

Water Adjudication Advisory Committee
Zoom Meeting
January 21, 2021

Committee members Abigail Brown, John Bloomquist, Mike Cusick, Christy Clark, John Scully, Jim DuBois, Brian Bramblett, Ross Miller, Ross Keogh, Lorents Grosfield, and Jeff Laszlo, Jim Hagenbarth attended. Judge Holly Brown did not attend. Chief Water Judge McElyea presided. Judicial Assistant Swithin Shearer took minutes. Also in attendance from the Water Court were: Sara Calkins, Water Court Administrator; Associate Water Judge Stephen Brown; and Water Masters Julia Nordlund, Kirsia Shelkey, and Kathryn Lambert.

Also attending were: Judith Coleman with the United States; Molly Kelly, Barbara Chillcott, Karen Coleman, and Millie Heffner with the Montana DNRC; and Jeremiah Langston with the Montana Attorney General's office.

Minutes

9:05 Begin meeting, technical difficulties prevented timely start.

9:05 Judge McElyea welcomed Lorents Grosfield and Jeff Laszlo, who were unable to attend the prior meeting.

9:06 Jeff Laszlo introduced himself.

9:07 Lorents Grosfield introduced himself.

9:07 Judge McElyea begins the discussion of the first topic: records retention.

Judge McElyea: Rules 59, 60(a), and 60(b), M. R. Civ. P. Additional items may need to be addressed after issuance of a final decree, which would necessitate access to Water Court/water rights records.

9:12 Brian Bramblett discusses DNRC records keeping, mainly re: centralized record system (database). Section 85-2-112. History of records, starting from 1973-1977 in paper. In 1977/1978, transitioned to Legacy (electronic). In 2001, there was another switch to Oracle, which is electronic. Overview of what's included in the database: post-1973 permits and changes (administrative records, ownership updates, measurement records, etc.); existing pre-1973 water rights (Statement of Claim, some Water Court litigation documents). Who is responsible for the local records (district court decrees prior to Water Court adjudication, etc.)? Section 85-2-117 states DNRC is required to provide info if requested by a local clerk of court. Water Rights Query System website contains tutorials on how to access data.

9:31 Judge McElyea issues re: record retention-should the Court do or include anything upon issuance of a final decree? Records held in one spot, easily accessible to public, protected (physical and electronic versions), updated, dated, color, document is named and searchable. Anything the Court needs to do now?

Abigail Brown: coordinate with DNRC on how to load info from old cases not in FCE (all documents).

Sara Calkins: How do you want that data dump to look like? It might not be pretty.

Abigail Brown: Ideal to see in every claim file, but in one claim with reference to where all info can be found. In order of preference: Individual documents loaded, but could be one scan in chronological, and not searchable but all there.

Ross Keogh: Maps with GIS layers in a way that can be archived and preserved.

John Bloomquist: Order from the Court regarding the record. The Court needs to order that the info that's the basis of the final decree be preserved.

Christy Clark: User friendly but the reality is it gets expensive very quickly, so it may not be realistic to have something as complete as possible. Who is the end user-the sophistication/complication of the database needs to take into account who's using it.

Judge McElyea: A couple years ago, some of the records were damaged when a warehouse roof collapsed. There needs to be redundancy in the records.

Judith Coleman: Jim DuBois is on the line to answer better-he has more experience.

Jim DuBois: Accessible is good, but balance between what's ideal and what's possible. Good idea to order that the records from the Water Court be preserved for administration purposes.

Lorents Grosfield: Pre- and post-1973 records are different, but the records should be preserved in one place to be easily accessible.

Jim Hagenbarth: Old decrees (prior to Water Court) are very important to preserve. Idaho's record system is great. Should be a centralized system at the state level, not local/county level.

Jeff Laszlo: Keep older records as safe as possible because they're the hardest to access and preserve. How are older decrees incorporated into current litigation?

Judge McElyea: It's very common for the Water Court to review those older decrees, which may not have involved all parties compared to the Water Court proceedings.

Judge Brown: Should final decrees reference case numbers, possibly on the abstracts?

Abigail Brown: Yes, helpful on the abstracts.

Mike Cusick: Yes, case number would be helpful.

Brian Bramblett: If the info is in the database, there could be an option to search, but if that info isn't in the database, that's harder.

Mike Cusick: Info needs to be accessible without an attorney's help. Pre- and post-1973 info needs to be incorporated together. Does DNRC have a process or plan for how to incorporate alterations to a water right with a change based on Water Court adjudication of the underlying historical right?

10:09 Judge McElyea: segue into the next topic. Section 85-2-234 is the final decree statute. Should the Court acknowledge the existence of water rights other than those adjudicated by the Water Court?

Ross Miller: Order directing DNRC through record-keeping to maintain records re: post-1973 water rights?

Ross Keogh: Order from Court regarding other water rights not adjudicated. Abandonment.

Jeff Laszlo: How do those other water rights affect historical water rights?

Judge McElyea: That goes to the heart of this discussion, and the answer isn't really clear. The Water Court is trying to provide a useful end product that doesn't overstep the Court's jurisdictional limits.

Judge Brown: Could reference all water rights by various attachments to the final decree, and existing rights, permits, changes, compacts, etc. would each be in a separate attachment.

Christy Clark: What bill failed and will you pursue it again?

Judge McElyea: No intent to resurrect, but I can send those bill drafts to everyone after the meeting.

John Bloomquist: 85-2-234(4) states what should be in a final decree-it talks about water rights, not just existing rights. That would include all other types of water rights in a comprehensive decree.

Judge McElyea:

Mike Cusick: Think about the fact that DNRC changes aren't necessarily final.

Lorents Grosfield: Permits not looked at by Water Court, but DNRC's job to have those accessible as opposed to Water Court.

Brian Bramblett: Potential jurisdictional issue to incorporate things like permits into the Water Court's decree.

Ross Keogh: Living final decree requires a permanent Court, but we don't have that from the legislature. So for now, the Court likely needs to provide a decree that is for a fixed point in time.

10:35 Next topic: Topics other than final decrees? Do you want to meet on your own without the judges? Last meeting for a while unless some need to meet again.

Ross Miller: Address in final decree the fact that someone has to start from scratch to prove a water right that goes through a change proceeding.

Mike Cusick: Ross Keogh's idea about a permanent court to have a living decree, but how the Water Court addresses the content of the final decree might change depending on whether the Court is permanent and whether we pursue a living decree option.

Ross Keogh:

John Scully: Final decrees should include compacts, permits, etc. and cross-reference with case numbers. How do you protect district court records?

Judge McElyea: The Court has to be aware of limitations-maybe there needs to be some legislation to address some of these limitations.

Christy Clark: We need to educate legislators, who don't understand district court, Water Court, and DNRC interplay.

10:52 Wrap up

Judge McElyea-we can have more meetings where the judges participate, or meet on your own.

John Bloomquist: How do we get a living final decree? Continued discussion needed.

Judge McElyea: Ross Miller run the topic on DNRC change process and John Bloomquist can run the conversation on how to get to a final living decree.

Brian Bramblett: Final decree doesn't necessarily need to give everything, but it does play a part in the records pursuant to the statutes.

Judge McElyea: What do the non-attorneys want from this role in participating in this committee?

Jim Hagenbarth: Idaho has a good system.

Jim DuBois: The decree should be a fixed document for the Water Court. The water rights and the administration of those rights is a dynamic process, but the decree itself is not.

Judge McElyea: Mr. DuBois is correct-that's the way the statutes are set up right now.

Christy Clark: Opportunity to understand the process. Provide some empathy to show what water users go through in this process.

Jeff Laszlo: Agree with Ms. Clark. This process has a lot of uncertainty, so we want a voice in the process and to be understood. There also needs to be flexibility.

Lorents Grosfield: Interested in the discussion with John Bloomquist about what a final decree versus a living final decree looks like.

11:10 Conclusion, another meeting in 2 weeks on February 4 at 9:00

Jim DuBois: Judith Coleman and I aren't available.

Topics: Living decrees, DNRC change process, other issues

Ross Keogh will be host for next meeting. If the judges need to sit out of the meeting, just let the Court know and that will be respected.

John Scully: advise about ongoing bills that are pertinent

Judge McElyea: Third agenda item: pending legislation, SB 13 and SB 55

Judge McElyea expressed his gratitude for the members and their participation and discussion.

11: 17 Meeting closed