

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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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 WRMapper, contact the Water Resource Division GIS staff or refer to the WRMapper manual.

Once the claims have been pulled, gather the data sources (aerial photographs, topographic maps, etc.) necessary to examine the claims. WRMapper 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.

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. If a worksheet has been completed in any way, the worksheet should remain in the file.

The claim file may also contain:

- **DNRC Water Right Ownership Update (Form 608).** The ownership update form is used for all changes in ownership when water rights transfer in connection with a real estate transaction. Other water right transfer forms (older versions) may also be in the

claim file. In 2007, the Montana legislature passed House Bill 39 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.

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.

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. 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.**

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.

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
Exempt? No
Implied Claim? No
Fee Owed? No

[] 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:

ID Govt Lot Qtr Sec Sec Twp Rge County Means of Diversion
1 SWSWSW 27 11S 14W BEAVERHEAD DIKE
Period of Diversion: APRIL 28 TO NOVEMBER 4
Source Name: NIP & TUCK
Remarks: OK Amended POD/Rule 8 Means/Rule 9 DNRC error
additional PODS: See attached addendum/amendment forms
named ditch:
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
Remarks: _____
Issue _____ Information _____
Comments: _____

[] **Type of Historical Right:** FILED
_____ OK _____ Amended _____ Rule 13, 14 _____ DNRC error
Remarks: _____
Issue _____ Information _____
Comments: _____

[] **Flow Rate:** 4.00 CFS (Miner's Inches: 160.00)
Comparison Stat: 11.22 GPM/ACRE
_____ OK _____ Amended _____ Rule 14 _____ DNRC error
Remarks: _____
Issue _____ Information _____
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
Remarks: _____
Issue _____ Information _____
Comments: _____

Climatic Area: 5 - LOW
_____ OK _____ Not Ok Comments: _____

[] **Period of Use:** APRIL 28 to NOVEMBER 4
_____ OK _____ Amended _____ Rule 16 _____ DNRC error
Remarks: _____
Issue _____ Information _____
Comments: _____

[] **Maximum Acres:** 160.00
_____ OK _____ Amended _____ Rule 12 _____ DNRC error
Remarks: _____
Issue _____ Information _____
Comments: _____

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.**

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 changes.

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:

- 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 85-2-431, 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.

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.

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. 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, 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, Ph.D, 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.

- 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).

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 ¼¼¼ 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.

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.

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.

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.

- 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.

- 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.

G. INVESTIGATION TECHNIQUES

1. Ownership Review. A review of ownership may be used in preparing for an interview, e.g., solving vague POUs 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 A FIELD INVESTIGATION CONDUCTED ON **MM/DD/YYYY** FOUND **16.00** ACRES PRESENTLY BEING IRRIGATED. SEE CLAIM FILE FOR ADDITIONAL INFORMATION.

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.

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 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. (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 may 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.

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 should 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.

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. 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)

Tom Hughes
1625 11th Ave.
Helena, MT 59620
(406) 444-2074
(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.

