

**CHRONOLOGY OF MONTANA'S WATER
ADJUDICATION PROCESS, 1972-2003**

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CHRONOLOGY OF MONTANA'S WATER ADJUDICATION PROCESS, TYPES OF DECREES, AND THE MCCARRAN AMENDMENT

The adjudication of water in Montana has been a topic of discussion and work for 25 years in varying forms and applications. The process has continued to evolve with input from individuals and entities who have experience with the system as water users, attorneys, tribes, judges, water masters, department personnel, and legislators. This document is an attempt to provide a chronology of how the adjudication process has evolved and to document where we've been in an effort to determine where we want to go with adjudication in the future. The chronology is fairly lengthy but will provide a good overview of how the process has progressed and some of the challenges it has faced over the years. Following the chronology is a brief summary of the McCarran Amendment and the role that it plays in Montana's adjudication process now and potentially in the future.

CHRONOLOGY OF MONTANA'S WATER ADJUDICATION PROCESS

1972	<p>1972 Montana Constitution. Article IX, section 3. Water rights.</p> <p>(1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed.</p> <p>(2) The use of all water that is now or may hereafter be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use.</p> <p>(3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law.</p> <p>(4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.</p> <p>Convention Notes: (1) New provision guaranteeing all existing rights to the use of water. (2) No change except in grammar. (3) New provision recognizing state ownership of all water subject to use and appropriation by its people. (4) New provision requiring Legislature to pass laws establishing a central records system so that records of water rights may be found in a single location as well as locally.</p>
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Pre-July 1973	<p>A person could gain a right to use water simply by putting the water to beneficial use. Some efforts were made to document water use through filings in government offices or through District Court decrees, but no one knew for sure how many water rights were claimed or how much water was appropriated from Montana streams. Water rights put to beneficial use prior to July 1, 1973, are called "existing water rights".</p>
July 1, 1973	<p>Water Use Act became effective. After the effective date of this act, any person seeking to appropriate water or to change an existing right was required to obtain a permit from the Department of Natural Resources and Conservation (DNRC). DNRC was also directed to establish a centralized record system of existing rights and to begin proceedings to determine existing rights through the appropriate District Court. The first effort to accomplish this daunting task was in the Powder River Basin. After 6 years, completion of the first basin was not in sight.</p>
1975	<p>Northern Cheyenne Tribe files lawsuit. The Northern Cheyenne Tribe filed a lawsuit in the United States District Court to adjudicate water rights in the Tongue River and Rosebud Creek. The United States filed two more lawsuits in the United States District Court for the same purpose, in its own right and as fiduciary on behalf of the Northern Cheyenne and other reservation tribes. [<i>United States v. Adsit</i> was consolidated with <i>Northern Cheyenne v. Tongue River Water Users Assn.</i>, CV-75-20BLG (D.C. Mont.)] [<i>Northern Cheyenne v. Adsit</i>, 668 F. 2d 1080, 1082 (CA 9th 1982)]</p>
1977	<p>House Bill 809 and HJR 81. In 1977, HB 809, calling for a General Revision of Laws Relating to Water Rights Adjudication, passed the House and was tabled in the Senate. HJR 81 was then passed to perform an interim study on determining existing water rights. [<i>House Joint Resolution 81, Laws of 1977</i>]</p>
1978	<p>Subcommittee on Water Rights submitted its Determination of Existing Water Rights Report to the Legislature and recommended a comprehensive statewide adjudication of water rights be processed through a state water court system.</p>
1979	<p>The United States filed four more lawsuits in United States District Court seeking a declaration of water rights on behalf of the United States and four additional tribes. [<i>United States v. Ageson</i>, CV-79-21GF (D.C. Mont. 1979); <i>United States v. Aasheim</i>, CV-79-40BLG (D.C. Mont. 1979); <i>United States v. AMS Ranch</i>, CV-79-22GF (D.C. Mont. 1979); <i>United States v. Abell</i>, CV-79-33M (D.C. Mont. 1979)]</p>

May 11, 1979	Senate Bill 76 became effective. SB76 set up the current process for adjudicating existing water rights. It divided Montana into four water divisions and called for four judges, commonly known as the Water Court, to adjudicate all existing water rights in a statewide proceeding. At the same time, the Reserved Water Rights Compact Commission was created to negotiate federal and Indian reserved water rights. <i>[Chapter 697, Laws of 1979]</i>
June 8, 1979	Montana Supreme Court issued an Order requiring every person claiming ownership of an existing water right to file a claim with DNRC. Claims not timely filed will be lost as the statutory conclusive presumption is that the water right is abandoned. <i>[Supreme Court Order No. 14833, dated June 8, 1979]</i>
November 29, 1979	United States District Court dismisses all seven federal lawsuits. Appeal is taken. <i>[Northern Cheyenne Tribe v. Tongue River Water Users Association; United States v. Tongue River Water Users Association; United States v. Big Horn Low Line Canal; United States v. Ageson; United States v. Aasheim; United States v. AMS Ranch; United States v. Abell, 484 F. Supp. 31 (D.C. Mont. 1979)]</i>
May 11, 1979 - April 30, 1982	Claim filing period. The original filing deadline was January 1, 1982. The Montana Supreme Court extended the deadline to April 30, 1982.
April 30, 1982	Filing deadline. 200,000+ claims were submitted. Timely filed statements of claims, by statute, are prima facie proof of their content. Prima facie proof means "a fact presumed to be true unless disproved by some evidence to the contrary".
February 22, 1982	Ninth Circuit reversed the dismissal of the federal lawsuits. <i>[Northern Cheyenne v. Adsit, 668 F. 2d 1080 (CA 9th 1982)]</i>
July 1, 1983	U.S. Supreme Court reversed the Ninth Circuit and remanded the cases for further proceedings. The U. S. Supreme Court left open for determination on remand whether the proper course in such cases is a stay of the federal suit or dismissal without prejudice. The Supreme Court stated that resort to the federal forum should remain available if warranted by a significant change of circumstances. <i>[Arizona v. San Carlos Apache Tribe of Arizona, 463 U.S. 545 (1983)]</i>

December 9, 1983	<p>On remand, the Ninth Circuit held that the question of jurisdiction under state law is one to be resolved by the state courts and that the question of adequacy of the state proceedings is to be decided by the state courts. The federal proceedings were stayed until the state court proceedings were concluded. [<i>Northern Cheyenne v. Adsit</i>, 721 F.2d 1187, 1188-1189 (CA 9th 1982)]</p>
April 30, 1982 - November 11, 1985	<p>Claims verified, decrees issued. DNRC verified claims by using their field office employees to review claims and compare them against aerial photos and the water resources survey published from 1943 through 1972 for the pertinent county. If DNRC found a problem with a claim, such as a problem with the amount of water that was claimed as historically used in comparison to a standard flow rate of 17 gallons per minute per acre or a point of diversion that was incorrectly described when compared to the claimant's map, they could change the claimed information before the decree was issued by the Water Court. The claimant would then have to object if the claimant disagreed with the change. Approximately the first 20 basins were decreed this way.</p>
June 18, 1985	<p>Pettibone decision The Montana Supreme Court ruled that the state of Montana is the owner of water rights appurtenant to school trust lands, not the lessee. [<i>Department of State Lands v. Pettibone</i>, 216 M 361, 702 P.2d 948]</p>
July 17, 1985	<p>Department of Fish, Wildlife, and Parks filed a writ of supervisory control against the Water Courts with the Montana Supreme Court based on the following factors:</p> <ul style="list-style-type: none"> • substantive errors in decreed water rights • procedural law errors in the Water Court adjudication process • accuracy and validity of decrees <p>[<i>Montana Supreme Court Cause No. 85-345</i>]</p>
December 18, 1985	<p>Montana Supreme Court ruled that the Water Court has the authority to adjudicate water right claims on all Indian reservations. The Supreme Court further concluded that the Water Use Act is adequate on its face to adjudicate both Indian and federal reserved rights. A challenge could later be brought as to how the statutes were applied. [<i>State ex rel. Greely v. Confederated Salish and Kootenai Tribes</i>, 219 Mont. 76, 95, 712 P.2d 754 (1985)]</p>

1985	Fort Peck Indian Reservation Compact. Negotiations between the Compact Commission and the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation were successfully concluded in 1985. The Compact was approved by the Water Court. Portions of the Compact are still awaiting Congressional approval. <i>[85-20-201, MCA]</i>
February 19, 1986	Stipulation was signed by 22 attorneys as a result of the FWP challenge to the adjudication. This stipulation helped separate the role of DNRC and the role of the Water Court. It provided that "the verification that was performed by DNRC shall be limited to a factual analysis of water right claims for accuracy and completeness and the identification of issues." Since DNRC could rarely change any water rights before they were decreed, it started filing thousands of objections to allegedly inaccurate water right claims as a general objector. <i>[Montana Supreme Court Cause Nos. 85-345, 85-468, 85-493]</i>
March 12, 1986	Chief Water Judge sent a letter to DNRC stating that "the conception of the accurate and legally defensive adjudication is with this Court." The DNRC withdrew thousands of objections in 1987 based on this representation. <i>[Letter from Water Court to DNRC, dated March 12, 1986, p. 2, and letter from DNRC to Water Court dated July 7, 1987]</i>
April 8, 1986	Montana Supreme Court ruled that no matter how the water right is expressed in the decrees of the Water Court, either in flow rate or in acre feet or a combination thereof, such expression of amount is not the final determining factor. Beneficial use shall be the basis, the measure and the limit of all rights to the use of water. <i>[McDonald v. State, 220 Mont. 519, 530 (1986)]</i>
Spring 1986	DNRC drafted a set of rules for claim examination. DNRC intended to adopt the rules pursuant to the Montana Administrative Procedure Act (MAPA).
Summer 1986	Water Court Orders were issued that directed DNRC to reexamine certain groups of claims (mostly commercial, mining, power generation, fish and wildlife) in 5 basins. The basins were 43B, 76G, 41K, 41E, and 41H. <i>[Basin 43B File, Basin 76G File, Basin 41K File, Basin 41E File, Basin 41H File]</i>
July 23, 1986	Water Court Order was issued prohibiting DNRC from adopting claim examination rules under MAPA. <i>[Water Court MAPA File]</i>

August 7, 1986	DNRC issued rules informally for public comment.
August 8, 1986	Water Court Order was issued that DNRC take no further action on the examination rules without express authorization of the Water Court. [Water Court MAPA File]
August 20, 1986	DNRC appealed the Water Court Orders to the Montana Supreme Court.
September 26, 1986	<p>Based on a September 25, 1986, motion by DNRC, the Water Court ordered that the reexamination of 4 of the 5 basins it had initially ordered DNRC to reexamine be stopped. The stay was requested on the grounds that:</p> <ul style="list-style-type: none"> • the Orders are premature as no new verification or examination procedures have been adopted • the Orders are contrary to the Stipulation • the United State of America has not asked for reexamination by any procedure other than that set out in the Stipulation • the Orders to reexamine the basins pending the outcome of the MAPA litigation in the Supreme Court will result in the waste of judicial and administrative functions. <p>The Water Court issued its stay Order "without conceding any of the allegations of this motion". [76G Basin File, 41K Basin File, 41E Basin File, 41H Basin File]</p>
February 3, 1987	Legislative Joint Appropriations Subcommittee on Natural Resources cut \$500,000 per year from the adjudication program budget.
March 31, 1987	<p>Decision issued by the Montana Supreme Court in <i>In re Department of Natural Resources & Conservation, 226 Mont. 221, 236, 740 P.2d 1096 (1987)</i>. The decision:</p> <ul style="list-style-type: none"> • affirmed the Water Court's Orders • declared that the Supreme Court itself would promulgate rules to cover water right claim examination • directed the Water Court and DNRC to submit draft rules
July 1, 1987	Effective date of reduced adjudication program budget. Staff was reduced from 37.72 FTE to 20 FTE for FY88 and FY89 with 13 FTE in regional offices.

<p>July 7, 1987</p>	<p>Supreme Court issued the Claim Examination Rules. The effective date of the rules was July 15, 1987. Public comment was allowed to be submitted until March 15, 1988. Comments were received from:</p> <ul style="list-style-type: none"> • Confederated Salish and Kootenai Tribes • Department of Fish, Wildlife, and Parks • Department of Natural Resources and Conservation • Montana Power Company • United States of America • Washington Water & Power • Montana Water Court <p><i>[Order Adopting Water Right Claim Examination Rules, Matter of Activities of the Department of Natural Resources & Conservation, Supreme Court Order No. 86-397, dated July 7, 1987]</i></p> <p>As a result of the Supreme Court rules, DNRC puts "issue remarks" on any claim that they feel isn't accurate based on their research into the specific claim. Through the verification process that was used prior to the examination process, DNRC could put "gray area remarks" on claim abstracts. Gray area remarks did not cover the range of issues that the current issue remarks cover.</p>
<p>August 19, 1987</p>	<p>Water Court ordered DNRC to report any substantial differences between the claim examination procedures and the verification manual for 5 basins (43Q, 41G, 40K, 40C, and 41C) . DNRC and the Water Court were trying to make the change from the "verification" process, which happened before the Supreme Court MAPA decision, and the "examination" process, which is the current process for DNRC when reviewing claims.</p>
<p>Fall 1987</p>	<p>Water Right Claim Examination Manual was drafted to provide step-by-step procedures for DNRC staff to follow in implementing the Supreme Court Claim Examination Rules.</p>
<p>October 14, 1987</p>	<p>Water Policy Committee of the Legislature hired a Denver law firm as consultants to study the adjudication in Montana and submit a report. This report is often referred to as the "Ross Report" and is approximately 85 pages long with 180 pages of Appendices. The Water Policy Committee was part of the EQC.</p>
<p>December 1987</p>	<p>Claim examination was started in 6 basins using the Claim Examination Rules.</p>

<p>October 1987 - December 1987</p>	<p>Water Court issued Orders denying the reexamination of Basin 40C, 41G, and 40K. In the absence of a show of necessity and in view of the recent reduction in DNRC funding, the Court concluded that it could not justify the costs, in terms of time and money, that would be required to reexamine these basins. <i>[40C Basin File, 40K Basin File]</i></p>
<p>January 4, 1988</p>	<p>U.S. Government filed a Motion before the Water Court to have reexamination comparison reports prepared on all basins in all temporary preliminary and preliminary decrees and have reexamination conducted in those basins on which comparison reports had been written -- 40C, 40K, 41C, 41G, and 43A. Comparison reports addressed the difference between the verification and examination procedures. <i>[Water Court Order No. WC-88-1]</i></p>
<p>May 10, 1988</p>	<p>Water Court issued an Order and Memorandum denying the U.S. Government motion for reexamination and took the motion for comparison reports under advisement. <i>[Water Court Order No. WC-88-1]</i></p>
<p>September 30, 1988</p>	<p>Consultant's report was submitted to the Water Policy Committee. The report affirmed Montana's adjudication process and suggested legislative "fine-tuning". The report stated that a process of limiting changes to water rights to their historical use would be a way to catch inaccurate claims in the future. In defense of the accuracy of the adjudication, the report also stated that the Water Court would continue to call in flagged claims (those with gray area remarks) on its own motion. <i>["Ross Report", pages 56-57, 60-61]</i></p>

October 19, 1988	<p>Montana Supreme Court's first "Bean Lake" decision. <i>In Re Water Rights in Dearborn Drainage Area, 234 Mont. 331, 766 P.2d 228 (1988)</i>. The Supreme Court ruled "It is clear therefore that under Montana law before 1973, no appropriation right was recognized for recreation, fish and wildlife, except through a Murphy right statute. The prevailing legal theory was that some form of diversion or capture was necessary for an appropriation even though some forms of nondiversionary water rights were given appropriation status. in this case the Water Court denied the appropriation water right claim ' because of the lack of diversion, intent, and notice.' Whatever the merits of the lack of diversion argument, the DFWP and the public could not have intended an appropriation where none was recognized by law, and for the same reason, adverse appropriators could not have had notice of such a claim. We therefore uphold the Water Court's decision that DFWP, for itself or for the public, had no appropriation right in Bean Lake, and no 'existing right' therein which is protected by Art. IX, Section 3(1) of the Montana Constitution." [See September 24, 2002 -- Supreme Court overruled this decision]</p>
May 10, 1989	<p>Water Court and DNRC jointly submitted proposed revisions to the Claim Examination Rules to the Montana Supreme Court.</p>
Spring 1989	<p>1989 Legislature increased the adjudication program budget by \$150,000 per year for FY90 and FY91. Staff was increased from 20 FTE to 27 FTE with 20 FTE in the regional offices.</p>
July 13, 1989	<p>Montana Supreme Court issued the first Order amending the Claim Examination Rules. The amended rules had an effective date of September 1, 1989. [<i>Montana Supreme Court Cause No. 86-397</i>]</p>
July 17, 1989	<p>Water Court ruled that any claims for existing pre-1973 water rights not filed on or before the April 30, 1982, deadline were forfeited. [<i>Order, Findings, Conclusions, and Memorandum, Water Court Case No. 43B-LC-1</i>]</p>
September 1, 1989	<p>Department of Fish, Wildlife, and Parks was the only party to submit comments and objections to the September 1, 1989, version of the Claim Examination Rules. DFWP's comments were overruled by the Montana Supreme Court on November 2, 1989.</p>
March 29, 1990	<p>Judge W.W. Lessley dies after serving close to 11 years as the first Chief Water Judge of the Montana Water Court.</p>

May 14, 1990	C. Bruce Loble is appointed Chief Water Judge by the Montana Supreme Court.
December 18, 1990	Montana Supreme Court issued the second Order amending the Claim Examination Rules. The amended rules had an effective date of January 15, 1991. [<i>Second Order Amending Water Right Claim Examination Rules, Matter of Activities of the Department of Natural Resources & Conservation, Supreme Court Cause No. 86-397</i>]
May 6, 1992	Montana Supreme Court affirms the July 17, 1989, decision by the Water Court that claims filed after the April 30, 1982, deadline are forfeited. <i>In re Adjudication of Existing Yellowstone River Water Rights, 253 Mont. 167, 832 P.2d 1210 (1992)</i>
September 1992	Northern Cheyenne Indian Reservation Compact. Negotiations between the Compact Commission and the Northern Cheyenne Tribe were successfully concluded and ratified by the Montana Legislature in 1991. The Water Court approved the Compact. The Northern Cheyenne Compact was ratified by Congress and signed into law in September 1992. [<i>85-20-301, MCA; Public Law 102-374</i>]
1993	National Park Service Compacts for Yellowstone and Glacier Parks and the Big Hole Battlefield. A reserved water rights compact with the National Park Service for Yellowstone and Glacier Parks and the Big Hole Battlefield was finalized and ratified by the Montana Legislature in 1993. The Compact is awaiting Water Court approval. The Compact does not require congressional approval. [<i>85-20-401, MCA</i>]
July 1, 1993	Senate Bill 310 becomes effective. SB310 provided for the conditional remission of the forfeiture of existing water rights caused by the failure to comply with the April 30, 1982, deadline. Water right claimants were given one more opportunity to file a water right claim in the general adjudication. The deadline for filing claims was July 1, 1996. [<i>Chapter 629, Laws of 1993</i>]
July 1, 1993	1993 Legislature reduced adjudication staff from 27 to 23 FTE. The regional office staff was reduced from 20 to 17 FTE, and the Helena central office staff decreased from 7 to 6 FTE.
November 1993	Special legislative session reduced the adjudication budget and eliminated four regional office FTE. There were now 13 FTE in the regional offices. The total program staff was reduced from 23 to 19 FTE.

1995	<p>Little Bighorn Battlefield National Monument and Bighorn Canyon National Recreation Area Compact. The 1995 Legislature ratified a compact for the remaining two Park Service units, Little Bighorn Battlefield National Monument and Bighorn Canyon National Recreation Areas, completing Park Service negotiations for Montana. The Compact is awaiting Water Court approval. The Compact does not require congressional approval. <i>[85-20-401, MCA]</i></p>
February 8, 1995	<p>Water Court ruled that it has the right to call in claims. This decision is often referred to as the "on motion" decision that was written by Judge Loble. The "on motion" decision provided that the Water Court had the authority to call in claims on its own motion and that there didn't have to be an objector to the claim for the Water Court to call it in. The Water Court did not say when or if it would call claims in "on motion", ruling it was the Water Court's discretion to do so. <i>[In the Matter of the Water Court Procedures In Addressing Factual and Legal Issues Called In "On Motion of the Water Court", Water Court Case No. WC-92-3]</i></p>
April 13, 1995	<p>1995 Legislature formed an advisory committee. The Legislature required the Chief Water Judge to appoint a committee to provide recommendations on methods to improve and expedite the water adjudication process. The work of this advisory committee resulted in legislation aimed at improving the process. <i>[3-7-103, MCA]</i></p>
April 13, 1995	<p>1995 Legislature removed DNRC's ability to serve as an "institutional objector" from statute. In order to object to a claim, the objector must have "good cause shown", which means a written statement showing that a person has an <u>ownership interest</u> in water or its use that has been affected by the decree. <i>[Chapter 421, Laws of 1995]</i></p>
July 13, 1995	<p>Rules for collecting processing fees for late claims were adopted. For claims filed after April 30, 1982, and prior to July 1, 1993, a \$150 processing fee was assessed. The Department was to send a billing invoice to the current late claim owner. The Department was to complete this mailing by June 30, 1996. A state agency filing a late claim had until July 30, 1997, to pay the processing fee to the Department.</p>
October 6, 1995	<p>First late claim processing fee invoice notice was mailed. DNRC received payment on 829 out of a total of 2,050 claims requiring a processing fee. 130 claims were withdrawn or it was determined that they had been filed in a timely manner and were not subject to the late claim status.</p>

April 16, 1996	Second late claim processing fee invoice was mailed. DNRC received payment on 261 out of 1,091 claims that required a processing fee. 51 claims were withdrawn or it was determined that they had been filed in a timely manner and were not subject to the late claim status.
July 1, 1996	Deadline for filing late claims. Approximately 1,950 late claims were received by DNRC, bringing the total late claims filed between April 30, 1982, and July 1, 1996, to 4,986.
September 20, 1996	Judge Loble appointed the members of the Water Adjudication Advisory Committee. The members were: John Bloomquist, Wm. Russell McElyea, and R. Mark Josephson as attorney members and Barry Hedrich, Eugene Manley, and Vernon Westlake as water user members. Ex officio members included: James Dubois, Department of Justice; Harley Harris, Assistant Attorney General; Don MacIntyre, DNRC; and Albert Stone, Professor of Law Emeritus.
October 1, 1996	Report of the Montana Water Adjudication Advisory Committee was presented to the Montana Supreme Court, the 55th Montana Legislature, the Governor of Montana, the Montana Water Court, and the Department of Natural Resources and Conservation. The Committee recommended: <ul style="list-style-type: none"> • amendments to several statutes • that DNRC make greater use of direct claimant contact in its examination process; and • further study of: <ul style="list-style-type: none"> • how exempt claims should be treated in the adjudication; • how to tabulate all existing water rights, permits and change authorizations in a final decree to serve as guidance to water commissioners; • whether there should be an institutional objector in the adjudication process; and • the impact subdivisions may be having on the adjudication process.
March 17, 1997	DNRC began the process of revising the Supreme Court Claim Examination Rules.

<p>March 25, 1997</p>	<p>Benton Lake and Black Coulee National Wildlife Refuges (NWR) Compact. In 1996, a compact between the State and the USFWS was reached for both the Benton Lake and Black Coulee National Wildlife Refuges (NWR). The Compact was ratified by the 1997 Montana Legislature and was signed by Governor Marc Racicot on March 25, 1997. The Compact is in the Water Court process. <i>[85-20-701, MCA]</i></p> <p>Red Rock Lakes NWR Compact A compact for Red Rock Lakes NWR was ratified by the Legislature and signed by the Governor. The Compact has gone through the final federal approval process and is awaiting Water Court approval. It does not require ratification by Congress. <i>[85-20-801, MCA]</i></p> <p>Negotiations concerning the three remaining USFWS units are in progress:</p> <ul style="list-style-type: none"> Bowdoin NWR Charles M. Russell/UL Bend NWR National Bison Range
<p>April 14, 1997</p>	<p>Rocky Boy Indian Reservation Compact A Compact between the State and the Chippewa Cree Tribe of the Rocky Boy Indian Reservation was reached in early 1997. The Compact was ratified by the 1997 Montana Legislature and was signed by Governor Marc Racicot on April 14, 1997. The Compact was approved by the Water Court. The Compact has been ratified by the U.S. Congress. <i>[85-20-601, MCA; Public Law 106-163]</i></p>
<p>April 15, 1997</p>	<p>A list of suggested modifications to the Supreme Court Claim Examination Rules was sent to Judge Loble.</p>
<p>August 29, 1997</p>	<p>The Water Court issued an Order directing DNRC to reexamine 1,122 irrigation claims in the Judith River Basin. The Order came as a result of DNRC's proposal to reexamine the irrigation claims so that the verification process is consistent within the basin. <i>[Basin 41S File]</i></p>
<p>1997</p>	<p>The reserved water rights compact with the Bureau of Land Management for both the Upper Missouri Wild and Scenic River and Bear Trap Canyon Public Recreation Site on the Madison River was finalized in 1997. It does not require ratification by Congress. The Compact must be filed with the Water Court. <i>[85-20-501, MCA]</i></p>

1999	<p>Red Rock Lakes NWR Compact and amendments. The U.S. Fish & Wildlife Service Compact for Red Rock Lakes, which was passed by the 1999 Legislature, required some amendments. The amendments correct errors found in a consumptive use chart within the Compact. The amendments were passed by the 2001 Legislature. They do not change the meaning of the original Compact agreed to by the U.S. Fish & Wildlife Service and the Compact Commission.</p>
1999	<p>Crow Indian Reservation Compact. A compact settlement between the Crow Tribe, the United States, and the Compact Commission passed a special session of the Legislature in 1999. One year later, a Streamflow Management Plan for the Bighorn River was approved by the parties. The Compact must go to Congress. <i>[85-20-901, MCA]</i></p>
1999	<p>House Bill 407 was introduced in the Legislature. HB 407 did not pass the Legislature. The bill sought to require the Water Court to develop rules relating to:</p> <ul style="list-style-type: none"> • the Water Court's "on motion" policy • the Water Court's review of water right settlements • the Water Court's use of DNRC personnel. <p>The legislation was seen as not necessary when the Chief Water Judge committed to adopting rules to address the issues. <i>[Rep. Cindy Younkin, HB407 sponsor]</i></p>
September 22, 2000	<p>Judge Loble requested interested Water Court observers to submit comments on:</p> <ul style="list-style-type: none"> • the Court's review of claims on its own motion; • the Court's review of settlement documents; and • the Court's use of the DNRC in post decree assistance.
November 21, 2000	<p>Water Court rules meeting was held in Bozeman. Questions were raised with regard to how the "on motion" decision would be used by the Water Court and the success of "neighbors keeping neighbors honest" through the objection process. The Chief Water Judge stated in this meeting that "as a practical matter, people are not objecting to their neighbor's water rights". The Judge also stated the following with regard to the Water Court's use of its "on motion" ability. "Frankly, when we went to the On Motion decision, we pulled back from all those on motions. We have taken the position that by and large, that's not our problem." <i>[Meeting on Water Court Rules Transcript, dated November 21, 2000, pages 23-24.]</i></p>

2001	<p>Fort Belknap Indian Reservation Compact. A Compact between the State and the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation was ratified by the 2001 Montana Legislature and signed by Governor Judy Martz. Negotiations continue on a federal bill that must go to Congress. [85-20-1001, MCA]</p>
July 18, 2002	<p>Water Court held a public meeting in Bozeman to consider the comments received regarding proposed Water Right Adjudication Rules.</p>
September 24, 2002	<p>Montana Supreme Court overruled its 1988 Bean Lake decision. In its decision, the Court stated that the doctrine of prior appropriation does not require a physical diversion of water where no diversion is necessary to put the water to a beneficial use. Further, the Court held that fish, wildlife, and recreation uses are beneficial and that valid instream and in-lake appropriations existed prior to 1973 when the facts and circumstances indicate that notice of the appropriators intent had been given. [<i>In re Adjudication of Existing Water Rights</i>, 311 Mont. 327, 55 P.3d 396 (2002)]</p>
November 14, 2002	<p>Chief Water Judge reconvened the Water Adjudication Advisory Committee. The issues that were outlined were:</p> <ul style="list-style-type: none"> • how to make the adjudication process more efficient; • consideration of post-1973 changes in the adjudication; • accuracy of the adjudication; • establish procedures for enforcement of Water Court decrees and the Court's "on motion" authority; • status and treatment of nonfiled exempt claims; • increase use of the Internet to disseminate adjudication information; and • revision of the claim examination rules to address the 2002 Supreme Court decision on recreation, fish, and wildlife claims.
December 2003	<p>Helena Central DNRC Office -- 2.7 FTE Regional DNRC Offices -- 9.8 FTE 2003 General Fund Budget for Adjudication -- \$644,009</p>

STATUS OF STATE ADJUDICATION AS OF DECEMBER 1, 2003

Final Decrees	6 basins	16,354 total claims
Preliminary Decrees	11 basins/1 subbasin	23,262 total claims
Temporary Preliminary Decrees	36 basins/2 subbasins	89,809 total claims
Active examination by DNRC	4 basins completed	3,774 total claims
Active examination by DNRC	13 basins/29,477 claims done	39,840 total claims
To be examined by DNRC	15 basins	46,379 total claims
TOTALS	85 basins/3 subbasins	219,417 total claims

TYPES OF DECREES

- Temporary preliminary decree (TPD) -- issued in basins containing federal reserved water rights where a compact has not been concluded. TPDs contain all rights other than reserved rights being negotiated. In these basins, a preliminary decree will be issued as a second step in the process and will include all rights in the temporary preliminary decree along with all reserved rights in the basin.
- Preliminary decree -- this is the first decree issued in basins that do not contain any federal reserved rights.
- Final decree -- After all objections have been resolved, the Water Judge issues a final decree. On the basis of the final decree, DNRC will issue a Certificate of Water Right to each person decreed an existing water right.

THE MCCARRAN AMENDMENT

Because of the sovereign immunity of the United States, rights to the use of water claimed by the federal establishment under state law or federal law could not be adjudicated in state water right proceedings unless representatives of the United States waived the federal immunity to state court action and voluntarily subjected those rights to the jurisdiction of the state courts. As might be expected no representative of the United States or of tribes claiming Winters doctrine rights was ever willing to voluntarily subject the claims to a state adjudication process.¹

¹"Evaluation of Montana's Water Rights Adjudication Process" Saunders, Snyder, Ross & Dickson, P.C., September 30, 1988, p. 43-44.

Because of this issue, a state that had any federally reserved water rights was not able to have a complete adjudication because there was no way that the state process could identify and quantify federal claims.

In 1952, the McCarran Amendment was passed in Congress. The McCarran Amendment effectively told the United States representatives that if the United States was properly noticed and invited into state proceedings and if those proceedings were "for the adjudication of rights to the use of water of a river system or source", the federal and tribal claims to water could be included in and addressed in state adjudication proceedings. A more thorough discussion of the McCarran Amendment and applicable case law is provided in Appendix A. (Ross report, pages 43-53).