

## **WHO HAS JURISDICTION OVER MONTANA'S WATER?**

The Montana Water Court has exclusive jurisdiction over the final determination of "existing water rights" (i.e. water right claims with Pre-July 1, 1973, priority dates). See § 85-2-215, MCA.

The DNRC has exclusive jurisdiction over post-July 1, 1973, water right permits and change applications. See §§ 85-2-302 and -402, MCA.

The District Courts have jurisdiction over water distribution controversies and "may grant injunctive or other relief necessary and appropriate to preserve property rights or the status quo pending issuance of the final decree." The District Court also has jurisdiction over ditch easement conflicts. See § 70-17-112, MCA.

## **WHAT ARE YOUR OPTIONS IF YOU GET INTO A CONTROVERSY OVER WATER?**

1. First talk with the person about the problem. If you can work it out among yourselves this is obviously the best solution. If talking doesn't work, there are other options available; depending on what is the source of the problem.

2. You can file a court action in the appropriate District Court asking for a temporary restraining order and preliminary injunction. See §§ 27-19-101, 201, and 314, MCA. This will probably be the fastest way to obtain relief, but it is also the most expensive, as for most water users it will require the hiring of an attorney. This option is very formal and often polarizes the parties after one party "wins."

3. If a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of the Montana Water Use Act, then call the DNRC regional office in your area and they can assist you in filing a report in accordance with § 85-2-114, MCA.

4. A fourth option, available only to water users who claim water rights previously decreed by a District Court, is to file a petition with the District Court to have a water commissioner appointed to distribute the water. See § 85-5-101, MCA. If a water user on a previously decreed stream is dissatisfied with the method of distribution by the water commissioner, then that water user can file a written and verified complaint with the District Court and request a hearing on the matter. See § 85-5-301, MCA.

5. A fifth option is to file a petition with the District Court under § 85-5-110, MCA, to seek the appointment of a water mediator to mediate the water controversy.

6. A sixth option is to file a petition with the District Court pursuant to § 85-2-406, MCA, and request the District Court to certify the determination of the disputed existing rights involved in the controversy to the Chief Water Judge. This would likely involve water rights or streams that have not been involved in a prior District Court decree.

7. A seventh option available to water users in a basin that is subject to a Water Court issued Temporary Preliminary or Preliminary Decree, as modified after objections and hearings, is to petition the District Court to enforce the provisions of the modified water court decree in accordance with §§ 3-7-212, 85-2-231, 85-2-406 or 85-5-101, MCA.

**Source: Excerpt from Montana Water Court Guidebook**