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## Utah's New Rule Providing for Water Law Case Assignments to Judges Who Have Been Educated About Water Law

by The Honorable Kate Appleby

The Utah Judicial Council (the Council) in May adopted a rule, effective November 1, establishing district court water judges. *See* Utah Code Jud. Admin. R. 6-104. The new rule provides that the Council will designate "at least three district court judges who volunteer as water judges" and establishes a procedure for assigning certain kinds of water law cases to those judges. Parties in the initial stages of litigation may request such an assignment, and the case will be given to one of the state's water judges; a request made later in the litigation may be reassigned at the discretion of the judge who already has the case. Judges who volunteer as water judges will either have, or will cultivate, the expertise necessary to adjudicate these often complex and long-in-duration cases with important consequences for the litigants and the state.

### Why do water law cases require judges with special training?

Water law cases involve precious public resources, and adjudicating claims to these resources requires understanding not only this complex area of the law, but also water science, management, and technology.

### How did this rule originate?

Seeing the need for developing special expertise in the area of water law, the Judicial Council sought to address the challenge quickly and efficiently. The rule is modeled on Utah's district court tax judges rule, which has long been in place and successfully channels cases to judges who volunteer for this specialized assignment. *See* Utah Code Jud. Admin. R. 6-103. The proposed water judges rule was posted for public comment and adjusted in part based upon comments received.

### Does any case involving water automatically qualify for assignment to a water judge?

No. At the beginning of actions filed under Utah Code, Title 73 (titled Water and Irrigation), Chapters 3 and 4 (Appropriation and Determination of Water Rights respectively), parties may request assignment to a water judge, and it will be assigned to one. For already-pending adjudications, such as cases that were initiated before this rule goes into effect, the judge assigned to the case has discretion to grant a motion to reassign the case to a water judge.

### Why is the rule limited to actions filed under Chapters 3 and 4?

These chapters involve the largest, most significant types of water law adjudications. With experience, if it becomes apparent that the rule should include other areas for nearly automatic assignment to a water judge, the rule could be amended. Meanwhile, if a case appears to warrant reassignment because it involves complex water law issues not arising under Chapter 3 or 4, a party may request its reassignment to a water judge.

### Who decides whether a case that isn't a Chapter 3 or 4 case will be reassigned?

The supervising water judge – a judge elected by the other water judges – makes this determination based upon the request of one of the parties.

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**What is the role of the supervising water judge?**

Aside from deciding whether cases not filed under Chapter 3 or 4 should be reassigned, the supervising water judge has administrative responsibilities such as coordinating the water judges' schedules and making appropriate adjustments to each water judge's case load.

**Are three water judges enough to handle the cases?**

That's not clear. The designation is voluntary, and the hope is that more than three judges will volunteer. The rule is based on the district court tax judges rule, which also sets a floor of three judges; at present, more than three judges have volunteered as tax judges and more than three judges may well come forward for water judge assignments. Serving as a water judge will interest judges who have or who have had water law cases, and judges interested in learning about water science and working on some of the most challenging issues of our times.

**How will the water judges receive training?**

The supervising judge, working with the Standing Committee on Judicial Branch Education and the Utah Judicial Institute, will oversee water law education for the water judges. This is likely to include sessions at the annual and district court conferences and perhaps will include training outside of those conferences. Other resources are available through Dividing the Waters, an

affiliate of the National Judicial College dedicated, among other things, to providing educational and networking opportunities for judges with water law cases and on-line courses.

**How can someone find out about important district court water decisions?**

A water judge who decides a case of first impression shall post the decision on the courts' website. Tax judges already do this. The idea is to make the judges' decisions, and their reasoning, available for the consideration of others.

**What are the next steps for this project?**

Recruitment of judges willing to serve as water judges is already under way, and training is available for them with additional educational opportunities being planned. Beginning in November, the courts will monitor water law case data to consider whether the new rule could be improved. This evaluation may include seeking feedback from water law stakeholders.

The new rule is an effort to establish a mechanism for assigning certain types of water law cases to judges who have been trained in the law and science of water. In coming months, after some experience, stakeholder observations of their experience will be important to assess how well the rule is working. Meanwhile, the rule will help improve the resolution of these challenging cases.

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