

Historical (Pre-1973) Water Right Ownership and Subdivided Parcels

- Would it ever be feasible to get the water from the claimed source of water to my property?

If you need to cross someone else's property to gain access to the claimed point of diversion, you may need to obtain a legal easement to be able to convey the water to your property. This may require hiring an attorney to help you get the water to your property.

- If I could get water to my property from the claimed source, could I change anything about the water right?

If you want to change the point of diversion, purpose of use, place of use or place of storage, state law requires that you file an Application to Change a Water Right (Form 606) in order to have a legal right to the new point of diversion, purpose of use, place of use, or place of storage. There is an upfront fee of \$700 and it's possible you would have to hire a consultant and attorney to complete the process.

- Would the portion of the water right that I would receive be enough to be useable on my property?

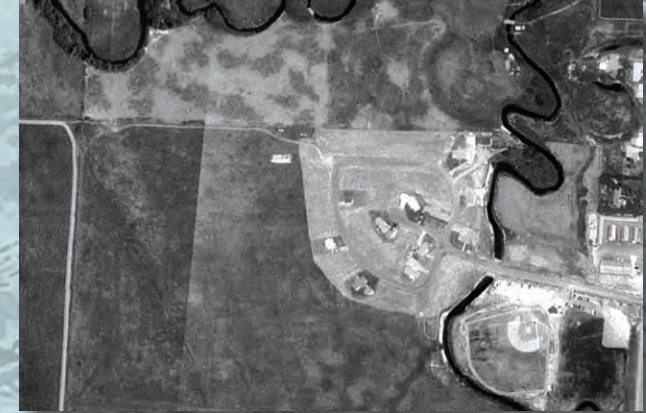
Normally a water right is split proportionally across the total irrigated acres (claimed Place of Use) unless otherwise stated in the deed or other recorded document. For instance, if the place of use described 20 acres irrigated and a flow rate of 200 gallons/minute, but now there are 40 owners with a 1/2 acre parcel each, you would each receive 1/40th of the irrigated acreage (or 1/2 acre) and 1/40th of the original flow rate (or 5 gallons per minute). In this example, that's about enough water to run one garden hose.

- Could I sell or lease my subdivided portion of this water right?

Many have heard that "Water Rights are valuable," and they are. It is possible to sell or lease your portion of a water right. However, the process to get it moved can be difficult. A change in the point of diversion, purpose of use, place of use or place of storage requires an Application to Change a Water Right (Form 606). You may want to consult with an attorney about selling or leasing a water right.



Beggs Park, Flathead County, 2004



Beggs Park, Flathead County, 1990

Department of
Natural Resources and Conservation



The Water Resource Division promotes and coordinates the wise use and conservation of Montana's water resources for current and future generations.

For further information, contact:

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http://dnrc.mt.gov/wrd/water_rts/adjudication

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Water right ownership

As you are well aware, many areas of Montana have experienced great population growth and land has been subdivided to accommodate the growth. Many land parcels originally had water rights associated with them.

According to Montana Law, ownership of a water right transfers with the sale of the land (to which the water right is appurtenant) to the new property owner unless the deed, or other recorded document, severs the water right from the property.

Am I a successor in interest for a historical water right?

The DNRC is in the process of reviewing all claims for pre-1973 water use in preparation for the Montana Water Court issuing a decree. If your property falls within the historic place of use described in a Claim for Existing Water Right filed by a previous owner, it is possible that you may have an interest in a portion of this historic water right. You may want to review your deed or other recorded documents relevant to your property to see if you have a documented interest in this water right.

If your deed or other recorded document states that no water rights are transferred with the property you purchased, DNRC needs to know. Please contact us so we can contact the person who transferred the property. You don't have a historic water right.

If your deed does not mention water rights, or states that water rights go with the property, you may have an interest in a historic water right and have several options to consider.

These options include:

- **File an Ownership Update form.**

If you have an interest in pursuing your portion of this claimed water right you need to file an Ownership Update (Form 608) or an Ownership Update Divided Interest (Form 641) with the DNRC Water Resources Regional Office and pay the required \$50.00 fee. (Only the individuals listed as current owners of record in the DNRC database are included in future notices from DNRC.)

- **Form a Water Users Association or Homeowner's Association.**

This group would be made up of all land owners within the place of use of this historic water right. This means the entire water right can be transferred to a single entity (the Association) and the entire water right would remain intact. The Association would be contacted by the DNRC or Water Court for actions involving this claimed right. Also, the Association could file one Application to Change a Water Right (Form 606) and pay one fee instead of individuals owning portions of this right each filing and paying fees separately. You may need to consult with an attorney to form an Association.



Eric Chase

Flat Creek, Lewis and Clark County

- **Do nothing.**

If you choose this option you, or the next property owner, will eventually be contacted by the Water Court.

- **File an Objection or Notice of Intent to Appear in the future.**

Notice of a water right decree (by basin) is sent to all water right owners as listed in the DNRC database. At that time, you are given options to file an Objection or later a Notice of Intent to Appear (NOIA), if you want to be involved in what happens with a water right throughout the remaining Water Court review. If you are not a water right owner, but want to participate in the review of a specific water right claim, you may file a NOIA.

- **Amend the Existing Water Right.**

An Amendment requires all owners listed on the water right to sign the form. You must file a Form 608 to be an owner (for pre-July 1, 2008 transactions).

Some things to consider before making any decision are:

- **Is the claim that I may own a portion of a valid and viable claim?**

You would want to make your own determination as to whether the claimed historic water right was ever perfected or put to use on your property. Was it used, to some degree, at one time and then not used for many years? Was the water right abandoned? If you have major concerns with any of this, you probably want to look at an aerial photo and consult with DNRC staff.