

WATER RIGHT DISPUTE OPTIONS

Controversy over water rights is common in Montana, especially in times of drought. When a water right controversy arises, the parties should 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 whose 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 circumstances, how fast you want the matter settled, and how much you are willing to spend. You should consider consulting an attorney to find out which option is best for you.

1. You can talk to the other water user.
2. You can file an action in district court asking for a temporary restraining order and preliminary injunction. This may be the fastest way to obtain relief, but it is also the most expensive, as for most water users it will require hiring an attorney. This option often polarizes the parties. See Mont. Code Ann. §27-19-101, 201, 314.
3. If there is a pre-July 1, 1973 district court decree, or a Water Court decree (temporary preliminary decree, preliminary decree, or a portion of either, as modified after objections are resolved), you can petition the district court to have a water commissioner appointed. Under some circumstances, the DNRC can petition for a water commissioner or can join in your petition. A water commissioner distributes water according to a decree. Any disputes about water distribution can be brought up to your local district court judge. Mont. Code Ann. §85-5-301. How soon a water commissioner would be appointed depends on your district court and whether the water rights in the decree have been tabulated. See Mont. Code Ann. §85-5-101. The commissioner is paid by the water users. If you have a decreed water right, this can be a less expensive way to settle a water distribution problem.
4. If 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. Mont. Code Ann. §85-2-406(2)(b). The district court retains exclusive jurisdiction to grant injunctive or other relief as 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. The water judge returns the decision to the district court with a tabulation (list) of the existing rights and their relative priorities.
5. You can petition the district court for the appointment of a water mediator. It is important to know that a mediator does not have the power to order any water user to do anything. A mediator can help you to work out solutions. The DNRC has a list of mediators who have

attended its educational programs specifically offered for water mediators. This option may be 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 can leave you on good terms with your neighbor when the matter is finally settled. See Mont. Code Ann. §85-5-110

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 depends on the facts of your situation, and on budget and staff limitations. You should be prepared to initiate enforcement on your own.

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