

## STANDING IN WATER PROCEEDINGS

### LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting (5-4-105, MCA; [Chapter 309, Laws of 2017](#)). The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The legislation links below open to the page showing the status and history of bills introduced on this topic in the past. The bill text and any related fiscal notes can be accessed through the link at the top of that page.

**Legislation can be complex, and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.**

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### Background Materials and Research

**Topic Summary** A litigant must have standing to seek a judicial or administrative remedy. In order to have standing, the complaining party must clearly allege past, present or threatened injury to a property or civil right that is distinguishable from an injury to the public generally. *Mont. Trout Unlimited v. Beaverhead Water Co.*, 2011 MT 151, ¶ 27, 361 Mont. 77, 85, 255 P.3d 179, 184.

In the context of water proceedings, standing is relevant to a number of questions. Who can object to a water right claim contained in a temporary preliminary decree or preliminary decree issued by the Water Court as part of a water adjudication proceeding? Who can request a hearing on an objection? Who can object to an application filed before the Department of Natural Resources (DNRC)? Who has standing to sue for enforcement of an existing water right that is allegedly being used unlawfully? The Legislature has turned its attention to each of these issues during the previous five legislative sessions attempting to broaden, narrow, or clarify who has access to the water court and DNRC in order to participate in or initiate proceedings related to the adjudication and enforcement of water rights.

#### Legislative Services Division Materials:

Water Policy Interim Committee, [Water Rights in Montana handbook](#) (2018)

Legislative Legal Services Office, [Standing to object to water right claims before the Montana Water Court](#) (2012)

#### Other Materials:

Montana Supreme Court, [Montana Trout Unlimited v. Beaverhead Water Co., et al., 2011 MT 151](#)

## Introduced Legislation

\*Chapter number assigned means bill was passed and approved.

### 2019

[Senate Bill 296](#) -- Chapter number assigned -- AN ACT PROVIDING THAT A WATER RIGHT OWNER MAY FILE SUIT TO PROTECT AGAINST UNLAWFUL USE OF WATER AND INTERFERENCE WITH THE USE OF WATER; AMENDING SECTION 85-2-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

### 2017

None.

### 2015

[Senate Bill 361](#) -- Chapter number assigned -- AN ACT CLARIFYING WHO MAY OBJECT TO PROCEEDINGS IN THE WATER COURT BY REVISING THE DEFINITION OF "GOOD CAUSE SHOWN"; AND AMENDING SECTION 85-2-233, MCA.

### 2013

[Senate Bill 233](#) -- (H) Died in Standing Committee -- A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING ENFORCEMENT PROVISIONS FOR INTERFERENCES WITH A PRIOR WATER RIGHT; AND AMENDING SECTION 85-2-114, MCA."

[Senate Bill 337](#) -- Chapter Number Assigned -- AN ACT CLARIFYING THE DEFINITION OF "GOOD CAUSE SHOWN" FOR A HEARING ON A TEMPORARY PRELIMINARY DECREE OR PRELIMINARY DECREE; AND AMENDING SECTION 85-2-233, MCA.

### 2011

[Senate Bill 356](#) -- Veto Override Failed in Legislature. AN ACT CLARIFYING THE DEFINITION OF "GOOD CAUSE SHOWN" FOR A HEARING ON A TEMPORARY PRELIMINARY DECREE OR PRELIMINARY DECREE; AND AMENDING SECTION 85-2-233, MCA.

[Senate Bill 316](#) -- (S) Died in Standing Committee -- A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "GOOD CAUSE SHOWN" WITH REGARD TO THE ATTORNEY GENERAL FILING AN OBJECTION IN THE WATER ADJUDICATION PROCESS; AMENDING SECTION 85-2-233, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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