

RECOMMENDATIONS OF THE GEOCODES WORKING GROUP

FOR THE WATER RIGHT OWNERSHIP UPDATE PROCESS

This document provides recommendations to various entities involved in the process of the updating ownership of water rights. The current update process is guided by state law, including sections 85-2-423, MCA through 85-2-431, MCA. State law requires a transferor of property to disclose the transfer of water rights on a realty transfer certificate, which ultimately filed with the Department of Revenue. The transferee (buyer) must also file a water right ownership update form to the Department of Natural Resources and Conservation and pay a fee. The DNRC may use information from the Department of Revenue or a submitted ownership update form (with a copy of the deed) to update the department's water rights database, which contains approximately 360,000 records.

Various processes in Montana rely on having an accurate water right database that reflects a water right's legal place of use and ownership, such as Water Court proceedings, probate, land improvements, and water rights enforcement. Timely updates to the database are also necessary to keep those processes moving.

This update process has been questioned for its accuracy and efficiency during the Water Policy Interim Committee's 2019-20 interim—beginning specifically with the use of a unique numeric identifier, known as a geocode, to identify a water right's place of use. Various processes in Montana rely on having an accurate water right database that reflects a water right's legal place of use and ownership, such as Water Court proceedings, probate, land improvements, and water rights enforcement. Timely updates to the database are also necessary to keep those processes moving.

To provide solutions, the WPIC created a 19-member Geocodes Working Group to examine the update process and suggest improvements. After six meetings, the GWG proposed three items to the WPIC: two pieces of legislation and some administrative recommendations.

The WPIC combined the legislation into one bill and amended the administrative recommendations (see following). The committee legislation would limit use of geocodes, provide a "correct and complete" standard for updates, give further guidance for dividing or severing a water right, allow for updates without an administrative fee, require rules for adding or subtracting owners, minimize delays, and increase penalties.

ADMINISTRATIVE RECOMMENDATIONS

Designated agency	Recommendation
All parties	Recognize that use of a geocode is a reference, but not a legal, definitive record of a water right's place of use.
County clerks and recorders	Improve access to land transfer documents, which would enable the DNRC to more easily and accurately update the water rights database.
DNRC*	Keep all records, maps, and research used to determine ownership in each water right file.
DNRC*	Rewrite language of ownership update postcards (confirming an ownership update) and fee letters (seeking payment of update fee) to better describe circumstances and the process under existing law. If legislation or policies change, the language of the postcards and letters shall be re-evaluated.
DNRC*	Standardize ownership update procedures at the agency's eight regional offices.
Legislative Audit Division	Consider a legislative audit of the underlying processes associated with ownership updates, the water right database, and Water Court platform requirements.
Water Court	Continue to attach all relevant maps and other information related to a water right ownership update to a red-marked abstract, court water master's report, and final orders.

COMMITTEE REQUESTED FOLLOW-UP

* The GWG recommended the DNRC incorporate the above suggestions into their 1993 policy handbook on ownership updates. The WPIC agreed and asked the DNRC to make these changes by the committee's September meeting.