

Montana Water Court  
PO Box 1389  
Bozeman, MT 59771-1389  
1-800-624-3270  
(406) 586-4364  
watercourt@mt.gov

**MONTANA WATER COURT  
UPPER MISSOURI DIVISION  
RUBY RIVER  
BASIN 41C  
PRELIMINARY DECREE**

\*\*\*\*\*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR THE  
PRELIMINARY DECREE OF THE RUBY RIVER BASIN**

The Water Court issued the Temporary Preliminary Decree for the Ruby River - Basin 41C on November 14, 1990. Objections filed to claims in the Temporary Preliminary Decree have been addressed and resolved.

Since issuance of the Temporary Preliminary Decree in 1990, there have been statewide changes to several classes or elements of water rights. These changes include changes regarding examination and decrees of claims for fish and wildlife, wildlife, and recreation purposes. There have also been changes to claim elements such as standardization of source names and point of diversion legal descriptions. In some instances, additional information has been added to the abstracts of claims in this Preliminary Decree. This additional information includes ditch names, reservoir data, and period of diversion. These changes have been authorized by Montana Water Court Orders. *See* Amended Order on Period of Diversion - Statewide entered December 11, 2008; Second Amended Order on Period of Diversion - Statewide entered November 10, 2014; Order Addressing Reexamination entered December 14, 2012; and Supplemental Order Regarding Fish and Wildlife, Wildlife, and Recreation Claims - Statewide 2013 entered April 17, 2013.

These Findings of Fact and Conclusions of Law are issued for inclusion in this Preliminary Decree for the Ruby River - Basin 41C as authorized by §§ 3-7-224(2) and

85-2-231, MCA. These Findings of Fact and Conclusions of Law supersede the Findings of Fact and Conclusions of Law for the Temporary Preliminary Decree.

## **FINDINGS OF FACT**

### **DESCRIPTION OF BASIN**

1. Basin 41C encompasses the Ruby River and its tributaries as well as groundwater located within Basin 41C. The downstream end of the basin is the Ruby River confluence with the Beaverhead River south of Twin Bridges, Montana. There are no basins hydrologically upstream of Basin 41C. The boundaries of Basin 41C generally are depicted on the attached map.

### **DECREE ABSTRACTS AND INDEX**

2. In addition to these Findings and Conclusions, this Decree consists of abstracts for each individual water right claim decreed in this basin. Accompanying the Decree are six Indexes designed to facilitate research on water rights included in the Decree. The six Indexes include:

- Water Right Claim Identification Number Index
- Owner Name Index
- Priority Date Index
- Point of Diversion Index
- Source Name Index
- Issue Remark Index

3. Copies of the Decree and six Indexes are located at the Department of Natural Resources and Conservation (DNRC) Bozeman Regional Office, the DNRC Water Rights Adjudication Office in Helena, and the Montana Water Court in Bozeman. This information is also available on the DNRC's Water Rights Adjudication webpage.

### **UNRESOLVED FACTUAL AND LEGAL ISSUES**

4. The objection period allows interested parties to raise issues regarding their own water rights or other water rights in this Decree. Issues may also be raised by the Water Court on its own motion. See Rule 8, W.R.Adj.R.

5. Many unresolved factual and legal issues have been noted by issue remarks on the individual claim abstracts. Some issue remarks provide notice of changes made by

DNRC as directed by the Water Court in its Order Addressing Reexamination issued December 14, 2012, as subsequently amended. Issue remarks also provide notice if it is unclear whether ownership should be updated, or notice of some issues that may not be pursued unless an objection is filed. The Issue Remark Index combines the issue remarks into a list arranged numerically by water right claim number. Searching the Issue Remark Index by water right claim number will identify issue remarks on individual claim abstracts. Objections may be filed to claims with issue remarks. Issue remarks not resolved through the objection process will be resolved as directed by § 85-2-248, MCA, or removed as having served their notice purpose.

6. Water users within this Basin and other interested persons will be mailed a Notice of Entry of Preliminary Decree and Notice of Availability contemporaneously with the filing of these Findings and Conclusions. The Notice of Availability explains the objection process and sets a deadline for filing objections with the Water Court.

7. Claims for water rights reserved under the laws of the United States of America are included in the Montana general adjudication of water rights. The State of Montana, through the Reserved Water Rights Compact Commission, engaged in the negotiation of reserved water right compacts with Indian Tribes and the federal government. Sections 85-2-701 through 85-2-708, MCA. There are claimed tribal reserved rights and federal reserved rights in this basin that are not reflected in this Preliminary Decree. Resolution of any claims in this basin made by the Confederated Salish and Kootenai Tribes of the Flathead Reservation (“Tribes”) or the United States of America on behalf of the Tribes currently is stayed and such claims are not addressed in this Preliminary Decree.

### **CONCLUSIONS OF LAW**

1. This is a general adjudication of existing water rights. An existing water right is a right to the use of water which is protected under the law as it existed prior to July 1, 1973. § 85-2-102(13), MCA.

2. Certain claims were exempt from the statement of claim filing process but could be voluntarily filed. § 85-2-222, MCA (1979). These exempt rights were for stock or domestic uses from instream or groundwater sources. In 2013, the Montana

Legislature created a process to file claims for existing water rights that were exempt from filing in the statewide water right adjudication. § 85-2-222(2), MCA.

3. The Montana Water Court has jurisdiction to enter a Preliminary Decree for the Ruby River - Basin 41C pursuant to Title 85, Chapter 2, Montana Code Annotated. *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545, 103 S.Ct. 3201, 77 L.Ed.2d 837 (1983); *State ex rel. Greely v. Conf. Salish & Kootenai Tribes*, 219 Mont. 76, 712 P.2d 754 (1985).

4. These Findings of Fact, Conclusions of Law, and abstracts define existing water rights under Montana law in Basin 41C and comprise this Preliminary Decree in accordance with § 85-2-231, MCA, and Rule 4, W.R.Adj.R.

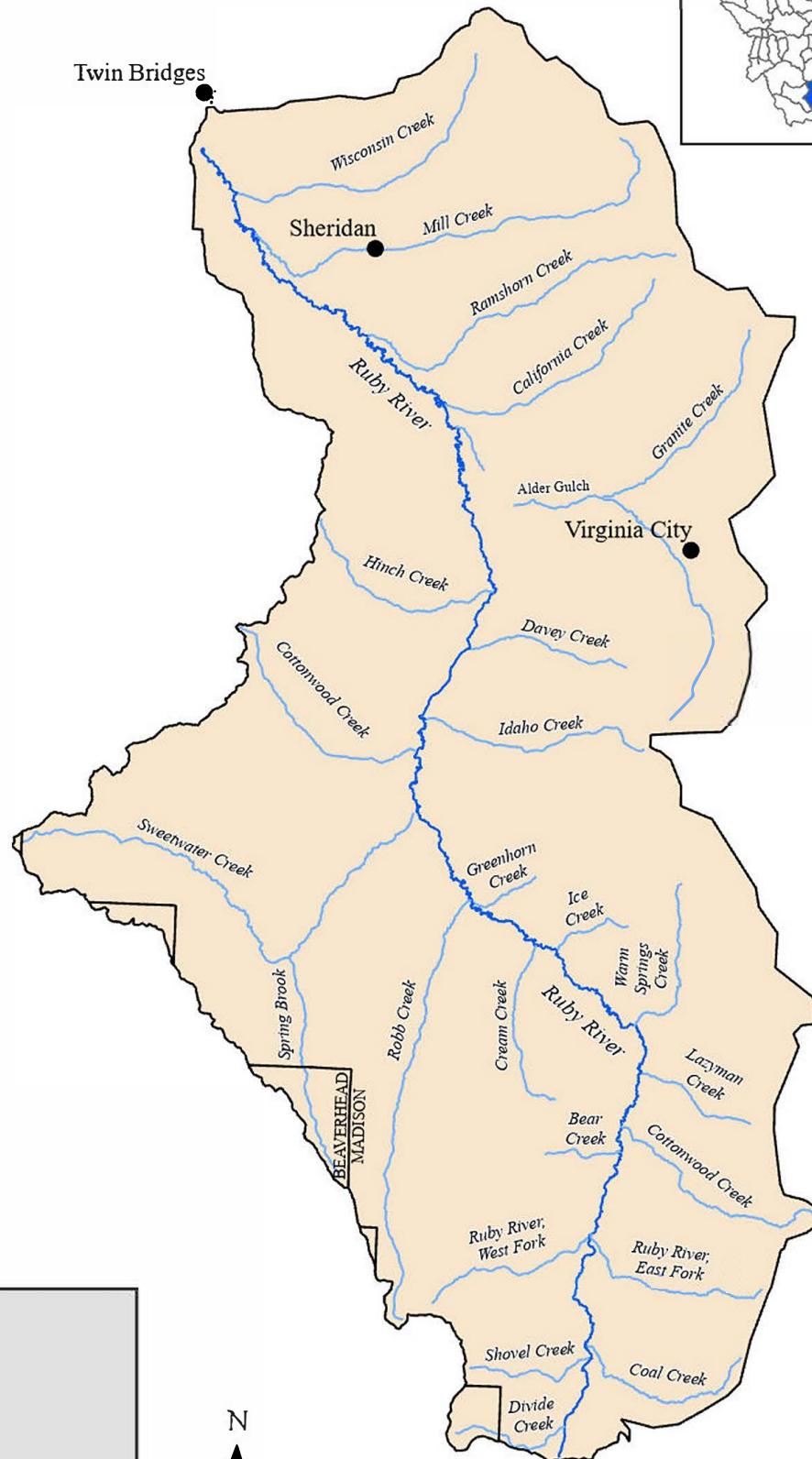
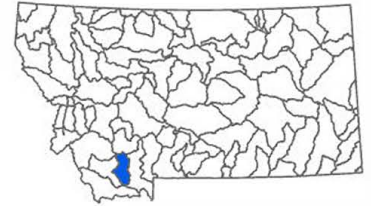
**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service Via Electronic Mail:**

Montana DNRC, Water Resources  
Todd Netto, Adjudication, Enforcement and Distribution Bureau Chief  
Shannon Buswell, Water Rights Data Quality & Standards Program Supervisor  
TNetto@mt.gov  
Shannon.Buswell@mt.gov

Bozeman Regional Office, DNRC  
kstrasheim@mt.gov  
jackson.alvey@mt.gov  
james.fleming@mt.gov

# BASIN 41C - RUBY RIVER



## Legend

- Towns
- Ruby River
- Streams
- Basin 41C Boundary



0 5 10 Miles