

Quantifying and Protecting Montanan's Water Rights



Montana's
Water Right Adjudication Process

Who is included in the Adjudication Process?



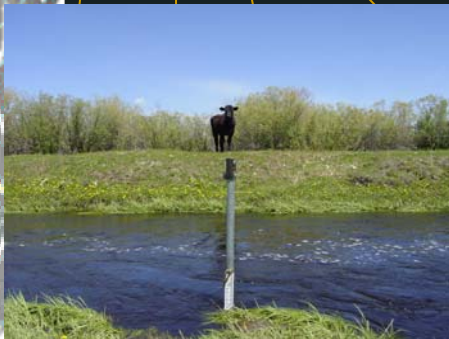
PRE-1973 Water Rights.

(Some Stock water and domestic water rights were exempt but could voluntarily participate.)

Who is
affected by the outcome
&
can participate in the process?



All Water Users.



General Stream Adjudication

Initiated by Montana's 1972 Constitution

- Confirmed Existing Water Rights
- Ordered the legislature to provide a system of administration, control, regulation & records

(Article 9, Section 3)



General Stream Adjudication

- Legislatively created Statutory Actions.
 - Montana Water Use Act (1973)
 - Senate Bill 76 of 1979
 - Expedited the Adjudication process
 - Senate Bill 310 (Late Claims bill)
 - effective July 1, 1993, deadline 1996
 - House Bill 22 (Funding / Fee Bill 2005)
 - House Bill 782 ("on motion" bill, 2005)



General Stream Adjudication

- Supreme Court oversees the Water Court
- Montana Water Court;
 - Directs adjudication activities,
 - Controls schedule,
 - Holds hearings, reviews facts, and is
 - Preliminary & Final Decision maker.



General Stream Adjudication



■ DNRC's Adjudication Responsibilities

- Technical Assistant to the Montana Water Court
 - Does the examination, and
 - Field investigations.
- Record Keeper
 - Keeps hard copy, electronic, and microfilm records
 - Maintains computer system
 - Uses these tools to generate review reports and to actually "print" the decrees.

Why?

- An essential tool need by the State to protect and define Montana's existing use's of water

It's not enough to simply be

"Upstream with a shovel"

Montana is a Headwater's state for the Clark Fork of the Columbia, Yellowstone and Missouri Rivers.

Why?

Critical to day-to-day Water Administration.

- Water users, District Court, and Water Commissioners use a water right decree to guide and govern water deliveries.
- Montana, even as a territory, adopted the "*doctrine of prior appropriation*".
- This doctrine divides (allocates) water between users in times of shortage.



Prior Appropriation

"First in time is First in Right"

- Water is allocated by priority.
- Priority established by date of first use.
- The court reviews and adjudicates priority.



Montana Water Administration



- Montana Law makes two parties responsible for the “formal” day-to-day administration of water
 - the local District Court &
 - the Court Appointed Water Commissioner.
- They are guided by a Water Right Decree.
 - A decree is simply a record of a court decisions.
 - The process of reaching that decision is called an “adjudication”.

Historic Stream-reach Decrees

- Who
- How much water (miners inches) &
- Priority Date

Intervenors.

BE IT REMEMBERED that this cause came on regularly to be heard in term and was submitted upon the testimony heretofore taken before a special examiner appointed by the court and upon written briefs and oral arguments of counsel for the respective parties; and thereupon, after due consideration thereof, it is ORDERED, ADJUDGED AND DECREED that the rights of the respective parties herein, complainant, defendants and intervenors, be and the same are hereby fixed, settled and determined in the amount, from the stream and of the date set opposite the names of said parties as follows, to-wit:

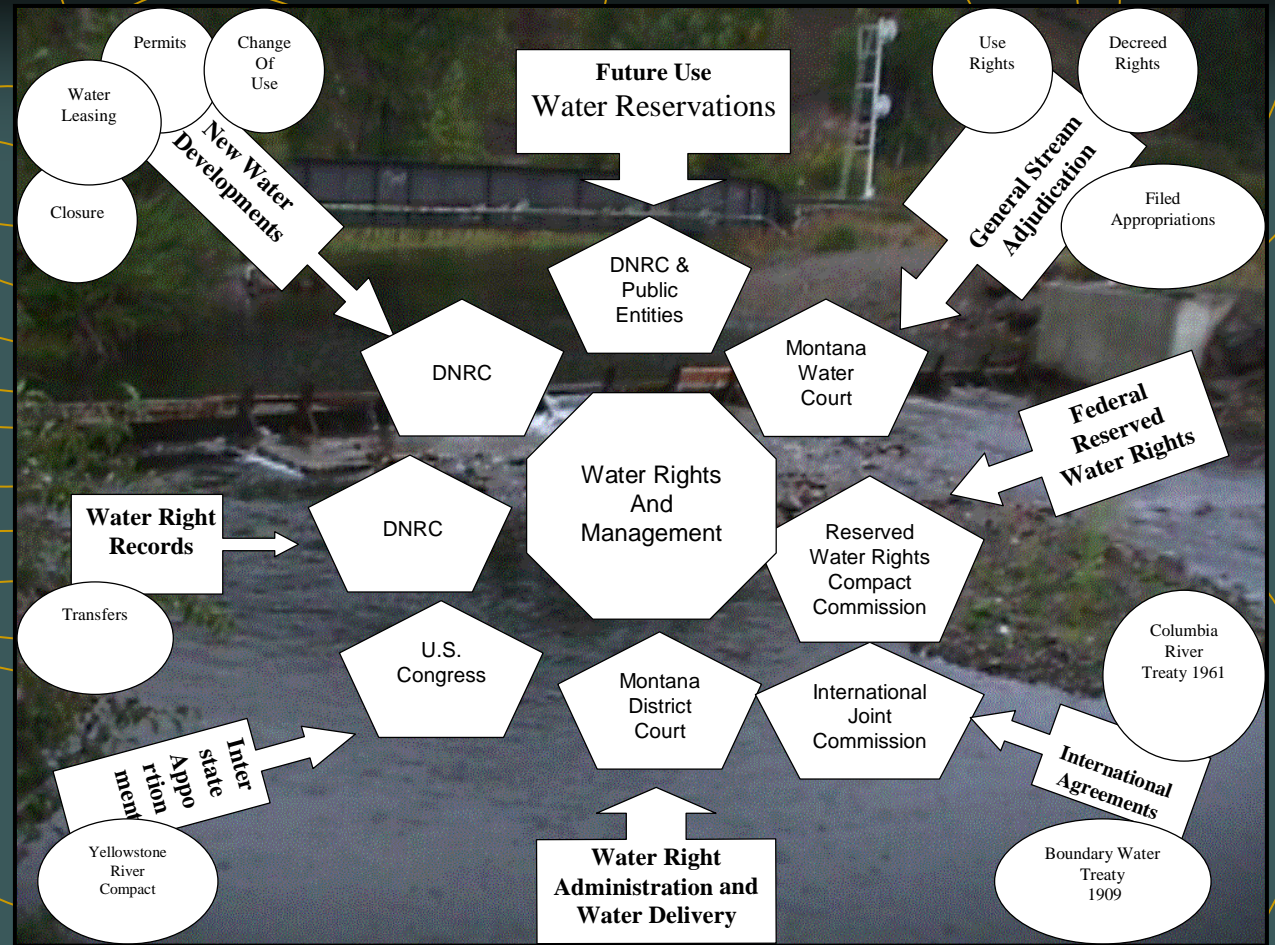
Name	Amount in miner's inches	Stream From which taken	Date of Appropriation
AMES REALTY COMPANY	: 100	: Prickly Pear Creek	: April 1, 1865
" " "	: 190	: Prickly Pear Creek	: April 1, 1866
" " "	: 167	: Prickly Pear Creek	: April 6, 1866
JOHN BOWER, C. B. KOUNTZ, SOPHIE SYMES, KATHERINE SYMES, JOHN SYMES and GEORGE SYMES, jointly;	: : : 112.5	: : : Prickly Pear Creek	: : : October 15, 1866
CHARLES E. BROWN, suc- cessor to J. H. Hall,	: 60	: Spring Creek	: April 1, 1865
" "	: 40	: Prickly Pear Creek	: April 1, 1879
JOHN BUNNELL	: 100	: Prickly Pear Creek	: April 1, 1866
HARRY C. BURGESS, Successor to Reynolds Frosser	: 67 : 55	: Prickly Pear Creek	: September 30, 1862 : January 1, 1869
" "		Also the absolute ownership of all developed bedrock waters conveyed in pipe system from Holmes Gulch, in Section 1, Township 9, North of Range 3 West; also all developed bedrock waters developed in McClellan Gulch, in Section 8, Township 9, North of Range 2 West.	
T. H. CARTER and	: 15	: Clark Creek	: April 1, 1865
B. R. YOUNG, jointly	: :	: :	: :
GEORGE COCKELL	: 55	: Prickly Pear Creek	: April 1, 1865
CONRAD-STANDARD COMPANY,	: 500	: McClellan Creek	: October 15, 1868
H. L. GRAM <i>Case 4643 Gram 33 MP R. Jones 175</i>	: 50	: Prickly Pear Creek	: April 8, 1866

Today's Decree will confirm:

- Priority dates
- Amount of water diverted
 - (typically a flow rate, but sometimes a volume)
- Use and extent of use
 - (use, place of use and acres irrigated)
- Diversions
 - (Type, location, & conveyance method)
- or Identify operational features if necessary.
- Owners
- Wells



Water Law 101




A water right is a *right to use* a public resource, water, for a beneficial purpose.

Water Law quickies:



- "First in Time is First in Right"
- Limited to historic use
- "Beneficial Use"
- The measure of use and the limit to use
- "Use it or Lose it"



Every water users has the right to the conditions on the source as they were when their appropriation began.

1. A necessary requirement of the system.
2. Limits expansion of water rights.
3. Balances the use of junior and senior rights.
4. Balance with a "reasonableness test".

Right to Unchanged Conditions:



- Limits and controls the use and extent of a water right!
- Can not increase use (for example)
 - More water
 - More consumption (more acres)
 - Increased period of diversion.
- Change in Water Use Practices
 - Return Flows vs. Waste water, Tail water & Seepage
- Typically part of the “adverse affect” evaluation.

Simplified Adjudication Process

1) *Claims Collection*

Claims Examination

**2) *Temporary Preliminary
or
Preliminary Decree***

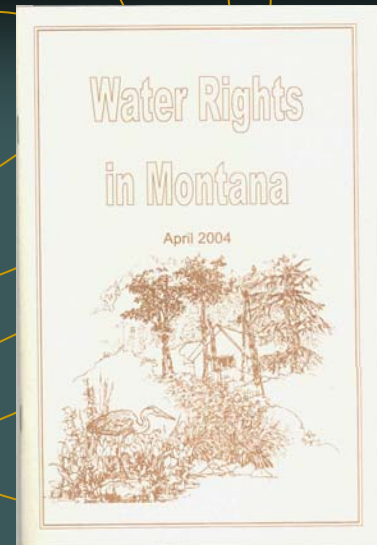
Federal Water Rights added

3) *Final Decree*

4) *Certificate of Water Right*

Adjudication Process: (Simplified)

1. Notice of Process ('80 - '82)
2. Claims Filing Period ('80 - '82)
 1. Late Claim Filing (July 1, 1996)
3. Preliminary Decree
 1. Notice
 2. Objections
 3. Hearing
4. Final Decree (Includes Federal Water Rights)
5. Appeal to Montana Supreme Court
6. Certificate of Water Right



Simplified Adjudication Process:

What's
next?

1) *Claims Collection*

Claims Examination

**2) *Temporary Preliminary
or
Preliminary Decree***

Federal Water Rights added

3) *Final Decree*

4) *Certificate of Water Right*