

**Record Number:** 16

***Do you think that Montana needs more storage facilities to capture runoff and flood waters? Why or why not?***

Yes

***If you do feel that Montana needs more storage facilities, what types do you think will be most beneficial? Off-stream vs. on-stream, for example.***

Off-stream

***Do you feel that funding for water storage and water distribution systems should be made a priority in the state budget? Please explain.***

No. The concept of private sector/public partnerships should be pursued; as well as more privately controlled facilities with user agreements pursuant to the beneficial use doctrine - i.e. with beneficial uses and controlled access to the general public for recreation, etc.

***Currently, state law provides that the disposition of facilities is a priority for the Department of Natural Resources and Conservation (DNRC). From 1991-1999, the DNRC sold 6 facilities and is continuing to investigate and dispose of storage facilities that are more appropriately owned by other entities. Should the State of Montana continue to sell its existing storage facilities? Why or why not?***

Yes, under the terms described above.

***If the State of Montana retains ownership of storage facilities, where should the funding for upkeep and maintenance come from?***

User fees must be closely examined - the beneficial uses of a particular facility may be far reaching to include a lot of downstream users.

***Do you think that Montana should make more of an effort to capture flood waters and put them to a beneficial use? Why or why not?***

Yes. If you don't use it, you lose it. In order to maximize beneficial uses for the people of Montana, as declared in current law. This approach must be taken.

***How do you perceive flood waters being captured and used?***

Off-stream storage facilities, improved irrigation systems and diversion to areas of need and or capacity. (By pipeline if necessary)

***Currently, water decrees are enforced by the District Court. Do you think that enforcement should remain in the judicial arena?***

Yes

***If you feel that the enforcement of water decrees should not be in the District Court, who should be responsible for enforcement?***

Ultimate authority should be under the court's direction, but with a limited appeals process. Initial enforcement could perhaps be done under a water court's authority.

***What does the term "water banking" mean to you?***

Storing and sharing supplemental waters for use later among downstream users.

***Monday, January 12, 2004***

Page 57 of

***Do you think that Montana should be more involved in water banking? Please explain.***

Yes. using current methods, deciding what would be considered "extra" waters would prove to be very, very difficult to accomplish. We need some reforms to the process.

***Do you feel that the current water adjudication process is resulting in accurate decrees? Why or why not?***

Yes, but the process is slow.

***What do you think should be done to make Montana's water adjudication more accurate?***

Establish more water courts.

***Do you think the current system of property owners objecting to other property owner's water right claims is a good process?***

unsure

***Should there be an "institutional objector" in the adjudication process? Why or why not?***

unsure

***Do you feel comfortable with the United States serving as the institutional objector? Why or why not?***

unsure

***If you feel that there should be an institutional objector, what entity do you think should serve in that role?***

unsure

***Should the Montana Water Court play a more aggressive role in the water adjudication process and call in, on its own motion, more of the claims that appear to be questionable? Why or why not?***

unsure

***Should the water adjudication process be paid for with user fees? Why or why not?***

unsure

***If the water adjudication process is funded by user fees, how should the fees be determined and what do you feel is an appropriate fee schedule?***

unsure

***Have you ever used the water right permit and change process that is currently offered by the DNRC?***

No

***If you have used the process, what do you think worked well?***

Monday, January 12, 2004

*What are your suggestions for making the water right permit and change process work more efficiently and effectively?*

*Do you feel that the issue of surface water and ground water interconnectivity needs to be addressed more thoroughly in state law?*

The issue probably needs further study.

*Do you feel that the state of Montana should continue to try to negotiate reserved water right compacts? Why or why not?*

Yes. Resolution of many cases would likely prove highly beneficial to the people of Montana.

*If not, do you favor litigation? Please explain.*

*If you have other water policy concerns, please provide your input below.*

*Please let us know if we are reaching all interested parties by selecting the category below that best reflects your interest.*

*Investor/Developer*

*Landowner*

*Conservation District*

*Department of Fish, Wildlife and Parks*

*Department of Natural Resources and Conservation*

*Industry*

*Utility*

*Recreational water user*

*Agricultural water user*

*Private sector*

*Tribal government*

*Federal government*

private sector

*Other*

*How did you hear about this feedback form?*

*EQC interested persons list mailing*

*Potentially interested persons list mailing*

*News release*

*EQC member*

EQC list

*EQC website*

*Watershed listserv e-mail*

*Water Adjudication Advisory Committee e-mail*

*District Judges mailing*

*Monday, January 12, 2004*

*Page 60 of 68*

**Record Number:** 17

***Do you think that Montana needs more storage facilities to capture runoff and flood waters? Why or why not?***

No.

Natural processes (i.e. flows, volumes, etc.) need to be allowed to operate.

***If you do feel that Montana needs more storage facilities, what types do you think will be most beneficial? Off-stream vs. on-stream, for example.***

***Do you feel that funding for water storage and water distribution systems should be made a priority in the state budget? Please explain.***

No.

Natural processes (i.e. flows, volumes, etc.) need to be allowed to operate.

***Currently, state law provides that the disposition of facilities is a priority for the Department of Natural Resources and Conservation (DNRC). From 1991-1999, the DNRC sold 6 facilities and is continuing to investigate and dispose of storage facilities that are more appropriately owned by other entities. Should the State of Montana continue to sell its existing storage facilities? Why or why not?***

No.

Revenues should be generated by these storage facilities that cover expenses and generate profits for MT.

***If the State of Montana retains ownership of storage facilities, where should the funding for upkeep and maintenance come from?***

Users.

***Do you think that Montana should make more of an effort to capture flood waters and put them to a beneficial use? Why or why not?***

No - but with limited exceptions.

Natural processes (i.e. flows, volumes, etc.) need to be allowed to operate.

***How do you perceive flood waters being captured and used?***

In existing reservoirs.

***Currently, water decrees are enforced by the District Court. Do you think that enforcement should remain in the judicial arena?***

Yes

***If you feel that the enforcement of water decrees should not be in the District Court, who should be responsible for enforcement?***

***What does the term "water banking" mean to you?***

Placing a commercial value on water - and that is very risky. Water is a public resource and should be protected (quantity and quality) in the overall public's interest.

***Monday, January 12, 2004***

***Page 61 of 68***

*Do you think that Montana should be more involved in water banking? Please explain.*

No.

*Do you feel that the current water adjudication process is resulting in accurate decrees? Why or why not?*

*What do you think should be done to make Montana's water adjudication more accurate?*

*Do you think the current system of property owners objecting to other property owner's water right claims is a good process?*

Yes

*Should there be an "institutional objector" in the adjudication process? Why or why not?*

Yes, to maintain the integrity of the process.

*Do you feel comfortable with the United States serving as the institutional objector? Why or why not?*

*If you feel that there should be an institutional objector, what entity do you think should serve in that role?*

*Should the Montana Water Court play a more aggressive role in the water adjudication process and call in, on its own motion, more of the claims that appear to be questionable? Why or why not?*

Yes.

Water is an important public resource and should be protected (quantity and quality) in the overall public's interest.

*Should the water adjudication process be paid for with user fees? Why or why not?*

Yes. User pays.

*If the water adjudication process is funded by user fees, how should the fees be determined and what do you feel is an appropriate fee schedule?*

Flows. Fee schedule = whatever it takes to fund a program that is consistent, fair, and protects the resource and the public's interest in that resource.

*Have you ever used the water right permit and change process that is currently offered by the DNRC?*

Yes

*If you have used the process, what do you think worked well?*

average

***What are your suggestions for making the water right permit and change process work more efficiently and effectively?***  
adequate funding and consistent application of the rules.

***Do you feel that the issue of surface water and ground water interconnectivity needs to be addressed more thoroughly in state law?***  
Yes. It's critical to the health of the resource (groundwater and surface water) and public values dependant on the resource.

***Do you feel that the state of Montana should continue to try to negotiate reserved water right compacts? Why or why not?***

***If not, do you favor litigation? Please explain.***

***If you have other water policy concerns, please provide your input below.***

***Please let us know if we are reaching all interested parties by selecting the category below that best reflects your interest.***

***Investor/Developer***

***Landowner***

***Conservation District***

landowner

***Department of Fish, Wildlife and Parks***

***Department of Natural Resources and Conservation***

***Industry***

***Utility***

***Recreational water user***

***Agricultural water user***

agricultural water user

***Private sector.***

***Tribal government***

***Federal government***

***Other***

***How did you hear about this feedback form?***

***EQC interested persons list mailing***

***Potentially interested persons list mailing***

***News release***

***EQC member***

***EQC website***

***Watershed listserv e-mail***

watershed listserv

***Water Adjudication Advisory Committee e-mail***

***District Judges mailing***

*Monday, January 12, 2004*

*Page 64 of 68*

**Record Number:** 18

***Do you think that Montana needs more storage facilities to capture runoff and flood waters? Why or why not?***

No. The storage sites that are economical have already been developed. On and off stream storage facilities can have significant ecological impacts which in turn can have significant economic impacts. on stream storage facilities typically block fish passage and may elevate water temperatures...both are potentially dangerous to aquatic ecosystems. Off stream storage also can have adverse temperature affects. Both on and off stream storage designed to capture high runoff or flood waters reduce or eliminate periodic flushing flows which are necessary ingredients in healthy aquatic and riparian ecosystems. For example, without periodic flooding flows cottonwood trees (for complex reasons) don't regenerate. Once the cottonwood trees are gone the wildlife (primarily birds and raptors)lose their habitat and their numbers are reduced as well. Flushing flows cleanse spawning and side channels of sediments and provide a critical link for maintenance of the multi-million dollar per year Montana trout fishery. The small economic benefit associated with new storage is far outweighed by the economic risk associated with loss of wildlife and aquatic ecosystems. The science is clear. Stay with the science.

***If you do feel that Montana needs more storage facilities, what types do you think will be most beneficial? Off-stream vs. on-stream, for example.***

I do not think Montana needs more storage facilities.

***Do you feel that funding for water storage and water distribution systems should be made a priority in the state budget? Please explain.***

Funding for new storage facilities should not be a priority. See answer to question one for the reasons. Funding for more efficient distribution systems should be a priority. Over 90% of Montana's diverted surface water serves the beneficial use of agricultural applications. Many if not the majority of agricultural diversion and delivery systems are old and not designed to be "efficient". Thus they leak. Arguably the leaks largely end up in groundwater which MAY recharge the surface source at some time in the future but it is better to only take the water necessary to support the beneficial use. In some cases more than twice the amount of water needed for the beneficial use is diverted simply because it is "lost" in the ditches before it gets to the fields. Lining ditches has demonstrated that significantly less water can be diverted while still completely meeting the beneficial use need/quantity. Thus upgrading existing distribution systems throughout the state can make more water available at critical times. The cost of making ditches more efficient is arguably the beneficial users responsibility. However the state can play a role in the potential financing of these improvements.

***Currently, state law provides that the disposition of facilities is a priority for the Department of Natural Resources and Conservation (DNRC). From 1991-1999, the DNRC sold 6 facilities and is continuing to investigate and dispose of storage facilities that are more appropriately owned by other entities. Should the State of Montana continue to sell its existing storage facilities? Why or why not?***

Perhaps. Storage facilities can be money makers both for the state and the economy. Water is becoming increasingly valuable in Montana. Privatizing these facilities can lead to problems.

***If the State of Montana retains ownership of storage facilities, where should the funding for upkeep and maintenance come from?***

Same as in the private sector, money for upkeep should come from those who benefit from the use of the stored water.

***Do you think that Montana should make more of an effort to capture flood waters and put them to a beneficial use? Why or why not?***

No. The storage sites that are economical have already been developed. Arguably certain flood levels provide an instream flow beneficial use already. Reduction or elimination of periodic flushing flows which are necessary ingredients in healthy aquatic and riparian ecosystems. For example, without periodic flooding flows cottonwood trees (for complex reasons) don't regenerate. Once the cottonwood trees are gone the wildlife (primarily birds and raptors)lose their habitat and their numbers are reduced as well. Flushing flows cleanse spawning and side channels of sediments and provide a critical link for maintenance of the renewable multi-million dollar per year Montana trout fishery. The small economic benefit associated with new flood storage is far outweighed by the economic risk associated with loss of wildlife and aquatic ecosystems. The science is clear. Stay with

the science.

***How do you perceive flood waters being captured and used?***

Difficult and economically risky business. Capture only happens if there are floods. The cost of the facilities cannot be amortized because of the uncertainty of the water availability. The last five years of drought have clearly demonstrated the huge risk in financing and constructing floodwater capture systems/structures.

***Currently, water decrees are enforced by the District Court. Do you think that enforcement should remain in the judicial arena?***

***If you feel that the enforcement of water decrees should not be in the District Court, who should be responsible for enforcement?***

***What does the term "water banking" mean to you?***

***Do you think that Montana should be more involved in water banking? Please explain.***

***Do you feel that the current water adjudication process is resulting in accurate decrees? Why or why not?***

***What do you think should be done to make Montana's water adjudication more accurate?***

***Do you think the current system of property owners objecting to other property owner's water right claims is a good process?***

No

***Should there be an "institutional objector" in the adjudication process? Why or why not?***

Absolutely! The sheer volume of rights being adjudicated makes it impractical for senior water right holders with few resources to watch over this process, file objections and follow it to resolution.

An institutional objector could evenly apply historic use/consumption documentation standards on applications and shift the burden of proof from other right holders having to object to the applicant having to prove. Much more efficient and cost effective.

***Do you feel comfortable with the United States serving as the institutional objector? Why or why not?***

***If you feel that there should be an institutional objector, what entity do you think should serve in that role?***

***Should the Montana Water Court play a more aggressive role in the water adjudication process and call in, on its own motion, more of the claims that appear to be questionable? Why or why not?***

Yes

***Should the water adjudication process be paid for with user fees? Why or why not?***

***If the water adjudication process is funded by user fees, how should the fees be determined and what do you feel is an appropriate fee schedule?***

***Have you ever used the water right permit and change process that is currently offered by the DNRC?***

Yes

***If you have used the process, what do you think worked well?***

No. DNRC has failed to develop formal rules regarding permitting and changes the result is an unarticulated and uneven application of the laws.

***What are your suggestions for making the water right permit and change process work more efficiently and effectively?***

Applicants should shoulder the major portion of responsibility and cost of fully demonstrating that they meet the standard of the Basin Closures and no adverse effect on senior appropriators. As currently administered much of the burden for this demonstration rests with existing right holders through the objection process or litigation of the Basin Closure. This can be expensive, protracted and contentious. The problem appears to be the level of documentation required of applicants for new and changed water permits. DNRC's current interpretation of the basin closure laws allows most new groundwater permit applications to proceed to the objection stage in closed basins. DNRC acknowledges potential cumulative adverse impact to existing users from this action but shifts the burden and costs to the objection process through existing water rights holders and away from applicants and the agency.

Because adjudication has not been fully completed, change applications are being submitted based on claimed water amounts rather than decreed water amounts. These claimed water amounts can be very inflated. However once changed they are permitted for specific quantities and in a sense "backdoor adjudicated" potentially to the detriment of other users or at the expense of other users through the objection process. A method to pre-adjudicate change requests based on applicant supplied researched and well documented historic use should be part of the change system.

Many change applications are for conversion from flood irrigation to sprinkler irrigation. Flood irrigation typically creates significant recharge or return flow while sprinkler irrigation does not. Thus the irrigation of the same acreage by sprinkler is more consumptive. Change applicants should be allowed equal water consumption but no more. Applicants should be required to fully demonstrate the pre change level of water consumption (water taken out of the system) and the proposed water consumption of the changed use. Change permits should only be granted for equal consumption rates pre and post change. If additional consumption is desired by the applicant that application for new additional consumption should be an application for a new water right not a changed water right.

***Do you feel that the issue of surface water and ground water interconnectivity needs to be addressed more thoroughly in state law?***

Yes. Since passage of the Montana Water Use Act much has been learned about the science of groundwater and surface water interaction. This new knowledge is not fully articulated in Montana water law. The legislature, in many cases, has not given specific direction and definition for DNRC leaving important determinations on interconnectivity to agency discretion. This has and will lead to more litigation and resolution by the courts. Refining Montana water law based upon the best science, detailed study of other states' water woes and the pattern of problems now arising in Montana would be fruitful. Providing "tools" for redistributing water use under the prior appropriations doctrine will be critical for the success of an evolving Montana economy. Continued recognition that groundwater and surface water are a single interconnected source of water is critical to the evolution of water law in Montana that will prevent "water wars" and provide a template for protection of existing water rights while accommodating growth.

If new groundwater permits are issued where groundwater is connected to surface water senior water rights holders who are impacted through reduced flows have little recourse under the "first in time first in right" prior appropriations doctrine because placing a call on the new groundwater permit does not immediately result in the water becoming available to the senior user. In the majority of cases the aquifer has to recharge to allow surface flows to resume and this could take weeks, months or even years. Thus a 2003 groundwater permit could get their water at the expense of an 1880 surface water permit. This situation renders the prior appropriation system meaningless.

***Do you feel that the state of Montana should continue to try to negotiate reserved water right compacts? Why or why not?***

*If not, do you favor litigation? Please explain.*

*If you have other water policy concerns, please provide your input below.*

*Please let us know if we are reaching all interested parties by selecting the category below that best reflects your interest.*

*Investor/Developer*

*Landowner*

*Conservation District*

*Department of Fish, Wildlife and Parks*

*Department of Natural Resources and Conservation*

*Industry*

*Utility*

*Recreational water user*

*Agricultural water user*

*Private sector*

*Tribal government*

*Federal government*

*Other*

*other*

*How did you hear about this feedback form?*

*EQC interested persons list mailing*

*Potentially interested persons list mailing*

*News release*

*EQC member*

*EQC list*

*EQC website*

*Watershed listserv e-mail*

*Water Adjudication Advisory Committee e-mail*

*District Judges mailing*