

**DNRC REPORT TO EQC
HB22 ADJUDICATION PROGRESS
March, 2012**

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
 - **Fourth Benchmark 44,000 claims by 12-31-2012**
 - Claims examined July 2005 thru **Feb, 1 2012** **49,991**
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 - Claims examined by Purpose
 - o Irrigation 11,011 22%
 - o Stock 27,731 56%
 - o Domestic 6,537 13%
 - o Other 4,712 9%
- 49,991**

Claims remaining to be examined **7,009**

Summary Reports to Water Court

Date Issued

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
Milk River above Fresno (40F)*	April 15, 2011

(* basins not yet decreed)

Decrees Issued by Water Court	Date Issued	Number of Claims
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
Smith River (41J)	12/16/2010	2,684
Blackfoot River (76F)	2/10/2011	3,717
Flatwillow Creek (40B)	5/5/2011	3,677
Arrow Creek (41R)	6/23/2011	2,173
National Bison Range Compact	9/30/2011	97

Above decrees scanned and available at:

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

BASINS BY COMPLETION DATE - DNRC WORK PLAN FY 2012				
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 Report pending	11	2013
3	Rosebud Creek (42A)	Summary Report pending	12	2012
4	Shoshone River (43N)	Summary Report pending	10	2012
5	Milk River above Fresno (40F)	Summary Report issued	4	2011
6	Flathead River (76LJ)	Examination in progress	7	2013
7	Cut Bank River (41L)	Summary Report pending	6	2012
8	St. Mary River (40T)	Summary Report pending	11	2012
9	Yellowstone R below Powder R (42M)	Examination in progress	6	2013
10	Red Rock River (41A)	Examination in progress	3	2012
11	Peoples Creek (40I)	Summary Report pending	9	2012
12	Two Medicine River (41M)	Summary Report pending	8	2013
13	Marias River (41P)	Examination in progress	5	2014
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)	Summary Report pending	7	2014

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
2011 season completed water court assistance for 38 streams
Automated indexes are now in use

Post Decree Assistance (July-March FY2012)

<u>Case type</u>	<u>case count</u>	<u>work hours</u>
Certified case		150
85-2-248	100	2,187.5
Case	54	1989.5
<u>General assist</u>		1,912
Total hours		6,239

Post Decree assistance primarily involves working with claimants and the Water Court to help resolve issue remarks on water rights. This assistance is generated through the on motion process (85-2-248) and objections by water users resulting in a case. Assistance includes meeting with claimants, conducting field investigations, mapping, and providing recommendations and technical reports pertaining to individual cases. In addition, assistance is requested by the Water Court to help with certified cases before and after the initial decree phase. Unique requests to help the Water Court resolve specific cases such as large basin mapping projects, and other technical requests fall within the general assistance category.

Expenses

YTD FY 2012:	Operating Costs	\$ 133,912.69
	Personnel Services	\$ 934,737.79
	Total	\$ 1,068,650.40
	Budget	\$ 2,141,331

Billing System

108,000 bills mailed Dec 27, 2005
Estimated revenue generated \$6.2 million
Revenue received \$5.218 million

Appeals

5,089 Appeals received
5089 appeals resolved to date (1,121 denied, 3,113 resolved with fee correction, 855 cancelled)

The department is working on preparing 264 invoices over \$200.00 to send to the Department of Revenue for collection. These invoices total approximately \$287,000.

HB39 Automate Ownership updates (effective July 1, 2008)

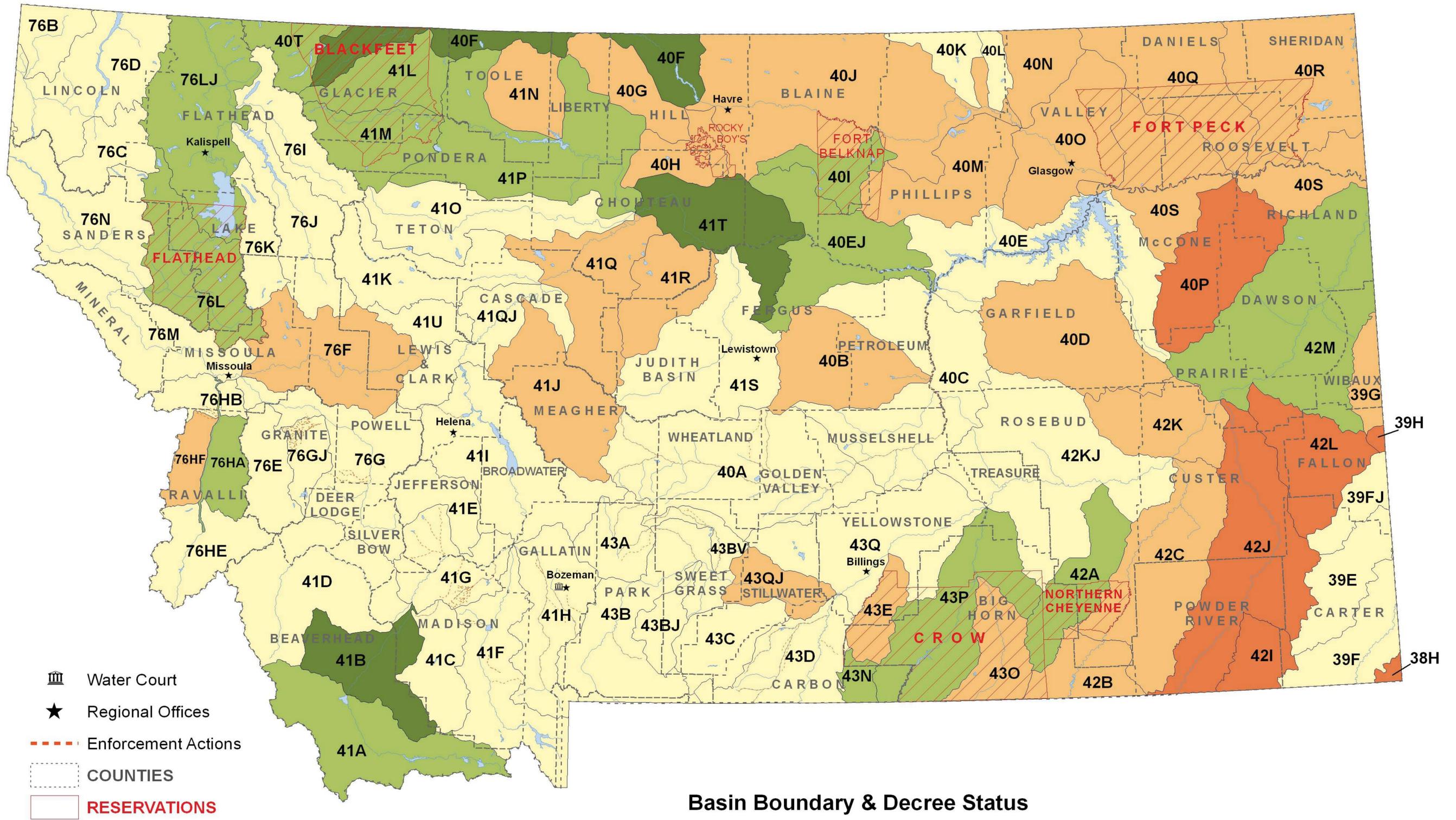
- Department staff continue to validate water right geocodes for property transfers that occurred from November 2010 thru January 2012.
- In 2010, 3,821 ownerships were updated involving 9,460 water rights
- In 2011, 6,245 ownerships were updated involving 15,765 water rights.
- So far this fiscal year, 5,980 ownerships have been updated involving 14,120 water rights.

Adjudication Transition Plan

-The adjudication transition plan was completed summer of 2011 as identified in the legislative audit report. This plan identifies potential resources needed beyond 2015.

Basin Location and Adjudication Status

02/14/2012



WATER COURT
ADJUDICATION PROGRESS REPORT TO THE EQC (AND WATER POLICY INTERIM
COMMITTEE) PURSUANT TO § 85-2-281, MCA
Submitted by C. Bruce Loble, Chief Water Judge
As of February 16, 2012

The Water Court is continuing to work through its expanding 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
40B	Flatwillow Creek	3,677	Decree issued 5/5/2011-60 day counter-objection deadline is 4/9/2012
40H	Big Sandy Creek	797	31
40J	Milk River Between Fresno Reservoir & Whitewater Creek	12,897	Decree issued 6/24/2010-60 day Notice of Intent to Appear deadline expires on 4/10/2012
40M	Beaver Creek, Tributary of Milk River	2,942	957
40O	Milk River Below Whitewater Creek	3,306	231
40R	Big Muddy Creek	2,029	665
41D	Big Hole River	3,892	1,134
41I	Missouri River upstream of Holter Dam to Three Forks	5,168	217
41J	Smith River	2,719	Decree issued 12/16/2010 - 60 day Counter-objection period deadline is 3/9/2012
41K	Sun River	2,856	104
41O	Teton River	2,541	282
41Q	Missouri River from Sun River to Marias River	4,127	979
41QJ	Missouri River from Holter Dam to Sun River	2,584	295
41R	Arrow Creek	2,179	Decree issued 6/23/2011 - Extended Objection Deadline 3/19/2012
42B	Tongue River above & including Hanging Woman Creek	1,345	304
42C	Tongue River below Hanging Woman Creek	4,710	1134

42KJ	Yellowstone River between Bighorn and Tongue Rivers	4,767	195
43A	Shields River	3,395	105
43B	Yellowstone River above & including Bridger Creek	4,860	318
43E	Pyror Creek	629	485
43O	Little Bighorn River	1,176	1,135
43Q	Yellowstone River between Clarks Fork Yellowstone and Bighorn Rivers	2,473	91
76F	Blackfoot River	3,717	Decree issued 2/10/2011-60 day Counter-objection period begins in March 2012
76HF	Bitterroot River - Westside Subbasin	3,774	134
<p>United States Forest Service - Montana Compact — A hearing on the objections was held on January 4, 2012 in Missoula. Post hearing briefing is ongoing.</p> <p>United States of America, Fish and Wildlife Service, National Bison Range - Montana Compact was issued September 30, 2011. A public meeting is scheduled for March 1, 2012 in Pablo. The objection deadline is March 28, 2012.</p>			

The Judicial Nomination Commission has set a March 9 application deadline for the Associate Water Judge position. Public comment on the applicants will begin March 12 and close on April 11, 2012. Thereafter, the Commission will forward the names of three to five nominees to Chief Justice McGrath for his consideration. More information may be found online at http://courts.mt.gov/supreme/boards/jud_nomination/default.mcp

Five years ago, the DNRC computerized water rights database was an occasional topic of conversation during EQC meetings. The functionality of the DNRC computer database has improved significantly since then and the decree issuance and objection process has become more automated and efficient. Objections, Counter-objections, on motion issues, and Notices of Intent to Appear are entered into the DNRC database shortly after being filed at the Water Court and the information is electronically and quickly available to Water Court and DNRC staff. The DNRC is also scanning these documents and posting them on its Water Right Query System on the NRIS Internet site. The DNRC has created database search tools (1) to help the Water Court staff identify logically related claims for case consolidation and consistent review, and (2) to help the DNRC staff better assist claimants and objectors involved in Water Court proceedings. Additional features to improve the database are currently being designed by DNRC staff and the Water Court. DNRC employees John Peterson and Dave Coey are particularly helpful with brainstorming and implementing database enhancements.

The Water Court calendar of case and claim proceedings and basin deadlines is on the Water Court website. Forms, decrees, objection lists, and informational memos or brochures are posted on either the DNRC or Water Court web sites and routinely updated when needed.

The DNRC and the Water Court have preliminarily agreed to recommend a legislative transition of three DNRC FTEs from the DNRC to the Water Court during the upcoming biennium.

As the Water Court issues new decrees in areas closer to Indian reservations, new issues are arising. Previous reports to this Committee have mentioned the Crow Tribe objections in the Pryor Creek (43E) and the Little Bighorn River (43O) basins regarding Section 2 of the 1920 Crow Allotment Act. Another issue has arisen regarding a DNRC issue remark being applied to claims asserting priority dates prior to July 1, 1873. Based on a land cessions map, the DNRC has been applying a P490 remark to those claims. The remark states:

AT THE TIME OF THE CLAIMED PRIORITY DATE, IT APPEARS THAT THE PLACE OF USE WAS PART OF AN INDIAN RESERVATION.

At the request of the Water Court, the DNRC did some research on the accuracy of this remark being applied to claims in southwest Montana. In a December 30, 2009 Memorandum and a September 2011 Memorandum, the DNRC recommended the remark be removed from those claims with priority dates after April 15, 1856. The affected claims are located in the “common hunting ground” described in an 1855 Treaty. This remark is also on claims outside the common hunting ground, including claims within the Missouri River from Holter Dam to the Sun River drainage (Basin 41QJ). In one case in Basin 41QJ, the Court has requested the United States of America, Bureau of Indian Affairs, to address the question as to whether it would be appropriate to accept the analysis provided by the DNRC in Basin 41QJ and to remove the P490 remark from any claim with a post April 15, 1856 date. An initial response date of March 19, 2012 has been set.