

DNRC REPORT TO EQC

HB22 ADJUDICATION PROGRESS

May, 2011

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 **May, 1 2011** **48,057**
-
- Claims examined by Purpose

o Irrigation	10299	22%
o Stock	26921	56%
o Domestic	6343	13%
o Other	<u>4494</u>	9%
	48,057	

Claims remaining to be examined **8,946**

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 *	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

Above decrees scanned and available at:

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

	BASINS BY COMPLETION DATE - DNRC WORK PLAN 2011			
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	12	2011
3	Rosebud Creek (42A)	Summary Report pending	10	2011
4	Shoshone River (43N)	Summary Report pending	9	2011
5	Milk River above Fresno (40F)	Summary Completed	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	8	2011
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 Report pending	9	2011
12	Two Medicine River (41M)	Summary Report 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)	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
 Automated indexes are now in use

Post Decree Assistance (July thru May 1 2011)

<u>Case type</u>	<u>case count</u>	<u>work hours</u>
Certified case	7	229
85-2-248	77	2178
Case	85	3115
<u>General assist</u>		<u>2326</u>
Total hours		7,848

Expenses

YTD FY 2011:	Operating Costs	\$ 255,981
	Personnel Services	\$ 1,905,471
	Total	\$ 2,161,452
	Budget	\$ 2,412,521.00

Billing System

108,000 bills mailed Dec 27, 2005
Estimated revenue generated \$6.2 million
Revenue received \$5.26 million

Appeals

5,089 Appeals received
5089 appeals resolved to date (1121 denied, 3113 resolved with fee correction, 855 cancelled)

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.

WATER COURT
ADJUDICATION PROGRESS REPORT TO THE EQC PURSUANT TO § 85-2-281, MCA
Submitted by C. Bruce Loble, Chief Water Judge
May 10, 2011

The Water Court is continuing to work 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	184
40B	Flatwillow Creek	3,677	Decree issued 5/5/2011 Objection Deadline is 11/1/2011
40E	Missouri River between Musselshell River & Fort Peck Dam	3,010	169
40G	Sage Creek	943	38
40H	Big Sandy Creek	797	31
40J	Milk River Between Fresno Reservoir & Whitewater Creek	12,897	Decree issued 6/24/2010 Final Objection Deadline is 6/20/2011
40M	Beaver Creek, Tributary of Milk River	2,942	1,152
40O	Milk River Below Whitewater Creek	3,306	369
40R	Big Muddy Creek	2,029	Decree issued 1/28/2010 NOIA Deadline is 6/3/2011
40S	Missouri River Below Ft. Peck Dam	2,966	203
41C	Ruby River	2,183	180
41D	Big Hole River	3,892	1,537
41G	Jefferson River	2,407	226
41I	Missouri River upstream of Holter Dam	5,168	206
41J	Smith River	2,684	Decree issued 12/16/2010 Objection Deadline is 6/14/2011
41K	Sun River	2,856	100
41O	Teton River	2,541	461

41Q	Missouri River from Sun River to Marias River	4,127	Decree issued 5/27/2010 Final Objection Deadline 5/18/2011
41QJ	Missouri River from Holter Dam to Sun River	2,584	353
42B	Tongue River above & including Hanging Woman Creek	1,345	270
42C	Tongue River below Hanging Woman Creek	4,708	1,075
42KJ	Yellowstone River between Bighorn and Tongue Rivers	4,767	387
43A	Shields River	3,395	109
43B	Yellowstone River above & including Bridger Creek	4,860	320
43E	Pyror Creek	629	Decree issued 2/2/2010 Counter-Objection Deadline is 6/13/2011
43O	Little Bighorn River	1,176	Decree issued 3/3/2010 Counter-Objection Deadline is 6/21/2011
43Q	Yellowstone River between Clarks Fork Yellowstone and Bighorn Rivers	2,473	136
76F	Blackfoot River	3,717	Decree issued 2/10/2011 Objection Deadline 8/9/2011
76HF	Bitterroot River - Westside Subbasin	3,774	149
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 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 in the approximate order of the following basin list:

Basin Designation	Source	Approximate Number of Claims
41R	Arrow Creek - A Decree is Anticipated in June 2011	2,173
41T	Missouri River Between Marias River to and including Bullwacker Creek - A Decree is Anticipated in July 2011	3,050
40F	Milk River above Fresno Reservoir	2,330
41B	Beaverhead River - A motion to delay issuance of this decree until the Red Rock River (Basin 41B) is ready is pending	2,222
Four Basins	Approximate Number of Claims in Prospective Decrees	9,775

Pursuant to the request of Senator Brenden, the Water Adjudication Advisory Committee will examine options concerning claims which were “exempt” from the filing requirements of the 1979 legislation (SB 76) which created the statewide water rights adjudication effort. Senator Brenden has requested the Advisory Committee to report its review to the EQC.

The 2011 Legislature increased the staff of the Water Court by 3.5 FTEs to be phased in over the next two years. A half time administrative FTE (deputy clerk) will begin on July 1, 2011. A new Water Master will begin in January 2012. A law clerk and Association Water Judge are anticipated to begin on July 1, 2012.

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.

DNRC REPORT TO EQC
HB22 ADJUDICATION PROGRESS
September, 2011

Claims Examination Progress

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- Claims examined July 2005 thru **July, 30 2011** **48,530**
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	48,530	

Claims remaining to be examined **8,470**

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8	St. Mary River (40T)	Summary Report pending	11	2011
9	Yellowstone R below Powder R (42M)	Examination in progress	8	2012
10	Red Rock River (41A)	Examination in progress	3	2012
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12	Two Medicine River (41M)	Summary Report pending	8	2013
13	Marias River (41P)	Examination in progress	10	2013
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2007 season completed water court assistance for 26 streams

2008 season completed water court assistance for 32 streams

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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 2011)

<u>Case type</u>	<u>case count</u>	<u>work hours</u>
Certified case		0
85-2-248	7	290
Case	7	442.5
<u>General assist</u>		319
Total hours		1,051.5

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	\$ 10,849.10
	Personnel Services	\$ 71,884.59
	Total	\$ 82,733.69
	Budget	\$ 2,141,331

Billing System

108,000 bills mailed Dec 27, 2005
Estimated revenue generated \$6.2 million
Revenue received \$5.217 million

Appeals

5,089 Appeals received
5089 appeals resolved to date (1121 denied, 3113 resolved with fee correction, 855 cancelled)

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.
- Department staff continue to validate water right geocodes for property transfers that occurred from November 2010 thru July 2011.**
- In 2010, 3,821 ownerships were updated involving 9,460 water rights**
- In 2011, 4,476 ownerships were updated involving 11,174 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.**

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 August 19, 2011

The Water Court is continuing to work 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
40B	Flatwillow Creek (Public Meeting Sept 6, 2011 - Winnett)	3,677	Decree issued 5/5/2011 Objection Deadline is 11/1/2011
40H	Big Sandy Creek	797	31
40J	Milk River Between Fresno Reservoir & Whitewater Creek	12,897	Decree issued 6/24/2010 Counterobjection Deadline is 10/11/2011
40M	Beaver Creek, Tributary of Milk River	2,942	1,103
40O	Milk River Below Whitewater Creek	3,306	296
40R	Big Muddy Creek	2,029	710
41D	Big Hole River	3,892	1,386
41I	Missouri River upstream of Holter Dam	5,168	211
41J	Smith River	2,719	Decree issued 12/16/2010 Extended Objection Deadline is 9/12/2011
41K	Sun River	2,856	103
41O	Teton River	2,541	379
41Q	Missouri River from Sun River to Marias River	4,127	Decree issued 5/27/2010 Notice of Intent to Appear Anticipated Deadline 11/1/2011
41QJ	Missouri River from Holter Dam to Sun River	2,584	305
41R	Arrow Creek	2,179	Decree issued 6/23/2011 Objection Deadline 12/20/2011
42B	Tongue River above & including Hanging Woman Creek	1,345	260

42C	Tongue River below Hanging Woman Creek	4,710	988
42KJ	Yellowstone River between Bighorn and Tongue Rivers	4,767	255
43A	Shields River	3,395	109
43B	Yellowstone River above & including Bridger Creek	4,860	315
43E	Pryor Creek (Public meeting in Hardin & Billings on August 30, 2011)	629	Decree issued 2/2/2010 Notice of Intent to Appear Deadline is 9/26/2011
43O	Little Bighorn River (Public meeting in Hardin & Billings on August 30, 2011)	1,176	Decree issued 3/3/2010 Notice of Intent to Appear Deadline is 10/03/2011
43Q	Yellowstone River between Clarks Fork Yellowstone and Bighorn Rivers	2,473	104
76F	Blackfoot River	3,717	Decree issued 2/10/2011 Extended Objection Deadline 11/7/2011
76HF	Bitterroot River - Westside Subbasin	3,774	138
United States Forest Service - Montana Compact — Several Objections Still Pending - Discovery and Pre-hearing Deadlines, and December 5-6, 2011 Missoula hearing dates have been set.			
United States Bureau of Land Management - Montana Compact — Compact Approved June 29, 2011			

Although the Water Court has completed most of its review of the current Summary Reports (basically draft decrees), it will not be issuing any new decrees for a few months. Following the issuance of the last several decrees, the United States filed an increasing number of general objections contending some of the claims examination has been deficient. The Water Court is in the process of requesting some additional checks and standards to be run on prospective decrees and anticipates ordering a more detailed examination of claim ownership issues on Indian Reservations.

In 2010, decrees were issued in the Pryor Creek (43E) and the Little Bighorn River (43O) basins. Many of the claims in these basins are within the boundaries of the Crow Reservation. The Crow Tribe and/or the United States Bureau of Indian Affairs have filed objections to almost every claim on the Little Bighorn River and to a sizable number on Pryor Creek. A significant number of the tribal objections involve Section 2 of the 1920 Crow Allotment Act. Many water users, including tribal and non-tribal water users, have filed motions to dismiss and motions for sanctions against the Tribe and its attorney. The Water Court has consolidated these motions into two cases for early resolution.

Pursuant to the request of Senator Brenden, the Water Adjudication Advisory Committee is examining options concerning claims which were “exempt” from the filing requirements of the 1979 legislation (SB 76) which created the statewide water rights adjudication effort. Senator Brenden has requested the Advisory Committee to report its review to the EQC. The Advisory Committee has met twice and is scheduled to meet again on September 19, 2011.

The 2011 Legislature increased the Water Court staff by 3.5 FTEs to be phased in over the 2013 fiscal biennium. It is anticipated that a half time administrative FTE (deputy clerk) will begin in September 2011; a new Water Master in January 2012; and a new law clerk and Associate Water Judge in July 2012. Applications for the Associate Water Judge will likely be advertised in January 2012.

On June 23, 2011, the Montana Supreme Court reversed the Water Court's earlier decision which held that Montana Trout Unlimited did not have standing or "good cause" to challenge water right claims in the Big Hole River basin decree. *Montana Trout Unlimited v. Beaverhead Water Company, et al.*, 2011 MT 151. The Supreme Court, Chief Justice McGrath authoring the majority opinion, concluded that "there is no statutory or regulatory restriction on who is entitled to file an objection to a claim" and MTU "has a sufficient ownership interest in water or its use to demonstrate 'good cause' to require the Water Court to hold a hearing or hearings on its objections under § 85-2-223, MCA." *MTU* ¶ 23 and ¶ 34.

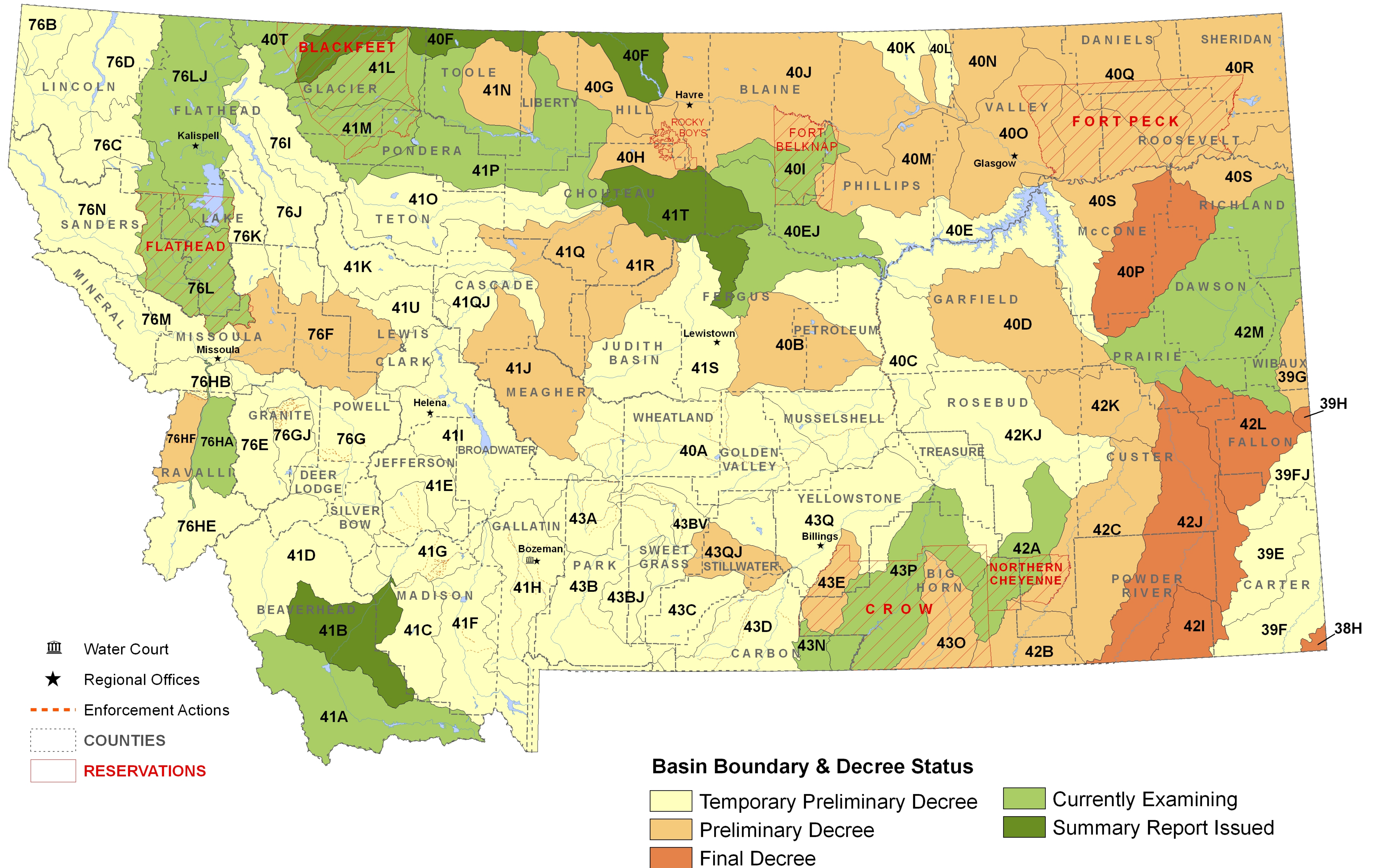
Justice Nelson agreed MTU had standing, but he disagreed with the Majority's broad construction of § 85-2-233(1)(b), MCA. He thought it would have been better to "hold that a demonstrated interest in the use of the water, coupled with a personal and concrete injury resulting from the decree, is necessary to establish 'good cause' under the statute." *MTU* at ¶¶ 65 and 66. He said the majority opinion "effectively reads the 'good cause' requirement out of the statutory scheme" and that the "Court has transformed the adjudication of water rights into a broad public participation process - a result not contemplated by the statutory scheme." *MTU* at ¶¶ 59 -60.

Justice Rice dissented and would have affirmed the Water Court decision. He agreed with Justice Nelson's interpretation that the majority opinion "broadly opened the Water Court to a public participation process which was not intended under the statutes." *MTU* at ¶ 73. In addressing the dissenting views, Chief Justice McGrath asserted that the Court's "interpretation of § 85-2-233, MCA, does not render the word 'ownership' meaningless or expand the right to be heard on an objection to a preliminary decree to every person in the State of Montana. Rather, it is consistent with the statute as a whole and with the intent of the Legislature in developing a comprehensive water rights adjudication process." *MTU* at ¶ 35.

Although it is too soon to know what effect the *MTU* decision will have on Montana's statewide water rights adjudication, the decision has the potential of broadening the participation and number of possible objectors. However, the practical effect of the decision will probably be less than one might expect. The speed and intensity of the adjudication effort, jump started by the 2005 Legislature, is rapidly accelerating. As the number of active decrees increases over the next few years, the pace of litigation will intensify even more. The Water Court anticipates the number of claims requiring active attention will triple within the next few years. Therefore, becoming significantly involved in this process will require a relentless and constant attention to Water Court deadlines and other details. Any person or organization seeking to participate in the adjudication of water rights on many claims or on a broad scale will likely need to maintain a well trained and busy professional staff for many years in order to do so.

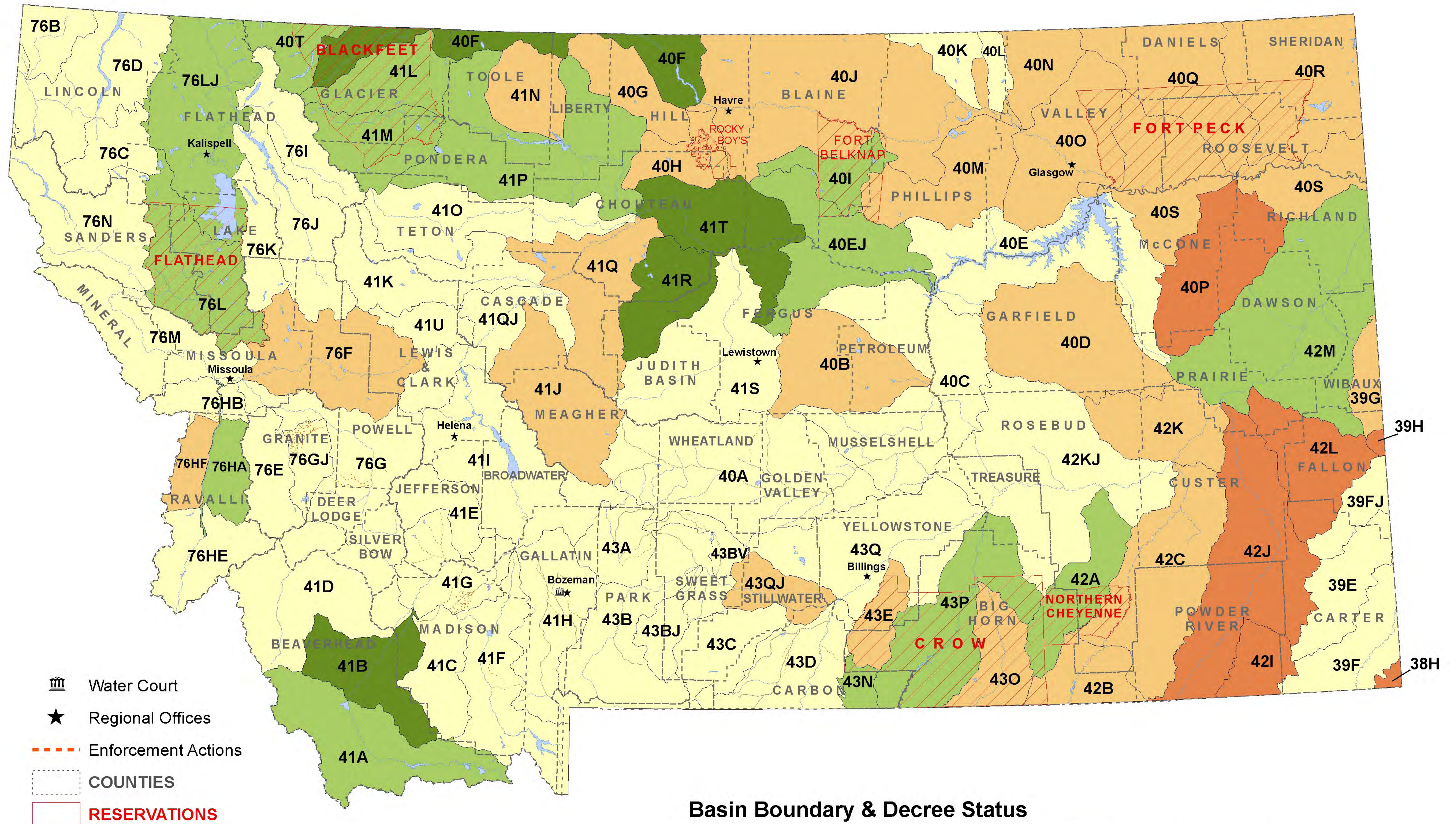
Basin Location and Adjudication Status

8/10/11



Basin Location and Adjudication Status

5/3/11



DNRC REPORT TO EQC
HB22 ADJUDICATION PROGRESS
January, 2011

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4	Shoshone River (43N)	Summary Report pending	10	2012
5	Milk River above Fresno (40F)	Summary Completed	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	8	2012
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	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)	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 2011)

<u>Case type</u>	<u>case count</u>	<u>work hours</u>
Certified case		119.5
85-2-248	51	1723
Case	39	1590
<u>General assist</u>		1,378
Total hours		4,810.5

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	\$ 83,936.14
	Personnel Services	\$ 673,114.78
	Total	\$ 757,050.92
	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 (1121 denied, 3113 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 October 2011.
- In 2010, 3,821 ownerships were updated involving 9,460 water rights
- In 2011, 6,245 ownerships were updated involving 15,765 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.

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 December 16, 2011

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 Extended Objection Deadline is 1/30/2012
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 scheduled to begin in January 2012
40M	Beaver Creek, Tributary of Milk River	2,942	1,017
40O	Milk River Below Whitewater Creek	3,306	297
40R	Big Muddy Creek	2,029	678
41D	Big Hole River	3,892	1,275
41I	Missouri River upstream of Holter Dam	5,168	213
41J	Smith River	2,719	Decree issued 12/16/2010 - 60 day counter-objection period scheduled to begin in January 2012
41K	Sun River	2,856	104
41O	Teton River	2,541	324
41Q	Missouri River from Sun River to Marias River	4,127	1,005
41QJ	Missouri River from Holter Dam to Sun River	2,584	305
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	260

42C	Tongue River below Hanging Woman Creek	4,710	938
42KJ	Yellowstone River between Bighorn and Tongue Rivers	4,767	237
43A	Shields River	3,395	115
43B	Yellowstone River above & including Bridger Creek	4,860	317
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	101
76F	Blackfoot River	3,717	Decree issued 2/10/2011 Extended Objection Deadline 2/6/2012
76HF	Bitterroot River - Westside Subbasin	3,774	127
United States Forest Service - Montana Compact — Several Objections Still Pending - A hearing on the objections has been set for January 4-5, 2012 in Missoula.			

Although the Water Court has completed most of its review of the current Summary Reports (basically draft decrees) provided by the DNRC, no new decrees will be issued for a few months. Following the issuance of the last several decrees, the United States filed an increasing number of general objections contending some of the claims examination has been deficient. The Water Court is reviewing the objections, has requested DNRC to run some additional checks and standards on prospective decrees, and anticipates ordering a more detailed examination of claim ownership issues on Indian Reservations. The Court has also requested the technical teams of the DNRC and the United States to hold discussions on some of the filed objections to determine if mutually agreeable solutions can be found.

In 2010, decrees were issued in the Pryor Creek (43E) and the Little Bighorn River (43O) basins. Many of the claims in these basins are within the boundaries of the Crow Reservation. The Crow Tribe and/or the United States Bureau of Indian Affairs have filed objections to almost every claim on the Little Bighorn River and to a sizable number on Pryor Creek. A significant number of the tribal objections involve Section 2 of the 1920 Crow Allotment Act. Many water users, including tribal and non-tribal water users, have filed motions to dismiss and motions for sanctions against the Tribe and its attorney. The Water Court has consolidated these motions into two cases for early resolution. The initial settlement period on the Section 2 objections expires February 21, 2012.

Pursuant to the request of Senator Brenden, the Water Adjudication Advisory Committee is examining options concerning claims which were “exempt” from the filing requirements of the 1979 legislation (SB 76) which created the statewide water rights adjudication effort. Senator Brenden has requested the Advisory Committee to report its review to the EQC. The Advisory Committee has met three times and is scheduled to meet again on December 19, 2011.

Associate Water Judge application process will likely begin in February 2012.

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**
-
- Claims examined by Purpose

o Irrigation	11,011	22%
o Stock	27,731	56%
o Domestic	6,537	13%
o Other	<u>4,712</u>	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>		<u>1,912</u>
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	\$ <u>934,737.79</u>
	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)

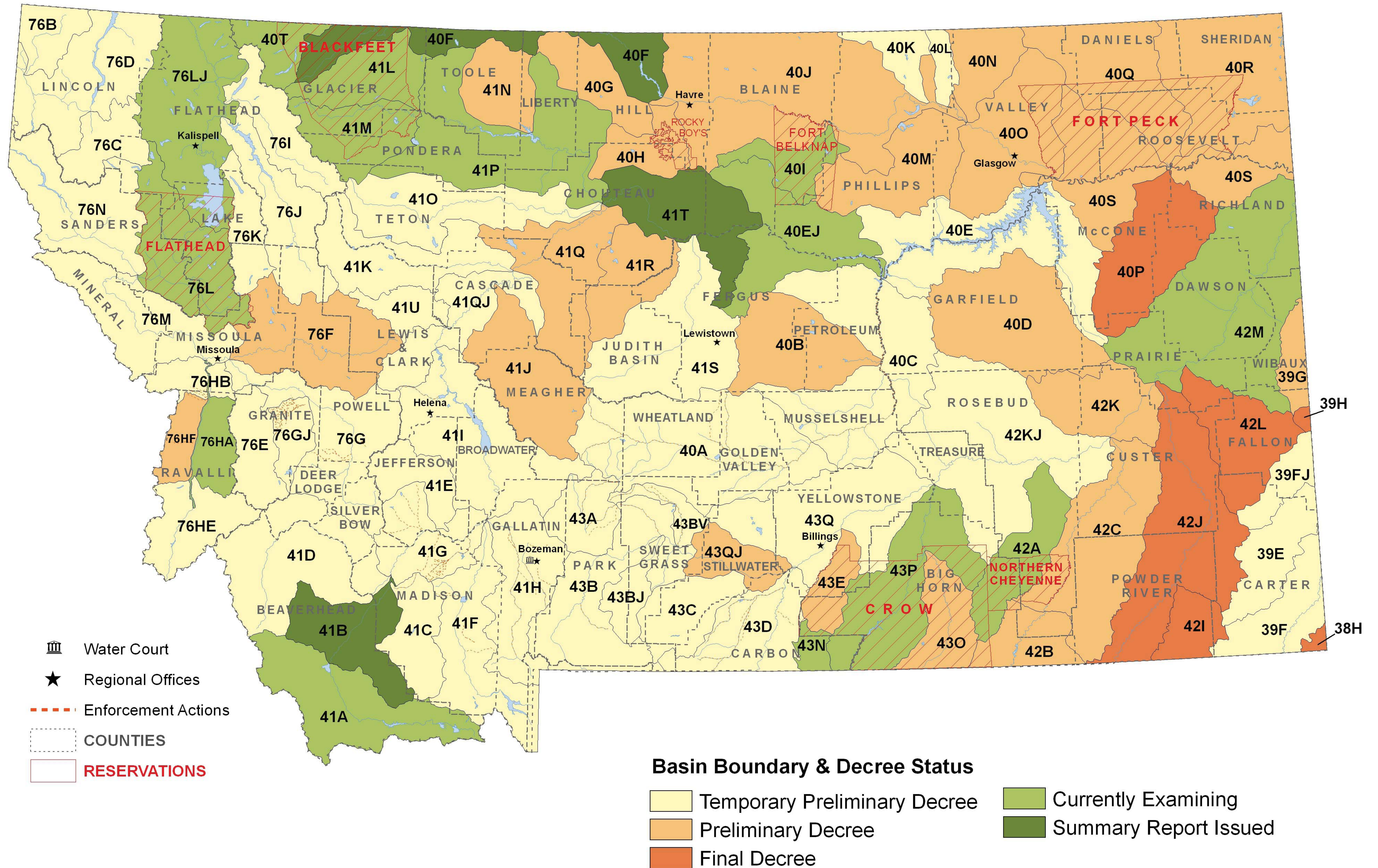
- Department staff continue to validate water right geocodes for property transfers that occurred from November 2010 thru January 2012.**
- In 2010, 3,821 ownerships were updated involving 9,460 water rights**
- In 2011, 6,245 ownerships were updated involving 15,765 water rights.**
- So far this fiscal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

DNRC REPORT TO EQC
HB22 ADJUDICATION PROGRESS
May, 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 **Mar, 31 2012** **50,548**
-
- Claims examined by Purpose

o Irrigation	11,231	22%
o Stock	27,974	56%
o Domestic	6,569	13%
o Other	<u>4,774</u>	9%
	50,548	

Claims remaining to be examined **6,452**

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	2,541
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	2,719
Blackfoot River (76F)	2/10/2011	3,717
Flatwillow Creek (40B)	5/5/2011	3,677
Arrow Creek (41R)	6/23/2011	2,179
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	192	3,809.5
Case	57	2,067.5
<u>General assist</u>		2,583
Total hours		8,610

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	\$ 184,723.00
	Personnel Services	\$ 1,193,053.15
	Total	\$ 1,377,776.10
	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)

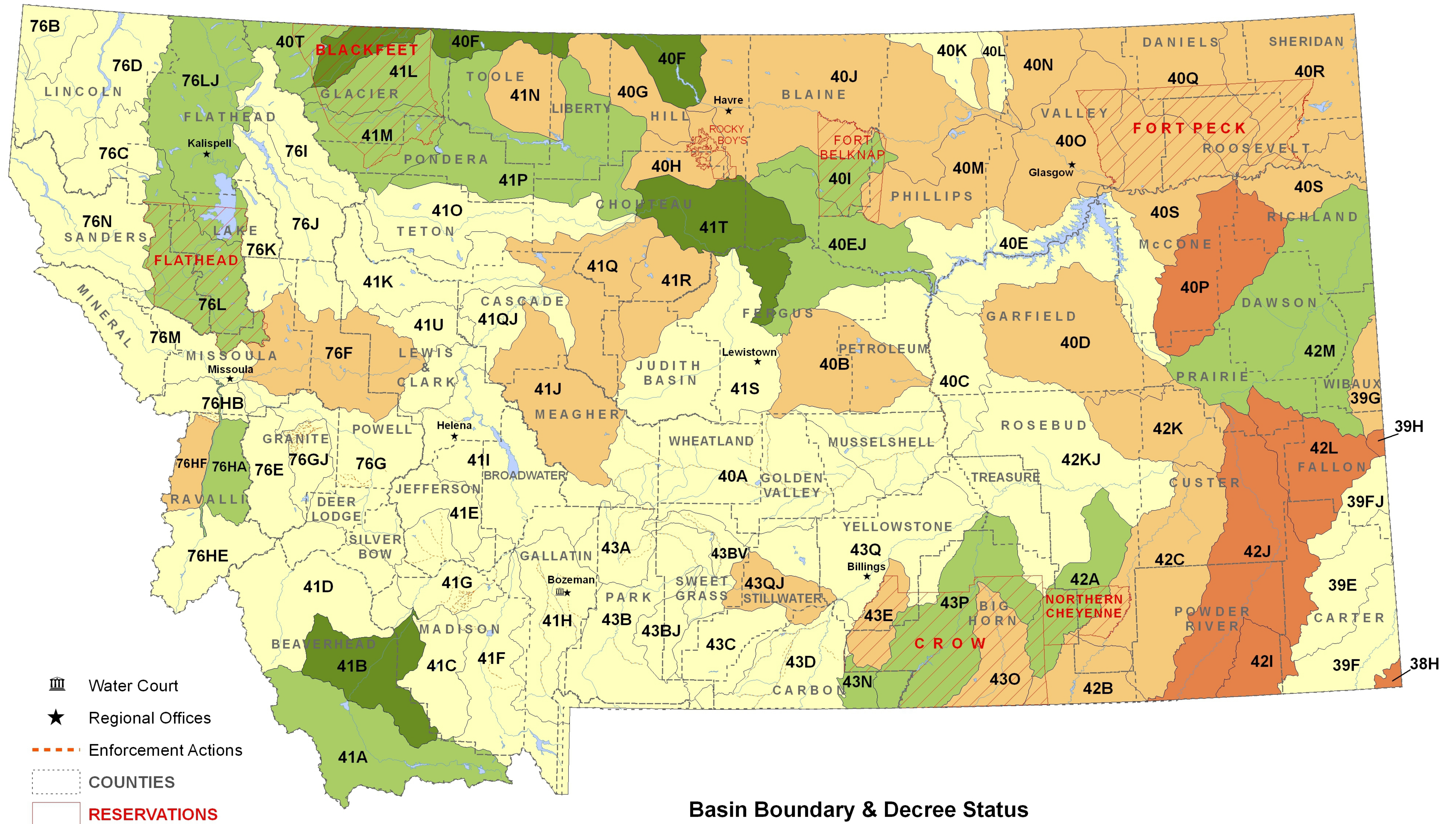
- Department staff continue to validate water right geocodes for property transfers that occurred from November 2010 thru January 2012.**
- In 2010, 3,821 ownerships were updated involving 9,460 water rights**
- In 2011, 6,245 ownerships were updated involving 15,765 water rights.**
- So far this fiscal year, 6,514 ownerships have been updated involving 15,422 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

04/11/2012



**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 April 12, 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 Notice of Intent to Appear notice tentatively scheduled for issuance on 4/ 26/2012
40H	Big Sandy Creek	797	31
40J	Milk River Between Fresno Reservoir & Whitewater Cr.	12,897	4,811
40M	Beaver Creek, Tributary of Milk River	2,942	939
40O	Milk River Below Whitewater Creek	3,306	229
40R	Big Muddy Creek	2,029	551
41D	Big Hole River	3,892	1,113
41I	Missouri River upstream of Holter Dam to Three Forks	5,168	215
41J	Smith River	2,719	Decree issued 12/16/2010 - 60 day Notice of Intent to Appear deadline expires on 6/11/2012
41K	Sun River	2,856	106
41O	Teton River	2,541	283
41Q	Missouri River from Sun River to Marias River	4,127	836
41QJ	Missouri River from Holter Dam to Sun River	2,584	277
41R	Arrow Creek	2,179	Decree issued 6/23/2011 - Final Objection Deadline expires 6/15/2012
41T	Missouri River from Marias River to & including Bullwhacker Creek	3,073	Decree Scheduled for issuance 4/19/2012 - Initial Objection Deadline 10/16/2012

42B	Tongue River above & including Hanging Woman Creek	1,345	259
42C	Tongue River below Hanging Woman Creek	4,710	1,064
42KJ	Yellowstone River between Bighorn and Tongue Rivers	4,767	170
43A	Shields River	3,395	101
43B	Yellowstone River above & including Bridger Creek	4,860	308
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	90
76F	Blackfoot River	3,717	Decree issued 2/10/2011 60 day counter objection deadline expires 4/30/2012
76HF	Bitterroot River - Westside Subbasin	3,774	106
<p>United States Forest Service - Montana Compact — A hearing on the objections was held on January 4, 2012 in Missoula. A decision is pending.</p> <p>United States of America, Fish and Wildlife Service, National Bison Range - Montana Compact was issued September 30, 2011. One objection was received by the objection deadline. A first Scheduling Conference is set for May 14, 2012 to discuss the objection.</p>			

The Judicial Nomination Commission received nine applications for the Associate Water Judge position. Public comment on the applicants closed on April 11, 2012. Applicant interviews with the Commission are scheduled for April 30, 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.mcpx

DNRC REPORT TO EQC
HB22 ADJUDICATION PROGRESS
July, 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 May, 31 2012 **50,924**
 - Claims examined by Purpose
 - o Irrigation 11,312 22%
 - o Stock 28,186 56%
 - o Domestic 6,618 13%
 - o Other 4,808 9%
- 50,924**

Claims remaining to be examined **6,076**

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 Bullwhacker 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	2,541
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	2,719
Blackfoot River (76F)	2/10/2011	3,717
Flatwillow Creek (40B)	5/5/2011	3,677
Arrow Creek (41R)	6/23/2011	2,179
National Bison Range Compact	9/30/2011	97
Missouri River, from Marias River to Bullwhacker Creek (41T)	4/19/2012	3,073

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 Bullwhacker & 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

Assistance for District Court Enforcement of Water Court Decrees

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
2012 season 39 projects are undergoing updates

Post Decree Assistance (July-March FY2012)

<u>Case type</u>	<u>case count</u>	<u>work hours</u>
Certified case		170
85-2-248	258	5,398
Case	70	2,307
<u>General assist</u>		<u>3,436</u>
Total hours		11,311

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	\$ 231,734.13
	Personnel Services	\$ 1,475,126.32
	Total	\$ 1,706,860.45
	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, 8,734 ownerships have been updated involving 20,530 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.

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 June 21, 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 Notice of Intent to Appear deadline expires 7/16/2012
40H	Big Sandy Creek	797	31
40J	Milk River Between Fresno Reservoir & Whitewater Cr.	12,897	4,697
40M	Beaver Creek, Tributary of Milk River	2,942	846
40O	Milk River Below Whitewater Creek	3,306	135
40R	Big Muddy Creek	2,029	521
41D	Big Hole River	3,892	1,038
41I	Missouri River upstream of Holter Dam to Three Forks	5,168	201
41J	Smith River	2,719	974
41K	Sun River	2,856	104
41O	Teton River	2,541	239
41Q	Missouri River from Sun River to Marias River	4,127	672
41QJ	Missouri River from Holter Dam to Sun River	2,584	257
41R	Arrow Creek	2,179	Decree issued 6/23/2011 - Objection deadline expired 6/15/2012 - Counterobjection deadline not yet set
41T	Missouri River from Marias River to & including Bullwhacker Creek	3,073	Decree issued 4/19/2012 - Initial Objection Deadline 10/16/2012
42B	Tongue River above & including Hanging Woman Creek	1,345	233

42C	Tongue River below Hanging Woman Creek	4,710	963
42KJ	Yellowstone River between Bighorn and Tongue Rivers	4,767	143
43A	Shields River	3,395	101
43B	Yellowstone River above & including Bridger Creek	4,860	308
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	92
76F	Blackfoot River	3,717	Decree issued 2/10/2011 Notice of Intent to Appear deadline expires 7/30/2012
76HF	Bitterroot River - Westside Subbasin	3,774	106
<p>United States Forest Service - Montana Compact — A hearing on the objections was held on January 4, 2012 in Missoula. A decision is pending.</p> <p>United States of America, Fish and Wildlife Service, National Bison Range - Montana Compact was issued September 30, 2011. One objection was received by the objection deadline. An initial settlement period has been set and a Status Report is due on November 19, 2012.</p>			

Since the passage of the legislation accelerating the water right adjudication effort by the 2005 Legislature, the DNRC and the Water Court have issued 16 decrees containing approximately 51,000 claims. In the next 6 months, we hope to issue 3 more decrees containing about 7,000 claims in the Red Rock River, Beaverhead River, and the upper Milk River drainages (Basins 41A, 41B, and 40F). By 2020, we will issue an additional 14 initial decrees containing about 31,000 claims to meet the goals of the 2005 Legislature. The Water Court is on track to meet the 2020 goal and is currently running slightly ahead of our projected completion date.

Chief Justice McGrath appointed Russell McElyea to be Associate Water Judge for a four year term beginning July 1, 2012. Judge McElyea's arrival comes at a good time because the decree issuance acceleration, as anticipated, has almost doubled the Water Court caseload in the last six months. We now have about 18,000 active claims awaiting resolution. When Judge McElyea officially assumes his office, the Water Court will be fully staffed.

This rapid acceleration brings new challenges. For example, as the Water Court issues new decrees in basins containing Indian reservations, new issues are arising. Previous reports to this Committee have mentioned (1) the Crow Tribe objections in the Pryor Creek (43E) and the

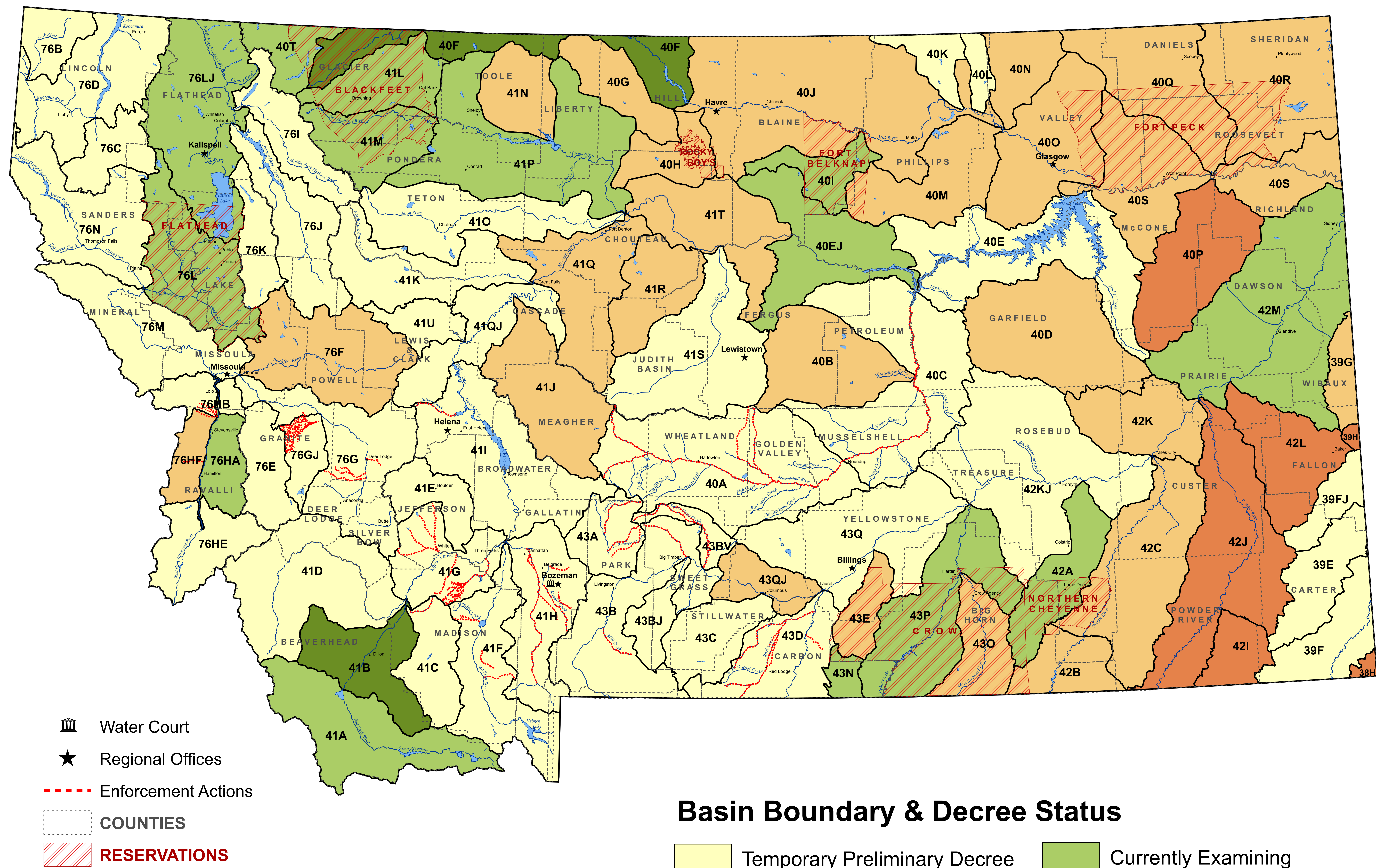
Little Bighorn River (43O) basins regarding Section 2 of the 1920 Crow Allotment Act; and (2) a DNRC issue remark which questions water appropriations earlier than Indian land cession dates, such as July 1, 1873 in the Missouri River drainage between Holter Dam and the Sun River (Basin 41QJ). The Section 2 issue is still in the settlement phase. The land cession issue is being briefed and the last brief is currently due on July 2.

One additional tribal issue has arisen regarding water rights being claimed on tribal trust lands. The United States asserts claims appurtenant to tribal trust lands may only be filed by the United States for the benefit of a tribe or allottee. This assertion includes rights set forth in any water rights settlement Compact with the state of Montana. Apparently, some of these checkerboard tribal trust lands or allotments are not clearly identified on a public record, so we are trying to determine the best way to ascertain the property ownership to make sure these claims are correctly identified and accurately decreed.

Finally, within the next few months, the Water Right Adjudication Advisory Committee hopes to complete its work on a report about the claims which were exempt from the filing process and what options might be available to address their absence from the adjudication. The Committee has embarked on this project at the request of Senator Brenden.

Basin Location and Adjudication Status

6/21/12



DNRC REPORT TO EQC
HB22 ADJUDICATION PROGRESS
September, 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 July, 31 2012 **51,419**
- Claims examined by Purpose
 - o Irrigation 11,435 22%
 - o Stock 28,435 55%
 - o Domestic 6,683 13%
 - o Other 4,866 10%

51,419

Claims remaining to be examined **5,581**

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 Bullwhacker 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	2,541
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	2,719
Blackfoot River (76F)	2/10/2011	3,717
Flatwillow Creek (40B)	5/5/2011	3,677
Arrow Creek (41R)	6/23/2011	2,179
National Bison Range Compact	9/30/2011	97
Missouri River, from Marias River to Bullwhacker Creek (41T)	4/19/2012	3,073

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 2013			
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	Flathead River (76LJ)	Examination in progress	7	2013
6	Cut Bank River (41L)	Summary Report pending	6	2013
7	St. Mary River (40T)	Summary Report pending	12	2012
8	Yellowstone R below Powder R (42M)	Examination in progress	6	2013
9	Red Rock River (41A)	Summary Report pending	10	2012
10	Peoples Creek (40I)	Summary Report pending	12	2012
11	Two Medicine River (41M)	Summary Report pending	8	2013
12	Marias River (41P)	Examination in progress	5	2014
13	Missouri R between Bullwhacker & Musselshell (40EJ)	Examination in progress	12	2012
14	Bitterroot R, E side (76HA)	Examination in progress	6	2015
15	Frenchman Creek Re-Examination (40L)	Summary Report pending	7	2014

Assistance for District Court Enforcement of Water Court Decrees

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
2012 season completed water court assistance for 40 streams

Post Decree Assistance (July- FY2013)

<u>Case type</u>	<u>case count</u>	<u>work hours</u>
Certified case	1	5
85-2-248	9	326
Case	3	42
<u>General assist</u>		<u>235</u>
Total hours		608

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	\$ 13,374
	Personnel Services	\$ 59,154
	Total	\$ 72,528
	Budget	\$ 2,082,984

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)

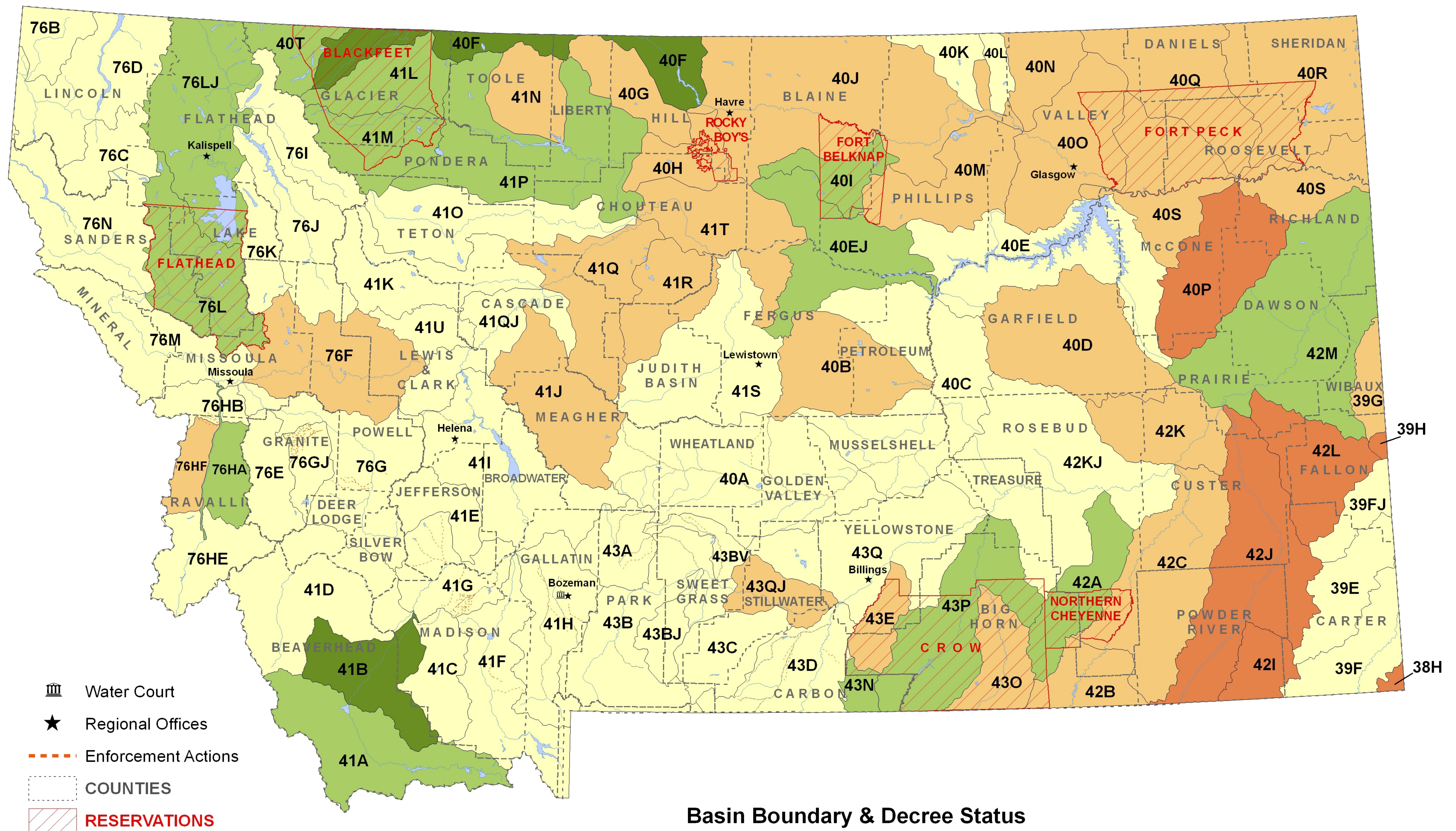
- Department staff continue to validate water right geocodes for property transfers that occurred from November 2010 thru January 2012.
- In 2010, 3,821 ownerships were updated involving 9,460 water rights
- In 2011, 6,245 ownerships were updated involving 15,765 water rights.
- In 2012 8,729 ownerships were updated involving 20,496 water rights.**
- So far this fiscal year, 1,455 ownerships have been updated involving 3,280 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

08/24/2012



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 August 27, 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	1,468
40H	Big Sandy Creek	797	31
40J	Milk River Between Fresno Reservoir & Whitewater Cr.	12,897	4,654
40M	Beaver Creek, Tributary of Milk River	2,942	852
40O	Milk River Below Whitewater Creek	3,306	135
40R	Big Muddy Creek	2,029	449
41D	Big Hole River	3,892	964
41I	Missouri River upstream of Holter Dam to Three Forks	5,168	193
41J	Smith River	2,719	957
41K	Sun River	2,856	104
41O	Teton River	2,541	224
41Q	Missouri River from Sun River to Marias River	4,127	493
41QJ	Missouri River from Holter Dam to Sun River	2,584	242
41R	Arrow Creek	2,179	Decree issued 6/23/2011 - Objection deadline expired 6/15/2012 - Counterobjection deadline 9/10/2012
41T	Missouri River from Marias River to & including Bullwhacker Creek	3,073	Decree issued 4/19/2012 - Initial Objection Deadline 10/16/2012
42B	Tongue River above & including Hanging Woman Creek	1,345	213
42C	Tongue River below Hanging Woman Creek	4,710	903

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76F	Blackfoot River	3,717	1,347
76HF	Bitterroot River - Westside Subbasin	3,774	104
<p>United States Forest Service - Montana Compact — A hearing on the objections was held on January 4, 2012 in Missoula. A draft decision has been prepared and is being finalized for issuance in September.</p> <p>United States of America, Fish and Wildlife Service, National Bison Range - Montana Compact was issued September 30, 2011. One objection was received by the objection deadline. An initial settlement period has been set and a Status Report is due on November 19, 2012.</p>			

The Water Right Adjudication Advisory Committee had hopes it would be able to complete its work about the claims which were exempt from the claim filing process and to offer some suggested options for legislative consideration. The Advisory Committee had reached a tentative conclusion, based on an agreement of the plurality of the members, to suggest enactment of a voluntary petition filing process. After circulating a draft of the proposed statutory modifications, it seems less likely that a consensus on the proposed statutory changes can be reached. During the oral presentation of the Water Court's Report in September, we may have an update on this topic.

The Water Court has been planning to issue simultaneous decrees in the Red Rock River and Beaverhead River drainages, Basins 41A and 41B, before the end of 2012. To reach this goal, all claim amendments and all DNRC claim examination work needs to be completed. A few months ago, the Court had announced a mid-September ending date for amendments. We have recently received letters from a few attorneys and one consultant who are assisting water users in these drainages. These letters are requesting the Court to extend the amendment deadline into October or November. If the deadline is extended, we may not be able to issue both decrees in 2012.