

Water Rights Adjudication

Department of Natural Resources and Conservation
 Reserved Water Rights Compact Commission
 Montana Water Court

JUNE 2010

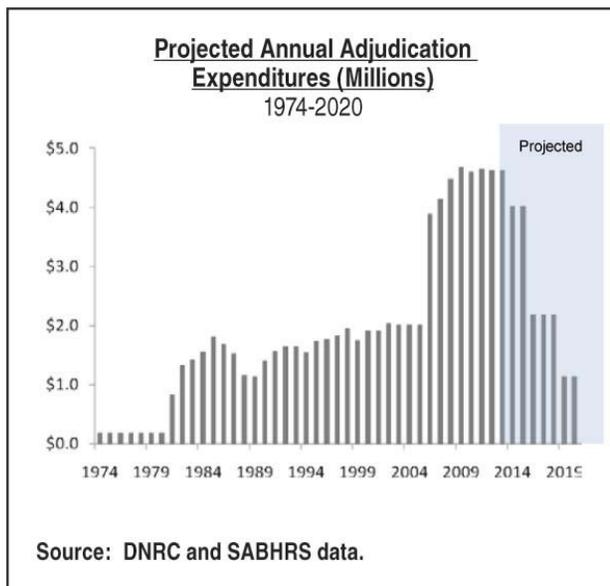
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REPORT SUMMARY

The initial phases of water rights adjudication should be completed by statutory deadlines, but the process may not finish until 2028 or later; changes in how state agencies manage the adjudication should help save money and avoid further delays as the process moves forward.

Context

Montana’s statewide adjudication of existing water rights officially began in 1973 and has been underway for over 30 years. For the period between 1974 and 2020, the state could expend up to \$65 million for adjudication activities in the Department of Natural Resources and Conservation (DNRC), the Reserved Rights Compact Commission (RWRCC), and the



Montana Water Court. These activities consist of examination of around 220,000 individual water rights claims by DNRC, negotiation of compact agreements with 20 different federal agencies and Indian tribes by the RWRCC, and the processing of water users’ objections through litigation at the Water Court. In 2005, the legislature passed House Bill (HB) 22, which provided additional resources to expedite examination and initial decree issuance and set deadlines for the process.

As the adjudication moves forward, several issues could impact progress. This includes the potential for re-examination of claims that were reviewed under the DNRC verification process. Statistical analysis of a sample of water rights claims showed the differences between verified and examined claims are not significant enough to justify the time and expense of re-examination. Rather than launching a full-scale re-examination, issues with verified claims can be addressed through other means that are less expensive and less time consuming. Further delays resulting from compact negotiations could also impact progress towards completing the adjudication. As the initial phases of the process near completion, it will be important to ensure agencies coordinate their activities effectively. Delaying decree issuance to accommodate compact negotiations is no longer an option.

The changes made under HB22 have been successful in moving the adjudication process forward. Audit work showed DNRC should meet the statutory deadlines established for completion of claim examination and is likely to finish this phase of the adjudication before the 2015 statutory deadline. Our analysis also shows the Water Court should be able to complete the initial decree issuance phase prior to its 2020 statutory deadline. However, the litigation phase of the adjudication is likely to continue until 2028 or later. Although many objections litigated through the Water Court can be settled quickly, a minority of cases take many years to reach a conclusion. There are currently no defined expectations regarding management of the litigation phase of the adjudication and opportunities may exist to better control the duration and cost of Water Court litigation. As remaining claims move into the litigation phase, the role of DNRC will diminish as the focus of the

adjudication shifts to the Water Court. Because of the progress made on DNRC claims examination, the transition to the litigation phase and the eventual post-decree administration of water rights is happening sooner than anticipated. The current organizational structure for water rights adjudication does not provide a good basis for the transition to administration of decreed rights. To date, limited planning has been undertaken to prepare for these changes. To protect the investments made in the state's water resources, state agencies and the legislature need to begin preparing now for the transition to the post-adjudication era.

Results

We make five audit recommendations to the various agencies involved in the adjudication effort addressing the following issues:

- ▶ The role of the Water Court in requesting further re-examination work in verified basins
- ▶ Developing system-based review procedures by DNRC to address the status of verified claims
- ▶ Avoiding of further delays resulting from compact negotiations through formal communications and reporting mechanisms between the RWRCC and the Water Court
- ▶ Developing defined expectations for Water Court performance during the litigation phase
- ▶ Beginning the process of planning for the transition to the post-adjudication era for all agency resources involved in the adjudication.

Recommendation Concurrence	
Concur	5
Partially Concur	0
Do Not Concur	0
Source: Agency audit response included in final report.	

For a complete copy of the report or for further information, contact the Legislative Audit Division at 406-444-3122; e-mail to lad@mt.gov; or check the website at <http://leg.mt.gov/audit>. Report Fraud, Waste, and Abuse to the Legislative Auditor's FRAUD HOTLINE Call toll-free 1-800-222-4446, or e-mail lad@mt.gov.