

FILED

APR 08 2020

Montana Water Court

**MONTANA WATER COURT**

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**ORDER REGARDING PREPARATION OF SUMMARY REPORTS AND  
ISSUANCE OF INTERLOCUTORY DECREES  
-STATEWIDE-**

The Water Court has issued preliminary or temporary preliminary decrees in all basins in the state of Montana except 76L and 76LJ. The Court is completing or has completed adjudication of water rights in several of these basins. Despite this progress, several classes of water rights were not addressed. These water rights must be included in the adjudication process before final decrees can be issued.

These classes of water rights include, without limitation, the following:

1. Exempt rights defined in § 85-2-222(1), MCA;
2. Late claims filed after April 30, 1982 and physically submitted or postmarked on or before July 1, 1996;
3. Mis-basined claims that were not included in the last decree for the basin;
4. Interbasin claims that were not included in the last decree or identified as interbasin claims in the last decree;
5. All claims with unaddressed issue remarks; and
6. All other timely filed claims not previously adjudicated.

The foregoing list of rights are identified as the Unadjudicated Claims in this order.

The Water Court intends to include all Unadjudicated Claims in interlocutory decrees issued pursuant to § 85-2-231(d), MCA. Those decrees will be the last decrees issued before final decrees. It is vital that all Unadjudicated Claims are properly

examined or re-examined and included in future interlocutory decrees. Final decrees cannot be issued until this occurs.

All Unadjudicated Claims not previously reviewed by the Department must be examined pursuant to the Water Right Claim Examination Rules, this Court's December 14, 2012 Order Addressing Reexamination, or this Court's April 17, 2013 Supplemental Order Regarding Fish and Wildlife, Wildlife, and Recreation Claims, whichever is applicable.

Although many Unadjudicated Claims have already been noted by the Department or the Water Court in Basin Files, it is possible some claims have not been identified. Since all claims were filed with the Department, and since the Department is required to keep a centralized record of claims of existing rights, the Court will need the Department's assistance in identifying all Unadjudicated Claims and placing them in an interlocutory decree for each basin.

The issuance of decrees is typically preceded by preparation of Summary Reports by the Department and submittal of those Reports to the Water Court. Summary Reports are a listing of all water rights to be included in a prospective decree.

Subject to the direction of the water judge, the Department must: "provide such information and assistance as may be required by the water judge to adjudicate claims of existing rights...and provide the water judge with all information in its possession bearing upon existing rights...." Sections 85-2-243 (a) and (d), MCA.

Pursuant to this statute, the Department is ordered to perform the following tasks:

1. Review its records and identify all Unadjudicated Claims.
2. Examine all Unadjudicated Claims pursuant to the to the Water Right Claim Examination Rules, this Court's December 14, 2012 Order Addressing Reexamination, or this Court's April 17, 2013 Supplemental Order Regarding Fish and Wildlife, Wildlife, and Recreation Claims, whichever is applicable.
3. Include all examined Unadjudicated Claims in future Summary Reports submitted to the Water Court.

4. Coordinate with the Chief Water Judge, Associate Water Judge, and Water Court Administrator to assure identification, examination, and preparation of Summary Reports occur in the sequence identified by the Chief Water Judge. A *Sequence for Preparation of Summary Reports and Issuance of Interlocutory Decrees* is attached to this order. The Chief Water Judge will modify or expand this document in the future. A new sequence will be provided to the Department when such changes occur.

DATED this 8<sup>th</sup> day of April, 2020.

  
Russ McElyea  
Chief Water Judge

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## 4/8/2020 Sequence for decree issuance in 2020/2021

### 2020

<b>Basin</b>	<b>Type of Decree</b>
39E	Preliminary
40H	Interlocutory
40N	Preliminary
40D	Preliminary
40E	Preliminary
41K	Preliminary
41Q	Interlocutory
41U	Preliminary
40Q	Interlocutory

### 2021

<b>Basin</b>	<b>Type of Decree</b>
43BV	Preliminary
41S	Preliminary
41I	Preliminary
42A	Interlocutory
42M	Interlocutory
40R	Interlocutory
42B	Interlocutory
43E	Interlocutory
41L	Interlocutory