

The review of how the other states address water issues was fairly superficial and not particularly helpful in making decisions regarding Montana's adjudication, distribution, and permitting system.

My comments on the specific recommendations of the UM study are:

Short Term:

1. Concurrent jurisdiction. My primary approach regarding the Water Court's jurisdiction at this time is to keep it focused on completion of the adjudication. Great progress has been made in the timely issuance of decrees and resolution of objections. I am extremely hesitant to add any new duties onto the Water Court that dilutes its focus on adjudication. In addition, when water distribution disputes occur, they often include issues beyond simple adjudication and administration such as ditch disputes and damage claims. Damage claims are occasionally tried to a jury. Once the water distribution portion of the case is completed, the parties often want a water commissioner appointed. These other issues seem a better fit for the district courts. This recommendation seems to also have a longer term component. In the long-term, I do not believe a single Water Court in one location can serve the needs of the State. I understand that the immediacy of many water disputes conflict with a district judge's duty to prioritize criminal matters and that other cases, such as neglect and dependency, also require immediate attention. As a water practitioner, I would also like more water expertise throughout the State. One approach may be to consider standing masters that serve the district judges within one or more judicial districts. If the Water Court, itself, is envisioned as serving this role, there would need to be regional offices/judges throughout the state similar to the DNRC. I do not anticipate the legislature would be eager to fund this.
2. Records Coordination. I have concerns about how the new DOR ownership update system is working. I have discovered several instances where a client's water right has been transferred into someone else's name, who has no ownership in the right, based on a transfer of a small part of the described place of use. This usually happens when the place of use description is fairly general. In these cases, there is no notice to the person who is taken off of the ownership record since they are not the one that transferred the property. As to living decrees, it has always been my understanding that the change process is designed to accomplish this. The DNRC electronic system is a great improvement to the old paper file days but it can always benefit from review and improvement. I have been concerned about changes to the DNRC website that make it more difficult to use. For example, you can no longer search for points of diversion or places of use according to township, range, and section. You can only search by geocode which defeats the purpose and is extremely unwieldy.
3. Education and Collaboration. No comment

Long Term:

1. Time Gap. This is a result of the adjudication taking longer than planned and emphasizes the need to complete the adjudication as soon as possible. Since 1973, all changes were to be approved by DNRC. The burden of proof was placed on the applicant. We are too far down this road to change the system now. We need to complete the adjudication as it is currently structured. As stated above, incorporating changes into the decrees administered by water commissioners is how our system creates a living decree. I am not sure if the study's reference to the burden of providing 1973 historical use is referring to the adjudication or the change process. In the adjudication, folks typically are not looking for

1973 evidence but are more likely to want 1873 evidence. The prima facie statute is designed to help with this evidentiary issue, but it also leads to a less than accurate adjudication particularly in the absence of an objection.

2. Agency review is a standard district court duty, and I am not aware of any problems in this arena.
3. Modernizing Water Commissioner/Distribution. The statutes can benefit from an update.

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