



## Water Policy Interim Committee

---

### 62nd Montana Legislature

#### SENATE MEMBERS

BRADLEY MAXON HAMLETT--Chair  
DEBBY BARRETT  
SHARON STEWART-PEREGOY  
CHAS VINCENT

#### HOUSE MEMBERS

WALTER MCNUTT--Vice Chair  
PAT CONNELL  
BETSY HANDS  
BILL MCCHESENEY

#### COMMITTEE STAFF

JOE KOLMAN, Lead Staff  
HELEN THIGPEN, Staff Attorney  
KEVIN MCCUE, Secretary

To: Water Policy Interim Committee  
From: Joe Kolman, Research Analyst  
Regarding: Water Right Call List

At the September WPIC meeting, committee members asked for a list of water right calls made in Montana over the last several years. Unfortunately, it does not seem that such a list exists.

This lack of information may be due in large part to the nature of a water right call. In a time of water shortage, a senior water user may make a call on junior water users in order to fulfill the senior's water right. This is an action between private parties and could be something as informal as a phone call, an email, or a chat at the post office, though that chat may be less than friendly. In these circumstances, a call is not an action performed and recorded within a government-based system. If the junior refuses to comply, the senior may ask a court for an injunction. But to my knowledge, these records are not centrally recorded.

However, in an effort to provide the committee with some information regarding water disputes and the use of water based on the priority date, attached are two relevant sources of information. These will be discussed in more detail at the January 2012 meeting.

The first is a list of complaints made to the Department of Natural Resources and Conservation. Complaints may be made to the agency pursuant to 85-2-114, MCA, alleging that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water.

Another measure of water use being limited by the prior appropriation doctrine - outside of calls or complaints - is the appointment of a water commissioner. In general, water users on a source will ask a court to appoint a water commissioner in times of limited water. The water commissioner distributes water according to first in time, first in right. The Water Court tracks these appointments and has provided the WPIC with the attached list.<sup>1</sup>

---

<sup>1</sup> Water right enforcement information previously submitted to the WPIC is available at the following links:

<http://leg.mt.gov/content/Committees/Interim/2011-2012/Water-Policy/Staff-Reports/ground-water-calls.pdf>

[http://leg.mt.gov/content/Committees/Interim/2009\\_2010/Water\\_Policy/Staff\\_Reports/water-right-enforcement.pdf](http://leg.mt.gov/content/Committees/Interim/2009_2010/Water_Policy/Staff_Reports/water-right-enforcement.pdf)

However, most of the information on these lists does not pertain to what the WPIC discussed in September 2011, which was the ability of a senior surface water right holder to make a call against junior ground water rights, specifically wells exempt from permitting.

As a followup, I asked Water Court Judge Bruce Loble about less publicized calls, complaints, or disputes along those lines.<sup>2</sup> The judge posed the question to about 70 people interested in water rights via an email list, but received no responses.

---

<sup>2</sup> Loble noted that the 2006 Trout Unlimited case decided by the Supreme Court is well known. The case dealt with prestream capture of ground water destined for a surface water source.