



Comprehensive Water Review

Key Challenges

Stakeholders identified the Key Challenges that need to be addressed to meet our current and future water needs.



Final Decree Transition



Water Right Application Processes



Changes, Mitigation, and Exceptions



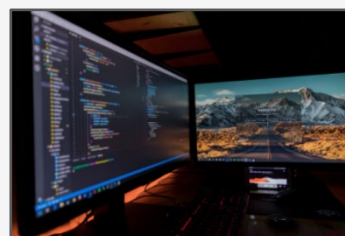
Drought Management



Stakeholder Engagement, Outreach, and Education



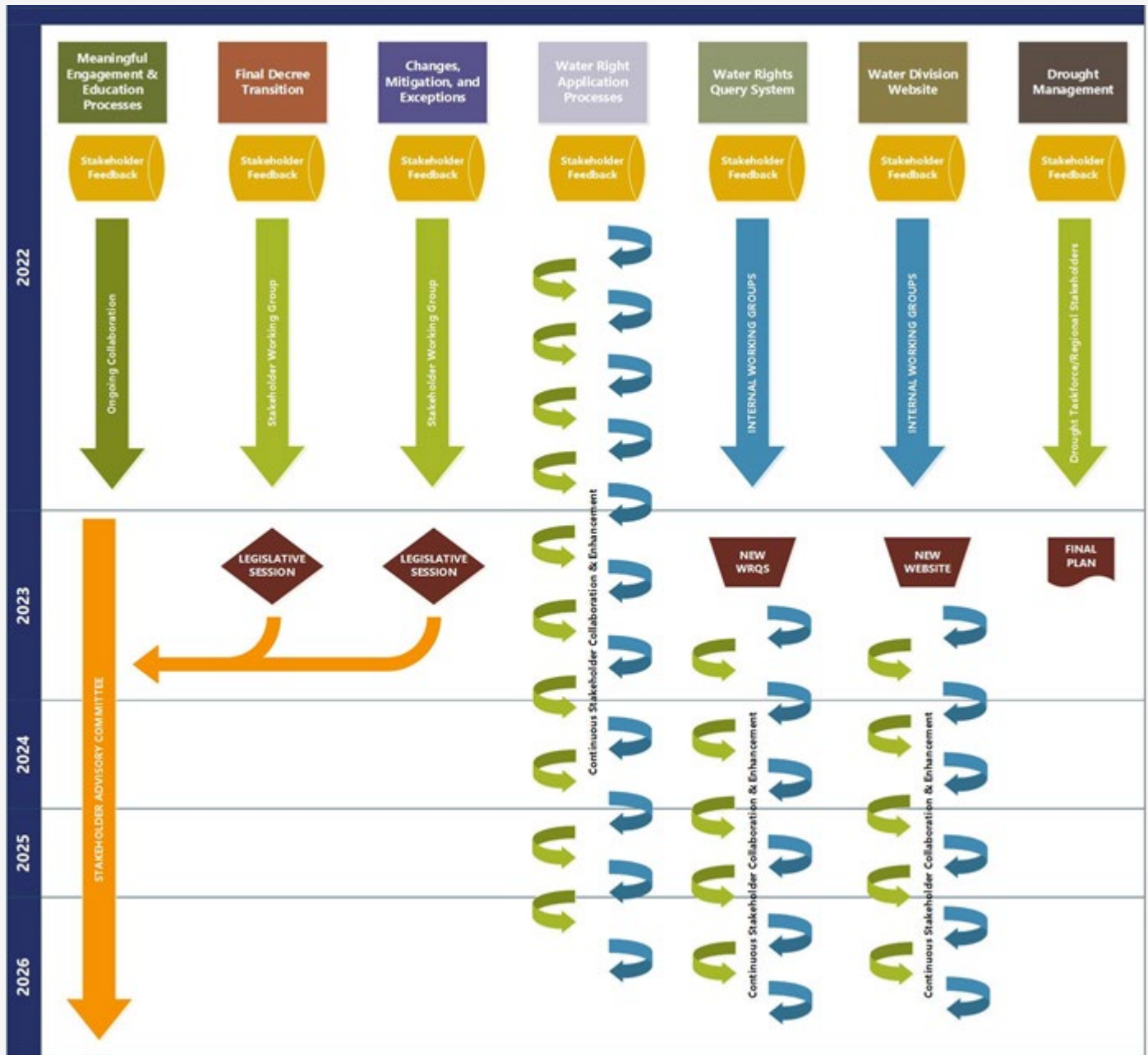
Water Rights Query System



Water Division Website

Timeline

This process diagram shows where we are headed with each of the Key Challenges





Comprehensive Water Review

Key Water Challenges and Proposed Action Plans

Winter 2022

Introduction

After nearly 50 years of implementation and targeted adjustments, the Water Use Act and associated regulations and policies need a comprehensive review to ensure that water administration and management is serving the current and future water needs of Montana. Benefits of this review include streamlined and consistent administrative processes, improved customer service, responsible and innovative development, and efficient administration of Montana's water resources. The results of this effort must also uphold the core principles of the Water Use Act for current and future water appropriators. This review of water right administration and management requires significant stakeholder input and a comprehensive look so that Montana can meet its water needs of the 21st Century.

To that end, the DNRC Water Resources Division (WRD) developed these Key Water Challenges and proposed Action Plans based on input received during the Governor's Red Tape Initiative and executive branch feedback, as well as WRD's stakeholder listening sessions, comments, and online public surveys. Many of these challenges were also identified in the 2015 State Water Plan and in discussions with the Water Policy Interim Committee. These Key Challenges aim to comprehensively address water administration and management over the course of the next three biennia. The proposed Action Plans describe the initial steps we, as a state, will take to address these challenges. These proposed Action Plans are not final solutions in and of themselves but rather a roadmap by which we can craft solutions with stakeholders.

1. Determine if the current statutory structure for the post final decree administration and regulation of water rights is adequate to meet future water policy objectives

Why: Over the past ten years, questions have arisen about the future roles of the judiciary, water commissioners, and the DNRC. As some basins in Montana near completion of the adjudication of pre-1973 “existing water rights,” there will be an increased focus and need for administration of all water rights on a source (i.e., existing rights, permits, certificates, water reservations, and compacted federal reserved water rights). Montana needs to clearly define the roles for administration of water rights to ensure a smooth transition to post-adjudication distribution, management, and enforcement roles.

Action Plan:

1. WRD will lead a facilitated stakeholder conversation on the roles and responsibilities of water administration and management after final decree issuance. Stakeholder discussions will cover these topics:
 - Current and post-adjudication roles and jurisdictions of district courts, water courts, and DNRC;
 - Role of final decrees;
 - Enforcement of final decrees; and
 - Water commissioner training and oversight.
2. The recommendations from these efforts may lead to draft legislation for the 2023 legislative session.

2. Evaluate and update the water right application process so that it is timely, transparent, streamlined, and consistent.

Why: The water right permit and change processes are complex and the law places the burden of proof on the applicant to meet the statutory criteria. The implementation of existing regulations, policies, procedures, and guidance can lead to longer processing times and inconsistent outcomes based on unique variables. Stakeholders have requested a simplified process with increased regulatory certainty.

Action Plan:

1. WRD will form an internal working group to conduct audits of internal processes (based on stakeholder feedback) to identify best practices, methods to ensure consistent implementation of water processes, resources, and training necessary to ensure consistent applications.
2. Following the internal reviews, the WRD internal working group will solicit additional stakeholder feedback to make recommendations to WRD leadership on the following:

- Elimination, revision, and/or necessary rulemaking for regulations, policies, procedures, and guidance; and
 - Improvements to application forms, addenda, instructions, and decision documents.
3. WRD will implement procedures that provide transparency to the public and assist with timely processing of applications.

3. Evaluate the coordination of water development, use, and protection to meet new demands in Montana.

Why: Montana lacks comprehensive policies that effectively protect existing uses while meeting new demands. Development is already constrained by existing demands and basin closures. These factors have also increased the complexity of permitting for new uses, and unintentionally increased the reliance on exceptions in section 85-2-306, MCA to avoid the permitting process and meet growth demands. This expanded use of permit exceptions, which lack availability reviews and opportunities for public comment, leads to overallocation of a finite resource and conflicts among water users. Montana needs to revise and modernize policies around mitigation of new uses, permit exceptions, and the water right permit and change processes to create regulatory certainty.

Action Plan:

1. WRD will work with a 3rd party facilitator to convene stakeholder groups to address the following issues:
 - Define what improvements are needed for the water right change and permit application processes;
 - Determine what statutes, regulations, and/or policies are needed to establish an effective mitigation and marketing framework; and
 - Evaluate the role of exempt wells to meet future demand.
2. The recommendations from these efforts may lead to draft legislation for the 2023 legislative session.

4. Develop tools, information, and policy recommendations to support drought adaptation and mitigation efforts of Montana communities and businesses.

Why: Drought is a regularly occurring characteristic of Montana’s climate. Some portion of Montana has experienced drought in 20 of the last 21 years. According to the [Montana Climate Assessment](#), future droughts in Montana are likely to be more frequent and intense due to warming air temperatures and decreasing snowpack. Developing information that communities can use to prepare for drought and crafting policies and programs to reduce the impacts of drought are critical for long-term social, economic, and ecologic resilience and sustainability.

Action Plan:

1. WRD will update the 1995 State Drought Plan (Plan):
 - WRD will use a collaborative process to engage a Drought Task Force and seven regional water user groups to identify local vulnerabilities and adaptation strategies to proactively address drought impacts;
 - The Plan will build upon local watershed drought plans and strategies;
 - The Plan will provide the framework for a coordinated approach to improve statewide monitoring, preparedness, response, and adaptation across state agencies and other partner organizations;
 - The Plan will recommend policies that support drought adaptation and response efforts of Montana communities statewide.
2. WRD will develop and host an interactive drought information website as a communications, education, and outreach hub. The site will:
 - provide regular updates on the planning process;
 - disseminate educational information about drought and adaptive drought planning;
 - provide access to tools and resources for assessing and monitoring regional and state-wide drought conditions; and
 - Allow Montanans to report drought impacts in their area.
3. The recommendations from these efforts may lead to draft legislation for the 2025 legislative session.

5. Develop a meaningful outreach, engagement and education process for stakeholders and the public.

Why: Water management is complicated, not only because of water’s finite and variable nature, but also because water policy is dynamic and constantly evolving. Continual demographic, and economic shifts, as well as changes in how society values water, will always bring new stakeholders into contact with Montana’s water administrative processes. Consistent and proactive water education and outreach activities are necessary to provide a foundation for the informed management of Montana’s water resources now and into the future.

Open, honest, consistent, and effective communication with decision-makers, stakeholders, and the public is essential to the success of the WRD’s role in the management and the administration of Montana’s waters. External engagement and input are a precondition for sustainable, actionable, and lasting water resource policy decisions. This dialogue builds trust, respect, ownership, and understanding among the diverse communities we serve.

Action Plan:

1. WRD Leadership will develop a public stakeholder engagement process that provides opportunities for candid input that leads to the collaborative development of recommendations to address the key challenges in this Comprehensive Water Review.

- WRD will develop a stakeholder outreach HUB to provide a central location for all materials related to the Comprehensive Water Review.
- 2. WRD Leadership will work with stakeholders to better understand engagement needs and develop a Stakeholder Engagement Plan (Plan) that is assessed and updated on a biannual basis. The Plan will guide WRD’s outreach and engagement activities with stakeholders and decision makers. The plan will include:
 - Education and outreach strategies on a variety of water related subjects through public service announcements, news releases, newsletters, technical publications, public meetings, technical trainings, workshops, and webinars; and
- 3. WRD will establish a standing Stakeholder Advisory Committee (STAC) to advise DNRC on policy decisions and to determine which policies should be formalized in administrative rule.

6. Update the Water Right Query System (WRQS) to be a user-friendly tool that easily provides access to full, accurate, detailed information about Montana water rights.

Why: The WRQS is based on end-of-life technology. The current system needs increased functionality and ease of use, capitalizing on improved technology, to address stakeholder needs.

Action Plan:

1. WRD will continue to work with stakeholders to solicit and analyze the needs of the WRQS to improve customer service and ease of use.
2. WRD will develop and replace WRQS based on stakeholder input.
3. WRD will conduct a business analysis aimed at documenting and formulating plans on how to further leverage and enhance the WRQS. These analyses will include but not be limited to:
 - Integrating Water Court Case files into the scanned documents;
 - Integrating water right application materials into the scanned documents at the time of public notice;
 - Integrating enhanced GIS/Mapping capabilities to the WRQS; and
 - Making scanned materials easier to understand and act upon.

7. Update the WRD website to be an intuitive, searchable, and a meaningful place that provides up to date information on water resources.

Why: WRD’s current website does not provide the public the ability to easily and intuitively find the information they need. A new website will provide tools, resources, and information driven by public needs, metrics of use, and keyword searching. This new website will allow WRD to optimize search engine functionality around high value keywords allowing the public to easily find an authoritative landing page.

Action Plan:

1. DNRC has hired a contractor to develop a website overhaul plan for the agency, including the WRD pages. WRD will incorporate the needs of public stakeholders in this process and will continue to listen to and enhance the new website in an agile fashion moving forward.

As part of our website overhaul, WRD plans enhanced services around but not limited to:

- Easily searchable forms, policies, memos, manuals, and standard practice documents;
- Online forms;
- Easily searchable Office of Administrative Hearings decisions; and
- Seamless integration with the WRQS.