

April 18, 2013

Water Policy Interim Committee,

The Senate Natural Resources Committee would like to encourage the 2013-14 Water Policy Interim Committee (WPIC) to investigate opportunities for the Water Court to review water right permit or change applications when a party seeks judicial review.

During the 2013 Legislative Session, the Senate Natural Resources Committee heard testimony on Senate Bill No. 330. The bill would have allowed a person aggrieved by a Department of Natural Resources and Conservation decision regarding a water right permit or change to petition the Water Court for de novo review of the department decision. The Senate Committee was presented with strong arguments in favor and in opposition to the concept. Concerns were raised that the Montana Water Court's workload would increase and lead to a delay in the ongoing adjudication process. There was discussion about the role of the Water Court after final decrees are issued and adjudication is complete. Additional concerns were raised that the Water Court would not have the expertise to analyze legal availability and lack of adverse effect -- particularly to conduct adequate analysis of groundwater-to-surface water interaction. However, proponents noted that the District Courts are not equipped to adequately review some of the complexities related to proposed water use or changes in water use. The Water Court does have that technical expertise specifically related to its adjudication function.

The 2012-13 WPIC recommended that the Department of Natural Resources and Conservation "work with water use applicants to identify specific issues that may unnecessarily impede the permit and change process and report those findings, along with suggestions to improve the process". We would encourage the WPIC to explore the Water Court's role and further analyze the questions raised in Senate Bill No. 330.

We look forward to learning more about WPIC's efforts in this area, and we appreciate the interim committee's work to date on these challenging issues.

Senate Natural Resources Standing Committee
Chairman Chas Vincent