

ADMINISTRATION OF WATER COURT DECREES

An overview of the process for distribution and administration of water under Montana Water Court decrees

This is a brief overview of the enforcement process for decrees issued by the Montana Water Court. Historical decrees issued by District Courts before the inception of the Montana Water Court are also enforced in areas throughout Montana and are not included in this overview. These historical decrees did not necessarily include all water users or types of rights on a stream.

The Montana Water Court issues temporary preliminary, preliminary, and final decrees of existing water rights by hydrologic basin, based upon over 200,000 statements of claim filed by water users statewide. A statement of claim is a filing of water use prior to June 30 1973.

Montana Water Court decrees can be enforced in basins, or portions of basins, with temporary preliminary and preliminary decrees after objections and hearings. To date none of the enforcement projects encompass all rights in an entire decreed basin, but are requested on specific streams or portions of streams within several basins throughout the state. At this point the projects are usually limited to surface water rights.

Requests to administer water under Water Court decrees are made by water users or the District Court. A water user petition requires signatures of 15% of the owners of water rights affected by the source to be administered.

By statute, MCA 85-5-101. Appointment of water commissioners. (1) The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates, permits, and changes in appropriation right issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may appoint a water commissioner.

The Montana Water Court evaluates status of hearings and objections within the requested source or sources, and coordinates with the District Court, water commissioners, and water users to determine the project scope and requirements. If objections and hearings are resolved within the decree process,

the Water Court requests the assistance of the DNRC to create enforcement materials for the District Court.

The DNRC reviews the claims on the requested source or sources and identifies and numbers the claimed points of diversion. The DNRC also makes note of any discrepancies and complex water delivery such as storage water and water exchanges. The DNRC prepares three reports for the Montana Water Court and the District Court. The reports are water rights listed by priority, diversion number, and ownership. These reports are for surface water rights which not only include the pre-1973 statement of claim water right types but also the post 1973 water right changes, exempt rights, permits, and reservations. The DNRC also provides detailed maps of the diversions on a local and drainage scale. The Water Court and/or District Courts often hold public meetings in conjunction with these projects, and when asked, the DNRC also attends public meetings to explain the diversion numbering system and the process involved in generating the indexes. If errors are identified they are corrected by the DNRC or the Water Court depending on the nature and scope of the problem (*see WATER RIGHT ADJUDICATION RULES AMENDED BY THE MONTANA SUPREME COURT December 5, 2006 at http://courts.mt.gov/water/rules/water_rt_adudication_rules.pdf*).

To date the DNRC has prepared 38 enforcement projects at the request of the Montana Water Court. The number of projects administered by the District Courts varies from year to year; therefore not all of the 38 projects are under enforcement annually. DNRC and the Water Court maintain and update all enforcement projects on a continual basis.

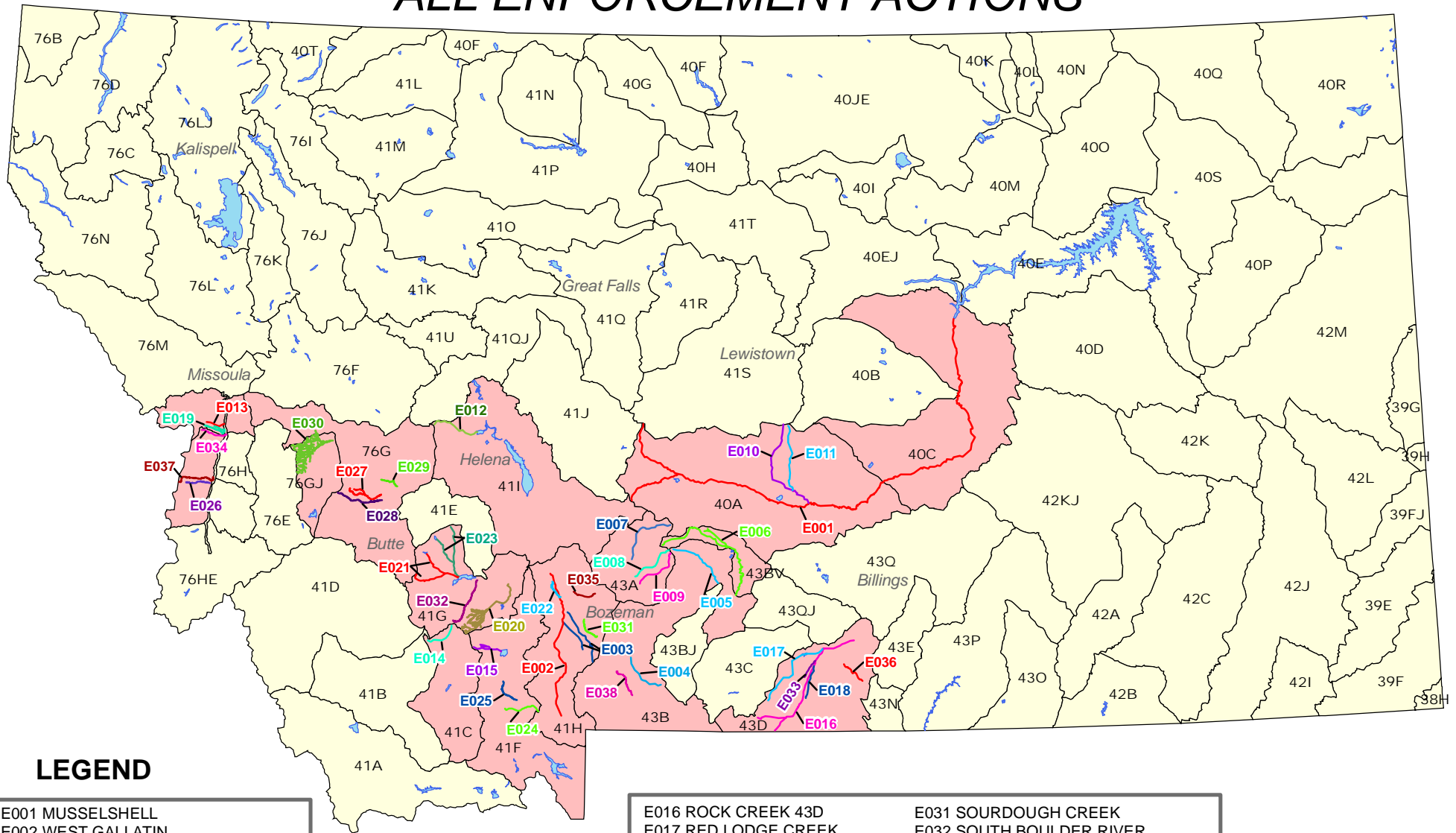
Within the enforcement areas, approximately 9,141 points of diversion have been assigned enforcement numbers. All types of active surface water rights are included in these projects which total 6,120. These include water rights from both the New Appropriations Program (post 1973 rights) and the Adjudication Program (pre-1973 rights). In the winter of 2006/2007 all enforcement projects were converted into the Water Rights Central Data Base, a significant improvement for future efficiency.

The local District Court has jurisdiction over distribution of the water within the enforcement area. The DNRC and the Montana Water Court only provide information and correct errors found in water rights on the tabulations in the enforcement areas, and provide any other assistance requested by the District Courts. The District Court appoints a water commissioner or commissioners to deliver available water. Only the water commissioner has the authority to admeasure and distribute water to parties owning water rights in the source or sources within an enforcement area. Unless specifically identified, the duty of the water commissioner is to deliver available water within a source or sources to a point of diversion based on priority date.

The following table shows the thirty eight enforcement actions currently prepared. A map is also attached.

<u>Enforcement #</u>	<u>Source</u>	<u>County</u>	<u>Basin</u>	<u>Total Rights</u>
E001	Musselshell River	Meagher / Golden Valley / Wheatland / Musselshell	40A / 40C	550
E002	West Gallatin River	Gallatin	41H	544
E003	Hyalite / South Cottonwood	Gallatin	41H	307
E004	Mill Creek	Park	43B	209
E005	Big Timber Creek	Sweet Grass	43B	225
E006	Sweet Grass Creek	Sweet Grass	43BV	202
E007	Shields River	Park	43A	189
E008	Cottonwood Creek	Park	43A	190
E009	Rock Creek	Park	43A	160
E010	Careless Creek	Wheatland / Golden Valley	40A	80
E011	Swimming Woman Creek	Golden Valley	40A	56
E012	Silver Creek	Lewis & Clark	41I	33
E013	Carlton Creek	Missoula	76H	67
E014	Wisconsin Creek	Madison	41C	79
E015	South Meadow Creek	Madison	41F	135
E016	Rock Creek / Tribs	Carbon	43D	795
E017	Red Lodge Creek / Tribs	Carbon	43D	98
E018	Clear Creek	Carbon	43D	61
E019	One Horse Creek	Ravalli	76H	108
E020	Willow Creek / Tribs	Madison	41G	378
E021	Pipestone Creek / Tribs	Jefferson	41G	125
E022	Baker Creek	Gallatin	41H	60
E023	Whitetail Deer Creek	Jefferson	41G	58
E024	Indian Creek	Madison	41F	38
E025	Bear Creek	Madison	41F	33
E026	Sheafman Creek	Ravalli	76H	145
E027	Dempsey Creek	Powell	76G	73
E028	Racetrack Creek	Powell	76G	119
E029	Cottonwood Creek	Powell	76G	76
E030	Lower Willow Creek / Tribs	Granite	76GJ	132
E031	Sourdough Creek	Gallatin	41H	67
E032	South Boulder	Madison	41G	195
E033	Dry Creek	Carbon	43D	60
E034	Sweeny Creek	Ravalli	76H	171
E035	Middle Cottonwood Creek	Gallatin	41H	25
E036	Bluewater Creek	Carbon	43D	63
E037	Fred Burr Creek	Ravalli	76H	169
E038	Emigrant Creek	Carbon	43B	45

ALL ENFORCEMENT ACTIONS



LEGEND

- E001 MUSSELSHELL
- E002 WEST GALLATIN
- E003 HYALITE & SOUTH COTTONWOOD
- E004 MILL CREEK
- E005 BIG TIMBER CREEK
- E006 SWEET GRASS CREEK
- E007 SHIELDS RIVER
- E008 COTTONWOOD CREEK
- E009 ROCK CREEK 43A
- E010 CARELESS CREEK
- E011 SWIMMING WOMAN CREEK
- E012 SILVER CREEK
- E013 CARLTON CREEK
- E014 WISCONSIN CREEK
- E015 SOUTH MEADOW CREEK

- E016 ROCK CREEK 43D
- E017 RED LODGE CREEK
- E018 CLEAR CREEK
- E019 ONE HORSE CREEK
- E020 WILLOW CREEK
- E021 PIPESTONE & LITTLE PIPESTONE CREEK
- E022 BAKER CREEK
- E023 WHITETAIL DEER CREEK
- E024 INDIAN CREEK
- E025 BEAR CREEK
- E026 SHEAFMAN CREEK
- E027 DEMPSEY CREEK
- E028 RACETRACK CREEK
- E029 COTTONWOOD CREEK 76G
- E030 LOWER WILLOW CREEK

- E031 SOURDOUGH CREEK
- E032 SOUTH BOULDER RIVER
- E033 DRY CREEK
- E034 SWEENEY CREEK
- E035 MIDDLE COTTONWOOD CREEK
- E036 BLUEWATER CREEK
- E037 FRED BURR CREEK
- E038 EMIGRANT CREEK