

ADMINISTRATION OF WATER COURT DECREES

An overview of the process for distribution and administration of water under Montana Water Court decrees

This is a brief overview of the water distribution and administration of decrees issued by the Montana Water Court. Water is also administered under historical decrees issued by District Courts before the inception of the Montana Water Court throughout Montana and are not included in this overview. These historical decrees did not necessarily include all water users or types of rights on a stream.

The Montana Water Court issues temporary preliminary, preliminary, and final decrees of existing water rights by hydrologic basin, based upon over 200,000 statements of claim filed by water users statewide. A statement of claim is a filing of water use prior to June 30, 1973.

Montana Water Court decrees can be administered in basins, or portions of basins, with temporary preliminary and preliminary decrees after objections and hearings. To date none of the water distribution projects encompass all rights in an entire decreed basin, but are requested on specific streams or portions of streams within several basins throughout the state. At this point the projects are usually limited to surface water rights.

Requests to administer water under Water Court decrees are made by water users or the District Court. A water user petition requires signatures of 15% of the owners of water rights affected by the source to be administered.

By statute, MCA 85-5-101. Appointment of water commissioners. (1) The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates, permits, and changes in appropriation right issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may appoint a water commissioner.

The Montana Water Court evaluates status of hearings and objections within the requested source or sources, and coordinates with the District Court, water commissioners, and water users to determine the project scope and requirements. If objections and hearings are resolved within the decree process, the Water Court requests the assistance of the DNRC to create water distribution lists and maps for the District Court.

The DNRC reviews the claims on the requested source or sources and identifies and numbers the claimed points of diversion. The DNRC also makes note of any discrepancies and complex water delivery such as storage water and water exchanges. The DNRC prepares three reports for the Montana Water Court and the District Court. The reports are water rights listed by priority, diversion number, and ownership. These reports are for surface water rights which not only include the pre-1973 statement of claim water right types but also the post 1973 water right changes, exempt rights, permits, and reservations. The DNRC also provides detailed maps of the diversions on a local and drainage scale. The Water Court and/or District Courts often hold public meetings in conjunction with these projects, and when asked, the DNRC also attends public meetings to explain the diversion numbering system and the process involved in generating the indexes. If errors are identified they are corrected by the DNRC or the Water Court depending on the nature and scope of the problem (*see WATER RIGHT ADJUDICATION RULES AMENDED BY THE MONTANA SUPREME COURT December 5, 2006 at http://courts.mt.gov/content/water/rules/water_right_adjudication_rules.pdf*).

To date the DNRC has prepared 43 water distribution projects at the request of the Montana Water Court. The number of projects administered by the District Courts varies from year to year, therefore all 43 projects are not under enforcement every year, and several of the projects were prepared for initial distribution during the 2013 irrigation season. DNRC and the Water Court maintain and update all enforcement projects every year.

Within the distribution areas, approximately 10,566 points of diversion have been assigned enforcement numbers. All types of active surface water rights are included in these projects which total 6,739. These include water rights from both the New Appropriations Program (post 1973 rights) and the Adjudication Program (pre-1973 rights). In the winter of 2006/2007 all enforcement projects were converted into the Water Rights Central Data Base, a significant improvement for future efficiency.

The local District Court has jurisdiction over distribution of the water. The DNRC and the Montana Water Court only provide information and correct errors found in water rights on the tabulations in the enforcement areas, and provide any other assistance requested by the District Courts. The District Court appoints a water commissioner or commissioners to deliver available water. Only the water commissioner has the authority to admeasure and distribute water to parties owning water rights in the source or sources. Unless specifically identified, the duty of the water commissioner is to deliver available water within a source or sources to a point of diversion based on priority date.