

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION



STEVE BULLOCK  
GOVERNOR

DIRECTOR'S OFFICE (406) 444-2074  
TELEFAX NUMBER (406) 444-2684

STATE OF MONTANA

WATER RESOURCES DIVISION (406) 444-6601  
TELEFAX NUMBERS (406) 444-0533 / (406) 444-5918  
<http://www.dnrc.mt.gov>

1424 9TH AVENUE  
PO BOX 201601  
HELENA, MONTANA 59620-1601

September 7<sup>th</sup>, 2016

Chairman Bradley Hamlett

Chief Justice Mike McGrath

Attorney General Tim Fox

RE: Future of Water Rights in Montana

Dear Chief Justice McGrath, Attorney General Fox, and Chairman Hamlett:

The Department would like to thank the Water Policy Interim Committee for the opportunity to provide comments both on WPIC's report regarding the future of water rights in Montana, and on the draft legislation that the committee will be considering at its October meeting. The State of Montana is moving toward an important moment in our history as it relates to the fulfillment of the Constitution's confirmation of all existing pre-1973 water rights. The Executive Branch, led by Department, is committed to working with both the Legislative and Judicial Branches to come up with a plan for the management of water rights after they have been finally decreed through the adjudication.

The Department believes that now is the time for all three branches of government to work together to engage the public in the process of identifying what comes after the adjudication. Toward that end, the Department recommends that the Legislature, beginning with WPIC, in conjunction with both the Executive and Judicial Branches, initiate an in-depth study to assess and propose a water rights system for after final decree.

The Ross Report provides an excellent example of the type of detailed, extensive third-party review and public process that we are proposing. The team that prepared the Ross Report sent out over 1,000 questionnaires and received 394 responses, in addition to conducting numerous interviews. It objectively analyzed the existing system and proposed changes based on the goals in the Constitution and the Water Use Act.

**RE: Future of Water Rights in Montana**

**September 7, 2016**

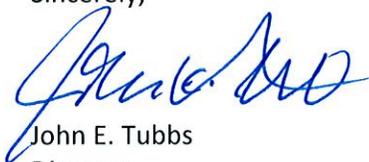
**Page 2**

The Department proposes to work with you to solicit and choose a third-party water rights expert who can conduct a similar review of Montana's current water rights system, seek public input on the existing and future system, and make recommendations for a post-adjudication system in a report to all three branches of government early in the 2017-18 interim. We believe that this approach will build on the work that WPIC and the Court system have done to date and allow time in the next interim to review the report, solicit public comment on it, and make decisions based on the recommendations. The Department is currently reviewing what financial resources it can bring to this process under its current budget authority and would welcome any additional resources that you can provide to help initiate this process.

Additionally, the Department believes that it would be beneficial if WPIC forego proposing any significant changes to the roles and responsibilities of the Department, the District Courts, or the Water Court until we can review the report and can make the most informed decision possible. The Department has concerns that proceeding with significant changes at this point would be premature. We are concerned that any significant change in roles and responsibilities could very likely impact the current progress the State of Montana is making towards completing the adjudication. Changes at this stage of the adjudication could also undermine the balance of powers and protections that water users currently rely upon. The Department feels that it is important to first set goals that can be used to identify what the water right system will look like after final decree, before determining which agency is best suited to implement this system.

We want to thank you for the work you have done to date. We believe that the State has the time to carefully consider the future of water rights in Montana and to lay out a system that is broadly supported. We look forward to working closely with you on this important endeavor.

Sincerely,



John E. Tubbs  
Director

cc:

Beth McLaughlin, Court Administrator

Andy Huff, Governor's office

Russ McElyea, Chief Water Court Judge

Jay Weiner, Deputy Attorney General

Tim Davis, Administrator, Water Resources Division

Jason Mohr, Legislative Services Division