



Final Decree Transition

Divisional Water Court/Judge Framework

FRAMING QUESTIONS – UPDATED FOR 5/10/2022 MEETING

FRAMING QUESTION #1: FINAL DECREES

1. What is the best way for adjudicated pre-1973 rights and new permits and changes (both as certificates of water rights) to be cohesively administered?
 2. Are the current statutes and rules adequate to meet that vision?
 - a. Are the current statutory provisions for corrections of mistakes and errors in final decrees adequate?
 - b. What notification process should be used?
- **Goal from WG:** Users and commissioners have access to the present version of their water right and the water right being enforced; The final decree needs to be dovetailed with changes and provisional permits.
- o WG has put forward the Water Division Court Model as a strawman (see attached draft legislative changes for Working Group consideration/discussion)
- **Questions to be answered in May Working Group meeting**
- o WG decision:
 - A) Living final decrees- needs clarification on what this entails
 - B) Current: final decree as the base of the water right, post 1973 modifications reflecting changes in use, abandonment, and ownership updates to the water right maintained in the centralized record with certificates of water rights captured as versions
 - C) other
 - o For mistakes, errors, and notification to final decree, are current rules and statutes sufficient?
 - [Rule 59](#) and [Rule 60](#), M. R. Civ. Pro.; and 85-2-234(8)
 - o What is the process to verify provisional permits after final decree?
 - Is 85-2-313 a sufficient process for modifications to permits?
 - Should 85-2-314 provide for a show cause hearing pursuant to 313?
 - o What is the process for verifying changes authorized prior to final decrees?
 - No statute or rule specifically addresses the procedure
 - 85-2- 313 does not clearly address *changes* in the context of final decrees
 - Current Statute. Other Options? Due process concerns?
 - Final decree reduces existing water right to less than what was authorized for change – Modification under 85-2-314;
 - Final decree increases existing water right to more than was evaluated for authorized change – potential abandonment of the remainder 85-2-404 and 405?

- Water Division Court Dockets- does a water division clerk of court address the need (3-7-204-new)

FRAMING QUESTION #2: ROLE OF THE JUDICIARY

1. Are there concerns with the current post-final decree system of judicial administration of water rights? If so:
 - a. Identify concern(s);
 - b. Identify the current statutory and regulatory frameworks and tools available to address those concern(s);
 - c. Identify any additional tools or resources needed to address those concern(s);
 - d. Identify potential statutory, regulatory, and policy solutions; and,
 - e. Evaluate pros and cons of potential solutions.
 2. Additional considerations for any potential statutory, regulatory, and policy solutions developed (e.g., overlapping jurisdictions, appointment of judges)?
- **Goal from WG:** Balance between local support and expertise, and statewide benefits and consistency.
 - WG has put forward the Water Division Court Model as a strawman (see attached draft legislative changes for Working Group consideration/discussion)
 - **Questions to be answered in May Working Group meeting**
 - Roles defined (as presented in the strawman)
 - Chief and associated water judge- jurisdiction over adjudication
 - Division Water judges- jurisdiction over commissioners, disputes, other judicial water issues
 - Division Water Judges vs District Court Judges
 - Additional capacity needed other than one judge/division?
 - Where do Petitions for Judicial Review go?
 - Should there be the opportunity to substitute Division Water Judges? What parameters (3-7-402)?

FRAMING QUESTION #3: WATER DISTRIBUTION AND DISPUTES

1. How should final decree and post-1973 appropriated water be distributed?
 - a. Are additional rules, statutes and authority needed to better manage and distribute water?
2. What is the role of water commissioners? Should every basin have a water commissioner?
3. Who is responsible for water commissioner management and supervision?
 - a. To whom should water commissioners report (District Court/Agency/Other)?
 - b. How should Water commissioners be hired, trained, and managed?
 - c. How are water commissioners represented in dissatisfied water user complaints?
4. Is the current structure to train, support, and fund water commissioners adequate?
5. What additional tools are needed to support water commissioners?
6. How are water commissioners' records maintained and standardized?
 - a. Should water records be standardized?
 - b. How should they be standardized?
 - c. Who should be responsible for maintaining water commissioners' records?
 - d. Should yearly water commissioners' records be maintained locally, centrally, or both?
 - e. Should records be digitized and added to individual water right records?
7. What is the relationship between water commissioners and the District Courts? Is there a need to improve consistency?

FRAMING QUESTION #4: WATER COMPLAINTS AND ENFORCEMENT

1. In what circumstances do stakeholders want water enforcement? Are there certain times of the year or locations where enforcement is more efficient and beneficial?
2. Are there additional statutory or administrative remedies needed to enforce water rights?
3. Are there additional judicial remedies needed to enforce water rights?
4. Are there sufficient mechanisms to allow water users to enforce against other water users for “illegal” water use?
5. What role, if any, should water measurement and reporting serve in enforcement?