May 21, 2018

Exhibit 7

# WATER COURT ADVISORY COMMITTEE'S PROPOSED LEGISLATIVE AND SUPREME COURT RULE AMENDMENTS

## 1. Eliminate unnecessary final decree requirements for reserved water rights:

**Amend 85-2-234 (Final decree) as follows:**

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree must ~~state~~ include:

(a) the name and post-office address of the owner of the right;

(b) the amount of water included in the right, as follows:

(i) by flow rate for direct flow rights, such as irrigation rights;

(ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or

(iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the inclusive dates during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree must ~~state~~ include:

(a) the name and mailing address of the holder of the right;

(b) the source or sources of water included in the right;

(c) the quantity of water included in the right;

(d) the date of priority of the right;

(e) the purpose for which the water included in the right ~~is currently~~ may be used~~, if at all~~;

(f) the place of use and a description of the land~~, if any, to which the right is appurtenant~~ where the water may be used;

(g) the place and means of diversion, if any; and

(h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under **85-2-702**.

## 2. Make Water Court decisions (legal and factual) immediately appealable and set a deadline for appeals to previously issue Water Court rulings.

**Amend 85-2-235 (Appeals) as follows:**

**85-2-235. Appeals.** (1) A person whose existing rights and priorities are determined in a final decree issued prior to [the effective date of this Act] may appeal the determination only if:

(a) the person requested a hearing and appeared and entered objections to the temporary preliminary decree or the preliminary decree;

(b) the person's rights or priorities as determined in the temporary preliminary decree or the preliminary decree were affected as the result of an objection filed by another person;

(c) the person requested a hearing and appeared before the water court to finally resolve an issue remark, as defined in **85-2-250**; or

(d) the person is a claimant appealing an adverse decision when the water court issued the decision as the result of an evidentiary hearing, or as the result of calling the claim in on the court's own motion, or pursuant to the process set forth in 85-2-248.

(2) ~~The attorney general may appeal a determination made in a final decree if the attorney general participated as an intervenor as provided in **85-2-248**.~~Any order issued by a water judge after [the effective date of this Act] and after the resolution of an objection, the conclusion of the process set forth in **85-2-248**, or the claim being reviewed on the court's own motion, that confirms, terminates, amends or otherwise modifies a water right that was set forth in a temporary preliminary decree, preliminary decree, or supplemental preliminary decree may be appealed by any party who participated in the particular proceeding in which the order was issued. Such orders must be appealed immediately in accordance with the Montana Rules of Appellate Procedure or the right to appeal is waived.

(3)(a) ~~An interlocutory ruling by the water judge upon a question of law may be appealed by any party who is affected by the decision and who participated in the matter in which the ruling was issued.~~ (*Temporary*) Orders that would otherwise be appealable under [new section (2) of this section] that were issued prior to [the effective date of this Act] may only be appealed within 24 months of [the effective date of this Act]. Any eligible appeal not filed by that date is waived.

(b) Within 30 days of [the effective date of this Act], the [water court/department] shall publish notice once a week for [3] consecutive weeks in at least three newspapers of general circulation that cover the water division in which appealable orders satisfying the requirements of 85-2-235(3)(a) have been issued. Within [six months] of [the effective date of this Act], the [court/department] shall send written notice of the appeal deadline to all parties entitled to receive notice of the availability of a decree pursuant to 85-2-232.Written notice shall be provided within each basin in which the court has issued orders subject to appeal pursuant to [section (3)(a)].

**Amend M.R.App.R. 6 (Application of these rules) as follows:**

Insert new provision: (5) Orders appealable in water court proceedings. In water court proceedings, any order entered after [the effective date of this Act] that is an appealable order under 85-2-235(2) must be appealed immediately after the date of entry of such order within the time allowed by rule 5(a)(1) of these rules. Failure to do so will result in waiver of the right to appeal.

Renumber subsequent paragraphs.

## 3. Restrict the filing of motions to amend requiring publication.

**Amend 85-2-233(6) (Motion to amend) as follows:**

(6) (a) After the issuance of a temporary preliminary decree or preliminary decree, notice must be published once a week for 3 consecutive weeks in two newspapers of general circulation in the basin where the decree was issued for:

(i) a motion to amend a statement of claim that may adversely affect other water rights; or

(ii) a motion to amend a timely objection that may adversely affect other water rights.

(b) The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice.

(c) The water judge may order any additional notice of the motion as the water judge considers necessary.

(d) The costs of the notice required pursuant to this subsection must be borne by the moving party.

(e) A motion to amend a statement of claim or timely objection may not be filed under subsection (6) after that claim or objection has been included in a preliminary or supplemental decree, and the objection period for claims in that decree has closed. Review of timely filed motions to amend is not automatic, and rests within the discretion of the water court.

**Water Right Adjudication Rules**

**Rule 1(b). The adjudication process.** Briefly, the adjudication process consists of the following steps:

(1) upon order of the Montana supreme court, the filing of statements of claim for uses of water that existed prior to July 1, 1973;

(2) a review of the submitted claim and accompanying materials for clarity and completeness with editing to allow entry into computerized storage;

(3) the compiling of the claim information into a centralized record system by the Department of Natural Resources and Conservation (hereinafter referred to as the department);

(4) under the direction of the water court pursuant to § 85-2-243, MCA, the department's examination of claims and the reporting of facts, data, and issues pertaining to the claims as set forth in these rules;

(5) the issuance, by the water court, of interlocutory, temporary preliminary, or preliminary decrees based upon the information on the sworn claims, data submitted by the department, additional information obtained by the water judge, and, where appropriate, the contents of approved compacts or the filings for Indian and federal reserved water rights;

(6) the notice and opportunity for interested persons to review and object to the interlocutory, temporary preliminary, or preliminary decrees for good cause;

(7) judicial hearings and orders granting, denying, amending or otherwise modifying claims of existing rights after objections and hearings ~~by the water court on issues raised in these proceedings;~~

(8) the issuance, by the water court, of final decrees based upon the previous decrees and the judicial determinations made upon hearings; and,

(9) the opportunity for interested parties to review and appeal the final decrees under § 85-2-235, MCA.

**RULE 10. MOTIONS TO AMEND.** Pursuant to § 85-2-233(6), MCA, claimants may file motions to amend their own claims and objectors may file motions to amend their own objections. A motion to amend must specify the requested amendment and the grounds for such amendment. Upon review, the water court will determine the notice required pursuant to § 85-2-233(6), MCA, and issue an appropriate order. A statement of claim or objection may not be amended pursuant to § 85-2-233(6), MCA, after that claim has been included in a preliminary or supplemental decree, and the objection period for claims in that decree has closed. Review of timely filed motions to amend is not automatic, and rests within the discretion of the water court.

**RULE 25. APPEALS.** An order granting, denying, amending or otherwise modifying a temporary preliminary decree, preliminary decree, or supplemental preliminary decree of an existing water right claim or claims after objections and hearing is immediately appealable pursuant to § 85-2-235(2). Appeals to the Montana supreme court by those parties entitled to an appeal under § 85-2-235, MCA, shall be taken in the manner specified in Rule 72, M.R.Civ.P., and made within the time frames permitted in Rule 5, M.R.App.P. The notice of appeal shall be in the form prescribed by Rule 4(c), M.R.App.P. The notice of appeal must also include a specific listing of all water right numbers for which the appeal is taken. Within 30 days of the filing of the notice of appeal, the water court may revise the caption of the proceeding to reflect the current status and posture of the parties, file a copy with the clerk of supreme court, and serve a copy on the parties.