

Five steps to streamline water rights transfer

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You are positive you own water rights, but a search of the Montana Department of Natural Resources and Conservation website does not list any in your name or your ranch's name. Does this mean you don't own any water rights? Did you lose or forfeit them?

The good news is that you probably do still own water rights but finding the right record could be a different story. For example, the record for your water rights may have a misspelling, or the ownership was not updated when the land was transferred. Thankfully, in Montana water rights are appurtenant to the land where they are used, meaning when land is sold, the right to use water on the land automatically transfers to the new landowner.

The change in ownership for both land and water rights occurs when the deed is signed by the seller, but the records are not updated until the deed is filed at the county clerk and recorder's office and a water right fee log is filed and processed by DNRC. This processing averages three months (or longer) and while county land records are updated immediately, the lag in water right transfers continues to raise concerns.

Without accurate ownership records, the Montana Water Court includes the wrong parties in water rights cases. If the actual water right owner is not served until a case is decided, the court and the parties have to start over, wasting valuable resources. And if you are a water right owner, missing notices will rob you of the opportunity to correct errors in Water Court decrees; receive notice of proposed permits, change applications and DNRC examinations; and protect your water right during court proceedings.

Current law requires the seller only to list water rights transferring with land and to certify that the water rights will be transferred. Then, DNRC must verify the list based on land owner information received from the Department of Revenue. If there are any discrepancies in the documentation, staff must take additional time to contact the new owner to clear them up. Furthermore, DNRC tracks land by 10-acre squares while DOR records parcels by geocode, a unique number designating a parcel created by a survey or subdivision. This makes it difficult to connect a water right to a geocode, and merging the two systems is like fitting a square peg into a round hole.

To overcome these deficiencies, the Legislature could simplify the water right ownership process in five steps:

1. Change the per water right fee structure to a flat fee.
2. Replace the Certification of Water Right Ownership Update with a form to be submitted to the clerk and recorder along with a check for the fee and a stamped envelope for the DNRC regional office to be forwarded to the DNRC.
3. Require the DNRC to add the new owner's name to the water right and notify the previous owner of the change in ownership and a deadline to dispute the ownership change.
4. Barring a protest, remove the previous owner's contact information from the water right.
5. Further simplify the transfer of a single domestic well by noting its number on the Realty Transfer Certificate and forwarding it to the appropriate DNRC regional office along with the fee.

Montana law requires the recording of deeds for land as soon as they are filed. This instantaneous recording of deeds is mandated because current land records protect the record owner from missing property tax payments or being held liable for liens against the previous owner. Don't water right owners deserve the same protection? By streamlining Montana's

transfer process, we could reduce costly errors, clarify water rights ownership and provide assurance for one of our most important rights.

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