

WATER COURT COMMENTS ON OWNERSHIP UPDATES

A. THE PROBLEM

Montana's system for tracking water rights ownership has problems with both accuracy and timeliness. These problems impact water users in the following ways:

1. Water users have a right to notice during the adjudication process. Notice cannot be given if ownership records are inaccurate.
2. The Water Court consolidates water rights into cases. Failure to update ownership increases the cost and duration of these cases.
3. The Water Court cannot issue final decrees if ownership records are inaccurate.
4. The Water Court routinely fields enquiries from people having trouble getting their water rights updated even when their rights are not before the Court.
5. Inaccuracy or delays in updating ownership causes problems for buyers and sellers in real estate transactions.
6. The Department is improperly adding new parties to water rights without evidence of ownership.

B. CAUSES OF THE PROBLEM

There are two primary causes of inaccuracy. The first is use of geocodes. Geocodes do not always reflect land or water right ownership accurately. Inaccurate geocodes, and improper use of geocodes, causes problems.

The second cause of inaccuracy is delay. Delays in processing ownership updates are caused by several factors. These include:

1. Delays in transmittal of information from DOR to DNRC.
2. The process is complicated, and water users don't understand it. Consequently, they do not prepare or file accurate water right transfers.
3. DNRC does not process updates until it collects fees. Chasing fees causes delays.
4. DNRC delays processing of updates even after paperwork is complete and fees have been paid. The Water Court routinely encounters delays of months or years.
5. The volume of real estate transactions in some counties has increased and staffing has not kept pace with the change in workload.
6. Time spent fixing problems related to inaccuracy also causes delay.

C. WHAT IS A REALISTIC GOAL?

Montana has an accurate system for defining interests in real property. Updates to real property ownership occur immediately upon filing of deeds with county clerks and recorders. Montana needs a similar system for water rights.

The goal should be a system that accurately and immediately updates water rights ownership.

D. SOLUTIONS

1. Geocodes were developed to assess taxes on real estate. They were not developed to describe water rights and do not always describe real estate or water rights accurately. WPIC should consider whether continued use of geocodes makes sense, and if it does, figure out ways to reduce problems caused by their use.
2. Speed up the transfer of information from DOR to DNRC, reduce the number of steps, or cut DOR out of the process altogether.
3. Eliminate payment of fees. DNRC will not process ownership updates until fees are paid. Delays caused by collection of fees impose costs on the Water Court and water rights owners. The legislature should find another way to pay for ownership updates.
4. The burden of preparing accurate ownership transfers should be on the new owners of water rights, who have the greatest incentive to supply accurate and timely information. The DNRC's role should be limited to recording information supplied by the parties.
5. Water rights owners should be allowed to file ownership updates electronically.
6. The DNRC should not add or remove parties from a water right without the written consent of all owners and transferees, or a court order.
7. Owners need a swift, cost effective forum for resolution of problems caused by inaccurate ownership updates.
8. Some delays at DNRC are caused by lack of adequate staffing. The legislature should allocate more resources to the Department where delays are caused by

personnel shortages. Delays and inaccuracy are also caused by lack of diligence. This problem needs to be addressed separately.