

LEGISLATION BRIEF



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SB 72 Water Distribution & Administration After Adjudication

Senator Fitzpatrick - Bill Sponsor

Currently, there are four Water Divisions, which are collectively known as the Water Court. As the Water Court begins to issue final decrees, water stakeholders have expressed concern about water administration and a desire to clarify the role of the judiciary. This legislation, developed by the Department of Natural Resources and Conservation's (DNRC) Comprehensive Water Review Stakeholder Group, provides continuity between water right adjudication and administration of the final decrees. Representing significant compromise between stakeholders in the working group, this legislation defines the roles of the Montana Water Court and District Courts, preserving the knowledge and expertise of the Water Court while also providing the opportunity for localized water distribution. This legislation preserves processes that work well, and updates inefficient processes, to meet Montana's future water challenges.

Bill Overview

Judicial Jurisdiction

This legislation provides continuity between water rights adjudication and administration of final decrees, clearly defining the role of the judiciary post-final decree. This legislation:

- Merges the pre and post 1973 structures for one seamless system of water administration in Montana
- Revitalizes existing four Water Divisions and maintains subject area expertise in Water Court Judges
- Eases burdens on water user from having to appear in multiple courts for one dispute & streamlines process for reaching judicial resolution
- Provides flexibility to water user to petition for the district court for water distribution supervision
- Ensures changes and provisional permits are consistent with final decrees
- Preserves state primacy in matters of water administration as contemplated in the McCarran Amendment.
- Maintains adjudication under current timelines

Judicial Appointment, Retention, and Election

This legislation amends the Water Court appointment, confirmation, and election provisions to align more closely with those processes in place for District Court Judges. In this legislation:

- Water Judges are assigned to a Water Division. One Water Judge is designated as the Chief Judge for administrative purposes.
- Vacancies are filled by Governor appointment and Senate confirmation. Appointed judges are subject to a retention election, keeping Water Judges accountable to local citizens.
- Consistent with District Court Judges, Water Judge terms are extended to six years.

Provisional Permits and Changes Issued Prior To Final Decree

This legislation provides clear guidance and processes to ensure that water right change authorizations and provisional permits are consistent with final decrees issued by the Water Court during adjudication. This legislation:

- Provides certainty to water users who have received change authorizations and provisional permits prior to the issuance of final decrees.
- Clarifies the State's duty under existing law to ensure changes and provisional permits are consistent with final decrees.
- Holds DNRC accountable to water users by creating a clear and transparent process.

Localized Water Distribution

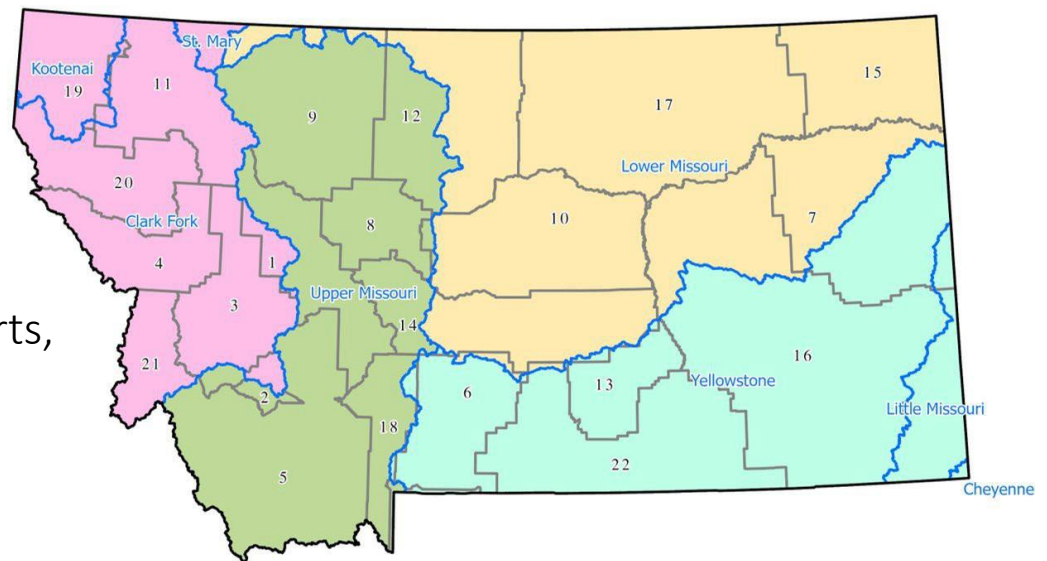
This legislation leverages the expertise of the Water Court and the experience of the local District Court and local water commissioners. This legislation:

- Retains the petition process for obtaining a water commissioner.
- Places the supervision of water commissioners with the Water Court Judge for that Water Division. Water users may petition for supervision by the local District Court.
- Enables District Court Judges to sit as a Water Court Judge while supervising water commissioners.
- Requires Water Court proceedings to be conducted in the county or division where the controversy occurs.
- Provides relief for those District Court Judges that do not have the capacity to manage water distribution in their area.
- Streamlines filing and record keeping processes for water users and commissioners.

This legislation does NOT

- Change a water commissioner's roles or responsibilities.
- Change the petitioning, hiring, or compensation structures associated with water commissioners.
- Create a centralized system of water commissioners.
- Make water commissioners state employees.

Water Division Courts,
District Courts, and
Hydrologic Basins



Water Court Divisions

Yellowstone River Basin	Major Drainage Areas
Lower Missouri River Basin	Montana District Courts
Upper Missouri River Basin	State of Montana
Clark Fork River Basin	

N
0 50 100 Miles

