

WATER DISTRIBUTION ISSUES

This document is a synthesis of comments received from members of the Water Adjudication Advisory Committee and other sources. For the sake of brevity, comments have been condensed. The full text of all comments has been posted on the Water Court website.

Comments are divided below into issues and solutions. Several issues were raised by more than one party. Solutions were inserted below the issue which seemed to fit best.

This process resulted in a boiled down version of your comments, and has probably left out or misinterpreted some valuable thoughts and suggestions. Accordingly, this condensed version will serve as an outline for our discussion, but should not be interpreted as a limitation on the boundaries of that discussion.

Our meeting and telephone conference will be limited to 90 minutes. As indicated in previous emails, we will have additional meetings as additional issues and solutions materialize.

While it would be helpful if you can reach consensus on both identification of problems and on solutions to those problems, consensus on all topics is probably unrealistic. Where consensus cannot be achieved, the objective should be to identify areas of disagreement as accurately as possible, so that WPIC is aware of divergent viewpoints.

ISSUES AND SOLUTIONS IDENTIFIED IN YOUR COMMENTS

1. Issue: It is not clear when a Water Court decree is enforceable.

Solutions:

- a. Amend statutes so that Water Court decrees are only enforceable after all objections and hearings pertaining to that decree have concluded.
- b. Amend statutes so that all hydrologically connected water rights are enforced simultaneously.
- c. Make orders issued by the Water Court enforceable upon issuance.
- d. Revise certification process so that certification of water rights disputes to the Water Court includes all hydrologically related water rights in a single proceeding.
- e. Older District Court decrees should not be used to administer water if a source has been through the Water Court adjudication process.

2. Issue: Provide adequate due process as part of water rights enforcement.

Solutions:

- a. Publish notice of the enforceability of water right decrees before enforcement begins. This change would require amendment of § 85-2-406(5), MCA.

b. Require issuance of an order by the Water Court confirming that all objections and hearings regarding water rights in a TPD or PD have concluded. This change would require amendment of § 85-2-406(4), MCA.

3. Issue: The exempt claim statute needs to be amended to include the same filing deadline for all basins.

Solutions:

a. Amend exempt claim statute in conformance with SB 37 proposed during the last legislative session.

4. Issue: The lack of clarity in enforcement statutes leads to selective enforcement of water rights.

Solution:

a. Require that all hydrologically related water rights be enforced simultaneously.

5. Issue: Some District Courts will not appoint a Water Commissioner unless all water rights have been adjudicated by the Water Court.

Solution:

a. Amend § 85-2-101, MCA to allow appointment of a Water Commissioner before the adjudication of all water rights has been completed.

6. Issue: Water Commissioner training and recordkeeping is haphazard.

Solution:

a. Allow for greater control over Water Commissioners by the DNRC.
b. Require that all Water Commissioners receive training before they are appointed.

7. Issue: District Courts don't have adequate knowledge to administer water rights.

Solution:

a. Use the Water Court to administer water rights.

8. Issue: Orders of the Water Court are not readily accessible.

Solution:

- a. Improve access to orders issued by the Water Court.

9. Issue: The number of appeals of Water Court decisions has increased substantially.

Solution:

- a. Require mandatory mediation before the filing of an appeal.

10. Issue: The place of use for municipal rights does not match municipal service areas. Municipal service areas are constantly changing and compliance with the change process is expensive, time-consuming, and impractical.

Solution:

- a. Allow the places of use for municipal water rights to change as municipal service areas change. This solution would require amendments to change statutes similar to those enacted in the states of Washington, Oregon, and Idaho.

11. Issue: GWIC data needs to be integrated with the DNRC water rights query system.

Solution:

- a. Update the DNRC database to include GWIC information.

12. Issue: If an administrative process for water distribution is implemented, appeal should go to either the Water Court or a District Court, but not both. Pick one court to hear all appeals.

Solution:

13. Issue: If an administrative system is not adopted, then either the Water Court or a District Court could hear appeals.

Solution:

14. Issue: Some water users are unwilling to file a change application to have post-1973 changes to their water rights recognized.

Solution:

a. Allow the Water Court to incorporate post-'73 changes into its decisions so that we have a living decree, or postpone the change application process until a dispute regarding the change arises in the future.

15. Issue: Tabulations prepared by the Water Court are helpful, but may not always contain complete information necessary for water distribution.

Solution:

a. Tabulations should only be used as a summary and not as the final word if there are discrepancies between water right abstracts and tabulations.

16. Issue: Overlap between the Water Court, District Court, and DNRC can be cumbersome and confusing.

Solution:

a. Simplify the decision-making process.
b. Allow the Water Court to hear cases in areas with chronic problems, and when dissatisfied water users have petitioned the Court for review of a Water Commissioner's actions.

17. Issue: The water rights change process is cumbersome and not user-friendly. As a result, many water users do not comply with the change process.

Solution:

a. Streamline the process and honor Water Court determinations regarding historical use.

18. Issue: Small changes to water distribution statutes will not produce much benefit.

Solution:

a. A discussion of changes to water distribution should begin with a comparison of the benefits and disadvantages of analogous systems.