

1 SENATE BILL NO. 330

2 INTRODUCED BY DEBBY BARRETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE WATER COURT TO CONDUCT JUDICIAL
5 REVIEW OF WATER RIGHT PERMIT OR CHANGE APPLICATIONS WHEN A PARTY SEEKS JUDICIAL
6 REVIEW; AND AMENDING SECTIONS 2-4-702, 3-7-223, 3-7-224, 3-7-501, AND 85-2-125, MCA."

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8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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10 NEW SECTION. **Section 1. Water court review of department decisions.** A party who is aggrieved
11 by a final decision of the department issued pursuant to 85-2-302 or 85-2-310 and who seeks judicial review shall
12 petition the water court pursuant to Title 2, chapter 4, part 7, for de novo review of the final decision.

13

14 **Section 2.** Section 2-4-702, MCA, is amended to read:

15 **"2-4-702. Initiating judicial review of contested cases.** (1) (a) Except as provided in 75-2-213 and
16 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is
17 aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This
18 section does not limit use of or the scope of judicial review available under other means of review, redress, relief,
19 or trial de novo provided by statute.

20 (b) A party who proceeds before an agency under the terms of a particular statute may not be precluded
21 from questioning the validity of that statute on judicial review, but the party may not raise any other question not
22 raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure
23 to raise the question before the agency.

24 (2) (a) Except as provided in 75-2-211, 75-2-213, and subsection (2)(c) of this section, proceedings for
25 review must be instituted by filing a petition in district court within 30 days after service of the final written decision
26 of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as
27 otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county
28 where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its
29 principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

30 (b) The petition must include a concise statement of the facts upon which jurisdiction and venue are

1 based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in
 2 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which
 3 the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

4 (c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather
 5 than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in
 6 the same manner as the provisions of this part apply to the district court.

7 (d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title
 8 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be
 9 located or where the action is proposed to occur.

10 (e) If a petition for review is filed pursuant to [section 1], the water court, rather than the district court,
 11 has jurisdiction and the provisions of this part apply to the water court in the same manner as the provisions of
 12 this part apply to the district court.

13 (3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the
 14 agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers
 15 proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice
 16 only if the provisions of 27-19-315 through 27-19-317 are met.

17 (4) Within 30 days after the service of the petition or within further time allowed by the court, the agency
 18 shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under
 19 review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably
 20 refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may
 21 require or permit subsequent corrections or additions to the record."
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23 **Section 3.** Section 3-7-223, MCA, is amended to read:

24 **"3-7-223. Duties of chief water judge.** The chief water judge shall:

25 (1) administer the adjudication of existing water rights by:

26 (a) coordinating with the department of natural resources and conservation in compiling information
 27 submitted on water claim forms under Title 85, chapter 2, part 2, to ~~assure~~ ensure that the information is
 28 expeditiously and properly compiled and transferred to the water judge in each water division;

29 (b) ~~assuring~~ ensuring that the water judge in each water division moves without unreasonable delay to
 30 enter the required preliminary decree;

1 (c) ~~assuring~~ ensuring that any contested or conflicting claims are tried and adjudicated as expeditiously
2 as possible;

3 (2) conduct hearings in cases certified to the district court under 85-2-309;

4 (3) conduct de novo judicial review of final decisions of the department of natural resources and
5 conservation pursuant to petitions filed with the water court under [section 1];

6 ~~(3)~~(4) assign court personnel to divisions and duties as needed;

7 ~~(4)~~(5) assign the associate water judge to divisions and cases as needed; and

8 ~~(5)~~(6) request and secure the transfer of water judges between divisions as needed."
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10 **Section 4.** Section 3-7-224, MCA, is amended to read:

11 **"3-7-224. Jurisdiction of chief water judge and associate water judge.** (1) The chief water judge and
12 the associate water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as
13 water judge for one of the water divisions.

14 (2) The chief water judge and the associate water judge have jurisdiction over cases certified to the
15 district court under 85-2-309, petitions filed under [section 1], and all matters relating to the determination of
16 existing water rights within the boundaries of the state of Montana.

17 (3) With regard to the consideration of a matter within the chief water judge's jurisdiction, the chief water
18 judge and the associate water judge have the same powers as a district court judge. The chief water judge and
19 the associate water judge may issue orders, on the motion of an interested party or on the judge's own motion,
20 that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including but not limited
21 to requiring the joinder of persons not parties to the administrative hearing being conducted by the department
22 pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue certified pursuant
23 to 85-2-309(2)."
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25 **Section 5.** Section 3-7-501, MCA, is amended to read:

26 **"3-7-501. Jurisdiction.** (1) The jurisdiction of each judicial district concerning the determination and
27 interpretation of cases certified to the court under 85-2-309 or of existing water rights and concerning petitions
28 filed under [section 1] is exercised exclusively by it through the water division or water divisions that contain the
29 judicial district wholly or partly.

30 (2) A water judge may not preside over matters concerning the determination and interpretation of cases

1 certified to the court under 85-2-309 or of existing water rights or concerning petitions filed under [section 1]
2 beyond the boundaries specified in 3-7-102 for the judge's division except as provided in 3-7-201.

3 (3) The water judge for each division shall exercise jurisdiction over all matters concerning cases certified
4 to the court under 85-2-309, ~~or~~ concerning the determination and interpretation of existing water rights, or
5 concerning petitions filed under [section 1] within the judge's division as specified in 3-7-102 that are considered
6 filed in or transferred to a judicial district wholly or partly within the division.

7 (4) The determination and interpretation of existing water rights includes, without limitation, the
8 adjudication of total or partial abandonment of existing water rights occurring at any time before the entry of the
9 final decree."
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11 **Section 6.** Section 85-2-125, MCA, is amended to read:

12 **"85-2-125. Recovery of costs and attorney fees by prevailing party.** (1) If a final decision of the
13 department on an application for a permit or a change in appropriation right is appealed to ~~district~~ the water court,
14 the ~~district~~ water court may award the prevailing party reasonable costs and attorney fees.

15 (2) The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable
16 costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with
17 a water right to enjoin the use of water by a person that does not have a water right."
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19 NEW SECTION. **Section 7. Codification instruction.** [Section 1] is intended to be codified as an
20 integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 1].
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