

From: [JP Pomnichowski](#)
To: [Mohr, Jason](#)
Subject: [EXTERNAL] RE: Water committee seeks input on water court, cloud seeding
Date: Friday, December 13, 2019 3:55:06 PM

Dear members of the Water Policy Interim Committee,

In response to WPIC's invitation for public comment regarding House Joint Resolution 14 to study the future of the Water Court, I offer this opinion.

The Montana Water Court, being the entity tasked with determining hundreds of thousands of property rights in Montana (water rights) must focus its efforts on completing adjudication before the legislature considers expanding its role.

The work of the Water Court has been ongoing for *forty years* since its creation in 1979, in a process that was expected to be complete by 2020. Within three years of the court's creation, there were 200,000 pre-1973 water rights claims filed, but adjudication stalled in the 1980s. Some of you may remember a bill passed in the 2005 Montana Legislature (the "Water Bill") by Walt McNutt to assess Montana water rights holders from \$20-\$400 each to spur adjudication. After that bill passed, and with that influx of money for the Water Court, the DNRC expected the adjudication process to be complete in ten years, by 2016.

Adjudication is not yet done, and won't be for some time. A 2010 legislative audit estimated the court would complete adjudication in 2028. However, since that report, the court ordered re-examination of 90,000 claims and the legislature allowed the filing of late stock and domestic claims (HB110 claims previously exempt from filing). The DNRC received more than 24,000 of these claims, which the court must also process. The Water Court must issue final decrees in all basins, and the court cannot issue final decrees in basins that have compacts for reserved rights pending (Ft. Belknap and CSKT). HB220 (2019) amended 85-2-270 to say, "it is realistic and feasible for the water court to issue" first decrees by June 30, 2024.

All of this now extends the timeline for adjudication another eight years or more, coming closer to fifty years for a process slated originally to take no more than twenty years.

The first job of the Water Court is adjudication. That must be done before additional responsibilities are considered.

There's a certain irony in a discussion of expanding the role of the Water Court before adjudication is complete, since adjudication must be completed before water rights users can defend their water rights, and before the state can defend its water use from downstream states' demands.

A recommendation from WPIC that the Water Court must focus its work on completing adjudication would help to reinforce Montanans' investment of time and money to the only entity that can determine their water rights.

Thank you.

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From: Jason Mohr [mailto:jmohr2@mt.gov]
Sent: Tuesday, December 3, 2019 4:59 PM
To: pomnicho@montanadsl.net
Subject: Water committee seeks input on water court, cloud seeding

The Water Policy Interim Committee seeks stakeholder and public input regarding two studies—one of the future of the Water Court (House Joint Resolution 14) and another of weather modification laws (HJ40). The 2019 Legislature passed both study resolutions, which WPIC agreed to conduct.

HJ14 states that “it may be wise to retain [Water Court judges’ and masters’] expertise for future decades of water rights administration in Montana.” The Legislature created the court in 1979 as a venue to litigate 219,000 historical water rights claims. The court must also issue final decrees in the state’s 85 hydrologic basins for these water rights. HJ14 asks WPIC to “review the future role of the Montana Water Court and, if possible, make recommendations for the Water Court.”

HJ40 is a review of weather modification, also referred to as “cloud seeding.” The technique is used to enhance precipitation, suppress hail, and mitigate fog. Weather modification, which was developed in the 1940s, is more commonly used in other Western states. Montana state law requires permittees to conduct an environmental impact statement and provide \$10 million proof of financial responsibility for each weather modification project. The study resolution requests the committee “to propose changes in order to encourage use of this scientific technique.”

The committee has heard mostly background material related to the two studies in its first two meetings of the 2019-20 interim.

The WPIC is asking the public and stakeholders about relevant issues and possible issues for each study. Written comments may be submitted by mail or email to committee staff. If sending an email, please indicate in the subject line which study resolutions is being referenced. Comments must be received by Dec. 11 for consideration by the committee at its Jan. 6-7 meeting.

The WPIC is led by Rep. Zach Brown, D-Bozeman, chairman, and Sen. Jeffrey Welborn, R-Dillon, vice-chairman. Other members of the committee are: Sen. Jill Cohenour (D-E. Helena), Sen. Bruce “Butch” Gillespie (R-Ethridge), Sen. Jon Sesso (D-Butte), Rep. Bob Brown (R-Thompson Falls), Rep. Carl Glimm (R-Kila), Rep. Bradley Maxon Hamlett (D-Cascade), Rep. Shane Morigeau (D-Missoula), and Rep. Walt Sales (R-Manhattan).

For more information on the committee's activities and meetings, please visit the

committee's website or contact Jason Mohr, committee staff.

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