

# Water Right Dispute Options

Controversy over water rights is common in our semi-arid state, especially in times of drought. When a water right controversy arises, the Department of Natural Resources and Conservation (DNRC) urges the parties to first talk to each other to see if the matter can be settled. It is surprising how many water disputes can be settled once the parties just start talking.

If you are a water user who feels your water rights are being adversely affected by the actions of another water user, and you cannot resolve the matter with the offending water user yourself, you have the following options, and possibly others, available to you under Montana law. Which option is best for you depends on your particular circumstances, how fast you want the matter settled, and how much money you are willing to spend. You should consider consulting an attorney to find out which option is best for you.

## **TEMPORARY RESTRAINING ORDER/INJUNCTION**

1. You can file a court action in the appropriate district court asking for a temporary restraining order and preliminary injunction. See Mont. Code Ann. §27-19-101, 201, 314. This will probably be the fastest way to obtain relief, but it is the most expensive, and for most water users it will require the hiring of an attorney. This option is formal and often polarizes the parties.

## **PETITION DISTRICT COURT TO ENFORCE PRE-1973 DECREE**

2. If an old (pre-July 1, 1973) district court decree exists, you can petition the district court pursuant to Mont. Code Ann. §85-5-101 to have a water commissioner appointed. For those fortunate enough to have a decreed water right, this can be a fairly inexpensive way to settle a water distribution problem. A water commission distributes water according to the decree, and any disputes with the way the water is distributed can be brought up with the local district court judge who appointed the water commissioner. Mont. Code Ann. §85-5-301. How fast a water commissioner would be appointed depends on your local district court and how often a water commissioner has been appointed in the past.

## **ASK THE DISTRICT COURT TO CERTIFY UNADJUDICATED STREAM TO THE WATER COURT**

3. When a water distribution controversy arises upon a source of water in which not all existing (pre-July 1, 1973) water rights have been conclusively determined by the Water Court, any party to the controversy may petition the district court to certify the matter to the Chief Water Judge for a determination of the existing rights that are involved in the

controversy. § 85-2-406, Mont. Code Ann.

§85-2-406(2)(b). The district court from which relief is sought retains exclusive jurisdiction to grant injunctive or other relief that is necessary and appropriate pending adjudication of the existing water rights certified to the water judge. Certified controversies must be given priority over all other adjudication matters. After determination of the matters certified, the water judge shall return the decision to the district court with a tabulation or list of the existing rights and their relative priorities.

### **PETITION DISTRICT COURT TO ENFORCE WATER COURT DECREE**

4. When the existing water rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued by the Water Court under the new adjudication statutes (since July 1, 1973), the judge of the district court may upon application by both the DNRC and one or more holders of valid water rights in the source appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled. Mont. Code Ann. §85-5-101 (2). (A temporary preliminary decree or preliminary decree or a portion of a temporary preliminary decree or preliminary decree as modified after objections and hearings is enforceable and administrable according to its terms. If an action to enforce a temporary preliminary decree or preliminary decree is commenced, the water judge shall upon referral from the district court establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all existing rights and their relative priorities. Mont. Code Ann. §85-2-406 (4)).

### **WATER MEDIATOR**

5. You can petition the district court pursuant to Mont. Code Ann. §85-5-110 for the appointment of a water mediator. It is important to know that the mediator does not have the power to order any water user to do anything, but rather would be able to discuss proposed solutions. The DNRC has a list of mediators who have attended its educational programs specifically offered for water mediators. This option may represent the best way for water users to start talking about a solution as an alternative to expensive and time-consuming litigation. How fast a mediator would be appointed depends on your local district court. Although this may not represent the fastest solution, it may represent the one that may leave you talking with your neighbor when the matter is finally settled.

### **DNRC**

6. You can contact the nearest DNRC Regional Office. The DNRC has jurisdiction over water users wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or otherwise violating provisions of the Montana Water Use Act. Mont. Code Ann. §85-2-114. If your situation involves your water not reaching your point of diversion, the DNRC requires you to contact the offending party to make a "call" for your water, document the call, and file a formal

written complaint. Although the DNRC can fine violators of the Water Use Act and take them to court to make them stop, the necessary investigations and decisions to take enforcement action may not come soon enough to solve your immediate problem. Whether the DNRC takes enforcement action also depends on the facts of your situation. In addition, it depends on what budget and staff limitations exist at a particular time, and how many other priority enforcement actions are pending. You should be prepared to initiate enforcement on your own.

You may have other options available to you depending on your particular circumstances.

<http://www.dnrc.state.mt.us/wrd/home.htm>

## **WATER RIGHTS RESEARCH**

You can research your water rights and competing water rights by going to the DNRC website and clicking on Water Right Query System. Follow the instructions on how to search. You can see the water right abstract and the claim file. The web address is:

<http://nris.mt.gov/dnrc/waterrights/default.aspx>

## **FORMS AND TABULATIONS**

Forms to petition the District Court to appoint a water commissioner are available. Check with the Clerk of Court first. If the Clerk of Court does not have the forms, call the Water Court at (800) 624-3270 (in Montana only) or (406) 586-4364.

The Water Court has forms for the order appointing the commissioner, commissioner's bond, and worker's compensation.

If the stream has not had a water commissioner recently, the District Court will ask the Water Court to prepare a tabulation of adjudicated water rights. The Water Court will ask the DNRC to furnish a detailed list of the water rights and a map showing points of diversion. The first time a commissioner is appointed, it can take a long time to prepare the tabulation. After the first tabulation is prepared, it can be updated more quickly.