

WESTERN STATES ADJUDICATION CONFERENCE

Lessons Learned in Montana:
The Do's of Water Rights Adjudication

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Why am I here?

- Background
- Contributions from WY, AZ, OR
- Cyclical nature of Water Rights Adjudication
 - MT currently involved in accelerated adjudication process



Montana Profile

- Great Basin State, i.e., desert (mountainous west – prairie east)
- 85 Basins
- 219,000 water rights in adjudication process (47,000 claims to be examined)
- 8 Tribes
- Large federal land holdings in the state.



Montana Adjudication Profile

- Central system of water rights is based on the Montana Constitution (1972).
- Statewide adjudication (1979)
- First in time, first in right doctrine
- Prima facie validity of claims
- Adjudication program has statutory performance benchmarks that are linked to funding.



Common Themes of “Do’s”

- **Process** (examination rules, record keeping, technology, quality control)
- **Personnel** (Recruitment, Training,)
- **Compacts** (Tribal and Federal)
- **Coordination & Cooperation with the Legislative Branch** (funding, legislation)
- **Coordination & Cooperation with the Judicial Branch** (Supreme Court, Water Court, District Courts (general jurisdiction))



Process

- MT verification vs. examination process.
 - Adopt formal rules (MAPA & Supreme Court)
- Record keeping
 - Maintain active ownership records.
 - Don't leave “paper water rights” on agency records”
 - Integrate court decisions with agency records.



Process

- Technology
 - Track emerging technologies and use them to improve processes – GIS, document imaging, web technologies, database.
 - Look for partnerships (NRIS, Department of Revenue, other states).



Process

- Quality Control
 - Dedicated quality control staff.
 - Evaluate adjudication processes and procedures to see if they are still valid and working well.
 - Incorporate work flow, error checking and edits into process.



Personnel

- Organization – consider location of personnel; centralization vs decentralization



Personnel

- Recruitment & Hiring
 - In May 2005 MT hired 40 water resource specialists – advertised throughout the northwest particularly in colleges specializing in natural resources.
 - Working with Montana University System to develop curriculum for water resource specialists.
 - Aging workforce (internal career ladders)



Personnel

- Training
 - Examination rules and manuals provide “body of knowledge” for training program.
 - Annual “Water Rights Boot Camp”
 - Aerial photo interpretation, water law, examination rules and procedures, field investigation techniques, communication, Compacts, enforcement, GIS, database, report writing, change management, post-decree assistance to the Water Court.



Compacts

- 1979 – Montana Reserved Water Right Compact Commission
 - Coordinate general adjudication and examination process with Compact Commission activities.
 - Incorporate negotiated Compacts into water right data systems.



Compact History

- **1985 - Fort Peck Indian Reservation Compact.**
- **Sept 1992 - Northern Cheyenne Indian Reservation Compact.**
- **March 1997 - Red Rock Lakes NWR Compact**
- **March 1997 - Benton Lake and Black Coulee National Wildlife Refuges (NWR) Compact is concluded.**
- **1995 - Little Bighorn Battlefield National Monument and Bighorn Canyon National Recreation Area Compact, completing Park Service negotiations for Montana.**



Compact History

- 1993 - **National Park Service Compacts** for Yellowstone and Glacier Parks and the Big Hole Battlefield.
- April 1997 - **Rocky Boy Indian Reservation Compact**
- 1997 - The reserved water rights compact with the **Bureau of Land Management for both the Upper Missouri Wild and Scenic River and Bear Trap Canyon Public Recreation Site** on the Madison River



Compact History

- 1999 - **Red Rock Lakes NWR Compact and amendments.** The U.S. Fish & Wildlife Service Compact for Red Rock Lakes
- 1999 - **Crow Indian Reservation Compact.** A compact settlement between the Crow Tribe, the United States, and the Compact Commission
- Nov 2001 - **Fort Belknap Indian Reservation Compact.** A Compact between the State and the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation



Coordination & Cooperation with the Legislative Branch

- Legislation
 - Environmental Quality Council
 - Provide information, status reports on adjudication, report issues and concerns.
- Funding Models
 - Filing Fees
 - General Fund
 - Use Fee



Coordination & Cooperation with the Judicial Branch

- Establish clear understanding of jurisdiction and roles
- Meet frequently and discuss areas of mutual interest.
- Coordinate record keeping procedures and integrate information systems as appropriate.
- Involve judges and water masters in training and work sessions.



Do's

1. Have a clear plan: a basin at a time or the entire state?
2. Define the process as accurately as possible with all stakeholders
3. Set a realistic time frame and goals
4. Accurate forecasting and priority setting
5. Consider centralization given current technology
6. Get a commitment for funding
7. Pray the commitment holds
8. Develop a good working relationship with the Water Court. The legislature, other state agencies; know the boundaries
9. Plan on educating everyone in the process
10. Yearly training of staff; quality control

Additional Information

http://dnrc.mt.gov/house_bill22/

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