

Amending a Pre 1973 Water Right Claim

MCA 85-2-233 (6) says this about amending water rights:

(6) (a) After the issuance of a temporary preliminary decree or preliminary decree, notice must be published once a week for 3 consecutive weeks in two newspapers of general circulation in the basin where the decree was issued for:

(i) a motion to amend a statement of claim that may adversely affect other water rights; or

(ii) a motion to amend a timely objection that may adversely affect other water rights.

(b) The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice.

(c) The water judge may order any additional notice of the motion as the water judge considers necessary.

(d) The costs of the notice required pursuant to this subsection must be borne by the moving party.

Because there is not a preliminary decree issued by the water court in basins 76L and 76LJ, you should simply be able to process an amendment to your water right on the form attached to this document.

If the purpose of the amendment is to change the priority date to July 16, 1855 because you are a successor in interest to an allottee, you may want to consider explaining to the court that it is because you only recently learned your property was an Indian Allotment.

Consider including a copy of the allottee land patent from the [BLM General Land Office Records](#), a copy of your deed or property tax record information from the [Montana Cadastral](#) website and any other information that you think will help demonstrate that that you've met the court mandated criteria to be for a Walton Water Right.

1. The claim is for water use on land formerly part of the Flathead Indian Reservation, and the land was allotted to a member of an Indian tribe;
2. The allotted land was transferred from the original allottee, or a direct Indian successor to the original allottee, to a non-Indian successor;
3. The amount of water claimed for irrigation is based on the number of acres under irrigation at the time of transfer from Indian ownership; except that:
4. The claim may include water use based on the Indian allottee's undeveloped irrigable land, to the extent that the additional water use was

developed with reasonable diligence by the first purchaser of land from an Indian owner.

A copy of the form for filing an amendment to a water right claim can be found at this link: [Amendment Form for Pre 1973 Water Right](#)

We ask you to consider this amendment as an opportunity to see how the DNRC / UMB interact and the implications to due process related to the jurisdictional mess that the compact has created.

It might help answer questions as to where we fall from a jurisdictional standpoint. Does the state have any jurisdiction over water rights within reservation boundaries at this point in time, or does the Flathead Water Management Board?

Complete the amendment form, and submit it to the DNRC.

Document all correspondence or communications you have with them. Who, What, Where, When, etc. Record to the best of your knowledge what was communicated to you.

If they recommend you go the water management board, do the same, file the amendment and document all communication.

If the water right is properly amended, all is well.

If it is not, this information may be a good source for an affidavit filed the water court to show due process violations or other problems with the process.

A copy of the Amendment form is attached to this document for reference.

AMENDMENT TO STATEMENT OF CLAIM

Claim Number(s): _____

Owner(s): _____

I make the following amendment(s) to the above statement of claim(s):

(Complete only those sections that require amendment.)

1. **Purpose (use):** _____

- a. If irrigation, method of irrigation use Sprinkler Flood Water spreading
 Subirrigation Natural Overflow

b. If domestic, number of households served: _____

c. If stock, total number and type of livestock served: _____

2. **Source of Water:** _____ **Tributary of** _____

3. **Point of Diversion:** County - _____ See attachment

_____ Lot	_____ Block	_____ 1/4	_____ 1/4	_____ 1/4	Section _____	T _____	R _____
_____ Lot	_____ Block	_____ 1/4	_____ 1/4	_____ 1/4	Section _____	T _____	R _____
_____ Lot	_____ Block	_____ 1/4	_____ 1/4	_____ 1/4	Section _____	T _____	R _____

Subdivision _____

Replaces claimed information Supplements claimed information Addendum included

If the P.O.D is being amended, attach a map showing all points of diversion for this water right.

4. **Period of Diversion:** _____

(Month/Day TO Month/Day)

5. **Means of Diversion:** Well Instream Use Dam
 Headgate Pump: Capacity - _____ gpm
 Other - _____

6. **Means of Conveyance:** Ditch Pipeline Instream Use
 Other - _____

7. **Place of Use:** County - _____ See attachment

_____ acres	_____ Lot	_____ Block	_____ 1/4	_____ 1/4	_____ 1/4	Section _____	T _____	R _____
_____ acres	_____ Lot	_____ Block	_____ 1/4	_____ 1/4	_____ 1/4	Section _____	T _____	R _____
_____ acres	_____ Lot	_____ Block	_____ 1/4	_____ 1/4	_____ 1/4	Section _____	T _____	R _____
_____ acres	_____ Lot	_____ Block	_____ 1/4	_____ 1/4	_____ 1/4	Section _____	T _____	R _____
_____ acres	_____ Lot	_____ Block	_____ 1/4	_____ 1/4	_____ 1/4	Section _____	T _____	R _____

_____ **Total Acres** Subdivision _____

Replaces claimed information Supplements claimed information Addendum included

If the P.O.U. is being amended, attach a map showing entire place of use for this water right.

8. Flow Rate Claimed: _____ cubic feet per second
 gallons per minute
 miner's inches

9. Volume Claimed: _____ acre-feet per year

10. Period(s) of Use: _____
(Month/Day TO Month/Day)

11. Priority Date: (date of first use) _____
(Month/Day/Year)

12. Type of Historical Right: Decreed Right
 Filed Appropriation Right
 Use Right

**Please attach proof of
priority date or type of right.**

13. Reasons for Amendment: _____

14. Comments: _____

15. Statement Signed by Owner: See attachment

I declare under penalty of perjury (§ 45-7-201, MCA) under the laws of the state of Montana that the foregoing content of this form is true and correct. I further declare that I have the authority to sign this document for myself as an individual or in representational capacity as an officer of a corporation, member of a limited liability company, general partner of a limited partnership, trustee for a trust or other official capacity for an entity as defined under "person" in §85-2-102, MCA. **(All current owners of the right as listed in the DNRC centralized record system are required to sign. Please attach DNRC's Amendment Agreement form if additional owner signatures are needed.)**

Typed or Printed Name Office/Title

Signature Date

Typed or Printed Name Office/Title

Signature Date

Typed or Printed Name Office/Title

Signature Date