

Final Decree Transition Sub-Working Group

9.25.23 Meeting Summary

Role of the Judiciary

What are the needs that the 2022 SWG was trying to solve?

1. **Need:** Clear process for post final decree and current transition period
 - We are getting to final decrees, and the current system is unclear; unclear on how work goes to Divisional Courts.
2. **Need:** Simplicity
 - Need an attorney to file a complaint.
3. **Need:** Efficiency
 - One water issue has multiple venues
 - Costly and difficult to navigate
 - Want one place to hear water issues and clarity on where to file
 - Incompatible decisions amongst multiple venues
 - There are issues that have multiple courts depending on the complexity of the issue.
 - **Option:** File in your home district court. Clerk of Court sends up to the Divisional Court.
4. **Need:** Timeliness
 - District courts don't have the time or resources to have timely resolution.
 - Can lose growing seasons while waiting for a decision (distribution, enforcement, abandonment, waste).
 - What is the ideal amount of time?
 - Is this area specific? Multiple areas (Teton, Gallatin) experiencing large population growth, conversion from Ag to other uses.
 - Will we see more problems in the future?
5. **Need:** Water expertise
 - What are we looking for? expert in water vs local expert or both.
 - The water adjudication court has expiration, maintain subject matter expertise. How do we get that expertise?
 - **Options:**
 - i. Divisional Court – must go to the water CLE, required training? Required to have some water background. Learn it on the ground. Appointment process ensures that they have the knowledge
 - ii. Commissioner – required training
6. **Need:** Keep what is working
 - Framework to keep a specialized court (Division Court) and funding with it.
 - Staying at home, decisions in the home area.
 - Division Court is too expanded.
 - District Court works.
 - The state is McCarran compliant currently, can we strengthen this?

What are the options to address the needs identified?

Focus for the sub-working group (based on SWG feedback at September meeting)

1. **Option SB72:** Use the current Divisional Court, adjudication judges transition into these judges, one office/administrator, option to take to district court.
2. **Option division start, district option:** Use the current Divisional water judges, bolster, have option to take to District Court, adjudication courts expires.
 - Can we make water issues get to these courts today (see flow chart)?
 - Where are the gaps in statute that exist that would need to be addresses?
 - Can we treat a Water Division like a multi- judge district?
 - Should the divisions be smaller? Based workload- smaller.
 - Use of special masters as needed for workload
 - Where do you file within the division?
 - 3-7-221 & 3-7-223 & 3-7-224- not temporary
 - Substitutions 3-1-804?
3. **Option district start, division option:** Start at the district court, take it to the Divisional Court if it is not working.
 - Will there still be a timeliness issue? Urban vs Rural.
4. **Option simple bill (proposed on 9.25):** Clean-up bill to remove “water court” out of statue. Change to water judges tile 3, part

Not a focus for the sub-working group (based on SWG feedback at September meeting)

1. **Option district court only:** Only use district courts for all water issues, adjudication courts expires, and non-adjudication authorities removed, and divisional courts are removed from statute.
2. **Option adjudication court only:** The adjudication court takes on this role, does not expire.
 - Discussion: is making the adj Court Constitutional?
 - Discussion: funding, currently adj funding rules out.

Additional Discussion Items:

1. Is there conflict between title 85 and tile 3 for commissioners?
2. Is there something about water rights that requires a specialized court post adjudication?
 1. Yes:
 - Water rights are a private property right/right to use, needs to be treated differently, there is a value.
 - Requires more interface with a decision-maker (judicial)
 - It is what we have now. 50 years down this path.
 2. No:
 - Other agencies don’t use specialized court; concerns that district courts may not want to take on other issues (new precedence?)

- Other agencies have boards (e.g., DEQ has board of env review/DNRC has the hearings unit/ DOL has a hearings unit), that are appealable to district courts.
3. How to approach effective dates/termination dates on transition recommendations, new statute.
 4. Timing issue, final decrees are rolling. Do we just deal with what we have until adjudication is over, or fix now? Built in a transition? People with decrees now that are in limbo now.
 5. If there was a specialized court, what would it be called?
 - Divisional Courts
 - Water Division Courts
 - Keep what it is in statute
 - Need to also need to think about the title of any future legislation
 - Water Administration after Adjudication

Action Items from 9.25.2023

- How many water cases do they see? Timeline to hear the water cases? Who are the divisional judges? District Court and Adjudication Court (adjudication vs other water)
Joselyn ask Beth & Sara
- Abby update the flow chart