

LC1454: Efficient Administration of Water Rights (Water Division Courts)

Section 1 (2-4-702)	Revisions to petitions for judicial review into the future. <ul style="list-style-type: none">• Since 2015, statute has allowed for a party who is aggrieved by a permitting or change of appropriation decision from DNRC to appeal that decision to either the district court OR the water (adjudication) court• That statute sunsets in September of 2025, and Section 1 of the bill allows an aggrieved party to file their complaint in the water division court under the effective date of this bill.• Parties would still be able to substitute their district court judge under NEW SECTION 22 of the bill.
Section 2 (3-1-102)	Courts of record <ul style="list-style-type: none">• Adds the water division court to the list of courts of record in the state.
Section 3 (3-1-804)	Procedures for substituting district court judges. [SUBSTITUTION OF JUDGES] <ul style="list-style-type: none">• Makes clear that the regular order of substituting a district court judge <u>also</u> applies to a water division judge, except when the water division judge is presiding over an adjudication proceeding.
Section 4 (3-1-901)	Providing notice of a judicial vacancy, appointment of water division judge from a list of nominees from the chief justice. [APPOINTMENT OF JUDGES] <ul style="list-style-type: none">• Revises that the governor appoints water division judges, instead of the chief justice. Further, that the governor makes the appointment from a list of nominees provided to the governor by the chief justice.• Revises that the notice provided to the public of seeking applications for a vacancy applies only to vacancies for supreme court justices and district court judges.• Water division judges are still subject to Senate confirmation following their appointment by the governor under 3-1-906, which is not being amended.
Section 5 (3-1-904)	Public comment on judicial nominations [APPOINTMENT OF JUDGES] <ul style="list-style-type: none">• This section makes clear that the process for providing public comment for judicial appointments for supreme court or district court nominees only applies to supreme court and district court nominees.• That is because public comment on water division judge nominees is submitted to the chief justice and then carries forward with the nomination of candidates to the Governor.
Section 6 (3-1-905)	Governor shall make an appointment within thirty days of receipt of the list of nominees for water division judge from the chief justice of the supreme court. [APPOINTMENT OF JUDGES] <ul style="list-style-type: none">• Further, if the governor does not make an appointment within thirty days, the chief justice shall make the appointment from the same list of nominees.
Section 7 (3-1-907)	Clean up language regarding duration of appointment for district court judges and supreme court justices.

<p>Section 8 (3-7-101)</p>	<p>Establishes the water division court that is comprised of four water divisions presided over by a water division judge. [STRUCTURE OF COURT]</p> <ul style="list-style-type: none"> • This section continues the four water divisions that are currently in statute, affirms that each is presided over by a water division judge and that those four water division judges make up the water division court. • Allows a water division judge to preside over one or more water divisions.
<p>Section 9 (3-7-103)</p>	<p>Reassigns the water adjudication advisory committee to the appropriate entity under the new water division court and chief judge of the water division judge.</p> <ul style="list-style-type: none"> • This section is clean up of who is responsible for assembling the water adjudication advisory committee. • Provides for the termination of the committee at the completion of statewide adjudication.
<p>Section 10 (New Section)</p>	<p>Provides for venue for where a case before the water division court is heard. [STRUCTURE OF COURT]</p> <ul style="list-style-type: none"> • Establishes that a dispute or case is heard in the water division or county in which the water right is located. This means that the water division judge travels to the dispute rather than the parties traveling to Helena or Bozeman. • Allows parties to mutually agree to hear a case outside of the division or county. • Requires all matters under the jurisdiction of the water division court must be brought before or immediately transferred to the appropriate water division judge.
<p>Section 11 (New Section)</p>	<p>Establishes the Office of the Water Division Court as a centralized filing and record keeping entity of the water division court. [STRUCTURE OF COURT]</p> <ul style="list-style-type: none"> • There is one singular office of the water division court at a location designated by the chief justice of the supreme court. • The chief judge of the water division court shall designate a water division court administrator who performs the necessary clerical and administrative duties of the court, including accepting uniform filings, maintaining centralized records, and hire necessary clerical staff to assist water users and the public.
<p>Section 12 (New Section)</p>	<p>Affirms the direct appeal to the supreme court. [STRUCTURE OF COURT]</p> <ul style="list-style-type: none"> • Reaffirms that there is a right to appeal to the supreme court of decisions by the water division court.
<p>Section 13 (3-7-201)</p>	<p>Creates the process by which water division judges are selected and identifies who water division judges are. [APPOINTMENT OF JUDGES]</p> <ul style="list-style-type: none"> • The water division court consists of at least two water division judges appointed by the governor. • The governor appoints water division judges from a list of not less than two or more than four eligible nominees submitted by the chief justice of the supreme court. • Provides the process and establishes the timeline for appointments of expiring terms and vacancies.

	<ul style="list-style-type: none"> • Requires the chief justice to solicit public comments on the nominees, which are sent along with their application to the governor for consideration. • To be eligible for the office of water division judge an applicant must have the same qualification of a district court judge or supreme court justice, provided for in Article VII, section 9, of the Montana constitution.
Section 14 (3-7-202)	<p>Establishes the term of office for water division judges. [APPOINTMENT OF JUDGES]</p> <ul style="list-style-type: none"> • The term of office for water division judges is six years, like district court judges.
Section 15 (3-7-203)	<p>Outlines process for filling a vacancy of a water division judge. [APPOINTMENT OF JUDGES]</p> <ul style="list-style-type: none"> • Clarifies that the procedure for filling a vacancy is provided for in 3-7-201 (Section 13) and Title 2, Chapter 9, Part 1 (Sections 3-6) of the bill. • Defines vacancy as death, resignation, retirement, or forfeiture of the position.
Section 16 (3-7-204)	<p>Provides for the Montana supreme court to supervise the water division court for budgetary and salary purposes.</p> <ul style="list-style-type: none"> • Provides for the supervision of the activities of the water division court by the Montana supreme court. • This section consolidates multiple statutes into one that says that the Montana supreme court shall provide for the budget of the water division court in the budget they submit to the legislature. Further, that they shall pay for the salary and expenses of all water division judges, water masters, and employees. • Requires water division judges to receive the same salary as district court judges.
Section 17 (New Section)	<p>Establishes what the powers and duties of water division judges. [WORK OF THE COURT]</p> <ul style="list-style-type: none"> • Within the water division court’s jurisdiction, a water division judge has the same powers as a district court judge, including issuing orders necessary to fulfill the judge’s duties and responsibilities. • The water division court shall continue to administer the adjudication of existing water rights (pre-1973 rights).
Section 18 (3-7-221)	<p>Provides for the selection of one water division judge to serve as the chief water division judge.</p> <ul style="list-style-type: none"> • Provides that the chief justice of the Montana supreme court shall select one sitting water division judge to serve as the chief water division judge. • Provides that the role of the chief water division judge is largely administrative to maintain the office, perform budgeting duties, and handle human resources issues on behalf of the water division court.
Section 19 (3-7-301)	<p>Revises the appointment of water masters.</p> <ul style="list-style-type: none"> • The chief judge of the water division court may appoint water masters. This change makes it clear that their role remains solely related to the

	<p>adjudication activities of the court and that water users seeking remedy on water administration issues post adjudication will have their case handled by a judge rather than a water master.</p> <ul style="list-style-type: none"> • All water masters must take the oath of office required of judges, follow the code of judicial conduct, and may be disqualified from a proceeding on the same grounds as a water division judge.
Section 20 (3-7-311)	<p>Revises the role and duties of water masters.</p> <ul style="list-style-type: none"> • Water masters currently play a key role assisting water court judges in the timely and efficient completion of the statewide adjudication.
Section 21 (3-7-404)	<p>Makes clear that the procedure for substitution and disqualification of water division judges or water masters is exclusive.</p> <ul style="list-style-type: none"> • Adds the processes of substitution and disqualification of water division judges or water masters set forth in Title 3, Chapter 7 is exclusive.
Section 22 (New Section)	<p>Creates a new substitution process for water division judges, including how you can substitute your district court judge for the water division judge on all matters. [SUBSTITUTION]</p> <ul style="list-style-type: none"> • On all matters aside from adjudication, the manner for substitution of a water division judge is the same as for a district court judge. Except for when a motion under (3) is filed by a party (re: a water user), other water division judges shall be called before a district court judge for substitution. • Provides an express opportunity for a water user to replace a water division judge with a district court judge on all matters under the water division court's jurisdiction with good cause. Provides for an explanation of the process, including the wide situations where good cause exists.
Section 23 (3-7-501)	<p>Establishes the issues and topics over which the water division court has jurisdiction. [WORK OF THE COURT]</p> <ul style="list-style-type: none"> • This section specifically outlines the issues over which the water division court has jurisdiction, including: <ul style="list-style-type: none"> ○ Hearings on objections to permits and changes certified to it, ○ All matters concerning the adjudication of existing water rights, including total or partial abandonment of rights prior to entry of final decree, ○ The interpretation, enforcement, and administration of water rights under a decree, ○ Proceedings for distribution, administration, and enforcement of water rights under a commissioner, ○ Appointment of water commissioner, ○ Water compact proceedings, ○ Abandonment proceedings after entry of final decree, ○ Proceedings for judicial enforcement of water rights, and ○ Petitions for judicial review of department determinations. • The jurisdiction of the water division court is exclusive.
Section 24 (3-7-502)	<p>Identifies how water division judges resolve jurisdictional disputes amongst themselves. [WORK OF THE COURT]</p>

	<ul style="list-style-type: none"> Whenever there is a question over jurisdiction of water division judges, the water division judges involved shall resolve the matter amongst themselves.
Section 25 (85-2-102)	<p>Revises the definitions that apply to the Montana Water Use Act to reflect water division court and judges. [CROSS REFERENCES]</p> <ul style="list-style-type: none"> Specifically, it is the revision to the definition of water division court and water judges.
Section 26-32 (Throughout Title 85, chapter 2)	<p>Cleaning up cross references in the water use act (Title 85, chapter 2) in terms of references to courts and judges consistent with roles and responsibilities. [CROSS REFERENCES]</p>
Section 33 (85-2-406)	<p>Clarifies and establishes the roles of the water division court and water division judges in the supervision of water distribution. [COMMISSIONERS AND DISTRIBUTION]</p> <ul style="list-style-type: none"> Reminder that the substitution provisions of NEW section 22 still apply, but that it is the water division judges who are responsible for enforcing the distribution of water rights, and the water division court that assembles tabulations, receives petitions for enforcement, and has the power to enjoin parties.
Section 34 (85-5-101)	<p>Establishes that it is the role of the water division judge, having jurisdiction, to appoint water commissioners that oversee distribution when a petition is submitted by water users on a source. [COMMISSIONERS AND DISTRIBUTION]</p> <ul style="list-style-type: none"> In addition to placing the water division judge as the appointing judge of water commissioners, again subject to the substitution provision of NEW section 22, the changes specifically allow a petitioner to submit the names of up to three potential commissioners with the petition. Day to day activities, compensation, and record-keeping of a water commissioner are not modified by this bill. Those remain the same as now.
Section 35-53 (Throughout Title 85, chapter 5)	<p>Cleaning up cross references in the water use act and water commissioner statutes (Title 85, chapter 5) in terms of references to courts and judges consistent with roles and responsibilities. [CROSS REFERENCES]</p>
Section 54 (New Section)	<p>Repeals sections of code that are no longer needed.</p> <ul style="list-style-type: none"> With the changes made in the above sections, some statutes become no longer relevant because they are consolidated into one place (budgeting for the court and jurisdiction related matters, for example), or are obsolete (duties of chief and associate water judge, for example).
Section 55 (New Section)	<p>Provides for notification to tribal governments.</p>
Section 56 (New Section)	<p>Provides for codification instructions.</p> <ul style="list-style-type: none"> Puts the new sections 10-12, 17, and 22 in to Title 3, Chapter 7 (the Water Courts statutes).
Section 57 (New Section)	<p>Provides for an effective date of the bill.</p> <ul style="list-style-type: none"> The law becomes effective on January 1, 2026.
Section 58 (New Section)	<p>Provides for standard severability language.</p>

TITLE 3, CHAPTER 7 – WATER COURTS

PART 1 – STRUCTURE OF THE WATER DIVISION COURT

- Section 1 – Water division courts
- Section 2 – Water divisions boundaries
- Section 3 – Water adjudication advisory committee
- Section 4 – Venue
- Section 5 – Office of the water division court
- Section 6 – Direct appeal to supreme court

PART 2 – WHO ARE THE WATER DIVISION JUDGES

- Section 1 - Appointment of water division judges – qualifications
- Section 2 – Term of office
- Section 3 – Vacancies
- Section 4 – Supervision and administration by supreme court
- Section 5 – Water division judges – powers and duties
- Section 6 – Appointment of chief water judge – terms of office

PART 3 – WATER MASTERS AND THEIR ROLE

- Section 1 – Appointment of water masters – removal
- Section 2 – Duties of water masters

PART 4 – SUBSTITUTION AND DISQUALIFICATION OF JUDGES

- Section 1 - Definitions
- Section 2 – Disqualification of water division judges
- Section 3 – Waiver of disqualification
- Section 4 – Procedure exclusive
- Section 5 – Substitution of water division judges

PART 5 – JURISDICTION OF WATER DIVISION COURT

- Section 1 – Jurisdiction
- Section 2 – Jurisdictional disputes

*** This is meant to be informational to guide discussion of the bill draft. Specifically, the section numbers are not intended to be accurate as to codification. ***