Discussing Water Rights, A Western Pastime
TOPICS

- History of Montana Water Rights
- 1973 Montana Water Use Act
- Compacts
- Summary
History of Water Rights in Montana

- Prior Appropriation Doctrine State
  - Beneficial Use of Water
  - “First in Time, First in Right”

- Types of rights
  - Use Rights
  - Filed Rights
  - Decreed Rights
What is a Water Right

- It is the Right to Use the Water

- 1972 Constitution says “all waters of the state are the property of the state for the use of its people”

- It is like a Property Right
  - It is protected by the Constitution
  - Has Value - Can be bought and sold
  - Can’t be taken away without due process
Elements of a Water Right

- Priority Date
- Beneficial Use
- Source
- Point of Diversion & Flow Rate (CFS or GPM)
- Volume (Acre-Feet/YR)
- Place of Use
- Period of Use
MONTANA WATER USE ACT
(ADMINISTERED BY DNRC)

- Legally Recognized All Existing uses of Water Prior to July 1, 1973.


- Created a Central Water Rights Records System.
Adjudication Program


- 215,000 Prima Facia Claims were Filed Statewide by 1982.

- Water Court directs Adjudication Activities.
  - Holds Hearings & Final Decision Maker.
  - DNRC provides technical assistance.
Steps with Processing Permits & Changes

Application Filed With DNRC – Priority Date
1. Correct & Complete Assessment
2. Criteria Assessment – Adverse Effects
3. MEPA
4. Public Notice
5. Objections
6. Settle or Hearing
7. Issue – Provisional Permit
8. Project Completion Notice
9. Certificate of Water Right
Permit Criteria- New Applications

- Water is physically and legally available
- Use will not adversely affect prior existing water rights – Involves Public Notices
- Diversion, construction, and operation are adequate
- Beneficial use
- Possessory interest in place of use
Stock Water Exception

- Small stock ponds
  - < 15 Acre Feet in size, located on a nonperennial stream & water user controls more than 40 acres of land file Form 605 after construction.
Groundwater Exemption

- Wells & Springs \(< 35 \text{ GPM}\) & volume used does not exceed 10 Acre Feet/ YR. Drill water wells first & file after water is put to use ) Form 602).
Changing A Water Right

- Authorization from the DNRC is required before changing a Water Right.
  - Moving or adding a point of diversion (headgate or pump)
  - Moving or adding a place of use
  - Place of Storage
  - Purpose
  - Salvage Water
  - Temporary Change to convert a water right to an instream use to benefit fisheries.
Change Criteria

- Change will not adversely affect any existing water right, junior or senior.

- Adequate means of diversion, construction & operation.

- Beneficial use of water.
Larger Big Horn River
Irrigation Claims

- Big Horn Canal
  - 788 cfs - 33,546 acres
- Big Horn Low Line Ditch Co.
  - 250 cfs - 5,475 acres
- Two Leggins Water Users Assoc.
  - 847 cfs – 7,520 acres
- Farmers Ditch Co
  - 75 cfs – 1,850 acres
- Victory Irrigation District
  - 90 cfs – 2,743 acres
Compacts

- Crow Compact
  - Closed all Basins to New Permits
  - Still allows small wells and stock ponds
  - Created Stream Flow & Lake Level Management Plan

- Yellowstone River Compact
  - Interstate Compact with ND, WY, & MT
  - Rules were established to administer water rights along MT-WY border.
  - Wy – 80%    Mt – 20%
    - Allocation Amounts for any Unused Waters as of 1/1/50.
Water Reservation System

- 1978 - Board of Natural Resources & Cons. Issued the Final Order for the Establishment of the Yellowstone River Water Reservations.

- Instream Flows (DFWP & DHES in 1978)

- Municipal Uses

- Agricultural Irrigation
  - County Conservation Districts Administer
INFORMATION SOURCES

Water Right Info and Forms Available At:
http://dnrc.mt.gov

Existing Water Rights Data Available At:
http://nris.mt.gov

Well Logs Available At:
http://mbmggwic.mtech.edu

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Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Prairie, Rosebud, Stillwater, Sweet Grass, Treasure & Yellowstone