WATER RIGHTS in MONTANA

2026

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Acknowledgment

Water Rights in Montana is a compilation of two previous citizen guides discussing Montana water rights—the Montana Department of Natural Resources and Conservation's *Water Rights in Montana* and the Environmental Quality Council's and Montana University System Water Center's *Wading into Montana Water Rights*. We would like to thank the authors of the latter guide, Michelle Bryan and the late Professor Gerald L. Westesen, for providing a foundation for this publication.

Disclaimer

Water Rights in Montana should not be used as a legal reference. When in doubt, always refer to the Montana Code Annotated or the Administrative Rules of Montana promulgated by the Department of Natural Resources and Conservation. When making any legal judgments on the adequacy or completeness of procedure, always consult your own legal counsel.

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Background of Water Rights in Montana

Water powers our economy, ensures human health, and provides recreational activities. Few elements reach so deeply into the human existence as water. But who can use water? How much can they use? At what time? What uses are legal? These questions lead into the realm of water rights—a blend of laws, regulations, and customs that govern the distribution of Montana's water among its many users.

Montana waters, in all their varied forms and locations, belong to the state. This ownership, however, exists on behalf of all state citizens and is explained in Article IX, section 3(3) of the Montana Constitution:

> [a]ll surface, underground, flood, and atmospheric waters within the boundaries of the state are the ***property of the state for the use of its people*** . . . (emphasis added).

Because Montana waters belong to the state, water rights holders ***do not own*** the water itself. Instead, they possess a ***right to use*** the water, which is referred to as a water right or an appropriation right under Montana law. A water right is defined as "the right to appropriate water pursuant to an existing right, a permit, a certificate of water right, a state water reservation, or a compact."[1]

Water rights in Montana are guided by the prior appropriation doctrine, that is, first in time is first in right. A person's right to use a specific quantity of water depends on when the use of water began. The first person to use water from a source established the first right; the second person could establish a right to the leftover water, and so on. During dry years, the person with the first right has the first chance to use the available water to fulfill that right. The holder of the second right has the next chance.

The birth of the prior appropriation system of distributing water has its roots in the California gold rush. It was customary in the mining camps that the first person to stake a claim and subsequently divert a stream to operate the claim had the first right to that water.

[1] § 85-2-102, MCA.

In Montana, many early users sought legal protections for their rights by filing and recording a water right in the office of the clerk and recorder, which is known as a filed appropriation right.[2] Others simply put the water to use, which is known as a use right.[3] In some cases, district courts issued decrees on who was entitled to what amount of water in times of scarcity, resulting in what is known as a decreed right.[4]

Water users are limited to the amount of water that can be beneficially used. In Montana, the term “beneficial use” means, generally, a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses.[5] Other beneficial uses include instream flow to benefit fish,

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[2] “Filed Appropriation Right” means a water right which has been filed and recorded in the office of the county clerk and recorder as provided by statute prior to July 1, 1973. Montana Water Right Claim Examination Rule (2)(a)(25).

[3] “Use Right” means a claimed existing water right perfected by appropriating and putting water to beneficial use without written notice, filing, or decree. Montana Water Right Claim Examination Rule (2)(a)(71).

[4] “Decreed Right” means a claimed water right determined in a judicial decree prior to the commencement of this adjudication or after commencement of this adjudication as provided in § 85-2-216, MCA. Montana Water Right Claim Examination Rule (2)(a)(18).

[5] "Beneficial use", unless otherwise provided, means:
(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;
(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;
(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;
(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

aquifer recharge,[6] mitigation,[7] and an aquifer storage and recovery project.[8]

The water rights process—with all its discrepancies and conflicts—was a major topic at the 1972 Montana Constitutional Convention. Policymakers recognized the overwhelming need for improved recordkeeping and regulation. First, the convention incorporated all past water rights into the new Montana Constitution:

> All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.[9]

To strengthen state supervision, the convention next charged the Montana Legislature with providing for "the administration, control, and regulation of water rights and … a system of centralized records."[10]

The Legislature responded by enacting Title 85, chapter 2, MCA.

(e) a use of water through a temporary lease of an appropriation right approved by the department pursuant to 85-2-428;
(f) a use of water for aquifer recharge or mitigation; or
(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368. § 85-2-102, MCA.

[6] "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water. § 85-2-102, MCA.

[7] "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water. § 85-2-102, MCA.

[8] "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use. § 85-2-102, MCA.

[9] Article IX, § 3(1), Mont. Const.

[10] Article IX, § 3(4), Mont. Const.

Montana Water Use Act

The provisions of Title 85, chapter 2, MCA, commonly referred to as the Montana Water Use Act, were the most comprehensive update to Montana's water rights laws in the state's history. The act (effective July 1, 1973) changed water law significantly in a number of ways:

1. All water rights existing prior to July 1, 1973, are to be finalized through a statewide adjudication process in state courts.

2. A permit[11] system was established for obtaining water rights for new or additional water developments on or after July 1, 1973.

3. An authorization system was established for changing water rights.

4. A centralized water rights records system was established. Prior to 1973, water rights were recorded, but not consistently, in county courthouses throughout the state.

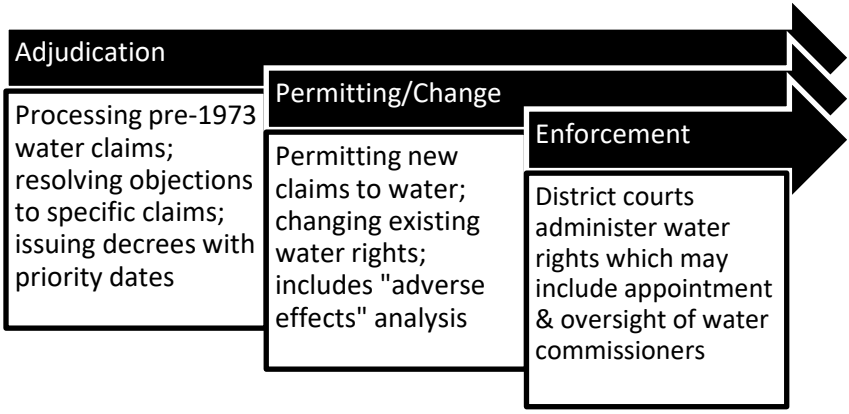
5. A system was provided to reserve water for future consumptive uses[12] and to maintain minimum instream flows for water quality and fish and wildlife.

[11] "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314. § 85-2-102, MCA.

[12] "Consumptive use" means the annual volume of water used for a beneficial purpose, such as water transpired by growing vegetation, evaporated from soils or water surfaces, or incorporated into products that does not return to ground or surface water. ARM 36.12.101(16).

Legal Processes for Water Rights

The Water Use Act and other legislation helped create the three major processes related to water rights:



Other government entities have certain authorities related to water rights, which are listed in Appendix A.

This handbook focuses on the three major entities involved:

Entity	Role
Water Court	Adjudicates all pre-1973 water claims Assists district courts Conducts judicial review of DNRC final decisions on permits and changes
Department of Natural Resources and Conservation	Examined all pre-1973 claims and continues to provide support to the Water Court Permits new uses of water Processes changes to existing water rights
District courts	Enforce water rights through court proceedings Conduct judicial review of final decisions on permits and changes

Adjudication of Existing (pre-1973) Water Rights

A Short History of Adjudication

The Montana Supreme Court formally recognized the prior appropriation doctrine in 1921. The 1939 Montana Legislature saw the need for an organized legal system. But the first real effort to organize, adjudicate, and administer water rights wouldn't come until the state's constitution was rewritten more than 30 years later.

The 1973 constitution recognized all existing beneficial uses of water and directed the state to establish an organized legal system for their administration. Efforts to adjudicate existing water rights would follow first in the Powder River basin.

Initiated in 1973, the burden of collecting and investigating claims[13] fell to the Department of Natural Resources and Conservation (DNRC). Investigations often involved onsite visits, aerial photo interpretations, and interviews. In 1979, after six years of intensive field work, completion of adjudication for the first basin[14] appeared distant. Decidedly, to adjudicate its remaining 84 basins in a timely manner, Montana needed a more efficient system.

Consequently, the 1979 Legislature passed Senate Bill 76 (SB 76), amending the adjudication procedures originally established by the Montana Water Use Act. Rather than adjudicating existing water rights one basin at a time, the Legislature opted for a comprehensive general adjudication of the entire state. Existing water rights are those that originated legally before July 1, 1973, and are often referred to as pre-1973 water rights.

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[13] *See* § 85-2-224, MCA.

[14] "Basin Code" means the respective number/letter combination used to identify each of the 85 basins in Montana (e.g. 43QJ) according to the Atlas of Water Resources of Montana prepared by the Montana water resources board. Montana Water Right Claim Examination Rule 2(a)(8).

SB 76 established two innovative entities for western water law. The Montana Water Court is a specialized court that has sole jurisdiction over the adjudication of pre-1973 water right claims. The other entity is the Montana Reserved Water Rights Compact Commission. The compact commission was responsible for negotiating on behalf of the state with the federal and tribal entities to quantify the federal and tribal reserved water rights, which are also known as existing rights.

When SB 76 was passed, many people thought the process would be finished in less than 15 years. For a variety of reasons, the adjudication is still not complete.

Who Administers the Adjudication Process?

MONTANA WATER COURT

The Water Court is structured with a chief judge, associate judge, and four district court judges, although rarely does a district court judge get assigned a Water Court case.

The Montana Supreme Court monitors all water judges,[15] water masters,[16] and Water Court personnel. The chief justice of the Montana Supreme Court appoints a chief water judge to supervise all division water judges and guide the statewide adjudication. The chief justice may also appoint an associate water judge.[17] The Legislature confirms the appointments of the chief water judge and associate water judge at four-year intervals.

Each water division has a water judge. The water judge must be a sitting or retired district court judge from a judicial district wholly or partly within a water division.[18] Except in limited situations, water

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[15] "Water judge" means a judge as provided for in Title 3, chapter 7. § 85-2-102.

[16] "Water master" means a master as provided for in Title 3, chapter 7. § 85-2-102. *See also* Montana Water Right Claim Examination Rule 2(a)(75) (“Water Master” means a person appointed by a water judge to assist in the adjudication of existing water rights as provided for in Title 3, Chapter 7, Part 3, MCA, and Rule 53 of the Montana Rules of Civil Procedure.)

[17] § 3-7-221, MCA.

[18] § 3-7-201, MCA.

judges cannot preside over the determination of water rights occurring beyond the boundaries of their divisions.[19] It is at the chief water judge's discretion to assign cases to water masters, to division water judges, and to the associate water judge.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

The Montana Department of Natural Resources and Conservation (DNRC) and its regional offices assist the Water Court throughout the adjudication process by:

- providing information and technical support to the water judges;
- providing information and technical support to persons filing claims; and
- upon the request of a water judge, conducting field investigations of claims.[20]

How Does the Adjudication Process Work?

In 1979, the Montana Supreme Court issued a Water Rights Order requiring all persons claiming existing water rights to file their claims with the DNRC by January 1, 1982. Failure to file by the deadline would result in presumption of abandonment of the right.[21]

Later, the court extended the filing deadline to April 30, 1982. The DNRC received more than 200,000 claims. The 1993 Legislature allowed the filing of late claims. Around 4,500 late claims were filed before the 1996 closing date. Late claims are subordinate to other filed claims.

[19] § 3-7-501, MCA.
[20] § 85-2-243(1), MCA.
[21] § 85-2-212, MCA.

Criteria. Each statement of claim had to include:

- the name and address of the claimant;
- the name of the watercourse or water source from which a right was claimed;
- the quantities and times of claimed water use;
- a legal description of the point of diversion[22] and place of claimed water use;
- the purpose of use and the number of acres irrigated, if applicable;
- an approximate starting date of beneficial use;
- a sworn statement that the claim is true and correct; and
- supporting evidence, such as maps, plats, aerial photos, or decrees.[23]

Exempt Water Rights.[24] Existing water rights for livestock and domestic uses from instream flows or ground water[25] sources were exempt from the requirement to file a claim in the adjudication; however, these could be voluntarily filed.

The 2013 Legislature opened a filing period for exempt rights. A person claiming an exempt right was required to file a statement of claim with DNRC by June 30, 2019. Around 27,000 exempt claims were filed before that closing date. Failure to file a claim for an exempt right subordinated that right to all other claimed water rights.[26]

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[22] "Point of Diversion" (POD) means the location or locations where water is diverted from the source. For instream or inlake appropriations, the point of diversion is the portion of the source in which the instream or inlake use occurs. Montana Water Right Claim Examination Rule 2(a)(53).

[23] § 85-2-224, MCA.

[24] "Exempt Water Right" means an existing water right for which a statement of claim did not have to be filed pursuant to § 85-2-222, MCA. Montana Water Right Claim Examination Rule 2(a)(22).

[25] "Ground water" means any water that is beneath the ground surface. § 85-2-102, MCA.

[26] § 85-2-222, MCA.

Decrees

A decree is the final order of the Water Court for a basin adjudication. Decrees form the basis for future administration of water rights. To reach completion, each water right claim in a basin progresses through several stages:



Each stage is described in more detail in the following pages.

DNRC Examination

Before the Water Court evaluates a basin, DNRC staff must examine each claim to determine if it is complete, accurate, and reasonable. If an examination uncovered excessive claims or other discrepancies or mistakes, the DNRC contacted the claimant to resolve any errors. If the DNRC was not able to come to an agreement with a claimant on a discrepancy, an issue remark[27] was placed on the claim. The DNRC completed this process in June 2025. All issue remarks must be finally resolved before a final decree can be issued. After the examination of all claims in a basin, the DNRC issued a summary report to the water judge who uses the information to prepare the basin decree.

[27] "Remarks" means statements added to the decree abstract by the department or the water court to limit or define a water right, to explain unique aspects of the water right, and to identify potential factual and legal issues. Remarks that limit, define, or explain unique aspects of a claim are "clarifying" or "information" remarks. Remarks that identify potential factual and legal issues are "issue" remarks. Montana Water Right Claim Examination Rule 2(a)(57).

Preliminary Decree

After the DNRC completes its examination, it prepares a summary report of all claims in the basin. The Water Court then issues a preliminary decree based on:

- statements of claim; and
- if applicable, reserved water rights compacts.[28]

Once a compact concludes, the water judge incorporates the compact into a separate preliminary decree.[29]

Temporary Preliminary Decree

When reserved water rights[30] negotiations were being conducted, the Water Court issued a number of temporary preliminary decrees that included all state-based claimed rights in a basin other than reserved rights. All temporary preliminary decrees have now been superseded with preliminary decrees based on more rigorous claim examination procedures.[31]

Interlocutory Decree

The Water Court has also issued a number of interlocutory decrees that include rights exempt from filing that were filed after the date the Water Court issued a preliminary decree. Interlocutory decrees follow the same procedure as preliminary decrees.

Public Notice of the Decree

A notice of issuance of every interlocutory, temporary preliminary, or preliminary decree is given to all parties who may be affected by the decree, along with the deadline for objecting to the rights or compacts,

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[28] § 85-2-231(2), MCA.
[29] § 85-2-231, MCA.
[30] "Reserved Water Rights" means a right to use water that is expressly or impliedly reserved by treaty, an act of Congress, or an executive order. Montana Water Right Claim Examination Rule 2(a)(58).
[31] § 85-2-231(1) and (4), MCA.

or both, in the decree. This notification consists of direct mailings and publication in area newspapers.[32] Water users are encouraged to review the decree and file objections if they believe that their own claims or claims belonging to others in the basin are in error or contain incorrect information. Following the expiration of a decree's objection period, each party whose claim received an objection will be given notice of the filing of that objection. This notice triggers a 60-day counterobjection period. The counterobjection period is followed by a notice of intent to appear period in which parties may request the opportunity to participate in objection or issue remark resolution proceedings before the Water Court.[33]

Objections

It is very important that persons who are entitled to file an objection do so if they believe there is a problem with a claim. By failing to file an objection in an earlier decree phase, the person may be excluded from filing an objection at a later date.[34]

Hearings

Persons disagreeing with a decree have a period of 180 days to file an objection, which may be extended up to 360 days. Accordingly, the Water Court will hold a hearing to reevaluate all disputed areas. Any of the following parties may object:

- any person named in the decree;
- any interested person; or
- any other person who claims rights to the use of water from sources in other basins that are hydrologically connected to the sources within the decreed basin and who would be entitled to receive notice if the claim or claims were from sources within the decreed basin.[35]

[32] § 85-2-232(1) and (3), MCA.
[33] § 85-2-233, MCA.
[34] § 85-2-233(1)(d), MCA.
[35] § 85-2-233(1), MCA.

Resolving Issue Remarks

If an objection is not filed and a claim contains an issue remark, the Water Court must take certain steps to finally resolve the issue remark.

First, the Water Court will review each factual and legal issue remark to determine if information in the claim file or information obtained by the court provides a sufficient basis to resolve the issue remark or to determine if the issue remark can be corrected as a clerical error.

If an issue remark cannot be resolved by the court, the Water Court notifies the claimant in writing that each issue remark must be resolved through an informal process with the DNRC.

For any issue remark that is not resolved by this informal process with the DNRC, the Water Court will schedule proceedings to resolve the issue remark. The proceedings must include any parties appearing in opposition to the claim, including the attorney general if the attorney general has chosen to intervene.

If the issue remark involves nonperfection or abandonment and the claim does not receive an objection, the Water Court has authority to join the state of Montana through the attorney general as a necessary party to resolve the issue remark. If the issue remark does not involve nonperfection or abandonment, the attorney general may intervene as a matter of right.

Following any hearings or proceedings, the Water Court will issue its written decision. The Water Court's decision on each issue remark that it reviews pursuant to law must be documented in a water master's report or water judge's order. The Water Court must modify the abstract of each claim in accordance with its written decision and remove any applicable issue remarks.[36]

[36] § 85-2-248, MCA.

All issue remarks, as defined by law, must be finally resolved before a final decree may be issued whether or not there is an objection to the claim.[37]

Final Decree

After resolving all objections and issue remarks in a basin and upon completion of all reserved right compact proceedings, the water judge issues a final decree for the basin. Because the water judge may adjust existing rights[38] during the adjudication, the elements of a final decreed water right may differ from the original claim. For each water right, the decree includes:

- flow rate;[39]
- priority date;[40]
- beneficial use;
- period and place of use;
- source of water; and
- place and means of diversion.[41]

Based on the final decree, the DNRC issues a Certificate of Water Right to each decreed water rights holder and files a copy in its centralized records system.[42]

As of April 2026, the Water Court has issued 19 final decrees. An accurate accounting of water throughout the state's 85 hydrologic basins must necessarily include all permitted water rights (new

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[37] § 85-2-248, MCA.

[38] "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law. § 85-2-102, MCA.

[39] "Flow Rate" means the rate at which water has been diverted, impounded, or withdrawn from the source for beneficial use. Montana Water Right Claim Examination Rule 2(a)(27).

[40] "Priority Date" means the allocation date associated with a beneficial use of water which determines ranking among water rights, usually expressed by day, month, and year. Montana Water Right Claim Examination Rule 2(a)(55).

[41] § 85-2-234(6), MCA.

[42] § 85-2-236, MCA.

appropriations of water), changes to water rights, federal water rights, Indian reserved water rights, and exempt groundwater rights. These rights are described in the following pages.

Updates on the adjudication can be found at http://dnrc.mt.gov/Water-Resources/Water-Rights/Basin-Status.

Reserved Water Rights and Compacts

The federal reserved water rights doctrine is based on a series of rulings by the United States Supreme Court. This doctrine establishes that when the United States sets aside a federal reserve (for example, an Indian reservation or national forest), it also reserves the amount of water sufficient to fulfill the purposes of the reservation. The priority date for reserved water rights is typically the date that the reservation was established.

Montana is unique in having created a special commission to proactively negotiate with tribes and federal entities to settle all reserved water rights in the state. Other states have either undertaken piecemeal negotiations or have resolved reserved water rights claims through litigation.

In 1979, the Montana Legislature established the Reserved Water Rights Compact Commission (RWRCC) to negotiate settlements, or compacts, with Indian tribes and federal agencies that claimed reserved water rights within Montana.[43]

Because many reserved water rights have senior priority dates, the RWRCC negotiated for limits on those reserved rights to protect water rights arising under state law and to allocate water fairly. As a result of RWRCC's negotiations, the Montana Legislature approved 18 water right compacts between 1985 and 2015.

After state approval, each compact must also be approved by the tribal government, if applicable, and the federal government. See Appendix B for further information on individual compact status. The water rights quantified in a compact must then be decreed by the Montana Water

[43] § 2-15-212, MCA; Title 85, ch. 2, part 7, MCA.

Court as part of the statewide adjudication of water put to use before July 1, 1973.[44]

The DNRC now fulfills the state's commitments under these compacts since negotiations concluded and the RWRCC is inactive.

New (post-1973) Appropriations of Water

On or after July 1, 1973, any person planning a new or expanded appropriation of surface water[45] or ground water for a beneficial use of water must obtain a permit to appropriate[46] water or file for a water right through a permit exception. The water right permitting process is administered by the DNRC.

There are basins and subbasins in Montana that have been closed to new appropriations of surface water because they have been deemed to be over appropriated. See pages 52-57 for a list of current closures and further information regarding closed basins and subbasins.

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[44] § 85-2-234(7), MCA.

[45] "Surface water" means water occurring at or on the surface of the ground, including but not limited to any river, stream, creek, ravine, coulee, undeveloped spring, lake and other source of water. Montana Water Right Claim Examination Rule 2(a)(68).

[46] "Appropriate" or "appropriation" means:
(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;
(b) in the case of a public agency, to reserve water in accordance with 85-2-316;
(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;
(d) in the case of the United States department of agriculture, forest service:
(i) instream flows and in situ use of water created in 85-20-1401, Article V; or
(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;
(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;
(f) a use of water for aquifer recharge or mitigation; or
(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368. § 85-2-102(1), MCA.

The Permitting Process

A person must apply for and receive a permit to appropriate water *before* beginning to construct diversion works or diverting water from a surface water or ground water source. Those seeking a permit must plan ahead—the application process takes time to complete. The applicant for a permit must prove that the following criteria are met:

- there is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate;
- considering the physical availability of water and existing legal demands in the area of potential impact, water can reasonably be considered legally available;
- the water rights of a prior appropriator will not be adversely affected;
- the proposed means of diversion, construction, and operation are adequate;
- the proposed use of water is a beneficial use; and
- the applicant has a possessory interest in the proposed place of use.[47]

Exceptions to the Permitting Process

The Water Use Act provides several exceptions to the permitting process. For uses meeting the exception criteria, the statutory criteria for a new permit in section 85-2-311, MCA, do not need to be proven. Exceptions to the permitting process are set forth in section 85-2-306, MCA.

Surface Water

Small livestock pits or reservoirs located on nonperennial flowing streams qualify for a permit exception. If the pit or reservoir will hold less than 15 acre-feet of water with an annual appropriation of less than 30 acre-feet and will be located on a parcel of land 40 acres or

[47] § 85-2-311, MCA.

larger, construction may begin immediately. Within 60 days of completion, an Application for a Provisional Permit for Completed Stockwater Pit or Reservoir, Form 605, must be submitted to the DNRC. A provisional permit, subject to prior water rights, will then be issued. If the reservoir adversely affects prior water rights, the DNRC can revoke the permit or require an applicant to modify the reservoir.[48]

Ground Water

A ground water appropriation less than 35 gallons per minute (gpm) or 10 acre-feet a year may be eligible for the permit exception in section 85-2-306(3)(a)(iii), MCA. These appropriations are commonly referred to as "exempt wells," though the exception can also be applied to other groundwater developments. Proposed appropriations intending to qualify for this exception are subject to the DNRC's review for combined appropriations, in which the DNRC determines whether two or more groundwater developments appropriating from the same source aquifer are serving a project that could have been served by a single water right.

For those intending to obtain a water right using the permit exception, the first step is to submit a Notice of Intent to Appropriate Groundwater (NOI), Form 602I, with the DNRC. Once the NOI is deemed correct and complete, the DNRC will authorize or deny within 10 business days. The DNRC will review the proposed appropriation for a "combined appropriation" at this time. If the NOI is authorized, the water user has 5 years to complete the project, put the water to use, and file a Notice of Completion of Groundwater Development. One extension of up to 5 additional years may be granted by the DNRC upon receipt of a Request for Extension for Authorized Notice of Intent to Appropriate Groundwater, Form 602E. If the NOI is denied, the water user will need to go through the permitting process.

Within 60 days after the water is put to use, the water user must submit a Notice of Completion of Ground Water Development, Form 602, along with a filing fee, to the DNRC. The priority date of the water right is the date that the DNRC receives the completed Form 602. The

[48] § 85-2-306, MCA.

DNRC will review the form to ensure that it is correct and complete and the appropriation was completed in substantial accordance with the authorized NOI. If all requirements are satisfied, the DNRC will then issue a Certificate of Water Right to the water user for the specified use.

Two other groundwater permit exceptions also exist in section 85-2-306(3)(a), MCA:

- Local governmental fire agencies may appropriate groundwater for emergency fire protection, training, or operations, which may include enclosed storage. These appropriators may file a Form 647 with the DNRC.
- Nonconsumptive geothermal heating or cooling exchange applications of 350 gpm or less may qualify to file a Form 646 with the DNRC if certain conditions are met.

In a controlled ground water area, a permit may be required to appropriate any amount of water, depending on the terms of the ground water area. This publication contains a list of the controlled ground water areas on page 50.

Stream Depletion Zones

Upon petition, the DNRC may initiate rulemaking to establish a stream depletion zone[49] within a closed basin.[50] The petition must be filed on a Form 652 by a municipality, county, conservation district, local water quality district, or the owners of at least 15% of the flow rate of surface water rights in the area estimated to be affected. If the proposed stream depletion zone is within a closed basin and a hydrogeologic assessment for the area was conducted by either a ground water investigation program, a hydrogeologist, or qualified licensed professional engineer, the DNRC may establish a stream depletion zone through rulemaking.

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[49] "Stream depletion zone" means an area where hydrogeologic modeling concludes that as a result of a ground water withdrawal, the surface water would be depleted by a rate equal to at least 30% of the ground water withdrawn within 30 days after the first day a well or developed spring is pumped at a rate of 35 gallons a minute. § 85-2-102, MCA.

[50] § 85-2-380, MCA.

Any water rights filed pursuant to the permit exception within an established stream depletion zone are limited to a volume of 2 acre-feet per year (and a flow of 20 gpm), rather than the 10 acre-feet per year (and flow of 35 gpm) of water rights filed pursuant to the permit exception outside the stream depletion zone.

A single stream depletion zone exists: the Rye Creek Stream Depletion Zone in Ravalli County.

Appropriations Over 3,000 Acre-Feet

A person proposing to appropriate more than 3,000 acre-feet of ground water a year must receive legislative approval for the specific appropriation.[51] This law does not apply to appropriations for municipal use, public water supplies, or the irrigation of cropland owned and operated by the applicant.

Flathead Reservation

The DNRC is not responsible for authorizing or administering new appropriations on the Flathead Reservation. The Flathead Reservation Water Management Board (FRWMB) administers water rights on the Flathead Reservation in accordance with the Unitary Administration and Management Ordinance (Ordinance). The Ordinance provides procedures for permitting new uses of water, changing existing uses, and enforcing water rights. The Montana Legislature and the Confederated Salish and Kootenai Tribes' (CSKT) Council passed the Ordinance and neither government can change the law unilaterally.

The Montana governor appoints two members to FRWMB in consultation with local county commissioners, and the CSKT Tribal Council appoints two members. Those four members select the fifth voting member. FRWMB manages staff with expertise in water rights and hydrology. Water rights administered by FRWMB are accessible to the public in the DNRC Query System.

[51] § 85-2-317, MCA.

The permit application process involves several steps. A prospective water user (applicant) must follow the procedure described below to apply for a water use permit.

Step 1 (Optional) – Preapplication Meeting

Potential new water users may choose to participate in the preapplication meeting process prior to submitting their permit application to the DNRC. Water users who participate in the preapplication meeting process will benefit from expedited processing timelines and a reduced filing fee once they submit their application. Permit applicants, whether they participate in the preapplication meeting process or not, elect whether the DNRC or the applicants will complete the technical analyses for the proposed project. If the applicant elects to complete the technical analyses, the DNRC will conduct a scientific credibility review of the analyses. If the applicant participates in the preapplication meeting process, the completed technical analyses for the project (or the DNRC's scientific credibility review of the applicant's technical analyses) will be delivered to the applicant prior to the submission of the permit application. An applicant who does not participate in a preapplication meeting will receive the technical analyses or scientific credibility review along with the draft preliminary determination later in the process. Administrative rules[52] provide guidance about the various types of technical analyses required based on the details of the proposed project.

Step 2 - Application Form

A potential new water user, either after the preapplication meeting process or as the first step, must complete the Application for Beneficial Water Use Permit, Form 600. If the applicant did not participate in the preapplication meeting process, the applicant must also submit the Form 600-Technical Analyses Addendum. If the applicant chooses to complete the technical analyses, the technical analyses must be submitted with the application. The application must

[52] *See* Title 36, chapter 12, ARM.

contain evidence pertaining to the permit criteria. Specific administrative rules define what must be included in an application for the DNRC to deem an application correct and complete.[53] If the DNRC deems the application correct and complete, the DNRC will begin evaluating the criteria for permit issuance. An application fee must be submitted with the application. Forms and instructions are available from any water resources regional office and are available on the DNRC website.[54] A list of forms is included in this publication.

Additional criteria must be addressed if the application is for appropriations of 4,000 or more acre-feet and 5.5 or more cubic feet per second (cfs). If the appropriation is for an out-of-state use, the applicant must also address criteria set out in section 85-2-311(4), MCA.

If the application is for an appropriation of ground water in a closed basin, additional criteria apply. This procedure is explained later in this publication.

[53] *See* Title 36, chapter 12, ARM.

[54] *See* *https://dnrc.mt.gov/Water-Resources/Water-Rights/Apply-for-Water-Rights/Application-Forms-Guidance-Documents*

Criteria for Issuance of a Permit

Section 85-2-311(1), MCA

The applicant for a water use permit to appropriate less than 4,000 acre-feet a year and 5.5 cfs has the initial burden to prove by a preponderance of the evidence that the criteria for issuance of a permit are met. These include the following:

1. Water is physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate.

2. Water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested.

3. The water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation will not be adversely affected. Adverse effect is based on a consideration of the applicant's plan to exercise the water right so that prior water rights will be satisfied.

4. The proposed means of diversion, construction, and operation of the appropriation works are adequate.

5. The proposed use of water is a beneficial use.

6. The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

An applicant is required to prove one of the following criteria if a valid objection is filed:

1. The discharge permit holder has the ability to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, MCA.

2. The proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to section 75-5-301(1), MCA.

3. The water quality of a prior appropriator will not be adversely affected.

Step 3 - Application Review

The date that the DNRC receives the original permit application is the initial priority date assigned to the appropriation. This date is important because of the "first in time is first in right" principle in Montana water law. The DNRC will review the application to ensure that it is correct and complete.[55] At the same time, an environmental review is completed to determine whether the proposed project will have significant environmental impacts and whether an environmental impact statement is needed. If the application is incomplete, the DNRC will send a deficiency letter. The deadline to send the deficiency letter is 15 business days if a preapplication meeting occurred and 30 business days if a preapplication meeting did not occur.

After the DNRC sends a deficiency letter, the applicant has 120 days to make the application correct and complete. An application that is not made correct or complete within 120 days is terminated.

Within 60 or 120 days of determining that an application is correct and complete (depending on whether a preapplication meeting did or did not occur), the DNRC issues a draft preliminary determination to grant or deny an application. Upon receiving the draft preliminary determination, the applicant may request an extension of time to provide DNRC with additional information.

If the draft preliminary determination is to grant the application, the application proceeds to public notice for public comments. If an updated draft preliminary determination or preliminary determination is to deny the application, the application is sent to a hearing for the applicant to show why the permit or change application should be granted. A hearing with the applicant will be conducted to take further information or evidence from the applicant.

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[55] "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information. § 85-2-102, MCA.

A final order will be issued after the hearing if the decision is to deny the application. The applicant may appeal the decision to district court.

If, after the hearing on the decision to deny, the DNRC determines that the application may be granted, the draft preliminary determination will be modified and the application will proceed to public notice for public comments. To notice applications, DNRC publishes the notice once in a newspaper of general circulation in the area of the source, posts the notice on its website, and mails notifications to appropriators who may be affected by the appropriation.[56]

During the 30-day public notice period for public comments, commenters may file a public comment on the DNRC Form 654 identifying how one or more criteria for the issuance of the permit is not adequately addressed in the draft preliminary determination. Within 30 days of the close of the period to provide public comments, the DNRC shall consider and respond to the public comments and issue a non-draft preliminary determination. If no public comments are received, the DNRC's draft preliminary determination is adopted as the final determination.

The DNRC's non-draft preliminary determination will proceed to a 30-day public notice period for objections. The application will be noticed in the same manner as it was for the public notice period for public comments.

Those with standing have an opportunity to file an Objection to Application, Form 611, with the required fee on or before the deadline specified in the published notice. A valid objection must explain how the objector will be adversely affected and must include probable, believable facts sufficient to support a reasonable legal theory that at least one of the requisite criteria is not satisfied. An objector may object only to issues already identified in a public comment or raised in a hearing. If no objections are received, the permit is granted.

[56] § 85-2-307, MCA.

If valid objections are received, the DNRC conducts a hearing. After evaluation of the evidence and testimony given at the hearing, a final order is issued. A final order may be appealed to district court or the Water Court.

Step 4 - Project Completion

After receiving the permit, the permittee may then construct the project, divert the water, and put the water to the intended use as granted in the permit. When this is finished, the permittee must provide the DNRC with a certified statement describing how the appropriation has been completed. This includes submitting a Project Completion Notice for Permitted Water Development, Form 617, to the DNRC before the deadline specified in the permit or any authorized extension of time. If the permittee fails to file a project completion notice by the deadline, the permit expires.

A permittee may petition to the DNRC to modify or remove a condition of approval or reduce the amount permitted or authorized. Denial of the petition does not affect the permit or change authorization.

When unforeseen circumstances prevent completion of the project before the deadline, the permittee may submit an Application for Extension of Time, Form 607. If the permittee demonstrates due diligence in completing the project and establishes good cause for any failure to do so within the prescribed timeframe, the DNRC may grant an extension of time for a reasonable period.

Step 5 – Provisional Permit Petition Process (Post-Final Decree)

Statute provides that after a final decree for a basin is issued, the owner of an existing water right decreed in that basin may file a petition to reduce, modify, or revoke a provisional permit that was issued by the DNRC prior to issuance of the final decree. This petition process is designed to reconcile any provisional permit that would have been denied or issued in a modified form if the final decree had been available to the DNRC at the time the permit was issued.

A correct and complete petition must be filed on DNRC Form 658 and must establish that:

- reduction, modification, or revocation of the provisional permit is necessary to protect the existing water right;
- the provisional permit would have been denied or modified if the final decree had been available to DNRC; and
- based on the findings of the final decree, water could not be considered legally available at the time of issuance of the permit.

If a correct and complete petition is filed, the owner(s) of a provisional permit subject to the petition have the opportunity to respond.[57]

If the DNRC proposes to reduce, modify, or revoke a provisional permit, the owner of a provisional permit is entitled to a show cause hearing before the DNRC takes the proposed action.

Step 6 - Verification & Certificate of Water Right

After a project completion notice is filed, the DNRC will review the project completion notice and determine whether the project was completed in substantial accordance with the permit. The DNRC will issue a Certificate of Water Right when:

- the water has been used according to the terms of the permit and the project has been completed;
- the basin in which the permit lies has been adjudicated and the final decree is issued; and
- owners of water rights decreed in the adjudication have been given an opportunity to petition the DNRC to reduce, modify, or revoke provisional permits issued before the final decree.

The priority date of a certificate of water right is the same as the original permit.

[57] *See* DNRC Form 659.

Temporary Permits

A person may request a temporary permit to appropriate water if the use of water is for a limited period of time.[58] An application for a temporary permit is processed in the same manner as a provisional permit. The applicant must prove the same criteria listed under section 85-2-311, MCA. A temporary permit has an expiration date based on the period requested by the applicant and will expire on that date. A Certificate of Water Right is not issued for a temporary permit.

Interim Permits

An interim permit to appropriate water allows an applicant to begin constructing and using water pending final approval or denial of the provisional permit.[59] The DNRC may issue an interim permit unless substantial information indicates that the criteria for issuing a provisional permit under section 85-2-311, MCA, cannot be met. An interim permit is issued pending final approval or denial by the DNRC of the application for a regular permit.

Changes in Water Use

A change in appropriation right[60] requires prior approval from the DNRC before changing any water right or water reservation in any of the following ways:

- point of diversion;
- place of use;
- purpose of use; or
- place of storage.

The holder of a water right must submit the current Application to

[58] § 85-2-312, MCA.
[59] ARM 36.12.104.
[60] (a) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage. (b) The term does not include a change in water use related to the method of irrigation. § 85-2-102, MCA.

Change a Water Right, Form 606, to DNRC. An applicant may change up to the historic amount of water diverted and the historic consumptive use. Therefore, an applicant must first provide information proving the water right to be changed was used and the extent of the historic use. The application must contain information about the proposed change and evidence pertaining to the criteria that must be met. There are specific rules that define what must be included in an application in order for the DNRC to deem an application correct and complete. If the DNRC deems the application correct and complete, the department will begin evaluating the criteria and issue a draft preliminary determination to grant or deny the change. In order for the DNRC to grant a change application, the applicant must prove by a preponderance of the evidence that the criteria set forth in section 85-2-402, MCA, are met (see related box). An application to change a water right follows the same general process for notice and hearing as a permit to appropriate water. Upon completion of the change, the appropriator must file a Notice of Completion of Change of Appropriation Water Right, Form 618, notifying the DNRC that the authorized change is completed.

The 2017 Legislature clarified that a change in irrigation method is not a change in appropriation right subject to approval by the DNRC.[61]

A change in appropriation right is subject to additional criteria if it involves diversion of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet a second, consumes 4,000 or more acre-feet of water a year and 5.5 or more cubic feet a second, or involves out-of-state transport of water.[62]

[61] § 85-2-102, MCA.
[62] § 85-2-402(4),(5), and (6), MCA.

Criteria for Issuance of an Authorization to Change a Water Right
Section 85-2-402(2), MCA

The applicant for a change in an appropriation water right has the burden to prove by a preponderance of the evidence that the criteria for issuance of an authorization are met. These criteria include:

1. The proposed use will not adversely affect the use of other water rights or other planned developments for which a permit or certificate has been issued or water has been reserved.

2. The proposed means of diversion, construction, and operation of the appropriation works are adequate.

3. The proposed use of the water is a beneficial use.

4. The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

If a valid objection pertaining to water quality is received, the applicant must also prove one of the following.

1. The water quality of an appropriator will not be adversely affected.

2. The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, MCA.

An applicant for salvaged water must also prove that the proposed water-saving method will salvage at least the amount of water asserted by the applicant.

Temporary Change in Appropriation Water Right

An appropriator may temporarily change a water right with the DNRC's approval.[63] The temporary change may be approved for up to 10 years with an opportunity to renew for 10 more years, although there is no limit on the number of renewals. An appropriator must file an Application to Change a Water Right, Form 606, identifying the proposed change and how long it will be needed. The applicant must also provide evidence to meet the same criteria as an authorization to change listed above. If granted, the temporarily changed appropriation has the same priority date as the water right being changed.

In 1995, the Legislature provided for the protection of fishery resources by allowing the owner of an existing consumptive use water right to change the purpose temporarily to instream flow. The owner must file an application, as described in the preceding paragraph. The owner may voluntarily change the purpose to instream flow or lease the water right and change the purpose to protect the fishery.[64]

Replacement Wells

If an existing well fails and a new well is constructed, an exception to the change process is available when certain criteria are met. A water user can retain the priority date of the existing well by filing a Notice of Change in Appropriation Right for Replacement Well, Form 634, if the new well meets the following requirements:

- the old and new wells must be located outside the boundaries of a controlled ground water area, or they can be located within the boundaries of a controlled ground water area if the provisions of the order or rule establishing the controlled ground water area do not restrict the development of replacement wells;
- the existing well must be abandoned pursuant to the well abandonment procedures, standards, and rules adopted by the board of water well contractors pursuant to section 37-43-202, MCA;

[63] § 85-2-407, MCA.
[64] § 85-2-408, MCA.

- the flow rate and volume[65] of water must be equal to or less than the amounts used from the old well and the distance between the old well and new well may not be greater than 200 feet; and
- the new well must withdraw water from the same source aquifer as the well being replaced.

If these requirements are met, the DNRC can authorize the replacement well without a full change application.[66] If a replacement well does not meet the criteria above, the water user must file a change application (DNRC Form 606) pursuant to section 85-2-402, MCA.

Redundant Wells

When a public water supply system constructs a redundant (backup) well, a Notice of Change in Appropriation Right for Redundant Water Supply Well Construction, Form 635, may be filed if the redundant well meets the following requirements:

- the backup well must withdraw water from the same source aquifer as the original well(s); and
- the backup well must be required by a state or federal agency.[67]

The flow rate and volume of all wells, including backup wells, may not exceed the flow rate or volume authorized by the water rights for the public water supply system. If the backup well does not meet the statutory requirements in section 85-2-429, MCA, then the water user must file a change application (DNRC Form 606) pursuant to section 85-2-402, MCA.

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[65] "Volume" means the acre-feet of water per year. Twelve acre-inches or 325,851 gallons are equal to one acre-foot. ARM 36.12.101(79).
[66] § 85-2-429, MCA.
[67] § 85-2-429(1), MCA.

Replacement Point of Diversion

An appropriator may change an appropriation right for a replacement surface water point of diversion without the prior approval of the DNRC if:

- the existing point of diversion is inoperable due to natural causes or deteriorated infrastructure;
- there are no other changes to the water right;
- the capacity of the diversion is not increased;
- there are no points of diversion or intervening water rights between the existing point of diversion and the replacement point of diversion or the appropriator obtains written waivers from all intervening water rights holders;
- the replacement point of diversion is on the same surface water source and is located as close as reasonably practicable to the existing point of diversion;
- the replacement point of diversion replaces an existing point of diversion and the existing point of diversion will no longer be used;
- the appropriator can show that the existing point of diversion has been used in the 10 years prior to the notice for change of appropriation right for a replacement point of diversion; and
- the appropriator can show the change will not increase access to available water, change the method of irrigation, if applicable, or increase the amount of water diverted, used, or consumed.

Within 60 days after completion of a replacement point of diversion, the appropriator shall file a Notice of Change in Appropriation Right for Replacement Point of Diversion, Form 644, with the DNRC. If these requirements are met, the DNRC can issue an authorization to change a water right.[68] If the replacement point of diversion does not meet the statutory requirements in section 85-2-429, MCA, then the water user must file a change application (DNRC Form 606) pursuant to section 85-2-402, MCA.

[68] § 85-2-429, MCA.

Change in Place of Use for Municipal Water Right

A municipality, as defined in section 7-1-4121, MCA, or a county water and sewer district organized under Title 7, chapter 13, part 22, MCA, may change the place of use for an unperfected municipal use permit or water reservation without the prior approval of the DNRC if all of the following requirements are met:

- the flow rate authorized by the permit or water reservation will not be exceeded;
- the volume authorized by the permit or water reservation will not be exceeded;
- the place of use is within:
    - the municipality's land use plan and future land use map boundary duly adopted by the municipality pursuant to Title 76, chapter 25, MCA;
    - the municipality's growth policy boundary duly adopted by the municipality pursuant to Title 76, chapter 1, MCA; or
    - a county water and sewer district's service area boundary adopted under Title 7, chapter 13, part 23, MCA;
- all water being diverted by the system is being measured; and
- there are no other changes to the water right or rights.

The appropriator must file a correct and complete Form 657 with the DNRC within 180 days of annexation by a municipality under Title 7, chapter 2, MCA, or addition of land to a county water and sewer district under Title 7, chapter 13, part 23, MCA. If the above requirements are met, the DNRC can issue an authorization to change a water right.[69] If the municipality or county water and sewer district does not meet the statutory requirements in section 85-2-429, MCA, then the water user must file a change application (DNRC Form 606) pursuant to section 85-2-402, MCA.

The form filing can include a change in place of use for a water right that is not an unperfected permit or water reservation if the

[69] § 85-2-429, MCA.

requirements above are satisfied for each additional water right being changed and the unperfected volume of the unperfected permit or water reservation is adequate to satisfy the additional water use needs of the entire additional place of use. Additionally, all rights being changed on a single form must have the same existing place of use and must share the same common distribution system.

Change to Add, Move, or Remove Stock Tanks From an Existing Stock Watering System

An appropriator with a water right for stock use may add, move, or remove stock tanks without prior approval of the DNRC if the following requirements are met:

- the change will not increase the amount of water diverted from the source and will not increase the number of animal units;
- if stock tanks are being added to a livestock direct from source water right, the maximum flow rate for the diversion to the tanks does not exceed 35 gpm;
- the infrastructure is adequate to control diversions and prevent waste of water; and
- the appropriator has a possessory interest or the written consent of a person with a possessory interest in the property where the water is to be put to beneficial use.

The appropriator must file a correct and complete Form 656 with DNRC within 60 days after the stock tanks are added or moved. If the above requirements are met, DNRC can issue an authorization to change a water right.[70] A temporary change for stock tanks may be authorized in accordance with section 85-2-407, MCA, using this process. If the addition, removal, or change in location of stock tanks does not meet the statutory requirements in section 85-2-429, MCA, then the water user must file a change application (DNRC Form 606) pursuant to section 85-2-402, MCA.

[70] § 85-2-429, MCA.

Marketing for Aquifer Recharge or Mitigation

The 2011 Legislature allowed existing water rights holders to change all or part of an appropriation for use as water marketed (e.g. leased or sold) for aquifer recharge or mitigation.[71] The appropriator may continue the original beneficial use until the change in use is completed.

A marketing for mitigation change allows a senior water user to make mitigation water available to a prospective permit applicant to offset adverse effects that would be caused by a new permit. The statute is intended to make the permit process more efficient.

Changes to an appropriator's right must be completed within 20 years. The appropriator must notify the DNRC within 30 days each time a portion of change is completed.

The water purchaser or lessee would still be required to submit an Application for Beneficial Water Use Permit.

Leasing Water Rights for Road Construction

Water needed for road construction and dust control can be leased from an individual who holds a valid Montana water right. Section 85-2-410, MCA, was specifically designed to assist Montana's road construction contractors with water use compliance. The restrictions include the following:

- the lease can run for up to 90 days and applies to diversions of water that do not exceed 60,000 gallons a day or the amount of the existing right, whichever is less;
- a combination of short-term leases may not exceed 120,000 gallons a day for one project;
- the lease does not require prior approval by the DNRC. However, 30 days prior to the use of water, the lessee must publish a notice of the proposed use in the local newspaper

[71] § 85-2-420, MCA.

or mail individual notices to the potentially affected water users in the area of the proposed point of diversion; and
- at least two days prior to water use, the lessee must submit a copy of the public notice and a copy of the lease agreement to the DNRC.

An existing water user whose right is not being satisfied may make a complaint to the DNRC and could cause the short-term lease to end. However, if it is shown that there is no adverse effect on the existing water user's right, the lessee can continue to divert water.

Temporary Lease of a Water Right

The 2025 Legislature enacted section 85-2-428, MCA, which allows an appropriator to temporarily lease a water right. Applicants must file Form 650, Temporary Lease of Appropriation Right. To protect other water users while also providing for a simplified authorization process, a temporary lease is subject to special limitations:

- only the consumptive portion of a water right as determined by DNRC may be leased;
- for an irrigation right, the consumptive volume may not exceed 2 acre-feet per acre irrigated;
- the appropriation right must have been used within five years prior to the application date;
- the appropriation right may be leased only during the right's period of diversion;
- the appropriation right may not be leased for more than five years during any consecutive 10-year period;
- the appropriation right may not be leased for more than 40 days a year;
- the appropriation right may only be leased for a beneficial use;
- the volume and flow rate of water leased may not exceed the appropriator's original appropriation right;
- the point of diversion may not be changed;
- the leased water may not be transported outside of Montana;

- the use of an appropriation right on a place of use associated with leased water is prohibited during any year that leased water is put to beneficial use; and
- storage may be temporarily added during the term of the leased appropriation.

A water user adversely affected by the temporary lease may file an objection. A temporary lease is not subject to other sections of law related to a temporary change in an appropriation right.

Salvaged Water

A water user who implements a water-saving method may retain the right to the salvaged[72] water for a beneficial use.[73] The salvaged water is that portion of the water made available through the implementation of water-saving methods. Lining a ditch to reduce seepage or replacing a ditch with a pipeline may be considered a water-saving method if water consumption is reduced. If the salvaged water is to be used for any purpose or in any place not associated with the original appropriation, the DNRC's approval is required. The appropriator must file an Application to Change a Water Right, Form 606, and must meet the criteria for issuance of an authorization to change a water right. The proposed water-saving method also must salvage at least the amount of water asserted by the applicant.

Ownership of a Water Right

Generally, a water right is appurtenant to the land on which it is used. The deed or instrument of conveyance between the parties transfers the water rights. The DNRC forms merely record that information in the central water rights database.

When a person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate (RTC) must contain a water rights disclosure in which the transferor

[72] "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods. § 85-2-102, MCA. *See also* ARM 36.12.101(84).

[73] § 85-2-419, MCA.

acknowledges, at or before closing or transfer of real property, whether or not any water rights are associated with the property to be transferred and whether or not any water rights will transfer with the real property.[74]

If a conveyance involves water rights that are divided, exempted, or severed in the transaction, all transferees (if the water right is being divided) or parties exempting or severing the water right (if the water right is being severed from the land) must submit the proper ownership update form with the DNRC and pay the associated fee.[75] Failure to comply with the ownership update filing requirements in section 85-2-424, MCA, may result in a financial penalty or rejection of recording of the deed or both by the county clerk and recorder.[76]

The DNRC will process ownership update forms according to the procedures and requirements specified in section 85-2-424, MCA.

If a water right will be changed from its historical use, the owner must also submit an Application to Change a Water Right, Form 606, described previously.

Water Right Administration

Whether exercising a century-old, existing water right or a newly permitted water right, an appropriator must observe standard rules of use. From period of use to place of use to type of use, these rules guide the administration of Montana waters.

In Montana, water right administration follows the traditional “first in time, first in right” philosophy.[77] Accordingly, a senior appropriator may completely fulfill the senior appropriator’s water right before a junior appropriator receives any.

[74] § 85-2-424, MCA.
[75] § 85-2-424, MCA.
[76] § 85-2-424(6), MCA.
[77] § 85-2-401, MCA.

Each Montana district court supervises water use within its jurisdiction.[78] In its oversight capacity, a court may appoint one or more water commissioners to measure, record, and administer water rights on a watercourse. Administration is based on tabulations of water rights as determined in decrees and decisions issued by the Water Court and permits issued by the DNRC. Such appointments happen after:

- petition of water rights holders (owning at least 15% of the water rights affected by a decree or at least 15% of the flow rate of the water rights affected by a decree);
- application by both the DNRC and one or more water rights holders on a watercourse; or
- application of the board(s) of one or more irrigation districts.[79]

When a court appoints two or more water commissioners on a watercourse, one may be designated chief commissioner. A chief commissioner supervises the other commissioner(s) in administering water rights.[80]

Upon petition of water rights holders (owning at least 51% of the water rights in an adjudicated ditch or water system), the court may direct a commissioner to maintain and repair ditches, canals, and other structures necessary to distribute water rights. Owners are responsible for all maintenance expenses.[81]

A person owning or using any of the waters of the stream or ditch or extension of the ditch who is dissatisfied with the method of distribution, claims to be entitled to more water than the person is receiving, or claims a junior user is receiving their water may file a complaint with the district court.[82]

A district court may appoint a water mediator to resolve water controversies upon request of the governor, upon petition by at least

[78] § 85-2-406, MCA.
[79] § 85-5-101, MCA.
[80] § 85-5-102, MCA.
[81] § 85-5-106, MCA.
[82] § 85-5-301, MCA.

15% of the owners of water rights in a decreed or nondecreed basin, or in the discretion of the district court having jurisdiction.[83] A water mediator often is a judge or a water master from the Water Court. A water mediator may not require any valid water right holder to compromise or reduce any of the holder's existing water rights. A water mediator appointed may:

- discuss proposed solutions to a water controversy with affected water right holders;
- review options related to scheduling and coordinating water use with affected water right holders;
- discuss water use and water needs with persons and entities affected by the existing water use;
- meet with principal parties to mediate differences over the use of water; and
- hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

On the Flathead Reservation, the FRWMB has to authority to appoint water commissioners to administer water within the Flathead Reservation.

Enforcement

Enforcement addresses illegal and noncompliant uses of water. If a water user feels that a water right is being adversely affected by illegal and noncompliant uses by another water user, the issue may be resolved either informally or through formal proceedings. The affected parties may discuss whether the matter can be settled. Otherwise, there are various options under Montana law for resolution.

DNRC

DNRC's enforcement process is largely constituent driven. A water user who believes the user is being harmed by another party's use of water may file a complaint with the DNRC. The DNRC will conduct an investigation and issue a report. If the DNRC determines that there is a

[83] § 85-5-110, MCA.

violation of the Water Use Act, it attempts to educate the violator and seek voluntary compliance.

If voluntary compliance is not achieved, the DNRC may petition a district court to take action to prevent waste, unlawful use, interference, or other violations of the Montana Water Use Act.[84] The DNRC may direct its own attorney or request the attorney general or the county attorneys within their respective counties to bring suit to enjoin the waste, unlawful use, interference, or other water use violation(s).

The DNRC also has the authority to enforce the terms and conditions of a permit or change in appropriation right. If the DNRC determines a permit or change authorization is not being applied to the beneficial use contemplated or is not in compliance with the terms and conditions of the authorization after notice, the DNRC may require the permittee or the holder of the change in appropriation right to show cause why the authorization should not be modified or revoked.[85]

District Court

Montana's district courts have the longest involvement and association with water right enforcement. Each of Montana's 56 counties has a district court. The district courts are administratively structured into 22 judicial districts served by 51 district court judges. These judges resolve disputes between water users, including ruling on injunctions to prohibit a party from interfering with the use of a water right. District courts may certify to the Water Court particular issues regarding the determination or interpretation of water rights at issue in an enforcement proceeding.

The attorney general or a county attorney may bring suit in a district court to prevent waste, unlawful use, interference, or other water use violations without being requested to do so by the DNRC.[86]

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[84] § 85-2-114, MCA.
[85] § 85-2-314, MCA.
[86] § 85-2-114, MCA.

The DNRC, the attorney general, or a county attorney may also pursue civil penalties not to exceed $1,000 per violation. Each day of violation constitutes a separate violation.[87]

Water right owners may independently seek relief in district court, including injunctive relief, without going through the DNRC, the attorney general, or a county attorney.[88]

Compact Boards

Each of the state's compacts with tribes establishes a compact board to resolve disputes between users of tribal water rights and water rights arising under state law. Compact boards also resolve disputes related to compact interpretation. The compact board on the Flathead Reservation has additional responsibilities such as approving new appropriations on the reservation.[89] The governor and the tribal council appoint an equal number of board members, and together the appointed members select one additional member.

Other Types of Water Rights

Water Reservations

State law allows the state of Montana, state agencies, other political subdivisions, or the United States and any of its agencies to apply for a state water reservation[90] for future beneficial uses or to maintain stream flows. The DNRC administers the state water reservation application process.

In 1978, the Board of Natural Resources and Conservation granted water reservations in the Yellowstone River Basin to eight municipalities, 14 conservation districts, and four state and federal

[87] § 85-2-122, MCA.
[88] § 85-2-114, MCA.
[89] § 85-20-1901, MCA; § 85-2-1902, MCA.
[90] "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time. § 85-2-102, MCA.

agencies. These water reservations have a priority date of December 15, 1978.

In 1992, the board issued an order granting water reservations in the Upper Missouri River basin above Fort Peck Dam to 14 municipalities, 15 conservation districts, and four state and federal agencies. These water reservations have a priority date of July 1, 1985.

In 1994, the board granted water reservations in the Lower Missouri River basin below Fort Peck Dam with a priority date of July 1, 1985, to nine municipalities, eight conservation districts, and one state agency. The board also granted reservations in the Little Missouri River basin with a priority date of July 1, 1989, to two municipalities, three conservation districts, and one state agency.

In the Yellowstone, Upper Missouri, and Lower Missouri River basins, water reservations were granted for municipal, irrigation, instream flow, and water storage uses. Individuals within a conservation district who are interested in using water under the local district's water reservation should contact the conservation district office.

The U.S. Forest Service–Montana water rights compact allows the Forest Service to apply for state water reservations as an instream flow right on national forest system lands. The Forest Service's ability to apply for a state water reservation pursuant to Article VI of the compact in any basin or subbasin terminates 30 years after the water court issues a final decree for that water basin under section 85-2-234(1), MCA.

With the exception of instream flow reservations and those issued as part of the federal water right compact with the U.S. Forest Service, pursuant to section 85-20-1401, MCA, the DNRC is required to review water reservations at least once every 10 years to ensure the objectives of the reservation are being met.

Instream Use and Leasing

Most water rights involve taking water out of streams for irrigation, domestic, or other consumptive uses. These diversions can reduce streamflows during times of drought, which in turn can stress local fisheries. In the 1980s and 1990s, the Montana Legislature realized this concern and created laws that allow water that is diverted for consumptive uses to be temporarily changed or leased for instream use.[91]

There are three ways to temporarily change a consumptive use water right to instream use. A person may:

- lease all or a portion of a water right to the Montana Department of Fish, Wildlife, and Parks (FWP);
- lease the water right to another party interested in holding the right for the fishery; or
- convert the water right to an instream use without a lease.

Any change to an instream use requires a temporary change authorization from the DNRC and must benefit fisheries. The FWP may not enter into new leases for instream flow after June 30, 2029.[92]

The FWP and some conservation groups seek interested senior water rights holders who no longer wish to use all of their appropriated water (possibly through increased water conservation) and who have a desire to contribute water to maintain fish populations during critical times of drought. Water rights holders may get help from interested lessees to develop salvage water projects, assess water savings, and file the necessary authorizations to change the water rights involved in a leasing agreement. As a result, the water rights holder continues to own the water right, receives financial compensation, and assists in maintaining a fishery.

[91] § 85-2-408, MCA.
[92] § 85-2-436, MCA.

Controlled Ground Water Areas

Prior to the passage of Senate Bill 120 in 2009, controlled ground water areas (CGWAs) were adopted by the DNRC through an administrative hearing process and final order, rather than through administrative rulemaking. CGWAs designated by final order are available at https://dnrc.mt.gov/Water-Resources/Water-Rights/Basin-Closures-Stream-Depletion-Controlled-Ground-Water-Areas.

Following the passage of SB 120 in 2009, the DNRC may adopt an administrative rule designating a CGWA to protect water quality or quantity.[93] The CGWA rulemaking process may be initiated by:

- the DNRC;
- a state or local public health agency, municipality, county, conservation district, or local water quality district; or
- at least one-third of the water rights holders in the proposed controlled ground water area.

A correct and complete petition must contain analysis prepared by a hydrogeologist, a qualified scientist, or a qualified licensed professional engineer concluding that one or more criteria described below are met.

The Controlled Ground Water Area Petition, Form 630, is available from the DNRC website. A petition must be filed with the appropriate fee, and the petitioner must also pay the reasonable costs of public notice for the petition.

Upon receipt of a correct and complete petition, the DNRC may deny the petition, study it further, or draft rules to designate the proposed controlled ground water area as a Permanent Controlled Ground Water Area or a Temporary Controlled Ground Water Area. The public will be notified of the proposed rules and may provide comment.

[93] § 85-2-506, MCA.

PERMANENT CONTROLLED GROUND WATER AREA

The DNRC may designate a permanent controlled ground water area by administrative rule if the DNRC finds that one of the following criteria is met and cannot be appropriately mitigated:

- current or projected reductions of recharge to the aquifer or aquifers in the proposed controlled ground water area will cause ground water levels to decline to the extent that water rights holders cannot reasonably exercise their water rights;
- current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have reduced or will reduce ground water levels or surface water availability necessary for water rights holders to reasonably exercise their water rights;
- current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have induced or altered or will induce or alter contaminant migration exceeding relevant water quality standards;
- current or projected ground water withdrawals from the aquifer or aquifers in the proposed controlled ground water area have impaired or will impair ground water quality necessary for water rights holders to reasonably exercise their water rights based on relevant water quality standards;
- ground water within the proposed controlled ground water area is not suited for beneficial use; or
- public health, safety, or welfare is or will become at risk.

A permanent controlled ground water area designation may include but is not limited to the following control provisions:

- banning further appropriation of ground water;
- restricting the development of future ground water appropriations by flow, volume, purpose, aquifer, depth, water temperature, water quality, density, or other criteria;
- requiring measurement of future ground water or surface water appropriations;

- requiring notice on land records within a permanent controlled ground water area to inform prospective holders of a property interest of the permanent controlled ground water area;
- requiring spacing restrictions on certain wells;
- mitigating ground water withdrawals;
- testing water quality; and
- requiring data reporting. [94]

TEMPORARY CONTROLLED GROUND WATER AREA

If the DNRC determines that the evidence does not support designation of a permanent controlled ground water area, it may designate a temporary controlled ground water area to allow studies to obtain additional evidence. A temporary controlled ground water area may include the control provisions of measurement, water quality testing, and reporting requirements, but it may not last longer than six years.[95]

Active, Permanent Controlled Ground Water Areas

WATER QUANTITY CLOSURES[96]	**County**
Hayes Creek	Missoula
Larson Creek	Ravalli
Powder River Basin	Custer, Powder River, Rosebud
South Pine	Fallon, Prairie, and Wibaux
Horse Creek	Stillwater
WATER QUALITY CLOSURES	**County**
Bitterroot Valley Sanitary Landfill	Ravalli

[94] § 85-2-506, MCA.
[95] § 85-2-506, MCA.
[96] See https://dnrc.mt.gov/Water-Resources/Water-Rights/Basin-Closures-Stream-Depletion-Controlled-Ground-Water-Areas.

BNSF Paradise	Sanders
BNSF Somers Site	Flathead
Bozeman Solvent Site	Gallatin
Idaho Pole	Gallatin
Rocker	Silver Bow
Nat'l Park Service-MT Compact Yellowstone	Park, Gallatin, Madison, and Sweet Grass
Warm Springs Ponds	Deer Lodge
East Valley	Lewis and Clark
Old Butte Landfill/ Clark Tailings Site	Silver Bow
Butte Alluvial and Bedrock Site	Silver Bow

Yellowstone Controlled Ground Water Area

The Yellowstone Controlled Ground Water Area was established under the compact negotiated between the U.S. National Park Service (NPS) and Montana under section 85-20-401, MCA, and became effective January 31, 1994. It is located north and west of Yellowstone National Park and was established to regulate ground water development adjacent to the park in an effort to preserve the park's natural hydrothermal features. Ground water developments are restricted within this area. The restrictions apply to ground water appropriations with a priority date on or after January 1, 1993. Anyone wanting to appropriate ground water in this area after January 31, 1994, must apply for a permit from the DNRC. Depending on the rate and volume of ground water needed and the temperature of the ground water at the wellhead, different restrictions apply. All applicants must provide a statement of whether the proposed water use requires water with a temperature of 60 degrees Fahrenheit or more. All permits issued require meters to be installed for measuring the total volume of water used. Annual water usage must be reported by the water user on or

before January 15 of each year to the Montana Bureau of Mines and Geology. With funding from NPS, the DNRC provides the required water meters, and the applicant must submit a picture of its installation when the project is complete.

The compact requires the DNRC to send the NPS a copy of each permit application, including a map and well log. The NPS has 30 days to file an objection to the application and 60 days to file an objection to the well log report if it determines that the proposed appropriation is hydrologically connected to surface water or ground water specifically described in the compact. The compact also provides certain requirements depending on the temperature of the water.[97]

Additional information and a map of the Yellowstone Controlled Ground Water Area can be obtained by contacting the DNRC Water Resources Regional Office in Bozeman at 406-586-3136 or the DNRC Helena Central Office at 406-444-6601.

Closure of Highly Appropriated Basins

Montana has closed some of its river basins to certain types of new water appropriations because of water availability problems, overappropriation, and a concern for protecting existing water rights.

Legislative Closures

Section 85-2-319, MCA, gives the Legislature the authority to close highly appropriated basins to certain new appropriations. The Legislature has enacted the following closures:

1. The Jefferson and Madison river basins, the Teton River basin, and the Upper Clark Fork River basin are closed to certain new appropriations of water.
2. There is a temporary closure in the Upper Missouri River basin and the Bitterroot Basin.

[97] § 85-20-401, MCA (Article IV, Section G, Part 2).

Administrative Rule Closures

The law also provides that DNRC may adopt a rule closing a highly appropriated basin. In order to adopt rules, the DNRC must receive a petition signed by at least 25% or 10 (whichever is less) of the users of water from the source of supply within the specific basin or receive a petition from the Montana Department of Environmental Quality. The petition must show that during certain times of the year, one of the following occurs:

1. There is no unappropriated water in the source of supply.
2. The rights of prior appropriators would be adversely affected by further appropriation.
3. Further new uses would interfere with other planned uses for which a permit has been issued or water has been reserved.
4. The water quality of an appropriator would be adversely affected by the issuance of permits.
5. Further use would not be substantially in accordance with the classification of water set for the source of supply pursuant to section 75-5-301(1), MCA.
6. Issuance of permits would adversely affect holders of a discharge permit issued in accordance with Title 75, chapter 5, part 4, MCA, in their ability to satisfy effluent limitations.

If the DNRC determines that rules should be adopted to close a basin, notice will be provided and a public hearing will be held on the rules.

Petition for Closure of a Highly Appropriated Basin, Form 631, is available from the DNRC. A petition must be filed with the appropriate fee, and the petitioner also must pay reasonable processing costs.

Basins Closed by Administrative Rule

Basin	**County**
Grant, Houle, and Sixmile Creeks	Missoula
Sharrott and Willow Creeks	Ravalli
Walker and Truman Creeks	Flathead
Rock Creek	Carbon

Basin	County
Towhead Gulch	Lewis and Clark
Musselshell River	Meagher, Wheatland, Golden Valley, Musselshell, Petroleum, Garfield, and Rosebud

Milk River Closures

The DNRC may suspend new appropriations or close a source in the Milk River basin.[98] The DNRC has closed the mainstem and the southern tributaries of the Milk River.

Compact Closures

The state of Montana has several compacts with Indian tribes and federal agencies. The following compacts have closed certain sources of water to new appropriations.

Effects on Areas Closed by Federal and Tribal Water Compacts

Compact	Closure
Northern Cheyenne Tribe	Prohibits new appropriations in the Rosebud Creek basin, a tributary to the Yellowstone River.
Chippewa Cree Tribe of the Rocky Boy's Indian Reservation	Except for exceptions to the permit requirements, stockwater, or deep aquifer ground water, the DNRC may not permit new appropriations from sources in the Big Sandy Creek basin (excluding Sage Creek and Lonesome Lake Coulee) and in the Beaver Creek drainage.
U.S. Department of the Interior Fish and Wildlife Service *Benton Lake National Wildlife Refuge and Black Coulee National Wildlife Refuge*	Two basins have been closed to further appropriations or reservations of water for consumptive use: Black Coulee watershed and Lake Creek watershed (including the unnamed tributaries of Benton Lake).

[98] § 85-2-321, MCA.

Compact	Closure
U.S. Department of the Interior Fish and Wildlife Service *Red Rock Lakes*	Closes appropriations for consumptive use in the basins upstream of the most downstream point on the Red Rock Lakes National Wildlife Refuge and the Red Rock Lakes Wilderness Area. Certain exceptions apply.
U.S. Department of the Interior Fish and Wildlife Service *Charles M. Russell National Wildlife Refuge*	Certain impoundments are prohibited within the refuge.
U.S. Department of the Interior Bureau of Land Management *Upper Missouri National Wild & Scenic River* *Bear Trap Canyon Public Recreation Site*	Closes the Missouri River mainstem to new storage, prohibits impoundments upstream from the scenic river area, and closes the Missouri River basin upstream from the scenic river area to new appropriations in any month in which the water volume designated for the "available water supply" has been exhausted.
U.S. Department of the Interior Bureau of Land Management *Upper Missouri Breaks National Monument*	Certain impoundments prohibited on portions of the mainstems of the Judith River and Arrow Creek within the monument.
U.S. Department of the Interior National Park Service *Yellowstone National Park (within Montana)* *Glacier National Park* *Big Hole National Battlefield* *Little Bighorn Battlefield National Monument* *Bighorn Canyon National Recreation Area*	In addition to specific restrictions and conditions in each location, these locations will be closed to new appropriations when the total appropriations reach a specified level: • Around Big Hole National Battlefield, including the North Fork of the Big Hole River and the tributaries upstream of the battlefield; • To the westside tributaries adjoining Bighorn Canyon National Recreation Area, including Dry Head, Deadman, Davis and Layout creeks;

Compact	Closure
	• Drainages around Glacier National Park, including the Middle and North forks of the Flathead River; • Numerous basins adjoining Yellowstone National Park, including Bacon Rind, Buffalo, Cottonwood, Coyote, Crevice, Dry Canyon, Hellroaring, Little Cottonwood, Slough, Snowslide, Soda Butte, and Tepee creeks; and the Gallatin, Madison, and Yellowstone rivers. Certain water rights may be curtailed on the Little Bighorn River above the Little Bighorn Battlefield National Monument. Certain impoundments are restricted on the mainstem of certain streams upstream of or along NPS instream flow reaches and on the Little Bighorn River in MT upstream of the Little Bighorn Battlefield National Monument.
Crow Tribe	Closes basins to new appropriations within the Crow Reservation, the Bighorn River basin, and the Pryor Creek basin. Certain exceptions apply to fee land.
Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation	Prohibits new appropriations in the Milk River basin in basins above the western crossing of the Milk River (into Canada from the United States) and below the eastern crossing of the Milk River (into the United States from Canada) to the confluence of the Milk and Missouri rivers.
Blackfeet Tribe	Prohibits new appropriations on reservation and from the mainstems of the reservation boundary streams

Compact	Closure
	(Birch and Cut Bank creeks and the Two Medicine River). Temporary exceptions may apply.

Persons wishing further information on any of these compact closures should contact the DNRC to determine the specifics of the restrictions on these sources.

Appropriations in Closed Basins

An applicant proposing to appropriate ground water in a closed basin must complete a hydrogeologic report and must meet other criteria.[99] If the hydrogeologic report predicts that the appropriation would have no net depletion of surface water, the application moves through the permitting process. If the assessment predicts net depletion of surface water, it must be determined if net depletion would have an adverse effect on prior appropriators. If no adverse effect is determined, the application moves through the permitting process. If there would be an adverse effect, the applicant must submit an aquifer recharge or mitigation plan. Closures created by administrative rule or water compacts may have different restrictions.

[99] § 85-2-360, MCA.

Sources of Information

All water right forms required by the DNRC are available at any of the eight water resources regional offices listed below, at the Helena Central Office, or on the DNRC website at https://dnrc.mt.gov/Water-Resources/Water-Rights/.

Department of Natural Resources & Conservation Offices

Montana Department of Natural Resources and Conservation
Water Resources Division
1424 Ninth Ave.
P.O. Box 201601
Helena, MT 59620-1601
Phone: 406-444-6601
https://dnrc.mt.gov/Water-Resources/

DNRC Water Resources Regional Offices[100]

BILLINGS
Airport Industrial Park
1371 Rimtop Drive
Billings, MT 59105-1978
Phone: (406) 247-4415
Serving: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Prairie, Rosebud, Stillwater, Sweet Grass, Treasure, and Yellowstone counties

BOZEMAN
2273 Boot Hill Court, Suite 110
Bozeman, MT 59715-7249
Phone: 406-586-3136
Serving: Gallatin, Madison, and Park counties

GLASGOW
222 Sixth St. South
P.O. Box 1269
Glasgow, MT 59230-1269
Phone: 406-228-2561
Serving: Daniels, Dawson, Garfield, McCone, Phillips, Richland, Roosevelt, Sheridan, Valley, and Wibaux counties

HAVRE
210 Sixth Ave.
P.O. Box 1828
Havre, MT 59501-1828
Phone: 406-265-5516
Serving: Blaine, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole counties

HELENA
1424 Ninth Ave.
P.O. Box 201601
Helena, MT 59620-1601

[100] See https://dnrc.mt.gov/Water-Resources/Water-Resources-Regional-Offices.

Phone: 406-444-6999
Serving: Beaverhead, Broadwater, Deer Lodge, Jefferson, Lewis and Clark, Powell, and Silver Bow counties

KALISPELL
655 Timberwolf Parkway
Suite 4
Kalispell, MT 59901-1215
Phone: (406) 752-2288
Serving: Flathead, Lake, Lincoln, and Sanders counties

LEWISTOWN
613 Northeast Main St., Suite E
Lewistown, MT 59457-2020
Phone: 406-538-7459
Serving: Cascade, Fergus, Golden Valley, Judith Basin, Meagher, Musselshell, Petroleum, and Wheatland counties

MISSOULA
2705 Spurgin Road, Building C
P.O. Box 5004
Missoula, MT 59806-5004
Phone: 406-721-4284
Serving: Granite, Mineral, Missoula, and Ravalli counties

Flathead Reservation Water Management Board (FRWMB)

On the Flathead Reservation, all water right forms required by FRWMB are available at the office below or on the FRWMB website at frwmb.gov/forms-applications/.

Physical Address:
400 Main Street SW
Ronan, MT 59864
Phone: (406) 201-2532

Mailing Address:
PO Box 37
Ronan, MT 59864

Montana University System Water Center

Montana State University-Bozeman
605A Leon Johnson Hall
PO Box 2690
Bozeman, MT 59717-2690
Phone: 406-994-6690
montanawatercenter.org
E-mail: water@montana.edu

Montana Water Court

The Montana Water Court can provide information about issued decrees, objections, water right hearings in the statewide adjudication, and enforcement of water right decrees.

Bozeman Office Physical Address
149 Willow Peak Drive Unit #2
Bozeman, MT 59718

Bozeman Mailing Address
PO Box 1389
Bozeman, MT 59771

Missoula Office
201 Railroad Street W
Missoula, MT 59802
Phone: 406-586-4364
800-624-3270
courts.mt.gov/courts/water
E-mail: watercourt@mt.gov

Water Policy Interim Committee

State Capitol
P.O. Box 201704
Helena, MT 59620-1704
Phone: 406-444-3064
legmt.gov

Water Conversion Table

Flow rate is the rate at which water is diverted or withdrawn from the source. It is measured in gallons per minute (gpm) or cubic feet per second (cfs). One cfs is a rate of water flow that will supply 1 cubic foot of water in 1 second and is equivalent to flow rates of:

448.80 gpm
1.98 acre-feet a day
40 miner's inches in Montana (1 miner's inch = 11.22 gpm)

Volume is the amount of water diverted over a specific period of time each year. One acre-foot is the volume of water that will cover 1 acre to a depth of 1 foot and is equal to:

43,560 cubic feet or 325,851 gallons

Water Right Forms and Fees

These water right forms are available from the water resources regional offices or on the DNRC website at:
DNRC.mt.gov/Water_Right_Forms_And_Resources

Form No.	Title	Fee[101]
Form 600	**Application for Beneficial Water Use Permit** • In a Basin Closure Area, Controlled Groundwater Area, or Compact Area — all surface water or groundwater appropriation greater than 35 gpm **If an acceptable preapplication meeting is conducted with DNRC, the fee is reduced by $1300. $500 of the $1600 is due with the signed Preapplication Meeting Form.	$2900 -or- $1600**
	• Outside a Basin Closure Area, Controlled Groundwater Area, or Compact — all surface water or a groundwater appropriation of greater than 35 gpm **If an acceptable preapplication meeting is conducted with DNRC, the fee is reduced by $1300. $500 of the $1200 is due with the signed Preapplication Meeting Form.	$2500 -or- $1200**
	• In a Controlled Groundwater Area — groundwater appropriation of 35 gpm or less	$400
Form 602	**Notice of Completion of Ground Water Development**	$250
Form 602E	**Request for Extension for Authorized Notice of Intent to Appropriate Groundwater**	$250

[101] See Form 613, Fee Schedule, effective October 1, 2025, https://dnrc.mt.gov/_docs/water/Water-Rights-Forms/613.pdf

Form No.	Title	Fee[101]
Form 602I	**Notice of Intent to Appropriate Groundwater**	$400
Form 605	**Application for Provisional Permit for Completed Stockwater Pit or Reservoir**	$250
Form 606	**Application to Change a Water Right** **If an acceptable preapplication meeting is conducted with DNRC, the fee is reduced by $1000. $500 of the $1500 is due with the signed Preapplication Meeting Form.	$2500 -or- $1500**
	• If the change application concerns a replacement well greater than 35 gpm or 10 acre-feet, or a municipal well that exceeds 450 gpm, or a replacement reservoir located on the same source, or a proposal to move or add stock tanks to an existing system.	$400
Form 607	**Application for Extension of Time**	$400
Form 608	**DNRC Water Right Ownership Update** ($100 for the first water right plus $20 for each additional water right updated on the same Form 608, not to exceed a maximum of $600.)	
Form 609	**Water Use Complaint**	None
Form 611	**Objection to Application**	$50
Form 617	**Project Completion Notice for Permitted Water Development**	None
Form 618	**Project Completion Notice for Change of a Water Right**	None
Form 625	**Correction to a Water Right**	None
Form 626	**Application to Renew a Temporary Water Right Change**	$400
Form 630	**Controlled Groundwater Area Petition** (For additional expenses see ARM 36.12.103.)	$3000

Form No.	Title	Fee[101]
Form 631	**Petition for Closure of a Highly Appropriated Basin** (For additional expenses see ARM 36.12.103.)	$3000
Form 634	**Notice of Change in Appropriation Right for Replacement Well**	$400
Form 635	**Notice of Change in Appropriation Right for Redundant Well Construction**	$400
Form 636	**Petition to Subordinate a State Water Reservation**	None
Form 637	**Reinstatement Request**	$1000
Form 638	**Water Reservation for Instream Flow (USFS)**	$1600
Form 641	**DNRC Ownership Update, Divided Interest**	$150
Form 642	**DNRC Ownership Update, Split and Sever of a Water Right**	$150
Form 643	**DNRC Ownership Update, Severed Water Right**	$50
Form 644	**Notice of Change in Appropriation Right for Replacement Point of Diversion**	$400
Form 645	**Permit Registration for Groundwater Use within the National Park Service Compact Area** (less than 35 gpm and 10 acre-feet in the Glacier National Park and Big Hole National Battlefield areas)	$400
Form 646	**Geothermal Heating/Cooling Notice of Completion**	$400
Form 647	**Notice of Completion of Emergency Fire Protection Development**	$125
Form 650	**Temporary Lease of Appropriation Right**	$400

Form No.	Title	Fee[101]
Form 651	**Petition to Modify a Permit or Change Application**	$800
Form 652	**Petition to Create Stream Depletion Zone**	$1500
Form 653	**Variance Request**	None
Form 654	**Public Comment**	None
Form 655	**Application Amendment Form**	None
Form 656	**Notice of Change in Appropriation Right for Stock Tanks**	$400
Form 657	**Notice of Change in Appropriation Right for Municipal Use**	$400
Form 658	**Petition for Reduction, Modification, or Revocation of a Provisional Permit**	$250
Form 659	**Response to Petition for Reduction, Modification, or Revocation of a Provisional Permit**	None
Form 670	**Consent to Approval of Application**	None

Appendix A. Government Authority and Water Rights

Agency or entity	Water right-related function(s)
Any state agency, state political subdivision, or federal agency	• Acquire a state water reservation for beneficial uses or to maintain flow, level, or quality

Attorney General	• Water Court may join to certain cases of abandonment or nonperfection
	• May litigate:
	  ○ issues of statewide importance
	  ○ unresolved issues on historic water rights claims
	  ○ water waste or water right abandonment
	  ○ certain compact-related proceedings
	  ○ fines for violations of Title 85, chapter 2, MCA
	• May offer general legal services to carry out Title 85, chapter 2, MCA

Board of Land Commissioners	• Appropriate water for use upon state lands
Compact boards	Every compact the State of Montana entered into with a tribal government provides for a compact board for that compact. The compact board on the Flathead Reservation has additional responsibilities • Resolve disputes between users of tribal water rights and water rights arising under state law. • Resolve disputes related to compact interpretation.
County attorneys	• Intervene, if necessary, in cases of water waste or water right abandonment
Conservation districts	• Develop plans for conservation, development, use, and disposal (sale) of excess water

Agency or entity	Water right-related function(s)
	• Obtain water rights (water reservations) for district use
Department of Environmental Quality	• Ensure proof of water rights from DNRC for certain subdivision approvals • Provide discharge permit for aquifer recharge or mitigation plan to the DNRC, if necessary
Department of Natural Resources and Conservation	• Process historic water rights claims for pre-1973 adjudication • Process and consider permits for new water rights and changes to existing water rights • Aid district courts, Water Court in water distribution controversies • Maintain a centralized database of water rights • Implement compacts with federal reserved water rights holders (tribes and federal agencies) • Process water reservation requests from other government entities • Process stream depletion zone petitions • Administer basins closed to additional appropriations • Designate, process petitions for, and administer controlled groundwater areas • Investigate water waste • Administer state water projects • Develop state water plan • Excluded from most water right functions on the Flathead Reservation.
Department of Revenue	• Notify DNRC of property transfers including an associated water right
District courts	• Enforce water rights through court proceedings

Agency or entity	Water right-related function(s)
	• Appoint water commissioners to distribute water • Appoint water mediators to settle disputes • Consider cases of water waste, water right abandonment • Consider appeals of permitting, change, or adjudication decisions • Excluded from water right-related functions on the Flathead Reservation.
Irrigation districts/water users' associations	• Improve, develop, and maintain common water delivery systems
Legislature	• Pass and amend water right-related laws • Consider certain out-of-state appropriations of water and large ground water appropriations • Designate closed basins
Montana Bureau of Mines and Geology	• Maintains ground water well log reports in the Ground Water Information Center • Receives and maintains water use records from the Yellowstone Controlled Ground Water Area • Manages the Ground Water Assessment and Ground Water Investigation Programs
Montana Supreme Court	• Consider appeals of district court, Water Court decisions
Regional Water Authority	• Secure source of water for individual public agencies for sale
Reserved Water Rights Compact Commission	• Inactive; negotiated settlements with 19 Indian tribes, federal agencies
Flathead Reservation Water Management Board (FRWMB)	• Administers water rights on the Flathead Indian Reservation for all residents of the Flathead Reservation in accordance with the law passed by the Montana

Agency or entity	Water right-related function(s)
	Legislature and the Confederated Salish and Kootenai Tribal Council.
Tribal Water Resource Departments of the following tribes: Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation; Blackfeet Tribe; Chippewa Cree Tribe of the Rocky Boy's Indian Reservation, Crow Tribe, Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community; and Northern Cheyenne Tribe	• Administer new uses and changes in use of the tribal water right on designated reservations, except on the Flathead Reservation where FRWMB administers water rights.
Water Court	• Conduct legal proceedings related to historic, pre-1973 water rights claims • Produce enforceable decrees of water rights • Aid district courts in water distribution controversies • Consider petitions for certain historic domestic and stock water right claims

Appendix B. Status of Water Compacts in Montana

Compact	Dates of Montana Legislative Passage	Information
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation 85-20-201, MCA	May 1985	The tribal and federal governments have approved this compact.
Northern Cheyenne Tribe 85-20-301, MCA	May 1991	The tribal and federal governments (Public Law 102-374, Sep. 1992) have approved this compact.
U.S. Department of the Interior National Park Service *Yellowstone National Park* *Glacier National Park* *Big Hole National Battlefield* 85-20-401, MCA	May 1993	The federal government has approved this compact.
U.S. Department of the Interior National Park Service *Little Bighorn Battlefield National Monument* *Bighorn Canyon National Recreation Area* 85-20-401, MCA	May 1995	The federal government has approved this compact.

Compact	Dates of Montana Legislative Passage	Information
U.S. Department of the Interior Bureau of Land Management *Upper Missouri National Wild & Scenic River* *Bear Trap Canyon Public Recreation Site* 85-20-501, MCA	March 1997	The federal government has approved this compact.
U.S. Department of the Interior Fish and Wildlife Service *Benton Lake National Wildlife Refuge, Black Coulee National Wildlife Refuge* 85-20-701, MCA	March 1997	The federal government has approved this compact.
Chippewa Cree Tribe of the Rocky Boy's Indian Reservation 85-20-601, MCA	April 1997	The tribal and federal governments (Public Law 106-163, Dec. 1999) have approved this compact.
U.S. Department of the Interior Fish and Wildlife Service *Red Rock Lakes National Wildlife Refuge* 85-20-801, MCA	April 1999	The federal government has approved this compact.
Crow Tribe 85-20-901, MCA	June 1999 Special Session	The tribal and federal governments (Public Law 111-291, Dec. 2010) have approved this compact.

Compact	Dates of Montana Legislative Passage	Information
Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation 85-20-1001, MCA	April 2001	This compact awaits approval from the federal and tribal governments.
U.S. Department of Agriculture Agriculture Research Service *Fort Keogh Livestock and Range Research Laboratory* 85-20-1101, MCA	March 2007	
U.S. Department of Agriculture Agricultural Research Service *Sheep Experiment Station* 85-20-1201, MCA	March 2007	The federal government has approved this compact.
U.S. Department of the Interior Fish and Wildlife Service *Bowdoin National Wildlife Refuge* 85-20-1301, MCA	April 2007	The federal government has approved this compact.
U.S. Department of Agriculture *Forest Service* 85-20-1401, MCA	April 2007	The federal government has approved this compact.

Compact	Dates of Montana Legislative Passage	Information
Blackfeet Tribe 85-20-1501, MCA	April 2009	The tribal and federal governments (Public Law 114-322, Dec. 2016) have approved this compact.
U.S. Department of the Interior U.S. Fish and Wildlife Service *National Bison Range* 85-20-1601, MCA	April 2009	The federal government has approved this compact.
U.S. Department of the Interior Bureau of Land Management *Upper Missouri River Breaks National Monument* 85-20-1801, MCA	April 2013	The federal government has approved this compact.
U.S. Department of the Interior Fish and Wildlife Service *Charles M. Russell National Wildlife Refuge* 85-20-1701, MCA	April 2013	The federal government has approved this compact.
Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation 85-20-1901, MCA	April 2015	The tribal and federal governments (Public Law 116-260, Dec. 2020) have approved this compact.

Notes:

Persons with disabilities who need an alternative accessible format of this document should contact:

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