

Water Adjudication Advisory Committee
Zoom Meeting
June 16, 2021

Committee members Abigail Brown, John Bloomquist, Mike Cusick, Jeff Laszlo, Jim Hagenbarth, John Scully, Lorents Grosfield, Barbara Chillcott for Brian Bramblett, and Aislinn Brown for Jeremiah Langston attended. Jim DuBois, Ross Miller, Ross Keogh, Christy Clark, and Judge Holly Brown did not attend.

The following people from the Water Court attended: Chief Water Judge Russ McElyea; Associate Water Judge Stephen Brown; Water Court Administrator Sara Calkins; Water Master Julia Nordlund; Water Court Intern Brooke Reynolds; Water Court Extern Emily McKay; and Judicial Assistant Swithin Shearer, who took minutes.

Deb Stephenson, private water rights consultant, also attended.

Minutes

9:00 Begin meeting, but some people are having technical difficulties, so we'll wait to start.

9:07 Judge McElyea opens the meeting by asking for a volunteer to describe the process the sub-committee used to draft legislation drafting process.

9:08 Abigail Brown: Describing working group for drafting the amended bill, which focused on revisions to Title 3.

9:10 John Bloomquist joins the meeting late due to technical difficulties. He offers to begin discussion of the amended portions of Title 3.

9:11 Judge McElyea turns over the discussion to the people who worked on drafting.

9:12 John Bloomquist: The basis of this draft bill came from my memo to the committee during the March 2021 meeting. The bill primarily adds a role for water division judges.

No changes to water divisions or the boundaries.

The draft is limited to Title 3, particularly Water Court functions.

Section 2 identifies appointment of water division judges, no changes to length of term.

Section 4 is new-the new duties of the division water judge: abandonment, corrections/changes to water rights (judge has discretion to determine scope of notice), review of DNRC change authorization decisions, continuous update of tabulation to incorporate change authorizations and permits, conduct hearings, appointment and supervision of water commissioners (discussion needed about whether this would be concurrent with district court), enforcement decisions of a compact board, splits after final decrees.

Section 7 decentralization of Water Court office to move the division water judges out into the actual water divisions.

Section 8 duties of the chief water judge-can serve as a judge in any division.

Sections 9 and 14 jurisdiction, authority, and venue.

Title 85 Chapter 5 needs to be coordinated with these changes.

We didn't make changes to any other statutes yet. We wanted to bring this product back to the committee first before making all statutory changes necessary to implement this.

9:35 Judge McElyea opens up the meeting to comments from other members.
Barbara Chillcott: What is the next step to get this out to more stakeholders?
John Bloomquist: Draft report and send to governor, legislature, and Supreme Court.
John Scully: How does this affect budget? Did you discuss that due to decentralization?
John Bloomquist: No discussion on the budget.
John Scully: Duties of chief water judge to manage the budget. Also, do district court judges have concurrent jurisdiction? What role does the DNRC play?
Mike Cusick: Re: DNRC role, no impact on that.
Jim Hagenbarth: Will district court judges have the same level of expertise on water issues compared to the division water judges? That's significant to reduce costs for water users who may have water disputes.
Lorents Grosfield: District courts have a full case load and district court judges may be too busy to give an answer promptly when water disputes arise. The water divisions are huge, how are the division judges going to know or figure out water commissioners when they're covering multiple counties. Maybe the commissioner appointment should stay with district court due to local familiarity. Also, why did you delete the portion of Section 2 re: voting for a water division judge?
John Bloomquist: Never previously utilized.
Judge McElyea: District court judges vote for the division water judge.
Lorents Grosfield: Would district court judges have any authority over water issues? It seems they won't at all.
John Bloomquist: Correct, after issuance of a final decree. But that depends on how we rewrite other portions of Title 85.
Lorents Grosfield: Section 9 re: judges having same functions as a district court judge.
Judge McElyea: We apply law, issue orders, etc. But re: injunctive relief or fines, we have the authority but don't use it. But in the future, we may need the ability to fashion relief that assists the parties.
John Bloomquist: We didn't change anything in that authority.
Jeff Laszlo: Appeals? Distribution supervision? Are we creating a system that is better and more efficient for water users? Concurrent jurisdiction versus exclusive-let the district judge choose to keep or pass to division water judge. How do you pass institutional knowledge on to others when centralized Water Court goes away? Difference in decision by division.
Judge McElyea: It's possible to have one judge cover more than one division. The Water Court believes in allowing local control when effective, but allowing the water users a choice in venue. Current method of appeal likely stays the same with appeal to the Supreme Court.
Jeff Laszlo: Is Section 4(i) the same or different as current statute?
John Bloomquist: Just authorizes a division water judge to exercise the same authority as a district court currently does. The McCarran Amendment allows local state courts to administer water, and I believe it's in Montana's best interest to maintain that authority.
Jeff Laszlo: I agree with Lorents that the divisions are very large, so it's important to maintain a usable system for those that are away from city-centers.

10:25 Judge McElyea: Plan for two final decrees to be issued by the end of July. It's likely that we'll see larger water disputes moving forward. This committee's conversation and work is timely. The concurrent jurisdiction question is significant moving forward for implementation of this legislation.

John Scully: We need to ensure administration of water is protected. Do we need a statement at the beginning of each final decree regarding administration moving forward once a decree is issued?

Judge McElyea: The current Water Court jurisdiction does not allow that type of statement.

John Scully: How can this committee make that statement? Shouldn't that come from the Supreme Court or the Water Court? Who can do that?

Judge McElyea: The Supreme Court won't be able to answer that question.

John Bloomquist: The role of this committee is to make recommendations to the legislature. I would like some time to address the concurrent jurisdiction questions before creating a report to push out to the legislature and Supreme Court.

Abby Brown: I would be willing to continue working on this with you, especially with concurrent jurisdiction and McCarran Amendment discussion.

Mike Cusick: I agree with Abby.

Judge Stephen Brown: Create legislation that allows a court to go through and determine whether the court properly has jurisdiction, similar to analysis in *Greely*.

John Scully: I just want to ensure our goal is to improve the current system, not get rid of it altogether.

John Bloomquist: I'd like some time to address concurrent jurisdiction questions. I will reach out to the other members to continue working on this and report back.

Judge McElyea: Let us know if you need another meeting.

10:56 Meeting closed