

# Stakeholder questions and concerns about the WRQS, WRIS, Scanned Documents, Historical Documents, Abstracts, and Other Water Processes

(Compiled by DNRC- 2.14.2024)

## 1. Raw Data (forms and phone calls)

- Ownership changes:
  - Web based ownership updates
  - Owners being added or removed and no notice to owners
  - Web based ownership updates – process to ensure the person submitting the form is actually the owner of the water right?
  - Geocodes updated by DOR records, no notice
  - the postcards that go out to new owners/past owners(?) after an ownership update is processed are incredibly cryptic. Can we re-do these so that they are more understandable?

## 2. Data Interface (Trident)

- What systems are in place to ensure “new data” that is input is accurate - i.e. ditch names being added to an abstract. Second person reviews?
- No actual lock/security block of modifications to claims without approval from WC
- No tracking or report of modifications to water rights not ordered by the WC
- Data Security
  - Who can make changes to what and when can they do it? 2 person sign off? When/How are claimants involved?
  - Access to database from potential other litigants (i.e. tribal reserved water rights)
  - What firewalls exist to protect data integrity?
  - What protocols are in place to ensure that changes are not made unless the DNRC or its employee has the legal authority to do so?
  - How and when are claimants informed of any additions or subtractions made to their claim file or their abstract?
  - What systems are in place to ensure historically input data is accurate? Example is STR that are numbers that don't make sense.
  - Shifts in burden of proof when data added or entered isn't accurate.
  - Process to clean up absent litigation? When, where how?

## 3. Water Right Information System (general)

- What is the purpose of the WRIS?
- Who has access to the WRIS? Is their access different? Who owns the data that is in the WRIS? The claimant? Water right owner?
- What changes can legally be made by DNRC?
- What data are in the WRIS?
- Is the WRIS the centralized record? What is the definition of "centralized record system" and whose definition is it?

- What rules/statutes govern what must be in the WRIS? IF none, what policies (current and historically)? Do policies need to be developed that outline what must be included?
  - Can the "system of centralized records" contemplated in Art. IX, Sec. 3(4) include more than one database? Is it necessary, given the legacy issues with the WRIS that the "system of centralized records" be comprised of more than one database? How does this centralized record system integrate with the "present system of local records" referenced in Art. IX, Sec. 3(4)? Does it integrate?
  - Under what circumstances would the WRIS include anything other than what is defined in Water Rights Claims Examination Rule 2(a)(10) (which is limited to “the original, electronic, microfilm or scanned records of all claims of existing rights, permits, certificates, applications, ownership updates, and other documents filed with the department”).
- Why is the information in the WRIS different from the information in the WRQS?
- What is the part of the record versus what is a reference or tool.

### 3. WRIS- Database

- Is WRIS accurate, complete, and timely? How can the WRIS be more accurate, complete, and timely moving forward? And how can the public facing WRQS reflect all that is in the WRIS (or if not possible, how can the WRQS clearly articulate what the public can see vs. what the public must request)? How can DNRC audit and then comprehensively and systematically address legacy issues with the WRIS and its prior databases? I think it unlikely we can work to address # 2 short of a fully funded audit from an independent auditor. What Data Quality Assurances are in the WRIS?
- How is the legacy issue addressed when these items may not actually be in the WRIS for some water rights? Are legacy issues identified and addressed? How? When?
- How has data been migrated to the current WRIS over time?
- Is there certainty that the WRIS contains ALL information from prior systems since the 1980s? What protocols and safeguards were in place in the 1980s to present? My understanding from the last stakeholder meeting is that there probably were not any. Now DNRC is working on quality control. This is great moving forward, but cannot fix or address issues from the past.

### 3. WRIS- Scanned Documents (FileNet) & Historic Documents (Iron Mountain)

- Scanned docs are not organized, labeled properly, and not searchable
- Date that is provided on scanned document
- Scanning documents – quality assurances. Is someone double checking to make sure both sides of a page are scanned? Are the documents all legible?
- How to identify legacy issues and address them in a comprehensive and systematic way?
- Large maps- How/when will these be scanned.
- What is the policy that DNRC is following for retention? Is this different between adjudication and new appropriations and changes? Are the document owners contacted prior to destruction of their files?
- Additional data requested:
  - DNRC:
    - Every document related to every modification of a water right that has been made since that water right was filed in 1981. This will require an audit and addressing legacy issues.
    - Complete copies of ownership update filings, including all supporting documents (deeds, etc.)
    - For the compacts, are all documents relevant to that compact in the WRIS.

- Administrative hearings- All documents from Administrative hearings process, especially evidence that was produced during a hearing and relied upon by the hearings officer as part of his/her decision, i.e. reference in proposal for decision, final order, etc
- Legal availability search w/o court ordered volumes
- o Water Court:
  - Every single water court document relating to that water right since the 1980s.
  - This includes the transcripts of contested hearings from the 1980s to present. Does DNRC have a way to transcribe from cassette tape? In 2023 I have a case that has come up again because of legacy errors and I need the transcript of a 1980s hearing.
  - This includes all maps reviewed by DNRC in claims examination.
  - In theory, at final decree any terms from a historical decree should be incorporated into the findings of the Water Court, but this probably is not correct. Not all water rights have had to go through active adjudication in the Water Court if there were no objections or issue remarks.
  - There are a lot of water rights that have been modified by the Water Court over the years that are missing information key to understanding the water right as it exists today. In particular, I am thinking of water rights that were subject to a stipulation, agreement or some other type of settlement arrangement that was adopted by the Court but where no copy of the settlement document was included in the water right file. Often, these settlement documents include details about modifications to the geographic components of the water right (POD, POU or Place of Storage), and/or details of subordination agreements or other aspects of the water right that are not readily captured by the elements listed on the water right abstract. The settlement documents may include maps that are critical to the understanding of where PODs, POUs and places of storage are located. Even a poorly made map can vastly improve the understanding of a water right (one of the reasons why the State required maps with the original claim filings). This is becoming more important as we move through the re-examination basins. While more recent Water Court cases are available through Full Court, the older ones are not. Our ask at this time is to identify water right files that need to be updated with information from the Water Court case files and to get copies of important documents scanned to the water right files. This may sound like looking for a few hundred needles within thousands of haystacks, but I have some suggestions for how to focus the effort.
  - There are a number of water rights that contain informational remarks that reference a stipulation, agreement, etc. Mainly these will be found in the free-text remarks (not formatted remarks) so it would be necessary to search all the free-text remarks for the adjudication water rights for keywords like, 'stipulation', 'private agreement', 'settlement'... I recognize this is no small task. One approach could be to start with basins that are currently in the re-examination phase with a Preliminary decree soon to be issued or that has recently been issued. In my experience, these remarks were often placed when a stipulation addressed some agreement about sharing water, an unusual division of flow rate or volume, or subordination by one party or another. The contents of these agreements may have a direct impact on actions that can or cannot be taken in the next decree stage.
  - Another way to search would be to look for water rights where either the POD, POU or Place of Storage has a flag that is set to 'Modified by Water Court'. Again, I recognize this is not a short list. It would make sense to start the search with the earliest basins to be decreed and that have not yet had a second decree issued.

- The result of these 2 steps would be a list of water rights that have a high potential to have documents that are saved in the Water Court case files but not in the water rights files. Beyond identifying this list, I suspect it would be a manual process to look at Water Master's reports for reference to settlement docs/stipulations/agreements that were not made part of the water right files.
- I will add that not every stipulation is critical to understanding a water right. However, if the goal is to get to a point where we can say with confidence that the WRIS is the official record of water rights in the state, we need to take this step. The number of instances where crucial information is saved in the Water Court case file out of reach of the water right owners and other members of the public, is higher than many people recognize. While there has been substantial discussion about "errors" in the WR Database, which is certainly an on-going issue that needs to be addressed, in my experience after having reviewed thousands of water right files, one of the biggest problems is the data gap that exists between the Water Court case files and the water right files
- Water Court Orders
  - Only substantive orders? Who defines what a substantive order is?
  - Does this include going back and inputting historical data that is missing?
  - Moving forward how are water users to know that these exist and where to find them? Someone buys land 20 years from now - how do they know?
  - The WRIS does not consistently match court orders. Therefore, when DNRC does something like reexamination they are not complying with existing orders on water rights. The DNRC employee isn't even aware that an order exist.
- Case file
  - If intended to refer to the Water Court case file for a water right, then it needs to be all of the files (TPD, interlocutory, PD proceedings; proceedings for motions to amend, motions to correct, certification actions, etc.)
  - Water Court case files in the WRIS; whether the Water Court should be a "court of record" under MCA 3-1-102 if it's expected to be a repository for stipulations or other documents outside the scope what is filed in a case.
    - This question dovetails with the FDT work. Currently there is no "Water Court" defined in statute. There are water judges who are part of water divisions. See 3-7-101 et seq.
  - This may be possible looking forward from introduction of FullCourt, but this may not be possible looking backwards. Not all historical case files are scanned in.
  - Does this also include District Court records for water rights that were historically adjudicated and/or are being administered?
  - Does this also include Montana Supreme Court records for those water rights that have been addressed by the Supreme Court?
- Master's Reports
- Claim file
  - Is there a policy or definition of what is in a "claim file?"
  - Will DNRC go back and systematically scan in all the large maps/large files that were not originally scanned in? What about other missing information (not all claim files are complete, as noted above).
  - Will DNRC implement some type of QA to ensure that hand entered information is accurate

- Will DNRC implement some type of QA to ensure that ALL documents are scanned?
- Will DNRC implement some type of QA to ensure that all scanned documents historic and current are useable, readable, and complete?
- Who controls what is added to a claim file? There are examples of non claim owners requesting the addition of information to someone else's claim file and it happening. How has this worked, how will it work?
- All the aerial photos used by DNRC for the claims examination (usually just two photos) should be added to the claim file. I know they're big aerials stored at DNRC, but with 2023-24 technology, you would think they could figure out a way to scan those and upload them into a user-friendly format for each claim file.
- District Court
  - Stipulations (with exhibits) – from Water Court cases only? From District Court? From Supreme Court? Recorded in Clerk & Recorder records, but never in a court file?
  - District Court orders on administration of water and enforcement actions. District Court documents and records related to administration of the water right
  - The “local” records referenced in Mont. Const. Art IX, Sec 3(4) that were the “present system of records” in place in 1972.
    - What are these?
    - District court records prior to 1972
    - Clerk and recorder records prior to 1972
    - Other records?

#### 4. Reports

- Reports the WC relies on change or break with no notice to the WC, often causing inconsistencies, report errors, and delays
  - Objection List
  - Counterobj notice (several issues)
  - Abstracts
  - Indexes (missing type of historical right)
- Inconsistencies between reports run by DNRC OIT vs. what is available to WC in database
- Programming changes that alter water rights decreed or modifications ordered by the WC, with no notice to the WC; 4000 character limitation

#### 5. Public Access: Water Right Query System (WRQS) & Water Rights Notification Tool (WRNT)

- What is the purpose of the WRQS
- Consistency of information and ability to recreate searches:
  - The magnitude of this concern/problem is unknown primarily because there are legacy problems with the information contained in the WRIS that new software cannot fix or even begin to address unless and until an audit is done of the entire database. Output in the WRQS is only as good as the input.
  - Not all water right records are the same. I cannot easily predict what information I will be able to retrieve from a particular water right file beyond the very basics (i.e. abstracts and, hopefully, at least part of the original statement of claim). I have had instances where entire statements of claim files are missing. This means each search of a water right is unique and not repeatable.

- There does not always exist a paper trail in the claim file system (at least in the public view version) that links changes or modifications to elements of water rights. This is particularly true when looking at past records.
- Unused claim number - what does this mean? If it's unused then why/how does it exist?
- “Associated” water rights - there are cases where water rights are considered “associated” i.e. share same POD but other than that have no relationship; The use of this term needs to be made clear and defined so that water users understand.
- Place of Use search
  - It is not possible to use the aliquot search function with confidence. For example, if I put the W2 in as the search term, this search does not also pull anything described in the SW or NW (even though both of those descriptions are subsets of the W2). It only pulls water rights that use the W2 as the description. There is no warning in the system about this, which means users may falsely believe they have done a comprehensive search when, most of the time, they have not. This has always been a problem and is still a problem.
  - Geocodes are still a problem.
- Point of Diversion search
  - Same issues as above.
- What defines the parameters of a “General Abstract” produced by a WRQS query? Why are there only general abstracts and not the most current decree abstract?
  - More helpful than a “general abstract” would be for the public to also be able to see the versions listed with dates. Similar to a title abstract for a property. This would be a quick way to understand the history of the water right.
- Final decree abstracts
  - The ability to access these abstracts in a timely manner for issues such as due diligence on a land sale is critical.
  - Final decree abstracts in WRIS must match the water final decree abstracts.
  - Current Final Decree abstracts are not available to the public through the query system
  - Inconsistency with abstracts between WC orders (post decree) and query system
- Versions and operating authority. Under what circumstances or authority would the most recent version of a water right abstract not be pulled in the WRQS?
  - From the public facing system, there is no way to be sure the most recent version is the “general abstract” that is pulled. Also, there are many abstracts with the warning that the abstract being viewed is not the “most recent operating version” but there are no details as to why.
  - How is a water user supposed to understand what a “more current operating authority” is?
  - What version of the water right is pulled in the WRQS?

## 6. Other: Adjudication process

- e.g., ditch names and POU); timing of claimant contact letters and when the basin is closed. Only chance to object to the change.
- In certain basins (Basin 41U is example) elements of water rights that should not have been modified in re-examination were, despite parameters of re-exam order. There are claims for which the source was modified from a creek to a river despite prior court orders that were in the claim file which affirmed the source was, in fact, the creek. This appears to have depended on who the examiner was. Now parties have spent thousands of dollars to unwind the modification through the water court process. This is 2023. This has happened in other basins as well.

- Re-exam order is applied inconsistently. And during re-examination it appears that many examiners are not/did not look at the claim file & added issue remarks inconsistent with prior court orders from TPD or, sometimes re-added issue remarks that were expressly removed during TPD proceedings. This is causing water users to pay twice for the same work, with the burden of having to object to their own water rights. This is currently happening in Basin 41K. This is the present day, but has happened in the past too and in other basins (i.e. 43A had a lot of these issues also).
- Additionally, there are reexaminations occurring on claims that the court has held a case on and issued an order on and that court data isn't being considered.
- Claimant contact on changes to data?
  - Legacy claimant contact - can that be determined and added to claim files when it is missing?
  - Burden of proof shifts when data is added/changed on claim abstracts or through issue remarks this shifts the burden. Has this been discussed? How do claimants fix it before the basin is closed and goes to the water court.
- What is timeline for claimant contact? What can occur as the result of claimant contact?
- How do claimants correct errors from original input, changes made subsequently by DNRC (ownership, ditch, POD, etc) without having to litigate? (i.e. reexamination)
- What happened to all the GIS data that was generated during the original examination of basins with the WR Mapper? Could we use these data as a jumping off point to have real GIS representation of geographic water right info?

