

*** Bill No. ***

Introduced By *****

By Request of the (Agency or Department)

A Bill for an Act entitled: "An Act ; amending
Sections , MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. *Section 3-7-101, MCA, is amended to read:*

"3-7-101. **Water divisions.** To adjudicate existing water rights, ~~and~~ to conduct hearings in cases certified under 85-2-309, and to implement the functions provided under [new Section 4], water divisions are established as defined in 3-7-102. A water division shall be presided over by a water judge."

"3-7-102. **Water divisions boundaries.** There are four water divisions whose boundaries are formed by the natural divides between drainages and the borders of the state of Montana and which are described as follows:

(1) The Yellowstone River basin water division consists of those areas drained by the Yellowstone and Little Missouri Rivers and any remaining areas in Carter County.

(2) The lower Missouri River basin water division consists of those areas drained by the Missouri River from below the mouth of the Marias River and any remaining areas in Glacier and Sheridan Counties.

(3) The upper Missouri River basin water division consists of those areas drained by the Missouri River to below the mouth of the Marias River.

(4) The Clark Fork River basin water division consists of the areas drained by the Clark Fork River, the Kootenai River, and any remaining areas in Lincoln County."

"3-7-103. Promulgation of rules and prescription of forms -- advisory committee. (1) As soon as practicable the Montana supreme court may promulgate special rules of practice and procedure and shall prescribe forms for use in connection with this chapter and Title 85, chapter 2, parts 2 and 7, in consultation with the water judge and the department of natural resources and conservation.

(2) (a) The chief water judge shall appoint a water adjudication advisory committee to provide recommendations to the water court, the Montana supreme court, the department of natural resources and conservation, and the legislature on methods to improve and expedite the water adjudication process.

(b) The committee consists of three nongovernmental attorneys who practice before the water court, one district court judge, and three water users who have filed statements of claim with the department of natural resources and conservation under this chapter.

(c) The chief water judge or the judge's designee shall serve as an ex officio member of the committee. The Montana supreme court may appoint the attorney general or the attorney general's designee, a representative from the department of natural resources and conservation, and a representative of the United States government as ex officio members of the committee.

(d) The committee members shall serve at the pleasure of the water court and shall serve without compensation.

(e) The committee shall file a report with the Montana supreme court by October 1, 1996, and as often as determined by the Montana supreme court."

Section 2. Section 3-7-201, MCA, is amended to read:

"3-7-201. ~~Designation of water judge~~Water division judge.

(1) A water division judge must be designated for each water division. A water division judge may be appointed as provided under 3-7-221(1), unless the duties of the office of a water judge are being conducted by the chief water judge, or associate water judge as provided under 3-7-223 or 3-7-225, or as provided under subsection (2).~~by a majority vote of a committee composed of the district court judge from each single-judge judicial district and the chief district judge from each multijudge judicial district, wholly or partly within the division. Except as provided in subsection (2), a water judge must be a district court judge or retired district court judge of a judicial district wholly or partly within the water division.~~

(2) A district court judge or retired district court judge may sit as a water division judge ~~in more than one division~~ if requested by the chief water judge under 3-7-223~~justice of the supreme court or the water judge of the division in which the judge is requested to sit.~~

(3) A water division judge, A the chief water judge or associate water judge, when presiding over a water

division, presides as district court judge in and for each
judicial district wholly or partly within the water
division."

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Section 3. Section 3-7-202. None}, MCA, is amended to read:

"3-7-202. **Term of office.** The term of office for a water division judge ~~is from the date of initial appointment as provided in 3-7-201 to June 30, 1985. After June 30, 1985, the term of office of a water judge is 4 years. , subject to continuation of the water divisions by the legislature. A vacancy shall be filled in the same manner as provided under 3-7-201. Any term is subject to continuation of water divisions by the legislature.~~"

~~"3-7-203. **Vacancies.** If a vacancy in the office of water judge occurs, it must be filled in the manner provided in 3-7-201 for the initial designation of a water judge. A vacancy is created when a water judge dies, resigns, retires, is not elected to a subsequent term, forfeits the judicial position, is removed, or is otherwise unable to complete the term as a water judge."~~
~~{Internal References to 3-7-203: None}~~

"3-7-204. **Supervision and administration by supreme court.** (1) The Montana supreme court shall supervise the activities of the water judges, water masters, and

associated personnel in implementing this chapter and Title 85, chapter 2, part 2.

(2) The supreme court shall pay the expenses of the water judges and the salaries and expenses of the water judges' staffs and the salaries and expenses of the water masters and the water masters' staffs, from appropriations made for that purpose. "Salaries and expenses" as used in this section include but are not limited to the salaries and expenses of personnel, the cost of office equipment and office space, and other necessary expenses that may be incurred in the administration of this chapter and Title 85, chapter 2, part 2."

~~**Section 4.** Section 3-7-211, MCA, is amended to read:~~
~~"3-7-211. Appointment of water commissioners. Except as provided in 85-20-1902, the district court having jurisdiction over the hydrologically interrelated portion of a water division, as described in 85-2-231(3), in which the controversy arises may appoint and supervise a water commissioner as provided for in Title 85, chapter 5."~~
~~{Internal References to 3-7-211: None}~~

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~~Section 5. Section 3-7-212, MCA, is amended to read:~~
~~"3-7-212. Enforcement of decrees. The district court having jurisdiction may enforce the provisions of a final decree. In the absence of any final decree having been issued, the district court having jurisdiction may enforce the provisions of a temporary preliminary decree, preliminary decree, or supplemental preliminary decree entered under 85-2-231, as modified by a water judge after objections and hearings."~~

~~{Internal References to 3-7-212: None}~~

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NEW SECTION. Section 4. Duties of water division judge.

(1) A water division judge shall:

- a. Determine all questions of abandonment of an ~~existing~~ existing water right, or ~~permit~~, certificate of water right, or state water reservation included in a final decree issued under 85-2-234 within the water division;
- b. Correct any element of an existing water right included in a final decree issued under 85-2-234 within the water division. Corrections made under this subsection may be allowed for any of the following reasons:
 - i. Mistake, inadvertence, surprise, or excusable neglect;
 - ii. Newly discovered evidence that by due diligence could not have been discovered at the time of entry of the preliminary decree;
 - iii. Fraud, misrepresentation, or other misconduct of a party;
 - iv. The judgment is void; and
 - v. Any other reason justifying relief from the operation of the final decree.

In making corrections to an element of an existing water right under this subsection the water division judge shall direct notice as the water judge deems necessary.

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c. Conduct proceedings for petitions for judicial review of final agency action of the Department under Title 85, Chapter 2, Parts 3 and 4, within the water division filed with the water court under 2-4-702;

d. Update the tabulations of all water rights included in a final decree issued under 85-2-234 within the water division, including all permits or change authorizations approved by the Department under Title 85, Chapter 2, Parts 3 and 4, or corrections to existing water rights as provided under subsection (1)(b);

e. Conduct hearings in cases certified under 85-2-309 within the water division;

f. Conduct proceedings as requested by the chief water judge under 3-7-223.

g. Except as provided in 85-20-1902, and subject to Subsection (1)(i), appoint and supervise a water commissioner on any source within the water division as provided under Title 85, Chapter 5;

h. Upon entry of a final decree issued under 85-2-234, conduct proceedings on any complaint by a dissatisfied user under Title 85, Chapter 5, Part 3, within the water division;

i. Concurrent with the district courts, supervise the distribution of water among all appropriators owning a water right as provided under 85-2-406. In exercising concurrent authority in supervising the distribution of water among all appropriators under 85-2-406, the district courts shall supervise the distribution of water pursuant to any district court decree entered prior to July 1, 1973.~~In the absence of a final decree having been issued under 85-2-234, the district court having jurisdiction, or the water division judge for the water division, may enforce the~~
The water division judge shall supervise the distribution of water among all appropriators whose water rights are included in the provisions of a temporary preliminary, preliminary, or supplemental decree as modified pursuant to Title 85, Chapter 2, Part 2, and -
~~Upon entry of a final decree issued under 85-2-~~

~~234, the water division judge shall supervise
the distribution of water among all
appropriators whose water rights are included
in the decree;~~

j. Conduct judicial review of enforcement
decisions of any compact boards established
under Title 85, Chapter 20 within the water
division; and

k. Divide or apportion water rights included in a
final decree upon the request of the owner(s)
based upon updates to ownership as reflected in
the centralized water right records.

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Section 6. Section 3-7-221, MCA, is amended to read:

"3-7-221. Appointment of chief water judge~~and,~~ associate water judge and water division judge -- terms of office.

(1) The chief justice of the Montana supreme court shall appoint a chief water judge as provided in Title 3, chapter 1, part 10. The chief justice of the Montana supreme court may appoint an associate water judge or water division judge as provided in Title 3, chapter 1, part 10.

(2) To be eligible for the office of chief water judge ~~or,~~ associate water judge, or water division judge a person shall have the qualifications for district court or supreme court judges found in Article VII, section 9, of the Montana constitution.

(3) The term of office of the chief water judge, ~~and the~~ associate water judge and the water division judge is 4 years, subject to continuation of the water divisions by the legislature."

Section 7. Section 3-7-222, MCA, is amended to read:

"**3-7-222. Salary -- office space.** (1) The chief water judge, ~~and~~ the associate water judge, and the division water judge must receive the same salary and expense allowance as provided for district judges in 3-5-211.

(2) The office of the chief water judge, ~~and~~ the associate water judge, and the division water judge must be at the location designated by the chief justice of the Montana supreme court. The office of the division water judge shall be within the water division as provided under 3-7-102. The Montana supreme court shall provide in its budget for the salary, expenses, and office and staff requirements of the chief water judge, ~~and~~ the associate water judge and the water division judge. Money may be appropriated by the legislature from the general fund for these purposes."

Section 8. Section 3-7-223, MCA, is amended to read:

"3-7-223. (Temporary) Duties of chief water judge. The chief water judge shall:

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

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

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

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

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

(3) conduct proceedings for petitions for judicial review filed with the water court under 2-4-702;

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

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

(6) request a district court judge or retired district court judge to sit as a water division judge under 3-7-201(2), and secure the transfer of water judges between divisions as needed; and-

(7) pursuant to 3-7-201, serve as a water division judge within any water division." (*Terminates September 30, 2025-sec. 6, Ch. 126, L. 2017.*)

3-7-223. (*Effective October 1, 2025*) **Duties of chief water judge.** The chief water judge shall:

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

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

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

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

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

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

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

(5) request a district court judge or retired district court judge to sit as a water division judge under 3-7-201(2), and secure the transfer of water judges between divisions as needed; ~~and."~~

(7) pursuant to 3-7-201, serve as a water division judge under [new section] within any water division."

Section 9. Section 3-7-224, MCA, is amended to read:

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

(2) The chief water judge and the associate water judge have jurisdiction over ~~cases certified to the district court under 85-2-309~~, all matters relating to the determination of existing water rights within the boundaries of the state of Montana, and all petitions for judicial review filed with the water court under 2-4-702.

(3) With regard to the consideration of a matter within the ~~chief water judge's~~ jurisdiction of the water judge, the chief water judge, ~~and~~ the associate water judge, and the water division judge have the same powers as a district court judge. The chief water judge, ~~and~~ the associate water judge, and the water division judge may issue orders, on the motion of an interested party or on the judge's own motion, that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including but not limited to requiring the joinder of persons not parties to the administrative hearing being conducted by the

department pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2). (*Terminates September 30, 2025-- sec. 6, Ch. 126, L. 2017.*)

3-7-224. (*Effective October 1, 2025*) **Jurisdiction of chief water judge, ~~and~~ associate water judge and water division judge.** (1) The chief water judge and the associate water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as water division judge for one of the water divisions.

(2) The chief water judge and the associate water judge have jurisdiction over ~~cases certified to the district court under 85-2-309 and~~ all matters relating to the determination of existing water rights within the boundaries of the state of Montana.

(3) With regard to the consideration of a matter within the ~~chief water judge's~~ jurisdiction of the water judge, the chief water judge, ~~and~~ the associate water judge and the water division judge have the same powers as a district court judge. The chief water judge, ~~and~~ the associate water judge, and the water division judge may issue orders, on the motion of an interested party or on the judge's own motion, that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including but not

limited to requiring the joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2)."

"3-7-225. (Temporary) Duties of associate water judge.

The duties of the associate water judge are the same as those assigned to the chief water judge pursuant to 3-7-223(1) through (3). *(Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.)*

3-7-225. (Effective October 1, 2025) Duties of associate water judge. The duties of the associate water judge are the same as those assigned to the chief water judge pursuant to 3-7-223(1) and (2)."

Section 10. Section 3-7-301, MCA, is amended to read:

"3-7-301. Appointment of water masters -- removal. (1)

The chief water judge or the water judge in each water division may appoint one or more water masters.

~~(2) A water master may be appointed after July 1, 1980, and must be appointed on or before July 1, 1982.~~

(3) In appointing a water master, the chief water judge shall consider a potential master's experience with water law, water use, and water rights.

(4) A water master shall serve at the pleasure of the chief water judge and may be removed by the chief water judge.

(5) A water master may serve in any water division and may be moved among the water divisions at the discretion of the chief water judge."

Section 11. Section 3-7-311, MCA, is amended to read:

"3-7-311. Duties of water masters. (1) The water master has the general powers given to a master by Rule 53(c), M.R.Civ.P.

(2) Within a reasonable time after June 30, 1983, the water master shall issue a report to the water judge meeting the requirements for the preliminary decree as specified in 85-2-231.

(3) After a water judge issues a preliminary decree, the water master shall assist the water judge in the performance of the water division's further duties as ordered by the water judge.

(4) A water master may be appointed by a district court to serve as a special master to a district court for actions brought pursuant to 85-2-114(1) or (3) or 85-5-301 if the appointment is approved by the chief water judge."

(5) A water master may assist a water division judge in implementing any of the functions and duties provided under [new section Part 2]

Section 12. Section 3-7-401, MCA, is amended to read:

"3-7-401. Definitions. For the purposes of this part, the following definitions apply:

(1) "Fiduciary" includes such relationships as executor, administrator, trustee, or guardian.

(2) "Financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(a) ownership in a mutual or common investment fund that holds securities is not a financial interest in such securities unless the judge or water master participates in the management of the fund;

(b) an office in an educational, religious, charitable, fraternal, or civic organization is not a financial interest in securities held by the organization;

(c) the proprietary interest of a policyholder in a mutual insurance company or a depositor in a mutual savings association or a similar proprietary interest is a financial interest in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and

(d) ownership of government securities is a financial interest in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(3) "Proceeding" includes prehearing, hearing, appellate review, or other stages of adjudication conducted by the water master, ~~or water judge~~, or water division judge."

Section 13. Section 3-7-402, MCA, is amended to read:

**"3-7-402. Disqualification of water judge~~, or~~ master or
water division judge.** (1) A water judge may withdraw or may disqualify the water master in any proceeding or pertinent portion of a proceeding in which the judge's or the water master's impartiality might reasonably be questioned.

(2) A water judge may also withdraw or may disqualify the water master in the following circumstances:

(a) if the judge or the water master has a personal bias or prejudice concerning a party of personal knowledge or disputed evidentiary facts concerning the proceeding;

(b) if in private practice the judge or the water master served as a lawyer in the matter in controversy or a lawyer with whom the judge or the water master previously practiced law served during the association as a lawyer concerning the matter or the judge or the lawyer has been a material witness concerning it;

(c) if the judge or the water master has served in governmental employment and in that capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(d) if the judge or the water master knows that the judge or the water master, individually or as a fiduciary, or the

judge's or the water master's spouse or minor child residing in the judge's or the water master's household has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the outcome of the proceeding; or

(e) if the judge or the water master or the judge's or the water master's spouse or a person within the third degree of relationship to any of them (as calculated according to 72-11-101 through 72-11-104) or the spouse of such a person:

(i) is a party to the proceeding or an officer, director, or trustee of a party;

(ii) is known by the judge or water master to have an interest that could be substantially affected by the outcome of the proceeding;

(iii) is to the judge's or water master's knowledge likely to be a material witness in the proceeding.

(3) A water judge should be informed about the judge's and the water master's personal and fiduciary financial interests and make a reasonable effort to be informed about the personal financial interests of the judge's and the water master's spouse and minor children residing in the judge's or the water master's respective household."

"3-7-403. Waiver of disqualification. A water judge may accept from the parties to the proceeding a waiver of any ground for disqualification if it is preceded by a full disclosure on the record of the basis for disqualification."

"3-7-404. Procedure exclusive. The procedure for disqualification of a water judge or water master specified in this section is exclusive unless otherwise specifically altered by the Montana supreme court."

Section 14. Section 3-7-501, MCA, is amended to read:

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

(2) A water judge may not preside over matters concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights beyond the boundaries specified in 3-7-102 for the judge's division except as provided in 3-7-201.

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

(4) The determination and interpretation of existing water rights includes, without limitation, the adjudication of total or partial abandonment of existing water rights occurring at any time before the entry of the final decree. ^u

(5) Upon entry of a final decree under 85-2-234, a water division judge shall exercise jurisdiction over all matters within the water division as provided under [new section Part 2].

(6) Venue for all proceedings conducted by a water division judge under subsection (5), shall be within any county within the water division as provided under 3-7-102."

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