

Jason, hope you are mentoring. and
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for McFayados

1. Amend new section 1, and any other section necessary, which is Senator Gillespie's amendment, to allow any party to a water rights enforcement action (not just the plaintiff/petitioner) to move the matter from the Water Court to the District Court. This applies to section 16 also, and to section 19; This entails removing the "exclusive" 3-7-501 jurisdiction of the water court and restoring the jurisdiction of both water court and district courts. I believe this was the intention of the sponsor, but even if not, it is imperative.
2. Amend new section 1, and any other section necessary, to allow any party to a water rights enforcement action to move the authority to the District Court.
3. Clarify that the Water Court judges are "pro tempore" within the District Court jurisdiction and, therefore, they have and exercise the same in rem jurisdiction over water rights disputes. This may require other sections of the bill to be adjusted to reflect that both courts exercise the same jurisdiction, but the Water Courts in a limited, "pro tempore" role.
4. Clarify that amendments in 1 and 2 apply to judicial review, section 2, as well and to the appointment and supervision of water commissioners. Amend section 15 to clarify EITHER the water court or the district court, depending on which handles the case based on the decisions of the parties (to leave it at water court or move it to district court), will appoint and supervise water commissioners; AND this must apply even to controversies that cross district court boundaries. 3-7-211 (2)(c) allows
6. Limit the Governor's appointment power in section 17 to two or three water court judges. Allow them to stand for retention elections. ADD THE CONDITION THAT THE GOVERNOR CHOOSE FROM SITTING OR RETIRED DISTRICT COURT JUDGES TO HANDLE THE WATER JUDGE ROLE.
7. Section 33: Regarding private petitions to challenge provisional permits or changes in appropriation rights: Delete the new private petition process and clarify that only the DNRC and water rights holder has this right but keep the inclusion of the "change in appropriation right." WATER RIGHTS OWNERS AND USERS NEED TO BE REALISTIC ABOUT THIS PROVISION. IT IS A NEW MECHANISM FOR MESHING PRE-73 WATER RIGHTS WITH POST-73 PERMITS AND AUTHORIZATIONS, AND THAT NEEDS TO BE DONE. BUT, AS A NEW MECHANISM, IT SHOULD BE SUBJECT TO PUBLIC DEBATE; IT HAS NOT BEEN, HAVING BEEN ADDED TO THE DRAFT IN SEPTEMBER 2022. (The presence of the word "petition" in section 313 refers to the DNRC or water right holder, not third parties. I was there.) THERE ARE OTHER MODELS FOR ACCOMPLISHING THIS, SUCH AS THE ONE SUGGESTED OF HAVING DNRC DO THE FIRST ANALYSIS AND IF THERE IS NOT A PROBLEM ON PAPER, THEN NO EXISTING USES ARE SUBJECT TO PETITION; IF THERE IS A PROBLEM ON PAPER, THEY MAY BE SUBJECT TO PETITION BY EITHER DNRC, OR A LIMITED GROUP OF PEOPLE WITH STANDING. I am sure there are other models. SO I AM RECOMMENDING THAT WE STRIKE

asks 2 ?
keep water holder
direct WP holder
strike +
discuss later

"substitute
judges" out
language

strike
33

Sec 17
already in 513

amend
Sec 12
3-7-211
allows

Sec 19?
3-7-501
(exclusive)

amend
Sec 20, 21
1, 16, 19, 10
and Sec

remove
Sec 32

THIS PROCESS AND SUBJECT IT TO FURTHER DISCUSSION OVER THE

INTERIM.

8. Section 34: amend to place the burden of proof on DNRC to demonstrate that it would have denied or modified the permit or change had the Final Decree been available. Other than that, keep this section as is.
9. Section 40: Oath and Bond of Water Commissioner. STRIKE THE BOND

REQUIREMENT

10.

and Sec 40

and 34 (15)