

Water Right Adjudication Process in the Gallatin

In a nutshell . . .

- The adjudication is a statewide lawsuit that is addressed basin by basin – as a claimant you are part of this litigation.
- All claimants are part of the litigation – municipal, irrigation, commercial, etc.
- You must be involved in the process (objection, counterobjection, notice of intent to appear) to protect your water right.
- The Gallatin had an old district court decree – Bell v. Armstrong
- The Water Court issued a temporary preliminary decree on September 26, 1985.
- The next step is a Preliminary Decree – the decree was issued on October 9, 2018 and we are all dealing with this right now. Yes, you already did this once in the Temporary Preliminary Decree – this is the next phase and you have to be involved again.
- The next step (some time in the future) is a Final Decree
- Goal: Have all the pre 1973 Claims “final” through a final decree.
- The multiple decree phases (temporary preliminary, preliminary, and final) is to allow water users to be involved and protect their claims (water rights)

What you need to do . . .

- You are involved in litigation – pay attention to all notices, letters, etc., from the Water Court.
- Deadlines for different pieces of the process will be communicated to you from the Water Court.
- YOU CANNOT AFFORD TO IGNORE ANY PAPERWORK OR INFORMATION RECEIVED FROM THE WATER COURT OR DNRC.

The water adjudication laws are set up in a way that requires water right claimants to object to each other. It is important to remember that water rights are a property right and all water right claimants have the right to take necessary steps to protect their property right. In the adjudication that means objecting to other claims that may adversely impact their water right.

In the Gallatin . . .

The notice of entry of preliminary decree and notice of availability was published for the Gallatin (Basin 41H) by the Water Court on October 11, 2018. Pursuant to state law, water users had until April 9, 2019 to file objections to claims. An extension was granted by the Water Court to extend the objection deadline to May 9, 2019. Once the objection deadline passes water users have 60 days from the date the notice is sent from the Water Court to file a counterobjection – July 29, 2019.

****NOTICE OF ENTRY OF PRELIMINARY DECREE AND NOTICE OF AVAILABILITY:** October 11, 2018

All claimants receive notice from the Water Court with direction on how to file an objection and what to consider.

What you should do:

1. Review the abstract of your own water right claim or claims.
2. Review the abstracts of all other water rights that affect your water right.
3. Decide if these abstracts correctly identify pre-July 1973 water use.
4. Decide if you want to file objections.
5. File your objections with the Water Court on or before the filing deadline.

Your water right can be affected by what is in your abstract and other abstracts in the Decree. The Montana Department of Natural Resources and Conservation (DNRC) examined all the claims. Elements of your claim may have been changed because of information the DNRC obtained during examination. If your abstract shows changes, you can challenge the changes by filing an objection with the Water Court.

If you believe your water right claims or someone else's water right claims in this Decree do not reflect their historical (before July 1, 1973) beneficial use, you can file an objection.

****INITIAL OBJECTION DEADLINE:** April 9, 2019

****EXTENDED OBJECTION DEADLINE:** May 9, 2019

After the time for filing objections has passed, the Water Court will notify you by mail if someone objects to any of your claims. If someone objects to your water right claims, then you are entitled to file counterobjections to their claims. The Water Court will notify you of the time when counterobjections must be filed. The Water Court will set a date for all interested parties to notify the Water Court of their intent in participating in any hearings.

If you received an objection to a claim, you have the right to file a counterobjection against any claims owned by the individual that objected to your claim. Only the water right claimant can decide if it is in their best interest to file a counterobjection.

You might file a counterobjection if:

1. you have concerns or believe there are inaccuracies in their claim or claims.
2. you want to ensure that their claims are held to the same standard of review as your claims.
3. filing a counterobjection might facilitate settlement discussions on both the original claim that received the objection and any claims that you counterobject to.

****COUNTEROBJECTION DEADLINE:** July 29, 2019

****NOTICE OF INTENT TO APPEAR DEADLINE:** Set by the Court after the Counterobjection Deadline has passed.

Water users may still be involved with someone's claim if the water user missed the objection and counterobjection deadlines. However, the water user's involvement is limited to monitoring the process in the water court or changing elements of the claim that are already on the objection list or have an issue remark.

****CASES IN FRONT OF THE WATER COURT:**

Once all the deadlines have passed the water master will consolidate cases and begin case proceedings.

Settlement: The settlement process is an informal step that the water master will set after consolidation of cases. Parties need to show progress towards settlement.

If no objections on a claim but the claim has issue remarks: The Water Court may resolve remarks based on information in the claim file or the Claimant can be sent to DNRC to resolve the remarks.

If other parties are involved: The Water Court will issue an order setting a status conference. The parties can talk about the objections and a path towards settlement. If there is not a settlement, the Water Court will issue a hearing tack scheduling order to begin the litigation process in front of the Court.