

SB72- lessons learned/concerns and what worked

Judiciary:

Lessons learned/concerns:

- “water division court” vs “Water court” – distinct and different; clearer naming
- Legal interpretations:
 - o McCarran is up to interpretation;
 - There is a way to tinker with the jurisdictional statutes to maintain the defense
 - Still need the bill- Does it hurt water users, or beneficial in, to still address the issue
 - o Permanency of the WC
 - Constitutional issue; temporary vs permanent. Danger with not dealing with not dealing with the issue.
- Election vs appointment of judges and by whom
 - o Governor appointment vs Supreme Court
 - o Retention, no election, open election, is there an end point or is it retention forever?
- The public needs access to the information that supports the decision that was made, to support the decision (e.g., the stipulation is not in the file)
 - o Modify the duties of the water court: the documentation of the determination is needed and to be included in the water right record so that 10 years from now it can be interpreted.
 - o WRQS- Water Court case files uploaded. What is not there and needs to be there? need the SWG to beta test.
- Do not like the water court, not opposed to the 4 water divisions, need to figure out what direction that we need to go. Enforcement in the Teton. District court judge is administering. Scary for legislation to throw a process out the window that it working (not sure if it would or would not).
- Why do we treat water so differently then every other property right? Once the adjudication process is done, it is done.

What worked:

- The water court ends.
- The water division court is retained, and the WC judges are acting in this capacity, district courts.
- Moved towards a more responsive court; district court having a hard time with timely response on enforcement of water.
- More expertise to address the issues
- Roadmap to users 85-2-406: what is enforceable and when.
- Resolves the mismatch of multiple courts addressing different aspects of the same dispute; hydrologic boundaries addressed/simplified
- Finality of water court determination. End to the adjudication, no motion to continue to amend after adjudication.

Notes from the 8/9 discussion. SWG and public comments

- Creation of centralized place that hold judiciary files, and one place that it is filed.
- Align more with district courts are handled, timelines mirror the rules of civil procedure.

Provisional permits and changes:

Lessons learned/concerns:

- Petition process- People thought that it was a new process
- The big gap in process- provisional permits/final decree/commissioner distribution
- 180 days makes people petition; don't like the time period, would like the disputes to continue
- Proactive vs reactive

What worked:

- Reconciling process is needed.
- Like the roadmap provided to let water right holders know what is going to happen after FDs
- Question: unperfected reserved rights.... How will they fit in?

Commissioners and local control

Lessons learned/concerns:

- Local control of commissioners - Expanded WC jurisdiction
- Water commissioners do not know how to install devices. No one polices.
- Goal: make this process simpler for the general water user to participate, easier to engage, costs less. Water users that don't have to go broke to get/to protect their water rights

What worked:

- Water Commissioners, District Court, decentralized water divisions
- Clear roles, who to call, getting solved quickly (also an education piece)
- The dispute has to be held in the area where the dispute occurred.
- NOTE- "control" is a narrative we need to be aware of

Education and outreach and politics

- Complex issue difficult to explain and understand
- General outreach and education needs to increase:
 - o The general public need to understand this CWR process and a meaningful way to participate/engage/understand.
 - o Legislative education
 - o **Action DNRC:** lay out the outreach plan for next two years in detail and solicit feedback from SWG.
- Perception of sneaking this through; gotcha (education and outreach)
- Why now and the urgency needs to be better explained and conveyed. Be able to demonstrate the importance and magnitude of this work product so that it is not used as a political chip
- Clarify roles:
 - o Permits and changes
 - o Adjudication

Notes from the 8/9 discussion. SWG and public comments

- Water Court
- Commissioners
- DNRC
- The product was not ready, and the amendment process confused
- Water rights education is generally lacking (e.g., water rights audit)
- Politics
 - Get substance and process right
 - Good that we are vetting more, better education, better process.
- We are being proactive, we are not doing nothing, we are addressing the issue.
 - Something needs to happen, we can not wait.
- Need to create a transition, because WC is not issuing all final decrees today.

Measurement (for measurement sub-working group)

- Measurement devices- cost and labor, resources.
- Need to think about the average user and how it will impact them.
- *who is building measurement devices and availability
- **Action:** DNRC tie Ross into the measurement discussion.

Ideas moving forward:

- Break the bill apart, deal with certain pieces individually:
 - Judiciary
 - Provisional permits and changes and FD
 - Commissioners
- We need to provide the background to the SWG to have the conversations. Topics:
 - Bring in experts (legal; operational) on elections and election law early

Notes from the 8/9 discussion. SWG and public comments