

Water Rights in Montana

December 1999

Montana Department of
Natural Resources and Conservation

P.O. Box 201601
Helena, MT 59620-1601

Phone (406) 444-6610

www.dnrc.state.mt.us/wrd/home.htm

Next - Mediator

Terry McLaughlin

Kathy Moore

Mitchel Renaldi

Persons with disabilities who need an alternative accessible format of this document should contact:

Department of Natural Resources and Conservation
Water Resources Division

48 North Last Chance Gulch

P.O. Box 201601

Helena, MT 59620-1601

Phone: 406-444-6603/Fax: 406-444-0533/TDD: 406-444-6873

Form 608A	Addendum to Water Right Ownership Update-Proportional Transfer (for each 608A filed, up to a maximum of \$200.00)	\$50
Form 610A or 610B	Application for Reservation of Water (fee plus department costs of giving notice, holding hearing, etc.)	\$100
Form 611	Objection to Application	\$25
Form 613	Fee Schedule for Water Use in Montana	None
Form 615	Water Conversion Table	None
Form 617	Project Completion Notice for Permitted Water Development	None
Form 618	Project Completion Notice for Change of a Water Right	None
Form 625	Water Right Correction (no fee if due to departmental error)	\$10
Form 626	Application for Renewal of Temporary Water Right Change	\$50
Form 627	Notice of Water Right (exempt from the adjudication filing requirements)	\$25
Form 630	Petition for Controlled Groundwater Area to the Department of Natural and Conservation. (fee plus department costs of giving notice, holding hearing, etc.)	\$200
Form 631	Petition for Closure of a Highly Appropriated Basin. Petition to the Department of Natural Resources and Conservation to adopt rules to reject permit applications, or modify, or condition permits issued in a highly appropriated water basin or subbasin (fee plus department costs of giving notice, holding hearing, etc.)	\$200
	Reinstatement of a permit or authorization to change	\$25

These water right forms are available at the water resources regional offices or the central office in Helena. Most are also available at your local county clerk and recorder's office. Many of these forms are available on the DNRC website at www.dnrc.state.mt.us/wrd/home.htm.

<u>Form No.</u>	<u>Title</u>	<u>Fee</u>
Form 600	Application for Beneficial Water Use Permit	\$200
Form 600A or 600B	Supplement to Application for Beneficial Water Use Permit	None
Form 600INS	Information and Instructions for Application for Beneficial Water Use Permit	None
Form 600ACF or 600BCF	Supplement to Application for Beneficial Water Use Permit—Upper Clark Fork River Basin Groundwater Appropriations	None
Form 602	Notice of Completion of Groundwater Development	\$25
Form 603	Well Log Report	None
Form 605	Application for Provisional Permit for Completed Stockwater Pit or Reservoir	\$25
Form 606	Application for Change of Appropriation Water Right (\$25.00 for a replacement well or reservoir in the same source, or to move or add stock tanks)	\$200
Form 606A or 606B	Supplement to Application for Change of Appropriation Water Right	None
Form 606ASW	Supplement to Application for Change of Appropriation Water Right: For Salvage Water	None
Form 606T	Temporary Change Supplement to Application for Change of Appropriation Water Right	None
Form 607	Application for Extension of Time	\$50
Form 608	Water Right Ownership Update (\$5.00 for each additional water right updated, up to a maximum of \$50.00)	\$25

BACKGROUND OF WATER RIGHTS IN MONTANA	1
MONTANA WATER USE ACT	1
WATER RIGHTS ADMINISTRATION	1
ADJUDICATION OF EXISTING WATER RIGHTS	2
EXEMPT EXISTING WATER RIGHTS	5
NEW APPROPRIATIONS OF WATER	6
Surface Water	6
Groundwater	6
Special Groundwater Circumstances	7
HOW THE PERMIT SYSTEM WORKS	8
Step 1 - Application Form	8
Step 2 - Application Review	10
Step 3 - Project Completion on a Perfected Permit	12
Step 4 - Certificate of Water Right	12
TEMPORARY AND INTERIM PERMITS	13
CHANGES IN WATER USE	13
Temporary Change in Appropriation Water Right	14
Salvaged Water	14
OWNERSHIP OF A WATER RIGHT	15
DISPUTE RESOLUTION	16
WATER RESERVATIONS	16
INSTREAM USE AND LEASING	17
CONTROLLED GROUNDWATER AREAS	18
Yellowstone Controlled Groundwater Area	19
CLOSURE OF HIGHLY APPROPRIATED BASINS	20
Legislative Closures	20
Administrative Rule Closures	20
Compact Closures	21
SOURCES OF INFORMATION	23
DNRC OFFICES	23
Water Resources Regional Offices	23
Montana Water Court	24
Printed Material	25
Water Conversion Table	25
WATER RIGHT FORMS AND FEES	26

Printed Material

The following publications are available from DNRC, its regional offices, or local libraries through interlibrary loans with the Montana State Library,

<u>Cost:</u>	
\$ 5.00	Montana Water Law (1999)
None	Water Rights in Montana
None	A Guide to Stream Permitting in Montana
	Application Guidelines for the Renewable Resource
None	Loan and Grant Program
\$ 4.00	Board of Water Well Contractors (Codes and Rules)
None	Water Well Drilling For the Prospective Well Owner
	Is Your Dam Above Homes, Highways, or
None	Other Structures?

Water Conversion Table

FLOW RATE is the rate at which water is diverted or withdrawn from the source. It is measured in gallons per minute (gpm) or cubic feet per second (cfs). One cfs is a rate of water flow that will supply one cubic foot of water in one second and is equivalent to flow rates of:

- 448.80 gpm
- 1.98 acre-feet per day
- 40.00 miner's inches in Montana (11.22 gpm)

VOLUME is the amount of water diverted over a specific period of time each year. One acre-foot is the volume of water that will cover one acre to a depth of one foot and is equal to:

- 43,560 cubic feet or
- 325,851 gallons

Bozeman, MT 59715
Phone: 406-586-3136
Fax: 406-587-9726

Serving: Gallatin, Madison,
and Park Counties

P.O. Box 1828
Havre, MT 59501-1828
Phone: 406-265-5516
Fax: 406-265-2225

Serving: Blaine, Chouteau,
Glacier, Hill, Liberty, Pondera,
Teton, and Toole Counties

HELENA

21 North Last Chance Gulch
P.O. Box 201601
Helena, MT 59620-1601
Phone: 406-449-0944
Fax: 406-442-9315

Serving: Beaverhead, Broadwater,
Deer Lodge, Jefferson, Lewis and
Clark, Powell, and Silver Bow
Counties

KALISPELL

109 Cooperative Way, Suite 110
Kalispell, MT 59901-2387
Phone: 406-752-2288
Fax: 406-752-2843

Serving: Flathead, Lake, Lincoln,
and Sanders Counties

LEWISTOWN

613 NE Main Street, Suite E
Lewistown, MT 59457-2020
Phone: 406-538-7459
Fax: 406-538-7089

Serving: Cascade, Fergus, Golden
Valley, Judith Basin, Meagher,
Musselshell, Petroleum, and
Wheatland Counties

MISSOULA

Town & Country Shopping Center
1610 S. 3rd St. West, Suite 103
P.O. Box 5004
Missoula, MT 59806-5004
Phone: 406-721-4284
Fax: 406-542-1496

Serving: Granite, Mineral,
Missoula, and Ravalli Counties

Montana Water Court

The Montana Water Court in Bozeman can provide
information about issued decrees, objections, or hearings
on pre-July 1, 1973, water rights in the statewide adjudication.

Montana Water Court
601 Haggarty Lane
P.O. Box 879

Bozeman, Montana 59771-0879
406-586-4364 or (toll-free number) 800-624-3270
Fax: 406-522-4131

Water rights in Montana are guided by the prior appropriation doctrine, that is, first in time is first in right. A person's right to use a specific quantity of water depends on when the use of water began. The first person to use water from a source established the first right, the second person could establish a right to the water that was left, and so on. During dry years, the person with the first right has the first chance to use the available water to fulfill their right. The holder of the second right has the next chance. Water users are limited to the amount of water that can be beneficially used.

Montana Water Use Act

The Montana Water Use Act (Title 85, Chapter 2, MCA) of 1973 was the most comprehensive change in Montana's water right laws in the state's history. The act (effective July 1, 1973) changed the water rights administration significantly in a number of ways.

1. All water rights existing prior to July 1, 1973, are to be finalized through a statewide adjudication process in state courts.
2. A permit system was established for obtaining water rights for new or additional water developments.
3. An authorization system was established for changing water rights.
4. A centralized records system was established. Prior to 1973, water rights were recorded, but not consistently, in county courthouses throughout the state.
5. A system was provided to reserve water for future consumptive uses and to maintain minimum instream flows for water quality, and fish and wildlife.

Water Rights Administration

Water rights in Montana are managed by three entities: the Department of Natural Resources and Conservation (DNRC), the Montana Water Court, and the district courts. DNRC administers the portions of the Montana Water Use Act that relates to water uses after June 30, 1973. DNRC trains water commissioners and water measuring techniques. DNRC, also provides technical information and assistance to the Water Court, which is responsible for adjudicating water rights that existed before July 1, 1973. The Water

Court decides any legal issues certified to it by DNRC that may arise in connection with permit or change applications, or in disputes filed in the district courts. The district courts can issue injunctive relief while it certifies water right issues to the Water Court for decision.

DNRC maintains a central records system for all permits, changes, and certificates issued after June 30, 1973, and for all existing water rights filed as part of the statewide adjudication.

Adjudication of Existing Water Rights

In 1979, the legislature passed Senate Bill 76 amending the adjudication procedures originally established by the Montana Water Use Act. Rather than adjudicating existing water rights one basin at a time, the legislature opted for a comprehensive general adjudication of the entire state. Existing water rights are those that originated legally before July 1, 1973, the effective date of the Montana Water Use Act.

Montana is divided into four water divisions, and the Water Court presides over each division for the purpose of adjudicating existing water rights. The Reserved Water Rights Compact Commission (RW RCC) was created to negotiate compacts with federal agencies and Indian tribes to quantify their reserved water rights in Montana. The RW RCC is an integral part of the statewide adjudication process.

On June 8, 1979, the Montana Supreme Court issued an order requiring every person claiming ownership of an existing water right to file a statement of claim for that right with the DNRC no later than January 1, 1982. Stockwater and domestic claims for groundwater or instream flow were exempted from this process, though such claims could be filed voluntarily. Existing water rights not filed by the deadline would, by statute, be conclusively presumed to have been abandoned.

On December 7, 1981, the Montana Supreme Court extended the deadline to 5:00 P.M. on April 30, 1982. Over 200,000 claims were received by the deadline as well as a number of late filed claims after that deadline. In 1992, the Montana Supreme Court ruled that untimely filed claims were forfeited.

In 1993, the legislature passed Senate Bill 310 which provided, under certain terms and conditions, the remission of the forfeiture of existing rights caused by the failure to comply with the April 30, 1982, deadline. Essentially, the remission bill revived previously forfeited late claims and

Persons wishing further information on any of these compact closures should contact DNRC to determine the specifics of the restrictions on these sources. The NPS compact also established the Yellowstone Controlled Groundwater Area, which set up restrictions on appropriating groundwater. Information on controlled groundwater areas is presented on page 18.

Sources of Information

All water right forms required by DNRC are available at any of the eight water resources regional offices listed below or the Helena Central Office. Most are also available at your local county clerk and recorder's office.

DNRC Offices

Montana Department of Natural Resources and Conservation

Water Resources Division

Water Rights Bureau

48 North Last Chance Gulch

P.O. Box 201601

Helena, Montana 59620-1601

406-444-6610

Fax: 406-444-0533

www.dnrc.state.mt.us/wrd/home.htm

Water Resources Regional Offices

BILLINGS

1371 Rimtop Drive

Billings, MT 59105-1978

Phone: 406-247-4415

Fax: 406-247-4416

GLASGOW

222 Sixth Street South

P.O. Box 1269

Glasgow, MT 59230-1269

Phone: 406-228-2561

Fax: 406-228-8706

Serving: Big Horn, Carbon,

Carter, Custer, Fallon, Powder

River, Prairie, Rosebud, Stillwater,

Sweet Grass, Treasure, and

Yellowstone Counties

Serving: Daniels, Dawson,

Garfield, McCone, Phillips,

Richland, Roosevelt, Sheridan,

Valley, and Wibaux Counties

Lake National Wildlife Refuge and Black Coulee National Wildlife Refuge. As of July 17, 1997, the following basins have been closed to further appropriations or reservations of water for consumptive use:

- Black Coulee watershed, and
- Lake Creek watershed, including the unnamed tributaries of Benton Lake.

4. The U. S. Bureau of Land Management/Montana Compact applies to the Upper Missouri National Wild and Scenic River (UMNW&SR) and the Bear Trap Canyon Public Recreation Site. The compact, ratified March 27, 1997, closes the following basins:

- The mainstem of the Missouri River to new storage impoundments upstream from UMNW&SR
- The Missouri River basin upstream of UMNW&SR to new appropriations in any month in which the water volume designated for the "available water supply" has been exhausted.

5. The U. S. National Park Service/Montana Compact applies to Glacier National Park, Big Hole National Battlefield and the portion of Yellowstone National Park that is in Montana. As a result of the compact, the following streams will be closed to new appropriations when the total appropriations reach a specified level.

- Big Hole National Battlefield
 - North Fork of the Big Hole River and tributaries, including Ruby and Trail creeks (these streams are currently partially closed under the Jefferson/Madison Basin Closure).
- Glacier National Park (significant water remains available for new appropriations)
 - Middle Fork of the Flathead River
 - North Fork of the Flathead River
- Yellowstone National Park (significant water remains available for new appropriations on all but Soda Butte Creek)
 - Bacon Rind, Buffalo, Cottonwood, Coyote, Crevice, Dry Canyon, Hellroaring, Little Cottonwood, Slough, Snowslide, Soda Butte, and Tepee creeks
 - Gallatin, Madison, and Yellowstone rivers

6. The Crow Tribe/Montana Compact closes basins within the Crow Tribe Reservation, the Bighorn River Basin, and Pryor Creek Basin to new appropriations under state law. The basin closures, effective June 16, 1999, are on all surface water and groundwater requiring a permit under state statute.

subordinated to other timely filed existing water rights. The deadline for filing late claims was July 1, 1996. Approximately 4,900 late claims were filed by the July 1, 1996, deadline.

In 1997, the legislature passed Senate Bill 108 which generally revised the water adjudication laws relating to different types of decrees. This legislation allows the Water Court to adjudicate water right claims and to review federal reserved water right compacts when necessary, and without the need to wait until other types of claims in the same basin are ready for inclusion into a decree. In addition, the bill added two new sections to the law. One requires objections to be filed at the initial decree stage, and the other allows claimants an opportunity to file counter objections.

Since all the claims cannot be adjudicated at once, claims are being decreed by basin for each of Montana's 85 drainage basins (see page 5).

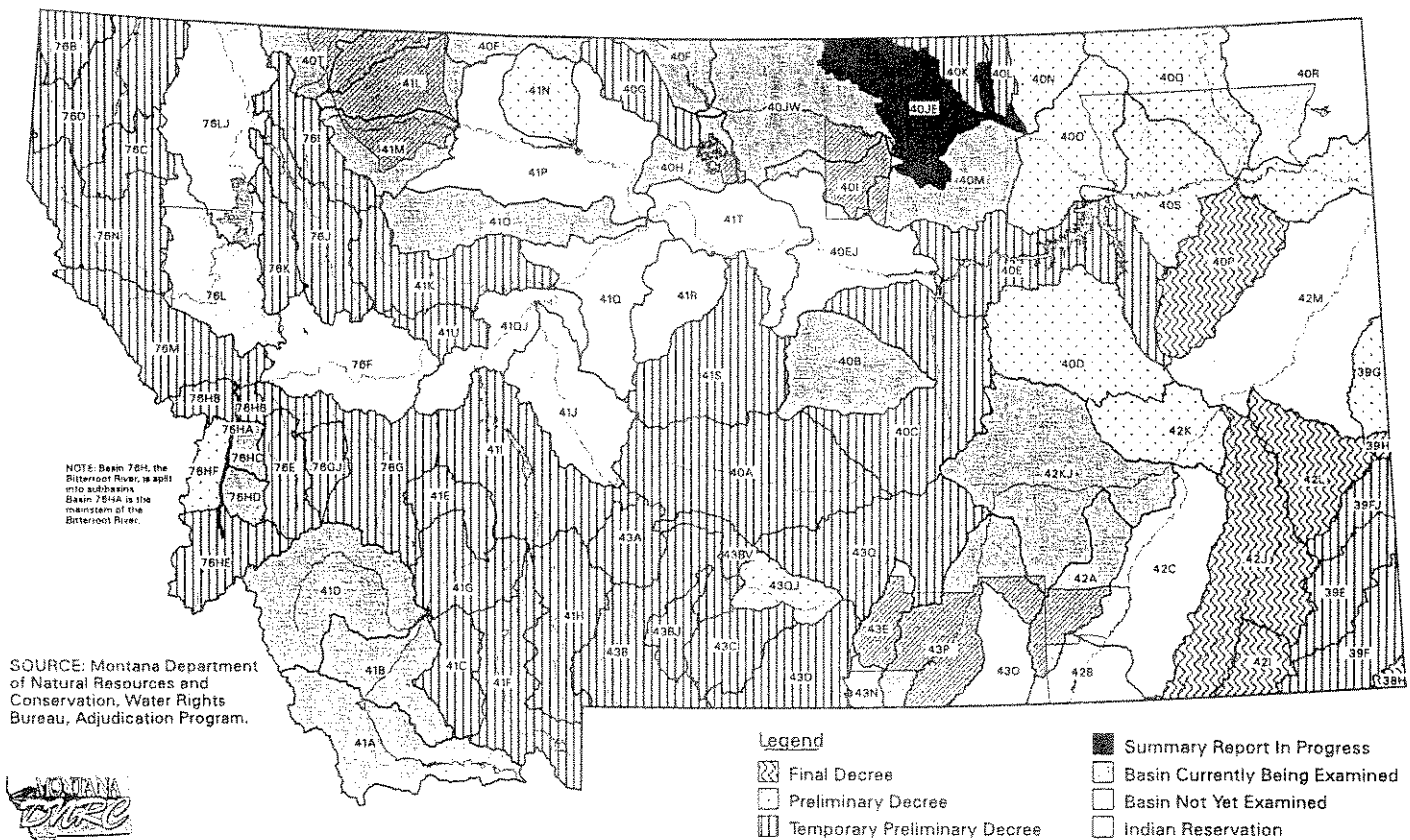
DNRC's role in the process is to provide technical assistance to the Water Court. Prior to the issuance of a decree, DNRC examines each claim for completeness, accuracy, and reasonableness. The elements of a water right, individually and in combination, are checked using examination rules adopted by the Montana Supreme Court. If DNRC finds apparent discrepancies in the claimed right, the claimant is contacted to discuss the issues. If the apparent discrepancies can be resolved, the claim is amended voluntarily by the claimant. If the issues cannot be resolved, the water right remains as claimed, but DNRC attaches a remark identifying the potential problem. After all claims in a basin are examined, DNRC issues a Summary Report to the Water Court. This report is available to the public. The court uses this report in preparing the decree for the basin.

Notice of issuance of every temporary preliminary or preliminary decree is given to all parties who may be affected by the decree, along with notice of the time period for objecting to the rights or compacts, or both, in the decree. Water users are encouraged to review the decree and file objections if they feel their claims, or claims belonging to others in the basin, are in error or contain incorrect information. Following the expiration of a decree's objection period, each party whose claim received an objection must be given notice of the filing of that objection. This notice triggers a 60-day objection counter period.

A water judge or water master hears all objections and counter objections. After all objections are resolved, the water judge issues a final decree. On the basis of the final decree, DNRC will issue a Certificate of Water Right to each person decreed an existing water right.

Montana General Adjudication

Status as of August, 1999



4. The water quality of an appropriator would be adversely affected by the issuance of permits;
 5. Further use would not be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(D), MCA; or
 6. Issuance of permits would adversely affect holders of a discharge permit issued in accordance with Title 75, Chapter 5, Part 4 in their ability to satisfy effluent limitations.
- If DNRC determines that rules should be adopted to close the basin, notice will be provided and a public hearing held on the rules. Depending on the evidence and testimony submitted, the rules could close a basin:

1. To all new appropriations of water, or to only consumptive uses;
2. During all times of the year, or only during certain times of the year;
3. To all types of uses, or to only specific types of uses.

Petition For Closure of a Highly Appropriated Basin, form 631, is available from DNRC. A petition must be filed with the appropriate fee, and the petitioner(s) also must pay reasonable processing costs.

Compact Closures

Under Section 85-2-701 MCA, the Reserved Water Rights Compact Commission has negotiated seven compacts with Indian Tribes and federal agencies. These compacts have closed certain sources of water to new appropriations.

1. The Northern Cheyenne/Montana Compact required DNRC to order a moratorium on the issuance of permits in the basin of Rosebud Creek, a tributary to the Yellowstone River in Big Horn and Rosebud Counties. The moratorium, effective May 20, 1991, is for surface water and alluvial groundwater.

2. The Chippewa Cree Tribe of the Rocky Boy's Reservation/Montana Compact has two moratoriums on new state appropriations and Tribal water rights, effective April 14, 1997.

- A 10-year moratorium on new state permits from sources in the Big Sandy Creek Basin (excluding Sage Creek and Lonesome Lake Coulee) and in the Beaver Creek drainage, and
- A 5-year moratorium on the development of Tribal consumptive uses from surface water in the Beaver Creek drainage. (During this time a monitoring network of recording stations will gather data to determine whether Beaver Creek gains or loses flow between the confluence of the east and west forks of the creek and the

Montana has closed some of its river basins to certain types of new water appropriations due to water availability problems, over appropriation, and a concern for protecting existing water rights. Sections 85-2-319 and 85-20-401, MCA, legislatively authorize the closure of basins to certain new appropriations through the adoption of administrative rules and negotiation of reserved water right compacts.

Legislative Closures

1. The Upper Missouri River Basin, the Jefferson and Madison River Basins, the Teton River Basin, and the Upper Clark Fork River Basin to certain new appropriations of water.
2. There are also temporary closures in the Bitterroot Basin and the Clark Fork Basin.
3. The State legislated DNRC to study and close sources of water in the Milk River basin. Currently portions of the mainstem Milk River, all of Miners Coulee, Halfbreed Coulee, Bear Creek, and their tributaries are closed to certain appropriations.
4. The following basins are administratively closed to new appropriations of water during certain times of the year: Grant Creek, Houle Creek, and Sixmile Creek in Missoula County; Sharrott Creek and Willow Creek in Ravalli County; Walker Creek and Truman Creek in Flathead County; Rock Creek in Carbon County; Towhead Gulch in Lewis and Clark County; and Musselshell River in Meagher, Wheatland, Golden Valley, Musselshell, Petroleum, Garfield, and Rosebud Counties.

Administrative Rule Closures

The law also provides for the closure of highly appropriated basins through the adoption of administrative rules. In order to adopt rules, DNRC must receive a petition signed by at least 25 percent or 10 (whichever is less) of the users of water from the source of supply within the specific basin or receive a petition from the Department of Environmental Quality. The petition must show that during certain times of the year:

1. There is no unappropriated water in the source of supply;
2. The rights of prior appropriators would be adversely affected by further appropriation;
3. Further new uses would interfere with other planned uses for which a permit has been issued or water has been reserved;

Temporary Preliminary Decrees	36 basins/2 subbasins	85,976 claims
Preliminary Decrees	9 basins/1 subbasin	21,487 claims
Final Decrees	6 basins	16,354 claims
Basins Being Examined	18 basins	48,016 claims
Unexamined Claims	16 basins	47,575 claims
Total	85 basins	219,408 claims

Two of the six final decrees were administratively adjudicated by DNRC before the Water Court was created by the legislature in 1979.

To date, the RWRCC has negotiated and the Montana Legislature has ratified these compacts:

Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation-State of Montana	1985
Northern Cheyenne Tribe-State of Montana	1992
United States National Park Service-State of Montana (Big Hole National Battlefield, Glacier National Park, Yellowstone National Park, Big Horn Canyon National Recreation Area, and Little Bighorn Battlefield National Monument)	1994
Chippewa Cree Tribe of the Rocky Boy's Reservation-State of Montana	1997
United States Bureau of Land Management-State of Montana (2 Units - Bear Trap Canyon Public Recreation Site and Upper Missouri National Wild and Scenic River)	1997
United States Fish and Wildlife Service-State of Montana (2 Units - Benton Lake National Wildlife Refuge and Black Coulee National Wildlife Refuge)	1997
Crow Tribe-State of Montana	1999

Exempt Existing Water Rights

Existing water right claims for livestock and domestic uses from instream flows or groundwater sources are exempt from the adjudication process. If claims were not filed, exempt rights can be placed in DNRC's central records for notice purposes. The owner must submit a completed Notice of Water Right, form 627, with the appropriate filing fee. The filing of Form 627 does not constitute a recognition or an admission by the State of such water rights. The burden of proof of these water rights remains with the owners. Once the water right is entered into the records, the owner will receive notice of any actions on the source of supply that may affect the water right.

Step 2 - Application Review

The date DNRC receives the original permit application will be the priority date assigned to the appropriation. This date is important because of the "first in time is first in right" principle in Montana water law. DNRC will review the application to ensure it is correct and complete and process the application as outlined on page 11. The estimated processing time after an application is correct and complete is 210 days. At the same time, an environmental review is made to determine whether the proposed project will have significant environmental impacts and whether an environmental impact statement is needed. If an application is not correct and complete, DNRC shall notify the applicant of any defects in the application. The applicant has 90 days to make the application correct and complete. If an application is not correct or complete within 30 days of DNRC notification, the priority date will change to the date the application is correct and complete. An application that is not correct or complete within 90 days will be terminated.

If there is potential for adverse effect, DNRC must publish notice of the application once in a newspaper of general circulation in the area of the source. DNRC will also mail notification of the application to existing water users listed in the DNRC records indicating those areas which might be affected by the supply source. Local water users have an opportunity to file an Objection to Application, form 611, with the required fee on or before the deadline specified in the published notice. All objections must be based on specific criteria. An objector has standing only if their property, water rights, or interests would be adversely affected by the proposed appropriation. If no objections are received and the applicant proves the criteria, the permit is issued.

If correct and complete objections are received and cannot be resolved, DNRC conducts a hearing. After evaluation of the evidence and testimony given at the hearing, the hearing examiner issues a proposal for decision to grant, modify, or deny the permit. Within 20 days, any of the parties can file written exceptions to the proposal for decision. The exceptions may request presentation of briefs or oral argument before DNRC on the proposed decision. If no exceptions are filed or after oral arguments, DNRC issues a final order. A final order may be appealed to district court.

Issues that could affect applications for permits are:

1. Any proposed appropriation that may significantly affect the quality of the human environment will require an environmental impact statement (EIS). The purpose of the EIS is to document environmental and human

Criteria for Issuance of an Authorization to Change Appropriation Water Right *Section 85-2-402(2), MCA*

The applicant for a change in an appropriation water right has the burden to prove by a preponderance of the evidence that the criteria for issuance of an authorization are met. These include:

1. The proposed use will not adversely affect the use of other water rights or other planned developments for which a permit or certificate has been issued or water reserved.
2. The proposed means of diversion, construction, and operation of the appropriation works are adequate.
3. The proposed use of water is a beneficial use.
4. The applicant owns or has permission from the person who owns the property where the water is to be used.

If a valid objection pertaining to water quality is received, the applicant must also prove:

5. The water quality of an appropriator will not be adversely affected, or
6. The ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, Chapter 5, Part 4.

An applicant for salvaged water must also prove:

7. The proposed water-saving method will salvage at least the amount of water asserted by the applicant.

Ownership of a Water Right

A water right is appurtenant to the land on which it is used. Anyone who transfers ownership of land with a water right is required under the law to file a Water Right Ownership Update, form 608, with DNRC within 60 days of filing the deed. The purpose of filing the form is to help maintain a reliable record of water right ownership. In addition, it will allow the

second or more of water being consumed, the applicant must prove the criteria in Section 85-2-402(5), MCA. If the change involves the transport of water out of state, the applicant must prove the criteria listed in Section 85-2-402(6), MCA, and obtain legislative approval.

Temporary Change in Appropriation Water Right

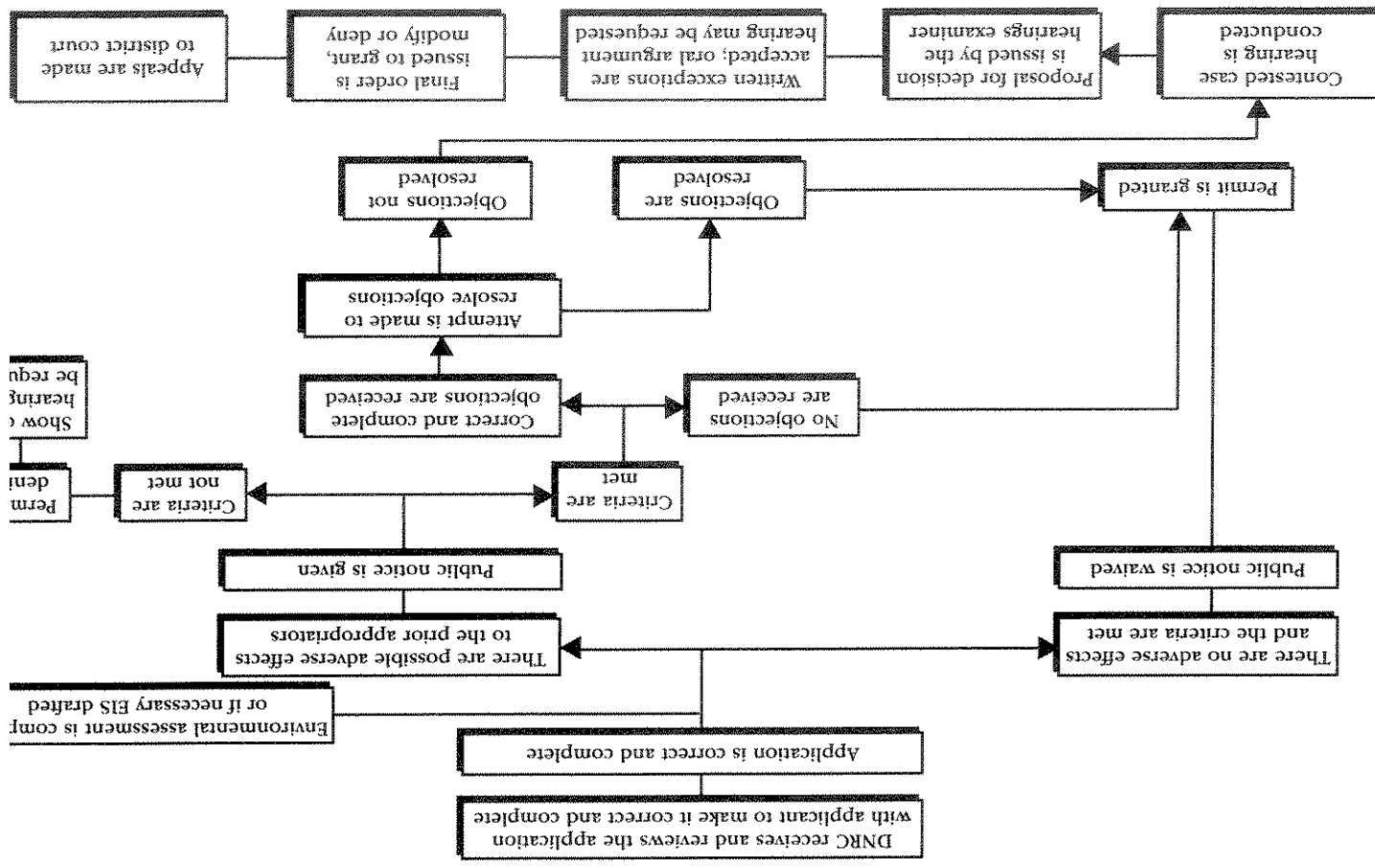
An appropriator may temporarily change a water right with DNRC approval. The temporary change may be approved for up to 10 years with an opportunity to renew for 10 more years. An appropriator must file an Application for Change of Appropriation Water Right, form 606, and a Temporary Change Supplement, form 606T, identifying the proposed change and how long it will be needed. The applicant must also provide evidence to meet the same criteria as an authorization to change listed on page 15. The temporarily changed appropriation has the same priority date as the existing water right.

In 1995 the legislature provided for the protection of fishery resources by allowing the owner of an existing consumptive use water right to change its purpose temporarily to instream flow. The owner must file an application, as described in the preceding paragraph. The owner may voluntarily change the purpose to instream flow or lease the water right and change the purpose to protect the fishery resource. All temporary change authorizations for instream flow purposes issued prior to June 30, 2005 remain valid until the expiration date of the temporary change. However, they cannot be renewed or extended after that date.

Salvaged Water

A water user who saves water through conservation may retain the right to the salvaged water for a beneficial use. The salvaged water is that portion of the water made available through the implementation of water-saving methods. For example, lining a ditch or canal to reduce seepage or replacing a ditch with a pipeline to eliminate delivery losses are considered water-saving methods, if the water consumed becomes less. If the salvaged water is to be used for any purpose or in any place not associated to the original appropriation, DNRC approval is required. The appropriator must file an Application for Change of Appropriation Water Right, form 606, and must meet the criteria for issuance of an authorization to change listed on page 15 plus one additional criterion: that the proposed water-saving method will salvage at least the amount of water asserted by the applicant.

Water Permit Application Process



impacts, evaluate alternatives, and provide for public review and comment. Information developed during the EIS process will aid DNRC in processing the permit. DNRC may assess a fee to the applicant to fund preparation of the EIS, under Section 85-2-124, MCA.

2. Any Permit to Appropriate Water that DNRC issues is provisional. It is junior to all prior existing water rights and subject to the final Water Court determination or adjudication of those rights. It also is junior to prior DNRC permitted water rights and prior water reservations, except as otherwise provided by law.

Step 3 -Project Completion on a Perfected Permit

Upon receiving the permit, the applicant's next step is to construct the project, divert the water, and put the water to the intended use as outlined in the permit. When this is finished, the permittee must provide DNRC with a certified statement describing how the appropriation has been completed. This includes submitting a Project Completion Notice for Permitted Water Development, form 617, to DNRC before the deadline specified in the permit or any authorized extension of time. If the permittee fails to file a project completion notice by the deadline, the permit will be terminated by operation of law.

When unforeseen circumstances prevent completion of the project before the deadline, the permittee may submit an Application for Extension of Time, form 607. If the permittee shows good cause that a continuous effort has been made to complete the project, DNRC will grant an extension for a reasonable period of time.

Step 4 - Certificate of Water Right

After the project is completed, DNRC will review the project completion notice and determine whether the project was completed in substantial accordance with the permit. DNRC will issue a Certificate of Water Right when:

1. The project has been completed,
2. The water has been used according to the terms of the permit, and
3. The basin in which the permit lies has been adjudicated and the final decree issued.

The priority date of a certificate is the same as on the original permit.

Temporary and Interim Permits

A person may request a temporary permit to appropriate water if the use of water is for a limited period of time. Temporary uses include water needed for oil or gas exploration or in highway construction. An application for a temporary permit is processed in the same manner as a provisional permit. The applicant must prove the same criteria under Section 85-2-311, MCA. A temporary permit has an expiration date based on the period requested by the applicant and will expire on that date. No Certificate of Water Right is issued for a temporary permit.

An interim permit to appropriate water allows an applicant to begin constructing and using water pending final approval or denial of the provisional permit. An interim permit may be issued unless substantial information indicates that the criteria for issuing a provisional permit under Section 85-2-311, MCA, cannot be met. The issuance of an interim permit does not guarantee issuance of a provisional permit; that decision remains subject to the procedures and criteria identified on pages 8-12.

Changes in Water Use

To protect all water rights, prior approval from DNRC is required before changing an existing water right, permit, certificate, or water reservation in any of the following ways:

1. Point of diversion.
2. Place of use.
3. Purpose of use.
4. Place of storage.

A person must submit an Application for Change of Appropriation Water Right, form 606, to DNRC and include information on the water right to be changed and the proposed change. In addition, the Supplement to Application for Change of Appropriation Water Right, form 606A or 606B, must provide evidence that the criteria for issuance of an Authorization to Change Appropriation Water Right listed on page 15 are met. An application for change follows the same general process for notice and hearing as outlined on page 11. Upon completion of the change, the appropriator must file a Project Completion Notice for Change of a Water Right, form 618, notifying DNRC that the authorized change is completed.

The applicant submitting a change in purpose or place of use of an appropriation to divert 4,000 acre-feet or more of water per year and 5.5