

House Bill 39 (2007) revised the water right ownership update process, requiring county clerks and recorders, the Department of Revenue, and the DNRC to coordinate to ensure the water rights are correctly recorded on a realty transfer certificate.⁴⁶

County clerks and recorders first collect a realty transfer certificate, usually from a title company.⁴⁷ This certificate includes a place to indicate whether or not water rights were transferred. At the closing or transfer of real estate, the parties must pay a fee to the DNRC to transfer the water right. This fee starts at \$50. (Ultimately, it is up to the new owner or buyer of a property to ensure the fee is paid and the certificate is submitted.)⁴⁸ County officials report these property transfers to the Department of Revenue, which then updates the department's ORION property ownership database. Periodically, the DNRC updates its Water Right Information System database from ORION.⁴⁹ The DNRC is responsible for reconciling missing fees and missing transfers.⁵⁰

The Water Court has delayed decrees or rulings in certified controversies, because water right ownership was unclear due to uncompleted water right transfer.⁵¹ Water commissioners have shut off water rights due to uncompleted water right transfers.⁵² Revenue officials said a geocode is used to identify a parcel and is likely insufficient to indicate location details necessary for a water right, such as place of diversion or point of diversion.⁵³

Some details about the handling of the realty transfer certificate were unclear during testimony at WPIC meetings. The DNRC convened a working group of the affected parties.⁵⁴

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⁴⁶ Section 85-2-424, MCA.

⁴⁷ Section 15-7-305, MCA.

⁴⁸ Sections 85-2-424 and 85-2-426, MCA.

⁴⁹ Krista Lee Evans, memo to the WPIC, "HB39 Ownership Update Status Sheet," March 8, 2016.

⁵⁰ Section 85-2-424, MCA.

⁵¹ Testimony of Honorable Judge Russ McElyea to the WPIC, Jan. 12, 2016.

⁵² Testimony of Lezlie Kinne to the WPIC, March 8, 2016.

⁵³ Testimony of Rocky Haralson, Department of Revenue, to the WPIC, May 2, 2016.

⁵⁴ Testimony of Tim Davis, DNRC, to the WPIC, May 2, 2016.