

Final Decree Transition

sub-working group Discussion Notes

12.8.2023

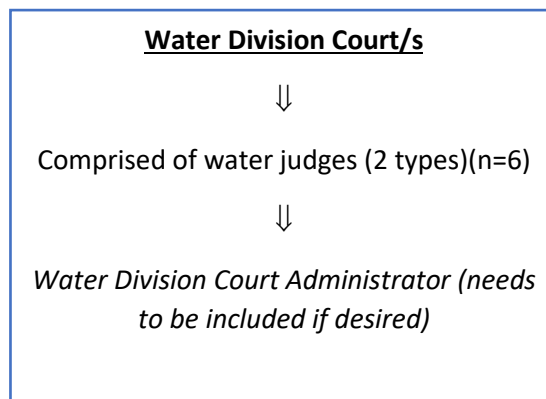
Approach:

- Starting with building out division model because already in statute - update power and duties to all water functions
- Post final decree in all basins, no adjudication water judges
- Division judges, which has chief and associate adjudication judges AND water division judges

- (TBD) Clean up all water judges in statute and be explicit of the meaning
- (TBD) Adding more divisions; split upper Missouri in ½ (everything north of the canyon; wolf creek)
 - o Does this further address what is local?
- (TBD) Transition & funding
 - o Separate duties of two types of judges helps with the transition challenge
 - o Adjudication court staff, transferred to water division
 - o Need for administrator
 - o Funding model Funding (HB2, vs counties, vs supreme court)
 - o How do you codify roles?
- (TBD) How does a judge get to the water division court?
 - o Appointment (gov or supreme court)
 - o Election
 - o Today: district judges select among themselves-
- (TBD) File, Judge, Venue – delineated these 3 areas from discussion in trying to understand tension between local and divisional
 - o **Where do I file?** Divisional Court (rationale: 1 filing place)?
 - Why: multijurisdictional issue; filing in the divisional court- saves one headache for district court clerks.
 - Why: a single place for water files is important to retrieve files in multiple places
 - Why: McCarran, where filing matters. not be an option to be filed in the local judicial district.
 - Question: one clerk or four?
 - o **What judge hears the case?**

- In the filing, the person filing can choose to have if district judge as the judge (Division court hat), the clerk must sends it there.
 - Revise the substitution statute- defendant gets to say, want something else.
 - Why: the filer is in the driver seat
 - Why: regional solution opportunity
- **Venue: where is the case decided?**
 - Default: Where the water rights are located.
 - The filer can identify a proper venue
- Other options:
 - Default district court (with division court hat) then to division
 - People are used to district court being the start.
 - If they don't have time, they can move it to the division
 - What about when it spans multiple district court jurisdictions?
- Timeliness
 - Put something under the statute in terms of timelines for administration (e.g., like a TRO), like an emergency need.
 - What are the bucket of issues that need high response- enforcement?

Visual:



Water Judge type 1: WATER DIVISION (new name?)

JUDGES

- Currently 4 divisions (N=4)
- Duties: administer decrees, review DNRC Water Division decisions, and to preside over distribution, enforcement and abandonment disputes
- Water Division Judge or District Court Judge (with Division judge hat on)

Water Judge type 2: Adjudication Water Judges

- Chief and associate water judge (N=2)
- Statewide
- Duties: Complete statewide adjudication of claims
- Water masters