

Draft findings for Future of the Water Court study

1. Since at least 1921, Montana has recognized the prior appropriation doctrine as the guiding legal principle for the distribution of water.
2. Myriad local, state, federal, and tribal officials have certain legal authorities over water rights in Montana.
3. The Water Use Act of 1973 created a process to determine existing water rights and to permit new water rights.
4. The Water Use Act of 1973 establishes a system of centralized records, which functionally exists as the DNRC's Water Right Information System.
5. The Water Court, with assistance from the Department of Natural Resources and Conservation, determines pre-1973 water rights through an adjudication process.
6. District courts distribute water and enforce water rights.
7. The Department of Natural Resources and Conservation approves permits for new beneficial uses of water and changes to existing beneficial uses of water.
8. After adjudication ceases and the Water Court issues final decrees by 2028, the Water Court's remaining duty will be to aid district courts in a water distribution controversy, when requested.
9. Adjudication, permitting, and enforcement processes occur (sometimes simultaneously) in different venues for a single water right.
10. Some water right ownership transfers are not reflected in the centralized water rights database in a timely manner, which has complicated the adjudication and enforcement of certain water rights.

Recommendations for consideration may include:

- altering what entities have jurisdiction for water distribution
- improving water rights records coordination
- changing the determination of historic use for changes to a water right
- considering venues of appeal for agency decisions
- altering water commissioner and water distribution laws
- building water right-related education and collaboration
- improving timeliness and accuracy of water right ownership transfers
- clarifying when a decree is enforceable
- clarifying how "15 percent of water users" is calculated for certain water controversies
- requiring additional training for water commissioners and district judges
- limiting certain powers of and requirements for water commissioners
- adjusting timelines for DNRC action when processing a new water right permit or a change of a water right
- proposing future WPIC interim studies on above or other related topics.