

I. INTRODUCTION

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A. WHAT IS WATER RIGHTS ADJUDICATION

When a judge hears a case and renders a decision, the matter is said to have been adjudicated. In the arena of water rights, adjudication refers specifically to the settling of claims filed for water rights.

Before passage of the Montana Water Use Act in 1973, a person could gain a right to use water simply by putting that water to beneficial use. These rights are known as existing water rights. But no one knew how many existing water rights there were or exactly how much water had been appropriated. The Water Use Act, effective July 1, 1973, established a central repository for water right records and required prospective water users to apply for a permit before putting water to use. The act also recognized that the amounts, ownership, and priority dates for all existing water rights needed to be better defined.

The first undertaking in organizing Montana's existing water rights began in the Powder River Basin. In 1973, the task of collecting and investigating claims fell to the Department of Natural Resources and Conservation (department). After six years of intensive field work, aerial photo interpretations and interviews, completion of the first basin was not in sight.

Consequently in 1979, the legislature modified the Water Use Act by passing Senate Bill 76, which set up Montana's current system for adjudicating existing water rights.

Senate Bill 76 divided Montana into four water divisions (See [Figure I-1](#), Water Divisions Map) and called for four judges, commonly known as the [Water Court](#), to adjudicate all existing water rights in a statewide proceeding. At the same time, the [Reserved Water Rights Compact Commission](#) (RWRCC) was created to negotiate compacts with federal agencies and Indian tribes wishing to quantify their federal reserved water rights in Montana. The activities of the commission are an integral part of the statewide adjudication process.

On June 6, 1979, the Montana Supreme Court issued an Order requiring every person claiming ownership of an existing water right to file a claim (see Exhibit I-1) with the Department of Natural Resources and Conservation no later than January 1, 1982. On December 7, 1981, the Supreme Court extended the deadline to 5:00 p.m. on April 30, 1982. Stockwater and domestic claims for groundwater or instream flow were exempted from this process, though such claims could be filed voluntarily.

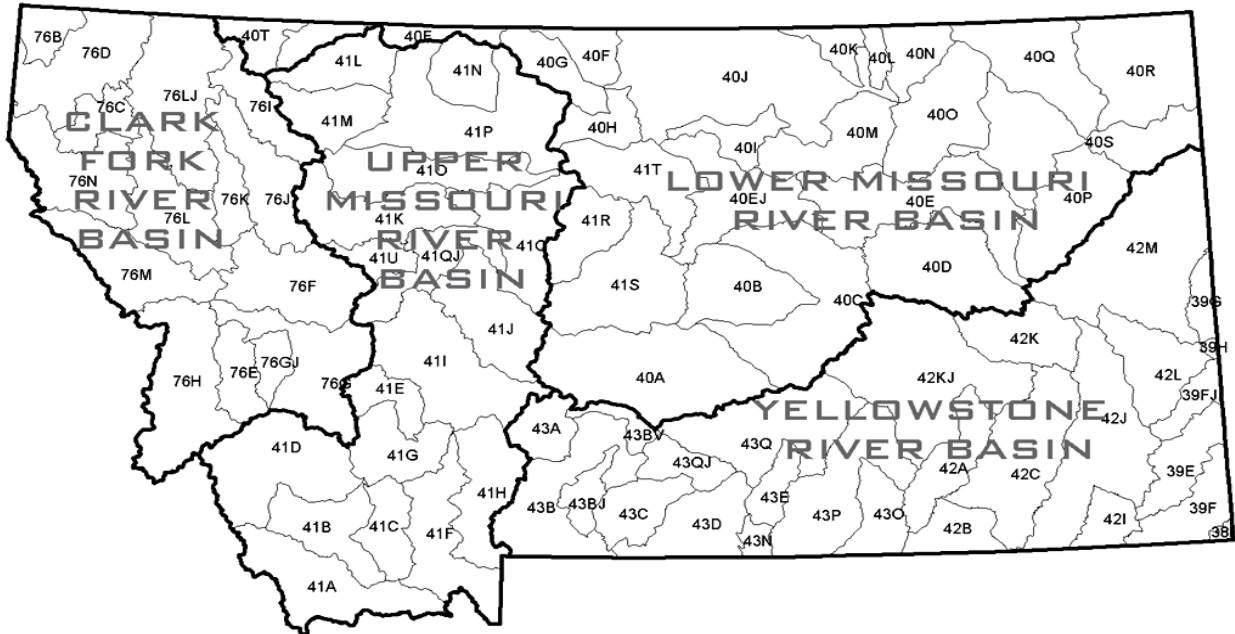
By statute, claims not filed by the April 30, 1982 deadline were presumed to have been abandoned. In 1992, the Montana Supreme Court made a determination that the failure to file a statement of claim on or before April 30, 1982, was a forfeiture of the water right. In 1993, the 53rd Montana Legislature passed Senate Bill 310 which under certain terms and conditions, provided for the remission of the forfeiture of existing rights caused by the failure to file claims on or before April 30, 1982. Accordingly, a "late claim" could be filed by physically filing the claim with the department on or before July 1, 1996, or sending the claim by United States mail, postmarked on or before July 1, 1996.

Over 200,000 claims were received by the April 30, 1982 deadline. To date, 4,986 late claims have been filed. Since all of these claims cannot be adjudicated at once, the claims are being handled systematically for each of Montana's 85 river basins. Each claim is examined by the department staff for completeness and accuracy; apparent discrepancies are reported to the claimants and the Water Court. The reports are also made available to the public. When all claims in a basin are examined, a decree is issued.

Historically, the first issuance of a decree by the Water Court was termed either a temporary preliminary decree or a preliminary decree. Temporary preliminary decrees were issued in basins containing federal reserved water rights where a compact was not been concluded. Such decrees contain all rights other than reserved rights being negotiated. In these basins, a preliminary decree will be issued as a second step in the process and will include all rights in the temporary preliminary decree along with all reserved rights in the basin. Adjudication in basins without federal reserved rights began with a preliminary decree. As of 2010, all decrees issued by the Water Court will be termed a preliminary decree.

In 2011 the legislature provided for the addition of an Associate Water Judge appointed by the Chief Justice of the Montana Supreme Court to work on cases as assigned by the Chief Water Judge.

**FIGURE I-1
WATER DIVISION MAP**



In 1997, the legislature passed Senate Bill 108 which revised the water adjudication laws. One revision in the bill allows the Water Court to adjudicate water right claims or review federal reserved water right compacts when necessary, and without the need to wait until other types of claims in the same basin are examined. In addition, SB 108 requires objections to be filed at the initial decree stage, and also allows claimants an opportunity to file counter-objections.

A notice of issuance of every decree is given to all parties that may be affected by it, along with notice of the time period for objecting to the rights or compacts in the decree. The water judge, with the help of a water master, hears and decides all objections. After all objections have been resolved, the water judge issues a final decree. On the basis of the final decree, the department will issue a Certificate of Water Right to each person decreed an existing water right. Water rights dated after July 1, 1973, are not subject to the adjudication process.

B. PROGRAM DESCRIPTION

The Adjudication Program, i.e., the department and the Montana Water Court, is responsible for the protection and confirmation of all rights having any useful and beneficial purpose that existed prior to July 1, 1973 (the effective date of the Montana Water Use Act).

1. Program Responsibilities. Generally the department's role in the program is to collect, compile, record, and examine claims for pre-1973 water rights filed pursuant to Senate Bill 76 and thereby assist the Water Court in preparing temporary preliminary, preliminary and final decrees. More specifically, the department's responsibilities are:

- i. Provide information and assistance to aid claimants in filing claims in accordance with [§85-2-112\(5\), MCA](#). Even though the general filing deadline has passed, amendments to filed claims are still received.
- ii. Develop and maintain a Claim Examination Manual.
- iii. Maintain the centralized record system of all existing water right claims as required by Article IX Section 3 of the Montana Constitution.
- iv. Provide assistance and information to the water judges as required by [§85-2-243, MCA](#). see also [Rule 1, W.R.C.E.R.](#) Meeting this objective involves the following:
 - Continue to examine water right claims in specified basins, meet the benchmarks set forth in [House Bill 22](#), and provide a summary report to the Court upon completion.
 - Respond to requests made by the Water Court in conjunction with the litigation of objections to Water Court decrees, the resolution of issue remarks, and enforcement of decrees.
 - Assist the Water Court with the issuance and mailing of decrees, counter-objection and objection notices. Conduct return mail research.
 - Provide technical expertise to the Reserved Water Right Compact Commission regarding water right quantification for negotiations on reserved water rights.
 - Assist the Water Court in complying with district court requests for Water Court decree enforcement, by providing technical assistance and information.
- v. Pursuant to [§85-2-236, MCA](#), issue a certificate of water right to each person decreed an existing right in those basins where a final decree has been entered. (Note: No certificates have been issued to date for the six

final decree basins because of reserved rights issues in two basins and the potential reopening of all final decrees.)

- vi. Improve the department's public relations through positive contact with claimants during claims examination.

2. Program Goals.

- To provide the statewide adjudication with thorough and timely review of existing water rights claims for completeness, accuracy, and reasonableness.
- To check that the elements of a water right, individually and in combination, are reasonable and accurate using the policies and procedures specified in the Montana Supreme Court Water Right Claim Examination Rules (W.R.C.E.R.) and the examination manual.
- To identify for further review through the decree process those aspects of a water right that do not appear reasonable or accurate.

3. Policy and Procedures. The policy and procedures to implement the program goals are based on rules adopted by the Montana Supreme Court on July 15, 1987, amended in 1991 and again in 2006. These rules provide the general guidelines on how to examine claims.

To implement the general guidelines to examine claims as specified in the Supreme Court Rules, the department has written this more detailed manual entitled the "Water Right Claim Examination Manual".

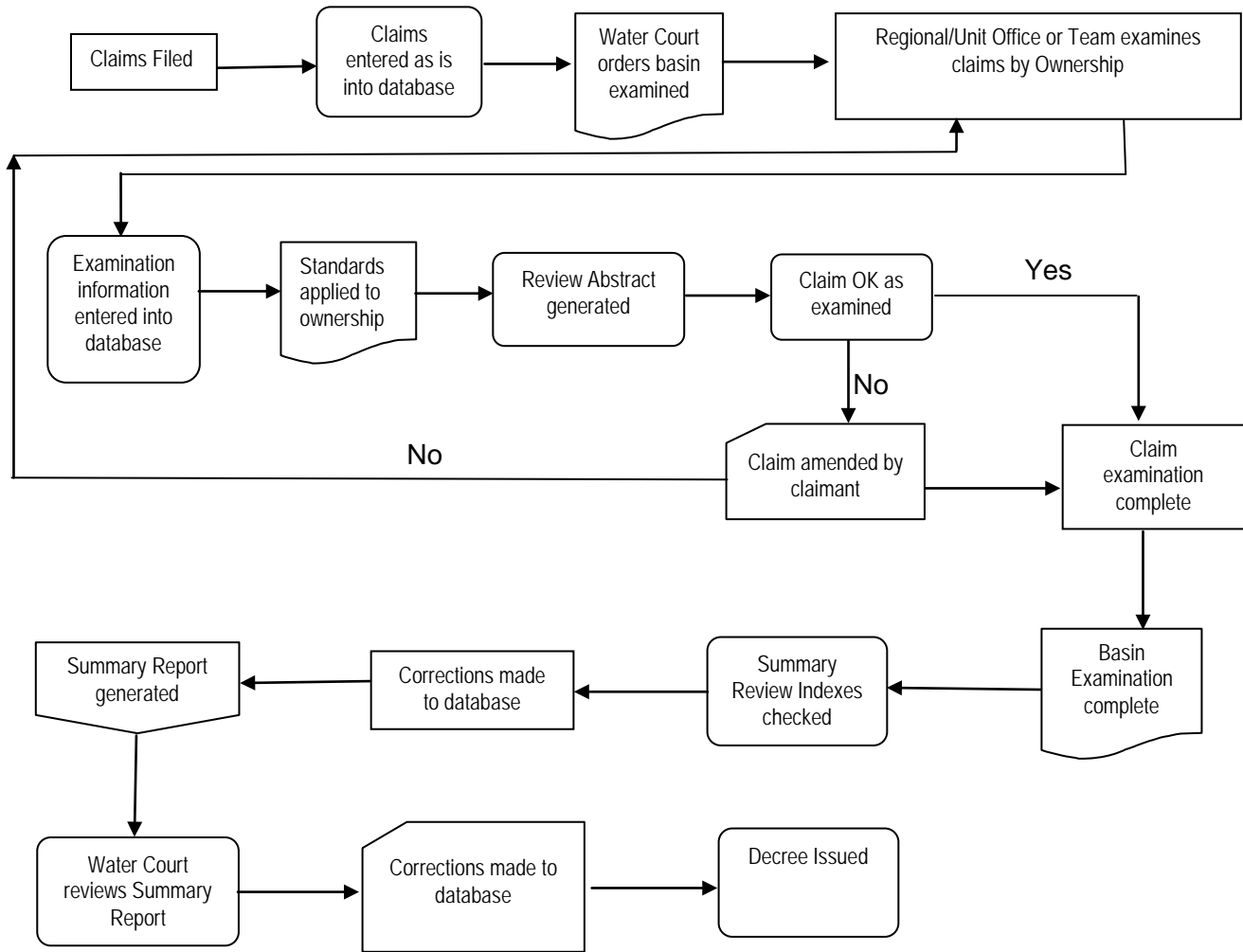
This manual provides step-by-step procedures for department adjudication staff to follow in implementing the Supreme Court Rules on a day-to-day basis. This manual explains how to routinely apply these guidelines to specific claims and issues in a manner consistent with the state's centralized water right database. This manual also describes how the department claims examination is to be coordinated between the regional/unit offices, the specialist teams, the program manager, the records section, the Water Court, and the claimants.

This Claim Examination Manual covers daily technical guidance to the adjudication staff for examining each element as prescribed by the Supreme Court Rules. By addressing the details of day-to-day claim examination, this manual serves the objective of consistent treatment of claims by different staff members and between different regional/unit offices and teams.

4. Claims Examination Overview. In general, the review of water right claims by the department consists of the following activities (also see [Figure I-2 Claim Examination Flow Chart](#)):

- **Review** the claim file to see if the claimed information is clear and understandable. If discrepancies exist in the claimed information, the claimant is usually contacted. The claim should clearly and accurately reflect the claimant's intent.
- **Examine** the claim against the available factual records and resources, i.e., maps, aerial photographs, courthouse records, etc. In many cases, factual records and resources may be limited, in which case the claimed information is reviewed for reasonableness. Additional information may be requested from the claimant.
- If the examination raises **issues** and questions, or makes changes to a claim regarding the claimed information, the claimant **must be** contacted. The result of this contact may or may not resolve the issues. In certain cases a field inspection may be conducted. Unresolved issues are documented on the examination worksheet and reported in the department's review abstract for the claim.
- The **examination worksheet** and supplement forms are scanned and used to update the computer database. From the database, a copy of the department's summary report is printed for the Water Court's review.
- When examining claims, department personnel must abide by the following principles:
 - The claimant may claim or adjust their claim as they wish. The final authority for determining the validity of changes is the Water Court.
 - Department claim examination personnel are not to draw legal conclusions or give legal advice.
 - The department may explain the claim examination procedures and the adjudication process, discuss options, and offer reasonable assistance with forms and paperwork with and for the claimants.
- The department has a responsibility by statute to keep accurate records (including documenting claimant contact) and to report facts and issues discovered during claim examination.

**FIGURE I-2
CLAIM EXAMINATION FLOW CHART**



5. Current FTE and Claim Examination Status. The program currently has 43 FTE's, of which, 16 FTE's will be located in the regional/unit offices and 27 FTE's in Helena on the statewide adjudication teams.

6. Examination Priorities. The Montana Legislature prioritizes the basins within each water division and the department examines claims accordingly. Claimants may petition the Water Judge to designate a priority basin if the basin involves: recurring water shortages resulting in urgent water rights controversies;

- federal or Indian water rights negotiations nearing completion; or
- adjudication proceedings nearing issuance of a decree.

Presently, the department is focused on meeting benchmarks assigned by the 2005 legislature. There are approximately 57,000 unexamined claims that must be examined before June 30, 2015. The benchmarks set by the legislature are as follows:

<u>Date</u>	<u>Total Number Claims Examined</u>
December 31, 2006	8,000
December 31, 2008	19,000
December 31, 2010	31,000
December 31, 2012	44,000
June 30, 2015	57,000

7. Decree Issuance. [Rule 5, W.R.C.E.R.](#); [Rule 3, W.R.Adj.R.](#) Following examination of claims by the department, a Summary Report, which consists of an Abstract of Water Right Claim for each claim, is generated by the DNRC. The Water Court reviews the Summary Report prior to decree issuance and may ask the DNRC questions concerning examination of the claims pursuant to the Water Right Claim Examination Rules. Changes may be made to claims by the DNRC based upon its answers to the Courts' questions.

If the Court determines that changes pursuant to the claim examination rules or statute should be made to claims beyond those made by the DNRC, it will issue an order directing the DNRC to make such changes. The order from the Court is placed in the claim file by the DNRC. [Rule 3, W.R.Adj. R.](#)

Any changes made to a claim by the DNRC are stated in writing and sent to the Water Court. The department will enter changes in the centralized water right database and place the Court's written documentation in the claim file.

As ordered by the Water Court, the department prints all abstracts of existing water rights to be included in the decree. The department prepares and mails the decree. Included in the mailing process is a Notice of Availability (an individual notice) for each owner of a claim, certificate, permit, water reservation grantees, and other interested persons requesting notice.

Historically, the first issuance of a decree by the Water Court was termed either a temporary preliminary decree or a preliminary decree. Temporary preliminary decrees were issued in basins containing federal reserved water rights where a compact was not been concluded (see [§85-2-231, MCA](#)). Such decrees contain all rights other than reserved rights being negotiated. In these basins, a preliminary decree will be issued as a second step in the process and will include all rights in the temporary preliminary decree along with all reserved rights in the basin. Adjudication in basins without federal reserved rights begins with a preliminary decree. As of 2010, all decrees issued by the Water Court will be termed a preliminary decree.

Adjudication by the Water Court beyond a temporary preliminary decree has been temporarily suspended in basins with reserved water rights while negotiations for a compact are being pursued. Several basins within Montana have no federal or Indian reserved water rights subject to compact negotiations and, therefore, may proceed to preliminary and final decree. Compacts negotiated and ratified to date are:

<u>COMPACT</u>	<u>DATE RATIFIED</u>
○ Fort Peck-Montana Compact	1985 Legislature
○ Northern Cheyenne-Montana Compact	1992 Legislature
○ U.S. National Park Service-Montana Compact	1994 Legislature
○ U.S. Bureau of Land Management-Montana Compact	1997 Legislature
○ Chippewa Cree Tribe-Montana Compact	1997 Legislature
○ U.S. Fish and Wildlife Service-Montana Compact (Black Coulee and Benton Lake National Wildlife Refuges)	1997 Legislature
○ U.S. Fish and Wildlife Service-Montana Compact (Red Rock Lakes National Wildlife Refuge)	1999 Legislature
○ Crow Tribe-Montana Compact	1999 Legislature
○ Fort Belknap Indian Reservation-Montana Compact	2001 Legislature
○ Forest Service Compact	2007 Legislature
○ U.S. Fish and Wildlife Service-Montana Compact (National Bison Range)	2009 Legislature

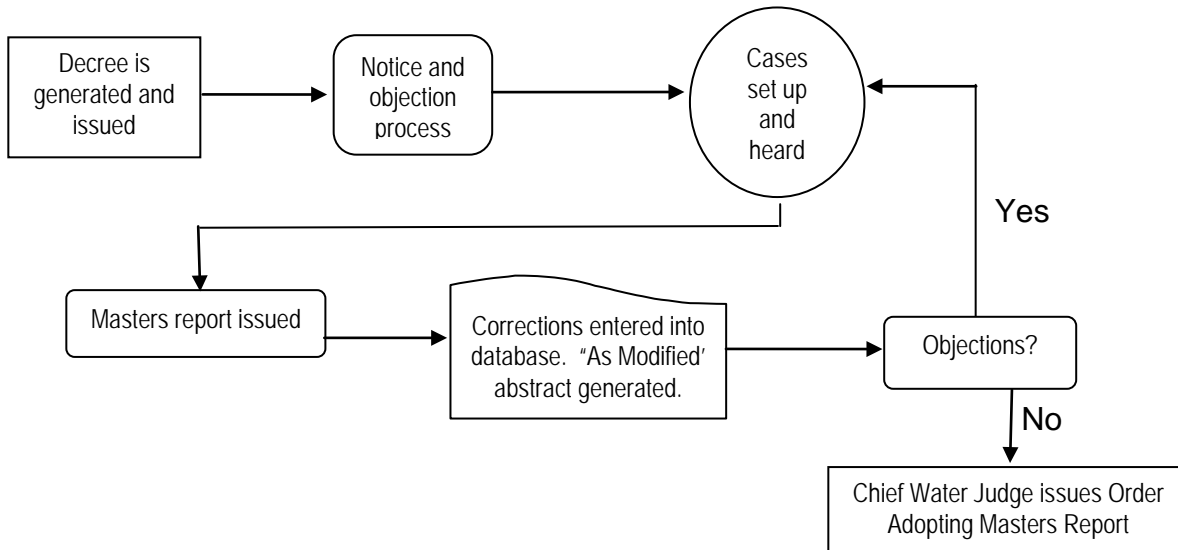
After a temporary preliminary or preliminary decree has been issued, statute provides for a minimum 180-day review period. The water judge may extend the time limit of the review period up to two additional 90-day periods for good cause shown. An objection to the findings and conclusions stated in the decree may be filed with the Water Court by a person named in the decree, or any other person for good cause shown.

Once the objection period ends, the Water Court notifies each person who received an objection. That individual has 60 days to file a counter-objection to the claim or claims of the objector. The counter-objection is limited to those claims included in the decree and the counter-objection period cannot be extended.

The objection and counter-objection entitles the parties to a hearing before the water judge to resolve the objections.

Most objections and issue remarks are resolved prior to a hearing by settlement. After an objection/issue remark is resolved through hearings, status conferences, or stipulations, the Water Court sends updated information to the department for inclusion into the centralized water right database. Upon order from the water judge, the department prepares the next level decree (preliminary or final) for issuance. See [Figure I-3](#) below.

**FIGURE I-3
DECREE ISSUANCE FLOW CHART**



8. Decree Status. The following summarizes the number of claims and basins involved in each stage of the decree process as of April, 2008. See [Figure I-4](#), Basin Location and Adjudication Status below or http://dnrc.mt.gov/wrd/water_rts/adjudication/default.asp for most current status.

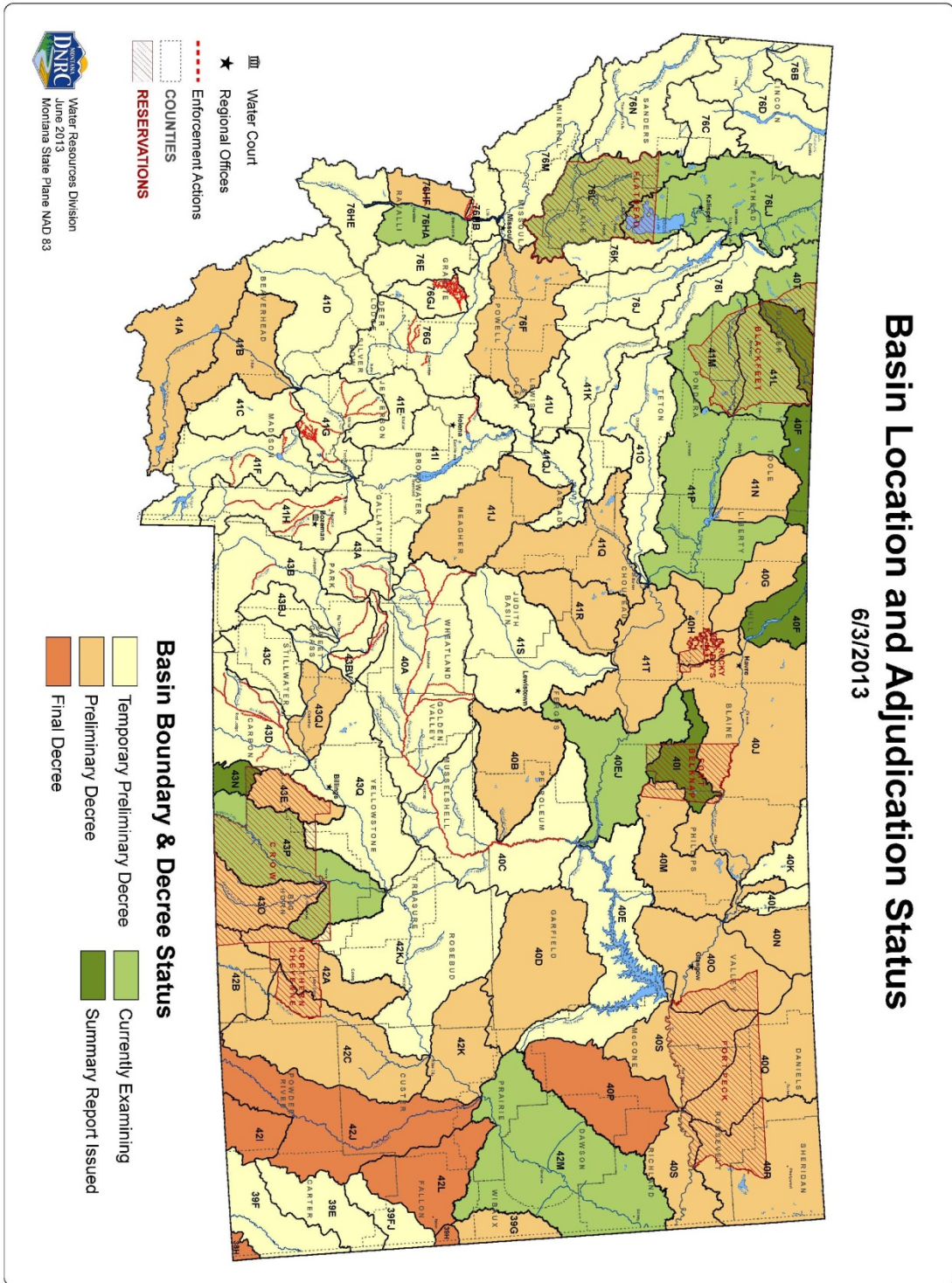
Temporary Preliminary Decrees
39 basins and 2 subbasins
96,266 claims

Preliminary Decrees
11 basins and 1 subbasin
23,262 claims

Final Decrees
6 basins
16,354 claims (Of these, 10,302 water rights were in the two Powder River basins which were examined by the department prior to the formation of the Water Court.)

Total Decrees
56 basins and 3 subbasins
128,657 claims

**FIGURE I-4
Basin Location and Adjudication Status**



C. COMMENTS FROM W. W. LESSLEY, CHIEF WATER JUDGE

- We are adjudicating the waters of Montana. Water that belongs to all the people of Montana and the beneficial use of water that belongs to the claimants of that water.
- We are adjudicating the waters of Montana for the enjoyment and use of the people of Montana now and in the future.
- We must remember always that we are bound by the law, that we are not owners of this water, and that we are not to make "we know best" decisions.
- We will follow an aggressive, common-sense program seeking a balanced perspective.
- There is a job to do and we intend to do it. We will do this job as quickly as possible.
- The job we do will be as factually correct as possible. We will be following the rules that we have from the courts reasonably and sensibly.
- Our adjudication must be correct enough to withstand factual and legal analysis and attack--and this from within or without Montana.
- But with all that, we refuse to slow down on our job for absolute perfection. (That type of perfection is saved for Heaven and the Heavenly Hosts!)
- We know our job is adjudication, that is, identification, and not allocation and definitely not elimination.
- A copy of these methods, procedures, and testing shall be furnished to those working on our adjudication program in the field offices, engineers, water masters and each judge.
- We insist they be followed. They are the result of months of study, revising, testing in actual drainages. Such unified methods and procedures followed by us all will result in a finished job, a job which we will all take pride in--more important, a job that will stand.

W.W. Lessley, Chief Water Judge
Montana Water Court
(1979-1990)

D. HISTORY OF THE ADJUDICATION PROGRAM

1. Legislative History. Article IX, Section 3(1) of the Montana Constitution (adopted in 1972) states "All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed." In response to this mandate, a water rights adjudication program was created by the 1973 Legislature under the Water Use Act (Senate Bill 444) to judicially and finally determine Montana's pre-1973 water rights.

The Department of Natural Resources and Conservation (department) had the responsibility of beginning proceedings to determine existing rights under the Water Use Act. Guided by the statutes at that time, the department organized the adjudication program and selected two Powder River basins to begin gathering data essential to the proper understanding and determination of existing rights. Approximately 10,000 existing water rights were examined by the department during a five year period in preparation for the two preliminary decrees.

The 1979 Legislature significantly amended the adjudication process with the passage of Senate Bill 76 (SB76). In this legislation, the owners of the water rights were given the primary responsibility for claiming their water use and providing documentation to support their claim. In addition, a system of water judges (commonly referred to as the Water Court) with the responsibility to adjudicate water rights was established. The Water Court consists of four judges (one for each of the major water divisions in the state, i.e., Clark Fork, Yellowstone, Upper and Lower Missouri) plus a staff of water masters and clerical personnel. The chief water judge, who serves the Upper Missouri division, and all Water Court staff are located in Bozeman.

SB76 redefined the department's role from the former adjudication process (commonly referred to as the Powder River adjudication). The department was now statutorily mandated to provide information and assistance to the water judges. In the former role, the department, as directed by the local district court, was to independently prepare draft preliminary decrees for the district court. [Title 85, Chapter 2, Part 2](#) of the Montana Code Annotated contains the statutes to be followed in Montana's present adjudication process.

SB76 also created the Reserved Water Rights Compact Commission. This Commission was given the authority to negotiate and quantify federal reserved water rights with those entities, primarily federal agencies and Native Americans residing on reservations, having these unique rights. Results of the compacts upon ratification by Congress and the Legislature are to be included in the Water Court decree, issued under the statewide adjudication effort.

There are several notable court actions, all interrelated to some degree, which have had significant impacts on the adjudication. Beginning on January 30, 1975 the United States and Indian tribes filed seven cases over a four year period in United States District Court. Apparently these were filed in response to the department beginning adjudication activities on the Tongue and Big Horn Rivers (under the Montana Water Use Act) and later in initiating statewide adjudication efforts (under Senate Bill 76). On November 26, 1979, the Federal District Court dismissed all seven cases in favor of ongoing statewide water right adjudication

proceedings. The United States and the Indian tribes appealed the cases to the U.S. Circuit Court of Appeals.

The Ninth Circuit Court of Appeals consolidated the appeals for review and in Northern Cheyenne Tribe vs. Adsit ("Adsit") reversed the District Court. Then the State of Montana appealed the Circuit Court decision to the U.S. Supreme Court. On October 4, 1982 the United States Supreme Court granted Montana's petition and consolidated it with San Carlos Apache Tribe vs. Arizona. The Supreme Court, in July 1983, upheld the District Court's dismissal and stated that they were correct in deferring to the state proceedings.

2. Claim Filing And Recordation. Based on petitions from the Montana Attorney General, the Montana Supreme Court ordered that statements of claim for all existing water rights must be filed with the department by 5:00 p.m. on April 30, 1982. By statute, failure to file a claim as required resulted in a conclusive presumption that the water right had been abandoned.

Statement of claim forms first became available November 15, 1979. These forms were made available at ten department offices statewide, at every County Clerk and Recorder and Clerk of Court office and in many County Extension, Soil Conservation Service (SCS) or Agricultural Stabilization and Conservation Service (ASCS) offices around the state. In addition to the forms, the department made water use guide sheets, instructional brochures, and general informational brochures available.

To get the program off the ground the department, with assistance from the four water judges, conducted 19 public meetings in January and February of 1980. A total of 7,046 people attended these meetings and received specific information on the adjudication process. In addition to these public meetings and as required by statute several legal steps were taken to provide the people of Montana, especially property owners, with proper notice of the adjudication proceedings. The Water Rights Order issued by the Montana Supreme Court was printed in the 8 daily newspapers in the state and in at least 1 paper published in each county. The Order was published in a total of 59 papers within 30 days of its issuance and again during April of 1980, 1981, and 1982. To serve individual notice, the Water Rights Order and explanation were enclosed with every County Treasurer's statement of property tax in October 1979, 1980, and 1981. A copy of the Order was conspicuously posted in county courthouses within 30 days after issuance and again in 1980, 1981, and 1982.

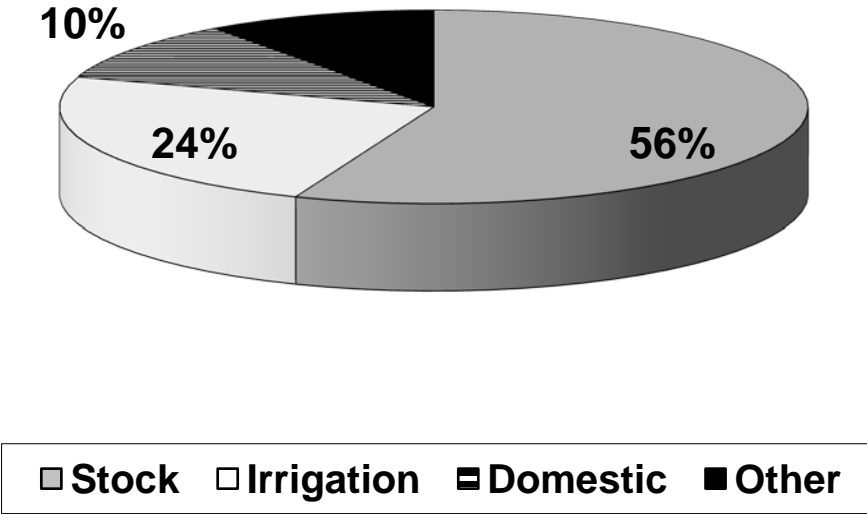
The most successful public information and assistance efforts were the workshops conducted by the department on a regular statewide basis throughout the filing period. From January to March of 1982, 238 assistance workshops were conducted in 50 different cities. Workshops were given to many special groups including the Montana Realtors Association, County Agricultural Extension Agents, Municipalities, County Clerk and Recorders, County Clerks of Court, and agricultural organizations such as Montana Stockgrowers Association. The department conducted two seminars for the State Bar of Montana in April 1980 and participated in a third in October 1981.

Extensive use was made of all media. Public service announcements for radio and television were produced and received wide coverage. A 30-minute film entitled "Crisis at our

Headgate" received wide coverage in 1981 and early 1982. Weekly public service announcements providing workshop schedules were provided to all interested radio stations and newspapers in the state. Press releases were also sent out on a regular basis. Many, like the Stone/Dunbar/Eagle series, were major feature articles. These announcements were given good media coverage. Adjudication personnel participated in news programs and contacted media sources in their area to initiate coverage and special interest articles on the adjudication program. Direct mailings through the use of bulk mailing permits were used to announce meetings and deadlines in the fall of 1981 and early spring of 1982. Paid advertising was used moderately throughout the program. However, a fairly intensive advertising effort was made in December 1981 and March 1982.

On April 30, 1982 at 5:00 p.m. the deadline for filing Statements of Claim for existing pre-July 1, 1973 water rights passed. The department received 201,165 claims. See Figure I-5 below for a statewide breakdown by type of use.

FIGURE I-5
Adjudication Claims
Statewide Breakdown By Use



Approximately 56% of the claims were filed between January 1 and April 30, 1982. Approximately 45% of the claims were filed in the month of April and 60,000 claims or 30% were filed in the last week of the filing period. About 2,000 claims were received after April 30 that were postmarked April 30. To collect these filings, the department had a total of 57 people working in the adjudication program by April 30, 1982.

The department then processed and entered all Statements of Claim received into a centralized record system. To do this, the department went through a claim check process called "clarification". This process was approved by the Water Court and implemented in April 1981. Staff reviewed the claim and any attachments to ensure it was complete, clear, and

interpretable. If problems were discovered, the claimant was contacted. The DNRC's goal was to have all claims reviewed, filmed, computerized, and filed in archives by July 11, 1983. Filming was completed in May 1983. Computerizing and filing in archives were completed in June 1983.

Approximately 5,000 water right claims have been filed with the department since the 5:00 p.m. April 30, 1982 Supreme Court deadline. In addition, 10,302 existing water uses were declared in the two Powder River basins prior to the current claims filing process. As a result, a total of over 216,000 filings for existing water uses are on record with the department for the 85 drainage basins in Montana. The number of claims in a basin ranges from 99 to 12,864.

In 1993, the Montana Legislature passed Senate Bill No. 310. This act provided for, under certain terms and conditions, the remission of the forfeiture of existing rights to the use of water caused by the failure of persons to file statements of claim on or before April 30, 1982. Accordingly, a claim of existing right not filed with the department on or before April 30, 1982, could be filed with the department on or before July 1, 1996. These are referred to as "late claims."

On six different occasions, beginning in October, 1993 and ending in April, 1996, legal notices of the opportunity to file a late claim were published in 55 newspapers throughout the state. Copies of the notice were posted in each of the regional offices as well as the Clerk of Court's office in every county. In addition, on June 14, 1996, the department issued a news release resulting in numerous inquiries.

The department prepared and submitted rules establishing procedures for collecting processing fees for late claims (see [§85-2-225, MCA](#)). The rules provided for the payment of \$150 (in addition to any filing fee) for claims filed after April 30, 1982, but prior to July 1, 1993. The rules were filed with the Secretary of State's Office on June 30, 1995 and published in the Montana Administrative Register Issue No. 13 dated July 13, 1995.

On October 10, 1995 and April 16, 1996, the department mailed processing fee (\$150) notices.

3. Claim Review. Senate Bill 76, as encoded in [§85-2-243, MCA](#), requires the department to provide assistance and information as may be required by the water judge. Under this statute, the department provides pertinent information and facts to the Water Court at the direction of the water judge. The department reviews all claims prior to issuance of a decree as the fulfillment of this requirement.

The department began reviewing claims in the fall of 1982 using a Water Court approved operations manual, referred to as the Verification Manual. The department "verified" over 80,000 claims. Verification included gathering, examining, and reporting data, facts, and issues pertaining to the claims of existing water rights. Typically, each of nine regional offices verified all claims within an assigned, local basin before proceeding to another basin. The verification methodology and scheduling of basins for department review varied, but was approved by the water judges.

Most of the claims "verified" by the department have been decreed by the Water Court in 28 temporary preliminary decrees, 7 preliminary decrees, and 4 final decrees.

4. Stipulation. During the summer and fall of 1985, the Montana Department of Fish, Wildlife and Parks, the United States, and other parties filed original proceedings with the Montana Supreme Court urging the court to take supervisory control of the water rights adjudication process. It was argued that the verification procedures developed by the Water Court and used by the department to examine claims were seriously flawed. The parties claimed that inequitable treatment and inadequate examination of claims would result in inaccurate decrees, and possibly nullify Montana's adjudication process.

Negotiations were held by the various parties which led to an out-of-court stipulation. The department, although not a party, participated in these discussions. The Stipulation was submitted to the Montana Supreme Court on February 19, 1986. Following oral arguments before the Supreme Court to explain its contents and answer questions, the petitioners agreed to dismiss their complaints with the understanding that the Stipulation would be followed.

In regard to the department, the Stipulation states that the examination of water right claims will be limited to "factual analysis and the identification of issues" and that the "Water Court will refrain from participating in the verification of claims by DNRC, except the Water Court upon proper application and for good cause shown, may enjoin DNRC from acting beyond its jurisdiction in the verification process". It was also stated that the examination procedures and policies will be available to the public.

In addition, the Stipulation required that basins where temporary preliminary or preliminary decrees have been issued, the department prepare a report for each decreed basin comparing the verification procedures with the examination procedures adopted pursuant to the Stipulation. The Water Court agreed, pending the implementation of the procedural revisions described in the Stipulation which included the adoption of new verification procedures, that it would not issue any further decrees.

5. Rules Adoption. Following the stipulation, the department began implementing its provisions, principally the review and modification of the claims review policy and procedures. The objective was to develop a process of gathering data and identifying issues pertinent to water right claims as an independent agency, thereby assisting the Water Court in accurately adjudicating the underlying rights.

Toward this end, the question arose whether the claim examination procedures should be adopted by the department under the Montana Administrative Procedures Act (MAPA) or adopted by the Water Court. The department proceeded with the intent of rule adoption under MAPA. Two orders were issued by the Water Court during July and August, 1986 stating "that the DNRC shall not take any further action to proceed with an informal process of public review and comment...without the...express authorization of the Montana Water Courts." It further ordered "that any future failure to comply with this court's...Order shall be deemed contempt of court."

An appeal of the Water Court's orders to the Montana Supreme Court was filed by the department on August 20, 1986. Oral arguments were held January 12, 1987. A decision was issued on March 31, 1987 affirming the Water Court orders prohibiting the department from rule adoption; however, the Supreme Court declared it would promulgate rules covering the verification of water right claims. The Supreme Court's decision went on to say that nothing in the decision "shall be taken to demean or underestimate the crucial role to be played by DNRC in the adjudication of water right claims." It termed the technical expertise, assistance, and information of the department as "indispensable for the success of the adjudication process."

With the assistance of the Water Court and the department, the Supreme Court issued a temporary version of the claim examination rules - nearly 100 pages - on July 7, 1987. The Supreme Court, without prior public comment, issued the rules with an effective date of July 15, 1987. The Supreme Court stated that public comment on the operation and effectiveness of the rules could be filed with the Supreme Court until March 15, 1988. The intention was to allow a reasonable interval for operating under the rules to determine if they promote a steady progress to final adjudication. Comments were submitted to the Supreme Court by the department, Water Court, United States government, Department of Fish, Wildlife and Parks, Montana Power Company, Washington Water and Power, and the Confederated Salish and Kootenai Tribes. To date, the Supreme Court has not acted on the comments submitted.

6. Re-examination. The stipulation required the department to file a report with the Water Court in those basins where a temporary preliminary or preliminary decree had been issued comparing the previous review procedures with those adopted by the Supreme Court. Based on the report, the Water Court, either on its own motion, at the request of the department or at the request of an individual, could order the department to re-examine all or a portion of the claims in a decreed basin. This requirement of the stipulation affected 34 decreed basins.

In July, 1987 the Water Court was advised that the department, in accordance with the stipulation, planned to complete the reports for decreed basins comparing the previous verification procedures to the Supreme Court examination procedures. The department further advised the Water Court that it believes any subsequent claim re-examination in decreed basins should be conducted prior to claim examination in non-decreed basins. Based on several orders issued in August, 1987, the Water Court ordered the department to cease preparation of comparison reports except for five basins (41G, 40C, 41C, 43A, and 40K) where review of the claims was eventually completed under the verification procedures. The reports were submitted in September, 1987. Re-examination in the five basins was denied.

On January 4, 1988, the United States filed a motion with the Water Court to:

- 1) produce reports comparing the previous verification procedures with the present Water Rights Claims Examination Rules in those basins where temporary preliminary or preliminary decrees have been issued; and

- 2) conduct re-verification in those basins for which comparison reports have already been issued.

Grounds for the motion included assertions that (1) many of the claims filed to date are inaccurate and excessive (including claims within basins that have received temporary preliminary and preliminary decrees); (2) the re-verification of basins that have been inadequately verified under the old claim examination rules is required by both state law and the McCarran amendment (43 USCS 666(a)(1952); and (3) the February 1986 stipulation requires preparation of comparison reports for the previously decreed basins.

Similar motions were filed by Washington Water Power and Montana Power Company, and a motion to intervene was filed by the Department of Fish, Wildlife and Parks. The Water Court held a hearing on these motions March 7, 1988 and issued an order and memorandum concerning the motions on May 10, 1988.

The Water Court's order denied re-examination in the five basins having comparison reports (basins 41G, 41C, 40C, 40K, and 43A), and took under advisement the motion for comparison reports for those basins where temporary preliminary or preliminary decrees have been issued "to allow the court time to specifically examine each of the many basins with thousands of claims," and to then make specific orders.

The court emphasized that the purpose of the adjudication is "to adjudicate all of Montana's pre-1973 water as soon as possible, as simply as possible and to do it accurately and under all the law applicable," and stated that "we are and will continue to give complete study to each basin as it proceeds through adjudication to its final decree."

7. Consultant's Report. Due to the numerous questions raised about the adjudication program, the 1987 legislature reduced the funding for the program by approximately half. The reasoning for the budget cut was to slow down the adjudication process and allow more time for ironing out difficulties. The program work force was reduced from 37.72 to 20 full-time employees. Seven people were laid off, others were repositioned, and vacant positions were eliminated.

The legislature also allocated \$75,000.00 for an independent study of Montana's general stream adjudication to be administered by the legislative Water Policy Committee. A request for proposal for the study was advertised nationally. From a pool of 15 proposals, the law firm of Saunders, Snyder, Ross, and Dickson from Denver was chosen. The consultant's report, submitted on September 30, 1988 to the Water Policy Committee, recommended that Montana's adjudication process only needed some minor legislative fine tuning. The report says Montana's process is not "so grievously flawed as to require massive legislative overhauls".

As a result of the study, four bills were introduced and passed by the 1989 legislature to help reduce potential conflicts and clarify the previous statutes. In addition, funding for the program was increased allowing for the hiring of seven additional FTE's, moving staff from 20 to 27 FTEs.

8. Supreme Court Orders. On July 13, 1989 the Montana Supreme Court issued an order amending the Water Right Claim Examination Rules based on proposed changes submitted to them by the Water Court and the department on May 8, 1989. In working with the rules since their adoption on July 15, 1987, areas were recognized where the rules were unclear, activities were minimally productive and limits on the department's activities were not adequately defined. The amendments were to increase the efficiency and speed of examining claims, and enhance the precision and clarity with which the rules describe the examination process. The effective date for implementing the amendments was September 1, 1989. On December 18, 1990, the Montana Supreme Court issued a second order amending the Water Right Claim Examination Rules with an effective date of January 15, 1991.

The most significant revisions occurred in the proposed rules submitted to the Supreme Court on December 30, 2004. Along with changing the title of the rules to the Water Right Adjudication Rules, the proposed rules specify the practice and procedures by which the court reviews statements of water right claims on its own initiative (also called the court's "on motion" policy), how the Water Court reviews settlement documents, and the court's use of the department in post-decree evaluation of claims or settlement documents.

The Water Right Adjudication Rules were adopted by the Montana Supreme Court on December 6, 2006, as a result of an interim study by the Environmental Quality Council (EQC) mandated by House Joint Resolution 4 in the 2003 legislature (resulting bills were HB22 and HB782).

[Figure I-6](#), Adjudication Program Chronology, lists the more important events which have occurred in the adjudication program from 1979 to the present.

**FIGURE I-6
ADJUDICATION PROGRAM CHRONOLOGY**

May 11, 1979	Senate Bill 76 became effective.
May 11, 1979	Claim filing period. Original filing through deadline was January 1, 1982. This April 30, 1982 deadline was extended by the Montana Supreme Court to April 30, 1982.
April 30, 1982	Filing deadline. 200,000+ claims submitted.
April 30, 1982 through Nov. 11, 1985	Claims verified, decrees issued. Temporary Preliminary - 27 basins, 54,566 claims Preliminary - 7 basins, 9,930 claims Final - 4 basins, 5,096 claims Powder River Final - 2 basins, 10,302 claims 40 basins 79,894 claims
June 18, 1985	Montana Supreme Court rules the State of Montana, as owner of the land where water is used, is the owner of the water right and not the lessee. (Pettibone decision)
July 17, 1985	DFWP filed writ of supervisory control against the Water Courts with the Montana Supreme Court. -substantive errors -procedural law errors -accuracy and validity of decrees questioned
Fall, 1985	Numerous other parties joined or filed suit siding either with or against the Water Court.
Dec. 2, 1985	Oral arguments were scheduled, but the parties requested and were granted a delay to negotiate out of court.
Dec. 18, 1985	Montana Supreme Court rules the Water Court has the authority to adjudicate water right claims on all Indian reservations. The court further concluded the Water Use Act is adequate to adjudicate both Indian and federal reserved rights.
Feb. 19, 1986	Stipulation signed. Helped separate role of DNRC vs Water Court. Verification by DNRC shall be limited to a factual analysis of water right claims for accuracy and completeness and the identification of issues.
April 8, 1986	Montana Supreme Court rules the ultimate measure of volume for water right claims in Montana is the amount needed for beneficial use and not the limits set in court decrees.

Spring, 1986	DNRC drafted a set of rules for claim examination. DNRC intended to adopt rules under MAPA.										
Summer, 1986	Water Court order issued directing DNRC to re-examine certain groups of claims in the following basins: <table border="0" style="margin-left: 40px;"> <tr> <td style="padding-right: 40px;">Basin 43B - MN and PG claims</td> <td>Basin 76G - MN, FW and PG</td> </tr> <tr> <td style="padding-right: 40px;">claims</td> <td>Basin 41K - MN, FW, WI, CM and</td> </tr> <tr> <td style="padding-right: 40px;">PG claims</td> <td>Basin 41E - MN, FW, WI, CM and</td> </tr> <tr> <td style="padding-right: 40px;">PG claims</td> <td>Basin 41H - MN, FW, CM and PG</td> </tr> <tr> <td style="padding-right: 40px;">claims</td> <td></td> </tr> </table>	Basin 43B - MN and PG claims	Basin 76G - MN, FW and PG	claims	Basin 41K - MN, FW, WI, CM and	PG claims	Basin 41E - MN, FW, WI, CM and	PG claims	Basin 41H - MN, FW, CM and PG	claims	
Basin 43B - MN and PG claims	Basin 76G - MN, FW and PG										
claims	Basin 41K - MN, FW, WI, CM and										
PG claims	Basin 41E - MN, FW, WI, CM and										
PG claims	Basin 41H - MN, FW, CM and PG										
claims											
July 23, 1986	Water Court order issued prohibiting DNRC from adopting rules under MAPA.										
August 7, 1986	DNRC issued rules informally for public comment.										
August 8, 1986	Water Court order issued that DNRC take no further action on rules without express authorization of the Water Court.										
August 20, 1986	DNRC appeals orders.										
Sept. 26, 1986	Based on a September 25, 1986 Motion by the DNRC, the Water Court orders the re-examination of Basins 76G, 41K, 41E and 41H stopped. The stay was requested on the grounds re-examination procedures had not yet been adopted as agreed to in the Stipulation.										
Jan. 12, 1987	Oral arguments before the Montana Supreme Court. <ul style="list-style-type: none"> -separation of powers -due process concerns -conflict of interest if Water Court involved in daily DNRC examination activities 										
Feb. 3, 1987	Joint Appropriations Subcommittee on Natural Resources cuts \$500,000 per year from adjudication program budget.										
March 31, 1987	Decision issued. Affirmed the Water Court's orders. Declared that Supreme Court would promulgate rules to cover claim examination. Directed Water Court and DNRC to submit draft.										
April 30, 1987	Draft rules submitted to Supreme Court.										
July 1, 1987	Effective date of reduced adjudication program budget. Staff reduced from 37.72 FTE to 20 FTE for FY88 and FY89 (13 FTE in regional offices).										

July 7, 1987 Supreme Court issues examination rules. Effective date of July 15, 1987. Public comment can be submitted by March 15, 1988.

Comments to July 15, 1987 version of claim examination rules were received by the Supreme Court from the Confederated Salish and Kootenai Tribes; Dept. of Fish, Wildlife & Parks; Dept. of Natural Resources & Conservation; Montana Power Co.; United States of America; Washington Water & Power; and the Montana Water Court.

No action has yet been taken on comments.

August 19, 1987 Water Court orders the DNRC to report any substantial differences between the claim examination procedures and the verification manual for Basins 43A, 41G, 40K, 40C and 41C.

Fall, 1987 Water Right Claim Examination Manual drafted to provide step-by-step procedures for DNRC staff to follow in implementing the Supreme Court rules on a day-to-day basis.

Sept. 4, 1987 Report for the five basins (43A, 41G, 40K, 40C and 41C) mentioned in the August 19, 1987 order, are submitted to the Water Court.

Oct. 14, 1987 Legislature's Water Policy Committee hires Denver law firm as consultants to study the adjudication and submit a report.

Oct. 19, 1987 Water Court issues order denying re-examination of Basin 40C.

December, 1987 Claim examination began in six basins using the Water Rights Claims Examination Rules.

Dec. 11, 1987 Water Court issues order denying re-examination of Basin 41G.

Dec. 17, 1987 Water Court issues order denying re-examination of Basin 40K.

January 4, 1988 US Government files a Motion before the Water Court to have re-examination comparison reports prepared on all basins in Temporary Preliminary and Preliminary Decree, and that re-examination be conducted in those basins on which comparison reports had been written, i.e., 40C, 40K, 41C, 41G, and 43A.

May 10, 1988 Water Court issues Order and Memorandum denying the US Government Motion for re-examination and takes Motion for comparison reports under advisement.

August 3, 1988 Temporary Preliminary Decree issued for Shields River basin (43A). First post-stipulation decree.

Sept. 30, 1988 Consultant's report submitted to Water Policy Committee. Affirms Montana's adjudication. Suggests legislative "fine-tuning".

May 10, 1989 Water Court and DNRC jointly submit proposed revisions to the rules to the state Supreme Court aimed at increasing pace of examination.

- Spring, 1989 1989 Legislature increases adjudication program budget by \$150,000 per year for FY90 and FY91. Staff increased from 20 FTE to 27 FTE (20 FTE in regional offices).
- July 13, 1989 Supreme Court issues first Order amending the claim examination rules, with an effective date of September 1, 1989.
- July 17, 1989 Water Court rules that any claims for existing pre-1973 water rights not filed on or before the April 30, 1982 deadline are forfeited.
- Sept. 1, 1989 Dept. of Fish, Wildlife and Parks only party to submit comments and objections to the September 1, 1989 version of the claim examination rules. DFWP's comments were overruled by the Supreme Court on November 2, 1989.
- March 29, 1990 Judge W. W. Lessley dies after serving close to eleven years as the first Chief Water Judge of the Montana Water Court.
- May, 14, 1990 C. Bruce Loble is appointed Chief Water Judge by the Montana Supreme Court.
- Dec. 18, 1990 Supreme Court issues second Order amending the claim examination rules, with an effective date of January 15, 1991.
- May 6, 1992 Montana Supreme Court affirms the July 17, 1989 decision by the Water Court that claims filed after the April 30, 1982 deadline are forfeited.
- July 1, 1993 Senate Bill 310 becomes effective. The bill provides for the conditional remission of the forfeiture of existing right caused by the failure to comply with the April 30, 1982 deadline. Water right claimants are given one more opportunity to file a water right claim in the general adjudication. The deadline for filing claims is July 1, 1996.
- July 1, 1993 1993 Legislature reduced adjudication staff from 27 to 23 FTE. (Regional office staff reduced from 20 to 17 FTE and the Helena central office staff decreased from 7 to 6 FTE.)
- November, 1993 Special Legislative session reduced adjudication budget and eliminated four regional office FTE (13 FTE in regional offices). Total program staff reduced from 23 to 19 FTE.
- Feb. 8, 1995 Water Court rules they have the right to call claims [ON MOTION OF THE WATER COURT].
- April 13, 1995 The 1995 Legislature forms an advisory committee. The chief water judge shall appoint the committee to provide recommendations on methods to improve and expedite the water adjudication process.
- July 13, 1995 Rules for collecting processing fees for late claims are adopted. Claims filed after April 30, 1982 and prior to July 1, 1993, must pay a \$150 processing

fee. The Department was to send a billing invoice to the current late claim owner. The Department was to complete this mailing by June 30, 1996. Late claims filed by a state agency had until July 30, 1997 to pay the processing fee to the department.

- Oct. 6, 1995 First late claim processing fee invoices mailed by the department. Payment received on 829 out of 2,050 claims (130 claims withdrawn or determined timely).
- April 16, 1995 Second late claim processing fee invoices mailed. Department received payment on 261 out of 1091 claims (51 claims withdrawn determined timely).
- July 1, 1996 Deadline for filing late claims. Approximately 1,950 late claims received. Total late claims filed: 4,986.
- Sept. 20, 1995 Judge Loble appoints members of the Montana Water Adjudication Advisory Committee.
- Oct. 1, 1996 Montana Water Adjudication Advisory Committee presents Report to the 55th Montana Legislature, the Governor, the Montana Water Court and the department.
- The Committee recommended amendments to several statutes, as well as the DNRC making greater use of direct claimant contact in its examination; also recommended further study of 1) how exempt claims should be treated in the adjudication, 2) how to tabulate in a binding decree all existing water rights, permits, and change authorizations to serve as guidance to water commissioners, 3) whether there should be an institutional objector in the adjudication process, and 4) the impact subdivisions may be having on the adjudication process.
- March 17, 1997 Department begins revising the Water Right Adjudication Rules (formally Water Right Claim Examination Rules).
- August 29, 1997 Water Court Orders department to re-examine 1122 irrigation claims in the Judith River Basin.
- June 29, 2000 Department submits original final draft of the Water Right Adjudication Rules to the Water Court.
- Sept. 22, 2000 Judge Loble requests comments on the Water Court's 'on motion' process, the Court's review of settlement documents, and the Court's use of the department in post-decree assistance.
- Sept. 24, 2002 Montana Supreme Court overrules 1998 Bean Lake decision, stating the prior appropriation doctrine does not require a physical diversion of water where no diversion is necessary to put water to beneficial use. Fish, wildlife and recreation uses are beneficial and that valid instream and inlake appropriations existed prior to 1973 when facts and circumstances indicated that notice of the appropriators intent had been given. Water Court instructed to identify, review and hold hearing on all pre-1973 recreation, fish and wildlife claims.

Nov. 14, 2002 Judge Loble reconvenes the Montana Water Adjudication Advisory Committee.

April, 2003 The 2003 Legislature directs the Environmental Quality Council (EQC) in HJR 4, to evaluate various elements of Montana's water policies. Through this evaluation the EQC determined the adjudication process was taking too long. The EQC held numerous meetings and heard testimony from many concerned water users and user groups. The EQC requested budget and staffing requirements from the department and the Water Court for adjudication completion to the first decree in 10 and 15 years respectively. EQC drafted a proposal to generate fees from all water users in the state. Critical items for the department were the completion of a fully functional database and agreement to claim examination benchmarks; items for the Water Court concerned accuracy and the 'on motion' process.

2004 The Adjudication Advisory Committee meets throughout the year to address the accuracy, on motion, and acceleration of the adjudication process.

September, 2004 The department contracts with Northrup-Grummon to develop a summary report and decree and complete other items critical to the database.

Dec. 31, 2004 Water Court submits the Draft Water Right Adjudication Rules to the Montana Supreme Court.

January, 2005 House Bill 22 is introduced in the 2005 legislature. The bill implements a water adjudication fee; sets benchmarks for the department; and provides a mechanism for claimants in verified basins to have claims examined.

January, 2005 House Bill 782 is introduced in the 2005 legislature. The bill allows the Attorney General's office to intervene in Water Court cases, and required the court to resolve all issues before final decree.

July, 2005 The adjudication program hires 2 GIS staff, 31 water right specialists, 3 central office support staff, 1 quality control specialist and creates 3 teams of 8 specialists each located in Helena just to examine claims.

December, 2005 The first HB 22 billing cycle of 108,000 adjudication fee bills were sent to water right owners for a total of \$6.2 million. \$5.01 million is initially collected.

September, 2006 DNRC meets the first HB 22 Benchmark by examining over 10,000 claims.

April 2007 House Bill 473 is passed by the 2007 Legislature. This bill confirms all elements of HB22 passed in 2005 except for the water rights adjudication fee, which was discontinued after one billing cycle in December 2005.

Dec. 31, 2008 DNRC meets the second HB 22 Benchmark by examining over 19,000 claims.

Dec. 31, 2010

DNRC meets the third HB 22 Benchmark by examining over 31,000 claims.

2011

In 2011 the legislature provided for the addition of an Associate Water Judge appointed by the Chief Justice of the Montana Supreme Court to work on cases as assigned by the Chief Water Judge.

2013

SB 355 of the 2013 Session provides a petition process before the Water Court for owners of existing rights exempt from filing who did not voluntarily file their exempt claims to request a judicial determination from the Water Court of their existing exempt rights claims.

II. DEFINITIONS

The following terms are used in this manual. The definitions are often from the Rule 2 of the [Montana Supreme Court Water Rights Claim Examination Rules \(W.R.C.E.R.\)](#) with additional definitions from other reputable sources. For additional definitions concerning post June 30, 1973 terms, see [§85-2-102, MCA](#) (per [Rule 2 \(b\), W.R.C.E.R.](#)).

"Abstract" means the computer printout of each claim of an existing water right showing the information submitted on the original or amended statement of claim, any changes authorized by the Montana Supreme Court Water Right Claim Examination Rules (W.R.C.E.R) or by the Water Court, remarks noting any obvious factual or legal issues presented by the claim, and other remarks explaining the nature and extent of the claimed water right.

"Acreage" means the number of irrigated acres.

"Adjudication" means the judicial determination of water rights that existed prior to July 1, 1973, including the total or partial abandonment of existing water rights occurring at any time before the entry of the final decree.

"Adjudication Fee" means the fee imposed upon water users by House Bill 22 which passed during the 2005 legislative session. It was a fee based on number of water rights, purpose and volume. Bills were sent out in December 2005. During the 2007 Legislative session, the funding for House Bill 22 was shifted to the general fund and the adjudication fee was discontinued.

"Adjudication Specialist Team" means a team of up to 8 specialists and one supervisor whose sole responsibility is the examination of statements of claim and the preparation of a Summary Report in a basin. There are 3 teams located in Helena.

"Amended Claim" means the contents of a submitted claim as altered or changed by the claimant as to any matter contained in the original claim and as allowed by the Montana Supreme Court Claim Examination Rules.

"Animal Unit" means a measurement of livestock numbers. For example, one cow and calf pair is one animal unit, three pigs are one animal unit, five sheep are one animal unit and one horse is 1.5 animal units.

"Appropriate" means to divert, impound or withdraw a quantity of water for a beneficial use.

"Appurtenant Land" means the land which a water right benefits or belongs to.

"ASD" means Adjudication Shared Drive. This location houses materials commonly used by all adjudication specialists statewide.

“Associate Water Judge” means a water judge appointed by the Chief Justice of the Montana Supreme Court to work on cases as assigned by the Chief Water Judge as provided for in [Title 3, Chapter 7, Part 2, MCA](#) .

“Associated Rights” means a statement of claim uses the same development (well, reservoir, point of diversion) as 1) a federal reserved water right claim, 2) a new appropriation (post-July 1, 1973 water right), or 3) an exempt right. The adjudication program does not associate the *place of use* involving statements of claim and post-July 1, 1973 water rights.

“Basin Code” means the respective number/letter combination used to identify each of the 85 basins in Montana (e.g. 43QJ) according to the [Atlas of Water Resources of Montana](#) prepared by the Montana Water Resources Board.

“Benchmarks” means the number of statements of claim to be completely examined by specified years as set in HB 22. See [§85-2-271, MCA](#).

“Beneficial Use” means a use of water recognized as beneficial prior to July 1, 1973 and used for the benefit of the appropriator, other persons, or the public and may include but not be limited to irrigation, stock, domestic, fish and wildlife, industrial, mining, municipal, power generation, and recreational uses.

“Centralized Record System” means the original, electronic, microfilm or scanned records of all claims of existing rights, permits, certificates, applications, and other documents filed with the Department.

“Certificate” means in the Adjudication program, a Certificate of Water Right will be issued to all water right owners after a final decree is issued. (A Certificate of Water Right in the New Appropriations program is issued for groundwater appropriations under 35 gallons per minute not to exceed 10 acre-feet per year. These may cover stock, domestic, or irrigation or, ‘other’ purposes)

“Change in Appropriation Right” means a change made in accordance with [§85-2-402, MCA](#) after July 1, 1973.

“Claim” or “Statement of Claim” means a sworn statement of an existing water right, as defined in [§85-2-224, MCA](#), filed with the department upon order of the Montana Supreme Court.

“Claimant” means any individual, association, partnership, corporation, state agency, political subdivision, Tribe, the United States or any agency of the United States, or any other entity, who has filed a statement of claim or is successor in interest to a statement of claim as identified in the centralized records system.

“Claimant Contact” means communication between the department and a claimant or claimant's authorized representative regarding the claimed water right.

"Clarification" means the process by which elements of a water right are made more complete, clear, concise and interpretable without changing the intent of the claimed information.

"Climatic Area" means areas defined by differing climatic and geographic conditions containing similar crop consumptive use data as delineated by the United States Department of Agriculture, Natural Resource Conservation Service.

"Consolidation of Claims" means a change in historical water usage has taken place.

"Control" means having ownership, or if under lease, having the right to determine the release or storage of water.

"Dam Height" means the vertical distance from the lowest point of the dam crest to the lowest point on the natural ground along the downstream toe of the dam.

"Data Sources" means those sources of information against which claimed water use is compared in the claim examination process. Examples can include aerial photographs, Water Resource Surveys, and developed and approved guidelines for specific water uses.

"Decree Abstract" means the abstract that is part of Water Court issued decree. The decree abstract contains the original or amended claim information, changes authorized by the Water Right Adjudication Rules or the Water Court, Water Court ordered data, and remarks.

"Decreed Right" means a claimed water right determined in a court decree prior to the commencement of this adjudication or after commencement of this adjudication as provided in [§85-2-216, MCA](#).

"Department" means the Montana Department of Natural Resources and Conservation.

"Developed Spring" means a spring with some man-made development at or below the point of extrusion which brings additional flow to the surface which would not naturally be available for use and is classified as groundwater.

"Duplicate Water Right" means more than one statement of claim having all the same elements and documentation.

"Enforceable priority date" means a priority date of June 30, 1973, or later, which is administratively assigned to late claims that are subordinate to valid, timely filed claims and certain permits in accordance with [§85-2-221\(3\)\(f\), MCA](#).

"Error Check Report" means a database report which checks for examination errors at the conclusion of the examination of a statement of claim.

"Examination" means the process under the W.R.C.E.R. of examining, gathering information, and reporting data, facts, and issues pertaining to the claims of existing water rights. Prior to the adoption of the W.R.C.E.R. on July 15, 1987, this process was referred to as "verification".

"Examination Worksheet" means a database generated worksheet used to guide an examiner through the examination of a statement of claim.

"Exempt Water Right" means an existing water right for which a statement of claim did not have to be filed pursuant to [§85-2-222, MCA](#). This includes 1) domestic use based on instream use with no man-made diversion, 2) domestic use based on a groundwater source, 3) stockwater based on instream use with no man-made diversion, 4) stockwater use based on a groundwater source, 5) appropriations of groundwater put to use between January 1, 1962 and July 1, 1973 with a notice filed under the 1961 Ground Water Code.

"Existing Water Right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

"Factual Issues" means unclear information or issues with a statement of claim that are factual in nature, such as numbers of acres irrigated or quantity of water used. Such issues result in issue remarks being added to claims during examination.

"Field Investigation" means an on-site inspection, under [§85-2-243, MCA](#), of physical evidence and features relating to the individual elements of a claimed water right.

"Filed Appropriation Right" means a water right which has been filed and recorded in the office of the county clerk and recorder as provided by statute prior to July 1, 1973.

"Filing Fees" means fees imposed for filing statements of claims as described in [§85-2-225, MCA](#).

"Final Decree" means the final Water Court determination of existing water rights within a basin or subbasin, as described in [§85-2-234, MCA](#).

"Flow Rate" means the rate at which water has been diverted, impounded, or withdrawn from the source for beneficial use.

"GIS" means geographical information system, which is software used to facilitate the collection, management and analysis of spatially referenced information and the associated attributes. It is the basis of the DNRC's Water Right Mapper program used during examination of statements of claim.

"Groundwater" means any water under the surface of the land including the water under the bed of any stream, lake, reservoir, or other body of surface water. Section 89-2911, R.C.M. 1947 (1961 Groundwater Code).

"Guideline" means an estimate of reasonable use to be used as the benchmark for initiating further department review or claimant contact under the W.R.C.E.R. The estimate of reasonable water use is derived from technical data and recommendations of the department and adopted by the Water Court.

"Historical Irrigation" means irrigation that took place for the first time before July 1, 1973.

"Historical Right" means an existing water right claim.

"Household" means the dwelling, house, or other domestic facilities where a person, family or social unit lives.

"Implied Claim" means a claim authorized by the Water Court to be separated and individually identified when a statement of claim includes multiple rights.

"Index" means a database report generated by specific elements of a water right claim, such as owner, source, point of diversion. A series of indexes are generated at the conclusion of basin examination. The indexes are used as a tool to proof examination results during summary report preparation prior to a Summary Report being sent to the Water Court.

"Interior Drainage" means an area in which water drains into a depression from which water only escapes by evapotranspiration or subsurface drainage. The scale varies from a small kettle in a glaciated area to a large playa lake, such as the Great Salt Lake in Utah.

"Irrigation" means the application of water to the land to eliminate the moisture limitation to crop production. (Soil Conservation Service, 1979.)

"Irrigation District" means a statutory district created pursuant to [Title 85, Chapter 7, MCA](#) for the purpose of supplying irrigation water and other uses to its members.

"Lake" means a naturally occurring inland body of water.

"Late Claim" means a claim filed with the department after 5:00 p.m., April 30, 1982 and physically submitted or postmarked on or before July 1, 1996. Late claims are subject to certain terms and conditions pursuant to [§§85-2-221\(3\)](#), [85-2-222](#) and [85-2-225, MCA](#).

"Legal Issues" means unclear information of a legal nature discovered during examination of a statement of claim. For example, non-use may raise the legal issue of abandonment or no evidence of use may raise the legal issue of non-perfection of the water right being examined.

"Legal Land Description" means the description given to a parcel of land in terms of, but not limited to, quarter section, section, township, range, and county.

"Mapper" means a customized ArcGIS project designed and created to assist in mapping water rights throughout the state of Montana. Mapper allows the user to perform all the spatially related tasks inherent to examining water right claims.

"MCA" means Montana Code Annotated, which is a compilation of existing law. MCA is arranged by title, chapter, part and section. Title 85 of MCA contains the statutes and the Water Use Act that guide the department's role in the adjudication of existing water rights.

"McCarran Amendment" means an enactment in 1952 which is a waiver of sovereign immunity for federal and tribal reserved water rights acquired under federal law. Under this law, these rights can be subject to comprehensive adjudication proceedings in state court. 43 U.S.C. Section 666 (1988)

"Means of Diversion" means the structures, facilities, or methods used to appropriate water from the source of supply. For instream or inlake appropriations, the means of diversion is "instream" or "inlake".

"Microfilm Record" means a photographic film record on a reduced scale of all paper documents related to a water right.

"Multiple Use" means the same appropriation used for more than one purpose by a single owner.

"Natural Overflow" means the water which results in the flooding of land adjoining a stream during high flow with no man-made diversion involved.

"Natural Subirrigation" means a naturally occurring high water table condition that supplies water for crop use.

"Non-consumptive" means a beneficial use of water that does not cause a reduction in the source of supply.

"On-site visit" means an informal field investigation conducted at a claimant's invitation.

"Other Uses" means all uses of water for beneficial purposes other than stockwater, domestic, and irrigation uses.

"Owner" means any person, according to [§85-2-102, MCA](#), who has title or interest in water rights or properties.

"Ownership Update" means the updating of the department's water right ownership records pursuant to [§§85-2-421 through 85-2-426, MCA](#). The department's ownership update form or the automated records update do not transfer water rights or legally determine water right ownership. The department's centralized ownership records are updated by what is reflected on the legal documents that actually transfer water rights. (Updated version from Supreme Court Rules due to a procedural change by statute.)

"Period of Diversion" means the period in a calendar year when water is diverted, impounded or withdrawn from the source.

"Period of Use" means the period in a calendar year when water is used for a specified beneficial use.

"Permit" means an authorization to use water, issued by the state, specifying conditions such as type, quantity, time and location of use. Permits are issued for uses after July 1, 1973, for surface water appropriations, or any groundwater uses over 35 gallons per minute or 10 acre-feet.

"Place of Use" (POU) means the lands, facilities, or sites where water is beneficially used.

"Point of Diversion" (POD) means the location or locations where water is diverted from the source. For instream or inlake appropriations, the point of diversion is the portion of the source in which the instream or inlake use occurs.

"Preliminary Decree" means the preliminary Water Court determination of existing water rights within a basin or subbasin as described in [§85-2-231, MCA](#), which precedes the final decree.

"Priority Date" means the allocation date, or date of first use associated with a beneficial use of water which determines ranking among water rights, usually expressed by day, month, and year.

"Redundant Water Right" means a claim in which many of the elements are the same on more than one statement of claim. Most often, the priority date is different.

"Regional/Unit Office" means a branch office established by the department to provide water right information and assistance to the public or public agencies.

"Remarks" means statements added to the decree abstract by the department or the water court to limit or define a water right, to explain unique aspects of the water right, and to identify potential factual and/or legal issues. Remarks that limit, define, or explain unique aspects of a claim are "clarifying" or informational remarks and appear on the abstract under the element they clarify or at the end of the abstract if they contain general information. Remarks that identify potential factual or legal issues are "issue" remarks and appear in the issue remark box at the end of the abstract. Review abstracts "issue" remarks are underlined and appear under a certain element or at the end of the abstract.

"Reserved Water Rights" means a right to use water that is expressly or impliedly reserved by treaty, an act of Congress, or an executive order based on Federal law.

"Reservoir" means a storage facility, created or augmented by man-made means, that impounds and stores water for beneficial use.

"Review Abstract" is a database generated report of the examination results. It is used as a tool to inform the claimant of their water right and any additional facts and findings, including potential issues.

"SB76" means Senate Bill 76. The bill was passed in the 1979 legislature and called for the adjudication of all the remaining basins in the state, excluding the Powder River basins. It divided Montana into four water divisions and called for four judges, commonly known as the Water Court, to adjudicate all existing water rights in a statewide proceeding.

"Scanned Record" means a digitally scanned record of paper documents related to a water right.

"Service List" means the list of persons notified of all future hearings or proceedings relevant to a specific claim or case. This list may include the claimants and their representatives, any objectors and their representatives, any persons filing a notice of intent to appear and their representatives, any counter-objectors and their representatives, any intervenors and their representatives, and other persons receiving courtesy notification.

"Source" means the specific supply from which water is taken for a beneficial use.

"Split Claim" means the division of one water right claim into two or more separate claims. When a claim is split, one portion of the claim maintains the original claim number and the other separated portions are assigned new claim numbers.

"Spring" means a naturally occurring extrusion of groundwater upon the land surface. See "developed spring" and "undeveloped spring" for further definition.

"Standards" means the database application of specific guidelines to certain elements of a statement of claim at the conclusion of examining a claim.

"State Based Rights" means water rights based on state law rather than Federal law. Reserved rights claimed by Indian tribes or Federal agencies are based on Federal law. Generally, private or state claims are based on state law.

"Subbasin" means a designated area that drains surface water to a common point within a basin.

"Summary Report" means the department's report to the Water Court consisting of individual abstracts, the claimed and clarified data and a summary organized in indexes of the department's examination findings for each claim within a basin or subbasin.

"Supplemental Rights" means separate water rights for the same purpose, owned by the same claimant, and used on overlapping places of use.

"Surface water" means water occurring at or on the surface of the ground, including but not limited to any river, stream, creek, ravine, coulee, undeveloped spring, lake and other source of water.

"Temporary Preliminary Decree" means a Water Court decree, prior to the issuance of the preliminary decree, as necessary for the orderly administration of existing water rights pursuant to [§85-2-231, MCA](#).

"Type of Historical Right" refers to the historical basis of an existing water right as a decreed right, filed appropriation right, reserved right or use right.

"Undeveloped Spring" means the flow from the spring is not increased by some development at its point of extrusion from the ground and is classified as surface water.

"Use Right" means a claimed existing water right perfected by appropriating and putting water to beneficial use without written notice, filing, or decree.

"Volume" means the amount of water which has been diverted, impounded, or withdrawn from the source over a period of time for beneficial use, usually measured in acre-feet per year.

"Waste And Seepage" Waste water means the loss of water through the design or operation of an appropriation of water distribution facility. Seepage is the movement of water through a porous soil; its origin could be from another's waste or occurring naturally.

"Water Court" means the water division of the state courts presided over by water judges responsible for adjudicating existing water rights in Montana as provided for in [Title 3, Chapter 7, MCA](#).

"Water Judge" means a judge responsible for adjudicating existing water rights as provided for in [Title 3, Chapter 7, Part 2, MCA](#).

"Water Master" means a person appointed by a water judge to assist in the adjudication of existing water rights as provided for in [Title 3, Chapter 7, Part 3, MCA](#), and [Rule 53 of the Montana Rules of Civil Procedure](#).

"Water Reservations" means a water right held by a government entity for future use or instream flow.

"Water Resources Survey" (WRS) means a survey of water resources and water rights in Montana on a county basis by the former state engineer's office or water resources board, predecessors of the department.

"Water Spreading" means surface flood irrigation involving the diversion of occasional (flood or runoff) surface water from natural, usually non-perennial, water courses by means of dams, dikes, or ditches, or a combination of these. It differs from conventional irrigation because it is totally dependent on and regulated by the availability of water, not crop needs.

"Well" means any artificial opening or excavation in the ground, however made, by which groundwater can be obtained or through which it flows under natural pressure or is artificially withdrawn. Section 89-2911, R.C.M. 1947 (1961 Groundwater Code).

"Winters Doctrine" states that when the United States withdrew land from the public domain to establish an Indian reservation (Ft. Belknap), it also impliedly withdrew sufficient water to satisfy the purpose for which the lands were withdrawn. The doctrine applies to any land withdrawn for a federal purpose (Indian reservations, national parks, national forests). The doctrine did not quantify the amount of water involved. *Winters v. United States*, 207 U.S. 564 (1908).

III. GENERAL PROCEDURES

Adjudication staff spends a considerable amount of time organizing claim files and materials for efficient examination. Several areas must be considered before beginning claim examination in a basin. This chapter identifies some of these areas and provides general guidelines.

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A. PUBLIC MEETINGS

1. Purpose. The department, if directed by the Water Court pursuant [§85-2-243, MCA](#) may conduct public meetings in each basin or subbasin. [See also Rule 32, W.R.C.E.R.](#) Public meetings are a method of acquainting the public with the general procedures of the adjudication process and the department's claim examination process. They may also be used for specific purposes such as:

- gathering facts and information for accurate claim examination within a basin related to
 - flow rate, volume, and period of use for irrigation that may include the usual and customary method of irrigation, crops grown, and growing season within a basin or subbasin; and
 - flow rate, volume, and period of use for other uses of water within a basin or subbasin; and
- educating the public about available resources and information including decrees, decree indexes, regional/unit office resources, and the process beyond examination.

2. Planning. Public meetings should be held at a time and place appropriate to the material being presented and convenient to the participants. Two or more public meetings on a single issue may be necessary for larger basins.

Determining the need for a public meeting and the items to be discussed will be a joint effort between the adjudication staff, supervisors, the bureau chief and the department's Public Information Officer (PIO). The planning process should consider:

- persons needed as presenters;
- preferred date and alternatives;
- meeting location (time, town, building, room, adequate seating);
- equipment (department brochures, other handouts, public address system, projector and screen, tape recorder, etc.);
- checking for potential conflicts with other meetings or events; and
- checking for a possible sponsor (county commissioners, extension agents, etc.).

3. Notification. Preparation of news releases will be coordinated by the bureau chief and the PIO. Meetings will be announced using one or more of the following: radio stations, newspapers, or television stations which have general coverage in the location. In addition, notices may be posted in various public locations. The Water Court will be notified in writing at least 10 working days prior to an announcement. Suggested locations for notices and contacts:

- Regional/Unit Office
- Claimants
- Clerk of Court
- Clerk and Recorder
- Library
- Natural Resources Conservation Service (NRCS)
- Farm Service Agency (FSA); formerly Agricultural Stabilization Conservation Service (ASCS)
- USFS, BLM, BIA, BOR, etc.
- County Commissioners
- County Extension Agents
- Conservation Districts
- Legislators
- Attorneys and consultants active in water rights
- Seed company, fertilizer company, grain terminal, etc.
- Irrigation company, implement supply dealer, etc.
- Farm supply dealer, tire dealer, etc.
- Post Office
- Banks, Production Credit Association, Federal Land Bank
- Chamber of Commerce
- Schools, gymnasiums
- Grocery store

B. STANDARD MEASUREMENTS OF WATER

1. Conversions. The Supreme Court rules have adopted standard water measurements for flow rate and volume to ensure consistency and to comply with [§85-2-103, MCA.](#), [Rule 4, W.R.C.E.R.](#) The following conversions will be used in determining equivalent flow rates and volumes:

- forty (40) statutory or miner's inches (MI) = 1 cubic foot per second (cfs);
- one (1) miner's inch (MI) = 11.22 gallons per minute (gpm);
- one (1) cubic foot per second (cfs) = 448.8 gallons per minute (gpm); and
- one (1) acre-foot (AF) = 325,851 gallons.

For additional information about standard measurements, see [Figure III-1](#). For common abbreviations used for water measurement, see Exhibit III-1.

2. Reporting Flow Rate and Volume. Generally, flow rates were claimed in cubic feet per second (cfs), miners inches (MI) or gallons per minute (gpm). As claims were originally stored in the database, flow rates in units of miner's inches were converted by the computer to cubic feet per second.

The department's examination worksheet, review abstracts and decree abstracts will identify units of water measurement only in gpm or cfs in compliance with [§85-2-103, MCA.](#)

a. Flow Rate. The standard units for flow rates are as follows:

- Less than one (1) cfs will be converted automatically by the database into units of gallons per minute (gpm) when standards are applied.
- Equal to or greater than one (1) cfs will be converted to units of cubic feet per second when standards are applied.

b. Volume. Volumes will be in units of acre-feet (AF) or gallons (g). All conversions will be made using the equivalencies described above.

**FIGURE III-1
GENERAL WATER CONVERSION TABLE**

One cubic foot of water = 7.48 gallons
= 62.4 pounds
= 1,728.0 cubic inches

One cubic foot per second (cfs) = 7.48 gallons per second
= 448.8 gallons per minute
= 1.0 acre-inch per hour
= 0.99 acre-feet per 12 hours
= 1.983 acre-feet per day
= 724.0 acre-feet per year
= 646,316 gallons per day
= 40.0 Miner's Inches Montana (1 Miner's Inch = 11.22 GPM)

One acre-foot of water = 325,851.0 gallons
= 43,560.0 cubic feet
= 1 foot of water on 1 acre

One gallon of water = 8.34 pounds
= 231.0 cubic inches
= 0.134 cubic feet

One gallon per minute = 1,440.0 gallons per day
= 0.002 cubic feet per second

100 gallons per minute = 0.442 acre-feet per day

1,000,000 gallons per day = 1.55 cubic feet per second
= 694.0 gallons per minute
= 3.07 acre-feet per day
= 1,121.0 acre-feet per year

1 foot of water pressure = 0.433 pounds per square inch

1 pound per square inch = 2.31 feet of water pressure

C. CENTRALIZED RECORD SYSTEM

A centralized record system for all water rights is maintained by the department. [Rule 3\(a\), W.R.C.E.R.](#) This system is composed of three parts:

- numbered files of original claim forms and documentation submitted by the claimants, along with related materials added by the department and Water Court;
- a database record system which is initially the claimed information as clarified by the department;
- a microfilm or scanned record of each numbered claim file.

All water right information can be found in the claim file or as a scanned document maintained by the department and available through the Oracle database or [DNRC Water Right Query System](#). Historically, the claims were maintained on microfiche. As more basins come 'online', microfiche will become obsolete. The claim files and scanned records are progressively updated to document each stage of the adjudication process. [Rule 3\(b\). \(c\), W.R.C.E.R.](#)

1. Changing the Record. The department will not change the claimed elements of a water right in the centralized record system except as specified below. [Rule 3\(d\), W.R.C.E.R.](#)

a. Prior to Issuance of a Decree: [Rule 3\(d\)\(1\), W.R.C.E.R.](#)

- As specifically ordered or directed in writing by the Water Court.
- To comply with standard measurement of water ([§85-2-103, MCA](#)) and water right ownership updates ([§§85-2-421 through 85-2-426, MCA](#)).
- As specifically allowed and directed by the Water Right Claim Examination Rules ([W.R.C.E.R.](#)).
- To reflect a claimant's amendment(s) to a claim.
- To correct a department data entry error.

b. After Issuance of a Decree: [Rule 3\(d\)\(2\), W.R.C.E.R.](#)

- As specifically ordered or directed in writing by the Water Court, including any computer programming changes the DNRC may determine are necessary which if

implemented would add information or make changes to the elements of claims in the centralized record system.

- In compliance with water right ownership updates ([§§85-2-421 through 85-2-426, MCA](#)).
- To change an owner's address.
- To remove asterisks identifying changes to claimed elements.

c. Method. When changing a record that does not involve an amendment, make the change on the examination worksheet or appropriate abstract. Be extremely aware of what authority allows the examiner to make changes. **No change should ever occur without documentation; this could include an explanation, the authority, and any documents which will then become part of the claim file.** The changes will be entered into the database.

When a change involves an amendment, refer to “Special Provisions: Amended Claims” in Section XI.A. for processing instructions.

2. Public Access. All records pertaining to the centralized record system are public records and therefore open to inspection by any person as provided in [§2-6-102, MCA](#). Prior to final decree anything in the file is part of a work in progress and may be subject to change. [Rule 3\(e\) W.R.C.E.R.](#)

Any changes to water rights involved in active Water Court proceedings will not be released on the Natural Resources Information system until the Water Court enters an operating authority.

3. Copies. For parties requesting reproductions of department materials, fees will be charged and collected at rates established by the department. Follow [§2-6-110, MCA](#) and the [DNRC Public Information Policy](#) when providing materials to customers (see Attachment A: “DNRC Information-Related Charges” contained within the PDF document). Reproduced materials for which costs will be recovered include, but are not limited to, photocopies, copies from microfiche, reproduced microfiche, and computer generated materials. The department will provide copies in the format they are in, no special conversions will take place. [Rule 3\(e\), W.R.C.E.R.](#)

Any person may obtain a copy of a Water Court decree or decree index. [Rule 3\(g\) W.R.C.E.R.](#) Members or the public should be informed that after a ½ hour of copying, a labor fee is imposed. Water Court decrees and indexes issued after 1998 are available online (http://dnrc.mt.gov/wrd/water_rts/adjudication/). Decrees and indexes are also available from the department for the cost of covering printing or electronic media (CD) costs.

D. PRE-EXAMINATION OFFICE ORGANIZATION

For the examination process to proceed in an orderly and efficient manner, an organized examination system must be set up by each regional/unit office or adjudication team. Due to differences in physical layout, budget priorities, and personnel, individual office organization is left to the supervisor and examiner.

1. Pre-examination Steps. This section contains a synopsis of organizational work which should be completed prior to examination.

- a. Obtain materials necessary for examining claims:
 - (1) [Water Resources Survey](#) books and field forms
 - (2) database-derived claim indexes by drainage basin
 - (3) Document stamps: department supplemental document stamp, claimant supplemental document stamp, claim folder stamp (if necessary)
 - (4) Prior to GIS software development, claims were examined using scaled grids, planimeters (for checking acreage), mylar, and sectionalized aerials. These materials may be obtained for reference.
- b. Coordinate with GIS staff to have all 1979-1980 aerial photographs, WRS aerials, and WRS information scanned and registered for use in WRMapper.
- c. Arrange for WRMapper training. See the Adjudication Shared Drive (ASD) for Mapper protocols, guides and materials.
- d. Request GIS staff determine the basin boundary and compare with previously determined boundaries (drawn on topographic maps). With the bureau chief and supervisor, determine basin boundary for interbasin transfers misbasined claims, and notice purposes.
- e. Log the location of all claims into the database or request the database team perform this function.
- f. Obtain all court decrees – there may be several decrees on a source, each being issued on a different date, possibly with different parties for different sections of the source.
- g. Obtain indexes of 1979 aerials, and WRS aerials if the physical aerials will be housed at the regional/unit office or with the team. (Historical aerials will be available digitally within WRMapper.)
- h. Obtain copies of forms (electronic or hardcopy):
 - (1) addendums (POU, POD, Remark, Reservoir)
 - (2) questionnaires (Pump, Reservoir, Other Uses, etc.)
 - (3) interview report form
 - (4) field investigation worksheet
 - (5) map and overlay labels

- (6) associated flags
- (7) basin correction forms
- (8) name/address correction form
- (9) implied claim form labels
- (10) amendment forms
- (11) withdrawal forms
- (12) Supplemental rights forms
- i. Develop decree indexes for recording documentation.
- j. Complete source name standardization.
- k. Start list of claims with interbasin transfer.
- l. Have the following readily available, in hardcopy and GIS format, for examining claims:
 - (1) basin boundary map
 - (2) climatic area map
 - (3) Indian cession map
 - (4) basin map to plot field investigations
 - (5) interbasin transfer list

2. Claim Organization.

a. Oracle Database. Enter the location of the claims in the database under the Location tab or request this action be performed by the database team. The location screen displays the current and previous locations and staff processing the claim, as well as the dates the file was received and sent. Claims can be assigned to an office or specific individuals. See the Oracle Coding Manual for instructions on entering location information.

b. Claim Storage. Develop a filing system to organize claim files in a way that will allow easy location of the claim files through all stages of the examination process. The following is a recommended system for dividing drawers/boxes into specific categories to allow for easier access and location of claim files:

- Unexamined Claims. Claims for a basin are sent from Helena to the regional/unit office or team in numerical order in labeled file folders. These claims should be stored numerically prior to being pulled for examination.
- Examination Completed. Claims organized numerically where examination has been completed but the examination materials have not been sent to the [Records Unit](#) in Helena for processing.
- Examined And Reviewed. Claims organized numerically where all examination and review abstract work and processing has been completed. These claims require no further action prior to the issuance of the department's summary report.

- Action Pending. Claims being examined which need additional work. These claims should be sorted separately, either in a designated area, or at each examiner's workspace. Since 'action pending' claims may be comprised of a variety of pending issues, they should be organized alphabetically by owner name. Pending issues may include:
 - Claimant Contact. Preliminary review of claims where a response from or interview with the claimant is pending.
 - On-site visit. Claims where a scheduled on-site visit is pending.
 - Supervisor. Claims to be sent to supervisor for review or have been returned but not finally processed.
 - Water Court Assistance. Claims to be sent to the Water Court for review (generally for possible implied claims) or have been returned but not finally processed.

c. Database-generated Claim Indexes. Six database indexes (1-6 below) will be generated for each drainage basin to cross-reference claims during claim examination. The 'Uses Indexes' exist but will be printed only at the request of the regional/unit office or adjudication team supervisor. If any of these indexes need to be sorted differently, or if other indexes are needed for specific purposes, request through a supervisor. Place indexes into binders with labeled tabs for easy cross-referencing.

- 1) Owner
- 2) Source
- 3) POD
- 4) Priority Date
- 5) Numerical
- 6) Reservoir
- 7) Uses – IR, DM, ST, OT

d. Claim Folder Stamp. ***This stamp was used prior to 2005 and is now an obsolete process.*** A stamp was provided for labeling the front of each claim folder with a checklist. Claim folders were stamped prior to examining claims. The intent of the checklist on the front of the claim folder was to reduce confusion as to whether a claim had been completely examined. Its format was:

_____	Claimant Contact
_____	Documentation Recorded
_____	POU Recorded
_____	Claim Examined

3. Stamp To Identify Supplemental Forms. Two different supplemental document stamps will be kept in each regional/unit office or with each team to identify documents added to the claim file during claim examination. The purpose of these stamps is to differentiate between documents added by the claims examiner and the claimant. In addition, any received documents should be date stamped.

a. DNRC Supplemental Document Stamp. Stamp any supplemental forms, maps, documents, worksheets, etc. **added to the file by the examiner** which might be confused with paperwork submitted by the claimant with the DNRC supplemental document stamp. It is important to identify the origin of the materials. Its format is:

DNRC Supplemental Document Claim # _____
--

b. Claimant Supplemental Document Stamp. Stamp any documents, maps, letters, affidavits, etc., **received from the claimant or the claimant's representative** after receipt of the original claim with the CLAIMANT supplemental document stamp. Also, stamp the documents with the date received. Some documents may have been added to the claim file after April 30, 1982 without being stamped. If so, stamp them at this time. It is important to identify the origin of the materials. The stamp's format is:

CLAIMANT Supplemental Document Claim # _____
--

4. District/Supreme Court Decrees. Obtain complete copies of district court decrees in a basin prior to examining a basin. The decree index (compiled during the Water Resources Survey) may be a sufficient listing of the decrees. If the Supreme Court ruling has an impact, a copy of the decree should be obtained from the state law library. All decrees issued after the decree index was compiled must be obtained. Also obtain all decreed supplements (petitions) to appropriate water from decreed streams after the initial decrees were issued. The later decrees should be indexed for easy cross-reference.

5. Decree Index. A record of the documentation that accompanies a claim will be maintained for prior decreed rights. The purpose of this record keeping system is to check for the possibility of claims exceeding the original amount of water appropriated and decreed ("decree exceeded"). See "Irrigation: Flow Rate, Recording Documentation" (Section VII.B.6). Track prior decreed rights in the Historical Right tab in

the database. See the Oracle Coding Manual for instructions.

Many offices have historic decree index books already and some may have been microfilmed or scanned. Check all office resources for these items. Copies of the Water Resources Survey Decree Indexes for sources in a basin should be placed in a binder. Since these indexes are not complete or up to date, the form shown as Exhibit III-3 should be in the front of the Decree Index.

To make the indexes more usable, they were photocopied onto 8½ x 14" paper to provide extra room for recording documentation. If space becomes limited for recording documentation, use additional blank pages or Exhibit III-3.

6. Basin Files. A file should be set up for each basin in the regional/unit office or by each team for general basin information. Break each file into subparts, as necessary, such as:

- general basin information
- interbasin transfer list
- log of late claims
- review information for decree
- Water Court notices and findings
- review for objections
- objections
- objections list
- Water Court orders
- reports to legal staff
- reports to Water Court
- log of field investigations conducted in basin during examination

A basin file organized like this retains all pertinent objection materials, reports, lists of potential problems, etc. in easily found categories. Be aware of materials that may be needed in adjacent basins, e.g., the interbasin transfer list for Basin A should be included in Basin B file.

Each basin file should contain a synopsis of examination progress. Exhibit III-4 is a suggested format. Knowing dates at various stages of the examination process is useful for planning, reports, etc.

7. Aerial Photographs. All aerial photographs should be scanned and rectified by GIS staff for use in WRMapper. On occasion, photos may need to be obtained from the USDA Farm Service [Agency Aerial Photography Field Office](#) (APFO) (See [Form FSA-441](#) for ordering information and [Form FSA 441a](#) for pricing and other general photo information; Exhibit III-5). Available aerial photographs from the Agriculture Stabilization and Conservation Service (ASCS—USDA) are listed in Exhibit III-7. In addition, an inventory of Water Resource Survey aerial photography by regional/unit office and county is found in Exhibit III-9. Any newly acquired photos should

be sent to the GIS staff for inclusion in WRMapper. Historically, aerial photos were sectionalized by hand. For a description of the procedure, see Exhibit III-8.

a. Aerial Photograph Storage. Store aerial photographs in groups by roll number or county. See [Form FSA-441A](#) for an explanation on how aerial photograph exposures are enumerated. The aerials within each group (e.g., roll number) should then be kept in numerical order by exposure number.

An aerial photograph's clarity can be diminished or marred by abrasion and friction. Storing photos vertically, e.g., hanging in a cabinet, reduces this type of wear.

b. Aerial Photograph Indexes. Develop aerial photograph indexes so photographs can be quickly and easily retrieved. The index should indicate the preferred photo for mapping a POU when sections are covered by more than one photo.

The following are options presently used in regional/unit offices:

- A book-like index may be organized by township, range, and section, using forms shown in Exhibit III-6. Each section in a township has the corresponding photo numbers indicated. The indexes for the regional/unit office area can be arranged by county or basin within one book or as separate books. This index shows when more than one aerial exists of the parcel being examined. Due to the potential difference in clarity between photographs, it could be important to know that several photos cover the same area.
- A map of the basin (BLM or Forest Service map) can be used on which the coverage of each aerial is identified and labeled. This index gives a pictorial view of the coverage of a parcel being examined.

c. Ordering Aerial Photographs. USDA photos from 1955 through the present are housed at its [Aerial Photography Field Office](#) (APFO) in Salt Lake City. It houses photographic imagery secured for the Forest Service and Natural Resource and Conservation Service in addition to the Farm Service Agency. Scale of APFO photography varies from 1:6,000 to 1:80,000; all film products are available in black-and-white. In addition, natural color and color infrared products are available for some areas; please refer to the [APFO Catalog](#) for film types for specific areas of coverage. The catalog lists photographic coverage by state and by county. After determining the vintage of photos available for a county, contact APFO for individual photo numbers and [ordering information](#). Orders are custom made and normally take 4 to 6 weeks for processing and shipping.

Send requests for aerial photographs to a supervisor. The request should list the needed photographs by county, and then by ascending roll and exposure number. The request should also contain a statement justifying the need for the photographs. The photographs ordered will be 24" X 24" (1 inch = 1320 ft.), unless stated otherwise in the

request. When requesting photos, normally order only every other photograph in the flight line. Exceptions might be around the basin periphery where two photographs in sequence may be necessary for complete coverage.

The [APFO Catalog](#) lists available flight years for each county in Montana. For each flight year, the number of indexes is listed. These indexes, which are used for ordering photographs, are available in either hard copy or microfiche. If the indexes are not available at the regional/unit office, they may be ordered. It is suggested checking with the GIS supervisor or local NRCS offices to use their indexes if available.

E. WATER COURT CORRESPONDENCE [Rules 12 and 13 W.R.Adj.R.:](#)
[Rules 43\(d\) W.R.C.E.R.](#)

Correspondence with the Water Court is an every day occurrence. Usually this correspondence is in response to Water Court requests for assistance or requests made by the department to the Water Court requesting assistance.

With the exception of the Witness Identification Memorandum discussed below, all written correspondence to the Water Court will be reviewed by a supervisor for quality, content, and consistency. **Remember: the claimants and any other parties involved in the proceedings are copied (cc:) on all correspondence with the Water Court.**

If a deadline is established by the Water Court, a draft of the document should be sent to a supervisor in advance so that sufficient review is possible. E-mail is the recommended method for sending drafts. In situations where the Water Court request requires an immediate response, send only a copy of the final document to a supervisor.

After the document has been reviewed by a supervisor, the original will be sent to the Water Court.

Throughout the manual, the different procedures for Water Court correspondence are discussed. Described below are the primary areas where correspondence is sent to the Water Court.

1. Witness Notification Memorandums. If the Water Court order requires notification of the name and phone number of the department's witness who will be participating in the status conference, hearing or prehearing conference, a response memorandum should be prepared (See [Figure III-2](#)). Send the original response to the Water Court at least three working days prior to the deadline set in the order. Send a copy of the original response to all individuals listed on the Court's service list.
2. On-site Visits. See "Examination Materials and Procedures: Investigation Techniques, On-Site Visits" (Section IV, IV.F., and IV.F.3).
3. Misbasined Claims. See "Claim Examination: Point of Diversion" in Section VI.F.
4. Implied Claims. See "Special Provisions: Implied Claims" in Section XI.B.
5. Post-Decree Revisions. See "(Temporary) Preliminary Decree: Post-Decree Revisions" (Section XIII.E).
6. Summary Report Review. See Chapter XII.

Chapter XIII 7. Post Decree Assistance. Primarily Issue Remark Resolution. See

**FIGURE III-2
WITNESS IDENTIFICATION MEMO**

(Department Letterhead)

TO: [Name], Water Master
Montana Water Court

FROM: [Name], Water Resources Specialist

DATE: [Month/Day/Year]

SUBJECT: Case No. [WC-YYYY- ##]

CLAIMANT(S): Doe Ranches, Inc.

The appropriate person to assist the Water Court in the above mentioned case is [Name], Water Resources Specialist in the [Helena Water Resources Regional Office]. [Name] will be available on the appointed date and time at the [enter location and phone number if conference call or location if attending in person, e.g. Whitehall Public School, Whitehall, Montana].

cc: [CLAIMANT]
[ALL PARTIES ON SERVICE LIST]

IV. EXAMINATION MATERIALS AND PROCEDURES

This chapter describes how facts, data, and issues obtained through the examination process will be retained and properly stored in the database. Various techniques for contacting claimants are discussed.

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FIGURES

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A. PULLING CLAIMS FOR REVIEW

The method of pulling claims for examination is determined by each regional/unit office or team. However, use the following criteria in deciding methodology: (1) all claims belonging to one ownership should be handled by only one examiner; (2) a claimant should be contacted by only one examiner, and as few times as possible; and (3) office personnel should coordinate the use of data sources.

The following is a suggested method for pulling claims which will allow for efficient use of aerial photographs and other data sources. In addition, the examiner will become familiar with a local area and be better able to recognize owner names and addresses, source names, points of diversion, places of use, supplemental rights, and multiple use rights as the examiner becomes familiar with the local area.

- Divide the basin among the staff:
 - (1) by watershed or drainage, or
 - (2) geographically, halves, thirds, etc. For instance, one starts at the south end of a basin and proceeds north; while another starts in the middle and proceeds north, or
- Examine all claims in an ownership. Use the source index along with the owner index to determine if the owner has claims in other areas of the basin. Those claims should be pulled and examined as well.

In addition to the suggested methods for pulling claims, other factors could alter the manner in which claims are pulled for examination:

- State and federal agency claims should be examined at the beginning of basin examination since responses may take considerable time due to agency organizational structure.
- Examination of complex claims (e.g., irrigation districts, power generation, etc.) may be more extensive and time consuming. Such claims usually represent the larger and more complex uses in a basin. Again, these types of claims should be examined at the beginning of basin examination.

At the beginning of basin examination, an index of all reservoirs will be provided to the regional/unit office or team. Send the Trust Lands Management Division a copy of the index listing their claims, mailing labels (generated with index), and, for each claim involved, a questionnaire, and any other pertinent information

Either as claims are pulled or after they are examined, record the progress by tracking the claim numbers in the numerical index. This index can be located on a

shared drive on the network (G:). This serves as a check that a basin has been totally examined. Depending upon individual examiner methods, other indexes may also be marked. A method of automatically tracking claims is through Water Right Mapper (WRMapper), which is a GIS application with all water right information for a specific basin. For more information on WRMMapper, contact the Water Resource Division GIS staff or refer to the WRMMapper manual.

Once the claims have been pulled, gather the data sources (aerial photographs, topographic maps, etc.) necessary to examine the claims. WRMMapper should contain the necessary scanned aerial photographs and USGS topographic maps, however, the actual photographs and topos may be necessary for dark or poor images.

B. CLAIM INTEGRITY

1. Marking Original Claims. **NO comments, changes, or corrections may be made to the original clarified claim, map, documentation, or subsequent amendments during the examination process.** For potential courtroom purposes, it is important that the claim and attachments be the same as when submitted by the claimant.

2. Claim File. [Rule 43, W.R.C.E.R.](#)

All claim files should contain at a minimum:

- **Statement of Claim.** The Statement of Claim ([§85-2-224, MCA](#)) is a sworn Affidavit by the owner of the water right and should be notarized. Most should be date-stamped prior to April 30, 1982. Each page of the originally received materials should be stamped with a water right number.
 - Attached to the Statement of Claim should be **documentation** showing proof of use (for a decreed right, the pertinent portion certified from the Clerk of Court; for a filed right, a Notice of Appropriation, etc.)
 - A **map** depicting the point(s) of diversion and the place of use should be attached.
 - A DNRC “Statement of Claim Checklist” will also be included. The checklist was completed when the Statement of Claim was received at a regional office. The claimant may have been contacted if major discrepancies were noted at the time.
 - No other department material should be included with the stapled Statement of Claim and its supporting documentation other than the checklist.
- **An examination worksheet.** There may be older worksheets in the file that have not been completed. These should be discarded and a new worksheet generated from the database unless a worksheet has been completed in any way. If the older worksheet has been completed in any way, it should remain in the file.

The claim file may also contain:

- **DNRC Water Right Ownership Update (Form 608).** The ownership update form was used for all changes in ownership when water rights transferred in connection with a real estate transaction

prior to July 1, 2008. Other water right transfer forms (older versions) may also be in the claim file. In 2007, the Montana legislature passed House Bill 39 (effective July 1, 2008) which automates ownership updates. Acknowledgments of these automated transfers may be in the file in future.

- **Amendments.** The [Amendment to Statement of Claim](#) is received from the claimant following the initial filing period. Most should be date stamped after April 30, 1982. The amendment should be notarized and include documentation in the form of a map and proof of use, etc. It should be assembled separate from the Statement of Claim and supporting documentation. See “Special Provisions: Amended Claims” in Section XI.A for further information.
- **Implied Claim.** An implied claim occurs when more than a single water right appears on a Statement of Claim. Not all claims have been reviewed for implied claims. However, during the claim filing period, the DNRC had the authority to generate implied claims without permission from the Water Court. Approval from the Water Court is now required. See “Special Provisions: Implied Claims” in Section XI.B for further information.

All materials in the claim file should be arranged chronologically beginning with the Statement of Claim. If these documents have been de-stapled, they may no longer be in proper order. [Rule 43\(s\), W.R.C.E.R.](#)

C. DNRC EXAMINATION WORKSHEET

The examination worksheet is a report generated from the database. It shows the clarified claimed information in a checklist format for examination (by clarified, this means the information that was made more clear and concise at the time of initial data entry—if the intent of the claimant was clear on the statement of claim, the DNRC made clerical changes, noted in pencil, on the statement of claim, usually by a circle around the item number and the initials 'DNRC'). The worksheet provides for a consistent approach to the examination of the elements of a claim and a means in which to evaluate and document findings. [Rule 43\(b\), W.R.C.E.R.](#)

Many claim files may have an examination worksheet that was generated in the legacy database system. If the examination worksheet is blank, it should be discarded and a new examination worksheet created from the database. If an examination worksheet is generated and known changes occur, i.e., an ownership update is received or the claimant submits an amendment, generate a new worksheet. All worksheets showing work by an examiner and any updates to the database will be retained in the claim file. An example of the worksheet is shown as [Figure IV-1](#).

1. Worksheet Format. Each element on the worksheet has two separate sections.

a. Claimed Information. The text in uppercase is the clarified claim information as entered into the database. Changes, corrections, or amendments to this data may only be made as authorized by the [Supreme Court Water Right Claim Examination Rules \(W.R.C.E.R.\)](#) and as directed by this manual.

b. Examination Section. The text in lowercase under each element is to be used by the examiner for several functions: first, as a reminder to examine each element of the claim; second, to cite the authority for changes; third, as a record of remarks added during the examination; and fourth, for comments on each element; and fifth, to document sources used to confirm claimed information. Comments will only appear on the worksheet. Any information needing to be brought to the Water Court's attention must be captured in a formatted or free text remark (see Section V.) in order to appear on an abstract. Further explanation of each category in the examination section is below (see [Section IV.C.3](#)).

2. Changing Claimed Information. Changes, corrections, and amendments are made on the worksheet by drawing a line through the data to be changed and writing the new information above or next to it. All changes should be legible, printed, and in ink. The color of ink used should be one that contrasts well with the worksheet, such as blue, green or purple. Avoid fine point pens as the width of the writing must stand out clearly for database entry, scanning or photocopying. The worksheet will be referenced when updating the database—it is important that any changes, corrections, or amendment information is obvious. **NEVER "WHITE OUT" ANYTHING**. If a crossed out item is in fact OK, write "OK" next to it.

Asterisks. A system of asterisks will be used to flag changes made on the examination worksheet that are to be entered into the database. An asterisk will note to the claimant that the abstract no longer reflects exactly what was claimed.

Whenever an element is changed so that the review or decree abstract will differ from the claimed information or amendment, place an asterisk in the brackets. The asterisk represents a change in the original claimed data and will print on the review and decree abstracts to alert the claimant that a change has been made.

Example: [*] PURPOSE: ~~DOMESTIC~~-IRRIGATION

Changes made by amendments do not need an asterisk because an amendment is claimed information, i.e., the amendment is the “new” claim. Changes to climatic area, number of households, maximum reservoir capacity, or certain means of diversion (see “Claim Examination: Means of Diversion”), do not require asterisks. See “Claim Examination: Means of Diversion” in Section VI.G.3.a for further information.

"KEEP". A KEEP flag is a means of ensuring the database ‘standards’ do not overwrite a value that would otherwise be replaced by a pre-programmed remark generated by running ‘standards’. The KEEP flag is used on occasion for flow rate, volume or period of diversion values. Note that a KEEP flag needs to be designated in the database by writing "KEEP" on the examination worksheet next to the flow rate, volume or period of diversion data. At data entry, select the KEEP flag from the ‘origin’ field under the appropriate element. Procedures found in later sections will describe when KEEP flags should be used. Use of a keep flag means there is data in the file that substantiates the value of the element.

3. Documenting Examination. **The worksheet will become part of the public record and subject to scrutiny by judges, water masters, claimants, objectors, and attorneys. The logic and reasoning for any change to a claimed element must be clearly documented on the worksheet and notations must be legible.** [Rule 43\(c\), W.R.C.E.R.](#)

An area is provided under each element on the worksheet for documenting the examination. The primary parts are as follows.

- ___Ok: Check "Ok" only if the examination finds an element appears correct as printed on the worksheet. An element is not "ok" for many reasons, such as data entry errors, clarification errors, claimant clerical errors, by being outside of the guidelines or having unresolved issues.
- ___Amended: Check "amended" if the claimed information was amended by the claimant either unsolicited or through claimant contact.
- ___Rule ##: Check "rule" if a change, e.g., clarification or application of a

standard, is made under the authority of the cited Supreme Court Water Right Claim Examination Rule. This may include certain changes made upon instructions from the claimant (see [Section IV.D](#) below).

- ___DNRC error: Check "DNRC error" if a change is made because of a previous clarification, database entry, or keypunching error.
- ___Issue: Check "Issue" if the claim presents an aspect, unresolved during examination, which will be reported to the Water Court in an issue remark.
- ___Information: Check "Information" if the claim needs further explanation, which will be reported to the Water Court in an information remark.
- Comments: "Comments" are explanations of the examiner's analysis of an element, such as the source of data used to make a change. Any comments should be detailed, complete and understandable to anyone reading the file. Add and refer to additional sheets if necessary. Do not write on the back of the worksheet. The comments area may also be used to document remark codes.

The claim file serves as the repository of all claimed information and other materials related to the department's examination. Add copies to the claim file of all written correspondence sent or received by the department pertaining to a claim (including unsolicited items). All correspondence received by the department must be stamped with the date received. [Rule 43\(d\), W.R.C.E.R.](#)

FIGURE IV-1

June 23, 2009

STATEMENT OF CLAIM

D.N.R.C. Examination Worksheet

Water Right Number: STATEMENT OF CLAIM

Version Status: ACTIVE

Date Received: APRIL 28, 1982 _____ Ok _____ Not Ok

Exempt? No

Implied Claim? No

Fee Owed? No _____ Ok _____ Not Ok

[] **Owners:**

Remarks: _____ OK _____ Amended _____ Rule 7 _____ DNRC error
 _____ Issue _____ Information

Comments: _____

[] **Purpose (Use):** IRRIGATION **Irrigation Type:** FLOOD

Remarks: _____ OK _____ Amended _____ Rule 6 _____ DNRC error
 _____ Issue _____ Information

Comments: _____

[] **Source Name:** NIP & TUCK

USGS Map: _____ Others: _____

Remarks: _____ OK _____ Amended _____ Rule 11 _____ DNRC error
 _____ Issue _____ Information

Comments: _____

[] **Source type:** SURFACE WATER

_____ OK _____ Not Ok Comments: _____

[] **Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	<u>Means of Diversion</u>
1		SWSWSW	27	11S	14W	BEAVERHEAD		DIKE

Period of Diversion: APRIL 28 TO NOVEMBER 4

Source Name: NIP & TUCK

_____ OK _____ Amended _____ POD/Rule 8 _____ Means/Rule 9 _____ DNRC error
 _____ additional PODS: See attached addendum/amendment forms
 _____ named ditch: _____

Remarks: _____ Issue _____ Information

Comments: _____

FIGURE IV-1 (cont.)

June 23, 2009

STATEMENT OF CLAIM

[] **Basin Code:** 41A
Sub-Basin Code: _____

OK _____ Not Ok _____ Rule 8 Interbasin Transfer with Basin _____
Comments: _____

[] **Priority Date:** OCTOBER 10, 1903 **Enforceable Priority Date:** OCTOBER 10, 1903

OK _____ Amended _____ Rule 13 _____ DNRC error
Issue _____ Information _____
Remarks: _____
Comments: _____

[] **Type of Historical Right:** FILED

OK _____ Amended _____ Rule 13, 14 _____ DNRC error
Issue _____ Information _____
Remarks: _____
Comments: _____

[] **Flow Rate:** 4.00 CFS (Miner's Inches: 160.00)
Comparison Stat: 11.22 GPM/ACRE

OK _____ Amended _____ Rule 14 _____ DNRC error
Issue _____ Information _____
Remarks: _____
Comments: _____

[] **Volume:** 1,560.00 ACRE-FEET
Feasible Vol.: 1,515.37 ACRE-FEET
Comparison Stat: 9.75 ACRE-FEET/ACRE
24.75 HOURS/DAY TO ACHIEVE VOLUME

OK _____ Amended _____ Rule 15 _____ DNRC error
Issue _____ Information _____
Remarks: _____
Comments: _____

Climatic Area: 5 - LOW

OK _____ Not Ok _____ Comments: _____

[] **Period of Use:** APRIL 28 to NOVEMBER 4

OK _____ Amended _____ Rule 16 _____ DNRC error
Issue _____ Information _____
Remarks: _____
Comments: _____

[] **Maximum Acres:** 160.00

OK _____ Amended _____ Rule 12 _____ DNRC error
Issue _____ Information _____
Remarks: _____
Comments: _____

FIGURE IV-1 (cont.)

June 23, 2009

STATEMENT OF CLAIM

[] Place of Use:

Claimant Contact Points: 176.80 -- 143.19

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	160.00		S2	27	11S	14W	BEAVERHEAD

Total Acres: 160.00

OK Amended Rule 12 DNRC error
 Additional POU parcels: See attached addendum/amendment forms
 Remarks: Issue Information
 Comments: _____

Data Source: _____

<u>ID</u>	<u>Exam Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	<u>Photo I.D./County/Date</u>
1	_____		S2	27	11S	14W	BEAVERHEAD	_____

Total Acres: _____

Data Source: _____

<u>ID</u>	<u>Exam Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>	<u>Photo I.D./County/Date</u>
1	_____		S2	27	11S	14W	BEAVERHEAD	_____

Total Acres: _____

Geocodes/Valid: [18008927301010000 - Y](#)

OK
 Comments: _____

Supplemental: Yes (Enter water rights in related rights tab and generate report) No
 Multiple Use: Yes (Enter water rights in related rights tab) No

Existing Remarks:

P164 INFORMATION STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.
 TR1Z INFORMATION NOTICE OF WATER RIGHT TRANSFER RECEIVED 06/04/86.
 NOTICE OF WATER RIGHT TRANSFER RECEIVED 07/19/88.
 NOTICE OF WATER RIGHT TRANSFER RECEIVED 11/10/92.

FIGURE IV-1 (cont.)

June 23, 2009

STATEMENT OF CLAIM

Formatted Remarks:

Rmk ID Variables or free text

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

General Comments: (Document any aspects of the examination such as additional data sources, information pertinent to understanding the examination, etc. Use appropriate forms for interviews or field investigation and attach.)

Examined by: _____ Date _____
Addendums: _____ RMRK _____ RSRV _____ POU _____ DVRS _____ OWNR _____ AMEND _____ SUPP

Examined results entered in database by: _____ Date _____

4. Examination Wrap-Up and Addendums. At the end of the worksheet are two lines labeled 'Examined By' and 'Addendums'. Once the claim examination is complete, the examiner must sign (full name) and date the examination worksheet. Addendums are used to add information to a claim which could not be added directly to the worksheet ([Section IV.E](#)). See Exhibit IV-4 for examples of Place of Use, Point of Diversion, Owner and Reservoir addendums. These forms will be used anytime a POU parcel, POD, or reservoir is in addition to those found on the worksheet. The Owner addendum will be used to make minor corrections to existing owner names. Addendums added during examination will become a permanent part of the claim file. Place a checkmark next to the appropriate addendum.

- Examined By: _____ Date _____
- Addendums: __RMRK __RSRV __POU __DVRS __OWNR __AMEND__SUPP

5. Identification Codes. Prior to December, 2001, code letters were used to enter data from a claim into the database. In a few areas, the identification codes appear on the worksheet. See Exhibit IV-3 for identification codes if these appear on the worksheet.

6. Verification Abstracts. Worksheets may be found in the claim files which were used for documenting claim review prior to the development of the examination worksheet. Verification procedures occurred from 1982 to 1987 with some decrees being issued as verified up to 1990. The following are guidelines on whether or not these materials should be retained in the claim file.

- Verification abstracts which are not signed or dated and do not contain relevant claim review information should be discarded.
- Signed and dated verification abstracts which contain no relevant claim review information should be "Xed" with a highlighter, preferably in a color that does not block writing. Such abstracts will not be scanned, but will be retained in the claim file for documentation.
- Verification abstracts which contain relevant claim review information, e.g., claimant contact notes, should be retained and sent to Records with the file to be scanned.
- Code sheets completed during verification and not entered into the database should be "Xed" with a highlighter, preferably in a color that does not block writing. Such code sheets will not be scanned, but will be retained in the claim file for documentation. Exceptions are code sheets that can be used in the claim examination. These should not be "Xed" but should be sent in as part of the examination materials.

It is not necessary to transcribe verification information onto examination worksheets. Only information that requires a change to be made to the database, e.g., a changed POD legal land description, should be transcribed. When verification changes are used, they must meet the criteria and requirements of the current examination manual. If the verification abstract contains claimant contact information or other relevant review data, refer to it on the examination worksheet.

By following the above procedures, some verification abstracts (including code sheets) will be retained, and others discarded. The majority of those saved will probably not be scanned, but will remain in the claim file to document past work efforts.

D. CLARIFICATION

Clarification means the process by which certain specific elements of a water right are made more complete, clear, concise, and interpretable without changing the intent of the claimed information. This may have occurred at initial data entry and is indicated on the original statement of claim in pencil (see [Section IV.C.3](#) for further explanation). Clarification also occurs under current examination procedures as specified by Supreme Court rules.

With so many thousands of claims being filed by claimants inexperienced in such matters, many may have been confused about how to complete the claim forms. This undoubtedly led to clerical errors and inconsistencies in the claims. Clarification is a tool for the department to use in editing out these errors in claims. The department is also allowed to perform other actions categorized under clarification which are intended to provide consistency of identification in the database.

Clarification involves checking claimed information and comparing it to other information in the claim file, other water rights claims filed by the same owner, or other data sources. Many clarification changes may be made without contacting or notifying the claimant. **The claimant MUST be contacted, however, whenever a resolution is not clearly indicated in the claimed information or whenever the change is not clearly one authorized as clarification under the Supreme Court rules. The claimant must also be contacted if any element of the claim is changed or reduced pursuant to Supreme Court rule or standards.**

In addition, changes to claimed information cannot be made as clarification under the following circumstances.

- **An adjustment by a claimant to a claim not presently being examined.**
- **An adjustment by a claimant based on information provided by a non-owner (e.g., tenant, ranch manager, Forest Service District employee)**
- **An adjustment to flow rate, volume, priority date, or acres.**

[Rules 14\(f\) and 15\(g\), W.R.C.E.R.](#)

Clarification of flow rate, volume, priority date, or acres can still occur, but if any of these elements are changed to something different from that in the claim file, an amendment should be used. Other elements may be changed as clarification occurs.

1. Authorized Clarification. The Supreme Court Water Right Claim Examination Rules (see [Rule 33](#)) authorize the department to perform clarification as long as the intent of the claimed information is clear. The claim and attachments, or specifically related claims, must clearly provide the correct data.

For standardization and consistency, the following clarification changes may be made without claimant contact: [Rule 33\(b\) W.R.C.E.R.](#)

- Owner Name and Address. The claimant's name (e.g., a misspelling) and address can be changed to reflect current and consistent information. This clarification is limited to minor corrections—an ownership update must adhere to [§§85-2-421 through 85-2-426, MCA.](#)
- Priority Date and Type of Historical Right. If a priority date or type of historical right is not indicated on the claim form but is clearly indicated in the documentation.
- Purpose. The purpose of a water right can be changed to identify similar purposes consistently.
- Flow Rate and Volume. The claimed flow rate or volume units are inconsistent, or units for flow rate are not on the claim form but are clearly indicated in the documentation.
- Source. The claimed source name can be changed for consistency to reflect the source name designated by the USGS, WRS, or colloquial names, in this order of preference. The source name can be added if it is not on the claim form but is clearly stated in the documentation.
- POD and POU. The claimed legal land descriptions can be changed:
 - To achieve the nearest reasonable and concise legal land description or to identify identical PODs consistently.
 - If the legal land description does not match the claimant's map.
 - The claimed legal land descriptions for direct surface water stock use are not the same.
 - If legal land descriptions are reversed.
 - When N, S, E, or W are not indicated for the township or range.
 - The POD or POU are not on the statement of claim but are clearly stated in the documentation
- Means of Diversion. The claimed means of diversion can be changed to identify similar or identical means of diversion consistently. A means of diversion can be added if not indicated on the claim form but is clearly stated in the documentation.
- Period of Use. The claimed period of use can be added if not indicated on the claim form but is clearly stated in the documentation.

The claimant must be contacted when claimed data has apparent discrepancies or clerical errors, and neither the claimant's intent nor a correction is clear in the claim and attachments. Changes can be made to correct such discrepancies upon instruction from the claimant. [Rule 33\(c\), W.R.C.E.R.](#)

2. Making Clarification Changes. Authorized clarifications (no change in claimant's intent) are made on the examination worksheet. Cross out the claimed data and write the clarified data next to it. Place an asterisk in the left margin of the worksheet next to the changed element. Place a checkmark next to the rule in the examination section below the changed element. If more explanation is needed, use the comments area. Extensive or complex clarifications of POU legal land descriptions can be made on the worksheet or on a POU addendum sheet. [Rule 43\(b\), W.R.C.E.R.](#)

The claimant may need to be contacted for certain clarifications. Document the data supplied by the claimant and the specifics of the contact, i.e., whom, when and how received, etc. See "Claimant Contact Techniques: Making and Processing Contact" below for detailed procedures ([Section IV.F.](#)).

3. Clarification During Claims Collection. Most of the original claims submitted were reviewed and clarified (made complete, clear, and interpretable for database entry). When the department changed an item on the claim form, the change was noted by placing an asterisk or "DNRC" in pencil in the left margin on the statement of claim (outside the border) next to the item clarified. Often the item number on the form was circled in pencil. **[This was the only time the DNRC permitted any alteration to the original statement of claim—DO NOT MARK ON CLAIM MATERIALS, CLAIMANT MAPS OR AMENDMENTS. THIS CANNOT OCCUR UNDER CURRENT EXAMINATION PROTOCOL].** Both changes and asterisks were entered into the database. These changes will be identified on the examination worksheet by an asterisk in the left margin next to the clarified element.

During claim examination, carefully check those items clarified on the claim form and noted with an asterisk on the worksheet. Confirm the clarification was made correctly. If a clarification was made, but no asterisk was added, place an asterisk on the worksheet. Determine if the clarification was made in accordance with Rule 33 of the [Supreme Court Water Right Claim Examination Rules \(W.R.C.E.R.\)](#). If so, place a checkmark next to "rule" on the worksheet, and note it in the comments area under the clarified element, e.g., "Clarified on 03/04/1988."

If it is determined that past clarification was incorrect and the change cannot be considered a 'clarification' or 'rule' change, correct the examination worksheet to reflect the original claimed information. [Rule33\(d\), W.R.C.E.R.](#) Check "DNRC error" on the worksheet and note the reason in the comments area. Cross out the database-generated asterisk next to the element. Follow standard examination procedures.

E. ADDENDUM INSTRUCTIONS

Addendums are used to add data to the database record of a claim in the event the information cannot be clearly and legibly added to the examination worksheet. In the past, data entry was centralized and the addendum forms were sent to Helena for keypunching. Current technology allows each examiner to access and modify the database. Typically, these addendums are used anytime a POU, POD, owner, or reservoir is added to a claim in addition to the information on the worksheet. The following sections discuss standards for completing addendums to maintain consistency of data entry. Exhibit IV-4 shows example of addendums for POU, POD, owner, and reservoir.

1. Completing Addendums. Legibility is critical when completing addendums. Bright colored pens, such as blue, green or purple, are preferred as it is easier to read. Complete areas as follows:

BASIN	Use same basin code as found on claim.
NUMBER	Use entire claim number (example: 5434-00 and 30000786 for post-December 2001 database-generated numbers).

Complete the remaining areas of each addendum as follows:

a. Point Of Diversion Addendum

<u>Title</u>	<u>Procedure</u>
DIVERSION MEANS	Enter the means of diversion code.
PUMP SIZE	Enter the size of the pump when the Means of Diversion is "Well".
PRIMARY POD ID	If pertinent, enter the number of the primary POD that the specified POD is secondary to.
TRANSITORY	If the means of diversion is transitory, enter Yes. (Does not apply if the means of diversion is a well.)
POD TYPE	Enter Primary, Natural Carrier, XXX Secondary, Secondary, or Tertiary diversion.
GOVERNMENT LOT	If applicable, enter Government Lot number.
QUARTERS 1-4	Q1 = 160 acre designation (SW) Q2 = 40 acre designation (NWSW) Q3 = 10 acre designation (SENWSW)

	Q4 = 2.5 acre designation (NESENWSW)
SEC	Enter section.
TWP	Enter township.
RGE	Enter range.
COUNTY	Enter county name.
STATE	Enter the two-letter abbreviation code.
POD ORIGIN	Enter amended, claimed or examined.
SOURCE	Enter the source name. Refer to "Source Name Coding Consistency" below and the source name standardization section of the Oracle Coding Manual.
DITCH NAME	Enter the ditch name associated to the POD.
LOT/TRACT	If applicable, enter one lot or tract number.
BLOCK	If applicable, enter one block number.
SUBDIVISION NAME	Enter the assigned subdivision name.
CERTIFICATE NAME/TYPE	Enter the certificate of survey, mineral entry survey, homestead entry survey, etc.
CERTIFICATE NO.	Enter the number of the certificate of survey.
TRACT	Enter the tract number.
WELL DEPTH	Enter well depth in feet. Round to no decimal places.
STATIC LEVEL	Enter static water level in feet. Round to no decimal places.
CASING DIAMETER	Enter casing diameter in inches.
TEST RATE	Enter pumping rate from the well test data in gpm. Round to no decimal places. Do not use claimed flow rate or means of diversion pump capacity.
FLOWING	Enter Yes if the well is flowing.

b. Place Of Use Addendum.

Title

Procedure

ACRES Enter number of acres for added parcel. Example: 37.00.

ORIGIN Enter claimed, amended or examined.

For remainder, refer to Point of Diversion Addendum instructions.

c. Owner Addendum.

Title

Procedure

OWNER NAME AND ADDRESS Refer to "Owner Coding Consistency" below.

SUFFIX If applicable, enter Junior or Senior.

TITLE If applicable, enter MD, PhD, etc.

CUSTOMER TYPE Enter Business, Federal Agency, Indian Reservation, Individual, State/Local Agency

d. Reservoir Addendum.

Title

Procedure

NAME Enter the standardized name of the reservoir or lake.

ON OR OFF Enter "On-stream" or "Off-stream".

POD ID Enter the number of the POD that diverts the water into the reservoir.

ORIGINAL CAPACITY Enter the maximum capacity in acre-feet.

MAX DEPTH Enter the maximum depth of the reservoir.

DAM HEIGHT Enter height of dam rounded to the nearest foot. Dam height is the vertical distance from the lowest point on the dam crest to the lowest point on the natural ground (including any stream channel) along the downstream toe of the dam.

SURFACE AREA Enter surface area in acres.

ORIGIN Enter Amended, Claimed or Examined.

For remainder, refer to the Point of Diversion instructions above. When the claimant has control of the reservoir as part of the right, the legal land description should be the dam location. When control of the reservoir is not part of the right, the legal land description should match the POD.

2. Source Name Consistency. When standardizing source names on the worksheet, use the following format. Additional directions for standardizing source names are outlined in the Oracle Coding Manual. [Rule 11\(a\), W.R.C.E.R.](#)

- The type of source, e.g., river, creek, coulee, etc., should be included as part of the name.
- Forks should follow the name of the stream, preceded by a comma (Bitterroot River, East Fork).

3. Owner Name/Address Consistency. For instructions and examples for correcting owner names and addresses, see "Owner Name/Address Standards" (Exhibit IV-6). [Rule 7\(a\), W.R.C.E.R.](#)

4. Remarks. Refer to Section V: "Standard Examination Remarks" for further instruction on types of remarks as well as a current listing of remarks in the database library. Below is a general approach to completing the Remark Addendum.

a. Remark Standards. It is important that remarks be documented correctly to appear on the abstracts properly. Use the following guidelines:

- Complete in ink only. The color of ink used should be one that contrasts, such as blue, green or purple.
 - Print legibly. Use all capital letters.
 - When a water right number (claim, certificate, permit, or acknowledgement) is included in a remark, only the following formats are acceptable:

2564-00: The six digit number (including zeros) and extended ID must be completed.

30000000: For database-generated numbers.

- Flow rate, volume or acre figures, when noted in a remark, should follow a consistent format, e.g., 3,245 acres or 24.50 cfs.
- The proper format for dates is MM/DD/YYYY.

- The following abbreviations are the acceptable formats when writing a legal land description in the text of a remark:

SEC = section
TWP = township
RGE = range
NO. = number

- The following abbreviations are **NOT** acceptable:

POU: write out "PLACE OF USE"
POD: write out "POINT OF DIVERSION"
County Name: write it out

- When a legal land description is used in a remark, only use commas to separate successive $\frac{1}{4}\frac{1}{4}\frac{1}{4}$ descriptions. The following is the correct format:

Example: R40 THE **DAM** EXTENDS INTO THE **NWNWNE**,
NENENW SEC **36** TWP **99N** RGE **99E** MONTANA
COUNTY.

- For those remarks followed by a list of water right numbers, such as the Decree Exceeded remark (D5), the number of water rights that can be listed in the database is unlimited. List the water right numbers in numerical order.

b. Adding Or Changing Remarks. [Rule 43\(b\), W.R.C.E.R.](#)

Adding A Remark. Remarks are used to add statements explaining a particular situation or issue. The "comments" area under an element on the examination worksheet may be used to note the remark's reference number. Both formatted and free text remarks can be added directly to the examination worksheet under the 'Formatted Remarks' section. Note the reference number and the variables to be entered in the database. Free text remarks can be written under the Formatted Remarks section or in the 'general comments' area on the examination worksheet.

Changing A Remark. An existing remark, or a portion of it, can be deleted by drawing a line through the remark on the worksheet. Material can also be added directly to an existing remark. Document any changes and the authority when making changes to remarks.

Questionable Remarks. When in doubt about adding an examination remark or deleting an existing remark, discuss the situation with a supervisor.

c. "Clarification" Remarks. During claims collection and prior to initial database entry, remarks may have been added to make the claimed information clear, concise and understandable. Such remarks will print on the examination worksheet under "Existing Remarks". Many of these remarks are now referred to as "legacy remarks" and must be updated to current remarks (see Section V.). Review and evaluate all remarks added during the initial claim clarification process. It may be necessary to standardize or delete a remark. If such a "clarification" remark is not authorized by the current Supreme Court Water Right Claim Examination Rules, it must not appear on the review or decree abstract. If not suitable for a review or decree abstract, but useful as part of the claim file, retain the information in the general comments area of the examination worksheet.

d. Database-Generated Remarks. There are two different types of automatically generated remarks in the database. A remark may automatically be added as 1) a result of entering data into the Related Rights tab or 2) by running standards at the conclusion of the examination. The Supreme Court Rules specifically direct the DNRC to add standard remarks in certain situations. See Section V. for more information.

F. CLAIMANT CONTACT TECHNIQUES

The department will use claimant contact as the principal means of gathering further facts and data when potential issues are encountered in routine examination procedures. Contact also provides the opportunity for claimants to instruct the department to make changes to their claims that clarify their intent and reflect pre-1973 practices. [Rule 44\(a\), W.R.C.E.R.](#)

Generally a claimant will be contacted once after all claims in an ownership have been examined and the areas needing further information have been identified. The consolidation of issues leads to efficiency and effective results with minimum intrusion upon the claimant. Be well organized and thorough, making sure that all needed information is obtained. Have issues and requests clearly listed before contacting the claimant.

Keep the following in mind when examining claims:

- Nearly every claim examined will result in claimant contact. ANY changes, including those implemented by Supreme Court rule, require that DNRC give notice to the claimant (letter and copy of Review Abstracts most often).
- Any claim with an issue remark(s) **must have** documented claimant contact in the file, usually a letter. Contact may also occur by telephone, but the file must have documentation of the contact.
- **All possible owners of a water right must be included in claimant contact**—this is particularly important in highly subdivided areas.
- Basins may have been examined years ago and the decree is now being issued. Because of changes in Supreme Court rules or other examination procedures, it may be more efficient to provide information through public meetings or other public information avenues. Such public venues, however, do not satisfy the claimant contact requirements in the Supreme Court rules.

1. Types Of Contact. Claimant contact may be by telephone interview, personal interview, or written correspondence. Several alternatives may have to be used to completely examine a claim. The sequence in which the alternatives are used will be at the examiner's discretion. The type of contact should be the least intrusive and most likely to resolve the issues. Claimant contact is time consuming. It should be made as efficient as possible without sacrificing accuracy. [Rule 44\(b\), W.R.C.E.R.](#)

a. Telephone Interviews. Telephone contact is the preferred form of initial contact with claimants. Use telephone contact for resolving simple problems, soliciting missing information, and setting up interviews. Note a current phone

number in the claim file, such as on a sticky note on the inside cover of the file folder.

b. Personal Interviews. Interviews should be cordial, informal, and friendly. More information will be gathered if the claimant is comfortable in the situation. Specific appointments should be made for interviews.

Regional/Unit Office Interviews. This is the preferred location for in-person interviews as all required materials (aerials, topographic maps, etc.) are usually available. If the examination was completed by a team member located in Helena, all materials may be located there—however, meeting the claimant at the regional/unit office is often more convenient for the claimant.

Out-Of-Town Interviews. Great distances may exist between the examiner and the basin they are examining. Appointments may be made to meet claimants in the basin when necessary. A central location such as a county courthouse, NRCS office, or library are possibilities. To meet the claimant at their home is also acceptable. Be sure that enough appointments are set to warrant the trip. Seek approval for all travel from a supervisor.

c. Letter Contact. Letters should be clear and concise, yet sufficiently detailed to inform the claimant. When pertinent, copies of the claim, map, aerials, and other helpful materials should be included.

As time is now “of the essence” due to the examination benchmarks set out in [House Bill 22](#), all claimant contact letters should ask the claimant to contact the examiner within 30 days. All letters should give the claimants notice that unresolved issues will be litigated once the decree in the basin is issued.

Contact letters may be sent in many situations. For example, a letter can be sent when telephone contact has failed, to document telephone contact, or to supplement a claimant interview when the information needed is complex. Sending review abstracts with all letters is recommended as this shows the claimant how their water right will currently appear in the decree. A review abstract can be generated by water right number or ownership (see “Post-Examination Procedures, Review Abstracts” in Section XII). A copy of the letter should be placed in the claim file to document the correspondence.

There are several types of letters, depending on the circumstances:

- Questionnaire Letter. Use this letter when detailed information is needed such as on pumps, reservoirs, power generation, mining, etc. The letter generally is comprised of a cover letter (Exhibit IV-8) and questionnaire (Exhibit VIII-1, X-1 through X-7).
- General Contact Letter. Use this letter when an appointment needs to be made for an in-person interview. Generally, it is used when a claimant

can't be reached by telephone. This letter is designed to be quick and efficient. (Exhibit IV-9).

- Personalized Letters. Use customized letters to address specific situations that require individual attention. Some typical uses for personalized letters are:
 - addressing unresolved issues that are intricate and require explanation. A synopsis of the unresolved issues is advised as it allows the claimant to gather and prepare information;
 - confirmation of items discussed during telephone contact or personal interview;
 - confirming or scheduling the date, time, and location of an interview or on-site visit.
- Final Letter. Optionally, a final letter may be sent when the initial contact letter soliciting information is not answered (Exhibit IV-10) and the information being solicited is required. By Supreme Court rule, the DNRC is required to contact the claimant. The DNRC is not required by rule to send a final letter, although in some situations it may be effective.

2. Making And Processing Contact.

a. Preparation. As a claim is reviewed, it is suggested that questions and concerns regarding the claim be listed in the general comments area of the worksheet or on an Interview Report Form, shown as [Figure IV-2](#). This suggestion is useful for several reasons. First, it documents the concerns the examiner has following the initial examination of the claim. Second, it will help keep the contact with the claimant quick, efficient, accurate, and complete. Third, the list of concerns will be invaluable to staff who may have contact with the claimant in the event the examiner is unavailable.

The need for contact should be assessed once all elements of all claims of an ownership have been examined. Prior to contact, it may be helpful to research all water rights of the claimant (including permits and certificates) for an overview of the claimant's water use.

b. Who And When. Contact should be with the present owner of the right, which may not be the original claimant. If there is information in the claim file indicating the current owner is represented by an attorney, verify whether contact should be made with the attorney or claimant.

Normally a claimant will be contacted no more than twice concerning unresolved issues pertaining to their claim.

FIGURE IV-2

DNRC INTERVIEW REPORT FORM

PERSON INTERVIEWED: _____
RELATIONSHIP: CLAIMANT _____ OTHER _____
INTERVIEW METHOD: PHONE _____ IN PERSON _____ LOCATION _____
DATE OF INTERVIEW _____

CLAIM NO. _____

TOPICS DISCUSSED AND FACTS IDENTIFIED: _____

CLAIM NO. _____

TOPICS DISCUSSED AND FACTS IDENTIFIED: _____

CLAIM NO. _____

TOPICS DISCUSSED AND FACTS IDENTIFIED: _____

CLAIM NO. _____

TOPICS DISCUSSED AND FACTS IDENTIFIED: _____

- Questionnaires. It is often required that questionnaires be sent to claimants to request additional information before a claim can be examined. This is a preliminary inquiry, meaning claimants may be contacted two more times regarding unresolved issues.
- First Contact. The first contact should be by telephone if possible as this is faster than composing and sending a letter (Exhibit IV-9). First contact may be to resolve an issue, set up an interview, or request some action by the claimant. If an interview will be conducted, set up an appointment at the earliest convenience, preferably within 30 days. If the claimant is asked to take some action or provide information, request that it be within 30 days (or some reasonable timeframe). If no response is received in 30 days, consider the claim complete and process accordingly. If the claimant responds at any time prior to the completion of the basin examination, "re-open" the claim file. Process any amendments received and examine the claim with the additional information received from the claimant.
- Second Contact. Optionally, if no response is received from the first contact within the set timeframe, a second contact letter, (Exhibit IV-10), may be sent allowing another 30 days to respond. However, this second contact is not required, and may not be advisable if the examination in the basin is nearing completion. It is recommended that the timeframe from first contact to close of the second letter timeframe be limited to a total of 60 days. After 60 days, process the claim. If the claimant responds at any time prior to the completion of the basin examination, "re-open" the claim file, process any amendments received and examine the claim with the additional information.

Always document any contact in the general comments area of the examination worksheet or if a memo or Interview Report Form is used, add a copy to the claim file. Note the type of contact, persons present, date, location and findings of contact in the general comments area, in the memo or on the Interview Report Form. It is important that "first contact" be documented to ensure Supreme Court Water Right Claim Examination Rule 44 is met. There may be unanswered or intermediate telephone contacts which do not require documenting, however, any contact that produces information should be documented.

Split Ownerships. Many claims have been subdivided or otherwise split since the initial filing period. When contact is necessary to clarify the intent of the claimant, see "Amended Claims: Who May Amend" in Section XI for general procedures involving claims with multiple owners.

c. Written Correspondence. All contact letters must include the date, water right numbers, names of claimant and attorney (if applicable), and the signature and contact information of the examiner.

Send contact letters to all owners having different addresses. In this situation,

the letterhead should list one claimant with all other owners and addresses listed at the bottom of the letter in a "cc".

If the claimant requests that someone else be contacted, e.g., an attorney or the person who completed the claim form, direct all future contact to that party with copies going to the claimant. Document the request.

Send all contact letters via first class mail on State of Montana letterhead. Place a copy of any contact letter in each claim file for documentation.

Returned Contact Letters. Contact letters returned by the post office with no forwarding address should be researched. There are several methods of obtaining correct addresses, such as [Montana Cadastral Mapping Program](#), telephone directories, co-owners, or regional/unit office records for varying addresses on different filings. However, county courthouse research is occasionally the only way to determine a correct address or correct ownership. The county assessor's office usually has the most current ownership and address information. However, examiners need supervisor approval for this time consuming method of gathering information.

d. Documenting Contact. When a claimant is contacted (by telephone or in-person), document the contact in the general comments area of the worksheet or on an Interview Report Form ([Figure IV-2](#)). If more room is needed to document the findings, add and refer to additional sheets. Make the interview findings detailed and complete so that they are understandable to anyone reading the file. [Rule 44\(c\), W.R.C.E.R.](#)

- If an interview is refused, note this in the comments area of the worksheet, and add necessary remarks.
- If the claimant fails to appear for an interview, attempt to reschedule.

Prior to the interview, complete the appropriate portions of the Interview Report Form. During or directly after the interview, complete the remainder of the form. The interview report must be placed in each affected claim file and will become a permanent part of the file. A copy should be sent to the claimant.

The procedure discussed above is the preferred method for documenting interviews. For simple cases, the interview may be documented under "General Comments" on the worksheet. All documentation should include: (1) persons contacted; (2) date; (3) means of contact; (4) topics discussed; (5) facts and data identified; and (6) claimant instructions or action to be taken.

In cases where the claimant is expected to take some action, e.g., submitting further documentation, a letter confirming the conversation may be sent as a reminder. Copies of all correspondence must become part of the claim file.

e. Docket System. Claims which have unresolved issues awaiting claimant response should be maintained separate from other claim files preferably in one area. Organize the claim files in alphabetical order by claimant's name. By having one common location, other staff will be able to locate a claim file easily if the examiner is unavailable.

A docket system is required to track the time elapsed once claimant contact is initiated. Because examiners are requesting responses within 30 days, tracking this timeline becomes important for determining when claims are 'complete'. The docket system also tracks the status of claimant contact in the event a final contact letter is needed (not always necessary). Either a single office log or individual examiner logs can be maintained noting due dates and claimants' names. An alternative to keeping a log is to mark the first file folder in a group of claims with the type and date of contact. Review the log or claim files regularly (at least every two weeks).

3. Possible Outcomes Of Claimant Contact. Claimants may be contacted to gather facts and data pertaining to apparent discrepancies or issues unresolved by routine examination procedures. The contact can have one of several outcomes and actions to be taken by the department. [Rule 43, W.R.C.E.R.](#)

- Information discussed confirms the claimed data. Do not change the claimed data beyond routine clarification. Document the information supporting the claimed data.
- Data different from that claimed is substantiated which the claimant wishes to have replace the claimed data. Depending on the type of data change, the claim can be changed on instruction from the claimant, either written or oral, or by amendment. If an amendment is not filed be sure to document the information used to substantiate the change.
 - (i) See "Special Provisions: Amended Claims" in Section XI for requirements when a claim must be amended.
 - (ii) See "Examination Materials and Procedures: Clarification" in this Section for requirements when a claim can be changed by either written or oral instructions from the claimant.
- The issue or discrepancy is unresolved, either because no information to substantiate or correct the claimed data is found or because the claimant chooses to retain the claim as is. Do not change the claimed data beyond routine clarification. Add an appropriate issue remark to the department's examination worksheet. [Rule 44\(e\), W.R.C.E.R.](#)

G. INVESTIGATION TECHNIQUES [Rule 43, W.R.C.E.R.](#)

1. Ownership Review. A review of ownership may be used in preparing for an interview, e.g., solving vague POU's or overlapping ownerships. This type of review can be a valuable resource as a backup or in conjunction with other claimant contact methods.

Use the [Montana Cadastral Mapping Project](#) or county land ownership records at the courthouse. These are usually maintained by the county assessor or clerk and recorder. Some counties will research ownership via telephone requests. If traveling to a courthouse, several ownerships needing research should be done for efficiency. Such travel must be approved by a supervisor.

Be aware that defining acreage through an ownership review may not be accurate. For example, a water right developed on leased land may be used on the leased land and the claimant's property. Contact the claimant to discuss the discrepancy with or in the claim.

2. Windshield Investigation. This type of field investigation is primarily designed to familiarize examiners with the physical layout of a basin and the general water use patterns. These investigations may be used as a basin tour soon after a basin is opened for examination.

Windshield investigations may be used to help clarify issues of a water right without formal investigation, claimant contact, or travel on private property. For economy, several claims needing investigation should be identified before conducting a windshield investigation, or conduct it in conjunction with other travel.

Prepare for a windshield investigation as if preparing for a claimant contact interview. Take appropriate materials. Do not travel on private roads or property. If claimed information is changed or confirmed by the windshield investigation (keeping in mind the limits of the DNRC), document the investigation.

All windshield investigations require a supervisor's authorization.

3. On-site Visit. On-site visits are field investigations made during basin examination and are conducted **at the request of the claimant**. On-site visits are intended to identify facts and data regarding the use of water related to a water right when routine examination procedures and claimant contact have not resolved issues. Investigations must be accurate and completed in a timely manner. The Field Investigation Report ([Figure IV-3](#)) must describe thoroughly and concisely all relevant observations and data.

- All on-site visits must be approved by a supervisor.
- When an on-site visit is approved, contact the claimant to set a date and

time for the investigation.

- The on-site visit will be conducted with the claimant present if the claimant so desires. The claimant should be encouraged to attend.
- The Field Investigation Worksheet (Exhibit IV-12) should be used for taking notes. Following the on-site visit, the field investigation worksheet will be completed, added to the claim file and referred to when composing the Field Investigation Report.

a. Remarking Results. Information identified during the on-site visit which was not incorporated into a claim by amendment should be identified on the department's examination worksheet. Add a remark under each appropriate element or a general information (GI) remark when addressing more than one element.

Examples: P225 AN ON-SITE VISIT CONDUCTED ON **MM/DD/YYYY** FOUND **16.00** ACRES PRESENTLY BEING IRRIGATED. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

P230 AN ON-SITE VISIT CONDUCTED ON **MM/DD/YYYY** FOUND REMNANTS OF A DITCH SERVING THE CLAIMED PLACE OF USE. TOTAL HISTORICALLY IRRIGATED ACRES AND LAST YEAR OF OPERATION WERE NOT DETERMINABLE. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

P620 THIS CLAIMED WATER RIGHT MAY BE QUESTIONABLE. AN ON-SITE VISIT CONDUCTED **MM/DD/YYYY** FOUND NO EVIDENCE OF RECENT **MINING** ACTIVITY. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

G30 AN ON-SITE VISIT CONDUCTED ON **MM/DD/YYYY** FOUND INFORMATION DIFFERENT FROM THAT CLAIMED FOR **PLACE OF USE, POINT OF DIVERSION, AND FLOW RATE**. SEE CLAIM FILE FOR ADDITIONAL INFORMATION. (Note: One or more elements can be listed.)

If the on-site visit confirms a claimed element where the manual would require a issue remark, the remark would not be needed. Retain remarks for all issues identified during examination if unresolved by a field investigation. For example, a claimant has indicated 200 acres are irrigated. The 1979 aerial photo and the WRS aerial photo show 100 acres irrigated. The appropriate issues have been noted on the examination worksheet (e.g., P270 and P286). A field investigation is conducted and 100 acres are identified as irrigated. However, the claimant retains the 200 acres claimed. The results of the field investigation should be remarked (consider it a third data source).

If the scenario were different where the aerial photograph, on-site visit, and claim show

200 acres, but the WRS shows 100 acres, just the WRS data source would be noted in an issue remark.

4. Field Investigations Requested by the Water Court. Generally court orders for field investigations are made after a decree is issued. On occasion, a written order for a field investigation may be sent to the bureau chief, supervisor, or an examiner with a copy sent directly to the regional/unit office during the examination stage of the adjudication. If the request does not indicate that it was also sent to the adjudication bureau chief, mail a copy the same day it is received. See (Temporary) Preliminary Decree: Post-Decree Water Court Assistance: Field Investigations (Section XIII.F.2) for further information.

Review the field investigation order. The Court Order must indicate the following:

- the parties to be contacted;
- the basis for the order;
- the department employee to conduct the investigation;
- the elements to be investigated;
- the deadline for the field investigation;
- the deadline for the field investigation report to be completed;
- direction to the department to file the original field investigation report with the Water Court
- direction to mail copies to persons on the service list.

When the Water Court orders a field investigation, the department shall contact the claimant or the claimant's representative to establish the date and time of the field investigation and, when necessary, to arrange access ([Rule 12\(c\), W.R.C.E.R.](#)). If there are any questions or uncertainties, discuss the request with a supervisor to avoid ex parte communications.

If the Water Court deadline cannot be met, the investigator must notify the Water Court at least five working days prior to the deadline, with a copy to the claimant and any other parties identified in the court's order. [Rule 14, W.R.Adj.R](#)

a. Notification of Field Investigation. Contact the claimant or the claimant's representative to establish a date and time for the investigation, keeping in mind that all parties must be notified 20 days prior. Also arrange access. Once a date and time are confirmed, send a notification letter to the claimant. Send a copy to the Water Court, the person who has arranged access, if different, and those persons on the service list. All parties should be given a reasonable opportunity to be present during the field investigation.

Send the notification letter at least 20 days prior to the field investigation date. The 20-day period may be shortened only by order of the Water Court, or by written agreement from all persons on the Water Court service list.

b. Preliminary Work Prior To Investigation.

In-Office Preparation. Review the file for all claimed and examined information. Carefully review the data to acquire a thorough knowledge of the claim.

Materials that may be gathered and analyzed include:

- the claimant's water rights: claims, permits, changes, and certificates for the area involved
- aerial photographs used for the Water Resources Survey
- Water Resources Survey
- copies of the WRS field notes
- aerial photographs/orthophotoquads
- copy of overlay showing claimed and examined POU if examined prior to WRMapper
- WRMapper examination materials
- topographic maps
- electronic data of some or all of the above

Pull the aerials, topographic maps and orthophotoquads of the area to be investigated. Review source name, POU, POD, topography, landmarks, ditches, highways, etc. Review priority date, acres irrigated, historical irrigation per Water Resources Survey, possible incremental development, etc. Prepare any questions.

Prepare field maps showing claimed data and examined data, noting areas of concern. These maps will be used to record investigated data. Mylar overlays, photocopies, or drawings directly on the resource materials have all been used in the past. The best method for recording field observations will need to be determined by the investigator. Possible options include generating maps from WRMapper or photocopying pertinent portions of aerial photos. These materials will be retained as part of the permanent field notes.

Items to be taken to the field might include:

- county highway map, BLM map, Forest Service map, etc.
- copies of all pertinent water rights including claims, changes, permits, and certificates (it is advised not to take originals into the field)
- the Water Court field investigation order
- copy of the examination worksheet
- field investigation worksheet(s)
- original aerial photograph and maps, with copies to draw on, other maps, mylar overlays if examined prior to WRMapper, maps generated from WRMapper
- GPS
- calculator
- digital camera

- extra batteries
- binoculars
- hand level or engineer's level
- laptop
- survey rod
- measuring wheel
- tape measure and steel tapes
- writing pad with clipboard and spare pencils
- equipment for measuring flow rate
 - 5 gallon bucket
 - piece of garden hose
 - stop watch
 - flow meters
 - portable weir or flume
 - plastic dams
 - carpenter's level
 - compass
 - wading boots
 - acreage grids
 - tape recorder
 - shovel

c. Field Procedures. Unless otherwise directed by the Water Court, the field investigation will be conducted with the claimant or their representative in attendance. Other individuals on the Water Court service list may attend the investigation.

On-site field investigations give the investigator an opportunity to observe the operation, condition, and physical layout of the system. Of primary importance is observing and describing the water right elements of major concern--especially those that are the basis for the investigation. Of secondary importance is reporting clerical type errors, such as the ditch location identified on the aerial photograph does not match the decreed point of diversion legal land description. Time and size of the project may allow inspection of only the primary issues.

With the claimant present, review the entire claim file to confirm the department's interpretation is the same as the claimant's intentions. Discuss the areas of concern to be investigated. It is important that the claimant and the investigator have a mutual understanding and awareness of the problems.

Conduct the field investigation in a sequential manner. If possible, start at the POD. Ask pertinent questions regarding the POD, such as "When was the diversion structure installed?" Compare actual POD with the aerial photograph for correct legal land descriptions. Note the means of diversion and whether the structure is evident and operational. Take structure measurements that may be needed later. Photograph the POD and begin a log of each photograph taken.

Next, address the delivery system. What is its condition and operational status? Note the maintenance, type of vegetation growing along and in the ditch, and other water loss considerations. If water is not flowing, determine whether the ditch would convey water in the proper direction. It may be necessary to use a hand level. Observe the secondary delivery system (laterals from the main ditch). Discuss with the claimant the history of use of the ditches including those plowed under. Take ditch measurements and photographs of features along the conveyance system.

Continue the investigation by checking the POU, beginning with the first field served by the delivery system. Take at least one photo of each field. Note the slope, soils, topography, type of vegetation, crop, and other relevant conditions. Ask the history of irrigation for each field. Make note of all areas that may not be irrigated such as high spots, swampy areas, steep areas, buildings, roads, brush, natural channels, etc. Any doubt concerning all or a portion of the irrigation should be discussed with the claimant.

Map the POD, delivery system, and POU on the field maps. Map the acreage being irrigated this year excluding unirrigable areas. If the present system differs significantly from the original (historical) water right, obtain a history of the differences sufficient for mapping and for discussing in the written report. Indicate existing, former, and recently constructed ditches. Have the claimant check and confirm your observations or provide evidence to the contrary.

This same procedure should be used for reviewing all elements of the water right. Take careful notes, drawings, and photographs as the investigation progresses. Do not rely on memory. Remember that you may be called to testify about the investigation. The field investigation worksheet (Exhibit IV-12) should be used to record your observations. It is designed so pertinent information is not forgotten or overlooked. In addition to the information requested on the field investigation worksheet, the following questions may be significant to the investigation:

POD:

- When was the diversion structure constructed?
- Is this the original headgate?
- Has the point of diversion been changed?
- If so, when was it changed?
- If not in recent operation, when was it last used?

Storage:

- When was reservoir or pit originally constructed? What changes or modifications have been made to it?
- Has the reservoir or pit been enlarged?
- When was it enlarged?
- How many times a year does reservoir or pit fill?

Conveyance:

- Is this the original system?
- If not, when were changes made?
- What and where is the historical conveyance system?
- Are any of the old ditches evident?
- Explain any secondary conveyance systems?
- When were the secondary systems constructed?
- Has the system been enlarged?
- If so, when was the system enlarged?

POU (irrigation):

- Was all the land put under irrigation at the same time or was land developed over the years?
- If incremental development, when was each field or portion of each field first irrigated?
- Why hasn't irrigation taken place since date of last use?
- When will the place of use be irrigated again?

Flow Rate:

- Pump: Rated capacity (gpm, gph, cfs), horsepower, make, model, lift (feet).
- Well: Depth, static water table, drawdown, casing size.

TIPS:

- Be prompt and courteous.
- Travel only on established roads.
- Leave gates as found unless the claimant states otherwise.
- Respect property.
- When setting the date of the investigation, tell those participating that pre-1973 water use will be discussed.
- Do not trespass.
- Discuss differences between claim and field observations with the claimant.
- Do not agree with the claimant about areas of the investigation if the final report may differ.
- **Do not presume to know the result of the investigation or the final outcome.**

d. Post-Field Investigation. As soon as possible after the field investigation, complete the remainder of the Field Investigation Worksheet (Exhibit IV-12). A completed Field Investigation Worksheet along with related maps and photographs will be added to the claim file.

(1) Maps. A map should contain the following features at a minimum:

- figure number/title
- claim number/case number
- claimant's name
- aerial photograph number/date

- scale
- reference to overlay (if applicable)
- legend
- section, township, range, county
- north arrow
- section corners

The various maps submitted with the report might include a general location map (Exhibit IV-14), a general system map (Exhibit IV-15), and photograph orientation map (Exhibit IV-16). The general system map may consist of an aerial photograph and various layers showing claimed and observed data.

(2) Digital Photographs. Digital photographs add greatly to the usefulness of a field investigation. Anything that can be put in the photograph to provide scale is useful, e.g., vehicle next to reservoir, person standing next to headgate, etc. Digital photographs can easily be incorporated into a Microsoft Word document for inclusion in the report. Create captions for all photos identifying photo number, date, photographer, direction of view and a description. Use the 'draw' feature in Microsoft Word to create arrows or other indicators to identify unclear features.

A photograph orientation map showing the photo number, location (quarter sections, section, township and range), and direction should be produced.

Digital photos should be stored in an appropriate labeled folder on a shared network drive, e.g., (G:) drive. Photos included in a case or field investigation should be backed up on a regular basis.

(3) Field Notes. Field notes will be retained with a copy of the formal report in a file at the regional/unit or team office.

(4) Formal Reports. Formal reports ([Figure IV-3](#)) will be prepared for field investigations requested by the Water Court. The report must address those items stated in the order. Clerical type errors discovered during the field investigation should also be discussed. If time or size of the project only allows inspection of primary items, the report should so indicate.

Formal reports should concisely state the facts. Reports should be clear concerning observed facts versus facts learned from a party (hearsay). Facts learned secondhand should be reported with their source clearly noted. An analysis of the data can be made based on substantiated and documented facts. Avoid qualifying phrases or opinions. Only make recommendations if directed by the Water Court order.

When reporting on water rights historically but not presently used, or possibly used to a much greater extent than the original appropriation, a chronology of relevant data should be discussed.

If flow rate or volume is observed to be significantly above the standard or appears excessive, the report should address as many factors affecting the water use requirements as possible. The resolution of the issue may hinge on the factors discussed in the report. For example, a discussion of various factors like soils and slope, custom in the locale, conveyance losses, reasonableness of design, maintenance of the facilities, demand of other appropriators on the source, quantity of return flow, etc., will be invaluable to the water master who must decide the flow or volume issue.

To help standardize reports, the organization shown in [Figure IV-3](#) below is recommended. Figure IV-3 describes the type of information to be included in a report. See Exhibit IV-18 for more specific examples. By following this outline, complete and consistent reports should be achieved statewide.

The primary parts of the formal report (Figure IV-3) are:

- Heading
- Introduction
- Description of System
- Results of Investigation
- Summary

Tips:

- Use a narrative format, rather than an outline.
- Be concise.
- Be consistent in your use of terms such as measurements.
- Use active voice and strong verbs.
- Don't express opinions.
- PROOF your report.
- Seek review by peers.

When the field investigation report is complete, it must be reviewed by a supervisor. Once approved, the original field investigation report will be sent to the Water Court. Mail a complete copy of the report and attachments, including a certificate of mailing, to all persons on the Water Court service list.

If communication with the water judge or water master is required to discuss the substance of the field investigation, this must be done in writing with copies mailed to all persons on the Water Court service list.

FIGURE IV-3

FIELD INVESTIGATION REPORT (Department Letterhead)

TO: [Name], Water Master
Montana Water Court

FROM: [Name], Water Resources Specialist

DATE: MM/DD/YYYY

CLAIMS: [Claimant Name and Water Rights]

INTRODUCTION

The introduction should lay the groundwork by covering all preliminary information. This should include 1) who assigned the field investigation, when it was assigned, date conducted and by whom, 2) the purpose of the field investigation, 3) sources of information used, 4) description of preliminary contact setting the investigation appointment, and 5) a closing statement/paragraph to introduction.

DESCRIPTION OF SYSTEM

This section should give a general description and location of the water system. Save details and specific measurements for later in the report. The description should include the general condition and status of the point of diversion, conveyance facility, and place of use. If all or part of the system is not presently in use, describing the condition and operational status is important.

RESULTS OF INVESTIGATION

This area should include by element the findings, evaluation, and analysis of all the data gathered. Each element unclear during the examination, or which the Water Court has asked be inspected, should be discussed. In addition, other elements should be discussed if the on-site inspection and other data reveal that the information may be inaccurate or inconsistent.

The discussion regarding each element may vary depending on the particular data, and the individual's writing style. Give a chronology of the data collected outlining the history of an element.

SUMMARY

A synopsis of the investigation's major points should be presented. Discrepancies between claimed versus observed data should be specifically outlined in the summary. The summary can indicate a condensed analysis of the data and facts and whether more work, measurements, or further investigations are needed. The summary should be stated as a series of facts rather than opinions or recommendations.

H. EXAMINATION OF FEDERAL AND STATE AGENCY CLAIMS

Approximately fifteen percent of claims submitted belong to federal agencies. Approximately four percent belong to state agencies. Examine these claims using the standard procedures for the purpose claimed. This section supplies addresses of these agencies and identifies the peculiarities of some agency claims. Be aware when examining federal claims of any compacts negotiated through the [Reserved Water Rights Compact Commission](#). Contacting the federal agency or the Commission may be necessary to determine a water right claim's status in a compact.

1. U.S. Department of the Interior.

a. Bureau of Indian Affairs. Examine the claims to the extent possible, and then review with a supervisor who will advise on a method for dealing further with these claims.

U.S.D.I. Bureau of Indian Affairs
Area Water Resources
316 N. 26th Street
Billings, MT 59101
ATTN: Douglas Davis
(406) 247-7998

b. Bureau of Land Management. The BLM claims were submitted on a computer tape, therefore no claim forms exist. They did not provide hard copy maps in most basins, but provided microfiche copies of 7.5 minute topographic maps and orthophotoquads. Each map has numerous developments on it labeled by a BLM project number which can be cross-referenced on a listing, also microfiched, that matches the BLM project number to a department generated water right number (sometimes referred to as SB-BLM numerical listing where SB is Senate Bill 76). If a microfiche map is unreadable, a hardcopy map may be requested from BLM.

In addition to maps generated in WRMapper, a copy of a topographic map or aerial photograph found in the microfiche record should be placed in each BLM claim file showing the claimed POD, conveyance facility, and POU. This allows anyone reviewing the claim file or scanned documents to better understand the water right. Place a label in the upper right hand corner of the copy to identify the claim number, preparer, date, and map or aerial used.

On September 23, 2009 the Water court issued an Order directing DNRC to examine all BLM Reserved claims state-wide pursuant to the Claim Examination Rules. Exhibit IV-19.

Specific questions on claims should be directed to the individual District or Resource Area Office.

Billings Field Office
5001 Southgate Dr
Billings, MT 59101
ATTN: Craig Drake
(406) 896-5349
Craig_Drake@blm.gov

Malta Field Office
HC 65, Box 5000
Malta, MT 59538
ATTN: Area Manager
(406) 654-1240

Butte Field Office
106 North Parkmont
Butte, MT 59702-3388
ATTN: Corey Meier
(406) 533-7640
Corey_Meier@blm.gov

Miles City Field Office
111 Garryowen Road
Miles City, MT 59301-0940
ATTN: Todd Yeager
(406) 233-2837
Todd_Yeager@blm.gov

Dillon Field Office
1005 Selway Drive
Dillon, MT 59725
ATTN: Stephen Armiger
(406) 683-8000
Stephen_Armiger@blm.gov

Missoula Field Office
3255 Fort Missoula Road
Missoula, MT 59801-7293
ATTN: Steve Flood
(406) 329-3823
Steve_Flood@blm.gov

Glasgow Field Station
Highway 2 West
RR #1 – 4775
Glasgow, MT 59230
ATTN: Casey Buechler (temporary)
(406) 228-3758
Casey_Buechler@blm.gov

Lewistown District Office
920 Northeast Main
P.O. Box 1160
Lewistown, MT 59457-1160
ATTN: Chad Krause
(406) 538-1908
Chad_Krause@blm.gov

Questions concerning general policy should be directed to either Francis Rieman or Mike Philbin at the State Office in Billings.

U.S.D.I. Bureau of Land Management
Montana State Office
Resource Division
5001 Southgate Drive
Billings, MT 59107-6800
ATTN: Francis Rieman
Water Rights Specialist
Montana-Dakotas State Office
(406) 896-5031
Frances_Rieman@blm.gov

-OR-

Mike Philbin
Program Lead
(406) 896-5041
Mike_Philbin@blm.gov

c. Bureau of Reclamation. These claims were submitted on statement of claim forms.

Dan Jewell, Area Manager
U.S. Bureau of Reclamation
Montana Area Office
P.O. Box 30137
Billings MT 59107-0137
(406) 247-7664

-OR-

Tim Grove
Great Plains Regional Office
U.S. Bureau of Reclamation
P.O. Box 36900
Billings, MT 59107-6900
(406) 247-7614 ext. 7759
tgrove@gp.usbr.gov

d. Fish and Wildlife Service. These claims were submitted on statement of claim forms. Care should be taken to review these claims for implied claims as their main duty is fish and wildlife management with a minor livestock management duty.

U.S. Fish and Wildlife Service
Water Resources Division
P.O. Box 25486 (Mailstop: 60189)
Denver Federal Center
Denver, CO 80225
ATTN: Meg Estep
(303) 236-4491
Meg_estep@fws.gov

e. National Park Service. These claims were submitted on statement of claim forms. The claims were completed by persons in the respective national parks. Examine to the extent possible, and then review with a supervisor who will advise on a method for dealing further with these claims.

Chuck Pettee
Branch Chief, Supervisory Hydrologist
National Park Service
Water Resources Division
1201 Oakridge Drive, Suite 250
Fort Collins, CO 80525
(970) 225-3500
(970) 225-9965 (fax)

2. U.S. Department Of Agriculture - Forest Service. The Forest Service claims were submitted on a computer tape, therefore no claim forms exist. The Forest Service submitted hard copies of 1/2" to 1" per mile scale maps with many developments per map. If the hard copy maps are unclear or inadequate, request maps from the Forest Service.

For instream stock use, the place of use should equal the point of diversion. [Rule 44\(b\), W.R.C.E.R](#) Some forests defined the POD as the upstream end of the stockwater use and the POU as the downstream end; some did the reverse. Other forests picked one point along the stream as the POD and POU. Further variations exist. These definitions of POD and POU were also used on some recreation and wildlife claims. Claimant contact may be necessary to identify the complete POD and POU. Be aware of land ownership boundaries when clarifying land descriptions for Forest Service PODs and POU.

In addition to maps generated in WRMapper, a copy of a topographic map or aerial photograph found in the microfiche record should be placed in each U.S. Forest Service claim file showing the POD, conveyance facility, and POU. Place a label in the upper right corner of the copy identifying the claim number, preparer, date, and map or aerial. This helps anyone reviewing the claim file understand the water right.

Specific questions on claims should be directed to the individual national forest offices:

BEAVERHEAD-DEERLODGE N.F.
420 Barrett Street
Dillon, MT 59725-3572
(406) 683-3900
(406) 683-3855 (fax)
ATTN: Bruce Ramsey

HELENA NATIONAL FOREST
2880 Skyway Drive
Helena, MT 59602
(406) 449-5201
(406) 449-5436 (fax)
ATTN: Kevin Riordan

BITTERROOT NATIONAL FOREST
1801 North First Street
Hamilton, MT 59840
(406) 363-7100
(406) 363-7159 (fax)
ATTN: Dave Bull

KOOTENAI NATIONAL FOREST
31374 U.S. Highway 2
Libby, Montana 59923
(406) 293-6211
(406) 283-7709 (fax)
ATTN: Paul Bradford

CUSTER NATIONAL FOREST
1310 Main Street
Billings, MT 59105
(406) 657-6200
(406) 657-6222 (fax)
ATTN: Steve Williams

LEWIS & CLARK NATL FOREST
1101 15th Street North
Great Falls, MT 59401
(406) 791-7700
(406) 731-5302 (fax)
ATTN: Lesley Thompson

FLATHEAD NATIONAL FOREST
650 Wolfpack Way
Kalispell, MT 59901
(406) 758-5200
(406) 758-5367 (fax)
ATTN: Cathy Barbouletos

LOLO NATIONAL FOREST
Building 24, Fort Missoula
Missoula, Montana 59804
(406) 329-3750
(406) 329-3795 (fax)
ATTN: Deborah Austin

GALLATIN NATIONAL FOREST
10 East Babcock Ave.
P.O. Box 130, Federal Building
Bozeman, MT 59771-0130
(406) 587-6701
(406) 587-6758 (fax)
ATTN: Mary C. Erickson

General policy questions should be directed to Robert J. (Tim) Sullivan at the regional office. All contact on basins in decree should be directed to Gail Dahl or Jody Miller.

U.S.D.A. Forest Service
Northern Regional Office
Federal Bldg., P.O. Box 7669
Missoula, MT 59807
ATTN: Gail Dahl
(406) 329-3062

Jody Miller
Special Asst. U.S. Attorney
Office of General Counsel
P.O. Box 7669
Missoula, MT 59807

3. U.S. Department Of Defense - Army Corps of Engineers. Examine the claims to the extent possible, and then review with a supervisor who will advise on a method for dealing further with these claims.

U.S. Army Corps of Engineers
Seattle District
Office of Counsel
P.O. Box 3755
Seattle, WA 98124-3755
ATTN: Siri Nelson
(402) 221-4055

U.S. Army Corps of Engineers
Omaha District
Office of Counsel
106 S. 15th Street
Omaha, NE 68106-1618
(206) 764-3730

4. Other Federal Agencies. Most other federal agency claims are domestic or institutional water supplies for facilities or stations. If the examiner is unsure or has questions concerning these claims, contact a supervisor.

5. State Agencies. Specific questions on claims submitted by the agencies should be directed to the individuals listed below.

Department of Natural Resources and Conservation:

Candace West
1520 East 6th Ave.
Helena, MT 59620
(406) 444-6660
(Legal questions)

Fred Robinson
1520 East 6th Ave.
Helena, MT 59620
(406) 444-6658
(Factual questions for WRD)

Dennis Meyer
1625 11th Ave.
Helena, MT 59620
(406) 444-5484
(Factual questions for TLMD)

Department of Fish, Wildlife and Parks:

Bob Lane
1420 East 6th Ave.
Helena, MT 59620
(406) 444-4045
(Legal questions)

Andy Brummond
2358 Airport Road
Lewistown, MT 59457
(406) 538-4658, Ext. 224
(Factual questions)

Department of Transportation:

Tim Reardon
2701 Prospect Ave.
Helena, MT 59620
(406) 444-6302

I. ADJUDICATION PROGRAM STATUS REPORTS

The preparation of the Adjudication Program Status Report ([Figure IV-4](#)) is a vital step in the claims examination process. Information contained in these monthly reports tracks the progress of basin examination and is used in several program reports, including quarterly reports to the [Environmental Quality Council](#) as required by [HB22](#).

The status report identifies on a monthly basis the number of claims where action is pending, the number of claims completed, and a running total of the number of claims completed in the basin. These basin statistics need to remain on the report until the Summary Report is issued. In addition, this report also tracks a claim examiner's hours in specific categories. **Under no circumstances should these categories be altered in the report.** If unsure of where to categorize an activity, contact a supervisor. This information will be reported for all basins being examined.

Each office will designate a water resources specialist who will be responsible for maintaining status records and at the end of each month, will send a complete status report to the Bureau Chief and other designated support staff.

In addition to the monthly report submitted below, a report will be generated from the database based on the examiner's identification number (CN0000). In order for the report to accurately reflect the number of claims completed by an examiner, a 'begin date' and an 'end date' must be entered in the examination tab.

1. Category definitions: The following definitions are provided to aid in determining hourly activity. If unsure of where a task should be included, contact a supervisor.

Claim Examination: Any activity related directly to claim examination including preparation, windshield examinations, claimant contact, etc. Additional work on completed claims before summary report preparation also would be included under claim examination.

Summary Report Preparation: Any activity related to preparing the summary report for the Water Court including reviewing indexes and completing error check reports.

Re-Examination: This category should only be used when directed by a Water Court order to specifically examine claims that were under the 'verification' procedures in place in the early 1980s.

Enforcement: Any activity related to enforcement action through the Water Court, including preparation of indexes, map generation, public meetings, regional/unit office review of enforcement projects, review of Authorizations to Change, Water Court post-decree changes, etc.

Certification: Any activity related to examining claims per an order from the Water

Court. Certifications take priority over all other activities.

Post-Decree Assistance: Any general assistance activity taking place following the issuance of a Water Court decree (not included in certification, re-examination or enforcement categories). The Water Court will direct what action is specifically to be taken. Hours in this category require the use of the Post Decree Work Report (see Section XIII.F.10).

Compact Commission Assistance: Any activity related to promoting negotiations but is not considered claim examination—attending meetings, verifying permits, field work, etc.

Training: Any activity considered training whether in a group setting or as an individual. This will also include any course work taken through the Helena College of Technology or free online courses.

Administration: Any activity that is part of the function of the Water Resource Division such as staff meetings, completing status reports, HB22 related activities, etc., that does not fall in a more specific category.

New Appropriations: Any activity under the New Appropriation program including assisting in the processing of groundwater certificates, permits, or authorizations to change.

State Projects: Any activity assisting the Water Projects Bureau such as monitoring of state dam projects.

Water Operations: Any activity associated with water operations or assisting water operations personnel from Helena, including floodplain measurements, dam safety, etc.

Water Management: Any activity assisting water management personnel from Helena. Also, activities related to water management such as attendance at watershed group meetings, field work falling under the goals of water management (assisting water commissioners), etc.

Complaints: Any activity related to a formal water right complaint including field investigations, mediation, etc.

Ownership Updates: Report any time actually processing ownership updates.

Records and Research: Any activity researching ownership, historical records, etc.

Leave and Holiday: Ah, seriously, if you need help here, you need vacation.

FIGURE IV-4

ADJUDICATION PROGRAM STATUS REPORT

[NAME] Regional/Unit Office

Report By: [NAME]

Date: MM/DD/YYYY

CLAIMS EXAMINATION ACTIVITY

**CURRENT BASIN Basin [NAME]
(BEGAN EXAMINING ON MM/DD/YYYY)**

PURPOSE	CLAIMS EXAMINE D ACTION PENDING	CLAIMS COMPLETE D THIS MONTH	TOTAL CLAIMS COMPLETE D TO DATE	TOTAL CLAIMS IN BASIN	PERCENTAG E COMPLETED
Irrigation	70	3	281	1230	22.85%
Stock	19	0	121	1218	9.93%
Domestic	0	0	17	86	19.77%
Other	0	0	90	233	38.63%
Total	89	3	509	2767	18.40%

ADJUDICATION PROGRAM STATUS REPORT

[NAME] Regional/Unit Office

Report By: [NAME]

Date: MM/DD/YYYY

HOURLY ACTIVITIES

Month/Year

Task	Hours
Claim Exam	30
Summary Report Prep	0
Re-Exam	0
Enforcement	0
Certification	208
Post Decree Assistance	24
Compact Commission Assistance	0
Training	8
Administration	31
New Appropriations	0
State Projects	8
Water Ops	0
Water management	
Complaints	1
Ownership updates	0
Records Research	8
Leave & Holiday	18
Total Hours	336

This report includes 168 hours of [NAME] time for this month.

This report includes 168 hours of [NAME] time for this month.

V. STANDARD EXAMINATION REMARKS

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A GUIDE TO EXAMINATION REMARKS

This guide is arranged alphabetically by remark category. Within each category, remarks are organized into sections. Remarks are either information/clarification remarks or issue remarks. Remarks may be “formatted” (see below) or they may be free text remarks for unique situations. Remarks are arranged sequentially by remark number. Each remark is coded with a letter designation which indicates a category.

Following each remark in this guide are references to the [Supreme Court Water Right Claim Examination Rules \(W.R.C.E.R.\)](#) and to the Claim Examination Manual when applicable. Claim Examination Manual (Man. Ref.) references where the remark is discussed.

Formatted Remarks: Within each remark category, most remarks are assigned Remark ID numbers, e.g., S25. Remark ID numbers identify a specific remark to be applied to a water right. Entering the formatted Remark ID into the Remark tab queries the remark from a library in the database. Any available variables in the remark can be populated (not all formatted remarks have variables). Variables in a formatted remark are indicated in this guide by being highlighted in gray.

Free Text Remarks: Remarks describing claim-specific or unique situations do not have formatted Remark ID numbers. Instead, these unique remarks are entered in the Remark tab in the database under the appropriate code, e.g., SN for a source name information remark or SNIS for a source name issue remark. By selecting the appropriate remark category abbreviation, the free text remark will print below the relevant element on a review abstract (see [Table V.1](#) and [V.2](#) below). Formatted remarks are preferred—if a situation occurs that may apply to other claims, ask a supervisor about the possibility of creating a new formatted remark.

Unpublished remarks: Miscellaneous remarks (coded as M or MS) and General Remarks (coded as R or RM) will only appear on internally generated documents and while accessing the database.

EXAMINATION MANUAL REMARK CATEGORIES

The remark categories are organized by water right element. For remarks to print in the appropriate location on abstracts, remarks must be identified with the proper category.

When coding a free text remark, choose the remark type according to whether the remark is an informational remark or an issue remark: ‘OW’ is an information remark for ownership; ‘OWIS’ is an issue remark for ownership.

For ease of use, any remark followed by a list of water right numbers, such as the decree exceeded remark (D5), should list the water right numbers in numerical order, without basin designation (000000-00 or 00000000).

REMARK CATEGORY SECTIONS

A. Information or Clarification Remarks: This section lists remarks which explain an aspect or feature of a water right element. Examples may include identifying a secondary point of diversion or noting a limited period of use agreement. Information or clarification remarks appear below the appropriate element on the review abstract (see example indicated by → below). In the department's summary report and on the decree abstract, the information remark will either print below the applicable element, or in a “remarks area” (see example indicated by → below) directly above the “Issue Box” (explained in next section).

REVIEW ABSTRACT:

Source: - MAGPIE CREEK
Source Type: SURFACE|WATER
→ ALSO KNOWN AS HOWELL SPRING DIVERSION (1910)
ALSO KNOWN AS FREEMAN CREEK (1900)

DECREE ABSTRACT:

→ THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON 10/18/1999: MAXIMUM ACRES, VOLUME.

THE FOLLOWING ISSUES WERE IDENTIFIED BY THE DNRC DURING ITS EXAMINATION OF THIS WATER RIGHT CLAIM. THESE ISSUES MAY REMAIN UNRESOLVED IF NO OBJECTIONS ARE FILED.

THE PERIOD OF DIVERSION FROM THE SOURCE INTO STORAGE CANNOT BE IDENTIFIED.

B. Issue Remarks: This section lists remarks identifying potential factual and/or legal issues discovered during claim examination. These remarks alert the claimant to potential issues during claimant contact prior to the Water Court issuing a decree. The issue remarks are also utilized by other parties reviewing claims. Careful consideration is required before applying an issue remark to a claim as statute requires the Water Court to resolve all issue remarks. These remarks will appear below the applicable element as underlined text on a review abstract (see example indicated by → below). Issue remarks will appear in the “Issue Box” of the department's summary report and the decree abstract.

REVIEW ABSTRACT:

Flow Rate: 1.88 CFS

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

DECREE ABSTRACT:

THE FOLLOWING ISSUES WERE IDENTIFIED BY THE DNRC DURING ITS EXAMINATION OF THIS WATER RIGHT CLAIM. THESE ISSUES MAY REMAIN UNRESOLVED IF NO OBJECTIONS ARE FILED.

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

THE TETON COUNTY WATER RESOURCES SURVEY (1962) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A FILED APPROPRIATION ON SPRING COULEE WITH A PRIORITY DATE PREDATING CASE NO. 388 TETON COUNTY.

C. Legacy and Archived Remarks: This section lists historical remarks generally no longer used in examination. Most remarks are from a former database system. These remarks have been updated or converted in the current Oracle database. Keep in mind these remarks are still in use by the Water Court and appear in decrees issued prior to December 2003. On occasion, when no current remark is adequate, these archived remarks may be used. Check with a supervisor or the Bureau Chief prior to using such remarks. Usually these remarks are used for a post-decree revision by the Water Court. In addition, some remarks are obsolete: “incidental use” remarks have been converted to purpose information remarks.

D. Water Court, Court Ordered, Post-Decree, Indian Reservation or Federal Right Remarks:

Water Court Remarks: In the objection resolution process by the Water Court, the water master makes revisions to a hard copy of the decree abstract and sends it to the department to update the database record. As these remarks are used frequently by the water masters when making revisions, the remarks have been assigned reference numbers and added to the remarks library. In addition to the Water Court remarks listed in this chapter, there are three general information remarks which are very broad in nature and can apply in nearly every category of remarks. Because of the nature of the following three remarks, they are mentioned here, and not categorized by element. **Water Court remarks are NOT for use in examination.**

G981 THE ANY ELEMENT MAY BE INCORRECT. THE ANY ELEMENT APPEARS TO BE ENTER VARIABLE. SEE DNRC MEMORANDUM DATED MM/DD/YYYY.

G985 THE ANY ELEMENT MAY BE INCORRECT. THE ANY ELEMENT APPEARS TO BE ENTER VARIABLE.

G986 THE WATER COURT HAS BEEN PRESENTED WITH EVIDENCE INDICATING THE ANY ELEMENT MAY BE INCORRECT. THE ANY ELEMENT MAY BE ENTER VARIABLE.

Court Ordered Remarks: **Court Ordered remarks are ONLY to be used during examination when the Court has issued an order specifying the use of such a remark.** Notice of these Court Orders will be distributed to the appropriate staff.

Post-decree Remarks: Post-decree remarks are used for correcting errors in decreed information found after the decree is issued. These remarks must be approved by the Water Court before they can be added to a decreed right because of due process notice requirements.

Indian Reservation and Federal Rights Remarks: Indian Reservation and Federal Rights remarks are generally specified by Court Order and pertain to a

specific basin(s). They are only to be used when specifically directed to do so (by a supervisor).

E. Database Generated Remarks: These remarks are automatically generated by the Oracle database. Database generated remarks may be added as a result of entering data into the Related Rights tab or by running standards at the conclusion of the examination of a claim. The Supreme Court Rules specifically direct the DNRC to add these standard remarks when certain situations exist.

Table V-1: Information/clarification and issue remark categories will print below the water right element on the review abstract. For the summary and decree abstracts, only the information remarks print below the water right element. Issue remarks print in the Issue Box:

<u>ELEMENT</u>	<u>CODE</u>	<u>USES</u>
OWNER	O/OWN	Ownership, Splits (O, OWN, OWIS)
PURPOSE	P/PU	Purpose (P, PU, PUIS)
SOURCE	S/SN	Source name (S, SN, SNIS)
SOURCE	S/ST	Source Type (S)
PRIORITY DATE	P/PR	Priority date (P, PR, PRIS)
FLOW RATE	F/FR	Flow rate (F, FR, FRIS, CG, FF, FRNS, FRST, FRSS)
VOLUME	V/VM	Volume (V, VM, VMIS, CG, VP)
MAXIMUM ACRES	M/MA	Maximum acres (M, MA, MAIS, C85)
PERIOD OF DIVERSION	P/PA	Period of Diversion (PA, PAIS, P160, P162)
PERIOD OF USE	P/PE	Period of use (P, PE, PEIS)
POINT OF DIVERSION	C/CV	Conveyance facility (C, CV, CVIS)
POINT OF DIVERSION	C/CX	Ditch name (C, CX, CXIS)
POINT OF DIVERSION	D/DM	Diversion means (D, DM, DMIS)
POINT OF DIVERSION	P/PD	Point of diversion (P, PD, PDIS)
POINT OF DIVERSION	S/SB	Subdivision Name (SB)
POINT OF DIVERSION	T/TI	Interbasin transfer
RESERVOIR	R/RN	Reservoir (R, RN, RNIS)
PLACE OF USE	P/PL	Place of use (P, PL, PLIS)
PLACE OF USE	S/SB	Subdivision Name (SB)
TYPE OF HISTORICAL RIGHT	P	(P, P355-P372, P988)

Table V-2: In most cases, except where noted, these remark categories will appear at the end of the review abstract, summary report, and decree abstract rather than under a specific element:

<u>USES</u>	<u>CODE</u>	<u>LOCATION ON ABSTRACT:</u>
Amendment to Claim (A, AM, AMIS)	A/AM	End of Abstract
Associated Rights (A, AS, ASIS)	A/AS	End of Abstract
Change Authorization (C, CTIN, CTIS)	C/CT/CA	End of Abstract
Conveyance Facility (C, CV, CVIS)	C/CV	Prints below element on Review Abstract. Issues print in box on Summary Report or Decree Abstract.
Decree Exceeded (D, DE, DEIS, D5)	D/DE	Varies. DE prints at the end of the Abstract. DEIS and D5 print below the flow rate element on the Review Abstract and in the box on the Summary Report or Decree Abstract.
Ditch Name (C, CX, CXIS)	C/CX	Prints below element on Review Abstract. Issues prints in box on Summary Report or Decree Abstract.
Duplicate Right (D, DU, DUIS)	D/DU	End of Abstract
Fee insufficient (F, FI, FIIS)	F/FI	End of Abstract
Gray area (for water court and late claims use only)	GA	End of Abstract
General information (G, GI, GIIS)	G/GI	End of Abstract
Implied claims (C, CI, CIIS)	C/CI	End of Abstract
Land Clarification (C, CL, CLIS)	C/CL	End of Abstract
Late claim (L, LC, LCIS)	L/LC	Prints below priority date element unless an L8 remark, which prints at end of Review, Summary, and Decree Abstracts. Issues print in the box on Summary Report or Decree Abstract
Multiple use (M)	M/MU	End of Abstract
Federal and Indian Reserved Water Right Remarks	P	End of Abstract
Supplemental rights (S, SR, SRIS)	S/SR	End of Abstract
Withdrawn claim (suppresses all other remarks except GI)	T/TC	End of Abstract
Transfer (aka Ownership Update) (T, TR)	T/TR	Does not print on Summary Report or Decree Abstract

* Interbasin Transfer Remarks (TI, T) are displayed at the end of the review abstract, and at the beginning of the summary report and decree abstract.

AMENDMENT (AM)

Added to denote an amendment made by the claimant.

A. INFORMATION OR CLARIFICATION REMARKS

- AM Free text amendment information remark.
- A5 THE PERIOD OF USE WAS AMENDED BY THE CLAIMANT ON MM/DD/YYYY. [Man. Ref. XI.A., Rule 34(f) W.R.C.E.R.]
- A6 THE PLACE OF USE WAS AMENDED BY THE CLAIMANT ON MM/DD/YYYY PURSUANT TO SECTION [85-2-233\(6\), MCA](#). [Man. Ref. XI.A.]
- A15 THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON MM/DD/YYYY: FLOW RATE, VOLUME, MAXIMUM ACRES, PLACE OF USE. [Man. Ref. XI.A.]
- A16 THE FLOW RATE AND VOLUME WERE AMENDED BY THE CLAIMANT ON MM/DD/YYYY PURSUANT TO [85-2-233\(6\), MCA](#). [Man. Ref. XI.A.]

B. ISSUE REMARKS

- AMIS Free text amendment issue remark.
- A19 AN AMENDMENT WAS SUBMITTED ON MM/DD/YYYY REQUESTING TO AMEND THE VOLUME TO 2.00 ACRE-FEET. DNRC REQUESTED A SIGNED AND NOTARIZED AMENDMENT FORM BE SUBMITTED. THE AMENDMENT HAS NOT BEEN IMPLEMENTED, AS IT HAS NOT BEEN PROPERLY FILED. [Man. Ref. XI.A.]
- A20 AN AMENDMENT WAS SUBMITTED ON MM/DD/YYYY, WHICH HAS NOT BEEN IMPLEMENTED. THIS AMENDMENT WAS NOT SUBMITTED BY THE OWNER LISTED IN THE DNRC RECORDS. [Man. Ref. XI.A.]
- A21 AN AMENDMENT WAS SUBMITTED ON MM/DD/YYYY, REQUESTING TO AMEND THE PLACE OF USE. THE AMENDMENT HAS NOT BEEN IMPLEMENTED AS IT HAS NOT BEEN SIGNED BY ALL OWNERS OF DNRC RECORD. [Man. Ref. XI.A.]

- A25 AN AMENDMENT WAS SUBMITTED ON MM/DD/YYYY. THE AMENDMENT WAS NOT IMPLEMENTED DUE TO DISAGREEMENT AMONG THE OWNERS OF RECORD. [Man. Ref. XI.A.]
- A26 AN AMENDMENT WAS SUBMITTED ON MM/DD/YYYY REQUESTING TO AMEND THE POINT OF DIVERSION AND PLACE OF USE. AS THIS IS A DECREED BASIN, THE AMENDMENT HAS NOT BEEN IMPLEMENTED. [Man. Ref. XI.A.]
- A27 AN AMENDMENT WAS SUBMITTED MM/DD/YYYY TO AMEND THE POINT OF DIVERSION, PRIORITY DATE, SOURCE, FLOW RATE, AND PURPOSE. THE AMENDMENT SUBSTANTIALLY CHANGES THE ORIGINALLY FILED STATEMENT OF CLAIM. [Man. Ref. XI.A.]
- A28 AN AMENDMENT WAS SUBMITTED ON MM/DD/YYYY TO **AMEND THE PLACE OF USE AND MAXIMUM ACRES**. THIS AMENDMENT WAS NOT SUBMITTED IN TIME FOR DNRC TO PROCESS PRIOR TO ISSUANCE OF THE WATER COURT **SUMMARY REPORT/DECREE**. [Man. Ref. XI.A.]

C. LEGACY AND ARCHIVED REMARKS

- AM1Z Legacy free text amendment information remark.
 AM2Z Legacy free text amendment information remark.
 AM3Z Legacy free text amendment information remark.
 AM4Z Legacy free text amendment issue remark.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL RIGHTS REMARKS

- A7 THE PLACE OF USE WAS AMENDED BY THE WATER COURT PURSUANT TO SECTION [85-2-233\(6\), MCA](#).
- A17 THE FLOW RATE AND VOLUME WERE AMENDED BY THE WATER COURT PURSUANT TO [85-2-233\(6\), MCA](#).

E. DATABASE GENERATED REMARKS

None in this category.

ASSOCIATED (AS)

Added to denote when multiple claims share particular elements.

A. INFORMATION OR CLARIFICATION REMARKS

- AS Free text associated right information remark.
- A30 THIS WATER RIGHT IS ASSOCIATED WITH WATER RIGHT NO. 000000-00. THEY ARE BASED ON THE SAME HISTORIC WATER RIGHT. [Man. Ref. VI.C.]
- A35 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY SHARE THE SAME RESERVOIR/POTHOLE LAKE/POINT OF DIVERSION. 000000-00, 000000-00, 000000-00. [Man. Ref. VI.C., VI.H.]
- A45 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY ARE PART OF A MANIFOLD SYSTEM WHICH SUPPLIES MUNICIPAL WATER TO THE BIG CITY. 000000-00, 000000-00, 000000-00. [Man. Ref. VI.C.]

B. ISSUE REMARKS

- ASIS Free text associated right issue remark.

C. LEGACY AND ARCHIVED REMARKS

- AS1Z Legacy free text associated right information remark.
- AS2Z Legacy free text associated right issue remark.
- A40 THIS WATER RIGHT IS ASSOCIATED WITH WATER RIGHT NO. 000000-00. THEY HAVE OVERLAPPING PLACES OF USE.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL RIGHTS REMARKS

None in this category.

E. DATABASE GENERATED REMARKS

The following remark is generated from information entered on the Related Rights tab in the database and does not have a code.

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED WHICH MEANS THEY SHARE THE SAME POINT OF DIVERSION/RESERVOIR/POTHOLE LAKE. 000000-00, 000000-00, 000000-00, 000000-00. [Man. Ref. VI.C., VI.F., VI.H.,VI.I.]

IMPLIED CLAIMS (CI)

Added to document the authority and source of data for generating an implied claim.

A. INFORMATION OR CLARIFICATION REMARKS

- CI Free text implied claim information remark.
- C5 THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 000000-00. [Rule 35(e) W.R.C.E.R., Man. Ref. XI.B.]
- R15 IMPLIED CLAIM NO. 000000-00 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. [Man. Ref. XI.B.]
- R16 THE IMPLIED CLAIMS LISTED FOLLOWING THIS STATEMENT WERE AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. 000000-00, 000000-00 [Man. Ref. XI.B.]

B. ISSUE REMARKS

- CIIS Free text implied claim issue remark.
- C8 PURSUANT TO 1982 POLICY, THIS IMPLIED CLAIM WAS GENERATED BASED ON INFORMATION IN CLAIM NO. 000000-00. CURRENT POLICY NOW REQUIRES IMPLIED CLAIMS BE AUTHORIZED BY THE WATER COURT. ON MM/DD/YYYY, A REQUEST FOR AUTHORIZATION TO CREATE AN IMPLIED CLAIM WAS SENT TO THE WATER COURT. AS OF MM/DD/YYYY, NO RESPONSE HAS BEEN RECEIVED FROM THE WATER COURT. [Man. Ref. XI.B.]
- C9 IT APPEARS MORE THAN ONE WATER RIGHT MAY BE INVOLVED. ON MM/DD/YYYY, A REQUEST FOR AUTHORIZATION TO CREATE AN IMPLIED CLAIM WAS SENT TO THE WATER COURT. AS OF MM/DD/YYYY, NO RESPONSE HAS BEEN RECEIVED FROM THE WATER COURT. [Man. Ref. XI.B.]

C. LEGACY AND ARCHIVED REMARKS

CI1Z Legacy implied claim information remark.

CI2Z Legacy implied claim issue remark.

C7 THIS IMPLIED CLAIM WAS CREATED BASED ON
INFORMATION IN CLAIM NO. 000000-00, PRIOR TO WATER
COURT AUTHORIZATION BEING REQUIRED.

**D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN
RESERVATION, OR FEDERAL RIGHTS REMARKS**

None in this category.

E. DATABASE GENERATED REMARKS

None in this category.

LAND DESCRIPTION CLARIFICATION (CL)

Added to retain claimed information relating to the Point of Diversion (POD) and Place of Use (POU) that cannot be otherwise entered in the database. Use a Point of Diversion or Place of Use remark if the information relates to only one of these two elements.

A. INFORMATION OR CLARIFICATION REMARKS

- CL Free text land description information remark.
- C10 POINT OF DIVERSION AND PLACE OF USE INCLUDES/ARE LOCATED IN GOVT LOTS 3 AND 4 IN SEC 36 TWP 99N RGE 99E MONTANA COUNTY. [Man. Ref. VI.E.]
- C15 POINT OF DIVERSION AND PLACE OF USE INCLUDES/ARE LOCATED IN CERTIFICATE OF SURVEY NO. 0000, MONTANA COUNTY. [Man. Ref. VI.E.]
- C25 POINT OF DIVERSION AND PLACE OF USE INCLUDES/ARE LOCATED IN MONTANA LODE, MINERAL SURVEY NO. 0000. [Man. Ref. VI.E.]
- C40 POINT OF DIVERSION AND PLACE OF USE INCLUDES LOTS 5, 6 AND 7 OF DOE ESTATES, FIRST ADDITION. [Man. Ref. VI.E.]
OR
POINT OF DIVERSION AND PLACE OF USE INCLUDES MONTANA SURVEY NO. 0000. [Man. Ref. VI.E.]
- C55 POINT OF DIVERSION AND PLACE OF USE ARE LOCATED IN HOMESTEAD ENTRY SURVEY NO. 0000. [Man. Ref. VI.E.]
OR
POINT OF DIVERSION AND PLACE OF USE ARE LOCATED IN TRACTS 2A AND 2B OF CERTIFICATE OF SURVEY NO. 0000. [Man. Ref. VI.E.]
- C64 THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE FORT PECK INDIAN RESERVATION. [Man. Ref. VI.E.]
- T104 THIS CLAIM IS LOCATED IN WHOLE OR IN PART WITHIN THE EXTERIOR BOUNDARY OF THE FLATHEAD INDIAN RESERVATION.

B. ISSUE REMARKS

- CLIS Free text land description issue remark.
- C80 THE NUMBER OF ACRES IRRIGATED, POINT OF DIVERSION AND PLACE OF USE LEGAL LAND DESCRIPTIONS MAY BE QUESTIONABLE. A PORTION OF SECTION 36 APPEARS TO BE ON STATE LAND. [Man. Ref. VI.E.]

C. LEGACY AND ARCHIVED REMARKS

- CL1Z Legacy free text land description information remark.
CL2Z Legacy free text land description issue remark.
- C60 THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION HAS BEEN ESTIMATED.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

- C6 THE ALIQUOT PART W2 IS ADDED TO THE DESCRIPTION ONLY TO FACILITATE LOCATION. THE ALIQUOT PART IS NOT AN ELEMENT OF THE LEGAL DESCRIPTION OF THE GOVERNMENT LOT.
- C64 THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE FORT PECK INDIAN RESERVATION.
- C85 THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 4000 ACRES. THE DNRC'S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.

E. DATABASE GENERATED REMARKS

None in this category.

CHANGE AUTHORIZATION (CT)

Added, usually by the new appropriations staff, to any water right where a change has been filed with the department.

A. INFORMATION OR CLARIFICATION REMARKS

CTIN Free text change authorization information remark.

C95 AUTHORIZATION TO CHANGE (SEVER/SELL) POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE COMPLETED MM/DD/YYYY. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. [Man. Ref. XI. F.]

C100 AUTHORIZATION TO CHANGE (SEVER/SELL) POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE OF A PORTION, 16 GPM UP TO 12 ACRE-FEET, COMPLETED MM/DD/YYYY. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE. [Man. Ref. XI. F.]

NOTE: When reviewing a claim with an associated change, the status of the change may have been denoted with a "Change Authorization", "Miscellaneous", and/or "Ownership" remark. Refer to "Special Provisions: Change in Appropriation Right: Examining Claims with Changes: Remarks Denoting a Change and the Change Status" (Section XI.F.3.d).

B. ISSUE REMARKS

CTIS Free text change authorization issue remark.

CA20 IT APPEARS THAT AN UNAUTHORIZED POST-JUNE 30, 1973 CHANGE IN POINT OF DIVERSION MAY BE REFLECTED IN THIS CLAIM. [Rule 39(c) W.R.C.E.R., Man. Ref. XI.F]

C. LEGACY AND ARCHIVED REMARKS

CT1Z Legacy free text change authorization information remark.

CT2Z Legacy free text change authorization issue remark.

CA01 APPLICATION TO CHANGE POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE RECEIVED MM/DD/YYYY. SEE APPLICATION NO. 000000-00.

- CA03 AUTHORIZATION TO CHANGE POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE ISSUED MM/DD/YYYY. NOTICE OF COMPLETION DUE MM/DD/YYYY. SEE AUTHORIZATION TO CHANGE NO. 000000-00.
- CA04 AUTHORIZATION TO CHANGE POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE OF A PORTION (16 GPM UP TO 12 ACRE-FEET) ISSUED MM/DD/YYYY. NOTICE OF COMPLETION DUE MM/DD/YYYY.
- CA05 AUTHORIZATION TO CHANGE POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE OF A PORTION (16 GPM UP TO 12 ACRE-FEET) ISSUED MM/DD/YYYY. NOTICE OF COMPLETION DUE MM/DD/YYYY. SEE AUTHORIZATION TO CHANGE NO. 000000-00.
- CA06 AUTHORIZATION TO CHANGE POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE, OF A PORTION (16 GPM UP TO 12 ACRE-FEET) COMPLETED MM/DD/YYYY. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. SEE AUTHORIZATION TO CHANGE NO. 000000-00.
- CA07 AUTHORIZATION TO CHANGE POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE COMPLETED MM/DD/YYYY. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE UPDATED IN THE CENTRALIZED RECORDS SYSTEM AFTER FINAL DECREE. SEE AUTHORIZATION TO CHANGE NO. 000000-00.
- CA08 AUTHORIZATION TO CHANGE POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE COMPLETED MM/DD/YYYY. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. SEE AUTHORIZATION TO CHANGE NO. 000000-00.
- CA09 AUTHORIZATION TO CHANGE POINT OF DIVERSION, PLACE OF USE, PURPOSE, PLACE OF STORAGE OF A PORTION (16 GPM UP TO 12 ACRE-FEET) COMPLETED MM/DD/YYYY. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE UPDATED IN THE CENTRALIZED RECORDS SYSTEM AFTER FINAL DECREE. SEE AUTHORIZATION TO CHANGE NO. 000000-00.
- CA10 REPLACEMENT WELL – FILE REFLECTS AUTHORIZATION TO CHANGE ISSUED MM/DD/YYYY. SEE AUTHORIZATION TO CHANGE NO. 000000-00.

CA11 REPLACEMENT WELL - AUTHORIZATION TO CHANGE ISSUED MM/DD/YYYY. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE UPDATED IN THE CENTRALIZED RECORD SYSTEM AFTER FINAL DECREE. SEE AUTHORIZATION TO CHANGE NO. 000000-00.

CA13 REPLACEMENT WELL - AUTHORIZATION TO CHANGE A PORTION 16 GPM UP TO 12 ACRE-FEET ISSUED MM/DD/YYYY. FILE REFLECTS RIGHT AS IT EXISTED PRIOR TO JULY 1973. APPROVED CHANGES WILL BE RECORDED AFTER FINAL DECREE.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

None in this category.

E. DATABASE GENERATED REMARKS

None in this category.

CONVEYANCE FACILITY (CV)

Added to clarify a unique Point of Diversion feature.

A. INFORMATION OR CLARIFICATION REMARKS.

- CV Free text conveyance facility information remark.
- C119 WATER DIVERTED FROM DOE CREEK IS CONVEYED TO THE SMITH RIVER, NORTH FORK WHICH IS USED AS A NATURAL CARRIER TO SECONDARY POINT(S) OF DIVERSION, DIVERSION NO. 2 AND 3. [Man. Ref. VI.F.]
- C120 WATER DIVERTED FROM DOE RIVER IS CONVEYED TO TWO DOE CREEK WHICH IS USED AS A NATURAL CARRIER TO A SECONDARY POINT OF DIVERSION IN THE SWSWSE SEC 36 TWP 99S RGE 99E MONTANA COUNTY. [Man. Ref. VI.D., VI. F.]
- C121 WATER DIVERTED FROM DOE CREEK IS CONVEYED TO MAD DOE CREEK WHICH IS USED AS A NATURAL CARRIER TO CONVEY WATER TO THE PLACE OF USE. [Man. Ref. VI.D.]
- C122 WATER STORED UNDER THIS RIGHT IS RELEASED FROM DOE RESERVOIR AND IS DIVERTED FROM DOE CREEK AT THE FOLLOWING SECONDARY POINTS OF DIVERSION: NENWSE SEC 36 TWP 99E RGE 99S, NWSENE SEC 36 TWP 99E RGE 99S AND SWSWNW SEC 36 TWP 99E RGE 99S, MONTANA COUNTY. [Man. Ref. VI.D., VI. F.]
- C123 WATER DIVERTED FROM COLLECTION DITCH IS CONVEYED TO DOE CREEK WHICH IS USED AS A NATURAL CARRIER TO SECONDARY POINTS OF DIVERSION IN THE NESWNW SEC 36 TWP 99N RGE 99E (MONTANA CANAL) AND THE NWSWNW SEC 36 TWP 99N RGE 99E (MONTANA DITCH). [Man. Ref. VI.D., VI. F.]
- C124 NORTH FORK DOE CREEK IS USED AS A NATURAL CARRIER TO CONVEY WATER FROM MAD DOE CREEK TO THE SECONDARY POINT(S) OF DIVERSION, DIVERSION NO. 2. [Man. Ref. VI.D., VI.F.]
- C125 WATER RELEASED FROM DOE RESERVOIR USES MAD DOE CREEK AS A NATURAL CARRIER TO CONVEY WATER TO A SECONDARY POINT OF DIVERSION IN THE NWNWNW SEC 36 TWP 99N RGE 99E MONTANA COUNTY. [Man. Ref. VI. F.]

- C126 WATER RELEASED FROM DOE RESERVOIR USES MAD DOE CREEK AS A NATURAL CARRIER TO CONVEY WATER TO THE PLACE OF USE. [Man. Ref. VI.D.]
- C127 WATER FROM DOE DITCH IS CONVEYED THROUGH COLLECTION DITCH TO THE PLACE OF USE. [Man. Ref. VI.D.]
- C130 TANK TRUCK USED TO CONVEY WATER. [Man. Ref. VI.D.]
- C135 THIS WATER RIGHT IS USED IN A MANIFOLDED GROUNDWATER SYSTEM IN CONJUNCTION WITH WATER RIGHT NO(S). 000000-00, 000000-00 AND 000000-00. [Man. Ref. VI.D., VI.G.]
- C138 THE POINT(S) OF DIVERSION HAS/HAVE BEEN CHANGED TO REFLECT THAT THIS RIGHT IS STORED IN CLARK CANYON RESERVOIR AND RELEASED FROM THE CLARK CANYON DAM BY THE CLARK CANYON WATER SUPPLY COMPANY. THE HISTORICALLY CLAIMED POINT(S) OF DIVERSION ARE SECONDARY AND IS/ARE LOCATED IN THE NENENE SEC 30 TWP 6S RGE 8W (JOHNSON DITCH) AND THE SESENE SEC 29 TWP 6S RGE 9W (SMITH DITCH) BEAVERHEAD COUNTY.
- C140 THIS WATER RIGHT CONSISTS OF THREE SPRINGS USED IN A MANIFOLDED GROUNDWATER SYSTEM. [Man. Ref. VI.D., VI.G.]
- C141 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT DIVERT GROUNDWATER BY MEANS OF A MANIFOLD SYSTEM CONSISTING OF THREE WELLS. 000000-00, 000000-00, 000000-00. [Man. Ref. VI.D., VI.G.]

B. ISSUE REMARKS

- CVIS Free text conveyance facility issue remark. [Man. Ref. VI.F.]
- C145 USE OF THE DOE DITCH TO CONVEY WATER TO THE PLACE OF USE MAY BE QUESTIONABLE. [Man. Ref. VI. F.]
- C150 THE CLAIMED CONVEYANCE DITCH CANNOT BE IDENTIFIED FROM AVAILABLE DATA. [Man. Ref. VI. F.]
- C155 THE CONVEYANCE DITCH HAS BEEN SEVERED BY HIGHWAY CONSTRUCTION AND CANNOT CONVEY WATER FROM THE SOURCE TO THE PLACE OF USE. [Man. Ref. VI. F.]

C. LEGACY AND ARCHIVED REMARKS

CV1Z Legacy free text conveyance facility information remark.
CV2Z Legacy free text conveyance facility information remark.
CV3Z Legacy free text conveyance facility issue remark.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

None in this category.

E. DATABASE GENERATED REMARKS

None in this category.

DITCH NAME (CX)

Ditch names have now been incorporated into the database in the Point of Diversion tab. The ditch name will appear on the abstract without adding a remark.

A. INFORMATION OR CLARIFICATION REMARKS

CX Free text ditch information remark.

B. ISSUE REMARKS

CXIS Free text ditch name issue remark.

C. LEGACY AND ARCHIVED REMARKS

CX1Z Legacy ditch name information remark.

CX2Z Legacy ditch name issue remark.

C160 DITCH NAME: REID DITCH
DITCH NAME: WARREN DITCH (STORAGE)

C161 DITCH NAME: FARMERS CANAL
DITCH NAME: STONE CANAL (STORAGE)

C165 DITCH NAME FOR DIVERSION NO. 1 IS: FRAZIER DITCH

C166 DITCH NAME FOR DIVERSION NO. 2 IS: STONE CANAL

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

None in this category.

E. DATABASE GENERATED REMARKS

None in this category.

DECREE EXCEEDED (DE)

Added to every claim in a decree exceeded situation.

A. INFORMATION OR CLARIFICATION REMARKS

DE Free text decree information remark.

B. ISSUE REMARKS

DEIS Free text decree issue remark. [Man. Ref. VII.C., VIII.C., IX.C.]

D5 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 150 MINER'S INCHES DECREED IN CASE NO. 0000, MONTANA COUNTY. 000000-00, 000000-00, 000000-00. [Man. Ref. VII.B., VIII.B., IX.B., X.C.]

C. LEGACY AND ARCHIVED REMARKS

DC1Z Legacy free text decreed stream – commissioner remark.
DE1Z Legacy free text decree exceeded information remark.
DE2Z Legacy free text decree exceeded issue remark.
DI1Z Legacy free text decree information remark.
DR1Z Legacy decreed right information remark.
DR2Z Legacy decreed right issue remark.
D7 This legacy remark was used to capture decreed right details: case no., original appropriator, source, priority date, miner's inches, rank no., project name, and comments. This information is now entered in the Claim History tab.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

None in this category.

E. DATABASE GENERATED REMARKS

None in this category.

DIVERSION MEANS (DM)

Added to identify additional means of diversion or in conjunction with "Other" means of diversion when no standard code exists.

A. INFORMATION OR CLARIFICATION REMARKS

- DM Free text diversion means information remark.
- D10 BUCKET USED AS AN ADDITIONAL MEANS OF DIVERSION. [Man. Ref. VI.G.]
- D15 MEANS OF DIVERSION INCLUDES A PIPELINE AND SLUICE BOX. [Man. Ref. VI.G.]
- D20 MEANS OF DIVERSION INCLUDES A SLUICE BOX, BUCKET, OR OTHER CONTAINER. [Man. Ref. VI.G.]
- D25 THE MEANS OF DIVERSION IS A WATERWHEEL. [Man. Ref. VI.G.]
- D35 PUMP IS SECONDARY MEANS OF DIVERSION. [Man. Ref. VI.G.]
- D36 PUMP LOCATED IN THE SENWSW SEC 36 TWP 99S RGE 99E IS A SECONDARY MEANS OF DIVERSION. [Man. Ref. VI.G.]
- D40 WATER COLLECTED IN DOE DITCH. [Man. Ref. VI.G.]
- D45 WATER COLLECTED IN DOE WASTE DITCHES IN THE N2 SEC 36 TWP 99N RGE 99E MONTANA COUNTY. [Man. Ref. VI.G.]
- D46 WATER IS COLLECTED AT VARIOUS LOCATIONS ALONG THE DOE DITCH FROM NENENE SEC 36 TWP 99N RGE 99E TO SWSWSW SEC 36 TWP 99N RGE 99E MONTANA COUNTY. [Man. Ref. VI.G.]

B. ISSUE REMARKS

- DMIS Free text diversion means issue remark. [Man. Ref. VI.G.]
- D50 THE CLAIMED MEANS OF DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA. [Man. Ref. VI.G.]

- D55 THE MEANS OF DIVERSION APPEARS TO BE INCORRECT. THE MEANS OF DIVERSION APPEARS TO BE A PUMP. [Man. Ref. VI.G.]
- D65 THE CLAIMED MEANS OF DIVERSION APPEARS TO/MAY BE INCORRECT AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. [Man. Ref. VI.G.]
- D70 TWO SEPARATE MEANS OF DIVERSION HAVE BEEN CLAIMED FOR THE POINT OF DIVERSION IN THE SESESE SEC 36 TWP 99N RGE 99E MONTANA COUNTY. [Man. Ref. VI.G.]
- D75 THE CLAIMS FOLLOWING THIS REMARK CLAIM DIFFERENT MEANS OF DIVERSION FOR WHAT APPEARS TO BE A SINGLE POINT OF DIVERSION IN THE NWNWNW SEC 36 TWP 99S RGE 99W MONTANA COUNTY. 000000-00, 000000-00, 000000-00. [Man. Ref. VI.G.]
- D80 NO MEANS OF DIVERSION WAS CLAIMED. [Man. Ref. VI.G.]

C. LEGACY AND ARCHIVED REMARKS

- DM1Z Legacy free text diversion means information remark.
DM2Z Legacy free test diversion means issue remark.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

None in this category.

E. DATABASE GENERATED REMARKS

None in this category.

DUPLICATE RIGHT (DU)

Added to claims that appear to be in duplicate or are redundant. Duplicate rights are identified when the claimed elements and supporting documentation provided are exactly the same on more than one statement of claim. Redundant rights are more difficult to identify. Many of the elements are the same on more than one statement of claim. The one element that will not be the same in a redundant situation is the priority date. See [Man. Ref. VI.J.3.h] for further examples of duplicate and redundant rights.

A. INFORMATION OR CLARIFICATION REMARKS

DU Free text duplicate or redundant information remark.

B. ISSUE REMARKS

DUIS Free text duplicate or redundant issue remark. [Man. Ref. VI.J.]

D85 THIS CLAIM APPEARS TO BE DUPLICATED BY CLAIM NO. 000000-00 WHICH IS BASED ON THE SAME FILED APPROPRIATION RIGHT. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. [Man. Ref. VI.J., VII.E.]

D91 CLAIM NOS. 000000-00 AND 000000-00 APPEAR TO BE DUPLICATE CLAIMS ON THE SAME HISTORIC APPROPRIATION OF WATER. CLAIM NO. 000000-00 REFLECTS A PRIORITY DATE OF MM/DD/YYYY AND CLAIM NO. 000000-00 REFLECTS A PRIORITY DATE OF MM/DD/YYYY. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. [Man. Ref. VI.J.]

D92 THIS CLAIM AND WATER RIGHT NO. 000000-00 APPEAR TO BE REDUNDANT/DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. [Man. Ref. VI.J.]

D93 CLAIM NOS. 000000-00 AND 000000-00 MAY BE REDUNDANT CLAIMS ON THE SAME HISTORIC APPROPRIATION OF WATER. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. [Man. Ref. VI.J., VII.E.]

D94 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE REDUNDANT/DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 000000-00, 000000-00, 000000-00. [Man. Ref. VI.J.]

- D95 THIS CLAIM APPEARS TO DUPLICATE CLAIM NO. 000000-00 FILED BY THE DOE IRRIGATION ASSOCIATION. [Man. Ref. VII.D., VII.F.]
- D96 THIS CLAIM APPEARS TO BE FOR WATER PROVIDED BY THE DOE IRRIGATION PROJECT UNDER CLAIM NO. 000000-00. THIS CLAIM APPEARS TO BE REDUNDANT. [Man. Ref. VI.J., VII.F.]
- D100 CLAIM NOS. 000000-00 AND 000000-00 ARE REDUNDANT CLAIMS ON THE SAME HISTORIC APPROPRIATION OF WATER. CLAIM NO. 000000-00 REFLECTS THE POST 1973 RIGHT AS AUTHORIZED BY AUTHORIZATION TO CHANGE 000000. IT APPEARS ONLY ONE WATER RIGHT, 000000-00, IS INVOLVED. [Man. Ref. VI.J.]

C. LEGACY AND ARCHIVED REMARKS

- DU1Z Legacy free text duplicate right information remark.
DU2Z Legacy free text duplicate right issue remark.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

None in this category.

E. DATABASE GENERATED REMARKS

The following database generated issue remark is printed from information entered in the Related Rights tab.

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. 000000-00, 000000-00. [Man. Ref. VII.E., VI.J.]

FEE INSUFFICIENT (FI)

Added to identify an insufficient claim filing fee or processing fee for a late claim.

A. INFORMATION OR CLARIFICATION REMARKS

FI Free text fee insufficient information remark.

B. ISSUE REMARKS

FIIS Free text fee insufficient issue remark.

F5 FILING FEE INSUFFICIENT TO COVER CLAIM. TOTAL AMOUNT DUE \$40.00. [Man. Ref. VI.A.]

F10 FILING FEE INSUFFICIENT TO COVER CLAIMS. TOTAL AMOUNT DUE \$120.00 FOR CLAIM NOS. 000000-00, 000000-00, 000000-00. [Man. Ref. VI.A.]

F15 FILING FEE INSUFFICIENT TO COVER IMPLIED CLAIM. TOTAL AMOUNT DUE \$40.00. [Man. Ref. XI.B.]

F20 FILING FEE INSUFFICIENT TO COVER IMPLIED CLAIMS. TOTAL AMOUNT DUE \$80.00 FOR CLAIM NOS. 000000-00, 000000-00. [Man. Ref. XI.B.]

F25 FILING FEE INSUFFICIENT TO COVER LATE CLAIM. TOTAL AMOUNT DUE \$40.00. [Man. Ref. VI.A., XI.C.]

F30 FILING FEE INSUFFICIENT TO COVER LATE CLAIMS. TOTAL AMOUNT DUE \$80.00 FOR CLAIM NOS. 000000-00, 000000-00. [Man. Ref. VI.A., XI.C.]

F35 PROCESSING FEE INSUFFICIENT TO COVER LATE CLAIM. TOTAL AMOUNT DUE \$150.00. [Man. Ref. VI.A., XI.C.]

C. LEGACY AND ARCHIVED REMARKS

FI1Z Legacy free text fee insufficient information remark.

FI2Z Legacy free text fee insufficient issue remark.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

None in this category.

E. DATABASE GENERATED REMARKS

None in this category.

FLOW RATE (FR)

Added to claims to clarify the flow rate or to identify unresolved issues. Applying standards also adds flow rate remarks to a claim.

A. INFORMATION OR CLARIFICATION REMARKS

- FR Free text flow rate information remark.
- F32 THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO THE GUIDELINE OF **99.00 GPM**. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION. [Man. Ref. X.B., X.C., Rule 29(g) W.R.C.E.R.]
- F37 THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNTS NECESSARY TO SUSTAIN THIS PURPOSE. THIS RIGHT SHALL CONTINUE TO BE UTILIZED IN ACCORDANCE WITH HISTORICAL PRACTICES. [Man. Ref. X.C]
- F39 THE FLOW RATE OF THIS WATER RIGHT HAS BEEN REDUCED TO THE 17 GPM PER ACRE GUIDELINE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION. [Man. Ref. VII.B.]
- F41 PRIMARILY A DIRECT FLOW SYSTEM; FLOW RATE RETAINED. [Man. Ref. VII.B., Rule 14(d) W.R.C.E.R.]
- F43 THE FLOW RATE OF THIS WATER RIGHT HAS BEEN REDUCED TO THE DOCUMENTED **123** GPM PER ACRE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION. [Man. Ref. VII.B.]
- F44 THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE. THE FLOW RATE EQUALS **123** GPM PER ACRE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION. [Man. Ref. VII.B.]
- F45 ENTIRE FLOW OF THE SOURCE AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY. [Man. Ref., VII.B., VIII.B., IX.B., X.B]
- F50 THIS RIGHT IS FOR **ONE-THIRD** THE FLOW OF **DOE CREEK** AS DESCRIBED IN CASE NO. **0000**, **MONTANA** COUNTY. [Man. Ref. VII.B., VIII.B., IX.B.]
- F56 **ENTIRE/ONE-FOURTH THE** FLOW OF **DOE CREEK**. [Man. Ref. VII.B., VIII.B., X.B.]

- F60 THE WATER RIGHTS FOLLOWING THIS STATEMENT HAVE AN UNDIVIDED INTEREST IN A SINGLE WATER RIGHT FOR 2.50 CFS/GPM. 000000-00, 000000-00, 000000-00. [Man. Ref. VII.B.]
- F65 UNDIVIDED ONE-THIRD INTEREST IN A SINGLE WATER RIGHT FOR 2.50 CFS/GPM. [Man. Ref. VII.B.]
- F75 CASE NO. 0000, MONTANA COUNTY DECREES THIS RIGHT AS AN UNDIVIDED ONE-THIRD INTEREST IN A SINGLE WATER RIGHT FOR 2.50 CFS/GPM. [Man. Ref. VII.B., X.C.]
- F76 THE WATER RIGHTS FOLLOWING THIS STATEMENT HAVE AN UNDIVIDED INTEREST IN A SINGLE WATER RIGHT FOR 2.50 CFS/GPM AS DECREED IN CASE NO. 0000, MONTANA COUNTY. 000000-00, 000000-00, 000000-00. [Man. Ref. VII.B.]
- F78 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT USE THE SAME PUMP. THE COMBINED FLOW RATE FOR THESE RIGHTS IS LIMITED TO THE HISTORICAL PUMP CAPACITY. 000000-00, 000000-00, 000000-00. [Man. Ref. VII.B.]
- F83 THE FLOW RATE OF THIS WATER RIGHT HAS BEEN REDUCED TO THE 17 GPM PER ACRE GUIDELINE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION. [Man. Ref. VII.B., Rule 14(d) W.R.C.E.R.]
- TRFL THE WATER RIGHT NUMBERS 000000-00, 00000000, 00000000 SHARE A FLOW RATE OF 10 GPM/CFS. THE WATER RIGHT WILL BE OPERATED IN THE FOLLOWING MANNER: XXXXXXXX. (Administrative Guideline No. 14)

B. ISSUE REMARKS

- FRIS Free text flow rate issue remark.
- F80 THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.
- F85 THE CLAIMED FLOW RATE WAS NOT EXAMINED AS NO FLOW RATE GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIM EXAMINATION RULES. [Man. Ref. VI.C., X.C.]

- F90 THE CLAIMED FLOW RATE EXCEEDS THE 150 MINER'S INCHES OF DOE CREEK DECREED IN CASE NO. 0000, MONTANA COUNTY. [Man. Ref. VII.B., VIII.B., IX.B., X.C.]
- F91 CASE NO. 0000, MONTANA COUNTY, DOES NOT SPECIFY A FLOW RATE; CLAIMED FLOW RATE RETAINED. [Man. Ref. VII.B.]
- F92 CASE NO. 0000, MONTANA COUNTY, DECREES A FLOW OF 150 MINER'S INCHES; NO FLOW RATE WAS CLAIMED. [Man. Ref. VII.B.]
- F93 CASE NO. 0000, MONTANA COUNTY, DOES NOT SPECIFY A FLOW RATE; NO FLOW RATE HAS BEEN CLAIMED. [Man. Ref. VII.B.]
- F95 CASE NO. 0000, MONTANA COUNTY, DECREES THE FLOW RATE AS MEASURED AT THE PLACE OF USE. THE FLOW RATE AT THE POINT OF DIVERSION IS UNKNOWN. [Man. Ref. VII.B.]
- F96 THE LOW FLOW RATE TO ACRES RATIO FOR THIS CLAIM, 2.30 GPM/ACRE, MAY INDICATE AN EXPANSION OF THE HISTORICAL RIGHT. CASE NO. 0000, MONTANA COUNTY, SPECIFICALLY DECREES A FLOW RATE OF ONE MINER'S INCH PER ACRE. [Man. Ref. VII.B.]
- F97 THE LOW FLOW RATE TO ACRES RATIO FOR THIS CLAIM, 2.30 GPM/ACRE, MAY INDICATE AN EXPANSION OF THE HISTORICAL RIGHT. CASE NO. 0000, MONTANA COUNTY, SPECIFICALLY DECREES 90.00 ACRES TO THIS RIGHT. [Man. Ref. VII.B.]
- F110 THE LOW FLOW RATE TO ACRES RATIO FOR THIS CLAIM, 2.30 GPM/ACRE, MAY INDICATE AN EXPANSION OF THE HISTORICAL RIGHT. [Man. Ref. VII.B.]
- F120 THE CLAIMED FLOW RATE EXCEEDS THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM WHICH IS 1.80 CFS. [Man. Ref. VII.B.]
- F134 THE CLAIMED FLOW RATE EXCEEDS THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM WHICH IS ESTIMATED TO BE 1.80 CFS. [Man. Ref. VII.B.]
- F135 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE DIVERSION AND CONVEYANCE FACILITIES. [Man. Ref. VII.B., VII.F., VIII.B., IX.B.]

- F145 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM. AVAILABLE DATA SUPPORT A FLOW RATE OF 2.50 CFS. [Man. Ref. VII.B., VIII.B., IX.B., X.C.]
- F150 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE PUMP CAPACITY. AVAILABLE DATA SUPPORT A FLOW RATE OF 98.50 GPM. [Man. Ref. VII.B., X.C.]
- F155 THE CLAIMED FLOW RATE IS 79.00 GPM PER ACRE. THE CLAIMED FLOW RATE CANNOT BE CONFIRMED. [Man. Ref. VII.B.]
- F156 THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. THE FLOW RATE SHOULD BE THE CAPACITY OF THE PUMP. WATER RIGHT 000000-00 FOR DOMESTIC USE HAS A DIFFERENT FLOW RATE. [Man. Ref. VII.B.]
- F157 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE GRAVITY FLOW DELIVERY SYSTEM. THE ACTUAL FLOW RATE APPEARS TO BE 88.50 GPM. [Man. Ref. VII.B.]
- F158 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE DITCH CAPACITY. AVAILABLE DATA SUGGEST THE DITCH CAPACITY IS 2.75 CFS. [Man. Ref. VII.B., VII.E.]
- F170 THE FLOW RATE HAS NOT BEEN EXAMINED AS NO QUANTIFIED FLOW RATE WAS CLAIMED. [Man. Ref. VII.B., VIII.B., IX.B.]
- F171 THE FLOW RATE HAS NOT BEEN EXAMINED AS NO QUANTIFIED FLOW RATE WAS CLAIMED. THE CLAIMS LISTED FOLLOWING THIS STATEMENT ARE ALL BASED ON THE SAME HISTORIC WATER RIGHT. 000000-00, 000000-00, 000000-00. [Man. Ref. VII.B., VIII.B., IX.B.]
- F172 NO QUANTIFIED FLOW RATE WAS CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM. [Man. Ref. VIII.B., IX.B.]
- F175 THE FLOW RATE MAY BE INCORRECT. ALL PARTIES IN THIS UNDIVIDED FLOW RATE INTEREST GROUP CANNOT BE IDENTIFIED. THE SUM OF THE UNDIVIDED INTEREST PORTIONS EQUALS 80%. [Man. Ref. VII.B.]

- F176 THE UNDIVIDED INTEREST PORTION OF THIS CLAIM MAY BE INCORRECT. THE SUM OF THE PORTIONS FOR THE CLAIMS IN THIS UNDIVIDED INTEREST EQUALS 143%. [Man. Ref. VII.B.]
- F177 THE FLOW RATE OF THIS CLAIM MAY BE INCORRECT. THE PARTIES IN THIS UNDIVIDED INTEREST GROUP HAVE CLAIMED DIFFERENT FLOW RATES. [Man. Ref. VII.B.]
- F180 FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE. [Man. Ref. VII.B., VII.D.]
- F185 THE CLAIMED FLOW RATE APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE. [Man. Ref. VII.B., VIII.B., IX.B., X.C.]
- F190 NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED. [Man. Ref. VII.B., VIII.B., IX.B., X.C.]
- F195 NO FLOW RATE HAS BEEN CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM. [Man. Ref. VIII.B., IX.B.]
- F200 THE TOTAL FLOW RATE CLAIMED ON THE IRRIGATION DISTRICT FORM DOES NOT EQUAL THE SUM OF THE INDIVIDUAL CLAIMED RIGHTS. [Man. Ref. VII.F.]
- F205 THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. [Man. Ref. VIII.B., IX.B.]
- F210 THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE. AVAILABLE DATA SUPPORT A FLOW RATE OF 24 GPM. [Man. Ref. VIII.B., IX.B.]
- F211 THE CLAIMED FLOW RATE APPEARS EXCESSIVE FOR A BUCKET MEANS OF DIVERSION. [Man. Ref. VIII.B.]
- F220 THE CLAIMED FLOW RATE EXCEEDS THE ESTIMATED AVERAGE ANNUAL FLOW OF THE SOURCE (3.50 CFS). [Man. Ref. X.B., X.C.]
- F225 THE CLAIMED FLOW RATE APPEARS TO/MAY BE HIGH FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. [Man. Ref. X.B., X.C.]
- F230 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE REASONABLE AND CUSTOMARY FLOW RATE FOR THIS

PURPOSE. AVAILABLE DATA SUPPORT AN ACTUAL FLOW RATE OF 2.41 CFS. [Man. Ref. X.B., X.C.]

- F231 US BUREAU OF MINES CIRCULAR NO. 0000 LISTS THE DIVERSION CAPACITY FOR THIS ORE PROCESSING FACILITY AT 99.99 GPM/CFS. [Man. Ref. X.B., X.C.]
- F240 THE CLAIMED FLOW RATE CANNOT BE CONFIRMED DUE TO A LACK OF DATA. [Man. Ref. X.B., X.C.]
- F245 THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF 30 GPM. [Man. Ref. X.B., X.C.]
- F250 INFORMATION IN THE CLAIM FILE DESCRIBES A HISTORIC FLOW RATE OF 35 MINER'S INCHES AND A VOLUME OF 40 ACRE-FEET PER YEAR. [Man. Ref. X.B., X.C.]
- F255 ACCORDING TO INFORMATION IN THE CLAIM FILE, THE CLAIMED FLOW RATE EXCEEDS THE CAPACITY OF THE CONVEYANCE SYSTEM. [Man. Ref. X.B., X.C.]
- F260 THE FLOW RATE FOR THIS WATER RIGHT WAS MEASURED AS 112 GPM DURING A FIELD INVESTIGATION CONDUCTED ON MM/DD/YYYY. [Man. Ref. X.B., X.C.]
- G30 A FIELD INVESTIGATION CONDUCTED ON MM/DD/YYYY FOUND INFORMATION DIFFERENT FROM THAT CLAIMED FOR PLACE OF USE, POINT OF DIVERSION, AND FLOW RATE. SEE CLAIM FILE FOR ADDITIONAL INFORMATION. [Man. Ref. IV.G.]
- G62 THERE HAS BEEN A CONSOLIDATION OF INDIVIDUAL HISTORIC WATER RIGHTS, LISTED BELOW, THAT NOW ALL REFLECT A COMBINED PLACE OF USE OF THESE WATER RIGHTS TO BE IRRIGATED FROM A COMBINATION OF ALL THE POINTS OF DIVERSION. THERE MAY BE A DISTRIBUTION ISSUE AS THIS CONSOLIDATION IMPLIES A COMBINED FLOW RATE FROM EACH POINT OF DIVERSION AND IT IS UNCLEAR IF THE DITCHES ARE CAPABLE OF DELIVERING THE COMBINED FLOW RATE. 000000-00, 000000-00, 000000-00. [Man. Ref. VII.G.]

C. LEGACY AND ARCHIVED REMARKS

- FR1Z Legacy free text flow rate information remark.
FR2Z Legacy free text flow rate information remark.
FR3Z Legacy free text flow rate information remark.

- FR4Z Legacy free text flow rate issue remark.
- F38 THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO THE GUIDELINE OF 99.00 GPM. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.
- F40 COMPUTER RECORD CAPACITY FOR FLOW RATE FILLED. FLOW RATE IS 2000 CFS.

The following remarks were created so post-decree corrections could be made to abstracts that were generated prior to 2001 where legacy standards were applied to the abstracts and not actually added to the database. These remarks are used by adjudication staff in post-decree corrections.

- CG1 THE FLOW RATE OF THIS WATER RIGHT HAS BEEN REDUCED TO THE 17 GPM PER ACRE GUIDELINE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.
- CG2 NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.
- CG3 NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.
- CG4 NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.
- CG5 NO FLOW RATE HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION.
- CG6 NO FLOW RATE HAS BEEN DECREED FOR THIS NATURAL OVERFLOW METHOD OF IRRIGATION.
- CG7 THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 65 GPM PER ACRE.
- CG10 THE FLOW RATE AND VOLUME ARE LIMITED TO THE MINIMUM AMOUNTS NECESSARY TO SUSTAIN THIS PURPOSE. THIS RIGHT SHALL CONTINUE TO BE UTILIZED IN ACCORDANCE WITH HISTORICAL PRACTICES.
- CG12 THE FLOW RATE AND VOLUME OF THIS WATER RIGHT ARE LIMITED TO THE MINIMUM AMOUNTS NECESSARY FOR FIRE PROTECTION PURPOSES.

The following archived standard remarks have been replaced in order to comply with Supreme Court Rules issued December 6, 2006. These remarks were applied prior to April 5, 2007, and are no longer used.

- FF002 NO FLOW RATE HAS BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.
- FF003 NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.
- FF006 NO FLOW RATE HAS BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM.
- FRNS THE FLOW RATE OF THIS WATER RIGHT HAS BEEN REDUCED TO THE 17 GPM PER ACRE GUIDELINE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

- F81 THE WATER COURT HAS DETERMINED THAT A FLOW RATE QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.
- F100 THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR ADMINISTRATIVE STOCK WATERING PURPOSES AT THE RATE OF 22.5 GALLONS/HEAD/DAY FOR PACK STOCK.
- G971 A LATE OBJECTION HAS BEEN FILED TO THE FLOW RATE OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.

E. DATABASE GENERATED REMARKS

- F84 THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS 220 GPM PER ACRE. [Man. Ref. VII.B., Rule 14(d) W.R.C.E.R.]
- FF004 NO FLOW RATE HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION. [Man. Ref. VII.B., Rule 14(d) W.R.C.E.R.] (*Standards No. 4*)

- FF005 NO FLOW RATE HAS BEEN DECREED FOR THIS NATURAL OVERFLOW METHOD OF IRRIGATION. [Man. Ref. VII.B., Rule 14(d) W.R.C.E.R.] (*Standards No. 5*)
- FF007 A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. [Man. Ref. VII.B., VIII.B., X.C., Rule 19(b), 29(c) W.R.C.E.R.] (*Standards No. 2*)
- FF007A A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE. [Man. Ref. IX.B., Rule 14(d), 24(b) W.R.C.E.R.] (*Standards No. 7A*)
- FF008 A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING. [Man. Ref. VII.B., Rule 14(d) W.R.C.E.R.] (*Standards No. 3*)
- FF009 A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE. [Man. Ref. IX.B.] (*Standards No. 7*)
- FRST THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO THE GUIDELINE OF 17 GPM PER ACRE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION. [Man. Ref. VIII.B., Rule 14(d) W.R.C.E.R.] (*Standards No. 14*)
- FRSS THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS _____ GPM PER ACRE. [Man. Ref. VII.B., VII.F., Rule 14(d) W.R.C.E.R.] (*Standards No. 13*)

GENERAL INFORMATION (GI)

Added to present information pertaining to the claim or claim file as a whole rather than to any single element or issue.

A. INFORMATION OR CLARIFICATION REMARKS

- GI General information remark.
- G20 THIS WATER RIGHT IS PRESUMED TO NOT BE ABANDONED PURSUANT TO [85-2-227, MCA](#). [Man. Ref. VI.C., X.B., Rule 27(e) W.R.C.E.R.]
- G24 THIS CLAIMED WATER RIGHT HAS BEEN WITHDRAWN AS IT WAS DUPLICATED BY WATER RIGHT NO. 000000-00. [Man. Ref. XI.E.]
- G26 THE COMPLETE SET OF DOCUMENTATION, MAPS AND OTHER RELATED MATERIALS CAN BE OBTAINED BY REVIEWING FILE NO. 000000-00. [Man. Ref. VII.F.]
- G27 THIS TERMINATED POWDER RIVER DECLARATION WAS NOT EXAMINED AS IT APPEARS TO BE THE SAME AS CLAIM NO. 000000-00.
- G55 ON MM/DD/YYYY A REQUEST FOR ASSISTANCE ON THIS CLAIM WAS SENT TO THE WATER COURT. AS OF THIS DATE NO RESPONSE HAS BEEN RECEIVED FROM THE WATER COURT. [Man. Ref. XI.B.]
- CC THIS WATER RIGHT IS INCLUDED IN WATER COURT CERTIFICATION CASE NO. WC-YYYY-01. [Man. Ref. XI.G.]
(Note: This remark is for internal purposes and will not print on any abstracts. Its purpose is to identify certification cases during summary preparation.)
- M90 PURSUANT TO WATER COURT ORDER, THIS CLAIM HAS NOT BEEN EXAMINED IN ACCORDANCE WITH MONTANA SUPREME COURT RULES. [Man. Ref. VI.I.]

B. ISSUE REMARKS

- GIIS General Information issue remark. [Man. Ref. X.B.]
- G30 A FIELD INVESTIGATION CONDUCTED ON MM/DD/YYYY FOUND INFORMATION DIFFERENT FROM THAT CLAIMED FOR PLACE OF USE, POINT OF DIVERSION, AND FLOW RATE. SEE

CLAIM FILE FOR ADDITIONAL INFORMATION. [Man. Ref. IV.F., IV.G.]

G32 CLAIM WAS IMPROPERLY DESIGNATED TO BASIN 40B. CLAIM WAS NOT INCLUDED IN THE BASIN 41C TEMPORARY PRELIMINARY DECREE ISSUED MM/DD/YYYY. [Man. Ref. VI.F., Rule 8(b) W.R.C.E.R.]

G33 CLAIM WAS IMPROPERLY DESIGNATED TO BASIN 43A AND WAS INCLUDED IN THE TEMPORARY PRELIMINARY DECREE ISSUED MM/DD/YYYY. CLAIM WAS NOT INCLUDED IN THE BASIN 43B TEMPORARY PRELIMINARY DECREE ISSUED MM/DD/YYYY. [Man. Ref. VI.F.]

G34 CLAIM WAS IMPROPERLY DESIGNATED TO BASIN 43A AND WAS INCLUDED IN THE TEMPORARY PRELIMINARY DECREE ISSUED MM/DD/YYYY. [Man. Ref. VI.F.]

G36 THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. 000000-00, 000000-00, 000000-00. [Man. Ref. VII.B.]

G60 THERE HAS BEEN A CONSOLIDATION OF INDIVIDUAL HISTORIC WATER RIGHTS, LISTED BELOW, THAT NOW ALL REFLECT A COMBINED PLACE OF USE OF THESE WATER RIGHTS TO BE IRRIGATED FROM A COMBINATION OF ALL THE POINTS OF DIVERSION. THERE MAY BE A DISTRIBUTION ISSUE AS THIS CONSOLIDATION IMPLIES A SHARING OF PRIORITY DATES AT EVERY POINT OF DIVERSION. 000000-00, 000000-00, 000000-00. [Man. Ref. VII.G.]

G62 THERE HAS BEEN A CONSOLIDATION OF INDIVIDUAL HISTORIC WATER RIGHTS, LISTED BELOW, THAT NOW ALL REFLECT A COMBINED PLACE OF USE OF THESE WATER RIGHTS TO BE IRRIGATED FROM A COMBINATION OF ALL THE POINTS OF DIVERSION. THERE MAY BE A DISTRIBUTION ISSUE AS THIS CONSOLIDATION IMPLIES A COMBINED FLOW RATE FROM EACH POINT OF DIVERSION AND IT IS UNCLEAR IF THE DITCHES ARE CAPABLE OF DELIVERING THE COMBINED FLOW RATE. 000000-00, 000000-00, 000000-00. [Man. Ref. VII.B., VII.G.]

G64 THERE HAS BEEN A CONSOLIDATION OF INDIVIDUAL HISTORIC WATER RIGHTS, LISTED BELOW, THAT NOW ALL

REFLECT A COMBINED PLACE OF USE OF THESE WATER RIGHTS TO BE IRRIGATED FROM A COMBINATION OF ALL THE POINTS OF DIVERSION. THERE MAY BE A DISTRIBUTION ISSUE AS NOT ALL POINTS OF DIVERSION CAN DELIVER WATER TO ALL OF THE COMBINED PLACE OF USE. 000000-00, 000000-00, 000000-00. [Man. Ref. VI.F., VII.G.]

G66 THERE HAS BEEN A CONSOLIDATION OF INDIVIDUAL HISTORIC WATER RIGHTS, LISTED BELOW, WHICH NOW REFLECT A COMBINED PLACE OF USE TO BE IRRIGATED FROM MULTIPLE POINTS OF DIVERSION. THERE MAY BE A DISTRIBUTION ISSUE AS THIS CONSOLIDATION IMPLIES A SHARING OF PRIORITY DATES AT EVERY POINT OF DIVERSION. THIS CLAIM MAY ALSO REFLECT AN EXPANSION OF HISTORIC BENEFICIAL USE. 000000-00, 000000-00, 000000-00. [Man. Ref. VII.G.]

G68 THERE HAS BEEN A CONSOLIDATION OF INDIVIDUAL HISTORIC WATER RIGHTS, LISTED BELOW, THAT NOW ALL REFLECT A COMBINED PLACE OF USE OF THESE WATER RIGHTS TO BE IRRIGATED FROM A COMBINATION OF ALL THE POINTS OF DIVERSION. THERE MAY BE DISTRIBUTION ISSUE AS THIS CONSOLIDATION IMPLIES A POTENTIAL EXPANSION OF DITCHES, EXPANSION OF THE WATER RIGHTS, AND NON-PERFECTION OF RIGHTS. 000000-00, 000000-00, 000000-00. [Man. Ref. VII.G.]

M8 PURSUANT TO WATER COURT ORDER, DATED MM/DD/YYYY, THIS CLAIM HAS NOT BEEN EXAMINED AS THE CLAIM INVOLVES TRIBAL OR ALLOTTED TRUST LANDS OR FEE LAND OWNED BY THE TRIBE. [Man. Ref. VI.I.]

M9 PURSUANT TO WATER COURT ORDER DATED MM/DD/YYYY, THIS CLAIM HAS NOT BEEN EXAMINED UNDER THE SUPREME COURT WATER RIGHT CLAIM EXAMINATION RULES AS THE CLAIMED TYPE OF HISTORICAL RIGHT IS RESERVED. [Man. Ref. VI.I.]

M30 PURSUANT TO WATER COURT ORDER DATED MM/DD/YYYY, THIS CLAIM HAS NOT BEEN EXAMINED UNDER THE WATER RIGHT CLAIM EXAMINATION RULES AS THE CLAIMED TYPE OF HISTORICAL RIGHT IS RESERVED. [Man. Ref. VI.I.]

M31 THIS CLAIM BY AN INDIVIDUAL AND BASED ON STATE LAW WAS EXAMINED PURSUANT TO WATER COURT ORDER DATED MM/DD/YYYY AND PRIOR TO THE TRANSFER OF THIS CLAIM TO THE CROW TRIBE. [Man. Ref. VI.I.]

M80 PURSUANT TO WATER COURT ORDER DATED MM/DD/YYYY, THIS CLAIM HAS NOT BEEN EXAMINED UNDER THE WATER RIGHT CLAIM EXAMINATION RULES AS THE CLAIMANT IS THE CROW TRIBE OR THIS CLAIM IS HELD IN TRUST FOR THE CROW TRIBE. [Man. Ref. VI.I.]

C. LEGACY AND ARCHIVED REMARKS

G11Z Legacy free text general information remark.
G12Z Legacy free text general information remark.
G13Z Legacy free text general information issue remark.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

CC10 THIS WATER RIGHT CLAIM WAS MODIFIED BY THE MONTANA WATER COURT IN A CERTIFICATION ACTION PURSUANT TO SECTION 85-2-406(2)(b), MCA.

G35 CLAIM WAS NOT INCLUDED IN THE BASIN 40A TEMPORARY PRELIMINARY DECREE ISSUED MM/DD/YYYY.

G40 ON MM/DD/YYYY DNRC FILED A MEMO STATING ANY ELEMENT IS INCORRECT.

G50 THE CLAIMED IRRIGATED ACRES AND PLACE OF USE HAVE BEEN RE-EXAMINED BY THE DNRC UNDER MONTANA WATER COURT ORDER DATED AUGUST 29, 1997. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

The following remarks were used during re-examination of irrigation claims within Judith River Basin (41S):

G965 THE TIMELY FILED OBJECTION OF JOHN DOE WAS AMENDED BY JANE DOE, SUCCESSOR TO INCLUDE POINT OF DIVERSION AND PLACE OF USE. BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHO'S RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

G970 THE TIMELY FILED OBJECTION OF JOHN DOE WAS AMENDED BY JANE DOE, SUCCESSOR TO INCLUDE POINT OF DIVERSION. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHO'S RIGHTS

MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

- G971 A LATE OBJECTION HAS BEEN FILED TO THE POINT OF DIVERSION OF THIS WATER RIGHT CLAIM. IT WILL BE RESOLVED DURING THE ADJUDICATION OF OBJECTIONS TO THE PRELIMINARY DECREE.
- G980 THE POINT OF DIVERSION MAY BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NWNENE SEC 36 TWP 99N RGE 99W MONTANA COUNTY. SEE DNRC MEMORANDUM DATED MM/DD/YYYY.
- G981 THE ANY ELEMENT MAY BE INCORRECT. THE ANY ELEMENT APPEARS TO BE ENTER VARIABLE. SEE DNRC MEMORANDUM DATED MM/DD/YYYY.
- G985 THE ANY ELEMENT MAY BE INCORRECT. THE ANY ELEMENT APPEARS TO BE ENTER VARIABLE.
- G986 THE WATER COURT HAS BEEN PRESENTED WITH EVIDENCE INDICATING THE ANY ELEMENT MAY BE INCORRECT. THE ANY ELEMENT MAY BE ENTER VARIABLE.
- G995 ALTHOUGH NOT OBJECTED TO, THE PLACE OF USE WAS CHANGED TO REFLECT THE REDUCTION/INCREASE IN MAXIMUM ACRES IRRIGATED.

E. DATABASE GENERATED REMARKS

None in this category.

GENERAL REMARK (Unpublished) (RM)

Added for internal use information within the department. These remarks are suppressed from printing on decree abstracts.

A. INFORMATION OR CLARIFICATION REMARKS

- RM Free text general information (unpublished) remark.
- R5 PARENT FILE FOR THIS RIGHT IS 000000-00. [Man. Ref. VII.F.]

B. ISSUE REMARKS

None in this category.

C. LEGACY AND ARCHIVED REMARKS

- RM1Z Legacy free text general information (unpublished) remark.
- RM2Z Legacy free text general issue (unpublished) remark.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

- RM THIS WATER RIGHT AND LATE CLAIM NO. 000000-00 ARE MULTIPLE USES OF THE SAME RIGHT. A MULTIPLE USE REMARK NEEDS TO BE ADDED TO THIS RIGHT. THE WATER RIGHT NUMBERS TO BE INCLUDED IN THE REMARK ARE 000000-00 and 000000-00.
- RM THIS WATER RIGHT AND LATE CLAIM NO. 000000-00 ARE MULTIPLE USES OF THE SAME RIGHT. THIS LATE CLAIM NUMBER NEEDS TO BE INCLUDED IN THE MULTIPLE USE REMARK.
- RMIS THIS WATER RIGHT AND LATE CLAIM NO. 000000-00 ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. A DECREE EXCEEDED REMARK NEEDS TO BE ADDED TO THIS RIGHT. INFORMATION REQUIRED FOR THIS REMARK IS: 43 MINERS INCHES; CASE NO. 0000; WATER RIGHT NUMBERS 000000-00, 000000-00.

- RMIS THIS WATER RIGHT AND LATE CLAIM NO. 000000-00 ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THIS LATE CLAIM NUMBER NEEDS TO BE INCLUDED IN THE DECREE EXCEEDED REMARK.
- RM THIS WATER RIGHT AND LATE CLAIM NO. 000000-00 ARE SUPPLEMENTAL. A RELATED RIGHTS RELATIONSHIP NEEDS TO BE CREATED. INFORMATION REQUIRED FOR THIS REMARK IS 999.00 TOTAL ACRES; WATER RIGHT NUMBERS 000000-00, 000000-00, 000000-00, 000000-00.
- RM THIS LATE CLAIM HAS BEEN DETERMINED SUPPLEMENTAL TO DECREED RIGHTS IN THIS BASIN. A RELATED RIGHTS RELATIONSHIP NEEDS TO BE CREATED. INFORMATION REQUIRED FOR THIS REMARK IS: 999.00 TOTAL ACRES; WATER RIGHT NUMBERS 000000-00, 000000-00, 000000-00, 000000-00.
- RM THIS WATER RIGHT AND LATE CLAIM NO. 000000-00 ARE SUPPLEMENTAL. THIS LATE CLAIM NUMBER NEEDS TO BE INCLUDED IN THE RELATED RIGHTS RELATIONSHIP.
- RM THIS LATE CLAIM HAS BEEN DETERMINED SUPPLEMENTAL TO DECREED WATER RIGHT NOS. 000000-00, 000000-00, 000000-00. THIS LATE CLAIM NUMBER NEEDS TO BE INCLUDED IN THE RELATED RIGHTS RELATIONSHIP.

E. DATABASE GENERATED REMARKS

None in this category.

GRAY AREA (GA)

During the verification phase of claim review, gray area remarks were used to identify issues. Gray area remarks are also added to decree abstracts by the Water Court. Do not change or delete a gray area remark authorized by a water master since July 15, 1987 without clearing it with the master.

A. INFORMATION OR CLARIFICATION REMARKS

None in this category.

B. ISSUE REMARKS

None in this category.

C. LEGACY AND ARCHIVED REMARKS

GA1Z Legacy gray area information remark.
GA2Z Legacy gray area issue remark.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

None in this category.

E. DATABASE GENERATED REMARKS

None in this category.

INTERBASIN TRANSFER (TI)

Added to claims to be decreed as interbasin transfers.

A. INFORMATION OR CLARIFICATION REMARKS

TI Free text interbasin transfer information remark.

Surface Water:

T10 THIS APPROPRIATION OF WATER TAKES WATER FROM THE JUDITH RIVER DRAINAGE (BASIN 41S) AND USES IT IN THE ARROW CREEK DRAINAGE (BASIN 41R). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN. [Man. Ref. VI.F., Rule 8(e) W.R.C.E.R.]

T15 THIS APPROPRIATION OF WATER TAKES WATER FROM THE JUDITH RIVER DRAINAGE (BASIN 41S) AND USES IT IN THE JUDITH RIVER DRAINAGE (BASIN 41S) AND THE ARROW CREEK DRAINAGE (BASIN 41R). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN. [Man. Ref. VI.F., Rule 8(e) W.R.C.E.R.]

Groundwater:

T20 THIS APPROPRIATION OF WATER TAKES GROUNDWATER FROM THE WILLOW CREEK DRAINAGE (BASIN 41N). THIS USE MAY POTENTIALLY AFFECT WATER RIGHTS IN THE MARIAS RIVER DRAINAGE (BASIN 41P). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER BASIN. [Man. Ref. VI.F.]

B. ISSUE REMARKS

T21 THIS INTERBASIN TRANSFER CLAIM WAS NOT INCLUDED IN THE 41S BASIN TEMPORARY PRELIMINARY DECREE ISSUED MM/DD/YYYY. [Man. Ref. VI.F.]

C. LEGACY AND ARCHIVED REMARKS

TI1Z Legacy interbasin transfer information remark.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

None in this category.

E. DATABASE GENERATED REMARKS.

Interbasin Transfer Notice Remark – This remark is generated automatically. It will appear at the top of the Decree Abstract of the basin containing the Place of Use (POU).

FOR THE CURRENT STATUS OF THE POINT OF DIVERSION BASIN, CONTACT THE MONTANA WATER COURT OR THE DNRC AS INDICATED IN THE DOCUMENT ENTITLED “NOTICE OF ENTRY OF TEMPORARY PRELIMINARY DECREE AND NOTICE OF AVAILABILITY.”

LATE CLAIM (LC)

Added to identify the type of subordination for 'A' late claims and 'B' late claims.

A. INFORMATION OR CLARIFICATION REMARKS

- LC Free text late claim information remark.
- L5 CLAIM FILED LATE MM/DD/YYYY. AS MANDATED BY SECTION [85-2-221\(3\), MCA](#), THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS. [Man. Ref. XI.C., Rule 36(d) W.R.C.E.R.]
- L6 CLAIM FILED LATE MM/DD/YYYY. AS MANDATED BY SECTION [85-2-221\(3\), MCA](#), THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW. [Man. Ref. XI.C., Rule 36(d) W.R.C.E.R.]
- L8 CLAIM FILED MM/DD/YYYY. THIS RIGHT IS AN EXEMPT RIGHT VOLUNTARILY FILED UNDER SECTION [85-2-222, MCA](#). [Man. Ref. XI.C., Rule 36(d) W.R.C.E.R.]

B. ISSUE REMARKS

- LCIS Free text late claim issue remark.
- L7 CLAIM FILED LATE MM/DD/YYYY. IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS CLAIM MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION [85-2-221, MCA](#). [Man. Ref. XI.C., Rule 36(d) W.R.C.E.R.]
- L10 THIS LATE CLAIM IS IN A DRAINAGE WHICH MAY BE CLOSED TO FURTHER APPROPRIATION PURSUANT TO A COMPACT RATIFIED BY THE LEGISLATURE PRIOR TO JULY 1, 1993. [Man. Ref. XI.C.]
- L11 IT IS UNCLEAR WHETHER THIS CLAIM SHOULD BE CONSIDERED LATE. THE MAP AND DOCUMENTATION WAS FILED ON MM/DD/YYYY. THE IRRIGATION CLAIM WAS INADVERTENTLY RETAINED BY THE CLAIMANT AND WAS

FILED WITH THE DEPARTMENT AGAIN ON MM/DD/YYYY. [Man.
Ref. XI.C.]

C. LEGACY AND ARCHIVED REMARKS

L61Z Legacy late claim information remark.
LC1Z Legacy late claim issue remark.

**D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN
RESERVATION, OR FEDERAL REMARKS**

None in this category.

E. DATABASE GENERATED REMARKS

None in this category.

MAXIMUM ACRES (MA, MAIS)

Added to claims with possible acreage issues. See also the Place of Use category for claims with an irrigation component which imply maximum acres issues.

A. INFORMATION OR CLARIFICATION REMARKS

MA Free text maximum acres information remark.

B. ISSUE REMARKS

MAIS Free text maximum acres issue remark.

M100 THE MAXIMUM ACRES CLAIMED MAY BE QUESTIONABLE. THE SUM OF THE PARCEL ACRES IS 12,350.00. [Man. Ref. VII.D.]

C. LEGACY AND ARCHIVED REMARKS

MA1Z Legacy maximum acres information remark.

MA2Z Legacy maximum acres issue remark.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

C85 THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS 120.00 ACRES. THE DNRC'S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.

G965 THE TIMELY FILED OBJECTION OF JOHN DOE WAS AMENDED BY JANE DOE, SUCCESSOR TO INCLUDE POINT OF DIVERSION AND PLACE OF USE. BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHO'S RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

G995 ALTHOUGH NOT OBJECTED TO, THE PLACE OF USE WAS CHANGED TO REFLECT THE REDUCTION/INCREASE IN MAXIMUM ACRES IRRIGATED.

E. DATABASE GENERATED REMARKS

None in this category.

MISCELLANEOUS (Unpublished) (MS)

Added for internal use information within the department. These remarks are suppressed from printing on review, summary and decree abstracts.

A. INFORMATION OR CLARIFICATION REMARKS

- MS Free text miscellaneous (unpublished) information remark.
- M1 WATER RIGHT NO. ASSIGNED TO WATER COURT ON MM/DD/YYYY.
- M5 AUTHORIZATION TO CHANGE ISSUED MM/DD/YYYY, REVOKED/TERMINATED MM/DD/YYYY. SEE 000000-00.
- M6 APPLICATION TO CHANGE RECEIVED MM/DD/YYYY, TERMINATED/DENIED MM/DD/YYYY. SEE 000000-00, 000000-00.

B. ISSUE REMARKS

None in this category.

C. LEGACY AND ARCHIVED REMARKS

- MS1Z Legacy miscellaneous information remark.
- MS2Z Legacy miscellaneous issue remark.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

None in this category.

E. DATABASE GENERATED REMARKS

None in this category.

MULTIPLE USE (MU)

Added when the same historic appropriation has been claimed by the original appropriator for more than one purpose.

A. INFORMATION OR CLARIFICATION REMARKS

MU Free text multiple use information remark.

B. ISSUE REMARKS

MUIS Free text multiple use issue remark.

M20 THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. 000000-00, 0000000-00. [Man. Ref. VI.C.]

M21 THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS HAVE STATED DIFFERENT FLOW RATES. IT APPEARS THE FLOW RATE SHOULD BE THE CAPACITY OF THE PUMP. 000000-00, 0000000-00. [Man. Ref. VI.C.]

M22 THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. IT APPEARS THE PRIORITY DATE IS MM/DD/YYYY AND THE TYPE OF HISTORICAL RIGHT IS DECREED. 000000-00, 0000000-00. [Man. Ref. VI.C.]

C. LEGACY AND ARCHIVED REMARKS

MU1Z Legacy multiple use information remark.

MU2Z Legacy multiple use issue remark.

M10 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES. 000000-00, 0000000-00.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

None in this category.

E. DATABASE GENERATED REMARKS

The following database generated remark is printed from information entered on the Related Rights tab.

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES FILED BY THE ORIGINAL CLAIMANT AND BASED ON THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THIS WATER RIGHT. RATHER IT DECREES THIS RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES. 000000-00, 000000-00. [Man. Ref. VI.C., Rule 41(d) W.R.C.E.R.]

OWNERSHIP (OW)

Added to document ownership information and unresolved ownership issues.

A. INFORMATION OR CLARIFICATION REMARKS

- OWIN Free text ownership information remark.
- C4 THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 000000-00. [Man. Ref. XI.D., Administrative Guideline No. 14]
- O3 OWNER DOE RETAINED. CONTRACT FOR DEED INTEREST. [Man. Ref. XI.D., Administrative Guideline No. 14]
- O5 OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS. [Man. Ref. XI.D., Rule 38(b) W.R.C.E.R., Administrative Guideline No. 14]
- O6 IT APPEARS THE OWNER IS A SHAREHOLDER IN THE CLARK CANYON WATER SUPPLY COMPANY.
- O25 THIS IRRIGATION DISTRICT WAS ESTABLISHED UNDER [TITLE 85, CHAPTER 7, MCA](#). [Man. Ref. VII.F.]
- O30 THIS WATER RIGHT WAS ESTABLISHED PURSUANT TO 89-101 THROUGH 89-141 R.C.M. (1947) (REPEALED). [Man. Ref. VII.F.]
- O31 THIS WATER RIGHT WAS ORIGINALLY PERFECTED BY PRIVATE OWNERSHIP AND LATER COMBINED WITH WATER RIGHTS ESTABLISHED PURSUANT TO 89-101 THROUGH 89-141 R.C.M. (1947) (REPEALED). [Man. Ref. VII.F.]
- R13 SPLIT CLAIM NO. 000000-00 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. [Man. Ref. XI.D., Administrative Guideline No. 14]
- R14 THE SPLIT CLAIMS LISTED FOLLOWING THIS STATEMENT WERE AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. 000000-00, 000000-00. [Man. Ref. XI.D., Administrative Guideline No. 14]
- R17 THIS SPLIT CLAIM WAS GENERATED BY THE DEPARTMENT BASED ON INFORMATION IN CLAIM 000000-00. [Rule 38(b) W.R.C.E.R., Administrative Guideline No. 14]

R18 THIS SPLIT CLAIM WAS GENERATED BY THE DEPARTMENT BASED ON INFORMATION IN CLAIM NO. 000000-00. THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S JUDITH RIVER DECREE ISSUED ON MM/DD/YYYY. [Man. Ref. XI.D.]

B. ISSUE REMARKS

- OWIS Free text ownership issue remark. [Man. Ref. VI.B., XI.E.]
- O35 CLAIM FORM NOT NOTARIZED. [Man. Ref. VI.B.]
- O40 CLAIM FORM NOT SIGNED OR NOTARIZED. [Man. Ref. VI.B.]
- O45 CLAIM FORM SIGNED BY OTHER THAN CLAIMANT. [Man. Ref. VI.B.]
- O50 AS OF MM/DD/YYYY, THIS WATER RIGHT APPEARS TO BE OWNED BY JOHN L. AND JANE W. DOE, 1111 DOE DR., BIG CITY, MT 55555-5555. [Man. Ref. VI.B., XI.D.]
- O55 ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF MM/DD/YYYY, THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY JOHN DOE. [Man. Ref. VI.B., XI.D.]
- O56 ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF MM/DD/YYYY, A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY JOHN DOE. [Man. Ref. VI.B., XI.D.]
- O60 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 000000-00, 000000-00. [Man. Ref. VII.D, Rule 12(e) W.R.C.E.R.]
- O65 THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. THE PLACE OF USE APPEARS TO BE ON STATE LAND. [Man. Ref. VII.D., IX.E.]
- O70 THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. PART OF THE PLACE OF USE APPEARS TO BE ON FEDERAL LAND. [Man. Ref. VII.D., IX.E.]
- O71 THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. PART OR ALL OF THE PLACE OF USE APPEARS TO BE ON FEDERAL LAND. [Man. Ref. IX.E.]

- O85 MONTANA COUNTY RECORDS AS OF MM/DD/YYYY SHOWS PLACE OF USE IS OWNED BY USA (DEPT OF INTERIOR BUREAU OF LAND MGMT). [Man. Ref. VII.D.]
OR
MONTANA COUNTY RECORDS AS OF MM/DD/YYYY SHOWS PLACE OF USE IS OWNED BY DOE BROTHERS. [Man. Ref. VI.B., VII.D., XI.D.]
- O90 A FORM 641 DIVIDED INTEREST/608A FORM WAS RECEIVED ON MM/DD/YYYY. THE DIVISION OF THE WATER RIGHT HAS NOT BEEN IMPLEMENTED AS WRITTEN AUTHORIZATION HAS NOT BEEN RECEIVED FROM ALL OWNERS OF RECORD. [Man. Ref. XI.D., Administrative Guideline No. 14]
- O95 A FORM 641 DIVIDED INTEREST/608A FORM WAS RECEIVED ON MM/DD/YYYY. THE DIVISION OF THE WATER RIGHT HAS NOT BEEN IMPLEMENTED DUE TO DISAGREEMENT AMONG THE OWNERS OF RECORD. [Man. Ref. XI.D., Administrative Guideline No. 14]
- O96 A FORM 641 DIVIDED INTEREST/608A FORM WAS RECEIVED ON MM/DD/YYYY. THE DIVISION OF THE WATER RIGHT HAS NOT BEEN IMPLEMENTED DUE TO A LACK OF INFORMATION. [Man. Ref. XI.D., Administrative Guideline No. 14]

C. LEGACY AND ARCHIVED REMARKS

- OW1Z Legacy ownership information remark.
OW2Z Legacy ownership issue remark.
OW3Z Legacy ownership information remark.
OW4Z Legacy ownership issue remark.
OW5Z Legacy split ownership information remark.
- O15 SEVER/SELL RECEIVED MM/DD/YYYY PROCESSED TO ADD OWNERS. WATER RIGHT WILL BE SPLIT INTO SEPARATE OWNERSHIPS AFTER FINAL DECREE.
- O20 SEVER/SELL RECEIVED MM/DD/YYYY PROCESSED TO CHANGE OWNERS.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

- C4 THIS SPLIT CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. 000000-00.
- R13 SPLIT CLAIM NO. 000000-00 WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.
- R14 THE SPLIT CLAIMS LISTED FOLLOWING THIS STATEMENT WERE AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. 000000-00, 000000-00.
- R18 THIS SPLIT CLAIM WAS GENERATED BY THE DEPARTMENT BASED ON INFORMATION IN CLAIM NO. 000000-00. THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41S JUDITH RIVER DECREE ISSUED ON MM/DD/YYYY.
- T30 * OWNERSHIP OF WATER RIGHT CHANGED BY ORDER OF THE WATER COURT DURING ADJUDICATION OF THE TEMPORARY PRELIMINARY DECREE.
- T31 * OWNERSHIP OF WATER RIGHT CHANGED BY ORDER OF THE WATER COURT ON MM/DD/YYYY DURING THE ADJUDICATION OF THE TEMPORARY PRELIMINARY DECREE.
- T35 BASED ON THE PARTIES' STIPULATION, OWNERSHIP OF THE WATER RIGHT CHANGED BY ORDER OF THE WATER COURT DURING ADJUDICATION OF THE TEMPORARY PRELIMINARY DECREE.
- T36 BASED ON THE PARTIES' STIPULATION, OWNERSHIP OF THE WATER RIGHT CHANGED BY ORDER OF THE WATER COURT ON MM/DD/YYYY DURING ADJUDICATION OF THE TEMPORARY PRELIMINARY DECREE.

E. DATABASE GENERATED REMARKS

None in this category.

OWNERSHIP UPDATE (TR)

PLEASE REFER TO THE TRANSFER CATEGORY

PERIOD OF DIVERSION (PA)

Added to claims to describe the addition of the period of diversion element or to note an issue with the period of diversion.

A. INFORMATION OR CLARIFICATION REMARKS

- PA Free text period of diversion information remark.
- P162 THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS MANMADE PIT. [Man. Ref. VI.L.]
- P164 STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE. [Man. Ref. VI.L.] [This is a general information remark and will print at the bottom of the abstract, per court order.]

B. ISSUE REMARKS

- PAIS Free text period of diversion issue remark.
- P160 THE PERIOD OF DIVERSION FROM THE SOURCE INTO STORAGE CANNOT BE IDENTIFIED. [Man. Ref. VI.L.]
- P166 THE PERIOD OF DIVERSION MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF THE PERIOD OF USE ISSUE. [Man. Ref. VI.K.]

C. LEGACY AND ARCHIVED REMARKS

- PA1Z Legacy period of diversion information remark.
- P95 THE PERIOD OF DIVERSION FROM THE SOURCE INTO THIS RESERVOIR IS MARCH 15 THROUGH OCTOBER 31.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

- P161 WHEN THIS CLAIM WAS ORIGINALLY DECREED, THE PERIOD OF DIVERSION WAS NOT INCLUDED ON THE ABSTRACT OF THIS CLAIM. IN 2008, THE PERIOD OF DIVERSION WAS ADDED. IT IS NOT CERTAIN IF THE PERIOD OF DIVERSION DATES ON THIS CLAIM ACCURATELY REFLECT THE

HISTORICAL PERIOD OF DIVERSION. MORE INFORMATION IS
REQUIRED. [Man. Ref. VI.L.] [This is an issue remark.]

E. DATABASE GENERATED REMARKS

None in this category.

PERIOD OF USE (PE)

Added to retain claimed data that cannot be stored in the period of use field in the database.

A. INFORMATION OR CLARIFICATION REMARKS

- PE Free text period of use information remark.
- P120 THIS RIGHT INCLUDES HIGH OR FLOOD WATERS OF DOE CREEK. [Man. Ref. VI.K.]
- P125 CASE NO. 0000, MONTANA COUNTY, LIMITS THIS RIGHT TO HIGH OR FLOOD WATERS OF DOE CREEK. [Man. Ref. VI.K.]
- P126 THIS RIGHT IS LIMITED TO HIGH OR FLOOD WATERS OF DOE CREEK. [Man. Ref. VI.K.]
- P128 CASE NO. 0000, MONTANA COUNTY, LIMITS THIS RIGHT TO DIVERSION FOR THREE OF EVERY TEN DAYS. [Man. Ref. VI.K.]
- P129 CASE NO. 0000, MONTANA COUNTY, DECREES A ROTATING SYSTEM FOR USE OF THIS RIGHT BETWEEN FIVE PARTIES. EACH PARTY IS DECREED USE OF THIS RIGHT FOR 48 HOURS OF EVERY 240 HOURS. [Man. Ref. VI.K.]

B. ISSUE REMARKS

- PEIS Free text period of use issue remark. [Man. Ref. VI.K.]
- P130 THE CLAIMED PERIOD OF USE EXCEEDS THE USUAL GROWING SEASON FOR THIS CLIMATIC AREA WHICH IS APRIL 15 TO OCTOBER 15. [Man. Ref. VI.K., Rule 16(d) W.R.C.E.R.]
- P135 THE CLAIMED PERIOD OF USE EXCEEDS THE USUAL PERIOD OF USE FOR THE CLAIMED PURPOSE WHICH IS MARCH 15 TO NOVEMBER 15. [Man. Ref. VI.K., X.F.]
- P140 THE CLAIMED PERIOD OF USE MAY BE QUESTIONABLE. USE OF THIS WATER MAY NOT BE FEASIBLE DURING WINTER MONTHS. [Man. Ref. VI.K., X.F., Rule 30(d) W.R.C.E.R.]

- P150 THE CLAIMED PERIOD OF USE APPEARS INADEQUATE FOR THE USUAL GROWING SEASON IN THIS AREA WHICH IS APRIL 1 TO OCTOBER 30. [Man. Ref. VI.K.]
- P151 THE CLAIMED PERIOD OF USE MAY BE QUESTIONABLE. THE CLAIMED PERIOD OF USE APPEARS TO BE INADEQUATE. [Man. Ref. VI.K.]
- P155 NO PERIOD OF USE HAS BEEN CLAIMED. THE USUAL AND REASONABLE PERIOD OF USE IN THIS AREA IS APRIL 20 TO OCTOBER 10. [Man. Ref. VI.K.]

C. LEGACY AND ARCHIVED REMARKS

- PE1Z Legacy period of use information remark.
PE2Z Legacy period of use information remark.
PE3Z Legacy period of use issue remark.
- P127 THE ACTUAL HISTORICAL PERIOD OF USE FOR THIS WATER RIGHT IS FROM THE LAST DAY THAT JOHN DOE IRRIGATES TO THE DAY JANE DOE CALLS FOR WATER. COMPUTER PROGRAM LIMITATIONS DO NOT ALLOW THE CORRECT PERIOD OF USE TO BE PRINTED ABOVE.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

None in this category.

E. DATABASE GENERATED REMARKS

None in this category.

PLACE OF USE (PL)

Added to retain claimed data that cannot be stored in the database Place of Use (POU) field.

A. INFORMATION OR CLARIFICATION REMARKS

- PL Free text place of use information remark. [Man. Ref. VI.E., VIII.D., X.D.]
- C64 THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE FORT PECK INDIAN RESERVATION. [Man. Ref. VI.E.]
- P165 THE PLACE OF USE INCLUDES/IS LOCATED IN GOVT LOTS 5, 6, AND 7 IN SEC 36 TWP 99N RGE 99E MONTANA COUNTY. [Man. Ref. VI.E.]
- P170 THE PLACE OF USE INCLUDES/IS LOCATED IN MONTANA PLACER, MINERAL SURVEY NO. 0000. [Man. Ref. VI.E.]
- P171 THE PLACE OF USE INCLUDES/IS LOCATED IN CERTIFICATE OF SURVEY NO. 0000, MONTANA COUNTY. [Man. Ref. VI.E.]
- P175 THE PLACE OF USE INCLUDES LOTS 5, 6, AND 7 OF DOE ESTATES, FIRST ADDITION. [Man. Ref. VI.E.]
OR
THE PLACE OF USE INCLUDES MINERAL SURVEY NO. 0000. [Man. Ref. VI.E.]
- P180 THE PLACE OF USE IS LOCATED IN HOMESTEAD ENTRY SURVEY NO. 0000 . [Man. Ref. VI.E.]
OR
THE PLACE OF USE IS LOCATED IN TRACTS 2A AND 2B OF CERTIFICATE OF SURVEY NO. 0000. [Man. Ref. VI.E.]
- P190 THE PLACE OF USE IS GENERALLY FROM TWP 98N TO TWP 99N AND FROM RGE 98E TO RGE 99E, MONTANA COUNTIES. FOR THE COMPLETE DETAILED PLACE OF USE DESCRIPTION, SEE FILE NO. 000000-00. [Man. Ref. VII.F.]
- P191 ONLY 23.00 ACRES ARE IRRIGATED DURING ANY GIVEN IRRIGATION SEASON WITHIN THE 134.00 ACRES DESCRIBED UNDER THIS RIGHT. [Man. Ref. VII.D.]

- P205 THE PLACE OF USE IS THE GENERAL AREA WITHIN A FIVE MILE RADIUS OF THE POINT OF DIVERSION. [Man. Ref. X.D.]
- P210 THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE PLACE OF USE HAS BEEN ESTIMATED. [Man. Ref. VI.E.]
- P215 THE PLACE OF USE IS THE TOWN OF DOE.
OR
THE PLACE OF USE IS EAST OF DOE ROAD.
OR
THE PLACE OF USE IS THE SURFACE AREA OF DOE RESERVOIR AT THE TOP OF THE FLOOD POOL. [Man. Ref. X.D.]
- P344 ALL OR A PART OF THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LANDS. THE WATER RIGHT USED ON THE PUBLIC LANDS IS APPURTENANT TO THE FOLLOWING PRIVATE LANDS: N2 SEC 2 TWP 99N RGE 99E [Man. Ref. IX.E.a.]
- P349 ALL OR A PART OF THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LANDS. THE WATER RIGHT USED ON THE PUBLIC LANDS IS APPURTENANT TO THE FOLLOWING PRIVATE LANDS: SENW SEC 3 TWP 45N RGE 50E SEE THE CLAIM FILE FOR THE COMPLETE LEGAL LAND DESCRIPTION OF THE PRIVATE LAND TO WHICH THIS WATER RIGHT IS APPURTENANT. [Man. Ref. IX.E.a.]
- T104 THIS CLAIM IS LOCATED IN WHOLE OR IN PART WITHIN THE EXTERIOR BOUNDARY OF THE FLATHEAD INDIAN RESERVATION. [Man. Ref. IX.E.a.]

B. ISSUE REMARKS

- PLIS Free text place of use issue remark. [Man. Ref. VIII.D., X.D.]
- O60 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 000000-00, 000000-00. [Man. Ref. VII.D, Rule 12(e) W.R.C.E.R.]
- P225 A FIELD INVESTIGATION CONDUCTED ON MM/DD/YYYY FOUND 16.00 ACRES PRESENTLY BEING IRRIGATED. SEE CLAIM FILE FOR ADDITIONAL INFORMATION. [Man. Ref. IV.G.]
- P230 A FIELD INVESTIGATION CONDUCTED ON MM/DD/YYYY FOUND REMNANTS OF A DITCH SERVING THE CLAIMED PLACE OF USE. TOTAL HISTORICALLY IRRIGATED ACRES

AND LAST YEAR OF OPERATION WERE NOT DETERMINABLE. SEE CLAIM FILE FOR ADDITIONAL INFORMATION. [Man. Ref. IV.F., IV.G.]

- P235 THE MONTANA COUNTY WATER RESOURCES SURVEY (YYYY) APPEARS TO INDICATE 86.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE. [Man. Ref. VII.D., Rule 12(e) W.R.C.E.R.]
- P240 THE MONTANA COUNTY WATER RESOURCES SURVEY (YYYY) APPEARS TO INDICATE 0.00 ACRES IRRIGATED. [Man. Ref. VII.D.]
- P245 THE MONTANA COUNTY WATER RESOURCES SURVEY (YYYY) APPEARS TO INDICATE ONLY 198.00 ACRES IRRIGATED OUT OF THE DOE DITCH. [Man. Ref. VII.D.]
- P250 THE MONTANA COUNTY WATER RESOURCES SURVEY (YYYY) APPEARS TO INDICATE 26.50 ACRES IRRIGATED BY WATER DIVERTED FROM DOE CREEK. [Man. Ref. VII.D.]
- P255 THE MONTANA COUNTY WATER RESOURCES SURVEY (YYYY) INDICATES AN ADDITIONAL 150.00 ACRES MAY HAVE BEEN IRRIGATED PRIOR TO THE SURVEY. THE ACREAGE WAS NOT BEING IRRIGATED AT THE TIME OF THE SURVEY. [Man. Ref. VII.D.]
- P260 THE MONTANA COUNTY WATER RESOURCES SURVEY (YYYY) APPEARS TO INDICATE 90.00 ACRES IRRIGATED AT THE TIME OF THE SURVEY, PLUS ANOTHER 40.00 ACRES AS HAVING BEEN IRRIGATED PRIOR TO THE SURVEY. [Man. Ref. VII.D.]
- P261 THE MONTANA COUNTY WATER RESOURCES SURVEY FIELD NOTES (YYYY) APPEAR TO INDICATE 10.00 ACRES IRRIGATED BY WATER DIVERTED FROM DOE CREEK. [Man. Ref. VII.D.]
- P262 THE MONTANA COUNTY WATER RESOURCES SURVEY FIELD NOTES (YYYY) INDICATE THAT 0.00 ACRES WERE IRRIGATED BY THIS FILED APPROPRIATION RIGHT. [Man. Ref. VII.D.]
- P263 THE MONTANA COUNTY WATER RESOURCES SURVEY FIELD NOTES (YYYY) INDICATES THE PLACE OF USE WAS LAST IRRIGATED SOMETIME PRIOR TO YYYY. [Man. Ref. VII.D.]
- P265 USDA AERIAL PHOTOGRAPH NO. 179-108, DATED MM/DD/YYYY, AND THE MONTANA COUNTY WATER

RESOURCES SURVEY (YYYY) APPEAR TO INDICATE FEWER ACRES IRRIGATED THAN CLAIMED. [Man. Ref. VII.D.]

- P270 USDA AERIAL PHOTOGRAPH NO(S). 378-201, 179-108, DATED MM/DD/YYYY, MM/DD/YYYY, APPEARS TO INDICATE 84.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE. [Man. Ref. VII.D., Rule 12(e) W.R.C.E.R.]
- P271 USDA AERIAL PHOTOGRAPH NO(S). 387-201, 179-108, DATED MM/DD/YYYY, MM/DD/YYYY, APPEARS TO INDICATE 0.00 ACRES IRRIGATED. [Man. Ref. VII.D.]
- P272 USDA AERIAL PHOTOGRAPH NO. 179-108, DATED MM/DD/YYYY, APPEARS TO INDICATE 84.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE. [Man. Ref. VII.D., Rule 12(e) W.R.C.E.R.]
- P273 USDA AERIAL PHOTOGRAPH NOS. CXM-1-222, CXM-1-211 DATED MM/DD/YYYY APPEAR TO INDICATE 25.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE. [Man. Ref. VII.D., Rule 12(e) W.R.C.E.R.]
- P274 USDA AERIAL PHOTOGRAPH NOS. CXM-1-222, CXM-1-211 DATED MM/DD/YYYY AND 179-88 DATED MM/DD/YYYY APPEAR TO INDICATE 25.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE. [Man. Ref. VII.D., Rule 12(e) W.R.C.E.R.]
- P275 USDA AERIAL PHOTOGRAPH NO. 179-108, DATED MM/DD/YYYY, INDICATED AN ADDITIONAL 25.00 ACRES MAY HAVE BEEN IRRIGATED PRIOR TO YYYY. THE ACREAGE WAS NOT IRRIGATED IN YYYY. [Man. Ref. VII.D.]
- P280 USDA AERIAL PHOTOGRAPH NO. 179-108, DATED MM/DD/YYYY, SHOWS EVIDENCE OF A SPREADER DIKE SYSTEM. THE SOURCE OF WATER IS AN INTERMITTENT STREAM. THE SYSTEM VISIBLE ON THE PHOTOGRAPH APPEARS CAPABLE OF IRRIGATING 90.00 ACRES WHEN WATER IS AVAILABLE. [Man. Ref. VII.D.]
- P283 USDI AERIAL PHOTOGRAPH NO. MMA-1-117, DATED MM/DD/YYYY, APPEARS TO INDICATE 40.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE. [Man. Ref. VII.D., Rule 12(e) W.R.C.E.R.]
- P284 USDI AERIAL PHOTOGRAPH NO. MMA-1-117, DATED MM/DD/YYYY, APPEARS TO INDICATE 0.00 ACRES IRRIGATED. [Man. Ref. VII.D.]

- P286 AERIAL PHOTOGRAPH NO(S). CXM-2FF-90, CXM-3FF-91, DATED MM/DD/YYYY, MM/DD/YYYY, APPEARS TO INDICATE 70.00 ACRES IRRIGATED. A DESCRIPTION OF THESE ACRES IS IN THE CLAIM FILE. [Man. Ref. VII.D., Rule 12(e) W.R.C.E.R.]
- P287 AERIAL PHOTOGRAPH NO(S). CXM-2FF-90, CXM-3FF-62, DATED MM/DD/YYYY, APPEARS TO INDICATE 0.00 ACRES IRRIGATED. [Man. Ref. VII.D.]
- P288 THE CLAIMED PLACE OF USE AND ACRES IRRIGATED MAY BE QUESTIONABLE. REVIEW OF AVAILABLE DATA APPEARS TO INDICATE FEWER ACRES MAY HAVE BEEN IRRIGATED THAN HAS BEEN CLAIMED. [Man. Ref. VII.D.]
- P289 THE CLAIMED PLACE OF USE AND ACRES IRRIGATED MAY BE QUESTIONABLE. REVIEW OF AVAILABLE DATA APPEARS TO INDICATE 49.00 ACRES IRRIGATED. [Man. Ref. VII.D.]
- P290 ACCORDING TO INFORMATION IN THE CLAIM FILE, THE PLACE OF USE WAS FIRST/LAST IRRIGATED IN YYYY. [Man. Ref. VII.D.]
- P291 ACCORDING TO INFORMATION IN THE CLAIM FILE, AN EXPANSION IN THE NUMBER OF IRRIGATED ACRES HAS TAKEN PLACE. MORE THAN ONE WATER RIGHT MAY BE INVOLVED. [Man. Ref. VII.D.]
- P295 THE CLAIMED PLACE OF USE DOES NOT APPEAR TO BE IRRIGATED BY WATER FROM THE CLAIMED SOURCE. [Man. Ref. VII.D.]
- P300 PART OF THE CLAIMED PLACE OF USE DOES NOT APPEAR TO BE IRRIGATED BY WATER FROM THE CLAIMED SOURCE. [Man. Ref. VII.D.]
- P301 PART OF THE CLAIMED PLACE OF USE MAY BE QUESTIONABLE. IT DOES NOT APPEAR THE PLACE OF USE ALONG DOE CREEK AND SMITH CREEK ABOVE THE DOE CANAL CAN BE IRRIGATED FROM THE CLAIMED SOURCE. [Man. Ref. VII.D.]
- P305 THE CLAIMED PLACE OF USE AND ACRES IRRIGATED COULD NOT BE IDENTIFIED FROM DATA SUBMITTED WITH THE CLAIM. [Man. Ref. VII.D., IX.E.]

- P306 THE PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE. [Man. Ref. VII.D., VIII.D., IX.E.]
- P310 AN INTERSTATE USE OF WATER IS CLAIMED. PLACE OF USE IS IN IDAHO. [Man. Ref. VII.D.]
- P320 THE PLACES OF USE FOR IRRIGATION CLAIM NO. 000000-00 AND DOMESTIC CLAIM NO. 000000-00 OVERLAP. [Man. Ref. VII.D., VIII.D.]
- P325 THE CLAIMED PLACE OF USE DOES NOT APPEAR TO BE USED FOR DOMESTIC IRRIGATION PURPOSES. [Man. Ref. VII.D., VIII.D.]
- P330 ONLY 2.00 ACRES OF THE CLAIMED PLACE OF USE APPEAR IRRIGATED FOR DOMESTIC PURPOSES. [Man. Ref. VII.D., VIII.D.]
- P335 USDA AERIAL PHOTOGRAPH NO. 179-108, DATED MM/DD/YYYY, SHOWS NO EVIDENCE OF FISH RACEWAYS AT THE CLAIMED PLACE OF USE. [Man. Ref. X.D.]
- P340 THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE JULY 1, 1973 PLACE OF USE WAS IN SEC 36 TWP 99N RGE 99E MONTANA COUNTY. [Man. Ref. XI.F.]
- P345 THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES A POST-JUNE 30, 1973 CHANGE IN PLACE OF USE. [Man. Ref. XI.F.]

C. LEGACY AND ARCHIVED REMARKS

- T105 THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LAND, BUT THIS RIGHT IS APPURTENANT TO THE FOLLOWING PRIVATE LANDS IN FALON COUNTY, MONTANA: SENW SEC 3 TWP 45N RGE 50E [Man. Ref. IX.E.a.]
- T106 THE PLACE OF USE CONSISTS , IN PART, OF FEDERAL PUBLIC LAND, BUT THIS RIGHT IS APPURTENANT TO THE FOLLOWING PRIVATE LANDS IN FALON COUNTY, MONTANA: SENW SEC 3 TWP 45N RGE 50E

PL1Z Legacy place of use information remark.
PL2Z Legacy place of use information remark.
PL3Z Legacy place of use issue remark.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

C6 THE ALIQUOT PART W2 IS ADDED TO THE DESCRIPTION ONLY TO FACILITATE LOCATION. THE ALIQUOT PART IS NOT AN ELEMENT OF THE LEGAL DESCRIPTION OF THE GOVERNMENT LOT.

G965 THE TIMELY FILED OBJECTION OF JOHN DOE WAS AMENDED BY JANE DOE, SUCCESSOR TO INCLUDE POINT OF DIVERSION AND PLACE OF USE. BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHO'S RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

G995 ALTHOUGH NOT OBJECTED TO, THE PLACE OF USE WAS CHANGED TO REFLECT THE REDUCTION/INCREASE IN MAXIMUM ACRES IRRIGATED.

P347 THE PLACE OF USE NENE SEC 36 T99N T99E CONSISTS OF FEDERAL PUBLIC LANDS. THE WATER RIGHT IS APPURTENANT TO THE FOLLOWING PRIVATE LANDS: SWSW SEC 1 T99N T99E.

T102 PURSUANT TO WATER COURT ORDER, THIS CLAIM HAS NOT BEEN EXAMINED IN ACCORDANCE WITH MONTANA SUPREME COURT RULES AS THE TRIBES OR THE UNITED STATES HAVE DETERMINED THAT THIS CLAIM INVOLVES TRIBAL OR ALLOTTED TRUST LAND OR FEE LAND OWNED BY THE TRIBES, TRIBAL CORPORATIONS, AGENCIES OF THE TRIBES, OR OTHER SIMILAR TRIBAL ORGANIZATIONS OR ENTITIES OR CLAIMS FOR FEDERAL RESERVED OR ABORIGINAL WATER RIGHTS CLAIMED BY THE TRIBES OR BY THE UNITED STATES ON BEHALF OF THE TRIBES.

T104 THIS CLAIM IS LOCATED IN WHOLE OR IN PART WITHIN THE EXTERIOR BOUNDARY OF THE FLATHEAD INDIAN RESERVATION.

E. DATABASE GENERATED REMARKS

None in this category.

POINT OF DIVERSION (PD)

Added to retain claimed data that cannot be stored in the database Point of Diversion (POD) field.

A. INFORMATION OR CLARIFICATION REMARKS

- PD Free text point of diversion information remark. [Man. Ref. VI.D., VI.E.]
- P3 THE POINT OF DIVERSION INCLUDES/IS LOCATED IN CERTIFICATE OF SURVEY NO. 0000, MONTANA COUNTY. [Man. Ref. VI.E.]
- P4 THE POINT OF DIVERSION INCLUDES/IS LOCATED IN GOVT LOT 8 IN SEC 36 TWP 99N RGE 99E MONTANA COUNTY. [Man. Ref. VI.E.]
- P5 THE POINT OF DIVERSION INCLUDES/IS LOCATED IN MONTANA LODE, MINERAL SURVEY NO. 0000. [Man. Ref. VI.E.]
- P6 THE POINT OF DIVERSION INCLUDES LOTS 8 AND 9 OF DOE ESTATES, FIRST ADDITION. [Man. Ref. VI.E.]
OR
THE POINT OF DIVERSION INCLUDES MINERAL SURVEY NO. 0000. [Man. Ref. VI.E.]
- P7 THE POINT OF DIVERSION IS LOCATED IN HOMESTEAD ENTRY SURVEY NO. 0000. [Man. Ref. VI.E.]
OR
THE POINT OF DIVERSION IS LOCATED IN TRACTS 2A AND 2B OF CERTIFICATE OF SURVEY NO. 0000. [Man. Ref. VI.E.]
- P8 DIKE EXTENDS INTO THE NESW SEC 36 TWP 99N RGE 99E MONTANA COUNTY. [Man. Ref. VI.F.]
- P9 DIKE EXTENDS INTO THE NWNWNE, NENENW SEC 36 TWP 99N RGE 99E MONTANA COUNTY. [Man. Ref. VI.F.]
- P10 THIS RIGHT FOR INSTREAM USE APPLIES FROM DOE DAM IN MONTANA COUNTY DOWNSTREAM TO THE CONFLUENCE OF THE NORTH FORK OF DOE CREEK WITH THE JONES RIVER IN MONTANA COUNTY. [Man. Ref. X.E., Rule 31, W.R.C.E.R.]

- P15 THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE POINT OF DIVERSION HAS BEEN ESTIMATED. [Man. Ref. VI.E.]
- P20 DRAIN DITCH IS FED ALONG ITS FULL LENGTH BY UNDERGROUND SEEPS. [Man. Ref. VI.F.]
- P25 POINT OF DIVERSION IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION. [Man. Ref. VI.F.]
- P30 POINT OF DIVERSION NO. 2 IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION. [Man. Ref. VI.F.]
- P35 PUMP IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION. [Man. Ref. VI.F.]

B. ISSUE REMARKS

- PDIS Free text point of diversion issue remark. [Man. Ref. VI.F.]
- G30 A FIELD INVESTIGATION CONDUCTED ON MM/DD/YYYY FOUND INFORMATION DIFFERENT FROM THAT CLAIMED FOR PLACE OF USE, POINT OF DIVERSION, AND FLOW RATE. SEE CLAIM FILE FOR ADDITIONAL INFORMATION. [Man. Ref. IV.F.]
- G64 THERE HAS BEEN A CONSOLIDATION OF INDIVIDUAL HISTORIC WATER RIGHTS, LISTED BELOW, THAT NOW ALL REFLECT A COMBINED PLACE OF USE OF THESE WATER RIGHTS TO BE IRRIGATED FROM A COMBINATION OF ALL THE POINTS OF DIVERSION. THERE MAY BE A DISTRIBUTION ISSUE AS NOT ALL POINTS OF DIVERSION CAN DELIVER WATER TO ALL OF THE COMBINED PLACE OF USE. 000000-00, 000000-00, 000000-00, 000000-00. [Man. Ref. VII.G.]
- G68 THERE HAS BEEN A CONSOLIDATION OF INDIVIDUAL HISTORIC WATER RIGHTS, LISTED BELOW, THAT NOW ALL REFLECT A COMBINED PLACE OF USE OF THESE WATER RIGHTS TO BE IRRIGATED FROM A COMBINATION OF ALL THE POINTS OF DIVERSION. THERE MAY BE DISTRIBUTION ISSUE AS THIS CONSOLIDATION IMPLIES A POTENTIAL EXPANSION OF DITCHES, EXPANSION OF THE WATER RIGHTS, AND NON-PERFECTION OF RIGHTS. 000000-00, 000000-00, 000000-00, 000000-00. [Man. Ref. VII.G.]
- P36 THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE. [Man. Ref. VI.F.]

- P37 THE LEGAL LAND DESCRIPTION FOR POINT OF DIVERSION NO. 2 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THIS CLAIMED POINT OF DIVERSION CANNOT BE CONFIRMED. [Man. Ref. VI.F.]
- P38 THE LEGAL LAND DESCRIPTION FOR POINTS OF DIVERSION NO. 1 AND 2 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THE CLAIMED POINTS OF DIVERSION CANNOT BE CONFIRMED. [Man. Ref. VI.F.]
- P40 THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE SWSWSW SEC 36 TWP 99N RGE 99W MONTANA COUNTY. [Man. Ref. VI.F.]
- P49 THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE WELL CANNOT BE IDENTIFIED FROM AVAILABLE DATA. [Man. Ref. VI.F.]
- P50 THE POINTS OF DIVERSION APPEAR TO BE INCORRECT. SEE CLAIM FILE FOR ADDITIONAL INFORMATION. [Man. Ref. VI.F.]
- P55 IT APPEARS POINT OF DIVERSION NO. 2 MAY BE INCORRECT. THE EXISTENCE OF A DIVERSION FACILITY AND CONVEYANCE DITCH CANNOT BE CONFIRMED FROM AVAILABLE DATA. [Man. Ref. VI.F.]
- P57 THE CLAIMED POINT OF DIVERSION MAY BE INCOMPLETE. IT APPEARS THERE SHOULD BE ADDITIONAL POINTS OF DIVERSION ON DOE CREEK WHICH COULD NOT BE IDENTIFIED FROM INFORMATION IN THE CLAIM FILE. [Man. Ref. VI.F.]
- P60 THE CLAIMED POINT OF DIVERSION IS NOT THE INITIAL POINT THAT WATER IS DIVERTED FROM THE SOURCE. THE INITIAL POINT CANNOT BE IDENTIFIED FROM AVAILABLE DATA. [Man. Ref. VI.F.]
- P65 ACCORDING TO INFORMATION IN THE CLAIM FILE, POINT OF DIVERSION NO. 3 HAS NOT BEEN USED SINCE YYYY. [Man. Ref. VI.F.]
- P79 IT APPEARS THAT AN UNAUTHORIZED POST-JUNE 30, 1973 CHANGE IN POINT OF DIVERSION MAY BE REFLECTED IN THIS CLAIM. [Man. Ref. VI.F., XI.F.]
- P80 THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 POINT OF

DIVERSION WAS IN THE NENENE SEC 36 TWP 99N RGE 99W MONTANA COUNTY. [Man. Ref. VI.F., XI.F.]

C. LEGACY AND ARCHIVED REMARKS

PD1Z Legacy point of diversion information remark.
PD2Z Legacy point of diversion issue remark.
PD3Z Legacy point of diversion issue remark.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

C6 THE ALIQUOT PART W2 IS ADDED TO THE DESCRIPTION ONLY TO FACILITATE LOCATION. THE ALIQUOT PART IS NOT AN ELEMENT OF THE LEGAL DESCRIPTION OF THE GOVERNMENT LOT.

G970 THE TIMELY FILED OBJECTION OF THE UNITED STATES OF AMERICA WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE POINT OF DIVERSION. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

G980 THE POINT OF DIVERSION MAY BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE NWNE SEC 36 TWP 99N RGE 99W MONTANA COUNTY. SEE DNRC MEMORANDUM DATED MM/DD/YYYY.

G990 THIS CLAIM APPEARS TO INVOLVE STOCK DRINKING DIRECTLY FROM THE SOURCE. IT APPEARS THAT THE POINTS OF DIVERSION SHOULD CORRESPOND WITH THE PLACE OF USE.

E. DATABASE GENERATED REMARKS

None in this category.

PRIORITY DATE (PR)

Added to identify the ranking of a decreed right, changes to the priority date based on Supreme Court rules, and post-June 30, 1973 existing rights.

A. INFORMATION OR CLARIFICATION REMARKS

- PR Free text priority date information remark.
- P350 CASE NO. 0000, MONTANA COUNTY, DECREED A RIGHT OF 38TH USE. [Man. Ref. VI.J.]
- P351 THE PRIORITY DATE OF THIS WATER RIGHT HAS BEEN CHANGED TO THE DATE OF FILING THE NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION (MM/DD/YYYY). THE PRIORITY DATE MAY BE CONTESTED BY PROPER OBJECTION. [Man. Ref. VI.J., Rule 13(f) W.R.C.E.R.]
- P353 THE PRIORITY DATE OF THIS WATER RIGHT HAS BEEN CHANGED TO FILING DATE OF THE STATEMENT OF CLAIM. THE PRIORITY DATE MAY BE CONTESTED BY PROPER OBJECTION. [Man. Ref. VI.J., Rule 13(f) W.R.C.E.R.]
- P354 THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED PURSUANT TO SECTION [85-2-306\(4\) MCA](#). [Man. Ref. VI.J., Rule 13(f) W.R.C.E.R.]

B. ISSUE REMARKS

- PRIS Free text priority date issue remark. [Man. Ref. VI.I., VI.J.]
- P355 THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WAS NOT SUBMITTED WITH THIS CLAIM. [Man. Ref. VI.I., VI.J.]
- P357 THE PRIORITY DATE AND THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT APPEAR TO BE A MULTIPLE USE OF THE SAME RIGHT. IT APPEARS THE PRIORITY DATE IS MM/DD/YYYY AND THE TYPE OF HISTORICAL RIGHT IS FILED. 000000-00, 000000-00. [Man. Ref. VI.C.]
- P360 THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A FILED APPROPRIATION RIGHT. [Man. Ref. VI.I.]

- P361 THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A **USE** AND A **RESERVED** RIGHT. [Man. Ref. VI.I.]
- P365 THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. THE **MONTANA** COUNTY WATER RESOURCES SURVEY (YYYY) IDENTIFIES THIS RIGHT AS A **FILED APPROPRIATION**. [Man. Ref. VI.I.]
- P370 THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A **FILED APPROPRIATION/USE RIGHT ON DOE CREEK** WITH A PRIORITY DATE **PREDATING/POSTDATING** CASE NO. **0000**, **MONTANA** COUNTY. [Man. Ref. VI.I.]
- P371 THIS CLAIM IS FOR A RIGHT ON **DOE CREEK**, DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY. AS THIS CLAIM HAS NO PRIORITY DATE AND THE TYPE OF HISTORICAL RIGHT IS QUESTIONABLE, CLAIMED WATER RIGHTS BASED ON THIS PRIOR DECREE MAY BE ADVERSELY AFFECTED. [Man. Ref. VI.J.]
- P372 NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM. [Man. Ref. VI.I.]
- P380 NO PRIORITY DATE WAS CLAIMED. [Man. Ref. VI.J.]
- P385 A SPECIFIC PRIORITY DATE HAS NOT BEEN IDENTIFIED. PRIORITY DATE WAS CLAIMED AS **RANKING THIRD ON DOE CREEK**, IN CASE NO. **0000**, **MONTANA** COUNTY. [Man. Ref. VI.J.]
- P386 THE PRIORITY DATE MAY BE QUESTIONABLE. IT IS UNCLEAR WHETHER THE CLAIMED PRIORITY DATE IS **1882** OR **1982**. [Man. Ref. VI.J.]
- P390 THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED **NOTICE OF APPROPRIATION** IS **JUNE 10, 1921**. [Man. Ref. VI.J.]
- P395 THE PRIORITY DATE MAY BE QUESTIONABLE. THE **MONTANA** COUNTY WATER RESOURCES SURVEY (YYYY) IDENTIFIES THE PRIORITY DATE AS **MAY 13, 1913**. [Man. Ref. VI.J.]
- P400 THE PRIORITY DATE MAY BE QUESTIONABLE. THE AFFIDAVIT STATES THE **WELL** WAS COMPLETED IN **THE EARLY 1930'S**. [Man. Ref. VI.J.]

- P405 THE PRIORITY DATE MAY BE QUESTIONABLE. ACCORDING TO INFORMATION IN THE CLAIM FILE, IT APPEARS WATER FROM THE SOURCE WAS FIRST USED IN YYYY. [Man. Ref. VI.J.]
- P415 THE BASIS OF THIS CLAIMED WATER RIGHT WAS NOT FOUND IN THE DECREE FROM CASE NO. 0000, MONTANA COUNTY. THE CLAIMED PRIORITY DATE CANNOT BE CONFIRMED. [Man. Ref. VI.J.]
- P416 THE PRIORITY DATE MAY BE QUESTIONABLE. THE CLAIMED PLACE OF USE IS INCONSISTENT WITH THE PLACE OF USE DESCRIBED IN CASE NO. 556, RAVALLI COUNTY DATED APRIL 10, 1905. [Man. Ref. VI.J.3]
- P430 CASE NO. 0000, MONTANA COUNTY, DOES NOT SPECIFY PRIORITY DATES. A PRIORITY DATE HAS/HAS NOT BEEN CLAIMED. [Man. Ref. VI.J.]
- P435 THE PRIORITY DATE MAY BE QUESTIONABLE. CASE NO. 0000, MONTANA COUNTY, DOES NOT SPECIFY A DAY/MONTH. THE CLAIMS LISTED FOLLOWING THIS STATEMENT HAVE CLAIMED VARYING PRIORITY DATES. 000000-00, 000000-00. [Man. Ref. VI.J.]
- P436 THE PRIORITY DATE MAY BE QUESTIONABLE. CASE NO. 0000, MONTANA COUNTY, DOES NOT SPECIFY A MONTH AND DAY. THE CLAIMS LISTED FOLLOWING THIS STATEMENT HAVE CLAIMED THE SAME PRIORITY DATE. 000000-00, 000000-00. [Man. Ref. VI.J.]
- P445 THE CLAIMED PRIORITY DATE PREDATES/POSTDATES THE FILED NOTICE OF APPROPRIATION. THE CLAIMED PRIORITY DATE AND TYPE OF HISTORICAL RIGHT CANNOT BE SUBSTANTIATED. [Man. Ref. VI.J.]
- P450 THE CLAIMED PRIORITY DATE DIFFERS FROM THE EARLIEST DATE ON THE FILED NOTICE. THE CLAIMED PRIORITY DATE CANNOT BE SUBSTANTIATED. [Man. Ref. VI.J.]
- P455 THE PRIORITY DATE MAY BE QUESTIONABLE. THE SOURCE/PLACE OF USE DESCRIBED ON THE FILED NOTICE OF APPROPRIATION IS INCONSISTENT WITH THE CLAIMED SOURCE/PLACE OF USE. [Man. Ref. VI.J.]
- P460 THE PRIORITY DATE MAY BE QUESTIONABLE. THE SOURCE/PLACE OF USE DESCRIBED IN CASE NO. 0000,

MONTANA COUNTY, IS INCONSISTENT WITH THE CLAIMED SOURCE/PLACE OF USE. [Man. Ref. VI.J.]

- P461 THE PRIORITY DATE MAY BE QUESTIONABLE. THE PLACE OF USE FOR THE DOE DECREED RIGHT, DESCRIBED AS NENE SEC 36 TWP 99N RGE 99W IN CASE NO. 0000, MONTANA COUNTY, IS INCONSISTENT WITH THE CLAIMED PLACE OF USE. [Man. Ref. VI.J.] (Note: Can be coded without ¼ section description.)
- P462 THE PRIORITY DATE MAY BE QUESTIONABLE. THE PLACE OF USE DESCRIBED FOR THIS RIGHT IN THE MONTANA COUNTY WATER RESOURCES SURVEY FIELD NOTES (YYYY) IS THE NWNW SEC 36 TWP 99N RGE 99W. THIS IS INCONSISTENT WITH THE CLAIMED PLACE OF USE. [Man. Ref. VI.J.] (Note: Can be coded without ¼ section description.)
- P465 THIS CLAIM TO A FILED APPROPRIATION/DECREED RIGHT MAY BE QUESTIONABLE. THE PLACE OF USE DESCRIBED IN THE MONTANA COUNTY WATER RESOURCES SURVEY (YYYY) IS INCONSISTENT WITH THE CLAIMED PLACE OF USE. [Man. Ref. VI.J.]
- P470 THE CLAIMED PRIORITY DATE INDICATES AN APPROPRIATION OF WATER AFTER JUNE 30, 1973. [Man. Ref. VI.J.]
- P475 CASE NO. 0000, MONTANA COUNTY, NULLIFIED THE FILED APPROPRIATION RIGHT SUBMITTED WITH THIS CLAIM. [Man. Ref. VI.J.]
- P479 THE CLAIMED PRIORITY DATE PRECEDES MM/DD/YYYY, THE EARLIEST GENERAL DATE OF SETTLEMENT WITHIN THE DOE RIVER DRAINAGE. [Man. Ref. VI.J.]
- P480 THE PRIORITY DATE OF THIS CLAIM IS UNCLEAR AS MULTIPLE PRIORITY DATES HAVE BEEN CLAIMED. MORE THAN ONE WATER RIGHT MAY BE INVOLVED. [Man. Ref. VI.J.]
- P500 THE PRIORITY DATE MAY BE QUESTIONABLE. NO NOTICE OF COMPLETION WAS FILED. THE NOTICE OF APPROPRIATION OF GROUNDWATER (FORM GW1) WAS FILED ON JUNE 10, 1965. [Man. Ref. VI.J.]
- P505 THE PRIORITY DATE MAY BE QUESTIONABLE. THE DATE OF FILING THE NOTICE OF APPROPRIATION OF GROUNDWATER (FORM GW1) IS DECEMBER 6, 1963. [Man. Ref. VI.J.]

- P510 THE PRIORITY DATE MAY BE QUESTIONABLE. THE DATE OF FILING THE **GROUNDWATER APPROPRIATION (FORM GW2)**, NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION, IS **MM/DD/YYYY**. [Man. Ref. VI.J.]
- P515 A FORM GW4, DECLARATION OF VESTED GROUNDWATER RIGHTS, WAS FILED AND SUBMITTED WITH THIS CLAIM AS A **FORM GW2/FORM GW3**, NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION. [Man. Ref. VI.J.]
- P516 THE PRIORITY DATE MAY BE QUESTIONABLE. IT APPEARS THE FORM GW4, DECLARATION OF VESTED GROUNDWATER RIGHTS, FILED **JUNE 5, 1966**, WAS USED IN LIEU OF A **FORM GW2/FORM GW3**, NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION. [Man. Ref. VI.J.]
- P525 A SURFACE WATER NOTICE OF APPROPRIATION WAS SUBMITTED TO SUPPORT THIS CLAIM TO GROUNDWATER APPROPRIATED BETWEEN JANUARY 1, 1962 AND JULY 1, 1973. [Man. Ref. VI.J.]
- P530 THE PRIORITY DATE MAY BE QUESTIONABLE. THE SUBMITTED **FORM GW2**, NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION, WAS FILED AFTER APRIL 13, 1981. SEE SECTION [85-2-306\(4\), MCA](#). [Man. Ref. VI.J.]
- P535 THE PRIORITY DATE MAY BE QUESTIONABLE. THE SUBMITTED **FORM GW2**, NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION, WAS FILED AFTER 6/30/1973. NO NOTICE OF APPROPRIATION OF GROUNDWATER (FORM GW1) WAS FILED AS REQUIRED BY THE 1961 GROUNDWATER CODE. [Man. Ref. VI.J.]
- P540 THE PRIORITY DATE MAY BE QUESTIONABLE. THE SUBMITTED **FORM GW2/GW3**, NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION, WAS NOT FILED AT THE COURTHOUSE AS REQUIRED BY THE 1961 GROUNDWATER CODE. [Man. Ref. VI.J.]
- P547 NO DOCUMENTATION AS REQUIRED BY THE 1961 GROUNDWATER CODE WAS SUBMITTED TO SUPPORT THIS CLAIM. THIS CLAIM IS SUPPORTED BY ACKNOWLEDGEMENT NO. **000000**. [Man. Ref. VI.J.]
- P550 THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. IT APPEARS THE PRIORITY DATE SHOULD BE THE DATE THE **SPRINKLER SYSTEM** WAS FIRST PUT TO USE. [Man. Ref. VI.J., VII.A.]

P988 NO TYPE OF HISTORICAL RIGHT IS CLAIMED. IT IS NOT CLEAR WHETHER THIS CLAIM IS FOR A RESERVED WATER RIGHT OR FOR A STATE LAW BASED WATER RIGHT. [Man. Ref. VI.I.]

C. LEGACY AND ARCHIVED REMARKS

PR1Z Legacy priority date information remark.

PR2Z Legacy priority date issue remark.

PR3Z Legacy priority date issue remark.

P356 THIS CLAIM FOR A RESERVED WATER RIGHT IS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. IT IS NOT CLEAR IF THE CLAIMED TYPE OF HISTORICAL RIGHT IS A FEDERAL RESERVE WATER RIGHT.

P440 THE PRIORITY DATE MAY BE QUESTIONABLE. CASE NO. 0000, MONTANA COUNTY, DOES NOT SPECIFY A DAY/MONTH/DAY AND MONTH. A DAY/MONTH/DAY AND MONTH HAS/HAS NOT BEEN CLAIMED. **(This remark is no longer used—this action is done by Rule.)**

P482 THE PRIORITY DATE OF THIS WATER RIGHT HAS BEEN CHANGED TO THE DATE OF FILING THE NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION (FORM GW2/FORM GW3). THE PRIORITY DATE MAY BE CONTESTED BY PROPER OBJECTION.

P484 THE PRIORITY DATE OF THIS WATER RIGHT HAS BEEN CHANGED TO THE FILING DATE OF THE STATEMENT OF CLAIM. THE PRIORITY DATE MAY BE CONTESTED BY PROPER OBJECTION. [Man. Ref. VI.J., Rule 13(f) W.R.C.E.R.]P520 THE PRIORITY DATE MAY BE QUESTIONABLE. NO DOCUMENTATION AS REQUIRED BY THE 1961 GROUNDWATER CODE WAS SUBMITTED TO SUPPORT THIS CLAIM.

P490 AT THE TIME OF THE CLAIMED PRIORITY DATE, IT APPEARS THAT THE PLACE OF USE WAS PART OF AN INDIAN RESERVATION. [Man. Ref. VI.J.]

P520 THE PRIORITY DATE MAY BE QUESTIONABLE. NO DOCUMENTATION AS REQUIRED BY THE 1961 GROUNDWATER CODE WAS SUBMITTED TO SUPPORT THIS CLAIM.

P545 THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE BECAUSE NO DOCUMENTATION AS REQUIRED BY THE 1961 GROUNDWATER CODE WAS SUBMITTED TO SUPPORT THIS CLAIM. THIS CLAIM APPEARS TO BE DUPLICATED BY/REDUNDANT WITH WATER RIGHT NO. 000000-00.

P546 THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE BECAUSE NO DOCUMENTATION AS REQUIRED BY THE 1961 GROUNDWATER CODE WAS SUBMITTED TO SUPPORT THIS CLAIM. THIS CLAIM IS SUPPORTED BY ACKNOWLEDGEMENT NO. 000000.

D. WATER COURT, INDIAN RESERVATION, OR FEDERAL REMARKS

T100 NO REVIEW OR DETERMINATION OF THE ORIGIN OF THE CLAIMED TYPE OF HISTORICAL RIGHT OR OF ITS PRIORITY DATE, QUANTITY, VOLUME OR FLOW RATE HAS BEEN MADE. ADDITIONAL EVIDENCE WILL BE REQUIRED BEFORE THE CLAIM CAN BE DECREED.

E. DATABASE GENERATED REMARKS

None in this category.

PURPOSE (PU)

Added to clarify and describe the purpose or identify unresolved issues.

A. INFORMATION OR CLARIFICATION REMARKS

- PU Free text purpose information remark.
- P555 THIS WATER RIGHT IS INCIDENTALY USED FOR FIRE PROTECTION. [Man. Ref. VI.C., X.C.]
- P556 THIS WATER RIGHT ALSO INCLUDES **NATURAL SUBIRRIGATION** AS AN INCIDENTAL TYPE OF IRRIGATION. [Man. Ref. VII.A.]
- P560 SUBIRRIGATION CONTROLLED BY CHECK DAM LOCATED ON DRAIN DITCH. [Man. Ref. VII.A.]
- P600 THIS RIGHT IS SUBJECT TO ALL PRIOR RIGHTS. THE FLOW RATE AND VOLUME REPRESENT THE CLAIMED NEEDS OF THE STATE DEPARTMENT OF FISH WILDLIFE AND PARKS TO MAINTAIN STREAM FLOWS FOR THE PRESERVATION OF FISH AND WILDLIFE HABITAT. THE CLAIMED AMOUNTS ARE MADE A MATTER OF RECORD BUT ARE SUBJECT TO CHANGE SHOULD THE COURT DETERMINE THAT THOSE WATERS ARE NEEDED FOR USES DETERMINED TO BE MORE BENEFICIAL TO THE PUBLIC. SEE R.C.M. §89-801 (1947), NOW REPEALED BY SEC. 46, CH. 452, LAWS 1973. [Man. Ref. X.B.]

B. ISSUE REMARKS

- PUIS Free text purpose issue remark. [Man. Ref. VI.C., XI.F.]
- P620 THIS CLAIMED WATER RIGHT MAY BE QUESTIONABLE. A FIELD INVESTIGATION CONDUCTED **MM/DD/YYYY** FOUND NO EVIDENCE OF RECENT **MINING** ACTIVITY. SEE CLAIM FILE FOR ADDITIONAL INFORMATION. [Man. Ref. IV.G., VI.C.]
- P625 THE CLAIMED PURPOSE (USE) COULD NOT BE IDENTIFIED DUE TO LACK OF DATA. [Man. Ref. VI.C.]
- P628 THE CLAIMED PURPOSE (USE) CANNOT BE CONFIRMED DUE TO LACK OF DATA. [Man. Ref. VI.C.]
- P630 THIS CLAIMED PURPOSE IS QUESTIONED AS A BENEFICIAL USE OF WATER EXISTING PRIOR TO JULY 1, 1973. [Man. Ref. VI.C., X.B.]

- P631 THIS CLAIMED PURPOSE (USE) CANNOT BE CONFIRMED. THERE APPEARS TO BE NO APPROPRIATION OF WATER AS THE METHOD OF DIVERSION IS INSTREAM USE. [Man. Ref. VI.C.]
- P637 THE PURPOSE OF THIS CLAIM IS UNCLEAR AS MULTIPLE PURPOSES HAVE BEEN CLAIMED. THE CLAIMED PURPOSES INCLUDE RECREATION AND COMMERCIAL. MORE THAN ONE WATER RIGHT MAY BE INVOLVED. [Man. Ref. VI.C.]
- P639 DNRC EXAMINATION WAS UNABLE TO CONFIRM THE USE OF THIS WATER RIGHT. IT APPEARS THIS WATER RIGHT MAY HAVE NOT BEEN PERFECTED. [Man. Ref. VI.C., VII.E.]
- P644 IT APPEARS THIS WATER RIGHT MAY NOT HAVE BEEN PERFECTED. ACCORDING TO INFORMATION IN THE CLAIM FILE, THERE APPEARS TO BE NO APPROPRIATION OF WATER. ALL ELEMENTS OF THIS CLAIM MAY BE QUESTIONABLE. SEE CLAIM FILE FOR ADDITIONAL INFORMATION. [Man. Ref. VI.C., VII.B.]
- P650 IT APPEARS THIS WATER RIGHT MAY NOT HAVE BEEN PERFECTED. ACCORDING TO INFORMATION IN THE CLAIM FILE, NO WELL EXISTS FOR THIS CLAIM. ALL ELEMENTS OF THIS CLAIM MAY BE QUESTIONABLE. [Man. Ref. VI.C.]
OR
THE HEADGATE AND DITCH ARE AT A LOWER ELEVATION THAN THE CLAIMED PLACE OF USE.
OR
WATER FROM THE MAIN DITCH HAS NEVER BEEN USED FOR HOUSEHOLD PURPOSES. [Man. Ref. VI.C.]
- P655 ACCORDING TO INFORMATION IN THE CLAIM FILE, THIS WATER RIGHT MAY NOT HAVE BEEN PERFECTED FOR IRRIGATION USE. ALL ELEMENTS OF THIS CLAIM MAY BE QUESTIONABLE. [Man. Ref. VI.C.]
- P665 IT APPEARS THIS WATER RIGHT MAY NOT HAVE BEEN PERFECTED. NO PURPOSE, SOURCE, POINT OF DIVERSION, MEANS OF DIVERSION, PRIORITY DATE, TYPE OF HISTORICAL RIGHT, FLOW RATE, VOLUME, PERIOD OF USE, OR PLACE OF USE HAVE BEEN CLAIMED. ALL ELEMENTS OF THIS CLAIM MAY BE QUESTIONABLE. [Man. Ref. VI.C.]
- P675 THIS CLAIMED WATER RIGHT MAY BE QUESTIONABLE. THE RIGHT APPEARS TO HAVE LAST BEEN USED IN YYYY. [Man. Ref. VI.C.]

- P676 THIS CLAIMED WATER RIGHT MAY BE QUESTIONABLE. ACCORDING TO INFORMATION IN THE CLAIM FILE, THE RIGHT WAS LAST USED IN YYYY. [Man. Ref. VI.C.]
- P680 THIS CLAIMED WATER RIGHT MAY BE QUESTIONABLE. ACCORDING TO INFORMATION IN THE CLAIM FILE, THE RIGHT MAY NOT HAVE BEEN USED FOR THE PAST 40 YEARS. [Man. Ref. VI.C.]
- P685 DNRC EXAMINATION WAS UNABLE TO CONFIRM THE USE OF THIS WATER RIGHT FOR THE TEN CONSECUTIVE YEARS PRIOR TO JULY 1, 1973. [Man. Ref. VI.C.]
- P686 DNRC EXAMINATION WAS UNABLE TO CONFIRM THE USE OF THIS WATER RIGHT FOR THE TEN CONSECUTIVE YEARS PRIOR TO MM/DD/YYYY. [Man. Ref. VI.C.]
- P690 THE CLAIMED PURPOSE DOES NOT MATCH THE FORMERLY DECREED PURPOSE. CASE NO. 0000, MONTANA COUNTY DECREED THE USE AS MINING. [Man. Ref. VI.C.]
- P695 NO TYPE OF IRRIGATION SYSTEM HAS BEEN CLAIMED. THE TYPE OF HISTORICAL IRRIGATION APPEARS TO HAVE BEEN A FLOOD SYSTEM. [Man. Ref. VII.A.]
- P697 THE TYPE OF IRRIGATION SYSTEM CANNOT BE CONFIRMED. IT IS UNCLEAR IF THIS RIGHT SHOULD BE DEFINED BY FLOW RATE OR VOLUME. [Man. Ref. VII.A.]
- P700 THE TYPE OF IRRIGATION SYSTEM CANNOT BE CONFIRMED. USDA AERIAL PHOTOGRAPH NO. 999-111, DATED MM/DD/YYYY, SHOWS FLOOD IRRIGATION. [Man. Ref. VII.A.]
- P720 THIS CLAIM IS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION. [Man. Ref. VI.I.]
- P724 BECAUSE THIS CLAIM DID NOT RECEIVE A FACTUAL OR LEGAL ISSUE REMARK DURING THE CLAIMS EXAMINATION PROCESS, THE WATER COURT WILL NOT HOLD A HEARING ON THIS CLAIM UNDER MATTER OF THE ADJUDICATION OF EXISTING RIGHTS IN BASIN 411, 2002 MT 216, 311 MONT. 327, 55 P.3D 396 UNLESS A VALID OBJECTION IS FILED UNDER

SECTION [85-2-233, MCA](#), OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER RULE 8, W.R.ADJ.R. [Man. Ref. VI.C., X.B., Rule 27(h) W.R.C.E.R.]

P725 THE WATER COURT WILL HOLD A HEARING ON THIS CLAIM TO DETERMINE ITS VALIDITY SUBJECT TO SECTION [85-2-248, MCA](#), AND MATTER OF THE ADJUDICATION OF EXISTING RIGHTS IN BASIN 411, 2002 MT 216, 311 MONT. 327, 55 P.3D 396. A HEARING MAY ALSO BE HELD ON THIS CLAIM IF A VALID OBJECTION IS FILED UNDER SECTION [85-2-233, MCA](#), OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER RULE 8, W.R.ADJ.R. [Man. Ref. VI.C., X.B., Rule 27(h) W.R.C.E.R.]

C. LEGACY AND ARCHIVED REMARKS

PU1Z Legacy purpose information remark.

PU2Z Legacy purpose issue remark.

P565 PLACER MINING
DAIRY
RESTAURANT
CONVENIENCE STORE AND SERVICE STATION
COAL FIRED ELECTRIC POWER PLANT
SMELTER
SAWMILL WITH LOG POND
CHURCH
CAR WASH
FISHING ACCESS SITE
MARINA
ATHLETIC CLUB
HIGHWAY REST AREA

Use the Purpose clarification tab in the database to insert the information conveyed in P565. Note: See Figure VI-1 (Claim Examination: Purpose) for a more comprehensive list of purpose descriptions.

P721 THERE IS A QUESTION AS TO THE VALIDITY OF THIS CLAIMED RIGHT. IN THE MATTER OF THE DEARBORN DRAINAGE AREA, 234 MONT. 343 (1988) (THE BEAN LAKE CASE) THE MONTANA SUPREME COURT STATED: "IT IS CLEAR THEREFORE THAT UNDER MONTANA LAW BEFORE 1973, NO APPROPRIATION RIGHT WAS RECOGNIZED FOR RECREATION, FISH AND WILDLIFE, EXCEPT THROUGH A MURPHY RIGHT STATUTE."

The P721 remark above was added to Water Court decrees issued prior to 2002. This remark is no longer used, but should not be changed or deleted. This remark can only be removed from a claim by Water Court order or direction.

P722 THIS CLAIM FOR A RESERVED WATER RIGHT IS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. IT IS NOT CLEAR WHETHER THE CLAIMED PURPOSE IS WITHIN THE PURPOSES CONTEMPLATED IN THE RESERVATION.

P723 THE MONTANA SUPREME COURT HAS INSTRUCTED THE WATER COURT TO HOLD A HEARING ON THIS CLAIM TO DETERMINE ITS VALIDITY. IN THE MATTER OF THE MISSOURI RIVER DRAINAGE AREA, 2002 MT 216, 311 MONT. 327.

P722 & P723 also are no longer valid and should not be used in current examination.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

None in this category.

E. DATABASE GENERATED REMARKS

None in this category.

RESERVOIR (RN)

Added to retain claimed information that cannot be entered in the reservoir record in the database or to identify unresolved issues.

A. INFORMATION OR CLARIFICATION REMARKS

- RN Free text reservoir information remark.
- R25 RESERVOIR NAME: OLD MILLER POND
RESERVOIR NAME: UPPER RANCH RSVR. NO. 2 [Man. Ref. VI.D., VI.H.] (Note: Only use R25 when more than one reservoir name is claimed; otherwise enter name in Name field in the Reservoir tab.)
- R35 THE DAM/PIT EXTENDS INTO THE NESW SEC 36 TWP 99N RGE 99E MONTANA COUNTY. [Man. Ref. VI.H.]
- R40 THE DAM/PIT EXTENDS INTO THE NWNWNE, NENENW SEC 36 TWP 99N RGE 99E MONTANA COUNTY. [Man. Ref. VI.H., IV.E.]
- R50 THE DAM/PIT IS LOCATED IN GOVERNMENT LOT 1 SEC 36 TWP 99N RGE 99E MONTANA COUNTY. [Man. Ref. VI.H.]
- R55 THE CAPACITY, DAM HEIGHT, AND SURFACE AREA HAVE BEEN ESTIMATED BY DNRC. [Man. Ref. VI.H.]
- R56 THE CAPACITY, DAM HEIGHT, MAXIMUM DEPTH, AND SURFACE AREA HAVE/HAS BEEN ESTIMATED BY DNRC. [Man. Ref. VI.H.]
- R65 THE RESERVOIR IS A DAMMED OXBOW OF THE OLD DOE RIVER CHANNEL. [Man. Ref. VI.H.]
- R70 MANMADE PIT IN BOTTOM OF NATURAL LAKE. [Man. Ref. VI.H.]
- R75 SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA. [Man. Ref. VI.H.]
- R76 SEE THE MONTANA RESOURCES BOARD DAM INVENTORY WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA. [Man. Ref. VI.H.]

B. ISSUE REMARKS

- RNIS Free text reservoir issue remark.
- R77 THE MAXIMUM STORAGE CAPACITY OF THIS RESERVOIR MAY BE QUESTIONABLE. ACCORDING TO DNRC ESTIMATES, THE MAXIMUM STORAGE CAPACITY IS 40.0 ACRE-FEET. [Man. Ref. VI.H.]
- R80 RESERVOIR APPEARS WASHED OUT ON USDA AERIAL PHOTOGRAPH NO. 179-152, DATED MM/DD/YYYY. [Man. Ref. VI.H.]
- R81 ACCORDING TO INFORMATION IN THE CLAIM FILE, THE DAM/PIT WASHED OUT IN YYYY. [Man. Ref. VI.H.]
- R85 ACCORDING TO INFORMATION IN THE CLAIM FILE, THE RESERVOIR WAS CONSTRUCTED IN YYYY WHICH DOES NOT CORRESPOND TO THE CLAIMED PRIORITY DATE. THIS MAY INDICATE AN EXPANSION OF THE WATER RIGHT. [Man. Ref. VI.H.]
- R90 ACCORDING TO INFORMATION IN THE CLAIM FILE, THE RESERVOIR WAS ENLARGED IN YYYY. THIS MAY INDICATE AN EXPANSION OF THE WATER RIGHT. [Man. Ref. VI.H.]
- R91 ACCORDING TO INFORMATION IN THE CLAIM FILE, A PIT WAS CONSTRUCTED WITHIN THE RESERVOIR IN YYYY WHICH DOES NOT CORRESPOND WITH THE CLAIMED PRIORITY DATE. THIS MAY INDICATE AN EXPANSION OF THE WATER RIGHT. [Man. Ref. VI.H.]
- R95 THE RESERVOIR IS NOT SHOWN IN THE MONTANA COUNTY WATER RESOURCES SURVEY (YYYY). IT APPEARS TO HAVE BEEN BUILT AFTER THE ORIGINAL APPROPRIATION AND MAY INDICATE AN EXPANSION OF THE WATER RIGHT. [Man. Ref. VI.H.]
- R100 EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA. [Man. Ref. VI.H.]
- R105 A RESERVOIR STORAGE RIGHT ON THIS CLAIM MAY BE QUESTIONABLE. THE DAM IS LOCATED ON ANOTHER INDIVIDUAL'S PROPERTY WHICH IS COVERED BY CLAIM NO. 000000-00. [Man. Ref. VI.H.]

R110 THERE IS A DISAGREEMENT AMONG THE OWNERS OF
RECORD CONCERNING THE INFORMATION SUBMITTED ON
THE RESERVOIR INFORMATIN WORKSHEET. [Man. Ref. VI.H.]

C. LEGACY AND ARCHIVED REMARKS

RN1Z Legacy reservoir information remark.
RN2Z Legacy reservoir information remark.
RN3Z Legacy reservoir issue remark.
RX1Z Legacy reservoir information remark.

**D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN
RESERVATION, OR FEDERAL REMARKS**

None in this category.

E. DATABASE GENERATED REMARKS

None in this category.

SOURCE NAME (SN)

Added to clarify and describe the source or identify unresolved issues.

A. INFORMATION OR CLARIFICATION REMARKS

- SN Free text source name information remark.
- S15 THE SOURCE INCLUDES UNNAMED TRIBUTARIES OF TWO DOE CREEK. [Man. Ref. VI.D.]
- S16 SOURCE IS COMPOSED OF SEVERAL/THREE UNNAMED TRIBUTARIES WITHIN THE POINT OF DIVERSION LEGAL LAND DESCRIPTION. [Man. Ref. VI.D.]
- S20 SOURCE IS COMPOSED OF SEVERAL/FOUR DEVELOPED/UNDEVELOPED SPRINGS WITHIN THE POINT OF DIVERSION LEGAL LAND DESCRIPTION. [Man. Ref. VI.D.]
- S30 ALSO KNOWN AS DOE SLOUGH
ALSO KNOWN AS DOE LAKE
ALSO KNOWN AS DOE SPRING [Man. Ref. VI.D.]
- S35 UNNAMED NATURAL LAKE [Man. Ref. VI.D.]
- S41 POTHOLE LAKE [Man. Ref. VI.D.]
- S42 SOURCE FEEDS A NATURAL LAKE/POND. [Man. Ref. VI.D.]
- S43 SOURCE ORIGINATES FROM A NATURAL LAKE KNOWN AS DOE LAKE. [Man. Ref. VI.D.]
- S45 THE SOURCE IS WATER FLOWING FROM THE DOE MINE TUNNEL. [Man. Ref. VI.D.]
- S50 FLOWING ARTESIAN WELL [Man. Ref. VI.D.]
- S55 WATER FROM DOE LAKE IS EXCHANGED FOR WATER DIVERTED FROM SOUTH FORK OF DOE CREEK. [Man. Ref. VI.D.]
- S60 WATER DIVERTED FROM DOE CREEK, CASE NO. 0000, MONTANA COUNTY, IS EXCHANGED FOR WATER DIVERTED FROM MAD DOE CREEK. [Man. Ref. VI.D.]

- S65 DOE RIVER IS USED AS A NATURAL CARRIER TO CONVEY WATER FROM MAD DOE CREEK TO POINT OF DIVERSION NO. 2. [Man. Ref. VI.D.]
- S70 SOUTH DOE RIVER IS USED AS A NATURAL CARRIER TO CONVEY WATER FROM MAD DOE CREEK TO THE POINT OF DIVERSION. [Man. Ref. VI.F.]
- S75 THE SOURCE IS A TRIBUTARY OF DOE CREEK. [Man. Ref. VI.D.]
- S80 THIS WATER RIGHT ALSO INCLUDES SURFACE WATER FROM AN UNNAMED TRIBUTARY OF MAD DOE CREEK. [Man. Ref. VI.D.]
- S85 THIS WATER RIGHT ALSO INCLUDES GROUNDWATER FROM A DEVELOPED SPRING IN THE NWNWNW SEC 36 TWP 99N RGE 99W MONTANA COUNTY. [Man. Ref. VI.D.]
- S90 THE SOURCE IS WATER COLLECTED IN A DRAIN DITCH. [Man. Ref. VI.D.]
- S95 THE SOURCE IS WATER COLLECTED IN THE DOE DRAIN DITCHES. [Man. Ref. VI.D.]
- S97 THE SOURCE IS WATER COLLECTED ALONG THE ENTIRE LENGTH OF THE DOE DITCH WITHIN THE POINT OF DIVERSION LEGAL LAND DESCRIPTION. [Man. Ref. VI.F.]
- S98 THE SOURCE IS WATER COLLECTED ALONG THE LENGTH OF DITCH WITHIN THE POINT OF DIVERSION LEGAL LAND DESCRIPTION. [Man. Ref. VI.F.]
- S100 SOURCE LOCATED WITHIN AN INTERIOR DRAINAGE. [Man. Ref. VI.D.]

B. ISSUE REMARKS

- SNIS Free text source name issue remark.
- S105 THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED. [Man. Ref. VI.D.]
- S110 THIS CLAIM APPEARS TO DIVERT WATER FROM TWO SEPARATE SOURCES. MORE THAN ONE WATER RIGHT MAY BE INVOLVED. [Man. Ref. VI.D.]

- S115 WATER IS NOT DIVERTED FROM THE CLAIMED SOURCE. WATER FROM THE CLAIMED SOURCE IS EXCHANGED FOR WATER DIVERTED FROM A DIFFERENT SOURCE. DUE TO THE EXCHANGE OF WATER, THE SOURCE AND PRIORITY DATE CANNOT BE CONFIRMED. [Man. Ref. VI.D.]
- S120 WATER IS NOT DIVERTED FROM THE SOURCE CLAIMED. A HISTORICAL APPROPRIATION FROM THE CLAIMED SOURCE CANNOT BE CONFIRMED. [Man. Ref. VI.D.]
- S125 WATER IS NOT DIVERTED FROM THE SOURCE CLAIMED. IT APPEARS THAT NO HISTORICAL APPROPRIATION HAS OCCURRED FROM THE CLAIMED SOURCE. [Man. Ref. VI.D.]
- S126 THE CLAIMED SOURCE MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM **DOE CREEK**. [Man. Ref. VI.D.]
- S127 THE CLAIMED SOURCE MAY BE QUESTIONABLE. THE SOURCE DESCRIBED IN CASE NO. 0000, **MONTANA COUNTY**, IS INCONSISTENT WITH THE SOURCE AT THE CLAIMED POINT OF DIVERSION. [Man. Ref. VI.D.]

C. LEGACY AND ARCHIVED REMARKS

- SN1Z Legacy source name information remark.
SN2Z Legacy source name information remark.
SN3Z Legacy source name issue remark.
- S10 POINT OF DIVERSION NO. 4 IS ON AN UNNAMED TRIBUTARY OF **STONEY CREEK**.
- S25 POINT OF DIVERSION NO. 3 IS ON **STONEY CREEK**.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

None in this category.

E. DATABASE GENERATED REMARKS

None in this category.

SOURCE TYPE (ST)

Legacy and archived source type remarks were added to describe the minor type.

A. INFORMATION OR CLARIFICATION REMARKS

None in this category.

B. ISSUE REMARKS

None in this category.

C. LEGACY AND ARCHIVED REMARKS

Prior to December, 2002, the following remarks were used to store spring, waste and seepage, subirrigation, manmade pit, or natural pit in the Remark tab in the database. Now these are entered as a Minor Type using the POD Tab.

S175	Manmade Pit
S180	Natural Pit
S185	Subirrigation
S190	Spring
S195	Waste and Seepage

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

None in this category.

E. DATABASE GENERATED REMARKS

None in this category.

SUPPLEMENTAL RIGHTS (SR)

Added to claims to identify supplemental relationships or related unresolved issues.

A. INFORMATION OR CLARIFICATION REMARKS

- SR Free text supplemental rights information remark. [Man Ref. VII.F.]
- S135 WHENEVER THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE COMBINED TO SUPPLY WATER FOR THE CLAIMED PURPOSE, EACH IS LIMITED TO THE HISTORICAL FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE. 000000-00, 000000-00, 000000-00. [Man. Ref. X.D., Rule 40(c) W.R.C.E.R.]

B. ISSUE REMARKS

- SRIS Free text supplemental rights issue remark.
- S140 THE COMBINED CLAIMED FLOW RATE FOR THIS GROUP OF SUPPLEMENTAL RIGHTS IS 69.50 GPM PER ACRE. THE FLOW RATE GUIDELINE FOR INDIVIDUAL CLAIMS IS 17 GPM PER ACRE. [Man. Ref. VII.E.]
- S141 THE COMBINED CLAIMED VOLUME FOR THIS GROUP OF SUPPLEMENTAL RIGHTS IS 17.90 ACRE-FEET PER ACRE. THE VOLUME GUIDELINE FOR INDIVIDUAL CLAIMS IS 1.90 ACRE-FEET PER ACRE. [Man. Ref. VII.E.]
- S146 THE COMBINED CLAIMED VOLUME FOR THIS GROUP OF SUPPLEMENTAL RIGHTS IS 200 ACRE-FEET WHICH APPEARS TO EXCEED THE CAPACITY OF DOE RESERVOIR. ACCORDING TO INFORMATION IN THE CLAIM FILE, THE MAXIMUM STORAGE CAPACITY IS 35 ACRE-FEET. [Man. Ref. VII.E.]
- S155 THE COMBINED FLOW RATE FOR THIS GROUP OF SUPPLEMENTAL RIGHTS EXCEEDS THE FLOW RATE GUIDELINE FOR MINING PURPOSES BY A FACTOR OF TWO. [Man. Ref. X.C.]
- S160 THE COMBINED CLAIMED VOLUME FOR THE FOLLOWING CLAIMS IS 1720 GALLONS PER CAPITA PER DAY (GPCD)

BASED ON THE 1980 CENSUS POPULATION OF 1896 PEOPLE AND A TOTAL CLAIMED VOLUME OF 3657 ACRE-FEET. THIS APPEARS EXCESSIVE FOR THE CLAIMED PURPOSE. 000000-00, 000000-00, 000000-00, 000000-00. [Man. Ref. X.C., X.D.]

S165 THE COMBINED CLAIMED VOLUME/FLOW RATE FOR THIS GROUP OF SUPPLEMENTAL RIGHTS IS 480.00 ACRE-FEET/300 GPM WHICH CANNOT BE CONFIRMED DUE TO LACK OF DATA. [Man. Ref. X.D.]

S170 THE COMBINED CLAIMED VOLUME FOR THIS GROUP OF SUPPLEMENTAL RIGHTS IS 1,480.00 ACRE-FEET. DATA IN THE CLAIM FILE INDICATES A MAXIMUM USE OF 810.00 ACRE-FEET PER YEAR. [Man. Ref. X.D.]

C. LEGACY AND ARCHIVED REMARKS

SR1Z Legacy supplemental information remark.

SR2Z Legacy supplemental issue remark.

SR3Z Legacy supplemental issue remark.

S130 THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE. 000000-00, 000000-00.

S131 THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. 000000-00, 000000-00.

S150 THE MAXIMUM COMBINED ACRES FOR THIS GROUP OF SUPPLEMENTAL CLAIMS MAY REQUIRE MODIFICATION PENDING RESOLUTION OF MAXIMUM IRRIGATED ACRES ISSUE.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

None in this category.

E. DATABASE GENERATED REMARKS

Irrigation: The following database generated remark is printed from information entered on the Related Rights tab.

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE. 000000-00, 000000-00. [Man. Ref. VII.E.]

TEMPORARY REMARKS

Added as permanent reference numbers for temporary legacy remarks.

A. INFORMATION OR CLARIFICATION REMARKS

None in this category.

B. ISSUE REMARKS

None in this category.

C. LEGACY AND ARCHIVED REMARKS

None in this category.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

- T981 THE MOTION OF THE COURT HAS BEEN AMENDED TO CONFORM WITH THE EVIDENCE SUBMITTED BY THE CLAIMANT TO INCLUDE CHANGES IN THE POINT OF DIVERSION AND PLACE OF USE. BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE TEMPORARY PRELIMINARY DECREE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.
- T982 THE MOTION OF THE COURT HAS BEEN AMENDED TO CONFORM WITH THE EVIDENCE SUBMITTED BY THE CLAIMANT TO INCLUDE A CHANGE IN THE POINT OF DIVERSION. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE TEMPORARY PRELIMINARY DECREE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.
- T997 A CLERICAL CORRECTION HAS BEEN MADE TO THE POINT OF DIVERSION. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER

WHOSE RIGHT MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

T998 CLERICAL CORRECTIONS HAVE BEEN MADE TO THE POINT OF DIVERSION AND PLACE OF USE. BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHT MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

T999 IN ACCORDANCE WITH THE DNRC MEMORANDUM OF MARCH 30, 1987, A CLERICAL CORRECTION HAS BEEN MADE TO CHANGE THE DECREED POINT OF DIVERSION TO A DNRC STANDARD LAND DESCRIPTION. BECAUSE THIS CORRECTION WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHT MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

E. DATABASE GENERATED REMARKS

None in this category.

TRANSFERS (aka Ownership Update) (TR)

Added to every claim where an ownership update has been recorded (computer generated). Remarks are suppressed from printing on the department's summary report and the decree abstract.

A. INFORMATION OR CLARIFICATION REMARKS

- OWN Free text ownership update received remark.
- T24 WATER RIGHT OWNERSHIP UPDATE RECEIVED
MM/DD/YYYY. DOE TO SMITH. SMITH RECEIVED 100% OF LOT
16A. [Man. Ref. XI.D.]
OR
WATER RIGHT OWNERSHIP UPDATE RECEIVED
MM/DD/YYYY. DOE TO SMITH – LOTS 8, 9, AND 10.
OR
WATER RIGHT OWNERSHIP UPDATE RECEIVED
MM/DD/YYYY. DOE CATTLE CO TO SMITH – SPLIT – SMITH
RECEIVES 120 ACRES IN THE NENE AND S2NE OF SEC 36,
TWP 99S RGE 99W.
OR
WATER RIGHT OWNERSHIP UPDATE RECEIVED
MM/DD/YYYY. NAME CHANGE – DOE CATTLE CO TO JONES
RIVER CATTLE CO.
- T25 WATER RIGHT OWNERSHIP UPDATE RECEIVED
MM/DD/YYYY. [Man. Ref. XI.D.]
- T26 NOTICE OF UNDIVIDED INTEREST, WATER RIGHT
OWNERSHIP UPDATE RECEIVED MM/DD/YYYY. [Man. Ref.
XI.D.]
- T27 WATER RIGHT OWNERSHIP UPDATE RECEIVED
MM/DD/YYYY. MDT PROJECT AND/OR PARCEL NUMBER
00000. [Man. Ref. XI.D.]

B. ISSUE REMARKS

None in this category.

C. LEGACY AND ARCHIVED REMARKS

TR1Z Legacy ownership update received information remark.
TR2Z Legacy ownership update received issue remark.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

T30 * OWNERSHIP OF WATER RIGHT CHANGED BY ORDER OF THE WATER COURT DURING ADJUDICATION OF THE TEMPORARY PRELIMINARY DECREE.

T31 * OWNERSHIP OF WATER RIGHT CHANGED BY ORDER OF THE WATER COURT ON MM/DD/YYYY DURING THE ADJUDICATION OF THE TEMPORARY PRELIMINARY DECREE.

T35 BASED ON THE PARTIES' STIPULATION, OWNERSHIP OF THE WATER RIGHT CHANGED BY ORDER OF THE WATER COURT DURING ADJUDICATION OF THE TEMPORARY PRELIMINARY DECREE.

T36 BASED ON THE PARTIES' STIPULATION, OWNERSHIP OF THE WATER RIGHT CHANGED BY ORDER OF THE WATER COURT ON MM/DD/YYYY DURING THE ADJUDICATION OF THE TEMPORARY PRELIMINARY DECREE.

E. DATABASE GENERATED REMARKS

None in this category.

TYPE OF RIGHT (P, T)

Added to clarify type of right or to identify unresolved issues involving the type of right.

A. INFORMATION OR CLARIFICATION REMARKS

C66 NO REVIEW OR DETERMINATION OF THE CLAIMED TYPE OF HISTORICAL RIGHT HAS BEEN MADE.

B. ISSUE REMARKS

C65 IT IS NOT CLEAR WHETHER THIS CLAIM IS FOR A RESERVED WATER RIGHT OR A STATE BASED RIGHT.

P360 THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A FILED APPROPRIATION RIGHT. [Man. Ref. VI.I.]

P365 THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. THE MONTANA COUNTY WATER RESOURCES SURVEY (YYYY) IDENTIFIES THIS RIGHT AS A FILED APPROPRIATION. [Man. Ref. VI.I.]

P372 NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM. [Man. Ref. VI.I.]

P988 NO TYPE OF HISTORICAL RIGHT IS CLAIMED. IT IS NOT CLEAR WHETHER THIS CLAIM IS FOR A RESERVED WATER RIGHT OR FOR A STATE LAW BASED WATER RIGHT. [Man. Ref. VI.I.]

P989 NO REVIEW OR DETERMINATION OF THE CLAIMED TYPE OF HISTORICAL RIGHT HAS BEEN MADE. ADDITIONAL EVIDENCE MAY BE REQUIRED BEFORE THIS CLAIM CAN BE DECREED. [Man. Ref. VI.I.]

C. LEGACY AND ARCHIVED REMARKS

None in this category.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

- M9 PURSUANT TO WATER COURT ORDER DATED MM/DD/YYYY, THIS CLAIM HAS NOT BEEN EXAMINED UNDER THE SUPREME COURT WATER RIGHT CLAIM EXAMINATION RULES AS THE CLAIMED TYPE OF HISTORICAL RIGHT IS RESERVED.
- T102 PURSUANT TO WATER COURT ORDER, THIS CLAIM HAS NOT BEEN EXAMINED IN ACCORDANCE WITH MONTANA SUPREME COURT RULES AS THE TRIBES OR THE UNITED STATES HAVE DETERMINED THAT THIS CLAIM INVOLVES TRIBAL OR ALLOTTED TRUST LAND OR FEE LAND OWNED BY THE TRIBES, TRIBAL CORPORATIONS, AGENCIES OF THE TRIBES, OR OTHER SIMILAR TRIBAL ORGANIZATIONS OR ENTITIES OR CLAIMS FOR FEDERAL RESERVED OR ABORIGINAL WATER RIGHTS CLAIMED BY THE TRIBES OR BY THE UNITED STATES ON BEHALF OF THE TRIBES.

E. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL ISSUE REMARKS

- P988 NO TYPE OF HISTORICAL RIGHT IS CLAIMED. IT IS NOT CLEAR WHETHER THIS CLAIM IS FOR A RESERVED WATER RIGHT OR FOR A STATE LAW BASED WATER RIGHT.
- P990 IT IS NOT CLEAR WHETHER THIS CLAIM IS A STATE-BASED WATER RIGHT OR PART OF THE TRIBAL WATER RIGHT AS DEFINED IN THE 1985 FORT PECK-MONTANA COMPACT.
- P991 THE CLAIMED TYPE OF HISTORICAL RIGHT IS QUESTIONABLE. BASED ON INFORMATION IN THE CLAIM FILE, THIS CLAIM MAY BE PART OF THE TRIBAL WATER RIGHT ACCORDING TO ARTICLE III.B.4. OF THE FORT PECK-MONTANA COMPACT. ADDITIONAL EVIDENCE MAY BE REQUIRED BEFORE THIS CLAIM CAN BE DECREED.
- P992 THE CLAIMED TYPE OF HISTORICAL RIGHT IS QUESTIONABLE. BASED ON INFORMATION IN THE CLAIM FILE, THIS CLAIM MAY BE PART OF THE TRIBAL WATER RIGHT ACCORDING TO ARTICLE III.B.1 AND 6. OF THE FORT PECK-MONTANA COMPACT. ADDITIONAL EVIDENCE MAY BE REQUIRED BEFORE THIS CLAIM CAN BE DECREED.

- P993 THE CLAIMED TYPE OF HISTORICAL RIGHT IS QUESTIONABLE. BASED ON INFORMATION IN THE CLAIM FILE, THIS CLAIM MAY BE PART OF THE TRIBAL WATER RIGHT ACCORDING TO ARTICLE III.B.2. OF THE FORT PECK-MONTANA COMPACT. ADDITIONAL EVIDENCE MAY BE REQUIRED BEFORE THIS CLAIM CAN BE DECREED.
- P994 THIS CLAIM MAY BE PART OF THE TRIBAL WATER RIGHT ACCORDING TO ARTICLE III.A. OF THE FORT PECK-MONTANA COMPACT. ADDITIONAL EVIDENCE MAY BE REQUIRED BEFORE THIS CLAIM CAN BE DECREED.
- P995 THIS CLAIM MAY BE PART OF THE TRIBAL WATER RIGHT ACCORDING TO ARTICLE III.B.3. OF THE FORT PECK-MONTANA COMPACT. ADDITIONAL EVIDENCE MAY BE REQUIRED BEFORE THIS CLAIM CAN BE DECREED.
- P996 AS THE TYPE OF HISTORICAL RIGHT CLAIMED IS BASED ON THE TRIBAL WATER RIGHT CONFIRMED IN THE FORT PECK-MONTANA COMPACT, THIS CLAIM HAS NOT BEEN EXAMINED UNDER THE SUPREME COURT WATER RIGHT CLAIM EXAMINATION RULES.
- P997 THE CLAIMED TYPE OF HISTORICAL RIGHT IS QUESTIONABLE. THIS CLAIM MAY BE A STATE-LAW WATER RIGHT ACCORDING TO ARTICLE III.I. OF THE FORT PECK-MONTANA COMPACT. ADDITIONAL EVIDENCE MAY BE REQUIRED BEFORE THIS CLAIM CAN BE DECREED.
- P998 THE CLAIMED TYPE OF HISTORICAL RIGHT IS QUESTIONABLE. THIS CLAIM MAY BE A STATE-LAW WATER RIGHT ACCORDING TO ARTICLE III.A. OF THE FORT PECK-MONTANA COMPACT. ADDITIONAL EVIDENCE MAY BE REQUIRED BEFORE THIS CLAIM CAN BE DECREED.
- P999 THE CLAIMED TYPE OF HISTORICAL RIGHT IS QUESTIONABLE. THE TRIBES AND THE UNITED STATES HAVE NOT IDENTIFIED THIS RIGHT AS BEING PART OF THE TRIBAL WATER RIGHT OR AS A FEDERAL RESERVED WATER RIGHT. ADDITIONAL EVIDENCE MAY BE REQUIRED BEFORE THIS CLAIM CAN BE DECREED.
- T100 NO REVIEW OR DETERMINATION OF THE ORIGIN OF THE CLAIMED TYPE OF HISTORICAL RIGHT OR OF ITS PRIORITY DATE, QUANTITY, VOLUME OR FLOW RATE HAS BEEN MADE. ADDITIONAL EVIDENCE WILL BE REQUIRED BEFORE THE CLAIM CAN BE DECREED.

F. DATABASE GENERATED REMARKS

None in this category.

VOLUME (VM)

Added to claims to clarify the volume or to identify unresolved issues. Applying standards also adds volume remarks to claims.

A. INFORMATION OR CLARIFICATION REMARKS

- VM Free text volume information remark. [Man. Ref. VII.C., VIII.C., X.C.]
- V9 PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED. [Man. Ref. VII.C.]
- V10 THIS VOLUME WAS PREVIOUSLY DECREED IN CASE NO. 0000, MONTANA COUNTY. [Man. Ref. VII.C., VIII.C., IX.C., X.C., Rule 15(d) W.R.C.E.R.]
- V11 ENTIRE VOLUME OF THE SOURCE AS DECREED IN CASE NO. 0000, MONTANA COUNTY. [Man. Ref. VII.C, VIII.C., IX.C.]
- V12 THIS RIGHT IS FOR ONE FOURTH THE VOLUME OF DOE CREEK AS DECREED IN CASE NO. 0000, MONTANA COUNTY. [Man. Ref. VII.C, VIII.C., IX.C.]
- V13 ENTIRE/ONE FOURTH THE VOLUME OF DOE CREEK. [Man. Ref. VII.C, VIII.C., IX.C.]
- V20 THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE. [Man. Ref. X.C.]

B. ISSUE REMARKS

- VMIS Free text volume issue remark. [Man. Ref. VII.C.]
- G975 THE CLAIMED VOLUME EXCEEDS MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 210 ACRE-FEET PER YEAR. [Man. Ref. VII.C.]
- V25 THE CLAIMED VOLUME WAS NOT EXAMINED AS NO VOLUME GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIM EXAMINATION RULES. [Man. Ref. VI.C., X.C.]
- V30 THE CLAIMED VOLUME EXCEEDS THE 1,750 ACRE FEET DECREED IN CASE NO. 0000, MONTANA COUNTY. [Man. Ref. VII.C., VIII.C., IX.C., X.C.]

- V35 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 17.80 ACRE FEET PER ACRE. [Man. Ref. VII.C.]
- V37 THE CLAIMED FLOW RATE IS 134.00 GPM/AC. IT APPEARS A VOLUME QUANTIFICATION MAY BE REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT. [Man. Ref. VII.B.]
- V40 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 2.9 TIMES THE CAPACITY OF THE RESERVOIR. [Man. Ref. VII.C., IX.C., X.C.]
- V45 THE CLAIMED VOLUME APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE. [Man. Ref. VII.C., VIII.C., IX.C., X.C.]
- V50 NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS AREA IS 2.00 ACRE-FEET PER ACRE. [Man. Ref. VII.C.]
- V55 VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE. [Man. Ref. VII.C., VII.D.]
- V60 THE CLAIMED VOLUME WAS NOT EXAMINED. THE CLAIMED NUMBER OF HOUSEHOLDS AND ACRES OF DOMESTIC IRRIGATION COULD NOT BE IDENTIFIED. [Man. Ref. VIII.C.]
- V65 THE CLAIMED VOLUME MAY BE EXCESSIVE. THE CLAIMED NUMBER OF HOUSEHOLDS AND ACRES OF DOMESTIC IRRIGATION APPEAR TO BE INACCURATE. [Man. Ref. VIII.C.]
- V70 THE CLAIMED VOLUME EXCEEDS THE 2.50 ACRE-FEET GUIDELINE FOR THIS PURPOSE. ITS ACCURACY CANNOT BE CONFIRMED DUE TO LACK OF DATA. [Man. Ref. VIII.C., X.C.]
- V75 THE CLAIMED VOLUME EXCEEDS THE 2.00 ACRE-FEET GUIDELINE FOR THIS PURPOSE. AVAILABLE DATA SUPPORT A VOLUME OF 1.80 ACRE-FEET. [Man. Ref. VIII.C., X.C.]
- V77 VOLUME APPEARS TO BE EXCESSIVE FOR A BUCKET MEANS OF DIVERSION. [Man. Ref. VIII.C., IX.C., X.C.]
- V80 THE CLAIMED VOLUME APPEARS EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EXCEEDS THE GUIDELINE OF 3.00 ACRE-FEET PLUS A REASONABLE AMOUNT FOR EVAPORATION. [Man. Ref. VIII.C.]

- V85 VOLUME MAY BE EXCESSIVE. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN 24.0 HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THIS FIGURE. [Man. Ref. VIII.C., X.C.]
- V86 THE CLAIMED FLOW RATE OR VOLUME MAY BE INCORRECT. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN 24.0 HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THESE FIGURES. [Man. Ref. VIII.C., X.C.]
- V90 NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS 2.00 ACRE-FEET PER YEAR. [Man. Ref. VIII.C., IX.C., X.C.]
- V95 NO VOLUME HAS BEEN CLAIMED. [Man. Ref. VII.C., VIII.C., IX.C., X.C.]
- V96 THE VOLUME HAS NOT BEEN EXAMINED AS NO QUANTIFIED VOLUME WAS CLAIMED. [Man. Ref. VII.C.]
- V97 NO QUANTIFIED VOLUME WAS CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS 2.50 ACRE-FEET PER YEAR. [Man. Ref. VIII.C., IX.C.]
- V100 THE CLAIMED VOLUME APPEARS TO/MAY BE EXCESSIVE FOR THE CLAIMED PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. [Man. Ref. VIII.C., IX.C., X.C.]
- V105 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. AVAILABLE DATA SUPPORT A VOLUME OF 2.30 ACRE-FEET. [Man. Ref. VIII.C., IX.C.]
- V111 THE CLAIMED VOLUME CANNOT BE CONFIRMED DUE TO LACK OF DATA. [Man. Ref. VII.C., VIII.C., IX.C., X.C.]
- V112 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS 116.12 GPD PER ANIMAL UNIT. [Man. Ref. IX.C.]
- V115 THE CLAIMED VOLUME APPEARS TO EXCEED THE REASONABLE AND CUSTOMARY VOLUME FOR THIS PURPOSE. AVAILABLE DATA SUPPORT A VOLUME OF 4.80 ACRE-FEET PER YEAR. [Man. Ref. X.C.]

- V120 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. AVAILABLE DATA SUGGEST THE ACTUAL VOLUME IS 1.20 ACRE-FEET PER YEAR. [Man. Ref. IV.D., X.C.]
- V130 THE CLAIMED VOLUME EXCEEDS THE 2.00 ACRE-FEET GUIDELINE FOR AGRICULTURAL SPRAYING. [Man. Ref. X.C.]
- V135 THE CLAIMED VOLUME MAY BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME IS 600 GALLONS PER CAPITA PER DAY (GPCD) BASED ON THE 1980 CENSUS POPULATION OF 2,518 PEOPLE. [Man. Ref. X.C.]
- V138 IT IS NOT CLEAR IF A PORTION OF THIS WATER RIGHT IS STORED PURSUANT TO THE CURTAILMENT PROVISION (BY THE SHAREHOLDERS) IN THE 1958 CONTRACT BETWEEN THE UNITED STATES (BUREAU OF RECLAMATION) AND THE CLARK CANYON WATER SUPPLY COMPANY.
- V140 IT IS NOT CLEAR WHAT PORTION OF THIS WATER RIGHT IS STORED PURSUANT TO THE CURTAILMENT PROVISION (BY THE SHAREHOLDERS) IN THE 1958 CONTRACT BETWEEN THE UNITED STATES (BUREAU OF RECLAMATION) AND THE CLARK CANYON WATER SUPPLY COMPANY. THIS RIGHT MAY BE STORING PRIVATE SHARHOLDERS WATER RIGHTS.
- V145 A GUIDELINE FOR THE FLOW RATE AND VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND FLOW RATE AND VOLUME REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE AND VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE AND VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.
- V150 THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.
- V155 CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL

BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

C. LEGACY AND ARCHIVED REMARKS

The following remarks were created so post-decree corrections could be made to abstracts that were generated prior to 2001 where legacy standards were applied to the abstracts and not actually added to the database. These remarks are used by adjudication staff in post-decree corrections.

- CG8 THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
- CG9 THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.
- CG11 THIS WATER RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.
- CG13 THE VOLUME OF THIS WATER RIGHT HAS BEEN REDUCED TO THE 1.9 ACRE-FEET PER ACRE GUIDELINE FOR WATER SPREADING. THE VOLUME MAY BE CONTESTED BY PROPER OBJECTION.
- VF010 THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE. **This remark was used prior to April 5, 2007, and should no longer be used.**
- VF011 THIS WATER RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES. **This remark was used prior to April 5, 2007, and should no longer be used.**
- VF013 THE FLOW RATE AND VOLUME OF THIS RIGHT IS LIMITED TO THE MINIMUM AMOUNTS NECESSARY FOR FIRE PROTECTION PURPOSES. **This remark was used prior to April 5, 2007, and should no longer be used.**

V15 THE VOLUME OF THIS CLAIM HAS BEEN REDUCED TO THE GUIDELINE OF 104.00 ACRE-FEET PER YEAR. THE VOLUME MAY BE CONTESTED BY PROPER OBJECTION.

V136 THIS CLAIM FOR A RESERVED WATER RIGHT IS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. IT IS NOT CLEAR WHETHER THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

V16 THIS USE IS ESSENTIALLY NON-CONSUMPTIVE. IN THE EVENT OF A SUBSEQUENT TRANSFER OR CHANGE OF THIS WATER RIGHT, THE USE SHALL BE DEEMED TO BE WHOLLY NON-CONSUMPTIVE.

V17 THE WATER COURT HAS DETERMINED THAT A VOLUME QUANTIFICATION IS REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.

V18 THE VOLUME QUANTIFICATION ON THIS CLAIM IS THE RESULT OF A STIPULATION FILED BY THE PARTIES WITH THE WATER COURT ON MM/DD/YYYY. THE COURT HAS MADE NO DETERMINATION AS TO THE NEED FOR A VOLUME QUANTIFICATION ON THIS CLAIM AS PROVIDED FOR IN [85-2-234\(6\)\(b\)\(iii\), MCA.](#)

E. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL ISSUE REMARKS

T100 NO REVIEW OR DETERMINATION OF THE ORIGIN OF THE CLAIMED TYPE OF HISTORICAL RIGHT OR OF ITS PRIORITY DATE, QUANTITY, VOLUME OR FLOW RATE HAS BEEN MADE. ADDITIONAL EVIDENCE WILL BE REQUIRED BEFORE THE CLAIM CAN BE DECREED.

F. DATABASE GENERATED REMARKS

V5 THE VOLUME OF THIS WATER RIGHT HAS BEEN REDUCED TO THE GUIDELINE OF _____ ACRE-FEET PER YEAR. THE VOLUME MAY BE CONTESTED BY PROPER OBJECTION. [Man. Ref. X.B., X.C., Rule 29(g) W.R.C.E.R.]

- V8 THE VOLUME OF THIS CLAIM HAS BEEN REDUCED TO THE _____ ACRE-FEET PER ACRE GUIDELINE FOR WATER SPREADING. THE VOLUME MAY BE CONTESTED BY PROPER OBJECTION. [Man. Ref. VII.C, Rule 15(e) W.R.C.E.R.]
- V23 THE VOLUME OF THIS WATER RIGHT APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME IS GREATER THAN 3.20 ACRE-FEET PER ACRE PER YEAR. [Man. Ref. VII.C., VIII.C., IX.C.]
- V24 THE CLAIMED VOLUME EXCEEDS MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS 3.20 ACRE-FEET PER YEAR. [Man. Ref. VII.C., VIII.C., IX.C., X.C.]
- VF009 THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE. [Man. Ref. VII.C., Rule 15(c) W.R.C.E.R.]
- VF012 THE FLOW RATE AND VOLUME ARE LIMITED TO THE MINIMUM AMOUNTS NECESSARY TO SUSTAIN THIS PURPOSE. THIS RIGHT SHALL CONTINUE TO BE UTILIZED IN ACCORDANCE WITH HISTORICAL PRACTICES. [Man. Ref. X.C., Rule 29(d) W.R.C.E.R.]
- VF014 THE VOLUME OF THIS RIGHT IS LIMITED TO THE MINIMUM AMOUNTS NECESSARY FOR FIRE PROTECTION PURPOSES. [Man. Ref. X.C.]
- VF015 THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE. [Man. Ref. IX.C., Rule 24(c) W.R.C.E.R.]
- VF016 THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES. [Man. Ref. X.C., Rule 29(b) W.R.C.E.R.]

WITHDRAWN CLAIM (TC)

Added to any claim withdrawn from the adjudication process by the claimant.

A. INFORMATION OR CLARIFICATION REMARKS

- G24 THIS CLAIMED WATER RIGHT HAS BEEN WITHDRAWN AS IT WAS DUPLICATED BY WATER RIGHT NO. 000000-00. [Man. Ref. XI.E.]
- T4 ON 12/30/2012 DEB CLARK FILED A REQUEST TO WITHDRAW OWNERSHIP INTEREST IN THIS CLAIM. THE FOLLOWING ELEMENTS WERE REDUCED BASED UPON THIS REQUEST AND THE AGREEMENT OF ALL REMAINING CO-OWNERS: FLOW RATE AND VOLUME
- T5 THIS CLAIM WAS WITHDRAWN FROM THE ADJUDICATION PROCESS AT THE REQUEST OF THE CLAIMANT ON MM/DD/YYYY. [Man. Ref. XI.E., Rule 37(d) W.R.C.E.R.]
- T9 THIS CLAIM WAS WITHDRAWN PURSUANT TO ARTICLE VII(C) OF THE CHIPPEWA CREE TRIBE-MONTANA COMPACT. 000000-00. [Man. Ref. XI.E.]

B. ISSUE REMARKS

- TCIS Free text withdrawn claim issue remark. [Man. Ref. XI.E.]
- T55 A REQUEST TO WITHDRAW SUBMITTED MM/DD/YYYY WAS NOT SIGNED BY ALL OWNERS OF RECORD. DNRC REQUESTED THE OTHER OWNERS SUBMIT A SIGNED AND NOTARIZED WITHDRAWAL FORM. AS OF MM/DD/YYYY, A WITHDRAWAL FORM HAS NOT BEEN SUBMITTED BY ALL OWNERS OF RECORD, THEREFORE, THIS REQUEST TO WITHDRAW HAS NOT BEEN PROCESSED. [Man. Ref. XI.E.]
- T60 A WITHDRAWAL OF INTEREST IN WATER RIGHT CLAIM WAS RECEIVED ON 12/25/1998. THE REDUCTION IN **FLOW RATE, VOLUME , AND TOTAL ACRES** HAS NOT BEEN IMPLEMENTED AS WRITTEN AUTHORIZATION HAS NOT BEEN RECEIVED FROM ALL CO-OWNERS. THESE ELEMENTS MAY BE EXCESSIVE.

C. LEGACY AND ARCHIVED REMARKS

G25 THIS CLAIMED WATER RIGHT HAS BEEN WITHDRAWN AND REPLACED BY WATER RIGHT NO. 000000-00. [Man. Ref. XI.E.]

D. WATER COURT, COURT ORDERED, POST-DECREE, INDIAN RESERVATION, OR FEDERAL REMARKS

T6 THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT DURING ADJUDICATION OF THE TEMPORARY PRELIMINARY DECREE.

T7 THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT ON MM/DD/YYYY DURING ADJUDICATION OF THE TEMPORARY PRELIMINARY DECREE.

T8 THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT DURING ADJUDICATION OF THE TEMPORARY PRELIMINARY DECREE. THIS CLAIM WAS DUPLICATED BY CLAIM NO. 000000-00/IS REPLACED BY WATER RIGHT NO. 000000-00.

E. DATABASE GENERATED REMARKS

None in this category.

VI. CLAIM EXAMINATION

This chapter contains instructions for the following areas of the claim examination process.

- A. Checking For Correct Data Entry
- B. Owner Name and Address
- C. Purpose
- D. Source
- E. Additional Legal Land Descriptions
- F. Point of Diversion
- G. Means of Diversion
- H. Reservoirs
- I. Type of Right
- J. Priority Date
- K. Period of Use
- L. Period of Diversion

These instructions pertain to all types of claims: irrigation, stock, domestic, and other uses. Subsequent chapters address specific procedures to each of the four general claim categories.

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A. CHECKING FOR CORRECT DATA ENTRY

1. Data Entry Review: The first step in examining a claim is to compare the data on the worksheet to the data on the claim form. This checks for proper and complete data entry into the department's database. If inconsistencies are found, make sure they are errors before altering the worksheet.

a. Inconsistencies Between Claim Form and Worksheet: Not all differences between the claim form and worksheet are data entry errors. Some differences that may occur are:

- Records section may have made corrections. Such corrections were generally clerical, e.g. errors missed during "clarification." There should be an explanation on the Statement of Claim Checklist or in the claim file.
- The claimant may have amended their claim. The file should be reviewed for amendments.
- The claim may have an ownership update. To confirm a change in occurring after November 1, 2001, check the Ownership tab in the database. See "Ownership Updates", Chapter XI. Prior to November 1, 2001, look in the claim file.
- The claim may have an associated change or sever/sell agreement. If there is an associated change or sever/sell agreement, there will be a change (CT) remark on the worksheet explaining the scope and status of the change or sever/sell. See "Special Provisions: Change in Appropriation Right" (Section XI.F).
- Certain claimed source names were not keypunched at the time the claims were originally entered due to the database structure, e.g., unnamed springs, certain named springs, named wells. See "Source" ([Section VI.D](#)).
- As claims were originally entered into the database, all flow rates in units of miner's inches (M.I.) were converted by the database to cubic feet per second (cfs). Worksheets that have flow rate in cfs units also have equivalent miner's inch units in parenthesis. Conversions back to miner's inches will not always be exact due to rounding error. Such rounding errors need not be corrected.

b. Correcting Data Entry Errors: When an examination worksheet contains data entry errors, corrections can be made directly on the worksheet. Check "DNRC Error" in the examination information area under the appropriate element of the water right. [Rules 3\(d\)\(1\)\(iv\) and 33\(d\), W.R.C.E.R](#)

2. Checking Date Received: Compare the date received on the worksheet to the date stamped on the claim form. The dates should be the same.

Claim forms were first available in November 1979, so there should be no earlier dates. If a date received is earlier than November 1979, check the claim file and transmittal record (that tracked the fee) for a correct date.

Other possible errors may be encountered involving the date a claim form was received by the department. Some of these are:

- date improperly entered into database;
- date stamp improperly set or advanced e.g., not April 31, not Saturday or Sunday;
- date the implied claim was generated used, not date original claim was received. An implied claim is a claim authorized by the Water Court to be separated and individually identified when the statement of claim includes multiple rights. See "Special Provisions: Implied Claims" (Section XI.B). If the claim is an implied claim, confirm that the date received is the same as the originally filed claim from which the implied claim was generated.

If the claim received date on the examination worksheet indicates a late filing between April 30, 1982 and July 1, 1996, check the claim file to confirm the date received. This ensures that an error in stamping is not misunderstood to be a late claim. If the claim appears to truly be a late claim, see "Special Provisions: Late Claims" (Section XI.C) for examination procedures.

Indicate whether or not the date received appears to have been correctly stamped and entered into the database by checking the appropriate box next to the "date received" on the examination worksheet. Changes to the date received can be made directly on the worksheet. To document any inconsistencies involving the date stamped on the claim form, or basis for changing the date received on the worksheet, use the General Comments area of the worksheet.

If a claim designated as 'late' is determined not to be late, the worksheet should be corrected immediately. Changes to the designation and the enforceable priority date can be made directly on the worksheet. To document any changes involving the designation, use the General Comments area on the worksheet. Make changes in the database immediately to ensure the integrity and accuracy of the database for public use.

3. Checking Fee Paid: Filing fees for claims were required pursuant to [§85-2-225, MCA](#). The standard filing fee was \$40 per water right, with a maximum filing fee for all claims filed by one person in any one water court division not to exceed \$480. Decreed water rights required no filing fee. Voluntarily filed exempt

rights (see [Section 85-2-22, MCA](#) for definition of exempt rights) required a filing fee of \$40, with the exception that a total of \$40 was owed on multiple exempt claims filed simultaneously on a single development. The fee status of a claim can be determined by checking the upper left hand corner of the claim form (see Figure XI-2). (Note: A common method was that "\$40" indicates the fee was paid, "*" indicates that the owner paid the maximum amount and no fee was owed on that water right, and "-0-" indicates no fee was owed on that water right.)

When a required filing fee was not submitted, check the claim file to confirm the fee status. In addition, review the other claims submitted by the claimant. If confirmed that a required filing fee was not submitted, contact the claimant.

An exception to the filing fee requirement, as described in [§85-2-225, MCA](#), are those claims where the type of historical right claimed is decreed. However, **if the type of right is amended or clarified to a use or filed right, a filing fee may be required.** If confirmed a filing fee was not submitted with the amendment or if the owner didn't reach the maximum filing fee amount at the time of filing, contact the claimant.

In determining if a fee is owed, look at what the current owner paid at the time of filing. If the fee issue is unresolved, add a fee insufficient issue remark to the department's examination worksheet for all the claims involved.

Examples: F5 FILING FEE INSUFFICIENT TO COVER CLAIM. TOTAL AMOUNT DUE **\$40.00**.

F10 FILING FEE INSUFFICIENT TO COVER CLAIMS. TOTAL AMOUNT DUE **\$120.00** FOR CLAIM NOS. **000000-00, 000000-00, 000000-00.**

Implied Claims. Filing fees are required for implied claims. Refer to "Special Provisions: Implied Claims" (Section XI.B) for fee review instructions.

Late Claims. Filing fees are required for late claims. If a filing fee for a late claim has not been received, add a fee insufficient (FI) issue remark to the department's examination worksheet for all the late claims involved.

Examples: F25 FILING FEE INSUFFICIENT TO COVER LATE CLAIM. TOTAL AMOUNT DUE **\$40.00**.

F30 FILING FEE INSUFFICIENT TO COVER LATE CLAIMS. TOTAL AMOUNT DUE **\$80.00** FOR CLAIM NOS. **000000-00, 000000-00.**

As of July 1, 1993, all late claims received by the department after April 30, 1982, were subject to a \$150 processing fee (this fee did not apply to exempt claims).

If the processing fee was not submitted, the following fee insufficient (FI) issue remark was added to the claim.

Example: F35 PROCESSING FEE INSUFFICIENT TO COVER LATE CLAIM.
TOTAL AMOUNT DUE \$150.00.

Depending on when the late claim was received, follow the procedures described below.

- Late Claim Received Between April 30, 1982 and June 30, 1993: For late claims received by the department between April 30, 1982 and June 30, 1993, the processing fee was collected according to procedures established by rules prepared by the department. If during examination, the processing fee is paid, delete the fee insufficient issue remark and immediately notify the bureau chief of the claim number.
- Late Claim Received After June 30, 1993: A processing fee must accompany late claims received after June 30, 1993. The exception is for late claims filed by a state agency. By department rule, the fee was collected later. If the processing fee is missing for a state agency claim, add the above fee insufficient issue remark (F35) to each late claim.

The amount paid should equal the filing fee and processing fee. When the fee status does not meet the requirements described in [§85-2-225, MCA](#), indicate this on the examination worksheet by checking the line 'Not OK' next to the 'Fee Owed' and change the 'No' to 'Yes'. Document any inconsistencies involving the fee paid on the examination worksheet. Also document any basis for changing the fee paid on the worksheet in the General Comments area of the worksheet.

Note: While no check-off box is present, "Exempt?" and "Implied Claim?" are also seen at the top of the first page of the department's examination worksheet. The Claim History tab in the database contains these elements, and the default is unchecked, or "no" on the worksheet. These elements are for internal record-keeping and are not reflected on abstracts.

For the "Exempt" element (see 'Definitions', Section II), check the box in the Claim History tab to mark the element 'Y' for yes if the claim is exempt from the filing requirements.

Exempt claims are:

- Stockwater use direct from source (no manmade diversion);
- Stockwater use from a groundwater source;
- Domestic use (including single and multiple domestic, and lawn and garden use) from a groundwater source, or
- Domestic use (including single and multiple domestic) directly from instream (no manmade diversion).

For the “Implied Claim” element, this box should be checked (giving a “yes” answer on the worksheet) under the Claim History tab if the claim being examined is an implied claim. Do not check this box for claims that *may* contain a possible implied claim (see Section XI.B for more information on implied claims).

B. OWNER NAME AND ADDRESS

An owner is any person, as defined in [§85-2-102, MCA](#), who has title or interest in water rights or properties. The name and address of the owner of record in the database is printed on the examination worksheet and decree abstract.

The name and address of the original claimant is stored in the database. If an ownership update (Form 608) was received prior to December 2001, only the original and current owner names were retained in the database. Names of intermediate owners can be found in the claim file or in the scanned documents. Since December 2001, the names and addresses of all owners are maintained in the database.

An owner may have name or address format variations on their claims or an address may have changed. Follow the guidelines described in “Owner Name/Address Standards” (Exhibit IV-6). By establishing consistency in owner names and addresses, the quality of the database for research is improved, plus owner indexes and listings become accurate and reliable.

The DNRC Water Right Ownership Update process is the mechanism used to update the water right ownership records when a change in ownership has occurred based on [85-2-424](#) through [85-2-426, MCA](#). See “Special Provisions: Ownership Updates” (Section XI.D) for additional discussion.

1. Examining Owner Name and Address: Review the owner name and address to establish a consistent name format as well as a consistent current address on all water rights belonging to each owner. [Rule 7, W.R.C.E.R.](#)

Standardization can be performed on the basin as a whole prior to or after examining the claims. It can also be done by ownership during claim examination. For common name and address abbreviations, see Exhibit IV-6. If duplicate records for the owner exist in the database, consolidation of the ownerships may be performed (see Oracle Tips and Tricks pages 4-5). Contacting the owners may be necessary to confirm duplication, and if ownerships are not to be consolidated, a “never consolidate” option is available in the database.

In addition, check the claim form for the claimant signature and notarization.

Examine the water right place of use ownership by using the AllCad layer (cadastral information) in WRMapper. This AllCad layer will be updated regularly by GIS staff. Keep in mind that the AllCad layer is not perfect and that realty transactions are not reflected in real time. See “Examination Materials and Procedures: Claimant Contact Techniques” (Section IV.F) for detailed discussion of claimant contact procedures regarding different ownership issues. (Some water right purposes such as instream, municipal, and ‘other’ purposes cannot be examined using the AllCad layer).

Geocodes: When checking cadastral ownership, confirm that the geocode(s) listed on the examination worksheet are correct. Validate the correct geocode by

entering 'Y' in the database under the 'Valid' column in the Geocode tab. Add any geocodes not present that represent the place of use. Delete any incorrect geocodes (indicated by an 'N' in the 'Valid' column in the Geocode tab). See "Geocodes" (Section VI.B.4) below for further discussion.

a. Owner/Address Index: An index of all water rights (claims, permits, certificates) in a basin will be supplied before claim examination begins. This index is sorted alphabetically by owner name including water right ID number. Each name and address appears as it was keypunched into the database. The owner/address index is the primary tool for identifying inconsistencies in owner names and addresses.

Common owner/address inconsistencies that might be identified are:

- owner name format variations
- owner name misspelled
- clerical error in address
- lack of or incorrectly identified middle initial
- Bob versus Robert
- lack of Jr. or Sr.
- lack of Inc. or Co.

b. Changing Owner Name/Address: A Form 608 Ownership Update is required to TRANSFER water right ownership prior to July 1, 2008. The claimed owner name/address will not be changed during the examination unless:

- a Form 608 is received;
- Ownership update from the Department of Revenue (after July 1, 2008);
- modified by rule by the department.

Upon identifying an owner/address inconsistency, the following data sources are available for research:

- signature on back of claim form, permit application, certificate application
- accompanying documentation
- other water rights by the same owner
- telephone directories
- courthouse records
- claimant contact
- cadastral information (website: <http://cadastral.mt.gov/> or AllCad layer)
- MT Business Entity Search Tool (website: <http://app.mt.gov/bes/>)

Caution should be used in consolidating an owner name. A claimant may wish to have several name formats for a number of reasons, such as taxation, inheritance purposes, contractual agreements, and corporate or ranch management purposes (Note: Legally the name on the water right must match the name on the deed, or other legal instrument of title to water rights if the water right has been severed/reserved). In

situations where an owner name format is not clear, contact the claimant. If a substantive change is to be made, e.g., adding a name omitted on one claim but named on others, a Form 608 Ownership Update, or a correction should be filed.

Make changes to the owner name/address on the worksheet. If the change will result in a difference between the claim form, amendment, addendum or a Form 608 Ownership Update and the decree abstract, place an asterisk on the worksheet in the brackets to the left of the owner name and address element on the examination worksheet. The basis of the change must be documented either in the General Comments area of the examination worksheet or in the claim file.

If a claimed owner name and/or address were inadvertently omitted from the database, add the missing elements to the worksheet.

When owner name/address corrections need to be made in an ownership with multiple water rights, use a Name/Address Correction Form (Exhibit VI-1). The form is available in the database by going to the Reports Menu; Administrative Reports; Name Address Corrections. After obtaining documentation to correct an address, populate the form by navigating to the Create and Maintain; Owners/Contacts screen in the database. Click on the line below the current primary address. By doing so, the primary address changes to 'no'. Enter the new address, making sure it is marked 'yes' in the primary address field. Navigate to the Reports Menu; Administrative Reports; Name/Address Corrections in the database. The form will automatically populate the affected water rights numbers, the old address, and the new address. Print the form and mark the appropriate reason for generating the form [name/address correction or address correction only]. Document the source of information in the choices at the bottom of the form. The form can be used when an examination worksheet is not available, such as prior to basin examination or post-decree. It may also be used to correct new appropriations files. Complete and process the form as follows:

- Complete the form.
- The form must be sent to the Records Unit in Helena where it will be scanned.
- File the form in the lowest adjudication water right number if the correction is only to the address. If a correction is made to the name, the form must be filed in all affected water right files.

If the claim file contains a Form 608 Ownership Update, but the examination worksheet reflects the original (seller) owner, generate a new examination worksheet which reflects the new owner's name. As an alternative, a note such as "Ownership changed based on an ownership update received MM/DD/YYYY" can be placed next to the owner's name. No asterisk is necessary, as the owner record has already been updated in the database.

Water Supply Organizations: Organizations established for the distribution of water should have water rights that remain solely in the organization's name, if that is how the water right is legally held. If the organization provides a listing of shareholders or member names, those individuals should not be listed as owners. No ownership

updates or amendments should be sought or accepted from shareholders or individual members.

Some of the more common water supply organizations include:

Federal Projects	Water User Associations
State Projects	Municipal Water Companies
Public Service Corporations	Drainage Districts
Mutual Irrigation Companies	Conservation Districts
Water Companies	Individuals (with several rights)
Corporations, Partnerships, or Trusts (with several rights)	

Note on Subdivisions: Subdivisions may have created a water user association to “manage” the water right. These entities will not have geocodes associated with them and therefore will not be part of the automated ownership update process effective July 1, 2008.

Note on Trusts: DNRC treats all trusts the same, and when entered into the database, the type of trust is usually not entered. An owner that is changing water right ownership from an individual name to a trust, or vice versa, needs to file an ownership update form 608 along with the filing fee. If the ownership listed in cadastral records is a trust, but the database records show an individual, bring this to the attention of the owner, in case the water right ownership was overlooked when transferring assets to the trust.

Contract for Deed: This written agreement is between the seller and the buyer of a piece of property. The buyer will receive title to the property after satisfying the agreement, which is usually paid in full. There is no fee associated with removing a contract-for-deed owner, but the file must contain a copy of the documentation showing that the deed has been satisfied.

c. Deceased Owner: When an owner is deceased and the estate is being handled by a trustee, retain the deceased owner's name in the database and on the worksheet. In the Create and Maintain; Owners/Contacts screen in the database, the deceased owner can be designated using the ‘Deceased’ button in the lower left corner. Add the trustee’s name to the worksheet and to the Create and Maintain; Owners/Contacts screen in the database. The trustee or personal representative’s name is entered in the field titled ‘Address Line 1’, e.g., C/O Jane Doe. Add the representative’s address in the field titled ‘Address Line 2’.

If issues exist on a claim and the owner is deceased, discuss the issues with the personal representative or trustee. If the trustee or personal representative is unable to resolve the issues, add issue remarks to the examination worksheet and document the discussions with the personal representative or trustee.

A deceased owner's name can only be removed without the filing of a Form 608 Ownership Update in one situation. If a husband and wife are both listed as owners on

water right(s) and one dies, the deceased spouse's name may be removed at the request of the living spouse as long as a copy of the death certificate is submitted. Document this action by a memo to the file.

d. Signature and Notarization: If there appears to be an inconsistency with the signature or notarization on the claim form, e.g., unsigned, not notarized, or not signed by owner named on Line 1 of the statement of claim, add an ownership (OW) issue remark to the department's examination worksheet. [Rule 5\(a\)\(6\), W.R.C.E.R](#)

Examples: O35 CLAIM FORM NOT NOTARIZED.

O40 CLAIM FORM NOT SIGNED OR NOTARIZED.

O45 CLAIM FORM SIGNED BY OTHER THAN CLAIMANT.

OWIS CLAIM FORM SIGNED BY NOTARY BUT MISSING NOTARY SEAL.

The notarized signature of a guardian or person with power of attorney is acceptable if supported by written confirmation. Document confirmation on the examination worksheet.

If contacted for other reasons, the claimant may be requested to sign and notarize a copy of the original claim form. In this situation, an issue remark would not be necessary. Another option is a signed and notarized affidavit stating that the claim as originally filed accurately represents the intent of the filing. An owner of record who was not the owner that filed the claim may sign and notarize an affidavit stating that the claim represents how the water was used prior to 1973 to the best of his knowledge. The wording should include the following: "The Statement of Claim is true and correct to my (new claimants) knowledge and belief" as per [§85-2-224, MCA](#).

2. Owner Name/Address Issues: Identify pertinent owner name/address issues discovered during claim examination on the department's examination worksheet using an ownership remark. For certain ownership issues, refer to the following sections:

- Overlapping POU: See "Irrigation: Place Of Use Issues" (Section VII.D)
- Decreed Right Exceeded: See "Irrigation: Flow Rate: Recording Documentation" (Section VII.B.6) [Rule 5\(a\)\(6\), W.R.C.E.R](#)

3. New Owner Determined but File Lacks Ownership Update: When a change in ownership has occurred (as shown by cadastral information or another source) prior to July 1, 2008 but no Form 608 Ownership Update has been received, attempt to get an ownership update filed by either the former owner or new owner. For transactions occurring after July 1, 2008, see "Ownership Updates", Section XI.D. and "Claimant Contact Techniques", Section IV.F.

Important - Until an ownership update has been properly filed, instructions or amendments from new owners should not be implemented. Accept (date stamp) and document information by the new owner, but do not incorporate it until the ownership update is received. In the reverse situation where amendments or instructions from previous owners are filed before an ownership update is received but after the land sale is completed, do not process the amendments (this would be evident on the cadastral layer in Water Rights Mapper). Discuss an amendment/change with the new owner. If the new owner is in agreement, a sworn affidavit from the new owner stating agreement with the amendments or instructions is sufficient to proceed with processing. In either event, keep the information in the claim file, document the circumstances, and add the appropriate remarks.

If an ownership update is not received, add the appropriate ownership issue (OW) remark to the examination worksheet:

- Examples:
- O50 AS OF **MM/DD/YYYY**, THIS WATER RIGHT APPEARS TO BE OWNED BY **JOHN L. AND JANE W. DOE**, **111 ANYWHERE DR, BIG CITY, MT 11111**.
 - O55 ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF **MM/DD/YYYY** THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY **JOHN DOE**.
 - O56 ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF **MM/DD/YYYY** A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY **JOHN DOE**.
 - O85 **MONTANA** COUNTY RECORDS AS OF **MM/DD/YYYY** SHOWS PLACE OF USE IS OWNED BY **DOE BROTHERS**.

If there is a concern that owners exist that are not identified by the DNRC's database, when claimant contact occurs, both current owners and potential owners should be contacted/notified. See April 9, 2008 Jim Gilman Interoffice Memorandum. (Exhibit XXXX).

4. Geocodes. Geocodes were initially assigned to water rights as either a one-to-one match or a one-to-many match based on the legal land description. At times, the legal land description associated with a water right was described very broadly, encompassing several parcels that may not have been within the true place of use. As a result, geocodes must be verified as belonging to the claimed place of use. See Section VII.D.5, VIII.D.5, IX.E.4 or X.D.5 for further information on geocodes.

C. PURPOSE

The purpose of a water right is the beneficial use for which it has historically been used.

1. Identifying Claimed Purpose: Using the information in the claim file, check the purpose on the claim form for clerical errors by the claimant and for consistency with the documentation. If the claimed purpose is unclear, contact the claimant. [Rule 6\(a\), W.R.C.E.R](#)

2. Examining Claimed Purpose: Review the purpose stated on a claim form and the submitted documentation to confirm that the water has been used historically (i.e. before 1973) for the claimed purpose. Review any available and relevant data sources such as:

- the claim file
- returned questionnaires
- Water Resource Surveys
- city directories
- local historical records
- mining indexes
- aerial photographs
- applicable NRIS GIS data
- reliable internet resources

[Rule 7, W.R.C.E.R](#)

The examiner's personal knowledge of an area, windshield surveys, claimant interviews, and on-site visits are additional sources of information. Document each source of information used in the examination.

a. Standard Purpose Descriptions: Water rights used for similar purposes will be standardized by checking that the assigned purpose on the examination worksheet is consistent with the purpose guidelines described below.

Other Use Claims: Due to the general nature of the purpose categories listed on the 'other uses' claim form, similar or identical uses of water were often claimed under different purpose categories. For example, water for an ore concentrator may have been claimed as a mining use (MN) by one claimant, but as an industrial use (IN) by another. A gravel washing plant may have been designated as commercial (CM) during initial clarification, which should now be changed to mining (MN). [Rule 7, W.R.C.E.R](#)

Determine a consistent purpose by comparing the claim form, returned questionnaire, and any information from claimant contact, to the purposes listed in [Figure VI-1](#). In some instances it may be necessary to clarify the purpose in the Purpose Clarification field in the database or with a free text information remark (PU).

FIGURE VI-1

STANDARD PURPOSE LIST

AGRICULTURAL SPRAYING (AS)

Miscellaneous agricultural spraying.

COMMERCIAL (CM)

Campground (private), hospital (private), nursing home (private), store, restaurant, service station, bar, tavern, lounge, dude ranch, rental cabins, pay-to-fish pond, hot spring resort, hotel, motel, club, athletic club, theater, car wash, mobile home park, apartments, cemetery, golf course, airport, office complex, office building, marina, railroad maintenance section house.

DEWATERING (DW)

Purpose is to remove water from an area to allow other activities such as: habitation, raising crops, construction. This purpose is questioned as a beneficial use unless the water is diverted to a beneficial use such as irrigation, in which case the purpose should be standardized to irrigation.

DOMESTIC (DM)

Single family dwelling, occupied by owner or renter. Criteria to substantiate this purpose include:

- Water used in one household (five persons or less).
- Household characterized by long term occupancy (i.e., one month or more).
- May include irrigation of lawn, garden, shelterbelt, ornamental acres, orchard, or greenhouse. Generally 5 acres or less.
- Does not include irrigation of pastures, cropped forage used as fodder, or products sold commercially.

EROSION CONTROL (EC)

Generally a dike or series of dikes to impede the flow of water thereby reducing erosion. This purpose is questioned as a beneficial use unless the water is diverted to a beneficial use such as irrigation, in which case the purpose should be standardized to irrigation.

FIRE PROTECTION (FP)

System in place only to extinguish fires. If the system is used for an additional purpose, that purpose should be the purpose of the water right with fire protection remarked as an incidental use.

FIGURE VI-1 (cont.)

FISH AND WILDLIFE (FW)

Fish pond, reservoir, natural lake, instream flow to protect habitat (including Murphy Rights).

FISH RACEWAYS (FR)

Confinement structures such as tanks or troughs with flow-through water systems used for intensive fish breeding and raising.

FLOOD CONTROL (FC)

Usually an impoundment, may not be beneficial use.

GEOTHERMAL HEATING (GH)

Heating of private buildings with geothermal water.

INDUSTRIAL (IN)

Oil refinery, sugar beet refinery, meat packing plant, coke ovens, sawmill, aluminum reduction, ore smelter, any use incidental to these plants or factories.

INSTITUTIONAL (IS)

School, church, hospital (government), nursing home (government), missile sites, DFWP fishing access site, DFWP parks, DOT maintenance shop, highway rest area, border crossing station, USFS picnic area, USFS campground, USFS guard station, USFS lookout, USFS ranger station, or other government facilities.

IRRIGATION (IR)

Irrigation of pastures, cropped forage used as fodder, or products sold commercially.

LAWN AND GARDEN (LG)

Private gardening, private ornamental horticulture, lawn, not cropped or foraged. Criteria to substantiate this purpose include:

- Not used in a household
- Use is proximate to and associated with one or more households
- May include irrigation of shelterbelt, ornamental acres, orchard, or greenhouse
- Does not include irrigation of pastures, cropped forage used as fodder, or products sold commercially
- Generally 5 acres or less.

FIGURE VI-1 (cont.)

MINING (MN)

Extraction or milling of ore, gravel washing, uses incidental to these purposes.

MULTIPLE DOMESTIC (MD)

More than one dwelling, characterized by long term occupancy, or if cannot confirm number of dwellings, the number of persons served in one household is five or more. Condominiums, townhouses, home owner's associations, two or more households in separate dwellings sharing a well or spring. See "Domestic", Chapter VIII. Criteria to substantiate this purpose include:

- Water used in two or more households in separate dwelling units.
- Households characterized by long term occupancy (i.e., one month or more).
- May include irrigation of lawn, garden, shelterbelt, ornamental acres, orchard, or greenhouse.
- Does not include irrigation of pastures, cropped forage used as fodder, or products sold commercially
- Does not include political entities or publicly regulated private utilities.

MUNICIPAL (MC)

Any use associated with a municipal water system, which may include individual water rights for a cemetery, parks, golf course, etc.

NAVIGATION (NV)

Instream flow to protect navigation, impoundment to store water against future inadequate flows.

OBSERVATION AND TESTING (OT)

Wells used exclusively to monitor aquifers for recharge, drawdown, water quality, etc.

OIL WELL FLOODING (OF)

Wells used to re-pressurize an oil reservoir. Water is injected into the oil formation to increase the pressure and therefore increase the longevity of oil production from the well. [See 36.22.1229, ARM.](#)

POLLUTION ABATEMENT (PA)

Systems used to reduce pollution by the addition or application of water. Usually associated with a commercial, industrial, mining, or other more primary activity; in such cases the purpose should be standardized to the

FIGURE VI-1 (cont.)

primary activity. If not associated, this purpose is questioned as a beneficial use.

POWER GENERATION (PG)

Mechanical, geothermal, fossil fuel, hydroelectric or nuclear power production.

RECREATION (RC)

Pond or reservoir, instream recreational use.

SALE (SL)

Water for sale

SEDIMENT CONTROL (SC)

Generally settling ponds for filtering or siphoning water to remove sediments. Usually associated with an industrial or mining operation; in such cases the purpose should be standardized to the primary activity. If not associated, this purpose is questioned as a beneficial use.

STOCK (ST)

Domestic animals, such as, but not limited to, cows, horses, sheep, pigs.

STORAGE (SG)

Usually associated with a reservoir operation.

WILDLIFE (WI)

Claim by individual or agency for water used by wildlife (water used by wildlife kept as stock is STOCK). Claims for waterfowl purposes should be standardized to wildlife or stock.

Additional standard descriptions may be developed as examination progresses and additional purposes are encountered. To assure statewide uniformity, the bureau chief will be involved in the review and categorization of additional purposes.

Domestic Claims: During the claim filing period, the domestic claim form was used to describe several different types of water use including domestic (DM), multiple domestic (MD), and lawn and garden (LG) irrigation. Generally, all of these uses were assigned a domestic (DM) purpose code.

For consistency, claims describing multiple domestic and lawn and garden use should now be assigned the appropriate purpose code. No asterisk is necessary as the intent of the claim is not being changed. See [Figure VI-1](#) for guidelines on which purpose code should be assigned.

Claims to lawn and garden use should be examined using the domestic use guidelines in Chapter VIII.

b. Changing the Purpose: If the claim file (and when available, a completed questionnaire) provides a clear picture of historic water use, the claimed purpose description should reflect that use. A claimed purpose may be modified by rule to one of the listed purpose descriptions in [Figure VI-1](#) in order to standardize purposes. Make such a change by crossing out the claimed purpose on the examination worksheet and writing in the standard purpose. Document the change on the worksheet by placing an asterisk in the brackets to the left of the purpose element. Document the basis for changing the purpose in the General Comments area of the worksheet. [Rules 6\(g\)\(2\) and 27\(g\)\(2\), W.R.C.E.R](#)

If the purpose claimed is unclear, contact the claimant. [Rules 33\(b\)\(2\), and 44 W.R.C.E.R](#) and Section IV. F. For example, a domestic claim could be unclear whether it is lawn and garden only, one household, or more than one household. If claimant contact is inconclusive, leave the purpose as Domestic and add the following purpose issue remark: [Rules 6\(e\)\(5\) and 27\(h\)\(4\), W.R.C.E.R](#) The purpose can also be amended by the claimant. [Rules 6\(d\)\(1\), and 34, W.R.C.E.R](#)

Example: P625 CLAIMED PURPOSE (USE) COULD NOT BE IDENTIFIED DUE TO LACK OF DATA.

P628 THE CLAIMED PURPOSE (USE) CANNOT BE CONFIRMED DUE TO LACK OF DATA.

P631 THIS CLAIMED PURPOSE (USE) CANNOT BE CONFIRMED. THERE APPEARS TO BE NO APPROPRIATION OF WATER AS THE METHOD OF DIVERSION IS INSTREAM USE.

c. Further Defining Purpose: The standardized purposes provide reviewers of department records or decrees with little information about how a water right was actually used. When the claim file or outside data sources identify a specific use, add the information to the 'Purpose Clarification' field in the database to more precisely describe the purpose. Document the source of the information on the worksheet. When the

specific purpose is not clear from the claim file, questionnaire, or other information, contact the claimant.

d. Post-1973 Change of Purpose: If the claimed purpose appears to be for a use that was different before July 1, 1973, follow the procedures in “Special Provisions: Change in Appropriation Right” (Section XI.F). [Rule 39\(b\) \(c\), W.R.C.E.R](#)

3. Purpose Issues: Denote all unresolved purpose issues on the department's examination worksheet using a purpose issue remark. [Rules 6\(e\)\(5\), and 27\(h\)\(4\) W.R.C.E.R](#) Any unique aspects or features of the purpose should be identified in the Purpose Clarification field in the database or in a purpose information remark. [Rules 6\(e\)\(2\) and 27\(h\)\(2\), W.R.C.E.R](#)

Generally, purpose issues will become apparent as a result of examining other elements of a claim, such as flow rate, volume, place of use, point of diversion, and priority date. For example, if an aerial photo used to verify the place of use of a claim for fish raceways does not show evidence of raceways, the place of use and purpose both become issues. Purpose issues will also become apparent when applying the purpose standardization guidelines.

When a purpose issue remark is added identifying extended non-use, a non-perfected use, or some other major discrepancy, examine the other elements as if the water right is being used for the claimed purpose. Add issue remarks to these elements if they do not meet the pertinent guidelines or examination criteria. For example, assuming a decreed or filed right for an irrigation claim:

- Flow rate below 17 gpm/ac; no issue remark may be needed.
- Volume will be zero; no issue remark needed.
- POU partially irrigated; add Place of Use and Flow Rate issue remarks.
- Priority date is not documented; add issue remark.

a. Fish & Wildlife, Wildlife, And Recreation: For claims with a purpose of fish and wildlife, wildlife, or recreation, with the exception of Murphy Rights (see Table X.2 for a list of “Murphy Right” streams), add one of two issue remarks to the department's examination worksheet, per Rule 27 (h) of the [Water Right Claim Examination Rules \(W.R.C.E.R.\)](#). Add the following remark to claims that did not receive a factual or legal issue remark as a result of the examination process:

P724 BECAUSE THIS CLAIM DID NOT RECEIVE A FACTUAL OR LEGAL ISSUE REMARK DURING THE CLAIMS EXAMINATION PROCESS, THE WATER COURT WILL NOT HOLD A HEARING ON THIS CLAIM UNDER *Matter of the Adjudication of Existing Rights in Basin 411*, 2002 MT 216, 311 Mont. 327, 55 P.3d 396 UNLESS A VALID OBJECTION IS FILED UNDER SECTION [85-2-233, MCA](#), OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER [RULE 8, W.R.ADJ.R.](#)

For fish and wildlife, wildlife, and recreation claims that do receive a factual or legal issue remark as a result of the claims examination process, the following remark will be added to the claim:

P725 THE WATER COURT WILL HOLD A HEARING ON THIS CLAIM TO DETERMINE ITS VALIDITY SUBJECT TO SECTION [85-2-248, MCA](#), AND *Matter of the Adjudication of Existing Rights in Basin 411*, 2002 MT 216, 311 Mont. 327, 55 P.3d 396. A HEARING MAY ALSO BE HELD ON THIS CLAIM IF A VALID OBJECTION IS FILED UNDER SECTION [85-2-233, MCA](#), OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER [RULE 8, W.R.ADJ.R.](#)

(Note: W.R.ADJ.R. stands for Water Right Adjudication Rules.)

Do NOT add the P725 remark if the issue remark is a notice remark such as a G34

Murphy Rights DO NOT receive P724 or P725 issue remarks. Murphy Rights were recognized as a valid appropriation prior to 1973 whereas other fish and wildlife claims were questioned as a beneficial use until the Bean Lake cases were decided. Fish and wildlife claims, other than Murphy Rights, now receive issue remarks, mandated by the last of the Bean Lake cases. See Section 89-801(2), RCM (1969) (repealed 1973); *In re Adjudication of Dearborn Drainage Area*, 234 Mont. 331, 766 P.2d 288, (1988); and *in re Adjudication of Existing Rights to the Use of All Water*, 2002 MT 216, 311 Mont. 327, 55 P.3d 396.

b. Municipal Use: For claims with a purpose of municipal use by a city, town or other public or private entity that operates a public water supply system, one of the following criteria must be met:

- a filtration waiver under the federal Safe Drinking Water Act has been obtained;
- the diversion or conveyance structures for the future municipal use has been acquired, constructed, or regularly maintained;
- a formal study has been conducted and prepared by a registered professional engineer or qualified consulting firm which includes a specific assessment that using the water right for municipal supply is feasible and that the amount of the water right is reasonable for foreseeable future needs, and;
- the municipality has maintained facilities connected to the municipal water supply system.

If one of the criteria are met, the department shall add the following information remark to the water right:

Example: G20 THIS WATER RIGHT IS PRESUMED TO NOT BE ABANDONED PURSUANT TO [§85-2-227, MCA.](#)

If one of the criteria are not met, be aware of possible abandonment issues.

c. Questionable Purposes: The following are guidelines for uses which are considered questionable. Other uses not listed here should be brought to the attention of the bureau chief.

- Dewatering, Erosion Control, Flood Control (dikes, levees, impoundments), Navigation: If it is not clear whether the claim describes one of these water uses or water management practices, contact the claimant. After confirming a questionable use exists, add the following purpose issue remark to the department's examination worksheet.

Example: P630 THIS CLAIMED PURPOSE IS QUESTIONED AS A BENEFICIAL USE OF WATER EXISTING PRIOR TO JULY 1, 1973.

For these questionable uses, do not examine the flow rates and volumes. The flow rate and volume of such claims will be decreed as claimed. When a value for flow rate or volume is claimed but not examined, add the appropriate following issue remark to the department's examination worksheet.

Examples: F85 THE CLAIMED FLOW RATE WAS NOT EXAMINED AS NO FLOW RATE GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIM EXAMINATION RULES.

V25 THE CLAIMED VOLUME WAS NOT EXAMINED AS NO VOLUME GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIM EXAMINATION RULES.

- Natural Overflow: For irrigation claims where the means of diversion is natural overflow, look for evidence of perfection (the POU appears to be irrigated, chopped, etc. as opposed to a bog or swampy area). If none, consider a purpose (PU) issue remark.

Example: P644 IT APPEARS THIS WATER RIGHT MAY NOT HAVE BEEN PERFECTED. ACCORDING TO INFORMATION IN THE CLAIM FILE, THERE APPEARS TO BE NO APPROPRIATION OF WATER. ALL ELEMENTS OF THIS CLAIM MAY BE QUESTIONABLE. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

- Dewatering, Erosion Control, Pollution Abatement, Sediment Control: These uses are questioned as beneficial uses unless the water is used for a specific purpose such as irrigation, mining, industrial, etc. For example, a pollution

abatement claim may be used for watering a sawdust pile at a lumber mill. In

this situation, the purpose should be standardized to industrial (IN) with information added to the Purpose Clarification field in the database. Document the source of the information on the examination worksheet.

d. Specific Purpose Not Claimed: Some claimants wrote descriptions of their water use on the claim form and did not check any of the purposes listed on the form. The policy during the claim filing period required categorizing the described purpose into one of the 26 purpose types available in the database. When reviewing such claims, check the assigned purpose code to determine if the purpose meets the standard guidelines ([Figure VI-1](#)).

If the claim file contains insufficient data to determine the purpose, consult outside data sources if available. When data sources indicate that substantive purpose issues also exist (e.g. 10 or more years of non-use, non-perfected water right, purpose reflects a claimed purpose after 1973), discuss the issues with the claimant. If changing the purpose would more accurately characterize the water right, the claimant has the option to amend the claim.

When the purpose cannot be clearly identified, add a purpose issue remark to the department's examination worksheet.

Example: P625 THE CLAIMED PURPOSE (USE) COULD NOT BE IDENTIFIED DUE TO LACK OF DATA.

e. Multiple Purposes Claimed: Claims may be encountered (generally 'other uses' claims) where more than one purpose has been identified. Only one purpose will appear on the examination worksheet. In this situation, the claimant should be contacted to determine what is actually being claimed. Refer to "Special Provisions: Implied Claims" (Section XI.B).

If the issue is unresolved, add the following purpose issue remark to the department's examination worksheet.

Example: P637 THE PURPOSE OF THIS CLAIM IS UNCLEAR AS MULTIPLE PURPOSES HAVE BEEN CLAIMED. THE CLAIMED PURPOSES INCLUDE **RECREATION AND COMMERCIAL**. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

Fire Protection: An exception to claimant contact and Water Court authorization called for in "Special Provisions: Implied Claims" (Section XI.B), is when more than one purpose is claimed and one of the purposes is fire protection. Whenever fire protection is claimed as an additional purpose, identify it by adding the following purpose information remark to the department's examination worksheet. [Rule 6\(b\) \(4\), W.R.C.E.R](#)

Example: P555 THIS WATER RIGHT IS INCIDENTALY USED FOR FIRE PROTECTION.

f. Claimed Purpose Not Perfected: For claims where it is apparent the right has never been perfected, document these findings thoroughly on the examination worksheet. The other water right elements for these claims may be vague or incomplete. If so, it is only necessary to add one purpose issue remark (P665) to the department's examination worksheet. However, issue remarks should be added to a specific element if there is relevant information in the claim file or if other data sources confirm non-use. For example, if the existence of a historical conveyance facility or acres irrigated cannot be identified from available maps, issue remarks should also be added to the point of diversion and place of use elements. [Rule 6\(e\) \(5\) \(ii\), W.R.C.E.R](#)

The following is an example of non-perfected claims:

Ranch X filed three irrigation claims, each describing the same source, POD, conveyance system, and POU. Each of the claims is based on a different filed appropriation. However, the WRS field notes indicate only one of these filings has been perfected. Claimant contact indicates that the remaining filed appropriations were to extend and expand the conveyance system to irrigate additional land. This extension or expansion has not taken place or is planned, but not yet begun. If a non-perfected claim is not withdrawn by the claimant, add the appropriate purpose issue remark to the department's examination worksheet.

Examples: P639 DNRC EXAMINATION WAS UNABLE TO CONFIRM THE USE OF THIS WATER RIGHT. IT APPEARS THIS WATER RIGHT MAY HAVE NOT BEEN PERFECTED.

P644 IT APPEARS THIS WATER RIGHT MAY NOT HAVE BEEN PERFECTED. ACCORDING TO INFORMATION IN THE CLAIM FILE, THERE APPEARS TO BE NO APPROPRIATION OF WATER. ALL ELEMENTS OF THIS CLAIM MAY BE QUESTIONABLE. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

P650 IT APPEARS THIS WATER RIGHT MAY NOT HAVE BEEN PERFECTED. ACCORDING TO INFORMATION IN THE CLAIM FILE, **NO WELL EXISTS FOR THIS CLAIM**. ALL ELEMENTS OF THIS CLAIM MAY BE QUESTIONABLE.

OR

THE HEADGATE AND DITCH ARE AT A LOWER ELEVATION THAN THE CLAIMED PLACE OF USE.

OR

WATER FROM THE MAIN DITCH HAS NEVER BEEN USED FOR HOUSEHOLD PURPOSES.

P655 ACCORDING TO INFORMATION IN THE CLAIM FILE, THIS WATER RIGHT MAY NOT HAVE BEEN PERFECTED FOR **IRRIGATION** USE. ALL ELEMENTS OF THIS CLAIM MAY BE QUESTIONABLE.

P665 IT APPEARS THIS WATER RIGHT MAY NOT HAVE BEEN PERFECTED. NO **PURPOSE, SOURCE, POINT OF DIVERSION, MEANS OF DIVERSION, PRIORITY DATE, TYPE OF HISTORICAL RIGHT, FLOW RATE, VOLUME, PERIOD OF USE, OR PLACE OF USE** HAVE BEEN CLAIMED. ALL ELEMENTS OF THIS CLAIM MAY BE QUESTIONABLE. (*Note: Two or more elements can be coded in this remark.*)

PUIS THE MONTANA WATER RESOURCES SURVEY (1959) INDICATES THIS MUNICIPAL CLAIM WAS NOT PERFECTED.

g. Extended Non-use: For extended non-use situations, contact the claimant to discuss the data sources, and if requested by the claimant, arrange an on-site visit. If the interview (and on-site visit, if conducted) supports the data sources, add a purpose issue remark to the department's examination worksheet (see below).

The following is an example of extended non-use:

The VanCleave Mining Company filed a claim describing the use of spring water in their Dog Tired Mine since 1902. However, the Montana Mining Indexes published from 1947 through 1973 do not make reference to the Dog Tired Mine. The questionnaire returned by the claimant confirms that the mine has not been in operation for the past 40 years.

Rule 6 (e) (5) (i) W.R.C.E.R. does not distinguish a specific timeframe for reporting potential non-use. Add the appropriate remark only if there has not been **any** use of the water right for the claimed purpose for **10 or more consecutive years**. If there is evidence that the water right was used for the claimed purpose, even briefly, during any 10 year period, do not add a purpose issue remark to the examination worksheet.

Examples: P620 THIS CLAIMED WATER RIGHT MAY BE QUESTIONABLE. AN ON-SITE VISIT CONDUCTED **MM/DD/YYYY** FOUND NO EVIDENCE OF RECENT **MINING** ACTIVITY. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

P675 THIS CLAIMED WATER RIGHT MAY BE QUESTIONABLE. THE RIGHT APPEARS TO HAVE LAST BEEN USED IN **1956**.

P676 THIS CLAIMED WATER RIGHT MAY BE QUESTIONABLE. ACCORDING TO INFORMATION IN THE CLAIM FILE, THE RIGHT WAS LAST USED IN **1950**.

P680 THIS CLAIMED WATER RIGHT MAY BE QUESTIONABLE. ACCORDING TO INFORMATION IN THE CLAIM FILE, THE RIGHT MAY NOT HAVE BEEN USED FOR THE PAST **40** YEARS.

If data is insufficient to conclude that the water right was not in use for any 10 year period, but a non-use issue appears to exist, add the following purpose (PU) issue remark to the department's examination worksheet.

Example: P685 DNRC EXAMINATION WAS UNABLE TO CONFIRM THE USE OF THIS WATER RIGHT FOR THE TEN CONSECUTIVE YEARS PRIOR TO JULY 1, 1973.

P686 DNRC EXAMINATION WAS UNABLE TO CONFIRM THE USE OF THIS WATER RIGHT FOR THE TEN CONSECUTIVE YEARS PRIOR TO **MM/DD/YYYY**.

h. Claimed Purpose Differs From Prior Decreed Purpose: Claims based on a prior decreed right that *specifically* identifies a purpose should be for that purpose. Claims for surface water stock use based on a prior decreed right for irrigation are an exception. If the claimed purpose does not match the prior decreed purpose, contact the claimant to determine whether the documentation is correct for the claimed purpose or if an amendment to the district court decree is available. If the issue is unresolved by an amendment to the claim or documentation of an amendment of the district court decree, add a purpose issue remark to the department's examination worksheet.

Example: P690 THE CLAIMED PURPOSE DOES NOT MATCH THE FORMERLY DECREED PURPOSE. CASE NO. **0000**, **MONTANA** COUNTY DECREED THE USE AS **MINING**.

4. Multiple Uses: The multiple use of a water right occurs when the same historic appropriation has been claimed for different purposes by the original claimant. Multiple uses of a water right for stock and irrigation, or irrigation and other uses are common. (See "Associated Rights" [\[Section VI.C.5\]](#) for situations when a claim and an exempt right filed by a single owner are based on the same historical right. In this particular situation, do not add a multiple use remark.) [Rules 6\(c\), 27\(f\) W.R.C.E.R](#)

A multiple use is determined through review of an index, submitted documentation and the intent of each claim. First, review the owner index to identify all claims in an ownership which have the same type of historical right and priority date. Second, review the claim files to determine if the owner is the original claimant or a subsequent owner.

The conclusive identification of a multiple use situation comes from close comparison of the documentation supporting the historical right upon which the claims are based. The following items **must** be the same for all claims when a multiple use situation exists:

- Decreed and Filed Rights : claimant, type of historical right, priority date, source, and documentation must be the same.
- Use Rights: claimant, priority date, and source must be the same.

When a multiple use situation is identified, check “Yes” on the Multiple Use line of the examination worksheet (below the Place of Use) and note the claim numbers to be included in the multiple use. These claim numbers will be entered into the Related Rights tab in the database. The following remark will automatically be generated on the review abstract and the decree abstract of all claims involved.

Example: THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES FILED BY THE ORIGINAL CLAIMANT AND BASED ON THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THIS RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES. **000000-00, 000000-00.**

Late claims should be included in multiple use situations. Reserved rights, withdrawn claims, and claims filed by irrigation districts should not be included in multiple use relationships with timely-filed water right claims.

Situations may occur where a multiple use of a water right appears to exist but cannot be confirmed. For example, a claimant files stock and domestic claims on a well. The type of right, priority date, and documentation are the same but the flow rates are different. Another example would be when documentation to support a single historic appropriation is submitted by a claimant on separate claims, but the type of historical right and/or priority dates differ. Contacting the claimant to understand the situation is advised. If contact does not resolve the issue, add one of the following multiple use issue remarks to the department's examination worksheet. Make sure the remark appears on all abstracts of the claims identified in the remark.

- Examples: M20 THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS MAY NEED A MULTIPLE USE REMARK. **000000-00, 000000-00.**
- M21 THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. THESE CLAIMS HAVE STATED DIFFERENT FLOW RATES. IT APPEARS THE FLOW RATE SHOULD BE THE CAPACITY OF THE PUMP. **000000-00, 000000-00.**
- M22 THE CLAIMS LISTED FOLLOWING THIS STATEMENT MAY BE A MULTIPLE USE OF THE SAME RIGHT. IT APPEARS THE PRIORITY DATE IS **MM/DD/YYYY** AND THE TYPE OF HISTORICAL RIGHT IS **DECREED**. **000000-00, 000000-00.**
- P357 THE PRIORITY DATE AND TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT APPEAR TO BE A MULTIPLE USE OF THE SAME RIGHT. IT

APPEARS THE PRIORITY DATE IS MM/DD/YYYY AND THE TYPE OF HISTORICAL RIGHT IS FILED. 000000-00, 000000-00.

5. Associated Rights: Associated rights are generally created in three types of scenarios:

A statement of claim uses the same development (well, reservoir, point of diversion) as

- 1) a federal reserved water right claim;**
- 2) a new appropriation (post-1973 water right); or**
- 3) an exempt right.**

These relationships should be “associated”.

(Note: The Adjudication program does not associate the *place of use* involving statement of claims and post-1973 water rights; the New Appropriation program does this.)

Document this association by adding the water right numbers to be included in the associated relationship in the ‘Formatted Remarks’ section of the examination worksheet.

Using the Related Rights tab will print a remark (similar to A35 below) on all rights in the associated relationship. *Pre 1973 or exempt rights use the related rights tab in the database. For post 1973, add the A35 remark and do not use the related rights tab in the database.*

Example: A35 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY SHARE THE SAME **RESERVOIR/ POTHOLE LAKE/POINT OF DIVERSION. 000000-00, 000000-00, 000000-00.**

An associated flag ([Figure VI-2](#)) should be completed when the association is between statements of claim and exempt rights or post-1973 new appropriations (permits or certificates). Put a copy of the flag (clearly marked "COPY") in the claim file. Send the flag to Helena where the flag will be scanned.

Statement of Claims and Exempt Rights: A statement of claim and an exempt right by a single owner are based on the same historical right (and are not duplicate filings for the same right), **the association between the statement of claim and exempt right should be made through an associated remark** (do not add a multiple use remark). Exempt rights claimed by individuals who submit a ‘Notice of Exempt Water Right’ to get their water right on record with the department are not included in the adjudication process. The following remark should be added to the department’s examination worksheet.

Example: A30 THIS WATER RIGHT IS ASSOCIATED WITH WATER RIGHT NO. **000000-00**. THEY ARE BASED ON THE SAME HISTORIC WATER RIGHT.

Reservoirs: A claimed reservoir may have other claims, exempt rights or post-1973 new appropriations (permits or certificates) associated with it. See “Claim Examination: Reservoirs or Pits: Reservoir Issues” ([Section VI.H.4](#)) for discussion on associating shared reservoirs.

Manifold Systems: In situations involving manifold systems (usually municipal claims), use the A45 remark.

Example: A45 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY ARE PART OF A MANIFOLD SYSTEM WHICH SUPPLIES MUNICIPAL WATER TO THE **BIG CITY. 000000-00, 000000-00, 000000-00.**

ASSOCIATED FLAG

WATER RIGHT NO. _____

(scan & file here)

IS ASSOCIATED WITH

WATER RIGHT NO. _____

WR's ARE ASSOCIATED BECAUSE:

CODED (initials)

DATE

COMPLETED BY:

DATE

D. SOURCE NAME

The source is the specific natural supply from which water is appropriated for a beneficial use. A single source may have several names applied to it by claimants. By standardizing source names, the quality of the database is improved, and source name indexes and listings become accurate and reliable.

Claimant contact must occur upon completing the examination of the ownership if the source is modified by rule, an issue remark exists, or is unclear, [Rules 11\(a\) \(2\),\(b\) and 44, W.R.C.E.R](#) and section IV. F.

1. Basin-wide Standardization System: This section describes the preparation of a single, permanent reference index on maps or arials of all standard source names within a basin. This reference index can be developed prior to examining claims within the basin or can be developed as the basin claims are examined. [Rule 11\(a\), W.R.C.E.R.](#)

In some areas of Montana, almost every source on a USGS topographic map is named. In these areas, it is possible to standardize stream names as claims are examined. Other parts of Montana do not have the USGS coverage or only a few of the watercourses are named on the USGS topographic maps. In these areas, stream name standardization is best done prior to claim examination. If the USGS topographic map has a geographic name, such as Black Canyon Gulch, but no specific stream name, then the geographic name can be used as a source name.

When standardizing source names as claims are examined, care must be taken that every claim (and most new appropriations permits issued after 1985) on a source receive the same name. For example, a USGS unnamed tributary source is claimed by some as an unnamed tributary and by others as a colloquial name (a name of local recognition). All the claims must be checked and the source standardized. This becomes very important when the decree is issued. Some claimants only look at the claims identified on their source when determining whether to object. If the source name is not standardized for all claims on a source, some claimants may not receive notice as they might only look at the source identified by their claim.

The following procedure was designed to develop a single, permanent reference index of all standardized source names. The procedure is intended to be applied before individual claim examination.

- Resources needed:
 - a) USGS topographic maps for basin
 - b) Water Resource Survey (WRS) for the county(ies)
 - c) POD index for the basin
 - d) Source name index for the basin
- Systematically examine the POD index, WRS, and USGS topographic map for each township. The POD index is useful since it lists claimed source names by township.

- a) If a claimed source name agrees with the USGS topographic map, go to the next claimed source name on the POD index. If a claimed source name disagrees with the USGS topographic map, the USGS name will be kept.
- b) If the claim indicates a named source and the USGS topographic map shows the source as UNNAMED TRIBUTARY, check the WRS. If the WRS name agrees with the claimed source name, write that name on the USGS topographic map.
- c) If the WRS source name disagrees with the claimed source name, check to see if only one claim disagrees or if all claims on the source disagree. Then decide whether to adopt the WRS name or the colloquial name. Write that name on the USGS topographic map.
- d) If the claim indicates a named source, and both the USGS topographic map and the WRS (or there is no WRS for the township) show the source as an UNNAMED TRIBUTARY, check the POD index for colloquial names. Check the source name index to see if the colloquial name identifies more than one source. Once you've determined how many different names are claimed for this source and how often each is used, standardize to one of them or leave the source as an unnamed tributary. Write the standard name on the USGS topographic map.
- e) Generally, an UNNAMED TRIBUTARY on the USGS topographic map will not be given a WRS name unless a claimant specifies that name on their claim.

Note: If the USGS topographic map has a geographic name, such as Black Canyon Gulch, but no specific stream name, then the geographic name can be used as a source name.

- This sequence takes care of colloquial names as they come up. Writing standardized names on the USGS topographic maps provides a source name resource that is easily used with little chance that claimed source names will not be consistently standardized.

2. Identifying the Claimed Source: Using the information in the claim file, check the source name identified on the claim form for clerical errors by the claimant and for consistency with the documentation. If the claimed source is unclear, contact the claimant. An amendment identifying the claimed source may be necessary. [Rule 11\(a\), W.R.C.E.R.](#)

3. Examining Source Name: The claimed source name will be checked to establish a consistent name for each source.

a. Source Name Review: The source indicated on the claim and worksheet will be compared with various data sources. The three primary authorities **IN THIS PREFERENTIAL ORDER** for standardizing source names are:

- USGS topographic maps
- WRS maps
- colloquial names on claims [Rule 11\(c\)\(1\), W.R.C.E.R.](#)

In areas without USGS topographic map coverage, Bureau of Land Management (BLM) and U.S. Forest Service maps are a good resource.

In the case that a source is not named on the USGS topographic map or on the WRS but is named consistently by the majority of the owners claiming it, the colloquial name (a name of local recognition) will become the standardized source name. Generally, the retention of a colloquial name would occur when multiple water rights by different owners exist for the source.

Standardize the claimed source name to match the preferred authority. When the evidence shows that the primary authority is incorrect, refer to the next level or most accurate authority. For example, a stream named Russell Creek on the USGS topographic map was called Russell Coulee by 12 of 13 claimants. The WRS and County Notice of Appropriation Index supported the latter name; therefore, Russell Coulee became the accepted standard source name.

b. Changing Source Name: The claimed source will not be changed during the examination unless:

- amended by the claimant; [Rule 34, W.R.C.E.R](#)
- clarified by the department without claimant contact as long as the claimed intent is clear to resolve discrepancies in the claimed information or to reference source names consistently; [Rule 33\(b\) \(1\), \(6\), W.R.C.E.R](#)
- modified by rule; [Rule 11\(c\), W.R.C.E.R](#) or if the claimant intent is unclear, clarified by the department on confirmation from the claimant. [Rule 33\(c\), W.R.C.E.R](#)

Make any corrections to the claimed source name directly on the worksheet. When a claimed source name is changed, note the change by placing an asterisk in the left hand margin next to the source element on the examination worksheet. (See the following sections on specific source types for example remarks, such as AKA remarks.) [Rule 11\(c\), W.R.C.E.R.](#)

- **Proper spelling, spacing, and composition of the source name is imperative;**
- The type of source, e.g., river, creek, coulee, etc. should be included as part of the name;

- Forks should follow the name of the stream, preceded by a comma (Bitterroot River, East Fork).

See the Water Rights Bureau Memo dated September 5, 2006 for instructions on adding new source names to the database. Do not add a new source name to the database until certain the source name has not already been entered.

c. Surface or Groundwater Check: This area of the worksheet will be used by the claims examiner to check the source type. Source types are broadly defined as:

- Groundwater: well or developed spring
- Surface Water: stream, lake, reservoir, or undeveloped spring [Rule 11\(d\)\(2\), W.R.C.E.R.](#)

Based on source name standardization and the examination procedures, the source type should reflect the broad definitions. When a source type is changed, note the change next to the source type element on the examination worksheet.

Assign source and minor types to the claimed source as shown in [Figure VI-3](#). For claimed sources not listed in the Claimed or Documented column in Figure VI-3, consult a supervisor.

d. Database Storage and Retrieval: The database is set up to store a source name with each point of diversion record. Therefore, a different source name may be retained for each diversion. Because the claim form allowed only one source possibility, the source originally entered into the database is the same for each diversion. All source names stored with PODs will appear in POD and Source Name indexes.

Retaining Multiple Source Names: Each point of diversion record in the database has a source field, so if multiple sources are claimed, these different sources can be noted in the appropriate diversion record. If examination determines the diversions to be on different sources, correct (modify by rule) the source names in the appropriate diversion record in the database so that the indexes (source and POD) will be accurate. See "Source Name Issues: PODs on Multiple Sources", [Section VI.D.9.b.](#) for more guidance on multiple sources claimed. [Rule 11\(b\), W.R.C.E.R.](#)

FIGURE VI-3

STANDARDIZING SOURCE TYPES (See [Figure VI-4](#) for Coding) [Rule 11\(c\), W.R.C.E.R.](#)

Claimed or Documented	Source Type	Minor Type	Standardized Source Name for Exam Worksheet
Groundwater Well	Groundwater		Groundwater
Developed Spring(s) (spring name meets standardization criteria)	Groundwater		Spring Name (Standardized Name)
Developed Spring(s) (spring name does not meet standardization criteria)	Groundwater	Spring	Spring, Unnamed Tributary of _____ (Note: a source name remark may be used to retain claimed spring name)
Undeveloped spring(s) (single point source, spring name meets standardization criteria)	Surface Water		Spring Name (Standardized Name)
Undeveloped spring(s) (single point source, spring name does not meet standardization criteria)	Surface Water	Spring	Spring, Unnamed Tributary of _____ (Note: a source name remark may be used to retain claimed spring name)
Undeveloped spring(s) (broad POD description, spring name meets standardization criteria)	Surface Water		Spring Name (Standardized Name)
Undeveloped spring(s) (broad POD description, spring name does not meet standardization criteria)	Surface Water	Spring	Spring, Unnamed Tributary of _____ (Note: a source name remark may be used to retain claimed spring name)
Drain ditch Waste water Waste & Seepage Seepage Drainage Collection Ditch or Collection Box	Surface Water	Waste & Seepage	Waste & Seepage, Unnamed Tributary of _____ (Note: a source name remark may be used to retain claimed spring name)
Subirrigation	Groundwater	Subirrigation	Sub-irrigation, Unnamed Tributary of _____
Swamp Marsh Diffuse Surface Water Runoff	Surface Water		Unnamed Tributary of _____
Natural Pit(s) Manmade Pit(s) Glacial Kettle(s) Natural Sink(s) Named/Unnamed Trib., Interior Drainage	Surface Water		See VI.D.8.d instructions
Groundwater Pit(s)	Groundwater	Manmade Pit or Natural Pit	Manmade Pit, Unnamed Tributary of _____ or Natural Pit, Unnamed Tributary of _____
Natural Overflow	Surface Water		Standardized Stream name or Unnamed Tributary of _____ (Note: a source name remark may be used to retain claimed name)
All Other Names			Discuss with Supervisor

Printing and Storage Formats: See [Figure VI-4](#), which explains source name formats on the worksheet, in the database, on the decree abstract and in the index.

- The "Write on Worksheet" column shows how different source name standardization should be written on the worksheet.
- The "Coded As" column shows how the source name will be coded and stored in the database.
- The "Printed on Decree Abstract" column depicts the source name format for the decrees and certificates.
- The "Printed on Indexes" column displays the source name format as printed on indexes and other reports.

4. Streams:

a. Named Streams: The stream name confirmed on the USGS or WRS map, or an acceptable colloquial name, will be the standard source name. Make corrections or standardizations on the worksheet. If a WRS or colloquial name becomes the standardized name, write the name on the USGS topographic map (see previously for more information on standardization, [Section VI.D.1](#)). [Rule 11\(c\)\(1\), \(2\), W.R.C.E.R.](#)

When a claimed source name is not an acceptable source name, it can be retained on the review or decree abstract in a source name information remark. If the claimed source name is not supported by the data sources but might be meaningful to the claimant, it should be retained. Use discretion when adding source name information remarks. [Rule 11\(d\)\(3\), W.R.C.E.R.](#)

Example: S30 ALSO KNOWN AS **DOE SLOUGH**

When a source name is used more than once in a basin to identify different streams (i.e., Deer Creek, Rock Creek, Beaver Creek), adding a source name (SN) information remark to the department's examination worksheet is suggested. Use the name of the first stream to which the source is tributary in this information remark. [Rule 11\(d\)\(3\), W.R.C.E.R.](#)

Example: S75 THE SOURCE IS A TRIBUTARY OF **DOE CREEK**.

When a source name includes a fork name, standardize the source name to "Little Doe Creek, West Fork", even though the USGS topographic map shows West Fork Little Doe Creek. This allows all water rights on a source and its tributaries to be more easily searched in applications such as the DNRC Water Right Query system. Other situations can occur; for example, West Fork is the listed source which is tributary to Little Doe Creek. In this situation, the source name is standardized to "Little Doe Creek, West Fork" on the USGS topographic map, the examination worksheet, and in

the database. In the rare situation that the source name includes fork, such as “West Fork Creek”, database assistance may be needed to enter this source.

b. Unnamed Streams: If the source is unnamed, use the first standard source name to which the claimed source is a tributary. Using the USGS topographic map, follow the claimed source downstream until it enters a named source. Write the source name on the worksheet as ‘Unnamed Tributary of _____’, i.e., Unnamed Tributary of Missouri River. [Rule 11\(c\)\(5\), W.R.C.E.R.](#)

When the source is composed of several unnamed tributaries within the claimed legal land description, add the following source name information remark to the department’s examination worksheet. [Rule 11\(d\)\(3\), W.R.C.E.R.](#)

Example: S16 SOURCE IS COMPOSED OF **SEVERAL/THREE UNNAMED TRIBUTARIES** WITHIN THE POINT OF DIVERSION LEGAL LAND DESCRIPTION.

FIGURE VI-4
SOURCE NAME FORMAT

<u>Write on Worksheet</u>	<u>CODED AS:</u>			<u>Printed on Review Abstract and Decree Abstract</u>	<u>Printed on Indexes</u>
	<u>Source, Fork Name</u>	<u>UT Code</u>	<u>Minor Type</u>		
Standardized Name	Standardized Name	N	None	Standardized Name	Standardized Name
UT of ___	Standardized Name	Y	None	Unnamed Tributary of ___	UT _____ (UT Rock Creek)
Spring, Unnamed Tributary of ___	Standardized Name	Y	Spring	Spring, Unnamed Tributary of ___	SP _____ (SP Rock Creek)
Standardized Spring Name	Standardized Spring Name	N	None	Standardized Spring Name	Standardized Spring Name
Waste & Seepage Unnamed Tributary of ___	Standardized Name	Y	Waste & Seepage	Waste & Seepage, Unnamed Tributary of ___	WS _____ (WS Rock Creek)
Subirrigation, Unnamed Tributary of ___	Standardized Name	Y	Subirrigation	Subirrigation, Unnamed Tributary of ___	SI _____ (SI Rock Creek)
Manmade Pit, Unnamed Tributary of ___	Standardized Name	Y	Manmade Pit	Manmade Pit, Unnamed Tributary of ___	MP _____ (MP Rock Creek)
Natural Pit, Unnamed Tributary of ___	Standardized Name	Y	Natural Pit	Natural Pit, Unnamed Tributary of ___	NP _____ (NP Rock Creek)
UT of Interior Drainage	Interior Drainage	Y	None	Unnamed Tributary of Interior Drainage	UT Interior Drainage
Spring, Unnamed Tributary of Interior Drainage	Interior Drainage	Y	Spring	Spring, Unnamed Tributary of Interior Drainage	SP Interior Drainage
Natural Pit, Unnamed Tributary of Interior Drainage	Interior Drainage	Y	Natural Pit	Natural Pit, Unnamed Tributary of Interior Drainage	NP Interior Drainage
Manmade Pit, Unnamed Tributary of Interior Drainage	Interior Drainage	Y	Manmade Pit	Manmade Pit, Unnamed Tributary of Interior Drainage	MP Interior

5. Lakes and Reservoirs: A lake is a considerable inland body of standing water which occurs naturally. Naturally occurring lakes which have had the surface artificially raised, altered, or volume increased due to human activities will be *treated as a reservoir only on those claims using the storage*. A reservoir is an artificial (man-made) lake where water is collected and kept in quantity for use.

The source name for a claim which includes a reservoir is the name of the stream from which water is diverted or impounded. For purposes of source name standardization, the following guidelines will apply:

- The source will be the inflowing stream name. If there is not a named, inflowing stream, use the outflowing stream name. If there is no named outflowing stream, the source will be an unnamed tributary of the first named stream to which the source is a tributary. [Rule 11\(c\)\(1\),\(5\) W.R.C.E.R.](#)
- A claimed reservoir name will be retained by writing the name in the reservoir/lake name area on the examination worksheet. The reservoir name can be entered in the Name field on the Reservoir tab in the database. The names will appear in the decree as part of the reservoir record. Use the Name field in the Reservoir tab in place of the R25 remark. Use the R25 remark in the instance more than one colloquial name is claimed.
- When there is no reservoir record (claimant does not have control of the diversion works), an acceptable reservoir name will be retained as part of the source name. For example, the source name for stock drinking directly out of Canyon Ferry Lake will be “Missouri River (Canyon Ferry Lake)”. Write the reservoir name next to the source name on the worksheet.

By following these guidelines, both the stream and reservoir name will be in the decree. The water right will be listed twice in the source name index: once under the stream name and once under the reservoir name.

A claimed lake name which meets the acceptable standardization criteria (see [Section VI.D.1](#)) will be retained and entered as the source. When a natural lake is claimed that is also known by another name, it may be noted using a source name (SN) information remark. [Rule 11\(d\)\(3\), W.R.C.E.R.](#)

Examples: S30 ALSO KNOWN AS **DOE LAKE**
S35 UNNAMED NATURAL LAKE
S41 POTHOLE LAKE
S42 SOURCE FEEDS A NATURAL **LAKE/POND**.
S43 SOURCE ORIGINATES FROM A NATURAL LAKE KNOWN AS **DOE LAKE**.
S45 THE SOURCE IS WATER FLOWING FROM THE **DOE TUNNEL**.
S50 FLOWING ARTESIAN WELL

6. Springs: Many variations exist in how springs have been named and stored in the database. This section discusses how they should be reviewed so that consistent source name standardization is maintained. Keep in mind that a spring source type is the location where water is flowing out of the ground and that as the water flows over land, that water then becomes a surface water tributary (often unnamed).

Developed Spring: A spring will be considered "developed" and the appropriation will be classified as groundwater if documentation clearly indicates some man-made development (physical alteration) of the spring that appropriates groundwater. The assumption is that the physical alteration increases the flow rate, since not many measurements of historical flow rates exist that could prove an increase in flow. Any increase in the ability to use the water is considered a developed spring. Appropriate documentation to consider a spring "developed" could include:

- Claim form or other documentation in the file indicates some man-made development at or below the point of extrusion from the ground which increases the ability to use the water that would not naturally be available.
- Claim form or other documentation in the file indicates some form of development at the spring, such as "developed spring", "spring box", "pipeline", "pump", or "rock cribbing", **and** claimant contact confirms a man-made development has increased the ability to use the water that would not naturally be available for use.
- Claimant is contacted regarding spring development or other issues, and confirms man-made development has caused an increased ability to use the water that would not naturally be available for use.

Other documentation to consider includes filings made in accordance with the 1961 Groundwater Code. See "Claim Examination: Priority Date: Claims Involving 1962-1973 Groundwater (GW) Forms" ([Section VI. J. 4](#)) for an explanation. See examples of the four forms in Exhibits VI-10 through VI-13.

- A GW3 or GW4 filed in accordance with the 1961 Groundwater Code. The exception is if the GW form clearly indicates the spring has not been developed. For example, if the GW form states "natural flowing springs", "natural flow", "spring surfaces and runs off" or "natural springs", it should be considered undeveloped and classified as surface water.
- A GW1 or GW2 which identifies a spring, and meets the filing criteria, may be used as a GW3 or GW4.

Undeveloped Spring: A spring will be presumed to be "undeveloped" and the appropriation will be classified as surface water if the above "developed" spring criteria are not met (no physical alteration, using water that is naturally available).

a. Identifying the Source: When the claimed source is a spring, the identification of the source as a spring or a stream will be determined as follows:

- When a spring is "developed" based on the above criteria, the source will be a spring. The source type will be groundwater and the POD legal land description should encompass just the spring.

In some cases, the source may be composed of several springs or a cluster of springs within a small area. Unless the springs have been specifically identified on the claimant map, only one POD description is needed. To explain this situation, a source name information remark may be added to the department's examination worksheet. [Rule 11\(d\)\(3\), W.R.C.E.R.](#)

Example: S20 SOURCE IS COMPOSED OF **SEVERAL/FOUR DEVELOPED/UNDEVELOPED** SPRINGS WITHIN THE POINT OF DIVERSION LEGAL LAND DESCRIPTION.

Based on the physical location of the developed spring, the claim may include a commingling of surface water. If the commingled surface water has not been claimed, the following source name information remark may be added to the department's examination worksheet. [Rule 11\(d\)\(3\), W.R.C.E.R.](#)

Example: S80 THIS WATER RIGHT ALSO INCLUDES SURFACE WATER FROM **AN UNNAMED TRIBUTARY OF MAD DOE CREEK**.

Depending on the location of the POU, there may be a secondary diversion on a watercourse used as a natural carrier. See "Claim Examination: Point of Diversion (POD): Unique POD Features" ([Section VI.F.2.c](#)) for natural carrier remarks.

- When a spring is "undeveloped" based on the above criteria and the POD on the claim form and claimant map is a single point source at the spring, the source will be a spring. The source type will be surface water and the POD legal land description should encompass just the spring. The claimed specific means of diversion may be modified by rule. If the means of diversion was claimed as "developed spring", this will need to be changed to a diversion means other than "developed spring", if possible. Review the claim file carefully for means of diversion other than "developed spring", for example, "pipeline" or "springbox".

The source name remarks (S20, S80) discussed above may also be needed.

- If a spring is "undeveloped" based on the above criteria, and the POD on the claim form and claimant map identify an area larger than just the spring or POD downstream from the spring, the source will be the stream to which the spring is a tributary. The source type will be surface water and the POD legal

and description should encompass where the water is diverted for use. The specific means of diversion may be modified by rule.

- The following source name information remark may be added to the department's examination worksheet if a spring has been developed in a manner that brings additional flow to the watercourse from which the water is actually diverted. However, this may be a separate right and an implied claim may be needed.

Example: S85 THIS WATER RIGHT ALSO INCLUDES GROUNDWATER FROM A DEVELOPED SPRING IN THE **NWNWNW** SEC **36** TWP **99N** RGE **99W MONTANA** COUNTY.

b. Named Springs: A claimed spring name which meets the acceptable standardization criteria will be retained as the standard source name. Make corrections to the claimed source name directly on the worksheet. The word "Spring" should always follow a standard name, e.g., Two Doe Spring.

A decision was made during the claim filing period that certain named springs would not be stored in the database, such as:

- Spring #1, #2, etc.
- spring name is the same as the claimant's name
- a number followed by a name (#3 Arthur)
- a number that is spelled out (twenty-seven)

These springs will not be named on the worksheet. These claimed spring names must be examined against acceptable standardization criteria. If the name does not meet the criteria, treat the source as an unnamed spring.

In situations where a claimed spring name is not an acceptable standardized name, the claimed name may be retained in a source name (SN) information remark added to the examination worksheet. Use discretion when adding source name information remarks.

[Rule 11\(d\)\(3\), W.R.C.E.R.](#)

Example: S30 ALSO KNOWN AS **DOE PLACE SPRING**

c. Unnamed Springs: A claimed spring without a name or with a claimed name that does not meet the acceptable standardization criteria is considered an unnamed spring. To establish a standard source name, identify the first downstream (or down gradient, if not connected) named source, even if far away from the spring. This puts the spring in a sub-basin, enhancing the usefulness of the database. [Rule 11\(c\)\(3\), W.R.C.E.R.](#)

All unnamed springs will be standardized on the worksheet to "Spring, Unnamed Tributary of _____" (using the first down gradient named source). Attach the spring to an

unnamed tributary even if not apparently connected such as an ephemeral stream. [Rule 11\(c\)\(3\), W.R.C.E.R.](#)

7. Wells: When "well" has been claimed, the source name on the worksheet will be "Groundwater". When a named well is being standardized to "Groundwater," the claimed name may be retained in a source name (SN) information remark (S30). Use discretion when adding source name information remarks. The means of diversion will be "Well." [Rule 11\(c\)\(4\), W.R.C.E.R.](#)

Recording Well Data: Instructions for entering well data, i.e. depth, static water level, yield rate, and casing diameter, are given in "Point Of Diversion: Specific Point Of Diversion Guidelines" ([Section VI.F.3](#)).

8. Additional Source Types: When none of the five choices (spring, well, stream, lake, or reservoir) on the claim form fit a particular situation, certain other source names are acceptable.

These additional source names are presented in [Figure VI-3](#). The left column lists various source names or types which may appear on the claim form or documentation. The right column lists the corresponding standardized source name.

Names in the left column (claimed or documented source name) can be retained as source name information remarks in the department's examination worksheet if helpful in explaining the situation. Source name remarks added during clarification should be deleted if they do not appear useful.

Questions regarding these source names and types should be brought to the attention of a supervisor, regional/unit manager, or bureau chief. Non-standard claimed source names and types not identified in [Figure VI-3](#) will normally involve issue remarks.

a. Waste and Seepage: Waste water is defined as water lost through the design of a system, the operation of a system, and/or the water distribution facility which has not re-entered a natural stream channel. Seepage is defined as the movement of water through a porous soil; its origin could be from another's waste or occurring naturally.

The source name for claims involving waste and/or seepage will be standardized as "Waste and Seepage, Unnamed Tributary of _____," using the first named source into which the water would flow. When considering "Waste and Seepage, Unnamed Tributary of _____" as the standardized source name, a definite diversion of the water must be involved. To further explain how and where waste and seepage originates, a source name information remark may be added to the department's examination worksheet. [Rule 11\(d\)\(3\), W.R.C.E.R.](#)

Examples: S90 THE SOURCE IS WATER COLLECTED IN A DRAIN DITCH.

S95 THE SOURCE IS WATER COLLECTED IN THE **DOE DRAIN DITCHES**.

Drain ditches may exist where the water is not being used, but is being drained off the claimed place of use. In this situation, the water right may be subirrigation, not waste and seepage.

For claims to waste or seepage being diverted from a natural stream channel, the source name will be that of the stream.

b. Subirrigation: The two types of subirrigation are as follows.

- Natural subirrigation is land having a water table within reach of the crop root system. There is normally no specific point of diversion. The POU should equal the POD.
- Controlled subirrigation systems, such as ditches equipped with check dams to control the level of the water table, would require a specific POD.

The source name for claims involving subirrigation will be standardized as "Subirrigation, Unnamed Tributary of _____," using the first named source the subirrigation water would flow into.

c. Natural Overflow or Flood: Generally, natural overflow or natural flooding as a claimed source name was changed during the clarification process to the stream name. Standardize the source name for claims involving natural overflow or natural flooding to the stream from which the natural overflow or flooding occurs. Make sure that the appropriate information remark (P120, P125, or P126) is entered.

d. Interior Drainages (Closed Basins): A closed basin or interior drainage exists when the surface water of an area does not have an identifiable outlet. An interior drainage, therefore, may not be known to be tributary to any other drainage or source. Interior drainage is defined in [Rule 2 \(a\) W.R.C.E.R.](#) as "an area in which water drains into a depression from which water only escapes by evapotranspiration or subsurface drainage. The scale varies from a small kettle in a glaciated area to a large playa lake, such as the Great Salt Lake in Utah."

The following guidelines, listed in order of preference, apply for standardizing the source name of an interior drainage.

- A named stream or lake, or an unnamed tributary to a named stream or lake, within an interior drainage which meets the acceptable standardization criteria will be the source name, e.g. "SWAMP COULEE." Add a source name information remark to the department's examination worksheet identifying the interior drainage.

Example: S100 SOURCE LOCATED WITHIN AN INTERIOR DRAINAGE.

- For unnamed streams within an interior drainage, determine the first named source down gradient from the interior drainage. Use this source name in conjunction with the source type. This puts the source in a sub-basin which enhances the usefulness of the database and indexes. Add a source name information remark to the department's examination worksheet identifying the interior drainage.

Examples: Unnamed Tributary of (source name)
Natural Pit, Unnamed Tributary of (source name)
Manmade Pit, Unnamed Tributary of (source name)

Example: S100 SOURCE LOCATED WITHIN AN INTERIOR DRAINAGE.

- If there is no named stream within the interior drainage and a down gradient source name cannot be determined, the standardized source name will be "INTERIOR DRAINAGE" used in conjunction with the source type.

Examples: Natural Pit, Unnamed Tributary of Interior Drainage
Manmade Pit, Unnamed Tributary of Interior Drainage
Unnamed Tributary of Interior Drainage
Spring, Unnamed Tributary of Interior Drainage

e. Others: All claimed source names that cannot be standardized using the procedures in the preceding sections will be brought to the attention of the bureau chief.

9. Source Name Issues:

a. Multiple Source Types Claimed: Claims may be encountered listing multiple source types, such as Waste/Subirrigation/Slough. Determining the accurate source name requires careful analysis. The claimant must be contacted. [Rules 11\(b\), and 44 W.R.C.E.R.](#) and Section IV. F.

The following guidelines apply when multiple source types have been claimed.

- If more than one source is involved, send the claim file to the Water Court requesting authorization for an implied claim. The claim file should clearly document why more than one water right exists.
- If only one source is involved and the source type is clearly indicated in the claim file, change the source type accordingly on the examination worksheet. When a single source type is not clearly indicated in the claim file, contact the claimant.

- If the multiple source type issue is not resolved, add a source name (SN) issue remark to the department's examination worksheet.

Example: S105 THIS CLAIM APPEARS TO BE CLAIMING **TWO** SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

b. PODs on Multiple Sources: Some claims show points of diversion on two or more sources. Possible explanations include two or more water rights may be involved, the POD legal land descriptions may be incorrect, or there may be only one water right involving two sources. If there is any uncertainty whether more than one water right is involved, contact the claimant. [Rules 11\(b\), and 44 W.R.C.E.R.](#) and Section IV. F.

The following guidelines apply when PODs on multiple sources have been claimed:

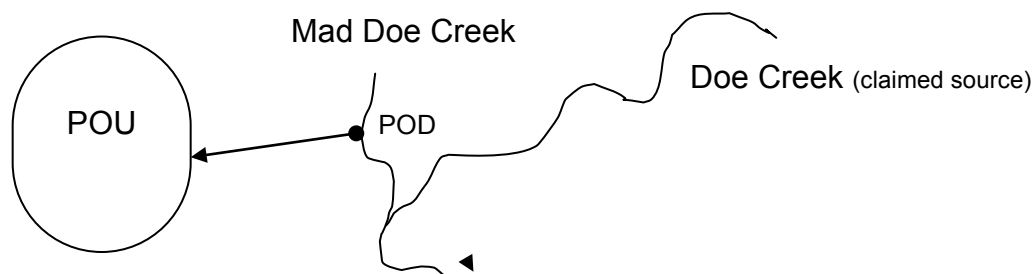
- For claims involving a named source and an unnamed tributary to that same source, **and** there is no apparent adverse effect to other water users, the claim will be reviewed as one water right. The database will accommodate the named source and the unnamed tributary. The named source and the unnamed tributary should be entered as the source for the appropriate POD.
- For claims involving two or more PODs on different named sources, contact the claimant.
 - The POD legal land descriptions may be incorrect.
 - An exchange of water from different sources or a natural carrier situation is occurring (see c. below).
 - If more than one source is involved, send the claim file to the Water Court requesting authorization for an implied claim. The claim file should clearly document why more than one water right exists.
 - If the reasons for PODs on different sources cannot be resolved, add a source name issue remark to the department's examination worksheet.

Example: S110 THIS CLAIM APPEARS TO DIVERT WATER FROM **TWO** SEPARATE SOURCES. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

c. POD not on Claimed Source: When the POD is located on a watercourse different from the source claimed, either an exchange of water from different sources or a natural carrier situation is occurring. [Rule 11\(d\)\(3\),\(5\), W.R.C.E.R.](#)

Exchange of Water from Different Sources: An exchange of water occurs when water from the diverted source is substituted for the water of the appropriated source. Contact the claimant to understand the specifics. Standardize the source name to the stream from which water was originally appropriated. Add a source name information remark (S55, S60) to the department's examination worksheet. In addition, add a source name issue remark (S115) to the department's examination worksheet noting the exchange as an issue. It is suggested this type of claim be reviewed by a supervisor or the bureau chief.

- Examples: S55 WATER FROM **DOE LAKE** IS EXCHANGED FOR WATER DIVERTED FROM **SOUTH FORK OF DOE CREEK**.
- S60 WATER FROM **DOE CREEK**, CASE NO. **0000**, **MONTANA** COUNTY, IS EXCHANGED FOR WATER DIVERTED FROM **MAD DOE CREEK**.
- S115 WATER IS NOT DIVERTED FROM THE CLAIMED SOURCE. WATER FROM THE CLAIMED SOURCE IS EXCHANGED FOR WATER DIVERTED FROM A DIFFERENT SOURCE. DUE TO THE EXCHANGE OF WATER, THE SOURCE AND PRIORITY DATE CANNOT BE CONFIRMED.



Natural Carrier: If the claimed source is an upstream tributary to the watercourse on which the POD is located, add a source name (SN) information remark to the department's examination worksheet to help explain the particular situation.

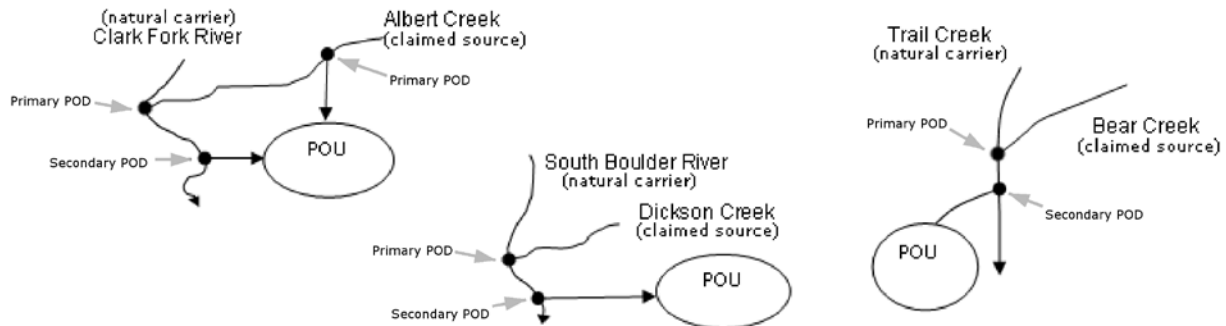
- Examples: C120 WATER DIVERTED FROM **DOE RIVER** IS CONVEYED TO **TWO DOE CREEK** WHICH IS USED AS A NATURAL CARRIER TO A SECONDARY POINT OF DIVERSION IN THE **SWSWSE** SEC **36** TWP **99S** RGE **99E** **MONTANA** COUNTY.
- C121 WATER DIVERTED FROM **DOE CREEK** IS CONVEYED TO **MAD DOE CREEK** WHICH IS USED AS A NATURAL CARRIER TO CONVEY WATER TO THE PLACE OF USE.

C122 WATER STORED UNDER THIS RIGHT IS RELEASED FROM **DOE RESERVOIR** AND IS DIVERTED FROM **DOE CREEK** AT THE FOLLOWING SECONDARY POINTS OF DIVERSION: **NENWSE SEC 36 TWP 99E RGE 99S, NWSENE SEC 36 TWP 99E RGE 99S** AND **SWSWNW SEC 36 TWP 99E RGE 99S, MONTANA COUNTY**.

C123 WATER DIVERTED FROM **COLLECTION DITCH** IS CONVEYED TO **DOE CREEK** WHICH IS USED AS A NATURAL CARRIER TO SECONDARY POINTS OF DIVERSION IN THE **NESWNW SEC 36 TWP 99N RGE 99E (MONTANA CANAL)** AND THE **NWSWNW SEC 36 TWP 99N RGE 99E (MONTANA DITCH)**.

C126 WATER RELEASED FROM **DOE RESERVOIR** USES **MAD DOE CREEK** AS A NATURAL CARRIER TO CONVEY WATER TO THE PLACE OF USE.

C127 WATER FROM **DOE DITCH** IS CONVEYED THROUGH **COLLECTION DITCH** TO THE PLACE OF USE.



When these examples are encountered, check the claim file, WRS, and if necessary, contact the claimant to determine whether water was historically diverted from the claimed source. If a historical diversion from the claimed source cannot be determined or never existed, add a source name (SN) issue remark, in addition to the remark(s) above, to the department's examination worksheet.

Examples: S120 WATER IS NOT DIVERTED FROM THE SOURCE CLAIMED. A HISTORICAL APPROPRIATION FROM THE CLAIMED SOURCE CANNOT BE CONFIRMED.

S125 WATER IS NOT DIVERTED FROM THE SOURCE CLAIMED. IT APPEARS THAT NO HISTORICAL APPROPRIATION HAS OCCURRED FROM THE CLAIMED SOURCE.

(Note: In a situation with more than one POD, a free text source name issue remark [SNIS] may be added to accurately represent the situation.)

Secondary Point of Diversion: For natural carrier and secondary points of diversion situations it is desirable to list the secondary points of diversion on the abstract with the other primary diversions in addition to adding a remark. These are entered in the database under the POD tab in the POD Type field as 'primary' or 'secondary'. An example information remark follows.

Example: C124 **NORTH FORK DOE CREEK** IS USED AS A NATURAL CARRIER TO CONVEY WATER FROM **MAD DOE CREEK** TO THE SECONDARY POINT(S) OF DIVERSION, DIVERSION NO(S). **2**.

d. Claimed Source Questionable: When it appears the source may be incorrect, contact the claimant to discuss the issue. For guidance on questionable sources, consult with a supervisor, regional/unit manager, or bureau chief. If the issue is not resolved, add a source name (SN) issue remark to the department's examination worksheet.

Examples: S126 THE CLAIMED SOURCE MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM **DOE CREEK**.

S127 THE CLAIMED SOURCE MAY BE QUESTIONABLE. THE SOURCE DESCRIBED IN CASE NO. **0000, MONTANA** COUNTY, IS INCONSISTENT WITH THE SOURCE AT THE CLAIMED POINT OF DIVERSION.

If the source is amended to a surface source where the POD is a sump or pit next to the source, add a point of diversion (PD) information remark to explain the POD is adjacent to the source but is diverting water from the source.

Example: PD WATER FROM **DOE CREEK** IS DIVERTED BY MEANS OF A **PIT** LOCATED ADJACENT TO THE SOURCE.

E. **ADDITIONAL LEGAL LAND DESCRIPTIONS**
[Rules 12\(e\)\(3\), 18\(d\)\(3\), 23\(c\)\(2\), 28\(c\)\(2\), W.R.C.E.R.](#)

Using the [Public Land Survey System \(PLSS\)](#), the standard reference to legal land descriptions is by township, range, section, and quarter sections. Other types of legal land descriptions, e.g., government lots, subdivisions, or mining claims, can be used to help define a property location. Exhibits VI-2 and VI-3 are discussions of land surveys, legal land descriptions, and the documents involved. (Note: If working near the state boundary, be aware that some maps show both states' township and range information.)

This section describes how other types of legal land descriptions are identified. These descriptions may be added during the examination process as a clarification of a claimed POD or POU to the nearest reasonable and concise legal land description.

1. **Subdivisions:** A claimed subdivision, or one identified during examination, will be retained to appear on the review or decree abstract. This is especially important in the urban areas of the state.

In standardizing subdivision names, use the subdivision name list supplied by the Department of Revenue. Each regional/unit office should have this list for their area or can access subdivisions by county on the cadastral website (<http://cadastral.mt.gov/>).

When adding a new subdivision, record the subdivision name, lot and block numbers directly on the worksheet in the 'comments' area below the 'Point of Diversion and Means of Diversion' element or the 'Place of Use' element on the examination worksheet. Following are some guidelines for adding or changing subdivision descriptions:

- A lot number with no identified subdivision name may refer to a government lot. Check the General Land Office (GLO) plat of the township or the cadastral website (<http://cadastral.mt.gov/>) to confirm.
- Use quarter section breakdowns with subdivision lot and block descriptions. Refine the quarter-section legal description the same as with land descriptions not involving subdivisions.
- If more than one lot or block number occurs within a specified quarter section breakdown, repeat the breakdown as a separate parcel listing for each lot or block number.
- It may not be possible to identify the acreage or legal description to match each lot and block referred to in a POD or POU. If so, lot and block numbers may be retained in a point of diversion (PD) or place of use (PL) information remark. For example, the claimed POU equals 10 acres of irrigation in Lots 5, 6, and 7 of Doe Estates, First Addition, NENENE, Sec.

36. The number of acres within each lot cannot be determined. Add a place of use (PL) information remark. If the remark is to refer to both POD and POU, combine the description in a clarification of land description (CL) information remark (C40, C55).

- Examples:
- P6 THE POINT OF DIVERSION INCLUDES **LOTS 8 AND 9 OF DOE ESTATES, FIRST ADDITION.**
OR
THE POINT OF DIVERSION INCLUDES **MINERAL SURVEY NO. 0000.**
- P7 THE POINT OF DIVERSION IS LOCATED IN **TRACTS 2A AND 2B OF CERTIFICATE OF SURVEY NO. 0000.**
OR
THE POINT OF DIVERSION IS LOCATED IN **HOMESTEAD ENTRY SURVEY NO. 0000.**
- PD POINT OF DIVERSION IS IN THE SENENW SEC 36 TWP 99N RGE 99E IDAHO COUNTY, IDAHO.
- P165 THE PLACE OF USE **INCLUDES/IS LOCATED** IN GOVT **LOTS 5, 6, AND 7** IN SEC **36** TWP **99N** RGE **99E MONTANA** COUNTY.
- P175 THE PLACE OF USE INCLUDES **LOTS 5, 6, AND 7 OF DOE ESTATES.**
OR
THE PLACE OF USE INCLUDES **MINERAL SURVEY NO. 0000.**
- P180 THE PLACE OF USE IS LOCATED IN **TRACTS 2A AND 2B OF CERTIFICATE OF SURVEY NO. 0000.**
OR
THE PLACE OF USE IS LOCATED IN **HOMESTEAD ENTRY SURVEY NO. 0000.**
- PL THE PLACE OF USE IS IN SW SEC 36 TWP 99N RGE 99E IDAHO COUNTY, IDAHO.
- C40 POINT OF DIVERSION AND PLACE OF USE INCLUDES **LOTS 5, 6 AND 7 OF DOE ESTATES, FIRST ADDITION.**
- C55 POINT OF DIVERSION AND PLACE OF USE ARE LOCATED IN **TRACTS 2A AND 2B OF CERTIFICATE OF SURVEY NO. 0000.**

- If a subdivision and government lot are both involved, both can be entered into the respective fields in the Point of Diversion tab or the Place of Use tab in the database. If legal description breakdown doesn't match with the

other location information, retain the location information in a PD, PL, or CL remark (see following examples).

- Examples:
- P4 THE POINT OF DIVERSION **INCLUDES/IS LOCATED IN** GOVT **LOT 8** IN SEC **36** TWP **99N** RGE **99E** MONTANA COUNTY.
- P165 THE PLACE OF USE **INCLUDES/IS LOCATED IN** GOVT **LOTS 5, 6, AND 7** IN SEC **36** TWP **99N** RGE **99E** MONTANA COUNTY.
- C10 POINT OF DIVERSION AND PLACE OF USE **INCLUDES/ARE LOCATED IN** GOVT **LOTS 3 AND 4** IN SEC **36** TWP **99N** RGE **99E** MONTANA COUNTY.

2. Government Lots: Government lots are used to describe portions of sections where normal quartering methods into aliquot parts is not feasible. They are typically found in sections along the north and west side of a township, odd shaped sections, land adjacent to lakes and rivers, on tribal reservations, and where surveys joined. Examples are shown below.

When a claim lists a government lot or a land description in a potential government lot situation, check the cadastral website (<http://cadastral.mt.gov/>), WRMapper GCDB layer, GLO plat books or GLO microfiche to confirm. Add a copy of the plat map to the claim file. (The BLM is currently bringing records online (<http://www.gloreports.blm.gov/>); Montana land patents are available; surveys are not online, but check the website periodically).

Retain a government lot identified through examination, even if not claimed. In the 'Point of Diversion and Means of Diversion' element on the examination worksheet, there is a column for "Govt Lot". Write the government lot numbers directly on the examination worksheet.

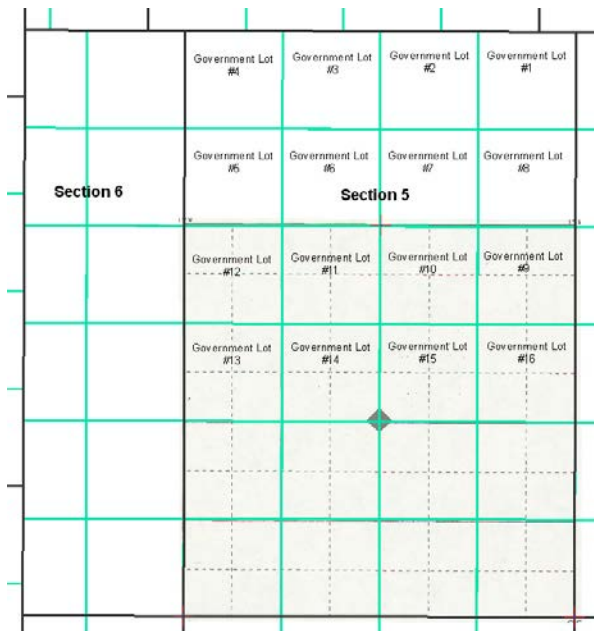
Use the following guidelines when a government lot is associated with a point of diversion or place of use legal land description:

- If a section is close to being typical size (640 acres), then a $\frac{1}{4}\frac{1}{4}\frac{1}{4}$ or $\frac{1}{4}\frac{1}{4}$ description should be added.
- There should be at least one $\frac{1}{4}$ or $\frac{1}{2}$ section description to identify the quadrant in which the lot is located.
- These descriptions, although not technically correct, are a useful tool.
- To break an odd shaped section into quadrants, align a standard section grid with the southeast corner. If the southeast corner is part of a lot boundary, align the grid with a standard corner which is not part of a lot boundary. The quadrant containing the standard corner (usually the

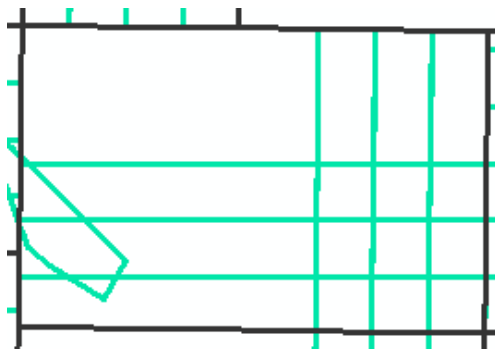
southeast) will be normal size with the error evident in the remaining quadrants (usually the north and west). See examples below.

- If more than one lot exists within a specific claimed legal description (quadrant), repeat the quadrant for each lot.

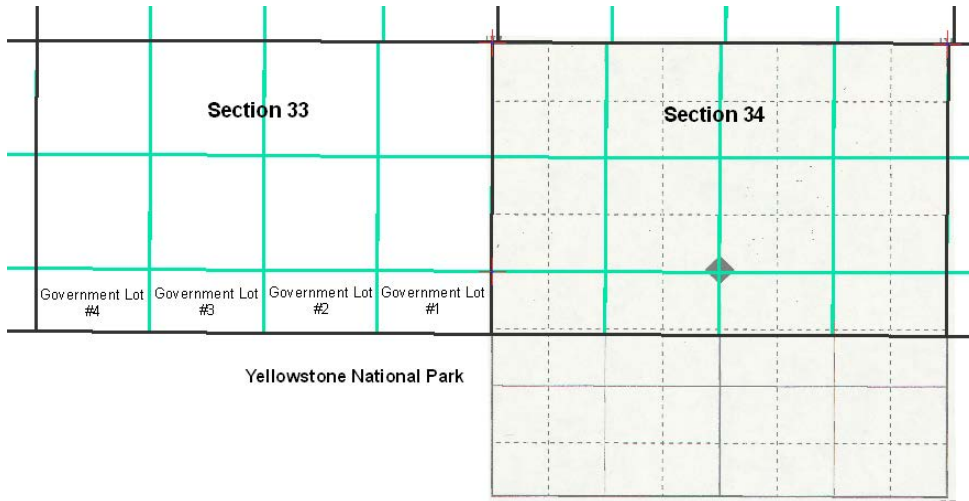
Example 1: Typical odd-shaped sections where the southeast corner standard applies. The south half of Section 5 would be described as any other normal section. A legal description to identify the government lots would be the north half (N1/2) of section 5.



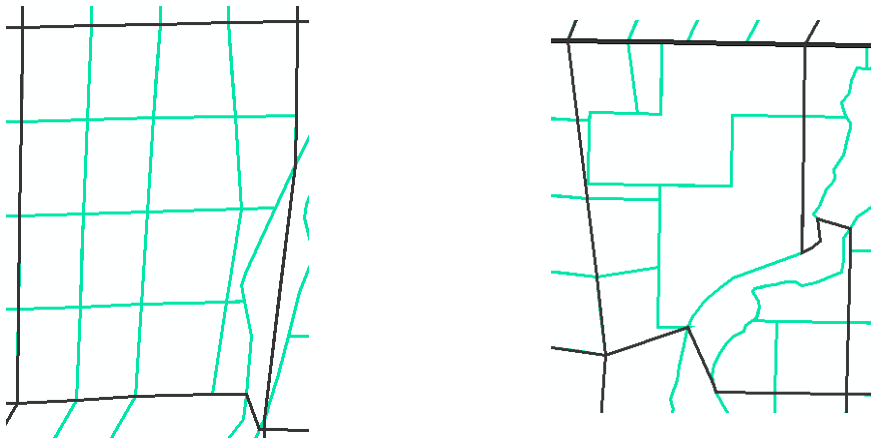
Example 2: Below is another example of the southeast corner standard.



Example 3: Odd-shaped sections near a park boundary where the south portion of a “normal” section has been cut off. Grid alignment is with the northern half. The odd-shaped southern half has been broken into government lots.



Example 4: Odd-shaped river sections, one with the southeast corner standard and one without the southeast corner standard. (Sections surrounding lakes will be similarly approached.)



3. **Certificates of Survey:** A claimed certificate of survey (COS), or one identified during examination, will be retained to appear on the decree abstract. Add a point of diversion (PD) or place of use (PL) information remark. A clarification (CL) remark may be used if the document refers to both the POD and POU. Though currently under construction, the ability to add land survey information into the POD and POU tabs in the database will be functional soon. Once functional, these remarks will no longer be used.

- Examples: C15 POINT OF DIVERSION AND PLACE OF USE **INCLUDES/ARE LOCATED IN** CERTIFICATE OF SURVEY NO. **0000, MONTANA** COUNTY.
- C55 POINT OF DIVERSION AND PLACE OF USE ARE LOCATED IN **TRACTS 2A AND 2B OF CERTIFICATE OF SURVEY NO. 0000.**
- P3 THE POINT OF DIVERSION **INCLUDES/IS LOCATED IN** CERTIFICATE OF SURVEY NO. **0000, MONTANA** COUNTY.
- P171 THE PLACE OF USE **INCLUDES/IS LOCATED IN** CERTIFICATE OF SURVEY NO. **0000, MONTANA** COUNTY.

4. Homestead Entry Surveys, Desert Land Claims and Mining Claims:

For a description and discussion of each of these documents, see Exhibit VI-2. These documents can help to further define the location of a claimed water right. A legal land description should be listed on the worksheet for the POD and POU.

Whenever one of these documents is identified on the claim form, in the claim file, or through claim examination, the type of document and document number should be retained on the examination worksheet using a point of diversion (PD) or place of use (PL) information remark. A clarification (CL) remark may be used if the document refers to both the POD and POU. If not submitted with or identified on the claim form, indicate in the comments area on the worksheet where the document was found.

When a homestead entry survey, mineral survey, etc. is retained, a legal land description should be listed on the worksheet for the POD and POU.

- Examples: P5 THE POINT OF DIVERSION **INCLUDES/IS LOCATED IN MONTANA LODE**, MINERAL SURVEY NO. **0000.**
- P6 THE POINT OF DIVERSION INCLUDES **MINERAL SURVEY NO. 0000.**
- P7 THE POINT OF DIVERSION IS LOCATED IN **HOMESTEAD ENTRY SURVEY NO. 0000.**
- P170 THE PLACE OF USE **INCLUDES/IS LOCATED IN MONTANA PLACER**, MINERAL SURVEY NO. **0000.**
- P175 THE PLACE OF USE INCLUDES **LOTS 5, 6, AND 7 OF DOE ESTATES, FIRST ADDITION.**
- P180 THE PLACE OF USE IS LOCATED IN **HOMESTEAD ENTRY SURVEY NO. 0000.**

C25 POINT OF DIVERSION AND PLACE OF USE **INCLUDES/ARE LOCATED IN MONTANA LODE**, MINERAL SURVEY NO. **0000**.

C40 POINT OF DIVERSION AND PLACE OF USE INCLUDES **MINERAL SURVEY NO. 0000**.

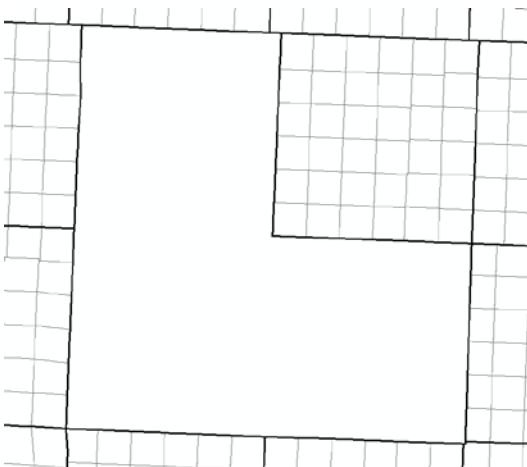
C55 POINT OF DIVERSION AND PLACE OF USE ARE LOCATED IN **HOMESTEAD ENTRY SURVEY NO. 0000**.

5. Unsurveyed Areas: If examining a claim in an unsurveyed area as indicated on a USGS topographic map, the rectangular (TRS) legal land description should be interpolated and listed on the examination worksheet. The survey lines of some unsurveyed areas have been interpolated on US Forest Service and BLM maps. When using WRMapper, this has already been done. The GCDB ([Geographic Coordinate Database](#)) layer has coverage for most of Montana, with the unsurveyed areas extrapolated from the surveyed areas. If information in the claim file or other resources indicates an unsurveyed area, add a point of diversion (PD) or place of use (PL) information remark to the department's examination worksheet.

Examples: P15 THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE POINT OF DIVERSION HAS BEEN ESTIMATED.

P210 THE TOWNSHIP IS UNSURVEYED. THE LEGAL LAND DESCRIPTION FOR THE PLACE OF USE HAS BEEN ESTIMATED.

Examples of unsurveyed areas:



6. Claims on Indian Reservation: For claims where the point of diversion or part of the place of use is within an Indian reservation, add the following land clarification (CL) issue remark to the department's examination worksheet.

Example: C64 THIS WATER RIGHT IS LOCATED, IN WHOLE OR IN PART, WITHIN THE BOUNDARY OF THE **FORT PECK** INDIAN RESERVATION.

F. POINT OF DIVERSION (POD)

[Rule 8, W.R.C.E.R.](#)

The point of diversion is the location of the initial diversion, impoundment, or withdrawal of water from the source. By standardizing PODs, the quality of the database is improved making POD indexes more accurate and reliable. The claimed flow rate should represent the amount withdrawn at the point of diversion. The point of diversion is where the water is measured [Caruthers v. Pemberton, 1 Mont. 111 (1869)].

All PODs will be described on the claim form, examination worksheet and decree abstract using an aliquot legal land description and any other legal land description that will precisely define its location. Refer to "Land Surveys and Descriptions," Exhibit VI-3, for a general discussion of legal land descriptions.

1. Identifying the Claimed POD: Using the information in the claim file, check the POD identified on the claim form for errors by the claimant and for consistency with the documentation, e.g., map. If the claimed POD is unclear and cannot be determined, contact the claimant. An amendment identifying the claimed POD may be needed. [Rule 8\(a\)\(1\)\(2\), W.R.C.E.R.](#)

Secondary Points of Diversion: Some claimants listed secondary points of diversion along with or instead of the initial point of diversion for their system. **A secondary diversion moves or controls water after the initial diversion and is within the system either en route to the POU or on the POU itself.** It does not take new water from the claimed source. A secondary diversion should not take more water than is diverted from the primary diversion. Examples of secondary diversions are:

- diversions from a stream course used as a natural conveyance
- exchanges from another source of water

Multiple diversions in series along a stream channel are not secondary PODs since each is used to initially divert (primary diversion) water from the claimed source.

Treat secondary points of diversion in the following way:

- Show both the primary and secondary point of diversion on the review abstract by noting the POD Type as 'primary' or 'secondary' in the POD tab in the database. Each diversion will have its own source name and **will necessitate a conveyance remark** (in addition to the POD Type designation) to explain the delivery of water from primary to secondary points of diversion. This allows ditch names to be associated to the appropriate POD.

A conveyance remark is necessary:

Example: C119 WATER DIVERTED FROM **DOE CREEK** IS CONVEYED TO **THE SMITH RIVER, NORTH FORK** WHICH IS USED AS A NATURAL CARRIER TO SECONDARY POINT(S) OF DIVERSION, DIVERSION NO(S), **2 AND 3**.

Instream or Inlake Uses: For 'other uses' claims where the POD and means of diversion is instream or inlake, see "Other Uses: Point of Diversion and Means of Diversion for In-stream or Inlake Appropriations" (Section X.D).

2. Examining POD: Examine each claimed POD to confirm its existence and check each legal land description for accuracy and consistency. A single POD may have several different legal land descriptions applied to it by claimants. (Note: POD locations may be located on state, federal, neighboring ownerships—DNRC does not keep records of easements, etc.; the owner is responsible for proper permissions.) [Rule 8\(a\)\(1\), W.R.C.E.R.](#)

Compare the POD indicated on the claim and worksheet with various data sources. These data sources include:

- claim file
- aerial photographs or orthophotoquads
- topographic maps
- Water Resources Survey
- ditch name indexes

Locate the claimed POD on the aerial photograph. Confirm the location on the Water Resources Survey data or USGS topographic maps. If there is a discrepancy between an aerial photograph and the WRS data, the aerial photograph takes precedence. If the aerial photograph does not show evidence of the claimed POD due to timber cover or the small size of the means of diversion, the WRS data will be given preference.

If the POD cannot be found on the aerial photograph, WRS, or topographic map, the examination of the claimed POD becomes subjective. Look carefully at the conveyance facility and POU in respect to the point of diversion. Also consider the claimed means of diversion. Determine if it is possible to supply the POU using the claimed POD, means of diversion, and conveyance facility. If necessary, consult the POD index to identify other claims with PODs in the general area. Review these claims for a better understanding of the situation.

The claimed POD may be modified by rule if supported by the claimant's map, data sources, or other claims using the same POD. This modification may involve either refining a claimed POD legal or identifying an entirely different legal.

Refining POD Legal Land Descriptions: Once identified, claimed PODs should be refined to the nearest reasonable and concise legal land description. The most precise land description is normally a $\frac{1}{4}\frac{1}{4}\frac{1}{4}$ section.

The database allows for a fourth section breakdown to a legal land description. This shall only be used when the claimant's map or our data source is extremely precise, or the claim indicates a fourth ¼ description. PODs in a highly subdivided area or a townsite could warrant a fourth ¼ description.

POD legal land descriptions should be further refined using information such as lot-block-subdivision, government lot, Homestead Entry Survey number, etc., whenever possible.

Shared PODs: The claimed legal land description of PODs shared by several claims and/or claimants may be modified by rule for consistency. The claimed POD may be modified by rule if supported by data sources or claimant's map. This modification may involve either refining a claimed POD legal or identifying an entirely different legal.

To help achieve this goal, it is suggested that claims be reviewed as a group, by source and by ownership. Familiarity with the area will increase. Patterns will become more apparent. For example, if the legal land description given by several users of a shared diversion differs from the data sources, contact the claimant(s).

For named ditches, POD consistency can be achieved by properly entering ditch names in the diversion/ditch name field of the database and by naming and assigning ditches in WRMapper. Also, developing a ditch name index creates a useful tool. See "Conveyance Facilities Index" ([Section VI.F.d](#)) below.

a. Changing POD: The claimed POD will not be changed during the examination unless: [Rule 8\(d\)\(1\)-\(3\), W.R.C.E.R.](#)

- amended by the claimant;
- modified by rule by the department without claimant contact to the nearest reasonable and concise legal land description; [Rules 8\(d\)\(2\), and 33\(b\)\(4\)\(i\), W.R.C.E.R.](#)
- modified by rule by the department without claimant contact to make a common POD used for more than one claim consistent [Rules 8 \(d\)\(5\), and 33\(b\)\(5\) W.R.C.E.R.](#);
- If the claimant intent is unclear, modified by rule by the department on confirmation from the claimant. ([Rule 33\(c\) W.R.C.E.R.](#));
- modified by rule without claimant contact in the following situations as long as the claimed intent is clear: legal land descriptions on the claim form and claimant's map disagree, claimed legal land descriptions for direct surface water stock use are not the same, legal land descriptions

are reversed, or the N, S, E, or W are not indicated in the legal land description for township or range. [Rule 33\(b\),\(4\),\(ii\),\(iii\),\(iv\),\(v\), W.R.C.E.R.](#)

Changes may be made directly to the worksheet or by adding a POD addendum form. If the legal land descriptions are changed so that they differ from the claim form, amendment, or addendum, place an asterisk on the worksheet in the brackets to the left of the point of diversion element. The basis of the change must be documented in the claim file.

b. Claimant Contact: Whenever the claimed point of diversion is unclear, has apparent discrepancies, or appears inaccurate after the initial review, the claimant should be contacted unless otherwise specified in this subchapter. [Rules 8\(a\)\(2\) and 44, W.R.C.E.R.](#) and Section IV.F. This contact can have several outcomes:

- Information discussed confirms the claimed POD. Document the information supporting the claimed POD.
- A POD different from that in the claim file is identified. The claimed POD can be standardized and modified by rule in cases where many claimants have filed on the same POD and given it a different location. A letter to the claimants noting the standardization is required. For individual corrections to the POD, an amendment can be submitted to change the claimed POD.
- A new POD in addition to those claimed is identified. This information can only be added by amendment.
- If the issue is unresolved, add a point of diversion issue remark containing the correct POD to the department's examination worksheet. (In WRMapper, map the examined POD along with the claimed POD(s)). If the actual POD is too lengthy for a remark, record the POD in the General Comments area of the worksheet, on an interview report form, or in a memorandum. Do not use a POD addendum sheet.

c. Unique POD Features: Unique POD features should be noted by adding a point of diversion (PD) information remark to the examination worksheet. [Rule 8\(e\)\(5\) W.R.C.E.R.](#)

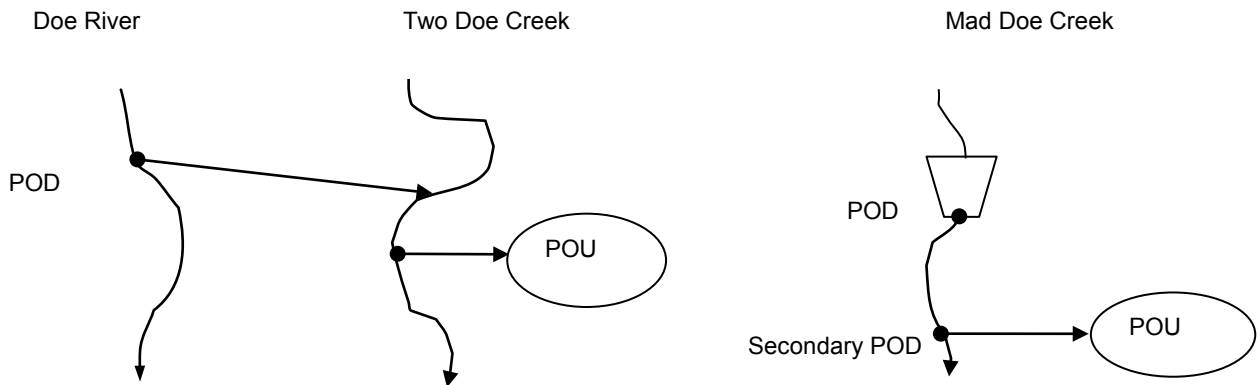
Example: P20 DRAIN DITCH IS FED ALONG ITS FULL LENGTH BY UNDERGROUND SEEPS.

Natural Carrier: Secondary diversions located on a watercourse used as a natural carrier should be remarked as unique features in the department's examination worksheet if helpful in explaining a particular situation. See illustrations below.

Examples: C120 WATER DIVERTED FROM **DOE RIVER** IS CONVEYED TO **TWO DOE CREEK** WHICH IS USED AS A NATURAL CARRIER TO A

SECONDARY POINT OF DIVERSION IN THE **SWSWSE SEC 36**
TWP **99S** RGE **99E MONTANA** COUNTY.

- C122 WATER STORED UNDER THIS RIGHT IS RELEASED FROM **DOE RESERVOIR** AND IS DIVERTED FROM **DOE CREEK** AT THE FOLLOWING SECONDARY POINTS OF DIVERSION: **NENWSE SEC 36 TWP 99E RGE 99S**, **NWSENE SEC 36 TWP 99E RGE 99S** AND **SWSWNW SEC 36 TWP 99E RGE 99S**, **MONTANA** COUNTY.
- C123 WATER DIVERTED FROM **COLLECTION DITCH** IS CONVEYED TO **DOE CREEK** WHICH IS USED AS A NATURAL CARRIER TO SECONDARY POINTS OF DIVERSION IN THE **NESWNW SEC 36 TWP 99N RGE 99E (MONTANA CANAL)** AND THE **NWSWNW SEC 36 TWP 99N RGE 99E (MONTANA DITCH)**.
- C124 **NORTH FORK DOE CREEK** IS USED AS A NATURAL CARRIER TO CONVEY WATER FROM **MAD DOE CREEK** TO THE SECONDARY POINT(S) OF DIVERSION, DIVERSION NO(S). **2**.
- C125 WATER RELEASED FROM **DOE RESERVOIR** USES **MAD DOE CREEK** AS A NATURAL CARRIER TO CONVEY WATER TO A SECONDARY POINT OF DIVERSION IN THE **NWNWNW SEC 36 TWP 99N RGE 99E MONTANA** COUNTY.
- S70 **DOE CREEK** IS USED AS A NATURAL CARRIER TO CONVEY WATER FROM **MAD DOE CREEK** TO THE POINT OF DIVERSION.



d. Conveyance Facilities Index: This section describes how to consistently determine ditch names for accurate data entry. By entering reliable ditch information in the database, a ditch index can be produced. This index will provide a convenient comparison of claims using the same named ditch as a conveyance facility. An example of this index is shown as Exhibit VI-4. [Rule 8\(e\)\(4\), W.R.C.E.R.](#)

With the development of WRMapper, there are now two databases with ditch information, the WRMapper geodatabase and the Oracle Water Rights database. The index would not be available until after examination data has been entered into one of the two databases. The index is useful to department staff when checking for clerical or other errors and to claimants in their review of the decree. Also, entering accurate ditch information during claims examination will be beneficial for future enforcement projects.

Standardizing ditch names is the first step. As the WRS includes most ditches, it will prove to be a valuable source for this information. Different names are sometimes indicated on the USGS topographic maps or are given by the claimants either on the claim form or in the documentation. The suggested **order of preference** for these sources is:

- USGS ditch names
- WRS ditch names
- Colloquial names

To enter a ditch or canal name into the database, enter the name in the POD tab for the point of diversion the ditch name applies (if the ditch name is not in the list of values, the ditch will have to be entered into the library of Diversion/Ditch Names in the database, which can be found in the dropdown menu under Create and Maintain). Ditches that convey stored water will have the word '(STORAGE)' noted after the ditch name. Example: WARREN DITCH (STORAGE).

NOTE:

- If the ditch is not named by the claimant and is not named on maps, do not give the ditch a name.
- If all claimants are agreeing to a colloquial name, name the ditch with that name.

3. Specific Point of Diversion Guidelines: The following are guidelines for various situations encountered in examining and consistently defining POD locations.

a. Point Specific Diversions: Point specific diversions include dams, headgates, stationary pumps, springs, and wells. Each specific POD associated with a water right should have a legal land description listed separately. This applies even if there is more than one POD existing in a 10 acre ($\frac{1}{4}\frac{1}{4}\frac{1}{4}$) legal land description. The claimant's map is the primary reference.

Recording Well Data: Well data found in the claim file, GW files, [GWIC](#), or other data sources will be entered in the database if the information is documented and clearly represents the well being claimed.

When a well has been claimed, well information will appear below the POD element on the examination worksheet. This will show the existing claimed well data as entered in the database and will also allow for input of well data identified during examination. The format on the examination worksheet is:

Means	WELL
Well Depth	50.00 FEET
Static Water Level	25.00 FEET
Casing Diameter	6.62 INCHES

If the worksheet does not show the well data, the point of diversion addendum sheet may be used to add this information.

The yield rate is the rate at which the well was tested (this is test data and may not represent actual use) and is normally found on the well log. The yield rate should be greater than the pumping rate (claimed flow rate). If the yield rate cannot be identified from the claim file or other data sources, this area should be left blank.

If well data is available that does not appear on the worksheet, write it in the appropriate space. Data appearing on the worksheet should be checked for correctness against the information in the claim file and other information obtained during the examination.

Two or More Rights on the Same Well or Pump: Two or more water rights (different priority dates) may be encountered on a single well or pump location. Be aware, not all water rights in this situation are associated. **Multiple water rights owned by different entities for the same well will be associated** if the relationship is between a statement of claim and one of the following: 1) a federal reserved water right claim, 2) a new appropriation (post-1973 water right), or 3) and exempt right. See Section [VI.C.5.](#)

b. Reservoirs: The POD of an **off-stream reservoir** should identify where the **water is diverted from the source** for conveyance to the reservoir. The department will identify the POD(s) feeding the reservoir and note the designation on the examination worksheet. The POD of an **on-stream reservoir** will be the location of where the **impoundment structure crosses the source**.

If control (ownership or if under lease, having the right to determine the release or storage of water) of the reservoir is not a part of the right, the POD for the right should be where the water is diverted from the reservoir to the POU.

Additional Diversions: Systems involving reservoirs sometimes have other diversions from the source that do not involve the reservoir. These additional PODs should also be identified on the examination worksheet and the decree abstract.

c. Transitory Diversions: Some systems divert water from several non-specific places along a source with a movable diversion means. In this situation, the POD should identify the area along which the diversion occurs. Add a point of diversion information remark to the department's examination worksheet. [Rule 8\(e\)\(5\), W.R.C.E.R.](#)

Examples: P25 POINT OF DIVERSION IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

P30 POINT OF DIVERSION NO. 2 IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

P35 PUMP IS MOVEABLE ALL ALONG SOURCE WITHIN LEGAL LAND DESCRIPTION.

d. Water Spreading: For water spreading systems involving dikes, the point of diversion is the location where the structure crosses the source.

If it is necessary to use additional legal land descriptions to describe the structure, do not use additional point of diversion records. Add a point of diversion information remark to the department's examination worksheet. [Rule 8\(e\)\(5\), W.R.C.E.R.](#)

Examples: P8 DIKE EXTENDS INTO THE **NESW** SEC **36** TWP **99N** RGE **99E** **MONTANA** COUNTY.

P9 DIKE EXTENDS INTO THE **NWNWNE**, **NENENW** SEC **36** TWP **99N** RGE **99E** **MONTANA** COUNTY.

e. Natural Subirrigation: When the source is natural subirrigation, the legal land description for the POD will be the same as the place of use.

f. Controlled Subirrigation: Where subirrigation is human-controlled, such as a check dam on a drain ditch, the POD will be the location of the ditch.

g. Natural Overflow: When the source is natural overflow or flooding, the legal land description for the POD will normally be the length of the stream through the place of use.

h. Waste and Seepage: This source name is used to cover a variety of situations. The POD for waste and seepage rights will be defined as the location where the claimant initially collects or manipulates waste and seepage and directs it to the place of use; this manipulation may range from construction of extensive drain ditches to simply burning off brush from a barrow pit, enabling it to collect water.

Because of the wide variety of situations, it will frequently be necessary to contact the claimant to identify the point of diversion for a waste and seepage claim. The following scenarios are given as examples:

- If the waste and seepage is ponded on the surface, the POD should be where the water leaves the ponded area.
- If the exact boundaries of the collection area are known, the POD will be where the water leaves the collection boundary.
- If the exact boundaries of the collection area are not known, the POD will be where the water leaves the drain ditch to the POU.
- If the exact boundaries of the collection area are known, but the location of where the water leaves is not (e.g., several locations or unresolved), the POD should be the length of the collection area.

To further explain how and where waste and seepage originates, a source name information remark may be added to the department's examination worksheet. [Rule 8\(e\)\(5\), W.R.C.E.R.](#)

Examples: S97 THE SOURCE IS WATER COLLECTED ALONG THE ENTIRE LENGTH OF THE **DOE DITCH** WITHIN THE POINT OF DIVERSION LEGAL LAND DESCRIPTION.

S98 THE SOURCE IS WATER COLLECTED ALONG THE LENGTH OF DITCH WITHIN THE POINT OF DIVERSION LEGAL LAND DESCRIPTION.

4. POD Issues: Any POD issues unresolved during claim examination will be remarked on the department's examination worksheet using a point of diversion (PD) issue remark. Some areas of potential POD issues follow. [Rule 8\(e\)\(8\), W.R.C.E.R.](#)

a. Claimed POD Incorrect: If a claimed POD appears incorrect and cannot be corrected through modifying by rule or claimant contact, add a point of diversion (PD) issue remark to the department's examination worksheet.

Examples: P40 THE POINT OF DIVERSION APPEARS TO BE INCORRECT. THE POINT OF DIVERSION APPEARS TO BE IN THE **SWSWSW** SEC **36** TWP **99N** RGE **99W** **MONTANA** COUNTY.

P49 THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE **WELL** CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

P50 THE POINTS OF DIVERSION APPEAR TO BE INCORRECT. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

P55 IT APPEARS POINT OF DIVERSION NO. **2** MAY BE INCORRECT. THE EXISTENCE OF A **DIVERSION FACILITY AND CONVEYANCE DITCH** CANNOT BE CONFIRMED FROM AVAILABLE DATA.

P57 THE CLAIMED POINT OF DIVERSION MAY BE INCOMPLETE. IT APPEARS THERE SHOULD BE ADDITIONAL POINTS OF DIVERSION ON **DOE CREEK** WHICH COULD NOT BE IDENTIFIED FROM INFORMATION IN THE CLAIM FILE.

b. Claimed POD Not Refined: Point specific diversions such as dams, headgates, stationary pumps, and wells should be refined to the nearest reasonable legal land description. The most precise description is normally a $\frac{1}{4}\frac{1}{4}\frac{1}{4}$ section. If a claimed POD is incomplete and cannot be refined through modifying by rule or claimant contact, add a point of diversion (PD) issue remark to the department's examination worksheet.

Examples: P36 THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

P37 THE LEGAL LAND DESCRIPTION FOR POINT OF DIVERSION NO. **2** COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THIS CLAIMED POINT OF DIVERSION CANNOT BE CONFIRMED.

P38 THE LEGAL LAND DESCRIPTION FOR POINTS OF DIVERSION NO. **1 AND 2** COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THE CLAIMED POINTS OF DIVERSION CANNOT BE CONFIRMED.

c. Claimed Conveyance Questionable: If the claimed conveyance facility appears in error, not functional, or unable to service the claimed place of use, and claimant contact did not resolve the issue, add a conveyance facility (CV) issue remark to the department's examination worksheet.

Examples: C145 USE OF THE **DOE DITCH** TO CONVEY WATER TO THE PLACE OF USE MAY BE QUESTIONABLE.

C150 THE CLAIMED CONVEYANCE DITCH CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

C155 THE CONVEYANCE DITCH HAS BEEN SEVERED BY HIGHWAY CONSTRUCTION AND CANNOT CONVEY WATER FROM THE SOURCE TO THE PLACE OF USE.

CVIS CASE NO. 0000, MONTANA COUNTY, DECREED THIS RIGHT AS BEING CONVEYED IN THE DOE DITCH. THIS IS INCONSISTENT WITH THE CLAIMED DITCH SYSTEMS WHICH CONVEY WATER ON THE OPPOSITE SIDE OF THE DOE RIVER.

d. Secondary POD without Initial (Primary) POD: **A secondary POD claimed without an initial (primary) POD requires claimant contact if the initial POD cannot be determined from the claim file, data sources, or other claims.**

If the initial POD can clearly be identified, add the initial point of diversion (modify by rule) to the examination worksheet. In such situations, **the initial POD can be added to the claim on instruction from the claimant; an amendment is not necessary. Claimant contact is necessary if the initial POD is not clear from the claim file.** Document any claimant contact on the examination worksheet. [Rule 33, W.R.C.E.R.](#)

If the initial POD cannot be identified and is not supplied by the claimant, add a point of diversion (PD) issue remark to the department's examination worksheet. [Rule 33, W.R.C.E.R.](#)

Example: P60 THE CLAIMED POINT OF DIVERSION IS NOT THE INITIAL POINT THAT WATER IS DIVERTED FROM THE SOURCE. THE INITIAL POINT CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

e. Prolonged Non-use: If the claim file, data sources, or claimant contact confirm that a POD has not been in use for an extended period of time, add a point of diversion (PD) issue remark to the department's examination worksheet.

Examples: P65 ACCORDING TO INFORMATION IN THE CLAIM FILE, POINT OF DIVERSION NO. **3** HAS NOT BEEN USED SINCE **1958**.

P230 A FIELD INVESTIGATION CONDUCTED ON **MM/DD/YYYY** FOUND REMNANTS OF A DITCH SERVING THE CLAIMED PLACE OF USE. TOTAL HISTORICALLY IRRIGATED ACRES AND LAST YEAR OF OPERATION WERE NOT DETERMINABLE. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

PDIS ACCORDING TO INFORMATION IN THE CLAIM FILE, POINT OF DIVERSION NO. 2 IS INOPERABLE AND HAS NOT BEEN USED SINCE 1959.

f. Point of Diversion Not on Claimed Source: See "Source Name: Source Name Issues: POD Not On Claimed Source" ([Section VI.D.9.c](#)).

g. Point of Diversion Not in Montana: If the POD is determined to be outside Montana, add both of the following point of diversion (PD) issue remarks to the examination worksheet.

Examples: PDIS POINT OF DIVERSION IS IN THE SENENW SEC 36 TWP 99N RGE 99E IDAHO COUNTY, IDAHO.

PDIS AN INTERSTATE USE OF WATER IS INVOLVED. POINT OF DIVERSION IS IN IDAHO.

Wyoming, South Dakota, and part of North Dakota including the Yellowstone River valley are exceptions because interstate use between Montana and these states is governed by a compact. Contact the bureau chief for processing instructions for interstate claims involving these states or Canada.

h. Post-June 30, 1973 Changes: If the claim file, data sources or claimant contact confirms a post-June 30, 1973 change in the point of diversion which is not in accordance with [§85-2-402, MCA](#), see "Special Provisions: Changes in Appropriation Right" (Section XI.F), and add the following point of diversion (PD) issue remark. [Rule 39\(c\)\(2\)\(i\), W.R.C.E.R.](#)

P79 IT APPEARS THAT AN UNAUTHORIZED POST-JUNE 30, 1973 CHANGE IN POINT OF DIVERSION MAY BE REFLECTED IN THIS CLAIM.

5. Interbasin Transfer, Including Potential Interbasin Groundwater (GW) Effect: An interbasin transfer of surface water occurs when water is diverted in one basin and used in whole or in part in another basin ([Rule 8 \(c\) W.R.C.E.R.](#)).

Potential interbasin groundwater effect involves claims for groundwater which may affect water rights outside the basin of diversion. Generally, an affect to water rights within a basin will be considered to occur when a groundwater claim outside the basin is:

- greater than one cfs, and
- within a mile of the basin boundary.

For example, a well at Twin Bridges (basin 41B) for 600 gpm (1.3 cfs) within one mile of the basin boundary may potentially affect groundwater claims in basins 41C, 41D and 41G.

All interbasin transfers and groundwater effects will be noted on the decree abstract.

a. Identifying Interbasin Transfers: Prior to examining claims, a supervisor must request a check for interbasin transfer and groundwater effect claims from the GIS staff in Helena. A list of all potential interbasin transfer and groundwater effect claims will be sent to the regional/unit office. If the POD of any claim on the list is in an adjacent basin that has not been examined, or is in a basin that was decreed under verification procedures, request these claims from the Records section in Helena as these claims may be examined. **Any claim that is part of a decree in another basin requires Water Court approval for examination in the current basin.** See Exhibit VI-16 for an example of a “Request to Examine” memorandum to the Court.

b. List of Interbasin Transfers: The list of interbasin transfers and groundwater effects claims will be an ongoing process for each basin. The list will contain:

- the claim number
- basin of the POD
- basin of the POU
- source type code

Interbasin transfers either out of or into a basin will be on the list. It should be readily accessible to all adjudication staff in the office, e.g., posted in a conspicuous location or saved to a shared folder on the server. Add any pertinent claims to lists being maintained on other basins. Notify other offices of interbasin transfer claims in basins they are examining as they are discovered.

Upon completion of examination of the basin, submit the list to the bureau chief. Send a copy to regional/unit offices with adjacent basins in their area.

c. Denoting Interbasin Transfers: Identify all claims which include interbasin transfer or groundwater effect by adding one of the following interbasin transfer (TI) remarks to the examination worksheet to explain the interbasin relationship. [Rule 8\(e\)\(7\), W.R.C.E.R.](#)

- Where the entire place of use is in a basin separate from the point of diversion basin:

Example: T10 THIS APPROPRIATION OF WATER TAKES WATER FROM THE **JUDITH RIVER** DRAINAGE (BASIN **41S**) AND USES IT IN THE **ARROW CREEK** DRAINAGE (BASIN **41R**). ANY OBJECTION TO

THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

- Where only a portion of the place of use is in a basin separate from the point of diversion:

Example: T15 THIS APPROPRIATION OF WATER TAKES WATER FROM THE **JUDITH RIVER** DRAINAGE (BASIN **41S**) AND USES IT IN THE **JUDITH RIVER** DRAINAGE (BASIN **41S**) AND THE **ARROW CREEK** DRAINAGE (BASIN **41R**). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

- Where a claim involves a potential groundwater affect:

Example: T20 THIS APPROPRIATION OF WATER TAKES GROUNDWATER FROM THE **WILLOW CREEK** DRAINAGE (BASIN **41N**). THIS USE MAY POTENTIALLY AFFECT WATER RIGHTS IN THE **MARIAS RIVER** DRAINAGE (BASIN **41P**). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER BASIN.

- Where a claim involves either an interbasin transfer or a potential groundwater effect and the separate basin has been decreed, add the following issue remark if the claim was not included in that decree:

Example: T21 THIS INTERBASIN TRANSFER CLAIM WAS NOT INCLUDED IN THE **40C** BASIN **PRELIMINARY TEMPORARY** DECREE ISSUED **MM/DD/YYYY**.

d. Examining Interbasin Transfer Claims: Claims involving an interbasin transfer will be decreed in both the POD basin and the POU basin.

Figure VI-4.5 Inter-basin transfer & Misbasined claims:

**DEPARTMENT OF
NATURAL RESOURCES
AND CONSERVATION
WATER RESOURCES DIVISION**

BRIAN SCHWEITZER
GOVERNOR

DIRECTOR'S OFFICE (406) 444-2074
TELEFAX NUMBER (406) 444-2684

---STATE OF MONTANA---

WATER RIGHTS ADJUDICATION
PHONE (406) 444-0560
FAX (406)444-0569

910 HELENA AVE
PO BOX 201602
HELENA, MT 59620-1602

INTEROFFICE MEMORANDUM

TO: Adjudication Staff

FROM: John Peterson, Bureau Chief

Date: October 26th, 2012

RE: Inter-basin transfer & Misbasined claims.

During recent Adjudication basin boundary adjustments the issue of inter-basin transfer and misbasined claims has arisen within most work units. During the last year the Water Court and the Bureau have worked to refine the process we use in dealing with these. In most cases any new misbasined or inter-basin claims will involve basins that have previously been decreed. Any action on these claims will require a memo to the Water Court and claimants will have to be notified. Some of these rights have been decreed in numerous basins and have multiple versions. In addition, not all decreed versions had the correct information preserved. This is especially true with basins that were verified.

Also, any amendments received during examination of a previously decreed claim have to be processed by the Court. Due to complexities the Bureau and the Water Court have encountered, I am directing any inter-basin transfer claims or misbasined claims to be reviewed by the Bureau Chief before any correspondence is sent to claimants or the Court. Ideally these claims will be identified when a basin boundary is proposed for change. In the future all basins decreed before 2005 may be subject to a boundary change to more accurately reflect drainage divides and not split flow paths.



- An interbasin transfer claim will be examined using the current claim examination rules regardless of whether the basin currently being examined is the POD or POU basin. If a contemporary examination of the claim has already occurred, no further examination of the claim should be required in other basins. If the same regional office is not examining the claim in the affected basin(s), the regional offices involved should communicate about the status of the claim and should add the claim to their interbasin transfer list if it is not already included on the list.
- Examination of a claim that is already in a decree issued by the Water Court should not occur unless authorized by the Water Court. [Rule 46\(c\), W.R.C.E.R.](#) If an interbasin transfer claim has been issued in a Water Court decree, the following steps should be taken:
 - A Memorandum should be sent to the Court requesting authorization to examine the claim.
 - The Court will issue an Order either denying or granting the claim examiner's request to examine the claim. The Order may specify that only certain elements can be examined as some interbasin transfer claims are already adjudicated by the Water Court. This process ensures that if a change to an element has been made by the Water Court, the claim continues to reflect the Court's changes.
 - After the authorized examination is complete, the claims examiner should send a second Memorandum to the Water Court stating the results of the examination. A copy of the newest version of the abstract should be attached to the second Memorandum.
 - Not all examination of interbasin transfer claims will result in a new version of the abstract. See the discussion below of different versions of abstracts.
 - All correspondence between the Water Court and the claims examiner during this process should be copied to the claimant(s). All such documentation should also be placed in the claim file. It is imperative that the Water Court has a complete paper trail of any such activity on a claim and that a claimant receives notice of any such activity on their claim.
 - If the correspondence is between the DNRC and the Water Court, the Water Court will ensure copies of the documentation are placed in the claim file.

- If the correspondence is between the DNRC and the claimant, the DNRC should make sure all of the proper documentation is in the claim file.
- Make sure the archived “DE” remark is replaced with the appropriate “TI” (interbasin transfer) issue and information remarks. See Section c. above.

Examples:

T10 THIS APPROPRIATION OF WATER TAKES WATER FROM THE JUDITH RIVER DRAINAGE (BASIN 41S) AND USES IT IN THE ARROW CREEK DRAINAGE (BASIN 41R). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

T21 THIS INTERBASIN TRANSFER CLAIM WAS NOT INCLUDED IN THE 41S BASIN TEMPORARY PRELIMINARY DECREE ISSUED MM/DD/YYYY.

- The claim will be decreed in the POU basin as shown in [Figure VI-5](#).
- Create a new version of an abstract any time a claim has been issued in a Water Court decree and it is examined a subsequent time with the Water Court’s permission. Depending upon what proceedings have or have not occurred, the new version of the abstract may be a version higher of any kind of abstract, for example post decree or original right. Add an operating authority to the new version the day authorized by the Court. Ensure the decree tab is updated appropriately. Contact the Adjudication Bureau Chief for assistance with the decree tab. If the claim will be included in a nondecreed basin, ensure the decree tab for the new version reflects the decree information for the decree it will be issued in. If the claim missed a decree, make sure the decree tab for the new version has the missed decree tab checked for that decree. Once complete each of the effected claims should be sent to scanning.

Figure VI-4.6
Interbasin transfer memo examples:

Beware of different situations for different basin scenarios:

(Request for Claims to be added to Decree)

MEMORANDUM

DATE: July 20, 2012

CLAIM(S): **41A 54154-00, 41A 54155-00, 41A 54156-00, 41A 54157-00**

TO: Anna Stradley, Water Master, Montana Water Court

FROM: Roxa Reller, Water Resource Specialist

CLAIMANT(S): USA (DEPT OF AGRICULTURE FOREST SERVICE)

RE: **Interbasin Transfer Claims, Request to Add Claims to Basin 41F Temporary Preliminary Decree Post-Decree**

INTRODUCTION:

During the Basin 41A (Red Rock River) claim examination and basin boundary review it was discovered claims numbered **41A 54154-00, 41A 54155-00, 41A 54156-00 and 41A 54157-00** are interbasin transfers. After reviewing the claim files and data sources, it is confirmed that the Places of Use are actually located in Basin 41F (Madison River).

MATERIALS REVIEWED:

Information in the claim files, topographic maps and e-mail with the claimant served as the primary data sources for this Memorandum.

DISCUSSION:

During the Basin 41A claim examination and basin boundary review it was discovered claims numbered **41A 54154-00, 41A 54155-00, 41A 54156-00 and 41A 54157-00** are interbasin transfers. After reviewing the claim files and data sources, it is confirmed that the claims' Points of Diversion are located in Basin 41A and the Places of Use are actually located in Basin 41F. Basin 41F was issued into Temporary Preliminary Decree on July 25, 1984.

Pursuant to Rule 46, W.R.C.E.R., DNRC requests to add the four claims: **41A 54154-00, 41A 54155-00, 41A 54156-00 and 41A 54157-00**, to the Basin 41F Temporary Preliminary Decree post-decree.

ENCLOSURES:

Review Abstracts
Maps

DATE: July 20, 2012 by _____
Roxa Reller, Water Resource Specialist (406) 444-1410
rfreller@mt.gov

REVIEWED:

DATE: July 20, 2012 by _____
John Peterson, Adjudication Bureau Chief

cc: USA (Dept of Agriculture Forest Service
% Jed Simon
PO Box 7669
Missoula, MT 59807-7669

(Memo to Court reporting interbasin Order is completed)

MEMORANDUM

DATE: August 1, 2012

CLAIM(S): **41A 54154-00, 41A 54155-00, 41A 54156-00, 41A 54157-00**

TO: C. Bruce Loble, Chief Water Judge, Montana Water Court

FROM: Roxa Reller, Water Resource Specialist

CLAIMANT(S): USA (DEPT OF AGRICULTURE FOREST SERVICE)

RE: **Authorization to Include Non-decreed Interbasin Transfer Claims 41A 54154-00, 41A 54155-00, 41A 54156-00, and 41A 54157-00 in the Basin 41F Temporary Preliminary Decree**

INTRODUCTION:

On July 27, 2012, the Court ordered that DNRC shall add non-decreed interbasin transfer claims **41A 54154-00, 41A 54155-00, 41A 54156-00, and 41A 54157-00** to the Basin 41F Temporary Preliminary Decree.

DISCUSSION:

The Court ordered that DNRC shall file a Memorandum with the Court when the following actions are complete.

1. Include the claims in the Basin 41F Temporary Preliminary Decree.
2. Update the decree tab in the DNRC's database to reflect the fact that the claims were not included in the Basin 41F Temporary Preliminary Decree.
3. Add the appropriate issue remark to the claims indicating they were not included in the Basin 41F Temporary Preliminary Decree.

CONCLUSION:

The DNRC has completed the actions specified in the July 27, 2012 order.

1. The claims have been added to the Basin 41F Temporary Preliminary Decree.
2. The decree tab has been updated and reflects that the claims were not included in the Basin 41F
3. Temporary Preliminary Decree. The issue remark applied is:
THIS INTERBASIN TRANSFER CLAIM WAS NOT INCLUDED IN THE 41F BASIN TEMPORARY PRELIMINARY DECREE ISSUED 7/25/1984.

DATE: August 1, 2012 by _____
Roxa Reller, Water Resource Specialist
(406) 444-1410 rreller@mt.gov

REVIEWED:

DATE: August 1, 2012 by _____
John Peterson, Adjudication Bureau Chief

ENCLOSURES:

Corrected Review Abstracts

cc: USA (Dept of Agriculture Forest Service)
c/o Jed Simon
PO Box 7669
Missoula, MT 59807-7669

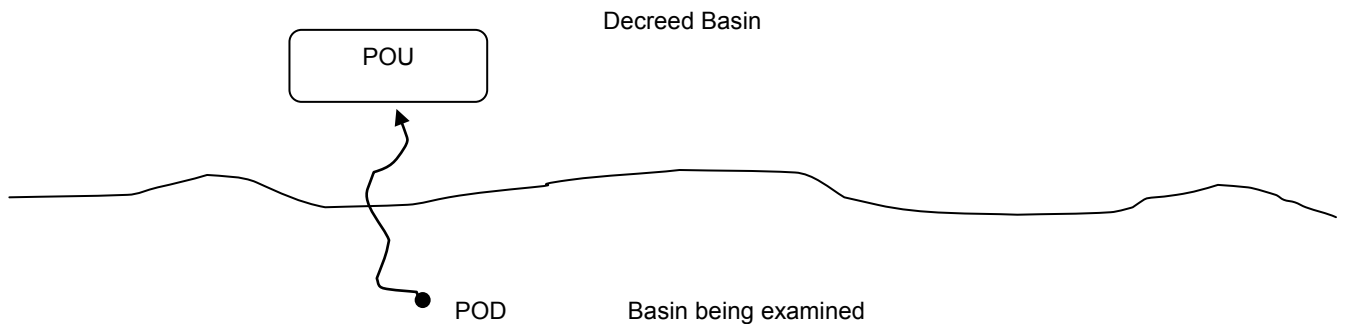
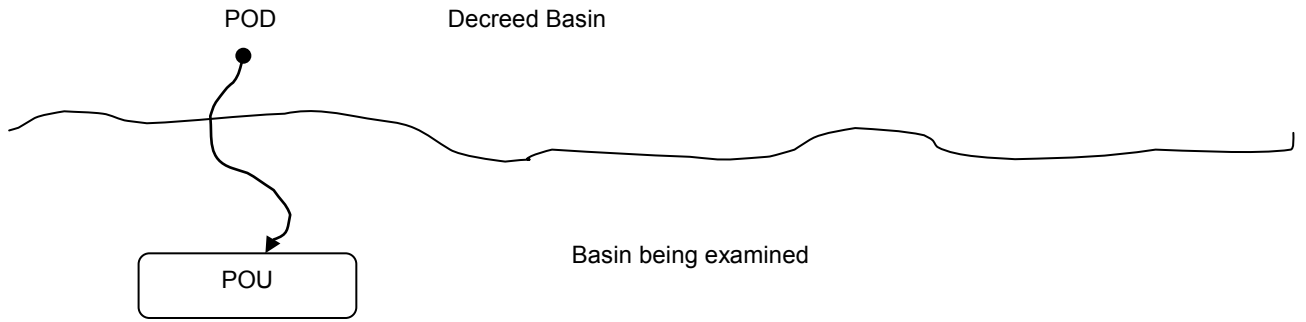


FIGURE VI-5

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**PRELIMINARY DECREE
TONGUE RIVER, BELOW HANGING WOMAN CREEK
BASIN 42C
ABSTRACT OF WATER RIGHT CLAIM
IMPORTANT NOTICE**

**** THIS IS AN INTERBASIN TRANSFER CLAIM ****

THIS APPROPRIATION OF WATER TAKES WATER FROM THE TONGUE RIVER, ABOVE & INCLUDING HANGING WOMAN CREEK DRAINAGE (BASIN 42B) AND USES IT IN THE TONGUE RIVER, BELOW HANGING WOMAN CREEK DRAINAGE (BASIN 42C). ANY OBJECTION TO THIS RIGHT MAY BE FILED DURING THE OBJECTION PERIODS FOR EITHER THE POINT OF DIVERSION OR PLACE OF USE BASIN.

FOR THE CURRENT STATUS OF THE POINT OF DIVERSION BASIN, CONTACT THE MONTANA WATER COURT OR THE DNRC AS INDICATED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

YOUR WATER RIGHT AS SHOWN ON THIS ABSTRACT MAY HAVE CHANGES FROM YOUR WATER RIGHT AS CLAIMED OR AMENDED. AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC) DURING THE EXAMINATION PROCESS. THESE CHANGES ARE AUTHORIZED BY THE MONTANA SUPREME COURT WATER RIGHT CLAIMS EXAMINATION RULES OR BY ORDER OF THE WATER COURT.

OBJECTIONS MAY BE FILED ACCORDING TO THE PROCEDURES OUTLINED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

Water Right Number: STATEMENT OF CLAIM

Version: 1 -- ORIGINAL RIGHT

Status: ACTIVE

Owners:

Priority Date: SEPTEMBER 22, 1899

Type of Historical Right: DECREED

Purpose(use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 13.34 CFS

*Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 373.00

Source Name: TONGUE RIVER

Source Type: SURFACE WATER

FIGURE VI-5 (cont.)

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Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNENE	13	6S	42E	ROSEBUD

Diversion Means: PUMP

Period of Use: MARCH 1 TO NOVEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	4.00		S2SESE	1	6S	42E	ROSEBUD
2	74.00		NE	12	6S	42E	ROSEBUD
3	94.00		SE	12	6S	42E	ROSEBUD
4	4.00		NWNENE	13	6S	42E	ROSEBUD
5	111.00		NW	7	6S	43E	ROSEBUD
6	86.00		SW	7	6S	43E	ROSEBUD

Total: 373.00

THE DNRC EXAMINATION OF THIS CLAIM FOUND NO SIGNIFICANT FACTS, DATA, OR ISSUES TO REPORT TO THE WATER COURT.

A BETTER UNDERSTANDING OF YOUR CLAIMED WATER RIGHT CAN BE OBTAINED BY COMPARING YOUR RIGHT WITH OTHER CLAIMS IN THE BASIN. FOR EXAMPLE, COMPARE PRIORITY DATES, FLOW RATES, VOLUMES, OR ACRES IRRIGATED. ALSO, YOUR WATER RIGHT MAY BE SUBJECT TO WATER RIGHTS IN ADJOINING BASINS OR SUBBASINS AS WELL AS BEING SUBJECT TO OTHER RIGHTS ON YOUR SOURCE OF SUPPLY. FINALLY, YOUR WATER RIGHT MAY BE SUBJECT TO INDIAN RESERVED AND FEDERAL RESERVED WATER RIGHTS.

COMPLETE DETAILS REGARDING THE DNRC EXAMINATION RESULTS AND RELATED MATERIALS CAN BE REVIEWED AT THE OFFICE LOCATIONS IDENTIFIED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

SEE GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR FURTHER EXPLANATION OF YOUR CLAIMED WATER RIGHT. THESE FINDINGS CAN BE FOUND AS INDICATED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY." IF YOU NEED OBJECTION FORMS, OR HAVE QUESTIONS ABOUT WATER COURT PROCEDURES OR CHANGES TO YOUR RIGHT, YOU CAN CONTACT THE WATER COURT BY CALLING 1-800-624-3270 (WITHIN MONTANA ONLY) OR 1-406-586-4364, OR BY WRITING TO P.O. BOX 1389, BOZEMAN, MT 59771-1389.

6. Basin Code: A basin code is assigned based on the legal land description of the claimed point of diversion. The basin code identifies claims for inclusion in a particular decree and legal public notice procedures. The concern for determining the proper basin code is not only limited to getting mislabeled claims out of a basin, but also for getting proper but mislabeled claims included in the basin. . [Rule 8\(b\), W.R.C.E.R.](#)

a. Reviewing Basin Codes: After identifying and modifying the claimed PODs to the most reasonable legal land description, review the basin code assigned to the claim for accuracy. Care should be taken that the basin code was not determined using a secondary POD.

The basin code is listed as part of the water right number e.g., 41A 95102 00 found at the top of the first page of the examination worksheet. 'Basin Code' is also its own element listed on the worksheet.

Check the POD legal land description against regional office, geospatial layer, and the [Atlas of Water Resources in Montana by Hydrologic Basin](#)(the basis for the boundary, but many changes have occurred since then) or another reliable basin map. For greater accuracy, transpose basin lines onto larger scale maps such as USGS topographic maps, U.S. Forest Service, or BLM maps or digitize into an ArcGIS layer.

If the basin code on a claim is incorrect, check all claims within the ownership to verify that all the basin codes on the claims are correct.

b. Correcting Basin Codes: A claim with an incorrect basin code should be corrected immediately. [Rule 8\(b\),\(1\),\(2\), W.R.C.E.R.](#)

Non-decreed Claim Corrected to a Non-decreed Basin: Indicate the correct basin code on the worksheet, claim form, and claim folder label. Complete a basin correction flag for each file (Exhibit VI-5).

- If the misbasined claim is not in a basin that is currently being examined, send the entire misbasined file to the Records section in Helena with a memorandum indicating the basin correction.
- If the claim files for the correct basin are in a basin that is currently being examined, send only the basin correction flag to Helena. Request the flag be returned to be filed with the claim.

In Helena, the basin correction flag will be scanned, and the flag filed with the claim.

Make any required changes to the printed logs and indexes kept in the regional/unit office.

Non-decreed Claim Corrected to a Decreed Basin: Contact the Adjudication Bureau Chief and notify the Water Court by memorandum ([Figure VI-6, Version 1](#)) stating the problem and the claims involved. Be sure to 'cc' the claimant on any such request. See Memorandum.

- Inclusion of a misbasined claim in a decree that has already been issued by the Water Court decree should not occur unless authorized by the Water Court. [Rule 46\(c\), W.R.C.E.R.](#) The following steps should be taken:
 - A Memorandum should be sent to the Court requesting authorization to include the misbasined claim in the decreed basin.
 - The Court will issue an Order granting the request to include the misbasined claim in the decreed basin.

Correct the basin code on each worksheet, claim form, and claim folder label. For every file, add a copy of the memorandum to the Water Court, complete a basin correction flag (Exhibit VI-5), and add a general information (GI) issue remark to the examination worksheet.

Example: G32 CLAIM WAS IMPROPERLY DESIGNATED TO BASIN **40B**. CLAIM WAS NOT INCLUDED IN THE BASIN **41C TEMPORARY PRELIMINARY** DECREE ISSUED **11/14/1990**.

- A second Memorandum should be sent to the Court and copied to the claimant(s) when the rebasing and examination of the claim is complete. Attach a copy of the corrected abstract to the Memorandum. A new version of the abstract does not need to be created in this situation as the claim has not yet been decreed by the Water Court. Ensure the missed decree tab (contact the Adjudication Bureau Chief for assistance with the decree tab) is checked for the decree in which the claim was not included.
- All correspondence between the Water Court and the claims examiner during this process should be copied to the claimant(s). All such documentation should also be placed in the claim file. It is imperative that the Court has a complete paper trail of any such activity on a claim and that a claimant receives notice of any such activity on their claim.
 - If the correspondence is between the DNRC and the Water Court, the Water Court will ensure copies of the documentation are placed in the claim file.
 - If the correspondence is between the DNRC and the claimant, the DNRC should make sure all of the proper documentation is in the claim file.

Decreed Claim Corrected To A Decreed Basin: Occasionally, a claim which has been decreed may be found to be misbasined and the correct basin has also been decreed. Immediately notify the Water Court by memorandum (see below), sending a copy to the claimant ([Figure VI-6, Version 2](#)).

- If the claims have been objected to and are at the Water Court, request the Court return the files for correction of the basin designation. After corrections, the claims are returned to the Water Court.
- If the claims have received no objections, indicate the necessary corrections will be made and the files will be stored with the appropriate basin files.

After the claim files are obtained, correct the basin code on each claim form and claim folder label. For every file, add a copy of the memorandum to the Water Court, complete a basin correction flag (Exhibit VI-5), and add a general information (GI) issue remark to the examination worksheet.

Example: G33 CLAIM WAS IMPROPERLY DESIGNATED TO BASIN **43A** AND WAS INCLUDED IN THE **TEMPORARY PRELIMINARY** DECREE ISSUED **08/03/1988**. CLAIM WAS NOT INCLUDED IN THE BASIN **43B TEMPORARY PRELIMINARY** DECREE ISSUED **01/16/1985**.

- Examination of a misbasined claim that has already been issued in a Water Court decree should not occur unless authorized by the Water Court. [Rule 46\(c\), W.R.C.E.R.](#) If a claim has been decreed the following steps should be taken:
 - A Memorandum should be sent to the Court requesting authorization to examine the misbasined claim.
 - The Court will issue an Order either denying or granting the request to examine the misbasined claim. Sometimes the Order will specify the elements that may be examined as some misbasined claims have already been adjudicated by the Court.
- A second Memorandum should be sent to the Court and copied to the claimant(s) stating the results of the examination and attaching the newest version (if applicable – see last bullet) of the abstract to the Memorandum.
- All correspondence between the Water Court and claims examiner during this process should be copied to the claimant(s). All such documentation should also be placed in the claim file. It is imperative that the Court has a complete paper trail of any such activity on a claim and that a claimant receives notice of any such activity on their claim.

- If the correspondence is between the DNRC and the Water Court, the Water Court will ensure copies of the documentation are placed in the claim file.
- If the correspondence is between the DNRC and the claimant, the DNRC should make sure all of the proper documentation is in the claim file.
- Create a new version of an abstract any time a claim has been decreed in a basin and it is examined/rebasined a subsequent time with the Water Court's permission. Depending upon what proceedings have or have not occurred, the new version of the abstract may be a version higher of any kind of abstract, for example post decree of original right. Add an operating authority to the new version the day the judge signed the order. Ensure that the new version of the abstract has the missed decree tab check for the decree in which it was not included.

Once completed, each affected claim should be sent to scanning and directed as follows:

- active claims to the Water Court
- non-active claims to storage

The relevant information will be scanned and the claim files will be forwarded to the Water Court or stored with the appropriate basin files.

Decreed Claim Corrected To A Non-decreed Basin: Immediately notify the Water Court by memorandum, sending a copy to the claimant ([Figure VI-6, Version 3](#)) indicating the following:

- If the claims have been objected to and are at the Water Court, request the Court return the files for correction. After corrections, the claims are returned to the Water Court.
- If the claims have received no objections, indicate the corrections will be made and the claim files will be stored with the appropriate basin files and reviewed when the basin is examined.

After the claim files are obtained, correct the basin code on each claim form and claim folder label. For every file, add a copy of the memorandum to the Water Court, complete a basin correction flag (Exhibit VI-5), and add a general information (GI) issue remark to the examination worksheet.

Example: G34 CLAIM WAS IMPROPERLY DESIGNATED TO BASIN **43A** AND WAS INCLUDED IN THE **TEMPORARY PRELIMINARY** DECREE ISSUED **08/03/1988**.

- Examination of a misbasined claim that has already been issued in a Water Court decree should not occur unless authorized by the Water Court. [Rule 46\(c\), W.R.C.E.R.](#) If a claim has been decreed the following steps should be taken:
 - A Memorandum should be sent to the Court requesting authorization to examine the misbasined claim.
 - The Court will issue an Order either denying or granting the request to examine the misbasined claim. Sometimes the Order will specify the elements that may be examined as some misbasined claims have already been adjudicated by the Court.
- A second Memorandum should be sent to the Court and copied to the claimant(s) stating the results of the examination and attaching the newest version (if applicable – see last bullet) of the abstract to the Memorandum.
- All correspondence between the Water Court and claims examiner during this process should be copied to the claimant(s). All such documentation should also be placed in the claim file. It is imperative that the Court has a complete paper trail of any such activity on a claim and that a claimant receives notice of any such activity on their claim.
 - If the correspondence is between the DNRC and the Water Court, the Water Court will ensure copies of the documentation are placed in the claim file.
 - If the correspondence is between the DNRC and the claimant, the DNRC should make sure all of the proper documentation is in the claim file.
- Create a new version of an abstract any time a claim has been decreed in a basin and it is examined/rebasined a subsequent time with the Water Court's permission. Depending upon what proceedings have or have not occurred, the new version of the abstract may be a version higher of any kind of abstract, for example post decree of original right. Add an operating authority to the new version the day the judge signed the order. Ensure that the new version of the abstract has the missed decree tab check for the decree in which it was not included.

c. Correcting Basin Lines: Attention should be paid to the accuracy of basin boundaries as delineated by the regional office, geospatial layer, and in the [Atlas of Water Resources in Montana by Hydrologic Basin](#) (the basis for the boundary, but many changes have occurred since then). (Any changes to these basin lines must be reviewed and approved by the regional/unit manager, Adjudication Bureau Chief, and

Water Court.) One of the preliminary pre-examination steps set out in Chapter III.D.1 is to outline the basin boundary on the USGS quad maps. The Adjudication Bureau Chief will communicate and coordinate with the Water Court and the regional offices.

Once approved, make the correction to all basin line maps and topographic maps in the office. Notify the entire regional/unit office staff, other regional/unit offices, the GIS manager, and the bureau chief. A check for claims affected by the correction should be made immediately after changing a basin line.

FIGURE VI-6

Sample Memorandums Regarding Misbasined Claims (Department Letterhead)

Beware of different situations for different basin scenarios:

(Misbasined memo request to correct basin code)

MEMORANDUM

DATE: July 20, 2012

CLAIM(S): **41A 54027-00, 41A 54028-00**

TO: Anna Stradley, Water Master, Montana Water Court

FROM: Roxa Reller, Water Resource Specialist

CLAIMANT(S): USA (DEPT OF AGRICULTURE FOREST SERVICE)

RE: **Basin Correction Request, 41A to 41F**

INTRODUCTION:

During the Basin 41A (Red Rock River) claim examination it was discovered claims numbered **41A 54027-00** and **41A 54028-00** were incorrectly designated to Basin 41A. After reviewing the claim files and data sources, it is confirmed that these claims are actually located in Basin 41F (Madison River).

MATERIALS REVIEWED:

Information in the claim files, topographic maps and e-mail with the claimant served as the primary data sources for this Memorandum.

DISCUSSION:

During the Basin 41A claim examination it was discovered claims numbered **41A 54027-00** and **41A 54028-00** were incorrectly designated to Basin 41A. After reviewing the claim files and data sources, it is confirmed that these claims are actually located in Basin 41F. Basin 41F was issued into Temporary Preliminary Decree on July 25, 1984.

Pursuant to Rule 46, W.R.C.E.R., DNRC requests to add the claims **41A 54027-00** and **41A 54028-00** to the Basin 41F Temporary Preliminary Decree post-decree and to correct the Basin Code from Basin 41A (Red Rock River) to Basin 41F (Madison River).

ENCLOSURES:

Review Abstracts

Maps

DATE: July 20, 2012 by _____

Roxa Reller, Water Resource Specialist
(406) 444-1410 rfreller@mt.gov

REVIEWED:

DATE: July 20, 2012 by _____

John Peterson, Adjudication Bureau Chief

cc: USA (Dept of Agriculture Forest Service)
% Jed Simon
PO Box 7669
Missoula, MT 59807-7669

(Memo to Court – Corrections have been made)

MEMORANDUM

DATE: August 23, 2012

CASE: **ORDER TO RE-BASIN NON-DECREED 41A CLAIMS TO
DECREED BASIN 41F CLAIMS: 41A 54027-00 41A 54028-00**

TO: C. Bruce Loble
Chief Water Judge, Montana Water Court

FROM: Roxa Reller
DNRC Water Resource Specialist

CLAIMANT: United States of America (Department of Agriculture Forest Service)

INTRODUCTION:

On August 20, 2012, the Montana Water Court ordered the Montana Department of Natural Resources and Conservation (DNRC) to re-basin non-decreed claims 41A 54027-00 and 41A 54028-00 from Basin 41A to decreed Basin 41F.

DISCUSSION:

The Court ordered that DNRC shall file a Memorandum with the Court when the following actions are complete.

4. Re-basin non-decreed claims 41A 54027-00 and 41A 54028-00 from Basin 41A to decreed Basin 41F.
5. Place a G32 issue remark on the claims indicating they were not included in the Basin 41F Temporary Preliminary Decree.
6. Ensure the decree tab in the DNRC centralized record system reflects the fact that the claims were not included in the Basin 41F Temporary Preliminary Decree.
7. File a Memorandum with the Court when the above actions are completed. Attach a corrected abstract to the Memorandum.

CONCLUSION:

The DNRC has completed the actions specified in the August 20, 2012 order.

1. Non-decreed claims 41A 54027-00 and 41A 54028-00 are re-basined from Basin 41A to Basin 41F.
2. The G32 issue remark was added to the claims and reads:
“CLAIM WAS IMPROPERLY DESIGNATED TO BASIN 41A. CLAIM WAS NOT INCLUDED IN THE BASIN 41F TEMPORARY PRELIMINARY DECREE ISSUED 07/25/1984.”
3. DNRC updated the decree tab in the centralized record system to reflect the above information.
4. A copy of each corrected abstract is attached to this Memorandum.

DATE: August 23, 2012 by _____
Roxa Reller, Water Resource Specialist
406-444-1410 rfreller@mt.gov
Water Adjudication Bureau

REVIEWED:

DATE: August 23, 2012 by _____
John Peterson, Adjudication Program Manager
DNRC Water Adjudication Bureau

ENCLOSURES: Corrected Review Abstracts

SERVICE LIST:

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Chief Water Judge
Montana Water Court
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G. MEANS OF DIVERSION
[Rule 9, W.R.C.E.R.](#)

The means of diversion (MOD) is the structure, facility, or method used to divert and initiate conveyance of water from the source. It can vary for each POD claimed. Each claimed diversion means will be consistently described on the decree abstract. By standardizing the means of diversion, the quality of the database is improved making indexes or listings containing MOD more accurate and reliable.

1. Identifying Claimed Means Of Diversion: Because of the limited number of choices provided on the claim form, the diversion means listed on the examination worksheet may not accurately reflect the claimant's intent or be as precise as possible. Furthermore, a single method of diversion may have been called several names by claimants.

Compare the diversion means listed on the examination worksheet with the claim file. The claimant's map, documentation, and the examination worksheet should clearly and consistently reflect the claimant's intent.

If the claimant's intent is not clear, contact the claimant. When claimant contact is inconclusive, note the issue on the examination worksheet, and add the following diversion means (DM) issue remark to the examination worksheet:

Example: D50 THE CLAIMED MEANS OF DIVERSION CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

2. Standard Means Of Diversion Descriptions: All means of diversion should be standardized to one of the methods in [Figure VI-7](#). Use Figure VI-7 along with the claim file and any claimant contact to determine when a claimed means of diversion must be standardized. "Developed Spring" is a valid means of diversion, but should ONLY be used when no other means of diversion (springbox, pipeline, pump, etc.) can be identified from the file or claimant contact.

Each POD will have only one means of diversion associated with it. If two or more methods of diversion are occurring, normally identify these as separate PODs. Add the second means of diversion and POD to the examination worksheet. The POD Origin field in the database should indicate 'claimed' if the intent is clear on the claim form (however, if other means are used to standardize the means of diversion, the Origin field may be 'modified by rule'). For example, a stockwater claim involving a pipeline from a spring to a tank and stock drinking direct from the spring and its channel of flow would be categorized as "Pipeline" and "Livestock Direct From Source" using two POD descriptions.

In other situations, a clearly subordinate means of diversion may be added as a means of diversion information remark, e.g., a domestic claim indicating pump and bucket for one POD could be categorized as a "Pump" for the means of diversion along

with a means of diversion information remark to capture the subordinate means of diversion (bucket).

Example: D10 **BUCKET** USED AS AN ADDITIONAL MEANS OF DIVERSION.

A diversion means (DM) information remark can be used to further explain a diversion system that is only generally explained by the standard means of diversion codes. Such information will be identified on the department's examination worksheet.

Example: D45 WATER COLLECTED IN **DOE WASTE DITCHES** IN THE **N2** SEC **36** TWP **99N** RGE **99E** **MONTANA** COUNTY.

When a MOD cannot be standardized to one found in [Figure VI-7](#), change the diversion means on the worksheet to "Other" and add a diversion means information remark to the department's examination worksheet.

Example: D15 MEANS OF DIVERSION INCLUDES A **PIPELINE AND SLUICE BOX**.

D20 MEANS OF DIVERSION INCLUDES A SLUICE BOX, BUCKET OR OTHER CONTAINER.

D25 THE MEANS OF DIVERSION IS A **WATERWHEEL**.

D35 **PUMP** IS SECONDARY MEANS OF DIVERSION.

D36 **PUMP** LOCATED IN THE **SESESE** SEC **36** TWP **99N** RGE **99E** IS A SECONDARY MEANS OF DIVERSION.

D46 WATER IS COLLECTED AT VARIOUS LOCATIONS ALONG THE **DOE DITCH** FROM **NENENE** SEC **36** TWP **99N** RGE **99E** TO **SESESE** SEC **36** TWP **99N** RGE **99E** **MONTANA** COUNTY.

Stockwater Reservoirs: The means of diversion for stock drinking directly only from an on-stream reservoir should be "Dam" to identify the dam as the means of diversion. If stock are drinking from stream channels above or below the reservoir in addition to the reservoir itself, the means of diversion should be "Dam" for the reservoir point of diversion and "Livestock Direct From Source" for the stock drinking direct diversion.

3. Examining Means of Diversion: Examine each claimed means of diversion for standardization, accuracy, and operational status. Compare the MOD on the examination worksheet to various data sources. These data sources include: [Rule 9\(b\), W.R.C.E.R.](#)

- claim file
- aerial photographs or orthophotoquads

- topographic maps
- Water Resources Survey

The examination of a claimed means of diversion that do not fit into the ‘standardization’ will require a judgment call. Review the claim file and data sources for confirmation of the operational status of the means of diversion. When the means of diversion on various claims for a common POD appear inconsistent, or other questions arise concerning claimed means of diversion, contact the claimant.

To improve consistency in examining diversion means, it is suggested that all claims from a particular source be reviewed as a block and by the same examiner. For each source, all claims should be reviewed by point of diversion. Remember that claims with the same POD legal land description may have separate diversion structures. Check the claim file to determine if the same diversion or conveyance (e.g., ditch) is described.

a. Changing MOD: The claimed MOD will not be changed during the examination unless: [Rule 9\(c\), W.R.C.E.R.](#)

- amended by the claimant; [Rule 9\(c\)\(1\), W.R.C.E.R.](#)
- modified by rule (clarified) by the department without claimant contact to identify similar means of diversion consistently or clear up discrepancies in the claimed information as long as the intent of the claimed information is clear ([Rule 9\(c\)\(2\) and 33 \(b\)\(10\),\(5\), W.R.C.E.R.](#));
- modified by rule (clarified) by the department on confirmation by the claimant if the claimed intent is unclear [Rule 33\(c\), W.R.C.E.R.](#)

Changes may be made directly to the examination worksheet. Place an asterisk on the worksheet in the brackets to the left of the POD element to denote a change to a MOD that differs from that on the claim form. An asterisk is not needed to change the means of diversion from one assigned category to another when the claimed intent is not changed, e.g., “Livestock Direct From Source” to “Dam”, “Flowing” to “Pipeline” or “Flowing” to “Livestock Direct From Source”.

b. Claimant Contact: Whenever the claimed means of diversion is unclear, has apparent discrepancies, or appears inaccurate after the initial review, the claimant should be contacted unless otherwise specified in this subchapter. This contact can have several outcomes: [Rule 9\(b\) and 44, W.R.C.E.R.](#) and Section IV. F.

- Information discussed with the claimant confirms the claimed MOD. Document the supporting information in the General Comments area of the examination worksheet, in a memorandum, or on an Interview Report Form (Figure IV.2).
- A MOD different from that in the claim file is identified. The claimed MOD may be changed on confirmation by the claimant. Document the data

substantiating the new MOD and the discussion with the claimant. As an alternative, an amendment can be submitted to change the claimed MOD.

FIGURE VI-7
MEANS OF DIVERSION GUIDELINES

<u>Diversion Method</u>	<u>Standardized Means</u>
Bucket, Pan, or other container	Bucket
Diversion Dam (or "Wing" dam) without impoundment	Diversion Dam
Dike (i.e., spreader dike)	Dike
Dam w/Impoundment	Dam
Dam with Pit	Dam/Pit
Drain Ditch, Collection Ditch	Drain Ditch
Developed Spring, (man-made work involved, no specific method identified)	Developed Spring
Ditch	Ditch
Headgate	Headgate
Infiltration Gallery	Infiltration Gallery
Instream or Inlake Use (usually for Wildlife, Fish & Wildlife or Recreation claims)	Instream or Inlake
Livestock Drinking Directly From Source	Livestock Direct From Source
Wildlife Drinking Directly From Source	Wildlife Direct From Source
Natural Overflow	Natural Overflow
Pipeline*, Hose Directly in Source	Pipeline*
Pump* (e.g., electric pump, fuel pump, hand pump, hydraulic ram, windmill)	Pump*
Pump (When the source is a Well)	Well
Sump or Pit	Pit
Spring Box*	Spring Box*
Natural Subirrigation	Subirrigation
Other	Add DM information remark describing the diversion means

* Pipeline, pump and spring box can be used as standardized means for developed springs.

** If purpose is stock, standardized means of diversion is Livestock Direct From Source.

- A new MOD in addition to those claimed is identified. This information can only be added by amendment.
- If the issue is unresolved either because no substantiating data can be found or a different MOD is substantiated but the claimant wants to retain the claim as is, add a MOD issue remark containing the correct MOD to the department's examination worksheet.

4. Means of Diversion Issues: Any pertinent means of diversion issues discovered during claim examination should be addressed by contacting the claimant. If claimant contact does not resolve the issue, add a diversion means issue remark to the department's examination worksheet. Some potential means of diversion issues are as follows. [Rule 9\(d\), W.R.C.E.R.](#)

- Claimed MOD appears incorrect.

Examples: D55 THE MEANS OF DIVERSION APPEARS TO BE INCORRECT.
THE MEANS OF DIVERSION APPEARS TO BE A **PUMP**.

D65 THE CLAIMED MEANS OF DIVERSION **APPEARS TO/MAY** BE INCORRECT AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

DMIS MEANS OF DIVERSION NO. 3 APPEARS TO BE INCORRECT.
LOCAL RESIDENTS HAVE IDENTIFIED A DRAIN DITCH.

- Two or more means of diversion are claimed for a single POD, which could not be resolved through standardization, modifying by rule or claimant contact.

Example: D70 TWO SEPARATE MEANS OF DIVERSION HAVE BEEN CLAIMED FOR THE POINT OF DIVERSION IN THE **SESESE** SEC **36** TWP **99N** RGE **99E MONTANA** COUNTY.

- Two or more means of diversion claimed by separate claims for a single POD.

Example: D75 THE CLAIMS FOLLOWING THIS REMARK CLAIM DIFFERENT MEANS OF DIVERSION FOR WHAT APPEARS TO BE A SINGLE POINT OF DIVERSION IN THE **NWNWNW** SEC **36** TWP **99S** RGE **99W MONTANA** COUNTY. **000000-00, 000000-00, 000000-00**.

- No means of diversion claimed.

Example: D80 NO MEANS OF DIVERSION WAS CLAIMED.

H. RESERVOIRS OR GROUNDWATER PITS [Rule 10, W.R.C.E.R.](#)

A reservoir or groundwater pit is a water storage facility created by manmade means that impounds water, storing it for beneficial use. Included are natural lakes that have had water levels raised by manmade means. A reservoir or pit should only be identified as an element of a water right if control (ownership or if under lease, having the right to determine the release or storage of water) of the reservoir or pit is part of the exercise of that right. Some reservoirs were claimed where control of the reservoir is not part of the claimed use. For example, storage in Hungry Horse Reservoir is part of the U.S. Bureau of Reclamation's water rights for power generation on the South Fork of the Flathead River, but storage is not part of water rights for summer homes on Hungry Horse Reservoir.

The purpose of this chapter is to outline the specific procedures unique to examining reservoirs/pits. Examine all elements of claims that include reservoirs/pits using the procedures pertinent to the claimed purpose. **A groundwater pit should be examined following the on-stream reservoir guidelines under each respective section of the manual.** Flow rate and volume procedures, as they relate to reservoirs/pits, are also addressed in the chapters pertaining to the claimed purpose. Table VI.1 below is provided as an overview of how to approach natural pits, man-made pits, and reservoirs. **Keep in mind what the claimant is trying to protect.**

1. Identifying Claimed Reservoirs/Pits: When a reservoir/pit has been claimed or clarified on the claim form, a reservoir record will be printed on the examination worksheet after the Period of Diversion element. Review the claim file and outside data sources to confirm the existence of the reservoir. Useful sources include aerial photos, topographic maps, and Water Resources Survey materials. If the reservoir cannot be confirmed, contact the claimant. If necessary, an on-site visit may be conducted at the claimant's request. [Rule 10\(a\)\(4\), W.R.C.E.R.](#)

If a reservoir has been claimed or depicted on the claimant's map but does not appear on the examination worksheet, it may be added using a reservoir addendum sheet (Exhibit IV-4). Enter the information under the Reservoir tab in the water right detail screen of the database. See "Reservoirs or Pits: Reservoir Record" ([Section VI.H.3](#)) for reservoir record information

If it is determined from information in the claim file or other data sources that a reservoir exists which has not been claimed, claimant contact is required to determine whether the reservoir is part of the purpose claimed. Once confirmed, obtain an amendment to capture the reservoir data ([Rule 10\(b\) W.R.C.E.R.](#)).

Source Name: The source name for a claim including a reservoir is the name of the stream from which water is diverted or impounded. If there is more than one named stream flowing into an on-stream reservoir, use the name of the outflowing stream. If there is no named outflowing stream, the source will be "Unnamed Tributary" of the first

named stream to which the source is a tributary. The source is **not** the reservoir name. (The reservoir name will be retained under the Name field in the Reservoir tab in the database). [Rule 10\(a\) \(5\), W.R.C.E.R.](#)

Table VI-1: Overview of Reservoirs and Pits

	Reservoir Record	Period of Diversion	Means of Diversion	Purpose	Flow Rate	Volume	On/Off	S/G	Rule
Reservoir	Yes	Yes	Dam	IR	No	Yes	On	S	10(a, b) 14(b)(2)i
			Varies	IR	Yes	No	Off	S	10(c, d) 14(b)(2)ii
			Dam	ST	No	No	On	S	24(b)(3)i 24(c)
Man-Made Pit	Yes****	Yes (yr-round)	Pit	ST	Yes, Keep	No	On	G*	24(b)(1)
			Pit	WI	Yes	Yes	On	G*	29(c)(1)
			Pit (pump)	IR	Yes	Yes, if Stored	On	G*	10(c, d)
Man-Made Pit	Yes****	Yes (yr-round)	Pit	ST	No	No	On	S	24(c)
			Pit	WI	No	Yes	On	S	29(d)
			Pit	IR	No	Yes, if Stored	On	S	10(c, d)
Natural Pit	No	Yes**	Livestock Direct	ST	No	No	N/A	S***	24(b)(2)
			Inlake	WI	No	No	N/A	S***	29(d)
			Pump	IR	Yes	No	N/A	S***	10(c, d) 14(b)
Lake	No	Yes**	Varies					S	
USA Pothole Lake	Yes	Yes	Varies	ST	No	Yes	Both	S	Court Order
	Yes	Yes	Varies	Other	No	Yes	Both	S	Court Order

* Be aware of 1962-1973 groundwater infringement.
 *** Surface water unless specified as groundwater.

** Period of diversion equals period of use.
 ****Reservoir data collected to establish a volume should the pit ever be questioned.

Unique Features or Aspects: Any unique aspects or features of a reservoir/pit may be remarked using a reservoir (RN) information remark. [Rule 10\(e\) \(6\), W.R.C.E.R.](#)

Examples: R50 THE **DAM/PIT** IS LOCATED IN GOVERNMENT LOT **1** SEC **36** TWP **99N** RGE **99E** **MONTANA** COUNTY.

R65 THE RESERVOIR IS A DAMMED OXBOW OF THE OLD **DOE RIVER** CHANNEL.

R70 MANMADE PIT IN BOTTOM OF NATURAL LAKE.

2. Collecting Reservoir Data:

a. The Reservoir/Pit Information Worksheet: The reservoir/pit information worksheet (Exhibit VI-6) has been developed to provide information to the Water Court for consideration when decreeing water uses involving reservoirs/pits. The worksheet addresses the history, condition, operation, and dimensions of the reservoir/pit. [Rule 10\(b\) \(2\)-\(4\), W.R.C.E.R.](#)

b. When to Complete a Reservoir/Pit Information Worksheet: A reservoir/pit worksheet will be completed when control of the reservoir/pit is part of the right. The amount of information required on the reservoir/pit worksheet is dependent on the volume. See Table VI.2 below for guidance on completing the reservoir/pit information worksheet.

For reservoirs less the 15 acre-feet, only the period of diversion information required per [Rule 10 \(a\) W.R.C.E.R.](#) must be collected; however, there must be documentation for the reservoir capacity, either by DNRC estimation or from the claimant providing the reservoir data. (The period of diversion for all groundwater pits is presumed to be year-round.) See Exhibit VI-6 for an example of a simplified worksheet for obtaining period of diversion information.

Table VI-2: When to Complete the Reservoir/Pit Information Worksheet

	< 15 AF	15 AF to 50 AF	> 50 AF
Reservoir Capacity	Estimate	Estimate or Contact	Reservoir Worksheet
Period of Diversion	Contact Claimant	Contact Claimant	Contact Claimant
Pit Capacity	Estimate	Estimate or Contact	Reservoir Worksheet
Period of Diversion	Year-round	Year-round	Year-round
“For Dept. Use Only” Reservoir Worksheet	Complete	Complete	Complete
Claimed Volume 2x Estimated Capacity	Contact Claimant	Contact Claimant	Contact Claimant

c. Completing the Reservoir/Pit Information Worksheet: Only one worksheet is needed for all claims on a single reservoir; list the claim numbers and

purposes at the top of the worksheet, e.g., 999997-00 (IR), 999998-00 (ST), 999998-00 (MN). Copies of the completed worksheet should be placed in each file.

The reservoir/pit worksheet should be completed by the claims examiner when the claim file contains specific reservoir/pit data, or specific reservoir/pit data is readily obtained from published data sources such as:

- project files at local BLM offices
- state water conservation project books
- USBOR project data book (1981)
- miscellaneous published information from MPC, WWPC, etc.
- [DNRC Dam Safety Bureau](#)
- [Corp of Engineers National Dam Inventory](#)
- [NRIS Interactive Maps of Montana](#)

If the claim file does not contain reservoir/pit data or reservoir/pit data is not available from published data sources, the claimant will be contacted to complete the reservoir/pit information worksheet. (If the claimant does not respond to the request for information, the DNRC will estimate reservoir information; see Step 2 under (3)c. below.). If the claim involves multiple owners (and the claims examiner is requesting the worksheet be completed by the claimants), only one owner needs to complete the reservoir/pit worksheet. Send a copy of the completed reservoir/pit worksheet to the other owners and request that they sign the copy and return it. Place the original and all signed copies in the file. Be sure the copies are clearly marked "COPY" to avoid uncertainty on the scanned record.

Follow the steps below for completing the reservoir/pit worksheet:

- **Step 1:** Review the claim file for information requested in Part A of the reservoir/pit information worksheet. If the information is in the claim file, complete Part A. Also estimate the capacity in the "FOR DEPARTMENT USE ONLY" section to confirm the data in Part A. See "Confirming Reservoir/Pit Data" ([Section VI.H.2.e](#)) below. If the right involves a reservoir, contact the claimant to complete the simplified reservoir worksheet if the capacity is less than 15 AF. If the reservoir/pit is greater than 15 acre-feet, request the claimant complete all remaining portions of the reservoir/pit worksheet.
 - If the information needed to complete Part A can be readily obtained from published data, either complete Part A or add a copy of the published data to the claim file. It will only be necessary to contact the claimant to complete Parts B and C.

If information is not in the claim file or cannot be obtained from published data, proceed to Step 2.

- **Step 2:** Estimate the reservoir/pit capacity. Calculations can be documented under the "FOR DEPARTMENT USE ONLY" section of the reservoir/pit information worksheet.
 - When a reservoir/pit capacity has been estimated, add a reservoir information (RN) remark to the department's examination worksheet.

Examples: R55 THE CAPACITY, DAM HEIGHT, AND SURFACE AREA HAVE BEEN ESTIMATED BY DNRC.

R56 THE **CAPACITY/DAM HEIGHT/MAXIMUM DEPTH/SURFACE AREA HAVE/HAS** BEEN ESTIMATED BY DNRC.

If the claimed volume is less than two times the estimated reservoir/pit capacity, use the estimated reservoir data. The claimant will be contacted to obtain the period of diversion for all reservoirs—at that time, request the claimant complete the reservoir/pit worksheet.

If the claimed volume is greater than two times the estimated reservoir/pit capacity, proceed to Step 3.

- **Step 3:** When Steps 1 and 2 cannot be accomplished, contact the claimant. An in-person or telephone interview is the preferred approach. Complete as much of the worksheet as possible through the interview. Another approach is to send the reservoir/pit information worksheet along with a cover letter (Exhibit IV-8) to the claimant for completion. When returned, complete the "FOR DEPARTMENT USE ONLY" section to confirm the data supplied by the claimant in Part A.

d. Completing the "FOR DEPARTMENT USE ONLY" Area:

DNRC Reservoir/Pit Estimate: Measure the surface acres on the aerial photograph, rounding to the nearest hundredth (this will help avoid errors when the error check report is generated). Assume a depth of **8 to 10 feet**, or a value common in the area (also round to nearest hundredth, if applicable). Analyze the contour lines on a topographic map to estimate depth. Dam height is the estimated depth **plus 3 feet for freeboard**. Use depth and surface acres at the maximum water level to calculate the capacity as follows: [Rule 10 \(a\)\(4\) W.R.C.E.R.](#)

- The standard equation for figuring **reservoir capacity** is:
Surface Acres X Depth X 0.4 = Capacity in acre-feet
- The standard equation for figuring **pit capacity** is:

Surface Acres X Depth X 0.5 = Capacity in acre-feet

Information Obtained: Use this area to document where the information from Parts A, B and C were obtained. More than one area may be checked.

e. Confirming Reservoir/Pit Data: When the information in Part A is from other than published data, review this information for reasonableness. Compare this information to the "FOR DEPARTMENT USE ONLY" section on the worksheet. If the claimed volume is greater than two times the estimated reservoir/pit capacity, contact the claimant. If contact is inconclusive, retain the claimant's data and add the following reservoir (RN) issue remark to the examination worksheet. [Rule 10 \(e\)\(8\)\(ii\) W.R.C.E.R.](#)

Example: R77 THE MAXIMUM STORAGE CAPACITY OF THIS RESERVOIR MAY BE QUESTIONABLE. ACCORDING TO DNRC ESTIMATES, THE MAXIMUM STORAGE CAPACITY IS **40.0** ACRE FEET.

f. Referencing Reservoir/Pit Data: When a reservoir/pit worksheet is added to the claim file, where Parts A, B or C have been completed, add a reservoir (RN) information remark to the department's examination worksheet.

Example: R75 SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

If a copy of published data is added to the claim file in lieu of a reservoir/pit worksheet, add a reservoir information (RN) remark to the department's examination worksheet.

Example: R76 SEE THE **MONTANA RESOURCES BOARD DAM INVENTORY WORKSHEET** IN THE CLAIM FILE FOR ADDITIONAL RESERVOIR DATA.

3. Reservoir/Pit Database Record: The reservoir/pit record in the database is used to store reservoir/pit information. Only one reservoir/pit record is required for each unique reservoir/pit. **Multiple water rights owned by different entities for the same reservoir/pit will be associated** if the relationship is between a statement of claim and one of the following: 1) a federal reserved water right claim, 2) a new appropriation (post-1973 water right), or 3) an exempt right . See Section [VI.C.5](#) for further discussion on associated rights. A reservoir record is required for claims where control of a reservoir/pit is part of the right.

If the reservoir record is missing from the worksheet, it may be created by means of a reservoir record addendum sheet (Exhibit IV-4). Enter the information under the Reservoir tab in the water right detail screen of the database. **A reservoir record should be added to the file if the water right involves a groundwater pit.** See "Examination Materials and Procedures: Addendum Sheet Instructions" (Section IV.D).

RESERVOIR:

RESERVOIR/LAKE NAME: Old Miller Pond

<u>Type</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
ONSTREAM		NENE	36	99N	99E	MONTANA

Capacity: 1.20 ACRE-FEET =(Max Depth X Surface Area X 0.4 (or 0.5))

Max Depth: 3.00 Feet **Dam Height:** 5.00 FEET **Surface Area:** 1.00 ACRES

a. On-stream/Off-stream Check-off: Check that the appropriate 'on-stream' or 'off-stream' reservoir type appears on the examination worksheet. Add or correct it as necessary. [Rule 10 \(e\)\(1\), W.R.C.E.R.](#)

- An off-stream storage facility is a reservoir/pit which receives water from an additional or different source of water other than the source which the reservoir/pit is located. All off-stream facilities have some manmade conveyance system to the reservoir, and control of the reservoir/pit is part of the exercise of the right. Groundwater pits are considered on-stream.
- An on-stream reservoir is water impounded on the natural channel of the source and where control of the reservoir is part of the exercise of the right.
- If storage is not part of the right but a standardized reservoir/lake name is identified, the name will be retained as part of the source name. Example: stock drinking directly out of Canyon Ferry Lake, the source name will be: "Missouri River (Canyon Ferry Lake)".

b. Legal Land Description of Impoundment Structure: When the claimant has control of the on-stream reservoir as part of the right, the legal land description in the reservoir record should be the **entire impoundment structure**. When the claimant has control of a pit or off-stream reservoir, the legal land description in the reservoir record will be the whole depression. Make this as clear and concise as possible. If it is necessary to use additional legal land descriptions to describe the impoundment structure, do not use additional reservoir/pit records. Add additional land descriptions in a reservoir information remark. [Rule 10 \(e\)\(2\),\(3\), W.R.C.E.R.](#)

Examples: R35 THE **DAM/PIT** EXTENDS INTO THE **NESW** SEC **36** TWP **99N** RGE **99E MONTANA** COUNTY.

R40 THE **DAM/PIT** EXTENDS INTO THE **NWNWNE**, **NENENW** SEC **36** TWP **99N** RGE **99E MONTANA** COUNTY.

c. Reservoir Name: Retain reservoir names in the Name field in the Reservoir tab in the database. This field is equivalent to using the R25 remark, which should only be used when more than one name is claimed for a reservoir. [Rules 10 \(a\)\(5\) and 10\(e\)\(5\) W.R.C.E.R.](#)

d. Maximum Depth: For all reservoirs and pits, the maximum depth is the deepest part of the storage facility. In some cases, the maximum depth may be larger than the dam height. This is achieved when the impoundment structure is constructed from excavated material taken from the upstream side of the dam. [Rules 10 \(a\)\(3\) and 10\(e\)\(5\) W.R.C.E.R.](#)

When the maximum storage capacity, dam height, maximum depth or surface area has been estimated by the department, add a reservoir information remark to the department's examination worksheet.

Examples: R55 THE CAPACITY, DAM HEIGHT, AND SURFACE AREA HAVE BEEN ESTIMATED BY DNRC.

R56 THE **CAPACITY/DAM HEIGHT/MAXIMUM DEPTH/SURFACE AREA HAVE/HAS** BEEN ESTIMATED BY DNRC.

e. Dam Height: For on-stream and off-stream reservoirs, document the dam height. [Rules 10 \(a\)\(1\) and 10\(e\)\(5\), W.R.C.E.R.](#)

- Dam height is the vertical distance from the lowest point on the dam crest to the lowest point on the natural ground (including any stream channel) along the downstream toe of the dam.
- When the total dam height is estimated, it should equal the known or estimated reservoir depth plus 3 feet for freeboard.

When the maximum storage capacity, dam height, maximum depth or surface area has been estimated by the department, add a reservoir information remark (R55 or R56 above) to the department's examination worksheet.

f. Surface Area: For on-stream and off-stream reservoirs/pits, document the surface area. [Rules 10 \(a\)\(2\) and 10 \(e\)\(5\) W.R.C.E.R.](#)

- Surface area is the area of the reservoir/pit in acres as depicted on the USDA aerial photograph, USGS topographic map or WRS aerial photograph.

Surface area can be estimated in WR Mapper using the Acreage Tool to outline the reservoir and calculate a value in acres. Note that this polygon is not saved to the mapping project and a slightly different value could be obtained each time the polygon is

drawn with the Acreage Tool (due to scale and/or line thickness). Be sure to document any calculations.

When the maximum storage capacity, dam height, maximum depth or surface area has been estimated by the department, add a reservoir information remark (R55 or R56 above) to the department's examination worksheet.

g. Maximum Storage Capacity: For on-stream and off-stream reservoirs, document the maximum storage capacity. [Rule 10 \(a\)\(4\) W.R.C.E.R.](#)

- Maximum storage capacity is measured in acre-feet.
- When the maximum reservoir capacity has been determined either by actual data or estimation, add this value to the "capacity" line on the examination worksheet.
- Enter the value in the database. It will appear on the decree abstract under Reservoir.

When the maximum storage capacity, dam height, maximum depth or surface area has been estimated by the department, add a reservoir information remark (R55 or R56 above) to the department's examination worksheet.

If the data to calculate an actual maximum capacity is later obtained, replace the estimated figures with the actual figures and remove or modify the remark.

4. Reservoir Issues: Any pertinent reservoir issues should be addressed by contacting the claimant. If claimant contact does not resolve the issue, add an issue remark to the department's examination worksheet. Some potential reservoir issues and remarks are as follows. [Rule 10 \(e\)\(8\), W.R.C.E.R.](#)

Owner Disagreement: If an owner does not agree with any of the information on the reservoir/pit information worksheet, the reservoir/pit data should be entered into the database and the following reservoir (RN) issue remark added to the department's examination worksheet.

Example: R110 THERE IS A DISAGREEMENT AMONG THE OWNERS OF RECORD CONCERNING THE INFORMATION SUBMITTED ON THE RESERVOIR INFORMATION WORKSHEET.

Washed Out Reservoirs: If aerial photographs or other data sources indicate that the reservoir is washed out or otherwise not usable, add a reservoir (RN) issue remark to the examination worksheet (Note: Do not add remark if wash-out date is after 1980). [Rule 10 \(e\)\(8\)\(i\) W.R.C.E.R.](#)

Example: R80 RESERVOIR APPEARS WASHED OUT ON USDA AERIAL PHOTOGRAPH NO. **179-152**, DATED **MM/DD/YYYY**.

R81 ACCORDING TO INFORMATION IN THE CLAIM FILE, THE **DAM/PIT** WASHED OUT IN **YYYY**.

Incremental Development: A reservoir may appear on a data source (including the questionnaire) to have been constructed or enlarged later than the claimed priority date. Attempt to find out when the reservoir was constructed or enlarged. If the reservoir was constructed or enlarged later than the claimed priority date, add a reservoir issue remark to the department's examination worksheet. An implied claim may be an option. See "Special Provisions: Implied Claims" (Section XI.B).

Examples: R85 ACCORDING TO INFORMATION IN THE CLAIM FILE, THE RESERVOIR WAS CONSTRUCTED IN **YYYY** WHICH DOES NOT CORRESPOND TO THE CLAIMED PRIORITY DATE. THIS MAY INDICATE AN EXPANSION OF THE WATER RIGHT.

R90 ACCORDING TO INFORMATION IN THE CLAIM FILE, THE RESERVOIR WAS ENLARGED IN **YYYY**. THIS MAY INDICATE AN EXPANSION OF THE WATER RIGHT.

R91 ACCORDING TO INFORMATION IN THE CLAIM FILE, A PIT WAS CONSTRUCTED WITHIN THE RESERVOIR IN **YYYY** WHICH DOES NOT CORRESPOND WITH THE CLAIMED PRIORITY DATE. THIS MAY INDICATE AN EXPANSION OF THE WATER RIGHT.

R95 THE RESERVOIR IS NOT SHOWN IN THE **MONTANA** COUNTY WATER RESOURCES SURVEY (**YYYY**). IT APPEARS TO HAVE BEEN BUILT AFTER THE ORIGINAL APPROPRIATION AND MAY INDICATE AN EXPANSION OF THE WATER RIGHT.

Reservoir Unconfirmed: If a reservoir cannot be confirmed from data sources or claimant contact, add the following reservoir issue remark to the examination worksheet. [Rule 10 \(e\)\(8\)\(i\) W.R.C.E.R.](#)

Example: R100 EXISTENCE OF THE CLAIMED RESERVOIR CANNOT BE CONFIRMED WITH AVAILABLE DATA.

Questionable Storage Right: A reservoir may be claimed, but it is questionable whether a storage right exists. For example, a reservoir dam is located on Party A's property and water backs up onto Party B's property. Both parties have submitted claims for the same reservoir. In this situation, Party B may or may not have a storage right to the reservoir. Contact the claimant. If Party B has no easement or financial involvement in the reservoir, Party B may amend the claim to remove the reservoir (assuming a stock

claim, the POD would equal POU and means of diversion would be “Livestock Direct from Source”). An alternative is to leave the reservoir as claimed and add the following reservoir issue remark to the examination worksheet.

Example: R105 A RESERVOIR STORAGE RIGHT ON THIS CLAIM MAY BE QUESTIONABLE. THE DAM IS LOCATED ON ANOTHER INDIVIDUAL'S PROPERTY WHICH IS COVERED BY CLAIM NO. **000000-00**.

Shared Reservoir: Occasionally, it may be determined that the claimed reservoir has, a federal reserved water right, exempt right filed, or a post-June 30, 1973 water right associated with it. This association can be confirmed by information obtained through:

- documentation in the claim file
- claimant contact
- data source research
- notification from New Appropriations that a permit was issued to increase the existing capacity of a claimed reservoir.

See “Claim Examination: Purpose: Associated Rights” ([Section VI.C.5](#)) for discussion on associated rights.

Document this association by adding the water right numbers to be included in the associated relationship in the ‘Formatted Remarks’ section of the examination worksheet. These water right numbers will be entered into the Related Rights tab in the database. The following remark will automatically be generated on the review abstract and the decree abstract of all claims involved.

Example: A35 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY SHARE THE SAME **POINT OF DIVERSION/RESERVOIR/POTHOLE LAKE. 000000-00, 000000-00, 000000-00, 000000-00**.

A claimed reservoir may have, a federal reserved water right, exempt rights, or post-1973 new appropriations (permits or certificates) associated with it. An associated flag ([Figure VI-2](#)) should be completed when the association is between claims and, federal reserved water rights, exempt rights or post-1973 water right permits involving reservoirs.

Put a copy of the flag (clearly marked "COPY") in the claim file. Send the flag to Helena where the flag will be scanned.

I. TYPE OF RIGHT
[Rule 13 \(b\) W.R.C.E.R.](#)

The type of historical right upon which a claim is based will be identified on the claim form, examination worksheet and decree abstract. There are five types of rights which will be encountered and examined.

- Decreed rights
- Filed rights
- Use rights
- Secretarial Right
- Reserved rights

1. Type of Right Definitions: For the purpose of claim examination, the types of rights are defined as follows:

Decreed Right: A decreed right is a water right determined in a judicial decree prior to the commencement of the Water Court's adjudication. [Rule 2 \(a\)\(18\), W.R.C.E.R.](#)

A petition on a decreed stream as described in §89-829, RCM (1947) (Repealed) is considered a decreed right if the petition has been accepted by the district court. (RCM is the Revised Code of Montana.) A copy of the court judgment must accompany the claim. A copy of the relevant portion certified by the clerk of court is ideal; verify transcriptions with the original document when in doubt.

Filed Right: A filed right is a water right filed and recorded in the office of the county clerk and recorder as provided by statute prior to July 1, 1973. The following documents are those generally encountered which constitute a filed right. [Rule 2 \(a\)\(25\), W.R.C.E.R.](#)

- Notice of Appropriation. Various formats of this form were filed with the county clerk and recorder. See Exhibit VI-9.
- GW Form. See Exhibits VI-10 through VI-13. A GW form used as a filed notice of appropriation for surface water will be accepted if the document was filed at the courthouse.
- Ersatz Notice of Appropriation. Other types of documents filed at the courthouse will be accepted if the source and priority date are stated. If a document is questionable, consult the bureau chief.

Use Right: A use right is an existing water right perfected by appropriating and putting water to beneficial use without written notice, filing, or decree. [Rule 2 \(a\)\(71\), W.R.C.E.R.](#)

Documents supporting a use right include affidavits by the claimant or others, well logs, power records, water use records and agreements, etc. Furthermore, a signed and notarized statement of claim is considered a self-serving affidavit.

Secretarial Right. This type of right will be treated as a use right. A secretarial right is a water right stemming from a homestead entry patent issued by the U.S. Government under the Act of Congress of May 20, 1862.

Reserved Water Right: A reserved water right is a right to use water that is expressly or impliedly reserved by an act of Congress, a treaty, or an executive order. [Rule 2 \(a\)\(58\), W.R.C.E.R.](#)

In all cases, review the Water Court order to determine the extent of examination for reserved rights in a specific basin.

Review (do not examine unless directed to do so by court order) reserved right claims to confirm that it is a reserved right. If there is doubt about whether the underlying right is a reserved right, contact the claimant (see Exhibit VI-14) to obtain confirmation that the type of right being claimed is in fact a reserved right. If claimant contact is inconclusive, send a copy of the claim to the Water Court with a request that they assist in determining whether the claim is a reserved right. Use the format of Figure XI-1 with the following title: "Request for Assistance".

Change the water right type of all claims for reserved rights from "Statement of Claim" to "Reserved Claim" on the examination worksheet. At this time, the Supreme Court rules do not address how to examine reserved rights ([Rule 13 \(b\) 2 W.R.C.E.R.](#)). It will be determined under direction of the Water Court what action will be taken on these claims.

The Water Court may order the DNRC to add specific remarks regarding the treatment of reserved rights. For examples of such remarks, see General Information or Type of Right remarks in Section V (M8, M9, M30, M80, P988, P989, etc.).

Apply the appropriate P724 or P725 issue remark to BLM reserved rights.

Exception 1: If a claimant has a statement of claim on the same development as a reserved claim (i.e., reserved right for wildlife), the legal land description on the reserved claim should be examined.

Relate the rights through an associated relationship. Write the water right numbers to be included in the associated relationship in the 'Formatted Remarks' section of the examination worksheet. These numbers will be

entered into the Related Rights tab in the database. The following remark will automatically be generated on the review abstract and the decree abstract of all claims involved.

Example: THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY SHARE THE SAME **RESERVOIR**.
000000-00, 000000-00.

Exception 2: Examine BLM reserved rights pursuant to the September 23, 2009 Water Court Order on DNRC Examination of BLM reserved Water Right Claims - Statewide - 2009.

- Add a P720 issue remark to all BLM claims claiming a reserved right under Public Water Reserve No. 107.

Example: P720 THIS CLAIM IS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

- If a BLM reserved right that claims a reserved right under Public Water Reserve No. 107 is transferred to a private entity the following issue remark should be added to the abstract.

Example: P730 THIS CLAIM WAS ORIGINALLY FILED AS A RESERVED RIGHT BY THE UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF LAND MANAGEMENT, AND WAS BASED ON PUBLIC WATER RESERVE NO. 107 CREATED BY EXECUTIVE ORDER DATED APRIL 17, 1926. THIS CLAIM WAS SUBSEQUENTLY TRANSFERRED TO A PRIVATE ENTITY. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A FEDERAL RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION, OR WHETHER THIS CLAIM MAY BE TRANSFERRED TO A PRIVATE ENTITY AND RETAIN THE ELEMENTS ASSOCIATED WITH A RESERVED RIGHT, OR WHETHER THE ELEMENTS OF THIS CLAIM MUST BE MODIFIED TO REFLECT ITS HISTORICAL BENEFICIAL USE.

- If a BLM claim asserts a reserved water right with a priority date other than April 17, 1926, the following issue remark should be added to the abstract.

Example: P734 THIS CLAIM WAS FILED AS A RESERVED WATER RIGHT. IT IS NOT CLEAR IF THIS CLAIMED RIGHT IS A RESERVED WATER RIGHT, BUT IF IT IS, IT IS NOT CLEAR WHETHER THE PURPOSE CLAIMED WAS CONTEMPLATED BY SUCH A RESERVATION, OR IF THE AMOUNT OF WATER CLAIMED IS THE AMOUNT NECESSARY TO FULFILL THE PURPOSE OF THE RESERVATION.

2. Examining Type of Right: Check the documentation submitted with the claim against the above definitions to determine whether the historical right is a decreed, filed, use, or reserved right. Compare the type of right on the claim form to the submitted documentation based on the criteria in Section VI.1.1 above.

Sources of information for reviewing type of right include:

- Scanned GW forms
- Old decrees
- WRS and field notes
- county clerk of court or clerk and recorder water right filings

a. Changing Claimed Type of Right: The claimed type of right will not be changed during the examination unless:

- amended by the claimant; [Rule 13 \(f\) 1 W.R.C.E.R.](#)
- modified by rule (clarified) by the department without claimant contact if the claimed intent is clear or with claimant contact if the claimed intent is unclear. [Rules 13 \(f\)\(2\) and 33\(b\), \(c\), W.R.C.E.R.](#)

The following are provided as guidance when the type of right may be modified by rule without claimant contact.

- If the type of right is not indicated on the claim form but is clear from the documentation, as defined above, the type of right may be added to the examination worksheet without obtaining an amendment.
- **If the document type and claim form disagree but it is clear that the document substantiates the claimed right (i.e., source, flow rate and priority date agree), the type of right may be changed without obtaining an amendment.** This modification would only be made from use to filed, use to decreed, or filed to decreed. The reverse relationship (filed to use, decreed to use, or decreed to filed) would imply that

documentation may be missing. In which case, contact the claimant (see 'Claimant Contact' below).

Make any changes to the type of right on the examination worksheet. If the change will result in a difference between the claim form, amendment or addendum, and the decree abstract, denote the change by placing an asterisk on the worksheet in the brackets to the left of the priority date element. The basis of the change must be documented in the claim file.

b. Claimant Contact: Whenever the claimed type of right is unclear, has apparent discrepancies, or appears inaccurate after the initial review, the claimant should be contacted unless otherwise specified in this subchapter. The contact can have several outcomes: [Rules 13 \(b\)\(2\) and 44, W.R.C.E.R.](#) and Section IV. F.

- Information discussed confirms which type of right in the claim file is correct. Document the information supporting the claimed type of right on the examination worksheet, in a memorandum or on an Interview Report Form. A copy should be sent to the claimant. If possible, request documentation from the claimant to support the claimed type of right (except use rights).
- A type of right entirely different from that in the claim file is identified. The claimed type of right may be changed by an amendment ([Rule 13 \(f\) 1 W.R.C.E.R.](#)) Obtain documentation to support the amended type of right.
- If the issue is unresolved, add a priority date (PR) issue remark to the department's examination worksheet. See 'Type of Right Issues.'

3. Type of Right Issues: Any unresolved type of right issues should be noted on the department's examination worksheet using a priority date remark. Some potential issues and remarks follow. [Rule 13 \(g\)\(5\)\(i\), \(ii\), W.R.C.E.R.](#)

a. No Filed or Decreed Right Documentation: If documentation of a filed or decreed right is not in the claim file and cannot be obtained from the claimant or office records, add a priority date issue remark to the department's examination worksheet.

Example: P355 THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WERE NOT SUBMITTED WITH THIS CLAIM.

P988 NO TYPE OF HISTORICAL RIGHT IS CLAIMED. IT IS NOT CLEAR WHETHER THIS CLAIM IS FOR A RESERVED WATER RIGHT OR FOR A STATE LAW BASED WATER RIGHT.

P989 NO REVIEW OR DETERMINATION OF THE CLAIMED TYPE OF HISTORICAL RIGHT HAS BEEN MADE. ADDITIONAL EVIDENCE MAY BE REQUIRED BEFORE THIS CLAIM CAN BE DECREED.

b. Documentation Conflicts With Other Data: If the documentation conflicts with the claim form or outside data sources (e.g., WRS) and cannot be corrected through claimant contact, add a type of right issue remark to the department's examination worksheet.

Examples: P360 THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A **FILED APPROPRIATION** RIGHT.

P365 THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. THE **MONTANA** COUNTY WATER RESOURCES SURVEY (1960) IDENTIFIES THIS RIGHT AS A **FILED APPROPRIATION**.

Note: Be aware there may be discrepancies within an actual historic decree. Include the appropriate information in a free text issue remark. This is a legal issue for the Water Court's consideration.

c. Filed or Use Rights on a Decreed Stream: Two situations may be encountered involving filed or use rights on decreed streams that present issues. **In either situation, the claimed right must be on the source or a tributary that has an appropriation included in the court decree.** In other words, the location of the appropriation dictates the sources and tributaries included in the court decree. If the majority of the appropriations are on Main River and the court includes an appropriation on Little Stream in the decree, and the court identifies it as a tributary on Main River, then it is a tributary included in the decree. If there are no appropriations included in the decree on South Main River, it is not considered a tributary for purposes of examining the specific issues raised in this section. The court decree identifies the sources and tributaries the claims examiner should be examining for these issues. This is not an outside determination to be made on any other criteria – for example, the claims examiner should **not** be determining hydrologic connectivity to determine what sources should be examined for these issues. The court already adjudicated the issue regarding what sources and tributaries are to be included when it determined what appropriations were to be included in the decree. For further reading on this issue, see *Leopold v. Lewis*, 172 Mont. 280, 563 P.2d 538, (specifically the discussion regarding whether Four Mile Creek is tributary of the North Fork of Smith River.) Claimant contact is not necessary prior to adding the issue remark. *Also*, sections 89-829 through 88-842, RCM (1947) lay out the framework for the historical law behind decreed rights. See especially sections 89-832, 89-835, and 89-839, RCM (1947). Be aware that decrees between individual parties may or may not include the entire source.

- Situation No. 1: When a filed or use right has a priority date preceding the date the decree was issued on the source, add the following priority date issue remark to the department's examination worksheet.

Example: P370 THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A **FILED APPROPRIATION/USE RIGHT ON DOE CREEK** WITH A PRIORITY DATE **PREDATING** CASE NO. **0000**, **MONTANA** COUNTY.

A claim may receive more than one such issue remark if there is more than one court decree for the source. Some sources have a line of court decrees issued for them. This is important information for the Water Court as it helps the Water Court make the legal determination of whether a claim for a filed or use right is already included in a court decree and the determination of whether an over appropriation of the source has occurred.

- Situation No. 2: **In 1921, the legislature required water users on adjudicated streams to petition the district court for new appropriations.** When a filed or use right has a priority date later than 1921 and postdates the issuance of the decree on the source, add the following priority date issue remark to the department's examination worksheet. When there is a decree between 2 or 3 people, the remark can only be added to the 2 or 3 people in the decree. This will be applied on a case by case basis.

Example: P370 THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A **FILED APPROPRIATION/USE RIGHT ON DOE CREEK** WITH A PRIORITY DATE **POSTDATING** CASE NO. **0000**, **MONTANA** COUNTY.

A claim may receive more than one such issue remark if there is more than one court decree for the source. Some sources have a line of court decrees issued for them. This is important information for the Water Court as it helps the Water Court make the legal determination of whether a claim for a filed or use right is already included in a court decree and the determination of whether an over appropriation of the source has occurred.

There are circumstances when Situation No. 1 and No. 2 should not be identified as an issue:

- When the district court decree *specifically* excludes the use, owner, source, or appropriation from the case.
- Exempt domestic and stock claims.

For state project claims based on a private filed or use right acquired by the state and combined with water rights established pursuant to 89-101 through 89-141, R. C. M. (1947) (Repealed), add the following free text priority date issue remark to the department's examination worksheet.

Example: PRIS THE PRIORITY DATE MAY BE QUESTIONABLE. THIS CLAIM IS FOR A **FILED APPROPRIATION/USE RIGHT** ON **DOE CREEK** ACQUIRED BY THE STATE WITH A PRIORITY DATE **PREDATING/POSTDATING** CASE NO. **0000**, **MONTANA** COUNTY.

d. No Type of Historical Right Claimed or Multiple Types claimed: If the type of historical right cannot be determined through examination procedures listed above or claimant contact, add the appropriate priority date issue remark to the department's examination worksheet.

Examples: P361 THE TYPE OF HISTORICAL RIGHT MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THE CLAIM INDICATES A **USE** AND A **RESERVED** RIGHT.

P372 NO TYPE OF HISTORICAL RIGHT WAS CLAIMED. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT WAS NOT SUBMITTED WITH THIS CLAIM.

J. PRIORITY DATE
[Rule 13, W.R.C.E.R.](#)

Priority date is the date of appropriation associated with a beneficial use of water. This determines ranking among water rights usually expressed by month, day, and year. The claimant was to support the priority date on a claim form by submitting the pertinent portion of a decree or other evidence [[§85-2-224 \(2\), MCA](#)].

1. Priority Date Review Criteria: This section describes in general terms the procedures for examining the claimed priority date. A single priority date will be identified from the documentation for each claim. The following are the criteria for examining the claimed priority date. [Rule 13 \(a\),\(b\), W.R.C.E.R.](#)

Decreed Rights: Examine the specific date identified in the documentation. The statement of claim, submitted documentation, office copy of district court decrees, and office decree index should all agree.

Filed Rights: For consistency, the earliest appropriation date on the filed document (generally the date of posting notice) is the priority date. The statement of claim and documentation should agree.

- 1962-1973 groundwater appropriation (GW) forms are an exception to this. **If properly filed (with the County Clerk and Recorder), the priority date of a form GW 1, 2, or 3 is the date of filing at the county courthouse.** (Note: This applies to 1962-1973 appropriations only. Earlier appropriations were voluntarily filed, often on any one of the four GW forms; see below.) For information on GW forms, see "Priority Date: Claims Involving '62-'73 Groundwater (GW) Forms" ([Section VI.J.4](#)).
- The priority date of a GW4 is the date of first use identified in Item 3 on the actual GW4 form (See Exhibit VI-13). **A GW 1, 2, or 3 used as a GW4 is acceptable.** See "Priority Date: Claims Involving '62-'73 Groundwater (GW) Forms" ([Section VI.J.4](#)).

Use Rights: The statement of claim is a self-serving affidavit for a use right. As a result, the documentation and statement of claim need not be in absolute agreement, but they should not contradict each other. For example, a claim states a priority date of May 15, 1934. An affidavit stating "water used prior to 1934" or "the system was being used in the 1930s" would not be contradictory.

2. Examining Priority Dates: Examine the claimed priority date according to the guidelines in this section for conformity with the submitted documentation and facts available to the department and to identify potential issues. In certain cases, the claimed priority date may be standardized. [Rules 13 \(c\),\(d\) and 44, W.R.C.E.R.](#)

Compare the date on the claim form to the date on the submitted documentation based on the criteria in Section VI.J.1 above. The priority date should also be compared to other data sources, such as:

- copies of district court decrees
- WRS and field notes
- decree indexes

When necessary, the claimant will be contacted to identify the claimed priority date.

Time of Day: When claimed, the time of day was entered into the database and will appear as part of the priority date on examination worksheets generated prior to December 2001. A claimed time of day should not be examined. The time of day will not appear on worksheets generated after December 2001.

Enforceable Priority Date: The Enforceable Priority Date will appear on the examination worksheet next to the priority date. An enforceable priority date is a priority date of June 30, 1973 or later that is administratively assigned to “B” type late claims. (For all timely filed claims, the enforceable priority date in the database is the same as the priority date. If the priority date is amended, make sure to also change the enforceable priority date to match.) Refer to “Special Provisions: Late Claims” (Section XI.C).

Check that the late designation has been identified as “B” and that the enforceable priority date is June 30, 1973 or later.

a. Changing Claimed Priority Dates: The claimed priority date will not be changed during the examination unless:

- amended by the claimant; [Rule 13\(f\)\(1\), W.R.C.E.R.](#)
- modified by rule (clarified) by the department without claimant contact if the claimed intent is clear or with claimant contact if the claimed intent is unclear. [Rule 13 \(f\)\(2\) and 33 \(b\)\(1\), \(8\) 33\(c\), W.R.C.E.R.](#) ;
- modified by rule to standardized for completeness/comply with the Ground Water Code (see below). [Rule 13 \(f\)\(3\)-\(5\), W.R.C.E.R.](#)

An amendment is normally required to change the priority date. The following are provided as guidance when the priority date may be modified by rule versus amended.

- If the priority date is incomplete or not on the claim form but it is clear from the documentation, based on the priority date review criteria, the priority date may be added without obtaining an amendment from the claimant. [Rule 2 \(a\)\(58\), W.R.C.E.R.](#)
- If the date on the claim form matches a date on the documentation, the claimed date may be changed without an amendment only to a **more**

senior priority date as identified by the examination criteria. This includes situations such as:

- The filing date on a GW4 was claimed.
- A date other than the earliest date on a surface water filing was claimed.
- The date a decree was issued was claimed.
- If the priority date does not match the filing date of the GW2 or GW3, the priority date may be changed to the date the groundwater notice was filed (for 1962-1973 appropriations). See “Claims Involving ’62-’73 Groundwater (GW) Forms: GW2 Or GW3 Filed Only” below. [Rule 13\(f\)\(4\), W.R.C.E.R.](#)
- When there is no indication that a GW2 or GW3 was filed, the claimed priority date may be changed to the date the statement of claim form was received. The type of historical right should be changed to **filed** if it is not already identified as a filed right, and the following information remark should be added under the priority date element: See “Claims Involving ’62-’73 Groundwater (GW) Forms: No GW Form” below ([Section VI.J.4.c](#)). [Rule 13\(f\)\(5\), W.R.C.E.R.](#)

Examples: P354 THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED PURSUANT TO SECTION [85-2-306\(4\) MCA](#).

P353 THE PRIORITY DATE OF THIS WATER RIGHT HAS BEEN CHANGED TO THE FILING DATE OF THE STATEMENT OF CLAIM. THE PRIORITY DATE MAY BE CONTESTED BY PROPER OBJECTION.

Make changes to priority dates directly on the examination worksheet. If the change will result in a difference between the decree abstract and the claim form, amendment or addendum, denote the change by placing an asterisk on the worksheet in the brackets to the left of the priority date element. The basis of the change must be documented in the claim file.

b. Claimant Contact: When the claimed priority date is unclear, has apparent discrepancies, or appears inaccurate after the initial review, the claimant should be contacted unless otherwise specified in this subchapter. The contact can have several outcomes: [Rule 13\(f\)\(5\), W.R.C.E.R.](#) and Section IV. F.

- Information discussed confirms which priority date in the claim file is correct. Document the information supporting the claimed priority date, or request documentation to support the claimed priority date, as necessary.

- A priority date or documentation entirely different from the claim file is identified and the claimant wishes to replace the claimed priority date. An amendment must be submitted to change the claimed priority date. Obtain documentation of the amended priority date, as necessary.
- If the issue is unresolved, add a priority date (PR) issue remark to the department's examination worksheet.

c. Standardizing Priority Dates: Standardize the priority date under the following criteria. Make the priority date standardization directly on the worksheet.

- No day date: If a day date is not claimed and the submitted documentation does not specify a day date, the last day of the month will be used.
- No month date: If a month date is not claimed and the submitted documentation does not specify a month date, the last month of the year will be used.
- Season: If a season of the year is claimed and the submitted documentation does not specify a month and day date, the last day of the particular season will be used ([Rule 13 \(f\)\(3\)\(i\)-\(iv\) W.R.C.E.R.](#)).

Fall.December 19
 Winter.March 19
 Spring.June 19
 Summer.September 19

- General Year: If a general year is claimed, such as “prior to 1950” and the submitted documentation does not identify a specific year, the end of the period will be used.

Prior to 1950December 31, 1949
 Mid 1930's.December 31, 1935
 1940's.December 31, 1949
 Before 1956December 31, 1955
 In the 1920'sDecember 31, 1929

If contacting the claimant of a filed or use right for other reasons, pursue a specific date for month, day, or season prior to standardization. A specific priority date supplied by the claimant may be added to the worksheet upon instructions from the claimant of the claimant may specify the priority date by amendment. [Rules 13\(f\)\(1\), \(2\) and 33\(b\), \(c\) W.R.C.E.R.](#)

Note: The database requires a valid MM/DD/YYYY to be entered. In situations where claimed priority dates are not to be examined and a full date was not claimed,

leave the priority date field blank. Add a free text priority date information remark: [Rule 13\(g\)\(3\), W.R.C.E.R.](#)

Example: PR THE PRIORITY DATE WAS CLAIMED AS YYYY. THE PRIORITY DATE HAS NOT BEEN EXAMINED PURSUANT TO COURT ORDER DATED MM/DD/YYYY.

3. Priority Date Issues: This section contains guidelines on the handling of various issues encountered in examining priority dates. This series of specific guidelines should be used as a systematic check of the priority date. By comparing the claimed priority date and documentation to the applicable subsections below (a through l) any discrepancies are likely to be identified. The specific guideline sections are: [Rules 13\(d\) and 13\(g\)\(5\), W.R.C.E.R.](#)

- a. general priority date issues
- b. decreed priority date issues
- c. filed appropriation priority date issues
- d. claimed source vs. documented source
- e. claimed POU vs. documented POU
- f. multiple priority dates claimed
- g. priority date post-June 30, 1973
- h. duplication
- i. redundant filings
- j. priority date precedes earliest acceptable date
- k. priority date precedes Indian cession
- l. priority date of a sprinkler system predates 1955

Whenever the examination indicates that a claimed priority date may involve discrepancies or issues, follow the procedures under the appropriate category. If the issue is unresolved, add a priority date issue remark to the department's examination worksheet.

a. General Priority Date Issues: Similar procedures will be used to address certain problems encountered on all types of rights. [Rule 13\(d\), W.R.C.E.R.](#)

- No priority date was claimed. [Rule 13\(d\)\(2\), W.R.C.E.R.](#)
- No priority date documentation was submitted to support a decreed or filed right. [Rule 13\(d\)\(1\), W.R.C.E.R.](#)
- The priority dates on the claim form and the documentation conflict. [Rule 13\(d\)\(4\), \(6\), W.R.C.E.R.](#)
- The priority date in the claim file conflicts with outside data sources, e.g., WRS.

In these situations, contact the claimant to resolve the discrepancy, and if necessary, request documentation specifying a priority date. Documents that may be submitted by the claimant to confirm the type of historical right and priority date are:

- Decreed right: pertinent portion of decree.
- Filed right: Notice of Appropriation or other filed document.
- Use right: a signed letter, affidavit, homestead entry patent, or amendment. A notarized letter or affidavit is preferred, but not required.

If the priority date is not confirmed by claimant contact or no documentation is submitted to support a priority date (the exception being use rights), add a priority date (PR) issue remark to the examination worksheet identifying the particular issue. [Rule 13\(g\)\(5\), W.R.C.E.R.](#)

Examples: P355 THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE MAY BE QUESTIONABLE. DOCUMENTATION TO SUPPORT THE TYPE OF HISTORICAL RIGHT AND PRIORITY DATE WERE NOT SUBMITTED WITH THIS CLAIM.

P380 NO PRIORITY DATE WAS CLAIMED.

P386 THE PRIORITY DATE MAY BE QUESTIONABLE. IT IS UNCLEAR WHETHER THE CLAIMED PRIORITY DATE IS **1882** OR **1982**.

P390 THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED **NOTICE OF APPROPRIATION** IS **JUNE 10, 1921**.

P395 THE PRIORITY DATE MAY BE QUESTIONABLE. THE **MONTANA** COUNTY WATER RESOURCES SURVEY (**1960**) IDENTIFIES THE PRIORITY DATE AS **MAY 13, 1913**.

P400 THE PRIORITY DATE MAY BE QUESTIONABLE. THE AFFIDAVIT STATES THE **WELL** WAS COMPLETED IN **THE EARLY 1930'S**.

P405 THE PRIORITY DATE MAY BE QUESTIONABLE. ACCORDING TO INFORMATION IN THE CLAIM FILE, IT APPEARS WATER FROM THE SOURCE WAS FIRST USED IN **1980**.

b. Decreed Priority Date Issues: The county, case number, priority date, source, original appropriator, miner's inches and flow description should all be recorded in the Historic Right tab of the database (do not fill out filing date on decreed rights unless necessary to differentiate between identical case numbers). This

will help track all the decreed rights. The following guidelines are provided to address certain situations encountered on decreed rights.

Where a prior decreed right has been exceeded, add a decree exceeded (DE) issue remark to the department's examination worksheet. See "Irrigation: Flow Rate: Recording Documentation: Decreed Rights Exceeded" (Section VII.B.5.b.). [Rules 14\(e\), 19\(e\), 24\(e\), and 29\(h\), W.R.C.E.R.](#)

Example: D5 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE **150** MINER'S INCHES DECREED IN CASE NO. **0000**, **MONTANA** COUNTY. **000000-00, 000000-00, 000000-00**.

Right In Decree Not Identified: When a date in the decree was claimed but the individual right being claimed has not or cannot be identified, contact the claimant. If contact is inconclusive, retain the claimed priority date and add a priority date issue remark.

Examples: P371 THIS CLAIM IS FOR A RIGHT ON **DOE CREEK**, DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY. AS THIS CLAIM HAS NO PRIORITY DATE AND THE TYPE OF HISTORICAL RIGHT IS QUESTIONABLE, CLAIMED WATER RIGHTS BASED ON THIS PRIOR DECREE MAY BE ADVERSELY AFFECTED.

P415 THE BASIS OF THIS CLAIMED WATER RIGHT WAS NOT FOUND IN THE DECREE FROM CASE NO. **0000**, **MONTANA** COUNTY. THE CLAIMED PRIORITY DATE CANNOT BE CONFIRMED.

PRIS THE DATE OF ISSUANCE OF THE DECREE, CASE NO. 0000, MONTANA COUNTY, WAS CLAIMED. THE INDIVIDUAL RIGHT BEING CLAIMED CANNOT BE IDENTIFIED.

Documentation Contains No Priority Dates: When the pertinent portion of the decree submitted as documentation contains no priority dates, contact the claimant. If it is determined that the decree contains no priority dates, add a priority date issue remark to the examination worksheet. [Rule 13\(d\)\(3\), W.R.C.E.R.](#)

Example: P430 CASE NO. **0000**, **MONTANA** COUNTY, DOES NOT SPECIFY PRIORITY DATES. A PRIORITY DATE **HAS/HAS NOT** BEEN CLAIMED.

Decree Assigns Ranking: When the decree assigns the right a priority date and also assigns a ranking, add a priority date information remark to identify the ranking as a feature of the right. [Rule 13\(g\)\(3\), W.R.C.E.R.](#)

Example: P350 CASE NO. **0000**, **MONTANA** COUNTY, DECREES A RIGHT OF **38TH** USE.

P385 A SPECIFIC PRIORITY DATE HAS NOT BEEN IDENTIFIED. PRIORITY DATE WAS CLAIMED AS **RANKING THIRD ON DOE CREEK, IN CASE 0000, MONTANA COUNTY.**

When the decree does not assign the right a priority date but only assigns a ranking, add two priority date remarks, one denoting ranking (information remark P350 above) and the other identifying the lack of priority date (issue remark P430 below). [Rules 13\(g\)\(3\), and 13\(g\)\(5\), W.R.C.E.R.](#)

Example: P430 CASE NO. **0000**, **MONTANA** COUNTY, DOES NOT SPECIFY PRIORITY DATES. A PRIORITY DATE **HAS/HAS NOT** BEEN CLAIMED.

No Specific Day or Month Dates: If the decree does not specify day or month dates and no specific date has been claimed, standardize the priority date. If the decree does not specify day or month dates, but specific dates have been claimed, accept the claimed priority date.

If the claims against a particular historical right have priority dates which vary or are the same, add a priority date issue remark to the department's examination worksheet for the claims involved.

Examples: P435 THE PRIORITY DATE MAY BE QUESTIONABLE. CASE NO. **0000**, **MONTANA** COUNTY, DOES NOT SPECIFY A **DAY/MONTH/DAY AND MONTH**. THE CLAIMS LISTED FOLLOWING THIS STATEMENT HAVE CLAIMED VARYING PRIORITY DATES. **000000-00, 000000-00.**

P436 THE PRIORITY DATE MAY BE QUESTIONABLE. CASE NO. **0000**, **MONTANA** COUNTY, DOES NOT SPECIFY A **MONTH AND DAY**. THE CLAIMS LISTED FOLLOWING THIS STATEMENT HAVE CLAIMED THE SAME PRIORITY DATE. **000000-00, 000000-00.**

c. Filed Appropriation Priority Date Issues: If the priority date on the claim form does not match any date on the filed appropriation document, contact the claimant. If the claimed date is confirmed to be earlier or later than all dates on the notice, a use right may be involved. If claimant contact is inconclusive, add a priority date (PR) issue remark. The exception is 1962-1973 groundwater filings [GW forms].

See "Claims Involving 1962-1973 Groundwater (GW) Forms," [Section VI.J.4](#), for specific procedures relating to GW forms. [Rules 13\(d\), 13\(g\)\(5\), and 44 W.R.C.E.R.](#)

Examples: P445 THE CLAIMED PRIORITY DATE **PREDATES/POSTDATES** THE FILED NOTICE OF APPROPRIATION. THE CLAIMED PRIORITY DATE AND TYPE OF HISTORICAL RIGHT CANNOT BE SUBSTANTIATED.

P450 THE CLAIMED PRIORITY DATE DIFFERS FROM THE EARLIEST DATE ON THE FILED NOTICE. THE CLAIMED PRIORITY DATE CANNOT BE SUBSTANTIATED.

d. Claimed Source vs. Documented Source: Compare the source name (if any) in the documentation to the standardized source name. Claimed and documented source names should be identifying the same source of water. If there is an apparent discrepancy, contact the claimant. If contact is inconclusive, add a priority date issue remark to the department's examination worksheet. [Rules 13\(d\)\(7\), 13\(g\)\(5\) and 44, W.R.C.E.R.](#)

Examples: P455 THE PRIORITY DATE MAY BE QUESTIONABLE. THE **SOURCE** DESCRIBED ON THE FILED NOTICE OF APPROPRIATION IS INCONSISTENT WITH THE CLAIMED **SOURCE**.

P460 THE PRIORITY DATE MAY BE QUESTIONABLE. THE **SOURCE** DESCRIBED IN CASE NO. **0000**, **MONTANA** COUNTY, IS INCONSISTENT WITH THE CLAIMED **SOURCE**.

e. Claimed POU vs. Documented POU: Compare the POU land description in the documentation (if any) to the claimed POU land description. The claimed and documented POUs should be within the same section or at least the same general locality. Before July 1, 1973, the POU could generally be changed without formal notice. If there is an apparent discrepancy, contact the claimant. If contact is inconclusive, add a priority date (PR) issue remark to the examination worksheet. [Rules 13\(d\)\(7\), 13\(g\)\(5\) and 44, W.R.C.E.R.](#)

Examples: P455 THE PRIORITY DATE MAY BE QUESTIONABLE. THE **PLACE OF USE** DESCRIBED ON THE FILED NOTICE OF APPROPRIATION IS INCONSISTENT WITH THE CLAIMED **PLACE OF USE**.

P460 THE PRIORITY DATE MAY BE QUESTIONABLE. THE **PLACE OF USE** DESCRIBED IN CASE NO. **0000**, **MONTANA** COUNTY, IS INCONSISTENT WITH THE CLAIMED **PLACE OF USE**.

P461 THE PRIORITY DATE MAY BE QUESTIONABLE. THE PLACE OF USE FOR THE **DOE** DECREED RIGHT, DESCRIBED AS **NENE** SEC **36** TWP **99N** RGE **99W** IN CASE NO. **0000**, **MONTANA**

COUNTY, IS INCONSISTENT WITH THE CLAIMED PLACE OF USE. [Man. Ref. VI.J.] (Note: Can be coded without ¼ section description.)

P462 THE PRIORITY DATE MAY BE QUESTIONABLE. THE PLACE OF USE DESCRIBED FOR THIS RIGHT IN THE **MONTANA** COUNTY WATER RESOURCES SURVEY FIELD NOTES (YYYY) IS THE **NWNW** SEC **36** TWP **99N** RGE **99W**. THIS IS INCONSISTENT WITH THE CLAIMED PLACE OF USE. [Man. Ref. VI.J.] (Note: Can be coded without ¼ section description.)

P465 THIS CLAIM TO A **FILED APPROPRIATION/DECREEED** RIGHT MAY BE QUESTIONABLE. THE PLACE OF USE DESCRIBED IN THE **MONTANA** COUNTY WATER RESOURCES SURVEY (YYYY) IS INCONSISTENT WITH THE CLAIMED PLACE OF USE.

f. Multiple Priority Dates Claimed: Claims may be encountered where more than one priority date has been identified. For example, the claim form indicates a priority date, but the documentation attached clearly identifies two or more rights. Only one priority date will appear on the examination worksheet. [Rule 13\(e\), W.R.C.E.R.](#)

In this situation, contact the claimant to determine what is actually being claimed. When two or more priority dates are confirmed, send the claim to the Water Court requesting authorization for an implied claim (See "Special Provisions: Implied Claims", Section XI.B). The claim file should clearly document why more than one water right exists.

If the multiple priority date issue is unresolved, add a priority date issue remark to the department's examination worksheet.

Example: P480 THE PRIORITY DATE OF THIS CLAIM IS UNCLEAR AS MULTIPLE PRIORITY DATES HAVE BEEN CLAIMED. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

g. Priority Date Post-June 30, 1973: The claimant will be contacted when a post-June 30, 1973 priority date is claimed. If the post-June 30, 1973 priority date is confirmed as correct, several options are available to the claimant: [Rules 13\(d\)\(9\), and 44, W.R.C.E.R.](#)

- Claim is withdrawn, and either a new appropriations Form 600, 602 or 605 is completed. See "Special Provisions: Withdrawal of a Claim" (Section XI.E) for claim processing instructions.

It is advised the claimant work with the new appropriations staff prior to withdrawing the claim as their guidelines and standards differ from

adjudication. Provide a copy of the claim file to the new appropriations staff.

- If the source is 1) surface water, 2) groundwater over 35 gpm, or 3) groundwater over 10 acre-feet per year, a Form 600 (new appropriation application) must be submitted with the filing fee to begin the permitting process. The claimant should work with the new appropriations staff as additional criteria must be met before a permit can be issued. The priority date is the date the Form 600 is received.
- If the source is groundwater for 35 gpm or less not to exceed 10 acre-feet per year, a Form 602 with the filing fee is needed to issue a certificate. The priority date is the date the Form 602 is received.
- If the source is surface water for a stockwater pit or reservoir with a storage capacity less than 15 acre-feet and the reservoir is located on a non-perennial flowing stream, a Form 605 may be submitted with the filing fee. The claimant should work with the new appropriations staff as additional criteria must be met before a stockwater permit can be issued. The priority date is the date the Form 605 is received.
- Claim is retained. Add the following priority date issue remark to the department's examination worksheet.

Example: P470 THE CLAIMED PRIORITY DATE INDICATES AN APPROPRIATION OF WATER AFTER JUNE 30, 1973.

h. Duplication: Situations may be encountered where duplicate claims have been submitted for the same water right. Duplicate water rights will have all the same elements and documentation on more than one statement of claim. Two examples of duplication follow: [Rule 13\(d\)\(8\), W.R.C.E.R.](#)

- Example 1: Two statements of claim were filed for the **same historical use** of water: both rights are based on the very same evidence, i.e., a filed appropriation or a decree (but not necessarily the same point of diversion or place of use). Some decrees specifically nullify particular prior filings. In such circumstances, contact the claimant. If the claimant confirms the duplication, the claimant may request that the claim for the filed right be withdrawn ("Special Provisions: Withdrawal of a Claim" (Section XI.E)). If claimant contact is inconclusive, identify the duplicate water rights by noting the claim numbers in the "Formatted Remarks" section of the examination worksheet. Enter these water right numbers into the Related Rights tab in the database. The following issue remark will automatically be generated on the review abstract and the decree abstract of all claims

involved. Also add a priority date issue remark to the examination worksheet on both claims.

Examples: THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. **000000-00, 000000-00.**

P475 CASE NO. **0000**, **MONTANA** COUNTY, NULLIFIED THE FILED APPROPRIATION RIGHT SUBMITTED WITH THIS CLAIM.

- Example 2: When a single filed right, decreed right, or use right is used to document identical claims, contact the claimant. If the claimant confirms the duplication, the claimant may request that one of the claims be withdrawn ("Special Provisions: Withdrawal of a Claim" (Section XI.E)). If claimant contact is inconclusive, identify the duplicate water rights by noting the claim numbers in the "Formatted Remarks" section of the examination worksheet. Enter these water right numbers into the Related Rights tab in the database. The following issue remark will automatically be generated on the review abstract and the decree abstract of all claims involved.

Example: THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. **000000-00, 000000-00.**

REMEMBER: *Remove the duplicate relationships from the related rights tab if it is later determined there is no longer a duplicate situation.*

i. Redundant Filings: Redundant rights are claims in which many of the elements are the same on more than one statement of claim. Most often, the priority date is different. These are difficult to determine and often require claimant contact. Each claim should be based on its own distinct historical appropriation of water, i.e., each claim should have been perfected separately. Often, more than one 'notice of appropriation' is filed on a single historic appropriation.

- Example: Two statements of claim were filed for the **same historical use** of water: both rights based on filed appropriations, filed at different times. The first is filed by John Doe Sr. and the second is filed ten years later by his son. The second filing by the son is a redundant filing of John Doe Sr.'s water right as they are for the very same appropriation of water. Claimant contact is usually required to make this determination of redundancy.

Consider the following questions upon encountering what may be a "paper" right. Contact the claimant to understand the history of its use. For example, explore whether the junior rights in a series of multiple rights can be connected to an increase or change in water use. Was an additional ditch constructed? Extended? Was the capacity of the

diversion or conveyance system increased? Or, are there no changes in use or appropriations of additional water connected with the claims?

If claimant contact does not resolve the redundancy issue, add a redundant right issue remark to the examination worksheet for all the redundant claims involved.

- Examples: D93 CLAIM NOS. **000000-00** AND **000000-00** MAY BE REDUNDANT CLAIMS ON THE SAME HISTORIC APPROPRIATION OF WATER. IT APPEARS THAT ONLY ONE WATER RIGHT IS INVOLVED.
- D94 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE **REDUNDANT** FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. **000000-00, 000000-00, 000000-00.**
- D96 THIS CLAIM APPEARS TO BE FOR WATER PROVIDED BY THE **DOE IRRIGATIONS PROJECT** UNDER CLAIM NO. **000000-00.** THIS CLAIM APPEARS TO BE REDUNDANT.
- D100 CLAIM NOS. **000000-00 AND 000000-00** ARE REDUNDANT CLAIMS ON THE SAME HISTORIC APPROPRIATION OF WATER. CLAIM NO. **00000-00** REFLECTS THE POST 1973 RIGHT AS AUTHORIZED BY AUTHORIZATION TO CHANGE **000000-00.** IT APPEARS ONLY ONE WATER RIGHT, **000000-00,** IS INVOLVED.

j. Priority Date Precedes Earliest Acceptable Date: Each regional/unit office will establish the earliest acceptable priority date for the basin being examined. These dates should be based on the WRS or other historical records. Particular purposes may have different earliest acceptable dates within a basin. Note the earliest acceptable priority date in the general basin information file for each basin. As a general rule, any priority date before 1860 should be examined closely. [Rule 13\(d\)\(10\), W.R.C.E.R.](#)

If the claimed priority date precedes the earliest acceptable priority date as established, contact the claimant. If contact is inconclusive, add a priority date issue remark to the department's examination worksheet.

- Example: P479 THE CLAIMED PRIORITY DATE PRECEDES **1864**, THE EARLIEST GENERAL DATE OF SETTLEMENT WITHIN THE **DOE RIVER** DRAINAGE.

k. Priority Date of a Sprinkler System Pre-dates 1955: When a claim for a sprinkler system lists a priority date earlier than 1955 and does not indicate a prior flood system, check the WRS, aerial photographs, and other data sources for

evidence of a prior flood system. Also determine whether the POU could have been flood irrigated. If there is nothing supporting the likelihood or possibility of a prior flood system, contact the claimant. Discuss the apparent inconsistency between the type of system, priority date, and POU. If no prior flood irrigation existed, the claimant may wish to amend the priority date to the date of appropriation for the sprinkler system. If the issue is unresolved, add a priority date issue remark to the department's examination worksheet.

Example: P550 THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. IT APPEARS THE PRIORITY DATE SHOULD BE THE DATE THE **SPRINKLER SYSTEM** WAS FIRST PUT TO USE.

If the sprinkler system was installed after June 30, 1973, and there was no pre-July 1, 1973 use, see "Claim Examination: Priority Date Issues: Priority Date Post-June 1973" ([Section VI.J.3.g](#)).

4. Claims Involving 1962-1973 Groundwater (GW) Forms: This section provides guidelines for examining (claims with a source type of Groundwater) for compliance with the 1961 Groundwater Code (Sections 89-2911 through 89-2913, RCM). The code discusses four different types of groundwater forms which were required to be filed at the courthouse. Examples of the GW1, GW2, GW3, and GW4 forms are Exhibits VI-10 through VI-13. [Rule 13\(d\)\(5\), W.R.C.E.R.](#)

- GW1 Notice of Appropriation of Groundwater
- GW2 Notice of Completion of Groundwater Appropriation by Means of Well
- GW3 Notice of Completion of Groundwater Appropriation Without Well
- GW4 Declaration of Vested Groundwater Rights

The filing of these GW forms at the courthouse was allowed by laws in force prior to April 14, 1981 [[§85-2-306 \(4\), MCA](#)].

Compliance with the 1961 Groundwater Code is not required for appropriations from surface water, including "undeveloped" springs (source type = Surface). Such claims will be treated as surface water appropriations for purposes of examining the claimed priority date.

Most of the situations involving groundwater rights will fall into one of three categories: (a) GW Forms Filed, (b) GW Forms Not Filed, and (c) No GW Form.

Throughout this groundwater section, reference is made to 1962, 1973 and 1981. These years represent the following dates:

- **01/01/1962** - the effective date of the 1961 Groundwater Code
- **07/01/1973** - the effective date of the Montana Water Use Act
- **04/14/1981** - filing of GW forms in the courthouse was allowed prior to this date

a. GW Forms Filed: For groundwater claims based on a GW form filed at a courthouse between 1962 and 1981, examine the claimed priority date in accordance with subsections (1) through (5) below.

(1) GW1 Filed Only: Groundwater claims with a priority date between 1962 and 1973 that have a filed Notice of Appropriation (GW1) attached but no Notice of Completion (GW2 or GW3) will be pursued further.

- Check the scanned GWs or contact the claimant to determine if a GW2 or GW3 was also filed. If a filed GW2 or GW3 is found, confirm with the claimant that the filing matches the claim. If confirmed, add a copy of the GW2 or GW3 to the claim file and document the confirmation. Use the procedures in (2) below to examine the claimed priority date.
- Check new appropriations records for a possible new appropriation form that may have been filed but not attached to the claim. If such a document is found, confirm with the claimant that the filing pertains to the claim. If confirmed, add a copy of the new appropriation form to the claim file and document confirmation. See "DNRC Post-June 30, 1973 Documents Attached" ([Section VI.J.5](#)) for further processing instructions.

If a filed GW2, filed GW3, or new appropriations document is not found, the claimed priority date may be questionable. As the statement of claim is a notice of completion pursuant to [§85-2-306\(4\)](#), the issue is whether the claimant may relate his priority date back to the GW1. Add a priority date issue remark to the department's examination worksheet.

Example: P500 THE PRIORITY DATE MAY BE QUESTIONABLE. NO NOTICE OF COMPLETION WAS FILED. THE NOTICE OF APPROPRIATION OF GROUNDWATER (FORM GW1) WAS FILED ON **JUNE 10, 1965**.

If the claimed priority date is prior to 1962 and the attached GW1 states a date of first use prior to 1962, follow the procedures in (4) below to examine the claimed priority date.

(2) GW1 and GW2 (Or GW3) Both Filed: The priority date for groundwater claims between 1962 and 1973 that have both a Notice of Appropriation (GW1) and a Notice of Completion (GW2 or GW3) should be the date of the date of the commencement of the point of diversion, generally found on the GW1 Section 89-2913(d) and (e), RCM. When the claimed priority date does not match the filing date of the GW1, contact the claimant. If contact is inconclusive, add a priority date (PR) issue remark to the department's examination worksheet.

Example: P505 THE PRIORITY DATE MAY BE QUESTIONABLE. THE DATE OF FILING THE NOTICE OF APPROPRIATION OF GROUNDWATER (FORM GW1) IS **DECEMBER 6, 1963**.

P540 THE PRIORITY DATE MAY BE QUESTIONABLE. THE SUBMITTED **FORM GW2/GW3**, NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION, WAS NOT FILED AT THE COURTHOUSE AS REQUIRED BY THE 1961 GROUNDWATER CODE.

(3) GW2 or GW3 Filed Only: The priority date for groundwater claims between 1962 and 1973 that have a Notice of Completion (GW2 or GW3) filed prior to 1973 but no Notice of Appropriation (GW1) should be the filing date of the GW2 or GW3. If a discrepancy in priority date exists between the claim form and GW2 or GW3, change the priority date (and the enforceable priority date) to the date the GW2 or GW3 was filed. Add the following priority date information remark to the department's examination worksheet. [Rule 13\(f\)\(4\), W.R.C.E.R.](#)

Example: P351 THE PRIORITY DATE OF THIS WATER RIGHT HAS BEEN CHANGED TO THE DATE OF FILING THE NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION (**FORM GW2/FORM GW3**). THE PRIORITY DATE MAY BE CONTESTED BY PROPER OBJECTION.

If the claimed priority date is prior to 1962 and the attached GW2 or GW3 states a date of first use prior to 1962, follow the procedures in (4) below to examine the claimed priority date.

(4) GW4 Filed Only: The intent of this form was to document and record groundwater use appropriated prior to 1962. The priority date for groundwater claims that have a filed Declaration of Vested Groundwater Right (GW4) attached is the date of first use. This filing was voluntary but is still considered a filed right. **A GW1, GW2, or GW3 used as a GW4 is acceptable.**

Following are guidelines for certain situations where the use of the GW4 is inconsistent with its intent.

- The claimed priority date does not match a date on the GW4. Contact the claimant to determine the claimed intent. If claimant contact is inconclusive, the claimed priority date will be accepted.
- A GW4 form is attached and a 1962 to 1973 priority date is claimed. Three different situations may be encountered.
 - If the date of first use described on the GW4 is prior to 1962, the claim may be modified by rule to reflect the earlier date. See

"Priority Dates: Examining Priority Dates: Changing Claimed Priority Dates" ([Section VI.J.2.a](#)).

- If the date of first use described on the GW4 post-dates 12/31/61 and the claimed priority date reflects the date the GW4 was filed in the county courthouse, accept the claimed priority date and add the following issue remark to the department's examination worksheet.

Example: P515 A FORM GW4, DECLARATION OF VESTED GROUNDWATER RIGHTS, WAS FILED AND SUBMITTED WITH THIS CLAIM AS A **FORM GW2/FORM GW3**, NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION.

- If the date of first use described on the GW4 post-dates 12/31/61, and the claimed priority date does not match the date the GW4 was filed at the county courthouse, a priority date issue exists. Contact the claimant to discuss the issue. If claimant contact is inconclusive, add the following priority date issue remark to the department's examination worksheet.

Example: P516 THE PRIORITY DATE MAY BE QUESTIONABLE. IT APPEARS THE FORM GW4, DECLARATION OF VESTED GROUNDWATER RIGHTS, FILED **JUNE 5, 1966**, WAS USED IN LIEU OF A **FORM GW2/FORM GW3**, NOTICE OF COMPLETION OF GROUNDWATER APPROPRIATION.

(5) GW Forms Filed After 06/30/73: Groundwater claims with a priority date between 1962 and 1973 that have a Notice of Completion (GW2 or GW3) filed after 1973 will be examined as follows:

- GW2 or GW3 filed between 1973 and 1981 with a GW1 filed prior to 1973 should be examined using the procedures in (2) above.
- GW2 or GW3 filed between 1973 and 1981 without a GW1 filed prior to 1973 should be examined in accordance with "No GW Form" below.
- GW forms filed on 04/14/1981 or later are not considered proper filings and should be examined in accordance with "No GW Form" below.

b. GW Form Not Filed: For groundwater claims with a priority date between 1962 and 1973 where the submitted GW form does not appear to have been filed with the county courthouse, pursue the following steps:

- Check the scanned GWs or contact the claimant to determine if the form was actually filed. If filed, add a copy of the filing date documentation to

the claim file. Examine the priority date according to the procedures pertinent to the type of form.

- Check new appropriations records for a possible new appropriations form that may have been filed but not attached to the claim. If such a document is found, confirm with the claimant that the filing pertains to the claim. If confirmed, add a copy of the new appropriations form to the claim file and document confirmation. See "DNRC Post-June 30, 1973 Documents Attached" ([Section VI.J.5](#)) for further processing instructions.

If proper filing of the GW form cannot be confirmed, process the claim according to the procedures in "No GW Form" below.

c. No GW Form: Groundwater claims with a priority date between 1962 and 1973 will be encountered which contain no documentation, or documentation other than a GW form. First determine if proper documentation can be found.

- Check the scanned GWs to see if a GW form was filed with the county courthouse, but not attached. If a GW form is found, contact the claimant to confirm that the filing pertains to the claim. Upon confirmation by the claimant, add the GW form to the claim file and document the confirmation. Examine the priority date according to procedures pertinent to the type of GW form.
- Check new appropriation records for a possible new appropriation form that may have been filed but not attached to the claim. If such a form is found, confirm with the claimant that the filing pertains to the claim. If confirmed, add a copy of the new appropriations form to the claim file and document confirmation. See "DNRC Post-June 30, 1973 Documents Attached" ([Section VI.J.5](#)) for further processing instructions.

Where a properly filed GW form or new appropriations document cannot be found, processing the claim will depend on several variables as outlined below:

- Claimant submits appropriate GW documentation. Examine the priority date according to procedures pertinent to the type of GW form.
- If the claimant does not submit the appropriate GW documentation, the priority date can be modified to the date the claim form was received. Add the following priority date information remarks to the department's examination worksheet. Whenever a P353 is added, **remember to change the type of right to 'Filed'**. [Rule 13\(f\)\(5\), W.R.C.E.R.](#)

Examples: P354 THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED PURSUANT TO SECTION [85-2-306\(4\) MCA](#).

P353 THE PRIORITY DATE OF THIS WATER RIGHT HAS BEEN CHANGED TO THE FILING DATE OF THE STATEMENT OF CLAIM. THE PRIORITY DATE MAY BE CONTESTED BY PROPER OBJECTION.

- Claimant amends the priority date to the date a GW2 or GW3 was filed at a courthouse between 1973 and 1981 without a GW1 filed prior to 1973. Add the following priority date information remark to the department's examination worksheet.

Example: P354 THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED PURSUANT TO SECTION [85-2-306\(4\) MCA](#).

5. DNRC Post-June 30, 1973 Documents Attached: This section provides guidelines when a pre-1973 priority date has been claimed and a new appropriations document has been submitted for the same water right. Ultimately the claim or new appropriations document will be recognized, but not both.

Confirm that the claim and new appropriations document are both actually describing the same water right. This may require claimant contact. Also confirm that processing of the document has been completed by the new appropriations staff.

After it is confirmed the claim and new appropriations document describe the same water right, the processing of these documents will depend on several variables as outlined below.

a. Claimed Priority Date Is Correct: When the claimed priority date appears to be correct on a claim with DNRC post-June 30, 1973 documents attached (i.e., the date of appropriation is prior to 1973 and proper documentation was filed to establish the priority date), the claimant should be informed of all of the options. If the new appropriations document is to be terminated, notify new appropriation staff or a regional/unit manager (adjudication staff will not perform the task of terminating new appropriation records).

If the claim and new appropriations document are both retained, add the following duplicate right (DU) issue remark to the department's examination worksheet.

Example: D92 THIS CLAIM AND WATER RIGHT NO. **000000-00** APPEAR TO BE **DUPLICATE/REDUNDANT** FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

Also complete an 'Associated' flag ([Figure VI-2](#)). The water rights are associated because the new appropriation and the claim appear to be redundant/duplicate filings. Put a copy of the flag (clearly marked "COPY") in the claim file. Document this association by adding the water right numbers to be included in the associated relationship in the 'Formatted Remarks' section of the examination worksheet. these

water right numbers will be entered into the Related rights tab in the database. a remark similar to the following will automatically be generated on the review abstract and the decree abstract of all claims involved.

Example: THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE ASSOCIATED. THEY APPEAR TO BE REDUNDANT/ DUPLICATE FILINGS.

(Note: The Adjudication program does not associate the *place of use* involving statement of claims and post-1973 water rights; the New Appropriation program does this.)

b. Claimed Priority Date Is Not Correct: When the claimed priority date appears to be incorrect on a claim with post-June 30, 1973 documentation attached (no GW documentation or GW not filed), processing the claim will depend on several variables as outlined below: [Rule 13\(d\)\(9\), W.R.C.E.R.](#)

- Claimant submits appropriate GW documentation. Examine the priority date according to procedures pertinent to the type of GW form.
- If the claimant does not submit the appropriate GW documentation, the priority date can be changed to the date the claim form was received. Add the following priority date information remarks to the department's examination worksheet. Whenever a P353 is added, remember to change the type of right to 'Filed'.

Examples: P354 THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED PURSUANT TO SECTION [85-2-306\(4\) MCA](#).

P353 THE PRIORITY DATE OF THIS WATER RIGHT HAS BEEN CHANGED TO THE FILING DATE OF THE STATEMENT OF CLAIM. THE PRIORITY DATE MAY BE CONTESTED BY PROPER OBJECTION.

- Claimant amends the priority date to the date a GW2 or GW3 was filed at a courthouse between 1973 and 1981 without a GW1 filed prior to 1973. Add the following priority date information remark to the department's examination worksheet.

Example: P354 THIS IS AN EXISTING RIGHT. ITS POST-1973 PRIORITY DATE IS DECREED PURSUANT TO SECTION [85-2-306\(4\) MCA](#).

When a redundant statement of claim and new appropriation exist, the claimant should be informed of all of the options. If the new appropriations document is to be terminated, notify new appropriation staff or a regional/unit manager (adjudication staff will not perform the task of terminating new appropriation records).

- If the new appropriations document is retained, and the claimant chooses to withdraw the claim, see "Special Provisions: Withdrawal of a Claim" (Section XI.E) for instructions on withdrawing a claim.

If the claim and new appropriations document are both retained, add a priority date issue remark to the department's examination worksheet.

Examples: P547 NO DOCUMENTATION AS REQUIRED BY THE 1961 GROUNDWATER CODE WAS SUBMITTED TO SUPPORT THIS CLAIM. THIS CLAIM IS SUPPORTED BY ACKNOWLEDGEMENT NO. **000000**.

PRIS THE CLAIMED PRIORITY DATE INDICATES AN APPROPRIATION OF WATER AFTER JUNE 30, 1973. THIS CLAIM APPEARS TO BE DUPLICATED BY/REDUNDANT WITH WATER RIGHT NO. 000000-00.

Also complete an 'Associated' flag ([Figure VI-2](#)). The water rights are associated because the new appropriation and the claim appear to be redundant/duplicate filings.

Put a copy of the flag (clearly marked "COPY") in the claim file. Document this association by adding the water right numbers to be included in the associated relationship in the 'Formatted Remarks' section of the examination worksheet. These water right numbers will be entered into the Related Rights tab in the database. A remark will automatically be generated on the review abstract and the decree abstract of all claims involved.

If during the review, it appears that the new appropriations document contains errors or discrepancies, notify the new appropriations specialist.

K. PERIOD OF USE

[Rule 16, W.R.C.E.R.](#)

The period of use is the timeframe within a calendar year that water is used for the claimed purpose. The period of use will be identified on the review abstract and the decree abstract as the earliest month/day to the latest month/day.

1. Identifying the Claimed Period of Use: Check that the period of use on the claim form does not exhibit clerical errors by the claimant, and is consistent with the documentation, if applicable. Also check that the claimed period of use has been properly entered into the database. The period of use on the examination worksheet may be slightly longer than claimed due to the limitation of the database prior to 2001. Correct the database to match the claimed period of use. No asterisk is necessary as the intent of the claim is not being changed. [Rules 16\(b\), 20\(b\), 25\(b\), 30\(b\), and 44, W.R.C.E.R.](#)

If the claimed period of use is unclear or cannot be identified for a purpose whose guideline is not year round, contact the claimant.

2. Period of Use Guidelines: This section contains values to be used as a guide for initiating further examination or claimant contact for the different types of purposes.

a. Irrigation: [Rule 16\(a\)\(1\), \(2\), W.R.C.E.R.](#)

Flood Systems and Sprinkler Systems: The guidelines for flood and sprinkler systems (including such systems with reservoirs) will be:

- Climatic Area I: March 15 to November 15
- Climatic Area II: April 1 to October 31
- Climatic Area III: April 15 to October 15
- Climatic Area IV: April 20 to October 10
- Climatic Area V: April 25 to October 5

If the POU is located in more than one climatic area, use the climatic area which has the longer period of use guidelines. If a claim is located in Climatic Area VI (mountainous area), use either the guidelines for Climatic Area V or those for the climatic area which is adjacent to the mountainous area. (See [Section VI.K.3](#) below for more information on examining period of use.)

Water Spreading, Natural Overflow, and Natural Subirrigation: The period of use guideline for claims involving these system types will be year-round use.

Formerly Decreed Period of Use: When an irrigation claim is based on a decree which specifically identifies a period of use for irrigation, the decreed dates will be the guideline.

b. Domestic and Multiple Domestic:

Households: The period of use guideline for household(s) use with or without lawn and garden will be year-round. If the claimed period of use is other than year-round, review the claim file for information indicating seasonal use, i.e., a cabin on Flathead Lake. When seasonal use isn't indicated, contact the claimant. If claimant contact is inconclusive, accept the claimed period of use. [Rule 20\(a\)\(1\), W.R.C.E.R.](#)

Lawn and Garden: The period of use guidelines for lawn and garden with no households will be the same as the irrigation period of use guidelines. If the claimed period of use is year-round or greatly exceeds the irrigation period of use guidelines, contact the claimant. [Rule 20\(a\)\(2\), W.R.C.E.R.](#)

Households and Lawn and Garden: The period of use for a claim involving both household use and lawn and garden will be year-round use. If a shorter period of use is claimed, review the documentation or contact the claimant. If claimant contact is inconclusive, accept the claimed period of use.

Formerly Decreed Period Of Use: When a domestic or multiple domestic claim is based on a decree which specifically identifies a period of use for domestic or multiple domestic purposes, the decreed dates will be the guideline.

c. Stockwater: The period of use guideline for stockwater use is year-round. Generally, the claimed period of use will be accepted as claimed. The claimant may be contacted if apparent discrepancies exist. [Rule 25\(a\)\(1\), W.R.C.E.R.](#)

Formerly Decreed Period Of Use: When a stockwater claim is based on a decree which specifically identifies a period of use for stockwater purposes, the decreed dates will be the guideline.

d. Other Uses: No specific guidelines have been developed to be applied to the period of use of 'other use' claims. The claimed period of use will be compared to what is usual and customary for the claimed purpose. The data sources and materials used to review the purpose will be used to establish the usual and customary period of use for the claimed purpose. [Rule 30\(a\)\(1\), W.R.C.E.R.](#) See "Murphy Right Streams" in Table X.2.

Formerly Decreed Period of Use: When an 'other use' claim is based on a decree which specifically identifies a period of use for the claimed purpose, the decreed dates will be the guideline.

e. Reservoirs: The period of use guidelines for reservoirs are the guidelines for the purposes for which the water is used. For example, a reservoir for sprinkler irrigation would have the irrigation guideline appropriate for the respective

climatic area. If more than one use is associated with a reservoir, the period of use guideline may differ between the individual claims to the reservoir.

For guidelines on examining the period of diversion (which may differ from the period of use) for claims involving reservoirs or groundwater pits, see “Period of Diversion” ([Section VI.L](#)).

3. Examining Period of Use: The examination of the period of use will be based on the period of use on the claim form, documentation, guidelines, and claimant contact where necessary.

Generally, the claimed period of use will be accepted if reasonably close to the guidelines. The rule of thumb for "reasonably close" is up to one month before and one month after the guideline.

a. Changing Claimed Period of Use: The claimed period of use will not be changed as a result of the examination unless:

- amended by the claimant; [Rules 16\(c\)\(1\), 20\(c\)\(1\), 30\(c\)\(1\), and 34\(b\) W.R.C.E.R.](#)
- modified by rule (clarified) by the department; [Rules 16\(c\)\(3\), 20\(c\)\(3\), and 25\(c\)\(3\), W.R.C.E.R.](#)
- modified by rule (clarified) by the department without claimant contact if the claimed intent is clear or with claimant contact if the claimed intent is unclear. [Rules 16\(c\)\(2\), 20\(c\)\(2\), 30\(c\)\(2\), 33\(b\) and 33\(c\), W.R.C.E.R.](#)

The following are provided as guidance when the period of use may be modified by rule without claimant contact. [Rules 16\(c\)\(2\), 20\(c\)\(2\), and 25\(c\)\(2\), W.R.C.E.R.](#)

- If the period of use for claims involving water spreading systems, natural subirrigation or natural overflow is not claimed or not year-round, and the claimant will not be contacted regarding other elements of the claim, change the period of use on the worksheet to year-round [Rule 16 \(c\)\(3\) W.R.C.E.R.](#)
- If no period of use is identified on the claim form, and the claim is used for a domestic or multiple domestic purposes, add a year round period of use. [Rule 20\(c\)\(3\), W.R.C.E.R.](#)
- If no period of use is identified on the claim form, claimant contact is non-responsive, and the claim is used for stock watering, the period of use may be changed to match a multiple use irrigation claim which shares the same point and means of diversion. [Rule 25\(c\)\(3\), W.R.C.E.R.](#)

- For other uses claims, the period of use may only be changed if amended by the claimant or modified by rule (clarified) by the department. [Rules 30\(c\)\(1\)\(2\), 33, and 34, W.R.C.E.R.](#)
- If no period of use has been given on the claim form but is clearly identified in the documentation, complete the period of use on the examination worksheet to correspond with the documentation. [Rule 23\(b\), W.R.C.E.R.](#)
- If only months are claimed (e.g., April-October) and the submitted documentation does not specify a day date, add the first day of the initial month and last day of the final month to the examination worksheet (e.g., April 1 - October 31).
- If the period of use given is equivalent to year-round (e.g., May 1 - April 30), change the period of use on the examination worksheet to January 1 to December 31.
- If the period of use is October 1 through May 1 (non-irrigation season), enter the period of use as is.

Changes may be made directly on the examination worksheet. If the period of use is changed so that the decree abstract will differ from the claim form or amendment, place an asterisk on the worksheet in the brackets to the left of the period of use element. The basis of a change must be documented in the claim file.

b. Claimant Contact: If the claimed period of use is not within the guideline for the claimed purpose or if the claimant's intent is unclear, contact the claimant. For example, year-round diversion of water for an outdoor swimming pool or year-round use of water for a high elevation placer mining operation would require claimant contact. If the documentation attached to the claim supports a specific period of use, this should also be discussed. Claimant contact can have the following outcomes: [Rules 16\(b\), 20\(b\), 25\(b\), 30\(b\), and 44, W.R.C.E.R.](#) and Section IV.F.

- Information discussed confirms the claimed period of use. Document the information supporting the claimed period of use.
- A period of use different from that in the claim file is substantiated. The claimed period of use may be changed by amendment by the claimant.
- If claimant contact is inconclusive or a discrepancy is unresolved, add a period of use (PE) issue remark to the department's examination worksheet. See issue remark examples below.

4. Period of Use Issues: Any pertinent issues discovered during the examination may be remarked on the department's examination worksheet using a period of use (PE) remark. If a period of use remark is applied to a claim, it may also be

appropriate to add a period of diversion issue remark (P166). [Rules 16\(d\)\(4\), 20\(d\)\(4\), 25\(d\)\(4\), and 30\(d\)\(4\), W.R.C.E.R.](#)

a. Period of Use Exceeds Guidelines: When the claimed period of use differs significantly (by 30 days or more) from the guideline and is not supported by the documentation, contact the claimant. If the issue is unresolved, a period of use issue remark will be added to the department's examination worksheet.

Examples: P130 THE CLAIMED PERIOD OF USE EXCEEDS THE USUAL GROWING SEASON FOR THIS CLIMATIC AREA WHICH IS **APRIL 15 TO OCTOBER 15**.

P135 THE CLAIMED PERIOD OF USE EXCEEDS THE USUAL PERIOD OF USE FOR THE CLAIMED PURPOSE WHICH IS **MARCH 15 TO NOVEMBER 15**.

P140 THE CLAIMED PERIOD OF USE MAY BE QUESTIONABLE. USE OF THIS WATER MAY NOT BE FEASIBLE DURING WINTER MONTHS.

b. Period of Use Inconsistent with Documentation: If the claimed period of use differs from a period of use clearly specified in the documentation, contact the claimant. If claimant contact is inconclusive, add the following period of use issue remark to the department's examination worksheet.

Example: PEIS THE CLAIMED PERIOD OF USE IS INCONSISTENT WITH THE CLAIMED DOCUMENTATION. CASE NO. 0000, MONTANA COUNTY, DECREES THE PERIOD OF USE AS JUNE 15 THROUGH SEPTEMBER 1.

P166 THE PERIOD OF DIVERSION MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF THE PERIOD OF USE ISSUE.

c. Period of Use Too Short: On occasion, periods of use are claimed that seem to be short for the claimed purpose. Contact the claimant. If claimant contact is inconclusive, add a period of use (PE) issue remark to the department's examination worksheet.

Examples: P150 THE CLAIMED PERIOD OF USE APPEARS INADEQUATE FOR THE USUAL GROWING SEASON IN THIS AREA WHICH IS **APRIL 1 TO OCTOBER 31**.

P151 THE CLAIMED PERIOD OF USE MAY BE QUESTIONABLE. THE CLAIMED PERIOD OF USE APPEARS TO BE INADEQUATE.

d. No Period of Use Claimed: When no period of use has been indicated on the claim form or documentation for a claim that has a guideline other than year-round, contact the claimant. If claimant contact is inconclusive, add a period of use issue remark to the department's examination worksheet.

Example: P155 NO PERIOD OF USE HAS BEEN CLAIMED. THE USUAL AND REASONABLE PERIOD OF USE IN THIS AREA IS **APRIL 20 TO OCTOBER 10**.

5. Unique Period of Use Features: Any unique aspects or features of the period of use should be called to the attention of the Water Court by adding a period of use (PE) information remark to the department's examination worksheet.

a. Limited Period of Use Agreements: Sometimes the documentation (decree, filed notice, affidavit, deed, contract, etc.) will state an unusual period of use, such as a limited use agreement for certain days, certain times, etc. In these situations, the claimed period of use will still apply. Add a period of use (PE) information remark stating the particulars of the limited use as an aspect of the right. [Rules 16\(a\)\(3\), 20\(a\)\(3\), 25\(a\)\(2\), and 30\(a\)\(2\), W.R.C.E.R.](#)

Examples: P128 CASE NO. **0000**, **MONTANA** COUNTY, LIMITS THIS RIGHT TO DIVERSION FOR **THREE** OF EVERY **TEN** DAYS.

P129 CASE NO. **0000**, **MONTANA** COUNTY, DECREES **A ROTATING SYSTEM FOR USE OF THIS RIGHT** BETWEEN **FIVE PARTIES**. EACH PARTY IS DECREED USE OF THIS RIGHT FOR **48 HOURS OF EVERY 240 HOURS**.

b. High or Flood Water Rights: When the claim or documentation states that the right includes high or flood water of a particular source, a period of use information remark will be added to the department's examination worksheet noting the high or flood water right as an aspect of the right. This high or flood water designation normally occurs with filed or use rights. The period of use dates will normally be accepted as claimed.

Example: P120 THIS RIGHT INCLUDES HIGH OR FLOOD WATERS OF **DOE CREEK**.

If the documentation with the claim states that the water right is **only** for high or flood waters, add a period of use (PE) information remark noting the limitation as an aspect of the right. This 'limited to high or flood water' designation generally occurs with decreed rights. Accept the period of use dates as claimed.

Examples: P125 CASE NO. **0000**, **MONTANA** COUNTY, LIMITS THIS RIGHT TO HIGH OR FLOOD WATERS OF **DOE CREEK**.

P126 THIS RIGHT IS LIMITED TO HIGH OR FLOOD WATER OF **DOE CREEK**.

L. PERIOD OF DIVERSION

The period of diversion is the period in a calendar year when water is diverted, impounded or withdrawn from the source. The period of diversion was not an element included on originally filed statements of claim. However, it is an important aspect of water rights as some rights may have a period of diversion that differs from the period of use. In 2008, it was determined that the period of diversion should be included as an element on all water right claim abstracts.

In order to provide notice to the claimant and potential objectors and pursuant to the Water Court's December 11, 2008 Amended Order on Period of Diversion – Statewide, information and/or issue remarks will be added to the abstract as noted below.

- The department will add the following general information remark to all claims:

Example: P164 STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.

- The period of diversion for groundwater pits should be standardized to year-round. Add a period of diversion information remark to the department's examination worksheet. The P164 information remark should be removed.

Example: P162 THE PERIOD OF DIVERSION HAS BEEN STANDARDIZED BY DNRC FOR THIS MANMADE PIT.

- If a period of use issue remark is applied to a claim, add a period of diversion issue remark.

Example: P166 THE PERIOD OF DIVERSION MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF THE PERIOD OF USE ISSUE.

- For claims with reservoirs, when no period of diversion is identified from documentation submitted with the claim or outside data sources, and claimant contact is inconclusive or claimant does not identify a period of diversion, set the values in the database to null and add a period of diversion (PA) issue remark (P160) to the department's examination worksheet. The P164 information remark should be removed.

Example: P160 THE PERIOD OF DIVERSION FROM THE SOURCE INTO STORAGE CANNOT BE IDENTIFIED.

Note: When examining reservoir claims, the period of diversion should be considered as an either/or situation: **EITHER the claimant has provided a period of**

diversion AND a KEEP/CLAIMED flag is designated in the database OR no period of diversion is designated and the claim has a P160 issue remark.

1. Identifying the Period of Diversion: Because the period of diversion was not an element of the original statement of claim but is a component in the database, the dates representing the period of diversion were derived from the period of use. Most often, the period of diversion equals the period of use. Reservoirs are usually the exception.

2. Examining the Period of Diversion: The DNRC will examine the period of diversion for all claims. Typically, period of diversion information will be obtained from claim documentation, reliable records (e.g., BLM project files), or claimant contact (e.g., reservoir information worksheet). The period of diversion will print on the examination worksheet below the point of diversion.

a. Changing the Period of Diversion: The period of diversion will not be changed as a result of the examination unless:

- amended by the claimant;
- obtained through claimant contact. [Rules 10\(b\), and 33\(b\) W.R.C.E.R.](#)

The period of diversion may be modified by rule without claimant contact if the period of diversion is identified from documentation submitted with the claim, from the reservoir information worksheet or from outside data sources. Changes to the period of diversion should be noted on the examination worksheet. Document the basis of the change on the examination worksheet. Add a "KEEP/MODIFIED BY RULE" flag to the database which will prevent the database from overwriting the period of diversion when standards are run.

b. Claimant Contact: If the claimed period of diversion is **not** obtained from information submitted with the claim, from the reservoir information worksheet or from outside data sources, contact the claimant. If the claimant responds to the request for information, the period of diversion will be documented on the examination worksheet and in the database. A "KEEP/CLAIMED" flag will be designated to prevent standards from overwriting the period of diversion.

3. Period of Diversion Issues: Any issues discovered during the examination will be noted on the department's examination worksheet using a period of diversion (PA) issue remark.

a. No Period of Diversion Obtained: When no period of diversion is identified from documentation submitted with the claim, outside data sources, and claimant contact is inconclusive, add a period of diversion (PA) issue remark to the department's examination worksheet.

For direct flow claims, when no period of diversion is identified from

documentation submitted with the claim or outside data sources and claimant contact is inconclusive or the claimant fails to identify a period of diversion, the period of diversion dates will be the same as the period of use.

b. Period of Diversion in Prior Decreed Basins: The following issue remark will be added to all water rights decreed prior to March 2008 unless the rights are direct flow claims where period of diversion is the same as the period of use, the claim identifies an onstream reservoir with a year-round period of use, or the claim is for a reservoir in Basins 41D, 41O, 41QJ, 42B, 42C, and 76FA. [This addition will be performed globally by the database personnel.]

Example: P161 WHEN THIS CLAIM WAS ORIGINALLY DECREED, THE PERIOD OF DIVERSION WAS NOT INCLUDED ON THE ABSTRACT OF THIS CLAIM. IN 2008, THE PERIOD OF DIVERSION WAS ADDED. IT IS NOT CERTAIN IF THE PERIOD OF DIVERSION DATES ON THIS CLAIM ACCURATELY REFLECT THE HISTORICAL PERIOD OF DIVERSION. MORE INFORMATION IS REQUIRED.

VII. IRRIGATION

This chapter describes the procedures unique to the examination of irrigation claims. The suggested order for examining claims is discussed in “Examination Materials and Procedures: Pulling Claims for Review” (Section IV.A). *Early in the examination process of specific basins, procedures or the examination “approach” should be outlined, specifically in areas that may be interpreted differently by individuals. Supervisors may consider outlining such topics and distributing a procedural outline to all staff involved in the examination. This information can be shared with all interested parties.*

The following elements are discussed in this chapter:

- A. Type of Irrigation System
- B. Flow Rate
- C. Volume
- D. Place of Use (POU)
- E. Supplemental Rights
- F. Irrigation Districts
- G. Combined POD, POU, Sources

The examination procedures for other elements of an irrigation claim are contained in Chapter VI: Claim Examination.

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A. TYPE OF IRRIGATION SYSTEM

The type of irrigation system is the method used to distribute water across the place of use, such as flood irrigation, sprinkler irrigation, or subirrigation. The type of irrigation system will be used in determining the accuracy of the claimed flow rate and volume. It will be identified on the review and decree abstracts under the purpose element for each irrigation water right.

Claimant contact must occur upon completing examination of the ownership if the type of irrigation system is modified by rule, an issue remark exists, or the system is unclear.

1. Identifying the Claimed Type of Irrigation System: Using the information in the claim file, check the type of irrigation system identified on the claim form for clerical errors by the claimant, and for consistency with the documentation. If the claimed type of irrigation system is unclear, see “Type of Irrigation System Issues” below ([Section VII.A.3](#)).

Codes: Codes were used to initially input and store the claimed type of system in the legacy database. These codes may appear on the documentation in the files. When more than one irrigation type was indicated on the claim form, e.g., sprinkler/flood, the proper code was written on the claim form by department staff prior to the information being entered into the database. The codes used below may need to be standardized—see [‘Standardizing Irrigation Systems’](#):

Legacy Code	System Type
B	border dike
C	contour ditch
D	spreader dike
F	flood
G	ditch system of other type
H	furrow
P	parallel ditch
S	sprinkler
A	sprinkler/furrow
E	sprinkler/flood
I	furrow/flood
J	sprinkler/furrow/flood
M	multiple methods
X	other

2. Examining Type of Irrigation System: The type of irrigation system indicated on the claim form and examination worksheet will be compared with various data sources. This is usually done while examining the place of use ([Section VII.D](#)).

The examination is intended to determine whether the claimed type of irrigation was perfected at the time of the claimed priority date and practiced before 1973. The examination also determines whether all types of irrigation that appear on the data sources have been claimed. When examining the type of irrigation system, the claim should accurately reflect pre-1973 practices:

- Check the aerial photograph for evidence of the claimed type of system.
- Check the submitted documentation for a discussion of the irrigation method.
- If the claim and documentation are unclear or differ from the data sources, e.g., sprinkler irrigation is claimed, but the aerial photograph shows a portion of the POU being flooded, see “Type of Irrigation System Issues” below ([Section VII.A.3](#)).

Standardizing Irrigation Systems: Generally the claimed type of irrigation system will be accepted. The type of irrigation system **shall be standardized** on the examination worksheet to one of the following categories of system types:

Legacy

<u>Code</u>	<u>System Type</u>
D	water spreading
F	flood
S	sprinkler
N	natural subirrigation
L	controlled subirrigation
O	natural overflow
E	sprinkler/flood
X	other (Use a Diversion Means remark to describe)

Changing Claimed Type of Irrigation System: The claimed type of irrigation system will not be changed during the examination unless:

- amended by the claimant
- modified by rule (clarified) by the department to standardize to one of the above consistent categories. [Rule 6\(d\)\(1\),\(2\), W.R.C.E.R](#)

If the claimed type of irrigation system is standardized so the review or decree abstract will differ from the claim form or amendment, note the change by placing an asterisk in the brackets to the left of the purpose element on the examination worksheet. Document the basis for the change on the examination worksheet. The claimant must be notified of such changes.

If examination of the claim finds a different type of irrigation occurring than what was claimed, such as flood to sprinkler or sprinkler to flood, the claimed type can only be changed by an amendment. [Rule 34, W.R.C.E.R](#) Add a purpose (PU) issue remark to the examination worksheet:

Example: P697 THE TYPE OF IRRIGATION SYSTEM CANNOT BE CONFIRMED. IT IS UNCLEAR IF THIS RIGHT SHOULD BE DEFINED BY FLOW RATE OR VOLUME.

Incidental Types of Irrigation: For claims where an incidental type (e.g., natural subirrigation, natural overflow) of irrigation is also being claimed, add a purpose (PU) information remark to the examination worksheet:

Example: P556 THIS WATER RIGHT ALSO INCLUDES **NATURAL SUBIRRIGATION** AS AN INCIDENTAL TYPE OF IRRIGATION.

Unique Features or Aspects: Any unique aspects or features of the type of irrigation system should be noted in a purpose (PU) information remark:

Example: P560 SUBIRRIGATION CONTROLLED BY CHECK DAM LOCATED ON DRAIN DITCH.

3. Type of Irrigation System Issues: Note any type of irrigation system issues on the examination worksheet using a purpose (PU) issue remark.

At the completion of examining the ownership, the claimant should be notified through claimant contact of all issue remarks. [Rules 5\(a\)\(6\) and 44, W.R.C.E.R](#)

a. No Type of System Claimed: If no irrigation type was checked on the claim form; review the accompanying documentation for an indication of the type of system. If the documentation identifies a type, add the irrigation type to the examination worksheet per [Rule 33 W.R.C.E.R.](#)

When no type of system is indicated on the claim form or in the submitted documentation, add a purpose (PU) issue remark to the department's examination worksheet:

Example: P695 NO TYPE OF IRRIGATION SYSTEM HAS BEEN CLAIMED. THE TYPE OF HISTORICAL IRRIGATION APPEARS TO HAVE BEEN A **FLOOD** SYSTEM.

b. Type of Irrigation Unconfirmed: If, from examination of the data sources, it is apparent the claimed type of irrigation system is incorrect, e.g., system claimed is present or future rather than historical, or has never been used; add a purpose (PU) issue remark to the department's examination worksheet:

Examples: P697 THE TYPE OF IRRIGATION SYSTEM CANNOT BE CONFIRMED. IT IS UNCLEAR IF THIS RIGHT SHOULD BE DEFINED BY FLOW RATE OR VOLUME.

P700 THE TYPE OF IRRIGATION SYSTEM CANNOT BE CONFIRMED. USDA AERIAL PHOTOGRAPH NO. **999-111**, DATED **MM/DD/YYYY**, SHOWS **FLOOD** IRRIGATION.

c. Priority Date of a Sprinkler System Predates 1955: When a claim for a sprinkler system lists a priority date earlier than 1955 and does not indicate a prior flood system, check the WRS, aerial photographs, and other data sources for evidence of a prior flood system. Also determine whether the POU could have been flood irrigated. If there is nothing supporting the likelihood or possibility of a prior flood system, contact the claimant. Discuss the apparent inconsistency between the type of system, priority date, and POU. If no prior flood irrigation existed, the claimant may wish to amend the priority date to the date of appropriation for the sprinkler system. If the issue is unresolved, add a priority date (PR) issue remark to the department's examination worksheet: [Rule 13\(d\)\(11\), W.R.C.E.R.](#)

Example: P550 THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. IT APPEARS THE PRIORITY DATE SHOULD BE THE DATE THE **SPRINKLER SYSTEM** WAS FIRST PUT TO USE.

If the sprinkler system was installed after June 30, 1973, and there was no pre-July 1, 1973 use, see "Claim Examination: Priority Date Issues: Priority Date Post-June 1973" (Section VI.J.3.g). Also see "Claim Examination: Priority Date" (Section VI.J.3.I) for examination procedures.

B. FLOW RATE
[Rule 14, W.R.C.E.R.](#)

The flow rate is the rate at which water has been diverted, impounded, or withdrawn from the source. The flow rate will be decreed in cubic feet per second (cfs) or gallons per minute (gpm). See "General Procedures: Standard Measurement of Water" (Section III.B) for standard units and conversions.

Flow rates for claims to lawn and garden use (LG) should be examined using the 35 gpm domestic use guidelines. See "Domestic: Flow Rate" (Section VIII.B). [Rule 19\(b\), W.R.C.E.R.](#)

Claimant contact must occur upon completing examination of the ownership if the flow rate is modified by rule; an issue remark exists, or is unclear. [Rules 14\(c\) and 44, W.R.C.E.R.](#)

1. Identifying the Claimed Flow Rate: Using the documentation in the claim file, check that the flow rate is consistent with the claim form. Also check for clerical errors by the claimant. [Rule 14\(a\), W.R.C.E.R.](#)

The flow rate units should be checked for agreement with the documentation and for correct conversion. If incorrect units have been claimed but the documentation in the claim file indicates the correct units, the correction can be made on the examination worksheet ([Rule 33 \(b\)\(7\), W.R.C.E.R.](#)). When the intended flow rate units are unclear, see "Flow Rate Issues" below ([Section VII.B.4](#)).

For claims involving prior decreed rights, the flow rate on the claim form and examination worksheet should not exceed the decreed flow rate as documented. For filed and use rights, claimed flow rates and documentation that do not match will not be considered in conflict. Consult with a supervisor if the claim appears questionable. A priority date issue remark (P455) may be considered. If the claimant's intent is unclear, see "Flow Rate Issues" below ([Section VII.B.4](#)).

Runoff: During the filing period, some claimants wrote "runoff" on their claim forms to describe the flow rate. Typically this was done for intermittent (non-perennial flowing) sources to describe why no specific flow rate was claimed. The term may have been added by the department during initial data entry as an information remark. This remark is no longer needed and should be deleted during examination. See "Flow Rate Issues: No Flow Rate Claimed" below ([Section VII.B.4.f](#)).

Flow Rate Units Standardization: Flow rates will be converted into standard units per [Rule 4 \(b\) W.R.C.E.R.](#) as follows: [Rule 14\(f\)\(4\), W.R.C.E.R.](#)

- less than one cfs will be automatically converted into units of gpm by the database when standards are applied;

- equal to or greater than one cfs will be converted into units of cfs when standards are applied.

2. Examining Flow Rate: The claimed flow rate will be examined using the system type, information in the claim file, a general flow rate guideline, and information gained through claimant contact. A comparison statistic below the flow rate element on the examination worksheet calculates a ratio of flow rate to acres (gpm/acre). The comparison statistic (gpm/acre) is derived from the flow rate and maximum acres; its purpose is to identify those water rights that are above the guideline. [Rules 14\(c\) and 44, W.R.C.E.R.](#)

Specific procedures for examining flow rates are given below by system type. For claimed flow rates that will be decreed, there are two underlying considerations that should be kept in mind. First, has the claimed flow rate actually been diverted? Second, is the claimed flow rate reasonable for the specific purpose? If the answer to either question is no, further information should be pursued to determine what is reasonable and accurate. This thought process should form the basis for examining all claims.

A description of the development of flow rate guidelines can be found in the “History of Flow Rate Guidelines” (Exhibit VII-1).

Unique Features or Aspects: Any unique aspects or features of the flow rate should be noted on the department’s examination worksheet in a flow rate (FR) information remark: [Rule 14\(g\)\(2\), W.R.C.E.R.](#)

Example: F41 PRIMARILY A DIRECT FLOW SYSTEM; FLOW RATE RETAINED.

F75 CASE NO. **0000**, **MONTANA COUNTY** DECREES THIS RIGHT AS AN UNDIVIDED **ONE-THIRD** INTEREST IN A SINGLE WATER RIGHT FOR **2.50 CFS/GPM**.

a. Changing Flow Rate. The claimed flow rate will not be changed during the examination unless:

- amended by the claimant; [Rule 14\(f\)\(1\), W.R.C.E.R.](#)
- modified by rule by the department ([Sections VII.B.1](#) and [VII.B.3](#) and [Rule 14\(f\)\(3\), W.R.C.E.R.](#));
- to standardize units of measure ([Section VII.B.1](#) and [Rule 14\(f\)\(4\), W.R.C.E.R.](#));
- modified by rule (clarified) by the department without claimant contact if the claimed intent is clear or with claimant contact is the claimed intent is unclear. [Rules 14\(f\)\(2\), 33\(b\)\(7\)\(i\)\(ii\), and 33\(c\), W.R.C.E.R.](#)

When the claimed flow rate is changed so that the review or decree abstract will differ from the claim form or amendment, place an asterisk in the brackets to the left of the

flow rate element on the examination worksheet. The claimant must be notified of such changes.

b. Claimant Contact: In conjunction with the flow rate examination criteria, the claimant should be contacted whenever the claimed flow rate is unclear, has apparent discrepancies, appears insufficient, or unreasonable. This contact can have several outcomes (see overview in Exhibit VII-17): [Rules 14\(c\) and 44, W.R.C.E.R.](#)

- Information discussed confirms the claimed flow rate. Document the information supporting the claimed flow rate.
- A flow rate different from that claimed is substantiated which the claimant wishes to have replace the claimed data. The claimant should submit an amendment.
- If the issue is unresolved (e.g., pump data is insufficient to confirm the claimed flow rate), or data support an actual flow rate different from that claimed, add a flow rate (FR) issue remark to the department's examination worksheet:

Example: F150 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE PUMP CAPACITY. AVAILABLE DATA SUPPORT A FLOW RATE OF **98.50 GPM**.

3. Flow Rate Criteria: This section contains guidelines for examining the claimed flow rate based on prior decreed rights, filed rights, and use rights. The guideline for each type of right is first described, followed by each system: [Rule 14\(d\), W.R.C.E.R.](#)

- [Systems Involving Reservoirs](#)
- [Water Spreading Systems](#)
- [Subirrigation, Natural Overflow, Waste, and Seepage](#)
- [Pumps](#)
- [Gravity Flow Pipelines](#)
- [Ditches and Canals](#)

Note: It may be determined after consulting with the claimant (and a supervisor) that it is necessary for the administration of a right to have both the flow rate and the volume decreed. The Water Court can make this determination under [§85-2-234\(6\)\(b\)\(iii\)](#) for final decrees.

- **Prior Decreed Rights**: For claims based on prior decreed rights where a flow rate has been specified, the flow rate will be decreed as claimed or amended. See "Irrigation Flow and Volume Criteria" (Exhibit VII-18). [Rule 14\(d\)\(1\), W.R.C.E.R.](#)

When the claimed flow rate on a single claim is equal to or less than the original decree, the claimed flow rate will generally be accepted but may be examined further if there is an apparent error or conflicting data.

For claimed flow rates greater than 17 gpm/ac, applying standards will calculate a flow rate per acre and add the following flow rate (FR) issue remark to the review and decree abstracts. The claimant must be notified of the issue.

Example: FRSS THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS **65** GPM PER ACRE.

A claimed flow rate greater than 17 gpm/acre may be substantiated by **pre-July 1, 1973** information. This information includes, but is not limited to:

- ditch measurements
- pump information
- water commissioner records on file at the county district court
- information obtained through claimant contact

If substantiated, note a KEEP/CLAIMED flag below the flow rate element on the examination worksheet which will suppress standards from applying the FRSS issue remark above. If the flow rate for a small acreage exceeds the guideline, discuss the claim with a supervisor. Exceeding the guideline is acceptable to a reasonable limit in these situations. Many factors may be involved in this decision: type of irrigation, conveyance loss, soil type, etc. Flow rates that are 'allowed' to exceed the guideline will need to be well documented.

- **Filed or Use Rights:** For claims based on filed or use rights, the flow rate guideline is 17 gpm/acre. Claimed flow rates below this guideline are generally accepted but may be examined further if there is an apparent error or conflicting data. See "Irrigation Flow and Volume Criteria" (Exhibit VII-18). [Rules 14\(b\)\(1\) and 14\(d\)\(2\), W.R.C.E.R.](#)

The flow rate will be examined according to the procedures discussed below. After the claim has been examined, applying standards in the database will compare the claimed flow rate of each claim to the 17 gpm/acre guideline. Claimed flow rates that exceed the guideline will be reduced to the guideline, unless there is a KEEP/CLAIMED flag accompanying the flow rate. When standards reduces a flow rate, the following flow rate (FR) information remark will be added and an asterisk will be noted next to the flow rate element on the review and decree abstracts. The claimant must be notified of the reduction.

Example: FRST THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO 17 GPM PER ACRE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

a. Systems Involving Reservoirs: Onstream reservoirs are first described below followed by [offstream reservoirs](#).

ONSTREAM RESERVOIRS

Onstream Reservoirs—Decreed: When the claim and historical decree both specify a flow rate, the flow rate will be decreed as claimed or amended.

Since district courts usually quantified appropriations utilizing reservoirs by volume, a decreed flow rate may indicate the reservoir was constructed after the decree. Thus, the volume may not have been decreed as it was not known at the time of the decree. A date of construction should be obtained from the claimant or other resources. See "Claim Examination: Reservoirs: Reservoir Issues" (Section VI.H.4).

When both the claim and historical decree do not specify a flow rate, use the procedures under "Onstream Reservoirs—Filed and Use Rights" directly below.

For other variations of claimed and prior decreed flow rates involving onstream reservoirs, see "Flow Rate Issues: Specific Decreed Flow Rate Issues" ([Section VII.B.4.a](#)).

Onstream Reservoirs—Filed and Use Rights: A flow rate will not be decreed, generally. Change the claimed flow rate to null (no value) and add an asterisk in the brackets to the left of the flow rate element of the examination worksheet. Standards will add the following flow rate (FR) information remark to the review and decree abstracts: [Rule 14\(b\)\(2\)\(i\) and 14\(d\)\(3\), W.R.C.E.R.](#)

Example: FF007 A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

A flow rate will be decreed for irrigation claims which use other than stored water, such as direct flow diversions upstream from a reservoir or a small reservoir as part of a large direct flow system, e.g., 0.4 AF reservoir for 20 acres of irrigation.

One method to determine if an irrigation claim uses other than stored water from the reservoir is to compare the claimed volume to a calculated volume. This calculated volume is based on the claimed acres multiplied by the appropriate climatic area volume guideline ([Section VII.C.3.a](#)). Compare the smaller volume to the capacity of the reservoir. If the claimed volume is greater than 2 times the capacity of the reservoir, the claim could be considered primarily a direct flow irrigation system. This approach may not work throughout Montana—consult with a supervisor to determine a basin-wide method.

A Reservoir With Irrigation Questionnaire (Exhibit VI-7) has been developed that may aid in determining direct flow irrigation systems.

When determining a possible direct flow system, be aware of supplemental right relationships. A small reservoir claim as part of a large system may utilize stored water to supplement other water rights and therefore may not be a direct flow system. [Rule 14\(d\)\(4\), W.R.C.E.R.](#)

Claimant contact may be necessary to understand the relationship between the reservoir, the irrigation system, the claimed volume, and claims which may be supplemental. When it is determined that storage is a minimal part of the total volume used, retain the claimed flow rate, note a KEEP/CLAIMED flag and add a flow rate (FR) information remark to the department's examination worksheet. (Also see "Irrigation: Volume: Specific Volume Examination Criteria: Systems Involving Reservoirs" ([Section VII.C.3.a](#)) for direction on removing the volume in direct flow systems.)

Example: F41 PRIMARILY A DIRECT FLOW SYSTEM; FLOW RATE RETAINED.

OFFSTREAM RESERVOIRS

Offstream Reservoir-Decreed: When the claim and original decree both specify a flow rate, the flow rate will be decreed as claimed or amended.

To examine a claimed flow rate involving an offstream reservoir which appears in error, conflicts with information in the claim file, or exceeds 17 gpm/acre, use the procedures under "Offstream Reservoirs—Filed and Use Rights" directly below.

For other variations of claimed and prior decreed flow rates involving offstream reservoirs, see "Flow Rate Issues: Specific Decreed Flow Rate Issues" ([Section VII.B.4.a](#)).

Offstream Reservoir-Filed and Use Rights: The guideline for offstream reservoir irrigation claims, where control (i.e., ownership of the point of diversion) of the reservoir is part of the right, is the capacity of the diversion and conveyance system. If no information is available on the capacity of the diversion and conveyance system or the system is shared by more than one claimant, the guideline will be 17 gpm/acre ([Rule 14 \(b\)\(2\)\(ii\) W.R.C.E.R.](#)).

Compare the claimed flow rate to information in the claim file and other data sources to identify the capacity of the diversion and conveyance system. If information identifying the diversion or conveyance capacity is available to the examiner, use this information to complete the appropriate portion of the Reservoir Questionnaire (Exhibit VI-6); place a copy in the claim file and document the source of information. When there is no information regarding the capacity of the diversion and conveyance system, compare the claimed flow rate to the 17 gpm/acre guideline.

A Reservoir Questionnaire (Exhibit VI-6) should be sent to the claimant with a cover letter (Exhibit IV-8) when the claimed flow rate:

- appears in error;
- conflicts with other data;
- exceeds the capacity of the diversion and conveyance system;
- exceeds the 17 gpm/acre guideline when diversion and conveyance capacity are unknown;
- insufficient data in the claim file to substantiate the claimed flow rate.

Alternatively, the claimant can be contacted by phone or in a personal interview (see “Examination Materials and Procedures: Claimant Contact Techniques” in Section IV.F). This contact can have one of several outcomes (see overview in Exhibit VII-17):

- Submitted reservoir data confirms the claimed flow rate. Add a KEEP/CLAIMED flag to the claimed flow rate on the examination worksheet if it exceeds the 17 gpm/acre guideline.
- Data about the diversion and conveyance system clearly indicates an actual flow rate less than the claimed flow rate. When the claimed flow rate is not amended to the actual flow rate, add a KEEP/CLAIMED flag to the claimed flow rate on the worksheet. Add a flow rate (FR) issue remark to the department's examination worksheet:

Examples: F120 THE CLAIMED FLOW RATE EXCEEDS THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM WHICH IS **1.80 CFS**.

F135 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE DIVERSION AND CONVEYANCE FACILITIES.

F145 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM. AVAILABLE DATA SUPPORT A FLOW RATE OF **2.50 CFS**.

- No documentation is submitted, or reservoir data is insufficient to confirm a flow rate. Additional claimant contact should be pursued. An on-site visit may be conducted at the invitation of the claimant. When reservoir data cannot be obtained and the claimed flow rate exceeds 17 gpm/acre, the claimed flow rate for filed and use rights will be reduced to the guideline when standards are applied. The claimant should be notified of the reduction.

The claimed flow rate for decreed rights will not be reduced by standards. Issue remarks are applied when necessary.

b. Water Spreading Systems:

Water spreading is diverting or collecting runoff from natural channels, gullies, or intermittent streams with a system of dams, dikes, ditches, or other means, and spreading it over a relatively flat area. Water spreading applications are dependent on the availability of water through natural runoff rather than the need of the crops. In other words, there is no control of what is coming into the delivery system, (See figures VII-1 and VII-2 below.)

FIGURE VII-1 Water Spreading Scenario 1

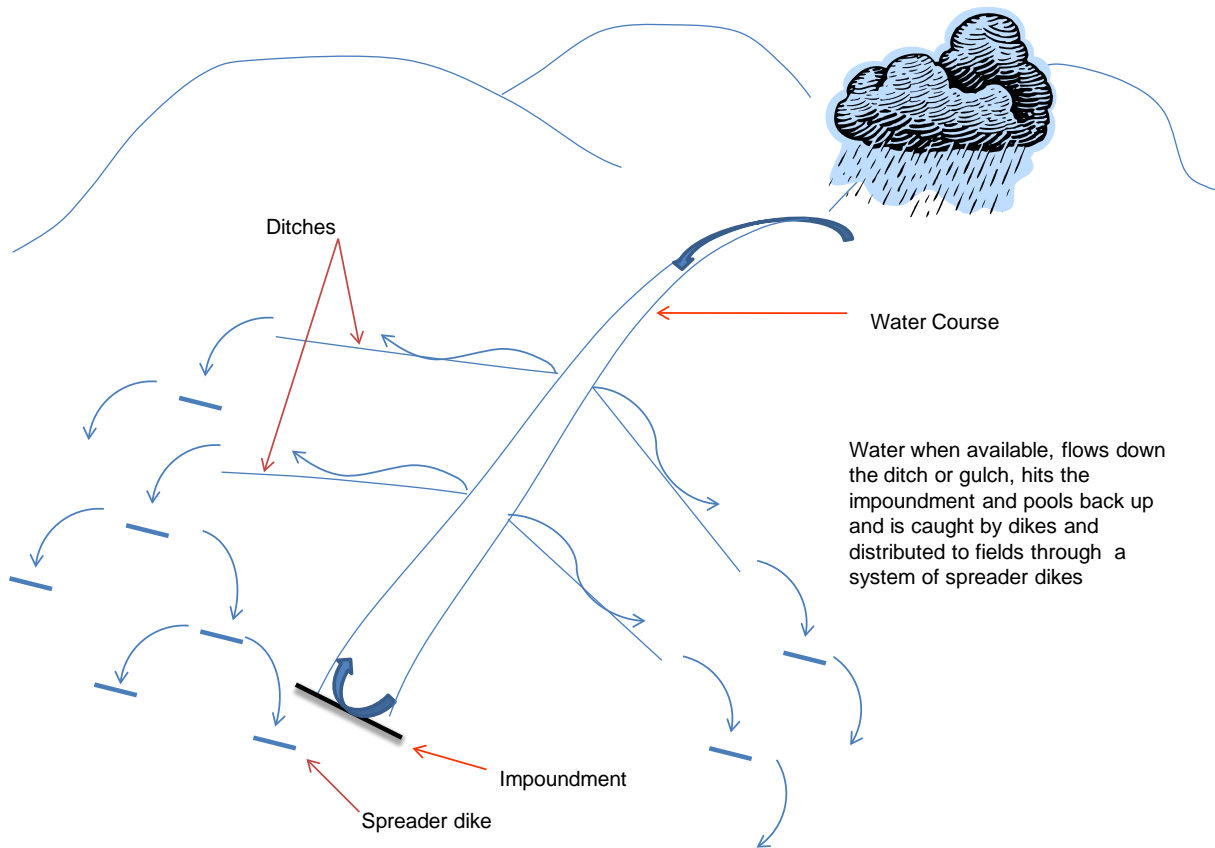
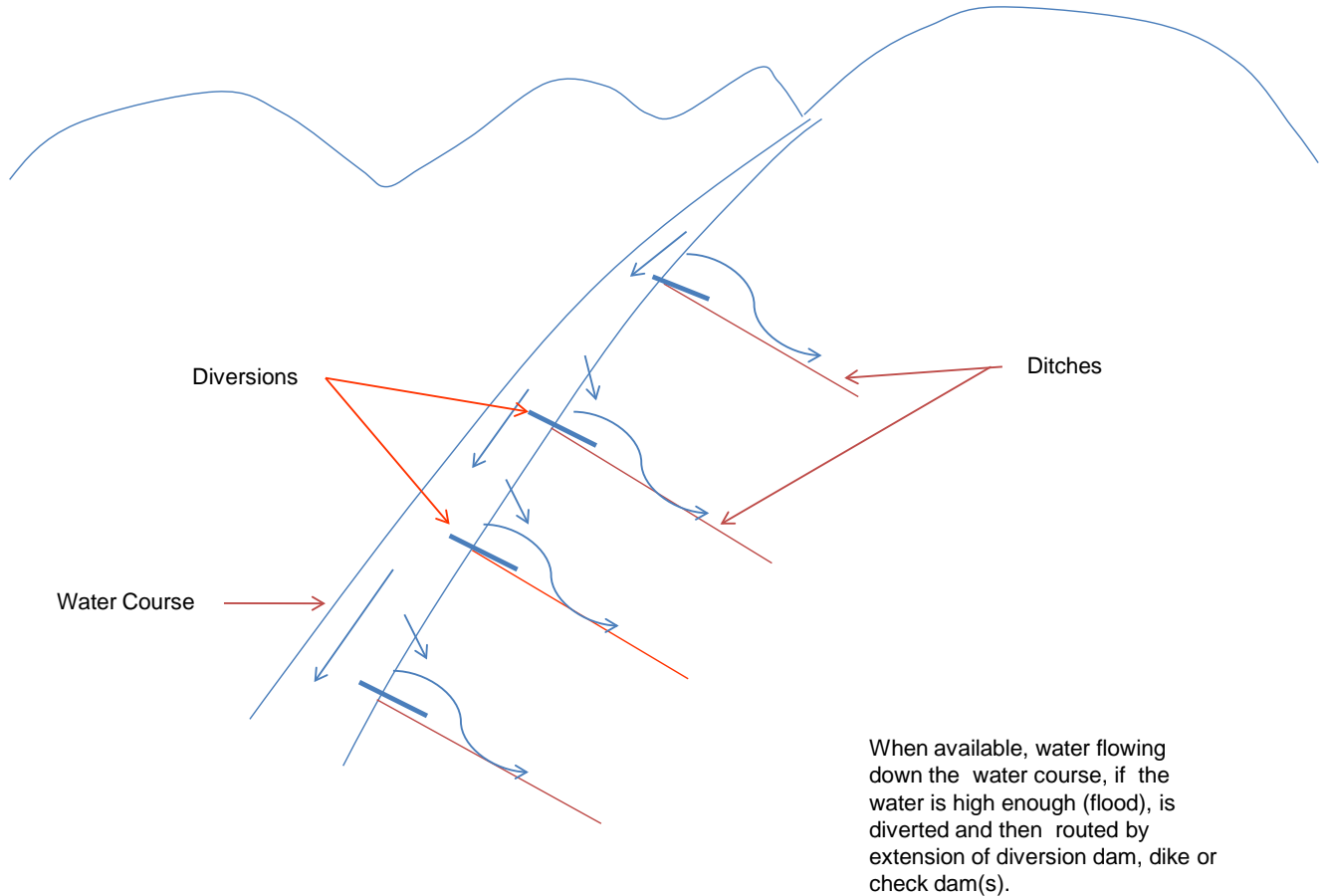


FIGURE VII-2 Water Spreading Scenario 2



Water Spreading Systems-Decreed: When the claim and original decree both specify a flow rate, the flow rate will be decreed as claimed or amended.

When both the claim and original decree do not specify a flow rate, use the procedures under "Water Spreading Systems—Filed and Use Rights" below.

For other variations of claimed and prior decreed flow rates, see "Flow Rate Issues: Specific Decreed Flow Rate Issues" below ([Section VII.B.4.a](#)).

Water Spreading Systems-Filed and Use Rights: A flow rate will not be decreed for direct flow water spreading systems ([Rule 14 \(d\)\(5\) W.R.C.E.R.](#)). Change the claimed

flow rate to null (no value) and place an asterisk in the brackets to the left of the flow rate element on the examination worksheet. The following flow rate (FR) information remark will be added to the review and decree abstracts when standards are applied:

Example: FF008 A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

Water Spreading Systems Involving Reservoirs: See "Flow Rate: Flow Rate Criteria: Systems Involving Reservoirs" ([Section VII.B.3.a](#)).

c. Subirrigation, Natural Overflow and Waste and Seepage:

Subirrigation, Natural Overflow and Waste and Seepage-Decreed: When the claim and original decree both specify a flow rate, the flow rate will be decreed as claimed or amended.

When both the claim and original decree do not specify a flow rate, use the procedures in "Subirrigation, Natural Overflow and Waste and Seepage-Filed and Use Rights" directly below.

For other variations of claimed and prior decreed flow rates, see "Flow Rate Issues: Specific Decreed Flow Rate Issues" below ([Section VII.B.4.a](#)).

Subirrigation, Natural Overflow and Waste and Seepage-Filed and Use Rights: For natural subirrigation, natural overflow, and waste and seepage, look for evidence of perfection (the POU appears to be irrigated, cropped, etc. as opposed to a bog or swampy area). If none, consider a purpose (PU) issue remark:

Example: P644 IT APPEARS THIS WATER RIGHT MAY NOT HAVE BEEN PERFECTED. ACCORDING TO INFORMATION IN THE CLAIM FILE, THERE APPEARS TO BE NO APPROPRIATION OF WATER. ALL ELEMENTS OF THIS CLAIM MAY BE QUESTIONABLE. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

- Natural Subirrigation and Waste and Seepage: A flow rate will not be decreed. Change the claimed flow rate to null (no value) and place an asterisk in the brackets to the left of the flow rate element on the examination worksheet. The following flow rate (FR) information remark will be added to the review and decree abstracts when standards are applied: [Rule 14 \(d\)\(6\) W.R.C.E.R.](#)

Example: FF004 NO FLOW RATE HAS BEEN DECREED FOR THIS USE OF NATURAL SUBIRRIGATION.

- Controlled Subirrigation and Waste and Seepage: Where subirrigation is controlled by systems such as drain ditches equipped with check dams, a flow rate will be decreed. In reviewing such systems, use the appropriate criteria for the means of control, e.g., ditches or pumps.
- Natural Overflow: A flow rate will not be decreed. Change the claimed flow rate to null (no value) and place an asterisk in the brackets to the left of the flow rate element on the examination worksheet. The following flow rate (FR) information remark will be added to the review and decree abstracts when standards are applied: [Rule 14 \(d\)\(6\) W.R.C.E.R.](#)

Example: FF005 NO FLOW RATE HAS BEEN DECREED FOR THIS NATURAL OVERFLOW METHOD OF IRRIGATION.

d. Pumps:

Pumps-Decreed: When the claim and original decree both specify a flow rate, the flow rate will be decreed as claimed or amended.

To examine a claimed flow rate involving a pump which appears in error, conflicts with pump data in the claim file (such as the pump rate at Means of Diversion), or exceeds 17 gpm/acre, use the procedures under "Pumps-Filed and Use Rights" directly below.

For other variations of claimed and prior decreed flow rates, see "Flow Rate Issues: Specific Decreed Flow Rate Issues" ([Section VII.B.4.a](#)).

Pumps-Filed and Use Rights: The output (flow rate) of a pump is limited primarily by the horsepower of the driving unit, vertical lift, operating pressure, and friction.

If the claim file contains sufficient pump data, "Estimating Pumped Flow Rates" (Exhibit VII-2) can be used to check the accuracy of a claimed flow rate. Remember that the flow rates in this exhibit are estimates based on generalized assumptions.

When a claimed flow rate appears in error, conflicts with pump data in the claim file (such as the pump rate at Means of Diversion), or exceeds the 17 gpm/acre guideline, and there is insufficient information in the claim file to substantiate the claimed flow rate, a Pump Questionnaire (Exhibit VII-3) should be sent to the claimant with a cover letter (Exhibit IV-8). Alternatively, the claimant can be contacted by phone or in a personal interview (see "Examination Materials and Procedures: Claimant Contact Techniques" in Section IV.F). [Rules 14 \(d\)\(2\) and 44, W.R.C.E.R.](#) This contact can have one of several outcomes (see overview in Exhibit VII-17):

- Submitted pump data confirms the claimed flow rate. Add a KEEP/CLAIMED flag to the claimed flow rate element on the examination worksheet if it exceeds the 17 gpm/acre guideline.

- Data about the pump clearly indicates an actual pumping rate less than the claimed flow rate. When the claimed flow rate is not amended to the actual pumping rate, the two most likely outcomes are:
 - If the claimed flow rate is **less than 17 gpm/acre**, add a flow rate (FR) issue remark to the department's examination worksheet:

Example: F150 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE PUMP CAPACITY. AVAILABLE DATA SUPPORT A FLOW RATE OF **98.50 GPM**.

- If the claimed flow rate is **greater than 17 gpm/acre**, add a **KEEP/CLAIMED** flag to the documented flow rate. Add a flow rate (FR) issue remark (F150 above) to the department's examination worksheet:
- No documentation is submitted or submitted pump data is insufficient to confirm a flow rate. Additional claimant contact may be pursued. An on-site visit may be conducted at the invitation of the claimant. When pump data cannot be obtained and the claimed flow rate exceeds 17 gpm/acre, the claimed flow rate for filed and use rights will be reduced to the guideline when standards are applied. The claimant must be notified of the reduction. The following information remark should appear on the abstract below the flow rate element.

Example: FRST THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO 17 GPM PER ACRE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

The claimed flow rate for decreed rights will not be reduced by applying standards in the database. If the flow rate is greater than 17 gpm/acre, the following flow rate (FR) issue remark will be added to the review and decree abstracts.

Example: FRSS THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS **95** GPM PER ACRE.

e. Gravity Flow Pipelines:

Gravity Flow Pipelines-Decreed: When the claim and original decree both specify a flow rate, the flow rate will be decreed as claimed or amended.

To examine a claimed flow rate involving a gravity flow pipeline which appears in error, conflicts with pump data in the claim file (such as the pump rate at Means of Diversion), or exceeds 17 gpm/acre, use the procedures under "Gravity Flow Pipelines—Filed and Use Rights" directly below.

For other variations of claimed and prior decreed flow rates, see "Flow Rate Issues: Specific Decreed Flow Rate Issues" ([Section VII.B.4.a](#)).

Gravity Flow Pipelines-Filed and Use Rights: The output (flow rate) of a gravity flow pipeline system is limited primarily by pipe type, pipe length, pipe diameter, vertical drop, and friction.

To estimate the flow rate of a gravity flow pipeline, the pipe diameter, pipe length, and vertical drop must be known. If data sources are available which are clear, accurate, and of sufficient scale, an estimated pipe output (flow rate) can be calculated:

- Pipe length can sometimes be estimated from the claimant's map.
- Contour lines on a topographic map can be used to estimate vertical drop.
- Pipe diameter must be known from the claim file or claimant contact.

Refer to "Estimating Pipeline Flow Rates" (Exhibit VII-4). Be aware that there are many variables, and thus room for error, in using this method. The flow rates estimated in Exhibit VII-4 assume PVC (plastic) pipe is used. If the claimant uses aluminum, concrete, or steel pipe, the estimates will be a bit high, but should still be used as a guideline.

When the claimed flow rate for the gravity flow pipeline system appears in error, conflicts with pipeline data in the claim file, or exceeds the 17 gpm/acre guideline, and there is insufficient information in the claim file to substantiate the claimed flow rate, a Gravity Flow Pipeline Questionnaire (Exhibit VII-5) and a cover letter (Exhibit IV-8) should be sent to the claimant. Alternatively, the claimant can be contacted by phone or in a personal interview (see "Examination Materials and Procedures: Claimant Contact Techniques" in Section IV.F). This contact can have one of several outcomes (see overview in Exhibit VII-17): [Rules 14 \(d\)\(2\) and 44, W.R.C.E.R.](#)

- Submitted pipeline data confirms the claimed flow rate. Add a KEEP/CLAIMED flag to the claimed flow rate element on the examination worksheet if it exceeds the 17 gpm/acre guideline.
- Data about the pipeline clearly indicates an actual flow rate less than the claimed flow rate. **When the claimed flow rate is not amended to the actual pipe output, the two most likely outcomes are:**
 - If the claimed flow rate is **less than 17 gpm/acre**, add a flow rate (FR) issue remark to the department's examination worksheet:

Example: F157 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE GRAVITY FLOW DELIVERY SYSTEM. THE ACTUAL FLOW RATE APPEARS TO BE **88.50** GPM.

- If the claimed flow rate is **greater than 17 gpm/acre**, add a **KEEP/CLAIMED** flag to the documented flow rate to prevent standards from reducing the flow rate. Add a flow rate (FR) issue remark to the department's examination worksheet:

Example: F157 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE GRAVITY FLOW DELIVERY SYSTEM. THE ACTUAL FLOW RATE APPEARS TO BE **88.50** GPM.

- No documentation is submitted or submitted pipeline data is insufficient to confirm a flow rate. Additional claimant contact may be pursued. An on-site visit may be conducted at the invitation of the claimant. When pipeline data cannot be obtained and the claimed flow rate exceeds 17 gpm/acre, the claimed flow rate for filed and use rights will be reduced to the guideline when standards are applied in the database. The claimant should be notified of the reduction. The following information remark should appear on the abstract below the flow rate element.

Example: FRST THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO 17 GPM PER ACRE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

The claimed flow rate for decreed rights will not be reduced by applying standards. If the flow rate is greater than 17 gpm/acre, the following flow rate issue remark will be added to the review and decree abstracts:

Example: FRSS THE CLAIMED FLOW RATE EXCEEDS THE 17 GPM PER ACRE GUIDELINE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA. THE FLOW RATE EQUALS **95** GPM PER ACRE.

f. Ditches and Canals:

Ditches and Canals-Decreed: When the claim and original decree both specify a flow rate, the flow rate will be decreed as claimed or amended.

Decreed flow rates greater than 17 gpm/acre involving ditches and canals will generally only have the issue remark shown above listed (FRSS). If specific ditch capacity data are available, the claimed flow rate should be examined using the procedures under "Ditches and Canals—Filed and Use Rights" directly below.

For other variations of claimed and prior decreed flow rates, see "Flow Rate Issues: Specific Decreed Flow Rate Issues" ([Section VII.B.4.a](#)).

Ditches and Canals-Filed and Use Right: A ditch or canal cannot flow at a rate greater than its "design rate." A claimed flow rate exceeding the guideline will be reduced

to the guideline when standards are applied. The claimant should be notified of this reduction.

A properly designed ditch or canal should provide:

- velocity of flow causing neither erosion nor sedimentation
- sufficient capacity to carry the design flow
- proper hydraulic gradient or slope
- stable side slopes
- minimum initial cost and maintenance

Flow rate of a ditch or canal may be estimated by using the Manning Equation, which is an empirical formula for open channel flow or flow driven by gravity. See Exhibit VII-16 for further information.

When a claimed flow rate appears in error, conflicts with other data, or exceeds the 17 gpm/acre guideline, and there is insufficient information in the claim file to substantiate the claimed flow rate, a Ditch Questionnaire (Exhibit VII-12) and cover letter (Exhibit IV-8) will be sent to the claimant. Alternatively, the claimant can be contacted by phone or in a personal interview (see “Examination Materials and Procedures: Claimant Contact Techniques” in Section IV.F). This contact can have one of several outcomes (see overview in Exhibit VII-17): [Rules 14 \(d\)\(2\) and 44, W.R.C.E.R.](#)

- Submitted data confirms the claimed flow rate. Add a KEEP/CLAIMED flag to the examination worksheet if information supporting an actual flow rate is obtained from the claim file, claimant contact, or other data sources such as:
 - records submitted with the claim
 - ditch measurements
 - water commissioner records
 - WRS data
 - state project records
 - Bureau of Reclamation records
- Data clearly indicates a ditch capacity less than the flow rate claimed. **When the claimed flow rate is not amended to the actual flow rate, the two most likely outcomes are:**
 - If the claimed ditch capacity is **less than 17 gpm/acre**, add one of the following flow rate (FR) issue remark to the department's examination worksheet:

Example: F158 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE DITCH CAPACITY. AVAILABLE DATA SUGGEST THE DITCH CAPACITY IS **2.75** CFS.

OR

Example: F145 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM. AVAILABLE DATA SUPPORT A FLOW RATE OF **3 CFS**.

- If the claimed ditch capacity is **greater than 17 gpm/acre**, add a **KEEP/CLAIMED** flag to the documented flow rate. Add a flow rate (FR) issue remark (F158 or F145 above) to the department's examination worksheet.
- No documentation is submitted, or is insufficient to confirm the flow rate. Additional claimant contact may be pursued. An on-site visit may be conducted at the invitation of the claimant. When ditch capacity cannot be obtained and the flow rate exceeds 17 gpm/acre, the claimed flow rate for filed and use rights will be reduced to the guideline when standards are applied. The claimant should be notified of the reduction. The following information remark should appear on the abstract below the flow rate element.

Examples: FRST THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO 17 GPM PER ACRE. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

4. Flow Rate Issues: Note any flow rate issues on the examination worksheet. At the completion of examining the ownership, the claimant should be notified through claimant contact of all issue remarks.

Claimant contact must occur upon completing examination of the ownership if the flow rate is modified by rule, an issue remark exists, or the system is unclear. [Rules 14 \(c\)\(4\) and 44, W.R.C.E.R.](#)

Any flow rate with a keep flag that has a flow rate to acre ratio that is greater than twice the standard (2 x 17 gpm/acre = 34 gpm/acre) shall receive a V37 remark:

Examples: V37 THE CLAIMED FLOW RATE IS **123** GPM/AC. IT APPEARS A VOLUME QUANTIFICATION MAY BE REQUIRED TO ADEQUATELY ADMINISTER THIS RIGHT.

a. Specific Decreed Flow Rate Issues.

Claimed Flow Rate Greater than Original Decree: If the claimed flow rate on a single claim is greater than the original decreed flow rate, or an apparent error exists, add a flow rate (FR) issue remark to the department's examination worksheet:

Example: F90 THE CLAIMED FLOW RATE EXCEEDS THE **150** MINER'S INCHES OF **DOE CREEK** DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

Be aware that an implied claim may be involved if the claimant uses the difference between the claimed and decreed flow rates.

Flow Rate Claimed-No Flow Rate in Original Decree: When a claim specifies a flow rate and the original decree does not, accept the claimed flow rate and add the following flow rate (FR) issue remark:

Example: F91 CASE NO. **0000**, **MONTANA** COUNTY, DOES NOT SPECIFY A FLOW RATE; CLAIMED FLOW RATE RETAINED.

This may be a situation where the decree addressed certain elements of the water right other than the flow rate.

No Flow Rate Claimed-Flow Rate in Original Decree: When no flow rate is indicated on the claim form but the original decree does specify a flow rate, add the following flow rate (FR) issue remark to the department's examination worksheet:

Example: F92 CASE NO. **0000**, **MONTANA** COUNTY, DECREES A FLOW OF **150** MINER'S INCHES; NO FLOW RATE WAS CLAIMED.

On the examination worksheet, the flow rate should be null (no value).

No Flow Rate Claimed-No Flow Rate in Original Decree: For onstream reservoirs, direct flow water spreading, natural subirrigation, and natural overflow, accept the claim as submitted. No issue remark or claimant contact is necessary. Check that the flow rate is null (no value) on the examination worksheet.

For flood or sprinkler systems, offstream reservoirs, pumped water spreading systems, and controlled subirrigation, add the following flow rate (FR) issue remark to the department's examination worksheet:

Example: F93 CASE NO **0000**, **MONTANA** COUNTY, DOES NOT SPECIFY A FLOW RATE; NO FLOW RATE HAS BEEN CLAIMED.

On the examination worksheet, the flow rate should be null (no value).

Flow Rate Decreed at POU: When a claim or documentation states the flow rate was formerly decreed as measured at the POU, add a flow rate (FR) issue remark to the department's examination worksheet:

Example: F95 CASE NO. **0000**, **MONTANA** COUNTY, DECREES THE FLOW RATE AS MEASURED AT THE PLACE OF USE. THE FLOW RATE AT THE POINT OF DIVERSION IS UNKNOWN.

Flow Rate to POU Ratio Low: A claim based on a prior decreed right having a low flow rate to acre ratio (less than 4 gpm/acre) and not involved in a supplemental relationship may be evidence of an expanded or incrementally developed POU.

If the decree does not specify a flow rate standard or the number of acres irrigated, the following flow rate issue remark may be added to claims when place of use issue (PL) remarks are involved. The remark in this circumstance is useful because it provides an additional indication of incremental development. If uncertain, bring the issue to a supervisor.

Example: F110 THE LOW FLOW RATE TO ACRES RATIO FOR THIS CLAIM, **2.30** GPM/ACRE, MAY INDICATE AN EXPANSION OF THE HISTORICAL RIGHT.

If the historical decree specifically states a standard or the acres involved, and the claimed flow rate is less than 4 gpm/acre, add the appropriate flow rate (FR) issue remark to the department's examination worksheet:

Examples: F96 THE LOW FLOW RATE TO ACRES RATIO FOR THIS CLAIM, **2.30** GPM/ACRE, MAY INDICATE AN EXPANSION OF THE HISTORICAL RIGHT. CASE NO. **0000**, **MONTANA** COUNTY, SPECIFICALLY DECREES A FLOW RATE OF **ONE** MINER'S INCH PER ACRE.

F97 THE LOW FLOW RATE TO ACRES RATIO FOR THIS CLAIM, **2.30** GPM/ACRE, MAY INDICATE AN EXPANSION OF THE HISTORICAL RIGHT. CASE NO. **0000**, **MONTANA** COUNTY, SPECIFICALLY DECREES **90.00** ACRES TO THIS RIGHT.

b. Claimed Flow Rate not Numerically Quantified: Where a flow rate is to be decreed by the Water Court and the claim states the flow rate as "ALL" or a portion of "ALL" (e.g., 1/2 of ALL), apply the following procedure. Use Percent of Flow (POF) as the unit when entering flow rate in the database.

- For historically decreed rights where the flow rate is expressed as a percent of flow (POF), the units should be noted as POF on the examination worksheet. If "ALL" is claimed, the flow rate will be noted as "100 POF"; if one-half of flow is claimed, the flow rate will be noted as "50 POF." Add a KEEP/CLAIMED flag below the flow rate element on the examination worksheet. Add a flow rate (FR) information remark to the examination worksheet to identify the claimed flow rate:

Examples: F45 ENTIRE FLOW OF THE SOURCE AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

F50 THIS RIGHT IS FOR **ONE-THIRD** THE FLOW OF **DOE CREEK** AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

- For a single filed or use right where a flow rate is to be decreed, add a flow rate information remark (F56) and a flow rate issue remark (F170) to the examination worksheet. Check that the flow rate is expressed as POF and a KEEP/CLAIMED flag is noted on the examination worksheet. Add the appropriate flow rate information and issue remarks:

Examples: F56 **ENTIRE/ONE-FOURTH THE FLOW OF DOE CREEK.**

F170 THE FLOW RATE HAS NOT BEEN EXAMINED AS NO QUANTIFIED FLOW RATE WAS CLAIMED.

- For multiple filed or use rights based on the same historical water right filed by the same claimant, where a flow rate is to be decreed and a flow rate has not been identified, add the following flow rate (FR) issue remark to the department's examination worksheet for each claim involved. This remark is in lieu of the F170 issue remark referenced above.

Example: F171 THE FLOW RATE HAS NOT BEEN EXAMINED AS NO QUANTIFIED FLOW RATE WAS CLAIMED. THE CLAIMS LISTED FOLLOWING THIS STATEMENT ARE ALL BASED ON THE SAME HISTORIC WATER RIGHT. **000000-00, 000000-00.**

c. Undivided Interest: An undivided interest is where two or more water users have an interest in a whole unsegregated water right. The undivided interest is generally established in a deed. In an undivided interest, a water right is shared among the users in alternating or rotating use that allows each user to divert the full flow rate during their turn.

When an undivided interest is identified by the claimant on the claim form, in submitted documentation or during claim examination, add a flow rate (FR) information remark to the examination worksheet showing the respective proportional interests to all claims that share the right. The flow rate information remark will be used at summary preparation to identify all water rights in an undivided interest. Note that the F65 or F75 remark will be replaced by a remark that identifies each individual water right (F60, F76). If all claimed rights to an undivided right are known, add the F60, or F76 as needed:

Examples: F65 **UNDIVIDED 1/3 INTEREST IN A SINGLE WATER RIGHT FOR 2.50 CFS/GPM.**

OR

F75 CASE NO. **0000**, **MONTANA** COUNTY DECREED THIS RIGHT IN A PRIOR DECREE AS AN UNDIVIDED $\frac{1}{4}$ INTEREST IN A SINGLE WATER RIGHT FOR **2.50 CFS/GPM.**

As a rotation of the water use will be occurring, all parties sharing the water right must be identified in a flow rate information remark. The remark should be added to each claim. One method of identifying these claims is at the conclusion of basin examination. Review a remark index for all flow rate information remarks and replace the F65 or F75 remark with a remark (F60 or F76) which identifies all claims to the undivided interest.

Examples: F60 THE WATER RIGHTS FOLLOWING THIS STATEMENT HAVE AN UNDIVIDED INTEREST IN A SINGLE WATER RIGHT FOR **2.50 CFS/GPM. 000000-00, 000000-00, 000000-00.**

F76 THE WATER RIGHTS FOLLOWING THIS STATEMENT HAVE AN UNDIVIDED INTEREST IN A SINGLE WATER RIGHT FOR **2.50 CFS/GPM** AS DECREED IN A PRIOR DECREE, CASE NO. **0000, MONTANA** COUNTY. **000000-00, 000000-00, 000000-00.**

Undivided Interest Exceeds 100%: When all the parties in the undivided interest relationship have been identified and the combined undivided portions exceed 100%, add the following flow rate (FR) issue remark to each claim in the undivided interest relationship. Contact all claimants.

Example: F176 THE UNDIVIDED INTEREST PORTION OF THIS CLAIM MAY BE INCORRECT. THE SUM OF THE PORTIONS FOR THE CLAIMS IN THIS UNDIVIDED INTEREST EQUALS **143%**.

Undivided Interest Less than 100%: If all parties sharing the water right cannot be identified and the combined undivided portions are less than 100%, add the following flow rate (FR) issue remark to each claim in the undivided interest relationship. Contact all known claimants.

Example: F175 THE FLOW RATE MAY BE INCORRECT. ALL PARTIES IN THIS UNDIVIDED FLOW RATE INTEREST GROUP CANNOT BE IDENTIFIED. THE SUM OF THE UNDIVIDED INTEREST PORTIONS EQUALS **80%**.

Undivided Interest Flow Rate Discrepancy: An undivided interest allows each user the full flow rate on a rotating basis. Therefore, the claimed flow rates of the claims in the undivided interest relationship should be identical. If the claimed flow rates are not the same, add a flow rate (FR) issue remark to each claim in the undivided interest relationship. Claimant contact is required.

Example: F177 THE FLOW RATE OF THIS CLAIM MAY BE INCORRECT. THE PARTIES IN THIS UNDIVIDED INTEREST GROUP HAVE CLAIMED DIFFERENT FLOW RATES.

d. Maximum Acres Issue May Affect Flow Rate: If a maximum acreage issue is identified when examining the place of use element and a flow rate is to

be decreed, add the following flow rate (FR) issue remark to the department's examination worksheet if the criteria below are met: [Rule 14 \(c\)\(1\), W.R.C.E.R.](#)

Example: F180 FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

This remark should only be added when there is no KEEP flag on the flow rate and it is determined the gpm/examined acres (using the lowest data source figure) exceeds the guideline. If, for example, the claim indicates a flow rate of 100 gpm, and the lowest number of examined acres equals 20 (5 gpm/ac), this remark is not needed because it is below the 17 gpm/acre guideline.

e. Flow Rate Inadequate: Claimed flow rates that are below the guidelines will generally be accepted. In addition, a low flow rate on a claim in a supplemental relationship will generally be accepted. If, however, the claimed flow rate appears to be in error or inadequate, and is below 4 gpm/acre, add the following flow rate (FR) issue remark to the examination worksheet: [Rule 14 \(c\)\(2\), W.R.C.E.R.](#)

Example: F185 THE CLAIMED FLOW RATE APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

f. No Flow Rate Claimed: (*This section does not apply to prior decreed flow rates. See "Specific Decreed Flow Rate Issues" (Section VII.B.4.a).*) [Rule 14 \(c\)\(3\), W.R.C.E.R.](#)

Onstream Reservoirs, Direct Flow Water Spreading, Natural Subirrigation, and Natural Overflow: Accept the claim as submitted. No issue remark or claimant contact is necessary. The flow rate will be nullified (no value) and the appropriate remark applied when standards are run.

Flood or Sprinkler Systems, Offstream Reservoirs, Pumped Water Spreading Systems, and Controlled Subirrigation: When no flow rate is indicated on the claim form or in the documentation, add the following flow rate (FR) issue remark to the department's examination worksheet:

Example: F190 NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

Check that the flow rate on the examination worksheet is null (no value) and that a KEEP/CLAIMED flag is applied.

g. Filed Appropriation Documents Multiple Rights: When several claims submit the same filed appropriation as documentation for a filed water right, see "Claim Examination: Purpose: Multiple Uses" (Section VI.C.4) for criteria. If *different owners* have provided the same filed appropriation, the total flow rate should be tracked. Be sure the claims are for the same source (POD or POU); if not, a priority date issue (P455) may be necessary as well. When the flow rate is exceeded, apply the following

general information (GI) issue remark to the examination worksheet of all irrigation water rights involved:

Example: G36 THE TYPE OF HISTORICAL RIGHT, PRIORITY DATE, AND FLOW RATE MAY BE QUESTIONABLE. THE CLAIMS FOLLOWING THIS STATEMENT USE THE SAME FILED APPROPRIATION TO DOCUMENT THE RIGHT. THE COMBINED FLOW RATE FOR THIS GROUP OF CLAIMS EXCEEDS THE TOTAL OF THE ORIGINAL APPROPRIATION. **000000-00, 000000-00, 000000-00.**

5. Recording Documentation: After a claim has been examined, the flow rate of historically decreed rights will be tracked and recorded. No record of documentation for 1962-73 groundwater developments, filed appropriations, or use rights will be maintained.

The purpose for tracking and maintaining a record of prior decreed rights is to check that a prior decreed right for a certain flow rate and priority date is not exceeded by claims against that right.

a. Recording: All claims that will be decreed a flow rate by the Water Court and are based on a historical decreed right will be recorded.

Enter the following in the Historical Rights tab under “Courthouse Filing Information (Historical Filing)”:

- County
- Right Type
- Origin
- Filing Date (to distinguish between cases and documents)
- Case/Document number
- Decreed appropriator
- Source
- Decreed priority date
- Miners inches
- Flow Description
- Volume Description

In the past, the method was to write the decree information on an index of the old decree. When recording the proof of use submitted with a claim in an index, the following information was recorded:

- Purpose code (i.e., IR, FW, CM)
- Claim number
- Claimed flow rate
- Claimant

In some basins, both methods may be used simultaneously. “Recording Decreed Rights (Example WRS Decree Index)” (Exhibit VII-6) is an example of how documentation was recorded.

b. Decreed Rights Exceeded: After all the claims for a basin or subbasin have been examined, review the Summary Preparation Report No. 7—Decree Exceeded Index or the written decree index. Identify any group of claims where the total claimed flow rate for the group exceeds the prior decreed flow rate for that water right. Determine if one or more parties are involved. [Rule 14 \(e\), W.R.C.E.R.](#)

- When only one party is involved, a total flow rate for several claims that is greater than the original decreed flow rate may be a multiple use of the right. See "Claim Examination: Purpose: Multiple Use" (Section VI.C.4). If not multiple use, then the prior decreed right has been exceeded.
- When two or more parties are involved and the sum of the flow rates claimed by the parties is greater than the original decreed flow rate, the prior decreed right has been exceeded.

Where a prior decreed right has been exceeded, add a decree exceeded (DE) issue remark to the department’s examination worksheet:

Example: D5 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME PRIOR DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 150 MINER’S INCHES DECREED IN CASE NO. 0000, MONTANA COUNTY. 000000-00, 000000-00, 000000-00.

Contact each claimant following claimant contact procedures ([Rules 14 \(c\) and 44, W.R.C.E.R.](#)). A “Decree Exceeded Contact Letter” (Exhibit VII-7) may be used. Typically, this claimant contact is only done as notification, and not to initiate a resolution, although occasionally claimants may take some action to resolve the issue. More often, the Water Court will resolve the issue. See the Water Court’s handout, “Decree Exceeded Issues” (Exhibit VII-14). This handout may be included with the claimant contact letter.

If the parties resolve the decree exceeded issue among themselves and submit amendments for the percentages to which they are entitled prior to the Water Court issuing a decree, remove the decree exceeded (DE) remarks.

When a single claim exceeds the original decreed flow rate, the above decree exceeded remark is not necessary. See “Specific Decreed Flow Rate Issues” ([Section VII.B.4.a](#)). Claimant contact is still required.

C. VOLUME
[Rule 15, W.R.C.E.R.](#)

Irrigation volume is the amount of water which has been diverted, impounded, or withdrawn from the source over the year for irrigation and is measured in acre-feet (AF). The volume of water needed for irrigation is influenced by several factors including crop, soil type, irrigation systems, seasonal weather, and climatic area.

Volumes for claims to lawn and garden use (LG) should be examined using the domestic use guidelines (2.5 AF/acre) in Section VIII.C.

Most water rights for irrigation will not be decreed a volume. The types of irrigation rights that will receive a volume are:

- rights previously decreed by volume
- water spreading systems
- systems involving reservoirs

Claimant contact must occur upon completing examination of the ownership if the volume is modified by rule; an issue remark exists, or is unclear. [Rule 44, W.R.C.E.R.](#) and Section IV.F

1. Identifying the Claimed Volume: When applicable, use the documentation in the claim file to check that the volume is consistent with the claim form. Also check for clerical errors by the claimant. Claimant contact is required if a volume is to be decreed and it is unclear. See "Specific Volume Examination Criteria" ([Section VII.C.3](#)). [Rule 15\(a\), W.R.C.E.R.](#)

The volume units of measurement should be checked for agreement with the documentation and for correct conversions. Some claims were for gallons per year. If incorrect units have been claimed but the documentation on the claim form indicates the correct units, the correction may be made on the examination worksheet per [Rule 33 \(b\)\(7\), W.R.C.E.R.](#)

Volume Units Standardization: Irrigation volumes that will be decreed must be expressed in acre-feet. Any such volumes not expressed in acre-feet are to be converted to acre-feet or gallons per [Rule 4 W.R.C.E.R.](#) Make the conversion on the worksheet and note the change is by rule. [Rule 15\(g\)\(4\), W.R.C.E.R.](#)

Make all conversions using the following equivalencies:

- One (1) acre-foot equals 325,851 gallons.
- One (1) acre-foot equals 12 acre-inches.

If a volume that will be decreed is in units that cannot be converted using the above formulas, e.g., "6 applications per season", add a volume (VM) free text issue remark to the examination worksheet:

Example: VMIS VOLUME CLAIMED AS 6 APPLICATIONS PER SEASON.

2. Examining Volume: For the types of irrigation rights to be decreed a volume, examine the claimed volume using the information in the claim file, information gained through claimant contact, and the guidelines. The guidelines for specific system types are given below in "Specific Volume Examination Criteria" ([Section VII.C.3](#)). The guidelines are based on alfalfa as the crop, a drought-year growing season, system type, and climatic area. [Rule 15\(h\)\(3\), W.R.C.E.R.](#)

Unique Features or Aspects: Any unique features or aspects of the volume should be noted on the department's examination worksheet in a volume (VM) information remark:

Example: V12 THIS RIGHT IS FOR **ONE-FOURTH** THE VOLUME OF **DOE CREEK** AS DECREED IN CASE NO. **0000**, **MONTANA** COUNTY.

a. Changing Volumes. The claimed volume will not be changed during the examination unless:

- amended by the claimant; [Rule 15\(g\)\(1\), W.R.C.E.R.](#)
- modified by rule by the department [Rule 15\(g\)\(3\), W.R.C.E.R.](#); [Sections VII.C.1](#) and [VII.C.3](#) ;
- to standardize units of measure [Rule s15\(g\)\(4\) and 4\(b\), W.R.C.E.R. Section VII.C.1](#);
- Modify by rule (clarified) by the department without claimant contact if the claimed intent is clear or with claimant contact if the claimed intent is unclear. [Rules 15\(g\)\(2\) 33\(b\)\(7\), and 33\(c\), W.R.C.E.R. Section VII.C.1 Section VII.C.3.](#)

When the claimed volume is changed so that the review or decree abstracts will differ from the claim form or amendment, place an asterisk in the brackets to the left of the volume element on the examination worksheet. The claimant must be notified of these changes.

b. Claimant Contact: For the system types that will receive a volume in the decree, claimant contact may be required. In conjunction with the volume examination criteria, the claimant should also be contacted whenever the claimed volume is unclear, has apparent discrepancies, appears insufficient, or appears unreasonable. This contact can have several outcomes: [Rule 44, W.R.C.E.R.](#) and Section IV.F.

- Information discussed confirms the claimed volume. Document the information supporting the claimed volume.

- A volume different from that claimed is substantiated which the claimant wishes to have replace the claimed data. The claimant should submit an amendment.
- If the issue is unresolved, or data support an actual volume different from the one claimed, add a volume (VM) issue remark to the department's examination worksheet. See Section V: Volume for the appropriate issue remark.

c. Climatic Areas: The climatic area is used in examining irrigation claims to determine volume and period of use guidelines. The climatic area code is on the examination worksheet under the volume element. It will print under the volume element on the review and decree abstracts of each irrigation claim.

A climatic area designation will be stored in the database for every irrigation claim. Identify the climatic area by referring to the 1986 USDA Natural Resource Conservation Service [Irrigation Climatic Area Map](#) (authorized by the Water Court for use in examination) which is available as a layer in WRMapper. A Roman numeral designation has been given to each of the six climatic areas. The lower the number, the higher the consumptive use of a crop grown in that climatic area. Reviewing the climatic area includes the following steps: [Rule 15\(b\), W.R.C.E.R.](#)

- Assign a climatic area code to each claim based on the POU location by locating the POU on the 1986 USDA map. Determine the climatic area corresponding to that location. If the POU is located in more than one climatic zone, use the climatic area which has the larger consumptive use. If a claim is located in Climatic Area VI (mountainous area), assign either Climatic Area V or the climatic area which is adjacent to the mountainous area.
- Complete or change the climatic area code directly on the worksheet. The climatic area will be entered into the database. No asterisk is needed.
- Review the climatic area code if previously assigned. Climatic area codes were assigned to some irrigation claims as claims were initially being entered into the database. These codes were based on an earlier 1973 Soil Conservation Service (SCS) Irrigation Climatic Area Map of Montana (from the SCS Montana Irrigation Guide, 1974). The 1973 SCS map **has been replaced** by the 1986 update. The two maps look similar, but there are many differences. If a climatic area code has already been assigned to the claim, verify the climatic area using the 1986 map.

d. Feasibility Check: Claims that will be decreed both a flow rate and a total volume should be checked for feasibility. Comparison statistics under the volume element on the examination worksheet list the maximum volume possible if water were diverted at the claimed flow rate throughout the claimed period of use (year round use equals 366 days). Compare this value to the claimed volume. When the claimed flow rate (Q) or period of use has been amended, recalculate the maximum feasible volume (V) using the following equations:

- For cfs: Feasible $V = Q \times \text{days used} \times 1.9834711$
- For gpm: Feasible $V = (Q \times \text{days used})/226.28542$

When the claimed volume exceeds the maximum feasible volume, standards will apply volume (VM) issue remarks to the review and decree abstracts. If the claimant wishes to resolve the issue remarks, discuss flow rate, volume, and period of use with the claimant in order to determine which may be in error.

Examples: V23 THE VOLUME OF THIS WATER RIGHT APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME IS GREATER THAN **3.20** ACRE- FEET PER ACRE PER YEAR.

V24 THE CLAIMED VOLUME EXCEEDS MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS **3.20** ACRE- FEET PER YEAR.

3. Specific Volume Examination Criteria: This section contains the guidelines for conducting examination and claimant contact. Separate subsections address the various specific guidelines, which differ depending upon the claimed type of irrigation system and type of historical right. Claimed volumes below the guidelines are generally accepted, but may be examined further if there is an apparent error or conflicting data.

a. Systems Involving Reservoirs: *(This section does not apply to prior decreed volumes—see "Prior Decreed Volumes" below ([Section VII.C.3.d](#))).* The claimed volume will be decreed for irrigation systems involving reservoirs where control of the reservoir is part of the right. When a reservoir is involved, data will be collected ([Rule 15 \(f\) W.R.C.E.R.](#)) according to the procedures in "Claim Examination: Reservoirs" (Section VI.H).

The volume values by climatic area for systems involving reservoirs are below. These values were used previously as volume guidelines for direct flood irrigation systems. A history and description of their development is in "Calculation of Volume Guidelines" (Exhibit VII-8).

Table VII-1: Climatic Area Values for Systems Involving Reservoirs

Climatic Area	AF/AC/YR Values
I	11.4
II	10.2
III	9.4
IV	8.5
V	7.2

When the claimed volume is greater than 15 AF and exceeds the above values, or is greater than 2 times the capacity of the reservoir, add the appropriate volume (VM) issue remark(s) to the department's examination worksheet ([Rule 15 \(h\) 5 W.R.C.E.R.](#)). If questions arise, consult with a supervisor.

Example: V35 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS **17.80** ACRE FEET PER ACRE.

When the claimed volume is below the AF/AC/YR value and is less than 2 times the reservoir capacity, the volume will generally be accepted, providing the delivery system is adequate. Add a volume (VM) information remark to the examination worksheet noting the volume was not examined:

Example: VM THE VOLUME CLAIMED IS 15 AF OR LESS AND WAS NOT EXAMINED.

If the delivery system cannot deliver the claimed volume, add an issue remark per [Rule 15 \(h\) 5 W.R.C.E.R.](#):

Example: V111 THE CLAIMED VOLUME CANNOT BE CONFIRMED DUE TO LACK OF DATA.

A volume will not be decreed for irrigation claims which use other than stored water, such as direct flow diversions upstream from a reservoir or a small reservoir as part of a large direct flow system, e.g., 0.4 AF reservoir for 20 acres of irrigation.

One method to determine if an irrigation claim uses other than stored water from the reservoir is to compare the claimed volume to a calculated volume based on claimed acres multiplied by the appropriate climatic area volume value. Compare the smaller volume to the capacity of the reservoir. If the claimed or calculated volume is greater than 2 times the capacity of the reservoir, the claim may be primarily a direct flow irrigation system. This approach may not work throughout Montana—consult with a supervisor to determine a basin-wide method. A Reservoir With Irrigation Questionnaire (Exhibit VI-7) has been developed that may aid in determining direct flow irrigation systems.

When determining a possible direct flow system, be aware of supplemental right relationships. A small reservoir claim as part of a large system may utilize stored water to supplement other water rights and therefore may not be a direct flow system.

Claimant contact may be necessary to understand the relationship between the reservoir, the irrigation system, the claimed volume, and claims which may be supplemental. When it is determined that storage is a minimal part of the total volume used, cross out the claimed volume on the examination worksheet, making the value null (no value). Add an asterisk in the brackets to the left of the volume element and add a volume (VM) information remark to the department's examination worksheet. See "Flow Rate: Flow Rate Criteria: Systems Involving Reservoirs" ([Section VII.B.3.a](#)) for further information on retaining the flow rate in such cases. [Rule 15\(f\), W.R.C.E.R.](#)

Examples: V9 PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

Retain the reservoir record. When standards are applied, the following volume (VM) information remark will be added to the review and decree abstracts:

Example: VF009 THE TOTAL VOLUME OF THIS RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

b. Water Spreading Systems: *(This section does not apply to prior decreed volumes. See "Prior Decreed Volumes" below ([Section VII.C.3.d](#))).* A volume will be decreed for water spreading systems. The volume guidelines by climatic area for water spreading systems are below ([Rule 15 \(e\) \(1\) W.R.C.E.R.](#)). These values were used previously as volume guidelines for irrigation systems. A history and description of their development is in "Calculation of Volume Guidelines" (Exhibit VII-8). [Rule 15\(e\), W.R.C.E.R.](#)

Table VII-2: Climatic Area Guidelines for Water Spreading Systems

Climatic Area	AF/AC/YR Guidelines
I	2.3
II	2.0
III	1.9
IV	1.7
V	1.4

When a claimed volume based on a filed or use right for a water spreading system exceeds the guideline for the respective climatic area, it will be reduced to the guideline when standards are applied, unless there is a KEEP/CLAIMED flag accompanying the volume. The V5 information remark (containing the appropriate guideline value) and an asterisk will be added to the review and decree abstracts. The claimant should be notified of this reduction.

Example: V5 THE VOLUME OF THIS WATER RIGHT HAS BEEN REDUCED TO THE 1.7 ACRE-FEET PER ACRE GUIDELINE FOR WATER SPREADING. THE VOLUME MAY BE CONTESTED BY PROPER OBJECTION.

Claims formerly decreed by volume will not have the claimed volume reduced by standards. See "Prior Decreed Volume" below ([Section VII.C.3.d](#)).

A claimed volume greater than the guideline may be substantiated by **pre-July 1, 1973** information:

- records submitted with the claim
- ditch measurements
- water commissioner records
- WRS data
- state project records
- Bureau of Reclamation records
- information obtained through claimant contact

If substantiated, note a KEEP/CLAIMED flag below the volume element on the examination worksheet.

c. Direct Flow Systems: (*This section does not apply to prior decreed volumes—see "Prior Decreed Volumes" below ([Section VII.C.3.d](#))*). A volume will not be decreed for direct flow irrigation rights. Direct flow irrigation includes flood and sprinkler systems (with or without pumps), subirrigation, and natural overflow. (It does not include systems using stored water from reservoirs or water spreading systems.) The volume should be null (no value) on the examination worksheet. Add an asterisk in the brackets to the left of the volume element on the examination worksheet. Standards will apply the following volume (VM) information remark to the review and decree abstracts. The claimant should be notified. [Rule 15\(c\), W.R.C.E.R.](#)

Example: VF009 THE TOTAL VOLUME OF THE RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

d. Prior Decreed Volumes: In some district court cases prior to the passing of SB76, water rights were decreed a volume. Prior decreed volumes must be retained to appear on the review and decree abstracts. Add a volume (VM) information remark to the examination worksheet: [Rule 15\(d\), W.R.C.E.R.](#)

Example: V10 THIS VOLUME WAS DECREED IN A PRIOR DECREE, CASE NO. 0000, MONTANA COUNTY.

Decree Exceeded: Compare the claimed volume to the volume decreed in the submitted documentation. If the claimed amount exceeds the prior decreed amount, add the following volume issue remark to the department's examination worksheet:

Example: V30 THE CLAIMED VOLUME EXCEEDS THE 1,750 ACRE-FEET DECREE IN A PRIOR DECREE, CASE NO. 0000, MONTANA COUNTY.

Be aware that an implied claim may be involved if the claimant uses the difference between the claimed and decreed amounts.

Volumes that are based on prior decreed water rights will be recorded. Enter the following in the Historical Rights tab under “Courthouse Filing Information (Historical Filing)”:

- County
- Right Type
- Origin
- Filing Date (to distinguish a case or document if have the same number)
- Case/Document number
- Decreed appropriator
- Source
- Decreed priority date
- Miners inches or volume
- Flow Description
- Volume Description

In the past, the method was to write the decree information on an index of the old decree. When recording the proof of use submitted with a claim in an index, the following information was recorded:

- Purpose code (i.e., IR, FW, CM)
- Claim number
- Claimed flow rate
- Claimant

In some basins, both methods may be used simultaneously. “Recording Decreed Rights (Example WRS Decree Index)” (Exhibit VII-6) is an example of how documentation was recorded.

When a prior decreed right is found to be exceeded by the combined volume of claims based on that right, add a free text decree exceeded (DE) issue remark similar to the D5 to the department's examination worksheet, but modified to refer to volume and acre-feet:

Example: DEIS THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREEED WATER RIGHT. THE SUM OF THE CLAIMED VOLUMES EXCEEDS THE 15 ACRE-

FEET DECREED IN CASE NO. 0000, MONTANA COUNTY. 000000-00, 000000-00, 000000-00.

Compare claimed volume to Table VII-3 below. These values were used previously as volume guidelines for all irrigation systems. A history and description of their development is in “Calculation of Volume Guidelines” (Exhibit VII-8). When the claimed volume exceeds the values, add a volume (VM) issue remark to the department's examination worksheet:

Example: V23 THE VOLUME OF THIS WATER RIGHT APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME IS GREATER THAN **3.20** ACRE-FEET PER ACRE PER YEAR.

Table VII-3: Climatic Area Guidelines for Various Systems (Decreed)

Climatic Area	Systems With Reservoirs	Flood Systems Without Pumps	Sprinkler and Pumped Systems	Water Spreading Systems
	AF/AC	AF/AC	AF/AC	AF/AC
I	11.4	5.7	3.8	2.3
II	10.2	5.3	3.5	2.0
III	9.4	5.0	3.3	1.9
IV	8.5	4.6	3.1	1.7
V	7.2	4.4	3.0	1.4

4. Volume Issues: Note any volume issues on the examination worksheet. At the completion of examining the ownership, the claimant should be notified through claimant contact of all issue remarks.

Claimant contact must occur upon completing examination of the ownership if the volume is unreasonable, an issue remark exists, or the system is unclear. [Rules 15\(h\)\(5\) and 44, W.R.C.E.R.](#) and Section IV.F.

a. Volume Excessive: When a claimed volume that will be decreed appears excessive for the circumstances of the claim (diversion and conveyance, POU, climatic area), add a volume (VM) issue remark to the department's examination worksheet:

Examples: V35 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS **17.80** ACRE-FEET PER ACRE.

V40 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS **2.9** TIMES THE CAPACITY OF THE RESERVOIR.

G975 THE CLAIMED VOLUME EXCEEDS MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS **210** ACRE-FEET PER YEAR.

b. Volume Inadequate: When a claimed volume that will be decreed appears exceptionally low, generally below 0.5 AF/AC, add the following volume (VM) issue remark to the department's examination worksheet:

Example: V45 THE CLAIMED VOLUME APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

c. No Volume Claimed: When no volume has been claimed for a water spreading system, a system involving a reservoir, or a prior decreed volume, add a volume (VM) issue remark to the department's examination worksheet:

Examples: V50 NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS AREA IS **2.00** ACRE-FEET PER ACRE.

V95 NO VOLUME HAS BEEN CLAIMED.

V96 THE VOLUME HAS NOT BEEN EXAMINED AS NO QUANTIFIED VOLUME WAS CLAIMED.

Check that the volume element on the examination worksheet is expressed as null (no value) and indicate a KEEP/CLAIMED flag on the examination worksheet.

For direct flow systems where a volume will not be decreed, accept the claim as submitted. No issue remark or claimant contact is necessary. Check that the volume element on the examination worksheet is null (no value).

d. Maximum Acres Issue May Affect Volume: If a maximum acreage issue was identified when examining the place of use element and a volume is to be decreed, add the following volume (VM) issue remark to the department's examination worksheet if the criteria below are met:

Example: V55 VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

This remark should only be added when there is no KEEP/CLAIMED flag on the volume and it is determined the acre-feet/examined acres (using the lowest data source figure) exceeds the guideline. If, for example, a claim which involves a reservoir indicates a volume of 100 acre-feet (Climatic Area III), and the lowest number of examined acres equals 20 (5 acre-feet/ac), this remark is not needed because it is below the guideline.

e. Claimed Volume not Numerically Quantified: When a claimed volume for a water spreading system, systems involving a reservoir, or a prior decreed volume states "ALL" or a portion of "ALL" (e.g., "½ of ALL"), the following procedures apply:

- For prior decreed rights, check that the volume is expressed as null (no value) and a KEEP/CLAIMED flag is designated. Add a volume (VM) information remark to the examination worksheet to identify the claimed volume:

Examples: V11 ENTIRE VOLUME OF THE SOURCE AS DECREED IN A PRIOR DECREE, CASE NO. **0000, MONTANA** COUNTY.

V12 THIS RIGHT IS FOR **ONE-FOURTH** THE VOLUME OF **DOE CREEK** AS DECREED IN A PRIOR DECREE, CASE NO. **0000, MONTANA** COUNTY.

- For filed or use rights where a volume is to be decreed, add a volume information remark (V13) **and** a volume issue remark (V96) to the examination worksheet:

Examples: V13 **ENTIRE/ONE-FOURTH THE** VOLUME OF **DOE CREEK**.

V96 THE VOLUME HAS NOT BEEN EXAMINED AS NO QUANTIFIED VOLUME WAS CLAIMED.

Check that the volume is expressed as null (no value) and a KEEP/CLAIMED flag is designated on the examination worksheet.

D. PLACE OF USE (POU)
[Rule 12, W.R.C.E.R.](#)

An irrigation place of use (POU) is the land to which water is applied. The POU is defined by a legal land description and an acreage value. The size of the POU relates closely to the amount of water claimed for an irrigation water right. As a result, the examination of the POU is a very important part of the overall analysis of an irrigation claim.

The claimant was required to support the POU on the claim form by submitting a map of the POD, conveyance, and POU ([§85-2-224\(2\) MCA](#)).

The examination of the claimed POU for an irrigation claim has two phases. First, identify the claimed POU and, when necessary, clarify it to make it clear and consistent with the claim file. Second, examine the claimed information for consistency with outside data sources. Both phases may require claimant contact. Generally, if the first phase requires contact, pursue the second phase for a better understanding of the claim prior to contact. [Rules 12\(a\)\(2\), and 44, W.R.C.E.R.](#) and Section IV.F.

Claimant contact must occur upon completing examination of the ownership if the place of use is modified by rule; an issue remark exists, or is unclear. [Rule 12\(a\),\(b\), W.R.C.E.R.](#)

1. Identifying the Claimed Place of Use: Using just the information in the claim file, check the acreage and location of the claimed POU. The POU on the claim form and the claimant's map should agree.

If the claimant's map is unclear, for example the POU is not outlined, add the following place of use (PL) issue remark to the department's examination worksheet:

Example: P305 THE CLAIMED **PLACE OF USE AND ACRES IRRIGATED** COULD NOT BE IDENTIFIED FROM DATA SUBMITTED WITH THE CLAIM.

P306 THE PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

Acreage: On the examination worksheet, compare the maximum acres value with the sum of the individual claimed parcels under the place of use element for agreement. The maximum acres figure is the total acres keypunched directly from the claim form whereas the sum of the individual claimed parcels is a database generated total. When a difference between the maximum acres and total parcel acres exist, check the arithmetic, claimant's map, and aerial photograph.

If the maximum acres do not equal the sum of the parcels, add a maximum acre (MA) issue remark to the examination worksheet. See "Maximum Acre Issues" ([Section VII.D.4.h](#)) for additional information.

Example: M100 THE MAXIMUM ACRES CLAIMED MAY BE QUESTIONABLE. THE SUM OF THE PARCEL ACRES IS **350.00**.

Legal Land Description: Compare the claimed parcel land descriptions to the claimant's map. The map and claimed parcels should agree. Many water right claimants were not familiar with legal land descriptions. One result of this unfamiliarity is a large number of inaccurate and/or overly general descriptions of claimed places of use. See "Modifying by Rule: Claimed Acreage or Legal Land Descriptions" below ([Section VII.D.1.a](#)).

The database allows for the addition of a fourth ¼ section breakdown to a legal land description. This should only be done when the claimant's map or the data sources are extremely precise, or the claim indicates a fourth ¼ description. POUs in highly subdivided areas or a townsite could warrant a fourth ¼ description.

Check whether the POU involves a subdivision, government lot, certificate of survey, etc. See "Claim Examination: Additional Legal Land Descriptions" (Section VI.E.) for processing instructions.

a. Modifying by Rule: Claimed Acreage or Legal Land Descriptions: The degree to which acreage or legal land descriptions can be modified per [Rule 12 \(d\) W.R.C.E.R.](#) without benefit of claimant contact depends on the quality of the claimant's map, and outside data sources (plat books, aerial photos, realty transfer certificates, etc.). The claimant's intent must be clearly established by their map or other information in the claim file, preferably both. [Rules 12\(d\)\(2\) and 33\(b\)\(1\),\(4\), W.R.C.E.R.](#)

- Simple arithmetic errors in acreage may be modified by rule to the correct value. Parcel acreage may be modified by rule without claimant contact. If an acreage discrepancy is not simple arithmetic or parcel adjustment, add a place of use (PL) issue remark to the examination worksheet:

Examples: P305 THE CLAIMED **PLACE OF USE AND ACRES IRRIGATED** COULD NOT BE IDENTIFIED FROM DATA SUBMITTED WITH THE CLAIM.

P306 THE PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

A downward or upward change to the total acreage stated on the claim form which involves more than a simple arithmetic error may **only be made by amendment**. **Contact the claimant if there is an issue with the acreage beyond simple arithmetic**. Consider requesting a new map from the claimant.

- Adjustments to the claimed legal land description may be modified by rule to a refined or adjusted value if the claimant’s intent is clearly established. If the claimed legal land description is not clear, add a place of use (PL) issue remark (P305, P306, or M100) to the examination worksheet.

If there are adjustments to the acreage because of mathematical error or the legal land description is refined, document the change to the claimed POU directly on the examination worksheet or by attaching a “DNRC Examination Worksheet POU Addendum” (Exhibit VII-9) or similar, to the examination worksheet. Indicate the acreage or legal land description has been modified by rule under the place of use element on the examination worksheet. If the POU acreage or legal land descriptions are changed so that they differ on the review or decree abstract from the claim form, place an asterisk in the brackets to the left of the place of use element on the examination worksheet. The claimant must be notified of such changes.

Acreage Errors: There are numerous reasons why the claimed parcel acres and maximum acres may need adjustment, such as:

- parcel listed twice
- parcel omitted
- acres too high or too low for land description
- arithmetic errors

For example, a claim is encountered where the claimed acreage values do not match the claimant's map. The claimed place of use on the statement of claim is described as:

32 acres	NWSW
18 acres	SWSW
<u>10 acres</u>	SESWNW
60 acres total	

The **claimant's map** and **department data sources** clearly depict the following:

38 acres	NWSW
18 acres	SWSW
<u>4 acres</u>	SESWNW
60 acres total	

The place of use acreage should be modified by [Rule 12 \(d\) W.R.C.E.R.](#) if no apparent possibility of conflict in ownership exists. If the POU acreage or legal land descriptions are changed so that they differ on the review or decree abstract from the claim form, place an asterisk in the brackets to the left of the place of use element on the worksheet. The claimant should be notified of such changes.

Legal Land Description Errors: There are numerous reasons why the claimed legal land descriptions may need correcting or refining, such as:

- duplicate parcels
- missing parcels
- backwards legal land description
- incorrect legal land description
- overly general or overly specific legal land description

For example, a 10 acre parcel might have been described by the claimant as lying within the NW $\frac{1}{4}$ of Section 26. This legal land description might be revised to more precisely define the POU in several different ways, depending on the information in the claim file and confirmed by other available data sources.

Claimed:	10 acres	NW
Solution 1:	10 acres	SWNW
Solution 2:	7 acres	SESWNW
	3 acres	SWSWNW

In some instances, a claimant may list a larger claimed acreage than the legal land description can accommodate, e.g., 150 acres in NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 26. In this example, review the claimant's map and other data sources to identify the place of use. If the claimant's map clearly depicts the POU that is confirmed by other data sources, the legal and the associated acreage should be modified by rule ([Rule 12 \(d\) W.R.C.E.R.](#)). The legal land description could be broken into smaller parcels, or the legal description could be made more general.

Claimed:	150 acres	NWSW
Solution 1:	80 acres	S2SW
	40 acres	NESW
	30 acres	NWSW
Solution 2:	150 acres	SW

If the POU acreage or legal land descriptions are changed so that they differ on the review or decree abstract from the claim form, place an asterisk in the brackets to the left of the place of use element on the examination worksheet. The claimant should be notified of such changes.

b. Changing Claimant Contact Points: If the total acreage value is changed because of modifying by rule or by an amendment submitted by the claimant, the "claimant contact points" must be adjusted. Claimant contact points are discussed further in "Analyzing Claimed and Data Source Acreage Totals" ([Section VII.D.2.e](#)) and a

depiction of how claimant contact points are derived is in “Definition of Claimant Contact Regarding Irrigated Acreage” (Exhibit VII-10).

The claimant contact points are listed directly below the place of use element on the examination worksheet. After the acreage has been updated in the database, generate a new examination worksheet which will show the new claimant contact points. Alternatively, the claimant contact points can be calculated using the equations below. Document the new claimant contact points by writing them on the worksheet.

The contact points are only guidelines. For extremely large acreages (>50,000), the claimant contact points should be used with some judgment—consult with a supervisor.

$$Cp = X - 0.8(X^{0.6})$$
$$Cp = X + 0.8(X^{0.6})$$

where X = new total claimed acres
Cp = new claimant contact point

2. Examining Place of Use: Using WRMapper, digitize the claimed place of use. Sometimes scanning the claimant’s map and adding it to WRMapper (georeferencing known points) may help in re-creating the claimant’s map. Also digitize the examined place of use using two primary data sources. An extensive overview of aerial photo interpretation is available on the Adjudication Shared Drive under Claim Examination Documents\Training.

Once the claimed POU has been properly identified, examine the POU to confirm the accuracy and existence of the irrigated acres, and the accuracy of the legal land descriptions. Variance between the claimed POU and examined POU may only be changed by an amendment.

Water supply organizations, irrigation districts, canal companies, ditch companies, etc. should be mapped if the rights are appurtenant to a specified place of use.

a. Data Sources: The POU indicated on the claim and examination worksheet will be compared with two or more data sources per [Rule 12 \(b\) W.R.C.E.R.](#) These data sources may include but are not limited to the following:

- USDA aerial photographs taken between 1975 and 1980
- USGS orthophotoquads
- USGS topographic maps
- Water Resources Survey (WRS) data and materials
- WRS published survey
- WRS photos
- WRS field notes
- U.S. National Forest Service maps

- Bureau of Land Management maps
- On-site visit at request of claimant

Although topographic maps do not provide a pictorial representation of the POU, they do provide important evidence about slope and the feasibility of irrigating from the source claimed. This information is not easily interpreted on aerial photographs. Also, topographic maps occasionally depict conveyance ditches and spreader dike systems.

The Water Resource Survey (WRS) data and materials were compiled for most counties by the Montana Water Conservation Board in the 1940's through 1960's. WRS materials consist of field notes, published books, 2" per mile (or greater) mylar maps, and 2" per mile (or greater) aerial photographs. The maps in the published survey books are 1" per mile and may be too small to make precise acreage calculations. The 2" per mile mylar maps show areas under irrigation at the time of the survey. Specify the type of WRS data on the examination worksheet.

On-site visits at the invitation of the claimant may become a data source when facts and issues cannot be resolved by other data sources, including claimant contact. See "Examination Materials and Procedures: Investigation Techniques" (Section IV.G).

b. POU Data Source Review: Use a minimum of two data sources to determine whether the claimed acreage is actually irrigated from the claimed POD. The principal data sources used in this examination are the 1975-80 USDA aerial photographs and the WRS data listed above. By comparing the claim and examination worksheet to each of these sources, and the sources to each other, an analysis of the changes in POU over time can be made.

Using two data sources, one earlier than the other, illustrates the changes taking place over time such as significant acreage taken out of, or put into, production between the two snapshots in time. For example, if the WRS data indicate that 50 of the claimed acres were irrigated in 1968, but a 1978 photo shows only 20 acres being irrigated, a non-use issue may exist. Similarly, if the WRS shows 20 irrigated acres, but a 1978 photo shows 50 irrigated acres, an incremental development issue might exist.

Two data sources may not always be available for certain areas or for claims with priority dates nearing 1973. Bring such claims to the attention of a supervisor. Every attempt will be made to find a second data source, preferably pre-1980. If a second data source exist that is post-1980, it will generally not be used for identifying issues (unless it speaks to extended non-use). The post-1980 data source can be used to document the examiner's analysis.

In some cases only one data source will exist. In these situations, only one data source will be used and the fact noted on the examination worksheet. A 1970 priority date, for example, postdates the WRS data for most counties. Since the late priority date makes pre-1973 incremental development or non-use less likely, the lack of a second data source is not likely to result in a deficient examination. If there is reason to believe an issue exists, see “Special Provisions: Change in Appropriation Right” (Section XI.F.) for potential issue remarks. Post-1973 changes in irrigated acreage are subject to the Montana Water Use Act, not the Water Court adjudication.

Also determine whether all acres that appear irrigated are actually served by the claimed source and conveyance system; the acres might be served by a different source or conveyance system. *Care should be taken to avoid crediting an active irrigation system with naturally subirrigated acres. Natural subirrigation sometimes resembles full service irrigation on an aerial photograph.* The area may be adjacent to a stream and always appears wet. Check photo dates and topographic maps for indications of springs in the area.

Claimed Acres 2.50 or Less: Acreage totals of 2.5 acres or less are presumed to be valid unless a data source, e.g., county plat, clearly contradicts the claim. Aerial photographs are generally not effective tools for reviewing small acreage. Note on the examination worksheet "POU not examined due to size."

Claimed Acres 2.51 - 5.00: Compare claims of 2.51 to 5.00 acres with a minimum of two data sources for evidence of irrigation and to see if the claimed acreage appears correct. If the data source clearly contradicts the claimed acreage, add the appropriate place of use (PL) issue remark:

Examples: P320 THE PLACES OF USE FOR **IRRIGATION** CLAIM NO. **000000-00** AND **DOMESTIC** CLAIM NO. **000000-00** OVERLAP.

P325 THE CLAIMED PLACE OF USE DOES NOT APPEAR TO BE USED FOR DOMESTIC IRRIGATION PURPOSES.

P330 ONLY **2.00** ACRES OF THE CLAIMED PLACE OF USE APPEAR IRRIGATED FOR DOMESTIC PURPOSES.

c. Data Source Criteria: For each claimed POU parcel, review the two principal data sources—the 1975-1980 USDA aerial photographs and the WRS data listed above—for evidence that the claimed acreage was being irrigated at the time the data source was compiled. If a third data source is available, review the claimed POU in the same manner. Any two data sources may be used in the examination. If two sources, one of which is not a ‘principal data source,’ represent the claimed information, use the two best data sources.

Flood Irrigation or Flood/Sprinkler Irrigation: The following are the examination criteria for determining historical flood irrigation or flood/sprinkler irrigation. A claimed parcel needs to meet only one of the criteria to confirm claimed acres on a given data source.

- The 1975-80 USDA aerial photographs must show a definite shade contrast indicating irrigation when compared to non-irrigated lands in the vicinity. Also, evidence of a supply ditch from the claimed source must show on the photo. In a floodplain or areas with a high water table, these criteria may require a liberal interpretation.

OR

- The 1975-80 USDA aerial photograph must show some evidence of the irrigation system. Do not count areas of brush and trees unless claimant contact supports irrigation in such areas. Do not count roads and buildings. Evidence must include:
 - main supply ditch from the claimed source,
 - lateral spreader ditches, or some system of controlled water spreading, and
 - clearly defined field boundaries (shade contrast) especially on the down slope side of the field.

OR

- WRS materials indicate irrigation.

Sprinkler Irrigation: The following are the examination criteria for determining historical sprinkler irrigation. A claimed parcel needs to meet only one of the criteria to confirm claimed acres on a given data source.

- The 1975-80 USDA aerial photograph must show some evidence of the irrigation system, such as:
 - conveyance ditches from the claimed source
 - holding ponds
 - irrigation wells
 - pump houses
 - wheel lines
 - surface or buried mainlines
 - center pivots
 - irrigated field boundary must show a definite shade contrast

OR

- The 1975-80 USDA aerial photograph must show a definite shade contrast indicating irrigation when compared to non-irrigated lands in the vicinity. A definite irrigated field boundary must be determined. A conveyance system from the claimed source should show on the aerial photograph or must be clearly illustrated on the claim map.

The above criteria are not always valid in areas with a high water table. Most fields irrigated by wheel lines are rectangular in shape but some fields have irregular ends that may be covered with handlines. Fields irrigated by center pivots are round, generally, but some cover corners with end guns or handlines. Acreage claimed under traveling gun sprinklers can be difficult to identify. Few traveling guns were used before 1975. Some traveling boom sprinklers (rotating booms) were installed from about 1969 to 1974, but they irrigated limited amounts of acreage and were limited to less than 4% slope.

OR

- WRS materials indicate irrigation.

Subirrigation and Natural Overflow: The following are the examination criteria for determining subirrigation or natural overflow. A claimed parcel needs to meet only one of the criteria to confirm claimed acres on a given data source.

- The USGS topographic map must confirm the claimed boundaries as being feasible. The claimed POU must be approximately at the same contour (elevation) as the source.

OR

- The 1975-80 USDA aerial photograph must show a definite shade contrast when compared to non-irrigated lands in the vicinity. Because of dry years or the time of year photographs were taken, there may not be evidence of subirrigation or natural overflow over the entire area.

OR

- WRS field note information and aerials indicate subirrigation or natural overflow. (The published WRS usually does not indicate areas of subirrigation or natural overflow. A remark will not be added to note the WRS data unless the area is specifically documented in the survey and disagrees significantly with the claimed acreage.)

d. Mapping Place of Use and Data Source Results: The place of use for irrigation claims is mapped in WRMapper because it shows the accurate location of the area examined, a pictorial view of supplemental rights, and irrigated land claimed by unrelated owners. Digitize the claimed place of use from the claimant's map. Also

digitize the examination results from the 1979-1980 aerial photograph (referred to in WRMapper as 'Examined') and from the WRS aerial photograph (referred to in WRMapper as 'WRS'). These results should be produced in a PDF report created from WRMapper. The reports MUST be named according to "Exporting and Naming Reports" ([Figure VII-1](#)):

Figure VII-3

Exporting Mapper Reports and Naming Convention

Exporting Reports to .PDF Format

Once you have your report the way you want it to look, you need to export it as a .PDF.

1. In ArcMap, click on the *File* menu and choose *Export Map* on the dropdown list.
2. In the *Save in* dropdown menu, navigate to *C:\wrmapper\reports*
3. In the *Save as type* dropdown, choose the PDF (*.PDF) option.
4. On the *General* tab, set the resolution to 125dpi.
5. For the *File name*, use the naming convention listed below to name your file. Click save.

WRMapper Reports Naming Convention:

Reports must be named according to these instructions.

Basin Number Water Right Number Water Right Type Extension.Report Type

Examples:

76L 123456 STATEMENT OF CLAIM 00.C.pdf
76L 123456 STATEMENT OF CLAIM 00.E.pdf
76L 123456 STATEMENT OF CLAIM 00.W.pdf
76L 123456 STATEMENT OF CLAIM 00.CE.pdf
76LJ 123456 STATEMENT OF CLAIM 00.CW.pdf
76LJ 123456 STATEMENT OF CLAIM 00.CEW.pdf
76LJ 123456 STATEMENT OF CLAIM 00.EW.pdf
41QJ 123456 RESERVED CLAIM 00.C.pdf
76L 123456 IRRIGATION DISTRICT 00.E.pdf
76LJ 30123456 STATEMENT OF CLAIM.EW.pdf

There should be a space between each part of the name, except for before the report type where there should be a period.

All letters should be in CAPS.

As we may want to extract all the claimed maps into a separate file, there should be only one file with a 'C' in the report type.

Figure VII-1 (cont.)

Water Right Types:

Water right types must be written exactly as they are in the following list:

IRRIGATION DISTRICT
STATEMENT OF CLAIM
RESERVED CLAIM
POWDER RIVER DECLARATION
INTER-STATE CLAIM

Extension:

This is the two digits (usually 00) that follow the water right number. If there isn't an extension for the water right (a 30,000,000 number), you can skip this part of the name.

Report Types:

Report showing the **claimed** information only: C
Report showing the **examined** information only: E
Report showing the **WRS** information only: W
Report showing the **claimed and examined** on the same report: CE
Report showing the **claimed, examined & WRS** on the same report: CEW
Report showing the **claimed and WRS** on the same report: CW
*Report showing **stock** claims: CE
*Report showing **domestic** claims: CE
*Report showing all "**other uses**" claims: CE
Report showing **supplemental claims: SU

*If you have been using the purpose (or purpose abbreviations) as part of the name; here are your options.

** Should be saved in your own files, not part of the files we export for FileNet.

(Optional: You can export a second copy with any naming convention you wish to another location for your own organizational purposes, but you **MUST** save a copy of every report following the instructions above.)

The POU element on the examination worksheet provides space to record the results of examining two separate data sources. In the "Data Source" area on the examination worksheet, note the data source, e.g. USDA or WRS or a third data source. Record the Photo ID, date, and county of the principal data sources on the examination worksheet.

Using tools in WRMapper to determine examined acres, record the examined irrigated acres from each data source on the examination worksheet. Each data source

has one space per corresponding claimed parcel. For example, a POU of twelve parcels will have twelve lines under Data Source No. 1 and twelve lines under Data Source No. 2. If no acreage issues exist, the examination results may be recorded by broad legal land descriptions, i.e. by section. However, **if acreage issues are apparent, the examination acreage should be by parcel description.**

Examination Worksheet POU Addendum: If additional space is needed to record POU examination results, use the “DNRC Examination Worksheet POU Addendum” (Exhibit VII-9) or similar. This form can be used to document the examination of a refined, amended, or alternative POU. Whenever an addendum is used, make a note in the POU element comments area. It is suggested the entire POU be placed on the addendum to reduce confusion.

e. Analyzing Claimed and Data Source Acreage Totals: After listing the examined irrigated acres on the examination worksheet for each of the data sources, compare the examined acreage totals to the claimant contact points listed below the place of use element.

Claimant Contact Points: The claimant contact points listed on the examination worksheet are based on the logarithmic equations shown in "Changing Claimant Contact Points" above ([Section VII.D.1.b](#)) and in Exhibit VII-10 which shows a scale illustrating the contact points. The range in the contact points allows for aerial photo distortion and examiner interpretation error. These contact points indicate the minimum discrepancy between claimed and data source acreage totals requiring claimant contact. Be sure the contact points have been revised to reflect any adjustments made to the claimed acreage total.

Comparing Data Source Totals to Claimant Contact Points: Compare each of the two principal data source acreage totals with the claimant contact points. If either of the acreage totals falls outside the range defined by the contact points, a place of use (PL) issue remark will be added to the claim. See “Specific POU Acreage Guidelines” ([Section VII.D.3](#)) and “Place of Use Issues” ([Section VII.D.4](#)) below.

f. Changing Claimed Place of Use: The claimed POU will not be changed during the examination unless:

- amended by the claimant; [Rule 12\(d\)\(1\), W.R.C.E.R.](#)
- modified by rule (clarified) by the department without claimant contact if the claimed intent is clear or with claimant contact if the claimed intent is unclear; [Rules 33\(b\)\(1\), \(4\) and \(c\), W.R.C.E.R. Section VII.D.1](#)
- modified by rule (clarified) by the department to the nearest reasonable and concise legal land description [Rules 12\(d\)\(2\) and 33\(b\)\(4\)\(i\), W.R.C.E.R. Section VII.D.1.](#)

When the claimed POU is changed so that the review or decree abstract will differ from the claim form, addendum, or amendment, place an asterisk in the brackets to the

left of the place of use element on the examination worksheet. The claimant must be notified of such changes.

3. Specific POU Acreage Guidelines: The following are guidelines for common situations encountered when examining POU acreage. For each situation described below, a general course of action is described. These specific situations are:

- a. [Both Sources Within Range](#)
- b. [Both Sources or Only Aerial Photograph Below Range](#)
- c. [Only WRS Below or Above Range](#)
- d. [Both Sources or Only Aerial Photograph Above Range](#)
- e. [Discretionary Contact](#)

a. Both Sources Within Range: Both principal data source acreage totals lie within the claimant contact point range. Furthermore, the claimed acreage does not present any discrepancies that may require claimant contact [Rule 12\(b\)\(2\), W.R.C.E.R. Section VII.D.3.e.](#)

Example: Claimed: 100 acres (claimant contact points = 87 to 113 acres)
Examination Results:
= WRS 98 acres
= USDA 95 acres

In this example, there are no acreage issues and thus no claimant contact regarding the place of use element.

b. Both Sources or Only Aerial Photograph Below Range: When just the USDA aerial photograph examined acreage or both of the principal data source acreage totals are below the claimant contact point range, add the appropriate place of use (PL) issue remark to the examination worksheet (see Section V: Place of Use P235 through P330 for issue remarks). Claimant contact is required.

Examples: (1) Both data sources below range:
Claimed: 100 acres (claimant contact points = 87 to 113 acres)
Examination Results:
= **WRS 70 acres**
= **USDA 83 acres**

(2) USDA aerial photograph below range:
Claimed: 100 acres (claimant contact points = 87 to 113 acres)
Examination results:
= WRS 89 acres
= **USDA 83 acres**

In addition, examine the flow rate (or volume if to be decreed). If the flow rate (or volume) is above the guideline, add a flow rate (F180) issue remark (or volume (V55) issue remark) to identify the relationship between the place of use and flow rate (or volume).

Examples: F180 FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

V55 VOLUME MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

Contact the claimant by letter notifying them of any issues and the need for further information (see Exhibit IV- 9 or Exhibit VII-11 for examples). If circumstances or available information warrant it, an interview can be scheduled for the claimant to review and discuss the claim and data sources. During claimant contact, review both data sources with the claimant so they understand the issue. In addition, describe the adjudication process (examination, summary report, decrees, objections, etc.), and how the issue would be identified in each step of the process. **DNRC is directed by [Rule 1 \(b\) W.R.C.E.R.](#) to gather facts and identify issues. Do not attempt to persuade the claimant to alter the claim, just outline the options available.** If requested by the claimant, an on-site visit may be scheduled and conducted. It is important that the examiner maintain the chronology of the examination process and **document every step.**

The claimant may do any one of the following:

- The claimant provides documentation that confirms the claimed acreage. Document the data source or other evidence supporting the claimed acreage in the file. Place a copy of the documentation in the file. Also, clearly document any issue resolution. Examine as necessary.
- The claimant amends the claimed acres to within the contact range of both data sources. Check the flow rate (or volume if to be decreed) against the guidelines. If the flow rate (or volume) is above the guideline for the amended acres, run standard to apply the appropriate flow rate (or volume) issue remark (in some circumstances, the appropriate issue remark will need to be added manually). Clearly document any issue resolution. Examine as necessary.
- The claimant amends the claimed acres to a value matching the higher of the two data source totals, e.g., claimant amends from 100 acres to the USDA examined acreage of 83 acres. The claimant contact points are recalculated after the amendment is processed (range now equals 71 to 94 acres). The lower data source acreage (WRS examined acreage of 70 acres) still remains below the claimant contact range of the amended acreage. No other evidence is provided by the claimant to contradict the

lower data source. Check the flow rate (or volume if to be decreed) against the guideline. Examine as necessary. The issue remarks referencing the WRS data source will remain on the claim. Contact the claimant to notify them of the remaining issue remarks. There may be a judgment here if the data sources have a lot of distortion or other features that create an inherent acre discrepancy. Be sure to document any deviation from the claimant contact acreage range.

- The claimant amends the claimed acres to some other amount that is confirmed based on facts or observable data, i.e., another data source. Document the new data source and add a copy to the claim file if possible. Check the flow rate (or volume if to be decreed) against the guidelines. Clearly document any issue resolution. Examine as necessary.
- The claimant amends the claimed acreage to a value other than either examined data source total. Examine the amended total using the newly calculated claimant contact points. If the examined data source totals are within the new contact point range, the issue is resolved. Check the flow rate (or volume if to be decreed) against the guidelines. Clearly document any issue resolution and delete the appropriate issue remark from the database. If examination finds that either data source is outside the new contact point range, issue remarks will remain on the claim (modify the variables in the remark on the examination worksheet and in the database). Contact the claimant to notify them of the place of use (PL) issue remarks.

Flow Rate and Volume: When a claimant chooses to amend their claimed acreage, check the claimed flow rate (or volume if it will be decreed). If **either** is above the guideline for the amended acres, run standards to apply the appropriate flow rate (or volume if it will be decreed) issue remark (in some circumstances, the appropriate issue remark will need to be added manually). Claimant contact is required.

c. Only WRS Below or Above Range: When the acreage total identified in WRS materials is either above or below the claimant contact point range, add the appropriate place of use (PL) issue remark to the examination worksheet (see Chapter V: Place of Use P235 through P330 for issue remarks). Contact the claimant following the procedures in “Both Sources or Only Aerial Photograph Below Range” above ([Section VII.3.b](#)).

Examples: (1) WRS materials below range:
Claimed: 100 acres (claimant contact points = 87 to 113 acres)

Examination Results:
= **WRS 70 acres**
= USDA 95 acres

- (2) WRS materials above range:
Claimed: 100 acres (claimant contact points = 87 to 113 acres)
Examination Results:
= **WRS 138 acres**
= USDA 95 acres

d. Both Sources or Only Aerial Photograph Above Range. When the aerial photograph or both of the principal data source totals are above the claimant contact point range, add the appropriate place of use (PL) issue remark to the examination worksheet (see Section V: Place of Use P235 through P330 for issue remarks).

Example: Claimed: 100 acres (claimant contact points = 87 to 113 acres)
Examination Results:
= WRS 108 acres
= **USDA 115 acres**

Before contacting the claimant, review all other claims in the ownership including post-1973 rights and the data sources for the following explanations:

- Unclaimed irrigated ground that appears on an aerial photograph may be covered by a post-1973 water use permit.
- Unclaimed irrigated ground is irrigated from a different source, and part of a different water right.
- Unclaimed acreage is subirrigated.

If any one of these explanations is confirmed by a data source, the claimed acreage can be accepted, no issue remark needed, and claimant contact is not necessary.

If the above explanations are not supported by a data source, contact the claimant following the procedures in “Both Sources or Only Aerial Photograph Below Range” ([Section VII.3.b](#)).

e. Discretionary Contact: If a claim raises questions concerning the POU which could be resolved or more clearly understood by contacting the claimant, do so. For example, 100 acres of irrigation are claimed and 89 were identified on both data sources. Neither data source total is below the claimant contact point range; however, the claimed acreage appears incorrect and both data sources appear to be accurate. Claimant contact is optional.

Example: Claimed: 100 acres (claimant contact points = 87 to 113 acres)
Examination Results:
= WRS 89 acres
= USDA 89 acres

Discretionary claimant contact might also be appropriate when claim examination clearly reveals an incremental development issue, even though the difference between the two standard data sources is small. For example, the WRS shows 100 irrigated acres, and the later aerial photograph shows 112. Although the later acreage figure is within the contact point range of 87-113, the option of contacting the claimant is available if it is clear this is an expansion of a water right, e.g., the historical flood irrigation right now expands onto adjacent bench land through the installation of a pump/sprinkler system.

4. Place of Use Issues: In addition to the place of use issues discussed in "Specific POU Acreage Guidelines" ([Section VII.D.3](#)), other issues may be encountered concerning the place of use. This section contains guidelines for the following situations: [Rule 12\(e\)\(6\), W.R.C.E.R.](#)

- a. [Overlapping POUs on Claims by Different Owners](#)
- b. [Claims by Individuals Where the POU is Located on State or Federal Lands](#)
- c. [POU not Irrigable by Source Claimed](#)
- d. [Claims to Irrigation District Rights Filed by Individuals](#)
- e. [Place of Use not in Montana](#)
- f. [Claimed POU Reflects a Post-June 30, 1973 Change](#)
- g. [Extended Nonuse](#)
- h. [Maximum Acres](#)

Claimant contact must occur upon completing examination of the ownership if the place of use is modified by rule; an issue remark exists, or is unclear. [Rules 12\(b\)\(c\) and 44, W.R.C.E.R.](#) and Section IV.F.

a. Overlapping POUs on Claims by Different Owners: When recording the POU using WRMapper, overlapping POUs by different owners may be encountered. Review the WRMapper AllCad layer or the [MT Cadastral Mapping Program](#). [Rule 12\(c\) and 12\(e\)\(6\)\(iii\), W.R.C.E.R.](#)

Following are situations where an overlapping issue may not be involved:

- A claim filed by a private individual overlaps the POU of an irrigation district, ditch company, or other water supply organization is not considered an overlapping issue.

- The relationship of the owners is husband/wife, parents/children, corporation/individual, etc. This would need to be confirmed with the claimants. If there is no overlapping issue, these claims should be identified in a supplemental rights relationship. See "Place of Use: Supplemental Rights" ([Section VII.E](#)).

The overlap may be due to imprecise maps and legal land descriptions provided by the claimant or a mapping error by the examiner. Make certain the claimants correctly depicted their POU. Heavily subdivided areas require precise mapping and maps used by many claimants were not adequate to distinguish small adjacent parcels. In some cases, claimed POU legal land descriptions can be modified by rule to correct an ambiguous situation. See "Modifying by Rule: Claimed Acreage or Legal Land Descriptions" ([Section VII.D.1.a](#)) above.

Overlapping POUs may be the result of both the buyer and the seller filing claims. If duplicate claims are involved, all claimants should be presented with options. If the claimants filed on a different water right for the same parcel, i.e., different sources, priority dates, etc., options may include co-ownership or division of the water right through a split process.

If the POU legal land descriptions cannot be modified through the limitations of "Modifying by Rule: Claimed Acreage or Legal Land Descriptions" ([Section VII.D.1.a](#)), add the following ownership (OW) issue remark to the department's examination worksheet for all the claims involved:

Example: O60 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. **000000-00, 000000-00.**

b. Claims by Individuals Where the POU is Located on State or Federal Land: When examining a claimed POU that appears to be located entirely or partially on state or federal land, add an ownership (OW) issue remark to the department's examination worksheet. In addition, document on the examination worksheet the data source (BLM Land Status map, etc.) used to make this determination.

Examples: O65 THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. THE PLACE OF USE APPEARS TO BE ON **STATE LAND.**

O70 THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE. PART OF THE PLACE OF USE APPEARS TO BE ON **FEDERAL LAND.**

O85 **MONTANA** COUNTY RECORDS AS OF **MM/DD/YYYY** SHOWS PLACE OF USE IS OWNED BY **USA (DEPT OF INTERIOR BUREAU OF LAND MGMT).**

O85 **MONTANA** COUNTY RECORDS AS OF **MM/DD/YYYY** SHOWS PLACE OF USE IS OWNED BY **15 DIFFERENT OWNERS. SEE CLAIM FILE FOR DETAILS.**

If the claim filed by an individual is duplicated by a state or federal claim, also add the following duplicate right (DU) issue remark to the department's examination worksheet:

Example: D95 THIS CLAIM APPEARS TO DUPLICATE CLAIM NO. **000000-00** FILED BY THE **BUREAU OF LAND MANAGEMENT.**

c. POU not Irrigated by Source Claimed: Data sources may show a claimed POU cannot be irrigated by the source claimed.

When this situation appears to exist, review all the claimant's claims and the data sources to be certain a POD or conveyance has not been overlooked. If the legal land description cannot be modified by [Rule 12 \(d\) W.R.C.E.R.](#) (see "Modifying by Rule: Claimed Acreage or Legal Land Descriptions," [Section VII.D.1.a](#)), add a place of use (PL) issue remark to the department's examination worksheet:

Examples: P295 THE CLAIMED PLACE OF USE DOES NOT APPEAR TO BE IRRIGATED BY WATER FROM THE CLAIMED SOURCE.

P300 PART OF THE CLAIMED PLACE OF USE DOES NOT APPEAR TO BE IRRIGATED BY WATER FROM THE CLAIMED SOURCE.

P301 PART OF THE CLAIMED PLACE OF USE MAY BE QUESTIONABLE. IT DOES NOT APPEAR THE PLACE OF USE **ALONG DOE CREEK AND SMITH CREEK ABOVE THE DOE CANAL** CAN BE IRRIGATED FROM THE CLAIMED SOURCE.

d. Claims to Irrigation District Rights Filed by Individuals: Occasionally individuals filed claims for water rights which duplicate or are shares in water supply organization claims. When it is apparent from the claim form or documentation that an individual has filed on the same water right as the water supplier claim, e.g., claimant mentions "15 shares" on claim form, or documentation contains a contract or certificate for shares, add the following place of use (PL) issue remark to the department's examination worksheet:

Example: D95 THIS CLAIM APPEARS TO DUPLICATE CLAIM NO. **000000-00** FILED BY THE **DOE IRRIGATION ASSOCIATION.**

If the duplication is confirmed, the claimant should be given options (see "Claim Examination: Priority Date: Priority Date Issues: Duplication" Section VI.J.3.h).

e. Place of Use not in Montana: If all or a portion of the place of use is in an adjacent state, the POU must be described with a place of use (PL) information remark on the examination worksheet (other states' principal meridians are different from Montana's). In addition, add a place of use (PL) issue remark to the department's examination worksheet:

Examples: PL PLACE OF USE IS IN SW SEC 2 TWP 20N RGE 21E LEMHI COUNTY, IDAHO.

P310 AN INTERSTATE USE OF WATER IS CLAIMED. PLACE OF USE IS IN **IDAHO**.

f. Claimed POU Reflects a Post-June 30, 1973 Change: When a claimed POU includes a change made after June 30, 1973 not in accordance with [§85-2-402, MCA](#), follow the procedures in "Special Provisions: Change in Appropriation Right" (Section XI.F). Changes may be discovered during claimant contact, on-site visits, or from information submitted with the claim.

g. Extended Non-use: For extended non-use situations, see "Claim Examination: Purpose: Purpose Issues: Extended Non-use" (Section VI.C.3.g).

h. Maximum Acres: Whenever the sum of the parcels claimed or amended do not equal the maximum acres as claimed or amended, attempt to resolve the problem. If, after claimant contact, the sum of the parcels still does not equal the maximum acres, add a maximum acre (MA) issue to the examination worksheet:

Example: M100 THE MAXIMUM ACRES CLAIMED MAY BE QUESTIONABLE. THE SUM OF THE PARCEL ACRES IS **400**.

Sometimes a claim is for a smaller number of acres than is contained within the POU. In this case, the max acres may not equal the sum of the parcels. Add the following place of use (PL) information remark:

Example: P191 ONLY **120** ACRES ARE IRRIGATED DURING ANY GIVEN IRRIGATION SEASON WITHIN THE **400** ACRES DESCRIBED UNDER THIS RIGHT

5. Geocodes: Geocodes were initially assigned to water rights as either a one-to-one match or a one-to-many match based on the legal land description. At times, the legal land description associated with a water right was described very broadly, encompassing several parcels that may not have been within the true place of use. As a result, geocodes must be verified as belonging to the claimed place of use. Any geocodes assigned initially to the water right are listed below the place of use element on the examination worksheet.

Determine valid geocodes by using the AllCad layer in WRMapper or the [Montana Cadastral Mapping Program](#) information. Indicate a valid geocode with a 'Y' on the examination worksheet.

Once a place of use has validated geocodes, cross off any geocodes not associated with the place of use on the examination worksheet. In the database, delete these records from the Geocode tab under the Create and Maintain Water Rights screen.

Geocode issues: Every effort should be made to validate geocodes.

- If a geocode cannot be conclusively determined as belonging partially or wholly within the place of use, the geocode should have a 'N' designation (not validated). If an ownership update occurs involving any geocode with a designation of an 'N', the water right will require further research before the ownership update can occur.
- If a geocode is designated as valid ('Y') and it is found to be in error, change the 'Y' to an 'N' on the examination worksheet and document the resources and/or research in making the determination. In the database, in order to remove an incorrectly validated geocode, first change the 'Y' to an 'N' and then save. The record can then be deleted.
- If a legal land description is found to be in error, review the geocodes. If any changes are made to the legal land description (i.e., a correction to the township, range or section occurs based on the claimant's map, for example), it may be determined that a geocode may need to be deleted or added.
- If the place of use is amended, review the geocodes. It may be determined that a valid geocode needs to be deleted, or a geocode not initially associated with the water right needs to be added.
- Water rights which have been reserved (exempted) from the land, such as those belonging to homeowner's associations, municipalities, and certain other entities that provide service but do not own the place of use, just the water right, will not have any associated geocodes. If a geocode is assigned, delete it from the Geocode tab in the database.

E. SUPPLEMENTAL RIGHTS
[Rule 40, W.R.C.E.R.](#)

Supplemental rights occur when one or more water rights claimed place of use overlaps the claimed place of use of another water right having the **same purpose** and **ownership**. The procedures in this section apply to irrigation claims. [Rule 40\(a\), W.R.C.E.R.](#)

Supplemental rights involving irrigation districts created under [Title 85, Chapter 7, MCA](#) are discussed in "Irrigation: Claims Filed on Irrigation District Forms" ([Section VII.F](#)). Supplemental rights for "Other Use" claims are processed according to "Other Uses: Place of Use" (Section X.C.3).

1. Identifying Supplemental Rights: Review the places of use for all irrigation claims of **one ownership** for supplemental rights. Irrigation districts and other water supply organizations are not considered supplemental to claims submitted by individual water users.

Supplemental rights are identified by examining the POUs of an ownership (also see "Irrigation: Claims Filed on Irrigation District Forms: Supplemental Rights" ([Section VII.F.5](#))). Use WRMapper to determine all irrigation rights within an ownership which overlap in any way. To be considered supplemental, they can overlap entirely, in part, or in series, e.g., Parcel A overlaps Parcel B which overlaps Parcel C. Parcel A and C are not adjacent, but are in series, and thus Parcels A, B, and C are supplemental.

Using the **claimed acres** perimeter in WRMapper, determine the extent of supplemental rights. (If acreage issues exist, it may be useful to note the examined supplemental acres in the general comments area of the examination worksheet, in the event the issues are resolved prior to decree.)

If overlapping claims have different owners, they are not supplemental. See "Irrigation: Place of Use: Place of Use Issues: Overlapping POUs on Claims by Different Owners" ([Section VII.D.4.a](#)).

2. Recording Supplemental Rights on Examination Worksheet: On the examination worksheet, indicate whether the water right is supplemental. [Rule 5\(a\)\(4\), W.R.C.E.R.](#)

SUPPLEMENTAL: Yes (Enter IR water rights in Related Rights tab and generate report) No

If the water right is supplemental to other water rights, **prepare a map** in WRMapper depicting the supplemental place of use (using claimed acres). Use the acreage tool in WRMapper to calculate total maximum acres. This map will be attached to the Supplemental Worksheet generated from the database Related Rights tab.

In the database, enter the supplemental irrigation water rights into the Related Rights tab. Select a Relationship Type of “supplemental.” Enter the Maximum Acres—this total should come from the map generated in WRMapper and is used by the Error Check Report. The Related Element is not required.

After standards have been applied to all claims in the supplemental relationship, generate a DNRC Supplemental Rights Worksheet (Exhibit VII-15) from the ‘Create and Maintain Related Rights’ screen in the database. Select Reports: Adjudication Reports: Supplemental Worksheet. The information on the DNRC Supplemental Rights Worksheet is used to identify supplemental claims in the temporary preliminary, preliminary, and final decrees. The worksheet is also used to identify potential supplemental rights issues.

Place a copy of the Supplemental Rights Worksheet together with a supplemental map into each claim file. Note the claim number in the top right corner on each copy.

3. Supplemental Rights Issues: Claimant contact must occur upon completing examination of the ownership if supplemental issues are applied to a water right. [Rules 40\(c\) and 44, W.R.C.E.R.](#) and Section IV.F.

a. Excessive Flow Rates: When supplemental flow rates total more than 60 gpm/acre, add a supplemental rights (SR) issue remark to the examination worksheet: [Rule 40\(c\)\(2\)\(i\), W.R.C.E.R.](#)

Example: S140 THE COMBINED CLAIMED FLOW RATE FOR THIS GROUP OF SUPPLEMENTAL RIGHTS IS **69.50** GPM PER ACRE. THE FLOW RATE GUIDELINE FOR INDIVIDUAL CLAIMS IS 17 GPM PER ACRE.

If the issue is discussed with the claimant, determine whether all the rights are used, or were ever perfected. Questions to consider are (1) Was an additional ditch constructed or an existing one extended for the junior rights? (2) Was the capacity of an existing ditch increased? (3) Were there changes in use or appropriations of additional water? ([See also, Consolidation of POU, POD, Sources, VII.G](#))

If all of the supplemental rights are not accounted for by answers to such questions, there may be non-perfected water rights in the group. If so, add a purpose issue remark to the department's examination worksheet on each claim in the supplemental rights relationship:

Example: P639 DNRC EXAMINATION WAS UNABLE TO CONFIRM THE USE OF THIS WATER RIGHT. IT APPEARS THIS WATER RIGHT MAY HAVE NOT BEEN PERFECTED.

When filed or use rights are involved and the claimed flow rates will be reduced by applying standards, the combined flow rate in the remark (S140) should be that of the reduced flow rates.

When the combined flow rate of the supplemental rights exceeds the ditch capacity, add the following flow rate issue remark:

Example: F158 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE DITCH CAPACITY. AVAILABLE DATA SUGGEST THE DITCH CAPACITY IS **2.75** CFS.

b. Excessive Volumes: When supplemental volumes total more than twice the guideline for water spreading systems or more than twice the capacity of the reservoir involved, add a supplemental rights (SR) issue remark and contact the claimant:

Examples: S141 THE COMBINED CLAIMED VOLUME FOR THIS GROUP OF SUPPLEMENTAL RIGHTS IS **17.90** ACRE-FEET PER ACRE. THE VOLUME GUIDELINE FOR INDIVIDUAL CLAIMS IS **1.90** ACRE- FEET PER ACRE.

S146 THE COMBINED CLAIMED VOLUME FOR THIS GROUP OF SUPPLEMENTAL RIGHTS IS **200** ACRE- FEET WHICH APPEARS TO EXCEED THE CAPACITY OF **DOE RESERVOIR**. ACCORDING TO INFORMATION IN THE CLAIM FILE, THE MAXIMUM STORAGE CAPACITY IS **35** ACRE- FEET.

If the issue is discussed with the claimant, determine aspects such as (1) Was the capacity of the reservoir increased? (2) Were there changes in use of appropriation of additional water? (3) Does the volume on each claim reflect the total amount of water appropriated or the additional amount of water diverted above and beyond that which was appropriated prior to the enlargement?

If all of the supplemental rights are not accounted for by answers to such questions, there may be non-perfected rights in the group. If so, add a purpose issue remark to the department's examination worksheet on each claim in the supplemental rights relationship:

Example: P639 DNRC EXAMINATION WAS UNABLE TO CONFIRM THE USE OF THIS WATER RIGHT. IT APPEARS THIS WATER RIGHT MAY HAVE NOT BEEN PERFECTED.

This remark should only be added when it is determined the acre-feet per acre of all supplemental rights totals more than twice the water spreading guideline or more than twice the capacity of the reservoir. The figure for water spreading systems can be determined by adding the volumes of the supplemental rights and dividing the total by

the maximum combined acres. The maximum combined acres is defined as the total acreage of the entire area claimed on all supplemental rights and is represented on the supplemental map generated in WRMapper.

When filed or use rights are involved and the claimed volume will be reduced by applying standards, the combined volume in the supplemental rights remark (S141, S146) should be that of the reduced volume.

c. Multiple Claims From Same Source: When supplemental claims exist from the same source which irrigate primarily the same POU (75% or greater overlap), this may indicate that certain claims have not been perfected, or may be duplicate or redundant. An issue remark should be added to the claim when: [Rule 40\(c\)\(2\)\(ii\), W.R.C.E.R.](#)

- the supplemental flow rate totals more than 60 gpm/acre:

Example: S140 THE COMBINED CLAIMED FLOW RATE FOR THIS GROUP OF SUPPLEMENTAL RIGHTS IS **69.50** GPM PER ACRE. THE FLOW RATE GUIDELINE FOR INDIVIDUAL CLAIMS IS 17 GPM PER ACRE.

- the supplemental volume totals more than twice the guideline:

Examples: S141 THE COMBINED CLAIMED VOLUME FOR THIS GROUP OF SUPPLEMENTAL RIGHTS IS **17.90** ACRE-FEET PER ACRE. THE VOLUME GUIDELINE FOR INDIVIDUAL CLAIMS IS **1.90** ACRE- FEET PER ACRE.

S146 THE COMBINED CLAIMED VOLUME FOR THIS GROUP OF SUPPLEMENTAL RIGHTS IS **200** ACRE- FEET WHICH APPEARS TO EXCEED THE CAPACITY OF **DOE RESERVOIR**. ACCORDING TO INFORMATION IN THE CLAIM FILE, THE MAXIMUM STORAGE CAPACITY IS **35** ACRE- FEET.

- two or more of the rights are from the same source with the same priority date and same flow rate. *Always use the Related Rights tab to identify duplicate claims.*

Related Rights tab:

Identify duplicate water rights by noting the claim numbers in the 'Formatted Remarks' section of the examination worksheet and enter these water right numbers into the Related Rights tab in the database. The following issue remark will automatically be generated on the review and decree abstracts of all claims involved:

Example: THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT APPEAR TO BE DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED. **000000-00, 000000-00**

4. Supplemental Rights Remark: When water rights are entered into the Related Rights tab in the database, the following supplemental rights remark will print on the review and decree abstracts: [Rules 40\(b\) and 40\(c\)\(1\), W.R.C.E.R.](#)

THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE. **000000-00, 000000-00, 000000-00, 000000-00.**

F. CLAIMS FILED ON IRRIGATION DISTRICT FORMS
[Rule 42, W.R.C.E.R.](#)

This section addresses claims submitted on the Irrigation District Form as well as claims filed by irrigation districts on a standard irrigation statement of claim form. Usually these claims are filed by an institution or a company. The following types of claimants may be included in this group:

- Federal Projects
- State Projects
- Public Service Corporations
- Mutual Irrigation Companies
- Water Companies
- Water User Associations
- Municipal Water Companies
- Drainage Districts
- Conservation Districts
- Corporations, Partnerships, or Trusts (with several rights)
- Individuals (with several rights)

Add information to the claim file that exists in the regional/unit office which pertains to the claim. This could be information from the [Water Resources Survey](#), State Water Conservation Projects Manual, the USDI-BOR Water Conservation Opportunities Study, a file maintained by the regional/unit office on the district, delivery records, diversion records, assessment records, organization's charter, etc. Identify this information by using the department supplemental document stamp. This will distinguish materials added by the department from that of the claimant.

1. Irrigation District Form: The irrigation district form differs from the standard irrigation, domestic, stock, or other use claim forms in that several water rights from one or more sources for the same place of use are identified on one form. The intent of the form is to allow lengthy POU descriptions to be listed only once for several rights. The form listed total combined flow rate, maximum acres, and volume for all the water rights associated to the particular district. Remember, the database representation of the form is not a water right and will not be decreed; only the rights listed on the form that support the district are decreed. The form was not limited to irrigation districts, and has been used by various claimants for many claimed purposes.

Examine claims filed on irrigation district forms according to the purpose identified. [Rule 42\(a\), W.R.C.E.R.](#)

2. Identifying an Irrigation District: To be recognized as a statutory irrigation district created pursuant to [§§85-7-101 through 110](#), a final order from

the district court creating the district should be in the file or obtained from the claimant. Review the irrigation district form and documentation for evidence of incorporation under the statutory requirements. Generally, any entity filing an irrigation district form that has the appearance of an irrigation district should be contacted to request a copy of the court order creating the district (unless the order is already in the claim file). If unsure an irrigation district meets the requirements in statute, review the claim file, and all relevant materials with a supervisor. [Rule 42\(d\), W.R.C.E.R.](#)

Table VII-4 is a listing of irrigation districts compiled by the department's Water Projects Bureau. If an irrigation district is not listed below and does not have a district court order, the qualifications under Title 85 may not be met. The list below may not contain all irrigation districts which meet the qualifications of incorporation.

Table VII-4: Irrigation Districts

Irrigation District	County	Irrigation District	County
Alfalfa Valley	Blaine	Harley	Blaine
Big Flat	Missoula	Helena Valley	Lewis & Clark
Big Horn	Big Horn	Huntley Project	Yellowstone
Bitterroot	Ravalli	Intake	Richland
Blodgett	Ravalli	Lockwood	Yellowstone
Buffalo Rapids	Prairie	Lomo	Ravalli
Bynum	Teton	Lower Little Horn & Lodge Grass	Big Horn
Canyon Creek	Ravalli	Lower Yellowstone Project	Richland
Cartersville	Rosebud	Malta	Phillips
Charlos Heights	Ravalli	Mill Creek	Ravalli
Clinton	Missoula	Missoula	Missoula
Daly Ditches	Ravalli	North Chinook	Blaine
Danford	Yellowstone	Paradise Valley	Blaine
Dodson	Phillips	Savage	Richland
East Bench	Beaverhead	Sunset	Ravalli
Fort Belknap	Blaine	Toston	Broadwater
Fort Shaw	Cascade	Upper Little Horn	Big Horn
Frenchtown	Missoula	Victory	Yellowstone
Glasgow	Phillips	Ward	Ravalli
Glen Lake	Lincoln	West Bench	Beaverhead
Greenfields	Teton	Yellowstone	Treasure
Hammond	Rosebud	Zurich	Blaine

In the Summary Report to the Water Court, the department will identify irrigation districts created under [Title 85, Chapter 7, MCA](#). Add the following ownership (OW) information remark to the department's examination worksheet: [Rule 42\(d\), W.R.C.E.R.](#)

Example: O25 THIS IRRIGATION DISTRICT WAS ESTABLISHED UNDER TITLE 85, CHAPTER 7, MCA.

State Project Claims: Certain state project claims are based on rights originally filed by the State Water Conservation Board (SWCB) pursuant to 89-121 RCM 1947. These department claims can be identified by the Notice of Appropriation, which is in the name of the SWCB, and which references the statute. If there is any doubt, contact the claimant. When a right based on this statute is identified, add an ownership (OW) information remark to the department's examination worksheet:

Example: O30 THIS WATER RIGHT WAS ESTABLISHED PURSUANT TO 89-101 THROUGH 89-141 R.C.M. (1947) (REPEALED).

When a state project claim is based on a private right acquired by the state, add the following ownership (OW) information remark to the department's examination worksheet:

Example: O31 THIS WATER RIGHT WAS ORIGINALLY PERFECTED BY PRIVATE OWNERSHIP AND LATER COMBINED WITH WATER RIGHTS ESTABLISHED PURSUANT TO 89-101 THROUGH 89-141 R.C.M. (1947) (REPEALED).

3. Worksheet and Decree Information: Claims filed on irrigation district forms which identify more than one water right are stored in the database in two parts. The irrigation district form itself has an "irrigation district" number, also known as a "Z" right, and each water right listed on the inside of the irrigation district form has a "statement of claim" number. If there is only one water right listed on the irrigation district form, only one statement of claim number is assigned (no "Z" right). Make certain that if a single right is listed on the irrigation district form that its water right type in the 'Create and Maintain Water Rights' screen in the database is 'statement of claim' (not irrigation district)—otherwise it will miss inclusion in the Water Court decree.

Print an examination worksheet for each statement of claim number. The statement of claim examination worksheet will typically show the values of the individual right (rather than the totals for the entire district). If there is only one water right listed in the irrigation district form, all information will appear on the statement of claim examination worksheet.

a. "Irrigation District" Numbers: An irrigation district number ("Z" right) is not a water right. A "Z" right is usually the lowest number in a group of irrigation district claims and is the form on which the other rights in the group were recorded. This file will contain all original materials, maps, affidavits, and other submitted information. "Z" rights were given a water right number during the filing period, but are not actual water rights. The irrigation district form allowed for recording large places of use for several rights on one or more sources. To avoid confusion, "Z" rights have been suppressed from Water Court decrees since August, 1984.

The statement of claim rights (child rights) listed on the irrigation district form (parent right) should be related to the parent "Z" right in the database. Add a general information (RM) remark to each statement of claim listed on the irrigation district form. Update any similar legacy or archived remarks to the R5.

Example: R5 PARENT FILE FOR THIS RIGHT IS **000000-00**.

b. POU Data Distribution: Since "Z" rights will be suppressed from Water Court decrees, the place of use must be associated with each statement of claim(s). [Rule 42\(b\)\(c\), W.R.C.E.R.](#)

Not all POUs have been added to the statements of claim associated with an irrigation district. If the place of use is not associated with the statement of claim, ask the database administrator to populate the POU accordingly.

Each statement of claim file should contain a copy of the original documentation, maps, and other related materials. Each claim should be fully documented to stand on its own. If materials are abundant (greater than 500 pages) or consist of large maps, add a flag to the statement of claim files indicating the location of the original documentation. Also add the following general information (GI) remark to the examination worksheet of the remaining claim rights:

Example: G26 THE COMPLETE SET OF DOCUMENTATION, MAPS AND OTHER RELATED MATERIALS CAN BE OBTAINED BY REVIEWING FILE NO. **000000-00**.

In some cases, separate statement of claim rights can be associated to specific POUs within the total area claimed. If so, list and review the POU by the individual right associated with it. Claimant contact may be helpful or necessary to determine the POU for each right. [Rule 44, W.R.C.E.R.](#) and Section IV. F.

A P190 place of use (PL) information remark may have been added by the DNRC or through an amendment to reflect the POU (due to legacy database limitations). Check with a supervisor to determine if this remark is still appropriate.

Example: P190 THE PLACE OF USE IS GENERALLY FROM TWP **98N** TO TWP **99N**, AND FROM RGE **98W** TO RGE **99E**, **MONTANA COUNTIES**. FOR THE COMPLETE DETAILED PLACE OF USE DESCRIPTION, SEE FILE NO. **000000-00**. (Note: One or more counties can be coded.)

4. Examination of Water Supply Organization Claims: Except as specifically noted in this section, the examination of water supply organization claims will be according to the purpose identified.

a. Point of Diversion: All PODs identified on the irrigation district form may be listed on the statement of claim examination worksheet. Attempt to determine which PODs apply to each statement of claim (this was sometimes done when the claim was originally entered into the database). Information to make this determination may be on the irrigation district form as the POD was listed for each water right. If so, make corrections on the examination worksheet.

If the PODs as identified on the irrigation district form cannot be associated with specific claimed water rights, contact the claimant. If contact is not definitive, add all PODs to each statement of claim examination worksheet within the district. The database administrator may be contacted to facilitate the data entry.

b. Place of Use: All claims filed on irrigation district forms will have the place of use examined. [Rule 42\(b\), W.R.C.E.R.](#)

Combined Parcels: Prior to examining the claimed parcels, attempt to combine parcels. In doing so, try to retain precision in describing irrigated areas. Combine only fully irrigated parcels. See the example below. Do not combine acres to a very general description: 570 acres in Section 30 is not acceptable.

Example:	<u>AC</u>	<u>SEC</u>	combines to:	<u>AC</u>	<u>SEC</u>
	160	NW 30		320	N2 30
	160	NE 30		160	SW 30
	160	SW 30		90	SE 30
	90	SE 30			

After combining parcels, it may be advantageous to enter the consolidated legal land descriptions (as long as the descriptions are clear and concise) in the database and generate a new worksheet.

General POU Review: The place of use examination procedures for irrigation districts are unique. The following should be considered in addition to following the examination procedures in "Irrigation: Place of Use" ([Section VII.D](#)) and "Irrigation: Place of Use: Mapping Place of Use and Data Source Results" ([Section VII.D.2.d](#)):

- Compare the claimed POU, submitted maps, and documentation to two principle data sources.
- The limits of the district's service area must be compared to the claimed POU legal land description.
- The acres claimed must be compared to the acres irrigated within the service area, as evident on the department's data sources.
- Attempt, if possible, to distinguish parcels served by the irrigation district from parcels served exclusively by private water rights.

- Use the documentation of the district's incorporation to examine the claimed POU legal land descriptions for containment within their service area. Determine the limits of the district's area from their maps and documentation and other available materials. Compare this area to the POU claimed and to the aerial photographs.
- If the claimed POU exceeds the contact point range or there appears to be discrepancies between the district's service area and the claimed POU, contact the claimant. This may not be as clearly defined a decision as with individual irrigation claims. If in doubt, review the POU with a supervisor before contacting the claimant.

Exceptionally Large POUs: For irrigation district claims having extremely large acreage, the claimed POU may be examined by setting up a special GIS project. There will always be a full examination of the POU of a claim.

Duplicate or Redundant Rights: See "Claims to Irrigation District Rights Filed by Individuals" below ([Section VII.F.6](#)).

c. Flow Rate: Irrigation District Numbers ("Z" Right): The total claimed flow rate is listed on the irrigation district form. This total flow rate should be compared to the documentation to determine whether the diversion and conveyance facilities are capable of handling the claimed flow. The irrigation district form flow rate should also be compared to the sum of the statement of claim flow rates. If they are not equal, or if the claimed flow rate appears to exceed the conveyance capacity, add a flow rate (FR) issue remark to the department's examination worksheet on all claims involved:

Examples: F135 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE DIVERSION AND CONVEYANCE FACILITIES.

F200 THE TOTAL FLOW RATE CLAIMED ON THE IRRIGATION DISTRICT FORM DOES NOT EQUAL THE SUM OF THE INDIVIDUAL CLAIMED RIGHTS.

Statement of Claim Numbers: The individual flow rate associated with the specific right will be listed on the examination worksheet. These flow rates will be examined according to "Irrigation: Flow Rate" ([Section VII.B](#)).

Check the combined total of all statement of claim flow rates against the "Z" right flow rate. If not equal, add a flow rate (FR) issue remark (F135 or F200 above) to the department's examination worksheet.

d. Volume: The total claimed volume will be listed on the irrigation district form. Each statement of claim examination worksheet will show the volume claimed for the individual right.

Volumes will be examined according to the purpose. See "Irrigation: Volume" ([Section VII.C](#)).

5. Supplemental Rights: Irrigation districts meeting the statutory requirements will not be considered supplemental to claims submitted by individual water users. If uncertainty exists about whether to identify the supplemental relationship between an individual water user and an entity using an irrigation district form, consult a supervisor. Claimant contact may be necessary to make a determination. [Rule 44, W.R.C.E.R.](#) and Section IV.F.

Irrigation supplemental rights involving water supply organizations other than irrigation districts created under [§§85-7-101 through 110](#) will be identified and reported using the procedures described in "Irrigation: Supplemental Rights."

a. Remarking Supplemental Irrigation Districts: When the water rights associated with an irrigation district created under [§§85-7-101 through 110](#) are supplemental, add the water rights to the Related Rights tab in the database (do not add the "Z" right). The following supplemental rights (SR) information remark will print on the review and decree: [Rules 5\(a\)\(4\) and 40\(c\), W.R.C.E.R.](#)

Example: THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE SUPPLEMENTAL WHICH MEANS THE RIGHTS HAVE OVERLAPPING PLACES OF USE. THE RIGHTS CAN BE COMBINED TO IRRIGATE ONLY OVERLAPPING PARCELS. EACH RIGHT IS LIMITED TO THE FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE. **000000-00, 000000-00.**

b. Uses Other Than Irrigation: When irrigation district forms have been filed for uses other than irrigation (i.e., municipal, commercial), supplemental rights will be identified and remarked using the procedures described in "Other Uses: Place of Use" (Section X.D.3).

c. Multiple Uses: Occasionally, irrigation districts claim multiple uses of, for example, both irrigation and stock. This multiple use should be identified. Irrigation districts claims are not identified in multiple use relationships with private right claims. [Rules 5\(a\)\(4\) and 41\(c\), W.R.C.E.R.](#)

6. Claims to Irrigation District Rights Filed by Individuals: Occasionally individuals filed claims on rights held by an irrigation district. When it is apparent from the claim form or documentation that an individual has filed on an irrigation district right (e.g., claimant mentions "15 shares" on claim form, or documentation contains a contract or certificate for shares), add the appropriate duplicate (DU) issue remark to the

examination worksheet of the claim filed by the individual. The claim number in the remark should be that of the statement of claim within the irrigation district, not the “Z” right.

Example: D95 THIS CLAIM APPEARS TO DUPLICATE CLAIM NO. **000000-00**
FILED BY THE **DOE IRRIGATION ASSOCIATION**.
D96 THIS CLAIM APPEARS TO BE FOR WATER PROVIDED BY **THE**
DOE IRRIGATION PROJECT UNDER CLAIM NO. **000000-00**.
THIS CLAIM APPEARS TO BE REDUNDANT.

If the claimant confirms the duplication, the claimant should be given options. See “Claim Examination: Priority Date: Priority Date Issues: Duplication” (Section VI.J.3.h) and “Claim Examination: Priority Date: Priority Date Issues: Redundant Filings” (Section VI.J.3.i).

G. CONSOLIDATION OF POU, POD, SOURCES

When examining an ownership, be aware of situations where there may be a consolidation of water rights. In all basins that have not received a decree, the DNRC will remove all existing consolidation remarks. This is the series (G60, G62, G64, G66, G68). An error check should be run after the remarks are removed to ensure no other issue remarks were excluded because a consolidation series remark was placed on the claim. DNRC will review all existing irrigation claims with a transfer remark and an amendment remark that are in a supplemental relationship. This review will assess if an unauthorized post 1973 change in water use has occurred. One indicator may be water rights in a supplemental relationship that contain numerical outliers (out of sequence claim numbers). If a water user acquired lands after 1973, and then amended existing water rights on either existing or acquired lands that now covers both properties a CA20 remark should be added. If a CA20 is added to a claim, claimant contact must be made regarding the amendments. In some cases, properties may have been split and now rejoined historically used water over the entire place of use. If this is true, a chain of title would clarify the situation and the issue should be removed.

When reviewing irrigation water rights that are consolidated the following issue remarks may apply. All examination procedures are within the irrigation section of the manual.

Example:

- F134 THE CLAIMED FLOW RATE EXCEEDS THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM WHICH IS ESTIMATED TO BE 1.80 CFS.
- P79 IT APPEARS THAT AN UNAUTHORIZED POST-JUNE 30, 1973 CHANGE IN POINT OF DIVERSION MAY BE REFLECTED IN THIS CLAIM.
- P80 THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 POINT OF DIVERSION WAS IN THE NENENE SEC 36 TWP 99N RGE 99W MONTANA COUNTY.
- P291 ACCORDING TO INFORMATION IN THE CLAIM FILE, AN EXPANSION IN THE NUMBER OF IRRIGATED ACRES HAS TAKEN PLACE. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.
- P295 THE CLAIMED PLACE OF USE DOES NOT APPEAR TO BE IRRIGATED BY WATER FROM THE CLAIMED SOURCE.
- P300 PART OF THE CLAIMED PLACE OF USE DOES NOT APPEAR

TO BE IRRIGATED BY WATER FROM THE CLAIMED SOURCE.

- P301 PART OF THE CLAIMED PLACE OF USE MAY BE QUESTIONABLE. IT DOES NOT APPEAR THE PLACE OF USE ALONG DOE CREEK AND SMITH CREEK ABOVE THE DOE CANAL CAN BE IRRIGATED FROM THE CLAIMED SOURCE.
- P345 THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES A POST-JUNE 30, 1973 CHANGE IN PLACE OF USE.
- P416 THE PRIORITY DATE MAY BE QUESTIONABLE. THE CLAIMED PLACE OF USE IS INCONSISTENT WITH THE PLACE OF USE DESCRIBED IN CASE NO. 556, RAVALLI COUNTY DATED APRIL 10, 1905.
- P455 THE PRIORITY DATE MAY BE QUESTIONABLE. THE SOURCE/PLACE OF USE DESCRIBED ON THE FILED NOTICE OF APPROPRIATION IS INCONSISTENT WITH THE CLAIMED SOURCE/PLACE OF USE.
- P461 THE PRIORITY DATE MAY BE QUESTIONABLE. THE PLACE OF USE FOR THE DOE DECREED RIGHT, DESCRIBED AS NENE SEC 36 TWP 99N RGE 99W IN CASE NO. 0000, MONTANA COUNTY, IS INCONSISTENT WITH THE CLAIMED PLACE OF USE. (Note: can be coded without the ¼ section description.)

VIII. DOMESTIC

This chapter describes the procedures unique to the examination of domestic claims. Other examination procedures for the other elements of domestic claims are described in Chapter VI: Claim Examination, and Chapter VII: Irrigation.

The following elements are discussed in this chapter:

- A. General Discussion
- B. Flow Rate
- C. Volume
- D. Place of Use

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A. GENERAL DISCUSSION

1. Domestic Claim. During the claim filing period, the domestic claim form was used to describe several different types of water use, including domestic, multiple domestic, and lawn and garden irrigation. Most often, these uses were grouped together under the domestic purpose category. Claims describing multiple domestic and lawn and garden should now be assigned the appropriate purpose. See the “Standard Purpose List” (Figure VI-1) to apply the appropriate purpose. **Claims with a purpose of multiple domestic or lawn and garden will be examined using the domestic guidelines.**

For consistency, the number of dwellings for a domestic claim is one. If two or more dwellings are identified, the purpose is multiple domestic. See “Volume: Examining Claimed Volume: Number of Dwellings” ([Section VIII.C.2.c](#)) below for information on identifying the number of dwellings.

Domestic and multiple domestic guidelines should be discussed with a supervisor prior to basin examination to establish consistent approaches.

2. Exempt Claims. Per [§85-2-222, MCA](#), individual domestic uses based upon *instream flow* or *ground water* sources are exempt from the filing requirements of [§85-2-221, MCA](#). Domestic exempt claims are:

- Individual (single and multiple) household domestic use, and lawn and garden use from a groundwater source

Any of these existing water rights, however, could be voluntarily filed with the department.

Take care when determining the number of households. Check that the correct exempt status is indicated on the examination worksheet under the water right number. In the database, indicate whether or not the claim is an ‘Exempt Claim’ in the ‘Claim Filing Information’ on the Historical tab in the Create and Maintain Water Right Detail screen.

3. Domestic Claim Questionnaire. A domestic questionnaire should be used to obtain additional information when the claim file does not provide sufficient information to examine a claimed domestic purpose. This questionnaire would be useful in the following circumstances:

- extended nonuse, such as old mining camps;
- several domestic claims with same priority date, source, and documentation;
- questions of non-perfection;
- post-June 30, 1973 use.

Send the Domestic Questionnaire (Exhibit VIII-1) and a cover letter (Exhibit IV-8) to the present owner of record. Alternatively, the claimant can be contacted by phone or in a personal interview (see “Examination Materials and Procedures: Claimant Contact Techniques” in Section IV.F). It may be appropriate to also send additional questionnaires or to customize the Domestic Questionnaire to gain additional information.

Multiple Owners. If multiple owners are involved, the questionnaire should be sent to all owners of record. If the questionnaire is undeliverable (return mail), the questionnaire may then be sent to owners identified through Cadastral information. See Jim Gilman's April 9, 2008 Interoffice Memorandum regarding Claimant Contact. In the event questionnaires completed by multiple owners are in conflict, consult with a supervisor. Options may include the claimants splitting the water right (per Administrative Guideline No. 14, "DNRC Water Right Ownership Update Guideline") or adding a free text issue remark:

Example: GIIS DOMESTIC QUESTIONNAIRES WERE RECEIVED FROM MULTIPLE OWNERS ON THE FOLLOWING DATES: **MM/DD/YYYY**, **MM/DD/YYYY**. THE DOMESTIC QUESTIONNAIRE INFORMATION HAS NOT BEEN INCORPORATED INTO THE CLAIMED INFORMATION DUE TO DISAGREEMENT AMONG THE OWNERS.

B. FLOW RATE
[Rule 19, W.R.C.E.R](#)

The flow rate is the rate at which water has been diverted or withdrawn from the source. Domestic flow rates will be decreed in units of gallons per minute (gpm) or cubic feet per second (cfs). See "General Procedures: Standard Measurement of Water" (Section III.B) for standard units and conversions.

Claimant contact must occur upon completing examination of the ownership if the flow rate is modified by rule; an issue remark exists, or is unclear. [Rules 19\(d\) and 44, W.R.C.E.R](#) and Section IV.F.

1. Identifying Claimed Flow Rate. The identification of claimed flow rates will follow the procedures described in "Irrigation: Flow Rate: Identifying the Claimed Flow Rate" (Section VII.B.1).

2. Examining Claimed Flow Rate. The claimed flow rate for domestic claims (as well as claims to lawn and garden use and multiple domestic) will be examined according to the claimed means of diversion, information in the claim file, and a general flow rate guideline of 35 gpm. Information may be gained through claimant contact. [Rules 19\(d\)\(1\) and 44, W.R.C.E.R](#)

For claimed flow rates that will be decreed, there are two underlying considerations to keep in mind. First, has the entire flow rate claimed actually been diverted? Second, is the claimed flow rate reasonable for the specific purpose? If the answer to either question is no, further information should be pursued to determine what is reasonable and accurate. This thought process should form the basis for examining all claims.

Unique Features or Aspects. Any unique aspects or features of the flow rate may also be noted on the department's examination worksheet by a flow rate (FR) information remark: [Rule 19\(g\)\(3\), W.R.C.E.R](#)

Example: F45 ENTIRE FLOW OF THE SOURCE AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

a. Changing Flow Rate. The claimed flow rate will not be changed during examination unless:

- amended by the claimant; [Rule 19\(f\)\(1\), W.R.C.E.R](#)
- modified by rule (clarified) by the department; [Rules 19\(f\)\(3\), \(4\) and 44, W.R.C.E.R](#) Section VII.B.1
- modified by rule (clarified) by the department without claimant contact if the claimed intent is clear or with the claimant contact if the claimed intent is unclear. [Rules 19\(f\)\(2\), 33\(b\)\(7\), and 33\(c\), W.R.C.E.R](#)

When the claimed flow rate is changed so that the review or decree abstract will differ from the claim form or amendment, place an asterisk in the brackets to the left of

the flow rate element on the examination worksheet. Document the changes on the examination worksheet including the appropriate authority below the flow rate element or in the "General Comments" area.

b. Claimant Contact. For system types receiving a flow rate in the Water Court decree, claimant contact may be required. In conjunction with the flow rate examination criteria, the claimant should also be contacted whenever the claimed flow rate is unclear, has apparent discrepancies, appears insufficient, or unreasonable. This contact can have several outcomes: [Rules 19\(d\) and 44, W.R.C.E.R](#) and Section IV.F.

- Information discussed confirms the claimed flow rate. Document the information supporting the claimed flow rate.
- A flow rate different from that claimed is substantiated which the claimant wishes to have replace the claimed data. The claimant should submit an amendment.
- If the issue is unresolved (e.g., pump data are insufficient to confirm the claimed flow rate) or data support an actual flow rate different from the one claimed, add a flow rate (FR) issue remark to the department's examination worksheet.

3. Specific Flow Rate Examination Criteria. Flow rates for domestic claims will be decreed differently depending upon the type of system involved. This section contains guidelines for examining domestic flow rates organized by system and type of right:

- a. [Domestic Claims without Reservoirs](#)
- b. [Domestic Claims with Onstream Reservoirs](#)
- c. [Domestic Claims with Offstream Reservoirs](#)
- d. [Prior Decreed Flow Rates](#)

a. Domestic Claims without Reservoirs. The flow rate for all domestic claims not involving the use of a reservoir will be decreed as claimed. **The guideline for examining these claims is 35 gpm.** (If the means of diversion is a bucket, use 10 gpm as a guideline.) Claimed flow rates of 35 gpm or below will generally be accepted, but may be examined further if there is an apparent error or conflicting data. [Rules 19\(b\)\(1\), W.R.C.E.R](#)

When a claimed flow rate exceeds the 35 gpm guideline, review the claim file for information that may be useful in determining its accuracy. Useful data includes:

- horsepower of pumping unit
- length, diameter, and head of gravity flow pipeline
- well pumping depth (i.e., "head" or vertical lift)
- pump make and model
- test data (well log information)

- flow rate measurements or records

When a claimed flow rate for a pump appears in error, conflicts with pump data in the claim file (such as the pump rate at Means of Diversion), or exceeds the 35 gpm guideline, and there is insufficient information in the claim file to substantiate the claimed flow rate, a Pump Questionnaire (Exhibit VII-3) or Gravity Flow Pipeline Questionnaire (Exhibit VII-5) should be sent to the claimant with a cover letter (Exhibit IV-8). Alternatively, the claimant can be contacted by phone or in a personal interview (see “Examination Materials and Procedures: Claimant Contact Techniques” in Section IV.F).

If claimant contact confirms a flow rate greater than the 35 gpm guideline, indicate the need for a KEEP/CLAIMED flag on the examination worksheet. Document the supporting information in the “General Comments” area on the examination worksheet.

If claimant contact is inconclusive, or the claimed flow rate exceeds 35 gpm, add a flow rate (FR) issue remark to the department’s examination worksheet:

Examples: F205 THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

F210 THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE. AVAILABLE DATA SUPPORT A FLOW RATE OF **24 GPM**.

F211 THE CLAIMED FLOW RATE APPEARS EXCESSIVE FOR A **BUCKET** MEANS OF DIVERSION.

If the flow rate is confirmed, but **exceeds 105 gpm** (3 times the 35 gpm guideline), add a flow rate (FR) issue remark to the department’s examination worksheet:

Example: F206 THE CLAIMED FLOW RATE EXCEEDS 105 GPM AND APPEARS EXCESSIVE FOR THIS PURPOSE.

b. Domestic Claims with Onstream Reservoirs. When a claim describes an onstream reservoir as its diversion method, a flow rate will not be decreed. Change the claimed flow rate to null (no value) and add an asterisk in the brackets to the left of the flow rate element of the examination worksheet. Standards will add the following flow rate (FR) information remark to the review and decree abstract: [Rules 19\(d\)\(3\)\(i\), W.R.C.E.R](#)

FF007 A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

c. Domestic Claims with Offstream Reservoirs. The flow rate for offstream reservoirs, where control of the reservoir is part of the right, will be decreed as claimed, amended, or modified by rule. **The guideline for examining these claims will**

be the capacity of the diversion and conveyance system. If there is no information regarding the capacity of the diversion and conveyance system, or the system is shared by more than one claimant, the flow rate **guideline of 35 gpm** will be used. [Rules 19\(b\)\(3\)\(ii\), W.R.C.E.R](#)

Because few claims involving offstream reservoirs include information about the capacity of their diversion or delivery systems, send a Reservoir Questionnaire to the claimant when the claimed flow rate exceeds the 35 gpm guideline.

When a claimed flow rate exceeds the capacity of the system, or the 35 gpm flow rate guideline, add a flow rate (FR) issue remark to the department's examination worksheet:

Examples: F135 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE DIVERSION AND CONVEYANCE FACILITIES.

F145 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM. AVAILABLE DATA SUPPORT A FLOW RATE OF **2.50 CFS**.

F205 THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

d. Prior Decreed Flow Rates. Claimed flow rates based on historical district court decrees which **specifically** decreed a domestic use (i.e., not contingent upon another decreed purpose) will be decreed as claimed, amended, or modified by rule.

If the claimed flow rate is greater than the amount historically decreed, add a flow rate (FR) issue remark to the department's examination worksheet:

Example: F90 THE CLAIMED FLOW RATE EXCEEDS THE **5** MINER'S INCHES OF **DOE CREEK** DECREED IN CASE NO. **0000**, **MONTANA** COUNTY.

A prior decreed flow rate will be compared to the guideline for the type of domestic system. For claimed amounts exceeding the guideline, add the appropriate flow rate issue remark (see above) to the department's examination worksheet.

Decree Exceeded: Flow rates based on a historically decreed water right for domestic use will be recorded (see "Irrigation: Flow Rate: Recording Documentation" (Section VII.B.5)). Where a prior decreed right has been exceeded, add a decree exceeded (DE) issue remark to the department's examination worksheet. Occasionally, domestic rights are in multiple use situations with irrigation claims. Anytime the combination of consumptive use rights exceeds the decreed amount, include the multiple use rights in the decreed exceeded remark: [Rule 19\(e\), W.R.C.E.R](#)

Example: D5 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME PRIOR DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 150 MINER'S INCHES DECREED IN CASE NO. 0000, MONTANA COUNTY. 000000-00, 000000-00, 000000-00.

4. Flow Rate Issues. Note any flow rate issues on the examination worksheet. At the completion of examining the ownership, the claimant should be notified through claimant contact of all issue remarks. [Rule 19\(g\)\(5\), W.R.C.E.R](#)

a. Claimed Flow Rate Appears Inadequate. Claimed flow rates that appear excessively low (e.g., 1 gpm or less) should be reviewed for possible error by the claimant such as unit of measurement. Also review the documentation to substantiate the flow rate. If the flow rate appears inadequate, add the following flow rate (FR) issue remark to the department's examination worksheet:

Example: F185 THE CLAIMED FLOW RATE APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

b. No Flow Rate Claimed. If no flow rate was claimed where a flow rate is to be decreed by the Water Court, review the supporting documentation in the claim file. If the flow rate cannot be identified, the flow rate should be null (no value) on the examination worksheet. Indicate a KEEP/CLAIMED flag on the worksheet below the flow rate element. Add a flow rate (FR) issue remark to the department's examination worksheet:

Examples: F172 NO QUANTIFIED FLOW RATE WAS CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM.

F195 NO FLOW RATE HAS BEEN CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM.

F190 NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

c. Claimed Flow Rate not Numerically Quantified. Where a flow rate is to be decreed by the Water Court and the claim states the flow rate as "ALL" or a portion of "ALL" (e.g., "½ of ALL"), apply the following procedure. Use Percent of Flow (POF) as the unit when entering flow rate in the database.

- For historically decreed rights where the flow rate is expressed as a percent of flow (POF), the units should be noted as POF on the examination worksheet. If 'ALL' is claimed, the flow rate will be noted as "100 POF"; if one-half of flow is claimed, the flow rate will be noted as "50 POF." Add a KEEP/CLAIMED flag below the flow rate element on the examination worksheet. Add a flow rate (FR) information remark to the examination worksheet to identify the claimed flow rate:

Examples: F45 ENTIRE FLOW OF THE SOURCE AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

F50 THIS RIGHT IS FOR **ONE FOURTH** THE FLOW OF **DOE CREEK** AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

- For a single filed or use right where a flow rate is to be decreed, add a flow rate information remark (F56) and a flow rate issue remark (F170 or F172) to the examination worksheet. Check that the flow rate is expressed as POF and a KEEP/CLAIMED flag is noted on the examination worksheet. Add the appropriate flow rate information and issue remarks:

Examples: F56 **ENTIRE/ONE FOURTH THE** FLOW OF **DOE CREEK**.

F172 NO QUANTIFIED FLOW RATE WAS CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM.

- For multiple filed or use rights based on the same historical water right filed by the same claimant, where a flow rate is to be decreed and a flow rate has not been identified, add the following flow rate (FR) issue remark to the department's examination worksheet for each claim involved. This remark is in lieu of the F170 issue remark referenced above.

Example: F171 THE FLOW RATE HAS NOT BEEN EXAMINED AS NO QUANTIFIED FLOW RATE WAS CLAIMED. THE CLAIMS LISTED FOLLOWING THIS STATEMENT ARE ALL BASED ON THE SAME HISTORIC WATER RIGHT. **000000-00**, **000000-00**.

C. VOLUME

The volume for a domestic claim is the amount of water diverted from the source over the year and is measured in acre-feet (AF). Volumes for claims with lawn and garden (LG) as the purpose should be examined using these domestic use guidelines. To determine the volume guidelines required in this section, first examine the place of use (Section VIII.D) to identify the number of households and irrigated acres.

Claimant contact must occur upon completing examination of the ownership if the volume is modified by rule; an issue remark exists, or is unclear. [Rule s19\(d\) and 44 W.R.C.E.R](#) and Section IV.F.

1. Identifying Volume. Identification of claimed volumes follows the procedures described in "Irrigation: Volume" (Section VII.C.1).

2. Examining Volume. The claimed volume for domestic claims (and claims to lawn and garden use) will be examined according to the claimed means of diversion, information in the claim file, and a general volume guideline of 1.5 acre-feet per household and 2.5 acre-feet per acre of lawn and garden or shelter belt up to a reasonable amount of domestic irrigation (generally 5 acres or less). If a reservoir is associated with a domestic claim, the guideline will be the same as above, plus a reasonable amount for evaporation. See "Evaporation Losses" (Exhibit X-8) for procedures on determining an estimation of evaporation. Information may be gained through claimant contact. [Rules 19\(b\)\(2\), 19\(b\)\(3\)\(iii\), and 44, W.R.C.E.R](#)

Unique Features or Aspects. Any unique features or aspects of the volume may be noted on the department's examination worksheet by a volume (VM) information remark: [Rule 19\(g\)\(3\), W.R.C.E.R](#)

Example: VM CASE NO. 0000, MONTANA COUNTY, DECREES ONE-THIRD INTEREST OF THE DOE LAKE STORAGE RIGHT.

a. Changing Volume. The claimed volume will not be changed during examination unless:

- amended by the claimant; [Rule 19\(f\)\(1\), W.R.C.E.R](#)
- modified by rule by the department [Rules 19\(f\)\(3\),\(4\) W.R.C.E.R](#) Section VII.C.1;
- modified by rule (clarified) by the department without claimant contact if the claimed intent is clear or with claimant contact if the claimed intent is unclear. [Rules 19\(f\)\(2\), 33\(b\)\(7\), and 33\(c\), W.R.C.E.R](#)

When the claimed volume is changed so that the review or decree abstract will differ from the claim form or amendment, place an asterisk in the brackets to the left of the volume element on the examination worksheet. The claimant must be notified of these changes.

b. Claimant Contact. In conjunction with the volume examination criteria, the claimant should also be contacted whenever the claimed volume is unclear, has apparent discrepancies, appears insufficient, or unreasonable. This contact can have several outcomes: [Rules 19\(d\) and 44, W.R.C.E.R](#)

- Information discussed confirms the claimed volume. Document the information supporting the claimed volume.
- A volume different from that claimed is substantiated which the claimant wishes to have replace the claimed data. The claimant should submit an amendment.
- If the issue is unresolved, or data support an actual volume different from the one claimed, add a volume (VM) issue remark to the department's examination worksheet. See Chapter V: Volume.

c. Number of Dwellings. Establishing a volume guideline for examining the claimed volume requires identifying the number of dwellings associated with the domestic claim ([Rule 19 \(c\) W.R.C.E.R.](#)). 'Domestic' purpose is for a single dwelling. 'Multiple Domestic' purpose is for more than one dwelling.

- **Identify the number of dwellings using available data sources.**

If the number of dwellings cannot be determined from available data sources:

- Convert the number of people claimed to households, generally assuming **five people equal one household**. Round odd lots up to the next higher household figure, e.g., 7 people equal two households. If the number of houses described in the claim conflicts with the number of households derived from people, contact the claimant.

Enter the number of dwellings in the blank to the right of "Households" under the volume element on the examination worksheet. The number of dwellings (households) will be stored in the database and will appear on the review and decree abstract.

Due to the small scale of most domestic places of use, aerial photographs are of limited value in substantiating the claimed number of households. Only if there is a wide discrepancy between the claimed number of households and the aerial photograph, or if the photograph shows no evidence of pre-June 30, 1973 domestic use, should the claimant be contacted.

d. Feasibility Check. Claims that will be decreed both a flow rate and a total volume should be checked for feasibility. A feasible volume and a comparison statistic are calculated under the volume element on the examination worksheet. The Feasible Volume shows the maximum volume possible if water were diverted at the claimed flow rate throughout the claimed period of use (year round use equals 366 days).

Compare the Feasible Volume to the claimed volume. When the claimed flow rate (Q) or period of use has been amended, recalculate the maximum feasible volume (V) using the following equations:

- For cfs: Feasible V = Q x days used x 1.9834711
- For gpm: Feasible V = (Q x days used)/226.28542

When the claimed volume exceeds the maximum feasible volume, standards will apply the following volume (VM) issue remarks to the review and decree abstract. If the claimant wishes to resolve the issue remarks, flow rate, volume, and period of use should be discussed with the claimant in order to determine which may be in error.

Examples: V23 THE VOLUME OF THIS WATER RIGHT APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME IS GREATER THAN **3.20** ACRE-FEET PER ACRE PER YEAR.

V24 THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS **3.20** ACRE-FEET PER YEAR.

3. Specific Volume Examination Criteria. Volumes for domestic claims will be decreed differently depending on the type of system involved. This section contains guidelines for examining the domestic volume organized by system and type of right:

- a. [Domestic Claims without Reservoirs](#)
- b. [Domestic Claims with Reservoirs](#)
- c. [Prior Decreed Volume](#)

Claimed volumes below the guidelines are generally accepted, but may be examined further if there is an apparent error or conflicting data.

a. Domestic Claims without Reservoirs. The volume for domestic claims without reservoirs will be decreed as claimed, amended, or modified by rule. The guidelines for reviewing these claims are: [Rule 19\(b\)\(2\), W.R.C.E.R](#)

- **one and one-half acre-feet per household, and**
- **two and one-half acre-feet per acre of domestic irrigation (generally 5 acres or less)**

Review the Comparison Statistic under the volume element on the examination worksheet. This calculates the number of hours per day it takes to deliver the claimed volume. A value greater than 10 hours per day may indicate an issue with the volume, flow rate, or period of use. If the claimed volume, flow rate or period of use is amended or modified by rule, recalculate the 'comparison stat' to confirm the claim is reasonable.

- Comparison Stat = (claimed volume/feasible volume) x 24 hours/day

When a claimed volume exceeds the guideline, the claim file should be reviewed for information supporting the claimed volume. If the claimed volume is not supported by information in the claim file, add a volume (VM) issue remark to the department's examination worksheet:

Example: V85 VOLUME MAY BE EXCESSIVE. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN **24.0** HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THIS FIGURE.

Seasonal Use. If the claim file indicates the period of use to be other than year round for domestic claims without reservoirs, the volume guideline will be calculated by pro-rating the year round guideline. The total pro-rated value may equal a certain amount for households plus a different amount for lawn and garden.

b. Domestic Claims with Reservoirs. The volume for domestic claims with reservoirs will be decreed as claimed, amended or modified by rule. **The guideline for domestic claims involving reservoirs is one and one-half acre-feet per household and two and one-half acre-feet per acre of lawn and garden or shelterbelt, plus a reasonable amount for evaporation.** The evaporation adjustment to the guideline only applies if the claimant has control of the reservoir as part of the domestic right. Calculate the guideline either on the examination worksheet or on the reservoir questionnaire (Exhibit VI-6). [Rule 19\(b\)\(3\)\(iii\), W.R.C.E.R](#)

On large reservoirs claimed for domestic use, the guideline may be artificially high due to the evaporation variable. This may not be a guideline of beneficial use. On claims where this occurs, base claimant contact on the guideline of one and one-half acre-feet per household and two and one-half acre-feet per acre.

Claimed volume at or below the calculated guideline will generally be accepted, but may be examined further if there is an apparent error or conflicting data.

When a claimed volume exceeds the guideline, the claim file should be reviewed for information supporting the claimed volume. If the claimed volume is not supported by information the claim file, add a volume (VM) issue remark to the department's examination worksheet. See "Domestic: Volume: Volume Issues: Volume Excessive" ([Section VIII.C.4.b](#)).

Reservoir Data. When the claimant has control of the reservoir as part of the domestic right, data will be collected and added according to the procedures in "Claim Examination: Reservoirs and Groundwater Pits" (Section VI.H.).

Seasonal Use. If the claim file indicates the period of use to be other than year round for domestic claims with reservoirs, such as a summer cabin on Flathead Lake, the volume guideline will be calculated by pro-rating the year round guideline. The total pro-rated value may equal a certain amount for households plus a different amount for lawn and garden.

c. Prior Decreed Volume. A volume will be decreed for claims based on a prior historical district court decree **specifically** for domestic use. Add a volume (VM) information remark to the department's examination worksheet:

Example: V10 THIS VOLUME WAS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

If the claimed volume is greater than the amount historically decreed, add a volume (VM) issue remark to the department's examination worksheet:

Example: V30 THE CLAIMED VOLUME EXCEEDS THE **50** ACRE-FEET DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

A prior decreed volume will be compared to the guideline for the type of domestic system. For claimed amounts exceeding the guideline, add an appropriate volume issue remark to the department's examination worksheet. See [Section VIII.C.4.b.](#) below.

Decree Exceeded: Volumes based on a historical decreed right for domestic use will be recorded. See "Irrigation: Flow Rate: Recording Documentation" (Section VII.B.5). When a prior decreed right is found to be exceeded by the combined volume of claims based on that right, add a free text decree exceeded (DE) issue remark similar to the D5, but modified to refer to volume and acre-feet. Occasionally, domestic rights are in multiple use situations with irrigation claims. Anytime the combination of consumptive use rights exceeds the decreed amount, include the multiple use rights in the decreed exceeded remark:

Example: DEIS THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED VOLUMES EXCEEDS THE **15** ACRE-FEET DECREED IN CASE NO. **0000**, **MONTANA** COUNTY. **000000-00, 000000-00, 000000-00.**

4. Volume Issues. Note any volume issues on the examination worksheet. At the completion of examining the ownership, the claimant should be notified through claimant contact of all issue remarks. [Rule 19\(g\)\(5\), W.R.C.E.R](#)

a. Volume Guideline not Determinable. The calculation of the volume guideline for domestic claims requires the claimed number of households and acres of domestic irrigation be identified. When the number of households or total acres cannot be identified and the claimed volume exceeds 4 AF, add the following volume (VM) issue remark to the department's examination worksheet:

Example: V60 THE CLAIMED VOLUME WAS NOT EXAMINED. THE CLAIMED NUMBER OF HOUSEHOLDS AND ACRES OF DOMESTIC IRRIGATION COULD NOT BE IDENTIFIED.

In some instances, the claimed number of households and total irrigated acres are large, and are not supported by data sources. Base the volume guidelines on the claimed number of households and total acres. Add the following volume (VM) issue remark to the department's examination worksheet:

Example: V65 THE CLAIMED VOLUME MAY BE EXCESSIVE. THE CLAIMED NUMBER OF HOUSEHOLDS AND ACRES OF DOMESTIC IRRIGATION APPEAR TO BE INACCURATE.

b. Volume Excessive. When a claimed volume exceeds the guidelines and is not supported by available data, add the appropriate volume issue remark to the department's examination worksheet. If the volume is amended, check the volume against the "comparison stat" (number of hours per day required to deliver the volume).

Examples: V70 THE CLAIMED VOLUME EXCEEDS THE **2.50** ACRE-FEET GUIDELINE FOR THIS PURPOSE. ITS ACCURACY CANNOT BE CONFIRMED DUE TO LACK OF DATA.

V75 THE CLAIMED VOLUME EXCEEDS THE **2.00** ACRE-FEET GUIDELINE FOR THIS PURPOSE. AVAILABLE DATA SUPPORT A VOLUME OF **1.80** ACRE-FEET.

V77 VOLUME APPEARS TO BE EXCESSIVE FOR A **BUCKET** MEANS OF DIVERSION.

V80 THE CLAIMED VOLUME APPEARS EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EXCEEDS THE GUIDELINE OF **3.00** ACRE-FEET PLUS A REASONABLE AMOUNT FOR EVAPORATION.

V86 THE CLAIMED FLOW RATE OR VOLUME MAY BE INCORRECT. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN **24.0** HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THESE FIGURES.

V100 THE CLAIMED VOLUME **APPEARS TO/MAY** BE EXCESSIVE FOR THE CLAIMED PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

V105 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. AVAILABLE DATA SUPPORT A VOLUME OF **2.30** ACRE-FEET.

V111 THE CLAIMED VOLUME CANNOT BE CONFIRMED DUE TO LACK OF DATA.

c. Claimed Volume Inadequate. If the claimed volume appears inadequate for the claimed use when compared to available data, add the following volume (VM) issue remark to the department's examination worksheet:

Example: V45 THE CLAIMED VOLUME APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

Volumes cannot be raised to the guideline arbitrarily through claimant contact. The guidelines are strictly a tool to trigger the need for further examination. When the claimed volume appears inadequate, the claimant may determine a volume based on a historical pre-1973 use that is reasonable compared to the number of hours per day required to deliver the volume. If amended, the volume should be checked against the "comparison stat" for reasonableness.

d. No Volume Claimed. When no volume has been claimed, add the appropriate volume (VM) issue remark to the department's examination worksheet:

Examples: V90 NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS **2.00** ACRE-FEET PER YEAR.

V95 NO VOLUME HAS BEEN CLAIMED.

V97 NO QUANTIFIED VOLUME WAS CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS **2.50** ACRE-FEET PER YEAR.

Check that the volume element on the examination worksheet is expressed as null (no value).

e. Claimed Volume not Numerically Quantified. When a claimed volume states "ALL" or a portion of "ALL" (e.g. "½ of ALL"), the following procedures apply:

- For prior decreed rights, check that the volume is expressed as null (no value) and a KEEP/CLAIMED flag is designated. Add a volume (VM) information remark to the examination worksheet to identify the claimed volume:

Examples: V11 ENTIRE VOLUME OF THE SOURCE AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

V12 THIS RIGHT IS FOR **ONE-FOURTH** THE VOLUME OF **DOE CREEK** AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

- For filed and use rights where a volume is to be decreed, add a volume information remark (V13) and a volume issue remark (V97) to the examination worksheet:

Examples: V13 **ENTIRE/ONE-FOURTH THE** VOLUME OF **DOE CREEK**.

V97 NO QUANTIFIED VOLUME WAS CLAIMED. THE VOLUME
GUIDELINE FOR THIS PURPOSE IS **2.50** ACRE-FEET PER
YEAR.

Check that the volume is expressed as null (no value) and a KEEP/CLAIMED flag is designated on the examination worksheet.

D. PLACE OF USE (POU)
[Rule 18, W.R.C.E.R](#)

The place of use for a domestic claim includes the households, associated facilities, lawns, gardens, shelterbelts, ornamental acreage, non-commercial greenhouses, and orchards where the water was historically used. The described place of use will include the number of households, the legal land description and, if domestic irrigation is included, the number of acres irrigated.

Although the place of use element appears after the volume element on the examination worksheet, the place of use should be examined first. The number of households and irrigated acres claimed must be identified before the volume guideline can be determined.

Claimant contact must occur upon completing examination of the ownership if the place of use is modified by rule; an issue remark exists, or is unclear. [Rule 18\(a\)\(2\) and 44, W.R.C.E.R](#) and Section IV.F.

1. Identifying Place of Use. Most procedures for identifying place of use are described in "Irrigation: Place of Use" (Section VII.D.1). There are also several procedures unique to domestic claims described below.

Due to the small size of most domestic places of use, particular emphasis should be placed on refining claimed legal land descriptions through providing additional legal land descriptions, such as lot, block, and subdivision. See "Claim Examination: Additional Legal Land Descriptions" (Section VI.E.) for procedures. [Rule 18\(d\)\(3\), W.R.C.E.R](#)

2. Examining Place of Use. Examine the claimed place of use by comparing it with a post-priority date aerial photograph. If an aerial photograph is unavailable, use an orthophotoquads or another data source such as USGS maps, USFS maps, Bureau of Land Management maps, [Water Resources Survey](#) data, the [Montana Cadastral Mapping Program](#), county plat books, ownership records, or the claim file. [Rule 18\(a\)\(1\), W.R.C.E.R](#)

Changing the Place of Use. The claimed place of use will not be changed during the examination unless:

- amended by the claimant, [Rule 18\(c\)\(1\), W.R.C.E.R](#) or
- modified by rule to the nearest reasonable and concise legal land description. [Rule 18\(c\)\(2\), W.R.C.E.R](#)

a. Reviewing Legal Land Descriptions. If the claimed place of use is not evident on the aerial photograph, check the [Montana Cadastral Mapping Program](#) to determine whether the claimed legal land descriptions are correct. If incorrect, add a place of use (PL) issue remark to the department's examination worksheet:

Example: PLIS MONTANA COUNTY RECORDS INDICATE THE LEGAL LAND DESCRIPTION FOR THE CLAIMED PLACE OF USE IS SWSWSW SEC 36 TWP 99N RGE 99W MONTANA COUNTY.

P306 THE PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

If evidence of domestic use cannot be found on the aerial photographs after a legal description is corrected, see “Examining Domestic Irrigation” (Section VIII.D.2.b.) directly below.

b. Examining Domestic Irrigation. Examination procedures for domestic irrigation will track closely with those used for typical irrigation (IR) claims (non-domestic). The claimant’s map and at least one post-priority date data source, when available, will be used to examine the acreage claimed ([Rule 18 \(b\), W.R.C.E.R.](#)). **Only one post-priority date data source is needed** (e.g., an aerial photograph or an orthophotoquad). The examination procedures for claims describing domestic irrigation will vary according to the total acreage claimed.

Claimed Acres 2.5 or Less. Acreage totals of 2.5 acres or less are presumed to be valid. The claimant should only be contacted if the aerial photograph or other data source (e.g., county plat) clearly contradicts the claim. Aerial photographs are generally not effective tools for reviewing small acreage. Note on the examination worksheet that the POU was not examined due to size.

Claimed Acres 2.51 to 5.0. Compare claims of 2.51 to 5.0 acres with an aerial photograph for evidence of domestic irrigation and to confirm that the claimed acreage appears correct. Contact the claimant if the aerial photograph contradicts the claimed acreage.

Claimed Acres Exceed 5.0. Domestic irrigation of more than 5 acres is rare. **Unless the aerial photograph clearly supports claimed domestic acreage greater than 5.0 (example, condominiums with extensive lawns), the claimant will be contacted** to determine if the claimed acreage is entirely for domestic irrigation. [Rules 18 \(b\)\(1\) and 55, W.R.C.E.R.](#) and Section IV.F.

Compare the claimed domestic acreage to the aerial photograph to determine if the claimed acreage is actually irrigated. If the irrigated acreage identified on the aerial photograph differs from the claimed acreage by more than the claimant contact point range, the claimant will be contacted. [Rules 18 \(b\)\(2\) and 44, W.R.C.E.R.](#) If claimant contact is not conclusive, add the appropriate issue remark by following the procedures outlined in "Irrigation: Place of Use: Specific POU Acreage Guidelines" (Section VII.D.3). [Rule 18 \(d\)\(6\), W.R.C.E.R.](#)

3. Non-domestic Irrigation. Examine the claim for the existence of domestic irrigation, as defined on the “Standard Purpose List” (Figure VI-1) under Lawn and Garden (LG) and Multiple Domestic (MD). Irrigated acres that do not meet those

guidelines will not be considered domestic irrigation. The aerial photograph or claimant contact may indicate that some or all of the claimed acreage is irrigated for non-domestic purposes.

When non-domestic irrigation is identified, all irrigation claims filed by the claimant should be reviewed to determine if they overlap the place of use described on the domestic claim.

- If a domestic irrigation claim overlaps the POU of an irrigation claim filed by the same owner, add a place of use (PL) issue remark to both claims. (Claimant contact may result in an amendment to eliminate the overlapping places of use, or the overlap may be justified.) [Rules 18 \(a\)\(2\)\(iv\) and 44, W.R.C.E.R.](#)

Example: P320 THE PLACES OF USE FOR **IRRIGATION** CLAIM NO. **000000-00** AND **DOMESTIC** CLAIM NO. **000000-00** OVERLAP.

- When no irrigation claim is found describing the POU of a claim for apparent non-domestic irrigation, add a place of use (PL) remark to the department's examination worksheet:

Examples: P325 THE CLAIMED PLACE OF USE DOES NOT APPEAR TO BE USED FOR DOMESTIC IRRIGATION PURPOSES.

P330 ONLY **TWO** ACRES OF THE CLAIMED PLACE OF USE APPEAR IRRIGATED FOR DOMESTIC PURPOSES.

If it is confirmed that the claimed POU is irrigated for other than domestic purposes, an implied irrigation claim may exist. See "Special Provisions: Implied Claims" (Section XI.B). Claimant contact may result in an amendment to clarify the domestic claim to reflect domestic use only. [Rules 18\(a\)\(2\)\(iii\) and 44, W.R.C.E.R.](#)

4. Mapping Place of Use. It is only necessary to map domestic places of use greater than five acres (the point of diversion should be mapped in WRMapper). In some cases, e.g. subdivisions, it may be helpful to map all POUs. When mapping domestic POUs, follow the procedures outlined in "Irrigation: Place of Use: Mapping Place of Use and Data Source Results" (Section VII.D.2.d.). These results should be produced in a PDF report created from WRMapper. The reports MUST be named according to "Exporting and Naming Reports" (Figure VII-1). For more information on WRMapper, see 'Mapper Protocols' on the Adjudication Shared Drive.

Overlapping Ownership. Ownership issues may be identified using the AllCad layer in WRMapper. If an ownership issue is identified, refer to "Irrigation: Place of Use: Place of Use Issues" (Section VII.D.4) or "Claim Examination: Owner Name and Address: New Owner Determined but File Lacks Ownership Update" (Section VI.B.3). This analysis includes examining claims for the possibility that they may overlap with federal or state ownership of the place of use. See Section VII. D.4.

Supplemental Rights. No review or identification of supplemental relationships will be made for domestic claims.

5. Geocodes. Geocodes were initially assigned to water rights as either a one-to-one match or a one-to-many match based on the legal land description. At times, the legal land description associated with a water right was described very broadly, encompassing several parcels that may not have been within the true place of use. As a result, geocodes must be verified as belonging to the claimed place of use. Any geocodes assigned initially to the water right are listed below the place of use element on the examination worksheet.

Determine valid geocodes by using the AllCad layer in WRMapper or the [Montana Cadastral Mapping Program](#) information. Indicate a valid geocode with a 'Y' on the examination worksheet. (See also, Assigning Geocodes Memo. Exhibit VI-18)

Once a place of use has validated geocodes, cross off any geocodes not associated with the place of use on the examination worksheet. In the database, these records will be deleted from the Geocode tab under the Create and Maintain Water Rights screen.

Geocode issues. Every effort should be made to validate geocodes.

- If a geocode cannot be conclusively determined as belonging partially or wholly within the place of use, the geocode should have a 'N' designation (not validated). If an ownership update occurs involving any geocode with a designation of an 'N', the water right will require further research before the ownership update can occur.
- If a geocode is designated as valid ('Y') and it is found to be in error, change the 'Y' to an 'N' on the examination worksheet and document the resources and/or research in making the determination. In the database, in order to remove an incorrectly validated geocode, first change the 'Y' to an 'N' and then save. The record can then be deleted.
- If a legal land description is found to be in error, review the geocodes. If any changes are made to the legal land description (i.e., a correction to the township, range or section occurs based on the claimant's map, for example), it may be determined that a geocode may need to be deleted or added.
- If the place of use is amended, review the geocodes. It may be determined that a valid geocode needs to be deleted, or a geocode not initially associated with the water right needs to be added.
- Water rights which have been reserved (exempted) from the land, such as those belonging to homeowner's associations, municipalities, and certain other entities that provide service but do not own the place of use, just the

water right, will not have any associated geocodes. If a geocode is assigned, delete it from the Geocode tab in the database.

IX. STOCKWATER

This chapter describes the procedures unique to the examination of Stockwater Claims. Examination procedures for the other elements of stock claims are described in Chapter VI: Claims Examination and Chapter VII: Irrigation.

The following elements are discussed in this chapter:

- A. General Discussion
- B. Flow Rate
- C. Volume
- D. Point of Diversion and Means of Diversion
- E. Place of Use

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A. GENERAL DISCUSSION

1. Exempt Claims. Per [§85-2-222, MCA](#), stock uses based upon *instream flow* or *ground water* sources are exempt from the filing requirements of [§85-2-221, MCA](#). Stock exempt claims are:

- Stockwater use directly from source (no man-made diversion)
- Stockwater use from a groundwater source

Any of these existing water rights, however, could be voluntarily filed with the department. Check that the correct exempt status is indicated on the examination worksheet under the water right number. In the database, indicate whether or not the claim is an 'Exempt Claim' in the 'Claim Filing Information' on the Historical tab in the Create and Maintain Water Right Detail screen. Any stock claim for surface water that has a man-made diversion is not exempt.

B. FLOW RATE [Rule 24, W.R.C.E.R.](#)

The flow rate for stock claims is defined as the rate at which water has been diverted or withdrawn from the source. Stock flow rates will be decreed in gallons per minute (gpm) or cubic feet per second (cfs). See "General Procedures: Standard Measurement of Water" (Section III.B) for standard units and conversions.

Claimant contact must occur upon completing examination of the ownership if the flow rate is modified by rule; an issue remark exists, or is unclear. [Rules 24\(d\) and 44, W.R.C.E.R.](#) and Section IV.F.

1. Identifying Claimed Flow Rate. The identification of claimed flow rates will follow the procedures described under "Irrigation: Flow Rate: Identifying the Claimed Flow Rate" (Section VII.B.1).

2. Examining Claimed Flow Rate. The claimed flow rate for stock claims will be examined according to the claimed means of diversion, information in the claim file, and a general flow rate guideline. Information may be gained through claimant contact. [Rules 24\(a\)\(d\) and 44, W.R.C.E.R.](#)

For claimed flow rates that will be decreed, there are two underlying considerations that should be kept in mind. First, has the claimed flow rate actually been diverted? Second, is the claimed flow rate reasonable for the specific purpose? If the answer to either question is no, further information should be pursued to determine what is reasonable and accurate. This thought process should form the basis for examining all claims.

Unique Aspects or Features. Any unique aspects or features of the flow rate may also be noted on the department's examination worksheet by a flow rate (FR) information remark:

Example: F45 ENTIRE FLOW OF THE SOURCE AS DECREED IN A PRIOR DECREE, CASE NO. 0000, MONTANA COUNTY.

a. Changing Flow Rate. The claimed flow rate will not be changed during examination unless:

- amended by the claimant; [Rule 24\(f\)\(1\), W.R.C.E.R.](#)
- modified by rule by the department [Rules 24\(b\) and 24\(f\)\(3\), W.R.C.E.R.](#) and Sections VII.B.1 and VII.B.3;
- to standardized units of measure [Rules 4\(b\) and 24\(f\)\(4\), W.R.C.E.R.](#) Section VII.B.1;
- to apply standards [Rule 24\(b\)\(2\), \(3\), W.R.C.E.R. Section IX.B.3.](#); or
- modify by rule (clarified) by the department without claimant contact. If the claimed intent is clear or with claimant contact if the claimed intent is clear. [Rules 24\(f\)\(2\), 33\(b\)\(7\), and 33\(c\), W.R.C.E.R.](#)

When the claimed flow rate is changed so that the review or decree abstract will differ from the claim form or amendment, place an asterisk in the brackets to the left of the flow rate element on the examination worksheet. Document the changes on the examination worksheet including the appropriate authority below the flow rate element or in the “General Comments” area. The claimant must be notified.

b. Claimant Contact. For system types receiving a flow rate in the Water Court decree, claimant contact may be required. In conjunction with the flow rate examination criteria, the claimant should also be contacted whenever the claimed flow rate is unclear, has apparent discrepancies, appears insufficient, or unreasonable. This contact can have several outcomes: [Rules 24\(d\) and 44, W.R.C.E.R.](#) and Section IV.F.

- Information discussed confirms the claimed flow rate. Document the information supporting the claimed flow rate.
- A flow rate different from that claimed is substantiated which the claimant wishes to have replace the claimed data. The claimant should submit an amendment.
- If the issue is unresolved (e.g., pump data are insufficient to confirm the claimed flow rate), or data support an actual flow rate different from the one claimed, add a flow rate (FR) issue remark to the department's examination worksheet.

3. Specific Flow Rate Examination Criteria. Flow rates for stock claims will be decreed differently depending on the type of system. This section contains the guidelines for examining the flow rate of claims organized by system and type of right:

- [Instream Direct, Ditches, Undeveloped Springs, Onstream Reservoirs](#)
- [Wells, Developed Springs, Pumps, Gravity Flow Pipelines, Groundwater Pits](#)
- [Offstream Reservoirs](#)

d. [Prior Decreed Flow Rates](#)

a. [Instream Direct, Ditches, Undeveloped Springs, Onstream Reservoirs](#). **A specific flow rate will not be decreed for stock drinking directly** from:

- streams and lakes
- undeveloped springs
- onstream reservoirs
- system employing a headgate and/or ditch
- man-made pits
- USA Pothole Lakes [Rules 24\(b\)\(2\),\(3\), W.R.C.E.R.](#)

For purposes of examining this element, springs will be presumed to be undeveloped, unless claimed or documented as developed (see [Section IX.B.3.b.](#) below for a brief description). On the examination worksheet, cross out the flow rate.

When the major source type is surface water, standards will apply the following flow rate (FR) information remark to the review and decree abstract: [Rule 24\(b\)\(2\), W.R.C.E.R.](#)

Example: FF009 A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

If the claim involves an onstream reservoir, standards will apply the following flow rate (FR) information remark to the flow rate on the review and decree abstract: [Rule 24\(b\)\(3\)\(i\), W.R.C.E.R.](#)

Example: FF007A A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

b. [Wells, Developed Springs, Pumps, Gravity Flow Pipelines, Groundwater Pits](#). **A specific flow rate will be decreed** for stock drinking from the following means of diversion: [Rule 24\(b\)\(1\), W.R.C.E.R.](#)

- wells
- pumped diversions
- gravity flow pipelines
- developed springs
- groundwater pits

These types of means of diversion can generally be measured and thus a

quantified flow rate can be decreed. Note a KEEP/CLAIMED flag below the flow rate element on the examination worksheet. This will suppress standards from overwriting the flow rate whenever the source type is surface water. If the claimed flow rate exceeds the 35 gpm guideline, an issue remark may be necessary. See "Stockwater: Flow Rate: Flow Rate Issues" ([Section IX.B.4](#)).

A spring will be considered "developed" and the appropriation will be classified as groundwater if documentation clearly indicates some man-made development (physical alteration) of the spring that appropriates groundwater. The assumption is that the physical alteration increases the flow rate, since not many measurements of historical flow rates exist that could prove an increase in flow. Any increase in the ability to use the water is considered a developed spring. See "Claim Examination: Source Name: Springs" (Section VI.D.6) for additional discussion on appropriate documentation.

The guideline for examining these claims is 35 gpm. Claimed flow rates below the guideline are generally accepted, but may be examined further if there is an apparent error or conflicting data.

When a claimed flow rate exceeds the 35 gpm guideline, review the claim file for information that may be useful in determining its accuracy. Useful data includes:

- horsepower of pumping unit
- length, diameter, and head of gravity flow pipeline
- well pumping depth (i.e., "head" or vertical lift)
- pump make and model
- test data (well log information)
- flow rate measurements or records

When a claimed flow rate for a pump appears in error, conflicts with pump data in the claim file (such as the pump rate at Means of Diversion), or exceeds the 35 gpm guideline, and there is insufficient information in the claim file to substantiate the claimed flow rate, a Pump Questionnaire (Exhibit VII-3) or Gravity Flow Pipeline Questionnaire (Exhibit VII-5) should be sent to the claimant with a cover letter (Exhibit IV-8).

Alternatively, the claimant can be contacted by phone or in a personal interview (see "Examination Materials and Procedures: Claimant Contact Techniques" in Section IV.F). When questionnaires are returned, follow the procedures described in "Stockwater: Flow Rate: Examining Claimed Flow Rate: Claimant Contact" ([Section IX.B.2.b](#)).

If claimant contact confirms a flow rate greater than the 35 gpm guideline, indicate a KEEP/CLAIMED flag on the examination worksheet. The flag will suppress standards from overwriting the flow rate and adding a flow rate issue remark to the review or decree abstract. Document the supporting information in the "General Comments" area on the examination worksheet.

If claimant contact is inconclusive, or the claimed flow rate exceeds 35 gpm, add a flow rate (FR) issue remark to the department's examination worksheet:

Examples: F205 THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

F210 THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE. AVAILABLE DATA SUPPORT A FLOW RATE OF **24 GPM**.

If the flow rate is confirmed, but **exceeds 105 gpm** (3 times the 35 gpm guideline), add a flow rate (FR) issue remark to the department's examination worksheet:

F206 THE CLAIMED FLOW RATE EXCEEDS 105 GPM AND APPEARS EXCESSIVE FOR THIS PURPOSE.

c. Offstream Reservoirs. The flow rate for offstream reservoirs, where control of the reservoir is part of the right, will be decreed as claimed, amended, or modified by rule. **The guideline for examining these claims will be the capacity of the diversion and conveyance system.** If available information is inadequate to determine or estimate the capacity of the diversion or conveyance system, or the system is shared by more than one claimant, use a **guideline of 35 gpm** [Rule 24\(b\)\(3\)\(ii\)](#), [W.R.C.E.R.](#)

When a claimed flow rate exceeds the capacity of the system, or the 35 gpm flow rate guideline, add a flow rate (FR) issue remark to the department's examination worksheet: [Rule 24\(g\)\(5\)](#), [W.R.C.E.R.](#)

Examples: F135 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE DIVERSION AND CONVEYANCE FACILITIES.

F145 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM. AVAILABLE DATA SUPPORT A FLOW RATE OF **2.50 CFS**.

F205 THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

d. Prior Decreed Flow Rates. Claimed flow rates based on historical district court decrees which **specifically** decree a stock use (i.e., not contingent upon another decreed purpose) will be decreed as claimed, amended, or modified by rule.

If the claimed flow rate is greater than the amount historically decreed, add a flow rate (FR) issue remark to the department's examination worksheet: [Rule 24\(g\)\(5\)](#).

[W.R.C.E.R.](#)

Example: F90 THE CLAIMED FLOW RATE EXCEEDS THE 5 MINER'S INCHES OF **DOE CREEK** DECREED IN CASE NO. **0000**, **MONTANA** COUNTY.

A prior decreed flow rate will be compared to the guideline for the type of stock watering system. For claimed amounts exceeding the guideline, add the appropriate flow rate issue remark (e.g., F205, F210) to the department's examination worksheet.

Decree Exceeded: Flow rates based on a prior decreed right for stock will be recorded (see "Irrigation: Flow Rate: Recording Documentation" (Section VII.B.5)). When a historically decreed right is found to be exceeded by the combined flow rate of claims based on that right, add a decree exceeded (DE) issue remark to the department's examination worksheet. Occasionally, stock rights are in multiple use situations with irrigation claims. Anytime the combination of consumptive use rights exceeds the decreed amount, include the multiple use rights in the decreed exceeded remark: [Rule 24\(e\), W.R.C.E.R.](#)

Example: D5 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME PRIOR DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 150 MINER'S INCHES DECREED IN CASE NO. **0000**, **MONTANA** COUNTY. **000000-00, 000000-00, 000000-00**.

4. Flow Rate Issues. Note any flow rate issues on the examination worksheet. At the completion of examining the ownership, the claimant should be notified through claimant contact of all issue remarks. [Rule 24\(g\)\(5\), W.R.C.E.R.](#)

a. Claimed Flow Rate Appears Inadequate. Claimed flow rates that appear excessively low (e.g., 1 gpm or less) should be reviewed for possible error by the claimant such as unit of measurement. Also review the documentation to substantiate the flow rate. If the flow rate appears inadequate, add the following flow rate (FR) issue remark to the department's examination worksheet:

Example: F185 THE CLAIMED FLOW RATE APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

b. No Flow Rate Claimed. If no flow rate was claimed where a flow rate is to be decreed by the Water Court, review the supporting documentation in the claim file. If the flow rate cannot be identified, the flow rate should be null (no value) on the examination worksheet. Indicate a KEEP/CLAIMED flag on the worksheet below the flow rate element. Add a flow rate (FR) issue remark to the department's examination worksheet:

Examples: F172 NO QUANTIFIED FLOW RATE WAS CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM.

F195 NO FLOW RATE HAS BEEN CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM.

F190 NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

c. Claimed Flow Rate not Numerically Quantified. Where a flow rate is to be decreed by the Water Court and the claim states the flow rate as "ALL" or a portion of "ALL" (e.g., "½ of ALL"), apply the following procedure. Use Percent of Flow (POF) as the unit when entering flow rate in the database.

- For historically decreed rights where the flow rate is expressed as a percent of flow (POF), the units should be noted as POF on the examination worksheet. If 'ALL' is claimed, the flow rate will be noted as "100 POF"; if one-half of flow is claimed, the flow rate will be noted as "50 POF." Add a KEEP/CLAIMED flag below the flow rate element on the examination worksheet. Add a flow rate (FR) information remark to the examination worksheet to identify the claimed flow rate:

Examples: F45 ENTIRE FLOW OF THE SOURCE AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

F50 THIS RIGHT IS FOR **ONE-FOURTH** THE FLOW OF **DOE CREEK** AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

- For a single filed or use right where a flow rate is to be decreed, add a flow rate information remark (F56) and a flow rate issue remark (F172) to the examination worksheet. Check that the flow rate is expressed as POF and a KEEP/CLAIMED flag is noted on the examination worksheet. Add the appropriate flow rate information and issue remarks:

Examples: F56 **ENTIRE/ONE FOURTH THE** FLOW OF **DOE CREEK**.

F172 NO QUANTIFIED FLOW RATE WAS CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM.

- For multiple filed or use rights based on the same historical water right filed by the same claimant, where a flow rate is to be decreed and a flow rate has not been identified, add the following flow rate (FR) issue remark to the department's examination worksheet for each claim involved. This remark is in lieu of the F170 or F172 issue remark.

Example: F171 THE FLOW RATE HAS NOT BEEN EXAMINED AS NO QUANTIFIED FLOW RATE WAS CLAIMED. THE CLAIMS LISTED FOLLOWING THIS STATEMENT ARE ALL BASED ON THE SAME HISTORIC WATER RIGHT. **000000-00**, **000000-00**.

C. VOLUME
[Rule 24, W.R.C.E.R.](#)

The volume for a stock claim is the amount of water diverted from the source over the year. It is measured in acre-feet (AF) when specific stock volumes will be decreed. Where a specific volume will not be decreed, a volume information remark will be applied to the water right that refers to a rate of 30 gallons per day per animal unit based on a reasonable carrying capacity and historical use.

A specific volume *will not* be decreed for stock claims *except* for U.S. government claims to reservoirs and pothole lakes. [Rule 24\(c\), W.R.C.E.R.](#)

1. Changing Volume. The claimed volume will not be changed during examination unless:

- amended by the claimant; [Rule 24\(f\)\(1\), W.R.C.E.R.](#)
- modified by rule by the department amended by the claimant; [Rules 24\(b\), and 24\(f\)\(3\) W.R.C.E.R.](#) Sections VII.B.1 and VII.B.3
- to standardized units of measure modified by rule by the department amended by the claimant; [Rules 4\(b\) and 24\(f\)\(4\), W.R.C.E.R.](#) Section VII.B.1;
- to apply standards [Rule 24\(b\)\(2\), W.R.C.E.R.](#) Section IX.C.2; or modified by rule (clarified) by the department without claimant contact if the claimed intent is clear or with claimant contact if the claimed intent is unclear. to apply standards [Rules 24\(f\)\(2\), 33\(b\)\(7\), and 33\(c\), W.R.C.E.R.](#)

2. Land Swaps. Procedures for examining stock volumes are discussed below *according to the current ownership*. Occasionally, land swaps occur between federal and private entities. Apply the following procedures based on current ownership. For example, if a private entity has transferred property (and water rights) to a federal entity, examine the claim per its current ownership (federal) to determine if a specific volume will be decreed.

Claimant contact must occur upon completing examination of the ownership if the volume is modified by rule; an issue remark exists, or is unclear. [Rules 24\(d\) and 44, W.R.C.E.R.](#) and Section IV.F.

3. All Stock Claims (Except USA Pothole Lakes and Reservoirs). A **specific volume will NOT be quantified or decreed for stock claims**. The only claims that will be decreed a volume are USA claims to pothole lakes and reservoirs. [Rule 24\(c\), W.R.C.E.R.](#)

Change the claimed volume on the examination worksheet to null (no value) and place an asterisk in the brackets to the left of the volume element on the examination worksheet. Standards will apply the following volume (VM) information remark to the review and decree abstract. The claimant must be notified.

Example: VF015 THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

4. USA Pothole Lakes and Reservoirs Claims. A **volume WILL be decreed for stock reservoir and pothole lake claims owned by USA** (e.g., BLM, Fish and Wildlife Service, or Forest Service). Volumes for these claims are retained and decreed pursuant to a June 17, 1985 and August 7, 1987 Orders (Exhibit IX-1) from the Water Court.

Examine the claimed volumes on USA stock reservoirs and pothole lakes by following the procedures outlined in “Claim Examination: Reservoirs and Groundwater Pits” (Section VI.H).

Feasibility Check. USA claims that will be decreed both a flow rate and a total volume should be checked for feasibility. A feasible volume and a comparison statistic are calculated under the volume element on the examination worksheet. The Feasible Volume shows the maximum volume possible if water were diverted at the claimed flow rate throughout the claimed period of use (year round use equals 366 days).

Compare the Feasible Volume to the claimed volume. When the claimed flow rate (Q) or period of use has been amended, recalculate the maximum feasible volume (V) using the following equations:

- For cfs: Feasible V = Q x days used x 1.9834711
- For gpm: Feasible V = (Q x days used)/226.28542

When the claimed volume exceeds the maximum feasible volume, standards will apply the following volume (VM) issue remarks to the review and decree abstract. If the claimant wishes to resolve the issue remarks, flow rate, volume, and period of use should be discussed with the claimant in order to determine which may be in error.

Examples: V23 THE VOLUME OF THIS WATER RIGHT APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME IS GREATER THAN **3.20** ACRE-FEET PER ACRE PER YEAR.

V24 THE CLAIMED VOLUME EXCEEDS MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS **3.20** ACRE-FEET PER YEAR.

5. Prior Decreed Volume. A volume will be decreed for claims based

on a historical district court decree *specifically* for stock use. Add a volume (VM) information remark to the department's examination worksheet:

Example: V10 THIS VOLUME WAS DECREED IN A PRIOR DECREE, CASE NO. **0000, MONTANA** COUNTY.

If the claimed volume is greater than the amount historically decreed, add a volume (VM) issue remark to the department's examination worksheet:

Example: V30 THE CLAIMED VOLUME EXCEEDS THE **50** ACRE-FEET DECREED IN A PRIOR DECREE, CASE NO. **0000, MONTANA** COUNTY.

A prior decreed volume will be compared to the guideline for the type of stock watering system. For claimed amounts exceeding the guideline, add an appropriate volume issue remark to the department's examination worksheet. See [Section IX.C.5.a.](#) below.

Decree Exceeded. Volumes based on a historical decreed right for stock will be recorded. See "Irrigation: Flow Rate: Recording Documentation" (Section VII.B.5). When a prior decreed right is found to be exceeded by the combined volume of claims based on that right, add a free text decree exceeded (DE) issue remark similar to the D5, but modified to refer to volume and acre-feet. Occasionally, stock rights are in multiple use situations with irrigation claims. Anytime the combination of consumptive use rights exceeds the decreed amount, include the multiple use rights in the decreed exceeded remark:

Example: DEIS THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED VOLUMES EXCEEDS THE **15** ACRE-FEET DECREED IN CASE NO. **0000, MONTANA** COUNTY. **000000-00, 000000-00, 000000-00.**

6. Volume Issues. Note any volume issues on the examination worksheet. At the completion of examining the ownership, the claimant should be notified through claimant contact of all issue remarks. [Rule 24\(g\)\(5\), W.R.C.E.R.](#)

a. Volume Excessive. When a claimed volume (groundwater or previously decreed) exceeds the guidelines and is not supported by available data, add the appropriate volume (VM) issue remark to the department's examination worksheet:

Examples: V40 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS **2.9** TIMES THE CAPACITY OF THE RESERVOIR.

V77 VOLUME APPEARS TO BE EXCESSIVE FOR A **BUCKET** MEANS OF DIVERSION.

V100 THE CLAIMED VOLUME **APPEARS TO/MAY** BE EXCESSIVE FOR THE CLAIMED PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

V105 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. AVAILABLE DATA SUPPORT A VOLUME OF **2.30** ACRE-FEET.

V111 THE CLAIMED VOLUME CANNOT BE CONFIRMED DUE TO LACK OF DATA.

If the comparison stat on the examination worksheet exceeds the guideline of 30 gallons per day per animal unit, add the following volume (VM) issue remark:

V112 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS **63** GPD PER ANIMAL UNIT.

b. Claimed Volume Appears Inadequate. If the claimed volume appears inadequate for the claimed use when compared to available data, add the following volume (VM) issue remark to the department's examination worksheet:

Example: V45 THE CLAIMED VOLUME APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

Volumes cannot be raised to the guideline arbitrarily through claimant contact. The guidelines are strictly a tool to trigger the need for further examination. When the claimed volume appears inadequate, the claimant may determine a volume based on historical pre-1973 animal units and a reasonable number of 24-hour days. If amended, check the volume for feasibility.

c. No Volume Claimed. When no volume has been claimed, add the appropriate volume (VM) issue remark to the department's examination worksheet:

Examples: V90 NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS **2.00** ACRE-FEET PER YEAR.

V95 NO VOLUME HAS BEEN CLAIMED.

Check that the volume element on the examination worksheet is expressed as null (no value) and a KEEP/CLAIMED flag is designated.

d. Claimed Volume not Numerically Quantified. When a claimed volume states "ALL" or a portion of "ALL" (e.g. "½ of ALL"), the following procedures apply:

- For prior decreed rights, check that the volume is expressed as null (no value) and a KEEP/CLAIMED flag is designated on the examination worksheet. Add a volume (VM) information remark to the examination worksheet to identify the claimed volume:

Examples: V11 ENTIRE VOLUME OF THE SOURCE AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

V12 THIS RIGHT IS FOR **ONE-FOURTH** THE VOLUME OF **DOE CREEK** AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

- For filed and use rights where a volume is to be decreed, add a volume information remark (V13) and a volume issue remark (V96 or V97) to the examination worksheet:

Examples: V13 **ENTIRE/ONE-FOURTH THE VOLUME OF DOE CREEK.**

V97 NO QUANTIFIED VOLUME WAS CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS **2.50** ACRE-FEET PER YEAR.

Check that the volume is expressed as null (no value) and a KEEP/CLAIMED flag is designated on the examination worksheet.

D. POINT OF DIVERSION AND MEANS OF DIVERSION
[Rule 44, W.R.C.E.R.](#) and Section IV.F.

The point of diversion (POD) for stock use is defined as the location where water is diverted from the source. Procedures for examining the point of diversion are described further in "Claim Examination: Point of Diversion" (Section VI.F).

Claimant contact must occur upon completing examination of the ownership if the point of diversion or means of diversion is modified by rule, an issue remark exists, or is unclear.

1. Identifying Point of Diversion. The point of diversion (POD) for stock use is defined as the location where water is diverted from the source. Stock may be drinking directly from a source or from a combination of other diversion methods.

2. Examining Point of Diversion.

a. Livestock Direct From Source. When examining stock claims where the means of diversion is *livestock direct from source*, it may be necessary to modify the POU or POD legal land descriptions to make them identical ([Rules 22 and 23\(b\)\(3\), W.R.C.E.R.](#)). When stock are drinking directly from the source, each POD legal land description should have a corresponding and identical POU legal land description. Changes in legal land descriptions may be based on the claimant's map, USGS maps, U.S. National Forest Service maps, Bureau of Land Management maps, or an aerial photograph. Conflicting data or a confusing claim file may necessitate contact with the claimant to obtain more information. [Rule 44, W.R.C.E.R.](#)

b. Ditch Direct with Headgate. Some stock claims combine diversion methods, such as a headgate and ditch with stock drinking directly from the ditch. The point of diversion legal land description will be the location of the headgate (or where the ditch diverts water from the source). The POD legal land description will usually not be identical to the POU land description on such claims.

c. Mapping Point of Diversion. For livestock direct from source claims, map a POD at each downstream legal land description where the source intersects with a section line. Where stock drink from a headgate and ditch system, map a POD at the location of the headgate. Map all other means of diversion accordingly. These results should be produced in a PDF report created from WRMapper. The reports MUST be named according to "Exporting and Naming Reports" (Figure VII-1). For more information on WRMapper, see 'Mapper Protocols' on the Adjudication Shared Drive.

d. Point of Diversion Issues. Follow the procedure outlined in "Claim Examination: Point of Diversion (POD): POD Issues" (Section VI.F.4).

3. Means of Diversion. Most examination procedures for the means of diversion are described in "Claim Examination: Means of Diversion" (Section VI.G). These procedures include determining a consistent means of diversion between claims

using the same diversion. Because the claim form for stock had a different set of diversion choices than the irrigation claim form, there are a number of means of diversion inconsistencies involving stock and irrigation claims. Special attention should be paid to means of diversion consistency when examining stock claims. [Rule 9, W.R.C.E.R.](#)

Onstream Reservoirs. The means of diversion for stock drinking directly only from an onstream reservoir should be “Dam” to identify the dam as the means of diversion. If stock are drinking from a stream above or below the reservoir as well as from the reservoir itself, the means of diversion should be “Dam” for the reservoir point of diversion and “Direct From Source” for the stock drinking directly from stream.

4. Changing Point of Diversion. The claimed POD will not be changed during the examination unless: Generally see [Rule 22, W.R.C.E.R.](#) which also refers examiners to [Rule 8, W.R.C.E.R.](#)

- amended by the claimant [Rule 8\(d\)\(1\), W.R.C.E.R.](#);
- modified by rule (clarified) by the department to the nearest reasonable and concise legal land description [Rules 8\(d\)\(2\) and 33\(b\)\(4\)\(ii\), W.R.C.E.R.](#);
- modified by rule and revised so that the POU and POD legal land descriptions for direct instream surface water stock use will be the same. [Rules 22 and 33\(b\)\(4\)\(iii\), W.R.C.E.R.](#), or revised to consistently identify and describe a point of diversion used by more than one claim, [Rules 8\(d\)\(3\) and 33\(b\)\(5\), W.R.C.E.R.](#);
- modified by rule (clarified) by the department without claimant contact if the claimed intent is clear or with claimant contact if the claimed intent is unclear. [Rules 33\(b\)\(1\),\(4\),\(5\) and 33\(c\), W.R.C.E.R.](#)

Changes may be made directly on the examination worksheet. If the legal land descriptions are changed so that they differ from the claim form or amendment, place an asterisk on the worksheet in the brackets to the left of the point of diversion element. Indicate the authority for the change on the examination worksheet. The claimant must be notified.

5. Changing Means of Diversion. The claimed MOD will not be changed during the examination unless:

- amended by the claimant; [Rule 9\(c\)\(1\), W.R.C.E.R.](#)
- modified by rule (clarified) by the department to identify similar means of diversion consistently; [Rules 9\(c\)\(2\) and 33\(b\)\(5\), W.R.C.E.R.](#)
- modified by rule (clarified) by the department without claimant contact if the claimed intent is clear or with claimant contact if the claimed intent is unclear. [Rules 33\(b\)\(1\),\(5\) and 33\(c\), W.R.C.E.R.](#)

Changes may be made directly to the examination worksheet. If the means of diversion is changed so that it differs from the claim form or amendment, place an

asterisk in the brackets to the left of the point of diversion element on the worksheet. An asterisk is not needed to change the means of diversion from one assigned category to another when the claimed intent is not changed, e.g., “Livestock Direct From Source” to “Dam”, “Flowing” to “Pipeline” or “Flowing” to “Livestock Direct From Source”.

E. PLACE OF USE (POU)
[Rule 23, W.R.C.E.R.](#)

The place of use (POU) for stock claims is where the stock drink the water. No acreage will be associated with a stock place of use. Procedures for examining the place of use of a stock claim are similar to the procedures for irrigation. See "Irrigation: Place of Use" (Section VII.D). [Rule 21, W.R.C.E.R.](#) refers the claims examiner to [Rule 12, W.R.C.E.R.](#) for direction on examining place of use in addition to the specifics included in [Rule 23, W.R.C.E.R.](#), see also Section VII.D.

Claimant contact must occur upon completing examination of the ownership if the place of use is modified by rule, an issue remark exists, or is unclear. [Rules 13\(a\)\(2\) and 44, W.R.C.E.R.](#) and Section IV.F.

1. Identifying Place of Use. Places of use for stock drinking directly from the source ("instream" use) will be identical to the POD ([Rule 23 \(b\) W.R.C.E.R.](#)). It may be necessary to modify the POD or POU to make them identical. Note the changes directly on the examination worksheet and indicate the change as 'modified by rule'. Place an asterisk in the brackets to the left of the place of use element on the examination worksheet. The claimant must be notified.

2. Changing Place of Use. The claimed POU will not be changed during the examination unless:

- amended by the claimant; to [Rules 23\(b\)\(2\) and 33\(b\)\(4\)\(i\), W.R.C.E.R.](#)
- modified by rule (clarified by the department to the nearest reasonable and concise legal land description; [Rules 23\(b\)\(2\) and 33\(b\)\(4\)\(i\), W.R.C.E.R.](#)
- modified by rule and revised so that the POU and POD legal land descriptions for direct instream surface water stock use will be the same; [Rules 23\(b\)\(2\) and 33\(b\)\(4\)\(iii\), W.R.C.E.R.](#)
- modified by rule (clarified) by the department without claimant contact if the claimed intent is unclear. [Rules 33\(b\)\(1\),\(4\) and 33\(c\), W.R.C.E.R.](#)

a. Private Stock Claims of State Land. Examine the POU as with any other claim. If the place of use (either all or a portion or the POU) is of state land, add the appropriate ownership issue remark:

Examples: O65 THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE.
THE PLACE OF USE APPEARS TO BE ON STATE LAND.

O70 THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE.
PART OF THE PLACE OF USE APPEARS TO BE ON STATE LAND.

b. Private Stock Claims on Federal Land. Pursuant to the February 12, 2010 Water Court Order Direction DNRC to Identify the Appurtenant Lands of Private Stock Claims Used of Federal Public Lands – Statewide, the following procedures should be followed when examining a private water right claim used on federal public lands administered by the BLM or Forest Service:

- Examine the place of use using normal procedures.
- Identify those private stockwater claims that include a place of use on federal public lands administered by the BLM or Forest Service.
- Contact the claimant(s) to determine the private land to which the water right claim is appurtenant. To gather this information, request a copy of the current federal grazing application and/or grazing permit from the claimant(s). These documents must be added to the claim file.
- Under the place of use element on the abstract add an information remark identifying the private land to which the water right is appurtenant based upon the information in the grazing application and/or grazing permit.
- A short land description should be identified in the remark using the first appearing, lead in legal land description of the base property identified by the grazing application and/or grazing permit, unless claimant specifies an alternative legal land description within the base property description, or the DNRC concludes a different legal land description within the base property description is more appropriate.

If all or part of the place of use is on federal public lands, an appurtenancy information remark similar to the following should be placed under the place of use element on the abstract.

Example: P349 ALL OR A PART OF THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LANDS. THE WATER RIGHT USED ON THE PUBLIC LANDS IS APPURTENANT TO THE FOLLOWING PRIVATE LANDS: SENW SEC 3 TWP 45N RGE 50E SEE THE CLAIM FILE FOR THE COMPLETE LEGAL LAND DESCRIPTION OF THE PRIVATE LAND TO WHICH THIS WATER RIGHT IS APPURTENANT.

If the entire base property legal land description is identified in the appurtenancy information remark, an information remark similar to the following should be placed under the place of use element on the abstract.

Example: P344 ALL OR A PART OF THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LANDS. THE WATER RIGHT USED ON THE PUBLIC LANDS IS APPURTENANT TO THE FOLLOWING

PRIVATE LANDS. N2 SEC 2 TWP 99N RGE 99E.

If the claim examination and claimant contact is inconclusive, or private water right claims identify a place of use including federal lands administered by the U.S. Fish and Wildlife Service, an issue remark similar to the following should be added to the abstract.

Examples: O65 THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE.
THE PLACE OF USE APPEARS TO BE ON STATE LAND

O71 THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE.
PART OR ALL OF THE PLACE OF USE APPEARS TO BE ON
FEDERAL LAND.

See exhibit IX-2, February 12, 2010 Water Court Order: Order Directing DNRC to Identify the Appurtenant Lands of Private Stock Claims Used of Federal Public Lands – Statewide.

See also “Stockwater: Place of Use: Place of Use Issues: Overlapping Ownership” ([Section IX.E.3.a](#)).

3. Mapping Place of Use. The place of use will not be mapped directly; rather the point of diversion for stock claims will be mapped in WRMapper as described above ([Section IX.C.2.c](#)).

4. Place of Use Issues. If the place of use cannot be identified from information in the claim file, add the appropriate place of use (PL) issue remark: [Rule 23 \(c\)\(5\), W.R.C.E.R.](#)

Example: P305 THE CLAIMED **PLACE OF USE** COULD NOT BE IDENTIFIED
FROM DATA SUBMITTED WITH THE CLAIM.

P306 THE PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT
BE REFINED FROM INFORMATION IN THE CLAIM FILE.

a. Overlapping Ownership. The points of diversion for stock use will be mapped in WRMapper. Using the AllCad layer in WRMapper, identify any ownership issues. Refer to “Claim Examination: Owner Name and Address: New Owner Determined but File Lacks Ownership Update” (Section VI.B.3).

When recording the POU using WRMapper, overlapping POUs by different owners may be encountered. Review the WRMapper AllCad layer or the MT Cadastral Mapping Program. [Rule 21, W.R.C.E.R.](#) refers claims examiner to [Rules 12\(c\) and 12\(e\)\(6\)\(ii\), W.R.C.E.R.](#)

The following situations where an overlapping issue may not be involved:

- A claim filed by private individual overlaps the POU of an irrigation district, Ditch Company, or other water supply organization is not considered an overlapping issue.
- The relationship if the owners are husband/wife, parents/children, corporation/individual, etc. This would need to be confirmed with the claimants.

The overlap may be due to imprecise maps and legal land descriptions provided by the claimant or a mapping error by the examiner. Make certain the claimants correctly depicted their POU. Heavily subdivided areas require precise mapping and maps used by claimants were not adequate to distinguish small adjacent parcels. In some cases, claimed POU legal land descriptions can be modified by rule to correct an ambiguous situation. See above section "Changing Place of Use."

Overlapping POUs may be the result of both the buyer and the seller filing claims. If duplicate claims are involved, all claimants should be presented with options. If the claimants filed on a different water right for the same parcel, i.e., different sources, priority dates, etc., options may include co-ownership or division of the water right through a split process.

If the POU legal land descriptions cannot be modified through the limitations listed under "Changing Place of Use," add the following ownership (OW) issue remark to the department's examination worksheet for all the claims involved:

Example: O60 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT WERE FILED BY DIFFERENT PARTIES WHO CLAIM OVERLAPPING PLACES OF USE. 000000-00, 000000-00.

Supplemental Rights. No review or identification of supplemental relationships will be made for stock claims.

5. Geocodes. Geocodes were initially assigned to water rights as either a one-to-one match or a one-to-many match based on the legal land description. At times, the legal land description associated with a water right was described very broadly, encompassing several parcels that may not have been within the true place of use. As a result, geocodes must be verified as belonging to the claimed place of use. Any geocodes assigned initially to the water right are listed below the place of use element on the examination worksheet.

Determine valid geocodes by using the AllCad layer in WRMapper or the [Montana Cadastral Mapping Program](#) information. Indicate a valid geocode with a 'Y' on the examination worksheet. (See also, Assignment of Geocodes Memo, Exhibit VI-18).

Once a place of use has validated geocodes, cross off any geocodes not associated with the place of use on the examination worksheet. In the database, these

records will be deleted from the Geocode tab under the Create and Maintain Water Rights screen.

Geocode issues. Every effort should be made to validate geocodes.

- If a geocode cannot be conclusively determined as belonging partially or wholly within the place of use, the geocode should have an 'N' designation (not validated). If an ownership update occurs involving any geocode with a designation of an 'N', the water right will require further research before the ownership update can occur.
- If a geocode is designated as valid ('Y') and it is found to be in error, change the 'Y' to an 'N' on the examination worksheet and document the resources and/or research in making the determination. In the database, in order to remove an incorrectly validated geocode, first change the 'Y' to an 'N' and then save. The record can then be deleted.
- If a legal land description is found to be in error, review the geocodes. If any changes are made to the legal land description (i.e., a correction to the township, range or section occurs based on the claimant's map, for example), it may be determined that a geocode may need to be deleted or added.
- If the place of use is amended, review the geocodes. It may be determined that a valid geocode needs to be deleted, or a geocode not initially associated with the water right needs to be added.
- Water rights which have been reserved (exempted) from the land, such as those belonging to homeowner's associations, municipalities, and certain other entities that provide service but do not own the place of use, just the water right, will not have any associated geocodes. If a geocode is assigned, delete it from the Geocode tab in the database.

X. OTHER USES CLAIMS

This chapter describes the procedures unique to the examination of Other Uses claims. Other Use claims will be examined following procedures outlined in Chapter VI: Claim Examination and Chapter VII: Irrigation, **except** as noted in this chapter regarding purpose, place of use, flow rate, and volume, period of use, point of diversion, and means of diversion for instream or inlake appropriations ([Rule 26 W.R.C.E.R.](#)).

The following elements are discussed in this chapter:

- A. General Discussion
- B. Purpose
- C. Flow Rate and Volume
- D. Place of Use
- E. Point of Diversion and Means of Diversion for Instream and Inlake Appropriations
- F. Period of Use

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A. GENERAL DISCUSSION

Other Uses claims will be examined following procedures outlined in “Claim Examination” (Chapter VI) and “Irrigation” (Chapter VII), **except** as noted in this chapter regarding purpose, place of use, flow rate, volume, period of use, point of diversion, and means of diversion for instream or inlake appropriations ([Rule 26 W.R.C.E.R.](#)).

Examiners will often have to rely on their judgment to determine the extent to which Other Use claims should be examined. The following sections are intended to assist the examiner in making those judgments.

B. PURPOSE

1. Identifying Purpose. The Other Uses category is a catch-all for all historic water uses that are not irrigation, stockwater, or domestic claims. As a result, this category combines a number of very different types of water use. Purposes may include, but are not limited to per [Rule 27 W.R.C.E.R.](#):

Agricultural Spraying	(AS)	Municipal	(MC)
Commercial	(CM)	Navigation*	(NV)
Dewatering*	(DW)	Observation & Testing	(OT)
Erosion Control*	(EC)	Oil Well Flooding	(OF)
Fire Protection	(FP)	Pollution Abatement*	(PA)
Fish and Wildlife	(FW)	Power Generation	(PG)
Fish Raceways	(FR)	Recreation	(RC)
Flood Control*	(FC)	Sale*	(SL)
Industrial	(IN)	Sediment Control*	(SC)
Institutional	(IS)	Storage*	(SG)
Mining	(MN)	Wildlife	(WI)

*See Questionable Purposes below (Section [X.B.2.d](#))

See the Standard Purpose List (Figure VI-1) for defined standardized purposes. These broad categories allowed for a wide variety of water uses within a single category. Similar or identical uses of water were often claimed under different purpose categories. For example, water for an ore concentrator may have been claimed as a mining use by one claimant, but as an industrial use by another. Determine a consistent purpose by comparing the claim form, a returned questionnaire, and any information obtained from claimant contact to the purposes listed in Figure VI-1. In some instances, it may be necessary to clarify the purpose in the Purpose Clarification field in the Maintain Purpose Record in the database. Additional information beyond the clarification can be noted in a free text purpose (PU) information remark.

2. Examining Purpose. Review the purpose stated on the claim form and the submitted documentation to confirm that the water has been used historically for the claimed purpose. Outside data sources are often needed to supplement the information in the claim file. Although USDA aerial photographs and Water Resource Survey data are useful tools for examining an irrigation claim, their value when

examining Other Uses claims may be limited. Review any available and relevant data sources such as:

- City directories
- Local historical records
- Mining indexes
- Applicable NRIS GIS data
- Reliable internet resources

Examination may require claim specific research, claimant contact or an on-site visit at the invitation of the claimant, as available data sources do not typically address historical water use for Other Use purposes. Contact the claimant if:

- the purpose cannot be determined from the claim file
- the water use is for a purpose other than that claimed
- the purpose cannot be substantiated
- several purposes are indicated on the claim as multiple uses of the right. (Fire protection is considered an incidental use.)

Claimant contact must occur upon completing examination of the ownership if the purpose is modified by rule, and issue remark exists, or is unclear. [Rules 27\(c\) and 44 W.R.C.E.R.](#) and Section IV.F.

a. Other Use Claim Questionnaires. Questionnaires for general purpose types have been developed: Commercial, Fish and Wildlife, Industrial, Mining, Municipal, Power Generation and Wildlife (Exhibits X-1 through X-7). Completed questionnaires can provide information about the history, status, and operation of the system, and whether the claimed flow rate and volume are reasonable. [Rule 27 \(d\) W.R.C.E.R.](#)

If an Other Uses claim lacks sufficient data to be adequately examined, a questionnaire should be sent to the claimant with a cover letter (Exhibit IV-8). Alternatively, the claimant can be contacted by phone or in a personal interview (see “Examination Materials and Procedures: Claimant Contact Techniques” in Section IV.F). Pump and reservoir questionnaires may also be sent to claimants of Other Uses claims. Combine the mailing of all questionnaires to minimize the number of times a claimant is contacted.

It is recommended questionnaires be completed for all claims of 100 gpm or greater. Questionnaires may be completed for claims less than 100 gpm at the examiner's discretion. Questionnaires may be modified to avoid requesting information already available in the claim file or from other sources easily accessible by the examiner.

Multiple Owners. If multiple owners are involved, the questionnaire should be sent to all owners of record. If the questionnaire is undeliverable (return mail), the questionnaire may then be sent to owners identified through Cadastral information. In the event questionnaires completed by multiple owners are in conflict, consult with a

supervisor. Options may include the claimants splitting the water right (per Administrative Guideline No. 14 “DNRC Ownership Update Guideline”) or adding a free text issue remark:

Example: GIIS DOMESTIC QUESTIONNAIRES WERE RECEIVED FROM MULTIPLE OWNERS ON THE FOLLOWING DATES: MM/DD/YYYY, MM/DD/YYYY. THE DOMESTIC QUESTIONNAIRE INFORMATION HAS NOT BEEN INCORPORATED INTO THE CLAIMED INFORMATION DUE TO DISAGREEMENT AMONG THE OWNERS.

b. Municipal. Municipal uses are generally associated with towns and cities providing water within a service area. The specific purposes are varied and could include households, businesses, parks, golf courses, cemeteries, industrial, treatment plants, etc. (see 1987 list of municipalities, exhibit X-11.) [Rule 27\(e\), W.R.C.E.R](#)

For claims with a purpose of municipal use by a city, town or other public or private entity that operates a public water supply system, specific criteria must be met pursuant to [§85-2-227\(4\), MCA](#).

- A “community water system” is defined as a public water supply system that serves at least 15 service connections used by year-round residents, or that regularly serves at least 25 year-round residents per [§75-6-102\(3\), MCA](#).
- A “public water supply system” is defined as a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections, or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year per [§75-6-102\(14\), MCA](#).

The claimant must meet one of the following specific criteria before the claim meets the presumption of non-abandonment:

- The right must have been at least partially used historically, plus *one* of the following:
 - a filtration waiver under the federal Safe Drinking Water Act has been obtained;
 - the diversion or conveyance structures for the future municipal use has been acquired, constructed, or regularly maintained;
 - a formal study has been conducted and prepared by a registered professional engineer or qualified consulting firm which includes a specific assessment that using the water right for municipal supply is feasible and that the amount of the water right is reasonable for foreseeable future needs;

- o the municipality has maintained facilities connected to the municipal water supply system to provide emergency or supplemental water.

If one of these criteria are met, add the following general information (GI) remark to the water right:

Example: G20 THIS WATER RIGHT IS PRESUMED TO NOT BE ABANDONED PURSUANT TO [§85-2-227, MCA](#).

The above criteria were added to [§85-2-227, MCA](#) in 2005. These criteria were not requested with the original statement of claim. If there is evidence indicating the claim is no longer in use, either partial or entirely, the examiner should first request the above criteria from the claimant before making any determination regarding abandonment. The Municipal Questionnaire (Exhibit X-2) can be customized to suit the situation. Per [Rule 27 \(e\) W.R.C.E.R.](#), the department will NOT add an issue remark regarding non-use if one of the above criteria are met, and specifies the addition of the G20 remark in this situation.

If NO criteria are met, evidence of non-use may be considered. See “Claim Examination: Purpose: Purpose Issues: Claimed Purpose Not Perfected” (Section VI.C.3.f) and apply the applicable issue remarks.

c. Fish and Wildlife, Wildlife, and Recreation. For claims with a purpose of fish and wildlife, wildlife, or recreation, with the exception of Murphy Rights ([Section X.C.3.d](#)), add one of two issue remarks to the department's examination worksheet, per [Rule 27 \(h\)\(5\),\(6\) W.R.C.E.R.](#)

*Add the following issue remark to claims that **did not receive a factual or legal issue remark** as a result of the examination process:*

Example: P724 BECAUSE THIS CLAIM DID NOT RECEIVE A FACTUAL OR LEGAL ISSUE REMARK DURING THE CLAIMS EXAMINATION PROCESS, THE WATER COURT WILL NOT HOLD A HEARING ON THIS CLAIM UNDER *Matter of the Adjudication of Existing Rights in Basin 411*, 2002 MT 216, 311 Mont. 327, 55 P.3d 396 UNLESS A VALID OBJECTION IS FILED UNDER SECTION [85-2-233, MCA](#), OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER [RULE 8, W.R.ADJ.R.](#)

*Add the following issue remark to claims that **did receive a factual or legal issue remark** as a result of the claims examination process: Do not add this remark if the issue remark is a notice issue remark such as a G34.*

Example: P725 THE WATER COURT WILL HOLD A HEARING ON THIS CLAIM TO DETERMINE ITS VALIDITY SUBJECT TO SECTION [85-2-248, MCA](#), AND *Matter of the Adjudication of Existing Rights in Basin 411*, 2002 MT 216, 311 Mont. 327, 55 P.3d 396. A HEARING

MAY ALSO BE HELD ON THIS CLAIM IF A VALID OBJECTION IS FILED UNDER SECTION [85-2-233, MCA](#), OR THE WATER COURT CALLS THE CLAIM IN ON ITS OWN MOTION UNDER [RULE 8, W.R.ADJ.R.](#)

To comply with the April 17, 2013 *Supplemental Order* from judge McElyea, the following procedures must be followed for fish and wildlife, wildlife, or recreation for examination and post-decree. Some variations of these claims are covered by existing claims examination rules, while some are not. Where a rule covers a particular right and application of the rule is clear, apply the rule. Where a rule is unclear, or it does not appear to fit the claim under review, follow the *Supplemental Order*. In these circumstances, remember that a claim is prima facie evidence of its content and historical beneficial use is the measure of a water right. Review with a supervisor any questions.

CATEGORY I: Claims diverted without a Reservoir. Rule 29(b)(l).

Examples of types of diversions falling within this category of claim may include: spring boxes, developed springs, diversion dams, headgates, wells, pumped diversions, gravity flow or other pipelines, any right using a man-made diversion resulting in a measurable flow rate, including wildlife drinking directly from any of these systems.

- How to Examine Flow Rate:

Under Rule 29(b)(l)(i), the flow rate guideline is the capacity of the diversion and conveyance system. If the capacity of the diversion and conveyance system cannot be determined, then leave flow rate as claimed and issue remark as follows:

Example: F80 THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

If you have information on the actual capacity of the diversion and conveyance system and the flow rate is equal to or lower than the actual capacity, then leave the claimed flow rate unchanged and unremarked.

If you have information on the capacity of the diversion and conveyance system and the claimed flow rate exceeds this capacity, then consult the statement of claim or information obtained from claimant contact to determine if the claimed flow rate is justified. If it is justified, then leave the flow rate unchanged and unremarked.

If the flow rate cannot be justified after seeking additional information, reduce flow rate as required by Rule 29(g). This reduction should only occur for filed and use rights, or decreed rights with no decreed flow rate. If reduced, attach the proper flow rate remark per Rule 29(g)(2)(ii).

- How to Examine Volume:

Under Rule 29(b)(1)(ii), the volume guideline is defined as what is "reasonable and customary" for a specific purpose. Volume should remain as claimed in the absence of substantial information that claimed volume is unreasonable. If volume is left as claimed, use the following remark:

Example: V150 THE VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND VOLUME REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Do not use this remark if you have otherwise determined the claimed volume is within the "reasonable and customary" guideline.

CATEGORY II: Claims Diverted with an On-stream Reservoir. Rule 29(c).

- How to Examine Flow Rate:

Under Rule 29(c)(1), flow rates for these rights are not decreed. Add a remark stating no flow rate decreed.

Example: FF007 A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

- How to Examine Volume:

Proceed in accordance with Rule 29(c)(1)(ii)(A) and (B).

When volume is less than 15 acre-feet, leave as claimed and do not remark.

When the claimed volume exceeds 15 acre-feet, the volume guideline is maximum storage capacity plus the estimate of evaporation. Leave the volume unchanged and unremarked if it is less than or equal to the guideline.

If volume exceeds this guideline for non-decreed rights, or decreed rights without a decreed volume, then consult the statement of claim or information obtained from claimant contact to determine if the claimed volume is justified. If it is justified, then leave the volume unchanged and unremarked.

If the volume cannot be justified after seeking additional information, then remark as follows:

Example: V155 CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Do not remark volume for decreed rights with a decreed volume.

CATEGORY III: Claims Diverted with an Off-stream Reservoir. Rule 29(c). (Also includes off-stream manmade pits).

- How to Examine Flow Rate:

Under Rule 29(c)(1)(i), the flow rate guideline is the capacity of the diversion and conveyance system.

If you have information on the actual capacity of the diversion and conveyance system and the flow rate is equal to or lower than the actual capacity, then leave the claimed flow rate unchanged and unremarked.

If you have information on the capacity of the diversion and conveyance system and the claimed flow rate exceeds this capacity, then consult the statement of claim or information obtained from claimant contact to determine if the claimed flow rate is justified. If it is justified, then leave the flow rate unchanged and unremarked.

If the flow rate cannot be justified after seeking additional information, reduce flow rate as required by Rule 29(g). This reduction should occur only for filed and use rights, and decreed rights with no decreed flow rate. If reduced, attach the proper flow rate remark per Rule 29(g)(2)(ii).

If there is no information concerning capacity of diversion and conveyance system, or the system is shared by more than one claimant, the flow rate guideline is that which is reasonable and customary for the specific purpose. Under these circumstances, flow rate should remain as claimed. If flow rate is left as claimed, use the following remark:

Example: F80 THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM CANNOT BE DETERMINED AND THE FLOW RATE REMAINS AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

- How to Examine Volume:

Proceed in accordance with Rule 29(c)(l)(ii)(A) and (B).

When volume is less than 15 acre-feet, leave as claimed and do not remark.

When the claimed volume exceeds 15 acre-feet, the volume guideline is maximum storage capacity plus the estimate of evaporation. Leave the volume unchanged and unremarked if it is less than or equal to the guideline.

If volume exceeds the guideline for non-decreed rights, or decreed rights without a decreed volume, then consult the statement of claim or information obtained from claimant contact to determine if the claimed volume is justified. If it is justified, then leave the volume unchanged and unremarked.

If the volume cannot be justified after seeking additional information, then remark as follows:

Example: V155 CLAIMED VOLUME EXCEEDS CAPACITY OF RESERVOIR PLUS EVAPORATIVE LOSSES. THE CLAIMED VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Do not remark volume for decreed rights with a decreed volume.

CATEGORY IV: Instream Flow Claims. Rule 29(d). (Also includes undeveloped springs).

- How to Examine Flow Rate and Volume:

The guidelines in Rule 29(d) state that flow rate and volume are the minimum amounts necessary to sustain the specific purpose.

Determining the minimum amount necessary to sustain a specific purpose can be subjective. In the absence of substantial evidence that claimed flow rate or volume departs from the guideline, flow rate and volume

should remain as claimed. If flow rate and volume are left as claimed, use the following issue remark:

Example V145 A GUIDELINE FOR THE FLOW RATE AND VOLUME OF THIS CLAIM CANNOT BE DETERMINED FROM AVAILABLE INFORMATION, AND FLOW RATE AND VOLUME REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED FLOW RATE AND VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM THE FLOW RATE AND VOLUME WILL BE DECREED AS CLAIMED, AND THIS REMARK WILL BE REMOVED FROM THE CLAIM.

Do not use this remark if you have otherwise determined that the claimed flow rate and or volume are correct.

CATEGORY V: Inlake Claims. Not Covered by Rule. Apply Rule 29(c).

- How to Examine Flow Rate:

These claims are not specifically covered by rule. Treat these claims the same as on-stream reservoir claims in CATEGORY II. Proceed by applying Rule 29(c)(I). Because these claims are instream, no flow rate will be decreed.

- How to Examine Volume:

These claims are not specifically covered by rule. Treat these claims the same as on-stream reservoir claims in CATEGORY II. Proceed in accordance with Rule 29(c)(I)(ii)(A) and (II).

CATEGORY VI: Pothole lakes. Not Covered by Rule.

This category generally covers impoundments without surface inflow and includes natural pits, manmade pits without surface inflow, and groundwater pits.

- How to Examine Flow Rate:

Not Covered by Rule. Potholes do not have a flow rate. No flow rate should be decreed for these claims.

- How to Examine Volume:

All wildlife pothole lake claims should have volume **decreed as claimed.**

Judge Lessley issued a related Order on June 17, 1985. It specifies that volumes will be established as claimed for federal wildlife claims for all lakes and reservoirs. The Water Right Claim Examination Rules cited above were adopted by the Montana Supreme Court after Judge Lessley's 1985 Order. In some instances, those Rules, and the provisions of this Supplemental Order, contradict Judge Lessley's June 17, 1985

Accordingly, Judge Lessley's June 17, 1985 Order is partially superseded and no longer applies to federal fish and wildlife, wildlife, and recreation claims with a lake or reservoir. See *Judge Lessley's June 17, 1985 Order Exhibit IX-1*

d. Questionable Purposes. The following are guidelines for uses which are considered questionable. Other Uses not listed here should be brought to the attention of a supervisor.

- Water Use/Water Management—Dewatering, Erosion Control, Flood Control (dikes, levees, impoundments), Navigation. If it is not clear whether the claim describes one of these water uses or water management practices, contact the claimant. After confirming a questionable use exists, add the following purpose (PU) issue remark to the department's examination worksheet:

Example: P630 THIS CLAIMED PURPOSE IS QUESTIONED AS A BENEFICIAL USE OF WATER EXISTING PRIOR TO JULY 1, 1973.

For these questionable uses, do not examine the flow rate and volume. The flow rate and volume of such claims will be decreed as claimed. When a value for flow rate or volume is claimed but not examined, add the appropriate issue remark to the department's examination worksheet:

Examples: F85 THE CLAIMED FLOW RATE WAS NOT EXAMINED AS NO FLOW RATE GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIM EXAMINATION RULES.

V25 THE CLAIMED VOLUME WAS NOT EXAMINED AS NO VOLUME GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIM EXAMINATION RULES.

- Standardization—Dewatering, Erosion Control, Pollution Abatement, Sediment Control. These uses are questioned as beneficial uses *unless* the water is used for a specific purpose such as irrigation, mining, industrial, etc. For example, a pollution abatement claim may be used for watering a sawdust pile at a lumber mill. In this situation, the purpose should be standardized to industrial (IN) with information added to the Purpose Clarification field in the database. Document the source of the information on the examination worksheet.

- Sale or Storage. Occasionally, a claim will be for the purpose of ‘storage’ without any other associated purpose. In recent history, claims have been amended to a purpose of ‘sale’. Bring such claims to the attention of a supervisor to determine a course of action. The supervisor may need to involve the Bureau Chief.

3. Changing the Purpose. If the claim file (and when available, a completed questionnaire) provides a clear picture of historical water use, the claimed purpose description should reflect that use. A claimed purpose may be modified per [Rule 27 \(g\) W.R.C.E.R.](#) to one of the listed purpose descriptions in Figure VI-1 in order to standardize purposes. Make such a change by crossing out the claimed purpose on the examination worksheet and writing in the standardized purpose. Document the change on the worksheet by placing an asterisk in the brackets to the left of the purpose element. Document the basis for changing the purpose in the General Comments area of the worksheet.

The claimed purpose of a water right will not be changed during the department’s examination unless:

- amended by the claimant; [Rule 27\(g\)\(1\), W.R.C.E.R.](#)
- modified by rule (clarified) by the department with claimant contact if the claimed intent is unclear; [Rule 33\(c\), W.R.C.E.R.](#)
- modified by rule (clarified) by the department to identify similar purposes consistently. [Rules 27\(g\)\(2\) and 33\(b\)\(2\), W.R.C.E.R.](#)

If the purpose claimed is unclear, see “Claim Examination: Purpose: Examining Claimed Purpose: Changing the Purpose” (Section VI.C.2.b).

4. Multiple Uses. The multiple use of a water right occurs when the same historical appropriation has been claimed for different purposes by the original claimant. All claims in an ownership should be reviewed to identify any multiple uses of a right per [Rule 27 \(f\)](#) and [Rule 41 W.R.C.E.R.](#) A multiple use is determined through review of an index (e.g., Summary Preparation Indexes 4 and 5), submitted documentation, and the intent of each claim. See “Claim Examination: Purpose: Multiple Uses” (Section VI.C.4) for procedures.

C. FLOW RATE AND VOLUME

The flow rate and volume for Other Uses varies greatly depending on the specific purpose. *Only those aspects explicitly addressed in [Rule 29 W.R.C.E.R.](#) pertaining to Other Uses flow rate and volume are discussed in this section. Refer to “Claim Examination” (Chapter VI) and “Irrigation” (Chapter VII) for additional procedures.*

The flow rate is the rate at which water has been diverted, impounded, or withdrawn from the source. The flow rate will be decreed in cubic feet per second (cfs) or gallons per minute (gpm).

The volume is the amount of water that has been diverted, impounded, or withdrawn from the source over the year for the claimed purpose, and is measured in acre-feet (AF).

Claimant contact must occur upon completing examination of the ownership if the flow rate or volume is modified by rule; an issue remark exists, or is unclear. [Rules 29\(e\) and 44, W.R.C.E.R.](#)

1. Identifying Claimed Flow Rate and Volume. Using the procedures in "Irrigation: Flow Rate" (Section VII.B) and "Volume" (Section VII.C), check the claim form and documentation. Check for correct conversion into standard units of measure (see "General Procedures: Standard Measurements of Water," Section III.B). If incorrect units have been claimed, but the documentation in the claim file indicates the correct units, the correction can be made on the examination worksheet per [Rule 33\(b\) W.R.C.E.R.](#)

For claims involving prior decreed rights, the flow rate (or volume, if decreed) on the claim form and examination worksheet should not exceed the decreed flow rate (or volume) as documented. For filed and use rights, claimed flow rates and documentation that do not match will not be considered in conflict unless the differences are unreasonable.

Runoff. During the filing period, some claimants wrote "runoff" on their claim forms to describe the flow rate. Typically this was done for intermittent (non-perennial flowing) sources to describe why no specific flow rate was claimed. The term may have been added by the department during initial data entry as an information remark. This remark is no longer needed and should be deleted during examination. See "Irrigation: Flow Rate: Flow Rate Issues: No Flow Rate Claimed" (Section VII.B.5.f).

2. Examining Claimed Flow Rate and Volume. Flow rates and volumes will be decreed as claimed, amended, or modified by rule. The claimed flow rate and volume will be examined using the information in the claim file, outside data sources, [water use guidelines](#) for the claimed purpose, and information gained through claimant contact. If necessary, an on-site visit may be conducted at the claimant's invitation (see "Examination Materials and Procedures: Investigation Techniques: On-site Visits" in Section IV.G.3). Contact the claimant if a guideline cannot be determined, the claimed amount exceeds the guideline or there are errors, inconsistencies, or insufficient data ([Rule 29 \(e\) W.R.C.E.R.](#)).

For claimed flow rates and volumes that will be decreed, there are two underlying considerations that should be kept in mind. First, has the claimed flow rate or volume actually been diverted? Second, is the claimed flow rate or volume reasonable for the specific purpose? If the answer to either question is no, further information should be pursued to determine what is reasonable and accurate. This thought process should form the basis for examining all claims.

Unique Features or Aspects. Any unique features or aspects of the flow rate or volume may be identified on the department's examination worksheet using a flow rate (FR) or volume (VM) information remark. See "Claim Examination Remarks" (Chapter V) for additional flow rate and volume remarks describing unique aspects or features.

Examples: F75 CASE NO. **0000**, **MONTANA COUNTY** DECREES THIS RIGHT AS AN UNDIVIDED **ONE-THIRD** INTEREST IN A SINGLE WATER RIGHT FOR **2.50 CFS**.

VM CASE NO. 0000, MONTANA COUNTY, DECREES ONE-THIRD INTEREST OF THE DOE LAKE STORAGE RIGHT.

a. Changing Flow Rate or Volume. The claimed flow rate or volume will not be changed during examination unless: [Rule 29\(i\) W.R.C.E.R.](#)

- amended by the claimant; [Rule 29\(i\)\(1\), W.R.C.E.R.](#)
- modified by rule by the department; [Rule 29\(i\)\(2\) W.R.C.E.R.](#); See [Rules 29\(b\)\(2\)-\(5\), 29\(c\)\(1\)\(i\), and 29\(g\)\(2\), W.R.C.E.R.](#)
- to standardize units of measure [Rules 29\(i\)\(4\) and 4\(b\), W.R.C.E.R.](#) Section III.B;
- to apply standards [Rule 29\(b\), W.R.C.E.R. Section X.C.3](#); or
- modified by rule (clarified) by the department without claimant contact if the claimed intent is clear of with clamant contact if the claimed intent is unclear. [Rules 33\(b\)\(7\), and 33\(c\), W.R.C.E.R.](#)

A flow rate or volume may only be modified as specified in [Rule 29 \(i\) W.R.C.E.R.](#) Place an asterisk in the brackets to the left of the appropriate element to denote the changes. Document the basis of the change on the examination worksheet. Standardization of units of measure should also be noted as modified by rule ([Rule 4 W.R.C.E.R.](#)).

b. Claimant Contact. For system types receiving a flow rate and/or volume in the Water Court decree, claimant contact may be required. In conjunction with the examination criteria in this section, the claimant should also be contacted whenever the claimed flow rate and/or volume is unclear, has apparent discrepancies, or appears unreasonable. The contact may have one of several outcomes: [Rules 29\(e\), and 44, W.R.C.E.R.](#)

- Information discussed confirms the claimed flow rate or volume. Document the information supporting the claimed amount.

- A flow rate or volume different from that claimed is substantiated which the claimant wishes to have replace the claimed data. The claim can be changed by an amendment from the claimant.
- If the issue is unresolved, e.g., data is insufficient to confirm the claimed flow rate or volume, or data support an actual flow rate or volume different from the one claimed, add a flow rate (FR) or volume (VM) issue remark to the department's examination worksheet. See "Other Uses Flow Rate and Volume Issues" below ([Section X.C.4](#)).

c. Data Sources and Procedures. There are several data sources and procedures that may help identify Other Use claims appearing to claim a flow rate and volume that are reasonable and customary: [Rule 29\(a\), W.R.C.E.R.](#)

- Claim File. A careful review of the claim file may provide enough information to determine a reasonable and customary flow rate or volume. For example, if it is clear the only use of a water right in a commercial establishment is for personal hygiene, a claimed flow rate of 400 gpm exceeds what is reasonable and customary; a flow rate (FR) issue remark may apply (see "Other Uses Flow Rate and Volume Issues," [Section X.C.4](#) below).
- Questionnaires. When the claim file does not provide sufficient data to support a claimed flow rate or volume exceeding what seems reasonable and customary for the claimed purpose, a questionnaire (Exhibits VI-6, VII-3, VII-5, X-1 through X-7) should be sent to the claimant along with a cover letter (Exhibit IV-8). Alternatively, the claimant can be contacted by phone or in a personal interview (see "Examination Materials and Procedures: Claimant Contact Techniques" in Section IV.F). [Rule 27\(d\), W.R.C.E.R.](#)
- Published Literature. Any relevant literature in the public domain may also be used by the examiner. This type of material can be site-specific or general:
 - Site Specific: Information on the water uses of large hydropower projects, mining, industrial facilities, and municipal water systems can often be found in industry publications, environmental impact statements, and other government agency records. Such sources of information should be located and reviewed whenever significant amounts of water are claimed.

- General:
 - The EPA has developed guidelines on the daily water requirement for resorts, trailer parks, schools, theaters, stores, motels, hospitals, etc. (“EPA Water Requirement Guidelines”, Exhibit X-12). Use these guidelines to identify reasonable and customary volumes, and to determine if claimant contact is necessary.
 - BLM guidelines on the requirements of mining operations should also be reviewed (“BLM Mining Water Requirement Guidelines”, Exhibit X-13). These, combined with information provided by a returned mining questionnaire, may help determine approximate water use requirements for a specific mining operation.
 - [USGS](#) flow data may be available for some of the larger streams in a basin. This may serve as a check on claimed flow rates on diversions from those, and upstream, sources.
 - DNRC’s Planning Guide for Water Use, [Form 615](#).
- Average Stream Flow Estimation Methods. The application of an average stream flow estimation technique, such as those mentioned below, is simply a tool which can be used to determine reasonableness. If the claimed flow rate is substantiated by other means, it is not necessary to apply these methods.

The approximate average annual flow (discharge) of a stream can be determined by using the Orsborn method, which is described in Exhibit X-14. Other techniques are available: [A Method for Estimating Mean and Low Flows of Streams in National Forests of Montana](#) (Exhibit X-15) and [A Method for Estimating Mean Annual Runoff of Ungaged Streams Based on Basin Characteristics in Central and Eastern Montana](#) (Exhibit X-16). See [Water Availability References](#) for other resources.

The claim should meet one of the following general criteria before applying any one of the three average annual flow techniques:

- source is surface water;
- claim does not involve a pump or onstream reservoir;
- drainage area is under 200 square miles;
- claim is for mining, power generation, or fish raceways at 100 gpm or more, or
- any Other Use purpose at 2.5 cfs or more.

If the criteria above are met, create a drainage area map using ArcGIS. Calculate the average annual discharge (QAA). Once the QAA has been determined, retain the calculation worksheet and drainage area map as part of the file. Document the QAA on the examination worksheet. If there is a significant difference

between the claimed flow rate and the QAA, see “Other Uses Flow Rate and Volume Issues” below ([Section X.C.4](#)).

d. Feasibility Checks. Claims that will be decreed both a flow rate and a volume should be checked for feasibility. A feasible volume and a comparison statistic are calculated under the volume element on the examination worksheet. The Feasible Volume shows the maximum volume possible if water were diverted at the claimed flow rate throughout the claimed period of use (year round use equals 366 days).

Compare the Feasible volume to the claimed volume. When the claimed flow rate (Q) or period of use has been amended or modified by rule, recalculate the maximum feasible volume (V) using the following equations:

- For cfs: Feasible V = Q x days used x 1.9834711
- For gpm: Feasible V = (Q x days used)/226.28542

When the claimed volume exceeds the maximum feasible volume, standards will apply the following volume (VM) issue remark to the review and decree abstract. If the claimant wishes to resolve the issue remark, flow rate, volume, and period of use should be discussed with the claimant in order to determine which may be in error.

Example: V24 THE CLAIMED VOLUME EXCEEDS THE MAXIMUM FEASIBLE VOLUME. BASED ON FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS **3.20** ACRE-FEET PER YEAR.

Review the Comparison Statistic under the volume element on the examination worksheet. This calculates the number of hours per day it takes to deliver the claimed volume. A value greater than 10 hours per day may indicate an issue with the volume, flow rate, or period of use. If the claimed volume, flow rate or period of use is amended or modified by rule, recalculate the 'comparison stat' to confirm the claim is reasonable.

- Comparison Stat = (claimed volume/feasible volume) x 24 hours/day

When a claimed volume exceeds the guideline, the claim file should be reviewed for information supporting the claimed volume. If the claimed volume is not supported by information in the claim file, add a volume (VM) issue remark to the department's examination worksheet:

Example: V85 VOLUME MAY BE EXCESSIVE. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN **24.0** HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THIS FIGURE.

e. Non-consumptive Uses. Add a volume (VM) information remark to the department's examination worksheet when the claimed volume is greater than 15 acre-feet and it is clear the amount of water consumed is negligible. It may be

necessary to review outside data sources and/or request the claimant complete a questionnaire in order to make this determination. Examples of claims which may require a volume (VM) information remark include power generation (hydropower), flood control, placer mining, fish raceways, and navigation claims.

Example: V20 THE USE OF THIS WATER APPEARS TO BE LARGELY NONCONSUMPTIVE.

f. Large Claims. Claims describing a flow rate of 15 cfs or more, and/or a volume of 15,000 acre-feet or more should be brought to the attention of a supervisor who will determine if any special steps need to be taken in examining such claims. It is not necessary to refer claims listing large flow rates and volumes when those figures are obviously based on a claimant's misconceptions about units of water measurement—in such cases, follow procedures for standardizing flow rate and volume in “Irrigation: Flow Rate” (Section VII.B), “Irrigation: Volume” (Section VII.C.) or “General Procedures: Standard Measurements of Water” (Section III.B).

3. Specific Flow Rate and Volume Examination Criteria. This section contains guidelines, where applicable, for different types of Other Uses systems. Claimed flow rates or volumes below a guideline will generally be accepted, but may be examined further if there is an apparent error or conflicting data. A guideline overview is depicted in [Table X-1](#).

a. Other Uses Claims without Reservoirs. Due to the wide variety of purposes within the Other Uses category, there are no precise flow rate or volume guidelines in the Water Right Claim Examination Rules ([Rule 29](#)) for most Other Uses claims.

Other Use claims that do not involve a reservoir *and* are not mining, fire protection, municipal, or agricultural spraying will be decreed a flow rate and a volume as claimed, amended, or modified by rule. **The flow rate guideline is the capacity of the diversion and conveyance system. The volume guideline is what is reasonable and customary** ([Rule 29 \(b\)\(1\), W.R.C.E.R.](#)). Other Uses involving purposes of mining, fire protection, municipal, and agricultural spraying are discussed in [Section X.C.3.f](#) through [X.C.3.i](#) below.

For Other Use claims involving **pumps**, see “Irrigation: Flow Rate: Flow Rate Criteria: Pumps” (Section VII.B.3.d).

For Other Use claims involving **gravity flow pipelines**, see “Irrigation: Flow Rate: Flow Rate Criteria: Gravity Flow Pipelines” (Section VII.B.3.e).

For Other Use claims involving **ditches and canals**, see “Irrigation: Flow Rate: Flow Rate Criteria: Ditches and Canals” (Section VII.B.3.f).

Table X-1: Other Uses Flow Rate and Volume Guidelines
(If listed below, follow flow rate and volume in Sections VI and VII.)

No Reservoir	Flow Rate Decreed	Flow Rate Guideline	Volume Decreed	Volume Guideline	Rule	Remark
Mining	Yes	Capacity of Diversion & Conveyance	No	None	29(b)(2)	VF016 CG11 CG12
Fire Protection	Yes	Capacity of Diversion & Conveyance	No	None	29(b)(3)	VF014
Municipal*	Yes	Capacity of Diversion & Conveyance	Yes	250 Gallons per capita per day	29(b)(4)	
Agricultural Spraying*	Yes	Capacity of Diversion & Conveyance	Yes	2 AF/year: no reservoir 4 AF/year: with reservoir	29(b)(5)	
Others*	Yes	Capacity of Diversion & Conveyance	Yes	Reasonable & Customary	29(b)(1)	
On-Stream Reservoir	No	None	Yes	>15AF Maximum Storage plus estimate of evaporation* *	29(c)(1)	FF007
Off-Stream Reservoir*	Yes	Capacity of Diversion & Conveyance OR Reasonable & Customary	Yes	>15AF Maximum Storage plus estimate of evaporation* *	29(c)(1)	
Murphy Rights*	Yes		Yes		29(f)	P600
Instream Use Inlake Use*	Yes	Minimum amount necessary to sustain purpose	Yes	Minimum amount necessary to sustain purpose	29(d)	V145
USA Pothole Lake	No	None	Yes	Capacity of the pothole lake	June 17, 1985 Court Order***	F37

*Feasibility Check required ([Section X.C.2.d](#)).

**A claimed volume less than 15AF will generally be accepted.

***See Exhibit IX-1 6/17/1985 Order Judge Leslie

b. Other Uses Claims with Reservoirs. Flow rate and volume guidelines and procedures for Other Use claims involving reservoirs are based on whether the reservoir is onstream or offstream. Refer to "Claim Examination: Reservoirs" (Section VI.H) for general reservoir procedures.

Flow Rate: Onstream Reservoirs. A flow rate will not be decreed per [Rule 29 \(c\) \(1\) W.R.C.E.R.](#) Change the claimed flow rate to null (no value) and add an asterisk in the brackets to the left of the flow rate element of the examination worksheet. The basis of the change must be documented on the examination worksheet. Standards will add the following flow rate information remark to the review and decree abstract:

Example: FF007 A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.

If the claim uses other than stored water from the onstream reservoir, such as diversions upstream from the reservoir, a flow rate will be decreed. Examine the claimed flow rate using the procedures specific to the means of diversion as noted above in "Other Uses Claims Without Reservoirs" (Sections VII.B.3.d, VII.B.3.e, VII.B.3.f).

Flow Rate: Offstream Reservoirs. A flow rate will be decreed as claimed, amended or modified by rule for Other Uses involving offstream reservoirs where control (i.e., ownership of the point of diversion) of the reservoir is part of the right. **The flow rate guideline is the capacity of the diversion and conveyance system** ([Rule 29 \(c\) \(1\) \(i\) W.R.C.E.R.](#)). If the reservoir system is shared by more than one claimant, the **flow rate guideline will be that which appears reasonable and customary** for the specific purpose ([Rule 29 \(c\) \(1\) \(i\) W.R.C.E.R.](#)).

Volume: All Reservoirs. A volume will be decreed as claimed, amended, or modified by rule for Other Uses involving reservoirs where control (i.e., ownership of the point of diversion) of the reservoir is part of the right. The **volume guidelines** are:

- For systems with a claimed volume **less than 15 acre-feet, the claimed volume will generally be accepted** ([Rule 29 \(c\) \(1\) \(ii\) \(A\) W.R.C.E.R.](#)). Collect reservoir data as outlined in "Claim Examination: Reservoirs" (Section VI.H).
- For systems with a claimed volume **greater than 15 acre-feet**, the volume guideline will be the **maximum storage capacity plus the estimate of evaporation** ([Rule 29 \(c\) \(1\) \(ii\) \(B\) W.R.C.E.R.](#)). See "Evaporation Losses" (Exhibit X-8) for procedures on determining an estimation of evaporation. Collect reservoir data as outlined in "Claim Examination: Reservoirs" (Section VI.H).

If the claimed volume is greater than 15 AF and cannot be examined using the procedures outlined in this section, or the volume is a quantity raising doubts about being reasonable for the purpose, contact the claimant. If claimant contact is inconclusive, add the following volume (VM) issue remark to the department's

examination worksheet: [Rules 29 \(e\) and 44, W.R.C.E.R.](#)

Example: V111 THE CLAIMED VOLUME CANNOT BE CONFIRMED DUE TO LACK OF DATA.

c. Other Use Claims—Pothole Lake Claims by USA.

Flow Rate: No flow rate will be decreed for this type of claim. Change the claimed flow rate to null (no value) and add an asterisk in the brackets to the left of the flow rate element on the examination worksheet. Document the basis of the change on the examination worksheet. Add a flow rate (FR) information remark:

Example: F37 THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNTS NECESSARY TO SUSTAIN THIS PURPOSE. THIS RIGHT SHALL CONTINUE TO BE UTILIZED IN ACCORDANCE WITH HISTORICAL PRACTICES.

Volume: A volume will be decreed for this type of claim filed by the USA (i.e., BLM, Fish and Wildlife Service, or Forest Service). Volumes for these claims are retained and decreed pursuant to a June 17, 1985 and August 7, 1987 Orders (Exhibit IX-1) from the Water Court. Examine the claimed volumes using the procedures in “Other Uses Claims with Reservoirs” ([Section X.C.3.b](#)) above and the procedures in “Claim Examination: Reservoirs and Groundwater Pits” (Section VI.H.).

d. Murphy Rights. The 1969 Montana Legislature granted the Montana Fish and Game Commission the authority to file on un-appropriated waters on twelve streams primarily to maintain flows necessary for fish and wildlife habitat (Section 89-801(2), RCM (1969)(repealed 1973)). The flow rate and volume filed by the Montana Department of Fish, Wildlife, and Parks on "Murphy Right" streams will be decreed as claimed, amended, or modified by rule ([Rule 29 \(f\) W.R.C.E.R.](#)). [Table X-2: Murphy Right Streams](#) lists the Murphy Right streams and the affected reach. The stream reaches are also depicted in Exhibit X-17 as both a list and a map. The map is also available on the Adjudication Shared Drive.

If examining a claim where the source is listed in [Table X-2](#), compare the claimed legal land description to that of the Murphy Right Stream. A Murphy Right Stream shapefile is available in WRMapper.

Add the following purpose (PU) information remark to the examination worksheet:

Example: P600 THIS RIGHT IS SUBJECT TO ALL PRIOR RIGHTS. THE FLOW RATE AND VOLUME REPRESENT THE CLAIMED NEEDS OF THE STATE DEPARTMENT OF FISH WILDLIFE AND PARKS TO MAINTAIN STREAM FLOWS FOR THE PRESERVATION OF FISH AND WILDLIFE HABITAT. THE CLAIMED AMOUNTS ARE MADE A MATTER OF RECORD BUT ARE SUBJECT TO CHANGE SHOULD THE COURT DETERMINE THAT THOSE WATERS ARE

NEEDED FOR USES DETERMINED TO BE MORE BENEFICIAL TO THE PUBLIC. SEE R.C.M. §89-801 (1947), NOW REPEALED BY SEC. 46, CH. 452, LAWS 1973.

Murphy rights DO NOT receive P724 or P725 issue remarks. See Section VI.C.3.a. Murphy Rights were recognized as a valid appropriation prior to 1973 whereas other fish and wildlife claims were questioned as a beneficial use until the Bean Lake cases were decided. Fish and wildlife claims, other than Murphy Rights, now receive issue remarks mandated by the last of the Bean Lake cases. See Section 89-801(2), RCM (1969) (repealed 1973); in re-Adjudication of Dearborn Drainage Area, 234 Mont. 331, 766 P.2d 228, (1988); and in re-Adjudication of Existing Rights to the Use of All Water, 2002 MT 216, 311 Mont. 327, 55 P.3d 396.

Check the claimed flow rate and volume against the filed appropriation and stream flow records. If there are no discrepancies, a KEEP/CLAIMED flag should be noted on the examination worksheet for both flow rate and volume. If discrepancies exist, add a flow rate (FR) issue remark:

Example: F220 THE CLAIMED FLOW RATE EXCEEDS THE ESTIMATED AVERAGE ANNUAL FLOW OF THE SOURCE (**3.50 CFS**).

e. Instream Uses. For all remaining instream and inlake Other Uses claims (excluding claims filed by the Montana Department of Fish Wildlife & Parks on Murphy Right streams), the **flow rate and volume guideline is the minimum amount necessary to sustain the specific purpose** ([Rule 29 \(d\) W.R.C.E.R.](#)).

Standards will apply the following volume (VM) information remark to the review and decree abstract:

Example: VF012 THE FLOW RATE AND VOLUME ARE LIMITED TO THE MINIMUM AMOUNTS NECESSARY TO SUSTAIN THIS PURPOSE. THIS RIGHT SHALL CONTINUE TO BE UTILIZED IN ACCORDANCE WITH HISTORICAL PRACTICES.

In order to make it clear there has been no method developed to determine what 'minimum flow or volume' is necessary for these claims, add the following issue remarks as well:

Example: F85 THE CLAIMED FLOW RATE WAS NOT EXAMINED AS NO FLOW RATE GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIM EXAMINATION RULES.

V25 THE CLAIMED VOLUME WAS NOT EXAMINED AS NO VOLUME GUIDELINES FOR THIS PURPOSE HAVE BEEN ESTABLISHED BY THE CLAIMS EXAMINATION RULES.

f. Mining. For an overview on mining practices and general water requirements in Montana, see “BLM Mining Water Requirement Guidelines” (Exhibit X-13) which includes a reprint from a BLM Technical Manual and an internal DNRC document. Other useful websites for researching mining activity include the [DEQ Abandoned Mine Query System](#) and the [Montana Bureau of Mines and Geology](#). The [NRIS](#) website has several abandoned mine shapefiles available for download into WRMapper.

Flow Rate: **The flow rate guideline is the capacity of the diversion and conveyance system** ([Rule 29 \(b\) \(2\) \(i\) W.R.C.E.R.](#)). Examine claimed flow rates using the procedures in “Other Uses Claims: Flow Rate and Volume: Examining Claimed Flow Rate and Volume” ([Section X.C.2](#)) and in “Other Uses Claims: Flow Rate and Volume: Specific Flow Rate and Volume Examination Criteria: Other Uses Claims Without Reservoirs” ([Section X.C.3.a](#)).

Volume: A volume will not be decreed for mining claims ([Rule 29 \(b\) \(2\) \(ii\) W.R.C.E.R.](#)). Change the claimed volume to null (no value) and add an asterisk in the brackets to the left of the volume element of the examination worksheet. Document the basis for the change on the examination worksheet. Standards will apply the following volume (VM) information remark to the review and decree abstract: [Rule 27 \(c\)\(4\), W.R.C.E.R.](#)

Example: VF016 THIS RIGHT IS LIMITED TO THE VOLUME OF WATER HISTORICALLY USED FOR MINING PURPOSES.

g. Fire Protection. A claim may indicate a purpose of fire protection as the main purpose or as an incidental, secondary purpose.

Flow Rate—Fire Protection Only Purpose: **The flow rate guideline will be the capacity of the diversion and conveyance system** ([Rule 29 \(b\) \(3\) \(i\) W.R.C.E.R.](#)). Examine the claimed flow rate using the procedures in “Other Uses Claims: Flow Rate and Volume: Examining Claimed Flow Rate and Volume” ([Section X.C.2](#)) and in “Other Uses Claims: Flow Rate and Volume: Specific Flow Rate and Volume Examination Criteria: Other Uses Claims without Reservoirs” ([Section X.C.3.a](#)).

Volume—Fire Protection Only Purpose: A volume will not be decreed for fire protection purposes when it is the primary purpose ([Rule 29 \(b\) \(3\) \(ii\) W.R.C.E.R.](#)). Change the claimed volume to null (no value) and add an asterisk in the brackets to the left of the volume element of the examination worksheet. Document the basis of the change on the examination worksheet. Standards will apply the following volume (VM) information remark to the review and decree abstract:

Example: VF014 THE VOLUME OF THIS RIGHT IS LIMITED TO THE MINIMUM AMOUNTS NECESSARY FOR FIRE PROTECTION PURPOSES.

Flow Rate—Fire Protection as an Incidental Use: For claims where fire protection is identified as an incidental use, Water Court authorization as called for in “Special Provisions: Implied Claims” ([Section XI.B](#)) is not necessary when two purposes are claimed *and* one of the purposes is fire protection. Whenever fire protection is claimed

as an incidental use, examine the claim according to the primary purpose. Identify this incidental use by adding the following purpose (PU) information remark to the department's examination worksheet:

Example: P555 THIS WATER RIGHT IS INCIDENTALLY USED FOR FIRE PROTECTION.

Volume—Fire Protection as an Incidental Use: Examine the volume according to the primary purpose.

Table X-2: Murphy Right Streams

Source	County	Reach*
Big Spring Creek	Fergus	From mouth in T17N, R16E, Sec 26 to State Fish Hatchery in T14W, R19E, Sec 5
Blackfoot River	Missoula, Powell	From mouth in T13N, R18W, Sec 21 to mouth of its North Fork in T14N, R12W, Sec 9
Flathead River	Flathead	From mouth in T27N, R20W, Sec 34 to the Canadian border in T37N, R22W, Sec 4 & 5, including section commonly known as the North Fork of Flathead River
Flathead River, Middle Fork	Flathead	From mouth in T31N, R19W, Sec 7 to mouth of Cox Creek in T27N, R12W (a non-sectioned township)*
Flathead River, South Fork	Flathead, Powell	From mouth at Hungry Horse Reservoir in T26W*, R16W Sec (unknown)* to its source at the junction of Danaher and Youngs Creeks in T20W, R13W, Sec 36
Gallatin River	Gallatin	From mouth in T2N, R2E, Sec 9 to the junction of its East Fork in T2N, R3E, Sec. 27
West Gallatin River	Gallatin	From the Beck & Border Ditch intake in T2S, R4E, Sec 14 to where it leaves the Yellowstone Park boundary in T9S, R5E, Sec 18
Madison River	Gallatin, Madison	From mouth in T2N, R2E, Sec 17 to Hebgen Dam in T11S, R3E, Sec 23
Missouri River	Broadwater, Lewis & Clark, Cascade	From its junction with the Smith River in T19N, R2E, Sec 9 to Toston Dam in T4N, R3E, Sec 7
Rock Creek	Granite, Missoula	From mouth in T11N, R17W, Sec 12 to the junction of its East and West Forks in T6N, R15W, Sec 31
Smith River	Cascade, Meagher	From mouth of Hound Creek in T17N, R3E, Sec 20 to the Fort Logan Bridge in T11N, R5E, Sec 31
Yellowstone River	Park, Stillwater, Sweetgrass	From the North-South Carbon-Stillwater county lines in T3S, R21E, Sec 10 to where it leaves the Yellowstone Park boundary in NT9S*, R8E, Sec 23

*As written Section 89-801, RCM 1947 (1969)

h. Municipal. Claims with a purpose of municipal use by a city, town or other public or private entity that operates a public water supply system, a flow rate and volume will be decreed.

Flow Rate: **The flow rate guideline for municipal claims is the capacity of the diversion and conveyance system** ([Rule 29 \(b\) \(4\) \(i\) W.R.C.E.R.](#)). Examine the claimed flow rate using the procedures in “Other Uses Claims: Flow Rate and Volume: Examining Claimed Flow Rate and Volume” ([Section X.C.2](#)) and in “Other Uses Claims: Flow Rate and Volume: Specific Flow Rate and Volume Examination Criteria: Other Uses Claims without Reservoirs” ([Section X.C.3.a](#)).

If the claimed flow rate is not substantiated by information in the claim file, a Municipal Questionnaire (Exhibits X-2) should be sent to the claimant along with a cover letter (Exhibit IV-8). Alternatively, the claimant can be contacted by phone or in a personal interview (see “Examination Materials and Procedures: Claimant Contact Techniques” in Section IV.F). It may be appropriate to also send additional questionnaires or to customize the Municipal Questionnaire to gain additional information about the system.

If the claimed flow rate cannot be substantiated, add a flow rate (FR) issue remark to the department's examination worksheet:

Example: F150 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE PUMP CAPACITY. AVAILABLE DATA SUPPORT A FLOW RATE OF **98.50 GPM**.

Also see “Other Uses: Purpose: Examining Purpose: Municipal Uses” ([Section X.B.2.b](#)) for criteria to determine the presumption of non-abandonment.

Volume: **The guideline is 250 gallons per capita per day (GPCD)** ([Rule 29 \(b\) \(4\) \(ii\) W.R.C.E.R.](#)). Information on the population of municipalities can usually be obtained through the [Census Bureau](#) or the [Montana Department of Commerce--Census and Economic Information Center](#). Historical population data is available in "[Population of Incorporated Places* \(Cities/Towns\) in Montana, 1890 to 2000](#)". Another resource is the local Chamber of Commerce. See “Municipal Water Needs” (Exhibit X-18) for explanation of the derivation of this guideline.

If the claimed volume is not substantiated by information in the claim file or from a completed questionnaire, calculate a volume using the guideline. Use 1970 census data to determine the population figure for calculating the GPCD (or use the year when the municipality had the greatest population prior to 1970).

Compare this calculated volume to the claimed volume. If the claimed volume exceeds the calculated guideline, and the volume is not decreed in a historical district court decree, the volume will be reduced to the guideline. Document the reduction by placing an asterisk in the brackets to the left of the volume element on the examination

worksheet. Add the following volume (VM) remarks to the department's examination worksheet:

Examples: V5 THE VOLUME OF THIS WATER RIGHT HAS BEEN REDUCED TO THE GUIDELINE OF **0.00** ACRE FEET PER YEAR. THIS VOLUME MAY BE CONTESTED BY PROPER OBJECTION.

V135 THE CLAIMED VOLUME MAY BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME IS **600** GALLONS PER CAPITA PER DAY (GPCD) BASED ON THE **1980** CENSUS POPULATION OF **2,518** PEOPLE.

If no documentation is submitted or submitted data is insufficient to confirm a volume, add a volume (VM) issue remark to the department's examination worksheet. See "Other Uses Flow Rate and Volume Issues" ([Section X.C.4](#)).

Multiple Claims. If the municipal purpose involves multiple claims in a manifold system and the combined volume in GPCD is excessive, see "Place of Use: Supplemental Other Uses Right" below ([Section X.D.4](#)).

i. Agricultural Spraying. This purpose can include, but is not limited to, pesticide or fertilizer applications. The spraying may occur, but is not limited to manual equipment, tractor-mounted equipment, or by aerial application.

Flow Rate: **The claimed flow rate guideline for agricultural spraying is the capacity of the diversion and conveyance system ([Rule 29 \(b\) \(5\) \(i\) W.R.C.E.R.](#)).** Examine the claimed flow rate using the procedures in "Other Uses Claims: Flow Rate and Volume: Examining Claimed Flow Rate and Volume" ([Section X.C.2](#)) and in "Other Uses Claims: Flow Rate and Volume: Specific Flow Rate and Volume Examination Criteria: Other Uses Claims without Reservoirs" ([Section X.C.3.a](#)).

Volume: **The volume guideline for agricultural spraying is 2 AF per year if no reservoir is involved. The guideline is 4 AF per year if a reservoir is involved ([Rule 29 \(b\) \(5\) \(ii\) W.R.C.E.R.](#))** (Section X.C.3.a and X.C.3.b above do not apply for examining the volume). When a claimed volume exceeds the guideline, review the file for any data in support of the claimed volume. If no supporting documentation is in the claim file, contact the claimant. Determine approximately how many acres per year are sprayed. To check the claimed volume, assume that 20 gallons/acre is used.

If the claimed volume is greater than 20 gallons/acre, add a volume (VM) issue remark (such as V70, V100, V130) to the department's examination worksheet.

Example: V100 THE CLAIMED VOLUME **APPEARS TO/MAY** BE EXCESSIVE FOR THE CLAIMED PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

j. Prior Decreed Flow Rates or Volumes. Flow rates or volumes based on historical district court decrees will be decreed as claimed, amended, or modified by rule. The flow rate or volume will not be reduced to the guideline ([Rule 29 \(g\) \(1\) W.R.C.E.R.](#)).

If the volume was decreed in a prior decree, add a volume (VM) information remark to the examination worksheet:

Examples: V10 THIS VOLUME WAS PREVIOUSLY DECREED IN CASE NO. **0000**, **MONTANA** COUNTY.

F45 ENTIRE FLOW OF THE SOURCE AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

Individual Claim Exceeds Prior Decreed Amount: If a claim's flow rate or volume is greater than the prior decreed amount, add the appropriate flow rate (FR) or volume (VM) issue remark to the examination worksheet. (An implied claim may be involved if the claimant historically used the difference between the claimed and decreed amount.)

Examples: F90 THE CLAIMED FLOW RATE EXCEEDS THE **150** MINER'S INCHES OF **DOE CREEK** DECREED IN CASE NO. **0000**, **MONTANA** COUNTY.

V30 THE CLAIMED VOLUME EXCEEDS THE **1,750** ACRE-FEET DECREED IN CASE NO. **0000**, **MONTANA** COUNTY.

Exceeds the Guideline: A prior decreed flow rate or volume will be compared to the guideline for the claimed purpose. If a claimed flow rate or volume exceeds the guideline, add an issue remark to the department's examination worksheet. See "Other Uses Flow Rate and Volume Issues" ([Section X.C.4](#)).

Decreed Rights Exceeded: Prior decreed rights are recorded as described in "Irrigation: Flow Rate: Recording Documentation" (Section VII.B.5). When a prior decreed right is found to be exceeded by the combined flow rate of claims based on a single right ([Rule 29 \(h\) W.R.C.E.R.](#)), add a decree exceeded (DE) issue remark to the department's examination worksheet:

Example: D5 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE **150** MINER'S INCHES DECREED IN CASE NO. **0000**, **MONTANA** COUNTY. **000000-00, 000000-00, 000000-00**.

k. Filed and Use Right Flow Rates or Volumes. Flow rates or volumes will be reduced to the guideline unless information in the claim file clearly substantiates the claim or information is obtained to support the flow rate or volume ([Rule 29 \(g\) \(2\) W.R.C.E.R.](#)).

When a claimed flow rate is reduced to the guideline, add the following flow rate (FR) information remark to the examination worksheet:

Example: F32 THE FLOW RATE OF THIS CLAIM HAS BEEN REDUCED TO THE GUIDELINE OF **99.00 GPM**. THE FLOW RATE MAY BE CONTESTED BY PROPER OBJECTION.

When a claimed volume is reduced to the guideline, add the following volume information remark to the examination worksheet:

Example: V5 THE VOLUME OF THIS WATER RIGHT HAS BEEN REDUCED TO THE GUIDELINE OF **0.00** ACRE FEET PER YEAR. THIS VOLUME MAY BE CONTESTED BY PROPER OBJECTION.

4. Other Uses Flow Rate and Volume Issues. Note any pertinent flow rate or volume issues discovered during the examination on the department's examination worksheet using a flow rate (FR) or volume (VM) remark, as appropriate. [Rule 29 \(j\)\(5\), W.R.C.E.R.](#)

a. Flow Rate Excessive. When a flow rate will be decreed and the claimed flow rate appears excessive for the circumstances of the claim (e.g., diversion and conveyance, purpose), add a flow rate (FR) issue remark to the department's examination worksheet. The claimant must be notified of any issue remarks.

Examples: F145 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM. AVAILABLE DATA SUPPORT A FLOW RATE OF **2.50 CFS**.

F220 THE CLAIMED FLOW RATE EXCEEDS THE ESTIMATED AVERAGE ANNUAL FLOW OF THE SOURCE (**3.50 CFS**).

F225 THE CLAIMED FLOW RATE **APPEARS TO/MAY** BE HIGH FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

F240 THE CLAIMED FLOW RATE CANNOT BE CONFIRMED DUE TO A LACK OF DATA.

F230 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE REASONABLE AND CUSTOMARY FLOW RATE FOR THIS PURPOSE. AVAILABLE DATA SUPPORT AN ACTUAL FLOW RATE OF **2.41 CFS**.

- F231 US BUREAU OF MINES CIRCULAR NO. **0000 (YYYY)** LISTS THE DIVERSION CAPACITY FOR THIS ORE PROCESSING FACILITY AT **400 GPM**.
- F245 THE CLAIMED FLOW RATE MAY BE QUESTIONABLE. DOCUMENTATION SUBMITTED WITH THIS CLAIM INDICATES A FLOW RATE OF **30 GPM**.
- F250 INFORMATION IN THE CLAIM FILE DESCRIBES A HISTORIC FLOW RATE OF **35 MINER'S INCHES** AND A VOLUME OF **40** ACRE-FEET PER YEAR.
- F255 ACCORDING TO INFORMATION IN THE CLAIM FILE, THE CLAIMED FLOW RATE EXCEEDS THE CAPACITY OF THE CONVEYANCE SYSTEM.
- F260 THE FLOW RATE FOR THIS WATER RIGHT WAS MEASURED AS **112 GPM** DURING A FIELD INVESTIGATION CONDUCTED ON **MM/DD/YYYY**.
- F220 THE CLAIMED FLOW RATE EXCEEDS THE ESTIMATED AVERAGE ANNUAL FLOW OF THE SOURCE (**3.50 CFS**).

b. Volume Excessive. When a claimed volume appears excessive for the circumstances of the claim (e.g., diversion and conveyance, purpose, reservoir capacity), add a volume (VM) issue remark to the department's examination worksheet. The claimant must be notified of any issue remarks.

- Examples: V40 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS **2.9** TIMES THE CAPACITY OF THE RESERVOIR.
- V70 THE CLAIMED VOLUME EXCEEDS THE **2.50** ACRE-FEET GUIDELINE FOR THIS PURPOSE. ITS ACCURACY CANNOT BE CONFIRMED DUE TO LACK OF DATA.
- V75 THE CLAIMED VOLUME EXCEEDS THE **2.00** ACRE-FEET GUIDELINE FOR THIS PURPOSE. AVAILABLE DATA SUPPORT A VOLUME OF **1.80** ACRE-FEET.
- V77 VOLUME APPEARS TO BE EXCESSIVE FOR A **BUCKET** MEANS OF DIVERSION.

- V85 VOLUME MAY BE EXCESSIVE. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN **24.0** HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THIS FIGURE.
- V86 THE CLAIMED FLOW RATE OR VOLUME MAY BE INCORRECT. BASED ON THE FLOW RATE AND PERIOD OF USE, THE SYSTEM WOULD HAVE TO RUN **24.0** HOURS PER DAY TO DELIVER THE CLAIMED VOLUME. NO INFORMATION EXISTS IN THE CLAIM FILE TO CONFIRM THESE FIGURES.
- V100 THE CLAIMED VOLUME **APPEARS TO/MAY** BE EXCESSIVE FOR THE CLAIMED PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.
- V111 THE CLAIMED VOLUME CANNOT BE CONFIRMED DUE TO LACK OF DATA.
- V115 THE CLAIMED VOLUME APPEARS TO EXCEED THE REASONABLE AND CUSTOMARY VOLUME FOR THIS PURPOSE. AVAILABLE DATA SUPPORT A VOLUME OF **4.80** ACRE FEET PER YEAR.
- V120 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. AVAILABLE DATA SUGGEST THE ACTUAL VOLUME IS **1.20** ACRE-FEET PER YEAR.
- V130 THE CLAIMED VOLUME EXCEEDS THE **2.00** ACRE-FEET GUIDELINE FOR AGRICULTURAL SPRAYING.
- V135 THE CLAIMED VOLUME MAY BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME IS **600** GALLONS PER CAPITA PER DAY (GPCD) BASED ON THE **1980** CENSUS POPULATION OF **2,518** PEOPLE.
- S160 THE COMBINED CLAIMED VOLUME FOR THE FOLLOWING CLAIMS IS **1720** GALLONS PER CAPITA PER DAY (GPCD) BASED ON THE **1980** CENSUS POPULATION OF **1896** PEOPLE AND A TOTAL CLAIMED VOLUME OF **3657** ACRE-FEET. THIS APPEARS EXCESSIVE FOR THE CLAIMED PURPOSE. **000000-00, 000000-00, 000000-00, 000000-00**.

c. Claimed Flow Rate or Volume Appears Inadequate. If the claimed flow rate or volume appears inadequate for the specific purpose or compared to available data, add a flow rate (FR) or volume (VM) issue remark to the department's examination worksheet:

Examples: F185 THE CLAIMED FLOW RATE APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

V45 THE CLAIMED VOLUME APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

d. No Flow Rate or Volume Claimed. If no flow rate or volume was claimed, add a flow rate (FR) or volume (VM) issue remark to the department's examination worksheet. If a flow rate or volume is not claimed, check that the value is expressed as null (no value) and a KEEP/CLAIMED flag is designated on the worksheet.

Examples: F190 NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

V90 NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS **2.00** ACRE-FEET PER YEAR.

V95 NO VOLUME HAS BEEN CLAIMED.

e. Claimed Flow Rate or Volume not Numerically Quantified. Where a claimed flow rate or volume is to be decreed and the claim states "ALL" or a portion of "ALL" (e.g., "1/2 of ALL"), follow the procedures as described in "Irrigation: Flow Rate: Flow Rate Issues: Claimed Flow Rate Not Numerically Quantified" (Section VII.B.4.b) and "Irrigation: Volume: Volume Issues: Claimed Volume Not Numerically Quantified" (Section VII. C.4.e).

D. PLACE OF USE (POU)
[Rule 28, W.R.C.E.R.](#)

The place of use for Other Uses claims will be defined by a legal land description. Typically, acres were not identified on Other Use claims. However, if a claim has a specified number of acres for purposes such as municipal (e.g., cemetery), commercial (e.g., golf course), or agricultural spraying, the acres should be retained.

Claimant contact must occur upon completing examination of the ownership if the place of use is modified by rule; an issue remark exists, or is unclear. [Rules 28\(a\)\(2\) and 44, W.R.C.E.R.](#) and Section IV.F.

1. Identifying Claimed Place of Use. Identify the claimed place of use on an Other Uses claim using the same procedures outlined in "Irrigation: Place of Use" (Section VII.D.1). The place of use for Other Use purposes will be identified and described to the nearest reasonable and concise legal land description ([Rule 28 \(a\) W.R.C.E.R.](#)). [Rule 28, W.R.C.E.R.](#) refers the claims examiner to [Rule 12, W.R.C.E.R.](#) for direction on examining place of use in addition to the specifics included in [Rule 28, W.R.C.E.R.](#), see also Section VIII.D.

It may be necessary to contact the claimant in order to determine the place of use. At the invitation of the claimant, an on-site visit may be conducted. See "Examination Materials and Procedures: Investigation Techniques: On-site Visits" (Section IV.G.3) for further information. [Rules 289a\)\(2\) and 44., W.R.C.E.R.](#)

Additional Legal Land Descriptions. Government lots, subdivisions, certificates of survey, homestead entry surveys, and mineral surveys, when available, are useful supplements when identifying or examining Other Use POUs. These descriptions may be added to a conventional $\frac{1}{4}\frac{1}{4}\frac{1}{4}$ section, township, and range legal land description directly on the examination worksheet as a clarification of a claimed POU. In some instances, a place of use (PL) information remark may best describe the location. Detailed discussion of these additional legal land descriptions is given in "Claim Examination: Additional Legal Land Descriptions" (Section VI.E). [Rule 28\(c\)\(2\), W.R.C.E.R.](#)

The degree to which legal land descriptions can be modified by rule ([Rule 33 \(b\)\(1\),\(4\), W.R.C.E.R.](#)) without benefit of claimant contact depends on the quality of the claimant's map, and outside data sources (plat books, aerial photos, realty transfer certificates, etc.). The claimant's intent must be clearly established by their map or other information in the claim file, preferably both.

When adding such legal land descriptions, make certain that portions of the historical place of use are not excluded. For example, if it is not clear the place of use falls entirely within a mineral survey, add a place of use (PL) remark to the examination worksheet. See "Standard Examination Remarks: Place of Use" (Section V) for appropriate remarks.

2. Examining Place of Use. Examine the place of use of an Other Uses claim using one or more of the following data sources: [Rule 28\(a\)\(1\), W.R.C.E.R.](#)

- Claim information
- USGS topographic maps
- Orthophotoquads
- USDA aerial photographs
- Water Resources Survey information
- U.S. National Forest Service maps
- Bureau of Land Management maps
- Returned questionnaires
- Industry publications
- City directories
- Mining histories
- Records of other government agencies
- Web resources

If a claimed place of use cannot be substantiated by an outside data source, add a place of use (PL) issue remark to the examination worksheet:

Example: P335 USDA AERIAL PHOTOGRAPH NO. **1379-48**, DATED **MM/DD/YYYY**, SHOWS NO EVIDENCE OF **FISH RACEWAYS** AT THE CLAIMED PLACE OF USE.

Unique Features or Aspects. Any unique aspects or features of the place of use may be identified using a place of use (PL) information remark: [Rule 28\(c\)\(3\), W.R.C.E.R.](#)

Examples: P215 THE PLACE OF USE IS **THE TOWN OF DOE.**

THE PLACE OF USE IS **EAST OF DOE ROAD.**

THE PLACE OF USE IS **THE SURFACE AREA OF DOE RESERVOIR AT THE TOP OF THE FLOOD POOL.**

Agricultural Spraying. If the claimed POU is confirmed by the claimant's map, the claimed POU parcel descriptions should be accepted. If the boundaries of the sprayed area are vague, or it is known that spraying occurs on property other than the claimant's, contact the claimant. The claimant may choose to submit an amendment to accurately reflect the historical place of use. If claimant contact is inconclusive and the place of use appears reasonable, add a place of use (PL) information remark to the examination worksheet:

Examples: PL THE PLACE OF USE IS IN TWP 98N RGE 98E AND TWP 99N RGE 99E, MONTANA COUNTY.

PL THE PLACE OF USE IS FROM TWP 98N TO TWP 99N AND RGE 98E TO RGE 99E, MONTANA COUNTY.

P205 THE PLACE OF USE IS THE GENERAL AREA WITHIN A **FIVE** MILE RADIUS OF THE POINT OF DIVERSION.

If the place of use appears to be unreasonable, add a place of use (PL) issue remark to the examination worksheet:

Example: PLIS THE PLACE OF USE IS QUESTIONABLE. THE CLAIMED PLACE OF USE IS FOR ALL OF BEAVERHEAD COUNTY.

Overlapping Ownership. Ownership issues may be identified using the AllCad layer in WRMapper. If an ownership issue is identified, refer to “Irrigation: Place of Use: Place of Use Issues” (Section VII.D.4) of “Claim Examination: Owner Name and Address: New Owner Determined but File Lacks Ownership Update” (Section VI.B.3). This analysis includes examining claims for the possibility that they may overlap with federal or state ownership of the place of use.

3. Changing Place of Use. The claimed legal land description will not be changed during the department’s examination per [Rule 28 \(b\) W.R.C.E.R.](#) unless:

- amended by the claimant; [Rule 28\(b\)\(1\), W.R.C.E.R.](#)
- modified by rule (clarified) by the department to the nearest reasonable and concise legal land description [Rules 28\(b\)\(2\) and 33\(b\)\(4\)\(i\), W.R.C.E.R.](#) and [Section X.D.1](#);
- modified by rule (clarified) and revised so that the POU and POD legal land descriptions for instream surface water use will be the same [Rule 28\(b\)\(3\), W.R.C.E.R.](#) and [Section X.E.2](#); or
- modified by rule (clarified) by the department without claimant contact if the claimed intent is clear or with claimant contact if the claimed intent is unclear. [Rules 33\(b\)\(1\), \(4\), and 33\(c\), W.R.C.E.R.](#)

4. Supplemental Other Uses Rights. Supplemental rights occur when the place of use of more than one water right overlap. The supplemental water rights must have the **same purpose** and **ownership**.

a. Identifying Supplemental Rights. Supplemental rights are identified by examining the POUs of an ownership. Use WRMapper to determine all rights within an ownership which overlap in any way. To be considered supplemental, they can overlap entirely, in part, or in series, e.g., Parcel A overlaps Parcel B which overlaps Parcel C. This is more common for mining and municipal purposes. [Rule 40, W.R.C.E.R.](#)

Add the following supplemental right (SR) information remark to the examination worksheet for all supplemental Other Uses claims (do not record supplemental Other Use water rights in the Related Rights tab):

Example: S135 WHENEVER THE WATER RIGHTS FOLLOWING THIS STATEMENT ARE COMBINED TO SUPPLY WATER FOR THE CLAIMED PURPOSE, EACH IS LIMITED TO THE HISTORICAL FLOW RATE AND PLACE OF USE OF THAT INDIVIDUAL RIGHT. THE SUM TOTAL VOLUME OF THESE WATER RIGHTS SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE. **000000-00, 000000-00, 000000-00, 000000-00.**

b. Supplemental Right Issues. Supplemental right issues may exist involving flow rate and volume. When the combined flow rate and/or volume of supplemental rights exceeds the guideline for their purpose by a factor of two or more, add a supplemental right (SR) issue remark ([Rule 40\(c\)\(2\), W.R.C.E.R.](#)) to the examination worksheet for each claim:

Examples: S155 THE COMBINED FLOW RATE FOR THIS GROUP OF SUPPLEMENTAL RIGHTS EXCEEDS THE FLOW RATE GUIDELINE FOR **MINING** PURPOSES BY A FACTOR OF **TWO**.

S160 THE COMBINED CLAIMED VOLUME FOR THE FOLLOWING CLAIMS IS **1720** GALLONS PER CAPITA PER DAY (GPCD) BASED ON THE **1980** CENSUS POPULATION OF **1896** PEOPLE AND A TOTAL CLAIMED VOLUME OF **3657** ACRE-FEET. THIS APPEARS EXCESSIVE FOR THE CLAIMED PURPOSE. **000000-00, 000000-00, 000000-00, 000000-00.**

S165 THE COMBINED CLAIMED **VOLUME/FLOW RATE** FOR THIS GROUP OF SUPPLEMENTAL RIGHTS IS **480.00 ACRE-FEET/300 GPM** WHICH CANNOT BE CONFIRMED DUE TO LACK OF DATA.

S170 THE COMBINED CLAIMED VOLUME FOR THIS GROUP OF SUPPLEMENTAL RIGHTS IS **1,480.00 ACRE-FEET**. DATA IN THE CLAIM FILE INDICATES A MAXIMUM USE OF **810.00** ACRE- FEET PER YEAR.

5. Geocodes. Geocodes were initially assigned to water rights as either a one-to-one match or a one-to-many match based on the legal land description. At times, the legal land description associated with a water right was described very broadly, encompassing several parcels that may not have been within the true place of use. As a result, geocodes must be verified as belonging to the claimed place of use. Any geocodes assigned initially to the water right are listed below the place of use element on the examination worksheet.

Determine valid geocodes by using the AllCad layer in WRMapper or the [Montana](#)

[Cadastral Mapping Program](#) information. Indicate a valid geocode with a 'Y' on the examination worksheet. (See assignment of Geocodes memo, Exhibit VI-18.)

Once a place of use has validated geocodes, cross off any geocodes not associated with the place of use on the examination worksheet. In the database, delete these records from the Geocode tab under the Create and Maintain Water Rights screen.

Geocode issues. Every effort should be made to validate geocodes.

- If a geocode cannot be conclusively determined as belonging partially or wholly within the place of use, the geocode should have a 'N' designation (not validated). If an ownership update occurs involving any geocode with a designation of an 'N', the water right will require further research before the ownership update can occur.
- If a geocode is designated as valid ('Y') and it is found to be in error, change the 'Y' to an 'N' on the examination worksheet and document the resources and/or research in making the determination. In the database, in order to remove an incorrectly validated geocode, first change the 'Y' to an 'N' and then save. The record can then be deleted.
- If a legal land description is found to be in error, review the geocodes. If any changes are made to the legal land description (i.e., a correction to the township, range or section occurs based on the claimant's map, for example), it may be determined that a geocode may need to be deleted or added.
- If the place of use is amended, review the geocodes. It may be determined that a valid geocode needs to be deleted, or a geocode not initially associated with the water right needs to be added.
- Water rights which have been reserved (exempted) from the land, such as those belonging to homeowner's associations, municipalities, and certain other entities that provide service but do not own the place of use, just the water right, will not have any associated geocodes. If a geocode is assigned, delete it from the Geocode tab in the database.

E. POINT OF DIVERSION AND MEANS OF DIVERSION FOR INSTREAM AND INLAKE APPROPRIATIONS.

1. Point of Diversion. Examination procedures for point of diversion are described in "Claim Examination: Point of Diversion" (Section VI.F). *Only those aspects explicitly addressed in [Rule 31 W.R.C.E.R.](#) pertaining to Other Uses point of diversion and means of diversion for instream and inlake appropriations are discussed in this section.*

Claimant contact must occur upon completing examination of the ownership if the point of diversion or means of diversion is modified by rule; an issue remark exists, or is unclear. [Rule 44, W.R.C.E.R.](#) and Section IV.F.

When examining instream or inlake claims, the point of diversion legal land description will be the same as the legal land description of the place of use. [Rule 31\(a\), W.R.C.E.R.](#)

Add the following point of diversion information remark to the department's examination worksheet: [Rule 31\(c\), W.R.C.E.R.](#)

Example: P10 THIS RIGHT FOR **INSTREAM/INLAKE** USE APPLIES FROM **DOE DAM IN MONTANA COUNTY DOWNSTREAM TO THE CONFLUENCE OF THE NORTH FORK OF DOE CREEK WITH THE JONES RIVER IN MONTANA COUNTY.**

2. Changing the Point of Diversion or Means of Diversion.

Point of Diversion: The claimed point of diversion may be changed by the department during the examination to make the point of diversion and place of use identical. It may be necessary to change either the point of diversion or place of use legal land descriptions. Changes in legal land descriptions may be based on the claimant's map, USGS maps, U.S. National Forest Service maps, Bureau of Land Management maps, or an aerial photograph. Conflicting data or a confusing claim file may make it necessary to contact the claimant for clarification. [Rule 31\(b\), W.R.C.E.R.](#)

Authorized changes may be made directly on the worksheet. When the claimed point of diversion is changed so that the review or decree abstract will differ from the claim form or amendment, place an asterisk in the brackets to the left of the point of diversion element on the examination worksheet.

Means of Diversion: The means of diversion may be changed by the department during the examination to identify the means of diversion as "Instream" or "Inlake".

Authorized changes will be made directly on the worksheet. When the claimed means of diversion is changed so that the review or decree abstract will differ from the claim form or amendment, place an asterisk in the brackets to the left of the point of diversion element on the examination worksheet. [Rule 31\(d\), W.R.C.E.R.](#)

F. PERIOD OF USE

The period of use is the timeframe within a calendar year when water is used for the claimed purpose. The period of use will be identified on the review and decree abstract as the earliest month/day to the latest month/day. See “Claim Examination: Period of Use” (Section VI.K) for general discussion of period of use. *Only those aspects explicitly addressed in [Rule 30 W.R.C.E.R.](#) pertaining to Other Uses period of use are discussed in this section.*

Claimant contact must occur upon completing examination of the ownership if the period of use is modified by rule; an issue remark exists, or is unclear. [Rules 30\(b\) and 44, W.R.C.E.R.](#) and Section IV.F.

1. Identifying the Claimed Period of Use. Check that the period of use on the claim form does not exhibit clerical errors by the claimant and is consistent with the documentation, if applicable. Also check that the claimed period of use has been properly entered into the database. The period of use on the examination worksheet may be slightly longer than claimed due to the limitation of the database prior to 2001. Correct the database to match the claimed period of use. No asterisk is necessary as the intent of the claim is not being changed.

If the claimed period of use is unclear or cannot be identified for a purpose whose guideline is not year-round, add a period of use (PE) issue remark:

Example: P135 THE CLAIMED PERIOD OF USE EXCEEDS THE USUAL PERIOD OF USE FOR THE CLAIMED PURPOSE WHICH IS **MARCH 15 TO NOVEMBER 15**.

2. Period of Use Guidelines. No specific period of use guidelines have been developed for Other Use claims. The claimed period of use will be compared to what is usual and customary for the claimed purpose. The data sources and materials used to examine the purpose will be used to establish the usual and customary period of use for the claimed purpose. [Rule 30\(a\)\(1\), W.R.C.E.R.](#)

Formerly Decreed Period of Use: When an Other Use claim is based on a decree which specifically identifies a period of use for the claimed purpose, the decreed dates will be the guideline.

3. Examining Period of Use. The usual and customary period of use for Other Uses claims will vary depending on the specific purpose identified. Examine the claimed period of use for reasonableness. Also review any documentation that may note conditions or limitations to the period of use. [Rule 30\(a\)\(1\), \(2\), W.R.C.E.R.](#)

a. Changing Claimed Period of Use. The period of use will not be changed as a result of the examination unless:

- amended by the claimant; [Rule 30\(c\)\(1\), W.R.C.E.R.](#)

- modified by rule (clarified) by the department without claimant contact if the claimed intent is clear or with claimant contact if the claimed intent is unclear. [Rules 30\(c\)\(2\), 33\(b\)\(1\), and 33\(c\), W.R.C.E.R.](#)

4. Period of Use Issues. Note any pertinent issues discovered during the examination on the department's examination worksheet. See "Claim Examination: Period of Use: Period of Use Issues" (Section VI.K.4). An issue may be identified as: [Rule 3\(d\)\(4\), W.R.C.E.R.](#)

- No period of use claimed;
- Claimed period of use differs significantly from that which is usual and customary for the specific purpose identified;
- Insufficient information available to determine the usual and customary period of use for the purpose identified;
- Period of use on the claim form differs significantly from period of use specified in the documentation;
- Feasibility during winter months.

XI. SPECIAL PROVISIONS

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A. AMENDED CLAIMS

A claimant may request and authorize (amend) historical changes to their claim prior to the printing of a Water Court decree ([Rule 34 W.R.C.E.R.](#)). Amendments must be submitted in writing. The department has developed an [Amendment Form](#) (Exhibit XI-1) which is the preferred instrument for amending a claim.

If an amendment is submitted after a decree is issued, the amendment must be processed by the Water Court (if a claimant finds errors after notice of a decree is received, the claimant should object to their water right during the objection period—see “Post Decree Revisions” (Section XIII.E)). All amendments submitted before the printing of the decree should be processed by the department as described below.

The following requirements were implemented by the Supreme Court Water Right Adjudication Rules on July 15, 1987. Any amendments received prior to that date will be acceptable even if they do not contain the requirements in “Amended Claims: Who May Amend” ([Section XI.A.1](#)) and “Contents of Amendments” ([Section XI.A.2](#)) below.

Amendments are required under the following circumstances, but may be used to change any element: [Rule 34\(b\), W.R.C.E.R.](#)

- An adjustment by a claimant to a claim not presently being examined;
- An adjustment by a claimant based on additional information acquired after the initial filing;
- An adjustment to flow rate, volume, priority date, or acres. Acceptable clarifications to these elements are described in the section on each element.

1. Who May Amend. Amendments received after July 14, 1987, will only be accepted from a current owner of the claim as listed in the department records or a legally authorized representative. The amendment may not be submitted by a non-owner, such as a tenant, ranch manager, or a forest service employee. [Rule 34\(c\)\(2\), W.R.C.E.R.](#)

If the current owner does not match the department records, contact the claimant to determine when the change in ownership occurred. If the transaction took place before July 1, 2008, supply the owner with a Water Right Ownership Update ([Form 608](#)). If the transaction occurred after July 1, 2008, and was not updated through the automated ownership update process, further research may be required including geocode assignment. An amendment from a non-record owner cannot be implemented until the database reflects current ownership.

Remember, an amendment is a sworn statement of facts within the affiant’s personal knowledge. If there is a new owner (of record or not) who was not around prior to July 1, 1973, he/she cannot swear to their personal knowledge of pre-July 1, 1973 use. Depending on the facts and reasonableness, if such an amendment is received, consider adding a free text amendment issue remark noting the affiant did not own the

property prior to 1973. The affiant can, however, attach an affidavit of a neighbor or prior owner who does have personal knowledge of pre-July 1, 1973 use to support the amendment.

Amendments received from persons other than the owner listed in the department records will be added to the claim file, but the information will NOT be entered into the database. Add an amendment (AM) issue remark to the department's examination worksheet:

Example: A20 AN AMENDMENT WAS SUBMITTED ON **MM/DD/YYYY** WHICH HAS NOT BEEN IMPLEMENTED. THIS AMENDMENT WAS NOT SUBMITTED BY THE OWNER LISTED IN THE DNRC RECORDS.

Multiple Owners. If an amendment is submitted by one owner for a claim involving multiple owners, remind the affiant that the amendment must be signed and notarized by **ALL** current owners (this statement is on the Amendment Form above the signature).

Send copies of the completed amendment along with an [Amendment Agreement Form](#) (Exhibit XI-2) to the other owners. Request the other owners review the amendment and if in agreement, sign and notarize the Amendment Agreement Form. Alternatively, multiple owners can sign and notarize a copy of the amendment. *All owners need to be noticed of the amendment and show agreement if the amendment is to be implemented.* Place the original and all documents showing agreement in the claim file. Be sure copies of the amendment are clearly marked "COPY" to avoid uncertainty on the scanned record. [Rule 34\(c\)\(2\), W.R.C.E.R.](#)

If not all signatures are obtained, add the following amendment (AM) issue remark to the department's examination worksheet: [Rule 34\(f\)\(4\), W.R.C.E.R.](#)

Example: A21 AN AMENDMENT WAS SUBMITTED ON **MM/DD/YYYY**, REQUESTING TO AMEND THE **PLACE OF USE**. THE AMENDMENT HAS NOT BEEN IMPLEMENTED AS IT HAS NOT BEEN SIGNED BY ALL OWNERS OF DNRC RECORD.

If an owner protests the amendment in writing, place the amendment and protest in the file but do NOT enter the amended information into the database. Add the following amendment (AM) issue remark to the department's examination worksheet:

Example: A25 AMENDMENT WAS SUBMITTED ON **MM/DD/YYYY**. THE AMENDMENT WAS NOT IMPLEMENTED DUE TO DISAGREEMENT AMONG THE OWNERS OF RECORD.

2. Contents of Amendments. Amendments must be submitted in writing. The department has developed an [Amendment Form](#) (Exhibit XI-1) which is the preferred instrument for amending a claim. However, a hand written/typed request which satisfies all of the amendment requirements is legally acceptable. All amendments

received after July 14, 1987 must contain: [Rule 34\(c\), W.R.C.E.R.](#)

- the date the amendment was received;
- the claim number of the claim being amended (a separate amendment form for each claim is preferred but not required);
- **a map.** If the place of use or point of diversion is amended, request the claimant provide a map showing the new POU or POD. Amendments to the maximum acres may also necessitate an amendment to the POU;
- reasons for the amendment (preferred but not required); and
- notarized signature of all current owners listed in the department's records. The notarized signature of a legally authorized representative is acceptable.

If proper notarized signatures of all record owners are requested and cannot be obtained or there is no response, do not process the amendment. Add the following amendment (AM) issue remark to the department's examination worksheet:

Example: A19 AN AMENDMENT WAS SUBMITTED ON **MM/DD/YYYY** REQUESTING TO AMEND THE **VOLUME TO 2.00 ACRE-FEET.** DNRC REQUESTED A SIGNED AND NOTARIZED AMENDMENT FORM BE SUBMITTED. THE AMENDMENT HAS NOT BEEN IMPLEMENTED AS IT HAS NOT BEEN PROPERLY FILED.

In order to qualify for prima facie status like the original Statement of Claim, an amendment must include the same type of supporting documentation for particular elements, just as the original claim did. This can include maps, letters, affidavits, or other documents.

3. Processing Amendments. Processing of amendments depends on where the particular basin is in the decree process. [Rule 34\(d\), W.R.C.E.R.](#)

a. Amendment Received before Basin Examination. Review the amendment for clarity of intent and be sure it contains all requisite items. Complete the following steps: [Rule 34\(d\)\(1\), W.R.C.E.R.](#)

- Date-stamp the amendment and all attached documents with the date received.
- Make sure the claim number being amended is clearly identified on the amendment and on all attached documentation. If the amendment is in letter form, write the claim number in the upper right-hand corner.
- Arrange all documentation in chronological order in the claim file.

- In the database, change the element(s) as amended. Change the element's origin to 'Amended' in the database.
- Add an appropriate amendment (AM) information remark. The date in the remark should be the date the amendment was received. [Rule 34\(f\)\(2\)](#), [W.R.C.E.R.](#)

Examples: A5 THE **PERIOD OF USE** WAS AMENDED BY THE CLAIMANT ON **MM/DD/YYYY**.

A15 THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON **MM/DD/YYYY**: **FLOW RATE, VOLUME, MAXIMUM ACRES, PLACE OF USE**. (Note: Two or more elements can be coded.)

- Send the amendment and all attachments to [Records](#) with a [routing slip](#) indicating the amendment and the attached materials should be scanned and filed with the claim to await examination.

Amendments Received Prior To July 15, 1987. These amendments, when encountered during examination, will be considered acceptable even if they do not contain the requirements above. At a minimum, the amendment must be in writing with a claim number, signature, and date. Check that the amended elements have been properly entered into the database. Add the necessary amendment information remark to the examination worksheet to document the amendment.

b. Amendment Received during Basin Examination. For amendments received during basin examination, complete the following steps: [Rule 34\(d\)](#), [W.R.C.E.R.](#)

- Process the amendment as in "Processing Amendments: Amendments Received before Basin Examination" ([Section XI.A.3.a](#)) above.
- After entering the amended information in the database, generate a new examination worksheet and proceed with examination. Document the examination process chronologically to make the file easy to follow in the future. If the amendment drastically alters the water right, see "Amended Claims: Examining Amendments" ([Section XI.A.4](#)).
- Amendments received during basin examination should be retained with other examination materials until the completion of the basin, at which time all materials will be scanned by Records.

c. Amendment Received after Basin Examination and Prior to Printing Decree. Amendments received after a basin is examined may be processed up until the time the basin is "locked down" in the database as the Water Court prepares to issue a decree. Depending on the stage of preparation, follow these guidelines:
Prior to Summary Report. Contact a supervisor to confirm whether the

amendment can be incorporated into the summary report prior to printing. If so, process the amendment as in “Amendment Received during Basin Examination” ([Section XI.A.3.b](#)) above. If the amendment cannot be incorporated into the summary report, follow the procedures described in “Amendment Received Prior to Decree” (directly below).

Prior to Decree. Contact a supervisor (or the specialist acting as the primary contact between the office/team and the water master) to confirm whether the amendment can be incorporated into the decree prior to printing. If so, process the amendment as in “Amendment Received during Basin Examination” ([Section XI.A.3.b](#)) above. It may be necessary to contact a database administrator to enter data in the database Notify the Water Master reviewing the Summary Report and request a Summary Report abstract for the Water Court. If the amendment cannot be processed for inclusion in the decree, see “Amendment Received after Decree Issued” ([Section XI.A.3.d](#)) below. Add the following amendment issue remark: [Rule 34\(d\)\(1\), W.R.C.E.R.](#)

Example: A28 AN AMENDMENT WAS SUBMITTED ON **MM/DD/YYYY** TO **AMEND THE PLACE OF USE AND MAXIMUM ACRES.** THIS AMENDMENT WAS NOT SUBMITTED IN TIME FOR DNRC TO PROCESS PRIOR TO ISSUANCE OF THE WATER COURT **DECREE.**

d. Amendment Received After Decree Issued. Claimants wishing to amend or correct an error with their claim in a decreed basin should be directed to file an [objection](#) with the Water Court if the objection list has not been published. If an objection list has been noticed, the claimant should file a motion to amend. See “Post-Decree Assistance” (Section XIII) for further details on communicating with the Water Court. [Rule 34\(d\)\(2\), W.R.C.E.R.](#)

4. Examining Amendments. Amendments will become part of the claim and will be examined following procedures for the purpose. [Rule 34\(e\), W.R.C.E.R.](#)

Occasionally an amendment may be submitted which so completely changes the claim that it could be considered a totally different water right from what was originally filed. Bring such instances to the attention of a supervisor for guidance. For example, amending an exempt claim (defined in Section II) to a non-exempt use or amending a claim to add another use may be a legal issue. Process the amendment as described in “Amendment Received during Basin Examination” ([Section XI.A.3.b](#)) above, and add the following amendment (AM) issue remark to the examination worksheet: [Rule 34\(f\)\(4\), W.R.C.E.R.](#)

Example: A27 AN AMENDMENT WAS SUBMITTED **MM/DD/YYYY** TO AMEND THE **POINT OF DIVERSION, PLACE OF USE, PRIORITY DATE, SOURCE, FLOW RATE, AND PURPOSE.** THE AMENDMENT SUBSTANTIALLY CHANGES THE ORIGINALLY FILED

STATEMENT OF CLAIM. (See also Consolidation of POU, POD, Sources, VII.G.)

B. IMPLIED CLAIMS

[Rule 35, W.R.C.E.R.](#)

1. What and Why. An "Implied Claim" is a claim authorized by the Water Court to be separated and individually identified when the statement of claim includes multiple rights.

Each water right should have been filed on a separate claim form. When it appears that a single claim contains more than one right, certain steps will be taken to determine if an implied claim should be generated. Only the Water Court can authorize the generation of an implied claim. [Rule 35\(a\)\(b\), W.R.C.E.R.](#)

Evidence of the existence of additional rights may appear on the claim form as multiple priority dates, sources, or purposes. Evidence may also exist in the attached maps and documentation. Usually evidence from the attachments must be fairly strong before considering sending the claim to the Water Court for review.

Information and data not included on or attached to the statement of claim, or filed before April 30, 1982, will not be considered for generation of an implied claim by the Water Court.

2. Request for Authorization Process Pre-Decree.

a. Request to Create an Implied Claim. Whenever a single claim appears to contain more than one right, review the claimant's other claims:

- If the claimed additional right is already on a separate claim, document this on both examination worksheets. Do not proceed further in the implied claim process.
- If there is doubt whether an additional right exists or about it being on another claim, contact the claimant. [Rules 35\(b\) and 44, W.R.C.E.R.](#)
 - If the claimant confirms there is no additional right or it is covered by another claim, document this on the claim examination worksheet. This ends the implied claim review of this claim.
- If the claimant does not respond to contact, or if the information gained is incomplete or inconclusive, do not proceed further in the implied claim process. Document the results in the claim file and apply the pertinent issue remarks to the claim.
- If the claimant confirms multiple rights and wants to pursue an implied claim and pay any required fees, send a "Request for Authorization to Create an Implied Claim" ([Figure XI-1](#)) with the complete claim file to the Water Court. Be sure to "cc" the claimant on the correspondence with the Water Court.

- If uncertain the additional water right is covered by another claim, send both claim files to the Water Court. If the water master denies the “Request to Create an Implied Claim”, include the request and the denial in the claim file. This ends the implied claim review for this claim.

b. Request for Authorization of an Implied Claim. Policies and procedures in affect during and shortly after the claim filing period allowed the department to generate implied claims *without* Water Court authorization. For any implied claims which do not contain Water Court authorization and it is confirmed that more than one right is involved, send a “Request for Authorization of an Implied Claim” ([Figure XI-2](#)) and all claim files to the Water Court. Be sure to “cc” the claimant on the correspondence with the Water Court.

3. Generating an Implied Claim Pre-Decree. When the Water Court has authorized an implied claim, transfer the additional right to a separate statement of claim form. The implied claim will usually be completed by the claimant or according to their direction and authorization. It may be necessary for the claimant to submit an amendment for the original claim. [Rule 35\(b\),\(c\),\(d\), W.R.C.E.R.](#)

All items on the statement of claim form should be completed, including the map and documentation. If documentation from the original claim is extensive, reference the original claim file in the general comments area of the implied claim examination worksheet.

The claimant's notarized signature is required, unless otherwise ordered by the Water Court. Request filing fees, if appropriate, pursuant to [§85-2-225, MCA](#), and [Rule 35 W.R.C.E.R.](#)

Place the implied claim in a labeled manila letter-sized file folder. A copy of the Request for Authorization and Water Court authorization should be included in both the original and implied claim files.

a. Implied Claim Fees. Implied claims are subject to the same fee requirements as an original Statement of Claim. See “Checking for Correct Data Entry: Checking Fee Paid” (Section VI.A.3) and [§85-2-225, MCA](#) for further detail on claim fees. [Rule 35\(d\)\(1\), W.R.C.E.R.](#)

If the maximum (\$480) in filing fees has not been met already, the claimant will owe an additional \$40 per implied claim, unless the implied claims are exempt-multiple use (instream or groundwater domestic and stock on the same source). If the original claim was filed late and is not an exempt right, the implied claim will get the same late filing date and be subject to the same \$150 late claim processing fee (see Late Claims in [Section XI.C](#)).

FIGURE XI-1

(State of Montana letterhead)

REQUEST FOR AUTHORIZATION TO CREATE AN IMPLIED CLAIM

TO: Montana Water Court

FROM: [Name], Water Resources Specialist
[Location] Water Resources [Regional/Unit] Office

DATE: [Date]

RE: Claim No. [000000-00]

This irrigation claim has two points of diversion. The first diversion is a diversion dam for a water spreading system. The second diversion is a dam and storage reservoir from which the claimant pumps for his sprinkler system.

The 1910 priority date fits the water spreading system but not the sprinkler system. According to the claimant, water was first pumped from Bear Creek in 1966 to flood irrigate. After trying different types of irrigation, including different types of sprinklers, a pivot system was installed in 1971.

In summary, this claim appears to contain two water rights. One right is for a water spreading system with a 1910 priority date. The other right is for a sprinkler system with a 1966 priority date. The complete file for this claim is enclosed. Please review and determine whether an implied claim should be generated. Thank you for your consideration in this matter.

Enclosure

cc: [CLAIMANT]

FIGURE XI-2

(For Implied Claims Created Without Water Court Authorization)

(State of Montana letterhead)

REQUEST FOR AUTHORIZATION OF AN IMPLIED CLAIM

TO: Montana Water Court

FROM: [Name], Water Resources Specialist
[Location] Water Resources [Regional/Unit] Office

DATE: [Date]

RE: Claim No. [000000-00]

The above claim was received April 27, 1982, as a timely filed statement of claim. Supporting documentation included notices of appropriation for:

- * 8 cfs - Big Hole River - September 20, 1901
- * 100 miners inches - Milky Spring - July 3, 1897

According to policy in affect during and shortly after the claim filing period, authorization from the Water Court to create implied claims was not required. Therefore, on November 22, 1982, during the clarification process, the July 3, 1897 right was separated and implied claim 41D 000000-00 was created.

At this time, I would like to request the Water Court's approval of implied claim 41D 000000-00. Enclosed for your review are both claim files.

Thank you for your consideration in this matter.

Enclosures

cc: [CLAIMANT]

b. Failure to Pay Implied Claim Fee. If a fee is required, the appropriate fees must be collected in order to process the implied claim. If the claimant does not submit the appropriate fee, DO NOT process the implied claim. Document in the claim file that an implied claim was requested and authorized by the Water Court, but the filing fee for the implied claim was not submitted. File the Request and the Water Court's authorization in the claim file. This ends the implied claim process for this claim.

c. Processing Once All Requirements are Met. Once all implied claim requirements have been met, in the upper right corner of the new claim form write the date the original claim was received (see [Figure XI-3](#)). Stamp or write IMPLIED CLAIM at the top of the claim form. Write the date the implied claim is generated on the label described below.

Complete the following items at the top left corner of the claim form. See [Figure XI-3](#) for proper placement of these items.

- claim number
- basin number
- climatic area code (irrigation claims only)
- filing fee collected, if any
- processing fee, if any

Attach a label over Item 2 (person completing form) on the claim form. This label states the claim has been authorized by the Water Court and refers to the original claim number. Its format is shown in [Figure XI-3](#).

4. Processing of Implied Claims Pre-Decree. Enter the information from the implied claim into the database (see "Claim Examination Documents\Implied Claims" on the Adjudication Shared Drive for instruction on creating a new water right) and generate an examination worksheet. Examine the implied claim following procedures for the purpose. In addition, add information remarks to both the implied claim and the original claim to reference each other. [Rule 35\(d\), W.R.C.E.R.](#)

Add the following implied claim (CI) information remark to the examination worksheet of the **implied** claim:

Example: C5 THIS IMPLIED CLAIM WAS AUTHORIZED BY THE WATER COURT BASED ON INFORMATION IN CLAIM NO. **000000-00**.

Add the following implied claim (CI) information remark to the examination worksheet of the **original** claim: [Rule 35\(e\)\(2\), W.R.C.E.R.](#)

Examples: R15 IMPLIED CLAIM NO. **00000000** WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.

R16 THE IMPLIED CLAIMS LISTED FOLLOWING THIS STATEMENT WERE AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM. **00000000, 00000000, 00000000**.

Remember to add each child claim number to the child tab for the parent claim in the database.

Once examination is complete, file the claim with other completed files in the basin. Be sure the new claim is added to the claim roster for the basin. If other basin files have already been scanned, this new claim should be routed to Records with appropriate scanning and filing instructions.

Outstanding Requests. As examination of the basin nears completion (prior to summary preparation), check for any outstanding requests for implied claims at the Water Court. If the Water Court is unable to process the outstanding request, add the appropriate implied claim (CI) issue remark (C8 or C9). If an implied claim is authorized and time allows before the Summary Report is issued, examine the claim following procedures for the claimed purpose.

Examples: C8 PURSUANT TO 1982 POLICY, THIS IMPLIED CLAIM WAS GENERATED BASED ON INFORMATION IN CLAIM NO. **000000-00**. CURRENT POLICY NOW REQUIRES IMPLIED CLAIMS BE AUTHORIZED BY THE WATER COURT. ON **MM/DD/YYYY**, A REQUEST FOR AUTHORIZATION TO CREATE AN IMPLIED CLAIM WAS SENT TO THE WATER COURT. AS OF **MM/DD/YYYY**, NO RESPONSE HAS BEEN RECEIVED FROM THE WATER COURT.

C9 IT APPEARS MORE THAN ONE WATER RIGHT MAY BE INVOLVED. ON **MM/DD/YYYY**, A REQUEST FOR AUTHORIZATION TO CREATE AN IMPLIED CLAIM WAS SENT TO THE WATER COURT. AS OF **MM/DD/YYYY**, NO RESPONSE HAS BEEN RECEIVED FROM THE WATER COURT.

5. Processing of Implied Claims Post-Decree. If the Water Court requests the department's assistance in creating an implied claim in a decreed basin, comply with the Court's Order. Usually such a request is for technical assistance only. Send the Court the results (per the order) in memorandum and map form. The claim file should also be returned to the Court upon completing the request for assistance. Note only authorized staff may make post-decree database changes or corrections authorized by the Court. See "Post Decree Assistance" (Section XIII) for further information.

FIGURE XI-3

IMPLIED CLAIM NUMBER **DATE ORIGINAL CLAIM RECEIVED**

CLIMATIC AREA

Form No. 76-1 R2/80

Implied Claim
STATEMENT OF CLAIM
FOR EXISTING WATER RIGHTS

RECEIVED
June 2, 1980

43D 30031607 **IRRIGATION**

3 For the Water Courts of the State of Montana

FF = \$40 (0,*) ← **FILING FEE RECEIVED FOR THIS IMPLIED CLAIM (FF)****

PF = \$150.00 ← **PROCESSING FEE FOR LATE CLAIMS (PF)**

1. Owner of Water Right _____ / _____ / _____
Last First Middle Initial

Co-Owner or Other Interest Owner _____ / _____ / _____
Last First Middle Initial

Address _____

City _____ State _____ Zip Code _____

Home Phone No. _____ Business Phone No. _____

FORM AUTHORIZED BY WATER COURT

DATE GENERATED: _____

EXAMINER: _____

REGIONAL OFFICE: _____

ORIGINAL CLAIM ID: _____

REMARKS: _____

3. Name of ditch, creek or river _____

Use: Irrigation

LABEL

**If no filing fee is to be collected:
 0 = no fee received this claim (as with decreed rights)
 * = fee maxed out (\$480 paid for filing claims in this [Water Court Division](#))

C. LATE CLAIMS
[Rule 36, W.R.C.E.R.](#)

A late claim is an untimely filed claim for an existing water right forfeited pursuant to the “conclusive presumption of abandonment” under [§85-2-226, MCA](#), and then remitted under [§85-2-221, MCA](#), by the 1993 Legislature. Late claims were filed with the department after 5:00 p.m. April 30, 1982 and physically submitted or postmarked on or before July 1, 1996. Late claims are subject to certain terms and conditions pursuant to [§§85-2-221\(3\), 85-2-222](#) and [85-2-225, MCA](#), which applies to late claim processing fees and exempt claim filing fees for claims filed after April 30, 1982. See also [Rule 36\(a\), W.R.C.E.R.](#)

Claimants who did not file a claim by 5:00 PM, April 30, 1982 had the opportunity to file a claim with the department through July 1, 1996. To be accepted, the claim had to be physically submitted to the department or postmarked in the U.S. mail on or before the July 1, 1996 deadline. The department will no longer accept late claims. If a late claim is submitted, it should be returned to the claimant. [Rule 36\(b\), W.R.C.E.R.](#)

Closed Basins. Pursuant to reserved water right compacts ratified by the legislature prior to July 1, 1993 (effective date of SB310 - late claim legislation), certain basins were closed to the filing of late claims. Basins which were closed pursuant to compacts are:

- Basin 42A: Rosebud Creek moratorium in effect. No late claims could be filed.

If a late claim is filed in a basin which is closed pursuant to a reserved water right compact, add the following late claim (LC) issue remark to the claim:

Example: L10 THIS LATE CLAIM IS IN A DRAINAGE WHICH MAY BE CLOSED TO FURTHER APPROPRIATION PURSUANT TO A COMPACT RATIFIED BY THE LEGISLATURE PRIOR TO JULY 1, 1993.

1. Examining Late Claims. As of July 1, 1996, all late claims are afforded a conditional remission of forfeiture, (i.e., claimants were allowed to file late claims but with conditions), and therefore, will be examined following procedures for the claimed purpose. [Rule 36\(c\), W.R.C.E.R.](#)

Shortly after the July 1, 1996 deadline, a review of all late claims was conducted by the department. It was then that late claims were identified as either “A”, “B”, or exempt. [Rule 36\(a\), W.R.C.E.R.](#)

Check the date received and information in the claim file to ensure the claim is late. During the clarification period, amendments were often submitted on claim forms. The date the amended claim was received may have been entered into the database instead of the date the original claim was received.

a. “A” Late Designation. Late claims were designated as “A” when: [Rule 36\(d\)\(1\), W.R.C.E.R.](#)

- the claim was placed in the U.S. mail and postmarked on or before 5:00 p.m. April 30, 1982, (i.e., not physically at the DNRC prior to 5:00 p.m. April 30, 1982) or
- if there was no evidence of the date of mailing, but there was evidence of execution (e.g., date the claim was notarized) on or before 5:00 p.m., April 30, 1982, *and* the claim was received by the department on or before May 7, 1982.

All such “A” claims should have the following late claim (LC) information remark:

Example: L5 CLAIM FILED LATE **MM/DD/YYYY**. AS MANDATED BY SECTION [85-2-221\(3\), MCA](#), THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL FEDERAL AND INDIAN RESERVED WATER RIGHTS.

“A” late claims retain the claimed priority date, but are subordinate to federal and Indian reserved water rights. Note that the “A” late designation is on the examination worksheet and in the Historical tab in the database.

b. “B” Late Designation. “B” late claims are all other claims, EXCEPTING exempt claims, physically submitted to the department or postmarked after May 7, 1982 and on or before July 1, 1996. “B” late claims should have the following late claim (LC) information and issue remarks: [Rule 36\(d\)\(2\), W.R.C.E.R.](#) and the October 1, 2003 Water Court Order on Late Claim Remarks.

Examples: L6 CLAIM FILED LATE **MM/DD/YYYY**. AS MANDATED BY SECTION [85-2-221\(3\), MCA](#), THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL FEDERAL AND INDIAN RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

L7 CLAIM FILED LATE **MM/DD/YYYY**. IN ADDITION TO BEING SUBORDINATE TO ALL FEDERAL AND INDIAN RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS CLAIM MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION [85-2-221, MCA](#).

“B” late claims receive an *enforceable priority date* of June 30, 1973. Note this on the examination worksheet and in the Enforceable Date field (under the Priority Date element) in the database when a claim receives the “B” late designation in the Historical tab.

c. Exempt Claims. Exempt claims filed after 5:00 p.m. April 30, 1982 and physically submitted or postmarked on or before July 1, 1996, which were exempt from the filing requirements in [§85-2-222, MCA](#), are NOT considered to be late claims. The Department allowed water users to fill out and submit to the Department a Form 627 wherein they could describe on a paper record for the Department to keep exempt rights that were not filed in the adjudication, but a Form 627 did not amount to an official “filing” of their exempt rights, those described exempt rights were not included in the adjudication of water rights, and the use of Form 627 was discontinued in 2008. SB 355 of the 2013 Session provides a petition process before the Water Court for owners of existing rights exempt from filing who did not voluntarily file their exempt claims to request a judicial determination from the Water Court of their existing exempt rights claims.

Exempt claims are:

- Stockwater use directly from source (no manmade diversion);
- Stockwater use from a groundwater source;
- domestic use (including single and multiple domestic, and lawn and garden use) from a groundwater source, or
- domestic use (including single and multiple domestic, and lawn and garden use) directly from instream (no manmade diversion).

NOTE: Domestic use as defined by statute includes single household use, multiple domestic use, and lawn and garden use. All of these purposes would be exempt from the filing requirements.

Late filed exempt claims should have the following late claim (LC) information remark, instead of any late claim issue remark:

Example: L8 CLAIM FILED **MM/DD/YYYY**. THIS RIGHT IS AN EXEMPT RIGHT VOLUNTARILY FILED UNDER SECTION [85-2-222, MCA](#).

d. Fees for Late Filed Claims. All late filed claims, including “A” and “B” designated late claims and exempt claims, are subject to the initial claim filing fee as set in [§85-2-225, MCA](#). In addition, all “A” and “B” designated late claims are each required to pay a \$150 late claim processing fee. This late claim processing fee DOES NOT apply to late filed exempt claims.

This late claim processing fee must be paid to the department. If no fee is collected, the appropriate fee insufficient (FI) issue remark must be added to the examination worksheet:

Example: F35 PROCESSING FEE INSUFFICIENT TO COVER LATE CLAIM. TOTAL AMOUNT DUE \$150.00.

Most late filers paid this fee when they filed their late claims. For those that did not, part of the administrative process included two statewide attempts to collect such fees in the late 1990's. If a claimant decides now that the claim isn't worth the fee, they may be willing to withdraw the late claim (see [Section XI.E](#)).

If the fee insufficient issue remark is on the water right, notify the claimant of the issue and processing fee in the claimant contact letter sent at the conclusion of examining the ownership.

If a late filed exempt claim is found to NOT be exempt, note this on the examination worksheet and attempt to collect the \$150 late claim processing fee. If the fee is not collected, add the fee insufficient (FI) issue remark:

- Examples:
- F25 FILING FEE INSUFFICIENT TO COVER LATE CLAIM. TOTAL AMOUNT DUE **\$40.00**.
 - F30 FILING FEE INSUFFICIENT TO COVER LATE CLAIMS. TOTAL AMOUNT DUE **\$80.00** FOR CLAIM NOS. **000000-00, 000000-00**.
 - F35 PROCESSING FEE INSUFFICIENT TO COVER LATE CLAIM. TOTAL AMOUNT DUE \$150.00.

D. OWNERSHIP UPDATES
[Rule 38, W.R.C.E.R.](#)

The DNRC Water Right Ownership Update process is the mechanism used to update the department's water right ownership records when a change in ownership has occurred based on [§85-2-403](#) and [§§85-2-421](#) through [85-2-426, MCA](#) (effective July 1, 2008). Also see "Claim Examination: Owner Name and Address" (Section VI.B) for additional discussion on ownership.

This process does not legally transfer water rights or legally determine water right ownership, but is simply the process the department is statutorily authorized to use to update the department's centralized ownership records. It is designed to reflect the legal changes in ownership as documented in the varied legal instruments used to transfer ownership of real property. As of July 1, 2008, the process is linked to Department of Revenue data, which in theory is based on the legal instrument of transfer. [Rule 38\(a\), W.R.C.E.R.](#)

Administrative Guideline No. 14, "DNRC Water Right Ownership Update Guideline" revised 2009, contains the procedures for processing ownership updates by the department. This guideline is available from New Appropriation staff. Ownership updates are categorized as: total ownership updates, divided interest ([Form 641](#)), exempt (reserved) ([Form 642](#)), and severed ([Form 643](#)):

- *Total* (100%) ownership updates occurring after July 1, 2008 are to be processed electronically through an update to the Water Right Database from the Department of Revenue Database. The two systems are linked through the geocodes of the parcels of record—**geocodes are critical**. Updates occurring before July 1, 2008, are processed by hand using [Form 608](#), and must be entered in the database by department staff.
- *Divided* interest ("split") ownership updates, where only a portion of the right is transferred, require the filing of [Form 641](#) with the department. The water right is divided among the owners—this can be very specific in the deed or proportional based on the historical place of use. (See procedures on splitting water rights. Exhibit XI-3)
- *Exempt (reserved)* ownership updates require the filing of [Form 642](#) with the department. This situation involves a land transaction but the water rights are not sold with the land. The water right is exempted (reserved) from the land transaction.
- *Severed* ownership updates require the filing of [Form 643](#) with the department. This situation involves the removal of a water right from the land but there is no land sale. The water right is severed from the land.

1. New Owner Determined but Claim Lacks Ownership Update. If a change of ownership has occurred prior to July 1, 2008, and no ownership update (Form

608) has been filed, contact either the former owner or new owner with instructions on filing an ownership update. Ownerships updated for transactions after July 1, 2008 are automated. The file should contain a copy of the ownership acknowledgement.

Important - Until an ownership update has been properly filed, instructions or amendments from new owners should not be implemented. Accept (date stamp) and document information by the new owner, but do not incorporate it until the ownership update is received. In the reverse situation where amendments or instructions from previous owners are filed before an ownership update is received but after the land sale is completed, do not process the amendments (this would be evident on the AllCad layer in Water Rights Mapper). A determination may be made to discuss an amendment/change with the new owner. If the new owner agrees, an [Amendment Agreement Form](#) or other sworn affidavit can be completed by the new owner. This is sufficient to proceed with processing. In either event, keep the information in the claim file, document the circumstances, and add the appropriate remarks.

Add the appropriate ownership or amendment issue or information (OW) remark to the examination worksheet (see Section V: Ownership or Transfers for additional remarks):

- Examples:
- O50 AS OF **MM/DD/YYYY**, THIS WATER RIGHT APPEARS TO BE OWNED BY **JOHN L. AND JANE W. DOE**, **1111 DOE DR.**, **BIG CITY, MT 55555-5555** .
 - O55 ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF **MM/DD/YYYY**, THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY **JOHN DOE**.
 - O56 ACCORDING TO CADASTRAL PROPERTY OWNERSHIP RECORDS, AS OF **MM/DD/YYYY** A PORTION OF THE PROPERTY ON WHICH THIS WATER RIGHT IS USED APPEARS TO BE OWNED BY **JOHN DOE**.
 - O85 **MONTANA** COUNTY RECORDS AS OF **MM/DD/YYYY** SHOWS PLACE OF USE IS OWNED BY **DOE BROTHERS**.

2. Extended Claim Identification Numbers. Prior to July, 2005, when a water right was split, each portion was assigned a different extended ID number. The first split might retain the original claim number and the subsequent portions received the claim number with a different extended number (e.g., 1297907-00 for the first portion, 1297907-01 for the second portion, 1297907-02 for the third portion, etc).

Current procedures for generating split claims involves leaving the original claim number with one portion, and assigning distinct new claim numbers to each of the other portions of the claim. These distinct numbers are acquired from the database when

creating a new claim during the split process. See Administrative Guideline No.14 for detailed instructions on the process.

3. Geocodes. All water rights are assigned a geocode based on the POU. The county assigns the geocode for each parcel and that information is passed to the Department of Revenue. This information is served to the public through the [Montana Cadastral Mapping Program](#) system. Automation of ownership to DNRC depends on the geocode assignment to the water right and must be accurate. See “Owner Name and Address: Geocodes” (Section VI.B.4).

E. WITHDRAWAL OF A CLAIM

A withdrawn claim is a claim removed from the adjudication process by the claimant ([Rule 37 W.R.C.E.R.](#)). Claimants withdraw claims for numerous reasons, the most common reasons being intent to develop water in the future, a right has been abandoned, or the right duplicates another right. Withdrawn claims are included in the Water Court decree.

1. Request to Withdraw Claim. The complete request, either as an affidavit or on the preferred [Request to Withdraw Statement of Claim Form](#) (Exhibit XI-4), will be: [Rule 37\(a\), W.R.C.E.R.](#)

- in writing
- dated
- contain the notarized signatures of all current owners of the right as listed in the department records*
- indicate the reason(s) for withdrawal (optional)

*If property owners are identified that differ from department records, an ownership update should occur by statute. This includes federal and state entities. As an alternative, the non-record owner could submit a Withdrawal Agreement Form prior to the withdrawal being processed.

If there are deficiencies, contact the claimant. See “Processing Withdrawn Claims” ([Section XI.E.2](#)) below.

All requests to withdraw a claim or ownership interest in a claim for a decreed water right should be forwarded to the Water Court for processing.

a. Multiple Owners. If a request to withdraw is submitted by one owner for a claim involving multiple owners, remind the affiant that the request must be signed and notarized by **ALL** current owners (this statement is on the Request to Withdraw Statement of Claim Form above the signature). [Rule 37\(a\)\(2\), W.R.C.E.R.](#)

Send copies of the completed request to withdraw along with a [Withdrawal Agreement Form](#) (Exhibit XI-5) to the other owners. Request the other owners review the request to withdraw and if in agreement, sign and notarize the Withdrawal Agreement Form. Alternatively, the multiple owners can sign and notarize a copy of the Request to Withdraw Statement of Claim form. *All owners need to be noticed of the request and show agreement if the withdrawal is to be implemented.* Place the original and all documents showing agreement in the claim file. Be sure copies of the request for withdrawal are clearly marked "COPY" to avoid uncertainty on the scanned record.

If not all signatures are obtained, add the following withdrawn claim (TC) issue remark to the department’s examination worksheet:

Example: T55 A REQUEST TO WITHDRAW SUBMITTED **MM/DD/YYYY** WAS NOT SIGNED BY ALL OWNERS OF RECORD. DNRC REQUESTED THE OTHER OWNERS SUBMIT A SIGNED AND NOTARIZED WITHDRAWAL FORM. AS OF **MM/DD/YYYY**, A WITHDRAWAL FORM HAS NOT BEEN SUBMITTED BY ALL OWNERS OF RECORD, THEREFORE, THIS REQUEST TO WITHDRAW HAS NOT BEEN PROCESSED.

If one of the owners protests the request to withdraw in writing, place the request and protest in the file. Do NOT implement the request to withdraw. Add a free text issue remark to the department's examination worksheet:

Example: TCIS A REQUEST TO WITHDRAW STATEMENT OF CLAIM WAS SUBMITTED ON **MM/DD/YYYY**. THE REQUEST WAS NOT IMPLEMENTED DUE TO DISAGREEMENT AMONG THE OWNERS OF RECORD.

b. Non-Record Owner. When a new owner NOT listed in the department records requests to withdraw one or more claims, first determine when the change in ownership occurred.

If the transfer took place prior to July 1, 2008, the new owner should file a [Form 608](#) with the department before the request to withdraw can be considered. If the transfer occurred after July 1, 2008, further research may be required to determine why a water right may not have automatically transferred to the new owner (geocode assignment, division of water right, etc). See Administrative Guideline No. 14 for procedures in this situation.

c. Request to Withdraw an Interest in a Claim. Occasionally one of many owners on a claim wishes to remove themselves as an owner of the claim. They can file a 'Request to Withdraw Interest in Statement of Claim,' but it is not encouraged. This process should be used only when an owner wishes to relinquish their interest in the claim. This process should not be used as a way to correct ownership or transfer ownership. The withdrawal of interest will be made part of the file and an ownership information remark added:

Example: OW JOHN SMITH HAS WITHDRAWN HIS INTEREST IN THIS FROM THE WATER RIGHT ON MM/DD/YYYY. NO OWNERSHIP UPDATE WAS FILED.

Filing a withdrawal of interest will remove an owner. Be aware such requests have the potential to reduce the overall water right. All co-owners must agree if the request to withdraw interest reduces the overall water right. Unless all co-owners sign off, the claim should not be reduced and an issue remark similar to the following should be added to the claim.

Example: T60 WITHDRAWAL OF INTEREST IN WATER RIGHT CLAIM WAS RECEIVED ON MM/DD/YYYY THE REDUCTION IN VOLUME, ACERAGE, and FLOW RATE HAS NOT BEEN IMPLEMENTED AS WRITTEN AUTHORIZATION HAS NOT BEEN RECEIVED FROM ALL CO-OWNERS. THESE ELEMENTS MAY BE EXCESSIVE.

If all co-owners sign off on the reductions to the claim, implement the reductions and add an information remark similar to the following:

Example: T4 ON MM/DD/YYY MARGIE HAIKKA FILED A REQUEST TO WITHDRAW OWNERSHIP INTEREST IN THIS CLAIM. THE FOLLOWING ELEMENTS WERE REDUCED BASED UPON THIS REQUEST AND THE AGREEMENT OF ALL REMAINING CO-OWNERS: FLOW RATE AND VOLUME.

If an examiner encounters such a situation during the examination process, they must review the request with a supervisor.

2. Previously Terminated/Withdrawn Claims. Withdrawal procedures varied from 1979 to the present. Prior to June 29, 1982, some claims were *terminated* by the department because they were grossly incomplete, were filed on incorrect forms, or lacked the required filing fees. After a June 29, 1982 letter from the Water Court, no claims were terminated without the claimant's written authorization – amounting to a withdrawal rather than a termination. “Termination” has become primarily a New Appropriation action. The Water Court recently moved from using the term ‘termination’ in its orders to that of ‘dismissed’. Review all previously terminated/withdrawn claims to determine if the claim was withdrawn properly per “Request to Withdraw” (Section XI.E.1) and “Determining Valid Withdrawals” below.

a. Determining Valid Withdrawals. A request to withdraw must clearly indicate which claim is being withdrawn and must clearly indicate withdrawal. Requests meeting the following signature requirements are considered properly withdrawn and can be examined as such.

- Prior to March 30, 1983, the signatures of all current owners were required. The signatures did not need to be notarized.
- After March 30, 1983, the notarized signatures of all current owners were required.
- Federal Agency Claims: A notarized signature is required for a withdrawal request submitted after July 15, 1987. Prior to July 15, 1987, a request to withdraw a claim by a federal agency will be considered valid if not notarized.

3. Processing Withdrawn Claims. Withdrawals received before or during basin examination will be reviewed for completeness as noted above in “Request to Withdraw Claim” ([Section XI.E.1](#)). Also review the request for reasonableness. For example, the claimant may submit a request to withdraw in error, believing they have claims in duplicate when this is not the case. Process a request to withdraw upon receipt.

If the request meets the requirements in “Request to Withdraw Claim” ([Section XI.E.1](#)): [Rule 37\(b\), W.R.C.E.R.](#)

- Stamp the withdrawal request with the date of receipt;
- Change the status from “Active” to “Withdrawn” in the “Create and Maintain Water Right Detail” screen in the database.
- Add the appropriate withdrawn claim (TC) information remark (the date in the remark is date received):

Examples: T5 THIS CLAIM WAS WITHDRAWN FROM THE ADJUDICATION PROCESS AT THE REQUEST OF THE CLAIMANT ON **MM/DD/YYYY**.

T9 THIS CLAIM WAS WITHDRAWN PURSUANT TO ARTICLE VII(C) OF THE CHIPPEWA CREE TRIBE-MONTANA COMPACT. **000000-00**.

If the request does not meet the requirements:

- Do not process the Request to Withdraw Statement of Claim;
- Place the request in the file and add the appropriate withdrawn claim (TC) issue remark (T55 or TCIS above) to the examination worksheet.

Duplication or Replacement. When claims have been withdrawn because of duplication add the appropriate withdrawn claim (TC) information remark to the examination worksheet:

Examples: G24 THIS CLAIMED WATER RIGHT HAS BEEN WITHDRAWN AS IT WAS DUPLICATED BY WATER RIGHT NO. **000000-00**.

Processing Improperly Terminated/Withdrawn Claims. For any claim found to have been terminated or withdrawn without meeting the requirements noted above, contact the claimant. If the claimant wishes to withdraw the claim, this may be done using the current procedure as in “Request to Withdraw a Claim” ([Section X.E.1](#)) and “Processing Withdrawn Claims ([Section X.E.2](#)).

If the claimant does not wish to withdraw the claim or does not respond to claimant contact, the claim is not considered terminated. Change the status to “Active.” The claim will be examined as a normal claim using the relevant procedures for the purpose.

4. Withdrawals Received After Examination Complete. If the basin is in Summary Report, check with a supervisor to determine if there is time to process the withdrawal before issuance of the decree. Notify the Water Master reviewing the Summary Report and send a Summary Report abstract to the Master for review. Requests to withdraw received by the department after the issuance of a decree should be forwarded to the Water Court (see “Post-Decree Assistance,” Chapter XIII).

5. Reinstatement of Withdrawn Claims. Withdrawn claims can be reinstated upon request of all the owners any time during the examination process. All elements will need to be examined. If this occurs during Summary Report review, notify the Water Master reviewing the Summary Report and send a Summary Report abstract to the Master for review, after reinstatement and examination.

Any time a request is made to reinstate a withdrawn claim in a decreed basin, the claim file and the request should go to the Water Court for processing. See the contact procedures in “Post Decree Assistance” (Chapter XIII).

6. Examining Withdrawn Claims. Examination is necessary **to make sure the withdrawal was processed correctly.** Withdrawn claims will be examined since the examination of withdrawn claims count toward the HB22 benchmarks. The first step in examining a withdrawn claim is to determine if the claim was properly withdrawn. After making this determination, the degree of examination will depend on the circumstances. Standards should be run on withdrawn claims.

a. Guidelines for Specific Types of Claims. The following situations are guidelines for examination of withdrawn claims—review an approach with a supervisor for consistent basin-wide examination.

- Properly withdrawn claims for 1962-1973 wells that have a groundwater certificate (filed a Form 602) for the same well need no further examination.
- Properly withdrawn claims where the reason for withdrawal was post-1973 water use need no further examination.
- Properly withdrawn claims for purposes exempt from the filing process need no further examination:
 - Stockwater use directly from source (no man-made diversion)
 - Stockwater use from a groundwater source
 - Domestic use (including single and multiple domestic, and lawn and garden use) from a groundwater source

- Domestic use (including single and multiple domestic, and lawn and garden use) directly from instream (no man-made diversion)
- Properly withdrawn claims for irrigation where the claimant indicated it was no longer in use or never used should have some degree of examination. If it is apparent no historical irrigation has taken place, no claimant contact is needed. If it is apparent that some historical irrigation has taken place, claimant contact should be made (unless the present owner is the one who withdrew the claim). The claimant or new owner may want to reinstate. [Rule 44, W.R.C.E.R.](#) and Section IV.F.
- Properly withdrawn claims for “other uses” should have some degree of examination. Claimant contact should be made. The claimant or new owner may want to reinstate. [Rule 44, W.R.C.E.R.](#) and Section IV.F.
- Claims withdrawn as a result of HB22 fees should have some degree of examination. Claimant contact should be made. The claimant or new owner may want to reinstate. The claimant should be made aware of the HB22 fee and it should be collected. [Rule 44, W.R.C.E.R.](#) and Section IV.F.

7. Decree Abstract Format for Withdrawn Claims. Withdrawn claims are those with a ‘withdrawn’ status rather than an ‘active’ status in the database. The decree abstract for a withdrawn claim will look like an ‘active’ decree abstract, but will have all elements suppressed except **owner’s information, purpose, source, and a T5 remark**. An example of a withdrawn claim decree abstract is shown as [Figure XI-4. Rule 37\(d\)\(1\)-\(4\), W.R.C.E.R.](#)

FIGURE XI-4

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**TEMPORARY PRELIMINARY DECREE
TETON RIVER
BASIN 41O
ABSTRACT OF WATER RIGHT CLAIM**

IMPORTANT NOTICE

YOUR WATER RIGHT AS SHOWN ON THIS ABSTRACT MAY HAVE CHANGES FROM YOUR WATER RIGHT AS CLAIMED OR AMENDED. AN ASTERISK (*) HAS BEEN PLACED NEXT TO EACH ITEM CHANGED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (DNRC) DURING THE EXAMINATION PROCESS. THESE CHANGES ARE AUTHORIZED BY THE MONTANA SUPREME COURT WATER RIGHT CLAIMS EXAMINATION RULES OR BY ORDER OF THE WATER COURT.

OBJECTIONS MAY BE FILED ACCORDING TO THE PROCEDURES OUTLINED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF TEMPORARY PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

Water Right Number: 41O 158011-00 STATEMENT OF CLAIM
Version: 1 -- ORIGINAL RIGHT
Status: **WITHDRAWN**

Owners: FRANCES E SALMOND
PO BOX 606
CHOTEAU, MT 59422

JAMES M SALMOND
PO BOX 606
CHOTEAU, MT 59422

Priority Date:

Enforceable Priority Date:

Type of Historical Right:

Purpose (use): IRRIGATION

Flow Rate:

Volume:

Maximum Acres:

Source: GROUNDWATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS WITHDRAWN FROM THE ADJUDICATION PROCESS AT THE REQUEST OF THE CLAIMANT ON 03/18/2002.

THE DNRC EXAMINATION OF THIS CLAIM FOUND NO SIGNIFICANT FACTS, DATA, OR ISSUES TO REPORT TO THE WATER COURT.

FIGURE XI-4 (cont.)

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A BETTER UNDERSTANDING OF YOUR CLAIMED WATER RIGHT CAN BE OBTAINED BY COMPARING YOUR RIGHT WITH OTHER CLAIMS IN THE BASIN. FOR EXAMPLE, COMPARE PRIORITY DATES, FLOW RATES, VOLUMES, OR ACRES IRRIGATED. ALSO, YOUR WATER RIGHT MAY BE SUBJECT TO WATER RIGHTS IN ADJOINING BASINS OR SUBBASINS AS WELL AS BEING SUBJECT TO OTHER RIGHTS ON YOUR SOURCE OF SUPPLY. FINALLY, YOUR WATER RIGHT MAY BE SUBJECT TO INDIAN RESERVED AND FEDERAL RESERVED WATER RIGHTS.

COMPLETE DETAILS REGARDING THE DNRC EXAMINATION RESULTS AND RELATED MATERIALS CAN BE REVIEWED AT THE OFFICE LOCATIONS IDENTIFIED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF TEMPORARY PRELIMINARY DECREE AND NOTICE OF AVAILABILITY."

SEE GENERAL FINDINGS OF FACT AND CONCLUSIONS OF LAW FOR FURTHER EXPLANATION OF YOUR CLAIMED WATER RIGHT. THESE FINDINGS CAN BE FOUND AS INDICATED IN THE DOCUMENT ENTITLED "NOTICE OF ENTRY OF TEMPORARY PRELIMINARY DECREE AND NOTICE OF AVAILABILITY." IF YOU NEED OBJECTION FORMS, OR HAVE QUESTIONS ABOUT WATER COURT PROCEDURES OR CHANGES TO YOUR RIGHT, YOU CAN CONTACT THE WATER COURT BY CALLING 1-800-624-3270 (WITHIN MONTANA ONLY) OR 1-406-586-4364, OR BY WRITING TO P.O. BOX 1389, BOZEMAN, MT 59771-1389.

F. CHANGE IN APPROPRIATION RIGHT
[Rule 39, W.R.C.E.R.](#)

A Change in Appropriation Right based on [§85-2-402, MCA](#), is a change in the point of diversion, place of use, purpose, or place of storage of a water right. This section briefly covers the change application process ([Form 606: Application to Change a Water Right](#)) and discusses problems relating to examining the claim underlying a change.

The New Appropriations staff has sole jurisdiction over the processing and approval of any Application to Change a Water Right. To the extent necessary for the examination of existing rights, aspects of this process are discussed here. For further detail on the process, see the Change Authorization Manual or New Appropriation staff.

The claim should reflect the water right as it existed prior to July 1, 1973. A separate Change file and database record (Change Authorization version) should reflect the change information. The pre-1973 claimed right will be examined, decreed, and subject to objections on its own merit. (Note: There was a time period when the Statement of Claim was overwritten with the information from the Change. No separate version was created. The Water Court is aware of this and attributes this to the process at the time.) [Rule 39\(a\), W.R.C.E.R.](#)

Why are Changes relevant to examination? If an examination presents questions concerning historic point of diversion, place of use, purpose, or place of storage, and there is a Change Authorization version for the claim – the answers may be found in the Change file. Also, issues may become clearer after a review of the Change file. If no questions arise concerning the historic use of these elements, then no review of the Change file may be necessary. However, some review is necessary to confirm that the claim and Change are correctly connected.

Geocodes: The geocodes must be validated for the place of use reflected in a change authorization.

1. Change Applications (Form 606). An Application to Change a Water Right may be filed on permits, certificates, claims, Powder River declarations, and exempt rights. When an Application to Change a Water Right is received, a Change Authorization version will be created in the database and will contain the elements of the water right as changed. In a basin currently being examined, the New Appropriations staff will ask for the claim to be examined (in past, some New Appropriation staff may have done an informal examination). The change version of the water right is tied to the application screen in the database through the Application tab on the Water Right Detail screen.

2. Post-1973 Changes to Pre-1973 Rights. These can be divided into two groups: a Form 606 Application to Change a Water Right *was not filed* or a Form 606 *was filed*.

a. Post-1973 Changes for Which No Form 606 was Filed.

These instances will only be identified through pertinent issue remarks as each claim in the basin is examined. Sometimes documentation will indicate a post-June 30, 1973 change. Sometimes the aerial photographs will show evidence of a post-June 30, 1973 change. Depending on the results of the examination, any number of issue remarks may be applicable. Add the appropriate issue remark to the examination worksheet (below is just one element that may warrant an issue remark): [Rule 39\(c\)\(2\), W.R.C.E.R.](#)

Examples: P79 IT APPEARS THAT AN UNAUTHORIZED POST-JUNE 30, 1973 CHANGE IN POINT OF DIVERSION MAY BE REFLECTED IN THIS CLAIM.

P80 THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 POINT OF DIVERSION WAS IN THE **NENENE** SEC **36** TWP **99N** RGE **99W** **MONTANA** COUNTY.

b. Post-1973 Changes for Which a Form 606 was Filed. Many

Form 606s were filed between July 1, 1973 and April 30, 1982 before the related claim was filed. For late filed claims, that period extends from July 1, 1973 to July 1, 1996. During this earlier period, especially July 1, 1973 through April 30, 1982, there was much confusion by claimants as to what should be included in their statements of claim. Many included the post-1973 changes in their claims. [Rules 39\(b\) and 39\(c\)\(2\), W.R.C.E.R.](#)

3. Examining Claims with Changes. Efforts have been made to match the claim and Form 606. Because of errors or lack of detailed information in the claim file or Change file or both, some Form 606's may have been matched with the wrong claim. The first step when examining the claim is to double-check that the Form 606 and claim are matched correctly.

When examining a claim with an associated change, the status of the change may be noted in the General Comments area on the examination worksheet for information purposes—no remark is required in the database as the status of Change applications is now tracked through the Application screen. Many of the change authorization remarks have been archived (CA01 thru CA13). This is controlled by the New Appropriation Program. See “Change Remarks Denoting a Change and the Change Status” below ([Section XI.F.3.d](#)).

Check to see if the Application to Change a Water Right or Change Authorization indicates more than one past use. If so, check all claims belonging to the claimant to make sure the change has been linked to the appropriate claim properly. Notify the New Appropriations staff if certain claims were overlooked.

a. Claim Shows the Right as it was before 1973 and File Contains a Form 606. In the past, completed Changes have been incorporated into the claim database record (i.e., the data was overwritten). If the examination worksheet shows the changed data and a Change Authorization version has not been created, coordinate with New Appropriation in the creation and updates to the water right versions (the original and change authorization version).

Review the claim and the Change file. If they don't make sense relative to each other, contact the claimant. If the claim appears to require an amendment, see Amended Claims ([Section XI.A](#)).

If the Change file appears to be in error, document findings in the claim file. Bring the problem to the attention of the New Appropriations staff.

Examine the claim using relevant procedures for a pre-July 1, 1973 purpose as outlined in this manual.

b. Claim Shows Post-1973 Changes and the File Contains a Form 606. Contact the claimant. Explain that it was intended for the claim to reflect pre-1973 information and the Form 606 was to show the post-1973 changes. Request information on the right as it existed before July 1, 1973. [Rules 39\(b\) and 39\(c\)\(2\), W.R.C.E.R.](#)

If the claimant amends the claim, proceed as in "Post-1973 Changes to Pre-1973 Rights: Post-1973 Changes for Which No Form 606 was Filed" ([Section XI.2.a](#)). If the claimant does not wish to amend the claim to reflect pre-1973 data, a two-fold examination will have to be done:

- Examine the claim as submitted.
- To the extent possible using the information available, determine what the right looked like before July 1, 1973.

Add any appropriate issue remarks to the department's examination worksheet. The remark type and items addressed will vary with the situation.

Examples: P340 THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 PLACE OF USE WAS IN SEC **36** TWP **99N** RGE **99E** MONTANA COUNTY.

P80 THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 POINT OF DIVERSION WAS IN THE **NENENE** SEC **36** TWP **99N** RGE **99W** MONTANA COUNTY.

PUIS THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS PRIOR TO JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 PURPOSE WAS MINING.

c. Claim Shows Post-1973 Changes and No Form 606 in File.

Contact the claimant. Explain that it was intended for the claim to reflect pre-1973 information. Request information on the right as it existed before July 1, 1973. Also suggest the claimant contact New Appropriations staff in order to submit an Application to Change a Water Right so that the claimant can acquire a legal right to the change. [Rules 39\(b\) and 39\(c\)\(2\), W.R.C.E.R.](#)

If the claimant amends the claim to reflect pre-1973 use, proceed with normal claim examination.

If the claimant does not wish to amend the claim to reflect pre-1973 data, a two-fold examination will have to be done as outlined in "Examining Claims with Changes: Claim Shows Post-1973 Changes and the File Contains a Form 606" ([Section XI.F.3.b](#)) above. Add any appropriate issue remarks to the department's examination worksheet. The remark type and items addressed will vary with the situation.

Examples: P345 THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES A POST-JUNE 30, 1973 CHANGE IN PLACE OF USE.

P80 THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 POINT OF DIVERSION WAS IN THE **NENENE SEC 10 TWP 12N RGE 03W LEWIS AND CLARK** COUNTY.

PUIS THIS CLAIM DOES NOT APPEAR TO REFLECT THE WATER RIGHT AS IT WAS BEFORE JULY 1, 1973. INFORMATION AVAILABLE INDICATES THE PRE-JULY 1, 1973 PURPOSE WAS MINING.

CA20 IT APPEARS THAT AN UNAUTHORIZED POST-JUNE 30, 1973 CHANGE IN **POINT OF DIVERSION** MAY BE REFLECTED IN THIS CLAIM.

d. Remarks Denoting a Change and the Change Status. Prior to 2001, change authorization remarks were added to the database of the water rights being changed to identify the current status of an Application or Authorization. Remarks CA01 thru CA13 have been archived. These types of remarks, CA01 thru CA13, should be removed (along with any free-text CT remarks), as the application screen now tracks the authorization to change status. See Change Authorization (CT) in Chapter V for

current remark status.

Other change remarks were referenced using a CT remark code. CT remarks will print on the decree abstract. If these remarks are not needed, be sure to remove them.

G. CERTIFICATION CASES

Certification cases arise in two situations: 1) When a water distribution controversy arises claimants may petition the District Court to certify the matter to the Chief Water Judge ([§85-2-406\(2\)\(b\), MCA](#)). 2) DNRC may certify questions to the Water Court pursuant to [§85-2-309\(2\), MCA](#)

The Water Court then consolidates the claims into a case and may issue an order to the DNRC to examine the claims. Certification cases take priority over all other adjudication matters. The department reports its findings to the Water Court. The Chief Water Judge makes a determination and provides that decision to the District Court or to the DNRC.

The Court will make a determination whether to issue a 'mini' decree pr wait and include the certified water rights in the basin decree. See Chapter XIII: Post-Decree Assistance for further information on the treatment of decreed water rights.

Once the certification proceedings are completed by the Water Court, if the claim was certified pursuant to [§85-2-406\(2\), MCA](#), the Water Court will return its decision to the district court. If the claim was certified pursuant to [§85-2-309\(2\), MCA](#), the claim is returned to the DNRC for further processing.

Claims examiners should not change the elements of a claim if the claim has been certified to the Water Court. If claims examiners need clarification regarding examination of a claim that has been adjudicated through a pre-decree certification, they should write a Memorandum to the Water Court requesting direction. The Court will issue an Order indicating the proper treatment of the claim by the DNRC.

The Water Court will add a remark to a claim included in a certification proceeding similar to the following:

THE FOLLOWING ELEMENT(S) OF THIS WATER RIGHT CLAIM WAS/WERE MODIFIED PRE/POST DECREE BY THE MONTANA WATER COURT IN CERTIFICATION ACTION **WC-XXXX** PURSUANT TO SECTION 85-2-406(2)(b), MCA: (**FLOW RATE, VOLUME, PERIOD OF DIVERSION**) SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

AND of a pre-decree certification, the following or similar remarks will be added by the Court:

Examples: A5 THE **PERIOD OF USE** WAS AMENDED BY THE CLAIMANT ON **MM/DD/YYYY**.

A15 THE FOLLOWING ELEMENTS WERE AMENDED BY THE CLAIMANT ON **MM/DD/YYYY**: **FLOW RATE, VOLUME, MAXIMUM ACRES, PLACE OF USE**.

H. CLAIMS THAT PRESENT SPECIAL ISSUES

Some claims by the nature or size of water use involved may present issues that are beyond the scope of the standard procedures delineated in this manual. Examples might include the storage facilities on the main stem of the Missouri River (e.g., Canyon Ferry Reservoir), navigation claims, irrigation claims for Hungry Horse Reservoir, major municipalities (e.g., Billings), large hydropower projects (e.g., Cochran Dam), and interstate or international diversions of water. Because these claims may have major effects on basins other than the basin being examined, these must be brought to the attention of a supervisor, who must bring them to the attention of the Bureau Chief.

Examine the claim to the extent possible. Consult a supervisor in making the determination whether an individual claim fits in this category. The rule of thumb is that if the claimed appropriation has substantial interbasin water or policy impacts, the claim should be referred to the Bureau Chief.

When you have questions about handling unusual situations, such as partial claim withdrawals, withdrawals of interests, large claims, unusual purposes, etc., start the examination with the section of the manual most pertinent to the issue.

Other than the dictates of the Supreme Court Water Right Claim Examination Rules and the Water Use statutes in Montana Code Annotated, there is considerable latitude in exploring solutions to problems such as these, providing all research is completed, a supervisor has reviewed the work, and full and formal approval is granted before implementing a solution.

XII. POST-EXAMINATION PROCEDURES

After a claim has been examined, a review abstract will be generated in the database. The review abstract is a database generated report of the examination results. It is used as a tool to inform the claimant of their water right and of any additional facts and findings, including potential issues. The review abstract is important in preparing for the department's Summary Report to the Water Court.

Once the examination of all claims in a basin has been completed, the basin is ready for the finishing processes in preparation for the Summary Report and the issuance of the Water Court decree.

All examination materials will be scanned by [Records](#) after the Summary Report is sent to the Water Court and the claims are ready for the issuance of the Water Court decree.

The following sections outline the procedures involved in the final stage of basin examination.

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A. DECREE PREPARATION

1. Overview. In order to run a decree for the Water Court, certain procedures are followed:

- DNRC examines all claims in the basin.
- Requests for implied claims (and other corrections) are made of the court.
- DNRC identifies and examines (with the court's approval if it is a claim that has been included in a Water Court decree) all interbasin transfer and misbasined claims:
 - A definitive basin boundary is required.
 - A GIS analysis is run to target all potential surface and groundwater interbasin transfers.
 - An analysis is made by examiners as the GIS data extract uses centroids (the geographical center of a polygon), not PODs with accurate X, Y coordinates. Making the determination of an interbasin transfer requires the claim file and maps.
 - The regional/unit office or the adjudication team compiles a list of interbasin transfers and sends it to the Bureau Chief.
- The Bureau Chief creates a decree list for the basin. It is populated by every claim that has a POD in the basin and those interbasin transfers added manually from the list compiled by the regional/unit office or the adjudication team.
- Summary Report preparation indexes are generated once the basin examination is complete based on the decree list.
- Claims are corrected based on the indexes, Supreme Court Rules, and the examination manual.
- A draft of the Summary Report is generated by purpose (rather than water right number) for a final review by DNRC staff before sending to the Water Court for their review.
- Possible corrections pursuant to the Water Right Claims Examination Rules identified by the Water Court may be made based upon further analysis by the claims examiner.
- DNRC and the Water Court determine a decree issuance date and set public meetings.

It is imperative that every claim that belongs in the decree is included. In the 'Create and Maintain Water Rights' screen in the database, there is a decree tab that indicates if the claim is included in a decree and specifies which decree(s).

Create a new version of an abstract any time a claim has been decreed by the Water Court in another basin and it is examined a subsequent time with the Water Court's permission. Depending upon what proceedings have or have not occurred, the new version or the abstract may be a version higher of any kind of abstract, for example, post decree or original right. Add an operating authority to the new version the day the examination is completed. Finally, consult with the Adjudication Bureau Chief to make

sure the new version is tied to the correct decree (the decree being prepared for summary report review) under the decree tab in the database so it will be issued in the correct basin and water users will receive notice of the claim.

B. REVIEW ABSTRACTS

The intent of the review abstract is to reflect the examination. Review abstracts must contain all updated information as shown on the examination worksheet, appropriate standards when applicable, and any information or issue remarks. The review abstract informs the claimant of their water right and any additional facts and findings, including potential issues as a result of the examination.

Prior to generating this review abstract, two steps must be performed:

1. Standards. Standards are a database application of specific guidelines to certain elements of a Statement of Claim at the conclusion of examining a claim. Standards are applied by locating the 'Run Standards/Error Checks' button on the 'Create and Maintain Water Rights' screen in the database. Standards can be applied to individual claims, all claims within an ownership, or an entire basin. Applying standards does the following:

- changes flow rates and volumes based on certain specific criteria, and adds information or issue remarks as necessary;
- renumbers parcel records consecutively; (**However, standards does not sort the PODs or POU by TRS—this must be done by the examiner by clicking on the 'Sort' button in the POD tab or the POU tab. If this is not done, the error check report will indicate the POD and POU do not match.**)
- changes volumes in the 'Create and Maintain Purpose' record to match volumes in the 'Create and Maintain Water Right Details' screen.
- changes the period of diversion in diversion records to match the period of use on all claims.

"Automated Procedure for Applying Standards" (Exhibit XII-1) shows a breakdown of the execution of standards.

2. Error Check Report. The error check report analyzes data for incomplete or inconsistent information and will report messages to the examiner to ensure the claim was examined properly. **The error check report has limitations and should not be used solely as a quality assurance mechanism.** Typically, the report is generated when a claim's examination is completed. The error check is applied by running an 'Error Check Abstract' from the 'Reports: Adjudication Reports' menu in the 'Create and Maintain Water Right Details' screen in the database. It can also be run by ownership or by basin. The "Error Check Automated Procedures" (Exhibit XII-2) is a listing of the error checks performed when the report is generated. This exhibit is also available in the database by selecting 'Error Check Abstracts Support Document' on the 'Help' menu. While every effort will be made to keep this document up to date in the database, the most current error check documentation will always be available on the Adjudication Shared Drive.

The purpose of the error check report is to provide a tool for the examiner to use to check their work. An example of the Error Check Report is available as Exhibit XII-3. Note the disclaimer on the header of the report:

THIS REPORT IS FOR INTER-DEPARTMENTAL USE ONLY AND IS NOT INTENDED FOR USE IN ANY COURT PROCEEDING, LEGAL ARGUMENT, OR OFFICIAL BUSINESS.

This report is similar, in a way, to the examination worksheet. If it provides documentation of an action, it should become part of the file. As part of the file, it becomes further documentation of the DNRC's examination of the claim. The examiner can use this report to document the corrections made to the file or the documentation can be made on a review abstract.

3. Generate a Review Abstract. Once Standards have been applied and the Error Check Report completed, generate a review abstract. Compare this review abstract with the examination worksheet. This comparison verifies that the examination results and data entry have been done properly. An example of a review abstract is available as Exhibit XII-4.

Checking the review abstract is a visual process. Develop a systematic approach so items are not overlooked. Verify the following:

- The examination worksheet and review abstract claim numbers are the same.
- Corrections made on the examination worksheet or revised abstract appear on the final review abstract.
 - All remarks and data on the examination worksheet (and addendum, if used) were entered in the database accurately.
 - Remarks are printed in the proper place on the review abstract. For example, all flow rate related remarks should appear under Flow Rate. General information remarks print at the bottom of the abstract under Remarks.
 - Check for changed data which should not have been changed.
- Asterisks denoting changes have been added where appropriate.
- Keep an eye out for inconsistent or nonsensical claim information. This is the last comprehensive review of the claim by the department before the decree is issued. Standards and Error Check Reports cannot catch all possible errors. **The quality of the examination reflects on each examiner as well as the entire department.**

Note in detail any corrections on the review abstract and place it in the file. Make the corresponding changes in the database. Generate a new review abstract; compare for accuracy and also place in the file. If additional changes are needed, make corrections on the new review abstract and repeat the process until all data is accurate. **Initial and date each review abstract** generated in the review process to document the abstract has been checked.

The examination worksheet, (which should clearly identify data sources used to examine the claim, claimant contact letter, claimant contact, and corrections made to the claim pursuant to rule.) any attachments, the error check report, and review abstracts become part of the claim file. **Organize all examination materials and review abstracts chronologically when examination is completed.** This will expedite pulling materials for scanning. See "Post-Examination Procedures: Scanning Examination Materials" ([Section XII.E](#)) for guidelines regarding the organization of this material.

C. SUMMARY REVIEW PREPARATION

1. Overview. After all examination results in a basin have been entered in the database *and* all interbasin transfers, irrigation districts, and water rights involved in certification cases* have been identified, the Summary Review Preparation Indexes will be generated by the database administrator. These indexes will be distributed to those completing the summary preparation.

IMPORTANT: Any water rights involved in a certification case should be considered the equivalent of 'decreed'. These water rights should not be modified without first communicating with the Water Court. Examination inconsistencies may be discovered during Summary Review—if this occurs, the Water Court must be notified.

The indexes are a tool used to further review the examination results prior to creating the department's Summary Report to the Water Court. This review is useful for determining consistency and adherence to guidelines and can locate potential problems which may have been overlooked during examination. The review will be completed by the appropriate regional/unit office and/or adjudication team. There are several documents referenced in this section:

Summary Report and Decree Preparation Checklist: outlines the steps in summary review ([Figure XII-1](#)).

Summary Index and Decree Preparation Instructions: detailed instructions on the approach to each index (Exhibit XII-5; available on the adjudication shared drive)

Summary Review Preparation Indexes: generated by the database administrator after key steps are completed. Examples of each index are included in the instructions noted above.

Summary Report: the department's report to the Water Court consisting of individual abstracts, the claimed and clarified data and a summary of the department's examination findings for each claim within a basin or subbasin (Exhibit XII-6).

The summary review process is constantly being updated as better tools are developed. Proficiency in Summary Report preparation is directly related to experience with the process; the basics are covered in this section. Expect a learning curve.

As an index is reviewed, corrections are documented and entered in the database. Any corrections to a claim must be documented on the review abstract and filed.

*If directed to do so by the Water Court.

FIGURE XII-1

SUMMARY REPORT AND DECREE PREPARATION CHECKLIST

1. _____ Identify all interbasin transfers on a spreadsheet and send to the Bureau Chief. See “Claim Examination: Point of Diversion (POD): Interbasin Transfer, Including Potential Interbasin Groundwater Effect” (Section VI.F.5).
2. _____ Identify irrigation districts and make sure all irrigation district numbers (“Z” rights) are not part of the decree. See “Irrigation: Claims Filed on Irrigation District Forms: Worksheet and Decree Information: Irrigation District Numbers” (Section VII.F.3.a).
3. _____ The Bureau Chief will populate the decree tab in the ‘Create and Maintain Water Rights’ screen in the database with all active statements of claim, reserved claims, and interbasin transfers. Pay attention to which version of the interbasin transfer rights are to be decreed.
4. _____ Check basin closures.
5. _____ Complete the review of the following Summary Review Preparation Indexes (number of indexes may change over time). Detailed instructions for each index are found in ‘Summary Index and Decree Preparation Instructions’.

INITIALS	DATE DONE	REPORT	GENERAL INDEX NAME
		A	RESERVED CLAIMS INDEX
		B	RESERVED CLAIMS INDEX
		1	STANDARDS INDEX (STANDARDS NOT RUN)
		2	STANDARDS INDEX (STANDARDS ARE RUN)
		3	REMARKS INDEX
COMPLETE THE ABOVE INDEXES BEFORE RUNNING THE INDEXES BELOW			
		4	MULTIPLE USE INDEX
		5	MULTIPLE USE INDEX (RELATED RIGHTS TAB)
		6	OWNER INDEX
		7	DECREE EXCEEDED INDEX
		7.a	FILED APPROPRIATION EXCEEDED INDEX
		8	RESERVOIR INDEX (PERIOD OF DIVERSION) – SORTED BY OWNERSHIP
		8.a	RESERVOIR INDEX (PERIOD OF DIVERSION) – SORTED BY WATER RIGHT NUMBER
		9	RESERVOIR INDEX
		10	SUPPLEMENTAL RIGHTS INDEX (OTHER USES; NOT IR)
		10.5	SUPPLEMENTAL RIGHT INFORMATION INDEX (IRRIGATION)
		11	RELATED RIGHTS RECORD HAS ONLY ONE CLAIM INDEX
		12	LIVESTOCK DIRECT POD AND POU INDEX
		13	MEANS OF DIVERSION – “INSTREAM” INDEX
		14	BEAN LAKE REMARKS INDEX

		15	SUBDIVISION INDEX
		16	SOURCE INDEX
		16.5	SOURCE INDEX – WITH MEANS OF DIVERSION INDEX
		17	DITCH INDEX
		18	GOVERNMENT LOT INDEX
		19	IMPLIED CLAIM INDEX
		20	POINT OF DIVERSION SORT (AND PERFORMED BY DATABASE ADMINISTRATOR)
		21	PLACE OF USE SORT (AND PERFORMED BY DATABASE ADMINISTRATOR)
		22	EXAMINATION CLOMPLETION DATE MISSING INDEX
		23	MULTIPLE VERSION EXISTS INDEX (AND PERFORMED BY DATABASE MANAGER)
		24	INTER BASIN TRANSFER REMARKS INDEX
		G1	GEOSPATIAL – NON-TRIBAL OWNERS ON TRIBAL LAND INDEX
		G2	GEOSPATIAL – PRIVATE OWNERS ON FEDERAL LAND INDEX
		25	ERROR CHECK REPORTS FOR BASIN

6. _____ Decree Inventory list is generated by the database administrator and sent to regional/unit office or adjudication team to account for claims.
7. _____ Bureau Chief requests a Summary Report issue event in the database. All claims are locked from further changes while the database administrator generates the report. The lock will be removed after the database administrator generated the Summary Report so the Water Court and the DNRC can proceed with review. In some cases, the Summary Report may remain locked indefinitely if progress toward issuing a decree is delayed.
8. _____ Database Administrator runs Summary Report for the Water Court in the requested format (electronic or hardcopy; PDF) and sorted as needed. All interbasin transfer claims and water right types (usually all active claims, reserved claims, and withdrawn claims) are included in the Summary Report unless excluded per Court direction. The Water Court must be informed of any changes made to the database after the issuance of the Summary Report.
9. _____ Bureau Chief and database administrator generate Summary Report Indexes as requested by the Water Court for their review in electronic of hardcopy, PDF and Excel.
10. _____ Examination materials are sent to Records to be scanned prior to issuance of the decree.
11. _____ DNRC and the Water Court determine a decree issuance date. Bureau Chief requests a decree issue event in the database. All claims are locked

from further changes without database permissions.

2. Internal Review. The department may be required to internally review a claim that has been examined due to the following:

- amendments to the Supreme Court Water Right Claim Examination Rules;
- claim examination manual updates;
- varying levels of examiner expertise;
- lack of documentation; or
- other factors.

Any examination prior to the 2006 Supreme Court Claim Examination Rules may have outdated examination results. Any examination completed prior to the 2008 Claim Examination Manual updates may have outdated examination results.

A byproduct of conducting Summary Review Preparation is the discovery of new issues and corrections. **Any corrections or modifications to a claim that result in a change, the claimant must be contacted.** For example, an element may be modified or issues may be identified. Spelling errors or legacy remark updates do not require claimant contact if the claimant has been contacted previously about the same.

Additional claimant contact also occurs when decree exceeded situations are identified. By tracking historical decree information in the 'Historical Rights' tab in the 'Create and Maintain Water Rights' screen, an index can be generated after the examination of all claims in a basin is complete. Although some decree exceeded issues may be identified as claim examination progresses, most will not be identified until the Summary Review Preparation phase. **The claimant must be contacted;** provide an updated review abstract showing the decree exceeded issue and the Water Court's handout on the issue. See "Irrigation: Flow Rate: Recording Documentation: Decreed Rights Exceeded" (Section VII.B.5.b). Also see "General Procedures: Pre-Examination Office Organization: District Court Decrees" (Section III.D.4) and "Decree Indexes" (Section III.D.5).

If there was no documentation of claimant contact during examination, or a rule change has occurred in the intervening time period, contact the claimant.
[Rule 44, W.R.C.E.R.](#)

3. Review Draft Summary Report. After all corrections are made to the claims per the summary review indexes, a draft Summary Report (and indexes) is generated for a final check. This may include a GIS analysis as noted in Figure XII-2 below.

FIGURE XII-2

SUMMARY REPORT OVERVIEW USING GIS

This is a geospatial review of the basin conducted from a point of diversion data set. This data set is based on centroids provided by the [Natural Resource Information System](#) (NRIS) and compiled by the GIS staff or other members of the adjudication staff. A centroid is the geographical center of a polygon created from the examined point of diversion's legal land description. The data set is reviewed within an ArcMap project. This project should have all quads in the basin, and the basin boundary. A key benefit of this review is to see if all the points of diversion match the named source on the quads and to see what points of diversion fall outside of the basin. A timely review can also be made for the following:

- (1) Use the query system in ArcMap to check for source name discrepancies (surface water), invalid means of diversion, and claims with no priority dates.
- (2) The following data sets should be created and reviewed:
 - POD layer to visually check locations outside of basin.
 - POU layer to visually check locations outside of basin.
 - BLM pothole lake or natural pit claims for FW and livestock with no volume.
 - Stock claims with "livestock direct from source" as the means of diversion and may have a flow or volume.
 - Domestic claims with a flow over 35 gpm.
 - Fire protection claims with no volume.
 - Ag spraying claims with no flow or volume.
 - Commercial claims with no flow or volume.
 - Natural sub-irrigation with a flow or volume.
 - Fish and wildlife with instream means of diversion that may have a flow and volume (excluding Murphy rights).
 - Irrigation claims with a flow and volume.
 - Groundwater with means of diversion as pump.
 - Priority date post-1973.
 - Source is groundwater but may be surface water.
 - Mining with instream means of diversion.
 - Mining with flows over 100 gpm.

Other data sets should be created as needed.

D. DEPARTMENT'S SUMMARY REPORT
[Rule 5\(a\), W.R.C.E.R.](#)

The department's Summary Report is a draft of the Water Court decree, which consists of all abstracts for the basin. The report is bound into books and sent to the Water Court in paper and/or electronic form for review before the decree is issued. The six basic decree indexes are also sent to the Court—Source, Owner Name, Point of Diversion, Priority Date, Water Right Number, and Issue Remarks.

The Chief Water Judge (CWJ) assigns a water master to the basin. The master will conduct a review of the Summary Report according to the Water Court's summary review responsibilities. See the "Water Court Summary Review Process" for an overview (Exhibit XII-7). The master will correspond with the regional/unit office or adjudication team supervisor who conducted the summary review preparation.

1. Making Corrections to Summary Reports. When errors are discovered **after** the Summary Report has been sent to the Water Court, the responsible regional/unit office or adjudication team will follow the procedures outlined below:

- An electronic copy of the Summary Report is obtained from the database administrator and provided to the office/team assisting the Water Court in its review. The master and the responsible office/team can both refer to the same document during review.
- Make corrections as necessary. Responses to the Court should be complete, thoroughly researched, and documented. The Water Court does not tell claims examiners how to modify a claim, The Water Court asks questions concerning possible errors. The claims examiners determine whether a correction should be made. Additional claimant contact may be required as part of this process. Remember that the claimant must be notified of any changes made to their claims including corrections, issue remarks, and information remarks that result as part of the Summary Report review process. Claimants must be notified if an issue remark is placed on their claim, during the review process and if possible given enough time to respond and resolve the issue remark before the decree is issued, just as would occur during the regular claim examination period. Notify the, master assigned to the review if any additional time is required to complete this process.
- Notify the Water Court ANYTIME a change is made to an abstract during the Summary Report review process, according to the Master's direction or due to the Master's questions. This process should continue until the claims examiners are notified by the Water court, Bureau Chief, and the Database Administrator, that the basin is locked down. After the basin is locked down, NO CHANGES CAN BE MADE

TO ANY WATER RIGHT CLAIM ABSTRACTS. A basin is normally locked down about two weeks prior to the projected issuance date for a decree.

- If problems are discovered, these will be discussed between the supervisor and the responsible office/team.
- The resulting materials and updated Summary Report abstract or review abstract will need to be scanned and sent to the appropriate claim file. ALL CHANGES made during the Summary Report review process and any claimant contact and correspondence with the Water Court, including Orders issued by the Court specifically addressing a claim, should be clearly documented in the claim file.

For amendments received **after** the Summary Report has been sent to the Water Court, see "Special Provisions: Amended Claims" (Section XI.A).

At the conclusion of the summary review process, the basin may be archived until the Water Court needs the files to begin resolving objections and issue remarks (about 2 years).

E. SCANNING EXAMINATION MATERIALS
[Rule 5\(b\), W.R.C.E.R.](#)

The scanning of all examination materials for a basin will occur generally at one time after all claims have been examined and the Summary Report has been sent to the Water Court. The responsible office/team will organize each file as listed below before sending to [Records](#) for scanning (ideally, the claim should be organized chronologically as each examination is completed). After all files have been scanned, they will be archived in storage (referred to as 'New Storage' in the 'Location' tab in the database).

If scanning occurs before Water Court review of the Summary Report, any resulting changes made to the Summary Report or review abstract must then be sent to Records to be included in the scanned file.

General guidelines for organizing examination materials for scanning:

- The claim number is identified on all examination materials.
- Documents are arranged in chronological order.
- Critique the supplemental documents:
 - All documents received from the claimant are date-stamped.
 - All documents received from the claimant, i.e., questionnaires, maps, affidavits, are identified with a supplemental document stamp.
 - All documents (survey maps, well logs, documents belonging to reservoir data, etc.) added to the claim file by the department should be stamped with a DNRC supplemental document stamp.
- Pack and organize examination materials numerically in boxes.
- Reconcile the Decree Inventory list.
- Request the database administrator record the destination of the files in the 'Location' tab in the database and the date sent to [Records](#). It is suggested a copy of the Decree Inventory List showing the claim material being sent be placed in the first box.
- Arrange for files to be transported and delivered to Records when the Summary Report is sent to the Water Court.

Congratulations on a job well done!

XIII. (TEMPORARY) PRELIMINARY DECREE

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A. GENERAL DISCUSSION

After the Water Court has completed its review of the department's summary report and any appropriate changes are completed for the basin, a (temporary) preliminary decree will be issued.

The department's summary report is not the decree. Rather, it is the first draft of the decree. After changes, the Summary Report will be morphed into the decree with the necessary decree requirements. An electronic copy of the Summary Report is available through the Helena Central Office, although this is not normally requested as it is a temporary document leading to the decree.

The Chief Water Judge will appoint one or more water masters to a basin prior to the issuance of the decree, usually at the start of the Court's review of the Summary Report. [Rule 3, W.R.Adj.R.](#) The master(s) will be responsible for the adjudication of all objections and issues on the claims in that decree ([Rule 11 W.R.Adj.R.](#)). The DNRC adjudication staff is responsible for assisting the water master through this stage of the process as required by [Rule 12 W.R.Adj.R.](#)

Issuance of a decree is a cooperative process between the Water Court and the department. The Water Court provides the Notice of Availability and the Findings of Fact and Conclusions of Law. The department provides decree abstracts, decree indexes, address correction forms, and mailing supplies. See [Rule 3 and 4, W.R.Adj.R.](#)

There are two types of water right decree abstracts—a public copy and an owner copy:

- The public copy is bound into decree books and delivered to the Water Court, department offices, the county clerk of court (if directed by the Water Court) and anyone purchasing a complete decree. The decree books contain all claims in the basin organized by claim number on numbered pages.
- The owner abstract is the same as the public copy except it lacks the page numbering. The owner abstract does not identify the page number of the claim where it appears in the decree. A separate abstract is generated for and mailed to all individuals listed as current owners of record in the database for their claims. The printing is in owner name order.

Every water right owner in the database record for the basin, whether they have claims, new appropriations, or reservations, is sent a Notice of Availability and [Address Correction Form](#). Abstracts of claims are sent to the claimants. Abstracts of permits, certificates or other new appropriations are NOT sent to those claimants because the decree ONLY contains statements of claim for existing water rights. In addition, a notice is sent to all interested parties as specified by court order ([Rule 5, W.R.Adj.R.](#)).

The Water Court and appropriate DNRC adjudication office receive copies of the decree, the Notice of Availability, the Findings of Fact and Conclusions of Law, and the indexes for the decree.

The Notice of Availability specifies who receives specific information, provides addresses and phone numbers of all involved offices, and specifies the following:

- A 180-day objection period is set by statute. By petition, the Water Court may grant up to two 90 day extensions of time. [Rule5\(c\), W.R.Adj.R.](#)
- During this period, adjudication staff can expect questions related to the decree and summary report for the basin. Remember, the DNRC's role is limited. Observe relevant Water Court orders and department policies, as discussed in "Public Assistance" below ([Section XIII.C](#)), in all public contact.
- Deadlines are set for the filing of Notices of Objections. The location of these objection forms is specified. Objection forms are specific to a basin. The Objection process is briefly described. See [Rule 5\(b\), W.R.Adj.R.](#) for procedures on filing objections.
- Public meetings with the appropriate Water Court staff and appropriate DNRC staff are specified with dates, times and locations.

After the objection period has ended, the Water Court will notify each person whose claim received a filed objection. The Court will also allow the claimant 60 days to file a counterobjection in a "Notice of Filing of an Objection and Opportunity to File Counterobjection" ([Rule 6 and 9, W.R.Adj.R.](#)). A counterobjection can be filed to any claim of the objector in the decree. The 60-day counterobjection period cannot be extended. The Court will set another public meeting in this Notice to describe the counterobjection filing process. Appropriate DNRC staff will again be asked to attend any public meetings.

Upon close of the counterobjection period, the appropriate adjudication office should return all claim files (if this has not already happened) for the basin to Records for archiving. A copy of the decree and indexes should be retained in the appropriate adjudication office.

The Court has one more notice to issue before it is ready to commence the resolution of objections and counterobjections, called the "Notice that Objections and Counterobjections Have Been Filed and Opportunity to File Notice of Intent to Appear." This is a 60 day notice for water users to file a Notice of Intent to Appear on those claims that they did not object to, but where changes could impact their water rights. At the end of this period, the Court requests the claim files in the basin that received an objection, a counterobjection, and/or an issue remark, and claims called in on motion of the Court.

See [Rules 7, 8 and 9, W.R.Adj.R.](#)

The assigned water master(s) then commences the task of putting the claims from the objection list into cases. The master(s) directs the set-up of case files and service lists. The master(s) then issues the first order in each case—an 'Order Consolidating Claims into a Case and Setting First Deadline' (or first status conference).

B. EXAMPLE ABSTRACT, NOTICE OF AVAILABILITY, INDEX

1. Abstract. An example of a water right decree abstract in a (temporary) preliminary decree is shown in Exhibit XIII-1. The water right appears in the decree by claim number and page number. Each owner of a statement of claim will receive an abstract for each of their existing rights. Owners of permits, certificates, etc. will NOT receive an abstract for such rights because they do not appear in the decree.

2. Notice of Availability. An example of the Notice of Availability is shown in Exhibit XIII-2. Every water right owner of record in a basin, those with claims, new appropriations, or reservations, will receive this form. In addition, the notice is sent to various interested parties as specified by the Court on its service list.

3. Indexes. Each complete copy of a decree has a set of six indexes. The indexes are:

- source
- owner name
- point of diversion
- priority date
- water right number
- issue remarks

The first five indexes contain the same information but are arranged in different orders. The issue remark index is arranged by water right number and contains unresolved issues identified through department examination or by the Water Court if the decree being issued is not the first Water Court decree for the basin. See Exhibit XIII-3 for examples.

A set of instructions explaining how to use the decree indexes are available in Exhibit XIII-4. The instructions explain how the indexes are organized and what information each index provides. Instructions are attached to each set of indexes sent to the clerk of court, Water Court, department, and regional/adjudication offices.

Other indexes, such as a conveyance facilities index, can be provided upon request. Additionally, as a basin goes from temporary preliminary to preliminary decree or from preliminary to final decree, the various indexes will be printed again. It is possible that changes made to claims after the decree have inadvertently created problems, such as late claims or Reserved claims being included, new database changes, or changes in either Claim Examination Rules or Adjudication Rules. Such problems at this stage can only be corrected by the Water Court. By identifying and pointing out the problems to the Water Court, the integrity of the database as well as the entire adjudication process is enhanced.

C. PUBLIC ASSISTANCE

1. Guidelines. From issuance of the first Water Court decree through the final decree for the basin, regional/adjudication office personnel can expect questions related to the decree.

Public assistance should be limited to locating requested data and if necessary "translating" the data. Answers to questions such as "What happens next?" or "What should I do now?" should be limited to procedural steps designated in statute or guidelines provided in the Court's Notice of Availability. **Do not provide legal advice or consultation services. This type of assistance is beyond the department's authority by rule or law** ([Rule 47 W.R.C.E.R.](#), [Rule 16\(a\), W.R.Adj.R.](#), [Rule 33 W.R.Adj.R.](#)).

2. Materials Available. All department records pertaining to the adjudication of water rights are public record and open to inspection by any person. [Figure XIII-1](#) lists the various materials which may help the public understand the decree. It is suggested this information be on display wherever the public will be reviewing the decree. Not all offices have the equipment for the public to view all materials on this list. Make adjustments as needed, such as providing photo copies when appropriate. [Rule 3\(e\), W.R.C.E.R.](#)

3. Public Review of Individual Claims. Claimants, or their representatives, may wish to examine individual claims and related materials. In general, "claim" means the original claim and attachments as submitted by the claimant plus the examination worksheet, addendum sheets, etc. that would be in each claim folder. "Related materials" means pertinent topographic maps, old and new aerial photographs, etc. that are part of the regional or adjudication office general resource materials.

The original documents which make up the claim are irreplaceable. Each time they are handled the potential exists for loss or damage. Even though claims are part of the public record, the Water Court's policy is to keep their handling to a minimum and to take all practical precautions for their safekeeping. The recommended procedure for accomplishing this is as follows:

- People wishing to review claims should be encouraged to do their initial review online from scanned materials. The public needs to be aware that the scanned information may not contain all file information, depending on how recently the file was scanned.
- After reviewing the scanned images, any document which cannot be read or which does not make acceptable copies, may be viewed in its original form. The file may need to be located and requested—or send the party to the appropriate location, if reasonable. If a file is requested from the Court, return the file promptly.

- UNDER NO CIRCUMSTANCES MAY ANY ORIGINAL CLAIM FILE OR PART THEREOF BE REMOVED FROM A DNRC OFFICE.
- Original claim files may only be reviewed in the regional/adjudication office under close supervision by the specialist. If requested, a specialist may copy any portions of the claim file for the public. Follow [§2-6-110, MCA](#) and the [DNRC Public Information Policy](#) when providing materials to customers (see Attachment A: “DNRC Information-Related Charges” contained within the PDF document). [Rule 3\(f\), W.R.C.E.R.](#)

FIGURE XIII-1

EXAMPLES OF MATERIALS AVAILABLE FOR PUBLIC REVIEW

Decree Indexes and [Index Instructions](#)

- [Source](#)
- [Owner](#)
- [Point Of Diversion](#)
- [Priority Date](#)
- [Water Right Number](#)
- [Issue Remarks](#)

Decree Abstracts and [Abstract Instructions](#)

- [Basin](#)
- [Claim Numbers](#) (arranged numerically in volumes)

Decree Related

- [Water Court Findings of Fact and Conclusions of Law](#)
- [Notice of Entry of Temporary Preliminary Decree and Notice of Availability](#)
- [Notice of Intent to Appear Form](#)
- [Objection Form](#)
- [Objection List](#)
- [Request for Extension](#)
- [Notice that Objections have been Filed and Hearings Requested](#)
- [Counterobjection Form](#)

DNRC Water Adjudication Bureau Information

- [What is Adjudication?](#)
- [Adjudication Status](#)
- [Adjudication Status Report](#)
- [Summary Report Projections](#)
- [Water Court Activity](#)
- [Administration of Water Court Decrees](#)
- [Claims Examination Manual and Exhibits Appendix](#)
- [Claim Examination FAQs](#)
- [Water Rights in Montana FAQs](#)
- [Claim Examination Acreage Issues](#)
- [Water Right Adjudication in Montana](#)
- [Navigating Water Right Claim Examination](#)
- [Water Right Claim Examination Rules](#)
- [Water Right Claim Adjudication Rules](#)
- [Amendment Form](#)
- [Amendment Agreement Form](#)
- [Address Change](#)
- [Request to Withdraw Statement of Claim](#)
- [Withdrawal Agreement](#)

FIGURE XIII-1 (cont.)

Additional Materials Available in Regional/Unit Offices or on the web:

- [Water Resources Survey books](#)
- Water Resources Survey field forms (available online 2009)
- Notice of Appropriation indexes, by county
- District Court Decree Indexes, by county
- County groundwater (GW) records (available online 2009)
- Historical aerial photographs
- General Land Office survey plats (GLO's)
- [Montana Code Annotated](#) (statutes)
- Conveyance Facilities Indexes (optional)

D. RETURNED MAIL PROCEDURES

The returned mail procedures presented in this section apply to **returned** “Notice of Entry of (Temporary) Preliminary Decree and Notice of Availability” (decree notice), and “Notice That Objections Have Been Filed and Hearings Requested” (this includes the Objection List and is referred to as the objection notice below). Review [Rule 45 W.R.C.E.R.](#)

Recall the “Notice of Entry of (Temporary) Preliminary Decree and Notice of Availability” is the Water Court’s notice that a decree has been issued and is now available for review. Once the decree is issued, the objection period begins, which is 180 days. [Rule 45\(e\) W.R.C.E.R.](#)

The Water Court will issue an “Objection List” and “Notice That Objections Have Been Filed and Hearings Requested”. This notice is sent after the counter-objection deadline has passed. It specifies a deadline for filing a “Notice of Intent to Appear.”

Mail which cannot be delivered is returned to the Water Rights Bureau in Helena. **Returned mail will be tracked as noted below and sent on to the regional/unit offices for research.**

It is imperative returned mail sent to a regional/unit office be researched, and documented on the Returned Mail Index as soon as possible. The regional/unit office must certify to the Water Court all research has been completed prior to the deadline specified in the notice (see Section XIII.D.2.d and Exhibit XIII-7). The goal is to locate and notify claimants before: [Rule 45\(b\), W.R.C.E.R.](#)

- the end of the objection period (180 days) as stated in the “Notice of Entry of (Temporary) Preliminary Decree and Notice of Availability” (decree notice);
- the end of the Counterobjection period (60 days in length) and
- the Notice of Intent to Appear period (60 days in length) as stated in the “Notice that Objections Have Been Filed and Hearings Requested” (objection notice). ([Rule 9 \(b\) W.R.Adj.R.](#))

1. Adjudication Support Staff Procedures.

a. Returned Mail. The bulk of returned mail will arrive at central office in the few weeks following the mailing. For each piece of returned mail, adjudication support staff will:

- Date stamp all returned mail envelopes.
- Track all returned mail using the Returned Mail Index (Section XIII.D.1.b). See [Figure XIII-2.](#)

- Process any returned mail where a new address has been indicated on the returned mail envelope. See [Figure XIII-2](#).
- Sort and send returned mail to the office responsible for the file.

A smaller amount of returned mail will continue to arrive over time. Process and send any subsequent batches of returned mail to the appropriate office in the same manner.

Note: Occasionally, returned mail may be received which should have been returned to the Water Court (e.g., notices sent by the Court to interested parties). If so, forward this mail to the Water Court.

b. Returned Mail Indexes. Prior to the issuance of a decree or objection notice, an Owner Index is generated by the database administrator to facilitate creating a mailing list. Request the database administrator run a Returned Mail Index (in Excel format). All returned mail will be tracked in the Returned Mail Index. See the 'Returned Mail Index' example in Exhibit XIII-6.

For "Notice of Entry of (Temporary) Preliminary Decree and Notice of Availability" returned mail, one index will be used. It contains all:

- Current adjudication owners
- Current new appropriations owners

For "Notice That Objections Have Been Filed and Hearings Requested" returned mail, two indexes will be used:

- Current adjudication owners with individual objection notices
- Current adjudication and new appropriations owners without individual objection notices

These indexes should be stored on the Adjudication Shared Drive in the appropriate Basin Data folder.

FIGURE XIII-2

SUPPORT STAFF RETURNED MAIL PROCEDURES
(When initially received in Helena Central Office)

Description of Group		Action
<p>No Forwarding Address Provided or Deceased</p> <p>A forwarding address has not been provided by USPS or it is indicated the recipient is deceased. These may contain decree abstracts, the notice of availability, an address correction mailer and possibly other notices.</p>	Spreadsheet	Enter date in 'Date Returned Mail Received' column. Use the 'Office Responsible for File' field in the spreadsheet to aid sorting (database administrator has populated this field).
	Oracle	
	Send	Send Returned Mail to Regional/Unit office for research
	Records	
<p>Forwarding Address Provided</p> <p>A forwarding address is provided. These may contain decree abstracts, the notice of availability, an address correction mailer and possibly other notices</p>	Spreadsheet	Enter date in 'Date Returned Mail Received' column. Indicate 'Y' in New Address/New Owner column.
	Oracle	Update Address in 'Create and Maintain Owner/Contact' screen. Follow Owner Name/Address Standards (Exhibit IV-6). Complete Name Address Correction form in database
	Send	Forward materials to new address (keep returned mail envelope).
	Records	Send documentation (e.g., Returned envelope, Address Correction Form, or Name Address Correction Report) to Records for scanning and filing at completion of Returned Mail research.

2. Regional/Unit Office Research Procedures. The Regional/Unit office will receive batches of returned mail from adjudication support staff in Helena. The support staff will have tracked all returned mail on the Returned Mail Index by indicating the date the returned mail was received. They will have also indicated if a new address was indicated on the returned envelope—such returned mail will have been processed by the support staff and should be evident by a ‘Y’ in the New Address/DB Form Completed column of the Returned Mail Index.

After receiving batches of returned mail from Helena, ensure the regional/unit office has also received the Returned Mail Index from the adjudication support staff—this should be stored in a central location on the Adjudication Shared Drive. Regional/unit office staff will document returned mail research results on the Returned Mail Index as well as on the DNRC Returned Mail Research Record Form. The processing steps are outlined in ‘Regional/Unit Office Returned Mail Procedures’ below ([Figure XIII-3](#)).

a. Researching Returned Mail. An overview of the research process is depicted in a flowchart in [Figure XIII-4](#). Research returned mail for ownership and/or address changes utilizing such resources as those outlined below. Document all research outcomes on the DNRC Returned Mail Research Record ([Figure XIII-5](#)). [Rule 45\(c\) W.R.C.E.R.](#)

- Check regional office records for varying addresses on different filings, for example a Form 600 or Form 602. Call the owner to verify ownership and/or correct an address. Document the contact.
- Check area telephone directories or online resources such as www.dexknows.com or others. If owners are listed, call to verify ownership. If the party is still the legal owner, obtain the new address. Document the contact.
- Check co-owner or any other individuals referenced in the water right records. Contact any relevant party who may aid in determining current ownership and/or addresses. Document the contact.
- Check the [Montana Cadastral Mapping Program](#). This site contains parcel data along with associated land ownership information. Be aware this site is updated periodically and may not be the most current information.
- Search online county property tax records maintained by the County Treasurer (e.g., Gallatin County is available <http://webapps.gallatin.mt.gov/proptax/>). These records list the individuals to whom the property tax statements were mailed along with the property description. If these records match DNRC ownership records, document research findings. If the ownership does not match, this may indicate a new owner.
- Check county plat books at the clerk and recorder’s office to determine current

ownership and address. Document research findings.

- Check County Appraiser (local Department of Revenue office), County Surveyor's office, or County Assessor's office.
- Search the [Social Security Death Index](#) (SSDI).
- Search the Montana Secretary of State's [Business Entity Search](#) for a registered agent
- Deceased owner estates may be in probate, and thus unresolved. Research should attempt to locate a trustee. Determine if a change in ownership has occurred, or only a change of address is required, i.e., c/o trustee or personal representative. Document research findings.

IMPORTANT:

- If during research it is determined there is a new owner, contact as described in 'Returned Mail Research Record' ([Section XIII.D.2.b](#)).
- If a party is deceased, determine if other water right owners are successors in interest (i.e., spouse of deceased). If so, no further research is necessary. If the deceased is the only owner or no successor is identified, further research is required to locate a heir, trustee or new owner.

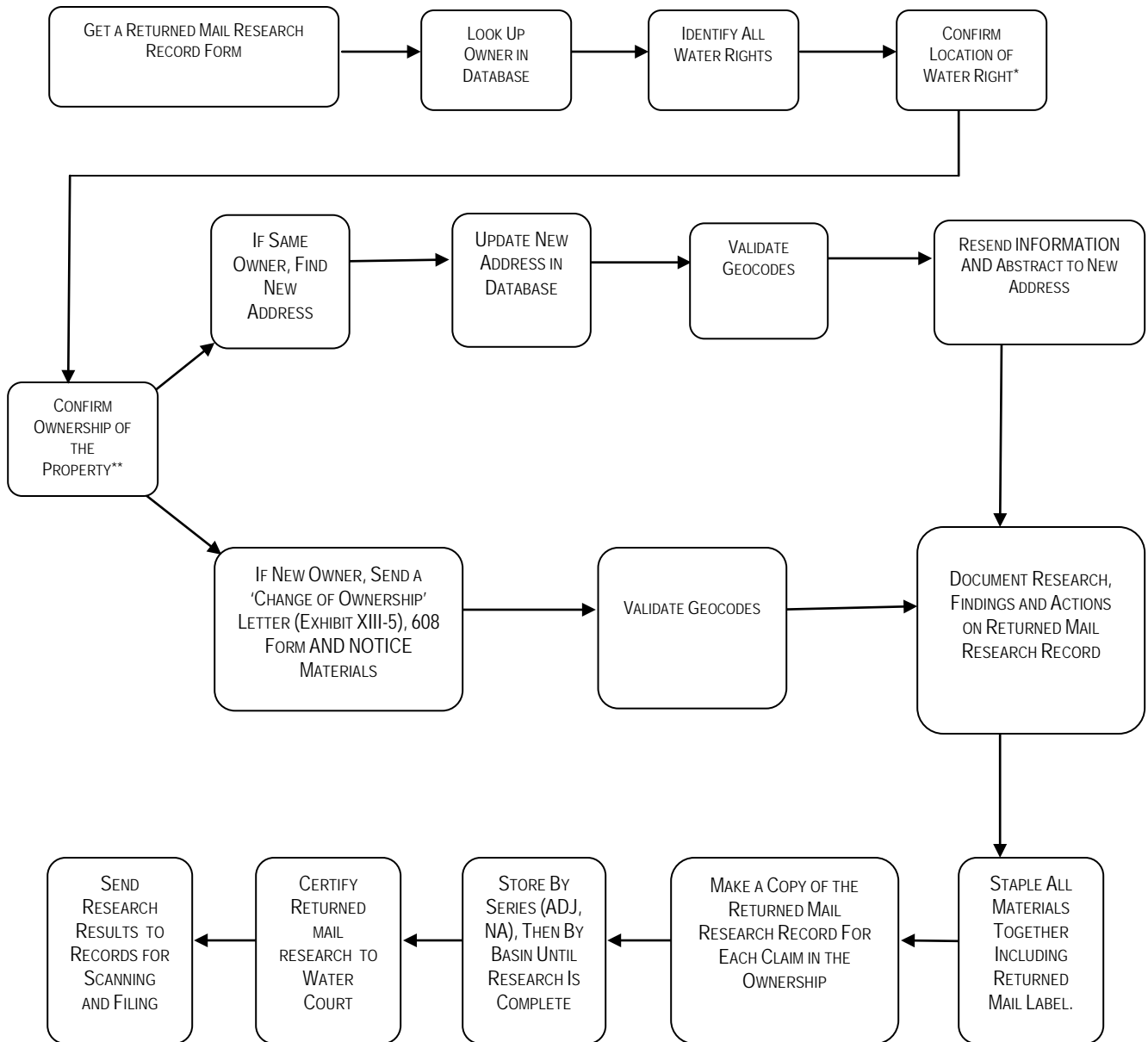
FIGURE XIII-3
REGIONAL/UNIT OFFICE RETURNED MAIL PROCEDURES

Description of Group	Action	
<p align="center">No Forwarding Address Provided</p> <p>A forwarding address has not been provided by USPS. These may contain decree abstracts, the notice of availability, an address correction mailer and possibly other notices.</p>	Spreadsheet	Complete appropriate columns in Returned Mail Index, documenting research results: date researched, researcher, new address/db form completed, new owner/608 sent, dead end.
	Oracle	New Address, Deceased, Location Unknown = Generate Name Address Correction form.
	Send	New Owner or Address: Forward materials (keep returned mail envelope).
	Records	Send documentation (Returned envelope, Returned Mail Research Record) to Records for scanning and filing at completion of basin Returned Mail research.
<p align="center">Deceased</p> <p>It is indicated or discovered the recipient is deceased. These may contain decree abstracts, the notice of availability, an address correction mailer and possibly other notices.</p>	Spreadsheet	Indicate 'Y' in deceased column. If other owners, check if any parties are a successor in interest. If so, no further research is necessary. If the deceased is the only owner or no successor is identified, further research is required to locate a heir, trustee or new owner.
	Oracle	If deceased, update database—use the "Deceased" button. Generate a Name Address Correction form.
	Send	Forward a copy of material to new owner, if located.
	Records	Send documentation (Returned envelope, Returned Mail Research Record) to Records for scanning and filing at completion of basin Returned Mail research.

*A copy of the Returned Mail Research Record should be in every file in an ownership. The original research documentation should be in the lowest water right number. If a new owner is identified, file a copy in the appurtenant water rights.

FIGURE XIII-4

Steps for Researching Returned Mail



* May encounter incorrect legal land descriptions. Follow department procedures for making corrections.

**Resources: Dexknows.com, County Clerk and Recorder, [GWIC](#), [Social Security Death Index](#), [Business Entity Search](#), [Montana Cadastral Mapping Program](#)

FIGURE XIII-5

September 3, 2009
Customer ID: 239100

Page 1 of 1
Return Mail Checklist

RETURN MAIL CHECKLIST

SE Secn: 1 Twp: 6S Rng: 9W GROUND WATER CERTIFICATE 41B-30011987
Qtrs Location Water Right Type Lowest Water Right No.

County: BEAVERHEAD

Subdivision: US RANCH ESTATES Lot: 14

Water Right(s): Water Right Number: Water Right Status: Owner to Water Right:
41B-30011987 GWCT ACTIVE CURRENT OWNER

Customer
Researching: A M SMITH - (Cust No. 239100)

Co Owner(s): PETER L SMITH - (Cust No. 239099)
A M SMITH - (Cust No. 239100)

Record Address: 132 SADDLE DR
DILLON, MT 59725

Research Findings: Address Changed New Ownership
 Address Unconfirmed Ownership Unconfirmed

New Address: Address Changed to: _____
City: _____ State: _____ Zip: _____ - _____

New Ownership: Name: _____
Address: _____
City: _____ State: _____ Zip: _____ - _____

Sources Used:

	Additional Notes
<input type="checkbox"/> Telephone: Party Contacted _____	_____
<input type="checkbox"/> Regional Office Water Right Records	_____
<input type="checkbox"/> County Records of present owners (e.g., Appraiser, Clerk & Recorder, Treasurer, etc.)	_____
<input type="checkbox"/> Montana GIS Cadastral Mapping Program	_____
<input type="checkbox"/> Secretary of State for corporations	_____
<input type="checkbox"/> Internet people search. Site: _____	_____
<input type="checkbox"/> Other: _____	_____

Information Sent to Researched New Owner and/or new Address; Date Sent: / /

Letter
 Change of Address Form
 Notice of Availability
 Notice of Objections
 Individual Objection Notice
 Water Right Ownership Update (Form 608)
 Abstracts
 Other: _____

Reviewed by: TRACY MCCREERY Signature: _____ On: 09/03/2009 09:01am

Database Updated by: _____ Date: _____

Geocode Validated: _____

See file _____ for further information and documentation.

b. Returned Mail Research Record. For each piece of returned mail, complete a **Returned Mail Research Record** ([Figure XIII-5](#)) (as generated from the database and as a blank form available on the Adjudication Shared Drive) to document information sources, research findings, and any contact. Also document geocode research which may require assignment and/or validation. Refer to "Irrigation: Place of Use: Geocodes" (Section VII.D.5).

To document the returned mail research, the lowest numbered claim within an ownership will contain the original, complete set of documentation, e.g., original Returned Mail Research Record, original returned envelope, and any other documentation. Other water rights affected by the returned mail research should contain a copy of the Returned Mail Research Record. Write the water right number in the upper right corner. [Rule 45\(f\), W.R.C.E.R.](#)

If research determines a new owner is involved, complete the appropriate portion of the Returned Mail Research Record. Note the claim number containing all documentation and make a copy of the Returned Mail Research Record for each water right which is appurtenant to the new owner's property.

The three main outcomes of returned mail research are: [Rule 45\(d\), W.R.C.E.R.](#)

- New Address. Document this information under RESEARCH FINDINGS. Update the database following the Owner Name/Address Standards (Exhibit IV-6). Generate a Name Address Correction form (from the Create and Maintain: Owner/Contacts screen, go to Reports: Administrative Reports: Name Address Corrections).
- New Ownership. If new ownership is determined, document the new owner's name and address under RESEARCH FINDINGS. The new ownership will only be updated upon receipt of a completed ownership update ([Form 608](#)) if the transaction took place prior to July 1, 2008. If the transaction occurred after July 1, 2008 and the ownership was not updated through the automation process, further research the geocodes and the appropriate ownership update form ([Form 641](#), [642](#), or [643](#)).
- New Address/Ownership Unresolved. If a new address and/or ownership cannot be determined, document the research efforts under RESEARCH FINDINGS. Explain the information sources which were researched. Attach the returned envelope with contents to the Returned Mail Research Record.

c. Processing Returned Mail. Once a new address and/or ownership is determined, material from the returned mail envelope will be forwarded as described below:

- If a new address, forward the material from the returned envelope in a new envelope. Attach the original returned envelope to the Returned Mail

- Research Record.
- If a new ownership is identified, mail the new owners the material from the returned envelope, an appropriate ownership update form, and a “Change of Ownership” letter (Exhibit XIII-5).

d. Finishing Steps. Most of the returned mail will arrive at the regional/unit office over the course of a few weeks following the mailing. Stragglers may continue to arrive—research these in the same manner as outlined above.

Prior to the deadline specified in the notice, the office responsible for the basin will prepare a general certificate of mailing (Exhibit XIII-7) to certify all returned mail has been researched and processed. In the certificate of mailing, identify all water rights where the current owner or address could not be found (i.e., dead end returned mail tracked in the Returned Mail Index). Make a copy of the certificate of mailing for the physical basin file.

After returned mail has been researched and certified, organize the returned mail research by series (adjudication, new appropriations) and basin. Send to Records for scanning and filing.

E. POST-DECREE REVISIONS

ERRORS FOUND IN DECREES

THE WATER COURT IS THE ONLY ENTITY WITH THE AUTHORITY TO MAKE CHANGES TO CLAIMED RIGHTS AFTER A DECREE IS ISSUED, AND THAT INCLUDES MAKING CHANGES TO THE CLAIMED RIGHTS IN THE DATABASE.

A decree is a legal document. As a result, the Water Court requires that all decreed claims be “locked” in the database at the time that the decree is being prepared for issuance. From this point forward, the abstracts for claims may only be corrected by the Water Court. [Rule 46\(c\), W.R.C.E.R.](#) However, according to [Rule 3 \(d\)\(2\), W.R.C.E.R.](#), changes to the database record may be made by the department **after** issuance of a decree in the following circumstances:

- As specifically ordered or directed **in writing** by the Water Court. The compliance technician, under supervision of the Bureau Chief, makes all such corrections to the database for the Court.
- To create a new record for changes in appropriation rights ([§85-2-402, MCA](#)).
- In compliance with water right ownership updates ([§85-2-403](#) and [§§85-2-421 through 85-2-426, MCA](#)).
- To change an owner address.

DNRC staff have an obligation to report any errors found in a decree to the Water Court. In the course of reviewing decreed rights for one reason or another, staff may discover errors. Review [Rule 46 W.R.C.E.R.](#) This reporting process varies by rule depending on when such errors are discovered.

If an error is found in any element of a decreed claim abstract, the specialist should: [Rule 46\(b\), W.R.C.E.R.](#)

- Document the error.
- Prepare a memorandum to be sent to the Water Court. This includes clerical errors, computation errors and other errors or omissions identified in a decree.
- “Cc” the claimant on the memorandum to the Water Court.
- “Cc” the claim file on the memorandum to the Water Court.
- Review the materials with a supervisor.
- Once approved by a supervisor:

- send the memorandum, supporting materials, and claim file to the Water Court.
- Print a copy for the claimant and send.
- Print a copy for the claim file (preferably in original format to produce a better scanned image). Route this copy to Records for scanning. Indicate this is a 'DNRC Post-Decree Document' so it may be appropriately identified on FileNet. Records will then route the document to the claim file.

In the memorandum, explain the discovery of the error identified and include a recommendation. The claimant may file a Notice of Objection with the Water Court if the error is discovered during the objection period, or a Motion to Amend with the Water Court if the objection period has expired, along with any necessary documents for resolution. Send the claimant the appropriate forms or have the claimant contact the Court. See [Figure XIII-6](#) for an example.

The memorandum to the Water Court and claimant should contain the following:

- water right ID number and basin code
- short discussion of how error was discovered
- water right elements that are incorrect
- proposed corrections (which should be well supported)
- any documentation that may be helpful (maps, deed, etc., but do not include items already in the case or claim file)
- copy of decree abstract with correction clearly made,

DNRC's memorandum may be used to support an objection, Motion to Amend, Amendment, or Affidavit filed by the claimant with the Water Court. On occasion, specialists may be asked to include such documents when their memorandum is sent to the Court. If the Court accepts such information, they may not be able to make such changes immediately if there is a notice problem. It will depend on the extent of the requested change, and its likelihood to cause adverse affect to other water rights. If and when the Court accepts such change, the Court will be responsible for making the change to the claim in the database.

FIGURE XIII-6

Decree Error Notice Memorandum
(Use State of Montana Letterhead)

MEMORANDUM

TO: Montana Water Court

FROM: [Name], Water Resources Specialist
[Location] Water Resources [Regional/Unit] Office

DATE: [Date]

RE: [42L 000000-00]
[John and Jane Doe, Owners]

During the routine processing of an Application For Change filed with the Department, an error was found on the abstract of 42L 000000-00 as decreed.

The place of use and point of diversion legal land descriptions for this water right are incorrect. Section 6, Township 3 North, Range 56 East, belongs to Joe Smith, as shown on the enclosed deed. Mr. Smith confirmed there is no well in the NW¼ of Section 6, and, he believes the Doe's own Section 6 in Township 2 North, Range 56 East.

The claimant's map in the claim file, showing the well, is labeled Township 2 North. A comparison of the USGS quad map (copy enclosed) with their map further confirms the correct township as 2 North, not 3 North as claimed and decreed.

A photocopy of the decree abstract showing the correction is enclosed for your reference. If it is determined that this is a clerical correction that should be made, please do so.

If claimants agree with the suggested correction, enclosed is a Verified Motion to Amend their claim which must be completed and filed with the Water Court, **OR** an Objection Form which must be completed and filed with the Water Court.

Thank you for your consideration in this matter.

Enclosures

cc: John and Jane Doe
Claim 42L 000000-00

F. POST-DECREE WATER COURT ASSISTANCE

As provided in [§85-2-243, MCA](#), the Water Court may at any time direct the department to provide information and assistance required to adjudicate claims of existing rights. This includes conducting field investigations, assistance with the enforcement of Water Court decrees, and assistance for issue remark resolution ([§85-2-248, MCA](#)). [Rules 1\(b\)\(4\) and 12\(a\) W.R.Adj.R.](#) and [Rule 1\(b\), W.R.C.E.R.](#)

It is IMPERATIVE to become familiar with the [Water Right Adjudication Rules](#) as set out by the Montana Supreme Court and cited as Rules 1 through 33, W.R.Adj.R., 2006. These rules are a companion to Water Right Claim Examination Rules. The Court's rules are located in the same hardcopy document as the Water Right Claim Examination Rules and exhibits. They can also be found on the DNRC and Water Court websites. (See also post decree assistance training material on the "[Adjudication](#)" drive.)

1. Post-Decree Assistance. A Water Court request for department assistance will be made in writing (see [Rule 12\(b\), W.R.Adj.R.](#)). The Court will send copies to all parties identified on the Water Court service list. The Water Court's request should specify:

- the assistance required
- a deadline for the department's review
- a memorandum be completed and sent to the Court
- the department send a copy of its memorandum to all parties on the Court's service list.

If the Water Court deadline cannot be met, notify the Water Court **at least five working days prior to the deadline** to request a continuance of the deadline to a specified future date ([Rule 14 W.R.Adj.R.](#)).

Document any telephone contact or personal interviews with the claimant or any other person. Attach this documentation to the department's memorandum to the Water Court. See "Examination Materials and Procedures: Claimant Contact Techniques" (Section IV.F).

Any contact with the Water Court made during the department's assistance and relative to a specific claim or case must be done as a formal memorandum to avoid "ex parte" communications (private, illegal communications by fewer than all parties to the case). Send copies of the memorandum to all persons on the Water Court service list. For further information on ex parte communications, see the order adopted by the Montana Supreme Court, '[In the Matter of the 2008 Montana Code of Judicial Conduct.](#)' Specifically review the terminology and Rule 2.1.

Please use the "Post Decree Assistance Memo" template (located on the shared drive - ADJUDICATION\Claim Examination Documents\Post Decree Assistance). When the memorandum is complete, it must be reviewed and signed by a supervisor or another Specialist.

- Once approved, send the original memorandum and any attachments to the Water Court.
- Mail a complete copy of the memorandum and attachments to all persons on the Water Court service list.
- Keep a copy for yourself until all issues are resolved and the case or claim is closed.

2. Field Investigations. For any Water Court requests to conduct a field investigation, see “Examination Materials and Procedures: Investigation Techniques: Field Investigations Requested by Water Court” (Section IV.G.4). See also [Rule 12 \(c\) W.R.Adj.R.](#) Generally, the Court will specify the extent and limit of the investigation in its order, and the notice procedures to be followed by the investigator. The department must arrange access when necessary. Note [Rule 12 \(c\) \(3\) W.R. Adj. R.](#) which directs the department to send a confirmation letter **at least 20 days prior** to the intended date of the field investigation. This timeframe may be shortened in the Water Court’s order or waived if all parties provide written agreement.

3. Withdrawals Received After Decree Issued. If a decreed claim is withdrawn, immediately send the withdrawal, along with a cover letter, to the Court for processing. Send the claimant a copy of the cover letter. An example of notification to the Court is shown in [Figure XIII-7](#).

4. Reinstatement of Withdrawn Claim. Any time a request is made to reinstate a withdrawn decreed claim, such request must be made to the Water Court. Prepare a memorandum ([Figure XIII-7](#)) stating the reason for the request. The memorandum, supporting documentation, and complete claim file should be reviewed by a supervisor. Include a ‘cc’ in the memorandum to the claimant and to the claim file.

- Once approved, send the original memorandum and any attachments to the Water Court.
- Mail a complete copy of the memorandum and attachments to the claimant.
- Print a copy for the claim file (preferably in original format to produce a better scanned image). Route this copy to Records for scanning. **Indicate in the instructions on the [routing slip](#) this is a ‘DNRC Post-Decree Document’** so it may be appropriately identified on FileNet. Records will then route the document to the claim file.

If the Water Court authorizes the reinstatement of the claim, the Court will update the water right status in the database to “Active” and generate a new abstract. Since the claim will have already been examined, there will usually be no further assistance needed from the department.

5. Amendment Received After Decree Issued. Claimants wishing to amend their claim in a decreed basin should be directed to file an objection if the objection period is open or a Motion to Amend if the objection period is closed, with the Water Court. Remember, only the Water Court can make changes to a claim at this stage in the process. See [Rule 10, W.R.Adj.R.](#)

Examiners may assist a claimant in this process by:

- recommending the claimant include with their objection an affidavit, such as an Amendment or Verified Motion to Amend provided by the Court;
- providing the claimant with a map for any requests to amend POD or POU; and
- providing a short memorandum to the Court. If the amendment corrects an error in the decree which is confirmed by review, this should be discussed in the memorandum.

When the memorandum is complete, it must be reviewed by a supervisor. The memorandum should include a 'cc' to the claimant and to the claim file.

- Once approved, send the original memorandum and any attachments to the Water Court.
- Mail a complete copy of the memorandum and attachments to the claimant.

The claimant is responsible for filing their objection and the original amendment with the Court.

6. Issue Remark Resolution. The department may be requested to provide information and assistance ([85-2-248, MCA](#)). Follow the procedures described above in "Post Decree Assistance" ([Section XIII.F.1](#)) as well as the assistance specified by the Court in any orders. Review [Rules 7 and 8, W.R.Adj.R.](#)

In 2005 the Water Court was directed by the Legislature to resolve all issue remarks on a water right claim abstract pursuant to the procedures delineated in Section 85-2-248. MCA. While the Water Court may be able to resolve an issue remark based upon information in the claim file, most issue remark resolution requires the involvement of the DNRC Water Resource Specialists. The Court will issue a "248 Order" directing the claimants to meet with the DNRC in an attempt to resolve the issue remarks on their claims. The DNRC assists claimants with gathering the evidence required to resolve the issue remarks and filing the proper documentation (whether an affidavit or Verified Motion to Amend Water Right Claim) with the Court. The DNRC also writes and separately files its recommendation regarding whether or not the issue remarks on the claims have been resolved. The DNRC's recommendation should include the reasoning and clear analysis of the evidence behind its recommendation of whether or not the

issue remarks are resolved. All parties involved in the case or in the proceedings for the claims should be included on the heading for the Memorandum.

- Remember, in most instances, the Court is looking for pre-July 1, 1973 evidence.
- Also, any time a change is made to a place of use or point of diversion, a map should also be generated. The documentation will be placed in the claim file by the Court if it accepts the attempted resolution of the issue remark.
- If there are multiple claimants, each claimant must agree with the proposed changes. Each claimant's signature is required on the documentation.

Sometimes the initial attempt at resolution by the claimants and DNRC prompts another Order from the Court. Read these Orders carefully to determine what the Court is seeking to resolve the issue remark. Further documentation from the claimant or further analysis from the DNRC may be required. *See DNRC Post Decree Template FIGURE XIII 6.5. Electronic template found on Adjudication shared drive.*

FIGURE XIII 6.5

MEMORANDUM

DATE: June 2, 2011

CLAIM NUMBER: 43Q-39513-00

TO: Kathryn Lambert, Senior Water Master

FROM: John Beyrau, Water Resource Specialist

CLAIMANT(S): John J. Clark and Peggy D. Clark

INTRODUCTION:

On May 9, 2011, a Montana Water Court Order was received directing the owners listed above to contact DNRC and attempt to resolve the issue remark:

THE YELLOWSTONE COUNTY WATER RESOURCES SURVEY (1943) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

Mr. Clark contacted DNRC on May 27, 2011. On May 31, 2011, Mr. Clark's call was returned. It was explained to him that DNRC would examine the available information relating to the Water Resources Survey data and photos of the place of use. DNRC will make recommendations to the Water Court about the issue remark. It was explained that he would get a copy of all communication with the Montana Water Court.

MATERIALS REVIEWED:

Claim file for water right no. 43Q-39513-00, The Yellowstone Co. Irrigated Area Survey (1943), USDA aerial Photo no. 679-159 (dated, 9-15-1979), Aerial Photo no. ZW-4GG-259 (dated, 06-26-1966. The place of use was mapped in the DNRC Water Rights Mapper GIS Application.)

DISCUSSION:

Water right claim 43Q-39513-00 was objected to by the United States of America (Bureau of Indian Affairs). The objection was resolved, the Master's Report was issued on November 14, 2001 and an Order Adopting Master's Report was issued on December 11, 2001. The resolution of the objection did not address the issue remarks that had been placed on the water right. The Claimant had amended the water right place of use to 21 acres on April 23, 1991. This addressed the examined acreage remark. The remark based on the Water Resources Survey information was not addressed at any time.

As a part of this investigation, the place of use was mapped in the DNRC Water Rights Mapper GIS Application. The result of the mapping is contained in the three DNRC examination reports that accompany this memo. The claimed place of use on the examination reports is taken from the place of

use map that was attached to the April 23, 1991 amendment. The map was scanned and georeferenced to the maps and air photos in the Water Rights Mapper application.

The Yellowstone Co. Irrigated Area Survey (1943) maps indicate that no part of Section 20 T3N R27E is irrigated (see attached survey map.). Study of the field notes for the survey turned up no record regarding any irrigation in the section. The dates in the field notes for the survey indicate that the fieldwork was completed in the area between early April to mid June of 1943. This is over a year prior to the decreed date of first use on the water right. The priority date of the water right postdates the April 1, 1943 date that the field notes were taken, so it appears that the water right would not appear in the Yellowstone Co. Irrigated Area Survey. The appropriation document in the original claim does not identify section 20 T3N R27E as a part of the place of use. The April 26, 1944 date of first use is consistent with the available information.

Two photographs were located that provide aerial photography coverage of the place of use: USDA aerial photo no. 679-159 (dated, 9-15-1979) and aerial photo no. ZW-4GG-259 (dated, 06-26-1966). The 1966 aerial photo was used for this investigation because no photo of the date of the Yellowstone Co. Irrigated Area Survey (1943). The 1966 aerial photos of Yellowstone Co. are the only aerial photos available to this investigation that are prior to 1973. The two photos were scanned and georeferenced in the Water Rights Mapper application. The place of use appears to be roughly the same in appearance in both aerial photos (see the two photo map versions of the DNRC Examination Reports). The boundary of the place of use is fairly diffuse and indistinct on both aerial photos. The fields appear to be intensively used tame pastures. The area of the amended place of use is, generally, slightly darker than the surrounding areas. Each photo was examined separately and the place of use delineated as well as possible on each photograph. The areas delineated for each photo are shown on the 2 photomap versions of the DNRC Examination Reports. The two areas are similar but differ in detail. Due to the diffuse nature of the irrigated area boundary this is to be expected. The total area involved is 22 acres for the 1979 photograph, and 23 acres for the 1966 photograph. The measured areas are within the Montana Water Rights Claim Examination Manual contact points for the 21 acres of the amended place of use.

Conclusion: The place of use was irrigated by 1966 and has been irrigated since that time (at least through 1979) whenever sufficient water has been available. The Yellowstone Co. Irrigated Area Survey (1943) does not show the area as irrigated. The date of first use of 1944 is after the Yellowstone Co. Irrigated Area Survey (1943) field work was completed, thus would not appear in the survey. Based on this information, it is recommended that the issue remark:

THE YELLOWSTONE COUNTY WATER RESOURCES SURVEY (1943) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.,

be removed from the water right. A copy of the general abstract with the recommended changes marked on it is enclosed with this memorandum.

ENCLOSURES:

Claim file for water right no. 43Q-39513-00, Yellowstone Co. Irrigated Area Survey (1943) map for T3N R27E, 3 DNRC Water Rights Mapper Examination reports (1 topographic map, 2 photo maps), marked up general abstract of water right.

DATE: June 2, 2011 by _____
John Beyrau, Water Resource Specialist
406-444-0541 jbeyrau@mt.gov

REVIEWED:

DATE: June 2, 2011 by _____
Robert Hensley, Water Resource Specialist

SERVICE LIST:

Kathryn Lambert, Senior Water Master
Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389

John J. Clark
Peggy D. Clark
10404 12 Mile Road
Shepherd, MT 59079

Bureau of Indian Affairs
Water Resources Division
316 North 26th Street

Billings MT 59101

DNRC Billings Regional Office
Kim Overcast
Airport Business Park
1371 Rimtop Drive
Billings, MT 59105-1978

John Peterson
Water Rights Adjudication Office
PO Box 201602
Helena, MT 59620-1602

FIGURE XIII-7

Request to Reinstate a Withdrawn Claim Memorandum

(Use State of Montana Letterhead)

MEMORANDUM

TO: Montana Water Court

FROM: [Name], Water Resource Specialist
[Location] Water Resources [Regional/Unit] Office

DATE: [Date]

RE: Request to Reinstate Claim No. [42L 000000-00]

The above referenced claim was filed with the Department on January 10, 1982 by John Doe. On February 5, 1989 the claimant signed a Request to Withdraw this claim, indicating he had no existing water right.

On MM/DD/YYYY this claim was decreed as an inactive, withdrawn claim.

On October 2, 2002, this office received a letter from Joe Smith, the current owner of this water right, stating he would like to have the claim reinstated.

Enclosed are the documents supporting this Request, along with the complete claim file.

It is recommended that the claimant file a Notice of Objection with the Court to support his request. A Notice of Objection form has been included for the claimant with a copy of this Request.

Thank you for your attention to this matter.

Enc: Notice of Objection

cc: [Claimant]
Claim [42L 000000-00]

The Water Court is the only entity that can actually remove a resolved issue remark. The DNRC's recommendations are not a guarantee. Sometimes, the Court will not be satisfied with the recommendation and will proceed to set a hearing on the matter. If a master requests clarification of a specialist's recommendations, the specialist should respond to the request as ordered by the Court. Send a copy to the claimant.

After the decree has been issued but before the close of the objection, counterobjection, and notice of intent to appear periods.

1. If claimants see a problem with their abstract they should file an objection with the Court to their own claim (if before the close of the objection period) or
2. If claimants wish to resolve an issue remark, they should file an affidavit with the Court addressing the issue and identifying how the elements should be corrected, and provide evidence to resolve the issue remark.
 - a. If claimants are proposing a change to an element that is not addressed in the issue remarks, they should file an objection as indicated by 1.
 - b. Claimants may attach evidence supporting their proposed change.

If claimants wish to resolve and issue remark, help them obtain any evidence needed to resolve the issue remarks and draft a Memorandum for the Court recommending whether or not the issue remarks have been resolved. In other words, follow the issue remark resolution process just as you would if claimants received an Order from the Court to resolve their issue remarks. This process potentially expedites the issue remark resolution process for the Court, as the Court may be able to resolve the issue remarks without further proceedings after the objection, counterobjection, and notice of intent to appear periods have closed.

FIGURE XIII 7.5

Request to resolve issue remarks after decree is issued and before close of objection period

A

**DEPARTMENT OF NATURAL
RESOURCES AND CONSERVATION
HAVRE WATER RESOURCES REGIONAL OFFICE**

BRIAN SCHWEITZER, GOVERNOR

210 6TH AVENUE
PO BOX 1828

STATE OF MONTANA

PHONE (406) 265-5516
FAX (406) 265-2225

HAVRE, MONTANA 59501-1828

MEMORANDUM

DATE: December 6, 2010

WATER RIGHT NO.: 40J 44004-00

TO: Anna Stradley, Water Master

FROM: Terri Peterson, Water Rights Technician

CLAIMANT(S): David Warburton and James Warburton

FILED
DEC 09 2010
Montana Water Court

INTRODUCTION:
On September 28, 2010, our Department received an Affidavit from David Warburton addressing the R90 reservoir issue remark.


MATERIALS REVIEWED:
Affidavit received September 28, 2010, from David Warburton
Statement of Claim File No. 40J 44004-00

DISCUSSION:
Claimant David Warburton submitted an Affidavit addressing the R90 reservoir issue remark, "According to information in the claim file, the reservoir was enlarged in 1989. This may indicate an expansion of the water right." Based upon the proposed affidavit submitted by the claimant the R90 issue is now resolved.


ENCLOSURES:
Original Affidavit received September 28, 2010

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AN EQUAL OPPORTUNITY EMPLOYER

DATE: December 6, 2010 by 
Terri Peterson, Water Rights Technician
406-265-5516 terpeterson@mt.gov

REVIEWED:

DATE: December 6, 2010 by 
Kraig Van Voast, Deputy Regional Manager

cc: David Warburton
7405 Paradise Valley Rd
Chinook MT 59523

James Warburton
40990 US Hwy 2
Chinook MT 59523

Claim File 40J 44004-00

7. Testifying in Water Court Proceedings. All Water Court cases either settle or go to hearing. Hearings are conducted by the Judge or master according to the Montana Rules of Civil Procedure and Rules of Evidence. See the applicable Sections in [Chapter 25, Civil Procedure](#), and the applicable Sections in [Chapter 26, Evidence](#), Montana Code Annotated.

When the parties to a case or claim fail to resolve the objection or issue, the Water Court will issue a Scheduling Order which sets the deadlines in preparation for a hearing in the matter and sets a hearing date. See [Rules 16\(c\) and 21, W.R.Adj.R.](#)

There are two instances where adjudication specialists may be requested to appear and testify in a Water Court proceeding:

- If the case involves only issue remarks, the Court will generally request the assistance of an adjudication specialist at the hearing. Such a request may appear in the Scheduling Order or in a specific order requesting the presence and testimony of the adjudication specialist. Notify a supervisor immediately so they may assist in preparing for the hearing.
- If a case involves an objector, the Court will generally leave it to the parties to subpoena an adjudication specialist for the hearing. If a subpoena is received, notify a supervisor immediately so they may assist in preparing for the hearing. There are specific rules involving subpoenas ([ARM 36.12.217](#) and [§26-2-515, MCA](#)). The supervisor should inform DNRC's legal staff.

See training documents, "Preparing to Testify" (Part I and II) and "Tips for Witnesses in Water Court Proceedings" on the Adjudication Shared Drive. Also review the 2007 "Expert Witness Mock Court" DVD which was a training exercise on the Water Court hearing process. The Chief Water Judge presided over three cases with the assistance of water law attorneys and the participation of adjudication specialists. The DVD is available in each regional/unit office and in Helena. This is an excellent overview with invaluable tips on what to expect as a witness.

PREPARATION IS KEY TO A COMFORT LEVEL AS A WITNESS WHEN TESTIFYING:

- Understand the Court process as much as possible;
- Review the recommended training materials
- Visit with experienced colleagues
- Review the claim file
- Review basin characteristics typically found in, but not limited to, the Water Resource Survey:
 - history, climate, soils, livestock, water supply, etc.
 - unique basin attributes
 - major water appropriators
 - flood/drought years
 - USGS gaging stations

8. Water Court Decree Enforcement. Pursuant to [§§3-7-212](#), [85-2-406\(3\) and \(4\)](#), and [85-5-101, MCA](#), a Water Court decree may be enforced upon written request from a district court. Review [Rule 31, W.R.Adj.R.](#)

The department's role in Water Court decree enforcements will be to:

- identify every diversion and instream use within the enforcement area;
- map the diversions and instream uses as needed;
- identify all ditch names as necessary;
- identify any POD discrepancies or other relevant issues;
- assist the Water Court and district court in conducting public meetings on enforcement.

The information provided by the department will be used by the Water Court to prepare a tabulation of existing water rights. The Water Court will then submit this tabulation to the district court. Upon request of the Water Court, maps and any other relevant requests will be provided by department staff.

9. Certification Cases. When a water distribution controversy arises before or after the Water Court has decreed a basin, claimants may petition the District Court to certify the matter to the Chief Water Judge ([§85-2-406\(2\)\(b\), MCA](#)).

The Water Court then consolidates the claims into a case and issues an order to the DNRC requesting technical assistance. Certification cases take priority over all other adjudication matters. The department reports its findings to the Water Court. The Chief Water Judge makes a determination and provides that decision to the District Court. See *also* Section XI.G.

10. Post-Decree Work Report. In conjunction with the Adjudication Program Status Report (Section IV.I), complete and submit a monthly Post-Decree Work Report ([Figure XIII-8](#)). This information will be vital for compiling statistics for the department and for reporting to the [Environmental Quality Council](#).

Post-decree hours will continue to be noted on the Adjudication Work Report. However, also track post-decree hours on the Post-Decree Work Report (the total reported should match on both reports). This report will be utilized to track the type of post-decree assistance the DNRC performs as well as the hours dedicated to four general categories.

a. Category Definitions. Categorize post-decree assistance into the following four categories. **Under no circumstances should these categories be altered in the report.** If unsure of where to categorize a post-decree activity, contact a

supervisor.

- Cases with Objectors
- [Section 85-2-248, MCA](#) Order
- Certification Cases
- General Claimant Assistance

Cases with Objectors: This may include any activity related to the case, such as status conferences, hearings, settlement negotiations, field investigations, subpoenas, etc.

Section 85-2-248, MCA Orders: This is a Court Order for the claimant to meet with DNRC to resolve issue remarks.

Certification Cases: The Water Court may order the DNRC to examine specific aspects of specific water rights. The Water Court makes a determination regarding the certified issues. This can occur pre- or post-decree.

General Claimant Assistance: This may include the claimant asking for assistance on some aspect of a case, but DNRC has not been ordered by the Court to assist. It may also include education or research.

G. POST-DECREE RE-EXAMINATION

1. Formal Process of “Re-examination”. Section 85-2-282, MCA, allows for the re-examination of claims in older Water Court decrees that were **verified**, rather than examined. Verification was the process used prior to examination. ‘Verification’ occurred from 1974 (in the Powder River basins) to 1987, more or less. Some decrees issued after 1987 are verified basins. These basins are noted on the [‘Adjudication Status Report’](#).

If the Water Court receives the appropriate request from water users in a basin, and grants such request for re-examination, it will issue an order directed to the department to re-examine specific claims in that basin and set the parameters of that re-examination. The court will also specify the addition of information remarks noticing the re-examination in that basin, such as the following:

Examples: G50 THE CLAIMED IRRIGATED ACRES AND PLACE OF USE HAVE BEEN RE-EXAMINED BY THE DNRC UNDER MONTANA WATER COURT ORDER DATED AUGUST 29, 1997. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

C85 THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS **120.00** ACRES. THE DNRC’S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.

2. Procedures for “Re-Examination”. The Court Order will limit the re-examination to specific elements, such as maximum acres and place of use. The order should specify the application of the current rules and manual to the re-examination of the specified elements. If only maximum acres and place of use are being re-examined, then only the irrigation claims need to be reviewed. The procedures for that review will be the same as an original examination of the relevant elements, unless specified otherwise in the order. For benchmark purposes, the examination of ‘verified’ claims does count toward DNRC required goals. The examination of these claims should be counted and reported monthly.

