

A Review of the paper of "Water Rights in Montana" by U OF M law School.

My background is the Musselshell River basin which is an over appropriated and dewatered river. When a user increases their historical consumptive use someone else on our system loses water which is legally theirs. I am glad to see the "goal " on page one is "fair, effective and efficient" The 1987 report on the difference between the Examination method and the verification method on the Musselshell river shows that more than half of the water right have a major flaw in one or more elements. This coupled with the fact that a prior water court didn't allow the DNRC to bring forth issue remarks on the Musselshell means that as far as the Musselshell is concerned the very premise of "fair, Effective and efficient is comprised .

On page 2 the report says "Decrees thus may not accurately describe the water use that is occurring at the time they are issued and become increasing less relevant as time goes on." This is when a very aggressive change process by the DNRC is needed and water rights need to be held to historical consumptive use to avoid harming other water rights through any changes including internal changes. The DNRC findings should be accepted by the water court as findings of fact. This way changes can occur with no harm and the water court and the DNRC will be working together. We need to look back to at least 1973 before the great expansion of pivots to protect junior rights and as such accept the DNRC as the finder of fact on historical consumptive use. This way changes can happen with no harm. One more failing of the system is to not have removed abandon rights which been used to support new water uses.

On page 3, the reports states that "most states allow adjudicating as currently used" and some states use "diverted volume" Or a "look back of' only '5 to 15 years". What a way with the use of pivots, sprinklers unchecked expansion of a of all water right elements and the limiting of return flows and increasing of historical consumptive use to dry up a river like the Musselshell. These ideas are nonstarters for Montana because of the lack of accuracy in our adjudication.

On page 4, it seems like the report tends to want to pull more from the DNRC and put it in district court or in water court. Water right holders just want their rights protected and to avoid as much court as possible. U of M is a school of lawyer and they may support more lawyer ways. Water court should rely on the DNRC as a finder of fact and only be a court of last resort.

We on the Musselshell have done the water commissioner thing quite well and should be an example, if not with the District Court, with the water court or the DNRC to be held to a standard. Our problem is all the inaccuracy of the water right book yet to be solved by the adjudication . WE have done our part.

Page 6. I quote. "Some irrigators are interested in more efficient methods of water use to covert water savings to new uses." That is great if they do not harm other users by increasing their historical consumptive use.

PAGE 11 issue remarks are brought up. We have very few on the Musselshell. The adjudication expects water users to tell on their neighbors and with 50% of our water rights not correctly listed, users are afraid of retaliation. This requirement also depends on a very uneducated public who does not understand water rights in most cases. Once again I turn to the 1987 study on the Musselshell.

Page 12. Under "Potential confusion", the water court can charge the DNRC to define the water right correctly and the change and except it with a right to protest. Use the DNRC as the finder of fact and accept their findings.

Page 14. One user should be able to cause water commissioners by showing damage. Our goal should be to have our adjudication done accurately and timely and controlled by commissioners to protect all water users and defend Montana from downstream states.