



# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

Abandonment	Intentional, prolonged nonuse of a water right, resulting in its loss <sup>2</sup>
Aboriginal Water Right	Aboriginal (or original) title to Indian lands and waters established long prior to the creation of an Indian reservation by Indian occupation or the land and use of the water for hunting, fishing and spiritual purposes. These rights typically become recognized when a reservation is established by treaty or statute on aboriginal lands. The recognized prior date is usually "time immemorial," see definition below. See also U.S. v. Adair, 723 F.2d 1394, 1412-15 (9 <sup>th</sup> Cir. 1983). <sup>2</sup>
Abstract	The computer printout of each claim of an existing water right showing the information submitted on the original or amended statement of claim, any changes authorized by the Montana Supreme Court Water Right Claim Examination Rules (W.R.C.E.R.) or by the Water Court, remarks noting any obvious factual or legal issues presented by the claim, and other remarks explaining the nature and extent of the claimed water right. <sup>7,**</sup>
Acre Foot (AF)	A measurement based on the volume of water that will cover 1 acre to a depth of 1 foot. <sup>2</sup>
Acre Feet per Year (AFY)	Maximum volume allowed for use during the course of a year. <sup>2</sup>
Act	The Montana Water Use Act, Title 85, chapter 2, parts 1 through 4, MCA <sup>1</sup>
Adjudication	A judicial procedure decreeing the quantity and priority date of all existing water rights in a basin. <sup>2</sup>
Adjudication Fee	The fee imposed upon water users by House Bill 22 which passed during the 2005 legislative session. It was a fee based on number of water rights, purpose and volume. <sup>7,**</sup>
Adjudication of Water Rights	In the context of Montana water law this refers to the statewide judicial proceeding to determine the type and extent of all water rights claimed to exist before July 1, 1973. <sup>4</sup>
Administrative Rules of Montana (ARM)	A collection of state agency rules used in the implementation of federal and state codes. <sup>2</sup>
Administrative Rules of Montana (ARM)	A collection of state agency rules used in the implementation of federal and state codes. <sup>5</sup>
Adverse Effect	Interference with a water right owner's ability to reasonably exercise their water right. In the context of new water use permits and change applications, the applicant must prove lack of adverse affect prior to appropriating water for a beneficial use pursuant to §85-2-311, MCA, or changing a water right pursuant to §85-2-402, MCA. <sup>9</sup>
Amended Claim	The contents of a submitted claim as altered or changed by the claimant as to any matter contained in the original claim and as allowed y the Montana Supreme Court Claim Examination Rules. <sup>7,**</sup>
Amount	Refers to both a flow rate in gallons per minute (gpm), or cubic feet per second (cfs), and a volume of water in acre-feet (af). <sup>1</sup>
Animal Unit	An animal unit (AU) is a measurement of livestock numbers. A cow and calf pair is one animal unit. Weaned animals are counted as one unit each. Animal unit consumptive use is 0.017 Acre Feet per Unit per Year, as expressed below: Number of AU's x .017 = AF/Year Number of AU's x .017/365 x days of use= AF/Period of Use
Appeal	To transfer a case from a lower to a high court for a new hearing. <sup>2</sup>
Applicant	The "person", as defined in 85-2-102, MCA, who files a permit or change application with the department <sup>1</sup>
Application	For purposes of ARM 36.12.120 through 36.12.122, 36.12.1301, 36.12.1401, 36.12.1501, and 36.12.1601 means an application for beneficial water use permit, Form No. 600, or an application to change a water right, Form No. 606. <sup>1</sup>
Application	For purposes of ARM 36.12.117 "application" means an application filed under 85-2-302, 85-2-316, 85-2-402, 85-2-407, and 85-2-408, MCA. <sup>1</sup>



# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

Appropriate	To capture, impound, or divert water from its natural course and apply toward a beneficial use <sup>2</sup>
Appropriation Right	Any right to the use of water which would be protected under the law as it existed prior to July 1, 1973 and any right to the use of water obtained in compliance with the provisions and requirements of the act. <sup>1</sup> (AKA-“claim” or “existing right”). <sup>1</sup>
Appurtenant Land	The land which a water right benefits or belongs to. <sup>7,**</sup>
Aquifer	A geologic formation(s) that is water bearing. A geological formation or structure that stores and/or transmits water, such as to wells and springs. Use of the term is usually restricted to those water-bearing formations capable of yielding water in sufficient quantity to constitute a usable supply for people’s uses. <sup>5</sup>
Aquifer Storage & Recovery Project	A project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use. <sup>8</sup>
Artificial Recharge	A process where water is put back into ground-water storage from surface-water supplies such as irrigation, or induced infiltration from streams or wells. <sup>5</sup>
Adjudication Shared Drive (ASD)	This location houses materials commonly used by all adjudication specialists statewide.
Associated Right <sup>1</sup>	Multiple water rights filed by the same or different appropriators that share the same point of diversion, place of use, or place of storage. <sup>1</sup>
Associated Rights <sup>7,**</sup>	A statement of claim uses the same development (well, reservoir, point of diversion) as 1) a federal reserved water right claim, 2) a new appropriation (post-July 1, 1973 water right), or 3) an exempt right. The adjudication program does not associate the <i>place of use</i> involving statements of claim and post-July 1, 1973 water rights. <sup>7,**</sup>
Basin	The area drained by a river and its tributaries; a watershed. <sup>5</sup> Montana has been divided into 90 water rights basins. See <a href="http://dnrc.mt.gov/wrd/water_rts/adjudication/">http://dnrc.mt.gov/wrd/water_rts/adjudication/</a> .
Basin Closure Area	A hydrologic drainage basin area within which applications for certain water use permits cannot be accepted. Basin closure areas can be designated by statute, administrative rule, or in compacts. <sup>1</sup>
Basin Code	The respective number/letter combination used to identify each of the 85 basins in Montana (e.g. 43QJ) according to the <u>Atlas of Water Resources of Montana</u> prepared by the Montana Water Resources Board. <sup>7,**</sup>
Beneficial Use	Use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; use of water to maintain and enhance streamflows to benefit fisheries pursuant to conversion or lease of a consumptive use right. <sup>9</sup> <i>And now including Water Banking.</i>
Call	The holder of a water right with a senior priority date and an immediate need for a use of water may require a holder of a water right with a junior priority date to refrain from appropriating water otherwise physically available until the senior water right is satisfied. This curtailment is termed “making a call”. <sup>2</sup>
Certificate	In the Adjudication program, a Certificate of Water Right will be issued to all water right owners after a final decree is issued. (A Certificate of Water Right in the <u>New Appropriations</u> program is issued for groundwater appropriations under 35 gallons per minute not to exceed 10 acre-feet per year. These may cover stock, domestic, or irrigation or ‘other’ purposes.) <sup>7,**</sup>



# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

Certificate of Survey Number (COS#)	The official number given a parcel of land created by a registered land survey as filed with the county clerk and recorder. <sup>1</sup>
Chain of Title Abstract	A sequential listing of all known "owners of record" and holders in due course. See also "General Abstract" and "Water Right Abstract".
Change Authorization or Change	An approval by the department to make a change in appropriation right as defined by 85-2-102, MCA, and allowed by 85-2-402, MCA. <sup>1</sup>
Change in Appropriation Right	A change made in accordance with §85-2-402, MCA after July 1, 1973.
Change of Water Right	Any change in a way a water right is used. Can be changed in type, place, time of use, point of diversion, adding points of diversion, etc. Changes of water rights must be approved by the Department of Natural Resources (DNRC) to assure that no injury occurs to other water rights. <sup>5</sup>
Claim <sup>1</sup>	A statement of claim filed pursuant to 85-2-221, MCA, for a water right established prior to July 1, 1973. <sup>1</sup> (AKA "Appropriation Right" or "Existing Right".)
Claim <sup>2</sup>	An assertion that a water right exists, usually occurring during the adjudication process. <sup>2</sup>
Claim or Statement of Claim <sup>7,**</sup>	A sworn statement of an existing water right, as defined in §85-2-224, MCA, filed with the department upon order of the Montana Supreme Court. <sup>7,**</sup>
Claimant	Any individual, association, partnership, corporation, state agency, political subdivision, Tribe, the United States or any agency of the United States, or any other entity, who has filed a statement of claim or is successor in interest to a statement of claim as identified in the centralized records system. <sup>7,**</sup>
Combined Appropriation	An appropriation of water from the same source aquifer by two or more groundwater developments, that are physically manifold into the same system. <sup>1</sup>
Compact	A legal agreement between Montana and a federal agency or an Indian tribe determining the quantification of federally or tribally claimed water rights. <sup>2</sup>
Cone of Depression	A cone-shaped depression of water table or pressure surface developing around a pumping well. <sup>1</sup>
Conjunctive Management	Management of ground and surface water as a single resource. <sup>9</sup>
Conjunctive Use	The deliberate combined use of groundwater and surface water. <sup>9</sup>
Consumptive Use <sup>1</sup>	The annual volume of water used for a beneficial purpose, such as water transpired by growing vegetation, evaporated from soils or water surfaces, or incorporated into products that does not return to ground or surface water. <sup>1</sup>
Consumptive Use <sup>2</sup>	A beneficial use of water that reduces supply, such as irrigation or household use. <sup>2</sup>
Consumptive Use <sup>5</sup>	That part of water withdrawn that is evaporated, transpired by plants, incorporated into products or crops, consumed by humans or livestock, or otherwise removed from the immediate water environment. Also referred to as water consumed. <sup>5</sup>
Contested Case	A proceeding before the department in which a determination of legal rights, duties, or privileges of a party is required to be made after an opportunity for hearing pursuant to Title 2, chapter 4, part 6, MCA. A contested case includes, but is not limited to: a proceeding and hearing on an objection to application pursuant to 85-2-309, MCA; a show cause proceeding and hearing involving revocation or modification of a permit or change in appropriation right pursuant to 85-2-314, MCA; and a show cause proceeding conducted following a preliminary determination to deny or preliminary determination to grant with modifications pursuant to 85-2-310, MCA. <sup>1</sup>
Controlled Groundwater Area	An area that has additional management controls applied to new groundwater uses pursuant to 85-2-506 through 85-2-508, MCA. <sup>1</sup>



# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

Correct & Complete	The information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information. <sup>10</sup>
Criteria Addendum	That additional portion of an application on which substantial credible information must address the criteria listed in 85-2-311 and 85-2-402, MCA. <sup>1</sup>
Cubic Feet per Second (cfs) <sup>2</sup>	A measurement based on a rate of water flow that will supply 1 cubic foot of water in 1 second. <sup>2</sup>
Cubic Feet per Second (cfs) <sup>5</sup>	A rate of the flow, in streams and rivers, for example. It is equal to a volume of water one foot high and one foot wide flowing a distance of one foot in one second. One "cfs" is equal to 7.48 gallons of water flowing each second. <sup>5</sup>
Cubic Feet per Second (cfs) <sup>1</sup>	A flow rate of water in cubic feet per second and is equivalent to 448.8 gallons per minute. Applications for a flow rate of less than one cfs will be converted to gallons per minute. <sup>1</sup>
Dam	An artificial barrier created by a man-made means deigned to form a basin to hold water and create a pond or reservoir. <sup>1</sup>
Declaration	The declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973. <sup>10</sup>
Decree	A final product of adjudication and a legal document issued by a district court or the Montana Water Court defining the priority, amount, use and location of a water right or set of water rights. The Montana Water Court adjudicates and prepares the decrees for entire basins as part of the adjudication process. <sup>4</sup>
Decree Abstract	The abstract that is part of Water Court issued decree. The decree abstract contains the original or amended claim information, changes authorized by the Water Right Adjudication Rules or the Water Court, Water Court ordered data, and remarks. <sup>7,**</sup>
Decreed Right	A claimed water right determined in a court decree prior to the commencement of this adjudication or after commencement of this adjudication as provided in §85-2-216, MCA. <sup>7,**</sup>
Decreed Water Right	A water right issued by the court upon adjudication of a stream. <sup>2</sup>
Deep Percolation	Water that percolates below the root zone and infiltrates a deeper aquifer that is not used by other appropriators or connected to a surface water source. <sup>1</sup>
Department	The Montana Department of Natural Resources and Conservation (DNRC) <sup>1</sup> or Department of Environmental Quality, depending on context
Developed Spring	A spring with some man-made development at or below the point of extrusion which brings additional flow to the surface which would not naturally be available for use and is classified as groundwater. <sup>7,**</sup>
Dewatering of Streams, Chronic and Periodic	Dewatering is a reduction in stream flow below the point where stream habitat is adequate to support healthy fish populations. Chronic dewatering is a significant problem in all years while periodic dewatering is a significant problem only in drought years. <sup>9</sup>
Director	The director of the department or the director's designee. <sup>1</sup>
Discharge Permit	An authorization from the Montana Department of Environmental Quality that allows the discharge of WASTE within specific parameters. <sup>8</sup>
Diversion	An open, physical alteration of a stream's flow away from its natural course. <sup>2,5</sup>
DNRC	Department of Natural Resources and Conservation. Montana's DNRC was established through the Executive Reorganization Act of 1971. It administers the portions of the Montana Water Use Act that relates to water uses after June 30, 1973. <sup>5</sup>





# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

Domestic Use	Those water uses common to a household including: food preparation, washing, drinking, bathing, waste disposal, cooling and heating, garden and landscaping irrigation up to five acres. <sup>1</sup> (See also "Household" and "In home use".)
Drainage Device	A mechanism capable of draining or releasing substantially the full capacity of a reservoir. <sup>1</sup>
Duplicate Water Right	More than one statement of claim having all the same elements and documentation. <sup>7,**</sup>
Duty	A water right is limited to the amount of water reasonably needed for a particular use. In Montana, the early courts developed a rule of thumb for irrigation of 1 miner's inch of water per acre. The courts deviated from this duty standard when the evidence demonstrated a greater or lesser need. <sup>6</sup>
Effluent	An outflow of waste <sup>8</sup>
Element	The factors which describe a water right including, but not limited to: the priority date; source of supply; point of diversion; means of diversion; period of diversion; flow rate; volume; acreage; purpose; place of use; period of use; storage capacity; and storage location. <sup>1</sup>
Enforceable priority date	A priority date of June 30, 1973, or later, which is administratively assigned to late claims that are subordinate to valid, timely filed claims and certain permits in accordance with §85-2-221(3)(f), MCA. <sup>7,**</sup>
Error Check Report	A database report which checks for examination errors at the conclusion of the examination of a statement of claim. <sup>7,**</sup>
Evapotranspiration (ET)	The loss of water from the soil both by evaporation and by transpiration from living plants. Evaporation accounts for the movement of water to the air from sources such as the soil, canopy interception, and water bodies. Transpiration accounts for the movement of water within a plant and the subsequent loss of water as vapor through stomata in its leaves. <sup>9</sup>
Examination	The process under the W.R.C.E.R. of examining, gathering information, and reporting data, facts, and issues pertaining to the claims of existing water rights. Prior to the adoption of the W.R.C.E.R. on July 15, 1987, this process was referred to as "verification". <sup>7,**</sup>
Examination Worksheet	A database generated worksheet used to guide an examiner through the examination of a statement of claim. <sup>7</sup>
Excluded Wells	Also known as "Exempt Wells"
Exempt Water Right	An existing water right for which a statement of claim did not have to be filed pursuant to §85-2-222.MCA. This includes 1) domestic use based on instream use with no man-made diversion, 2) domestic use based on a groundwater source, 3) stockwater based on instream use with no man-made diversion, 4) stockwater use based on a groundwater source, 5) appropriations of groundwater put to use between January 1, 1962 and July 1, 1973 with a notice filed under the 1961 Ground Water Code. <sup>7,**</sup>
Exempt Well	"Under Montana water law wells that divert 35 gallons per minute or less, and do not exceed 10 acre-feet per year in the total volume of water diverted are considered exempt from the DNRC Permitting Process." <sup>4</sup> <i>Although these small exempt wells are not required to go through the extremely time consuming (years) and the extraordinary cost of engineers, hydrologists, attorneys, hearings, etc., they are required to comply with a "simplified" process before they can receive an exempt well water right in the form of a "Certificate of Water Right" from DNRC. See "Understanding Small Individual Property Wells and Springs." For a free copy, email lamontkinkade@gmail.com.</i>



# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

Exempt Well Water Right	<p>This is a "Right-to-Water" drawn from small wells or small developed springs. It is documented as a true Water Right by a "Certificate of Water Right" issued as the last step of a DNRC simplified procedure. "Under Montana water law these wells that divert 35 gallons per minute or less, and do not exceed 10 acre-feet per year in the total volume of water diverted are considered exempt from the DNRC Permitting Process"<sup>4</sup>. Without this Exemption even the smallest use of water from a small well would be required to endure the extremely time consuming (years) and extraordinarily costly full-scale permitting process (engineers, hydrologists, attorneys, hearings, etc.).</p> <p>For details of the "Simplified Process" for obtaining Exempt Well Water Rights, see the "Understanding Small Individual Property Well &amp; Spring Water Right Exemption". For a free copy, email lamontkinkade@gmail.com.</p>
Existing Right <sup>1</sup>	In addition to its definition in 85-2-102, MCA, includes any appropriation of water commenced prior to July 1, 1973, if completed according to the law as it existed when the appropriation was begun. <sup>1</sup> (AKA <i>Appropriation Right or Claim</i> )
Existing Right <sup>2</sup>	A Montana water right originating on or before July 1, 1973, that is subject to adjudication. <sup>2</sup>
Existing Water Rights	"Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law. <sup>4,7,**</sup>
Evapotranspiration	The loss of water from the soil both by evaporation and by transpiration from living plants. <sup>1</sup>
Factual Issues	Unclear information or issues with a statement of claim that are factual in nature, such as numbers of acres irrigated or quantity of water used. Such issues result in issue remarks being added to claims during examination. <sup>7,**</sup>
Field Investigation	An on-site inspection, under §85-2-243, MCA, of physical evidence and features relating to the individual elements of a claimed water right. <sup>7,**</sup>
Filed Appropriation Right	A water right which has been filed and recorded in the office of the county clerk and recorder as provided by statute prior to July 1, 1973. <sup>7,**</sup>
Final Decree	The final <u>Water Court</u> determination of existing water rights within a basin or subbasin, as described in §85-2-234, MCA. <sup>7,**</sup>
Flowing Well	An oil or water well from which the product flows without pumping due to natural or artificially supplied subterranean pressure. <sup>9</sup>
Flow Rate	That rate at which water is diverted from a source, generally expressed in cubic feet per second or "cfs". <sup>2</sup> See also <i>Miners Inches</i> .
Gallons per Minute (gpm)	A measurement based on a rate of water flow that will supply 1 gallon of water in 1 minute <sup>2</sup>
General Abstract	A department-generated document that reflects certain water right elements from the department's database. <sup>1</sup> <i>It is limited in scope, silent on some elements and devoid of narrative explanations or relevant details.</i>
Geographical Information System (GIS)	Geographical Information System, which is software used to facilitate the collection, management and analysis of spatially referenced information and the associated attributes. It is the basis of the DNRC's Water Right Mapper program used during examination of statements of claim. <sup>7,**</sup>
Gallons Per Minute (GPM)	A flow rate of water in gallons per minute. <sup>1</sup>
Gray Area Remarks	Issue remarks that were the result of the verification process. <sup>2</sup>



# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

Ground Water <sup>2</sup>	Any water beneath the land surface, bed of a stream, lake, or reservoir. <sup>2</sup>
Ground Water <sup>5</sup>	(1) Water that flows or seeps downward and saturates soil or rock, supplying springs and wells. The upper surface of the saturate zone is called the water table. (2) Water stored underground in rock crevices and in the pores of geologic materials that make up the Earth's crust. <sup>5</sup>
Ground Water Recharge	Inflow of water to a ground-water reservoir from the surface. Infiltration of precipitation and its movement to the water table is one form of natural recharge. Also, the volume of water added by this process. <sup>5</sup>
Guideline	An estimate of reasonable use to be used as the benchmark for initiating further department review or claimant contact under the W.R.C.E.R. The estimate of reasonable water use is derived from technical data and recommendations of the department and adopted by the Water Court. <sup>7,**</sup>
Head Gate	The gate that controls water flow into irrigation canals and ditches. A watermaster regulates the head gates during water distribution and posts head gate notices declaring official regulations. <sup>5</sup>
Hearing Examiner	The person or persons assigned by the director to hear the contested case. <sup>1</sup>
Historical Irrigation	Irrigation that took place for the first time before July 1, 1973. <sup>7,**</sup>
Historical Right	An existing water right claim <sup>7,**</sup> See "Existing Water Right" above.
Household	The dwelling, house, or other domestic facilities where an individual, family, or social unit lives. <sup>1</sup> <i>No outside use. See also "In-home Use".</i>
Hydraulically Connected	A saturated water-bearing zone or aquifer in contact with surface water or other water-bearing zone where rate of exchange of water between the two sources depends on the water level of the water-bearing zone or aquifer. <sup>1</sup>
Hydrogeologic Assessment	A report for a project for or through which water will be put to beneficial use, the point of diversion, and the place of use that describes the geology, hydrogeologic environment, water quality, and predicted net depletion, if any, including the timing of any net depletion. <sup>8</sup>
Hydrograph	A chart showing the relationship between flow rate and time at given point (gage) in a watershed flow network. Time is usually on the horizontal axis and flow rate is usually on the vertical access. <sup>9</sup>
Hydrologic System	The overall movement of water, including snow and ice, above, on, or below the earth's surface. <sup>1</sup>
Implied Claim	A claim authorized by the Water Court to be separated and individually identified when a statement of claim includes multiple rights. <sup>7,**</sup>
Impoundment	Gathering and enclosure, as in a reservoir. <sup>8</sup>
In-home Use	Use inside a dwelling and no lawn or garden. <sup>1</sup>
Injunction	A court order prohibiting a specific act or commanding the undoing of some wrong or injury. <sup>2,5</sup>
Instream Flow <sup>2</sup>	Water left in a stream for nonconsumptive uses such as preservation of fish or wildlife habitat. <sup>7,28,16<sup>2</sup></sup>
In-stream Flow <sup>5</sup>	Non-consumptive water requirements that do not reduce the water supply, such as water required for maintaining flowing streams for fish or for recreational boating. <sup>5</sup>
Interested Person	A person with a real property interest, water right, or other economic interest that may be directly affected. <sup>2</sup>
Irrigation <sup>5</sup>	The controlled application of water for agricultural purposes through manmade systems to supply water requirements not satisfied by rainfall. <sup>5</sup>



# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

Irrigation <sup>7,**</sup>	The application of water to the land to eliminate the moisture limitation to crop production. (Soil Conservation Service, 1979.) <sup>7,**</sup>
Irrigation District <sup>8</sup>	A subdivision of government, managed by a board of directors, that supplies water to irrigators within a specified region. <sup>8</sup>
Irrigation District <sup>7,**</sup>	A statutory district created pursuant to Title 85, Chapter 7, MCA for the purpose of supplying irrigation water and other uses to its members. <sup>7,**</sup>
Irrigation Use	The controlled application of water to land to supply water requirements not satisfied by rainfall. <sup>1</sup>
Issue Remark	A statement added to an abstract of water right in a water court decree by the department or the water court to identify potential factual or legal issues associated with the claim. The term also includes "gray area remarks" that were the result of the verification process. <sup>2</sup>
Junior Appropriation/Junior Appropriator	A secondary user on a water course who holds a water right inferior to previous (senior) users. <sup>2,5</sup>
Late Claim	A claim filed with the department after 5:00 p.m., April 30, 1982 and physically submitted or postmarked on or before July 1, 1996. Late claims are subject to certain terms and conditions pursuant to §§85-2-221(3), 85-2-222 and 85-2-225, MCA. <sup>7,**</sup>
Legal Issues	Unclear information of a legal nature discovered during examination of a statement of claim. For example, non-use may raise the legal issue of abandonment or no evidence of use may raise the legal issue of non-perfection of the water right being examined. <sup>7,**</sup>
Legal Water Availability	Typically determined based upon comparison of physical water availability to the legal demands on a source or reach of a source by subtracting the legal demands from physical water availability. <sup>9</sup>
Mapper	A customized ArcGIS project designed and created to assist in mapping water rights throughout the state of Montana. Mapper allows the user to perform all the spatially related tasks inherent to examining water right claims. <sup>7,**</sup>
McCarran Amendment	An enactment in 1952 which is a waiver of sovereign immunity for federal and tribal reserved water rights acquired under federal law. Under this law, these rights can be subject to comprehensive adjudication proceedings in state court. 43 U.S.C. Section 666 (1988) <sup>7,**</sup>
Means of Diversion <sup>1</sup>	The type of structures, facilities, or methods used to appropriate, impound or collect water. Examples include, but are not limited to the following: dike, dam, ditch, headgate, infiltration gallery, pipeline, pump pit or well. <sup>1</sup>
Means of Diversion <sup>7,**</sup>	The structures, facilities, or methods used to appropriate water from the source of supply. For instream or inlake appropriations, the means of diversion is "instream" or "inlake". <sup>7,**</sup>
Measured Water Use Allowance	The allocation of additional water over and above the Farm Turnout Allowance (FTA) that an irrigator who demonstrates efficient use and need may obtain under the FIIP Water Use Agreement <sup>3</sup>
Median Year	That water flow would be at the 50 <sup>th</sup> percentile. Half of the years would have had higher flows and the other half would have had lower flows. <sup>1</sup>
Miner's Inches (MI)	By Montana law, 1 cfs is approximately equal to 40 miner's inches (1 Miner's Inch=11.25 Gallons Per Minute (GPM) or 1.5 Cubic Feet Per Minute (CFM) or 0.0495 Af/day. <sup>2,5</sup>
Mitigation	The reallocation of surface water or groundwater through a change in appropriation or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water. <sup>8</sup>





# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

Montana Code Annotated (MCA)	The laws of Montana classified by subject. <sup>8</sup> <i>Example: 85-2-225 MCA, as opposed to a rule. Example of a Rule: 36.12.101.</i>
Montana Water Court	The judicial entity responsible for the adjudication of all pre-1973 water rights claims in Montana. <sup>3</sup>
Montana Water Use Act (MWUA)	The laws of Montana that govern water rights adjudication and administration. Found at Title 85 of the Montana Code Annotated.
Montana Water Use Act	An act passed in 1973 to regulate Montana's water rights. All water rights prior to July 1, 1973 are to be finalized through an adjudication process and all new water rights have a permit system through DNRC. Also systems for changing water rights, centralized records, and reserving water for future consumptive and minimum instream uses were established. <sup>4</sup>
Multiple Domestic Use	A domestic use by more than one household or dwelling characterized by long-term occupancy as opposed to guests. Examples are domestic uses by colonies, condominiums, townhouses, and subdivisions. <sup>1</sup>
Multiple Use	The same appropriation used for more than one purpose by a single owner. <sup>7,**</sup>
Municipal Use	Water appropriated by and provided for those in and around a municipality or an unincorporated town. <sup>1</sup>
Murphy Right <sup>2</sup>	In 1969, the Montana Legislature enacted legislation granting the Montana Fish and Game Commission authority to appropriate unappropriated waters on 12 streams to maintain instream flows for the preservation of fish and wildlife habitat. These are known as Murphy rights after Representative James E. Murphy, who sponsored the measure. . The priority dates are 1970 or 1971. <sup>2</sup> <i>See also "Understanding Types of Water Rights in Montana." For a free copy email Lamontkinkade@gmail.com.</i>
Murphy Right <sup>3</sup>	The instream flow rights held by Montana DFWP pursuant to 1969 legislation authorizing appropriations for fisheries maintenance on twelve blue ribbon trout streams. The rights are named after the bill's sponsor, James E. Murphy. <sup>3</sup>
Murphy Rights <sup>4</sup>	Established in 1976. Appropriated stream flow amounts necessary for the preservation of fish and wildlife habitats. Named for the legislative author, Jim Murphy of Kalispell. They date back to 1970 and 1971 on 12 Blue Ribbon trout streams and only protect flows when senior water rights have been satisfied. <sup>4</sup>
Natural Subirrigation	A naturally occurring high water table condition that supplies water for crop use. <sup>7,**</sup>
Net Depletion	For the purposes of 85-2-360, MCA, means the calculated volume, rate, timing, and location of reductions to surface water resulting from a proposed groundwater appropriation that is not offset by the corresponding accretions to surface water by water that is not consumed and subsequently returns to the surface water. <sup>1</sup> <i>(Other definitions may apply.)*</i>
Nodes (Natural & FIIP)	Natural nodes are the measurement points located above any man-made stream diversions where the Tribes' on-Reservation instream flows would be monitored. FIIP nodes are the measurement points for instream flows on streams used by the Flathead Indian Irrigation Project on which the Tribes also have instream flow rights. <sup>3</sup>
Non-consumptive Use	A beneficial use of water that does not cause a reduction in the source of supply. <sup>7,**</sup>
Nonperennial Flowing Stream	A stream that does not flow continuously year-round. <sup>8</sup> <i>(Intermittent stream)</i>
Notice Area	A geographic area determined by the department which may include water rights affected by an application. <sup>1</sup>



# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

Off-stream Reservoir	A reservoir that is not located on the source of supply and is supplied with water from a diversion means such as a pipe, headgate and ditch or other means. <sup>1</sup>
On-site Visit	An informal field investigation conducted at a claimant's invitation. <sup>7,**</sup>
On-stream Reservoir	A reservoir that is located on the source of supply. <sup>1</sup>
Overstated Water Rights	Water rights in excess of what was perfected through beneficial use. <sup>9</sup>
Owner	Any person, according to §85-2-102, MCA, who has title or interest in water rights or properties. <sup>7,**</sup>
Owner of Record	A person who, according to the department's records, is the current owner of a water right. <sup>1</sup> ( <i>DNRC Water Right Query System</i> )
Ownership Update <sup>1</sup>	The updating of the department's water right ownership records by the filing of an ownership update form, Form No. 608, pursuant to 85-2-421 through 85-2-426, MCA. The department's form does not transfer water rights or legally determine water right ownership. It only updates the department's centralized ownership records as reflected by the legal documents that actually transfer water rights. <sup>1</sup>
Ownership Update <sup>7,**</sup>	The updating of the department's water right ownership records pursuant to §§85-2-421 through 85-2-426, MCA. The department's ownership update form or the automated records update do not transfer water rights or legally determine water right ownership. The department's centralized ownership records are updated by what is reflected on the legal documents that actually transfer water rights. (Updated version from Supreme Court Rules due to a procedural change by statute.) <sup>7,**</sup>
Party	An applicant, objector, petitioner, respondent, or other person named, admitted, or entitled to a contested case hearing pursuant to Title 85, chapter 2, parts 3 and 4, MCA. <sup>1</sup>
Perfect	<i>To put diverted water to a Beneficial Use, file a "Notice of Completion" and obtain the appropriate "type" of water right document from DNRC. (Some interpretations vary.)</i>
Period of Diversion	The period in a calendar year when water is diverted, impounded, or withdrawn from the source of supply. It is described by the earliest month, day and the latest month and day water is diverted during each year. <sup>1</sup>
Period of Use	The period in a calendar year when water is used for specified beneficial use. It is described as the earliest month and day and the latest month and day the water is beneficially used during each year. <sup>1</sup>
Permit <sup>1</sup>	A permit to appropriate water issued by the department under Title 85, chapter 2, part 3, MCA. <sup>1</sup>
Permit <sup>2</sup>	An authorization to use water, issued by the state, specifying conditions such as type, quantity, time, and location of use, and required for any new appropriation of water under State law after June 30, 1973. <sup>2</sup>
Permit <sup>7</sup>	An authorization to use water, issued by the state, specifying conditions such as type, quantity, time and location of use. Permits are issued for uses after July 1, 1973 for surface water appropriations, or any groundwater uses over 35 gallons per minute or 10 acre-feet. <sup>7,**</sup>
Person	An individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity (see 85-2-102, MCA). <sup>1</sup>
Physical Water Availability	The amount of water physically available at a specific point on a source typically measured in flow rate and volume. <sup>9</sup>
Place of Use (POU)	The land, facility or site where water is beneficially used. <sup>1</sup>



# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

Point of Diversion (POD)	The land, facility, or site where water is diverted from the source of supply. <sup>1</sup>
Pit, Pit-dam or Pond	A body of water that is created by man-made means, which stores water for beneficial use. <sup>1</sup>
Place of Storage	A reservoir, pit, pit-dam or pond. <sup>1</sup>
Potentially Affected Area	For the purposes of 85-2-361, MCA, means, as referred to in basin closure rules and in the context of a hydrogeologic assessment, the area or estimated area where groundwater will be affected by a proposed project. The identified area is not required to exceed the boundaries of the drainage subdivisions established by the Office of Water Data Coordination, United States Geological Survey, and used by the Water Court, unless the applicant chooses to expand the boundaries. <sup>1</sup>
Possessory Interest	The right to exert some interest or form of control over specific land. It is the legal right to possess or use property by virtue of an interest created in the property, though it need not be accompanied by fee title, such as the right of a tenant, easement holder, or lessee. <sup>1</sup>
Pre-application Review	The applicant or the applicant's attorney or consultant or others who may know about the proposed project have met with the department in person, via teleconference, or via video conference to discuss details of the proposed project and application. <sup>1</sup>
Preliminary Decree	The preliminary Water Court determination of existing water rights within a basin or subbasin as described in §85-2-231, MCA, which precedes the final decree. <sup>7,**</sup>
Preponderance of the Evidence	Convincing evidence that shows that the facts are more probable than not. Standard used in the Montana Water Court to determine water right validity.
Primary Diversion	The initial point from which diversion means will remove or impound water from the source of supply. <sup>1</sup>
Prior Appropriation Doctrine	In the West water law generally follows the Prior Appropriation Doctrine. The person having the earliest priority date on their water right gets first use of the water; "First in time is first in right." <sup>4</sup>
Prior Appropriations	The principle governing water law in Montana, namely that first in time is first in right, and that a senior appropriator is entitled to use the last drop of water to which that user is entitled before a junior appropriator may use the first drop of theirs. <sup>2</sup>
Priority Date <sup>1</sup>	The clock time, day, month, and year assigned to a water right application or notice upon department acceptance of the application of notice. The priority date determines the ranking among water rights. <sup>1</sup>
Priority Date <sup>2,5</sup>	The official date of an appropriation, generally the date of established intent; used in determining seniority among water users. <sup>2,5</sup>
Priority Date <sup>4</sup>	The clock time, day, month, and year assigned to a water right application or notice upon DNRC acceptance of the application or notice. The priority date determines the ranking among water rights. <sup>4</sup>
Proceeding	All events in a contested case following issuance of a hearing notice and appointment of hearing examiner, including prehearing conferences, hearings, interlocutory orders, and the decision of the hearing examiner on the merits. <sup>1</sup>
Project	A place of use that has its own identifiable flow rate, volume and means of diversion. <sup>1</sup>
Project Operator	The entity with the legal authority and responsibility to operate the Flathead Indian Irrigation Project, currently the CME. <sup>3</sup> ( <i>Cooperative Management Entity</i> )
Provisional Permit	"Temporary" permit for use of water. <sup>8</sup>



# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

Quantify (Quantification)	<i>To make specific the quantity or extent. (World Book Dictionary) These terms are widely used, but not universally understood or adequately defined.</i>
Reasonable Use	The use of a water right taking into account the suitability of the watercourse, economic value, social value, and impacts on other users in the watercourse. <sup>4</sup>
Recharge	The resupply of water to rivers or aquifers. <sup>8</sup>
Recreational Use	Includes but is not limited to swimming, boating, water sports, and fishing. <sup>1</sup>
Redundant Water Right	A claim in which many of the elements are the same on more than one statement of claim. Most often, the priority date is different. <sup>7,**</sup>
Remarks	Statements added to the decree abstract by the department or the water court to limit or define a water right, to explain unique aspects of the water right, and to identify potential factual and/or legal issues. Remarks that limit, define, or explain unique aspects of a claim are “clarifying” or informational remarks and appear on the abstract under the element they clarify or at the end of the abstract if they contain general information. Remarks that identify potential factual or legal issues are “issue” remarks and appear in the issue remark box at the end of the abstract. Review abstracts “issue” remarks are underlined and appear under a certain element or at the end of the abstract. <sup>7,**</sup>
Reserved Water Right <sup>2</sup>	A special water right accompanying federal lands or Indian reservations, holding a priority date originating with the creation of the land. <sup>2</sup>
Reserved Water Rights <sup>7,**</sup>	A right to use water that is expressly or impliedly reserved by treaty, an act of Congress, or an executive order based on Federal law. <sup>7,**</sup>
Reservoir	A pond, pit, or pit-dam, created by man-made means that impounds and stores water. <sup>1</sup>
Return Flow <sup>1</sup>	That part of a diverted flow which is applied to irrigated land and is not consumed and returns underground to its original source or another source of water, and to which other water users are entitled to a continuation of, as part of their water right. Return flow is not wastewater. Rather, it is irrigation water seeping back to a stream after it has gone underground to perform its nutritional function. Return flow results from use and not from water carried on the surface in ditches and returned to the stream. <sup>1</sup>
Return Flow <sup>4</sup>	Part of a diverted flow that is applied to irrigated land or other beneficial use and is not consumed and returns underground to its original source or another source of water. Other water users may be entitled to this water as part of their water right. <sup>4</sup>
Review Abstract	A database generated report of the examination results. It is used as a tool to inform the claimant of their water right and any additional facts and findings, including potential issues. <sup>7,**</sup>
Riparian	Riparian means related to or situated on the banks of a river. A riparian zone or riparian area is the interface between land and a river or stream. <sup>9</sup>
Salvaged Water	Water made available through water-saving methods. <sup>8</sup>
SB76	Senate Bill 76. The bill was passed in the 1979 legislature and called for the adjudication of all the remaining basins in the state, excluding the Powder River basins. It divided Montana into four water divisions and called for four judges, commonly known as the Water Court, to adjudicate all existing water rights in a statewide proceeding. <sup>7,**</sup>
Secondary Diversion	A diversion that is not from the source of supply but is a diversion that is used after the water is diverted from the source of supply at the primary diversion. For example, a pump in a ditch or reservoir is a secondary diversion. <sup>1</sup>
Seepage Water	That part of a diverted flow which is not consumptively used and which slowly seeps underground and eventually returns to a surface or groundwater source, and which other





# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

	water users can appropriate, but have no legal right to its continuance. Typical examples of seepage water include underground losses from an irrigation ditch or pond. <sup>1</sup>
Senior Appropriator	An original user on a watercourse who holds a water right superior to all subsequent (junior) users. <sup>2 &amp; 5</sup>
Senior Water Right	A water right with a priority date that is earlier in time than another water right. <sup>1</sup>
Service or Serve	Personal service or service by first class United States mail, postage prepaid and addressed to a person's last known address. Proof of service shall be made by the person making such service. Service by mail is complete upon the placing of the item to be served in the mail. Agencies of the State of Montana may also serve by depositing the item to be served with the mail and distribution section, General Services Division, Department of Administration. <sup>1</sup>
Service List	The list of persons notified of all future hearings or proceedings relevant to a specific claim or case. This list may include the claimants and their representatives, any objectors and their representatives, any persons filing a notice of intent to appear and their representatives, any counter-objectors and their representatives, any intervenors and their representatives, and other persons receiving courtesy notification. <sup>7,**</sup>
Show Cause	A contested case before the department in which a person aggrieved by a proposed action of the department is given the opportunity to present evidence and testimony to show why the proposed action should not be taken. A show cause proceeding conducted following a preliminary determination to deny or preliminary determination to grant with modifications pursuant to 85-2-310, MCA, shall be conducted as an informal contested case proceeding pursuant to 2-4-604, MCA. <sup>1</sup>
Source Aquifer	The specific groundwater source from which water is diverted for a beneficial use. <sup>1</sup>
Source of Supply	The specific surface or groundwater source from which water is diverted for a beneficial use. <sup>1</sup>
Split Claim	The division of one water right claim into two or more separate claims. When a claim is split, one portion of the claim maintains the original claim number and the other separated portions are assigned new claim numbers. <sup>7,**</sup>
Spring	A hydrologic occurrence of water involving the natural flow of water originating from beneath the land surface and arising to the surface of the ground. A developed spring is groundwater if some physical alteration of its natural state occurs at its point of discharge from the ground, such as simple excavation, cement encasement, or rock cribbing. An undeveloped spring is surface water if no development occurs at its point of discharge and the appropriation is made from the waters flowing on the surface of the ground. <sup>1</sup>
Staff	A person employed or retained by the department. <sup>1</sup>
State Based Rights	Water rights based on state law rather than Federal law. Reserved rights claimed by Indian tribes or Federal agencies are based on Federal law. Generally, private or state claims are based on state law. <sup>7,**</sup>
Statement of Claim	The assertion that a water right exists under the laws of Montana or that a reserved water right exists under the laws of the United States in Montana's general adjudication. <sup>4</sup>
Stock Use	The use of water for livestock, including but not limited to cattle, horses, pigs, sheep, llamas, and animals owned and controlled on game farms. It does not include domestic animals such as dogs and cats or wild animals. <sup>1</sup>
Stream Depletion Zone	An area where hydrogeologic modeling concludes that as a result of a groundwater withdrawal, the surface water would be depleted by a rate equal to a rate of at least 30% of the groundwater withdrawn within 30 days after the first day a well or developed spring



# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

	is pumped at a rate of 35 gallons a minute. <sup>9</sup>
Substantial Credible Information	Probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information. <sup>10</sup>
Summary Report	The department's report to the Water Court consisting of individual abstracts, the claimed and clarified data and a summary organized in indexes of the department's examination findings for each claim within a basin or subbasin. <sup>7,**</sup>
Supplemental Rights	Separate water rights for the same purpose, owned by the same claimant, and used on overlapping places of use. <sup>7,**</sup>
Surface Water <sup>1</sup>	All water of the state at the surface of the ground, including but not limited to any river, stream, creek, ravine, coulee, undeveloped spring, lake, and other natural surface source of water regardless of its character or manner of occurrence. <sup>1</sup>
Surface Water <sup>2</sup>	Water above the land surface, including lakes, rivers, streams, wetlands, wastewater, flood water, and ponds. <sup>2</sup>
Temporary Authorization or Temporary Change	An authorization to change granted pursuant to 85-2-407 and 85-2-408, MCA, for a specific period of time and with an automatic expiration date. <sup>1</sup>
Temporary Emergency Appropriation	The temporary beneficial use of water necessary to protect lives or property by reason of fire, storm, earthquake or other disaster, or unforeseen combination of circumstances which call for immediate action. An appropriation made necessary due to drought conditions is not a temporary emergency appropriation. <sup>1</sup>
Temporary Permit	A permit to appropriate water granted pursuant to Title 85, chapter 2, part 3, MCA, for a specific period of time and with an automatic expiration date. <sup>1</sup>
Temporary Preliminary Decree	A Water Court decree, prior to the issuance of the preliminary decree, as necessary for the orderly administration of existing water rights pursuant to §85-2-231. MCA. <sup>7,**</sup>
Time Immemorial	Time extending beyond the reach of memory, record, or tradition, indefinitely ancient, "ancient beyond memory or record;" a time before legal history and beyond legal memory <sup>2</sup>
Transitory Diversion	A movable diversion that will divert water from several nonspecific points along a source of supply. <sup>1</sup>
Transpiration	Process by which water that is absorbed by plants, usually through the roots, is evaporated into the atmosphere from the plant surface, such as leaf pores. <sup>5</sup>
Tribal Reserved Water Rights	Established by an act of Congress, a treaty, or an executive order. Gives a right to use water; the amount of water reserved depends on the purpose for which the land was reserved. <sup>4</sup>
Tributary	A surface water source feeding another surface water source; or groundwater hydraulically connected to a surface water source. <sup>1</sup>
Type of Historical Right	Refers to the historical basis of an existing water right as a decreed right, filed appropriation right, reserved right or use right. <sup>7,**</sup>
Unappropriated Water	Water which has not been appropriated, and in which no other person has or claims superior rights and interests. <sup>4</sup>
Undeveloped Spring	The flow from the spring is not increased by some development at its point of extrusion from the ground and is classified as surface water. <sup>7,**</sup>
Unnamed Tributary	A surface water stream, coulee, or draw, which is not named on a United States Geological Survey (USGS) or Water Resources Survey (WRS) map. <sup>1</sup>
Use of Water for the Benefit of the Appropriator	The amount of water reasonably needed for the intended purpose; the amount of water needed for conveyance to the intended purpose; and water used for instream flow. <sup>1</sup>



# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

Use Right	A claimed existing water right perfected by appropriating and putting water to beneficial use without written notice, filing, or decree. <sup>7,**</sup>
Valid	Recognized by law; legal and enforceable. Under Montana water law <i>validity</i> is used to determine water rights possession and assignment. Only those with valid water rights have an enforceable right to water. Validity for pre-1973 rights is determined through the adjudication process in the Montana Water Court. Post-1973 water rights are obtained through the permitting process with DNRC. <sup>2</sup>
Vested	A term used in some other Western states to describe water rights that are secured in the possession of or assigned to a person. Montana water law does not use this term or concept for determining water rights possession or assignment. See Valid, above.
Viable	<i>Water physically &amp; legally existing at the point of diversion.</i>
Volume <sup>1</sup>	The acre-feet of water. Twelve acre-inches or 325,851 gallons are equal to one acre-foot. <sup>1</sup>
Volume <sup>2</sup>	Amount of water diverted over a specific period of time. <sup>2</sup>
Walton Right	A non-Indian purchaser of an Indian allotment also acquires the Indian allottees' share of the reservation's irrigation water rights; the priority date of the right remains the date of the creation of the reservation; and, unlike the Indian allottee, the Indian purchaser loses the reserved water right if it is not put to use. The non-Indian purchaser is limited to the quantity of water that he/she puts to use with reasonable diligence after the transfer of title to the land. See <i>Colville Confederated Tribes v. Walton</i> , 647 F.2d 42 (9 <sup>th</sup> Cir. 1981) and <i>William C. Canby, Jr., American Indian Law in a Nutshell 4858-487 (West 2009)</i> . <sup>2</sup>
Waste <sup>9</sup>	Unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use. <sup>9</sup>
Waste And Seepage <sup>7,**</sup>	Waste water means the loss of water through the design or operation of an appropriation of water distribution facility. Seepage is the movement of water through a porous soil; its origin could be from another's waste or occurring naturally. <sup>7,**</sup>
Wasteful Use	The unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility of the application of water to anything but a beneficial use. <sup>8</sup>
Wastewater <sup>1</sup>	That part of a diverted flow which is not consumptively used and which returns as surface water to any surface water source, and which other water users can appropriate, but have no legal right to its continuance. A typical example is an irrigator who turns into the individual furrows traversing the irrigator's field from the head ditch more water than can seep into the ground. The water that stays on the surface and is not absorbed into the earth and which remains at the end of the furrow and is collected in a wastewater ditch is wastewater. <sup>1</sup>
Wastewater <sup>5</sup>	Water that has been used in homes, industries, and businesses that is not for reuse unless it is treated. <sup>5</sup>
Water Bank	An institutional mechanism used to facilitate the legal transfer and market exchange of various types of surface water, groundwater, and storage entitlements. Water banks use the market to make water available for new uses. <sup>9</sup>
Watercourse	Any naturally occurring stream or river, not including ditches, culverts, or other constructed waterways. <sup>2</sup>
Water Court <sup>2</sup>	Only Montana court with exclusive jurisdiction over the adjudication of water rights claims. <sup>2</sup>
Water Court <sup>4</sup>	Located in Bozeman, the Montana Water court's primary function is to carry out the



# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

	state-wide adjudication. Disputes between water right holders are still handled in local district court, and the local district courts oversee water commissioners in their area. <sup>4</sup>
Water Court <sup>5</sup>	The 1979 Legislature created the Montana Water Court to expedite and facilitate the statewide adjudication of over 219,000 state law-based water rights (generally rights with a pre-July 1973 priority date) and Indian and Federal reserved water rights claims. The Water Court has exclusive jurisdiction over the adjudication of water rights claims. <sup>5</sup>
Water Court <sup>7,**</sup>	The water division of the state courts presided over by water judges responsible for adjudicating existing water rights in Montana as provided for in Title 3, Chapter 7, MCA. <sup>7,**</sup>
Water Commissioner	Appointed by a district court to distribute water according to the water rights decree to aid in solving a water rights dispute. <sup>4</sup>
Water Consumed	Water that is no longer available for use because it has evaporated, transpired through natural vegetation, been consumed by humans or livestock, used in the production of crops, or used for industrial applications. <sup>4</sup>
Water Diversion	Changing the natural flow of water to another location by using dams, canals, or pipelines. <sup>5</sup>
Water Flow Estimating Technique	A mathematical method of estimating flow generally accepted by the department. This may be accomplished by correlating measurements of diversion system components with actual water use to estimate flow rate or volume of water used. An example is the use of measurements of power consumed by a pump to estimate the amount of water delivered by a pump. Another flow estimating technique would be to apply specific formulas developed by professional hydrologists based on climatic, basin, or stream channel characteristics to estimate stream flow. <sup>1</sup>
Water Judge	A judge responsible for adjudicating existing water rights as provided for in Title 3, Chapter 7, Part 2, MCA. <sup>7,**</sup>
Water Lease	An agreement with a water user to allow a person or organization, for a fee, to lease water from the user. Water leases are often used in Montana to maintain instream flow. <sup>4,9</sup>
Water Master <sup>2,5</sup>	An attorney versed in water law who serves at the discretion of the Water Court. <sup>2,5</sup>
Water Master <sup>7,**</sup>	A person appointed by a water judge to assist in the adjudication of existing water rights as provided for in Title 3, Chapter 7, Part 3, MCA, and Rule 53 of the Montana Rules of Civil Procedure. <sup>7,**</sup>
Water Management Board	The five member joint State-Tribal board that would administer the UMO on the Reservation under the Compact. <sup>3</sup> ( <i>CSKT Compact</i> )
Water Measuring Device	Equipment that directly measures water flow in open or closed channels and conduits. Examples would be flow meters, weirs, flumes, and bucket and stop watch. <sup>1</sup>
Water Quality	Chemical, physical, and biological characteristics of water that determine its suitability for a particular use. <sup>8</sup>
Water Reservation	A water right held by a government entity for future use of instream flow. <sup>7,**,8</sup>
Water Resources Survey <sup>1</sup> (WRS)	A survey by county of water resources and water rights in Montana by the former State Engineer's Office or Water Resources Board, predecessors of the department. <sup>1</sup>
Water Resources Survey <sup>7,**</sup> (WRS)	A survey of water resources and water rights in Montana on a county basis by the former state engineer's office or water resources board, predecessors of the department. <sup>7,**</sup>
Water Right Change	A change in the place of diversion, the place of use, the purpose of use, or the place of storage of a water right. These changes need the approval of DNRC to assure that the change will cause no adverse affect to other water users. <sup>9</sup>





# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

Water Savings Method	A change to the actual water use system or management of water use in which the modification being made would decrease the amount of water needed to accomplish the same result. Water savings methods might include changing from a ditch conveyance to a pipeline; lining an earthen ditch with concrete or plastic; and changing management of a water system to decrease water consumption. <sup>1</sup>
Watershed <sup>2</sup>	A geographic area that includes all land and water in a drainage system. <sup>2</sup>
Watershed <sup>5</sup>	The land area that drains water to a particular stream, river, or lake. It is a land feature that can be identified by tracing a line along the highest elevations between two areas on a map, often a ridge. Large watersheds, like the Mississippi River basin contain thousands of smaller watersheds. <sup>5</sup>
Watershed <sup>9</sup>	All the land that drains to a river or lake, with boundaries defined by topography (and includes wetlands, flood plains, riparian areas and uplands). For the purpose of this planning document, the term "watershed" is referring to a subunit of a sub-basin (smaller area). <sup>9</sup>
Water Table	The upper level of ground water; the level below which soil and rock are saturated with water. <sup>5</sup>
Water Use Agreement	The agreement between the FJBC, Tribes, and United States stipulating how the FIIP is to be managed so as [to] allocate water between Tribal instream flow rights and Project irrigation deliveries. <sup>3</sup>
Water Withdrawn	Water extracted from the ground or diverted from a surface source. Some withdrawn water reenters the water system further downstream as return flow. <sup>4</sup>
Well	Any artificial opening or excavation in the ground, however made, by which groundwater can be obtained or through which it flows under natural pressure or is artificially withdrawn. Section 89-2911, R.C.M. 1947 (1961 Groundwater Code). <sup>7, **</sup>
Winters Doctrine <sup>2</sup>	Amalgamation of federal case law defining a reserved Indian water right as a right to water sufficient to carry out the purposes of the reservation with a priority date as of the date of establishment the reservation. See <i>Winters v. U. S.</i> , 207 U.S. 564(1908); <i>Arizona v. California</i> , 373 U.S. 546 (1963); <i>Cappaert v. U.S.</i> , 426 U.S. 128 (1976); <i>U.S. v. Adair</i> , 723 F.2d 1394, 1408-1411 (9 <sup>th</sup> Cir. 1983). Under the Montana Water Use Act, tribal reserved water rights must be resolved through Montana's statewide adjudication process. The Montana supreme court has ruled that the Act is adequate to adjudicate federal and Indian reserved water rights. <i>State ex rel. Greely v. Confed. Salish &amp; Kootenai Tribes</i> , 219 Mont. 76, 95 (1985). However, though the Water court can adjudicate tribal reserved rights, its decisions will be subject to scrutiny by both the Montana and the U.S. Supreme Courts. <i>Id.</i> <sup>2</sup>
Winters Doctrine <sup>7, **</sup>	States that when the United States withdrew land from the public domain to establish an Indian reservation (Ft. Belnap), it also impliedly withdrew sufficient water to satisfy the purpose for which the lands were withdrawn. The doctrine applies to any land withdrawn for a federal purpose (Indian reservations, national parks, national forests). The doctrine did not quantify the amount of water involved. <i>Winters v. United States</i> , 207 U.S. 564 (1908). <sup>7, **</sup>
Zone of influence	The horizontal extent of the cone of depression. <sup>1</sup>



# MONTANA WATER SPECIALISTS

Cell 406-249-4997

www.MontanaWaterSpecialists.com

Fax 866-799-3296



## GLOSSARY OF WATER TERMS (A general guide to the language of water) \*

### Sources and References:

- 1 [www.mtrules.org/gateWay/Print\\_RV.Asp?RV=41016](http://www.mtrules.org/gateWay/Print_RV.Asp?RV=41016) Montana Rules 36.12.101 Definitions
- 2 "Montana Water Law Key Terms & Concepts" MT Water Rights Key Terms & Concepts, DNRC \_\_\_\_\_
- 3 "Glossary of Terms and Abbreviations" Report on the Proposed Water Rights Compact Between the State of  
 4 Montana and The Confederated Salish and Kootenai Tribes of the Flathead Reservation.  
 5 "Water Fact Sheets Terminology", Water Fact Sheet #10 Montana Watercourse (Montana DNRC), April 2015  
 6 Association of Gallatin Agricultural Irrigators (AGAI), [www.agaimt.com/#!/glossary-links/c1d84](http://www.agaimt.com/#!/glossary-links/c1d84)  
 7 C. Bruce Loble, Chief Water Judge  
 2013 DNRC Claims Examination manual. [http://dnrc.mt.gov/divisions/water/adjudication/docs/claims-examination/chapter\\_2.pdf/view](http://dnrc.mt.gov/divisions/water/adjudication/docs/claims-examination/chapter_2.pdf/view)  
*"The following terms are used in this manual. The definitions are often from the Rule 2 of the Montana Supreme Court Water Rights Claim Examination Rules (W.R.C.E.R.) with additional definitions from other reputable sources. For additional definitions concerning post June 30, 1973 -terms, see §85-2-102, MCA (per Rule 2 (b), W.R.C.E.R.)."*
- 8 "Water Rights in Montana" April 2014 (DNRC, Legislative Environmental Quality Council, Montana University System Water Center)
- 9 Montana State Water Plan, Appendix A "Glossary of Terms"
- 10 §85-2-102 (Definitions) MCA
- \* Unless the context requires otherwise (or the document containing the word, phrase, concept or acronym has a source-specific set of unique definitions incorporated within it), the reader may reasonably rely on the definitions and concepts contained herein. The contents herein are provided as information offerings and are not intended to be legal or accounting advice in any way. All readers are advised to seek competent legal counsel prior to entering into any binding or consequential undertaking or other reliance!
- \*\* This definition is used primarily (although not exclusively) by the MT Supreme Court "Water Court" in the adjudication of "Pre-1973 existing water rights claims." The reader is advised to look to the context in which these words, phrases and acronyms are specifically used and consider any specific "definitions" cited in, and unique to, that context or document.