

## **JUDICIAL BRANCH PROPOSAL FOR CHANGES TO WATER COURT JURISDICTION**

The Water Policy Interim Committee is considering changes to the role of the Water Court. The following suggestions will bring expertise to solving water problems, decrease the cost and increase the speed of decision making, and create more consistent law regarding water rights and their use.

### **SUGGESTION 1**

Water Court review of DNRC permit and change decisions should be permanent and exclusive.

#### *Benefits of Suggestion 1*

The DNRC's decisions on permit and change applications are subject to judicial review by either the Water Court or the District Courts. While this system gives water users choice of forum, it does not ensure consistent application of law nor does it ensure the reviewing court has the expertise to review permit and change decisions.

### **SUGGESTION 2**

The Water Court should have exclusive jurisdiction to decide the boundaries of Irrigation Districts.

#### *Benefits of Suggestion 2*

District Courts currently have jurisdiction to decide the boundaries of Irrigation Districts. This process involves identification of lands susceptible to irrigation. The Water Court uses a similar process to describe Irrigation District water rights. Under the current system, an Irrigation District must first have its boundaries defined in district court before going to the Water Court to have its water rights defined.

This arrangement is costly for water users because it requires two court cases to decide similar issues. It also causes delays in the adjudication of water rights because Irrigation District boundaries must be defined *before* water rights can be addressed. Allowing the Water Court to decide both issues in a single proceeding would save judicial resources, cost water users less money, produce more consistent results, and speed up the adjudication.

### **SUGGESTION 3**

The Water Court should have concurrent jurisdiction to decide cases regarding ditch easements.

#### *Benefits of Suggestion 3*

Although water disputes often involve both water rights and the ditches that carry them, these disputes cannot presently be resolved by the same court. Under the current system, district courts must adjudicate ditch easements, while the water rights carried in those ditches can only be decided by the Water Court. Litigants are forced to present their cases in two different courts where they face the potential for conflicting outcomes. This inefficient division of jurisdiction increases costs, delays decision making, and unnecessarily burdens the judicial system by requiring duplicate proceedings on similar issues.

Allowing the Water Court to decide water right and ditch easement issues in the same proceeding would save judicial resources, cost water users less money, give water users answers more quickly, and produce more consistent results.

### **SUGGESTION 4**

The Water Court should have concurrent jurisdiction to administer its own decrees.

#### *Benefits of Suggestion 4*

Montana's statutes give district courts exclusive jurisdiction to administer water rights. This system is a leftover from the days when district courts also adjudicated water rights. Under the current system, the Water Court adjudicates water rights but cannot enforce them. Water users must have their rights adjudicated in one court and administered in another.

Concurrent jurisdiction would give water users the option of having their rights decreed and administered by the same court. This change would allow water users to

select a court with specialized expertise to help them resolve complicated water distribution issues. Providing for concurrent jurisdiction would also address other problems with the current system, including inconsistency, forum shopping between districts, and delays in decision making.

### **ANSWERS TO WPIC QUESTIONS**

WPIC asked the following questions regarding Suggestion 4. Answers are provided below.

- What would your agency propose as a plan framework if your agency were to take over water rights enforcement/administration responsibilities from the District Courts?

*Answer: Water Court jurisdiction should be expanded to permit the court to hear dissatisfied water user petitions and illegal water use complaints.*

- What would you need to staff a centralized and professionalized WR enforcement effort?

*Answer: The Water Court would not need additional staff.*

- What would your budget look like (positions & salaries, work comp, office space, etc)?

*Answer: The Water Court would not need additional funding.*

- What would you propose in terms of where to locate staff (Bozeman, Helena, regional offices, etc.)?

*Answer: Water Court staff would remain in Bozeman, and travel to the location of the water dispute to conduct hearings. The court has used this system for years and it works well.*

- What would be a realistic timeline for Implementation?

*Answer: Implementation will occur immediately following statutory changes.*

- What would be some areas in MCA that would need to be reformed/amended to make this work?

*Answer: 85-2-406 should be amended to allow the Water Court to administer water rights. Changes would also be required to Title 85, chapter 2, part 1; and chapter 5, parts 2 and 3; and Title 3, chapter 7, parts 2, 3, and 5.*