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INTRODUCTION

Welcome to the Montana Water Court! This guidebook has been prepared to save you time and money. We want to answer some of the many questions that you may have regarding the Montana Water Rights adjudication.

Water rights are extremely valuable property rights. Failure to participate knowledgeably in the adjudication process could cost you some or all of your right to use water. The more knowledgeable you are, the better the job we will do at quantifying your use of water and the sooner we will get through this process.

We want to inform you about the steps that water users and objectors go through in resolving objections to water rights. This process is called "the adjudication." We have divided the guidebook into nine sections, with an explanation of each section and the forms used for each stage of the adjudication.

THIS GUIDEBOOK IS NOT A SUBSTITUTE FOR LEGAL ADVICE

We can give you an overview of the process and tell you what some of the rules are, but the Water Court **cannot** give legal advice. For that you need to talk to an attorney.

Many people do not retain attorneys when going through the adjudication process. Many of the objections are factual in nature, and don't involve questions of law which are more likely to require legal assistance. Neighbors talking to neighbors can resolve many objections. People frequently start through the process without attorneys and later retain attorneys if the issues become complex. Other people retain attorneys at the very start. This guidebook is meant for everyone, to help you understand the process if you choose not to retain an attorney, and to help you work more efficiently with an attorney if you choose to use one.

HOW TO USE THE GUIDEBOOK

The adjudication of water rights in your county will take some time to complete. There will be periods of up to several years between stages of the adjudication. During these periods of inactivity you may forget the overall picture. The guidebook will help refresh your memory as we move along through the adjudication process. The guidebook is divided into nine sections. You do not need to go through the guidebook all at one time. It is designed so that the information you should need for each stage of the adjudication is contained in the section for that stage.

WHAT IS INCLUDED IN THE GUIDEBOOK?

SECTION ONE describes the **Montana Water Court** and includes a brief history of the Water Court and an explanation of the Clerk of Court's Office.

SECTION TWO is on **Issuing a Decree**. It describes the Montana Department of Natural Resources and Conservation (DNRC) claims examination process used to prepare for the decree, how we notify you about a decree and how to use a decree. We also discuss water right abstracts and Notices of Availability.

SECTION THREE describes the **Objection Process**. It explains how to object to a water right claim, the objection period, the counterobjection period, and the Notice of Intent to Appear period.

SECTION FOUR is about **Initiating the Resolution of Objections**. It describes the Water Master's role, how the Court sets up cases, resolution of objections, DNRC assistance, affidavits, withdrawals of claims or objections, and status conferences.

SECTION FIVE is about **Settling Objections**. It includes settling objections on your own or with the assistance of a mediator.

SECTION SIX is about **Preparing for prehearing conferences and hearings**. It explains discovery or gathering information, the presentation of evidence, and what evidence and proof the Court needs to decide cases.

SECTION SEVEN explains **Master's Reports** and Decisions of the Court. It describes how the Master or judge goes about making decisions and what you can do if you don't agree with the decisions.

SECTION EIGHT explains water right **Ownership Updates and Address Changes** and the importance of keeping the Water Court and the DNRC informed of your current address and current ownership.

SECTION NINE explains **Preliminary Decrees, Final Decrees, and Appeals**.

We **STRONGLY RECOMMEND** that every Water Court participant keep copies of all documents sent or received by them in a file together with all their water right information. When the adjudication commences in your basin, you will be glad that you were organized early.

We sincerely hope that you find this guidebook useful. *If you have any questions, please call us. If something is unclear, please call us.* We want this to work for you. If you are

calling from within Montana, our toll free number is 1 (800) 624-3270. Our regular phone number is (406) 586-4364.

SECTION ONE: MONTANA WATER COURT

From Montana's early territorial days until June 30, 1973, many water rights were appropriated throughout the state but no one was certain how much water had been fully appropriated. The Montana Water Use Act, effective July 1, 1973, established a central repository for water right records and required prospective water users to apply for a permit before putting water to use. The act also recognized that the amounts, ownership, and priority dates for all existing water rights needed to be better defined.

In 1979, the legislature passed Senate Bill 76, which set up Montana's current system for adjudicating existing water rights. An "existing right" is defined by statute as a right to the use of water that would be protected under the law, as it existed prior to July 1, 1973. Senate Bill 76 divided Montana into four water divisions and authorized up to five Water Judges to adjudicate all existing water rights in a statewide proceeding.

On June 8, 1979, the Montana Supreme Court issued an Order requiring every person claiming ownership of an existing water right to file a claim with the DNRC by a certain date. The Supreme Court later extended this deadline to 5:00 PM on April 30, 1982. Claims for livestock and individual domestic uses based upon instream flow or groundwater sources were exempted from this filing requirement, although such claims could be filed voluntarily. Montana Water Law is based on the Prior Appropriation Doctrine - which means, "First in time is first in right." This makes priority dates very important. The more senior rights get the most use.

The Water Court follows the same Rules and laws that your local District Court does. In addition, the Water Court follows specific Rules adopted by the Montana Supreme Court.

Besides the Chief Water Judge, the Water Court has four District Court Judges working part time for the Water Court as Water Judges. There are six full time Water Masters who function as judicial officers, one Clerk of Court and two Deputy Clerks.

The Montana Water Court is located in Bozeman, Montana at 601 Haggerty Lane and includes the Chief Water Judge, the Masters, and the Clerks. The other Water Judges assist the Water Court from their various Districts. The other Water Judges are District Court Judges located in each of the four major water divisions, the Upper Missouri Division, the Lower Missouri Division, the Yellowstone Division, and the Clark Fork Division. Each division is

divided into Basins with a total of 85 Basins throughout the State.

OFFICE OF THE CLERK OF COURT

The Clerk of Court's office currently consists of the Clerk of Court and two Deputy Clerks. The responsibilities of the clerks are threefold. They act as clerks, secretaries, and court reporters.

Each clerk is assigned to a basin and works directly with the Master assigned to that particular basin. Any incoming calls regarding a particular basin are directed to the clerk assigned who can assist you regarding questions on claims or cases in your basin. **BE SURE AND HAVE YOUR WATER RIGHT CLAIM NUMBER OR CASE NUMBER BEFORE CALLING.** This is very helpful in locating your files and directing your call to the proper person.

All correspondence and Court Orders are typed, copied, mailed, and docketed by the clerk. The clerks record all hearings and prepare a transcript when requested. The clerks are responsible for the record keeping of all documents received by the Court and the maintenance of all files at the Water Court.

All original claim files that have received an objection are kept in the Clerk's Office at the Water Court. Currently, there are 77 four-drawer file cabinets containing over 23,000 original claim files at the Water Court. We also have the microfiche of all original claims in basins in which a decree has been issued.

WHO HAS JURISDICTION OVER MONTANA'S WATER

The Montana Water Court has exclusive jurisdiction over the final determination of "existing water rights" (i.e. water right claims with Pre-July 1, 1973, priority dates). *See* § 85-2-215, MCA.

The DNRC has exclusive jurisdiction over post-July 1, 1973, water right permits and change applications. *See* §§ 85-2-302 and -402, MCA.

The District Courts have jurisdiction over water distribution controversies and "may grant injunctive or other relief necessary and appropriate to preserve property rights or the status quo pending issuance of the final decree." The District Court also has jurisdiction over ditch easement conflicts. *See* § 70-17-112, MCA.

WHAT ARE YOUR OPTIONS IF YOU GET INTO A CONTROVERSY OVER WATER?

1. First talk with the person about the problem. If you can work it out among yourselves this is obviously the best solution. If talking doesn't work, there are other options available; depending on what is the source of the problem.
2. You can file a court action in the appropriate District Court asking for a temporary restraining order and preliminary injunction. *See* §§ 27-19-101, 201, and 314, MCA. This will probably be the fastest way to obtain relief, but it is also the most expensive, as for most water users it will require the hiring of an attorney. This option is very formal and often polarizes the parties after one party "wins."
3. If a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of the Montana Water Use Act, then call the DNRC regional office in your area and they can assist you in filing a report in accordance with § 85-2-114, MCA.
4. A fourth option, available only to water users who claim water rights previously decreed by a **District Court**, is to file a petition with the **District Court** to have a water commissioner appointed to distribute the water. *See* § 85-5-101, MCA. If a water user on a previously decreed stream is dissatisfied with the method of distribution by the water commissioner, then that water user can file a written and verified complaint with the **District Court** and request a hearing on the matter. *See* § 85-5-301, MCA.
5. A fifth option is to file a petition with the **District Court** under § 85-5-110, MCA, to seek the appointment of a water mediator to mediate the water controversy.
6. A sixth option is to file a petition with the **District Court** pursuant to § 85-2-406, MCA, and request the District Court to certify the determination of the disputed existing rights involved in the controversy to the Chief Water Judge. This would likely involve water rights or streams that have not been involved in a prior District Court decree.
7. A seventh option available to water users in a basin that is subject to a Water Court issued Temporary Preliminary or Preliminary Decree, as modified after objections and hearings, is to petition the **District Court** to enforce the provisions of the modified water court decree in accordance with §§ 3-7-212, 85-2-231, 85-2-406 or 85-5-101, MCA.

See also [Water Right Dispute Options](#)

SECTION TWO: ISSUING A DECREE

Montana is divided into four water divisions. Because of their size these divisions have been divided into basins. There are [85 basins in Montana](#). A basin is that area of land draining into a specific source of water. The entire area within the basin is said to be hydrologically related, which means all the water in the basin ultimately flows into a common stream or stretch of stream.

The Montana Water Court issues a decree for each basin in the State. Before a decree is issued, the DNRC first examines the claims.

THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

The [DNRC](#) is an executive agency of the State of Montana charged with coordinating the development and use of the water resources within Montana. An important part of their duty is to provide technical assistance to the Montana Water Court for the adjudication of existing water rights. The DNRC main office is located in Helena where the central computer and records storage are located. There are [DNRC Regional Offices](#) located around the state, each responsible for several basins.

DNRC CLAIM EXAMINATION

When a basin is ready for adjudication the first major goal is the examination of all the water right claims in preparation for the decree. The claims are first reviewed for completeness and clarity. Then, using a variety of resources such as Water Resource Surveys completed between the 1940s and the 1960s, District Court decrees, notices of appropriation, topography maps, aerial maps, field investigations and general use guidelines, the claims are reviewed for accuracy and reasonableness. DNRC documents the examination of claimed information that is either supported or contradicted by their research. When claimed information is unclear or appears contrary to other data the claimant is usually contacted for assistance. This assistance may resolve the situation. Unresolved issues are reported in the DNRC's examination report given to the Water Court. All claimed and examined information is filmed on microfiche and is available for you to review.

The DNRC examiner identifies and completes pertinent information on examination worksheets. These worksheets form a record of the examination for each claim. They are kept in the claim file and you may review them at any time.

TEMPORARY PRELIMINARY DECREE

The next step is to take the examination information and produce the components of the decree. A Temporary Preliminary Decree is a compilation of all of the Statements of Claims for pre-July 1973, or existing water rights within a basin. This includes all of the claims based upon state law. The Temporary Preliminary Decree does not include the Indian or Federal reserved rights based upon federal law. The reserved rights will be included in the Preliminary Decree, which will be issued later for each basin.

These claims are put onto computer-generated abstracts. The abstracts are put in numerical order and bound into several volumes to comprise the water court decree. The Water Court's Findings of Fact and Conclusions of Law are attached to the decree and give an overview of the basin and the decree.

CLAIM NUMBERING

Each claim has a unique number located at the top of the claim abstract. The number is prefaced by a letter and number combination identifying the basin in which the claim is located. For example, 41H is the prefix for the Gallatin River Basin. 43A is the prefix for the Shields River Basin.

Claim numbers are very important. We do everything concerning a claim by its number. Once you find the number, keep a record of it for future reference.

NOTICE OF ENTRY OF TEMPORARY PRELIMINARY DECREE AND NOTICE OF AVAILABILITY

The Water Court provides notice that a decree has been issued and that it is available for review. This notice is called a **NOTICE OF ENTRY OF TEMPORARY PRELIMINARY DECREE AND NOTICE OF AVAILABILITY**. It is a single yellow piece of legal sized paper full of information about what happens next. This notice is sent to everyone who claimed a water right in the basin together with a copy of an abstract of the claimed water right or rights as they appear in the decree. The notice is also published in the legal section of general circulation newspapers within the basin.

The Notice of Availability tells you what is going to happen next and what you should do. It tells you when these things will happen, where they will happen, and how to file an objection.

IMPORTANCE OF THE NOTICE OF AVAILABILITY

The day after a decree is issued, the time period for filing objections begins. The notice contains the deadline for filing objections. The objection period lasts about **180 days** unless a request to extend that time is granted.

During the objection period you need to review your abstracts carefully and make sure that the information on them is correct. You also need to review the abstracts of other claims that could affect your use of water to be sure that they are correct. If there are errors and you wish to file objections to your claims or someone else's claim, you need to do so before the expiration of the objection-filing deadline. Failing to file an objection by the deadline may have serious consequences. After the objections are resolved the decree is enforceable by your local District Court.

During the objection period, anyone may request an extension of the deadline to file objections by filing a "[Request for Extension](#)" form. The Water Judge may grant up to two **90-day** extensions. If you choose to request an extension please fill out the form legibly and simply state your reasons in plain language as precisely as you can. An extension for one party means an extension for everyone within the basin.

When the Court issues a decree, it holds one or more public meetings in the basin. The Master assigned to the basin brings a copy of the decree and the decree index. A claim examiner from DNRC and a Water Judge may be there as well. We talk about your decree and answer any procedural questions you may have. The dates, times, and locations of these meetings are contained in the Notice of Availability.

HOW DO YOU USE THE DECREE INDEX?

The index is important because it provides a quick entry into the decree. The Index to the decree allows you to locate claims by owner name, by source name, by point of diversion, by priority date, or by the claim number and includes all of the issue remarks.

Let's say, for example, that you filed claims on Bear Creek. If you want to know exactly who else claimed water out of Bear Creek, you go to the Decree Index under Source and locate Bear Creek. You will find all the claims to Bear Creek water including your own claim. You will also find the claim number, flow rate, priority date, point of diversion, and owner name on each of those claims. These claims will be listed in order of priority date with the most senior claim listed first. You can then compare this information with your knowledge of the water

usage on Bear Creek. Occasionally you may find more than one stream with the same name so check carefully. It is not unusual for a basin to have two or three "Spring" creeks.

Perhaps you want to know what "John Doe" claimed. Go to the Decree Index under Owner and locate Doe, John. There you will find all the claims that John Doe filed. You can then compare this information with your knowledge of John Doe's water usage.

Or, you want to know how much water is claimed or who else is claiming water from your point of diversion. Go to the Decree Index under point of diversion and look for your legal description. You will find all the claims filed on or near your point of diversion, along with the names of the owners, the priority dates, the claim numbers, and the flow rates. Be careful when using this index because different claimants may have used different legal descriptions for the same point of diversion.

If you want to know who has rights senior to yours, go to the Index under Priority Date and review those rights, which claim priority dates senior to yours.

An issue remark is added to a claim if the claimed information is unclear or is contradicted by other data. If you would like to see if a particular claim had issue remarks added by DNRC or the Water Court, you can look at the abstract or take a quick look at the Issue Remark section of the Index. The issue remarks are organized by claim number in the Issue Remark Index.

Once you have the claim number you can locate the abstract of that claim in the decree itself. There you will find more information about the claim than is contained in the Decree Index. For additional information you can also view a complete microfiche copy of the entire original claim. The microfiche is located at your regional DNRC office or at the Water Court.

Please call the Water Court or your local DNRC office if you have any further questions on this section.

SECTION THREE: THE OBJECTION PROCESS

By the April 30, 1982, filing deadline, Montana water users filed over 200,000 claims to existing water rights. Forty-five percent or approximately 90,000 claims were filed within thirty days of that filing deadline. As you might expect from such a flood of information, the water court decrees are not perfect. You will find errors in the decree. Some will be small errors, and some will be large, significant errors. We must rely upon you, the actual water users, to tell us where the problems can be found and how they should be fixed. That is why there is an objection period. This is your opportunity to explain where the problems are and what needs to be done.

Some of you have expressed concerns about getting involved in an adversarial process with your neighbors. While a few of the cases before the Water Court are hotly contested, the majority of objections are settled peaceably, by agreement of the parties, without ever being involved in a formal evidentiary hearing before the Water Court. Many of the originally filed statements of claim were somewhat expansive in their claims of water usage. Therefore, merely refining or making adjustments to the information presented in the originally filed statements of claim resolves many of the objections. It is not always that easy, but we do try to make this process a conciliatory one, not an adversarial one.

HOW TO FILE AN OBJECTION

The Water Court has prepared an [objection form](#) for your convenience. This form is called "Notice of Objection and Request for Hearing." The Notice of Availability indicates where to get the objection forms. When filling out the objection form, make sure your entries are readable. You should have a copy of the claim abstract in front of you when you fill out the objection form.

The information requested in **Sections 1 through 4** of the objection form helps us to identify the claim. You may be objecting to some of this identification information, but fill in this information just as it is in the decree abstract of the claim. Your proposed corrections are the basis for your objection, and there is a place for them farther down the objection form.

On the objection form, first identify the number of the claim to which you are objecting. Enter the claim number exactly as it is in the claim abstract found in the basin decree. If you enter the wrong claim number, your objection will be misfiled, or it will be returned to

you. Then enter the name of the source of water and the owner's name. The owner is also called the claimant.

If there are multiple owners, list the first owner and, on the back of the form or on a separate sheet of paper, list the remaining owners. Attach any extra sheet to your objection form. You only need to file one objection per claim, no matter how many owners there are.

Sections 5 and 6 on the objection form are to identify you, the objector, and your attorney if you have retained one. As an individual, you *are not* required to have an attorney, but you may retain an attorney at any time. You may leave section 6 blank and retain an attorney later. If you have an attorney on other matters, do not list that attorney in section 6 unless that attorney has agreed to represent you in the Water Court. The Water Court generally allows a corporation to proceed through an appropriate officer until it becomes necessary to prepare for a hearing.

Section 7 on the objection form requires you to think through the elements of the claim and the basis of your objection. It asks that you mark every element that you object to in the claim. If you object to the entire claim, mark all of the elements. The claim abstract is often a guide to the filing of an objection. In many claims, issue remarks are added to the abstract during the DNRC examination process discussed earlier. These remarks give notice of problems uncovered during the examination, such as an old decreed right now over claimed, acreage over claimed or the priority date being requested. It is the Water Court's experience that most objections arise from the issues identified in those remarks. If you are only concerned about certain elements of the claim, mark those elements that apply to your objection. If you are thinking about filing an objection, consider the following:

Ownership: Are the owners correctly listed? Do the owners have a right to all of the water claimed in flow rate and volume? Do the owners own all of the land claimed as the place of use? If your answer is "no" to any of these questions, then you may want to mark ownership.

Purpose of Right: The purpose claimed might be irrigation, stock, domestic, or some other purpose. Does the owner use this right for the purpose claimed? If you think not, you may want to mark purpose of right.

Source: The source is where the claimant gets water. Is the source name correct? Is a natural source claimed or is a ditch claimed as the source? If the source name is incorrect, you may want to mark source.

Priority Date: Is the priority date correct for this claim as listed in the decree? Is the claim based on a valid filed appropriation? Is the priority date consistent with rights resolved in an earlier decree? If you think not, you may want to mark priority date.

Flow Rate: Historically, flow rate was measured in miner's inches. One miner's inch is 11.22 gallons per minute, or GPM. Small flows are measured in gallons per minute and larger flows are measured in cubic feet per second, or CFS. 40 miner's inches equals one CFS, or 448.83 gallons per minute. Did the claimant use the decreed flow rate? Or, if the flow rate was not quantified, you may think a quantified flow rate is necessary to administer the right. If so, mark flow rate.

Volume: When volume is decreed, it is quantified in acre-feet per year. An acre-foot is the amount of water necessary to cover one acre with one foot of water. One acre-foot is about 325,000 gallons. Many stock water and direct flow irrigation claims are not decreed a quantified volume. If you believe that a volume quantification is necessary to administer the claim, or that a volume was quantified incorrectly, you may want to mark the volume.

Place of Use and/or Maximum Acres: Place of Use and Maximum Acres are listed together because a change in one is likely to cause a change in the other. If the land claimed was not historically irrigated or if the legal description is incorrect, you may want to mark the Place of Use and/or Maximum Acres. Note that any increases or reductions in acreage may indicate a need for a similar change in the claimed flow rate or volume. When the claimed place of use overlaps with a neighbor's claim, examine all the overlapping claims before determining how to file your objections.

Period of Use: Period of use is generally defined as the time from the first use of the year through the last use of the year. Questions may arise as to whether the period of use is correct for the purpose of the right, or for the climatic area.

Point of Diversion: Examine the point of diversion to see if the legal description is correct for each diversion claimed. The point of diversion should be on the source claimed, and there should be a viable means of conveyance from the point of diversion to the place of use. If a common ditch or pipeline is owned with other water users, you might check to see if all claims associated with the ditch or pipeline have an identical point of diversion legal description. The point of diversion and means of diversion are considered together for purposes of objection. If either one is incorrect, mark that item.

Means of Diversion: The means of diversion must be at the legal description defining the point of diversion. Is the correct means of diversion identified? The means of diversion and the means of conveyance may be separate elements, as in the case of a headgate and a ditch. If you object only to means of conveyance, you may want to mark "other" and describe your objection as discussed down below.

Abandonment/non-perfection: Abandonment and non-perfection are legal theories that arise when a claimed right is not in use. If either is proved, the result is the same. The claim is terminated. If the claim never saw water put to beneficial use, the claim was not perfected. If the claim is for a right that fell into nonuse for an extended period of time, the right may be abandoned. Certain evidence is necessary to prove non-perfection or abandonment, but remember, the Water Court *cannot* give legal advice.

Other: Finally, if you have an objection to something not listed, you may want to mark OTHER, and explain your objection. For example, you may examine the claim file and find the supporting documentation to be in conflict with the information claimed. Or you may want to state a legal argument. For example, you may believe that the claimed purpose is not a beneficial use under Montana law. You don't have to state all of your legal arguments on the objection form, but advising the claimant of a problem may help you to reach a settlement later and save time and money.

In **section 8**, on the back of the objection form, please explain your objection. This explanation will help us understand your objection and how to enter your objection on the Objection List. For example, you may object to the acres irrigated because you think more acreage was claimed than has been historically irrigated. You may object to the flow rate because you think it exceeds the amount decreed in a prior decree. Please identify the prior decree if you can. When the time comes to hear the objections, your explanation may assist the Water Master in consolidating your objection into a case.

You must **date and sign** your objection form, or it will be returned to you.

CERTIFICATE OF MAILING: After you have entered the date and signed your objection form, you must certify that you are giving each owner notice of your objection. You must send each owner a copy of your objection and send your original objection to the Water Court. Remember to keep a copy for your records along with any notes or information used in preparing the objection. If you are objecting to your own claim, leave the certificate of

mailing blank.

IMPORTANCE OF THE OBJECTION FORM

The objection form is your formal complaint about a specific water right and is very important. If we don't receive it, or don't receive it on time, or the information on it is inaccurate or illegible, your objection might not be heard during the adjudication of the water court decree.

The water court decree, as modified after objections and hearings, will be enforceable in accordance with §§ 3-7-212 and 85-2-406, MCA. If a right receives no objection or is not reviewed by the Water Court on its own initiative, it may remain unchanged, may be enforceable, and may be entered into the final decree. Therefore, if you think a water right is wrong, file an objection.

COUNTEROBJECTION PERIOD

After the Objection period expires, the Water Court will send one more notice to water users, **Notice of the Filing of an Objection**. This Notice is sent to all claimants who received objections. It states the name of the objector and the basic elements of the objection and establishes an additional 60-day period for the claimant whom received an objection to file a counterobjection to the claim or claims of the objector. These counterobjections are limited to those claims included within the particular decree issued by the court.

CLOSING THE OBJECTION PERIOD

After the counterobjection deadline expires, the Water Court will issue the Objection List and give **NOTICE THAT OBJECTIONS HAVE BEEN FILED AND HEARINGS REQUESTED**. This notice is sent to everyone named in the decree and is also published in the legal section of many local newspapers.

The DNRC is responsible for mailing all notices, beginning with the Notice of Availability. The Water Court's experience is that most claims do not receive an objection and are not listed on the Objection List. Claims that are not listed on the Objection List usually remain unchanged into the next decree.

After issuance of the Objection List, the Water Court will hold a public meeting in the basin to answer questions.

Whether your claims are on the Objection List or not, as a claimant you must review the Objection List to see if any possible changes in your neighbors' water rights could

affect your claims.

For example: An objection to flow rate or priority date could result in your neighbor's senior right receiving a larger flow rate, or your neighbor's junior right receiving an earlier priority date, making it senior to your claim.

You will have an opportunity to protect yourself after you have examined the Objection List. The issuance of the Objection List begins one more filing period, allowing you to get involved if you have a stake in the outcome of someone else's objection. For 60 days after the issuance of the Objection List, you may file a **Notice of Intent to Appear**.

WHAT IS THE NOTICE OF INTENT TO APPEAR?

The Water Court provides a form entitled [Notice of Intent to Appear](#). This Notice is a request to be included in the Water Court proceeding where you are neither the claimant nor the objector. The Notice of Intent to Appear is a form similar to the Notice of Objection.

Lines 1, 2, and 3 on the notice request you to enter the claim number, source, and county. As with the Notice of Objection, if the claim number is entered incorrectly, the notice will be misfiled or returned to you.

In **sections 4 and 5** of the notice identify yourself and your attorney, if you have one representing you in the Water Court.

Section 6, on the back of the notice, asks what changes you think should be made to the claim and why. You might not have any changes in mind but you might just want to protect yourself from changes that affect your rights. So, in section 6, simply state your reasons for being included in the adjudication of the claim and the objection.

Certificate of Mailing: As with the Notice of Objection, you must mail a copy of your Notice of Intent to Appear to the owner of the claim. If there are multiple owners, make photocopies to mail to each owner, save one for you, and send the original to the Water Court. You must send the Court a separate Notice for each claim number that you wish to appear on. Remember to keep a copy for your records along with any notes or information used in preparing the Notice of Intent to Appear. When it comes time to resolve your issues, you will be glad that you saved these notes and information.

In summary, the filing of a Notice of Intent to Appear allows someone who is neither the claimant nor the objector to participate in a hearing on objections. This "someone" is a third party. If you file a Notice of Intent to Appear, you will receive notice of all activity

concerning those claims, and you will be able to participate in the resolution of the objection. After the time for filing the Notice of Intent to Appear has passed, the Water Master will begin to hold conferences to determine which objections will settle and which will require contested evidentiary hearings. This will take some time, but you will be notified of any activity on any claims that you own, have objected to, or have filed a Notice of Intent to Appear.

Please call the Water Court if you have any questions concerning these forms or procedures.

SECTION FOUR: INITIATING THE RESOLUTION OF OBJECTIONS

Each Water Master is an attorney with education and experience in Montana water law. However, Masters do not give legal advice. The Masters are officers of the Water Court, under the supervision of the Water Judges, and act as neutral decision makers. Masters are given broad powers and authority to do the majority of the adjudication work.

The Master assigned to the basin is responsible for organizing the adjudication of objections in the basin. They consolidate claims into cases, order and conduct conferences, order field investigations, accept or reject settlement agreements, conduct hearings and issue decisions in the form of a Master's Report. A Master's Report is the final product and is issued after a case is settled or a hearing held. The Master's Report contains Findings of Fact and Conclusions of Law on which the decision is based.

After the Objection List has been prepared and the 60-day Notice of Intent to Appear period has expired, the Master first consolidates claims into cases.

HOW DOES A MASTER DETERMINE WHAT CLAIMS WILL BE CONSOLIDATED INTO A CASE?

Masters start by reviewing the Objection List. They look for claims that have similar objections, common parties or some other connecting factor. For instance:

Sam Smith has filed six claims. Bob Brown objects to all six claims. Brown's objections to the Smith claims involve the same elements of the claims and appear to involve the same issues. The Master will consolidate these six claims and Brown's objections into a case.

Another common example for consolidation of a case is what we call a "Decree Exceeded" issue. This is when several different claimants have filed their claims based on the same old previously decreed water right. If the combined flow rates of the claims exceed the flow rate originally decreed and the claimants object to each other's claims, those water right claims will be consolidated into a case. The goal is to figure out who really owns the old decreed water right and how much each claimant owns.

Another possibility occurs when the map attached to the Statement of Claim for Sam Smith's claimed place of use is very similar or exactly the same as Bob Brown's claimed place of use. It may look like the two men are irrigating the same ground. They object to each

other's claim. The two claims will be consolidated into a case. A review of the place of use and a new map will generally resolve this problem.

One last example is when Sam Smith filed a total of five claims and they appear in the decree with incorrect place of use legal descriptions. Sam Smith files objections to the places of use. These five claims will be consolidated into a case.

The reason for consolidating claims into a case is for management purposes. It makes it easier for the Court and usually is more convenient for the parties. Once claims are in a case, all correspondence and paperwork filed with the Court will be found in the case file rather than the individual claim files.

HOW DOES A MASTER DETERMINE WHAT SHOULD BE DONE ONCE CLAIMS ARE CONSOLIDATED INTO A CASE?

Once a case is consolidated, the issues raised by objection determine the controversy. The Master's first option is to send a letter to the claimant. The second option is to hold a Status Conference.

For instance: In the example where Sam Smith objected to his own claims because his place of use was incorrect, the Master writes Mr. Smith a letter, asking him to provide a sworn statement—an affidavit—as to the correct place of use. When the Master receives the affidavit he or she will write a Master's Report setting out the changes to be made to Smith's claims. Mr. Smith's objection brings the issue in front of the Court. The affidavit with the correct information resolves the objection.

Where several parties are involved in a case the Master will set a Status Conference to be held in person or by telephone conference call. A Court Order will be issued and sent to the parties with the specific time, date and place set for the conference. The Status Conference is set at least 30 days from the date of the Order. This gives the parties plenty of notice to gather their information about their claim or objection.

WHAT IS A STATUS CONFERENCE?

The purpose of the Status Conference is to get the parties together to resolve the objection. The objector is asked to explain his objection. The claimant then responds. The First Status Conference is informal and is not recorded. No witnesses are sworn in, no evidence is taken. This is an informal meeting to discuss the case and determine what needs to be done to resolve the objection.

Even though the first Status Conference is informal, you should be as prepared as possible. Do your homework. The Adjudication will proceed smoother and faster if everyone participates and is prepared at each step along the way. Many cases can be resolved at the First Status Conference.

WHAT DO YOU NEED TO DO TO PREPARE FOR A CONFERENCE?

If you are the claimant, you need to review your abstract of claim, your original statement of claim with the supporting documentation, and the objection to your claim. If you are the objector, you need to review your objection, the abstract, the statement of claim, and any documentation supporting your objection. If you are a third party who has filed a Notice of Intent to Appear, you should review the reason for your notice, the claim, the abstract, and the objection.

Often the DNRC claims examiner will be ordered to be present at the First Status Conference. This can be especially helpful to the parties when the objections appear to involve issue remarks or technical questions, such as legal descriptions or acreage amounts. The DNRC specialist can explain the claims examination process and is also available for questions.

If there are fewer than six parties, the Status Conference might be conducted by telephone conference call rather than in person. This means that you can participate in the Status Conference from your home, office, barn, or anywhere a phone is available. The call is initiated from the Court so that all you have to do is let the Court know the phone number of where you will be, then answer the phone when the call comes at the time set by the Court Order.

In cases having more than six persons, phone conferences often become unmanageable. Large cases will be held in person. The conference will be at a County Courthouse or a public meeting room in your area. We travel to you. In such cases, Masters will schedule several conferences in your area to make better use of their travel time. At the conclusion of the Status Conference, the Master will request that you take some action by a future date. Court Minutes will be issued to confirm what transpired in the conference and to remind you of that next action.

WHAT HAPPENS AFTER THE STATUS CONFERENCE?

The Master will give you some time to do the activity that was agreed to at the conference. Depending on the circumstances of the particular case, you may be given anywhere from a month to six months to accomplish that activity. During this time, you will be doing such

things as finding more information, meeting with DNRC, participating in a field investigation, providing an affidavit, consulting with an attorney, or conducting discovery. The process of discovery is discussed later on in Section Six. Let's look at the first activities mentioned.

Finding more information could include a search of your chain of title to the water claimed, or the location of old irrigation or ground water records.

You may have agreed to **meet with DNRC** to review the acres irrigated or some other technical aspect of your claim. DNRC may then issue a report of that meeting to you, the other parties in the case, and the Court.

The DNRC regional office for a basin has copies of many of the old records pertaining to existing water rights within the basin that they could locate. This usually includes: aerial photographs; topography maps; the field notes from the Water Resources Surveys; and old government maps. The DNRC often has copies of the old Notices of Appropriation and District Court Decrees originally filed at the offices of the county Clerk and Recorder and Clerk of Court. DNRC has computer indexes for irrigation claims, groundwater claims, and possibly the old District Court decrees. Microfilm records of all the claims filed within the basin are available.

During a conference or a visit with DNRC, you or the Master may discover the need for a **field investigation**. If you feel that a field investigation would be helpful, you can file a motion with the Court. This can either be granted or denied. If a field investigation is appropriate, the Master will issue an Order Directing DNRC to Conduct Field Investigation. The Field Investigation Order sets out the limits for the investigation based upon the information needed and will be conducted by the DNRC water rights specialist. All parties will be invited to participate, and anyone else may attend that you feel would be of assistance. The order will give DNRC a certain amount of time to arrange and complete the investigation. Occasionally all the maps, resources, and claimant contact are not enough to fully understand or measure an element of a water right claim. At the Order of the Court the DNRC specialist goes out onto the site of a water right claim and investigates what is observable and measurable about the water right. The DNRC specialist then drafts a report of his findings for the Court and the parties.

You may have agreed at the Status Conference to submit an **affidavit** concerning some aspect of the claim. An affidavit is a sworn statement of facts within the swearing party's knowledge. If some element of a water right claim is incorrect, such as the amount of water, the

number or acres, or the legal description, then the Master may request the claimant to provide an affidavit as to the correct element or elements of the claim. The Water Court provides a variety of affidavit forms for your use. See [Forms Menu](#).

When using any forms provided by the Court, fill them out legibly and simply state your reasons in plain language as precisely as you can. Remember that the Court is interested in the historical use, that is, how the water right was used prior to July 1, 1973.

If you have determined or agreed that one or more of your water right claims was filed in error, the Water Master will request that you file a [Withdrawal of Statement of Claim](#) on a form provided by the Court. Once a water right claim is withdrawn, it will be terminated by the Water Court and will not appear in any subsequent decrees.

If you have filed a Notice of Intent to Appear on a water right claim and the objections and your concerns have been resolved, the Master will request that you file a [Withdrawal of Notice of Intent to Appear](#) on a form provided by the Court.

If you have filed an objection to a water right and your objection has been resolved or you discover that you have filed an objection in error, the Master will request that you file a [Withdrawal of Objection](#) on a form provided by the Court.

You may decide that you need to **consult an attorney** before proceeding any further. If you choose to retain an attorney, the Court will expect to receive a Notice of Appearance from your attorney with copies of the Notice mailed to the other parties in your case.

You may find that the objection can easily be **settled** between the parties without any further Court participation. If the case settles, you will need to put your agreement into writing and file it with the Court. This agreement is generally referred to as a **Stipulation** or **Settlement Agreement**. Stipulations will be discussed in detail in the next section.

While most cases eventually settle, many of them require work and research to determine if they can be settled. There may be major legal or factual issues or both that cannot be settled. The case will then proceed to formal hearing.

The Court is fairly generous in allowing time for discovery or time to settle objections among yourselves, providing that you make an effort to do so.

If you have any questions concerning this part of the adjudication, please call the Water Court.

SECTION FIVE: SETTLING OBJECTIONS

Just because you filed an objection to a water right or your claim received an objection, this does not mean you are involved in a fierce court battle over water rights. Ninety percent of all objections are settled without a hearing.

The high rate of settlement is probably due to several things. First, quite a few of the original statements of claim were somewhat expansive in their claims of water usage. Therefore merely refining and making adjustments to the information presented in the originally filed statements of claim resolve many of the objections. For example, clarifying the legal description for acres claimed to be irrigated or clarifying the legal description of points of diversion or measuring actual flow rates may resolve many objections. Second, you may have a better understanding now of how you were using your water rights than you did when you filled out your statement of claim in 1982. Additionally, you and the objectors may be neighbors and you want to maintain positive relationships with each other. Finally, you also want to get these objections resolved as simply and as inexpensively as possible. It costs a lot more to go to Court, in time, satisfaction, stress and money, than it does to settle.

When you are starting to resolve objections to water right claims, make an effort to understand them. Many of the objections are based on the DNRC issue remarks that are printed on the water right abstracts. For decrees issued in 1992 and thereafter these issue remarks are found in a special issue box on the last page of the abstract. If any of these issue remarks are confusing to you, or if you need more information, call or visit the DNRC regional office responsible for your area. The DNRC has a three-inch thick examination manual that refers to almost every issue remark in the decree. The DNRC adjudication water resources specialist who examined the claims can probably explain the remarks to you.

HOW DO YOU SETTLE OBJECTIONS?

In the Water Court, there are a number of ways to settle objections. Your first option is settling objections **on your own**.

Once you identify the problem, make the effort to sit down with the other party or parties and figure out a solution that is mutually acceptable. You then need to notify your Water Master, in writing, of your settlement agreement. This is called a **Stipulation**. Stipulations usually contain statements of fact that the parties have agreed are correct along with the changes to be made to the claim. All parties must sign the stipulation. Your Master will make sure that

your stipulation covers the objections, is within the law, and conforms to all the legal niceties. The Court must accept the stipulation before it will consider the objection resolved.

Your second option is **mediation**. If you want to settle, but are not comfortable initiating or managing the negotiations, you can use a neutral third party to assist you. This process is called mediation. It has been used very effectively, at far less expense than any other method of settlement (except for doing it on your own.)

The Water Court has mediation program forms and a Roster of Mediators. If you are interested, the Water Court can send you a packet of information. Once you choose to mediate and follow the instructions in the packet, the Court will appoint your mediator. The mediators on the Roster have been trained in Water Court procedure and the use of the forms. If you are able to reach an agreement, the mediator will assist you in developing a stipulation to be submitted to the Court.

Mediation is a process in which the parties are assisted in communicating about the issues of a case and exploring possible solutions. The mediator does not make a decision or provide any evaluation of the case. The mediator facilitates the exchange of information and settlement alternatives between the parties.

The mediator adds to the settlement process in a variety of ways. Perhaps most important, the mediator establishes and enforces procedures which are fair and even-handed and which allow all sides the chance to be heard. Mediation also provides an opportunity to express emotions or frustrations that may be blocking negotiations and to address these underlying concerns in a controlled environment. Throughout the proceeding, the mediator helps the parties think through their claims and participate in fashioning an agreement.

Attorneys may attend the mediation sessions and represent their clients. However, in mediation it is anticipated that the parties themselves will have the opportunity to discuss issues with the other parties and the mediator. Because the parties themselves participate, there is usually a high degree of satisfaction with any agreement reached and with the mediation process itself.

All mediation discussions are confidential and cannot be used in a subsequent hearing if you are unable to reach agreement. The mediators are not employees of the Court. You will have to pay them for their time. However, that payment may be split between the parties. A mediation may take a few hours or more, depending on the complexity of the case and

the parties desire to get the case resolved. Mediation fees are negotiated between the parties and the mediator and rates may vary.

The Water Court realizes that not all cases will settle. Failure to reach agreement in any settlement efforts will not reflect negatively on your case. If you have any further questions, please call the Water Court.

SECTION SIX: PREHEARING CONFERENCES AND HEARINGS

The claims originally consolidated into your case have been through a Status Conference with the claimants and objectors. This may have been in person in your community or by telephone conference call. Following that conference, you were given a period of time in which to meet with the other parties and resolve the objections to your claims.

When settlement is not possible, the Court issues an Order setting several deadlines leading up to a **Hearing** on the objections. This is a **Scheduling Order**. In some cases the Master may hold a Scheduling Conference to set the various deadlines. This gives the parties a chance to adjust the dates to fit their schedules.

The first deadline on the Scheduling Order is for the completion of **Discovery**. The term Discovery refers to the gathering of information for a pending hearing. This can be information to support a claim or challenge a claim. The term also refers to the process of obtaining information from the other parties in your case about the contentions they plan to make at Hearing. In our system everyone is obligated to disclose information to the other parties in a dispute prior to the Hearing.

Discovery can take several forms, such as written questions to opposing party, called **Interrogatories**. You can send a list of questions to the other side that they must answer. This allows you to know the arguments they may use at Hearing.

Examples of this are: "Please give the name and address of each witness and expert witness that you will use to support your claims. Please give a summary of their testimony" or "What exhibits do you plan to use to support your objection to each of my claimed rights. Please describe each exhibit and the purpose for which it will be offered."

Another form of Discovery is **Requests for Admissions**. These are similar to interrogatories except that they ask the other party into admit something as true. An example of this is: "Please admit that the flow rate of this claim should be 50 gallons per minute rather than the 5,000 gallons per minute originally claimed."

Depositions are another form of discovery. A deposition is the taking of oral testimony prior to hearing. A party can set up a deposition and insist that a person show up and answer questions. All parties can attend the deposition and ask questions to the person being

deposed at that time. The advantage of a deposition over interrogatories is the ability to ask follow-up questions on the spot.

There are other forms of Discovery as well. You should read the [Montana Rules of Civil Procedure](#), which govern Discovery. One point you must understand is that you are obligated to answer or object to all Discovery requests made to you within a certain period of time. Failure to answer discovery requests can have serious consequences up to and including dismissal of a claim or objection.

So here's what you need to do: go out there and put together your case; get the witnesses you need and the documents to back up what the witnesses say; send some questions to the other side so you know what they intend to prove; and be sure to answer any questions they send to you.

Following the close of Discovery, the next deadline in the Scheduling Order is to file a **Proposed Prehearing Order**. Every party in a case must submit a proposed order. Your proposed order should include all of the arguments that you intend to make at Hearing. The most important part of the proposed order is to list all witnesses, including expert witnesses, and exhibits that you may use at the Hearing. If you leave witnesses off the list you may not be able to call them to testify at the Hearing. You do not have to call every person on your witness list as a witness at Hearing, so you should include anyone you may call even if you later decide not to call him or her. *Don't forget to list yourself if you intend to testify.*

A copy of any document that you send to the Court must be sent to all parties in the case along with a Certificate of Mailing, which was discussed earlier.

WHAT IS A PREHEARING CONFERENCE?

Your Scheduling Order set a time and date for a Prehearing Conference, usually by telephone conference call. At this conference all parties discuss the Proposed Prehearing Orders previously submitted to the Water Court. Any issues regarding Hearing procedure or matters, which the Court must address prior to Hearing, are dealt with at this Conference. In most cases the time and location for the Hearing is set at this conference, although the Hearing date may have been set in the original Scheduling Order. At this point all parties should be ready to go to Hearing.

WHAT IS A HEARING?

A Hearing in the Water Court is a trial in front of the Water Master. All parties

can give opening and closing statements, call witnesses and submit exhibits into evidence. Parties can object to questions and exhibits and cross-examine witnesses.

The objectors have the "**burden of proof**" at the Hearing. This means that they must show that the claim is not historically accurate as filed.

Let's take a closer look at the various parts of a Hearing:

1. The first part of the hearing is **Opening Statements**. Making an Opening Statement is optional. If you don't think it is necessary, don't make one. Because the objectors have the burden of proof, they always go first. Following this, the claimants can give a statement or reserve their statement until the objectors are finished presenting their case. Opening Statements are your opportunity to tell the Court what you intend to prove and how you intend to prove it. They should inform the Court. They are not intended for arguments to the Court. The time for that will come later. Opening Statements are not evidence.
2. Following Opening Statements, the objectors **present their case**. They can call witnesses to give testimony about the issues in a case. Anyone with personal knowledge about some aspect of the case can be a witness as long as they were named in the Prehearing Order. The party who calls a witness, examines the witness first. This is called **Direct Examination**. This is the time when the party brings out testimony to prove the contentions that they are making. This is also the time when any exhibits a party wants to place into evidence are offered to the Court. Exhibits must be put into evidence through a witness who has personal knowledge about that exhibit. An exhibit can be anything that is relevant to the issues in the case. The Water Court has seen maps, photographs, charts, court decrees, videos, deeds, and a number of other items offered as exhibits in cases. You can **object** to testimony or exhibits offered by another party at hearing. There are several grounds for an objection. The [*Montana Rules of Evidence*](#) govern the admission of evidence and testimony. Failure to object may result in the loss of that objection. In most cases, the Master will rule on the objection right away. However, if the circumstances warrant further research, the Master may take the objection under advisement, allow the question to be answered, and rule on the objection at a later time. If the objection is sustained, the evidence will then be excluded. You can also call expert witnesses if some aspect of the case requires expertise, which is beyond

the knowledge of the average person. Experts must have qualifications to give opinions on issues in the case. You need to establish these qualifications through testimony. This is referred to as "laying the foundation" for the expert witness. You need to ask expert witnesses questions about their education and occupation to establish that they have special knowledge about some subject, which is relevant to the issue before the Court. When the direct examination of each witness is completed the other parties can **cross-examine** that witness. This is where you try to get the witness to tell the rest of the story. Cross-examination is limited to questions that are within the scope of the direct examination. Cross-examination is also used to test the knowledge and credibility of the witness. Most of the courtroom dramas you see in the movies center around cross-examination. Again, the other parties can object to questions on cross-examination if they feel that the questions are improper.

3. When the objectors have called all of their witnesses, they rest their case. Now the claimants can make an **opening statement** if they reserved this right and then **present their case**. The same format applies. The claimant calls witnesses and examines them. Exhibits can be offered into evidence through the witnesses. The other parties can object to questions and exhibits and have the opportunity to cross-examine all witnesses.
4. When the claimants have called all of their witnesses, they rest their case. At this time the objectors can call **rebuttal witnesses**. These are witnesses who can specifically rebut testimony given by witnesses called by the claimant. Only the objectors have this right because they have the burden of proof.
5. When all of the testimony is completed, the parties can give **closing arguments**. Again, the objectors go first. The claimants follow them and the objectors are given the right to rebuttal once again. Closing arguments are just that, arguments to the Court. They are not evidence. This is your last opportunity to say your piece. You can argue to the Court and try to show the Court how the evidence you presented supports your contentions and how the other side's evidence fails to support theirs. When these arguments are completed, the Hearing is finished.

WHAT HAPPENS AFTER THE HEARING?

At the end of the hearing the Master may allow the parties time to submit a **Post Hearing Brief** and **Proposed Findings of Fact and Conclusions of Law**. The Post Hearing

Brief is your chance to address the law that should govern the case. If you are not a lawyer it may be difficult for you to prepare this document. However you should do your best and at least make your arguments about your case. The Master will review all briefs submitted.

Findings of Fact and Conclusions of Law are basically a recap of the evidence submitted at Hearing. The findings set out the evidence and the conclusions tell the legal effect of that evidence. When all post-hearing documents are filed with the Court, the case is considered fully submitted.

Please call the Water Court if you have any further questions concerning this section.

SECTION SEVEN: MASTER'S REPORTS

After the hearing, or if the objections are settled, the Master will either recommend (1) that changes be made to the water right claim, or (2) that the water right claim should remain unchanged. These recommendations are made in a Master's Report. Usually, this report has two parts:

The first part is called the **Findings of Fact**. The findings serve both as a history of the case and also involve determinations of disputed or uncertain facts. For example, if a claimant claims 200 miners inches of water and a neighbor objects that the flow rate should be only 100 miners inches, the Master will determine the correct flow rate from the evidence at hearing or from the parties' settlement agreement. The Master then sets this information out in a Finding of Fact.

The second part of the Master's report is the **Conclusions of Law**. Here, the Master cites the law applicable to the case and the results of the law. For example, if your case involves an abandonment issue, the Master would set out the law on abandonment and the results of that law on the particular water right claim. Most cases settle out of court, without a hearing. In these cases, the conclusions of law are usually fairly simple.

Once the Master's Report is issued, the Master no longer has jurisdiction over the case. The Master is then finished with the matter.

You should review the report **immediately**. If you disagree with any of the findings, conclusions or recommendations in the report, or see errors of any kind, you must submit an objection in writing to the Water Court **within 10 business days**.

If after 10 business days there are no objections, the Water Judge will then review the Master's Report and may adopt it as the Court's decision. The vast majority of Master's Reports do not receive any objections.

HOW DO YOU FILE AN OBJECTION TO A MASTER'S REPORT?

There is no form available for this type of objection. In order to file an objection to the report you must write a letter to the Court clearly stating your objection and how you think the Master's Report should be corrected. The Water Judge who referred the case to the Master will review any objections to the Master's Report and decide how they should be handled and who should handle them. Depending on the objection, there are several options.

1. If the objection concerns a **typographical error**, the Water Judge usually amends and

adopts the Master's Report and makes the necessary correction at the same time.

2. If the objection appears relatively minor, the Water Judge may recommit it, that is, give the case back to the Master, who makes the corrections and issues an **Amended Master's Report**. Any time that an Amended Master's Report is issued, the parties have another 10 business days to review it and object again if they need to.
3. If the objection concerns a major issue, the Water Judge will set a **Hearing** on the objection, after which the Judge will issue a decision. After a Hearing on an objection that concerns a major issue, the Judge may adopt the report, modify it, reject all or part of it, receive further evidence or recommit it to the Master.

WHAT IS SIGNIFICANT ABOUT THE ORDER ADOPTING MASTER'S REPORT?

A Master's Report is not a decision of the Court until a Judge adopts the report. Beware - once the Water Judge has adopted the Master's Report as the decision of the Water Court, *you lose your right to object to the Report*. Therefore, it is absolutely essential that you notify the court of errors or objections as soon as possible within the 10 business days.

The changes recommended in the Master's Report will be made to the abstract of the claim in preparation for the next decree only if the Water Judge adopts them. If the Water Judge adopts the Report, the abstract of the claim will be revised as set forth in the Adopted Report. The Court attaches a copy of the modified abstract to the Water Judge's Order Adopting Master's Report.

Once again it is important that (1) you review the Master's Report before the Judge adopts it and you lose your right to object to it, and (2) that you keep a copy of the final Master's Report to compare the changes with the corrected abstract attached to the Order Adopting Master's Report. An asterisk will be located on the corrected abstract next to each element of the claim that is changed by the Water Court. The corrected abstract should match the changes that are set forth in the Master's Report. Remember, in most cases the Master's Report will be the most important document that you receive from the Water Court. If you don't understand anything else about the adjudication process, you should make sure that you read your Master's Report and understand what changes it makes to your water right.

Call the Water Court if you have any questions.

SECTION EIGHT: OWNERSHIP UPDATES CHANGES OF ADDRESS

It has been over 20 years since all Montana water users were required to file their claims to pre-July 1973 water rights. In that time many Montanans have moved or transferred their property. If you have moved or transferred your water rights, it is very important that you file a change of address form or a Water Right Ownership Update with the DNRC.

WHAT IS A WATER RIGHT OWNERSHIP UPDATE?

The Water Right Ownership Update is a notice that you have transferred water and includes the names of the new owners, the method of transfer and other pertinent information. If the seller retains a portion of a right then additional information is requested to explain how much is being retained and how much is being relinquished. Something to remember about a water right is that it is appurtenant to the land and typically passes with the land to the new owner in a sale. There are, however, provisions for withholding water rights and possibly selling them.

The DNRC provides the [necessary forms](#), and they are also usually available at each DNRC Regional Office or your County Clerk and Recorder's office.

The Water Right Ownership Update process is not a difficult one. The DNRC checks that the correct claim numbers are identified, updates the computer database and microfilm records, and notifies the Water Court. There is a filing fee involved to defray the costs involved with the transfer, which is explained on the form. Without the timely filing of the transfer form neither the DNRC nor the Water Court have any knowledge of an ownership change. This circumstance can have serious consequences.

By law, it is the seller's responsibility to file the Water Right Ownership Update. However, it is in the buyer's definite interest to see that this is done.

If you have any questions about Water Right Ownership Update call your local DNRC Regional Office.

WHY ARE OWNERSHIP UPDATES IMPORTANT?

You sell your land and any appurtenant water rights and fail to file a Water Right Ownership Update. The Water Court begins the adjudication of objections to the water rights that you sold. You have moved to Florida and your forwarding address has expired. Therefore,

you do not respond to the orders of the Court. The new owner is also unaware of the Court proceedings. We do not know that you have transferred your water because you never notified us by filing a Water Right Ownership Update. The objector makes a motion for default. You fail to appear at the Show Cause Hearing. The Motion for Default is granted and the water rights are terminated. Since the seller is responsible for filing the transfer certificate, the seller may become responsible for any water rights lost due to a failure to file a Water Right Ownership Update.

If you have acquired property and water rights since 1982 and are not the original claimant, you need to check whether or not your seller filed a Water Right Ownership Update. Contact the local DNRC office. If a Water Right Ownership Update has not been filed, DNRC can explain the transfer process to you. There are provisions for buyers to do the actual filing of an Ownership Update.

**WHY IS IT IMPORTANT TO NOTIFY DNRC AND THE WATER COURT THAT YOU
HAVE CHANGED YOUR ADDRESS?**

If you move and fail to notify the DNRC and the Water Court of a change of address, you may be risking the loss of your water rights for the same reasons as failure to file a Water Right Ownership Update.

If you cannot be located, your claims could be dismissed due to default. While filing a change of address for your water rights may seem unimportant, it is very important! Also, it is helpful to the Water Court if you reference your claim numbers when notifying the Court of a change of address.

Both the DNRC and the Water Court provide change of address forms. Call the Water Court or your local DNRC office if you have any questions concerning this section.

SECTION NINE: PRELIMINARY DECREES, FINAL DECREES AND APPEALS

Once the objections to the claims in a temporary preliminary decree are resolved in a particular basin, the Water Court will become inactive in that basin. Before we can finalize all water rights, the Court must wait for Indian and Federal reserved water right claims in the basin to be negotiated into a compact or submitted to the Water Court for adjudication. During this interim period, the temporary preliminary decree, as modified during the objection process, can be enforced by your local District Court.

CAN I APPEAL THE WATER COURT'S DECISION IF I DON'T AGREE WITH IT?

The answer to this question is a little complicated. It could be yes or no. If you are thinking of appealing a Water Court decision, you should consult an attorney who is knowledgeable in this area. As a general rule, decisions on water court decrees are not appealable. These decisions are interlocutory or provisional in nature. They might be changed at a later date. Usually, only final judgments can be appealed.

However, the 1995 legislature, recognizing the length of time that might pass before a final decree is issued, authorized the appeal of a Water Court interlocutory ruling on a question of law. The party authorized to appeal under the 1995 legislation must be affected by the decision and must have participated in the matter in which the ruling was issued.

There are some other options to get an adverse decision before the Montana Supreme Court. These include Rule 54(b), M.R.Civ.P., certification requests and Writs of Supervisory Control. Again, consult an attorney for help in these areas.

WHAT IS THE PRELIMINARY DECREE?

There are three circumstances under which a preliminary decree is issued.

First, when there are no Indian or Federal reserved water right claims within a basin, the temporary preliminary decree stage is skipped and a preliminary decree is issued. There are approximately eleven basins in Montana without reserved water right claims. When decrees are issued in these basins they are called preliminary decrees and look very much like temporary preliminary decrees.

Second, a preliminary decree may also be issued when the Montana Legislature approves a compact resolving all Indian or Federal reserved water right claims within a basin.

The Montana Reserved Water Right Compact Commission negotiates agreements with the United States and Indian Tribes to quantify reserved water rights into a water compact. The Montana Legislature must approve each compact. All compacts are then subject to the objection and hearing process before the Water Court. The compact, either by itself or together with all state law based claims within the basin, will be included within a preliminary decree and subject to an objection process.

Third, if the State of Montana and the Federal or Indian reserved water right claimants cannot reach agreement on a compact, then the reserved water right claims are combined with state law based claims and a preliminary decree is issued.

Once all objections have been resolved and decisions made to a Preliminary Decree, the final decree is entered.

FINAL DECREES AND APPEALS

When the final Decree is issued in a basin there will be one final notice. There will be no objection period. The entry of judgment of the Final Decree begins the appeal-filing period. All appeals will be filed with and decided by the Montana Supreme Court. After resolution of any appeals, certificates of water right will be issued for every water right in the Final Decree.

Information on the appeal process and deadlines will be provided in the final notice for the decree. This process will follow the Montana Rules of Appellate Procedure. If you have any questions about these stages of the adjudication please call the Montana Water Court.