

## Final Decree Transition Sub Working Group Actions Items & Notes

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8.31.2023

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### **Update for the September SWG:**

- Provide the background information
- Outline the options to the SWG- did we miss any? Are any non-starter? Prioritize the options that the SWG wants the sub WG to dig into more,
- Which action items should be moved forward?
- Presentation to SWG by the LG in October
- November- WPIC update on commissioners, and DNRC update on PP and PC rules plan.

### 1. Identify background information for the SWG

1. SB 72
  - a. Senate version – [Gillespie Amendments](#)
  - b. Amendments ([LAWS Detailed Bill Information Page \(mt.gov\)](#))
  - c. Testimony and hearing ([LAWS Detailed Bill Information Page \(mt.gov\)](#))
2. Legal analyses (provided by LG)
  - a. Legality of the water court/ specialized court
  - b. McCarran amendment
3. Navigating the legislation ([Navigating SB72.docx](#))
4. SB72 - Lessons learned document ([Lessons Learned.docx](#))
5. Links to deeper content (LINK to Old Meetings)
6. Overlay of judicial vs hydrological district (aps)
7. Flow- multiple jurisdictions of case today & after adjudication (current statute), options in the future (Abby).
8. Glossary:
  - a. District courts: general jurisdiction, elected
  - b. Water Division: which have boundaries & judges: four in the state, created by statute, the division water judge is a sitting district court judges, they pick among themselves, they deal with water issues. Not a separate court from the district courts. Have water judges.
  - c. Adjudication Court: adjudication of water rights pre-7/1/1973, Ends after adjudication, has a chief water judge and associate water judge.
  - d. Senate version – [Gillespie Amendments](#)

## 2. Build out content and information:

### SB72 Judiciary

1. What is the problem that the change is trying to solve in 2022 SWG ([Navigating SB72.docx](#)) ?
  - a. We are getting to final decrees, and the current system is unclear; unclear on how work goes to Divisional Water Courts.
  - b. One water issue has multiple venues- costly and difficult to navigate. District courts don't have the time or resources to have timely resolution. Keep what is working. How to make more efficient more responsive/timely judicial system?
  - c. The water adjudication court has expiration, maintain subject matter expertise.
  - d. 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.
  - e. Election discussion: different structures are possible. SB 72: Governor appointment, senate confirmation (qualification screening), retention election. Compromise.
  - f. The state is McCarran compliant currently, can we strengthen this?
  - g. **Discussion for SWG:** Is there something about water rights that requires a specialized court post adjudication?
    - a. Why did MT set up the Divisional Water Courts: unclear; to do adjudication
    - b. Why was the adjudication court set up: to get adjudication done faster
    - c. Is there something about water rights that requires a specialized court post adjudication?
      - i. Yes:
        1. Water rights are a private property right/right to use, needs to be treated differently, there is a value.
        2. Requires more interface with a decision-maker (judicial)
        3. It is what we have now. 50 years down this path.
      - ii. No:
        1. Other agencies don't use specialized court; concerns that district courts may not want to take on other issues (new precedence?)
        2. 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.
2. Lessons learned/concerns and what worked ([Lessons Learned.docx](#)). What are the other options to address the problem identified?
  - a. **Option 1:** (SB72) Use the current Divisional Court, adjudication judges transition into these judges, one office/administrator.
  - b. **Option 2:** Only use district courts for all water issues, adjudication courts expires, and non-adjudication authorities removed, and divisional courts are removed from statute.
  - c. **Option 3:** Use the current Divisional water judges, bolster, have option to take to District Court.
    - i. Can we make water issues get to these courts today?
    - ii. Where are the gaps in statute that exist that would need to be addresses?
    - iii. Can we treat a Water Division like a multi- judge district?
    - iv. Should the divisions be smaller? Based workload- smaller.

Working Notes- not a final work product

- v. Use of special masters as needed for workload
  - d. **Option 4:** Start at the district court, take it to the Divisional Court if it is not working.
    - i. Will there still be a timeliness issue? Urban vs Rural.
  - e. **Option 5:** The adjudication court takes on this role, does not expire.
    - i. Discussion: is making the adj Court Constitutional?
    - ii. Discussion: funding, currently adj funding rules out.
3. Sub-working group recommendations on next steps
- a. If the work is being done in another venue and how long it will take
  - b. How to approach effective dates/termination dates on transition recommendations, new statute.

**Discussion/Action:**

Potential actions for the sub-working group, based on main Working Group feedback in September:

- **Action:** Since all compacts structured differently, summary of boards roles and responsibilities
- **Action:** SWG solicit feedback from the district court (Beth)
- **Action:** Create a list of questions for district judges and Clerk of Court
- **Action:** Stakeholder survey- likes/dislikes of use of the district court.

3. If there was a specialized court, what would it be called?

- 1. Divisional Courts
- 2. Water Division Courts
- 3. Keep what it is in statute-
- 4. Need to also need to think about the title of any future legislation:
  - o Water Administration after Adjudication

## SB 72 Provisional permits and changes

1. What is the problem that the change is trying to solve in 2022 SWG ([Navigating SB72.docx](#)) ?
  - a. Identify major policy questions, clean-up, or statute coordination
  - b. Identify terms and topics that need further clarification or questions that need to be answered
2. Lessons learned/concerns and what worked ([Lessons Learned.docx](#)). What are the other options to address the problem identified?
3. Sub-working group recommendations on next steps
  - a. If the work is being done in another venue and how long it will take

### **Discussion/Action:**

- DNRC lay out the rulemaking plan to the SWG related to 85-2-313 through 315 (November meeting)
  - o Are there gaps in the existing authority?
- Don't want this to sit.

## Commissioners and local control

1. What is the problem that the change is trying to solve in 2022 SWG ([Navigating SB72.docx](#)) ?
  - a. Identify major policy questions, clean-up, or statute coordination
  - b. Identify terms and topics that need further clarification or questions that need to be answered
2. Lessons learned/concerns and what worked ([Lessons Learned.docx](#)). What are the other options to address the problem identified?
3. Sub-working group recommendations on next steps
  - a. If the work is being done in another venue and how long it will take

### **Discussion/Action:**

- Understand the Scope of WPIC (November meeting of the SWG have an update)
- Wait on the commissioner deep dive, until we know what WPIC is doing
- Identify where there is overlap/gaps and how to collaborate