

XIII. (TEMPORARY) PRELIMINARY DECREE

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A. GENERAL DISCUSSION

After the Water Court has completed its review of the department's summary report and any requested changes are completed for the basin, a (temporary) preliminary decree will be issued.

The department's summary report is not the decree. Rather, it is the first draft of the decree. After changes, the Summary Report will be morphed into the decree with the necessary decree requirements. An electronic copy of the Summary Report is available through the Helena Central Office, although this is not normally requested as it is a temporary document leading to the decree.

The Chief Water Judge will appoint one or more water masters to a basin prior to the issuance of the decree, usually at the start of the Court's review of the Summary Report. The master(s) will be responsible for the adjudication of all objections and issues on the claims in that decree ([Rule 11 W.R.Adj.R.](#)). The DNRC adjudication staff is responsible for providing assistance to the water master(s) through this stage of the process as required by [Rule 12 W.R.Adj.R.](#)

Issuance of a decree is a cooperative process between the Water Court and the department. The Water Court provides the Notice of Availability and the Findings of Fact and Conclusions of Law. The department provides decree abstracts, decree indexes, address correction forms, and mailing supplies. See [Rule 3 and 4, W.R.Adj.R.](#)

There are two types of water right decree abstracts—a public copy and an owner copy:

- The public copy is bound into decree books and delivered to the Water Court, department offices, the county clerk of court (if directed by the Water Court) and anyone purchasing a complete decree. The decree books contain all claims in the basin organized by claim number on numbered pages.
- The owner abstract is the same as the public copy except it lacks the page numbering. The owner abstract does not identify the page number of the claim where it appears in the decree. A separate abstract is generated for and mailed to all individuals listed as current owners of record in the database for their claims. The printing is in owner name order.

Every water right owner in the database record for the basin, whether they have claims, new appropriations or reservations, is sent a Notice of Availability and [Address Correction Form](#). Abstracts of claims are sent to the claimants. Abstracts of permits, certificates or other new appropriations are NOT sent to those claimants because the decree ONLY contains statements of claim for existing water rights. In addition, a notice is sent to all interested parties as specified by court order ([Rule 5, W.R.Adj.R.](#)).

The Water Court and appropriate DNRC adjudication office receive copies of the decree, the Notice of Availability, the Findings of Fact and Conclusions of Law, and the indexes for the decree.

The Notice of Availability specifies who receives specific information, provides addresses and phone numbers of all involved offices, and specifies the following:

- A 180-day objection period is set by statute. By petition, the Water Court may grant up to two extensions of time. During this period, adjudication staff can expect questions related to the decree and summary report for the basin. Remember, the DNRC's role is limited. Observe relevant Water Court orders and department policies, as discussed in "Public Assistance" below ([Section XIII.C](#)), in all public contact.
- Deadlines are set for the filing of Notices of Objections. The location of these objection forms is specified. Objection forms are specific to a basin. The Objection process is briefly described. See [Rule 5, W.R.Adj.R.](#) for procedures on filing objections.
- Public meetings with the appropriate Water Court staff and appropriate DNRC staff are specified with dates, times and locations.

After the objection period has ended, the Water Court will notify each person whose claim received a filed objection. The Court will also allow the claimant 60 days to file a counterobjection in a "Notice of Filing of an Objection and Opportunity to File Counterobjection" ([Rule 6 and 9, W.R.Adj.R.](#)). A counterobjection can be filed to any claim of the objector in the decree. The 60-day counterobjection period cannot be extended. The Court will set another public meeting in this Notice to describe the counterobjection filing process. Appropriate DNRC staff will again be asked to attend any public meetings.

Upon close of the counterobjection period, the appropriate adjudication office should return all claim files (if this has not already happened) for the basin to Records for archiving. A copy of the decree and indexes should be retained in the appropriate adjudication office.

The Court has one more notice to issue before it is ready to commence the resolution of objections and counterobjections, called the "Notice that Objections and Counterobjections Have Been Filed and Opportunity to File Notice of Intent to Appear." This is a 30 day notice for water users to file a Notice of Intent to Appear on those claims that they did not object to, but where changes could impact their water rights. At the end of this period, the Court requests the claim files in the basin that received an objection, a counterobjection, and/or an issue remark. See [Rules 7, 8 and 9, W.R.Adj.R.](#)

The assigned water master(s) then commences the task of putting the claims

from the objection list into cases. The master(s) directs the set-up of case files and service lists. The master(s) then issues the first order in each case—an 'Order Consolidating Claims into a Case and Setting First Deadline' (or first status conference).

B. EXAMPLE ABSTRACT, NOTICE OF AVAILABILITY, INDEX

1. Abstract. An example of a water right decree abstract in a (temporary) preliminary decree is shown in Exhibit XIII-1. The water right appears in the decree by claim number and page number. Each owner of a statement of claim will receive an abstract for each of their existing rights. Owners of permits, certificates, etc. will NOT receive an abstract for such rights because they do not appear in the decree.

2. Notice of Availability. An example of the Notice of Availability is shown in Exhibit XIII-2. Every water right owner of record in a basin, those with claims, new appropriations, or reservations, will receive this form. In addition, the notice is sent to various interested parties as specified by the Court on its service list.

3. Indexes. Each complete copy of a decree has a set of six indexes. The indexes are:

- source
- owner name
- point of diversion
- priority date
- water right number
- issues

The first five indexes contain the same information but are arranged in different orders. The issues index is arranged by water right number and contains unresolved issues identified through department examination or by the Water Court if the decree being issued is not the first Water Court decree for the basin. See Exhibit XIII-3 for examples.

A set of instructions explaining how to use the decree indexes are available in Exhibit XIII-4. The instructions explain how the indexes are organized and what information each index provides. Instructions are attached to each set of indexes sent to the clerk of court, Water Court, department, and regional/adjudication offices.

Other indexes, such as a conveyance facilities index, can be provided upon request. Additionally, as a basin goes from temporary preliminary to preliminary decree or from preliminary to final decree, the various indexes will be printed again. It is possible that changes made to claims after the decree have inadvertently created problems, such as late claims or Reserved claims being included, new database changes, or changes in either Claim Examination Rules or Adjudication Rules. Such problems at this stage can only be corrected by the Water Court. By identifying and pointing out the problems to the Water Court, the integrity of the database as well as the entire adjudication process is enhanced.

C. PUBLIC ASSISTANCE

1. Guidelines. From issuance of the first Water Court decree through the final decree for the basin, regional/adjudication office personnel can expect questions related to the decree.

Public assistance should be limited to locating requested data and if necessary "translating" the data. Answers to questions such as "What happens next?" or "What should I do now?" should be limited to procedural steps designated in statute or guidelines provided in the Court's Notice of Availability. **Do not provide legal advice or consultation services. This type of assistance is beyond the department's authority by rule or law** ([Rule 47 W.R.C.E.R.](#), [Rule 33 W.R.Adj.R.](#)).

2. Materials Available. All department records pertaining to the adjudication of water rights are public record and open to inspection by any person. [Figure XIII-1](#) lists the various materials which may help the public understand the decree. It is suggested this information be on display wherever the public will be reviewing the decree. Not all offices have the equipment for the public to view all materials on this list. Make adjustments as needed, such as providing photo copies when appropriate.

3. Public Review of Individual Claims. Claimants, or their representatives, may wish to examine individual claims and related materials. In general, "claim" means the original claim and attachments as submitted by the claimant plus the examination worksheet, addendum sheets, etc. that would be in each claim folder. "Related materials" means pertinent topographic maps, old and new aerial photographs, etc. that are part of the regional or adjudication office general resource materials.

The original documents which make up the claim are irreplaceable. Each time they are handled the potential exists for loss or damage. Even though claims are part of the public record, the Water Court's policy is to keep their handling to a minimum and to take all practical precautions for their safekeeping. The recommended procedure for accomplishing this is as follows:

- People wishing to review claims should be encouraged to do their initial review online from scanned materials. The public needs to be aware that the scanned information may not contain all file information, depending on how recently the file was scanned.
- After reviewing the scanned images, any document which cannot be read or which does not make acceptable copies, may be viewed in its original form. The file may need to be located and requested—or send the party to the appropriate location, if reasonable. If a file is requested from the Court, return the file promptly.
- UNDER NO CIRCUMSTANCES MAY ANY ORIGINAL CLAIM FILE OR PART THEREOF BE REMOVED FROM A DNRC OFFICE.

- Original claim files may only be reviewed in the regional/adjudication office under close supervision by the specialist. If requested, a specialist may copy any portions of the claim file for the public. Follow [§2-6-110, MCA](#) and the [DNRC Public Information Policy](#) when providing materials to customers (see Attachment A: “DNRC Information-Related Charges” contained within the PDF document).

FIGURE XIII-1

EXAMPLES OF MATERIALS AVAILABLE FOR PUBLIC REVIEW

Decree Indexes and [Index Instructions](#)

- [Source](#)
- [Owner](#)
- [Point Of Diversion](#)
- [Priority Date](#)
- [Water Right Number](#)
- [Issue Remarks](#)

Decree Abstracts and [Abstract Instructions](#)

- [Basin](#)
- [Claim Numbers](#) (arranged numerically in volumes)

Decree Related

- [Water Court Findings of Fact and Conclusions of Law](#)
- [Notice of Entry of Temporary Preliminary Decree and Notice of Availability](#)
- [Notice of Intent to Appear Form](#)
- [Objection Form](#)
- [Objection List](#)
- [Request for Extension](#)
- [Notice that Objections have been Filed and Hearings Requested](#)
- [Counterobjection Form](#)

DNRC Water Adjudication Bureau Information

- [What is Adjudication?](#)
- [Adjudication Status](#)
- [Adjudication Status Report](#)
- [Summary Report Projections](#)
- [Water Court Activity](#)
- [Administration of Water Court Decrees](#)
- [Claims Examination Manual and Exhibits Appendix](#)
- [Claim Examination FAQs](#)
- [Water Rights in Montana FAQs](#)
- [Claim Examination Acreage Issues](#)
- [Water Right Adjudication in Montana](#)
- [Navigating Water Right Claim Examination](#)
- [Water Right Claim Examination Rules](#)
- [Water Right Claim Adjudication Rules](#)
- [Amendment Form](#)
- [Amendment Agreement Form](#)
- [Address Change](#)
- [Request to Withdraw Statement of Claim](#)
- [Withdrawal Agreement](#)

FIGURE XIII-1 (cont.)

Additional Materials Available in Regional/Unit Offices or on the web:

- [Water Resources Survey books](#)
- Water Resources Survey field forms (available online 2009)
- Notice of Appropriation indexes, by county
- District Court Decree Indexes, by county
- County groundwater (GW) records (available online 2009)
- Historical aerial photographs
- General Land Office survey plats (GLO's)
- [Montana Code Annotated](#) (statutes)
- Conveyance Facilities Indexes (optional)

D. RETURNED MAIL PROCEDURES

The returned mail procedures presented in this section apply to **returned** “Notice of Entry of (Temporary) Preliminary Decree and Notice of Availability” (decree notice), and “Notice That Objections Have Been Filed and Hearings Requested” (this includes the Objection List and is referred to as the objection notice below). Review [Rule 45 W.R.C.E.R.](#)

Recall the “Notice of Entry of (Temporary) Preliminary Decree and Notice of Availability” is the Water Court’s notice that a decree has been issued and is now available for review. Once the decree is issued, the objection period begins, which is 180 days.

The Water Court will issue an “Objection List” and “Notice That Objections Have Been Filed and Hearings Requested”. This notice is sent after the counter-objection deadline has passed. It specifies a deadline for filing a “Notice of Intent to Appear.”

Mail which cannot be delivered is returned to the Water Rights Bureau in Helena. **Returned mail will be tracked as noted below and sent on to the regional/unit offices for research.**

It is imperative returned mail sent to a regional/unit office be researched, and documented on the Returned Mail Index as soon as possible. The regional/unit office must certify to the Water Court all research has been completed prior to the deadline specified in the notice (see Section XIII.D.2.d and Exhibit XIII-7). The goal is to locate and notify claimants before:

- the end of the objection period (180 days) as stated in the “Notice of Entry of (Temporary) Preliminary Decree and Notice of Availability” (decree notice);
- the end of the “Notice of Intent to Appear” period (60 days) as stated in the “Notice that Objections Have Been Filed and Hearings Requested” (objection notice). ([Rule 9 \(b\) W.R.Adj.R.](#))

1. Adjudication Support Staff Procedures.

a. Returned Mail. The bulk of returned mail will arrive at central office in the few weeks following the mailing. For each piece of returned mail, adjudication support staff will:

- Date stamp all returned mail envelopes.
- Track all returned mail using the Returned Mail Index (Section XIII.D.1.b). See [Figure XIII-2.](#)
- Process any returned mail where a new address has been indicated on the returned mail envelope. See [Figure XIII-2.](#)

- Sort and send returned mail to the office responsible for the file.

A smaller amount of returned mail will continue to arrive over time. Process and send any subsequent batches of returned mail to the appropriate office in the same manner.

Note: Occasionally, returned mail may be received which should have been returned to the Water Court (e.g., notices sent by the Court to interested parties). If so, forward this mail to the Water Court.

b. Returned Mail Indexes. Prior to the issuance of a decree or objection notice, an Owner Index is generated by the database administrator to facilitate creating a mailing list. Request the database administrator run a Returned Mail Index (in Excel format). All returned mail will be tracked in the Returned Mail Index. See the 'Returned Mail Index' example in Exhibit XIII-6.

For "Notice of Entry of (Temporary) Preliminary Decree and Notice of Availability" returned mail, one index will be used. It contains all:

- Current adjudication owners
- Current new appropriations owners

For "Notice That Objections Have Been Filed and Hearings Requested" returned mail, two indexes will be used:

- Current adjudication owners with individual objection notices
- Current adjudication and new appropriations owners without individual objection notices

These indexes should be stored on the Adjudication Shared Drive in the appropriate Basin Data folder.

FIGURE XIII-2

SUPPORT STAFF RETURNED MAIL PROCEDURES
(When initially received in Helena Central Office)

Description of Group	Action	
<p>No Forwarding Address Provided or Deceased</p> <p>A forwarding address has not been provided by USPS or it is indicated the recipient is deceased. These may contain decree abstracts, the notice of availability, an address correction mailer and possibly other notices.</p>	Spreadsheet	Enter date in 'Date Returned Mail Received' column. Use the 'Office Responsible for File' field in the spreadsheet to aid sorting (database administrator has populated this field).
	Oracle	
	Send	Send Returned Mail to Regional/Unit office for research
	Records	
<p>Forwarding Address Provided</p> <p>A forwarding address is provided. These may contain decree abstracts, the notice of availability, an address correction mailer and possibly other notices</p>	Spreadsheet	Enter date in 'Date Returned Mail Received' column. Indicate 'Y' in New Address/New Owner column.
	Oracle	Update Address in 'Create and Maintain Owner/Contact' screen. Follow Owner Name/Address Standards (Exhibit IV-6). Complete Name Address Correction form in database
	Send	Forward materials to new address (keep returned mail envelope).
	Records	Send documentation (e.g., Returned envelope, Address Correction Form, or Name Address Correction Report) to Records for scanning and filing at completion of Returned Mail research.

2. Regional/Unit Office Research Procedures. The Regional/Unit office will receive batches of returned mail from adjudication support staff in Helena. The support staff will have tracked all returned mail on the Returned Mail Index by indicating the date the returned mail was received. They will have also indicated if a new address was indicated on the returned envelope—such returned mail will have been processed by the support staff and should be evident by a ‘Y’ in the New Address/DB Form Completed column of the Returned Mail Index.

After receiving batches of returned mail from Helena, ensure the regional/unit office has also received the Returned Mail Index from the adjudication support staff—this should be stored in a central location on the Adjudication Shared Drive. Regional/unit office staff will document returned mail research results on the Returned Mail Index as well as on the DNRC Returned Mail Research Record Form. The processing steps are outlined in ‘Regional/Unit Office Returned Mail Procedures’ below ([Figure XIII-3](#)).

a. Researching Returned Mail. An overview of the research process is depicted in a flowchart in [Figure XIII-4](#). Research returned mail for ownership and/or address changes utilizing such resources as those outlined below. Document all research outcomes on the DNRC Returned Mail Research Record ([Figure XIII-5](#)).

- Check regional office records for varying addresses on different filings, for example a Form 600 or Form 602. Call the owner to verify ownership and/or correct an address. Document the contact.
- Check area telephone directories or online resources such as www.dexknows.com or others. If owners are listed, call to verify ownership. If the party is still the legal owner, obtain the new address. Document the contact.
- Check co-owner or any other individuals referenced in the water right records. Contact any relevant party who may aid in determining current ownership and/or addresses. Document the contact.
- Check the [Montana Cadastral Mapping Program](#). This site contains parcel data along with associated land ownership information. Be aware this site is updated periodically and may not be the most current information.
- Search online county property tax records maintained by the County Treasurer (e.g., Gallatin County is available <http://webapps.gallatin.mt.gov/proptax/>). These records list the individuals to whom the property tax statements were mailed along with the property description. If these records match DNRC ownership records, document research findings. If the ownership does not match, this may indicate a new owner.
- Check county plat books at the clerk and recorder’s office to determine current ownership and address. Document research findings.

- Check County Appraiser (local Department of Revenue office), County Surveyor's office, or County Assessor's office.
- Search the [Social Security Death Index](#) (SSDI).
- Search the Montana Secretary of State's [Business Entity Search](#) for a registered agent
- Deceased owner estates may be in probate, and thus unresolved. Research should attempt to locate a trustee. Determine if a change in ownership has occurred, or only a change of address is required, i.e., c/o trustee or personal representative. Document research findings.

IMPORTANT:

- If during research it is determined there is a new owner, contact as described in 'Returned Mail Research Record' ([Section XIII.D.2.b](#)).
- If a party is deceased, determine if other water right owners are successors in interest (i.e., spouse of deceased). If so, no further research is necessary. If the deceased is the only owner or no successor is identified, further research is required to locate a heir, trustee or new owner.

FIGURE XIII-3

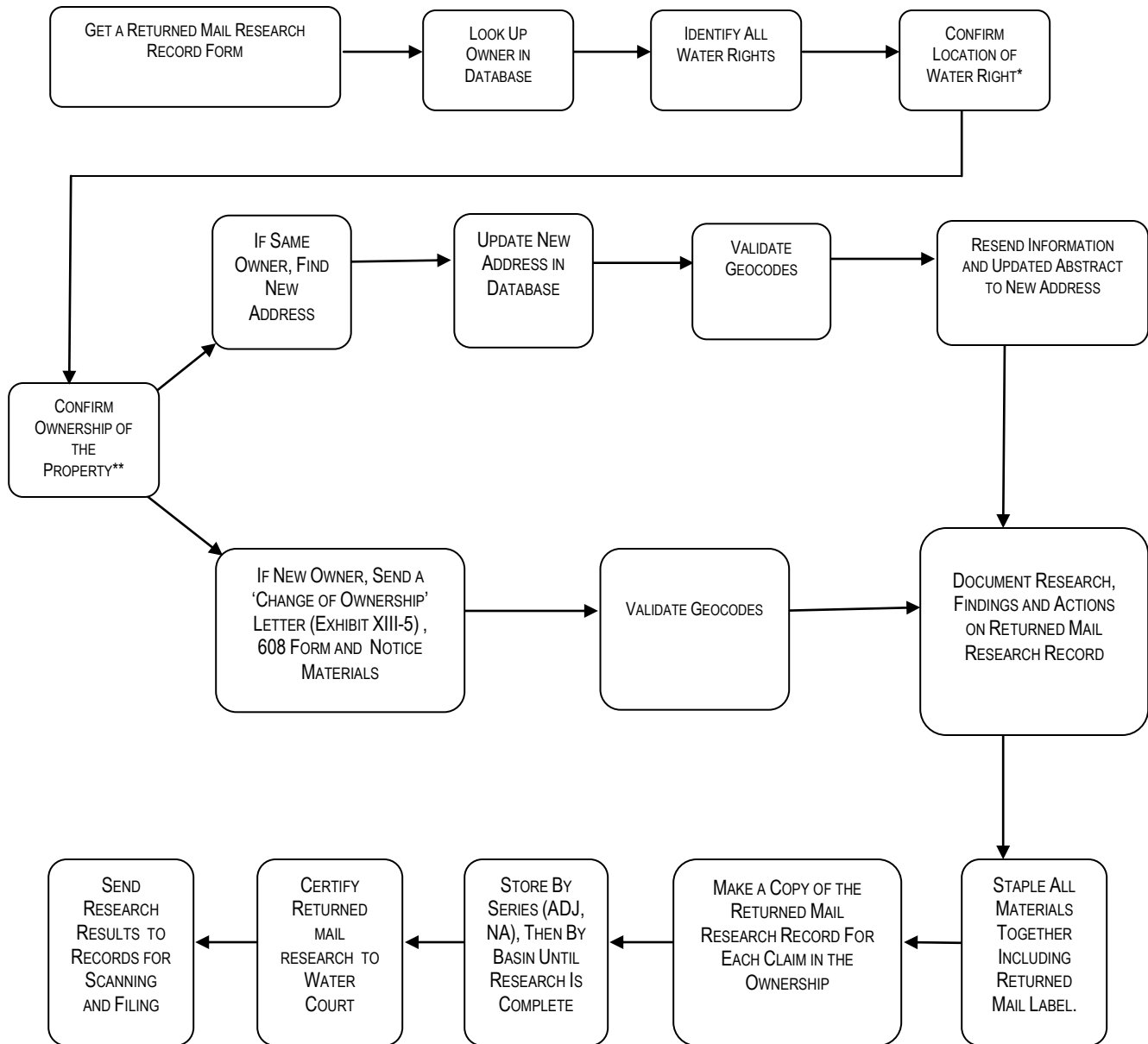
REGIONAL/UNIT OFFICE RETURNED MAIL PROCEDURES

Description of Group	Action	
<p style="text-align: center;">No Forwarding Address Provided</p> <p>A forwarding address has not been provided by USPS. These may contain decree abstracts, the notice of availability, an address correction mailer and possibly other notices.</p>	Spreadsheet	Complete appropriate columns in Returned Mail Index, documenting research results: date researched, researcher, new address/db form completed, new owner/608 sent, dead end.
	Oracle	New Address, Deceased, Location Unknown = Generate Name Address Correction form.
	Send	New Owner or Address: Forward materials (keep returned mail envelope).
	Records	Send documentation (Returned envelope, Returned Mail Research Record) to Records for scanning and filing at completion of basin Returned Mail research.
<p style="text-align: center;">Deceased</p> <p>It is indicated or discovered the recipient is deceased. These may contain decree abstracts, the notice of availability, an address correction mailer and possibly other notices.</p>	Spreadsheet	Indicate 'Y' in deceased column. If other owners, check if any parties are a successor in interest. If so, no further research is necessary. If the deceased is the only owner or no successor is identified, further research is required to locate a heir, trustee or new owner.
	Oracle	If deceased, update database—use the "Deceased" button. Generate a Name Address Correction form.
	Send	Forward a copy of material to new owner, if located.
	Records	Send documentation (Returned envelope, Returned Mail Research Record) to Records for scanning and filing at completion of basin Returned Mail research.

*A copy of the Returned Mail Research Record should be in every file in an ownership. The original research documentation should be in the lowest water right number. If a new owner is identified, file a copy in the appurtenant water rights.

FIGURE XIII-4

Steps for Researching Returned Mail



* May encounter incorrect legal land descriptions. Follow department procedures for making corrections.

**Resources: Dexknows.com, County Clerk and Recorder, GWIC, Social Security Death Index, Business Entity Search, Montana Cadastral Mapping Program

b. Returned Mail Research Record. For each piece of returned mail, complete a **Returned Mail Research Record** ([Figure XIII-5](#)) (as generated from the database and as a blank form available on the Adjudication Shared Drive) to document information sources, research findings, and any contact. Also document geocode research which may require assignment and/or validation. Refer to “Irrigation: Place of Use: Geocodes” (Section VII.D.5).

To document the returned mail research, the lowest numbered claim within an ownership will contain the original, complete set of documentation, e.g., original Returned Mail Research Record, original returned envelope, and any other documentation. Other water rights affected by the returned mail research should contain a copy of the Returned Mail Research Record. Write the water right number in the upper right corner.

If research determines a new owner is involved, complete the appropriate portion of the Returned Mail Research Record. Note the claim number containing all documentation and make a copy of the Returned Mail Research Record for each water right which is appurtenant to the new owner’s property.

The three main outcomes of returned mail research are:

- New Address. Document this information under RESEARCH FINDINGS. Update the database following the Owner Name/Address Standards (Exhibit IV-6). Generate a Name Address Correction form (from the Create and Maintain: Owner/Contacts screen, go to Reports: Administrative Reports: Name Address Corrections).
- New Ownership. If new ownership is determined, document the new owner’s name and address under RESEARCH FINDINGS. The new ownership will only be updated upon receipt of a completed ownership update ([Form 608](#)) if the transaction took place prior to July 1, 2008. If the transaction occurred after July 1, 2008 and the ownership was not updated through the automation process, further research the geocodes and the appropriate ownership update form ([Form 641](#), [642](#), or [643](#)).
- New Address/Ownership Unresolved. If a new address and/or ownership cannot be determined, document the research efforts under RESEARCH FINDINGS. Explain the information sources which were researched. Attach the returned envelope with contents to the Returned Mail Research Record.

c. Processing Returned Mail. Once a new address and/or ownership is determined, material from the returned mail envelope will be forwarded as described below:

- If a new address, forward the material from the returned envelope in a new envelope. Attach the original returned envelope to the Returned Mail

- Research Record.
- If a new ownership is identified, mail the new owners the material from the returned envelope, an appropriate ownership update form, and a “Change of Ownership” letter (Exhibit XIII-5).

d. Finishing Steps. Most of the returned mail will arrive at the regional/unit office over the course of a few weeks following the mailing. Stragglers may continue to arrive—research these in the same manner as outlined above.

Prior to the deadline specified in the notice, the office responsible for the basin will prepare a general certificate of mailing (Exhibit XIII-7) to certify all returned mail has been researched and processed. In the certificate of mailing, identify all water rights where the current owner or address could not be found (i.e., dead end returned mail tracked in the Returned Mail Index). Make a copy of the certificate of mailing for the physical basin file.

After returned mail has been researched and certified, organize the returned mail research by series (adjudication, new appropriations) and basin. Send to Records for scanning and filing.

E. POST-DECREE REVISIONS

ERRORS FOUND IN DECREES

THE WATER COURT IS THE ONLY ENTITY WITH THE AUTHORITY TO MAKE CHANGES TO CLAIMED RIGHTS AFTER A DECREE IS ISSUED, AND THAT INCLUDES MAKING CHANGES TO THE CLAIMED RIGHTS IN THE DATABASE.

A decree is a legal document. As a result, the Water Court requires that all decreed claims be “locked” in the database at the time that the decree is being prepared for issuance. From this point forward, the abstracts for claims may only be corrected by the Water Court. However, according to [Rule 3 \(d\) W.R.C.E.R.](#), changes to the database record may be made by the department **after** issuance of a decree in the following circumstances:

- As specifically ordered or directed **in writing** by the Water Court. The compliance technician, under supervision of the Bureau Chief, makes all such corrections to the database for the Court.
- To create a new record for changes in appropriation rights ([§85-2-402, MCA](#)).
- In compliance with water right ownership updates ([§85-2-403](#) and [§§85-2-421 through 85-2-431, MCA](#)).
- To change an owner address.

DNRC staff have an obligation to report any errors found in a decree to the Water Court. In the course of reviewing decreed rights for one reason or another, staff may discover errors. Review [Rule 46 W.R.C.E.R.](#) This reporting process varies by rule depending on when such errors are discovered.

If an error is found in any element of a decreed claim abstract, the specialist should:

- Document the error.
- Prepare a memorandum to be sent to the Water Court. This includes clerical errors, computation errors and other errors or omissions identified in a decree.
- “Cc” the claimant on the memorandum to the Water Court.
- “Cc” the claim file on the memorandum to the Water Court.
- Review the materials with a supervisor.
- Once approved by a supervisor:

- send the memorandum and supporting materials to the Water Court.
- Print a copy for the claimant and send.
- Print a copy for the claim file (preferably in original format to produce a better scanned image). Route this copy to Records for scanning. Indicate this is a 'DNRC Post-Decree Document' so it may be appropriately identified on FileNet. Records will then route the document to the claim file.

In the memorandum, explain the discovery of the error identified and include a recommendation. The claimant may file a Notice of Objection or Motion to Amend with the Water Court along with any necessary documents for resolution. Send the claimant the appropriate forms or have the claimant contact the Court. See [Figure XIII-6](#) for an example.

The memorandum to the Water Court and claimant should contain the following:

- water right ID number and basin code
- short discussion of how error was discovered
- water right elements that are incorrect
- proposed corrections (which should be well supported)
- any documentation that may be helpful (maps, deed, etc., but do not include items already in the case or claim file)
- copy of decree abstract with correction clearly made,

DNRC's memorandum may be used to support an objection, Motion to Amend, Amendment, or Affidavit filed by the claimant with the Water Court. On occasion, specialists may be asked to include such documents when their memorandum is sent to the Court. If the Court accepts such information, they may not be able to make such changes immediately if there is a notice problem. It will depend on the extent of the requested change, and its likelihood to cause adverse affect to other water rights. If and when the Court accepts such change, the Court will be responsible for making the change to the claim in the database.

FIGURE XIII-6

Decree Error Notice Memorandum

(Use State of Montana Letterhead)

MEMORANDUM

TO: Montana Water Court

FROM: [Name], Water Resources Specialist
[Location] Water Resources [Regional/Unit] Office

DATE: [Date]

RE: [42L 000000-00]
[John and Jane Doe, Owners]

During the routine processing of an Application For Change filed with the Department, an error was found on the abstract of 42L 000000-00 as decreed.

The place of use and point of diversion legal land descriptions for this water right are incorrect. Section 6, Township 3 North, Range 56 East, belongs to Joe Smith, as shown on the enclosed deed. Mr. Smith confirmed there is no well in the NW¼ of Section 6, and, he believes the Doe's own Section 6 in Township 2 North, Range 56 East.

The claimant's map in the claim file, showing the well, is labeled Township 2 North. A comparison of the USGS quad map (copy enclosed) with their map further confirms the correct township as 2 North, not 3 North as claimed and decreed.

A photocopy of the decree abstract showing the correction is enclosed for your reference. If it is determined that this is a clerical correction that should be made, please do so.

If claimants agree with the suggested correction, enclosed is a Verified Motion to Amend their claim which must be completed and filed with the Water Court, and an Objection Form which should accompany their Motion to Amend.

Thank you for your consideration in this matter.

Enclosures

cc: John and Jane Doe
Claim 42L 000000-00

F. POST-DECREE WATER COURT ASSISTANCE

As provided in [§85-2-243, MCA](#), the Water Court may at any time direct the department to provide information and assistance required to adjudicate claims of existing rights. This includes conducting field investigations, assistance with the enforcement of Water Court decrees, and assistance for issue remark resolution ([§85-2-248, MCA](#)).

It is IMPERATIVE to become familiar with the [Water Right Adjudication Rules](#) as set out by the Montana Supreme Court and cited as Rules 1 through 33, W.R.Adj.R., 2006. These rules are a companion to DNRC's Water Right Claim Examination Rules. The Court's rules are located in the same hardcopy document as the Water Right Claim Examination Rules and exhibits. They can also be found on the DNRC and Water Court websites. (See also post decree assistance training material on the "[Adjudication](#)" drive.)

1. Post-Decree Assistance. A Water Court request for department assistance will be made in writing (see [Rule 12 W.R.Adj.R.](#)). The Court will send copies to all parties identified on the Water Court service list. The Water Court's request should specify:

- the assistance required
- a deadline for the department's review
- a memorandum be completed and sent to the Court
- the department send a copy of its memorandum to all parties on the Court's service list.

If the Water Court deadline cannot be met, notify the Water Court **at least five working days prior to the deadline** to request a continuance of the deadline to a specified future date ([Rule 14 W.R.Adj.R.](#)).

Document any telephone contact or personal interviews with the claimant or any other person. Attach this documentation to the department's memorandum to the Water Court. See "Examination Materials and Procedures: Claimant Contact Techniques" (Section IV.F).

Any contact with the Water Court made during the department's assistance and relative to a specific claim or case must be done as a formal memorandum to avoid "ex parte" communications (private, illegal communications by fewer than all parties to the case). Send copies of the memorandum to all persons on the Water Court service list. For further information on ex parte communications, see the order adopted by the Montana Supreme Court, '[In the Matter of the 2008 Montana Code of Judicial Conduct.](#)' Specifically review the terminology and Rule 2.1.

Please use the "Post Decree Assistance Memo" template (located on the shared drive - ADJUDICATION\Claim Examination Documents\Post Decree Assistance). When the memorandum is complete, it must be reviewed and signed by a supervisor or another Specialist.

- Once approved, send the original memorandum and any attachments to the Water Court.
- Mail a complete copy of the memorandum and attachments to all persons on the Water Court service list.
- Keep a copy for yourself until all issues are resolved and the case or claim is closed.

2. Field Investigations. For any Water Court requests to conduct a field investigation, see “Examination Materials and Procedures: Investigation Techniques: Field Investigations Requested by Water Court” (Section IV.G.4). See also [Rule 12 \(c\) W.R.Adj.R.](#) Generally, the Court will specify the extent and limit of the investigation in its order, and the notice procedures to be followed by the investigator. The department must arrange access when necessary. Note [Rule 12 \(c\) \(3\) W.R. Adj. R.](#) which directs the department to send a confirmation letter **at least 20 days prior** to the intended date of the field investigation. This timeframe may be shortened in the Water Court’s order or waived if all parties provide written agreement.

3. Withdrawals Received After Decree Issued. If a decreed claim is withdrawn, immediately send the withdrawal, along with a cover letter, to the Court for processing. Send the claimant a copy of the cover letter. An example of notification to the Court is shown in [Figure XIII-7](#).

4. Reinstatement of Withdrawn Claim. Any time a request is made to reinstate a withdrawn decreed claim, such request must be made to the Water Court. Prepare a memorandum ([Figure XIII-7](#)) stating the reason for the request. The memorandum, supporting documentation, and complete claim file should be reviewed by a supervisor. Include a ‘cc’ in the memorandum to the claimant and to the claim file.

- Once approved, send the original memorandum and any attachments to the Water Court.
- Mail a complete copy of the memorandum and attachments to the claimant.
- Print a copy for the claim file (preferably in original format to produce a better scanned image). Route this copy to Records for scanning. **Indicate in the instructions on the [routing slip](#) this is a ‘DNRC Post-Decree Document’** so it may be appropriately identified on FileNet. Records will then route the document to the claim file.

If the Water Court authorizes the reinstatement of the claim, the Court will update the water right status in the database to “Active” and generate a new abstract. Since the claim will have already been examined, there will usually be no further assistance needed from the department.

5. Amendment Received After Decree Issued. Claimants wishing to amend their claim in a decreed basin should be directed to file an objection or Motion to

Amend with the Water Court. Remember, only the Water Court can make changes to a claim at this stage in the process. See [Rule 10, W.R.Adj.R.](#)

Examiners may assist a claimant in this process by:

- recommending the claimant include with their objection an affidavit, such as an Amendment or Verified Motion to Amend provided by the Court;
- providing the claimant with a map for any requests to amend POD or POU; and
- providing a short memorandum to the Court. If the amendment corrects an error in the decree which is confirmed by review, this should be discussed in the memorandum.

When the memorandum is complete, it must be reviewed by a supervisor. The memorandum should include a 'cc' to the claimant and to the claim file.

- Once approved, send the original memorandum and any attachments to the Water Court.
- Mail a complete copy of the memorandum and attachments to the claimant.
- Print a copy for the claim file (preferably in original format to produce a better scanned image). Route this copy to Records for scanning. **Indicate in the instructions on the [routing slip](#) this is a 'DNRC Post-Decree Document'** so it may be appropriately identified on FileNet. Records will then route the document to the claim file.

The claimant is responsible for filing their objection and the original amendment with the Court.

6. Issue Remark Resolution. The department may be requested to provide information and assistance ([85-2-248, MCA](#)). Follow the procedures described above in "Post Decree Assistance" ([Section XIII.F.1](#)) as well as the assistance specified by the Court in any orders. Review [Rules 7, 8 and 31, W.R.Adj.R.](#)

FIGURE XIII-7

Request to Reinstate a Withdrawn Claim Memorandum

(Use State of Montana Letterhead)

MEMORANDUM

TO: Montana Water Court

FROM: [Name], Water Resource Specialist
[Location] Water Resources [Regional/Unit] Office

DATE: [Date]

RE: Request to Reinstate Claim No. [42L 000000-00]

The above referenced claim was filed with the Department on January 10, 1982 by John Doe. On February 5, 1989 the claimant signed a Request to Withdraw this claim, indicating he had no existing water right.

On MM/DD/YYYY this claim was decreed as an inactive, withdrawn claim.

On October 2, 2002, this office received a letter from Joe Smith, the current owner of this water right, stating he would like to have the claim reinstated.

Enclosed are the documents supporting this Request, along with the complete claim file.

It is recommended that the claimant file a Notice of Objection with the Court to support his request. A Notice of Objection form has been included for the claimant with a copy of this Request.

Thank you for your attention to this matter.

Enc: Notice of Objection

cc: [Claimant]
Claim [42L 000000-00]

The Water Court is the only entity that can actually remove a resolved issue remark. The DNRC's recommendations are not a guarantee. Sometimes, the Court will not be satisfied with the recommendation and will proceed to set a hearing on the matter. If a master requests clarification of a specialist's recommendations, the specialist should respond to the request in the same manner as originally and file an additional memorandum with the Court. Send a copy to the claimant.

7. Testifying in Water Court Proceedings. All Water Court cases either settle or go to hearing. Such hearings are fairly informal because there is not a right to a jury hearing in Water Court proceedings. However, such hearings are conducted by the Judge or master according to the Montana Rules of Civil Procedure and Rules of Evidence. See the applicable Sections in [Chapter 25, Civil Procedure](#), and the applicable Sections in [Chapter 26, Evidence](#), Montana Code Annotated.

When the parties to a case or claim fail to resolve the objection or issue, the Water Court will issue a Scheduling Order which sets the deadlines in preparation for a hearing in the matter and sets a hearing date. See [Rules 13 and 21, W.R.Adj.R.](#)

There are two instances where adjudication specialists may be requested to appear and testify in a Water Court proceeding:

- If the case involves only issue remarks, the Court will generally request the assistance of an adjudication specialist at the hearing. Such a request may appear in the Scheduling Order or in a specific order requesting the presence and testimony of the adjudication specialist. Notify a supervisor immediately so they may assist in preparing for the hearing.
- If a case involves an objector, the Court will generally leave it to the parties to subpoena an adjudication specialist for the hearing. If a subpoena is received, notify a supervisor immediately so they may assist in preparing for the hearing. There are specific rules involving subpoenas ([ARM 36.12.217](#) and [§26-2-515, MCA](#)). The supervisor should inform DNRC's legal staff.

See training documents, "Preparing to Testify" (Part I and II) and "Tips for Witnesses in Water Court Proceedings" on the Adjudication Shared Drive. Also review the 2007 "Expert Witness Mock Court" DVD which was a training exercise on the Water Court hearing process. The Chief Water Judge presided over three cases with the assistance of water law attorneys and the participation of adjudication specialists. The DVD is available in each regional/unit office and in Helena. This is an excellent overview with invaluable tips on what to expect as a witness.

PREPARATION IS KEY TO A COMFORT LEVEL AS A WITNESS WHEN TESTIFYING:

- Understand the Court process as much as possible;
- Review the recommended training materials
- Visit with experienced colleagues

- Review the claim file
- Review basin characteristics typically found in, but not limited to, the Water Resource Survey:
 - history, climate, soils, livestock, water supply, etc.
 - unique basin attributes
 - major water appropriators
 - flood/drought years
 - USGS gaging stations

8. Water Court Decree Enforcement. Pursuant to [§§3-7-212](#), [85-2-406\(3\) and \(4\)](#), and [85-5-101, MCA](#), a Water Court decree may be enforced upon written request from a district court. Review [Rule 31, W.R.Adj.R.](#)

The department's role in Water Court decree enforcements will be to:

- identify every diversion and instream use within the enforcement area;
- map the diversions and instream uses as needed;
- identify all ditch names as necessary;
- identify any POD discrepancies or other relevant issues;
- assist the Water Court and district court in conducting public meetings on enforcement.

The information provided by the department will be used by the Water Court to prepare a tabulation of existing water rights. The Water Court will then submit this tabulation to the district court. Upon request of the Water Court, maps and any other relevant requests will be provided by department staff.

9. Certification Cases. When a water distribution controversy arises before or after the Water Court has decreed a basin, claimants may petition the District Court to certify the matter to the Chief Water Judge ([§85-2-406\(2\)\(b\), MCA](#)).

The Water Court then consolidates the claims into a case and issues an order to the DNRC requesting technical assistance. Certification cases take priority over all other adjudication matters. The department reports its findings to the Water Court. The Chief Water Judge makes a determination and provides that decision to the District Court.

10. Post-Decree Work Report. In conjunction with the Adjudication Program Status Report (Section IV.I), complete and submit a monthly Post-Decree Work Report ([Figure XIII-8](#)). This information will be vital for compiling statistics for the department and for reporting to the [Environmental Quality Council](#).

Post-decree hours will continue to be noted on the Adjudication Work Report.

However, also track post-decree hours on the Post-Decree Work Report (the total reported should match on both reports). This report will be utilized to track the type of post-decree assistance the DNRC performs as well as the hours dedicated to four general categories.

a. Category Definitions. Categorize post-decree assistance into the following four categories. **Under no circumstances should these categories be altered in the report.** If unsure of where to categorize a post-decree activity, contact a supervisor.

- Cases with Objectors
- [Section 85-2-248, MCA](#) Order
- Certification Cases
- General Claimant Assistance

Cases with Objectors: This may include any activity related to the case, such as status conferences, hearings, settlement negotiations, field investigations, subpoenas, etc.

Section 85-2-248, MCA Orders: This is a Court Order for the claimant to meet with DNRC to resolve issue remarks where there was no objector.

Certification Cases: The Water Court orders the DNRC to examine specific aspects of specific water rights. The Water Court makes a determination prior to the issuance of a decree.

General Claimant Assistance: This may include the claimant asking for assistance on some aspect of a case, but DNRC has not been ordered by the Court to assist. It may also include education or research.

G. POST-DECREE RE-EXAMINATION

1. Formal Process of “Re-examination”. Section 85-2-282, MCA, allows for the re-examination of claims in older Water Court decrees that were **verified**, rather than examined. Verification was the process used prior to examination. ‘Verification’ occurred from 1974 (in the Powder River basins) to 1987, more or less. Some decrees issued after 1987 are verified basins. These basins are noted on the [‘Adjudication Status Report’](#).

If the Water Court receives the appropriate request from water users in a basin, and grants such request for re-examination, it will issue an order directed to the department to re-examine specific claims in that basin and set the parameters of that re-examination. The court will also specify the addition of information remarks noticing the re-examination in that basin, such as the following:

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

C85 THE MAXIMUM NUMBER OF ACRES CLAIMED ON THE ORIGINAL STATEMENT OF CLAIM IS **120.00** ACRES. THE DNRC’S RE-EXAMINATION WAS OF THESE ORIGINAL CLAIMED ACRES.

2. Procedures for “Re-Examination”. The Court Order will limit the re-examination to specific elements, such as maximum acres and place of use. The order should specify the application of the current rules and manual to the re-examination of the specified elements. If only maximum acres and place of use are being re-examined, then only the irrigation claims need to be reviewed. The procedures for that review will be the same as an original examination of the relevant elements, unless specified otherwise in the order. For benchmark purposes, the examination of ‘verified’ claims does count toward DNRC required goals. The examination of these claims should be counted and reported monthly.

