



PO BOX 201704
Helena, MT 59620-1704
(406) 444-3742
FAX (406) 444-3971

Montana Legislative Services Division
Legislative Environmental Policy Office

Aug. 26, 2010

To: EQC
From: Joe Kolman, research analyst
Re: Water adjudication reports

EQC Members,

Attached are the adjudication reports from the Montana Water Court and the Department of Natural Resources and Conservation.

The WPIC meets in Helena Sept. 8-9. The draft report and several proposed pieces of legislation will be considered. All may be found online at www.leg.mt.gov/water

Please contact me if you have questions.

Joe Kolman
Legislative Environmental Policy Office
406.444.9280 Phone 406.444.3971 FAX
Rm 171A, State Capitol Building
P.O. Box 201706
Helena, MT 59620-1706

**DNRC REPORT TO EQC
HB22 ADJUDICATION PROGRESS
September, 2010**

Claims Examination Progress

- First benchmark 8,000 claims by 12-31-2006
- Second benchmark 19,000 claims by 12-31-2008
- **Third benchmark 31,000 claims by 12-31-2010**
- Claims examined July 2005 thru **Aug, 1 2010** **42,041**
-
- Claims examined by Purpose
 - o Irrigation 9533 23%
 - o Stock 23741 57%
 - o Domestic 5233 12%
 - o Other 3534 8%

42,041

Claims remaining to be examined **15,059**

<u>Summary Reports to Water Court</u>	<u>Date Issued</u>
Union Creek (part of 76F)	May 19, 2005
Teton River (41O)	August 15, 2005
Big Hole River (41D)	October 31, 2006
Tongue River, below hanging Woman Creek (42C)	August 7, 2007
Blackfoot River (76F) *	August 14, 2007
Missouri River, from Holter Dam to Sun River (41QJ)	August 15, 2007
Tongue River, above Hanging Woman (42B)	December 5, 2007
Pryor Creek (43E)	August 18, 2008
Smith River (41J) *	September 1, 2008
Beaver Creek (40M)	September 1, 2008
Flatwillow Creek (40B) *	September 11, 2008
Milk River (40J)	December 5, 2008
Little Big Horn River (43O)	February 6, 2009
Big Muddy Creek (40R)	April 6, 2009
Missouri River, Sun River to Marias River (41Q)	June 16, 2009
Beaverhead River (41B) *	August 14, 2009
Arrow Creek (41R) *	October 23, 2009
Missouri River, from Marias River to Bullwacker Creek (41T) *	November 17, 2009

(* basins not yet decreed)

<u>Decrees Issued by Water Court</u>	<u>Date Issued</u>	<u>Number of Claims</u>
Teton River (41O)	12/29/2005	2,500
Union Creek (part of 76F)	3/10/2006	42
Big Hole River (41D)	4/6/2007	3,892
Missouri River (41QJ)	2/6/2008	2,584
Tongue River (42C)	2/28/2008	4,710
Tongue River (42B)	2/28/2008	1,345

Forest Service Compact	5/19/2008	262
BLM-Montana Compact	3/6/2009	2
Beaver Creek (40M)	3/20/2009	2,942
Big Muddy Creek (40R)	1/28/2010	2,029
Pryor Creek (43E)	2/25/2010	629
Little Big Horn River (43O)	3/17/2010	1,176
Missouri River from Sun River to Marias River (41Q)	5/27/2010	4,127
Milk River between Fresno Res & Whitewater (40J)	6/24/2010	12,897

Above decrees scanned and available at:

http://www.dnrc.mt.gov/wrd/water_rts/adjudication/default.asp

BASINS BY COMPLETION DATE - DNRC WORK PLAN 2010				
BASIN COUNT	BASIN NAME	WORK STATUS	Estimated Completion Date	
1	Flathead R below Flathead Lake (76L)	Examination complete	12	2009
2	Big Horn R below Greybull R (43P)	Summary prep pending	5	2011
3	Rosebud Creek (42A)	Summary prep pending	6	2010
4	Shoshone River (43N)	To be Examined	7	2013
5	Milk River above Fresno (40F)	Summary prep in progress	11	2010
6	Flathead River (76LJ)	Examination in progress	9	2011
7	Cut Bank River (41L)	Summary prep pending	6	2012
8	St. Mary River (40T)	Summary prep pending	7	2012
9	Yellowstone R below Powder R (42M)	Examination in progress	8	2012
10	Red Rock River (41A)	Examination in progress	2	2013
11	Peoples Creek (40I)	Summary prep pending	6	2013
12	Two Medicine River (41M)	Summary prep pending	8	2013
13	Marias River (41P)	Examination in progress	10	2013
14	Missouri R between Bullwacker & Musselshell (40EJ)	Examination in progress	12	2012
15	Bitterroot R, E side (76HA)	Examination in progress	6	2015
16	Frenchman Creek Re-Examination (40L)	Examination complete	3	2010

District Court Enforcement Actions

2005 season completed water court assistance for 23 streams
2006 season completed water court assistance for 23 streams
2007 season completed water court assistance for 26 streams
2008 season completed water court assistance for 32 streams
2009 season completed water court assistance for 36 streams
2010 season completed water court assistance for 38 streams
Automated indexes are now in use

Post Decree Assistance (July thru Aug 1 2011)

<u>Case type</u>	<u>case count</u>	<u>work hours</u>
Certified case	0	0
85-2-248	8	321.5
Case	3	338
<u>General assist</u>		<u>161</u>
Total hours		820.5

Expenses

YTD FY 2011:	Operating Costs	\$ 14,325.42
	Personnel Services	\$ <u>87,107.36</u>
	Total	\$ 101,432.78
	Budget	\$ 2,412,521.00

Billing System

108,000 bills mailed Dec 27, 2005
Estimated revenue generated \$6.2 million
Revenue received \$5.205 million

Appeals

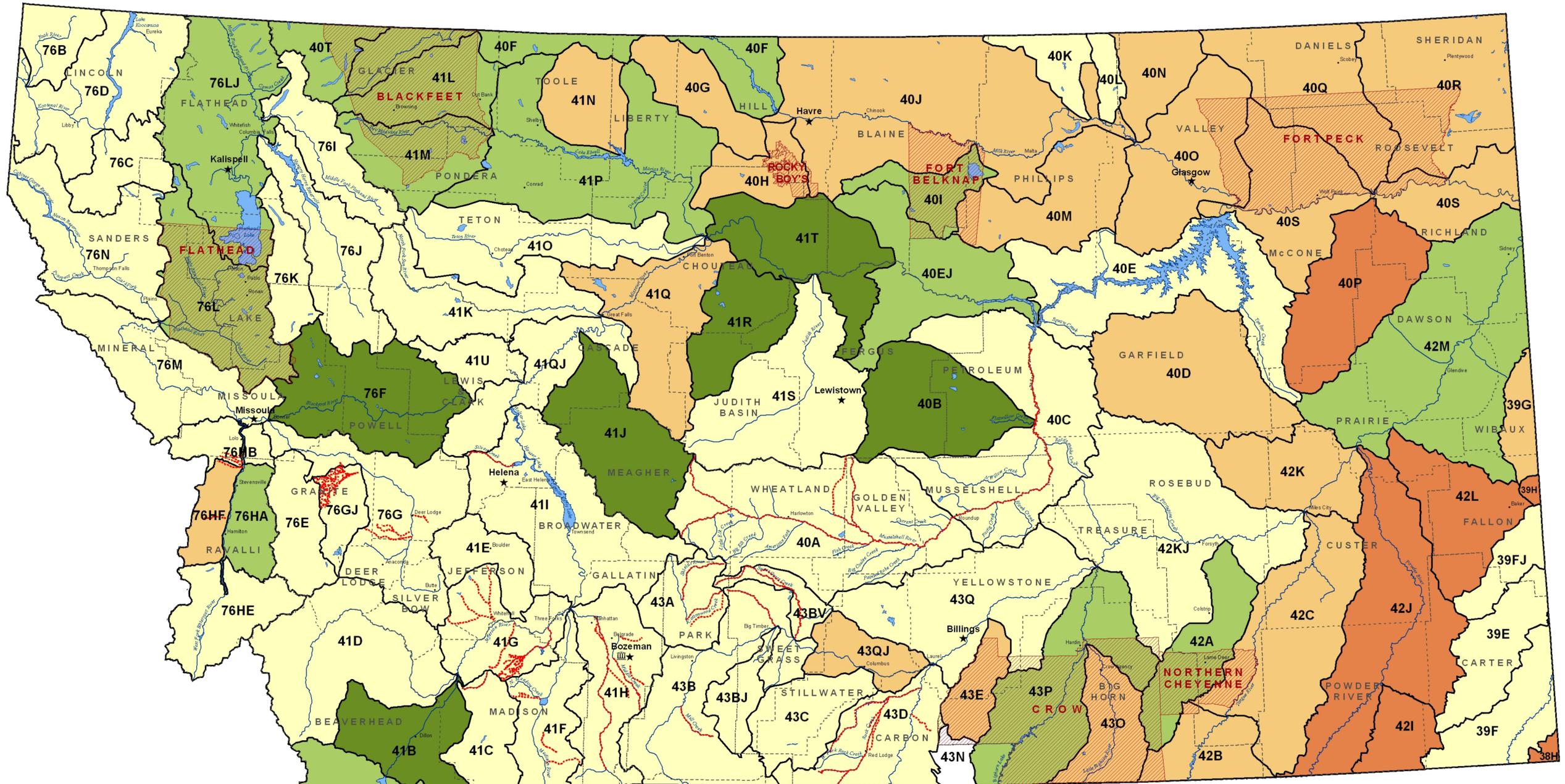
5,059 Appeals received
5056 appeals resolved to date (1128 denied, 3928 resolved with fee correction)
3 appeals remain

HB39 Automate Ownership updates (effective July 1, 2008)

-Contract is finalized and Tyler Inc is developing the program for DOR to pass thru new property owner names to DNRC for updating water right records.
-Geocodes were loaded into DNRC database in June 2008.
-State-wide ownership update export to DNRC was received 12-4-2009.
-The department has completed the initial data scrubbing and geocode validation due June 2010.

Basin Location and Adjudication Status

6/23/10



-  Water Court
-  Regional Offices
-  Enforcement Actions
-  COUNTIES
-  RESERVATIONS

Basin Boundary & Decree Status

- | | |
|---|--|
|  Currently Examining |  Temporary Decree |
|  Summary Report Issued |  Preliminary Decree |
|  Not Yet Examined |  Final Decree |



WATER COURT
ADJUDICATION PROGRESS REPORT TO THE EQC PURSUANT TO § 85-2-281, MCA
Submitted by C. Bruce Loble, Chief Water Judge
August 17, 2010

The Water Court is working through its inventory of water right claims that have unresolved objections, issue remarks, motions to amend, and claims certified to the Water Court by the DNRC or District Courts. The Water Court is primarily working on water right claims in the following basins:

Basin	Sources	Claims in Decree	Remaining Claims to Resolve
40A	Musselshell River above Roundup	5,812	141
40E	Missouri River between Musselshell River & Fort Peck Dam	3,010	184
40G	Sage Creek	943	38
40H	Big Sandy Creek	797	33
40J	Milk River Between Fresno Reservoir & Whitewater Creek	12,897	Decree issued 6/24/2010 Objection Deadline is 12/21/2010
40M	Beaver Creek, Tributary of Milk River	2,942	1,457
40O	Milk River Below Whitewater Creek	3,306	1,058
40R	Big Muddy Creek	2,029	Decree issued 1/28/2010 Extended Objection Deadline is 10/25/2010
40S	Missouri River Below Ft. Peck Dam	2,966	200
41C	Ruby River	2,183	187
41D	Big Hole River	3,892	1,902
41G	Jefferson River	2,407	213
41I	Missouri River upstream of Holter Dam	5,168	227
41K	Sun River	2,856	102
41O	Teton River	2,541	622
41Q	Missouri River from Sun River to Marias River	4,127	Decree issued 5/27/2010 Objection Deadline 11/23/2010
41QJ	Missouri River from Holter Dam to Sun River	2,584	513
42B	Tongue River above & including Hanging Woman Creek	1,345	368

42C	Tongue River below Hanging Woman Creek	4,708	1,183
42KJ	Yellowstone River between Bighorn and Tongue Rivers	4,767	489
43A	Shields River	3,395	128
43B	Yellowstone River above & including Bridger Creek	4,860	339
43E	Pyror Creek	630	Decree issued 2/25/2010 Extended Objection Deadline is 11/22/2010
43O	Little Big Horn River	1,176	Decree issued 3/25/2010 Objection Deadline is 9/21/2010
43Q	Yellowstone River between Clarks Fork Yellowstone and Bighorn Rivers	2,473	145
76HF	Bitterroot River - Westside Subbasin	3,774	181
United States Forest Service - Montana Compact — Several Objections Still Pending - Discovery and Pre-hearing Deadlines have been Set			
United States Bureau of Land Management - Montana Compact — All Objections Withdrawn			

The chief water judge has scheduled the following basin public meetings in two newly issued decreed basins:

Basin 40J - middle Milk River

August 25, 2010 - telephone conference call - 8:30 PM

September 29, 2010 - meeting - Malta High School - 8:00 PM

September 30, 2010 - meeting - Havre High School - 8:00 PM

December 2, 2010 - telephone conference call - 7:00 PM

Basin 41Q - Missouri River between Sun River and Marias River

September 8, 2010 - meeting - Belt Public School Library 8:00 PM

The Water Court has completed most of its review of the current Summary Reports (basically draft decrees) generated by the DNRC following completion of the DNRC basin water right claim examination duties. The Water Court anticipates issuing decrees, perhaps as often as one a month, in the approximate order of the following basin list:

Basin Designation	Source	Approximate Number of Claims
76F	Blackfoot River	3,699
41J	Smith River	2,719
41B	Beaverhead River	2,222
40B	Flatwillow Creek	3,677

41R	Arrow Creek	2,173
41T	Missouri River Between Marias River to and including Bullwacker Creek	3,050
Six Basins	Approximate Number of Claims in Prospective Decrees	17,540

In June 2010, the Water Court issued a decision dismissing the objections filed by Montana Trout Unlimited (Water Court Case 41D-1: *Trout Unlimited v. Beaverhead Water Company, Garrison Ranches Inc., and Paul H Cleary Jr. Trust*) and Western Watersheds Project & Laurence D. Zuckerman (Case 41D-2) in the Big Hole River basin decree. The Water Court concluded these objectors did not have standing to file objections because they did not meet the Legislature’s “good cause shown” requirement, set forth in § 85-2-233(1)(b), MCA, that objectors must have an “ownership interest in water or its use.”

On August 3, Trout Unlimited filed its Notice of Appeal to the Montana Supreme Court (Supreme Court Cause No. DA 10-0382). In its Notice of Appeal, Trout Unlimited stated that it filed “objections to over-stated water right claims based on its long-standing interest and participation in drought response, streamflow restoration and aquatic conservation in the Big Hole River basin.” Trout Unlimited further stated that its “demonstration of an active interest in water use and more efficient water management in the Big Hole River basin” is sufficient “good cause shown” and satisfied the legislative requirement that an objector must have an “ownership interest in water *or its use. . .*” (Notice of Appeal at 3 and 4, italics in original).

Finally, in response to the 2009 legislative mandate to generate “vacancy savings” and the Supreme Court Administrator’s suggestion, a few Water Court staff members have continued scaling back their hours to slightly less than full time to help the Judicial Branch meet its vacancy savings goals.