OF USE, THOSE ELEMENTS WILL BE DECREED
AS SHOWN ON THIS ABSTRACT AND THIS ISSUE REMARK WILL BE
REMOVED FORM THIS CLAIM.**

2. For dams involving ground water pits with any volume, and surface or ground water pits and reservoirs with a claimed volume of 15.00 AF or less:

- a. The period of diversion shall be year-round, a P162 information remark shall be added to the abstract, and the P164 information remark removed from the abstract
- b. The P162 information remark will be similar to the following:

THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS CLAIM.

- 3 For all other claims, including non-reservoir claims and natural lakes, the period of diversion dates shall be the same as the period of use.
- 4 For claims where the DNRC has placed any period of use issue remarks on an abstract, the DNRC shall also add a period of diversion issue remark similar to the following:

THE PERIOD OF DIVERSION MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF THE PERIOD OF USE ISSUE.

- 5 P161 issue remarks shall not be placed on claim abstracts in basins decreed after October 2008.

In basins decreed prior to October 2008:

Claims in basins decreed prior to October 2008 were handled in the following manner. This Order **does not** apply retroactively to those claims.

1. Period of diversion dates were printed on all previously decreed basin abstracts.
2. A P161 issue remark was added to the bottom of all abstracts except:
 - a. Non-reservoir claims where period of diversion was equal to period of use;
 - b. Onstream reservoir claims where period of diversion was equal to period of use and was from January 1 to December 31;
 - c. Reservoir claims in basins 41D, 41O, 41QJ, 42B, 42C and 76FA.
3. The P161 issue remark is similar to the following:

WHEN THIS CLAIM WAS ORIGINALLY DECREED, THE PERIOD OF DIVERSION WAS NOT INCLUDED ON THE ABSTRACT OF THIS CLAIM. IN 2008, THE PERIOD OF DIVERSION WAS ADDED. IT IS NOT CERTAIN IF THE PERIOD OF DIVERSION DATES ON THIS CLAIM ACCURATELY REFLECT THE HISTORICAL PERIOD OF DIVERSION. MORE INFORMATION IS REQUIRED.

Exhibit B

Period of Diversion Adjudication

Water Court Procedures:

In basins decreed after October 2008 (42A, 43E, 43O, 43P, 41A, 40R, 40T, 40F, 40I, 40J, 40M, 41L, 41P, 41M, 41B, 76LJ, 40B, 76HA, 76L, 41J, 76F, 41Q, 41T, 40EJ, 41R, 42M, 43N):

1. During Summary Review, the Water Master will verify that period of diversion dates and appropriate information and issue remarks appear on all abstracts.
2. During adjudication, the Water Master will resolve all P160 issue remarks.

In one decree basins (41O, 41D, 41QJ, 76FA, 42B, 42C, 43Q, 42KJ, 76HF, 40Q, 40S, 40H, 38H, 39H, 40P, 42I, 42J, 42L, 39G, 40D, 40G, 40N, 41N, 42K, 43QJ, 40O):

1. The Water Master will resolve P161 issue remarks when resolving objections, issue remarks, or when other reasons bring the claim to the Court's attention.

In two decree basins (41F, 41S, 41U, 43BV, 76B, 76C, 76D, 76E, 76GJ, 76I, 76J, 76K, 76M, 76N, 39E, 39F, 39FJ, 40A, 40E, 40L, 41E, 41H, 41K, 43B, 43BJ, 43C, 76G, 43A, 40K, 41G, 40C, 41C, 76HB, 43D, 76HE, 41I):

1. The Water Master will resolve P161 issue remarks when the second decree is issued or, if appropriate, while resolving objections, issue remarks, or when other reasons bring the claim to the Court's attention.

When making claimant contact the Water Master may use the questionnaire provided in Exhibit C.

Exhibit C**PERIOD OF DIVERSION**

The Period of Diversion is the period in the calendar year when water is diverted into a reservoir (off stream) or impounded by a reservoir (on stream). It is distinct from the Period of Use which is the period in the calendar year when water is put to a beneficial use. The Period of Diversion and Period of Use may be the same, they may overlap, or they may be completely different. The Period of Diversion claimed must reflect the use of this claim prior to July 1, 1973.

I/we hereby request the Period of Diversion listed below for water right claim _____.

- ☐ The Period of Diversion for this claim is January 1 to December 31.
- ☐ The Period of Diversion for this claim is the same as the Period of Use that appeared on the Abstract of Water Right Claim in the Water Court's most recent Decree of this claim.
- ☐ Other (explain):

Signature Date

Signature Date

Signature Date

Signature Date

THIS FORM MUST BE SIGNED BY ALL RECORD CLAIM OWNERS AND RETURNED TO THE MONTANA WATER COURT.
Po Box 1389
Bozeman, MT, 59771-1389

Reexamination Standards and Indexes: Fish and Wildlife, Wildlife, and Recreation Claims

Overview and Process:

As a part of the Water Court's Reexamination Order dated December 14, 2012, the Court ordered the reexamination of the flow rate and volume elements for all Fish and Wildlife, Wildlife, and Recreation claims. The subsequent order regarding Fish and Wildlife, Wildlife, and Recreation claims, dated April 17, 2013, sets the standard for the flow rate and volume elements of these claims. This memorandum summarizes the process of examining the flow rates and volumes for claims with a purpose of Fish and Wildlife, Wildlife, and Recreation, as directed by the order. Please refer to the supplemental order issued April 17, 2013 if additional clarification is needed.

On August 24, 2017 the Court issued an order clarifying that the Bean Lake remarks. The P724 and P725 would no longer be added to fish and wildlife claims. Please refer to *Order Regarding Issue Remarks in Basins Under Reexamination*.

Category 1. Claims Diverted without a Reservoir. Rule 29(b)(1).

How to Examine Flow Rate: If the capacity of the diversion and conveyance system cannot be confirmed or there is no information regarding capacity of the diversion and conveyance system in the claim file, add the following issue remark:

F80 THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

If information supporting the flow rate exists in the claim file and supports the flow rate, leave the flow rate unchanged and unremarked. If information supporting the claimed flow rate is received from the claimant, remove the above issue remark from the claim.

How to Examine the Volume: the volume guideline is what is "reasonable and customary" for a specific purpose. If information exists in the file showing that the volume is "reasonable and customary", leave the volume unchanged and unremarked. Add the following issue remark if the file lacks information supporting the volume:

V150 THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Under Rule 29(g)(ii), the flow rate or volume of Filed and Use rights can be reduced with the presence of supporting documentation. This does not apply to claims with a Decreed historical type of right. If the flow rate or volume is reduced, mark the element as 'Rule, Modified By' in the data base and add the appropriate information remarks to the database:

F32 THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO THE GUIDELINE OF 99.00 GPM. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

- V15** THE VOLUME OF THIS CLAIM HAS BEEN REDUCED TO THE GUIDELINE OF 104.00 ACRE-FEET PER YEAR. THE VOLUME MAY BE CONTESTED BY PROPER OBJECTION.

Category 2. Claims Diverted with an On-stream Reservoir. Rule 29(c).

How to Examine Flow Rate: no flow rate will be decreed for all Fish and Wildlife, Wildlife, and Recreation claims from an on-stream Reservoir. Ensure that the means of diversion is a dam and run Standards in the water rights database. Standards will remove the flow rate and add the following information remark:

- FF007** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

How to Examine Volume: when the volume is 15 acre-feet or less, leave as claimed and do not remark. When the volume is greater than 15 acre-feet, the volume guideline is storage capacity plus the estimate of evaporation. Leave the volume unchanged and unremarked if it is less than or equal to the guideline. See the DNRC Water Rights Claim Examination Manual Exhibits for reservoir evaporation estimate. Add the following issue remark to claims where the volume exceeds the volume guideline:

- V155** CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Category 3. Claims Diverted with Off-stream Reservoirs and Off-stream Man-made Pits. Rule 29(c).

How to Examine Flow Rate: the flow rate examination of off-stream reservoirs and man-made pits is the same process as Category 1 above. Follow the instructions for Category 1.

How to Examine Volume: the volume examination of off-stream reservoirs and man-made pits is the same process as Category 2 above. Follow the instructions for Category 2.

Category 4. Instream Flow Claims (includes undeveloped springs):

How to Examine Flow Rate and Volume: The guideline for the flow rate and volume for instream claims is the minimum amount necessary to sustain the specific purpose. In the absence of evidence substantiating flow rate and volume, leave the flow rate and volume as claimed and add the following issue remark:

- V145** A GUIDELINE FOR THE FLOW RATE AND VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND FLOW RATE AND VOLUME REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE AND VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE AND VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

If information substantiating the flow rate and volume exists in the claim file or is obtained from the claimant, leave the flow rate and volume unchanged and unremarked.

Category 5. In lake Claims:

The examination of the flow rates and volumes of in lake claims is the same process as Category 2, above. Follow the instructions under Category 2.

Category 6. Pothole Lakes:

How to Examine Flow Rate: Not covered by rule; a flow rate for claims in this category will not be decreed. The flow rate will remain blank and no standard remark applied.

How to Examine Volume: Since Pothole lake claims are not covered by Rule, the volume will be decreed as claimed and no standard examination remarks applied.

Sustained Null Flow Rates and Volumes:

Situations may be encountered where a sustained flow rate and or volume of *null* needs to be reinstated per instructions of the fish and wildlife order. Since a sustained flow rate or volume field is not editable in the database, add the following issue remark to the claim:

V147 PURSUANT TO WATER COURT ORDER, IF NO OBJECTIONS TO THIS CLAIM ARE FILED, THE CLAIMED FLOW RATE OF 000.00 GPM OR CFS/VOLUME OF 000.00 ACRE- FEET/FLOW RATE OF 000.00 GPM OR CFS AND VOLUME OF 000.00 ACRE- FEET WILL BE REINSTATED.

Occasionally, the claimed flow rate or volume, if reinstated, would be excessive for the diversion or storage capacity. An example would be a 500 GPM flow out of a 1 inch diameter pipe. In this situation, add the following issue remark instead of the remark above:

V146 THE CLAIMED FLOW RATE OF 000.00 GPM OR CFS/VOLUME OF 000.00 ACRE- FEET/FLOW RATE OF 000.00 GPM OR CFS AND VOLUME OF 000.00 ACRE- FEET APPEARS TO BE EXCESSIVE FOR THE CLAIMED MEANS OF DIVERSION/PURPOSE.

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FILED
APR 17 2013

Montana Water Court

MONTANA WATER COURT

SUPPLEMENTAL ORDER REGARDING FISH AND WILDLIFE, WILDLIFE, AND RECREATION CLAIMS

-STATEWIDE 2013-

The Water Court has received a number of inquiries from Department of Natural Resources (DNRC) personnel and Water Masters regarding examination and post-decree handling of fish and wildlife, wildlife, and recreation claims. The Water Court's December 14, 2012 *Order Addressing Reexamination* addressed some of the issues pertaining to these claims.

The purpose of this *Supplemental Order* is to provide additional guidance regarding examination and post-decree treatment of fish and wildlife, wildlife, and recreation claims. This *Supplemental Order* differs from the December 14, 2012 *Order Addressing Reexamination*. To eliminate any confusion, this *Supplemental Order* supersedes Part IV of the December 14, 2012 *Order Addressing Reexamination*.

Listed below are common variations of fish and wildlife, wildlife, and recreational claims. Some variations of these claims are covered by existing claims examination rules, while some are not. Where a rule covers a particular right and application of the rule is clear, apply the rule. Where a rule is unclear, or it does not appear to fit the claim under review, follow this *Supplemental Order*.

There will inevitably be instances where application of a rule is uncertain, and this *Supplemental Order* does not provide sufficient guidance. In these circumstances, remember that a claim is *prima facie* evidence of its content and historical beneficial use

is the measure of a water right. Apply common sense and good judgment based on your experience.

CATEGORY I. Claims diverted without a Reservoir. Rule 29(b)(1).

Examples of types of diversions falling within this category of claim may include: spring boxes, developed springs, diversion dams, headgates, wells, pumped diversions, gravity flow or other pipelines, any right using a man-made diversion resulting in a measurable flow rate, including wildlife drinking directly from any of these systems.

- **How to Examine Flow Rate:**

Under Rule 29(b)(1)(i), the flow rate guideline is the capacity of the diversion and conveyance system. If the capacity of the diversion and conveyance system cannot be determined, then leave flow rate as claimed and issue remark as follows:

THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

If you have information on the actual capacity of the diversion and conveyance system and the flow rate is equal to or lower than the actual capacity, then leave the claimed flow rate unchanged and unremarked.

If you have information on the capacity of the diversion and conveyance system and the claimed flow rate exceeds this capacity, then consult the statement of claim or information obtained from claimant contact to determine if the claimed flow rate is justified. If it is justified, then leave the flow rate unchanged and unremarked.

If the flow rate cannot be justified after seeking additional information, reduce flow rate as required by Rule 29(g). This reduction should only occur for filed and use rights, or decreed rights with no decreed flow rate. If reduced, attach the proper flow rate remark per Rule 29(g)(2)(ii).

- How to Examine Volume:

Under Rule 29(b)(1)(ii), the volume guideline is defined as what is "reasonable and customary" for a specific purpose, Volume should remain as claimed in the absence of substantial information that claimed volume is unreasonable. If volume is left as claimed, use the following remark:

THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Do not use this remark if you have otherwise determined the claimed volume is within the "reasonable and customary" guideline.

CATEGORY II. Claims Diverted with an On-stream Reservoir. Rule 29(c).

- How to Examine Flow Rate:

Under Rule 29(c)(1), flow rates for these rights are not decreed. Add a remark stating no flow rate decreed.

FF007: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

- How to Examine Volume:

Proceed in accordance with Rule 29(c)(1)(ii)(A) and (B).

When volume is less than 15 acre-feet, leave as claimed and do not remark.

When the claimed volume exceeds 15 acre-feet, the volume guideline is maximum storage capacity plus the estimate of evaporation. Leave the volume unchanged and unremarked if it is less than or equal to the guideline.

If volume exceeds this guideline for non-decreed rights, or decreed rights without a decreed volume, then consult the statement of claim or information obtained from claimant contact to determine if the claimed volume is justified. If it is justified, then leave the volume unchanged and unremarked.

If the volume cannot be justified after seeking additional information, then remark as follows:

CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Do not remark volume for decreed rights with a decreed volume.

CATEGORY III. Claims Diverted with an Off-stream Reservoir. Rule 29(c). (Also includes off-stream manmade pits).

- How to Examine Flow Rate:

Under Rule 29(c)(1)(i), the flow rate guideline is the capacity of the diversion and conveyance system.

If you have information on the actual capacity of the diversion and conveyance system and the flow rate is equal to or lower than the actual capacity, then leave the claimed flow rate unchanged and unremarked.

If you have information on the capacity of the diversion and conveyance system and the claimed flow rate exceeds this capacity, then consult the statement of claim or information obtained from claimant contact to determine if the claimed flow rate is justified. If it is justified, then leave the flow rate unchanged and unremarked.

If the flow rate cannot be justified after seeking additional information, reduce flow rate as required by Rule 29(g). This reduction should occur only for filed and use rights, and decreed rights with no decreed flow rate. If reduced, attach the proper flow rate remark per Rule 29(g)(2)(ii).

If there is no information concerning capacity of diversion and conveyance system, or the system is shared by more than one claimant, the flow rate guideline is that which is reasonable and customary for the specific purpose. Under these circumstances, flow rate should remain as claimed. If flow rate is left as claimed, use the following remark:

THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

- How to Examine Volume:

Proceed in accordance with Rule 29(c)(1)(ii)(A) and (B).

When volume is less than 15 acre-feet, leave as claimed and do not remark.

When the claimed volume exceeds 15 acre-feet, the volume guideline is maximum storage capacity plus the estimate of evaporation. Leave the volume unchanged and unremarked if it is less than or equal to the guideline.

If volume exceeds the guideline for non-decreed rights, or decreed rights without a decreed volume, then consult the statement of claim or information obtained from claimant contact to determine if the claimed volume is justified. If it is justified, then leave the volume unchanged and unremarked.

If the volume cannot be justified after seeking additional information, then remark as follows:

CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Do not remark volume for decreed rights with a decreed volume.

CATEGORY IV. Instream Flow Claims. Rule 29(d). (Also includes undeveloped springs).

- How to Examine Flow Rate and Volume:

The guidelines in Rule 29(d) state that flow rate and volume are the minimum amounts necessary to sustain the specific purpose.

Determining the minimum amount necessary to sustain a specific purpose can be subjective. In the absence of substantial evidence that claimed flow rate or volume departs from the guideline, flow rate and volume should remain as claimed. If flow rate and volume are left as claimed, use the following issue remark:

A GUIDELINE FOR THE FLOW RATE AND VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND FLOW RATE AND VOLUME REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE AND VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE AND VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Do not use this remark if you have otherwise determined that the claimed flow rate and or volume are correct.

CATEGORY V. Intake Claims. Not Covered by Rule. Apply Rule 29(c).

- How to Examine Flow Rate:

These claims are not specifically covered by rule. Treat these claims the same as on-stream reservoir claims in CATEGORY II. Proceed by applying Rule 29(c)(1). Because these claims are instream, no flow rate will be decreed.

- How to Examine Volume:

These claims are not specifically covered by rule. Treat these claims the same as on-stream reservoir claims in CATEGORY II. Proceed in accordance with Rule 29(c)(1)(ii)(A) and (B).

CATEGORY VI. Pothole lakes. Not Covered by Rule.

This category generally covers impoundments without surface inflow and includes natural pits, manmade pits without surface inflow, and groundwater pits.

- How to Examine Flow Rate:

Not Covered by Rule. Potholes do not have a flow rate. No flow rate should be decreed for these claims.

- How to Examine Volume:

An Order issued by Judge Lessley on August 7, 1987 provides volume should be quantified as claimed on federal wildlife pothole lake claims. Volume for these rights is not otherwise covered by rule. Judge Lessley's August 7, 1987 Order is hereby expanded to include all wildlife pothole claims, not just wildlife pothole claims made by the United States. This means all wildlife pothole lake claims should have volume decreed as claimed.

Application of Judge Lessley's 1985 and 1987 Orders.

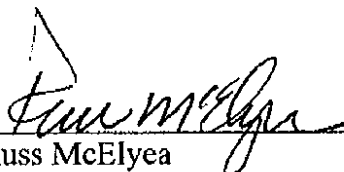
As discussed in CATEGORY VI above, the Order issued by Judge Lessley on August 7, 1987 pertaining to federal claims for wildlife water rights in pothole lakes will remain in effect, and should continue to be applied.

Judge Lessley issued a related Order on June 17, 1985. It specifies that volumes will be established as claimed for federal wildlife claims for all lakes and reservoirs.

The Water Right Claim Examination Rules cited above were adopted by the Montana Supreme Court after Judge Lessley's 1985 Order. In some instances, those Rules, and the provisions of this Supplemental Order, contradict Judge Lessley's June 17, 1985 Order. Accordingly, Judge Lessley's June 17, 1985 Order is partially superseded and no longer applies to federal fish and wildlife, wildlife, and recreation claims with a lake or reservoir.

IT IS SO ORDERED.

DATED this 17 day of April, 2013.



Russ McElyea
Associate Water Judge

John Peterson
Adjudication Program Manager
Montana DNRC
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Helena MT 59620-1602

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BLM Reserved Claims Examination

Overview:

The Water Court has directed DNRC to apply elements of the 2009 BLM order to the reexamination process. During reexamination efforts, identifying reserved rights in three categories is required by the Water Court. The Water Court will then address the underlying issue of reserved type of right after second basin decrees are issued. These claims are identified by quarries for type of right “reserved” and quarrying historical type of right “reserved”. If the quarries identify a private owner with a reserved water right. Research needs to be conducted to see if BLM transferred the rights through the ownership update process.

Remarks:

The 2009 BLM order directs the application of particular remarks as follows:

Add the following issue remark to the abstract of BLM claims claiming a reserved right under Public Water Reserve No. 107 (generally identified by a claimed priority date of April 17, 1926):

P720 THIS CLAIM IS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

Add the following issue remark to the abstract of BLM claims claiming a priority date other than April 17, 1926

P734 THIS CLAIM WAS FILED AS A RESERVED WATER RIGHT. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

Add the following issue remark to the abstract of BLM asserting a reserved right under Public Water Reserve No. 107 are transferred to a private entity.

P730 THIS CLAIM WAS ORIGINALLY FILED AS A RESERVED RIGHT BY THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT, AND WAS BASED ON PUBLIC WATER RESERVE NO.107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. THIS CLAIM WAS SUBSEQUENTLY TRASFERRED TO A PRIVATE ENITY. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WEATHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION, OR WEATHER THIS CLAIM MAY BE TRANSFERRED TO A PRIVATE ENTITY AND RETAIN THE ELEMENTS ASSOCIATED WITH A RESERVED RIGHT, OR WHETHER THE ELEMENS OF THIS CLAIM MUST BE MODIFIED TO REFLECT ITS HISTORICAL BENEFICIAL USE.

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FILED

SEP 23 2009

Montana Water Court

MONTANA WATER COURT

**ORDER ON DNRC EXAMINATION OF BLM
 RESERVED WATER RIGHT CLAIMS
 - STATEWIDE 2009 -**

On September 8, 2005, this Court issued a consolidated order directing the Department of Natural Resources and Conservation (DNRC) to examine all United States Bureau of Land Management (BLM) water right claims in accordance with the Water Right Claim Examination Rules. The order also directed DNRC to place a specific issue remark on reserved water right claims filed by the BLM based upon Public Water Reserve No. 107. The order was issued for basins 40B, 40R, 41A, 41B, 41D, 41J, 41M, 41P, 41QJ, 42C, 76F, and 76HA. The order should apply statewide.

~~Any BLM claim asserting a reserved water right will be examined in accordance with this order. Accordingly, it is~~

~~ORDERED that the DNRC shall examine all BLM claims in accordance with the current Water Right Claim Examination Rules. Basically, the claims will be examined as if they were filed under state law.~~

ORDERED that if any BLM claims assert a reserved water right under Public Water Reserve No. 107 (generally identified by a claimed priority date of April 17, 1926), the DNRC shall also add the following or similar issue remark to the claim abstract:

P720

THIS CLAIM IS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

ORDERED that if any BLM claims asserting a reserved water right under Public Water Reserve No. 107 are transferred to a private entity, ~~the DNRC shall examine the transferred claim in accordance with the Water Right Claim Examination Rules, as amended, and~~ add the following or similar issue remark to the abstract:

P730

THIS CLAIM WAS ORIGINALLY FILED AS A RESERVED RIGHT BY THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT, AND WAS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. THIS CLAIM WAS SUBSEQUENTLY TRANSFERRED TO A PRIVATE ENTITY. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION, OR WHETHER THIS CLAIM MAY BE TRANSFERRED TO A PRIVATE ENTITY AND RETAIN THE ELEMENTS ASSOCIATED WITH A RESERVED RIGHT, OR WHETHER THE ELEMENTS OF THIS CLAIM MUST BE MODIFIED TO REFLECT ITS HISTORICAL BENEFICIAL USE.

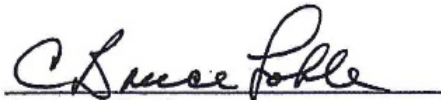
ORDERED that this Order supersedes any previous order on Public Water Reserve No. 107.

ORDERED that if any BLM claim asserts a reserved water right with a priority date other than April 17, 1926, the DNRC shall add the following or similar issue remark to the abstract:

P734

THIS CLAIM WAS FILED AS A RESERVED WATER RIGHT. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

DATED this 23 day of September, 2009.



C. Bruce Loble
Chief Water Judge

Jim Gilman, Adjudication Bureau Chief
Montana DNRC - WRD
PO Box 201602
Helena, MT 59620-1602

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.....
IN THE WATER COURT OF THE STATE OF MONTANA
.....

**ORDER REGARDING ISSUE REMARKS IN BASINS UNDER
REEXAMINATION**

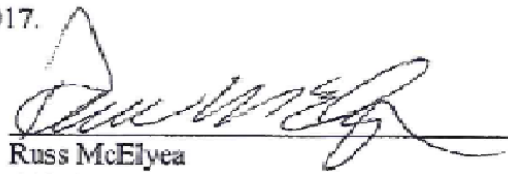
IT IS ORDERED that all issue remarks containing the following language shall be removed from summary reports provided by the DNRC to the Water Court:

TO ASSURE THE ORDERLY ADMINISTRATION OF WATER RIGHTS, THE WATER COURTS WILL SET A HEARING TO DETERMINE THESE ISSUES IF NO OBJECTIONS ARE MADE.

THE WATER COURT WILL HOLD A HEARING ON THIS CLAIM TO DETERMINE ITS VALIDITY SUBJECT TO SECTION 85-2-248, MCA, AND MATTER OF THE ADJUDICATION OF EXISTING RIGHTS IN BASIN 411, 2002 MT 216, 311 MONT. 327, 55 P.3D 396. A HEARING MAY ALSO BE HELD ON THIS CLAIM IF A VALID OBJECTION IS FILED UNDER SECTION 85-2-233, MCA, OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER RULE 8, W.R.ADJ. R.

BECAUSE THIS CLAIM DID NOT RECEIVE A FACTUAL OR LEGAL ISSUE REMARK DURING THE CLAIMS EXAMINATION PROCESS, THE WATER COURT WILL NOT HOLD A HEARING ON THIS CLAIM UNDER MATIER OF THE ADJUDICATION OF EXISTING RIGHTS IN BASIN 411, 2002 MT 216, 311 MONT. 327, 55 P.3D 396 UNLESS A VALID OBJECTION IS FILED UNDER SECTION 85-2-233, MCA, OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER RULE 8, W.R.ADJ. R.

DATED this 24th day of August, 2017.


Russ McElvey
Chief Water Judge

Reexamination Standards and Indexes: Remarks

Overview:

As a part of the reexamination process, the DNRC will perform a remarks summary index on each reexamination basin, as instructed by the court in the reexamination order. The work in this index includes: standardizing old legacy remarks, changing free-text remarks to formatted remarks, transferring database data stored in remarks to the appropriate fields in the database (such as supplemental rights stored in a remark instead of in the related rights tab), removing ‘junk’ remarks, such as: “*This claim is in Trudy’s desk*”.

See the Summary Preparation Instructions in the Reexamination folder of the Adjudication shared drive for specific remark index review instructions. Address questions regarding remarks that are related to specific scenarios to the basin supervisor.

Reexamination Remarks:

The P88 was created per the re-examination order for noticing claimants of DNRC changes related to the review of the *Point of Diversion*, *Source Name*, *Means of Diversion*, and *Ditch Name* elements of a water right. Add a P88 to any claim where changes are made to the Point of Diversion, Source Name, Means of Diversion, Ditch Name, and Place of Use (**in relation to livestock/wildlife direct from source point of diversion changes only**):

P88 SOURCE NAME, POINT OF DIVERSION, MEANS OF DIVERSION, DITCH NAME, RESERVOIR RECORD, AND PLACE OF USE WAS/WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

For *Fish and Wildlife*, *Wildlife*, and *Recreation* claims, the following issue remarks were created:

- V146** THE CLAIMED FLOW RATE OF 000.00 GPM OR CFS/VOLUME OF 000.00 ACRE- FEET/FLOW RATE OF 000.00 GPM OR CFS AND VOLUME OF 000.00 ACRE- FEET APPEARS TO BE EXCESSIVE FOR THE CLAIMED MEANS OF DIVERSION/ PURPOSE.
- V147** PURSUANT TO WATER COURT ORDER, IF NO OBJECTIONS TO THIS CLAIM ARE FILED, THE CLAIMED FLOW RATE OF 000.00 GPM OR CFS/VOLUME OF 000.00 ACRE- FEET/FLOW RATE OF 000.00 GPM OR CFS AND VOLUME OF 000.00 ACRE- FEET WILL BE REINSTATED.

See the section on *Fish and Wildlife*, *Wildlife*, and *Recreation* for specific directions on when to use these remarks.

Commissioner Remarks:

Additionally, a new category of remark was created; the CM (Commissioner type remark). The purpose of the CM remark is to convert information remarks that have direct impact to water distribution so that enforcement staff is aware of water distribution situations. CM remarks are broken up into the following categories: CMGI (prints at the bottom of the abstract for general commissioner information), CMDI (prints under *Point of Diversion* on the abstract); CMFI (prints under *Flow Rate*); CMVI (prints under *Volume*).

Remark placement: the purpose of the different CM categories is to retain the remark's location on the abstract. Generate a review abstract of water right to view which element a remark will print under. Additional commissioner remark categories may be created in the future at the request of the court to accommodate additional abstract element positions for the CM category remarks.

It is not necessary to convert standard remarks like the C121 conveyance remark below to CM type remarks as the enforcement administrator will query for this type of remark.

C121 WATER DIVERTED FROM DOE CREEK IS CONVEYED TO MAD DOE CREEK WHICH IS USED AS A NATURAL CARRIER TO CONVEY WATER TO THE PLACE OF USE.

P126 THIS RIGHT IS LIMITED TO HIGH OR FLOOD WATERS OF DOE CREEK.

See the following examples of CM remarks below:

Before: **PR1Z** AS SPECIFIED BY THE PARTIES FEBRUARY 13, 1991 STIPULATION, ALTHOUGH WATER RIGHT W128446-00 HAS THE SAME PRIORITY DATE AS THE FOLLOWING WATER RIGHTS, IT IS JUNIOR TO ALL OF THESE RIGHTS: W103430-00, W107762-00, W107765-00 AND W120946-00

After: **CMGI** AS SPECIFIED BY THE PARTIES FEBRUARY 13, 1991 STIPULATION, ALTHOUGH WATER RIGHT 128446-00 HAS THE SAME PRIORITY DATE AS THE FOLLOWING WATER RIGHTS, IT IS JUNIOR TO ALL OF THESE RIGHTS: 76GJ 103430-00, 76GJ 107762-00, 76GJ 107765-00 AND 76GJ 120946-00

Before: **PE1Z** CASE NO. 4445 GRANITE COUNTY DECREES THAT USE OF ALL WATER FROM THIS SOURCE ALTERNATES BETWEEN THIS RIGHT AND W107580-00 EVERY TWODAYS.

After: **CMGI** CASE NO. 4445 GRANITE COUNTY DECREES THAT USE OF ALL WATER FROM THIS SOURCE ALTERNATES BETWEEN THIS RIGHT AND 76GJ 107580-00 EVERY TWO DAYS.

Converting Information Remarks to Data:

At the time of the initial decree for the reexamination basins many of the data features now displayed could not accurately be displayed at the time. These types of remarks should be converted when encountered. Examples of information remarks that contain information that can now be displayed in the current data base but could not at the time of the first decree are described below.

THE ACTUAL PERIOD OF USE FOR THIS WATER RIGHT IS FROM APRIL 15 TO JUNE 16. COMPUTER PROGRAM LIMITATIONS DO NOT ALLOW THE CORRECT PERIOD OF USE TO BE PRINTED ABOVE. Update period of diversion element in database.

ACRES LOT BLK QTR SEC TWP RGE COUNTY 001 40.00 SWNW 26 10N 13E GRANITE 002 40.00 SWSW 26 10N 13E GRANITE 003 40.00 SESW 26 10N 13E GRANITE 004 40.00 NESW 26 10N 13E GRANITE 005 40.00 NWSW 26 10N 13E GRANITE 006 40.00 NENE 27 10N 13E GRANITE 007 40.00 SENE 27 10N 13E GRANITE 008 16.00 NWNE 27 10N 13E GRANITE 009 16.00 SWNE 27 10N 13E GRANITE. Update point of diversion element in database.

CLAIM RECEIVED BY MAIL, POSTMARKED 07/01/96: Update historic tab and ensure proper late claim remark added.

SPRING
BUCKET
WASTE AND SEEPAGE
Update the above in point of diversion tab in database

Removing Unnecessary Information Remarks:

At the time of verification, information remarks were used for many different purposes. As a result, information remarks may not always be relevant to the adjudication process. If remarks are encountered that are irrelevant to the elements of a water right, they should be removed. This only applies to information remarks and not issue remarks. Only remove issue remarks as a part of a reexamination review such as the decree exceeded review where prior incorrect decree exceeded issue remarks exist on a claim. Some examples of irrelevant issue remarks are identified below:

“WATER RIGHT NO. ASSIGNED TO MISSOULA ON 07/16/96”.

“WATER RIGHT LOCATED AT HEAD SHED”.

“FILE IS IN HOLDING TANK IN TRUDIES OFFICE 12/05/00.”

“PRELIMINARY DECREE.”

Adding Missing Remarks:

Occasionally, you will encounter claims in the remarks index that contain claim number references. Check that all claim numbers referenced in the remark also contain the same remark.

For example, the following remark shows up in all the claims referenced except for claim 43D 29361-00:

O60 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 43D 23158-00, 43D 23159-00, 43D 29361-00, 43D 29362-00, 43D 29363-00, 43D 29364-00, 43D 29365-00, 43D 29366-00.

In this example, it is appropriate to add the remark to claim 43D 29361-00, at the request and permission of the court. This procedure should be followed for all remarks with claim lists.

Converting Issue Remarks to Information:

During the reexamination of basin 76GJ, multiple issue remarks were identified that state the following:

THIS USE MAY CONSUME SOME WATER, BUT UNTIL THAT AMOUNT IS QUANTIFIED, IT IS PRESUMED THAT THE USE IS NON-CONSUMPTIVE. *(now a V20 information remark)*

Upon seeing these remarks, the court requested that the DNRC convert these to information remarks as they did not define the text of these remarks to be factual or legal issues. Moving forward in basin reexamination, **we will be converting issue remarks with text that is identical or similar in meaning to the non-consumptive remark above to information remarks.** Check with your supervisor if you come across a variation of the remark above that may contain factual or legal issues.

In General, the DNRC will not analyze issue remarks for conversion to information, except for the remark listed above. We will only convert additional issues to information upon request of the court.

Court Ordered Issue Remark Removal and Wording Removal:

The Montana Water Court issued an order the summer of 2017 to remove the wording in any issue remark that contained the wording in (1) below and keep the remaining language as decreed. The language below occurs in a variety of issues and should be word searched in the remark index used for reexamination. In addition, The Court ordered that (2) and (3) below should be removed in its entirety. There are instances of earlier remarks that are very similar to the remarks below and should be reviewed by a supervisor before they are removed.

- (1) TO ASSURE THE ORDERLY ADMINISTRATION OF WATER RIGHTS, THE WATER COURTS WILL SET A HEARING TO DETERMINE THESE ISSUES IF NO OBJECTIONS ARE MADE.
- (2) THE WATER COURT WILL HOLD A HEARING ON THIS CLAIM TO DETERMINE ITS VALIDITY SUBJECT TO SECTION 85-2-248, MCA, AND MATTER OF THE ADJUDICATION OF EXISTING RIGHTS IN BASIN 41I, 2002 MT 216,311 MONT. 327, 55 P.3D 396. A HEARING MAY ALSO BE HELD ON THIS CLAIM IF A VALID OBJECTION IS FILED UNDER SECTION 85-2-233, MCA, OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER RULE 8, W.R.ADJ.R.
- (3) BECAUSE THIS CLAIM DID NOT RECEIVE A FACTUAL OR LEGAL ISSUE REMARK DURING THE CLAIMS EXAMINATION PROCESS, THE WATER COURT WILL NOT HOLD A HEARING ON THIS CLAIM UNDER MATTER OF THE ADJUDICATION OF EXISTING RIGHTS IN BASIN 41I, 2002 MT 216, 311 MONT. 327, 55 P.3D 396 UNLESS A VALID OBJECTION IS FILED UNDER SECTION 85-2- 233, MCA, OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER RULE 8,W.R.ADJ.R.

Exempt Claims HB110 & SB355

Overview and Process:

In adjudication, exempt claims are water rights that have been exempted by the state legislature from being filed with the DNRC. However, the state legislature passed Senate Bill 355 in 2013, and House Bill 110 in 2017 to provide a process for Montana land owners to file exempt claims with the DNRC. Exempt claims will be examined by the DNRC according to the rules and guidelines specified in the claims examination manual as well as specific instructions for processing Senate Bill 355 exempt claims as specified below.

Both HB110 and SB355 exempt claims will be included in a separate **Supplemental Preliminary Decree** if they are not included in decrees issued under the reexamination order. Examination will occur in order of upcoming decrees and then evaluated after the exempt claim filing deadline has passed.

No reexamination versions will be created for these exempt claims because they were not included in a previous decree. They will appear in the decree as an original right.

The **decree tab** should not be updated until the examination is complete. In addition, the missed in decree box should not be checked. These water rights were not in existence when the prior decree was issued.

In **reexamination basins**, exempt claims can be processed as soon as they are received. Exempt claims **outside of reexamination basins** will be processed as time allows.

When processing the Statement of Claim from these exempt claims, **do not write or mark the original form** outside of the "For Department Use Only Box". When changes are made in the database use "Modified by Rule" and not "Clarified". All changes allowed are authorized by Supreme Court rules for examination. If additional materials are added by the department during initial entry, they should be stamped DNRC supplemental document. If corrections are made before the examination process during initial entry a brief memo should be added to the file summarizing the changes and why they occurred. It is preferred that changes and corrections be done and documented during the examination process.

The **operating authority date** for HB110 claims is **May 7, 2017**, and **October 1, 2013** for SB355 claims. It is extremely important that these dates be entered consistently for tracking purposes. Many database queries are designed to run on appropriate operating authority dates. These dates are critical in determining how many filings we are receiving.

HB 110 Key Points

- (1) If an exempt filing for ground water is filed between 1962 and 1973 and no GW form was filed at the Court House, the priority date will be the date it is received at the DNRC office.

Add the following information remarks:

P354 THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED PURSUANT TO SECTION 85-2-306(4) MCA.

P353 THE PRIORITY DATE OF THIS WATER RIGHT HAS BEEN CHANGED TO THE FILING DATE OF THE STATEMENT OF CLAIM. THE PRIORITY DATE MAY BE CONTESTED BY PROPER OBJECTION

- (2) Livestock direct form source claims will be accepted with no claimed flow rate or volume as long as the number of animal units are identified. Standards zeros these fields out when applied. Various consultants are now filing these without a flow or volume.
- (3) Multiple use will only be applied to HB110 claims during examination when the means of diversion are the same. A recent situation came up where a livestock direct claim was filed on the same historical documentation as an existing irrigation claim with a ditch as a diversion. Since exempt claims from surface water can't use the ditch, the new filing is not multiple use with the existing irrigation claim. The claims examination manual does not list means of diversion as criteria for multiple use, but it does talk about intent of the claim. Since the period of use is usually different, the means of diversion are different, and the original claimants are usually different it should not be considered as multiple use.
- (4) Reminder that exempt claims that claim a historical type of right has decreed are not charged a filing fee.
- (5) Individual claims for lawn and garden from a groundwater source are considered exempt. These are usually less than 5 acres and are considered domestic use not irrigation use. In most cases individual household use is included with lawn and garden use.
- (6) If a claim does not meet the definition of exempt right it should not be accepted. These types of claims should be returned if received by mail or not accepted in person at the Regional Office.

- (7) The E3 issue remark is added to all HB 110 filings. The E3 reads:

E3 THIS EXEMPT CLAIM WAS FILED ON 08/02/2017. THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43D DECREE ISSUED 05/09/2016.

- (8) When entering exempt claims into the database, please do not enter a flow rate next to the period of diversion field. The flow rate is only needed in the flow rate field one time for initial entry. This tab for flow rate was developed for compact rights and available for complex post decree cases. Please see the graphic below.

Montana DNRC Water Rights Database

Action Edit Query Inquiry Create and Maintain Code Table Updates Reports Record Help Window

Create and Maintain Water Right Details - DNRPRD - CN0418 - 09/19/2017 10:45 AM

Water Right			Version			Priority	
Number	Ext	Basin	Type	#	Authority	Type	Date & Time
30069959		76LJ	STATEMENT OF CLAIM	1	10/01/2013	ORIGINAL RIGHT	06/20/2014 00:00

Flow Rate			Volume			Acres		
Max	Unit	Origin	Max	Origin	Max	Origin	Origin	Enforceable Date
26	GPM	CLAIMED	1.63	CLAIMED	.25	CLAIMED		06/20/2014 00:00

Description

Purpose/... POD Reservoir Remarks Historica... Objections Decrees Cases Applicati... Related ... Measuri... Compact Subor

POD

POD ID	POD Origin	Unnamed Tributary	Source/Fork	Major Type
1	RULE, MODIFIED BY...	NO	GROUNDWATER	GROUND WATER

Sort POD

Period Of Diversion			Flow Rate		Enforcements		
Begin Date	End Date	Element Origin	Rate	Unit	Area ID	Number	Comment
01/01	12/31	CLAIMED	26	GPM			

Enter value for POD Origin

Record: 1/1

<OSC>

SB 355 process effective 10/1/2013 to 5/7/2017

All original claim file documents should remain in the claim file at all times. It is important to unite the original court order granting active status, and the filed stamped copy of the petition, with the claim file as fast as possible. Scanning of claim file contents should be accomplished at both the DNRC and Court's convenience and should not occur until the Court's Order Granting Petition is in the claim file

At this time, Section 85-2-222(5), MCA specifically bars the DNRC from resolving issue remarks on exempt claims filed through this process. It has been determined that generating a "Review Abstract" in the database initiates the statutory bar against issue remark resolution.

Consult with your regional manager to determine proper claim file handling procedures for claims requiring expedited public notice per Section 85-2-233(6), MCA.

SB-355 Key Points

1. If an exempt filing for ground water is filed between 1962 and 1973 and no GW form was filed at the Court House, the priority date will be the date it is received at the DNRC office. Add the following information remarks.:

P354 THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED PURSUANT TO SECTION 85-2-306(4) MCA.

P353 THE PRIORITY DATE OF THIS WATER RIGHT HAS BEEN CHANGED TO THE FILING DATE OF THE STATEMENT OF CLAIM. THE PRIORITY DATE MAY BE CONTESTED BY PROPER OBJECTION.

2. If an issue remark is added and a review abstract printed, **the issue remark can't be resolved by DNRC** Staff until ordered by Court.
3. If a claim does not meet the definition of exempt right it should not be accepted. These types of claims should be returned if received by mail or not accepted in person at the Regional Office.
4. Exempt filings within reexamination basins must have the petition sent to the Court but examination can begin immediately. The E2 issue remark is added to all SB355 filings.

E2 THIS EXEMPT CLAIM WAS FILED ON 01/02/2016. THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41B DECREE ISSUED 05/09/1993.

Identifying Exempt Claims

Definition of an Exempt Claim under MCA Statute:

85-2-222. Exemptions -- petition for determination. (1) Claims for existing rights for livestock and individual uses as opposed to municipal domestic uses based upon instream flow or ground water sources and claims for rights in the Powder River basin included in a declaration filed pursuant to the order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, or under sections 3 and 4 of Chapter 485, Laws of 1975, are exempt from the filing requirements of [85-2-221\(1\)](#).

Municipal: Any use associated with a municipal water system which may include individual right for a cemetery, parks, golf course, etc. (Pg. 260, *DNRC Water Right Claim Examination Manual*). According to the Meriam-Webster Dictionary, a *Municipality* is a primarily urban

political unit having corporate status and usually powers of self-government. Therefore, a ranch with more than one dwelling would qualify as an exempt use because the use of water is individual as opposed to municipal (public entity).

FAQ's on What Constitutes an Exempt Use:

Is groundwater use for single-domestic use for 50 GPM exempt?

Answer: yes, the statute does not specify or limit flow rates.

Is a Ranch with multiple dwellings exempt?

Answer: yes, this would still be considered a single as opposed to municipal domestic use

How do we define municipal domestic uses?

Answer: domestic use of water including lawn and garden irrigation distributed by a public/political entity (towns, counties, etc.)

Do multiple dwellings on the same well, such as a ranch with more than one dwelling, qualify as municipal domestic?

Answer: no, the use of water is individual as opposed to municipal (public entity).

Is domestic use for a mobile home park exempt?

Answer: no, the manual defines mobile home park use as *Commercial* which is not an *individual* use.

How do we find groundwater filings that aren't exempt?

Answer: filed by a municipality or for a commercial use. Flow rates and volumes may be higher but may not necessarily be clear indicators of non-exempt filings.

If a ranch has two sources of water for domestic purposes, can one exempt form be filed?

Answer: no, each source of water should have an individual filing.

Are groundwater pits for stock or domestic use exempt?

Answer: yes, Exempt statute provides for domestic and stock use for groundwater and does not exclude pits as a means of diversion. Groundwater filing provisions apply for priority dates between 1962 and 1973.

Summary Report Review

Overview:

The department will perform a limited summary review process that ensures the reexamination action items have been completed. Many of the reexamination action items are a type of summary review and therefore not necessary to replicate. As a part of this process, the reexamination basin supervisor will request certain indexes for review. The indexes below are required but others may be requested if unique problems arise. Check with basin supervisor when unique issues arise in a basin.

1. Point of diversion properly assigned to ditch name
 - a. Check to ensure that all diversions from the same named ditch have the same legal descriptions; correct any that do not comply
 - b. Check to ensure that a diversion for the same named ditch have consistent means of diversion
 - c. Check that the POD in the POD tab matches the ditch POD in the list of values
2. Checking commissioner remarks to ensure they are related to water distribution
– See remarks section in this guidebook
3. Check to ensure non-consumptive issue remarks were converted to information remarks
– See remarks section of this guidebook for more information
4. Computer generated information remarks index (CGI remarks)
 - a. Database administrator runs list of remarks that may have been incorrectly handled by the database and for claims missing CGI remarks
 - b. Department checks the list for consistency
 - c. G35 remark is placed appropriately on split and implied claims
5. Review that all secondary PODs have conveyance remarks attached to it
6. Review draft summary for errors (the items below are examples)
 - a. Check that all missing elements are populated with remarks or numbers except for pothole lakes and some springs previously decreed with blank elements.
 - b. Check for duplicate information remarks
 - c. Check that copied and pasted remarks were fully copied
 - d. Check remarks for spelling, correct date format and correct water right number format
 - e. R100 remarks: check to be sure none of the period of diversion process was not applied if the R100 remark is present on claims.
 - f. Source name, means of diversion and ditch name all make sense
 - g. Reservoirs have proper remarks and asterisks when period of diversion has been modified by the DNRC
 - h. Other errors specific to the basin

Other lists and indexes may be performed in each basin to address specific and unique problems. Check with basin supervisor when unique issues arise in a basin. The basin supervisor may develop an index to address unique issues.