

Final Decree Transition SubWorking Group

Homework Summary 2.12.24

Who is the Division judge and how do they get in that seat discussion and options?

Homework Assignment: All SWG choose top two options and articulate why.

Total responses: 15 out of 18 – Abby, Alan, Andrew, Arnold, Brian, Clayton, Jan, Jocelyn, Julie, Krista, Kurt, Nicole, Raylee, Ryan, Vicki

- a. Modified.Status.Quo._Pull from existing district court judges within the division to serve as Division Judge, wholly or partly (3-7-201)
 - i. Self-selection – volunteer; continue their other workload
 - ii. Term: 4 years (3-7-202)
 - iii. Vacancy.and.Removal: TBD (addressed somewhat in 3-7-203)
 - iv. Workload;water takes priority and existing workload that is displaced distributed to other judges; more water judges can be appointed as needed (Colorado, C.R.S.A, 37-92-203(2))
 - v. Note: least power to constituents; least accountability to water users.
 - vi. Note: Not a lot of support from sub-working group, can do better

Votes for A

1st choice: 3

2nd choice: 1

Rationale

- I believe that the divisions were setup for the adjudication and that the water judges were to begin that process. They failed and the legislature added chief water judge and associate judge to get the job done. In an article put out by DNRC for WPIC “A Short History of the Water Court”, the water court was formed with a chief judge and four district court judges (division).
- I believe that due to the Ross Report, in 1989 the District Court and court appointed water commissioners were given jurisdiction to enforce decrees to prevent judicial conflict.
- I believe that division cannot be utilized to enforce decrees due to the division being part of the water court and adjudication. A risk to McCarran.
- I believe that tweaking the District Court model with a water branch could be beneficial. Maybe an east branch (all District courts east of divide) and a west branch (all District courts west of divide). Picking one district judge for each with a central filing and records in Helena. Central Clerk would receive (digital) all water issues and forward to judge, either east or west. Would be easier for multi-jurisdictional issues. (*Ross Salmond idea*)
- We are being asked to do what the Ross Report said should not be done.
- Statutorily, the division could be moved out of the water court to the District Court “water branch” making risk to McCarran null. Would have to workout details. Concerned that the Water Courts use of the Division on claims could also be a risk.

- It is important to allow the judges to volunteer for this assignment as it is a highly specialized type of work. By allowing a district court judge to request to be the Divisional Water Court Judge it allows them to stay within their jurisdictional area thereby reducing travel.
- Volunteering can draw upon those with an interest through educational background and/or potential personal or professional experience.
- I do not believe that we will be able to get Judges to accept appointments as the majority do not have an education or experience in water law and will need to rely on volunteers. Those that do have experience or education will be better attracted to volunteer for the position and might otherwise get passed over when those outside the court system are making appointments.
- Judges in all but a few districts will not have enough water law issues and will need to continue to work as a District Court Judge.
 - This is brought out by the Musselshell District in which Judge Spaulding continues to function as the District Court Judge in an area where water distribution is likely the most complicated in the State. He does not function as just a water divisional judge.
 - I believe the term should be 6-years to better align with the current term for sitting District Court Judges.
 - This addresses the issues related to space and salary.
 - The issue of election/accountability can be confused as a sitting District Court Judge that volunteers might not be reelected on the full merits of their service e.g. they are defeated by decisions related to water law rather than their decisions in other district court matters or visa versa.
- Option a is already well established and has been for decades.
 - Judges do not have constituents nor should they be accountable to any one group. Judges decide the law as written and whether or not the law is constitutional.
 - I really have to question if the work load for division judges will ever come close to justify the expense post adjudication.
 - DNRC is already the designated repository for records.
- Modified status quo: the judges know their dockets and constituents and so long as they focus on water that seems to me the best option since the election is “local”

- b. Appointment, confirmation (Senate) from sitting district court judges wholly or partly within the division that volunteer to be nominated
- i. Appointment.(three.options.that.you.will.see.throughout.the.appointment.discussions)¿
 1. Governor: aligns with current statute of district court judges, separation between who is appointing and who hears the appeal, constituents can lobby the governor. Con: continuity & politics
 2. Chief Justice: understands the strengths and weaknesses of the district court judges; they supervise all lawyers and judges; supreme court is responsible for reallocating workload & cascade effect within the court system. Chief justice is an eight-year term- buffers against politics.
 3. Hybrid: the chief justice can recommend four nominees, public comment and the Governor appoints from that list.

- ii. Workload; water takes priority and workload distributed to other judges; more water judges can be appointed as needed (Colorado, C.R.S.A, 37-92-203(2))
- iii. Retired judges; opportunity for judge pro tempore (3-5-113) for a single case.
- iv. Term: 4 years, at the end of the term, needs reappointment & confirmed.
- v. Question: do the district judges want this work or role?
- vi. Note: mechanism for constituents to use their elected officials in the senate and the governor; district court judge is a judge of general jurisdiction? stays within the framework in statute; One stop shopping and one place for files; Reservation: have to go to the senate to oppose; fear of retaliation; cuts both ways. How is centralized filing and data management addressed?
- vii. Note: more support from subworking group than a; some with equal support and concerns for (a).

Votes for B

1st choice: 2

2nd choice:

3rd choice: 2

Rationale

- At the end of the day, I just need a damn judge to rule on a damn case. And if a ‘non-district court’ judge, or a ‘non-elected’ judge is the sticking point, then at least give me a dedicated district court judge who was appointed by a more thoughtful process than being the judge who missed the meeting and couldn’t say ‘no’ to the appointment – which I fear is the current process.
- If neither of these options are available, I could live with Option B (Hybrid). However, if one goal or desire is to get folks with water law expertise into the seat of a water judge, I don’t know any water attorney who would run a campaign to be a district court judge to then hope to be appointed to the seat of water judge, who would then be required to continue seeking reelection of the district court seat. I also do not think folks who have the desire to be a district court judge do so because they have an affinity for water law.
 - Overall, I really don’t have a strong feeling or preference of how the water judge gets to their seat. I just want a *judge* with the basic qualifications of a judge who have (hopefully) had some (at least 5 years) of real-life experience practicing law.
 - Additional questions and thoughts – in the FDT working group we probably did not discuss enough the barriers to entry for folks wanting (willing?) to be a water judge. Are we willing to sacrifice water law experience and expertise, which is the most likely sacrifice for pulling from sitting district court judges (Option B)?
- The chief justice appoints them based on their qualifications and water knowledge, etc.
- Appointment from sitting district court judges works within the framework of the existing courts and does not create a new court as it allows a district court judge to request to be appointed as the Divisional Water Court Judge in his area of jurisdiction and within his demonstrated educational experience.

- o We need to be as consistent with our neighboring states as is possible as it creates a relatively universal system across State boundaries that can be better understood when dealing with out of state landowners as they work with Montana attorneys.
 - Follows the Utah model whereby they designate certain district court judges as water judges and they establish a procedure whereby district court water cases are heard by designated water judges and they designate a supervising water judge from the existing judges.
 - Follows the Colorado model which also uses existing district courts and references the position of water judge of the district courts. The model states that the (existing) district courts acting through the water judge have exclusive jurisdiction of water matters within the division.
 - o This model allows for appointments from the existing District Court judges.
 - o My preference is an appointment by the Chief Justice as it is more probable that this will be an appointment based on qualifications rather than political affiliation.
- c. Appointment, senate confirmation, after initial term- retention election from anyone who meets the qualification of a judge (Art. VII, Sec 9, Mont Const) within the Division
- i. Appointment; Governor or Chief justice of Supreme Court or hybrid
 - 1. Options.see.above.
 - ii. Term; six years to align with district court judges; retention election during the next statewide general election. Special elections have huge costs.
 - iii. Jurisdiction; need to enumerate the scope of work and duties.
 - iv. Qualification: qualification of a judge, retired judge (Art. VII, Sec 9, Mont Const)
 - v. Workload: this is all that they do, can they serve in more than one division if not enough work or support district court work (is this possible if they are not elected/ like a judge pro tempore)
 - 1. Serving in more than one division is important question to explore further
 - vi. Election: retention - within the division or statewide.
 - vii. Venue; Can deal with where cases are heard (i.e. in place of controversy).
 - viii. Note: if this is not a sitting district court judge will need office space and staff. 3-7-204(2) provides for the Supreme Court to pay for salaries and expenses of water judges as well as their staffs. Salaries and expenses include personnel, office expenses and space, and other necessary expenses.
 - ix. Note: preference for appointment; there is preference for election for accountability & does b address this; prefer c because of workload concerns and clarity needed; c is creating a new court if not using sitting district court judges & prefer b (because they cannot help anyone else); seems like it is similar to SB72 & didn't play well; new court; this is not a new court. Opens up the options of who can be selected from, including qualified water law attorneys who may not want to run for District Court.

Votes for C

1st choice: 1

2nd choice: 7

Rationale

- I (personally) am not concerned with an election requirement – but I know others are. Accordingly, option “c” would also be acceptable to me.
 - Appointed by senate
 - I like the hybrid appointment option.
 - My members have been clear that they prefer a Division court model. Not only do they think a specialized divisional court should handle adjudication, but they also believe it should exist in some fashion after adjudication is completed, with authority over administrative water use decisions, hearing water right disputes, etc.
 - Divisional courts that specialize in water have important expertise in relevant subject matter and most importantly, their focused workload allows them to review and decide cases in a timely fashion. Further, they are more likely to be impartial on disputes that involve a water commissioner (since commissioners are appointed by District Court).
 - Some division of power and checks and balances are usually valued in our system of government, as is the case here for the farmers and ranchers I interact with.
 - My members do desire these judges to be elected, or at least have some sort of accountability in the form of a retention election, confirmation by the Senate, etc. They were willing to compromise on just how that had to happen in the previous iteration of this legislation and the same will likely hold true again, as long as we get the divisional court.
 - Option C with hybrid appointment process would accomplish many of the same objectives outlined above but would include a retention election would be expensive and complicated. Like some others, I am basically neutral when it comes to elections vs. appointment (with the caveat that I prefer a hybrid appointment that does not give Governor sole authority to appoint judges), but I agree with the argument that financial, political and logistical requirements associated with the election process would preclude many experienced candidates from pursuing a water judge role (just as it precludes some from pursuing a district court judgeship).
 - Option C would also be fine with me; and because I know the election piece is important to many. I, personally, am not that concerned about elections and do not think that a retention election (or any election) would, in reality, give the level of accountability that proponents of an election seem to desire.
- d. Appointment, senate confirmation from anyone who meets the qualification of a judge (Art. VII, Sec 9, Mont Const) ** same as option c without retention election **
- i. Appointment; Governor or Chief justice of Supreme Court or hybrid
 - 1. Options.see.above
 - ii. Term; four or six years to align with district court judges; eligible for reappointment
 - iii. Jurisdiction; need to enumerate the scope of work and duties.
 - iv. Qualification: qualification of a judge, retired judge (Art. VII, Sec 9, Mont Const)
 - v. Workload: this is all that they do, can they serve in more than one division if not enough work or support district court work (is this possible if they are not elected/ like a judge pro tempore)
 - 1. Serving in more than one division is important question to explore further
 - vi. Space.™.staff: 3-7-204(2) provides for the Supreme Court to pay for salaries and expenses of water judges as well as their staffs. Salaries and expenses include personnel, office expenses and space, and other necessary expenses.

- vii. Venue; Can deal with where cases are heard (i.e. in place of controversy).
- viii. Many of the same questions under b & c.
- ix. Questions: do they still have the jurisdiction?
- x. Note: explore further with the main working group, but the thinking behind this option is to mimic the current process for adjudication judges.

Votes for D

1st choice: 8

2nd choice:

Rationale

- Additions to context that I think are important:
 - (1) compliance and robustness to stand up to challenges under the McCarran Amendment was top of the line for me – tried to pick the options that given my discussions with legal minds gives me the most confidence that it would meet this bar,
 - (2) I also weighed heavily on reducing barriers to entry for qualified water attorneys with technical knowledge to be willing to be a judge, and I think that this should have been one of the lines that we included in each of the options (i.e. barrier to entry for a potential statewide election is high, so is having to run for a district court judge seat with the hope that you can maybe, possibly be picked to be the water division judge).
- under a “hybrid” appointment process is my preferred alternative as it allows for appointment of judges with water experience. My reasoning is as follows:
 - I think it unlikely that water attorneys will run to be a district court judge, simply to be appointed as a division water judge.
 - I prefer the “hybrid” process because if the Supreme Court nominates judges, and the Governor selects from that slate, we get some “separation of powers” and a public thoughtful selection process.
- Caveat: If there is some type of built in mechanism to be able to hold judges accountable to water users. I am thinking of some type of a petition process or something else. In the past I have been adamant that the position needs to be elected because they have so much power over our property rights. The election piece has always been the mechanism in our minds to create accountability. I am willing to look at different options for this.
- My members have been clear that they prefer a Division court model. Not only do they think a specialized divisional court should handle adjudication, but they also believe it should exist in some fashion after adjudication is completed, with authority over administrative water use decisions, hearing water right disputes, etc.
- Divisional courts that specialize in water have important expertise in relevant subject matter and most importantly, their focused workload allows them to review and decide cases in a timely fashion. Further, they are more likely to be impartial on disputes that involve a water commissioner (since commissioners are appointed by District Court).
- Some division of power and checks and balances are usually valued in our system of government, as is the case here for the farmers and ranchers I interact with.
- My members do desire these judges to be elected, or at least have some sort of accountability in the form of a retention election, confirmation by the Senate, etc. They were willing to compromise on just

how that had to happen in the previous iteration of this legislation and the same will likely hold true again, as long as we get the divisional court.

- Option D with hybrid appointment process would provide for the appropriate level of experience and expertise in water. It keeps the judges focused on water and provides for efficiency of process and flexibility to hear water cases where they originate or occur (“keeping it local”). Senate confirmation provides checks/balances and accountability to citizens/water users. Also provides some level separation/independence that is critical to provide for neutral decision making in controversial cases. In my mind, this is one of the strongest arguments in favor of an Option C and D (i.e. Water Division Court model).
 - Question: Not sure about ability of Water Division Judges hear non-water District Court cases, but this could potentially work upon request of a District Court judge to the Chief Justice (See Article VII, Section 6(3)) or even without: See Art. VII, Section 4(3).
- I believe that Options D and C make the most sense when analyzed under the goals & objectives outlined in the FDT working group notes; in other words, these options:
 - Decrease costs water users
 - Decrease (or at least not increase) fiscal costs
 - Are realistic
 - Give decision makers the resources/experience needed
 - Increase McCarran compliance
 - Increase subject matter expertise
 - Decrease complexity
 - Politically feasible?
- Option D, with the hybrid approach (i.e. CJ recommends a slate of candidates and Gov appoints). There could be some additional public participation or comments on potential candidates at this stage too (either pre-recommendation by CJ or pre-appointment by the Gov, or both). Such public comment periods will provide water users meaningful opportunity to participate during reappointment proceedings. Also, having a hybrid appointment gives some separation of powers, so the judicial branch is not the one who is nominating, appointing, and then overseeing the new judge. For me, Senate confirmation provides sufficient accountability because water users can appeal to their elected officials to support or reject a candidate, particularly on re-appointment. Arguably, this method would provide more accountability at a lower cost to water users than having to campaign for or against someone in an election.
- e. Full and open election without appointment and confirmation, anyone who is qualified to be a judge (Art. VII, Sec 9, Mont Const), and likely lives within the Division
 - i. Qualification: anyone who is qualified to be a judge under Art. VII, Sec 9, Mont Const, discussion about whether or not they live within the district
 - ii. Appointment and confirmation: when there is a vacancy follow provisions similar to other judges (Title 3, chapter 1, part 9)
 - iii. Elections: discussion should be had about whether or not it is a statewide election or just within the division (assume during statewide general election).
 - iv. Term: four or six years to align with district court judges; eligible for reelection
 - v. Number of judges; Likely follow one per division (4), but that is a discussion point, including whether a judge could serve in more than one division depending on workload.

- vi. Workload: this is all that they do, can they serve in more than one division if not enough work or support district court work (is this possible if they are not elected/ like a judge pro tempore)
 - 1. Serving in more than one division is important question to explore further
- vii. Space.™.staff: 3-7-204(2) provides for the Supreme Court to pay for salaries and expenses of water judges as well as their staffs. Salaries and expenses include personnel, office expenses and space, and other necessary expenses.
- viii. Venue; Can deal with where cases are heard (i.e. in place of controversy).
- ix. Same questions under c
- x. Note: concerns about appointment generally and who gets to appoint; alternatively should be a straight up election by everyone. Campaigns can be costly for judges- will it inject outside influence and lessen the pool? Population centers driving the vote- cuts both ways.

Votes for E

1st choice:

2nd choice: 1

Rationale:

- o Additions to context that I think are important:
 - (1) compliance and robustness to stand up to challenges under the McCarran Amendment was top of the line for me – tried to pick the options that given my discussions with legal minds gives me the most confidence that it would meet this bar,
 - (2) I also weighed heavily on reducing barriers to entry for qualified water attorneys with technical knowledge to be willing to be a judge, and I think that this should have been one of the lines that we included in each of the options (i.e. barrier to entry for a potential statewide election is high, so is having to run for a district court judge seat with the hope that you can maybe, possibly be picked to be the water division judge).

Other vote:

- o Since it seems to me that the District Court model that was proposed has been taken off the table, I am not willing to discuss how a Division Judge gets into a seat that does not currently exist in law. I have not been shown that there is a true need for this, I believe the District Court is the only option for local control, and I have not been convinced that there is not a possible constitutional issue.
- o Torn between D and current law – still learning and listening

All options:

- xi. Training: dedicated funding for training on water law, adjudication, and administration of water rights (emerging issues, continuing education)
- xii. Term of office: some consistency/building knowledge base/predictability

- xiii. Removal option: is it the same as other judges in statute and Art VII, Sec 11, Mont Const?
- xiv. Ensuring that there is a supervising judge/chief judge for administrative tasks (3-7-204), supervising staff (e.g., admin staff), budget management, thinking through the general supervision by the Supreme Court for these functions (3-7-204)
- xv. Ability for judge pro tempore, substitution, etc
- xvi. Stagger the appointment- some judge always has experience with water
- xvii. Qualifications: qualifications of a judge (3-7-221), water experience or training taken above or continued education requirements; who decides? There may be pushback if there are additional qualification limitations with appointment

Creating a new court?

1. Is the question of jurisdiction?
2. New duties?
3. More government issue?
4. Is the Water Division a new court?

Is the water division is seen as a new court; is it a new court? Provide Rationale.

Yes

- The Division Judges in current statute are part of the Water Court, when the Water Court finishes adjudication and ends, the Division Judges end with them. Therefore any Division Judge after that would be the creation of a new court.

No

- Do I see the division court model as creating a new court – **NO**. I believe that it is repurposing existing judges that are doing, or at least were intended, to do the work that we are more clearly enumerating in statute. I see it as a repurposing of existing statute for changing needs rather than creating something new.
- It's established law in MCA 3-7-101, et seq. The Montana Supreme Court has recognized this law and the existence of the Water Judges and Water Division Courts for decades (CSKT. v.Clinch, Fellows.vj.Water.Commissioner.ex.rel.Perry.vj.Beattie.Decree, Granite.Coj.vj. Anderson, to name only a fraction of the cases explicitly describing these statutes, and to say nothing of the many specific decisions decided by "Water Judges" that were appealed to the Montana Supreme Court). The idea that the courts don't exist is bananas, and only being argued for the purpose of de-legitimizing the institution they have become over 40 years.
- I do not believe this will be a new court when the judges are appointed/volunteer from the existing district courts.
- The water court is not a new court, it has been in existence since its creation by the legislature, the water court needs to continue as a "floating" divisional court, taking up cases referred by the district court and/or filed with them, it has all the personal, offices, supervising, monitoring and enforcing decrees with water commissioners in place, etc., the legislature needs to continue funding them for a period of at least 6 - 8 years to resolve all disputes, after/during the 6 years district courts can take over these cases on a county by county basis.

- I think 3-7-101, et seq makes this pretty clear. Additionally, the Supreme Court has recognized both the Courts and existence of the judges. The argument that the division courts are new is a political argument and undermines the process that has been used for decades.
- I absolutely do NOT see the divisional court as a “new” court. How can something be new when it already exists?
- See MCA 3-7-101, et. seq. In fact, transferring jurisdiction of administration of final decrees to the District Courts would effectively extinguish the existing Water Division Courts, which I believe creates McCarren Amendment problems.
- Division water judges are established in Title 3, Chapter 7. These statutes are not temporary, nor do they sunset. So even if we do nothing and the adjudication is completed, these division water judges will still be there. Moreover, the legitimacy of the adjudication water court and the water judges has been affirmed time and time again by the Montana Supreme Court. Establishing more precise division water courts by defining their duties, how they arrive at their seat, and who can be a division water court judge is merely a reorganization and fleshing out of current statute. Water division judges are specialized courts, but they are not “new.” They have been around since 1979. See all the LG’s research that I will not repeat here. See also *Montana Trout Unlimited v. Beaverhead Water Co.*, 2011 MT 151, ¶¶ 53-54 (Nelson, J. concurring). Finally, even if – for arguments sake – it is a new court, so what? If this is the best path forward, it’s the best path forward.
- I have NO idea why anyone thinks that the Divisional Courts that are clearly articulated in current statute would be seen as a new court.
- Division courts are already in law. I am open to looking at how the court is used and its role in a different way or change things but it’s not a new court.

Notes from 1.10.24 SWG Meeting (did not get to this in the 1.23.24 subworking group meeting)

2. Are there types of actions that need to be in one court or the other (page 2)
 - a. Commissioner- who supervises and what to do when I have a problem with the commissioner? (NOT other commissioner issues)
 - b. Interpretation of decrees
 - c. Review DNRC decisions
 - d. Litigation (non-petition enforcement)
 - e. Interpretation of decrees
3. How to address multi-jurisdictional conflicts?
4. What does administrative support look like?
5. Will a hybrid approach work (district to division/division to district); the use of water divisions/judges a non-starter; is district court only a non-starter?

Where to go for types of actions (where does it start, when is it transferred, who decides):

1. Commissioner- who supervises and what to do when I have a problem with the commissioner? (NOT other commissioner issues- e.g., record keeping, bills, training)
 - a. Start:
 - i. Appointed and supervises at district court;
 - ii. *need to figure out what is the appropriate district court.
 - b. Petition/transfer:
 - i. Either party or district judge can petition for request for commissioner/supervision/appointment the division court
 - ii. Who can petition- someone impacted by the enforcement
 - iii. It shall be transferred if petitioned. (question)
 - iv. Need trigger- Can not be transferred after the issue has been taken up; if a commissioner has been appointed; public notice required;
 - c. Dissatisfied water user complaint:
 - i. Someone other than the commissioner's supervising judge hears it.

2. Litigation- where do I go for illegal water use, abandonment, waste. (non-petition enforcement)
 1. Start:
 - a. start with the district court
 - b. need to talk about when it starts in the division
 - i. if it spans multiple courts
 1. Option 1: then the petition must be filed in both courts.
 2. Option 2: Goes to division court
 2. Petition/transfer:
 - a. Either party or district judge can petition for request for commissioner/supervision/appointment the division court
 - b. Who can petition- someone impacted by the enforcement
 - c. It shall be transferred if petitioned (required?)
 - d. Need trigger- Can not be transferred after the issue has been taken up; if a commissioner has been appointed; public notice required

3. Review DNRC decisions- what court do we go to when we petition for judicial review of DNRC decisions.

4. Interpretation of decrees- where do I file a motion for clerical error in a final decree?
 - a. Start:
 - i. division court (subject matter, consistency of opinions, separation of powers- commissioners vs interpretation): Ryan, Brian, Krista, Clayton, Nicole, Raylee, Vickie, Abby, Jan, Julie, (need to determine how division judges are determined)
 - ii. district court (simple, local): Alan, Jocelyn, Spencer
 - iii. neutral: Kelly, Mark
 - b. Transfer/petition

- i. What if it has distribution/commissioner established; different judge for interpretation
- ii. Talk about if it shall be transferred

* Beth come in after a draft proposal is developed and have reviewed for McCarran compliance (Governor, WAAC)

Action items (sub-group):

- Abby send out answers about Utah
- Feedback to subworking on how people get into a division judge seat
- Subworking group:
 - o Build out those option on getting into that seat

Be clear every time on the goals & objectives:

- Increase or decrease cost to the water users
- Increase or decrease fiscal not costs
- Is it realistic given the confines of the judicial system
- Does the decision maker have the resources
- Does it increase or decrease McCarran compliance
- Increase or decrease subject matter expertise
- Is in increasing or decreasing complexity
- Is it politically feasible

- review decisions made by a compact board or other administrative entity as provided in Title 85, chapter 20;
- conduct proceedings for petitions for judicial review filed with the Water Division Court under 2-4-12 702(2)(e);

- review motions brought pursuant to Rule 59 or 60, M.R.Civ.P., concerning the adjudication of an existing water right and orders pursuant to 85-2-234(8);
- hear and resolve disputes arising under the interpretation of a final decree issued under 85-2-234;
- hear and resolve issues related to judicial enforcement actions for waste, unlawful use, interference, or other violations pursuant to 85-2-114 and 85-2-122;
- hear and resolve issues related to enforcement actions brought pursuant to common law remedies, including but not limited to the waste of water, unlawful use of water, abandonment, or interference with the use of water, including the right to injunctive relief under Title 27, chapter 19
- conduct abandonment proceedings under 85-2-404 and 85-2-405;
- hear and determine matters related to objections to permits or changes in appropriation rights under 85-2-309;
- hear and determine matters related to a dispute over ownership of a water right certified to the Water Division Court under 85-2-424(9);
- hear and determine rights and issues related to water distribution controversies under 85-2-406;
- coordinate with the Department of Natural Resources and Conservation the compilation of necessary technical information for water distribution under XXX (redbooks)
- hear and resolve ditch easement matters ancillary to a water right dispute or controversy, as a water right is defined in 85-2-102;
- promulgate rules for use across all water divisions for practice and procedure pursuant to Title 3, chapter 7;
- prescribe forms for use pursuant to Title 3, chapter 7; and determine and interpret existing water rights, including without limitation the adjudication of total or partial abandonment of existing water rights occurring at any time;