

# Final Decree Transition sub working group- Working Draft

## Navigating SB 72

### 1. Duties and Jurisdiction of the Water Court and the four Water Divisions

- 2-4-702 ~~Temporary~~ Initiating judicial review of contested cases
- 3-1-101 The several courts of this state
- NEW Definitions
- 3-7-101 ~~Water divisions~~ Powers and duties of water court
- 3-7-102 ~~Water divisions~~ court division boundaries
- 3-7-103 Promulgation of rules and prescription of forms -- advisory committee
- New 3-7 Venue for water right determinations
- 3-7-212 Enforcement of decrees
- 3-7-223 (~~Temporary~~) Duties of chief water judge – operation of water court
- 3-7-224 (~~Temporary~~) Jurisdiction of chief water judge and associate water judge water judges
- 3-7-301 Appointment of water masters -- removal
- 3-7-311 Duties of water masters
- 3-7-401 Definitions
- 3-7-501 Jurisdiction
- 3-7-502 Jurisdictional disputes
- 2-4-702 Initiating judicial review of contested cases
- REPEALER Repeal of 3-7-222 Salary – office space
- REPEALER Repeal of 3-7-225 Duties of associate water judge

### 2. Appointment, Terms of Office, and Vacancies of Water Judges

- 3-1-901 Judicial vacancy--notice
- 3-1-905 Appointments

- 3-7-201 Designation of water judge
- 3-7-202 Term of office
- 3-7-203 Vacancies
- 3-7-204 Supervision and administration by supreme court
- 3-7-221 Appointment of chief water judge and associate water judge water judges -- terms of office
- 19-5-301 Membership – inactive vested members – inactive nonvested members

### 3. DNRC & Other Responsibilities

- 85-2-112 Department Duties
- 85-2-114 Judicial enforcement
- 85-2-122 Penalties
- 85-2-123 Deposit of fees and penalties
- 85-2-125 Recovery of costs and attorney fees by prevailing party
- 85-2-309 Hearings on objections - jurisdiction
- 85-2-405 Procedure for declaring appropriation rights abandoned

### 4. Provisional Permits, Changes, and Final Decrees

- 85-2-236 Certificate of water right
- 85-2-313 Provisional permit permits and change authorizations
- 85-2-314 Revocation or modification of permit or change in appropriation right
- 85-2-315 Certificate of water right

### 5. Local Distribution and Commissioners

- 3-7-211 Appointment of water commissioners
- 85-2-406 Water court supervision of water distribution
- 85-5-101 Appointment of water commissioners
- 85-5-102 Appointment of chief commissioner
- 85-5-103 Oath and bond

- 85-5-104 Terms of office
- 85-5-106 Maintenance and repair of ditches or systems
- 85-5-107 Record of distribution of water
- 85-5-108 Authority and arrest power
- 85-5-109 Failure to perform duty as contempt of court
- 85-5-110 Appointment of water mediators -- duties
- 85-5-111 Water commissioner and mediator education
- 85-5-201 Distribution of water and related expenses
- 85-5-202 Repair expenses
- 85-5-203 Telephone expenses
- 85-5-204 Apportionment of fees and expenses
- 85-5-205 Objections to expenses -- hearing
- 85-5-206 Effect of order fixing fees
- 85-5-301 Complaint by dissatisfied user
- 85-5-407 Appointment of water commissioner after final decree

## Navigating SB72

Duties and Jurisdiction of the Water Court and the four Water Divisions

Appointment, Terms of Office, and Vacancies of Water Judges

DNRC & Other Responsibilities

Provisional Permits, Changes, and Final Decrees

Local Distribution and Commissioners

Section	Title	Why was it necessary (2022 SWG), problem ring to solve	Questions for the 2023 SWG
New Sec 1	Coordination of Court Jurisdiction	Petition shall transfer to district court (local control). Original version had “may”	
2-4-702	(Temporary) Initiating judicial review of contested cases	Removed temp nature so that all contested cases went to the WC (expanded jurisdiction in 3-7-101)	
3-1-101	The several courts of this state	WC added because the WC was not listed as a court of record.	
3-1-901	Judicial vacancy—notice	Appointment for WC judges was changed from judicial nomination by chief justice to Governor for consistency with district court judges	
3-1-905	Appointments	Appointment for WC judges was changed from judicial nomination by chief justice to Governor for consistency with district court judges	
New sec 6	Definitions	Added for clarity	

3-7-101	Water divisions Powers and duties of water court	Expanded jurisdiction of WC for one-stop-shopping	
3-7-102	Water divisions court division boundaries	Statute coordination for the name	
3-7-103	Promulgation of rules and prescription of forms -- advisory committee	Statute coordination of the duties	
New sec 10	Venue for water rights determinations	Local control- that cases would be held where they occurred	
3-7-201	Designation of water judge	Water Division judges. Married Water Division judges to Bozeman Water Court Judges. Changed self-selected water division judges to appointment. Statute coordination with the appointment process (3-1-901 and 3-1-905 and 3-7-221)	
3-7-202	Term of office	Bozeman Water Court. Married Water Division judges to Bozeman Water Court Judges. To be consistent with district court judges terms which is 6 years	
3-7-203	Vacancies	Bozeman Water Court. Married Water Division judges to Bozeman Water Court Judges. Appointment process paralleled district court, attempted to bridge the transition with basins in final decree.	
3-7-204	Supervision and administration by supreme court	Statute coordination and clean-up of redundant language in repealed statutes 3-7-222 and 3-7-225.	
3-7-211	Appointment of water commissioners	Petition shall transfer to district court (local control). Original version had "may." Statute coordination recognizing a district court judge presiding over a water administration dispute was sitting as a water judge.	

3-7-212	Enforcement of decrees	Revised to ensure statutory language was clear that the water court who issued water decrees was the court to enforce those decrees. Statute Coordination for jurisdiction.	
3-7-221	Appointment of <del>chief water judge and associate water judge</del> water judges -- terms of office	Revised appointment process to align with 2021 legislation that vested appointment power in Governor and terminated the Judicial Nominations Committee. Addressed transition period (rolling issuance of final decrees) to provide flexibility in number of appointed water judges to ensure future workloads could be met without additional statutory amendment.	
3-7-223	<del>(Temporary)</del> Duties of chief water judge – operation of water court	Clarified that chief water judge position is administrative position. Established singular office of water court to maintain all water-related records and filings. Statute coordination for one-stop shopping concept of expanded jurisdiction.	
3-7-224	<del>(Temporary)</del> Jurisdiction of <del>chief water judge and associate water judge</del> water judges	Statute coordination to account for potential for more than 2 water judges and expanded jurisdiction of water court.	
3-7-301	Appointment of water masters -- removal	Statute coordination to allow for any water judge to appoint and remove a water master. Limits water master role to adjudication proceedings.	
3-7-311	Duties of water masters	Statute clean up. Statute coordination to limits water master role to adjudication proceedings	
3-7-401	Definitions	Statute clean up to remove redundant language	
3-7-501	Jurisdiction	Statute coordination on expanded jurisdiction.	
3-7-502	Jurisdictional disputes	Statute coordination – water divisions akin to multi-judge districts	
19-5-301	Membership – inactive vested members – inactive nonvested members	Statute coordination/clean up	

85-2-112	Department Duties	Statute coordination – replace district court with water court because of expanded jurisdiction	
85-2-114	Judicial enforcement	Statute coordination – replace district court with water court because of expanded jurisdiction	
85-2-122	Penalties	Statute coordination – replace district court with water court because of expanded jurisdiction	
85-2-123	Deposit of fees and penalties	Statute clean up (?)	
85-2-125	Recovery of costs and attorney fees by prevailing party	Statute coordination – replace district court with water court because of expanded jurisdiction	
85-2-236	Certificate of water right	Statute coordination	
85-2-309	Hearings on objections - jurisdiction	Statute coordination – replace district court with water court because of expanded jurisdiction	
85-2-313	Provisional permit permits and change authorizations	Merge permits and change application authorizations with final decrees	
85-2-314	Revocation or modification of permit or change in appropriation right	Merge permits and change application authorizations with final decrees	
85-2-315	Certificate of water right	Merge permits and change application authorizations with final decrees	
85-2-405	Procedure for declaring appropriation rights abandoned	Statute coordination – replace district court with water court because of expanded jurisdiction. Modernize language.	

85-2-406	Water court supervision of water distribution	Statute coordination – to account for expanded jurisdiction. Clarifies that district court judges may supervise water commissioners as substitute water judge (local control)	
85-5-101	Appointment of water commissioners	Statute coordination – to account for expanded jurisdiction. Clarifies that district court judges may supervise water commissioners as substitute water judge (local control). Statute clean up - require notice of petitions for commissioner.	
85-5-102	Appointment of chief commissioner	Statute coordination – replace district court with water court because of expanded jurisdiction.	
85-5-103	Oath and bond	Statute coordination – replace district court with water court because of expanded jurisdiction. Modernize language.	
85-5-104	Terms of office	Original version was for statute coordination – replace district court with water court because of expanded jurisdiction. Stricken during legislative session.	
85-5-106	Maintenance and repair of ditches or systems	Statute coordination – replace district court with water court because of expanded jurisdiction. Clarifies that district court judges may supervise water commissioners as substitute water judge (local control).	
85-5-107	Record of distribution of water	Statute coordination – replace district court with water court because of expanded jurisdiction. Allow flexibility for record keeping (district court clerk or water court administrator) to provide support to judicial districts in need of administrative support.	
85-5-108	Authority and arrest power	Statute coordination – replace district court with water court because of expanded jurisdiction.	
85-5-109	Failure to perform duty as contempt of court	Statute coordination – replace district court with water court because of expanded jurisdiction.	
85-5-110	Appointment of water mediators -- duties	Statute coordination – replace district court with water court because of expanded jurisdiction.	



85-5-111	Water commissioner and mediator education	Statute coordination – replace district court with water court because of expanded jurisdiction. Modernize language.	
85-5-201	Distribution of water and related expenses	Statute coordination – replace district court with water court because of expanded jurisdiction. Statute coordination – option of district court clerk or water court administrator.	
85-5-202	Repair expenses	Statute coordination – replace district court with water court because of expanded jurisdiction.	
85-5-203	Telephone expenses	Statute coordination – replace district court with water court because of expanded jurisdiction.	
85-5-204	Apportionment of fees and expenses	Statute coordination – replace district court with water court because of expanded jurisdiction. Statute coordination – option of district court clerk or water court administrator.	
85-5-205	Objections to expenses -- hearing	Statute coordination – replace district court with water court because of expanded jurisdiction. Modernize language.	
85-5-206	Effect of order fixing fees	Statute coordination – replace district court with water court because of expanded jurisdiction.	
85-5-301	Complaint by dissatisfied user	Statute coordination – replace district court with water court because of expanded jurisdiction. Insert process to assign different judge than one supervising commissioner to oversee complaint about commissioner	
85-5-407	Appointment of water commissioner after final decree	Statute coordination – replace district court with water court because of expanded jurisdiction.	
NEW	Repealer (repeals 3-7-222 Salary – office space, 3-7-225 Duties of associate water judge)	Consolidated into one statute (3-7-204)	
NEW	Notification to tribal governments	Procedural requirement	

NEW	Transition	Coordinate with modified terms of office (aligns with district court judges terms of office)	
NEW	Codification instruction	Procedural requirement	
NEW	Effective dates	Procedural requirement	