

IX. STOCKWATER

This chapter describes the procedures unique to the examination of Stockwater Claims. Examination procedures for the other elements of stock claims are described in Chapter VI: Claims Examination and Chapter VII: Irrigation.

The following elements are discussed in this chapter:

- A. General Discussion
- B. Flow Rate
- C. Volume
- D. Point of Diversion and Means of Diversion
- E. Place of Use

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## A. GENERAL DISCUSSION

1. Exempt Claims. Per [§85-2-222, MCA](#), stock uses based upon *instream flow* or *ground water* sources are exempt from the filing requirements of [§85-2-221, MCA](#). Stock exempt claims are:

- Stockwater use directly from instream (no man-made diversion)
- Stockwater use from a groundwater source

Appropriations of **groundwater** put to stock use between January 1, 1962 and July 1, 1973 with a notice filed under the 1961 Ground Water Code are also exempt from the filing requirements of [§85-2-221, MCA](#).

Any of these existing water rights, however, could be voluntarily filed with the department. Check that the correct exempt status is indicated on the examination worksheet under the water right number. In the database, indicate whether or not the claim is an 'Exempt Claim' in the 'Claim Filing Information' on the Historical tab in the Create and Maintain Water Right Detail screen. Any stock claim for surface water that has a man-made diversion is not exempt.

## B. FLOW RATE

The flow rate for stock claims is defined as the rate at which water has been diverted or withdrawn from the source. Stock flow rates will be decreed in gallons per minute (gpm) or cubic feet per second (cfs). See "General Procedures: Standard Measurement of Water" (Section III.B) for standard units and conversions.

**Claimant contact must occur upon completing examination of the ownership if the flow rate is modified by rule, an issue remark exists, or is unclear.**

1. Identifying Claimed Flow Rate. The identification of claimed flow rates will follow the procedures described under "Irrigation: Flow Rate: Identifying the Claimed Flow Rate" (Section VII.B.1).

2. Examining Claimed Flow Rate. The claimed flow rate for stock claims will be examined according to the claimed means of diversion, information in the claim file, and a general flow rate guideline. Information may be gained through claimant contact.

For claimed flow rates that will be decreed, there are two underlying considerations that should be kept in mind. First, has the claimed flow rate actually been diverted? Second, is the claimed flow rate reasonable for the specific purpose? If the answer to either question is no, further information should be pursued to determine what is reasonable and accurate. This thought process should form the basis for examining all claims.

Unique Aspects or Features. Any unique aspects or features of the flow rate may also be noted on the department's examination worksheet by a flow rate (FR) information remark:

Example: F45 ENTIRE FLOW OF THE SOURCE AS DECREED IN A PRIOR DECREE, CASE NO. 0000, MONTANA COUNTY.

a. Changing Flow Rate. The claimed flow rate will not be changed during examination unless:

- amended by the claimant;
- modified by rule by the department (Section VII.B.1);
- to standardized units of measure (Section VII.B.1);
- to apply standards ([Section IX.B.3](#)).

When the claimed flow rate is changed so that the review or decree abstract will differ from the claim form or amendment, place an asterisk in the brackets to the left of the flow rate element on the examination worksheet. Document the changes on the examination worksheet including the appropriate authority below the flow rate element or in the "General Comments" area. The claimant must be notified.

b. Claimant Contact. For system types receiving a flow rate in the Water Court decree, claimant contact may be required. In conjunction with the flow rate examination criteria, the claimant should also be contacted whenever the claimed flow rate is unclear, has apparent discrepancies, appears insufficient, or unreasonable. This contact can have several outcomes:

- Information discussed confirms the claimed flow rate. Document the information supporting the claimed flow rate.
- A flow rate different from that claimed is substantiated which the claimant wishes to have replace the claimed data. The claimant should submit an amendment.
- If the issue is unresolved (e.g., pump data are insufficient to confirm the claimed flow rate), or data support an actual flow rate different from the one claimed, add a flow rate (FR) issue remark to the department's examination worksheet.

3. Specific Flow Rate Examination Criteria. Flow rates for stock claims will be decreed differently depending on the type of system. This section contains the guidelines for examining the flow rate of claims organized by system and type of right:

- [Instream Direct, Ditches, Undeveloped Springs, Onstream Reservoirs](#)
- [Wells, Developed Springs, Pumps, Gravity Flow Pipelines, Groundwater Pits](#)
- [Offstream Reservoirs](#)
- [Prior Decreed Flow Rates](#)

a. Instream Direct, Ditches, Undeveloped Springs, Onstream Reservoirs. **A specific flow rate will not be decreed for stock drinking directly** from:

- streams and lakes
- undeveloped springs
- onstream reservoirs
- system employing a headgate and/or ditch
- man-made pits

For purposes of examining this element, springs will be presumed to be undeveloped, unless claimed or documented as developed (see [Section IX.B.3.b.](#) below for a brief description). On the examination worksheet, cross out the flow rate.

When the major source type is surface water, standards will apply the following flow rate (FR) information remark to the review and decree abstract:

Example: FF009 A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

If the claim involves an onstream reservoir, standards will apply the following flow rate (FR) information remark to the flow rate on the review and decree abstract:

Example: FF007A A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

b. Wells, Developed Springs, Pumps, Gravity Flow Pipelines, Groundwater Pits. **A specific flow rate will be decreed** for stock drinking from the following means of diversion:

- wells
- pumped diversions
- gravity flow pipelines
- developed springs
- groundwater pits

These types of means of diversion can generally be measured and thus a quantified flow rate can be decreed. Note a KEEP/CLAIMED flag below the flow rate element on the examination worksheet. This will suppress standards from overwriting the flow rate whenever the source type is surface water. If the claimed flow rate exceeds the 35 gpm guideline, an issue remark may be necessary. See “Stockwater: Flow Rate: Flow Rate Issues” ([Section IX.B.4](#)).

A spring will be considered "developed" and the appropriation will be classified as groundwater if documentation clearly indicates some man-made development (physical alteration) of the spring that appropriates groundwater. The assumption is that the physical alteration increases the flow rate, since not many measurements of historical flow rates exist that could prove an increase in flow. Any increase in the ability to use the water is considered a developed spring. See "Claim Examination: Source Name: Springs" (Section VI.D.6) for additional discussion on appropriate documentation.

**The guideline for examining these claims is 35 gpm.** Claimed flow rates below the guideline are generally accepted, but may be examined further if there is an apparent error or conflicting data.

When a claimed flow rate exceeds the 35 gpm guideline, review the claim file for information that may be useful in determining its accuracy. Useful data includes:

- horsepower of pumping unit
- length, diameter, and head of gravity flow pipeline
- well pumping depth (i.e., "head" or vertical lift)
- pump make and model
- test data (well log information)
- flow rate measurements or records

When a claimed flow rate for a pump appears in error, conflicts with pump data in the claim file (such as the pump rate at Means of Diversion), or exceeds the 35 gpm guideline, and there is insufficient information in the claim file to substantiate the claimed flow rate, a Pump Questionnaire (Exhibit VII-3) or Gravity Flow Pipeline Questionnaire (Exhibit VII-5) should be sent to the claimant with a cover letter (Exhibit IV-8). Alternatively, the claimant can be contacted by phone or in a personal interview (see "Examination Materials and Procedures: Claimant Contact Techniques" in Section IV.F). When questionnaires are returned, follow the procedures described in "Stockwater: Flow Rate: Examining Claimed Flow Rate: Claimant Contact" ([Section IX.B.2.b](#)).

If claimant contact confirms a flow rate greater than the 35 gpm guideline, indicate a KEEP/CLAIMED flag on the examination worksheet. The flag will suppress standards from overwriting the flow rate and adding a flow rate issue remark to the review or decree abstract. Document the supporting information in the "General Comments" area on the examination worksheet.

If claimant contact is inconclusive, or the claimed flow rate exceeds 35 gpm, add a flow rate (FR) issue remark to the department's examination worksheet:

Examples: F205 THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

F210 THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE. AVAILABLE DATA SUPPORT A FLOW RATE OF **24 GPM**.

If the flow rate is confirmed, but **exceeds 105 gpm** (3 times the 35 gpm guideline), add a flow rate (FR) issue remark to the department's examination worksheet:

F206 THE CLAIMED FLOW RATE EXCEEDS 105 GPM AND APPEARS EXCESSIVE FOR THIS PURPOSE.

c. Offstream Reservoirs. The flow rate for offstream reservoirs, where control of the reservoir is part of the right, will be decreed as claimed, amended, or modified by rule. **The guideline for examining these claims will be the capacity of the diversion and conveyance system.** If available information is inadequate to determine or estimate the capacity of the diversion or conveyance system, or the system is shared by more than one claimant, use a **guideline of 35 gpm** ([Rule 19 \(b\) W.R.C.E.R.](#)).

When a claimed flow rate exceeds the capacity of the system, or the 35 gpm flow rate guideline, add a flow rate (FR) issue remark to the department's examination worksheet:

Examples: F135 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE DIVERSION AND CONVEYANCE FACILITIES.

F145 THE CLAIMED FLOW RATE APPEARS TO EXCEED THE CAPACITY OF THE DIVERSION AND CONVEYANCE SYSTEM. AVAILABLE DATA SUPPORT A FLOW RATE OF **2.50 CFS**.

F205 THE CLAIMED FLOW RATE EXCEEDS THE 35 GPM GUIDELINE FOR THIS PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

d. Prior Decreed Flow Rates. Claimed flow rates based on historical district court decrees which **specifically** decree a stock use (i.e., not contingent upon another decreed purpose) will be decreed as claimed, amended, or modified by rule.

If the claimed flow rate is greater than the amount historically decreed, add a flow rate (FR) issue remark to the department's examination worksheet:

Example: F90 THE CLAIMED FLOW RATE EXCEEDS THE **5** MINER'S INCHES OF **DOE CREEK** DECREED IN CASE NO. **0000**, **MONTANA** COUNTY.

A prior decreed flow rate will be compared to the guideline for the type of stock watering system. For claimed amounts exceeding the guideline, add the appropriate flow rate issue remark (e.g., F205, F210) to the department's examination worksheet.

Decree Exceeded: Flow rates based on a prior decreed right for stock will be recorded (see "Irrigation: Flow Rate: Recording Documentation" (Section VII.B.5)). When a historically decreed right is found to be exceeded by the combined flow rate of claims based on that right, add a decree exceeded (DE) issue remark to the department's examination worksheet. Occasionally, stock rights are in multiple use situations with irrigation claims. Anytime the combination of consumptive use rights exceeds the decreed amount, include the multiple use rights in the decreed exceeded remark:

Example: D5 THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME PRIOR DECREED WATER RIGHT. THE SUM OF THE CLAIMED FLOW RATES EXCEEDS THE 150 MINER'S INCHES DECREED IN CASE NO. 0000, MONTANA COUNTY. 000000-00, 000000-00, 000000-00.

4. Flow Rate Issues. Note any flow rate issues on the examination worksheet. At the completion of examining the ownership, the claimant should be notified through claimant contact of all issue remarks.

a. Claimed Flow Rate Appears Inadequate. Claimed flow rates that appear excessively low (e.g., 1 gpm or less) should be reviewed for possible error by the claimant such as unit of measurement. Also review the documentation to substantiate the flow rate. If the flow rate appears inadequate, add the following flow rate (FR) issue remark to the department's examination worksheet:

Example: F185 THE CLAIMED FLOW RATE APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

b. No Flow Rate Claimed. If no flow rate was claimed where a flow rate is to be decreed by the Water Court, review the supporting documentation in the claim file. If the flow rate cannot be identified, the flow rate should be null (no value) on the examination worksheet. Indicate a KEEP/CLAIMED flag on the worksheet below the flow rate element. Add a flow rate (FR) issue remark to the department's examination worksheet:

Examples: F172 NO QUANTIFIED FLOW RATE WAS CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM.

F195 NO FLOW RATE HAS BEEN CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM.

F190 NO QUANTIFIED FLOW RATE HAS BEEN CLAIMED.

c. Claimed Flow Rate not Numerically Quantified. Where a flow rate is to be decreed by the Water Court and the claim states the flow rate as "ALL" or a portion of "ALL" (e.g., "½ of ALL"), apply the following procedure. Use Percent of Flow (POF) as the unit when entering flow rate in the database.

- For historically decreed rights where the flow rate is expressed as a percent of flow (POF), the units should be noted as POF on the examination worksheet. If 'ALL' is claimed, the flow rate will be noted as "100 POF"; if one-half of flow is claimed, the flow rate will be noted as "50 POF." Add a KEEP/CLAIMED flag below the flow rate element on the examination worksheet. Add a flow rate (FR) information remark to the examination worksheet to identify the claimed flow rate:

Examples: F45 ENTIRE FLOW OF THE SOURCE AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

F50 THIS RIGHT IS FOR **ONE-FOURTH** THE FLOW OF **DOE CREEK** AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

- For a single filed or use right where a flow rate is to be decreed, add a flow rate information remark (F56) and a flow rate issue remark (F172) to the examination worksheet. Check that the flow rate is expressed as POF and a KEEP/CLAIMED flag is noted on the examination worksheet. Add the appropriate flow rate information and issue remarks:

Examples: F56 **ENTIRE/ONE FOURTH THE** FLOW OF **DOE CREEK**.

F172 NO QUANTIFIED FLOW RATE WAS CLAIMED. THE FLOW RATE GUIDELINE FOR THIS PURPOSE IS 35 GPM.

- For multiple filed or use rights based on the same historical water right filed by the same claimant, where a flow rate is to be decreed and a flow rate has not been identified, add the following flow rate (FR) issue remark to the department's examination worksheet for each claim involved. This remark is in lieu of the F170 or F172 issue remark.

Example: F171 THE FLOW RATE HAS NOT BEEN EXAMINED AS NO QUANTIFIED FLOW RATE WAS CLAIMED. THE CLAIMS LISTED FOLLOWING THIS STATEMENT ARE ALL BASED ON THE SAME HISTORIC WATER RIGHT. **000000-00**, **000000-00**.

## C. VOLUME

The volume for a stock claim is the amount of water diverted from the source over the year. It is measured in acre-feet (AF) when specific stock volumes will be decreed. Where a specific volume will not be decreed, a volume information remark will be applied to the water right that refers to a rate of 30 gallons per day per animal unit based on a reasonable carrying capacity and historical use.

**A specific volume *will not* be decreed for stock claims *except* for U.S. government claims to reservoirs and pothole lakes.**

1. Land Swaps. Procedures for examining stock volumes are discussed below *according to the current ownership*. Occasionally, land swaps occur between federal and private entities. Apply the following procedures based on current ownership. For example, if a private entity has transferred property (and water rights) to a federal entity, examine the claim per its current ownership (federal) to determine if a specific volume will be decreed.

**Claimant contact must occur upon completing examination of the ownership if the volume is modified by rule, an issue remark exists, or is unclear.**

2. All Stock Claims (Except USA Pothole Lakes and Reservoirs). A **specific volume will NOT be quantified or decreed for stock claims**. The only claims that will be decreed a volume are USA claims to pothole lakes and reservoirs.

Change the claimed volume on the examination worksheet to null (no value) and place an asterisk in the brackets to the left of the volume element on the examination worksheet. Standards will apply the following volume (VM) information remark to the review and decree abstract. The claimant must be notified.

Example: VF015 THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

3. USA Pothole Lakes and Reservoirs Claims. A **volume WILL be decreed for stock reservoir and pothole lake claims owned by USA** (e.g., BLM, Fish and Wildlife Service, or Forest Service). Volumes for these claims are retained and decreed pursuant to a June 17, 1985 and August 7, 1987 Order (Exhibit IX-1) from the Water Court.

Examine the claimed volumes on USA stock reservoirs and pothole lakes by following the procedures outlined in "Claim Examination: Reservoirs and Groundwater Pits" (Section VI.H).

Feasibility Check. USA claims that will be decreed both a flow rate and a total volume should be checked for feasibility. A feasible volume and a comparison statistic are calculated under the volume element on the examination worksheet. The Feasible Volume shows the maximum volume possible if water were diverted at the claimed flow rate throughout the claimed period of use (year round use equals 366 days).

Compare the Feasible Volume to the claimed volume. When the claimed flow rate (Q) or period of use has been amended, recalculate the maximum feasible volume (V) using the following equations:

- For cfs: Feasible V = Q x days used x 1.9834711
- For gpm: Feasible V = (Q x days used)/226.28542

When the claimed volume exceeds the maximum feasible volume, standards will apply the following volume (VM) issue remarks to the review and decree abstract. If the claimant wishes to resolve the issue remarks, flow rate, volume, and period of use should be discussed with the claimant in order to determine which may be in error.

Examples: V23 THE VOLUME OF THIS WATER RIGHT APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME IS GREATER THAN **3.20** ACRE-FEET PER ACRE PER YEAR.

V24 THE CLAIMED VOLUME EXCEEDS MAXIMUM FEASIBLE VOLUME. BASED ON THE FLOW RATE AND PERIOD OF USE, THE MAXIMUM VOLUME POSSIBLE IS **3.20** ACRE-FEET PER YEAR.

4. Prior Decreed Volume. A volume will be decreed for claims based on a historical district court decree *specifically* for stock use. Add a volume (VM) information remark to the department's examination worksheet:

Example: V10 THIS VOLUME WAS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

If the claimed volume is greater than the amount historically decreed, add a volume (VM) issue remark to the department's examination worksheet:

Example: V30 THE CLAIMED VOLUME EXCEEDS THE **50** ACRE-FEET DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

A prior decreed volume will be compared to the guideline for the type of stock watering system. For claimed amounts exceeding the guideline, add an appropriate volume issue remark to the department's examination worksheet. See [Section IX.C.5.a.](#) below.

Decree Exceeded. Volumes based on a historical decreed right for stock will be recorded. See "Irrigation: Flow Rate: Recording Documentation" (Section VII.B.5). When a prior decreed right is found to be exceeded by the combined volume of claims based on that right, add a free text decree exceeded (DE) issue remark similar to the D5, but modified to refer to volume and acre-feet. Occasionally, stock rights are in multiple use situations with irrigation claims. Anytime the combination of consumptive use rights exceeds the decreed amount, include the multiple use rights in the decreed exceeded remark:

Example: DEIS THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE FILED ON THE SAME FORMERLY DECREED WATER RIGHT. THE SUM OF THE CLAIMED VOLUMES EXCEEDS THE **15** ACRE-FEET DECREED IN CASE NO. **0000**, **MONTANA** COUNTY. **000000-00, 000000-00, 000000-00.**

5. Volume Issues. Note any volume issues on the examination worksheet. At the completion of examining the ownership, the claimant should be notified through claimant contact of all issue remarks.

a. Volume Excessive. When a claimed volume (groundwater or previously decreed) exceeds the guidelines and is not supported by available data, add the appropriate volume (VM) issue remark to the department's examination worksheet:

Examples: V40 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS **2.9** TIMES THE CAPACITY OF THE RESERVOIR.

V77 VOLUME APPEARS TO BE EXCESSIVE FOR A **BUCKET** MEANS OF DIVERSION.

V100 THE CLAIMED VOLUME **APPEARS TO/MAY** BE EXCESSIVE FOR THE CLAIMED PURPOSE AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

V105 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. AVAILABLE DATA SUPPORT A VOLUME OF **2.30** ACRE-FEET.

V111 THE CLAIMED VOLUME CANNOT BE CONFIRMED DUE TO LACK OF DATA.

If the comparison stat on the examination worksheet exceeds the guideline of 30 gallons per day per animal unit, add the following volume (VM) issue remark:

V112 THE CLAIMED VOLUME APPEARS TO BE EXCESSIVE FOR THE CLAIMED PURPOSE. THE CLAIMED VOLUME EQUALS **63** GPD PER ANIMAL UNIT.

b. Claimed Volume Appears Inadequate. If the claimed volume appears inadequate for the claimed use when compared to available data, add the following volume (VM) issue remark to the department's examination worksheet:

Example: V45 THE CLAIMED VOLUME APPEARS TO BE INADEQUATE FOR THE CLAIMED PURPOSE.

*Volumes cannot be raised to the guideline arbitrarily through claimant contact.* The guidelines are strictly a tool to trigger the need for further examination. When the claimed volume appears inadequate, the claimant may determine a volume based on historical pre-1973 animal units and a reasonable number of 24-hour days. If amended, check the volume for feasibility.

c. No Volume Claimed. When no volume has been claimed, add the appropriate volume (VM) issue remark to the department's examination worksheet:

Examples: V90 NO VOLUME HAS BEEN CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS **2.00** ACRE-FEET PER YEAR.

V95 NO VOLUME HAS BEEN CLAIMED.

Check that the volume element on the examination worksheet is expressed as null (no value) and a KEEP/CLAIMED flag is designated.

d. Claimed Volume not Numerically Quantified. When a claimed volume states "ALL" or a portion of "ALL" (e.g. "½ of ALL"), the following procedures apply:

- For prior decreed rights, check that the volume is expressed as null (no value) and a KEEP/CLAIMED flag is designated on the examination worksheet. Add a volume (VM) information remark to the examination worksheet to identify the claimed volume:

Examples: V11 ENTIRE VOLUME OF THE SOURCE AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

V12 THIS RIGHT IS FOR **ONE-FOURTH** THE VOLUME OF **DOE CREEK** AS DECREED IN A PRIOR DECREE, CASE NO. **0000**, **MONTANA** COUNTY.

- For filed and use rights where a volume is to be decreed, add a volume information remark (V13) and a volume issue remark (V96 or V97) to the examination worksheet:

Examples: V13 **ENTIRE/ONE-FOURTH THE VOLUME OF DOE CREEK.**

V97 NO QUANTIFIED VOLUME WAS CLAIMED. THE VOLUME GUIDELINE FOR THIS PURPOSE IS **2.50** ACRE-FEET PER YEAR.

Check that the volume is expressed as null (no value) and a KEEP/CLAIMED flag is designated on the examination worksheet.

## D. POINT OF DIVERSION AND MEANS OF DIVERSION

The point of diversion (POD) for stock use is defined as the location where water is diverted from the source. Procedures for examining the point of diversion are described further in "Claim Examination: Point of Diversion" (Section VI.F).

**Claimant contact must occur upon completing examination of the ownership if the point of diversion or means of diversion is modified by rule, an issue remark exists, or is unclear.**

1. Identifying Point of Diversion. The point of diversion (POD) for stock use is defined as the location where water is diverted from the source. Stock may be drinking directly from a source or from a combination of other diversion methods.

2. Examining Point of Diversion.

a. Livestock Direct From Source. When examining stock claims where the means of diversion is *livestock direct from source*, it may be necessary to modify the POU or POD legal land descriptions to make them identical ([Rule 22 and 23 W.R.C.E.R.](#)). When stock are drinking directly from the source, each POD legal land description should have a corresponding and identical POU legal land description. Changes in legal land descriptions may be based on the claimant's map, USGS maps, U.S. National Forest Service maps, Bureau of Land Management maps, or an aerial photograph. Conflicting data or a confusing claim file may necessitate contact with the claimant to obtain more information.

b. Ditch Direct with Headgate. Some stock claims combine diversion methods, such as a headgate and ditch with stock drinking directly from the ditch. The point of diversion legal land description will be the location of the headgate (or where the ditch diverts water from the source). The POD legal land description will usually not be identical to the POU land description on such claims.

c. Mapping Point of Diversion. For livestock direct from source claims, map a POD at each downstream legal land description where the source intersects with a section line. Where stock drink from a headgate and ditch system, map a POD at the location of the headgate. Map all other means of diversion accordingly. These results should be produced in a PDF report created from WRMapper. The reports MUST be named according to "Exporting and Naming Reports" (Figure VII-1). For more information on WRMapper, see 'Mapper Protocols' on the Adjudication Shared Drive.

d. Point of Diversion Issues. Follow the procedure outlined in "Claim Examination: Point of Diversion (POD): POD Issues" (Section VI.F.4).

3. Means of Diversion. Most examination procedures for the means of diversion are described in "Claim Examination: Means of Diversion" (Section VI.G). These procedures include determining a consistent means of diversion between claims using the same diversion. Because the claim form for stock had a different set of

diversion choices than the irrigation claim form, there are a number of means of diversion inconsistencies involving stock and irrigation claims. Special attention should be paid to means of diversion consistency when examining stock claims.

Onstream Reservoirs. The means of diversion for stock drinking directly only from an onstream reservoir should be “Dam” to identify the dam as the means of diversion. If stock are drinking from a stream above or below the reservoir as well as from the reservoir itself, the means of diversion should be “Dam” for the reservoir point of diversion and “Direct From Source” for the stock drinking directly from stream.

4. Changing Point of Diversion. The claimed POD will not be changed during the examination unless:

- amended by the claimant;
- modified by rule by the department to the nearest reasonable and concise legal land description;
- revised so that the POU and POD legal land descriptions for direct instream surface water stock use will be the same.

Changes may be made directly on the examination worksheet. If the legal land descriptions are changed so that they differ from the claim form or amendment, place an asterisk on the worksheet in the brackets to the left of the point of diversion element. Indicate the authority for the change on the examination worksheet. The claimant must be notified.

5. Changing Means of Diversion. The claimed MOD will not be changed during the examination unless:

- amended by the claimant;
- modified by rule by the department to identify similar means of diversion consistently;
- modified by rule by the department on confirmation by the claimant.

Changes may be made directly to the examination worksheet. If the means of diversion is changed so that it differs from the claim form or amendment, place an asterisk in the brackets to the left of the point of diversion element on the worksheet. An asterisk is not needed to change the means of diversion from one assigned category to another when the claimed intent is not changed, e.g., “Livestock Direct From Source” to “Dam”, “Flowing” to “Pipeline” or “Flowing” to “Livestock Direct From Source”.

## E. PLACE OF USE (POU)

The place of use (POU) for stock claims is where the stock drink the water. No acreage will be associated with a stock place of use. Procedures for examining the place of use of a stock claim are similar to the procedures for irrigation. See "Irrigation: Place of Use" (Section VII.D).

1. Identifying Place of Use. Places of use for stock drinking directly from the source ("instream" use) will be identical to the POD ([Rule 23 \(b\) W.R.C.E.R.](#)). It may be necessary to modify the POD or POU to make them identical. Note the changes directly on the examination worksheet and indicate the change as 'modified by rule'. Place an asterisk in the brackets to the left of the place of use element on the examination worksheet. The claimant must be notified.

a. Private Stock Claims on Federal Land. Examine the POU as with any other claim. If the place of use (either all or a portion of the POU) is on federal land, add the appropriate ownership issue remark:

O71 THE OWNERSHIP OF THIS RIGHT MAY BE QUESTIONABLE.  
PART OR ALL OF THE PLACE OF USE APPEARS TO BE ON  
FEDERAL LAND.

See also "Stockwater: Place of Use: Place of Use Issues: Overlapping Ownership" ([Section IX.E.3.a](#)).

b. Appurtenancy Remarks. If you have, or receive, a "Grazing Permit" or "Lease Agreement" containing a "base property" description for the claimant, this is a description of the private appurtenant land. An appropriate appurtenancy information remark should be added to note this situation between the Federal agency and private entity. If an appurtenancy information remark can be added to the claim, the O71 issue remark should be removed. See Order "Directing DNRC To Identify The Appurtenant Lands of Private Stock Claims Used On Federal Public Lands," 2/12/2010, by the Water Court, Exhibit IX-2.

The primary remark used to identify the appurtenant lands is the P349. When using this remark there is no need to identify all of the appurtenant lands:

P349 ALL OR A PART OF THE PLACE OF USE CONSISTS OF  
FEDERAL PUBLIC LANDS. THE WATER RIGHT USED ON THE  
PUBLIC LANDS IS APPURTENANT TO THE FOLLOWING  
PRIVATE LANDS: SENW SEC 3 TWP 45N RGE 50E SEE THE  
CLAIM FILE FOR THE COMPLETE LEGAL LAND DESCRIPTION  
OF THE PRIVATE LAND TO WHICH THIS WATER RIGHT IS  
APPURTENANT.

On the rare occasion, when the entire base appurtenant land can be described, use the P344 remark:

P344 ALL OR A PART OF THE PLACE OF USE CONSISTS OF FEDERAL PUBLIC LANDS. THE WATER RIGHT USED ON THE PUBLIC LANDS IS APPURTENANT TO THE FOLLOWING PRIVATE LANDS. N2 SEC 2 TWP 99N RGE 99E

Note: the US Fish & Wildlife Service does not use “base property” descriptions. Only the BLM and US Forest Service use “base property” descriptions.

c. Duplicate/Redundant Claims. Add any appropriate redundant or duplicate issue remark where there is a private claim and a Federal claim on the same place of use, such as the following:

Examples: D92 THIS CLAIM AND WATER RIGHT NO. 000000-00 APPEAR TO BE REDUNDANT/DUPLICATE FILINGS. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED.

D93 CLAIMS NOS. 000000-00 AND 000000-00 MAY BE REDUNDANT CLAIMS ON THE SAME HISTORIC APPROPRIATION OF WATER. IT APPEARS ONLY ONE WATER RIGHT IS INVOLVED

2. Mapping Place of Use. The place of use will not be mapped directly; rather the point of diversion for stock claims will be mapped in WRMapper as described above ([Section IX.C.2.c](#)).

3. Place of Use Issues. If the place of use cannot be identified from information in the claim file, add the appropriate place of use (PL) issue remark:

Example: P305 THE CLAIMED **PLACE OF USE** COULD NOT BE IDENTIFIED FROM DATA SUBMITTED WITH THE CLAIM.

P306 THE PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.

a. Overlapping Ownership. The points of diversion for stock use will be mapped in WRMapper. Using the AllCad layer in WRMapper, identify any ownership issues. Refer to “Claim Examination: Owner Name and Address: New Owner Determined but File Lacks Ownership Update” (Section VI.B.3) and “Irrigation: Place of Use: Place of Use Issues” (Section VII.D.4).

Supplemental Rights. No review or identification of supplemental relationships will be made for stock claims.

4. Geocodes. Geocodes were initially assigned to water rights as either a one-to-one match or a one-to-many match based on the legal land description. At times, the legal land description associated with a water right was described very broadly, encompassing several parcels that may not have been within the true place of use. As a result, geocodes must be verified as belonging to the claimed place of use. Any geocodes assigned initially to the water right are listed below the place of use element on the examination worksheet.

Determine valid geocodes by using the AllCad layer in WRMapper or the [Montana Cadastral Mapping Program](#) information. Indicate a valid geocode with a 'Y' on the examination worksheet. (See also, Assignment of Geocodes Memo, Exhibit VI-18).

Once a place of use has validated geocodes, cross off any geocodes not associated with the place of use on the examination worksheet. In the database, these records will be deleted from the Geocode tab under the Create and Maintain Water Rights screen.

Geocode issues. Every effort should be made to validate geocodes.

- If a geocode cannot be conclusively determined as belonging partially or wholly within the place of use, the geocode should have an 'N' designation (not validated). If an ownership update occurs involving any geocode with a designation of an 'N', the water right will require further research before the ownership update can occur.
- If a geocode is designated as valid ('Y') and it is found to be in error, change the 'Y' to an 'N' on the examination worksheet and document the resources and/or research in making the determination. In the database, in order to remove an incorrectly validated geocode, first change the 'Y' to an 'N' and then save. The record can then be deleted.
- If a legal land description is found to be in error, review the geocodes. If any changes are made to the legal land description (i.e., a correction to the township, range or section occurs based on the claimant's map, for example), it may be determined that a geocode may need to be deleted or added.
- If the place of use is amended, review the geocodes. It may be determined that a valid geocode needs to be deleted, or a geocode not initially associated with the water right needs to be added.
- Water rights which have been reserved (exempted) from the land, such as those belonging to homeowner's associations, municipalities, and certain other entities that provide service but do not own the place of use, just the water right, will not have any associated geocodes. If a geocode is assigned, delete it from the Geocode tab in the database.







