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DEC 14 2012
Montana Water Court

MONTANA WATER COURT

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ORDER ADDRESSING REEXAMINATION

I. Background

Verification was the process used by the Department of Natural Resources and Conservation (DNRC) prior to the adoption of the Water Right Claim Examination Rules. When the Water Right Claim Examination Rules were adopted (effective July 15, 1987), they were not applied to previously verified claims. Verified claims moved through the objection and litigation phases without further review. Questions were raised regarding whether reexamination of verified claims was necessary due to potential differences between claims reviewed under the Water Right Claim Examination Rules and claims reviewed under the verification process.

The 2005 Legislature authorized the Water Court, upon proper petition or upon the Court's own initiative, to prioritize basins for DNRC claim examination and to direct the DNRC to reexamine claims that were verified and not previously subject to the Water Right Claim Examination Rules. §§ 85-2-270 and 271, MCA. In accordance with § 85-2-271(3)(b), MCA, the Water Court ordered the DNRC to reexamine Basin 40L, Frenchman Creek drainage, a tributary of the Milk River, which was reviewed under the verification process. December 4, 2009 Order Directing DNRC to Reexamine Claims in Basin 40L. One purpose of reexamining Basin 40L was to gather information regarding whether previous review of claims under the verification process generated significant, practical differences from review of claims under the Water Right Claim Examination Rules.

Based on the results of the Basin 40L reexamination, DNRC submitted a memorandum and proposal to the Water Court regarding reexamination of verified claims (hereinafter DNRC proposal). The DNRC proposal outlined standards and indexes to run through the state water right database to update elements of verified claims and make elements more consistent with claims currently examined under the Water Right Claim Examination Rules. The proposal attempted to address elements that "may not have been as closely scrutinized during verification." DNRC proposal, p. 1.

In 2009, the Legislative Audit Division conducted an assessment of operations within the water rights adjudication process. The audit report was made available in June 2010. One of the objectives of the audit was to address the difference between verified and examined claims. June 2010 Performance Audit Report to the Montana Legislature, p. 6. The audit determined the difference between verified and examined claims was not significant enough to justify a complete reexamination. p. 9. According to the report, a complete reexamination would be inconvenient for water users and the time and resources necessary for reexamination would not be justified by the results. p. 14. Although the audit determined reexamination should be avoided, it did not conclude that no action should be taken. The report concluded the DNRC and Water Court should work together to develop procedures to address elements subject to a higher degree of error to improve accuracy, reliability and consistency. p. 15.

In September 2012, a committee of Water Court and DNRC staff was formed to address the reexamination issue. The committee included Water Court staff – Chief Water Judge C. Bruce Loble, Associate Water Judge Russ McElyea, Court Administrator Sandra Palakovich, Senior Water Masters Colleen Coyle, Kathryn Lambert, and Douglas Ritter, Water Masters Bina Peters and Anna Stradley – and DNRC Water Adjudication Bureau Chief John Peterson and DNRC Operations Manager Jan Langel. Generally, the committee agreed a complete reexamination should not be undertaken. However, it was

agreed certain elements or issues that were not subject to consistent review should be examined by DNRC to eliminate potential problems for water users.

II. Adoption of DNRC Proposal

The committee discussed implementing the DNRC proposal. According to the committee, instead of limiting review to claims in verified basins, the DNRC proposal could be applied to all claims in decrees issued prior to March 28, 1997 that are not a final decree. Decrees issued after March 28, 1997 will not be issued again prior to Final Decree. *See* § 85-2-233(1)(d). It is presumed that decrees issued prior to March 28, 1997 will be issued again. Moreover, elements of claims issued in decrees prior to March 28, 1997, if subject to standardization, would appear in another decree and water users would have notice of the standardized elements. Instead of a complete DNRC reexamination between decrees, claims should be subject to a limited review. The review would focus on elements that were not scrutinized as closely during verification and issues that, if not reviewed, could cause problems for water users.

Based on feedback from the committee, corrections were made to the DNRC proposal to reflect current standards and procedures. The DNRC proposal (as modified) is attached as Exhibit A. The DNRC proposal contains three parts. The first part contains general guidelines for running standards. The second part describes specific standards to run through the database. The third part identifies summary indexes to run through the database. A majority of the committee agreed the DNRC proposal should be adopted.

The committee concluded the DNRC proposal should not apply standards and indexes to elements that have been modified by the Water Court through prior adjudication proceedings. To prevent improperly standardizing elements that have already been litigated, the database should identify litigated elements. Any element of a claim that has been litigated by the Water Court shall not be subject to standardization or further DNRC review. To identify whether an element has been subject to litigation, the

objection list issued for the previous decree should be reviewed. An element of a claim that appeared on the objection list should not be subject to modification based on implementation of the DNRC proposal. Additionally, an element that was modified as a result of Water Court proceedings and marked by an asterisk should not be subject to modification based on implementation of the DNRC proposal.

III. Identification of Additional Issues Requiring Further DNRC Review

In addition to the DNRC proposal, the committee identified five issues requiring further review: (1) decree exceeded; (2) filed and use rights predating district court decrees; (3) over-filed notices of appropriation; (4) claims with multiple uses; and (5) standardization and identification of point of diversion, source, and ditch name. Like the implementation of the DNRC proposal, review of these issues should apply to all claims in decrees issued prior to March 28, 1997. Both Water Court and DNRC committee members reported that review of these issues is important to achieve enforceable decrees.

According to the committee, issues one through four were not subject to consistent review. In some basins, these issues may not have been identified at all. Inconsistent review of decree exceeded, filed and use rights predating decrees, over-filed notices of appropriation and multiple uses may create problems for future enforcement of Water Court decrees.

Point of diversion, source and ditch name have been identified as elements that, if not subject to further review, may cause confusion for water users and could lead to problems for enforcement of Water Court decrees. Knowing the accurate locations and common or shared points of diversion and sources, as well as proper ditch names, will help eliminate unnecessary confusion among water users when a Water Court decree is enforced.

DNRC review of these five issues will help ensure the Water Court decrees will be useable and readily enforceable. Therefore, the committee concluded that in addition to the DNRC proposal, these five issues should be reviewed using

current DNRC examination procedures. If further review identifies decree exceeded issues, filed and use rights that predate decrees, over-filed notices of appropriation, and claims with multiple uses, the corresponding issue remark or information remark should be added to the affected claims. If point of diversion, source, or ditch name are modified as a result of DNRC review, the following issue remark should be added to the abstracts of modified claims:

> [ELEMENT(S) WAS/WERE] MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT ORDER DATED DECEMBER 14, 2012.

IV. Fish and Wildlife, Wildlife, and Recreation Claims

The committee members also discussed the application of guidelines concerning the flow rate and volume of fish and wildlife, wildlife, and recreation claims. Rule 29 of the Water Right Claim Examination Rules contains guidelines for the examination of flow rate and volume of other uses including fish and wildlife, wildlife, and recreation claims. The rule can be broken into four parts, claims diverted without a reservoir, claims diverted with an offstream reservoir, claims with an onstream reservoir, and instream claims (excluding Murphy Rights).

1. Claims Diverted and Without a Reservoir

Rule 29(b)(1) applies to fish and wildlife, wildlife, and recreation claims diverted but without a reservoir. The flow rate guideline is the capacity of the diversion and conveyance system and the volume is "that which appears reasonable and customary for the specific purpose..." Rule 29(b)(i) and (ii), W.R.C.E.R.

2. Claims Diverted With an Offstream Reservoir

Rule 29(c) applies to fish and wildlife, wildlife, and recreation claims diverted with an offstream reservoir. The flow rate guideline is the capacity of the diversion and conveyance system or if the diversion and conveyance system is shared by more than one claimant, the guideline is that which appears reasonable and customary for the specific purpose. Rule 29(c)(1)(i), W.R.C.E.R. If the volume is less than 15 Acre Feet, it is

generally accepted as claimed. If the volume is greater than 15 Acre Feet the guideline is maximum storage capacity plus the estimate of evaporation. Rule 29(c)(1)(ii), W.R.C.E.R.

3. Claims Diverted With an Onstream Reservoir

Rule 29(c), W.R.C.E.R. also addresses fish and wildlife, wildlife and recreation claims diverted with an onstream reservoir. These claims do not receive a quantified flow rate; an information remark is added stating "A specific flow rate has not been decreed for use from this onstream reservoir." Rule 29(c)(1), W.R.C.E.R. The volume guideline is the same as for claims with offstream reservoirs. *See* Rule 29(c)(1)(ii).

4. Instream Claims Excluding Murphy Rights

The flow rate and volume guideline for instream fish and wildlife, wildlife, and recreation claims excluding Murphy Rights is "the minimum amount necessary to sustain the specific purpose." Rule 29(d), W.R.C.E.R.

The guidelines set forth in Rule 29 use language that is difficult to apply consistently. Phrases such as "that which appears reasonable and customary" and "the minimum amount necessary to sustain the specific purpose" are susceptible to a wide variety of interpretations resulting in potential confusion and unfairness to both claimants and objectors. Because there is currently no statewide standard that can be applied to meet these guidelines, flow rate and volume have appeared in decrees with no quantified flow rate or volume. Despite the lack of clear guidelines, flow rate and volume should not appear in decrees as unquantified. This practice is not in compliance with Rule 29 and will make administration of these rights difficult in the future and may ultimately require that these claims be remanded to the Water Court for additional review.

To avoid these problems, the committee agreed that, notwithstanding previous DNRC policy, for all previously verified and examined claims as well as currently examined claims, when the guideline cannot be determined, the claimed flow rate and volume of fish and wildlife, wildlife, and recreation claims should remain as claimed

(excluding flow rates of claims with onstream reservoirs) and an issue remark should be added as shown below:

> THE FLOW RATE AND VOLUME OF THIS CLAIM WAS NOT SUBJECT TO A STANDARDIZED STATEWIDE EXAMINATION AND REMAIN AS ORIGINALLY CLAIMED. THE CLAIMED [FLOW RATE AND] VOLUME CAN BE CONTESTED BY PROPER OBJECTION. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THE [FLOW RATE AND] VOLUME WILL BE DECREED AS CLAIMED.

V. Examination of Late Claims

By Order of the Montana Supreme Court, the final deadline for filing a Statement of Claim was April 30, 1982. Failure to file a Statement of Claim by April 30, 1982 established a conclusive presumption of abandonment. *See* §§ 85-2-221 and 226, MCA. However, in 1993, the Montana Legislature amended § 85-2-221, MCA, to allow late filings until July 1, 1996. Claims filed after April 30, 1982 but on or before July 1, 1996 are considered "late claims."

Several decrees were issued prior to the amendment allowing late claims. As a result, late claims were not examined and were not included in several decrees. Therefore, all late claims in basins for which a Temporary Preliminary Decree or Preliminary Decree was issued and late claims were not examined should be subject to DNRC examination so they can be included in the decrees.

VI. Conclusion and Direction to DNRC

A complete reexamination of verified claims is not practical or necessary. As recommended in the audit report, the DNRC and Water Court worked together to create a plan that balances the need for accuracy and consistency with fairness to water users and consideration of time and cost necessary for the implementation of the plan. Applying the DNRC proposal and reviewing claims for the five additional issues identified by the committee covers issues and elements that did not receive consistent review and are essential to the enforceability, consistency and accuracy of the decrees. Review of the five issues and implementation of the DNRC proposal applies to claims issued in

Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997 without having to undertake a complete reexamination prior to the issuance of the next decree. Additionally, this Order addresses the examination of previously unexamined late claims and clarifies procedures for examining flow rate and volume of fish and wildlife, wildlife, and recreation claims in all decrees issued after this Order. Therefore, it is

ORDERED that DNRC shall implement the proposed standards and indexes identified in the DNRC proposal (Exhibit A) for all claims in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997.

ORDERED that the proposed standards identified in the DNRC proposal shall not apply to any element of a claim that has already been litigated by the Water Court. Any element of a claim that appeared on the objection list shall be considered litigated and shall not be subject to modification based on implementation of the DNRC proposal. Any element of a claim that is marked by an asterisk (added by the Water Court) has also been litigated and shall not be subject to modification based on the DNRC proposal.

ORDERED that DNRC shall review all claims in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997, for decree exceeded issues, filed and use rights that predate district court decrees, over-filed notices of appropriation, and multiple uses. If DNRC identifies decree exceeded issues, filed and use rights that predate district court decrees, over-filed notices of appropriation, or multiple uses, DNRC shall add the corresponding issue remark or information remark to the affected claims.

ORDERED that for all claims in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997, DNRC shall standardize the legal description for points of diversion and shall identify and standardize source names and ditch names. If point of diversion, source, or ditch name are modified as a result of this review, the issue remark specified in Section III shall be added to the abstract of each modified claim.

ORDERED that for all fish and wildlife, wildlife, and recreation claims in Temporary Preliminary Decrees and Preliminary Decrees issued prior to March 28, 1997 and in basins currently being examined, for which the flow rate or volume guideline cannot be determined, the flow rate and volume shall remain as claimed (excluding flow rates of claims with onstream reservoirs) and the issue remark specified in Section IV shall be placed on the claims.

ORDERED that DNRC shall examine all late claims filed in basins for which a Temporary Preliminary Decree or Preliminary Decree was issued and late claims were not examined.

ORDERED that DNRC review and revise its procedures to comply with this order.

DATED this 14 day of December, 2012.

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PROPOSED STANDARDS

I. Current General Guidelines for running standards:

- Standards are to be run against just the post decree abstract of the water right for the specified owner, decree, or water right number.
- The only water right types standards are run against include Statement of Claim, Interstate Transfer Claims and Irrigation District Claims. All Status values are included.
- The options for running standards include by owner within a given (input) basin, by water right, or by decree. All rules about which water rights apply are taken into consideration for each option.
- No "modified in this version" flags will be set when making changes to data as specified by standards.
- The "Standards Applied" checkbox that previously existed on the version screen will be moved to the water rights screen. This checkbox will be set to indicate that standards have been applied to this water right, so that standards are not run again against the same water right. The only real issue with running standards again is that it may create more than one identical remark for a water right. Volume and flow rate description fields will not be duplicated, but any issues remarks created by standards could be repeated if standards are applied more than once.
- Standards can only be run against a non-decreed water right. A decreed water right is any water right that is included as part of a decree where the decree has an event of Decree Issued.
- Standards against an owner will also require the input of the basin, so that standards are only run against non-decreed water rights owned by the given owner, in the requested basin.

II. Details of the Standards program:

1. Flow rates should be expressed in either gallons per minute (GPM) or cubic feet per second (CFS) units. Flow rates less than one CFS should be converted to GPM. Flow rates greater than 1 CFS should be expressed in CFS (448.8 GPM = 1 CFS).

   Standards Action:
   - Apply to all water rights.
   - Modify the flow rates to the correct units, according to the rules above, but do not change a flow rate with a unit of 'POF'. When converting the flow rate values, round to 2 decimal places.
   - If no flow rate is listed, but the water right shows flow rate units, remove the flow rate units.

2. For onstream reservoirs; if the historical right type is filed or use, and there is no keep flag on the flow rate (Keep Modified by Water Court), then the following remark is added to the water right. Also, the flow rate is set to zero, the flow rate units to null, and its origin to modified by rule.

   "No flow rate has been decreed for this use from this onstream reservoir."

Standards Action:

- Apply to water rights that have an on-stream reservoir, have a historical right type of "FILE" or "USE", and do not have a keep flag (KMRL, KMWC, KAME, KCLA, KDEC) on the flow rate.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F2.)

3. For irrigation claims; when the method of irrigation is water spreading, and there is no onstream reservoir, and the historical right type is filed or use, then the following remark is added to the water right. Also, set the flow rate to zero, the flow rate units to null, and its origin to modified by rule.

"A specific flow rate has not been decreed because this use consists of direct flow water spreading."

Standards Action:

- Apply to water rights that have a purpose of 'IR', an irrigation type of 'D', a historical right type of "FILE" or "USE", and do not have an onstream reservoir.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F3.)

4. For irrigation claims; when the method of irrigation is natural subirrigation, and there is no onstream reservoir, and the historical right type is filed or use, then the following remark is added to the water right. Also, the flow rate is set to zero, the flow rate units is set to null, and its origin to modified by rule.

"No flow rate has been decreed for this use of natural subirrigation."

Standards Action:

- Apply to water rights that have a purpose of 'IR', an irrigation type of 'N', and a historical right type of "FILE" or "USE", and do not have an onstream reservoir.
- Set the flow rate in the version record to NULL

- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F4.)

5. For irrigation claims; when the method of irrigation is natural overflow, and there is no onstream reservoir, and the historical right type is filed or use, then the following remark is added to the water right. Also, the flow rate is set to zero, the flow rate units to null, and its origin to modified by rule.

"No flow rate has been decreed for this natural overflow method of irrigation."

Standards Action:

- Apply to water rights that have a purpose of 'IR', an irrigation type of 'O', and a historical right type of "FILE" or "USE", and do not have an onstream reservoir.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F5.)

6. For irrigation claims, except the following:
   - water spreading systems (ie: irrigation type of 'D')
   - systems involving reservoirs (ie: water right has a reservoir record)
   - claims decreed a volume (ie: historical right type = decreed and water right has a V10 Remark)
   - claims where the volume has a keep flag (ie: volume element origin is KMRL, KMWC, KAME, KCLA, or KDEC)

add the following remark.

"The total volume of this water right shall not exceed the amount put to historical and beneficial use."

Standards Action:

- Apply to water rights that have a purpose of 'IR', unless any of the exceptions listed above apply.
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE

- Set the value in the volume description field of the version record to the text above. (On the pop-list, it is marked as V9.)

6A. For irrigation claims with a reservoir record and a V9 remark.

add the following remark.

"The total volume of this water right shall not exceed the amount put to historical and beneficial use."

Standards Action:

- Apply to water rights that have a purpose of 'IR', that have a reservoir record and a V9 remark.
- Set the volume in the version record to NULL
- Set the volume element origin in the version record to MRLE

6B. If purpose is irrigation and a reservoir record and type of irrigation is not water spreading and the claimed volume is greater than 15 acre-feet, and the claimed volume is greater than the volume guideline for the climatic area (see list below) then add the following remark.

"The volume of this water right appears to be excessive for the claimed purpose. The claimed volume is greater than **(guideline)** acre-feet per acre per year."

Climatic Area = 1; guideline = **11.4** acre-feet per acre per year

Climatic Area = 2; guideline = **10.2** acre-feet per acre per year

Climatic Area = 3; guideline = **9.4** acre-feet per acre per year

Climatic Area = 4; guideline = **8.5** acre-feet per acre per year

Climatic Area = 5; guideline = **7.2** acre-feet per acre per year

7. For stock claims; when the S/G code does not = G or there is no reservoir, or the major type is surface water and pump, or the major type is surface water and pipeline, AND NO KEEP FLAG ON THE FLOW RATE, change the flow rate to zero, the flow rate units to null, and its origin to as modified by rule, and add the following remark.

"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 necessary to sustain this purpose."

Standards Action:

- Apply to water rights that have a purpose of stock, unless the S/G code = G or reservoir, AND NO KEEP FLAG ON THE FLOW RATE.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as F9.)

7A. For stock claims; when onstream reservoir, and there is no 'keep' flag on the flow rate, change the flow rate to zero, the flow rate units to null, and its origin to as modified by rule, and add the following remark (FF007new rules).

"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."

Standards Action:

- Apply to water rights that have a purpose of stock and onstream reservoir, when there is no 'keep' flag on the flow rate.
- Set the flow rate in the version record to NULL
- Set the flow rate units in the version record to NULL
- Set the flow rate element origin in the version record to MRLE
- Set the value in the max flow rate description field of the version record to the text above. (On the pop-list, it is marked as FF007.)

8. For stock claims; when the owner is not USA, the volume is set to zero, and its origin to as modified by rule, and the following remark is added to the water right.

"This water right includes the amount of water consumptively used for stock watering 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."

Standards Action:

- Apply to water rights that have a purpose of stock, unless the owner has a customer type value of 'FEDA', 'LOCA', or 'RESV', (meaning owner is USA).
- Set the volume in the version record to NULL

- Set the volume element origin in the version record to MRLE
- Set the value in the volume description field of the version record to the text above. (On the pop-list, it is marked as V10.)

9. For stock claims; when the owner is USA, and there is no reservoir, and no keep flag on the volume origin, set the volume to zero, and its origin to as modified by rule, and then the following remark is added to the water right.

   "This water right includes the amount of water consumptively used for stock watering 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."

   Standards Action:
   - Apply to water rights that have a purpose of stock, when the owner has a customer type value of 'FEDA', 'LOCA', or 'RESV', (meaning owner is USA), unless there is a reservoir record or a keep flag (KMRL, KMWC, KAME, KCLA, KDEC) on the volume element origin.
   - Set the volume in the version record to NULL
   - Set the volume element origin in the version record to MRLE
   - Set the value in the volume description field of the version record to the text above. (On the pop-list, it is marked as V10.)

10. For mining claims; when there is no reservoir, and no keep flag on the volume origin, then the following remark is added to the water right and the volume origin is set to as modified by rule.

    "This water right is limited to the volume of water historically used for mining purposes."

    Standards Action:
    - Apply to water rights that have a purpose of 'MN', unless the water right has an element origin value on the volume origin of KMRL, KMWC, KAME, KCLA, or KDEC, or unless the water right has a reservoir record.
    - Set the volume in the version record to NULL
    - Set the volume element origin in the version record to MRLE
    - Set the value in the volume description field of the version record to the text above. (On the pop-list, it is marked as V11.

11. For fire protection claims; when there is no keep flag on the volume origin, add the following remark (VF014) to the water right and set the origin for volume to as modified by rule.

    "The volume of this right is limited to the minimum amounts necessary for fire protection purposes."

    Standards Action:

    - Apply to water rights that have a purpose of 'FP', unless the water right has an element origin value on the volume origin of KMRL, KMWC, KAME, KCLA, or KDEC.
    - Set the volume in the version record to NULL
    - Set the volume element origin in the version record to MRLE

    Set the value in the volume description field of the version record to the text above. (VF014)

12. For irrigation claims; when the historical right type is decree, and the flow rate is greater than 17 gpm/acre (claimed flow rate in gallons per minute divided by the total claimed acres), and there is no keep flag on the flow rate, then the following remark is added to the water right.

    "The claimed flow rate exceeds the 17 gpm per acre guideline and cannot be confirmed due to lack of data. The flow rate equals (the result of the above calculation) gpm per acre."

    Standards Action:

    - Apply to water rights that have a purpose of 'IR' and a historical right type of 'DECR', and a flow rate > 17gpm/acre, unless the right has an element origin value on the flow origin of KMRL, KMWC, KAME, KCLA, or KDEC.
    - Add a formatted remark to this water right with a remark category code of FRI2 (flow rate issue standards) a remark code (frlb_cd) of FRSS, and variable that matches the above text.

13. For irrigation claims, when the type of right is filed or use, and the flow rate is greater than 17 gpm/acre (claimed flow rate in gallons per minute divided by the total claimed acres), and there is no keep flag on the flow rate:

    - Then the flow rate is reduced in the database to the calculated standard (claimed acres times 17 gpm). Flows greater than 448.8 gpm will be converted and stored in the database as cfs, otherwise store the rate in gpm.
    - Then the flow rate origin is changed to "modified by rule."
    - Then the following remark is added to the water right.

    "The flow rate of this water right has been reduced to this 17 gpm per acre guideline. The flow rate may be contested by proper objection."

Note: 448.8 gallons per minute = 1 cubic foot per second.

Standards Action:

- Apply to water rights that have a purpose of 'IR' and a historical right type of 'FILE' or 'USE', and a flow rate > 17gpm/acre, unless the right has an element origin value on the flow origin of KMRL, KMWC, KAME, KCLA, or KDEC.
- Set the flow rate in the version record to the calculated standard
- Set the flow rate units in the version record to the appropriate value (either GPM or CFS)
- Set the flow rate element origin in the version record to MRLE
- Add a formatted remark to this water right with a remark category code of FR2 (flow rate information standards) a remark code (frlb_cd) of FRNS, and variable that matches the above text.

14. For all claims; when the volume is greater than zero, calculate the feasible volume ((the period of use in days times the flow rate in gpm times 1440) divided by 325,851 = acre-feet). The flow rate standards (13 & 14) must be applied before running the volume check. If the claimed volume is greater than the feasible volume, then the following remark is added to the water right.

"The claimed volume exceeds the maximum feasible volume. Based on the flow rate and period of use, the maximum volume possible is (the result of the above calculation) acre-feet per year."

Note: 325,851 gallons = 1 acre-foot

Standards Action:

- Apply to all water rights that have a volume amount, when the volume amount is greater than the calculated feasible volume.
- Set the flow rate in the version record to the calculated standard
- Add a formatted remark to this water right with a remark category code of VMI2 (volume issue standards) a remark code (frlb_cd) of V24, and variable that matches the above text.

15. For irrigation claims; when the type of irrigation is water spreading, and the historical right type is filed or use and there is no keep flag on the volume, then check the claimed volume to see if it is greater than the volume guideline for the climatic area (volume guideline times the claimed acres). If yes;

- Then reduce the volume in the database to the standard calculated volume.
- Then change the origin of the volume to "as modified by rule."
- Then add the following remark to the water right.

"The volume of this water right has been reduced to the **(guideline)** acre-feet per acre guideline for water spreading. The volume may be contested by proper objection."

Climatic Area = 1; guideline = **2.3** acre-feet per acre per year

Climatic Area = 2; guideline = **2.0** acre-feet per acre per year

Climatic Area = 3; guideline = **1.9** acre-feet per acre per year

Climatic Area = 4; guideline = **1.7** acre-feet per acre per year

Climatic Area = 5; guideline = **1.4** acre-feet per acre per year

Standards Action:

- Apply to water rights that have a purpose of 'IR', an irrigation type of 'D', a historical right type of 'FILE' or 'USE', and a volume that is > the volume guideline for the climatic area, unless the right has an element origin value on the volume origin of KMRL, KMWC, KAME, KCLA, or KDEC.
- Set the volume in the version record to the standard calculated volume
- Set the volume element origin in the version record to MRLE
- Add a formatted remark to this water right with a remark category code of VM2 (volume information standards) a remark code (frlb_cd) of V5, and variable that matches the above text.

16. For all water right claims; if the maximum volume in the water right detail screen does not equal the volume in the purpose record, then change the volume in the purpose record to equal the volume in the water right detail screen.

Standards Action:

- Apply to all water rights where the volume in the version record does not equal the volume of the purpose records.

- Set the volume in the first purpose record so that the sum volume for all purposes equals the volume in the version record.

17. For all water right claims; if any parcel id numbers are skipped (003, 005), then renumber the parcels so they are in consecutive order.

Standards Action:

- Apply to all water rights with skipped numbers in the parcel (place of use (puse_id_seq)) records.
- Renumber the parcel (place of use records) to be consecutive.

18. For all water right claims; all point of diversion ids shall be numbered to start with 1 and numbered consecutively. Ditch names identified by diversion number would need to follow their corresponding diversion id.

Standards Action:

- Apply to all water rights with skipped numbers in the point of diversion records (podv_no).
- Renumber the point of diversion records to be consecutive.
- Ditch numbering to follow.....

19. For all water right claims; if the period of diversion in the water right detail screen does not equal the period of use in the purpose record, then change the period of diversion to match the period of use, unless the period of diversion has a "keep, modified by rule" origin.

Standards Action:

- Apply to all water rights when the period of diversion (appropriation) does not equal the sum of the period of use records for the water right purposes, and the period of diversion is not equal to KMRL.
- Reset the period of diversion so that its begin date matches the earliest begin date of the period of uses and its end date matches the latest end date of the period of uses.

ELEMENTS MODIFIED BY WATER COURT WOULD NOT BE CHANGED BY STANDARDS.

Changes will NEVER be made to elements modified by water court. A second original version would be created; standards would then be applied ensuring no changes to the original claim. The program would be written to exclude the "modified by water court" elements.

III. Summary indexes that will be needed:

Reserved Rights- Make sure that the type of right is changed from statement of claim to reserved right. Verify the correct remark is added to the reserved right.

Remarks- Standardize old legacy remarks, convert obsolete remarks, change free text remarks to formatted remarks.

In the re-exam of basin 40L, only 87 remarks appeared, 410 were added during re-exam. The majority of the remarks were placed on period of diversion, point of diversion, place of use, purpose, ownership, means of diversion and priority date.

Decree Exceeded- Identify all decree exceeded claims and notify claimants; check for consistency in original appropriator name.

Reservoir Index- Verify period of diversion. Standardize reservoir names and reservoir information.

Examination as we know it today did not take place on reservoirs during verification. Most major elements concerning reservoirs were not documented and many assumptions were made. No reservoir work sheets appear in verification files.

Source Index- Source name standardization is essential. This was not a high priority during verification. For decree exceeded issues and future enforcement purposes this is a must.

Ditch Index- Ditch name standardization is essential. This was not a high priority during verification. Verify point of diversion consistency, accurate legal descriptions are crucial for future enforcement purposes.

Implied Claims- Verify correct remark is applied to implied claims and their parent right. Were implied claims verified or just generated and accepted?

Point of Diversion – Sort the PODs by TRS and eliminate gaps. During verification very little time was spent locating actual PODs and confirming correct legal's (¼ ¼ ¼).

Place of Use- Sort the POD's by TRS and eliminate gaps.