

Big Hole



Watershed Committee

Big Hole Watershed Committee

Monthly Meeting Minutes

January 15, 2014 - 6pm

Divide Grange

In Attendance

Jen Downing, BHWC; Phil Ralston, Rancher; Randy Smith, Chair/Rancher; Liz Jones, Rancher; Kathleen Kanneally, Citizen; Della Reinhardt, Rancher; John Reinhardt, Rancher; George Trischman, Rancher; Harold Peterson, Rancher; Ray Weaver, Rancher; Dean Peterson, Rancher; Russ Reibe, USFS; Tom Welsch, BHRF; Joe Willauer, Guide/Outfitter Rep; Jim Carpita, Beaverhead County; Alison Dunn, Resident; Rick Hartz, Beaverhead County; Rich McEldowney, RESPEC Consulting; Garth Haugland, Beaverhead County; Don Reese, Rancher; Emma Cayer, MFWP; Jim Hagenbarth, Rancher/Co-Chair; Mike McLane, MFWP; Mike Roberts, DNRC; Bryan Gartland, DNRC; Jeff Dunn, RESPEC Consulting; Doug Finnicum, BSB Water Department; Erik Kalsta, Rancher; Bill Cain, Resident/Secretary; Paul Cleary, Resident; Sam & Susan Stone, Big Hole Ranch; Mary Gibson, Self; Jim Olsen, MFWP; Dave & Cindy Ashcraft, Rancher/Outfitter; Rebecca Rock (?), Gary Jones, Self; Mike Bias, BHRF; Hans Humbert, Rancher; John Sconfianza, Resident; Craig Fellin, Outfitter; Doug Clark, Anaconda-Deer Lodge County (43 in Attendance)

Introduction & Snowpack Report

Attendees introduced themselves. The BHWC expressed their condolences to Garth Haugland, whose wife Ruth passed away earlier this month at the age of 78. Ruth's celebration of life is scheduled for this Saturday, January 18 in Dillon, MT.

Big Hole streamflow report provided by Mike Roberts, DNRC (see attached): Mountain snow is accumulating well (123% of average). Valley snow is low, but still near 100% of average. The streamflow forecast for 2014 is expected to be near 100%. The snowpack had a head start with heavy precipitation in September, and the water year on which averages are calculated beginning October 1. Precipitation statewide has been spotty, with the Ruby and Red Rock drainages well below average.

Committee Reports

Directors Report, Jen Downing

- All contracts and projects closed as of October 2013.
- BHWC Fall 2013 Newsletter was complete December 2013.
- California Creek restoration money secured - \$126,400. Contract is prepared and awaiting final signature from Montana DEQ. Contract start is June 2014.
- 2013 BHWC Annual Appeal is in process and near average so far compared to recent years.
- Brainerd Foundation Capacity grant for \$90,000 is underway. Jen is attending several trainings and one-on-one coaching sessions provided by TREC consulting as part of the capacity grant covering topics like Human Resources, Fundraising Planning, etc.
- BHWC is in process of reviewing applications for our Conservation Programs Coordinator position. We received 16 applications, and many are excellent candidates. A selection will be made in the next few weeks.
- The annual business meeting for the BWHC is typically held in February. Rather than the 3rd Wednesday (Feb 19), this meeting will be held February 3 at Fairmont Hot Springs Resort in a 4 hour format and tailored to the 22 watershed committee members for their review of the budget, work plans, and planning for the BHWC. The 22 committee members are invited. If anyone else would like to attend, please let us know. An RSVP is required in order for us to plan.
- The Big Hole River Drought Management Plan review meeting will be February 4, 2014 at the Divide Grange at 12:30pm. Please forward any comments or thoughts for the DMP review prior to that date.

Steering Committee - See Directors Report

Wildlife Committee – Jim Hagenbarth/Dean Peterson

- Sage Grouse: The public comment period for the Sage Grouse plan is open. Please consider reviewing and commenting on this plan and consider the impact sage grouse legislation will have on ranching operations. Dean has been involved with the plan through Vigilante Electric as there may be required accommodations for overhead power lines.
- Rich McEldowney suggested making comments as specific as possible that when comments are made during plan public comment periods, such as referencing a particular part of the plan or specific issue of disagreement. The more specific, the greater likelihood that the source agency will attempt to rectify the issue.
- Range Rider Program: The Upper Big Hole Range Rider program was reviewed during a meeting held December 11, 2013 in Jackson. Partners (BHWC, WCS, People and Carnivores, MFWP), Wildlife Services, Range Rider, USFS, and participants met to discuss the 2013 season and determine the fate of the program. Those in attendance expressed support for the program to continue.
- Carcass Removal: Carcass removal programs continue to be under development in the Madison and Big Hole watersheds. This effort continues to be led by WCS and supported by several groups.
- Livestock Loss Board: The BHWC provided a proposal for funding to the MT Livestock Loss Board in December to support the Upper Big Hole Range Rider 2014 and potential creation of a carcass removal program. Proposals will be reviewed in January 2014. \$100,000 is available. There were \$170,000 in requests.

Weed Committee - N/A

Land Use Planning Committee - Jen Boyer/ Jen Downing

- MT DNRC hope to complete state adoption of the floodplain maps early in 2014 after falling behind schedule due to changes in personnel. Once state adoption is final, they maps would immediately be available for county adoption.

Presentation: Water Rights, Drought Management, and Adjudication in the Big Hole River

Mike Roberts, DNRC Hydrologist; Bryan Gartland, DNRC Helena Regional Office Manager; Andy Brummond, Montana Fish, Wildlife and Parks Water Conservationist (absent); Mike McLane, Montana Fish, Wildlife and Parks Water Conservation Specialist

Background: The 2013 streamflow season was a challenging one. With low snowpack and low precipitation, streamflow conditions were expected to be tough. The Big Hole River Drought Management Plan was in place nearly the entire season and portions of the river were closed due to high water temperatures and low flows. The Jefferson River called on the Big Hole River in August for information on expected flows after the Big Hole contributions to the Jefferson dropped. Montana Fish, Wildlife and Parks found waters throughout the Upper Missouri with extreme low flows and instituted Murphy Rights. The Big Hole River Drought Management Plan has been in place since 1999 and reviewed annually - the annual review will occur winter 2014. During last drought season, BHWC members had many questions about adjudication, drought management, Murphy Rights, chronic dewatering and more. We agreed we would create an opportunity to discuss these questions and how BHWC could better position itself to address water quantity/quality and drought.

A. Bryan Gartland, DNRC:

1. Adjudication: Big Hole River adjudication status is very close to an enforceable decree. There are 315 claims left to resolve in 20 consolidated cases, some of which may involve hearings. In general, the remaining cases are the most contested cases. DNRC estimates that we are 1-2 years from an enforceable water court decree. The enforceable decree allows for water commissioners to be placed as needed. The enforceable decree is considered a preliminary temporary decree, but can be enforced prior to the final decree that would come several years later.

Question: What factors can help speed the process? *Ans:* The adjudication process is now out of the hands of DNRC and in the hands of the water court. If a water user has a contested claim, rapid processing of the objection and quick resolution can help to shorten the timeframe to reach the enforceable decree. The water court is gearing up to prepare for the process and to expedite the results.

2. *Senate Bill 355*: Exempt claims on stockwater and groundwater wells were exempt from filing for water right claim filing. Livestock and domestic uses direct from surface water sources are also included in SB 355. The new bill now allows users to file claims on these wells. This is a brand new process. So far there are 2 filed in the Helena region. *[See Handout Attached]*

3. Exempt well issues continue to be under development as they determine how to define combined appropriations. The 2013 legislature passed the decision to DNRC to create a rule on future exempt wells; however, now DNRC decision making on this has been frozen by the legislature and the existing rules continue to apply.

4. *Chronic Dewatered Stream (CDS)*: Montana law allows water users to petition DNRC to designate a water as chronically dewatered based on established criteria. If a river is considered chronically dewatered, all irrigation needs to be measured and controlled within 2 years. The status is a tool that water interests can use to help manage low flow problems. The CDS rule began in 1980 near the start of adjudication when it was clear that adjudication would take a very long time. The CDS rule was designed to help manage flows prior to adjudication completion. The BHWC was involved in the Big Hole CDS when the Big Hole River was the first to be designated as a CDS. The BHWC opposed the CDS designation and instead opted for the voluntary Big Hole River Drought Management Plan instead. Two rivers did have CDS designation statewide - Musselshell and a tributary of the Yellowstone (Mill Creek). Many other rivers were pursued, but ultimately chose voluntary changes instead.

Many Big Hole River irrigators already have water measurement and functioning structures. Most diversions on the mainstem and several of the tributaries from the headwaters to Dickie Bridge are complete in compliance with the CCAA program. Many others downstream are complete as well. Adjudication completion will require water measurement, of which we are 1-2 years from the start of. Therefore, we are in theory 4 years from the deadline for all irrigation points of diversion on the mainstem (not sure about tributaries) to be measured. Therefore, CDS continues to not be a viable alternative for the Big Hole since adjudication may meet the end result in a similar time frame if water commissioners are appointed once the decree becomes enforceable.

5. *Water Commissioners*: 15% or more of water users in a basin can petition for a water commissioner once the decree is enforceable (see #1). If there is less than 15%, the judge can place water commissioner if needed. It is unknown what will be considered a "basin" on the mainstem of the Big Hole - whole river, or river sections.

6. DNRC is streamlining the water right change process. The previous water right change process was long and with the burden on the water right holder. The new process includes more technical analysis done by DNRC, review time is reduced by 3-5 months, and is less burden on the irrigator.

B. Mike McLane, MFWP Water Conservation Specialist

MFWP has acquired and pursues water rights through several avenues as a means to maintain instream flows.

1. *Murphy Rights*: In the 1960's water rights were identified as important for conservation. A state legislature named Murphy created legislation for MFWP to file right on Blue Ribbon Tour Streams *[See Handout Attached]*. The right is a junior right with dates ranging from 1960-1970's. There is not a Murphy Right in the Big Hole River, but there is downstream of the Big Hole.

2. *Montana Water Use Act*: Water Reservation provisions in this act built upon the Murphy Right concepts. The act allowed public entities (agencies, cities, etc.) to get water rights for future consumptive use and to maintain flow or water levels. The first to use these water reservation provisions in act was the Yellowstone River.

3. Past State Water Plan In the 1980s several planning efforts looked to protect Montana water from downstream or out of state users. There was a specific plan for the Missouri River. It made many recommendations from finishing the water adjudication to leading a basin-wide water reservation process. That reservation process was put in statute. The Missouri water reservation process broke the river into two regions. The Missouri reservation process identified future water needs. It also identified that instream water needs. Instream flows priority dates as set by the final order are junior to consumptive needs – municipal and irrigation.

4. The 2013 Drought Season: In 2013, the Gallatin, Jefferson, and Madison Rivers all met extreme low flows simultaneously in August. The MFWP began looking for options to augment stream flows. One tool that could be used is the Murphy Right. The Gallatin had a Murphy Right call in 2012, but otherwise the tool had not been used often. MFWP's water conservation staff reviewed current status of flows and drought management plan effectiveness of the rivers with extreme low flows and rivers upstream. A call for Murphy Rights, although junior, could be used to call for water in rivers upstream of rivers with Murphy Rights. There were mixed reviews on whether this call should be made. The CCAA program had well documented flow management and the Big Hole River DMP was in action. BHWC urged MFWP not to use the Murphy Right because it would be a detriment to the volunteer actions already in place. ---- Result: no Murphy Call on the Big Hole River in 2013.

Question: How does Big Hole compare to Blackfoot drought management? **Ans:** The drought plan is similar to the Big Hole. However, the Drought committee will recommend to MFWP to make call on junior water users who are not participating in the drought plan. It is important to note that the Blackfoot water demand is less developed and therefore the river does not see as low of flows conditions. The area was traditionally flood irrigated, although many have turned to sprinklers. They are working with sprinkler irrigators to use water differently with emphasis on early season irrigation to increase soil profile saturation earlier in the season. Blackfoot Challenge has supported several efficiency projects.

Question: What is the impression of or needs of the Big Hole Watershed Committee/Big Hole River Drought Management Plan at the state level? **Ans:** The Governors Drought Committee hears reports statewide (from Mike McLane). They want to know of the Drought Management Plan is working. Some interests are looking for with quantification or an estimate of effectiveness (i.e. cfs). The CCAA provides flow estimates for these meetings, but we need data on the rest of the river. Current drought plan reporting on many streams is subjective. Upper Big Hole River has a mechanism because it is required. The rest of the river could, as done in the Blackfoot, enroll in reporting, i.e. anonymously (BHWC made its first attempt at this in 2013 with conservation reporting forms sent to irrigators to track conservation measures). We need a dedicated person to monitor, more than voluntary reporting. A water commissioner could fill this role later. The Blackfoot Challenge hired a water coordinator, (first Brain McDonald and now Jennifer Schoonen) to track flows and drought measures. Previously, Mike McLane tracked flows. Blackfoot Challenge also has water use plans for its irrigators that pre-plan water use for dry years.

Comment: If I report cfs conserved, my water right could be in jeopardy. **Ans (DNRC):** State law says that if you contribute flows under an established conservation plan, your water rights are not in jeopardy. The statute specifically recognizes that non-use of water as it related to a recognized conservation plan such as CRP or the CCAA process are protected from an abandonment review. For a simple drought response that statute doesn't extend. However, abandonment is a complex test of both intent and extended non use. It is not simple forfeiture. A water user must not use all or part of their water right for 10 years before the threat of abandonment. Therefore, if an irrigator uses their water one year out of 10, it would not be considered abandoned. Thus the periodic, partial season not use of water in a drought year simply doesn't meet the test to declare a right abandon. [See State Statute 85-2-404. Abandonment of appropriation right attached]

Question: Could MFWP water rights be pulled from the river early in the season and stored for later release?

Ans: No, MFWP's right is non-consumptive. Diverting and storing this instream flow water has an element of immediate consumption (an immediate depletion to the stream) and adverse effect to other users so DNRC would not approve such a change of use. However a new water right using high spring flows could be developed under the existing basin closures statute. The state water plan update is looking into flow augmentation projects. Also, the legal framework exists to do flow augmentation storage as a beneficial use.

Comment: Thank you Mike, Bryan and Mike for coming. BHWC lobbied in 2013 against the Murphy Right use because there would be no physical positive change, but would cause negative mental effect. In exchange for not using the Murphy Right, BHWC agreed to have you visit a meeting over the winter, which is today.

Question: Who decides decree enforcement area, i.e. does enforcement apply to the entire river or segments?

Ans: That depends on water user petition and the judge. The judge will determine the enforceable reach.

New Business -

Jim Olsen, MFWP announced they are in process of developing an Environmental Assessment to support the use of RSI Incubators in the Wise River and Trail Creek in 2014 to expand populations of Arctic Grayling.

Future Agendas

- The annual business meeting is February 3 at Fairmont Hot Springs Resort and tailored to committee members. This 4 hours meeting will review budgets, work plans and more for the BWHC. (not Feb 19)
- March 19, 2014, 7pm – Annual Upper Big Hole CCAA Update
- April 16, 2014, 7pm – BHWC Weed Committee

Adjourn

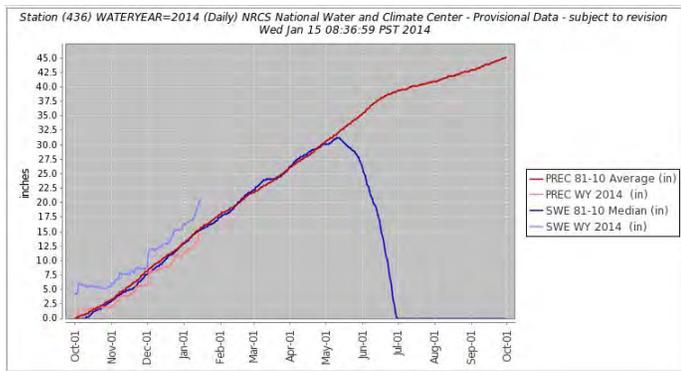
General Comments:

We are approximately half way through Big Hole snow accumulation for the 2014 water year. In general, water year basin snowpack is above average, precipitation is below average, and temperatures have fluctuated (October, December cooler than average, November warmer than average). A general trend observed from the SNOTEL station data is that the higher the elevation the higher percentages of average reported. While it is good to see the high elevations supporting above average snowpack, the importance of mid to low elevation snow is also critical to facilitate early season aquifer recharge as well as runoff that triggers irrigation and spawning for some species of fish such as grayling.

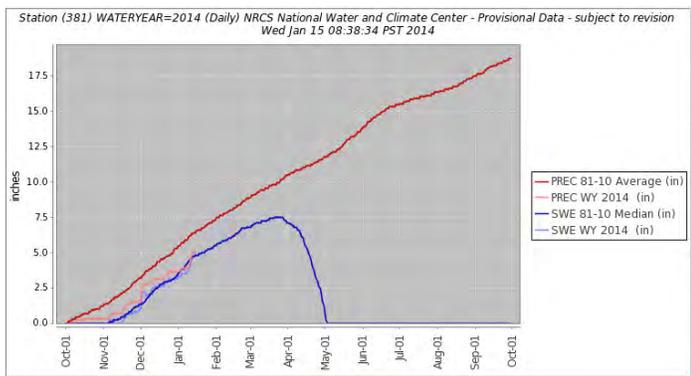
This is also the time of year the NRCS starts producing streamflow forecasts. Predictions at this time are for near average to slightly above streamflow volumes at both Wisdom and Melrose (assuming normal snowpack and precipitation).

The following NRCS data was compiled by Mike Roberts, DNRC.

<http://www.mt.nrcs.usda.gov/water.html>



Darkhorse Lake SNOTEL 8600'



Calvert Creek SNOTEL 6430'

2014 BIG HOLE BASIN APPROXIMATE SNOWPACK

		15-Jan	1981-2010	1971-2000	2013			
		current	normal	normal	normal	1981-2010	1971-2000	Percent of
	elevation	inches	inches	inches	inches	% avg	% avg	Last Year
Barker Lakes	8250	9.4	6.7	8	7.7	140	118	122
Basin Creek	7180	5.7	5.2	4.4	3.4	110	130	168
Bloody Dick	7600	7.7	6.7	7.2	7	115	107	110
Calvert Creek	6430	5.0	4.8	5.1	4.6	104	98	109
Darkhorse Lake	8600	20.5	15.3	17.6	16.4	134	116	125
Moose Creek	6200	9.8	9.5	10	7.1	103	98	138
Mule Creek	8300	9.6	7.6	8.8	8.9	126	109	108
Saddle Mtn.	7940	17.2	13.2	15	12.2	130	115	141
TOTAL		84.9	69.0	76.1	67.3	123.0	111.6	126
BASIN AVERAGE		123.0						

2014 BIG HOLE BASIN APPROXIMATE PRECIPITATION

		15-Jan	1971-2000	1971-2000	2013			
		current	normal	normal	normal	1981-2010	1971-2000	Percent of
	elevation	inches	inches	inches	inches	% avg	% avg	Last Year
Barker Lakes	8250	6.5	8.8	9.3	9.2	74	70	71
Basin Creek	7180	5.7	5.2	5	3.1	110	114	184
Bloody Dick	7600	8.3	8.5	9.4	missing	98	88	missing
Calvert Creek	6430	5.1	6.4	6.4	8.1	80	80	63
Darkhorse Lake	8600	14.7	15.5	18.4	16.3	95	80	90
Moose Creek	6200	11.8	11.5	11.7	11.8	103	101	100
Mule Creek	8300	7.8	9.2	9.4	10.2	85	83	76
Saddle Mtn.	7940	11.3	12.9	16	11.9	88	71	95
TOTAL		71.2	78.0	85.6	70.6	91.3	83.2	101
BASIN AVERAGE		91.3						

Montana State Statute

(Refer to page 4 of minutes)

85-2-404. Abandonment of appropriation right. (1) If an appropriator ceases to use all or a part of an appropriation right with the intention of wholly or partially abandoning the right or if the appropriator ceases using the appropriation right according to its terms and conditions with the intention of not complying with those terms and conditions, the appropriation right is, to that extent, considered abandoned and must immediately expire.

(2) If an appropriator ceases to use all or part of an appropriation right or ceases using the appropriation right according to its terms and conditions for a period of 10 successive years and there was water available for use, there is a prima facie presumption that the appropriator has abandoned the right for the part not used.

(3) If an appropriator ceases to use all or part of an appropriation right in compliance with a candidate conservation agreement initiated pursuant to 50 CFR 17.32 or because the land to which the water is applied to a beneficial use is contracted under a state or federal conservation set-aside program:

(a) the set-aside and resulting reduction in use of the appropriation right does not represent an intent by the appropriator to wholly or partially abandon the appropriation right or to not comply with the terms and conditions attached to the right; and

(b) the period of nonuse that occurs for part or all of the appropriation right as a result of the contract may not create or may not be added to any previous period of nonuse to create a prima facie presumption of abandonment.

(4) The lease of an existing right pursuant to 85-2-436 or a temporary change in appropriation right pursuant to 85-2-407 or 85-2-408 does not constitute an abandonment or serve as evidence that could be used to establish an abandonment of any part of the right. (5) Subsections (1) and (2) do not apply to existing rights until they have been finally determined in accordance with part 2 of this chapter.

**Final Order of the Board of Natural Resources and Conservation
Establishing Water Reservations above Fort Peck Dam, July 1, 1992**

Priority Date for all reservations as established by board order July 1, 1985

“Relative to other reservation the priority date of the DFWP shall be subordinate to the consumptive use reservations granted to all municipalities and the instream flow rights granted to the Montana Department of Health and Environmental Sciences. It shall be prior to the United States Department of Interior (Burdeau of Land Management), other reservations granted to Conservation Districts and reservations granted to the United State Bureau of Reclamation.

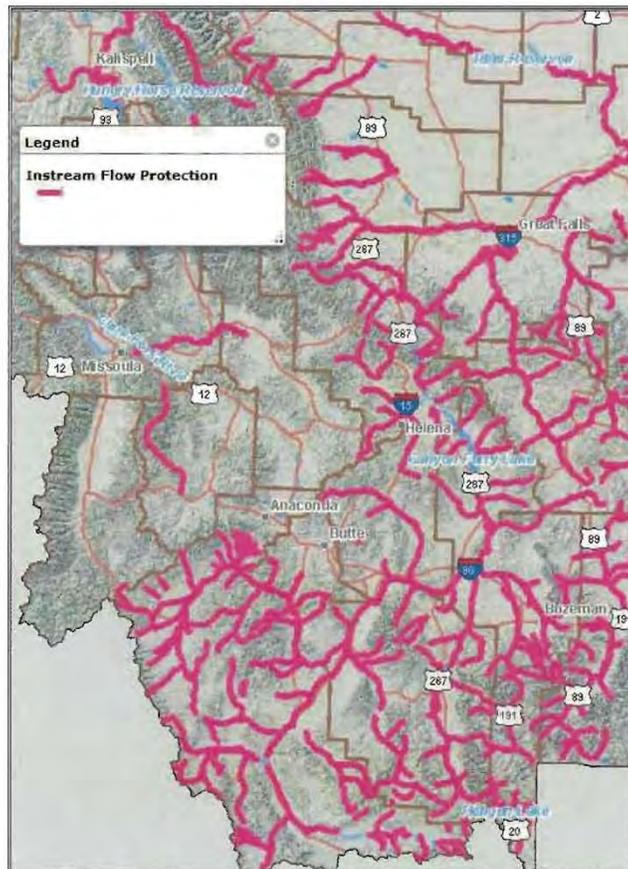


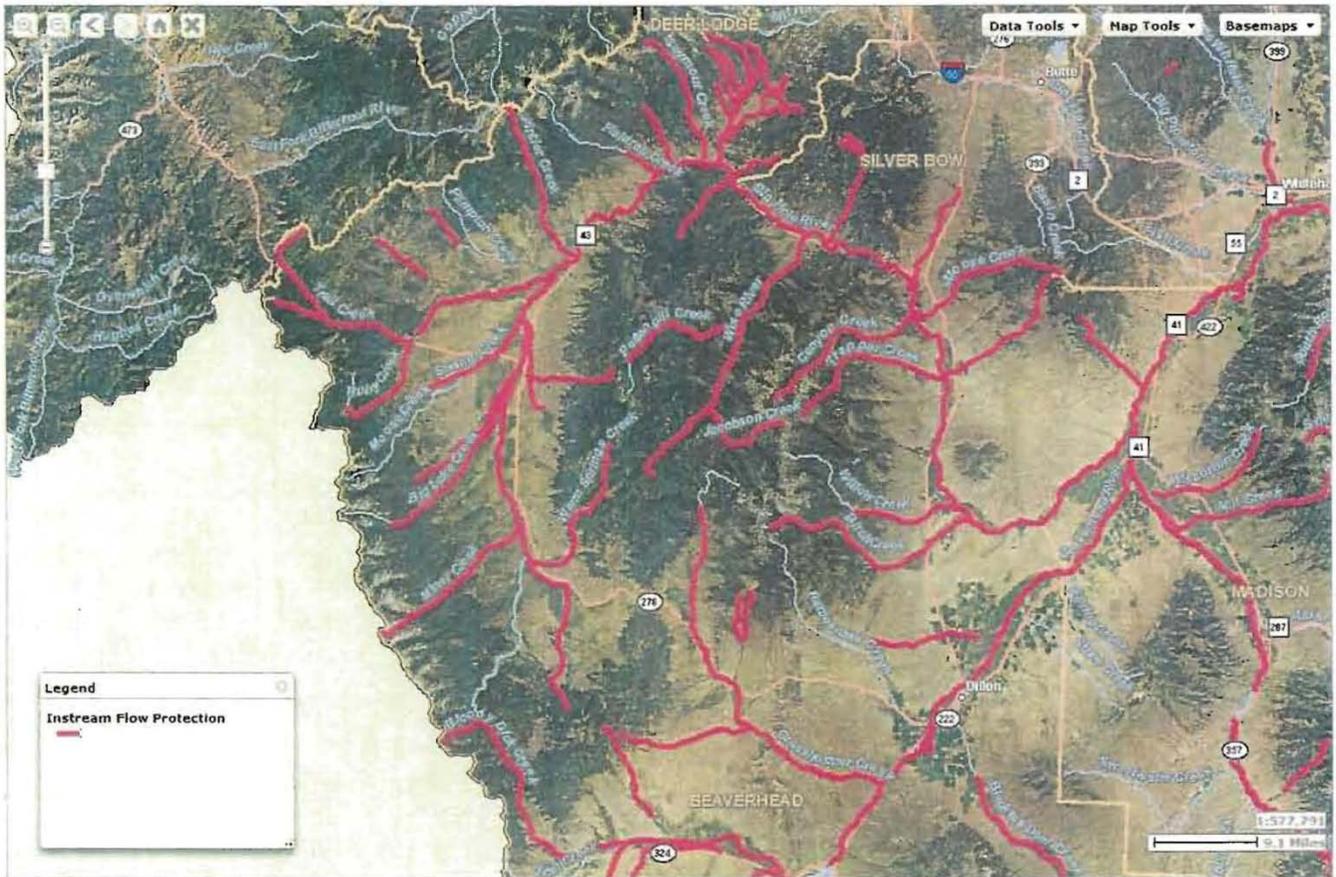
Figure 1 Map of Streams with water reservations in Missouri Headwaters

STREAM	REACH DESCRIPTION	DATES GRANTED	AMOUNT ALLOWED (cfs)
Big Hole River #1	Warm Springs Creek to Pintlar Creek	Jan 1 - Dec 31	160
Big Hole River #2	Pintlar Creek to the old Divide Dam	Jan 1 - Dec 31	800
Big Hole River #3	Old Divide Dam to mouth	Jan 1 - Dec 31	573
Beaverhead River #1	Clark Canyon to East Bench Div Dam at Barretts	Jan 1 - Dec 31	200
Beaverhead River #2	East Bench Diversion Dam at Barretts to mouth	Jan 1 - Dec 31	200
Ruby River #1	East, Middle, and West forks to Ruby Reservoir	Jan 1 - Dec 31	90
Ruby River #2	Ruby Dam to mouth	Jan 1 - Dec 31	40
Jefferson River	Headwaters to Madison River	Jan 1 - Dec 31	1,095.5
Madison River #1	Yellowstone NP boundary to Hebgen Reservoir	Jan 1 - Dec 31	245
Madison River #2	Hebgen Dam to West Fork	Jan 1 - Dec 31	502.5
Madison River #3	West Fork to Ennis Reservoir	Jan 1 - Dec 31	716
Madison River #4	Ennis Dam to mouth	Jan 1 - Dec 31	825
Gallatin River #1	Yellowstone NP boundary to WF Gallatin River	Jan 1 - Dec 31	170
Gallatin River #2	WF Gallatin River to East Gallatin River	Jan 1 - Dec 31	400
Gallatin River #3	East Gallatin River to mouth	Jan 1 - Dec 31	533.5
Missouri River #1	Jefferson and Madison rivers to Canyon Ferry Res.	Jan 1 - Dec 31	2,400
Missouri River #2	Hauser Dam to Holter Reservoir	Jan 1 - Dec 31	2,881

BIG HOLE RIVER DRAINAGE

STREAM	REACH DESCRIPTION	DATES GRANTED	AMOUNT ALLOWED (cfs)
American Creek	Headwaters to mouth	Jan 1 - Dec 31	2.8
Bear Creek	Headwaters to mouth	Jan 1 - Dec 31	2.8
Big Hole River #1	Warm Springs Creek to Pintlar Creek	Jan 1 - Dec 31	160
Big Hole River #2	Pintlar Creek to the old Divide Dam	Jan 1 - Dec 31	800
Big Hole River #3	Old Divide Dam to mouth	Jan 1 - Dec 31	573
Big Lake Creek	Twin Lakes outlet to mouth	Jan 1 - Dec 31	4.7
Birch Creek	Mule Creek to mouth	Jan 1 - Dec 31	10
Bryant Creek	Headwaters to mouth	Jan 1 - Dec 31	1.4
California Creek	Headwaters to mouth	Jan 1 - Dec 31	10
Camp Creek	Headwaters to mouth	Jan 1 - Dec 31	5
Canyon Creek	Canyon Lake to mouth	Jan 1 - Dec 31	5
Corral Creek	Headwaters to mouth	Jan 1 - Dec 31	1
Deep Creek	Sevenmile and Tenmile to mouth	Jan 1 - Dec 31	18
Delano Creek	Headwaters to mouth	Jan 1 - Dec 31	0.3
Divide Creek	North and East forks to mouth	Jan 1 - Dec 31	3
Fishtrap Creek	West and Middle forks to mouth	Jan 1 - Dec 31	10
Francis Creek	Sand Creek to mouth	Jan 1 - Dec 31	4
French Creek	Headwaters to mouth	Jan 1 - Dec 31	3
Governor Creek	Headwaters to mouth	Jan 1 - Dec 31	4
Jacobsen Creek	Tahpiez Lake to mouth	Jan 1 - Dec 31	14
Jerry Creek	Headwaters to mouth	Jan 1 - Dec 31	7
Johnson Creek	Schultz Creek to Forest Service boundary	Jan 1 - Dec 31	13
Joseph Creek	Anderson Creek to mouth	Jan 1 - Dec 31	5
LaMarche Creek	West and Middle forks to mouth	Jan 1 - Dec 31	11
Miner Creek	Upper Miner Lakes to mouth	Jan 1 - Dec 31	9
Moose Creek	Headwaters to mouth	Jan 1 - Dec 31	9
Mussigbrod Creek	Hell Roaring Creek to uppermost existing diversion point in NWSEW Section 9 T1S R18W	Jan 1 - Dec 31	10
NF Big Hole River	Ruby and Trail creeks to mouth	Jan 1 - Dec 31	30
Oregon Creek	Headwaters to mouth	Jan 1 - Dec 31	0.3
Pattengail Creek	Sand Lake to mouth	Jan 1 - Dec 31	12
Pintlar Creek	Oreanos Lake to mouth	Jan 1 - Dec 31	10
Rock Creek	Beaverhead National Forest boundary to mouth	Jan 1 - Dec 31	5
Ruby Creek	Pioneer and WF Ruby creeks to mouth	Jan 1 - Dec 31	4
Sevenmile Creek	Headwaters to mouth	Jan 1 - Dec 31	1.8
Seymour Creek	Upper Seymour Lake to mouth	Jan 1 - Dec 31	13
Sixmile Creek	Headwaters to mouth	Jan 1 - Dec 31	1.6
SF Big Hole River	Skinner Lake to mouth	Jan 1 - Dec 31	22
Steel Creek	Headwaters to mouth	Jan 1 - Dec 31	5
Sullivan Creek	Headwaters to mouth	Jan 1 - Dec 31	4
Swamp Creek	Yank Swamp to mouth	Jan 1 - Dec 31	8
Tenmile Creek	Tenmile Lakes to mouth	Jan 1 - Dec 31	3.8
Trail Creek	Headwaters to mouth	Jan 1 - Dec 31	8
Trapper Creek	Trapper Lake to mouth	Jan 1 - Dec 31	1.8
Twelvemile Creek	Headwaters to mouth	Jan 1 - Dec 31	1.2
Warm Springs Creek	West and East forks to mouth	Jan 1 - Dec 31	5
Willow Creek	Tenoy Lake to mouth	Jan 1 - Dec 31	16
Wise River	Mono and Jacobson creeks to mouth	Jan 1 - Dec 31	20
Wyman Creek	Headwaters to mouth	Jan 1 - Dec 31	7

Big Hole River Drainages (see previous page)



Senate Bill 355 – Exempt Claim Filing Statute

Frequently Asked Questions

1. What is an exempt water right?
 - a. An exempt right is a water right in existence before 1973, exempted by statute from the two previous mandatory claim filing periods. These rights include existing rights for livestock and individual, as opposed to municipal, domestic uses based upon instream flow and groundwater sources. This subset does NOT include rights for irrigation or stockwater rights not falling within the preceding definition.
2. Why do I want to file my exempt water right? What do I gain?
 - a. By filing your exempt water right, you are able to enforce the right against all other timely filed water rights in the state, including groundwater certificates and DNRC water use permits. In addition, if your exempt water right is filed and recorded with the DNRC, you are entitled to receive notice of various water right proceedings in your basin.
3. What happens if I don't file my exempt water right?
 - a. Your water right will NOT be enforceable against other water rights.
4. How much is the exempt claim filing fee?
 - a. \$160.00 for the DNRC claim filing fee. There is no fee for filing the required petition with the Water Court.
5. When is the exempt right claim filing period? When does it start and when does it end?
 - a. The exempt right claim filing period begins on October 1, 2013. The duration of the exempt claim filing period depends on how close your basin is to the issuance of a Final Decree by the Water Court. Contact the Water Court or your regional DNRC office to find out the current status of your basin.
6. Where can I get exempt water right claim forms?
 - a. Claim forms are available at any DNRC Regional Office, the Montana Water Court, and online at http://www.dnrc.mt.gov/wrd/water_rights/adjudication/default.asp.
7. Is a claim form all I need to file for my exempt water?
 - a. No. You must also file a Petition for Judicial Determination of Exempt Water Rights with the Water Court. This Petition is available online, at your DNRC Regional Office, or the Water Court. **The Petition must be filed with the DNRC at the same time you file your Statement of Claim.**

The DNRC will forward the Petition, along with your claim file, to the Water Court after you have completed the claim filing process.

8. Can I file my Petition for Judicial Determination of Exempt Water Rights with the Water Court before I file my Statement of Claim form?
 - a. No. You must complete your Statement of Claim filing with the DNRC prior to filing your Petition with the Water Court. The DNRC will assign your exempt water right a claim number and that number must be included on your Petition for the Court's records. Your Petition will be rejected by the Water Court if it does not contain a DNRC issued claim number on its face.
9. Is there any other documentation or information I should provide when filing my statement of claim?
 - a. Some water users already filed claims for their exempt rights. If an exempt right was timely filed before April 30, 1982, or during the late claim filing period (1993-July 1, 1996), there is no need to re-file that right.
10. What is the current status of exempt rights that were timely filed during previous claim filing periods?
 - a. If an exempt right was timely filed in the adjudication process, the water right was made part of the decree for that basin. If the exempt water right was not filed as a statement of claim in the adjudication, the water right is NOT part of the decree for the basin.
11. Will my exempt water right statement of claim be handled in the same way as previously filed statements of claim, previously exempt or not?
 - a. Yes. In the interest of preserving equal treatment and due process for all water users in Montana, your exempt water right claim filing will be examined and adjudicated the same as any other timely filed existing water right in the Statewide Adjudication.
12. If I filed an exempt right during the late claim filing period ending on July 1, 1996, can I still file a claim during this claim filing period?
 - a. There is no reason to file an exempt claim during this claim filing period if you filed on that water right during the 1993-July 1, 1996 late claim filing period. Exempt claims filed during the late claim filing period (1993-July 1, 1996) retained their claimed priority date.
13. If I filed a form 627 exempt right notice with the DNRC, can I still file a claim during this claim filing period?
 - a. Yes. By filing a statement of claim during the exempt claim filing period, you are establishing a timely filed water right claim that entitles you to all

the rights held by water users who filed their claims during the original claim filing period ending on April 30, 1982. The 627 forms were voluntary filings for the DNRC and its public notice efforts. A 627 form is **NOT** considered a valid claim.

14. If I, or my predecessors in interest, filed a groundwater right in compliance with the 1962 Groundwater Code, but did not file a statement of claim for the right in the statewide adjudication, do I need to file an exempt right claim at this time?
 - a. No. However, failure to do so could result in subordination of your right to all timely filed rights, groundwater certificates, and permits.
15. Do I need to provide evidence to support my exempt water right claim?
 - a. The requirements for exempt claim filings are exactly the same as they were for timely filed claims in 1982 and late filed claims in 1996. You do need to provide evidence to support your claim. Contact your regional DNRC office for more information on evidentiary requirements for your individual exempt rights, as they can vary greatly by type of right.
16. Can I get my exempt right adjudicated right now?
 - a. Yes, you can request that your petition to adjudicate your exempt water right be expedited by the Water Court and DNRC. This will require that you publish notice in two area newspapers and mail personal notice to other water users in your area as ordered by the Water Court.
17. What if I don't want to pay for notice costs and don't need my exempt water right to be adjudicated quickly?
 - a. You do not have to proceed quickly and pay for public notice costs immediately. An option is available to have your exempt water right claim and Water Court petition received, but not immediately examined and adjudicated by the DNRC and Water Court. Your exempt claim will be held for claim examination and public notice at the next decree issuance for your basin. Contact the Water Court or regional DNRC office for more information about the status of your basin and when your next decree will be issued.
18. What else is expected of me when I file my exempt claim?
 - a. You will also need to work with the DNRC claim examiners to resolve any factual issues they find with your claim. This may create an additional time commitment on your part. Further, you may receive objections to your exempt claim filing when it is publicly noticed. You will need to be prepared to address and resolve any objections that are filed before the Water Court will issue a final decree for your exempt water right.

19. Do I forfeit my exempt right if I don't file a claim?

a. No. Your right to use water will remain valid provided it is based on historic beneficial use. However, failure to do so will result in subordination to all timely-filed rights, groundwater certificates and permits.