

**Water Adjudication Advisory Committee
Webex Meeting (Hosted by Ross Keogh)
March 10, 2021**

Committee members Abigail Brown, John Bloomquist, Mike Cusick, Brian Bramblett, Ross Miller, Ross Keogh, Judge Holly Brown, Jeff Laszlo, Jim Hagenbarth, John Scully, Lorents Grosfield, Christy Clark, and Jeremiah Langston attended. Jim DuBois did not attend. Ross Keogh hosted the meeting. The following people from the Water Court attended: Chief Water Judge Russ McElyea; Sara Calkins, Water Court Administrator; Associate Water Judge Stephen Brown; Water Master Julia Nordlund; and Judicial Assistant Swithin Shearer, who took minutes.

Also attending were: Deb Stephenson, private water rights consultant; and Molly Kelly and Barbara Chillcott with the Montana DNRC.

Minutes

9:00 Begin meeting.

9:01 Jeremiah Langston self-introduction as member replacing Jay Weiner for the Attorney General's office.

9:05 Judge McElyea: John Bloomquist can speak about his memo.

9:05 John Bloomquist: Discussion of memo about potential changes to use of water division judges for post-final decree disputes.

Abandonment, tabulation updates, review of DNRC decisions, correct errors from final decrees.

Authority of chief and associate water judges to act as division judges, or to be the division water judges, depending on anticipated activity.

Role of DNRC doesn't change.

Judicial oversight of post-final decree administration.

Judge McElyea: Lack of sense of urgency in the legislature to have these kinds of discussions to plan for post-final decree world. We have several basins (approximately 10) that are close to final decree, so we need to have these discussions now. Description of how division water judges are selected and used.

Judge Stephen Brown: McCarran Amendment issues could arise in enforcement.

John Bloomquist: Yes, we definitely have the risk of McCarran Amendment problems.

Ross Keogh: John Bloomquist's proposal is a good way to address the upcoming issues. Exclusive Water Court jurisdiction for things like appeals/review of DNRC decisions.

John Bloomquist: Possible to have decentralized masters who make administration recommendations to a centralized Water Court, but it seems to add an extra step.

Judge McElyea: The water divisions created by the legislature were wise, and using that construct is also wise. No need for Water Court to be in Bozeman. Possible to split east and west of the divide and have judges continue to travel to the site of controversy. District courts are overburdened.

Judge Holly Brown: It's challenging to fit water cases into the case load statewide because it's often an unfamiliar area of law and takes more time for the judges to get up to speed.

Christy Clark: Concern from water users who could have a decision from a judge outside their community. It would be an easy way to get water users on board by having a division judge assigned to those controversies.

Jim Hagenbarth: This proposal is workable. It could be challenging for current water users to defend their water rights, so this could be a good solution to help those water users. But there could be challenges to get WPIC to listen and be open to implementation.

Judge McElyea: I think this group serves as that guidance to WPIC.

Abigail Brown: Looked at other states and international areas. There are lots of permanent water tribunals in other locations. We can't afford to do nothing. We need to think about whether to have a judicial route or administrative. I believe a permanent judicial route is best. The divisional water judges are a helpful idea. More conversation needed about whether chief and associate water judges become division judges. Describing Colorado process for appointment of water judges and authority to appoint something like a water master for assistance to the judges. Possibility of a trained group of water commissioners who could be seasonal employees of DNRC or the court.

John Bloomquist: The idea of a water master available to a division judge to expedite a decision is a good idea.

John Scully: I support the idea of decentralization, but we still have to go through a political process to make legislative changes. I agree with leaving the DNRC as is, like John suggested in his memo. Think about funding. Be careful not to overload the legislation so it can get passed quickly.

Christy Clark: To get through the legislature, maybe don't go through WPIC? Natural resources advisors in the Governor's Office that we could work with.

Ross Keogh: Use Title 3 to name associate and chief judges as division judges?

John Bloomquist: Yes. But jurisdiction issues possible.

Ross Keogh: En banc? Start with 2 division judges.

Judge McElyea: Great idea Christy to try to get help from Governor's Office. Fiscal impact: concurrent jurisdiction over administrative dispute won't increase money because a judge somewhere has to make that decision. John Scully's comment of modest changes, I agree, but there has been some resistance to that idea as well. These suggested changes about associate and chief judges and division judges are modest. We support concurrent jurisdiction.

John Bloomquist: Christy's idea about working with the Governor's Office is great.

Judge McElyea: Committee proposes legislation to get something done. Start modestly with changes to 3-7-2, 85-2-406, and 85-2-5.

Mike Cusick: Statutes in Title 3 modest tweaks, more changes required in 85-2-406 with supervision through the water divisions. MAPA review should be with water divisions and not district courts.

John Scully: How were changes made in the past?

John Bloomquist: Take a legislative product and get political support from water user groups.

Brian Bramblett: Talk to stakeholders first so we don't create additional issues.

Judge McElyea: We need something concrete to take to water users to discuss. Volunteers to work on legislation changes?

John Bloomquist: I have clients who are interested in post-final decree water distribution issues with Compacts. I'm willing to help put legislation changes together.

Abigail Brown: Happy to assist.

Ross Miller: Also happy to assist.

Mike Cusick: Also willing to help.

Brian Bramblett: Someone from DNRC Legal would help also.

Ross Keogh: I'll help as well.

John Bloomquist: I will put initial draft together and send to the people who just volunteered for feedback, then send to the rest of the committee, then get back together in about 6 weeks as a whole group.

Ross Miller: How narrow do we keep these?

Ross Keogh: Agree we need to clarify.

Abigail Brown: Focus on water rights first, then we can address expansion later because it's hard to draw the line.

John Bloomquist: We can address supervision and administration of final decree issues.

Judge McElyea: The Court will sit out the drafting process. Let us know when you want to get the rest of the group together.

10:50 Judge McElyea: Conclude meeting. No next meeting scheduled for now. We'll talk again once we have some legislation changes to discuss.

10:51 Meeting closed