

Montana Department of Natural Resources and Conservation and Montana Water Court

Environmental Quality Council
January 2004

Montana's General Stream Adjudication and Enforcement of Montana Water Court Decrees

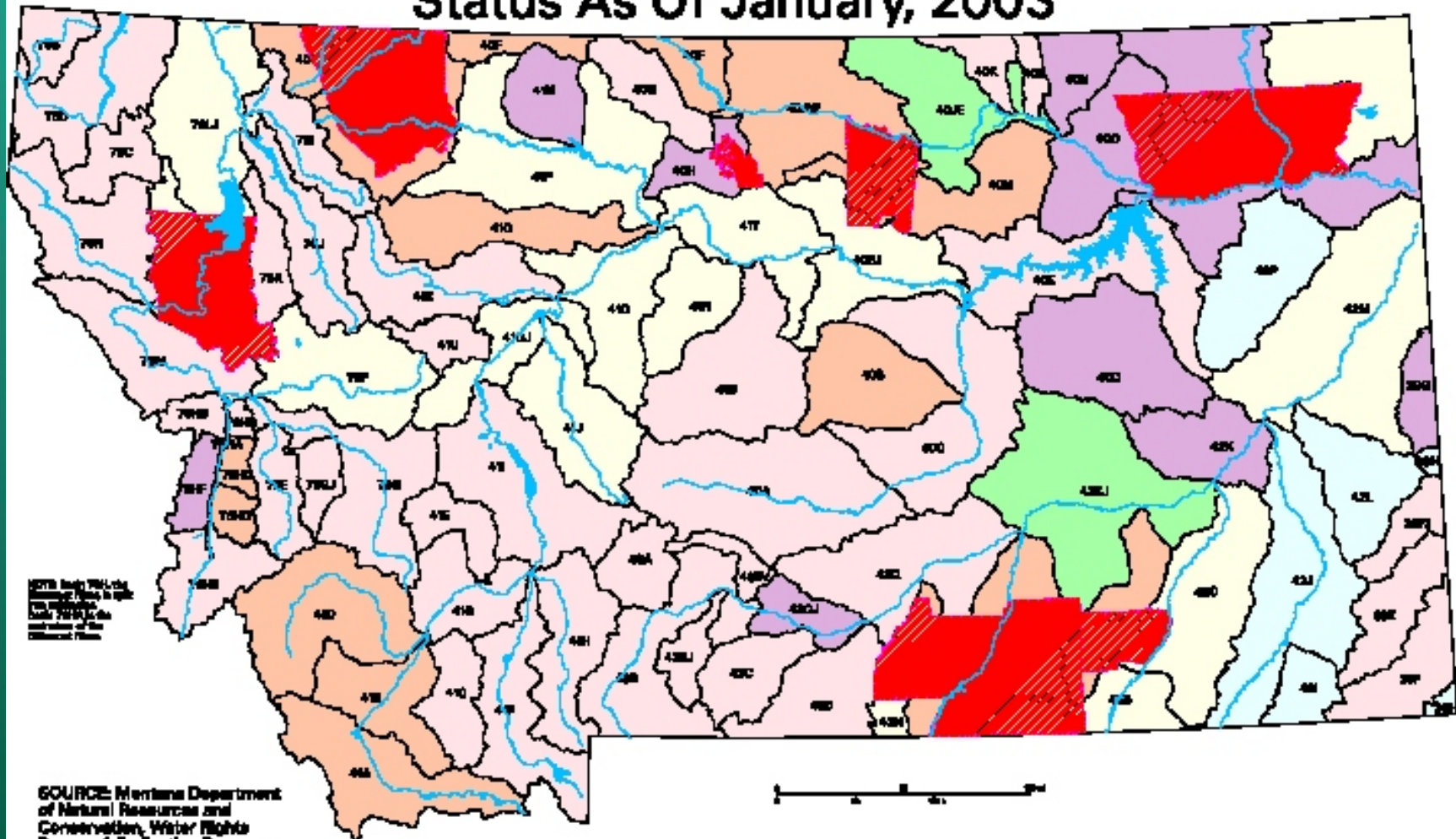
Colleen Coyle, Water Master, Montana Water Court
Jim Gilman, Adjudication Program Manager, DNRC

Montana General Stream Adjudication

- 1973 Water Use Act
- Montana Water Court adjudicates pre-July 1, 1973 water rights
- Prior appropriation system
- Over 200,000 claims filed and entered into DNRC central record system
- 85 hydrologic basins

Montana General Adjudication

Status As Of January, 2003



NOTE: Indian Reservations are shown in red with diagonal hatching.

SOURCE: Montana Department of Natural Resources and Conservation, Water Rights Bureau, Adjudication Program.



Legend

- | | |
|------------------------------|--------------------------------|
| Final Decree | Summary Report In Progress |
| Preliminary Decree | Basin Currently Being Examined |
| Temporary Preliminary Decree | Basin Not Yet Examined |
| | Indian Reservation |

Montana General Stream Adjudication

Claims Examination Process

- Water Right Claim Examination Rules govern the examination process
- DNRC's role is limited to factual analysis and examination of issues
- Claimant contact is used to gather facts and data on issues that can't be resolved by routine examination procedures
- DNRC places "issue remarks" on claims that can't be resolved

Montana General Stream Adjudication

Sample Issue Remarks

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

THE ROSEBUD COUNTY WATER RESOURCES SURVEY (1948) APPEARS TO INDICATE 2900 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE.

Montana General Stream Adjudication

Adjudication Procedure

- Water Court issues Temporary Preliminary Decree or Preliminary Decree, which includes computer generated indexes and abstracts of claims
- Court sets deadline for filing of objections, mails and publishes notice, and holds public meetings
- Court publishes list of objections filed, counterobjection period set

Montana General Stream Adjudication

Adjudication Process

- Case Consolidation by Water Masters for claims receiving objections and claims called in on motion of the Court
- Claims are *prima facie* proof of their contents (85-2-227)
- Status conferences held, settlement opportunities provided, hearings scheduled as necessary
- Master's Reports issued containing findings of fact and conclusions of law (Rule 53, M.R.Civ.P.)
- Objections to Master's Reports can be filed within 10 days
- Water Judge adopts, modifies, or rejects
- Enforcement of Water Court decree is possible following modification after objections and hearings - see Section 3-7-212, MCA

How is a Water Court decree enforced?

Through appointment of a water commissioner who:

- Sets priority date limits for water use
- Monitors headgates to ensure compliance with decree and commissioner orders
- Keeps records of water use and issues reports to District Court

Who appoints water commissioners?

The District Court in the county where the source is located, pursuant to:

- Section 3-7-212, MCA

Enforcement of Decrees. The district court having jurisdiction may enforce the provisions of a final decree. In the absence of any final decree having been issued, the district court having jurisdiction may enforce the provisions of a temporary preliminary decree or preliminary decree entered under 85-2-231, as modified by a water judge after objections and hearings.

Water Right Enforcement Options

Seven general options for water right controversies

1. Talk with other parties involved in the controversy
2. Contact DNRC
3. TRO or Preliminary Injunction in District Court
4. Petition for water commissioner under old (pre-July 1, 1973) court decree
5. Certification of controversy to Water Court
6. Petition for water mediator
7. Petition for water commissioner under Water Court decree

When might enforcement of a Water Court decree be useful?

When water users are not receiving the water to which they are entitled, distribution might be a factor, and at least some of the water users on the source are willing to file a petition and cover the costs of a water commissioner.

Water users should understand that the commissioners' costs will typically be billed to water users on a pro-rata basis.

Overview of Procedure to Begin Enforcement of Water Court Decrees

Section 85-5-101, MCA

- **Process begins with petition filed with District Court by owners of a least 15% of the water rights affected by the decree**
- **If water users are unable to obtain the signatures of 15%, and are not receiving the water to which they are entitled, the District Court Judge may, in his discretion, appoint a water commissioner.**

Overview of Procedure to Begin Enforcement of Water Court Decrees

- Section 85-2-406(4), MCA
- A temporary preliminary decree or preliminary decree or a portion of the temporary preliminary decree or preliminary decree as modified after objections and hearings is enforceable and administrable according to its terms.
- The Water Court provides tabulations of water rights to the District Court.

Outline of Enforcement Process

General Timeline

- 1. Petition from water users to District Court for enforcement or a District Court request.
- 2. Water Court determines whether the requested source decree is ready for enforcement. If the source decree is NOT ready, but could be made ready within a reasonable time, the Court attempts to expedite any pending cases. Once the source decree is ready, the following steps apply:
 - ▶ Order or request from District Court to Water Court to provide tabulations for enforcement.
 - ▶ Water Court and DNRC ascertain the scope of the enforcement project and project staffing.
 - ▶ DNRC identifies and maps every diversion within the enforcement area, notes any point of diversion discrepancies, and provides a tabulation to the Water Court.

Outline of Enforcement Process

General Timeline continued

- Public meetings may be held with the water users, District Court Judge, DNRC staff and Water Court staff.
- The Water Court reviews the tabulation and coordinates with DNRC to create ditch lists and the required tabulations for the District Court.
- The Water Court provides the District Court with the tabulation of existing water right claims and ditch lists.
- The District Court issues an order appointing a water commissioner to enforce the Water Court decree using the tabulations provided by the Water Court.
- The Water Court may assist the District Court in developing a water ordering system, water user billing system, or any other requirement for the successful distribution of water under the Water Court Decree.



Current Enforcement Projects

- Within the past three years, four District Courts have begun the process to enforce Water Court decrees in five different basins
- Judge Mark Guenther, Eighteenth Judicial District - Basin 41H on the West Gallatin River, Hyalite and South Cottonwood Creeks
- Judge Randal I. Spaulding, Fourteenth Judicial District - Basins 40A and 40C on the Musselshell River
- Judge Wm. Nels Swandal, Sixth Judicial District - Basin 43BV on Sweet Grass Creek
- Judge Jeffrey Sherlock, First Judicial District - Basin 41I on Silver Creek

DNRC's Role

- To provide a ditch index to the Court
- To provide a map of the project area

*“IF WE CAN’T DO THIS, WE MIGHT
AS WELL ALL GO HOME”*

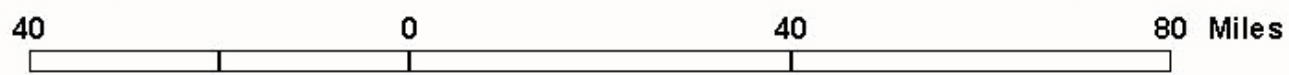
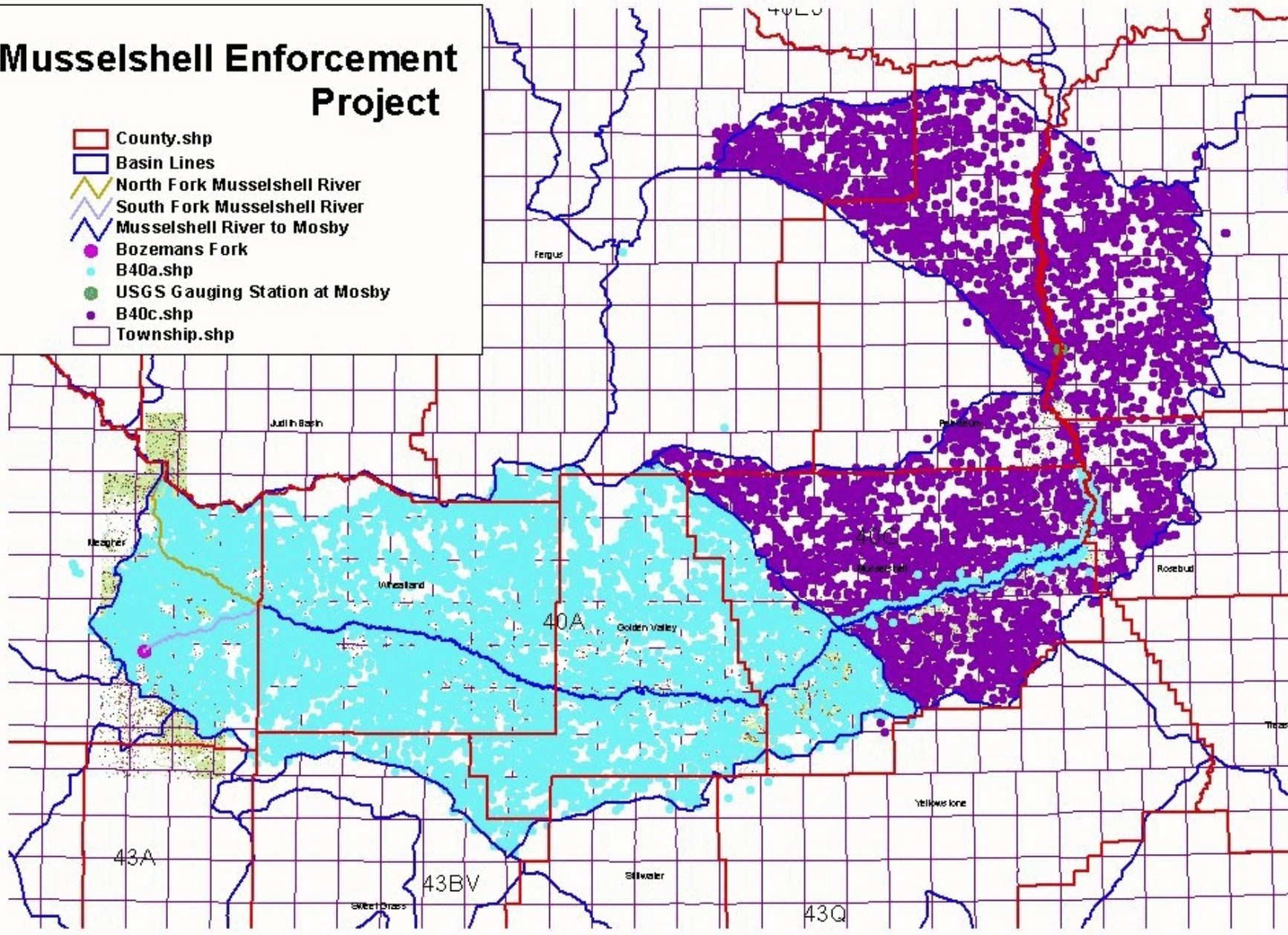
- Andy Brummond
Lewistown Regional Office, DNRC

MUSSEL SHELL ENFORCEMENT ACTION

- Determine scope of action

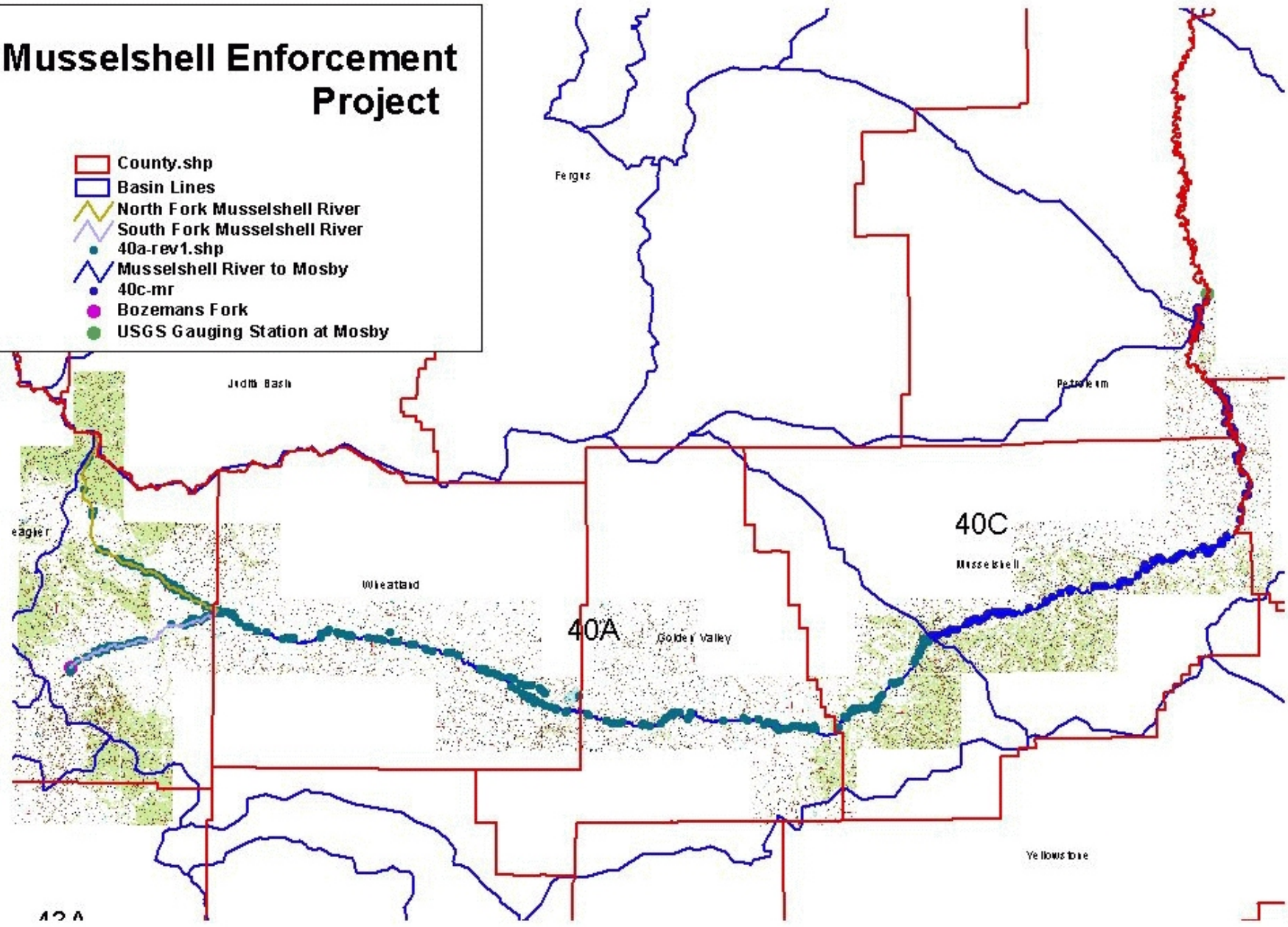
Musselshell Enforcement Project

- County.shp
- Basin Lines
- North Fork Musselshell River
- South Fork Musselshell River
- Musselshell River to Mosby
- Bozemans Fork
- B40a.shp
- USGS Gauging Station at Mosby
- B40c.shp
- Township.shp



Musselshell Enforcement Project

- County.shp
- Basin Lines
- North Fork Musselshell River
- South Fork Musselshell River
- 40a-rev1.shp
- Musselshell River to Mosby
- 40c-mr
- Bozemans Fork
- USGS Gauging Station at Mosby



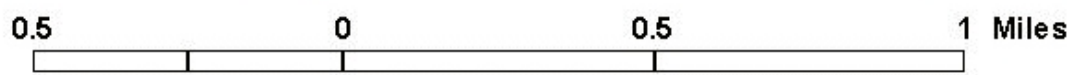
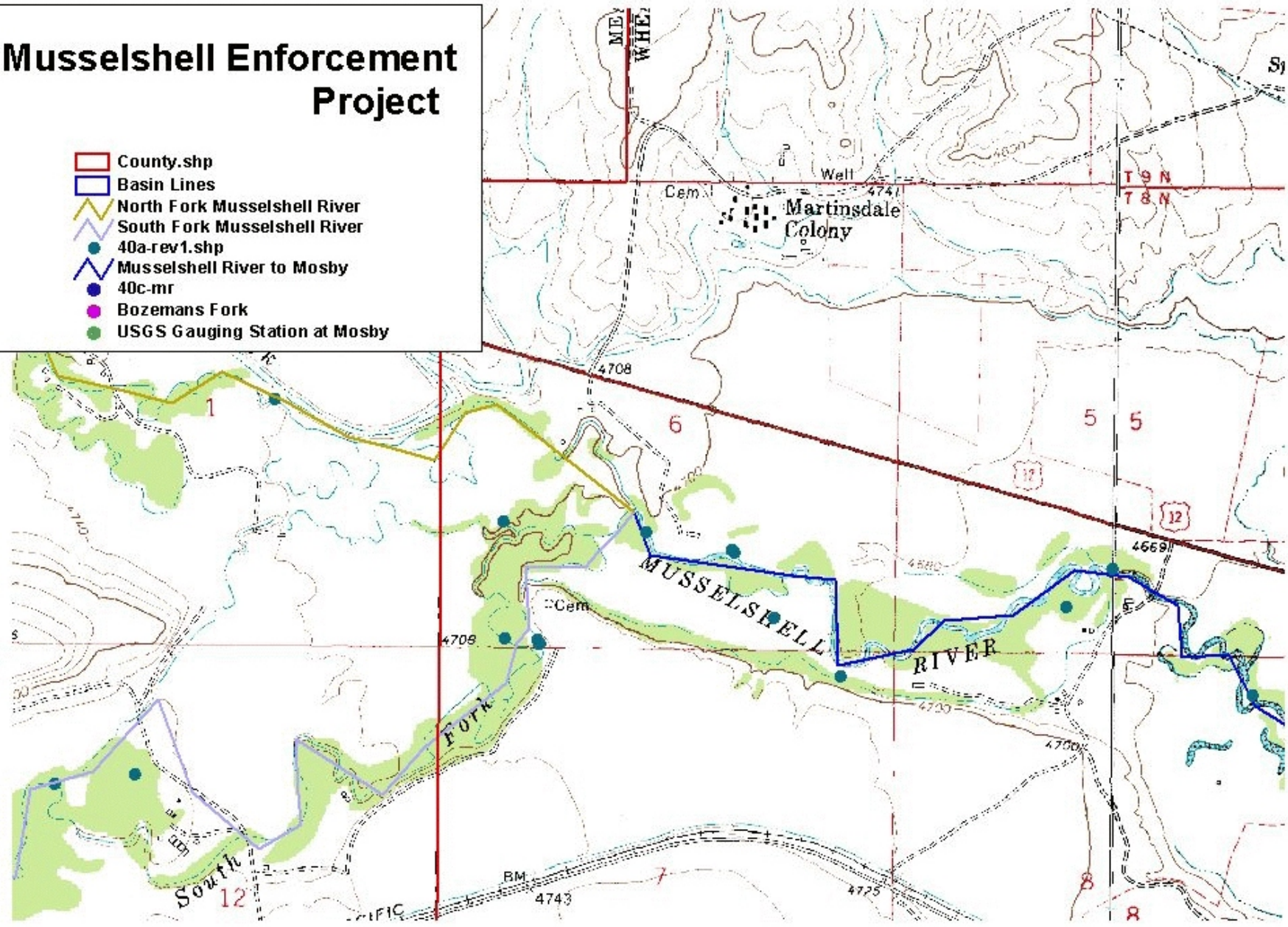
30 0 30 60 Miles

Specific Tasks

- Get all water right files
- Plot every point of diversion
- Review Authorization to Change
- Note discrepancies, errors, etc.

Musselshell Enforcement Project

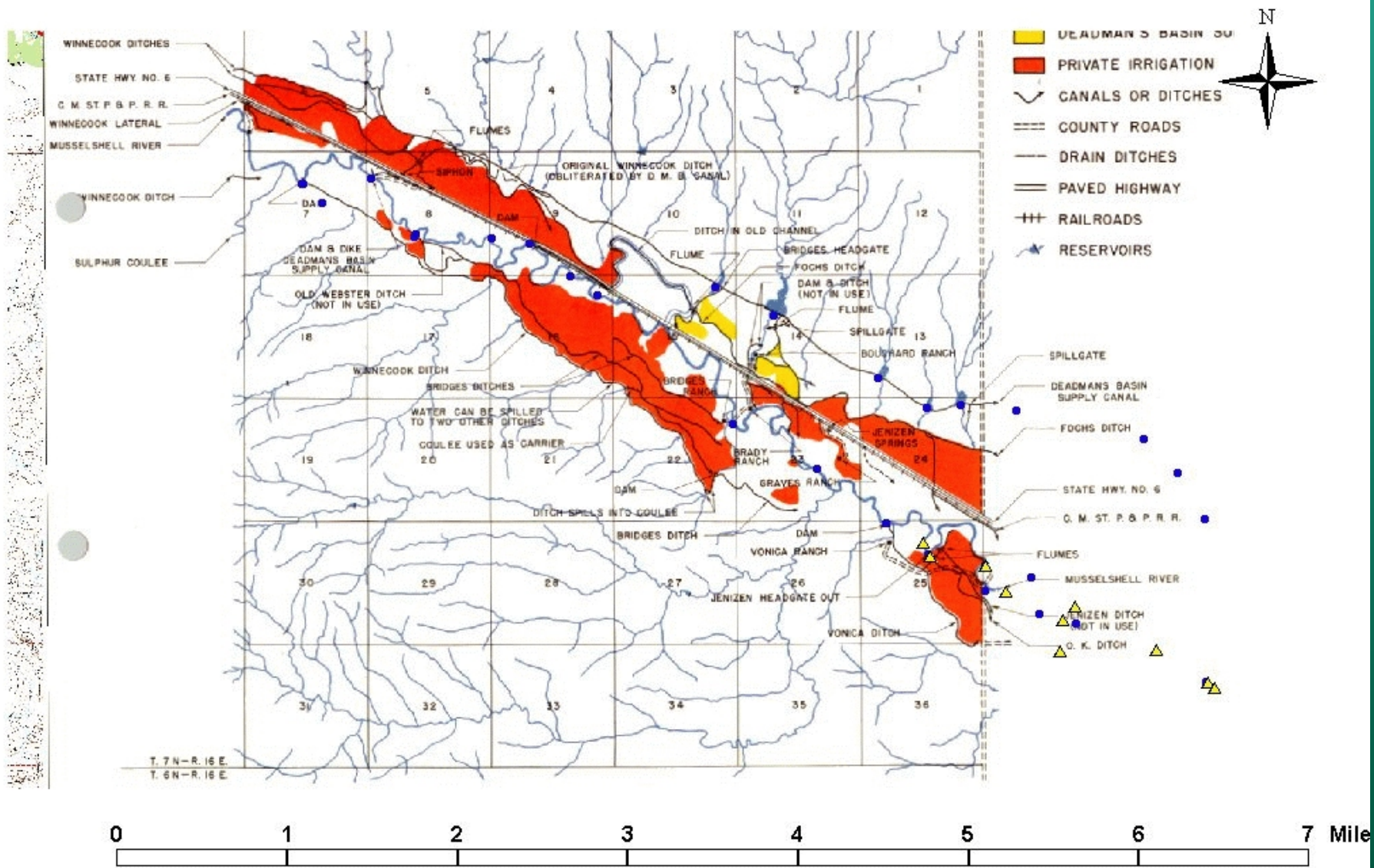
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Ditch Names

- Assign ditch names
 - ▶ From file
 - ▶ From decree
 - ▶ From Water Resources Survey

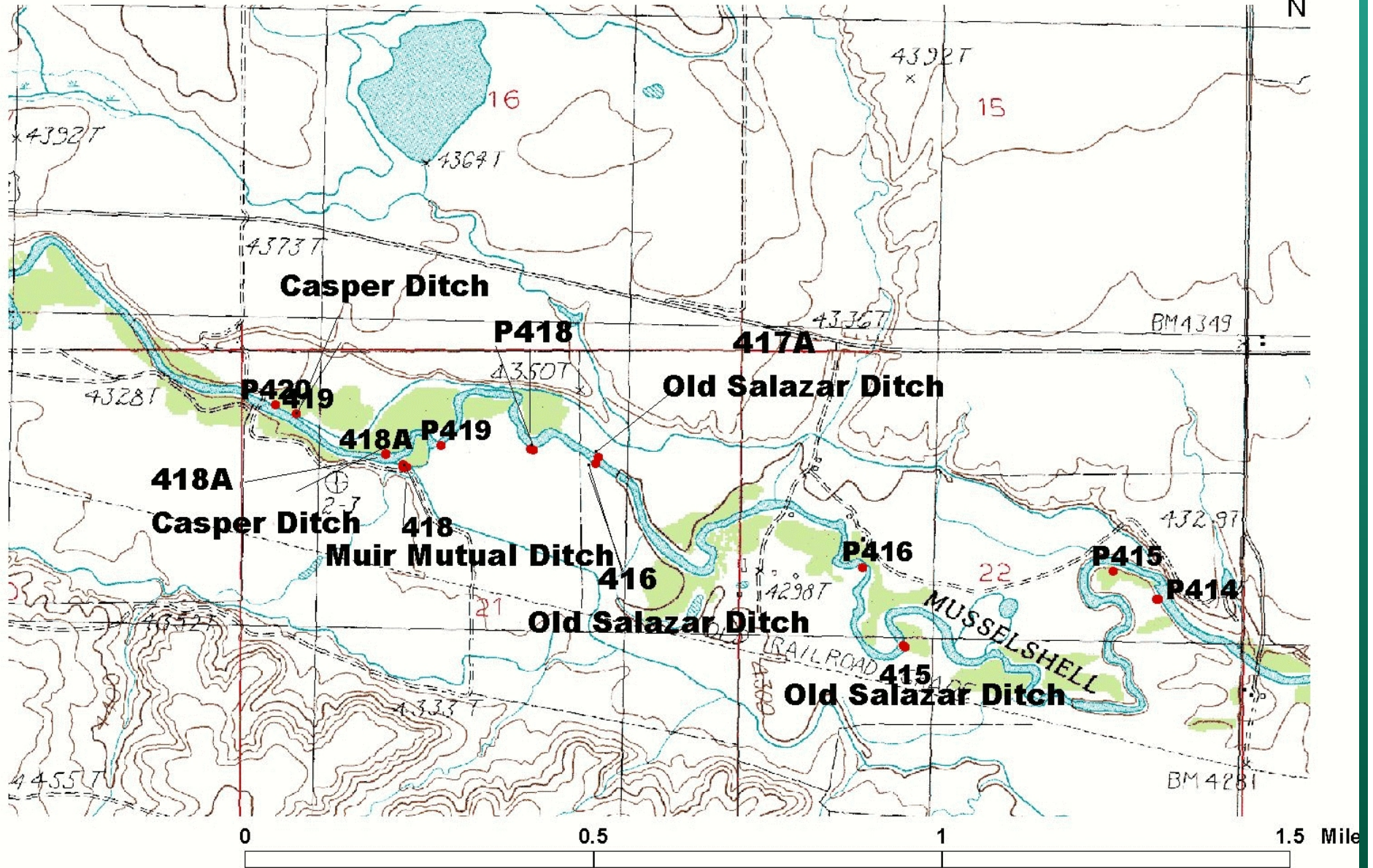
Deadmans Basin Supply Canal in Section 8



Point of Diversion

- Assign numbers to every unique point of diversion
 - ▶ To create the ditch index
 - ▶ Group all water rights that share a point of diversion

Ditch Commissioner Map



Ditch Lists

- Ditch lists indicate owners of record, priority date, period of use, water right claim number, type and use of right, flow rate, means of diversion, and DNRC or Water Court comments

DITCH REPORT

Based on the As Modified Temporary Preliminary Decree

Ditch No.	DITCH NAME	Qtr Sec	Sec	Twp Rge	Cnty	SOURCE
209	<i>Krueger - Spendiff</i>	NW	1	08N27E MU		MUSSELHELL RIVER

Priority Date	Owner	Water Right #	TYPE	Use	CFS	From	To	Means	COMMENTS_B		
<i>19040531</i>											
	GOFFENA	WILBUR	A		40C W20448800	F	IR	2.17	5/1 10/4	HG	POD: Lot 3, NW Sec. 1, T8N, R27E
	BIG WALL LAND CO				40C W20507300	F	IR	15	5/1 10/4	HG	case no. 40C-40, POD: Lot 3, W2 Sec. 1, T8N, R 27E
	GOFFENA	MARY	C								
	KITE CATTLE CO				40C W20963300	F	IR	3.09	5/1 10/4	HG	POD: NENENW Sec. 1, T8N, R27E
<i>19121231</i>											
	BIG WALL LAND CO				40C W20405200	U	IR	4.46	4/1 9/30	HG	New POD for W204052 at this diversion
<i>0</i>											
	MONTANA, STATE OF				40C B21529000	U	IR	2.01	4/1 10/19	HG	POD: NWNWNE Sec. 1 T8N, R 27E This type of historical right maybe questionable. Documentation submitted with
<i>19760304</i>											
	KITE CATTLE CO				40C P00763800	0	IR	8	4/15 10/15	DM	POD: NENENW Sec. 1, T8N, R27E
					CFS Total for Ditch						34.73

Final Indexes Provided to the Water Court

- Priority Index
 - ▶ All rights incorporating Authorizations
 - ▶ Sort by “enforceable priority date”
 - ▶ Accumulated flow rate
- Owner Index
 - ▶ All water rights incorporating Authorizations
 - ▶ All owners
- Change Index (if needed)

Musselshell River Enforcement - Priority Date Sort

Priority Date	Water Right #	OWNER	Use	Dv #	Qtr Sec	Sec	Twp Rge	Cnty	Ditch#	DIT CH_NAME	From	To	CFS	Total Flow
18800630	40A.W11290700	NINE-FRANCH CO INC	IR	1	NESWSE	11	08N11E	ME	604	Peterson Ditch	04/15	10/04	15.00	15.00
18800630	40A.W14584000	NINE-FRANCH CO INC	ST	1	NESWSW	6	08N12E	WH	604	Peterson Ditch	01/01	12/31	0.00	15.00
18800630	40A.W20596300	BERG BYRON L	IR	1	NESWSW	6	08N12E	WH	602	Cemetery Ditch	03/01	11/30	0.54	15.54
18800630		BERG LAURETTA M	IR	1	NESWSW	6	08N12E	WH	602	Cemetery Ditch	03/01	11/30		15.54
18800715	40A.W01428900	TEIG FAMILY TRUST	IR	1	NESWNE	12	08N11E	ME	603	Peterson Ditch	05/01	09/30	5.50	21.04
18800715	40A.W02296700	ROSTAD HELEN	IR	1	SWSENW	12	08N11E	ME			04/01	10/19	5.98	27.02
18800715		ROSTAD HELEN	IR	2	SWNWSE	10	08N11E	ME	604A	Bair Co. Ditch*	04/01	10/19		27.02
18801231	40A.W10670100	FOXLEY,SANDRA M TRUST	ST	1	N2	6	06N24E	MU			01/01	12/31	0.00	27.02
18801231		PARROTT LAND & CATTLE CO	ST	1	N2	6	06N24E	MU			01/01	12/31	0.00	27.02
18801231		FOXLEY,SANDRA M TRUST	ST	2	SESE	31	07N24E	MU			01/01	12/31	0.00	27.02
18801231		PARROTT LAND & CATTLE CO	ST	2	SESE	31	07N24E	MU			01/01	12/31	0.00	27.02
18801231		FOXLEY,SANDRA M TRUST	ST	3	SW	32	07N24E	MU			01/01	12/31	0.00	27.02
18801231		PARROTT LAND & CATTLE CO	ST	3	SW	32	07N24E	MU			01/01	12/31	0.00	27.02
18801231		PARROTT LAND & CATTLE CO	ST	4	NE	32	07N24E	MU			01/01	12/31	0.00	27.02
18801231		FOXLEY,SANDRA M TRUST	ST	4	NE	32	07N24E	MU			01/01	12/31	0.00	27.02
18801231		FOXLEY,SANDRA M TRUST	ST	5	N2SE	32	07N24E	MU			01/01	12/31	0.00	27.02
18801231		PARROTT LAND & CATTLE CO	ST	5	N2SE	32	07N24E	MU			01/01	12/31	0.00	27.02
18801231		FOXLEY,SANDRA M TRUST	ST	6	N2	33	07N24E	MU			01/01	12/31	0.00	27.02

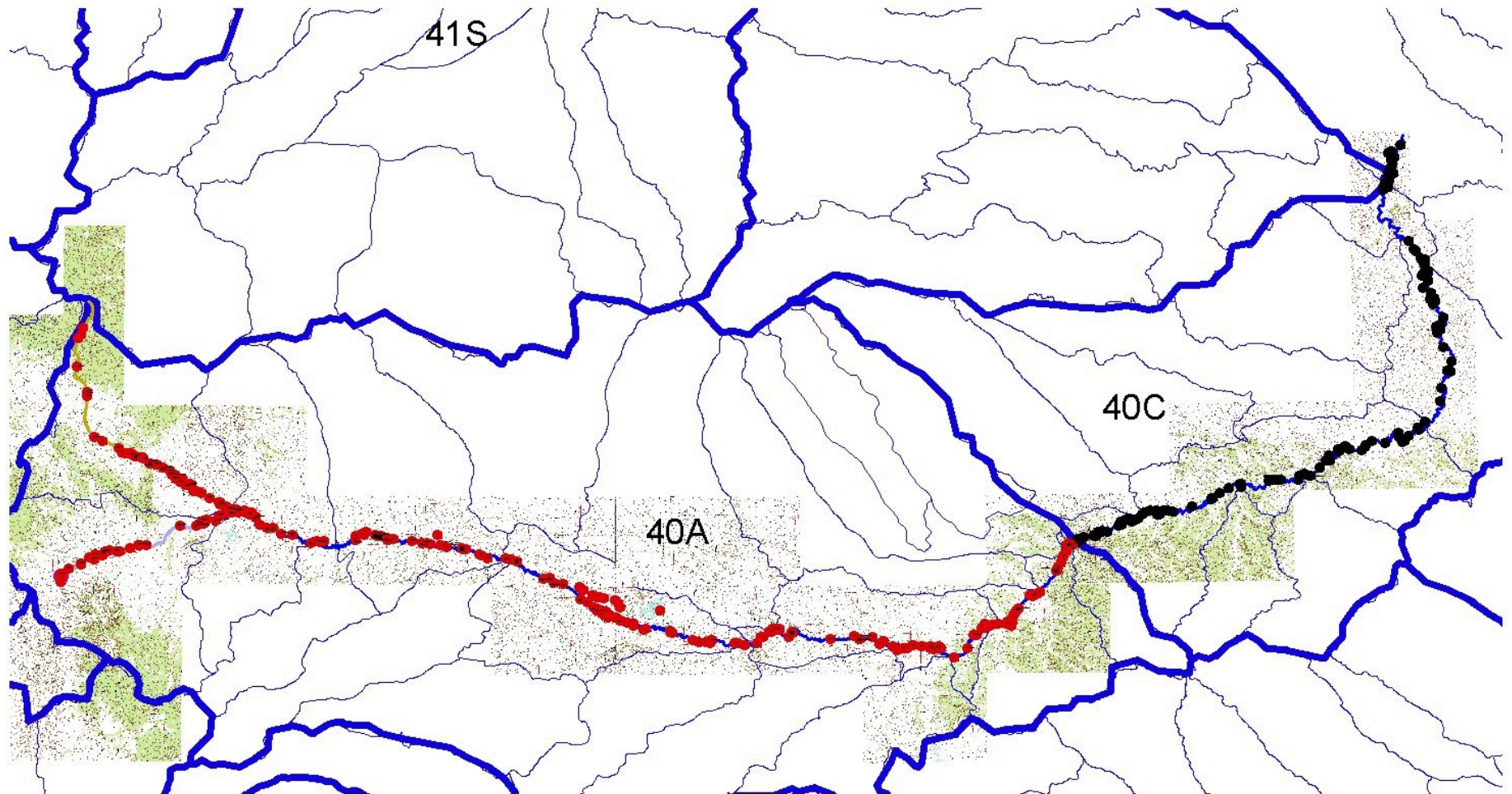
Summary of Work

Musselshell Enforcement Project

- We pulled & reviewed 700 files
- We plotted every point of diversion
- Assigned ditch names/pump sites and numbers to every point
- Reviewed all pertinent Change files
- Created accurate maps of area with every point of diversion
- Presented information at public meetings
- Designed reports & Created the indexes
- DNRC time estimate 800 hours

The Big Picture

Really Big Map

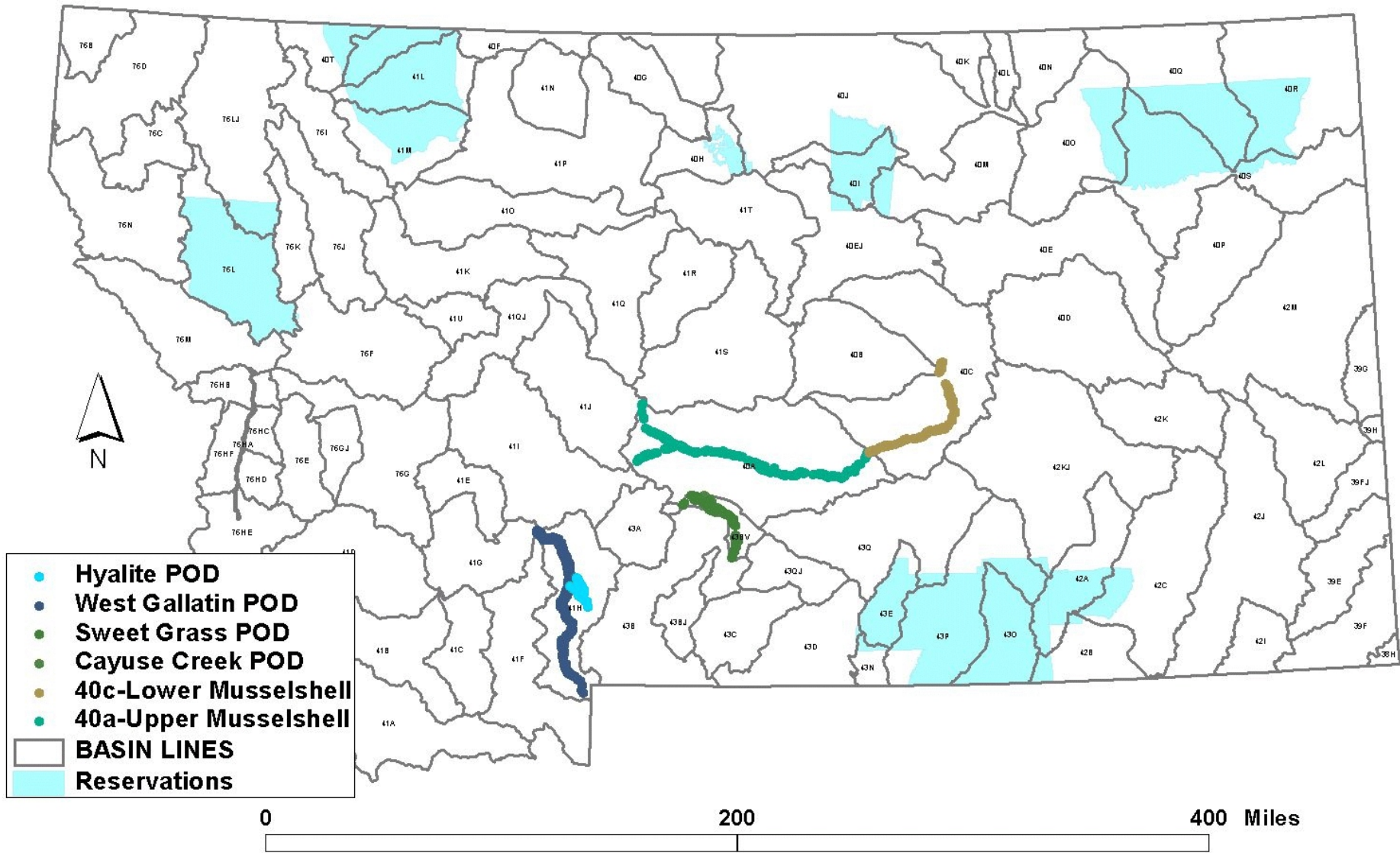


Future Projects

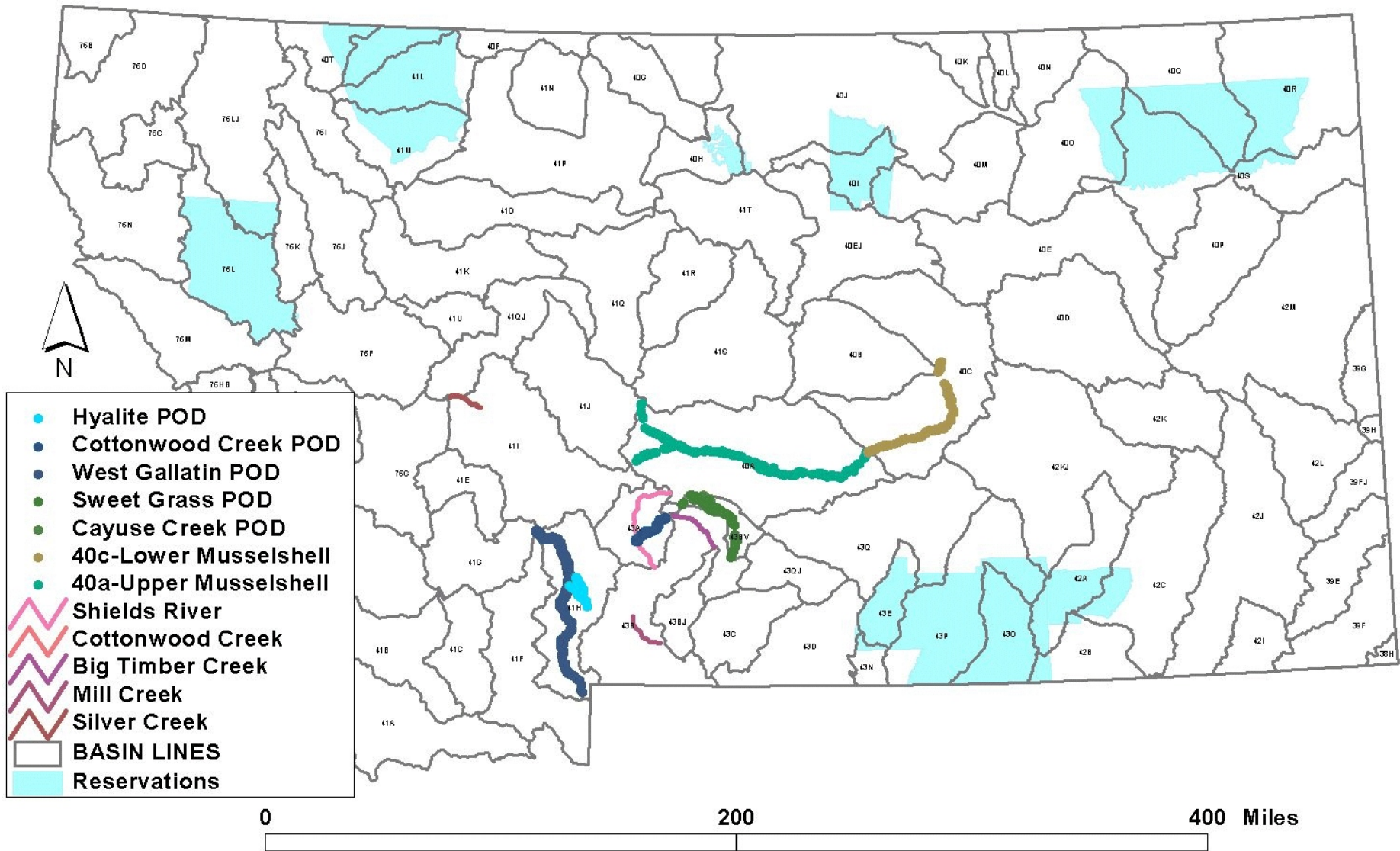
As of January, 2004

- Silver Creek (Basin 41I)
- Big Timber Creek (43B)
- Mill Creek (43B)
- Cottonwood Creek (43A)
- Upper Shields River (43A)

Current Enforcement Actions (2003)



Combined Enforcement Actions (2004)



Addressing Problems with Your Water Right Claim

Three Methods:

Late objection

Motion to amend

Change authorization/new permit

Late Objection Process

Forms available from Water Court

- Can file late objections to your own claim or other water user's claims
- Typically, these will not be addressed until the next decree phase, which could be several years

Motion to Amend Process

Section 85-2-233(6), MCA

- File a Motion to Amend Statement of Claim or Motion to Amend Objection with Water Court - include evidence as to historic use of claim
- If there is a potential for adverse affect to other water users, will be required to mail notice and publish notice in newspaper for three consecutive weeks
- 45 day objection period
- Only available to correct errors in filing - must have evidence of historic use prior to July 1, 1973

Change Authorization Process

DNRC

- Must use this process for post-1973 changes to historic point of diversion, place of use, purpose, or place of storage
- Forms can be obtained at DNRC Regional Offices
- \$400 fee
- Criteria in Section 85-2-402(2), MCA must be met

Montana Department of Natural Resources and Conservation and Montana Water Court

Environmental Quality Council
January 2004

Colleen Coyle, Water Master,
Montana Water Court
1-800-624-3270

Jim Gilman, Adjudication Program
Manager, DNRC
406-444-6618