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Montana Rules of Court

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WATER RIGHT ADJUDICATION RULES

EFFECTIVE

DECEMBER 5, 2006

As last amended, effective March 21, 2008

TABLE OF RULES

Rule

1. Purpose of rules and summary of adjudication process
 - (a) Authority of Montana water court
 - (b) The adjudication process
2. Water court practice and procedures
 - (a) Citation
 - (b) Application of other rules
 - (c) Water Court
3. Issuing a decree
4. Preliminary, temporary preliminary, other interlocutory decree
5. Procedure for filing objection to preliminary or temporary preliminary decrees
 - (a) Notice of objection
 - (b) Service of objection
 - (c) Filing of objection
 - (d) Extension of objection period
6. Notice of the filing of an objection an opportunity to file counterobjection
 - (a) Notice
 - (b) Counterobjection
 - (c) Service and filing
7. Issue remarks
8. Claims called in on motion of the water court
9. Notice that objections and counterobjections have been filed and opportunity to file notice of intent to appear
 - (a) Objection list
 - (b) Notice of intent to appear
10. Motions to Amend

11. Masters
 - (a) Appointment
 - (b) Order of reference
 - (c) Powers and duties
12. Department assistance
 - (a) Direction
 - (b) Requests for assistance
 - (c) Field investigations
13. Department data
 - (a) Admissibility
 - (b) Limitations
14. Continuances
15. Discovery
16. Settlement and mediation
 - (a) Settlement proceedings
 - (b) Mediation
 - (c) Hearing track
17. Settlements
 - (a) Approval required
 - (b) Expansion of claim
 - (c) Reduction of claim
18. Pretrial conference
19. Burden of proof
20. No right to jury trial
21. Hearings
 - (a) Subpoenas
 - (b) Recordings
 - (c) Procedure in evidentiary hearings involving only the claimant
 - (d) Procedure in evidentiary hearings involving the claimants and other parties
 - (e) Modification of abstract
 - (f) Enforcement
22. Sanctions
23. Master's Report
24. Final decrees
 - (a) Issuance
 - (b) Notice of entry
 - (c) Inspection of final decree

25. Appeals
26. Split claims
27. Public notice of adjudication proceedings
28. Perpetuation of testimony
29. Miscellaneous fees
30. Late claim administrative costs and expenses
31. Water court decree enforcement
 - (a) Preliminary procedure
 - (b) Identification of diversions and instream uses
 - (c) Public meetings
 - (d) Tabulations
 - (e) Controversies
32. Assistance to district courts
33. Attorney representation
 - (a) Attorney representation
 - (b) Unauthorized practice of law
 - (c) Rules of Professional Conduct

RULE 1. PURPOSE OF RULES AND SUMMARY OF ADJUDICATION PROCESS

Rule 1(a). Authority of Montana water court. The Montana water court has a statutory obligation and the exclusive authority to adjudicate claims of existing water rights. The Montana supreme court establishes these special Montana water court rules of practice and procedure to guide the adjudication of pre-July 1, 1973 water rights.

Rule 1(b). The adjudication process. Briefly, the adjudication process consists of the following steps:

- (1) upon order of the Montana supreme court, the filing of statements of claim for uses of water that existed prior to July 1, 1973;

(2) a review of the submitted claim and accompanying materials for clarity and completeness with editing to allow entry into computerized storage;

(3) the compiling of the claim information into a centralized record system by the Department of Natural Resources and Conservation (hereinafter referred to as the department);

(4) under the direction of the water court pursuant to § 85-2-243, MCA, the department's examination of claims and the reporting of facts, data, and issues pertaining to the claims as set forth in these rules;

(5) the issuance, by the water court, of interlocutory, temporary preliminary, or preliminary decrees based upon the information on the sworn claims, data submitted by the department, additional information obtained by the water judge, and, where appropriate, the contents of approved compacts or the filings for Indian and federal reserved water rights;

(6) the notice and opportunity for interested persons to review and object to the interlocutory, temporary preliminary, or preliminary decrees for good cause;

(7) judicial hearing by the water court on issues raised in these proceedings;

(8) the issuance, by the water court, of final decrees based upon the previous decrees and the judicial determinations made upon hearings; and,

(9) the opportunity for interested parties to review and appeal the final decrees under § 85-2-235, MCA.

RULE 2. WATER COURT PRACTICE AND PROCEDURES

Rule 2(a). Citation. These rules shall be known as the Water Right Adjudication Rules and may be cited as Rule ___, W.R.Adj.R.

Rule 2(b). Application of other rules. Unless the context of these Rules requires otherwise, the Montana Rules of Civil Procedure (M.R.Civ.P.), the Montana Rules of Evidence (M.R.Evid.), and the Montana Uniform District Court Rules govern the practice of the water courts. Unless the context requires otherwise, the definitions in Rule 2, W.R.C.E.R. apply to these Rules.

Rule 2(c). Water court. The term "water court" in these practice and procedure rules includes water judges and water masters.

RULE 3. ISSUING A DECREE. The chief water judge shall issue an order of reference assigning a basin to a water master. The water master shall review the department's summary report. The water master shall advise the chief water judge in writing when the decree is ready for issuance. If the chief water judge is not satisfied with the decree, the chief water judge may make the necessary modifications and issue the decree. If the water court modifies a claim abstract during the summary report review, it must state its reasons in writing and the department shall place that documentation in the claim file. Upon determination that the decree is ready for issuance, the chief water judge will issue an order for the department to proceed with printing all of the abstracts of existing water rights to be included in the decree. The order shall identify the type of decree to be issued.

RULE 4. PRELIMINARY, TEMPORARY PRELIMINARY, OR OTHER INTERLOCUTORY DECREE. "Preliminary decree," as used in these rules, means a preliminary decree issued in accordance with § 85-2-231, MCA. Any other decree of a water court, not a final decree under § 85-2-234, MCA,

shall be considered a temporary preliminary decree or interlocutory decree.

RULE 5. PROCEDURE FOR FILING OBJECTION TO PRELIMINARY OR TEMPORARY PRELIMINARY DECREES.

Rule 5(a). Notice of objection. The water judge shall provide notice of the objection period in accordance with § 85-2-232, MCA. Notices of objection must be filed in compliance with § 85-2-233, MCA. The water court shall provide objection forms. The objector shall include a statement of:

(1) the findings and conclusions with which the objector disagrees;

(2) the elements or part of the claim abstract which the objector believes should be modified; and

(3) the grounds and evidence on which the objection is based.

Rule 5(b). Service of objection. The objector must mail a completed copy of the objection to each claimant and complete the certificate of mailing on the objection form before filing the original objection with the water court. If the objector is the sole claimant on the claim, no certificate of mailing is necessary.

Rule 5(c). Filing of objection. Objections must be filed within 180 days after entry of the decree. The water judge may, for good cause shown, extend this time limit up to two additional 90-day periods if application for an extension is made prior to the expiration of the original 180-day period or any extension of it. Section 85-2-233(2), MCA.

Rule 5(d). Extension of objection period. Applications for extensions may be made on forms supplied by the water court. An extension for one objector in a basin is an extension

for all other objectors. Any order of extension shall state the specific calendar date on which the period of extension ends.

RULE 6. NOTICE OF THE FILING OF AN OBJECTION AND OPPORTUNITY TO FILE COUNTEROBJECTION.

Rule 6(a). Notice. Pursuant to § 85-2-233, MCA, the water court shall notify each person whose claim received an objection that an objection was filed. The notice shall set forth the name of each objector and shall allow an additional 60 days for the person whose claim received an objection to file a counterobjection to any claim of the objector in the decree. Counterobjections are limited to those claims included within the specific decree issued by the water court.

Rule 6(b). Counterobjection. Counterobjections must be filed in compliance with § 85-2-233, MCA. The water court shall provide counterobjection forms. The counterobjector shall include a statement of:

(a) the elements or part of the claim abstract which the counterobjector believes should be modified; and

(b) the grounds and evidence on which the counterobjection is based.

Rule 6(c). Service and filing. The counterobjector must mail a copy of the completed counterobjection to the claimants of the claim to which the counterobjection is filed and complete the certificate of mailing on the counterobjection form before filing the original counterobjection with the water court.

RULE 7. ISSUE REMARKS. If not otherwise resolved by the objection process, the water court shall review, resolve, and remove all issue remarks appearing on the abstracts of any claim as directed by §§ 85-2-247 through 85-2-250, MCA.

RULE 8. CLAIMS CALLED IN ON MOTION OF THE WATER COURT. The water court may issue such orders on its own motion as may be reasonably required to allow it to determine whether a claim accurately reflects its claimed pre-July 1, 1973 beneficial use. The order calling any claim in on motion shall state the basis of the water court's decision to review the claim and shall identify the elements of the claim and the issues to be reviewed. In reviewing claims called in on its own motion, the water court shall generally follow the procedures set forth in § 85-2-248, MCA.

RULE 9. NOTICE THAT OBJECTIONS AND COUNTEROBJECTIONS HAVE BEEN FILED AND OPPORTUNITY TO FILE NOTICE OF INTENT TO APPEAR.

Rule 9(a). Objection list. After expiration of the time for filing counterobjections, the water court shall compile an objection list which identifies all claims to which objections or counterobjections were filed, all issue remarks reported by the department, and any claim which the court knows at the time of the compilation of the list will be called in on the court's own motion. The water court shall notify in writing each party named in the water court decree or the successor in interest as documented in the department's centralized record system that the objection list has been compiled, where the objection list can be reviewed, and from where copies of the objection list, objections, counterobjections, and issue remarks may be obtained. The written notice shall set a date on or before which persons other than the claimants, objectors, or counterobjectors to a particular claim shall file a notice of intent to appear with the water court. The water court shall notify the Montana Attorney General, and may also notify other interested parties identified in § 85-2-232, MCA, and other water users that the objection list has been prepared. The clerk or person designated by the water judge to mail the written notice shall make a general certificate of mailing certifying that a copy of the notice has been placed in the U.S. Mail, postage prepaid, addressed to each party required to be served the notice. The certificate shall be conclusive evidence

of due legal notice that objections and counterobjections have been filed. The notice may also be published once in at least one newspaper of general circulation in the area where the basin, subbasin, or drainage is located.

Rule 9(b). Notice of intent to appear. Any person other than the claimant or objector who intends to appear and participate in further proceedings for any claims or issues included on the objection list must file a notice of intent to appear in compliance with § 85-2-233, MCA. The water court shall provide notice of intent to appear forms. The person filing a notice of intent to appear shall specify the claim number and include a statement of the appearing person's legal rights that might be affected by the resolution of the objections or issues involving the specified claim, and the purposes for which further participation is sought. Persons who file notices of intent to appear as provided in this rule shall receive notice of all future proceedings involving the claims specified in their notice and are entitled to participate in the resolution of the issues associated with those claims.

RULE 10. MOTIONS TO AMEND. Pursuant to § 85-2-233(6), MCA, claimants may file motions to amend their own claims and objectors may file motions to amend their own objections. A motion to amend must specify the requested amendment and the grounds for such amendment. Upon review, the water court will determine the notice required pursuant to § 85-2-233(6), MCA, and issue an appropriate order.

RULE 11. MASTERS.

Rule 11(a). Appointment. Water judges may appoint one or more water masters for the water court or for a particular water division, basin, subbasin, or case.

Rule 11(b). Order of reference. The order of reference to a master may specify or limit the master's powers or may direct the master to report only upon particular issues or to do

or perform particular acts or to receive or report evidence only, and may fix the time or place for beginning or closing the hearings before the filing of the master's report. Subject to the specifications or limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to take all measures necessary and proper for the efficient performance of the master's duties specified under the order.

Rule 11(c). Powers and duties. The water master has the general powers and duties granted a master by Rule 53(c), (d), and (e), M.R.Civ.P.

RULE 12. DEPARTMENT ASSISTANCE.

Rule 12(a). Direction. The water court may at any time direct the department to provide such information and assistance as may be required by the water court to adjudicate claims of existing rights, as provided in § 85-2-243, MCA.

Rule 12(b). Requests for assistance.

(1) All water court requests for department assistance issued after the expiration of the notice of intent to appear filing period and directed at the adjudication of a specific claim or claims contained in the decree shall be made in writing, delivered to the department, and served upon all parties in the water court proceeding that are identified on the water court service list involving the claim or claims which are the subject of the request for assistance. The request for assistance shall:

(i) state the basis for the request for assistance. If the request for assistance has been initiated at the request of the department, the water court's written request for assistance shall identify the information conveyed to the water court by the department and the department employee who conveyed the information to the water court;

(ii) specify the elements of each water right claim or claims to be reviewed by the department;

(iii) if known, identify the department employee who will conduct the review;

(iv) notify all persons on the water court service list of their right to submit written information to the department concerning the elements of the water right claim or claims being reviewed by the department and shall require all persons who submit information to mail a complete copy to all persons on the water court service list;

(v) specify a time period for completion of the department's review and the submission of the department's memorandum; and

(vi) direct the department to file the original memorandum with the water court and mail a complete copy of the memorandum to all persons on the water court service list.

(2) The department must document all contact with the claimant or any other person regarding the water right claim as provided in Rules 43 and 44 W.R.C.E.R. All persons on the water court service list are entitled to notice and reasonable opportunity to be present during any field investigation conducted in conjunction with the request for assistance.

(3) If necessary during the course of the review, the department may communicate in writing with the presiding water judge or water master to discuss the substance of the review being conducted by the department. All such communication and court response must be in writing with full service upon all persons on the water court service list.

Rule 12 (c). Field investigations. Upon written order of the water court, the department shall conduct field

investigations of claims. Unless otherwise directed by the water court, a field investigation shall be conducted with the claimant or a claimant's representative in attendance. The other persons on the water court service list may attend for the purpose of observing the department's field investigation.

(1) The water court's written order for field investigation shall:

- (i) state the basis for the order;
- (ii) specify the elements of each water right claim or claims to be field investigated by the department;
- (iii) if known, identify the department employee who will conduct the field investigation;
- (iv) specify a time period for completion of the field investigation and the submission of the department's field investigation report; and
- (v) direct the department to file the original field investigation report with the water court and mail a complete copy of the report to all persons on the water court service list.

(2) When the water court orders a field investigation, the department shall contact the claimant or the claimant's representative to establish the date and time of the field investigation and, when necessary, to arrange access. The date and time for the field investigation shall be confirmed through a letter from the department to the claimant with a copy sent to the water court, the person who has arranged access, and all other persons on the water court service list.

(3) The department shall send its confirmation letter at least 20 days before the intended date of the field investigation. The 20-day notice period may be shortened by order of the water court, or waived by written agreement of all persons on the water court service list.

(4) The field investigation data will be documented in accord with Rules 43 and 44 W.R.C.E.R. The department shall file the original field investigation report with the water court and mail a complete copy of the report, including a certificate of mailing, to all persons on the water court service list.

(5) If necessary, the department may communicate in writing with the presiding water judge or water master to discuss the substance of the field investigation. All such written communication must be served upon all persons on the water court service list.

(6) The water court may set a deadline for parties to comment on the department's final memoranda for requests for assistance or on the department's field investigation reports.

(7) This Rule does not limit the authority of the water court to issue appropriate orders under the provisions of Rule 34, M.R.Civ.P., or Rule 614, M.R.Evid.

RULE 13. DEPARTMENT DATA.

Rule 13(a). Admissibility. In any proceedings before the water court, any investigative reports, data, or other written information produced or promulgated by the department during examination or under the direction of the water court pursuant to § 85-2-243, MCA, shall be admissible without further foundation and not subject to the hearsay objection in situations where the department is not itself a party. Due provisions shall be made by the water court to allow any party to cross-examine the department employee who provided the assistance under § 85-2-243, MCA, and to controvert the report, data, or other information by other evidence.

Rule 13(b). Limitations. If the department fails to comply with the protocols specified in Rule 12, W.R.Adj.R., the

water court, upon appropriate motion by any party, may issue an order prohibiting or limiting the department employee's testimony at a hearing on the water right claim, and may strike all or portions of the memorandum prepared in response to the request for assistance or a field investigation report prepared by the department.

RULE 14. CONTINUANCES. Requests for continuance of any hearing or proceedings in the water court must be made in accordance with the Uniform District Court Rules, and served upon all interested parties not less than 5 days before the date set for hearing or proceedings. The water court will grant the continuance upon a substantial showing of good cause. The water court may grant an untimely request for a continuance upon a showing of exigent circumstances.

RULE 15. DISCOVERY. Parties may obtain discovery as provided by the Montana Rules of Civil Procedure. The water court, upon motion of a party or on its own initiative, may enter an order controlling or directing the course of discovery.

RULE 16. SETTLEMENT AND MEDIATION.

Rule 16(a). Settlement Proceedings. The water court promotes and will facilitate resolution of objections and issue remarks through settlement or mediation. Parties or department claim examination personnel may confer and exchange information during the initial settlement proceedings. Parties or department claim examination personnel may prepare and tender documents during the initial settlement proceedings. Parties or department claim examination personnel may file with the water court settlement documents or issue remark resolution documents during the initial settlement proceedings. Parties or department claim examination personnel will not engage in formal discovery or file potentially dispositive motions before the water court issues a hearing track order pursuant to Rule 16(c) W.R.Adj.R., without leave of the water court.

Rule 16(b). Mediation. The water court, upon motion of a party or upon its own initiative, may appoint a mediator to promote and facilitate settlement. The parties shall share and pay the expense of hiring a mediator as directed by the water court.

Rule 16(c). Hearing Track. The water court will issue an order commencing formal hearing proceedings if the parties fail to file settlement documents or issue remark resolution documents within a reasonable amount of time after the water court has issued a decree pursuant to Rule 3, W.R.Adj.R. The water court's hearing track order triggers the requirement that all parties, other than natural persons representing themselves, must be represented by an attorney in all water court proceedings. The water court's hearing track order will specify the date by which all counsel must file a notice of appearance with the water court.

RULE 17. SETTLEMENTS.

Rule 17(a). Approval required. The water court is not bound by settlement agreements. Any settlement reached by the parties is subject to review and approval by the water court. Settlement includes the documents filed by a claimant in cases where the claimant is the only party.

Rule 17(b). Expansion of claim. If a settlement seeks to enlarge or expand an element of a claim and the documentation provided by the parties does not include sufficient evidence to meet the burden of proof, the water court shall provide notice to the settling parties of the deficient documentation and allow reasonable time for the parties to file additional supporting evidence. If sufficient evidence to meet the burden of proof is not presented within the time allowed, the water court shall not enlarge or expand the element of the claim.

Rule 17(c). Reduction of claim. The claimant of a water right claim may waive the advantage of § 85-2-227, MCA. If a

claimant agrees to reduce or limit an element of a claim, the water court does not need to determine whether the burden of proof has been met. The water court may accept a claimant's requested reduction or limitation without further presentation of evidence, unless there is an unresolved issue remark on the claim, in which case § 85-2-248, MCA, must be applied.

RULE 18. PRETRIAL CONFERENCE. Pretrial conferences shall be conducted in accordance with and governed by Rule 16, M.R.Civ.P., and Uniform District Court Rule 5, insofar as the same is applicable to procedures in the water courts. Final pretrial conferences shall be the rule rather than the exception. The water court may order such preliminary pretrial conferences as may serve to expedite formulation of issues of law or fact or the course of the litigation.

RULE 19. BURDEN OF PROOF. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims.

RULE 20. NO RIGHT TO JURY TRIAL. Right to trial by jury does not exist in this adjudication of existing water rights.

RULE 21. HEARINGS.

Rule 21(a). Subpoenas. The parties may procure the attendance of witnesses before the water court by the issuance and service of subpoenas as provided in Rule 45, M.R.Civ.P. Failure by any person, without adequate excuse, to obey a subpoena served upon that person may subject that person to

the consequences, penalties, and remedies provided in Rules 37 and 45, M.R.Civ.P.

Rule 21(b). Recordings. All hearings held before the water court may be recorded by audio tape, audio-visual, stenographic, electronic, or other appropriate means. If a hearing was held before a water master, the water master shall file a transcript or recording of the proceedings and of the evidence and the original exhibits.

RULE 21(c). Procedure in evidentiary hearings involving only the claimant. In an evidentiary hearing involving only the claimant, the order of procedure shall be:

- (1) introductory and explanatory remarks by the water court;
- (2) discussion of the format of the proceeding;
- (3) testimony of the department and introduction of any report, data, or other written information prepared by the department;
- (4) cross-examination of the department by the claimant;
- (5) opening statement of the claimant;
- (6) introduction of evidence and testimony by the claimant and the claimant's witnesses;
- (7) closing statement of the claimant; and
- (8) optional briefing schedule for the claimant.

Rule 21(d). Procedure in evidentiary hearing involving the claimants and other parties. In an evidentiary hearing involving the claimant and other parties, the order of procedure shall be formulated during the final prehearing

conference as required by Rule 16(d), M.R.Civ.P., and included in the final prehearing order.

Rule 21(e). Modification of abstract. Following the conclusion of the evidentiary hearing and the expiration of any post-hearing briefing schedule, the water court shall review the evidence in the record, render its written decision in accordance with the burden of proof set forth in Rule 19, W.R.Adj.R., and modify the abstract of each applicable claim in accordance with the written decision.

Rule 21(f). Enforcement. Until a water judge adopts or modifies a master's report, any claim modified by the master's report may not be enforced under Rule 31, W.R.Adj.R.

RULE 22. SANCTIONS. If a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing, or fails to comply with an order issued by the water court, the water court, upon motion, or its own initiative, may issue such orders of sanction with regard thereto as are just. Sanctions applied against claimants may include termination of the claim; or modification of the claim to conform with data provided by the department, information obtained by the court, or information included in an objection. Sanctions applied against objectors and intervenors may include dismissal of the objector or intervenor from the proceeding.

RULE 23. MASTER'S REPORT. As stated in Rule 53(e), M.R.Civ.P., the master shall prepare a report upon the matters submitted to the master by the order of reference. If required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the water court unless otherwise directed by the order of reference. The clerk of the water court shall serve notice of the filing and a copy of the report on all parties who appeared before the master and who were not previously dismissed from the proceeding. At the discretion of the water court, notice of the filing and a copy of the master's

report may also be given to other claimants or other persons not otherwise appearing before the master in that proceeding.

Subject to Rule 6, M.R.Civ.P., any party to the proceeding before the master may file written objections with the water court within 10 days after the service date of the notice of filing of the master's report. In more complex cases, the water master may enlarge the objection period to 30 days. Upon request, a 10-day extension to the objection period may be freely granted. Any party filing objections shall also serve a copy of the objections upon the other parties on the service list. A hearing will not be held on the objections unless requested by a party or deemed necessary by the water judge. The water judge shall accept the master's findings of fact unless they are clearly erroneous. After reviewing the report, the water judge may adopt, modify, or reject the report, in whole or in part, or may receive further evidence or recommit it with instructions.

RULE 24. FINAL DECREES.

Rule 24(a). Issuance. A final decree shall be issued for a basin, subbasin, or drainage after all objections, counterobjections, and issue remarks have been resolved; all motions to amend and on motion proceedings have been completed; and the requirements of § 85-2-237(1), MCA, within the water division have been satisfied.

Rule 24(b). Notice of entry. Notice of entry of a final decree shall be sent to all parties named in the decree whose rights are stated, determined or affected thereby. The notice of entry of the final decree shall also be published once in a newspaper of general circulation in the area where the basin, subbasin, or drainage set forth in the decree is located.

Rule 24(c). Inspection of final decree. The notice of entry of final decree shall be in writing, and shall state where in the water division and for what period of time a copy of the final decree may be examined by the parties or interested

persons. Any person may obtain a copy of the final decree upon payment of a fee covering the cost of printing or electronic copying.

RULE 25. APPEALS. Appeals to the Montana supreme court by those parties entitled to an appeal under § 85-2-235, MCA, shall be taken in the manner specified in Rule 72, M.R.Civ.P., and made within the time frames permitted in Rule 5, M.R.App.P. The notice of appeal shall be in the form prescribed by Rule 4(c), M.R.App.P. The notice of appeal must also include a specific listing of all water right numbers for which the appeal is taken. Within 30 days of the filing of the notice of appeal, the water court may revise the caption of the proceeding to reflect the current status and posture of the parties, file a copy with the clerk of supreme court, and serve a copy on the parties.

RULE 26. SPLIT CLAIMS. The water court may split claims into separate claims at any time prior to the final decree upon request of the claimants, or on its own initiative. The remarks in Rule 38(b), W.R.C.E.R. or similar remarks may be added.

RULE 27. PUBLIC NOTICE OF ADJUDICATION PROCEEDINGS. The water court may provide notice of adjudication proceedings to the public through direct mail, newspaper advertising, public meetings, radio and television, the internet, or by other means.

RULE 28. PERPETUATION OF TESTIMONY. A person who desires to perpetuate testimony regarding the historical beneficial use of any water right claim filed in accordance with § 85-2-221, MCA, may file a verified petition with the water court. The procedure set forth in Rule 27, M.R.Civ.P., shall be followed, but each reference in that rule to the district court shall refer to the water court and notice to expected adverse parties shall be served by mail to the most recently updated address documented in the department's centralized record system. If the completed deposition is filed with the water

court, it may be placed in the claim file of the claim involved in the deposition. If more than one claim is involved, the deposition will be placed in the lowest numbered claim file of the claims involved and a notice of that filing location shall be inserted in the other claim files involved in the deposition. Alternatively, the depositions may be placed in the case file containing the verified petition and a notice of filing location shall be placed in the file of the claims identified in the deposition.

RULE 29. MISCELLANEOUS FEES. The chief water judge shall periodically establish a schedule of fees for copies of filed and microfiche documents and for fax and other electronic transmissions that do not exceed the highest fee charged for similar services by the state law library, clerks of court, or the department.

RULE 30. LATE CLAIM ADMINISTRATIVE COSTS AND EXPENSES. On or before July 1 of each odd numbered year, the chief water judge shall establish a schedule of administrative costs and expenses to assess against late claimants as required by § 85-2-225, MCA. The assessment shall be determined by calculating the number of hours a water judge or master works on a late claim and multiplying that number against a uniform hourly rate. The uniform hourly rate shall be derived by dividing the water court's annual budget by 2080 hours and dividing that quotient by the number of FTEs authorized by the legislature for the water court. If late claims are consolidated and reviewed with non-late claims and the time devoted to the late claim cannot be separately assessed to a late claim, the water court shall prorate the assessment to fairly allocate the costs of working on a late claim. Unless the fees are waived by the water court, the minimum assessment will be \$20.00. If the assessment is not paid within 60 days after notice is provided, the water court shall hold a show cause hearing to determine why the late claim or claims should not be terminated for failing to pay the assessment. If the assessment is not paid or adequate explanation provided, the claim may be terminated. Late

claim costs and expenses will not be assessed against withdrawn or terminated claims.

RULE 31. WATER COURT DECREE ENFORCEMENT.

Upon written request from a district court, water court decrees may be enforced pursuant to §§ 3-7-212, 85-2-406(3) and (4), and 85-5-101, MCA.

Rule 31(a). Preliminary procedure. Upon receipt of a district court request for enforcement, the water court shall:

(1) determine the scope of the enforcement project and project staffing in consultation with the department; and

(2) assess the status of all proceedings within the proposed enforcement area to confirm that all objections have been resolved and that the decree is ready for enforcement.

Rule 31(b). Identification of diversions and instream uses. If the decree is ready for enforcement, the water court will:

(1) identify every diversion and instream use within the enforcement area;

(2) map diversions and instream uses as needed;

(3) identify ditch names as necessary;

(4) note any point of diversion discrepancies or other issues that might adversely affect the distribution of water under the water court's tabulation of existing water rights; and

(5) notify the claimant of these discrepancies or issues. The water court may resolve any discrepancy or issue through the procedures set forth in §§ 85-2-233(6) and 85-2-248, MCA.

Rule 31(c). Public meetings. The water court may conduct public meetings on any proposed decree enforcement.

Rule 31(d). Tabulations. The water court shall provide tabulations of existing water rights within the proposed enforcement area to the district courts.

Rule 31(e). Controversies. If a water distribution controversy arises on a source that is included in the enforcement project, a dissatisfied water user may file a complaint with the district court pursuant to § 85-5-301, MCA, and petition the district court to certify the matter to the chief water judge pursuant to § 85-2-406(2)(b), MCA.

RULE 32. ASSISTANCE TO DISTRICT COURTS. The water court may assist the district courts in developing water user billing systems, water commissioner training, and any other requirement to facilitate the distribution of water under the water court decree and tabulations.

RULE 33. ATTORNEY REPRESENTATION

Rule 33(a). Attorney Representation. After the water court issues its hearing track order under Rule 16(c), W.R.Adj.R., only an attorney licensed to practice law in Montana (or an attorney who is admitted *pro hac vice*) may represent a party in water court proceedings except when natural persons appear *pro se*.

Rule 33 (b). Unauthorized Practice of Law. Actions taken under Rule 16(a) or 16(b), W.R.Adj.R. do not constitute the unauthorized practice of law.

Rule 33(c). Rules of Professional Conduct. It is not a violation of Rule 5.5 of the Montana Rules of Professional Conduct for an attorney to confer, negotiate or resolve issues with an unrepresented party under Rule 16(a) or 16(b), W.R.Adj.R., during the initial settlement proceedings, or for water court personnel to accept and rely upon documents filed

by or on behalf of an unrepresented party under Rule 16(a) or 16(b), W.R.Adj.R.