

Water Rights in Montana





Discussing Water Rights, A Western Pastime

TOPICS

- History of Montana Water Rights
- 1973 Montana Water Use Act
- Compacts
- Summary



History of Water Rights in Montana

- Prior Appropriation Doctrine State
 - ◆ Beneficial Use of Water
 - ◆ “First in Time, First in Right”

- Types of rights
 - ◆ Use Rights
 - ◆ Filed Rights
 - ◆ Decreed Rights



What is a Water Right

- It is the Right to Use the Water
- 1972 Constitution says “all waters of the state are the property of the state for the use of its people”
- It is like a Property Right
 - ◆ It is protected by the Constitution
 - ◆ Has Value - Can be bought and sold
 - ◆ Can't be taken away without due process

Elements of a Water Right

- Priority Date
- Beneficial Use
- Source
- Point of Diversion & Flow Rate (CFS or GPM)
- Volume (Acre-Feet/YR)
- Place of Use
- Period of Use



MONTANA WATER USE ACT

(ADMINISTERED BY DNRC)

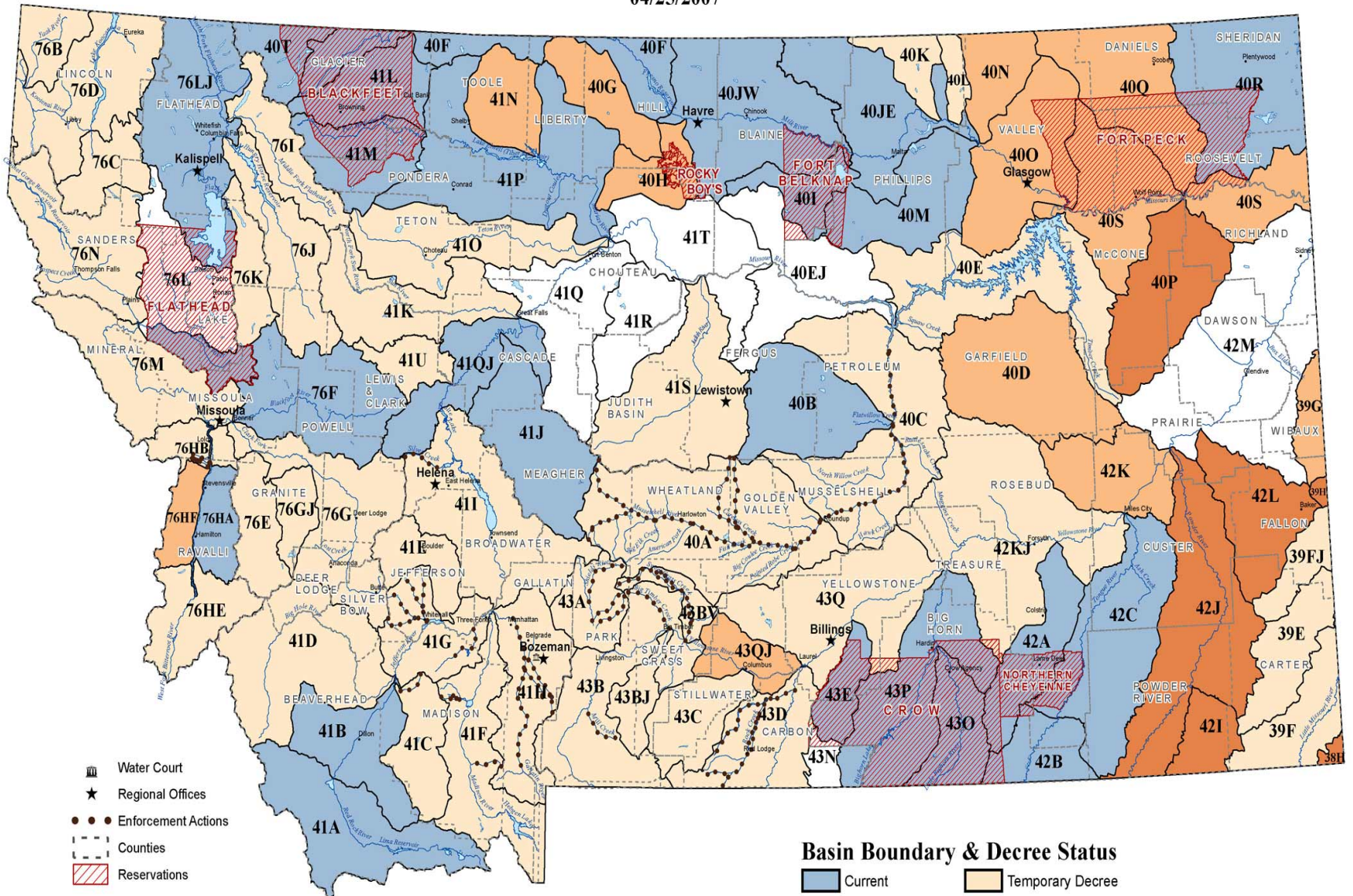
- Legally Recognized All Existing uses of Water Prior to July 1, 1973.
- Established a Permit System for obtaining Water Rights in Montana & a process for Changing Water Rights.
- Created a Central Water Rights Records System.

Adjudication Program

- 1979 Statewide Mandatory Filing of Existing (Pre-7/1/1973) Historical Water Uses – Four Year Timeline – 1982.
- 215,000 Prima Facia Claims were Filed Statewide by 1982.
- Water Court directs Adjudication Activities.
 - ◆ Holds Hearings & Final Decision Maker.
 - ◆ DNRC provides technical assistance.

Basin Location and Adjudication Status

04/25/2007



- Water Court
- Regional Offices
- Enforcement Actions
- Counties
- Reservations

Basin Boundary & Decree Status

- Current
- Not Yet Examined
- Temporary Decree
- Preliminary Decree
- Final Decree

Steps with Processing Permits & Changes

Application Filed With DNRC – Priority Date

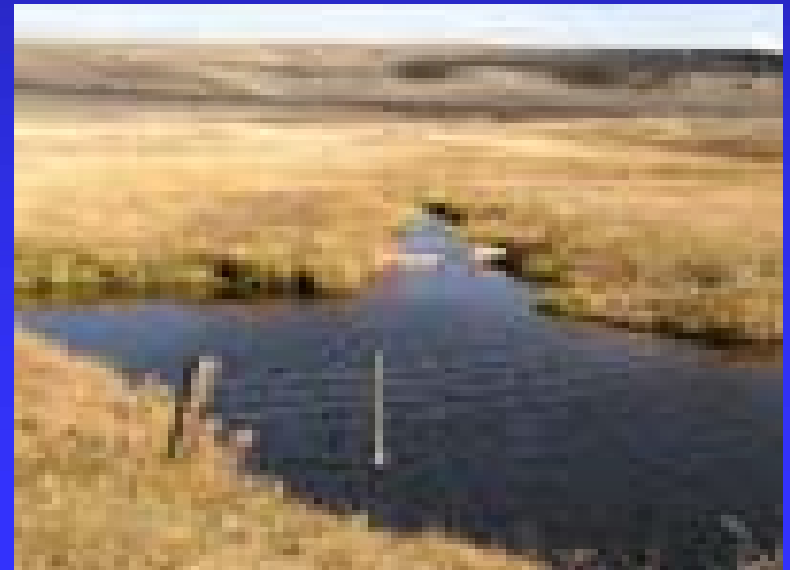
1. Correct & Complete Assessment
2. Criteria Assessment – Adverse Effects
3. MEPA
4. Public Notice
5. Objections
6. Settle or Hearing
7. Issue – Provisional Permit
8. Project Completion Notice
9. Certificate of Water Right

Permit Criteria- New Applications

- Water is physically and legally available
- Use will not adversely affect prior existing water rights – Involves Public Notices
- Diversion, construction, and operation are adequate
- Beneficial use
- Possessory interest in place of use

Stock Water Exception

- ✓ Small stock ponds
 - < 15 Acre Feet in size, located on a nonperennial stream & water user controls more than 40 acres of land file Form 605 after construction.



Groundwater Exemption

- Wells & Springs < 35 GPM & volume used does not exceed 10 Acre Feet/ YR. Drill water wells first & file after water is put to use) Form 602).



Travis Korte / The Hutchinson News

Changing A Water Right

- ❖ Authorization from the DNRC is required before changing a Water Right.
 - ◆ Moving or adding a point of diversion (headgate or pump)
 - ◆ Moving or adding a place of use
 - ◆ Place of Storage
 - ◆ Purpose
 - ◆ Salvage Water
 - ◆ Temporary Change to convert a water right to an instream use to benefit fisheries.

Change Criteria

- Change will not adversely affect any existing water right, junior or senior.
- Adequate means of diversion, construction & operation.
- Beneficial use of water.

Larger Big Horn River Irrigation Claims

- Big Horn Canal
 - ◆ 788 cfs - 33,546 acres
- Big Horn Low Line Ditch Co.
 - ◆ 250 cfs - 5,475 acres
- Two Leggins Water Users Assoc.
 - ◆ 847 cfs – 7,520 acres
- Farmers Ditch Co
 - ◆ 75 cfs – 1,850 acres
- Victory Irrigation District
 - ◆ 90 cfs – 2,743 acres

Compacts

■ Crow Compact

- ◆ Closed all Basins to New Permits
- ◆ Still allows small wells and stock ponds
- ◆ Created Stream Flow & Lake Level Management Plan

■ Yellowstone River Compact

- ◆ Interstate Compact with ND, WY, & MT
- ◆ Rules were established to administer water rights along MT-WY border.
- ◆ Wy – 80% Mt – 20%
 - ◆ Allocation Amounts for any Unused Waters as of 1/1/50.

Water Reservation System

- 1978 - Board of Natural Resources & Cons. Issued the Final Order for the Establishment of the Yellowstone River Water Reservations.
- Instream Flows (DFWP & DHES in 1978)
- Municipal Uses
- Agricultural Irrigation
 - ◆ County Conservation Districts Administer

INFORMATION SOURCES

Water Right Info and Forms Available At:

<http://dnrc.mt.gov>

Existing Water Rights Data Available At:

<http://nris.mt.gov>

Well Logs Available At:

<http://mbmggwic.mtech.edu>

Billings DNRC Water Resources Office

Airport Industrial Park

Billings, Mt. 59105 Ph: 247-4415 Fax: 247-4416

Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Prairie,
Rosebud, Stillwater, Sweet Grass, Treasure & Yellowstone