



# LC1454: Efficient Administration of Water Rights: the Future of the Water Court

*This bill draft is a product of DNRC's **Comprehensive Water Review Stakeholder Working Group**, which spent the past interim collaborating on policy recommendations for water resource administration in Montana.*

After more than 50 years of work, Montana's statewide water adjudication is issuing final decrees at an increasing pace. Final decrees have already been issued in 12 basins and more are imminent. Stakeholders have coalesced around the concept of providing a one-stop-shop by extending the Montana Water Court's jurisdiction to include post-adjudication water right administration.

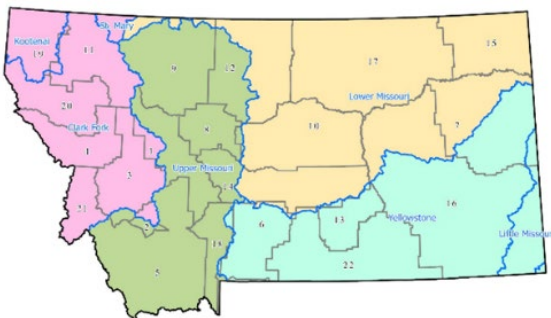
## What does this bill do?

This bill retains the technical and institutional expertise of the current water adjudication court by continuing the existing statutory water divisions as the Water Division Court. The Water Division Court will be responsible for:

- Adjudicating, administering, and enforcing final decrees
- Maintaining court records and documents
- Reviewing DNRC permitting decisions
- Appointing and supervising water commissioners
- Hearing distribution disputes and abandonment claims

### Local Venue for Local Matters

Water Division Court cases are heard within the **water division** (areas based on hydrology that are defined in existing law) or **county** where the controversy occurs.



### Water Division Judge Appointment Process:

1. Chief Justice of the Supreme Court compiles a list of 2-4 nominees and provides for a **30-day public comment** period
2. **Governor appoints** a nominee from list
3. **Senate confirmation** at next regular session



## How will this bill benefit Montana?

### An efficient judicial remedy for water right disputes

- Provides a **one-stop-shop** to resolve water right disputes in front of a judge with specialized expertise, avoiding the need to file multiple lawsuits in multiple courts. This saves time and cuts costs for Montanans.
- Provides a judicial system consistent with the unique interconnected characteristics of Montana water rights and water resources, allowing comprehensive consideration of water rights issues on a single source.
- Encourages **speedy resolution** of disputes by providing a forum where judges have expertise in the subject matter and do not need to juggle an already overwhelming docket and prioritize criminal cases.
- **Ensures timely completion of the adjudication process by retaining current processes and deadlines** for statewide adjudication of water rights. The **existing benchmarks** in law that hold the adjudication effort accountable are not amended.

### Preserves local control and accountability

- Maintains existing statute that established four water divisions to administer water rights regionally while simultaneously continuing the work of adjudication. Water right disputes often cross political boundaries of judicial districts. By **reflecting hydrogeography in the water divisions, the proposed bill** ensures that a water right dispute doesn't have to be tried in multiple judicial districts and stays with a judge with local knowledge. It also ensures that matters are heard in the division or county where the dispute occurs.
- Allows **substitution to the District Court** through a motion to substitute, meaning cases can be heard by the local District Court judge if there is good reason to do so.
- Judicial appointment and confirmation processes create accountability and clear opportunities for members of the public to provide feedback.

### Protects Montana's ability to adjudicate and administer federal and tribal water rights in state court

- The McCarran Amendment waives United States' sovereign immunity so that federal and tribal water right claims can be adjudicated and administered in state court. The proposed bill improves the existing judicial structure for the adjudication and administration of water rights consistent with the requirements of the McCarran Amendment.

## What happens if we do nothing?

The statewide adjudication will likely continue into the near future, as will the need for the current water adjudication court. If the legislature does not act, the best-case scenario is that Montanans will be required to litigate the adjudication of water rights and administration of water rights in different courts.

Moreover, the Water Court has only issued 12 final decrees to date. As more final decrees are issued, it will become increasingly difficult to legislatively adjust the judicial system through which those final decrees are administered. The failure to act now may result in a lost opportunity to provide Montanans with a more cost and time efficient water rights administration system.