

BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF _(Agency or Department)_____

A BILL FOR AN ACT ENTITLED: “AN ACT PROVIDING FOR THE CONTINUATION OF THE WATER DIVISIONS AND WATER JUDGES IN THE COMPREHENSIVE AND CENTRALIZED ADJUDICATION AND ADMINISTRATION OF WATER RIGHTS; REVISING THE POWERS, DUTIES, TERMS, DESIGNATION, APPOINTMENT, OPERATIONS, AND JURISDICTION OF THE WATER DIVISIONS; _____; _____; _____; _____; AMENDING SECTIONS; REPEALING SECTIONS; AND PROVIDING AN EFFECTIVE DATE.”

WHEREAS,

WHEREAS,

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-4-702, MCA, is amended to read:

2-4-702. (Temporary) Initiating judicial review of contested cases. (1) (a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in 75-2-211, 75-2-213, and subsections (2)(c) and (2)(e) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute, subsection (2)(d), or subsection (2)(e), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified

in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(e) (i) A party who is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, may petition the district court or the water court for judicial review of the decision. If a petition for judicial review is filed in the water court, the water court rather than the district court has jurisdiction and the provisions of this part apply to the water court in the same manner as they apply to the district court. The time for filing a petition is the same as provided in subsection (2)(a).

(ii) If more than one party is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, the district court where the appropriation right is located has jurisdiction. If more than one aggrieved party files a petition but no aggrieved party files a petition in the district court where the appropriation right is located, the first judicial district, Lewis and Clark County, has jurisdiction.

(iii) If a petition for judicial review is filed in the district court, the petition for review must be filed in the district court in the county where the appropriation right is located.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record. (*Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.*)

2-4-702. *(Effective October 1, 2025)* **Initiating judicial review of contested cases.** (1) (a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in 75-2-211, 75-2-213, and subsection (2)(c) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(e) (i) A party who is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, may petition the water division courts or district court for judicial review of the decision. If a petition for judicial review is filed in the water division courts, the water division courts rather than the district court has jurisdiction and the provisions of this part apply to the water division courts in the same manner as they apply to the district court. The time for filing a petition is the same as provided in subsection (2)(a).

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record.

Section 2. Section 3-1-101, MCA, is amended to read:

3-1-101. The several courts of this state. The following are courts of justice of this state:

- (1) the court of impeachment, which is the senate;
- (2) the supreme court;
- (3) the district courts;
- (4) the water division courts;
- ~~(4)~~ (5) the municipal courts;
- ~~(5)~~ (6) the justices' courts;
- ~~(6)~~ (7) the city courts and such other courts of limited jurisdiction as the legislature may establish in any incorporated city or town.

Section 3. Section 3-1-102, MCA, is amended to read:

3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, the water division courts, the workers' compensation court, the municipal courts, the justices' courts of record, and the city courts of record are courts of record.

Section 4. Section 3-1-804, MCA, is amended to read:

3-1-804. Substitution of district judges.

SUBSTITUTION OF DISTRICT JUDGES

This section applies to judges presiding in district courts. It does not apply to any judge sitting as a water court adjudication judge, or to a workers' compensation court judge, or to a judge supervising the distribution of water under 85-2-406, including supervising water commissioners under Title 85, chapter 5, part 1.

(1) Each adverse party is entitled to one substitution of a district judge.

(a) In a civil action other than those noted in subsection (1)(c) and (1)(d), a motion for substitution by the party filing the action must be filed within 30 calendar days after the first summons is served or an adverse party has appeared. A motion for substitution by the party served must be filed within 30 calendar days after service has been completed in compliance with M. R. Civ. P. 4.

(b) In a criminal action, a motion for substitution by the prosecution or the defendant must be filed within 10 calendar days after the defendant's arraignment.

(c) In an action involving the supervision of water distribution under 85-2-406 or supervision of a water commissioner under Title 85, chapter 5, part 1, a motion for substitution by the party filing the action or by an adverse party must be filed within 10 calendar days after a petition is filed pursuant to 85-2-406(b) or an application is filed pursuant to 85-5-101.

~~(e)~~ (d) A motion for substitution may not be filed in the following cases: a child abuse or neglect proceeding under Title 41, chapter 3; a youth court action proceeding under Title 41, chapter 5; or a mental health commitment proceeding under Title 53, chapter 21, part 1.

(2) (a) When an initial pleading is filed, the clerk of court shall stamp the name of the district judge to whom the case is assigned on the face of the original and all copies of that document.

(b) A motion for substitution of district judge must be made by filing a written motion with the clerk or as follows:

The undersigned hereby moves for substitution of District Judge _____ in this case

The moving party shall serve copies of the motion for substitution upon all other parties to the proceeding. The clerk shall immediately notify the district judge of the motion and, if there has already been a substitution, the first district judge to whom the case was assigned.

(3) In civil cases, the motion for substitution is not effective for any purpose unless the filing fee for a motion for substitution required by 25-1-201 is paid to the clerk of the district court.

In criminal cases, the motion for substitution is effective upon filing, except as otherwise provided herein for a motion filed by a defendant who is not represented by a public defender, as defined by 47-1-103.

In criminal cases filed by the county attorney, the county attorney shall pay the substitution motion fee required by 25-1-201 within 30 days of receipt of a claim from the clerk of district court. In criminal cases filed by the attorney general, the attorney general shall pay the substitution motion fee required by 25-1-201 within 30 days of receipt of a claim from the clerk of district court.

In criminal cases where the motion is filed by or on behalf of an indigent defendant, as defined by 47-1-103, represented by a public defender, as defined by 47-1-103, the office of public defender, as defined by 47-1-103, shall pay the substitution motion fee within 30 days of receipt of a claim from the clerk of district court. In criminal cases where the motion is filed by or on behalf of a defendant who is not represented by a public defender, as defined by 47-1-103, the motion for substitution is not effective for any purpose unless the substitution motion fee required by 25-1-201 is paid to the clerk of the district court except as waived pursuant to 25-10-404.

The substitution motion filing fee required by 25-1-201 is not a district court expense within the meaning of 3-5-901.

(4) Any motion for substitution that is not timely filed is void. The district judge for whom substitution is sought has jurisdiction to determine timeliness, and if the motion for substitution is untimely, shall enter an order denying the motion.

(5) After a timely motion has been filed, the substituted district judge does not have the power to act on the merits of the case or to decide legal issues in the case, except as provided in subsection (10).

(6) The first district judge who has been substituted or disqualified for cause has the duty of calling in all subsequent district judges. In a multijudge district, all other district judges in that district must be called before a district judge from another district is called.

(7) When a new district judge has accepted jurisdiction, the clerk of court shall provide a copy of the assumption of jurisdiction to the first district judge to whom the case was assigned and to each attorney or party of record. A certificate of service must be attached to the assumption of jurisdiction form in the court file.

(8) If the presiding judge in any action recuses himself or herself or if a new district judge assumes jurisdiction in any action, the right to move for substitution of a district judge is reinstated, except as to

parties who have previously obtained a substitution. The time periods run anew from the date of service of notice or other document identifying the new district judge.

(9) No party who is joined or intervenes has any right of substitution after the time has run as to the original parties to proceed.

(10) A district judge who has previously been substituted from the case may agree to set the calendar, draw a jury, and conduct all routine matters including arraignments, preliminary pretrial conferences in civil cases, and other matters that do not address the merits of the case, if authorized by the presiding district judge.

(11) When a new trial is ordered by the district court, each adverse party shall be entitled to one motion for substitution of district judge. The motion must be filed, with the required filing fee, within 20 calendar days after the district court has ordered a new trial.

(12) When a judgment or order is reversed or modified on appeal and the cause is remanded to the district court for a new trial, or when a summary judgment or judgment of dismissal is reversed and the cause remanded, each adverse party is entitled to one motion for substitution of district judge. The motion must be filed, with the required filing fee, within 20 calendar days after the remittitur from the supreme court has been filed with the district court. There is no other right of substitution in cases remanded by the supreme court.

In criminal cases, there is no right of substitution when the cause is remanded for sentencing.

Section 5. Section 3-1-901, MCA, is amended to read:

3-1-901. Judicial vacancy – notice. (1) (a) ~~Upon~~ On receiving notice from the chief justice of the supreme court, the governor shall appoint a candidate, as provided in this part, to fill any vacancy on the supreme court or the district court.

(b) The ~~governor~~ chief justice of the supreme court shall appoint a candidate to fill any term or vacancy for the water division judge or water adjudication judge ~~chief water judge or associate water judge~~ from the list of nominees provided to the governor by the chief justice of the supreme court pursuant to 3-7- ~~201~~ 221.

(2) Within 10 days of the date of receipt by the governor of the notice from the chief justice of the supreme court that a vacancy has occurred or the effective date of the judicial resignation has been announced, the governor shall notify the public, including media outlets with general statewide

circulation and other appropriate sources, that a vacancy has been announced, including the deadline within which applications must be received.

Section 6. Section 3-1-904, MCA, is amended to read:

3-1-904. Public comment. (1) The governor shall establish a reasonable period for reviewing applications and interviewing applicants that provides at least 30 days for public comment concerning applicants.

(2) Each applicant who has the qualifications set forth by law for holding judicial office and who receives a letter of support from at least three adult Montana residents by the close of the public comment period provided for in subsection (1) must be considered a nominee for the position.

(3) The total time from receipt of notice of a vacancy until appointment may not exceed 100 days.

(4) The application, public comment, and any related documents are open to the public except when the demands of individual privacy clearly exceed the merits of public disclosure.

(5) The governor shall provide at least 30 days for public comment concerning the nominees submitted by the chief justice of the supreme court for water division judge and water adjudication judge pursuant to 3-7-201.

Section 7. Section 3-1-905, MCA, is amended to read:

3-1-905. Appointments. (1) ~~The governor, or the chief justice of the supreme court for the office described in 3-7-221,~~ shall make an appointment within 30 days of the close of the public comment period from the list of applicants or nominees submitted by the chief justice of the Supreme Court for water division judge and water adjudication judge.

(2) For the purposes of Article VII, section 8, of the Montana constitution, the governor must be construed to receive the names of the nominees at the close of the public comment period provided for in 3-1-904.

(3) If the governor fails to appoint within 30 days of the close of the public comment period provided for in subsection (1), the chief justice shall make the appointment from the same list of applicants or nominees for water division judge and water adjudication judge within 30 days of the governor's failure to appoint.

NEW SECTION. Section 8. Office of the clerk of the water division courts - operations. (1) There is established a single office of the clerk of the water division courts that shall maintain all records, accept all filings, and conduct other clerical duties in matters before the water division and adjudication judges of the water division courts.

(2) The office of the clerk of the water division courts is comprised of a water division courts administrator and all personnel necessary for the water division courts administrator to perform their duties.

(3) The water division courts administrator shall perform duties assigned by the chief judge of the water divisions courts. As long as they are not inconsistent with this Chapter, the duties of the water division courts administrator shall include those duties set forth in Title 3, Chapter 5, Part 5.

(4) As used in this section, a “filing” with a water division judge or water adjudication judge means a filing of the office of the water division courts.

(5) Any reference to the “clerk” of the water division judge or water adjudication judge in Title 85, chapter 2 refers to the office of the water division courts and its administrator.

Section 9. Section 3-7-101, MCA, is amended to read:

3-7-101. Water divisions – water division courts. (1) To adjudicate existing water rights, and to conduct hearings in cases certified under 85-2-309 to administer the final decrees of all water rights, to resolve water rights and water use controversies or disputes, and to supervise the judicial administration and enforcement of water rights and water uses, water divisions are established as defined in 3-7-102. A water division shall be presided over by a water judge.

- (a) Each water division shall be presided over by a water division judge to carry out the duties set forth in [NEW SECTION 17]. A water division judge may preside over one or more divisions.
- (b) One or more water adjudication judges may be appointed to adjudicate existing water rights pursuant to Title 85, Chapter 2, Part 2. A water adjudication judge may preside over one or more divisions.
- (c) There shall be a chief judge of the water division courts selected from among the sitting water division judges and water adjudication judges pursuant to 3-7-201.

Section 10. Section 3-7-103, MCA, is amended to read:

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 chief judge of the water division courts judges and the department of natural resources and conservation.

(2) (a) The chief judge of the water judge division courts shall appoint a water adjudication advisory committee to provide recommendations to the water division courts, 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 division courts, one district court judge, one public member, and three water users who have filed statements of claim with the department of natural resources and conservation under this chapter.

(c) The chief judge of the water division courts 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 chief judge of the water division courts 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.

NEW SECTION. Section 11. Venue for water rights determinations. All matters under Title 3, Chapter 7, Part 2 must be brought before or immediately transferred to the water division judge in the appropriate water division. Any proceedings under Title 3, Chapter 7, Part 2 must be conducted within the water division or county in which the controversy arises unless otherwise determined by mutual agreement of the parties.

Section 12. Section 3-7-201, MCA, is amended to read:

3-7-201. ~~Designation~~ Appointment of water judges and chief judge of the water divisions courts - qualifications. (1) ~~A water judge must be designated for each water division by a majority vote~~

DIVISIONAL COURT MODEL: Revision date: 3/8/24 2:57 PM

~~of a committee composed of the district court judge from each single judge judicial district and the chief district judge from each multi judge 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. The water division courts consist of at least two water division judges, and at least one water adjudication judge, who shall be appointed by the governor, as provided in Title 3, Chapter 1, Part 9, from a list of three nominees for each vacancy submitted to the governor by the chief justice of the supreme court within 90 days of the expiration of a term or in the case of a vacancy of the seat described in 3-7-203.~~

(a) To be eligible for the office of water adjudication or water division judge, a person shall have the qualifications for district court or supreme court judges set forth in Article VII, section 9, of the Montana Constitution.

(b) In reviewing reappointments for water adjudication or water division judges, the chief justice of the supreme court shall:

(i) cause the court administrator to solicit feedback from parties and attorneys appearing before the judge in previous proceedings before the water division courts;

(ii) consider information about the judge that is on file with the judicial standards commission pursuant to Title 3, Chapter 1, Part 11; and

(iii) consider the judge's past performance as reported pursuant to 3-1-716.

(2) The chief justice of the supreme court shall select one water division judge or adjudication judge to serve as the chief judge of the water division courts for a term of two years.

(a) The chief judge of the water division courts shall serve as the chief judge for all matters regarding the efficient management of the water division courts business in cooperation with other water division and adjudication judges and the water division court administrator including:

(i) assign water division courts personnel to duties as needed; and

(ii) prepare water division courts budget requests to the supreme court; and

(iii) oversee the office of the water division courts, including supervision of the water division court administrator.

~~(2)(3) A district court judge, or retired district court judge, water division judge, or water adjudication judge may sit as a substitute water adjudication judge in more than one any division if requested by the chief justice of the supreme court or the water adjudication judge of the division in~~

which the substitute judge is requested to sit. A substitute adjudication judge has the same powers as a water adjudication judge appointed pursuant to this section.

~~(3) A 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.~~

~~(3)-(4) Except for adjudication actions under Title 85, Chapter 2, Parts 2 and 7 that are presided over by a water adjudication judge, actions in the water division courts may be tried by a judge pro tempore or special master in the same manner as civil actions pursuant to 3-5-113 to 3-5-118.~~

(5) Except for adjudication actions under Title 85, Chapter 2, Parts 2 and 7 that are presided over by a water adjudication judge, substitution of a water division judge is allowed in the same manner as civil district court actions pursuant to 3-1-804, except:

(a) all other water division judges must be called as a substitute judge before a non-water division judge is called, except in the instance of a motion to substitute a district court judge.

(b) A motion to substitute a district court judge may be granted by the water division judge if

(i) good cause exists for the substitution of the district court judge,

(ii) there will be no undue delay or prejudice to the other parties involved in the water controversy, and

(iii) the substitution is to a district court judge sitting wholly or partially within a judicial district where the water controversy arises.

(c) if a district court judge is substituted for a water division judge, the district court judge is deemed to be presiding as a water division judge.

(6) After the chief judge of the water division courts certifies to the governor and Montana supreme court that all final decrees in all basins pursuant to 85-2-234 and 85-235, except in basins that contain existing water rights pursuant to Title 85, Chapter 20, part 10 have been issued, the chief justice shall:

(a) cease submitting nominees to the governor for appointments to the role of water adjudication judges;

(b) may assign sitting water adjudication judges to a water division or divisions as a water division judge for the remainder of their term;

(c) may submit names to the governor pursuant to this section to appoint additional water division judges to remaining water divisions as needed; and

_____ (d) shall designate pursuant to this section a chief judge of the water division courts if a vacancy occurs.

Section 13. Section 3-7-202, MCA, is amended to read:

3-7-202. Term of office. The term of office for water division judges and water adjudication judges 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~~ 6 years and begins on the date of initial appointment as provided in 3-7-201, ~~subject to continuation of the water divisions by the legislature.~~

Section 14. Section 3-7-203, MCA, is amended to read:

3-7-203. Vacancies. If a vacancy in the office of water division judge or water adjudication 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 division judge or water adjudication 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 division judge or water adjudication judge.

Section 15. Section 3-7-204, MCA, is amended to read:

3-7-204. Supervision and administration by supreme court. (1) The Montana supreme court shall supervise the activities of the water division judges and water adjudication judges, water masters, and associated water division courts personnel in implementing this chapter and Title 85, ~~chapter 2, part 2.~~

(2) The supreme court shall pay the salaries and expenses of the water division judges and water adjudication 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~~ associated water division courts personnel. "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.~~

(3) A water division judge and a water adjudication judge must receive the same salary and expense allowance as provided for a district court judge pursuant to 3-5-211.

(4) The office of the water division courts, as described in [NEW SECTION 8], must be at a location designated by the chief justice of the Montana supreme court.

(5) The Montana supreme court shall provide in its budget for the salary, expense, and office and staff requirements of the water division judges and the water adjudication judges. Money may be appropriated by the legislature from the general fund for these purposes.

Section 16. Section 3-7-212, MCA, is amended to read:

3-7-212. Enforcement of decrees. The ~~district court~~ water division courts ~~having~~ have jurisdiction ~~may~~ to enforce the provisions of a final decree entered under 85-2-234. In the absence of any final decree having been issued, the ~~district court~~ water division courts ~~having~~ have jurisdiction ~~may~~ to enforce the provisions of a temporary preliminary decree, preliminary decree, or supplemental preliminary decree entered under 85-2-231, as modified by a water adjudication judge after objections and hearings.

NEW SECTION. Section 17. Duties and jurisdiction of water division judges. (1) With regard to consideration of a matter within the water division judge's jurisdiction, a water division judge has the same powers as a district court judge. A 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 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).

(2) The water division judge has the jurisdiction to interpret, administer, enforce and supervise the distribution of water rights pursuant to the terms of 3-7-212, 85-2-406, Title 85, Chapter 3, Title 85, Chapter 5, and Title 85, Chapter 20.

Section 18. Section 3-7-223, MCA, is amended to read:

3-7-223. ~~(Temporary) Duties of chief water judge and jurisdiction of water adjudication judges.~~ (1) The chief A water adjudication judge shall:

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

DIVISIONAL COURT MODEL: Revision date: 3/8/24 2:57 PM

(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 division judge in each water division;

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

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

~~(e) assigning personnel and duties as needed;~~

~~(2) conduct hearings in cases certified to the district court under 85-2-309;~~ A water adjudication judge has jurisdiction over all matters relating to the adjudication of existing water rights within the boundaries of the state of Montana.

~~(3) assign court personnel to divisions and duties as needed;~~ With regard to the consideration of a matter within a water adjudication judge's jurisdiction, a water adjudication judge has the same powers as a district court judge. A water adjudication 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).

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

~~(5) request and secure the transfer of water judges between divisions as needed.~~

~~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; and~~

~~(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 and secure the transfer of water judges between divisions as needed.~~

Section 19. Section 3-7-301, MCA, is amended to read:

3-7-301. Appointment of water masters – disqualification -- removal. (1) ~~The chief~~ With the concurrence of the chief judge of the water division courts, a water adjudication judge or the water judge in each water division may appoint one or more water masters: to expedite the adjudication of water rights pursuant to Title 85, Chapter 2, Part 2.

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

~~(3)~~ (2) In appointing a water master, the water adjudication judge shall consider a potential master's experience with water law, water use, and water rights.

(3) A water master shall take the oath required of judges and follow the Montana code of judicial conduct.

(4) An appointed water master is an employee of the district court under 3-5-901.

(5) A water master is subject to disqualification from proceeding on a matter on the same grounds as any other judicial officer. On disqualification of a water master, the water adjudication judge shall either refer the matter to another water master or move the case back to the water adjudication judge's active docket for further proceedings.

~~(4)~~ (6) A water master shall serve at the pleasure of the ~~chief~~ water adjudication judge and may be removed by the ~~chief~~ water adjudication judge.

~~(5)~~ (7) A water master may serve in any water division and may be moved among the water divisions at the discretion of the ~~chief~~ water adjudication judge.

Section 20. 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 adjudication judge meeting the requirements for the preliminary decree as specified in 85-2-231.

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

Section 21. 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 adjudication judge.

Section 22. Section 3-7-402, MCA, is amended to read:

3-7-402. Disqualification of water judge or master. (1) A water division judge or water adjudication 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 division judge or water adjudication 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 division judge or water adjudication 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.

Section 23. Section 3-7-403, MCA, is amended to read:

3-7-403. Waiver of disqualification. A water division judge or water adjudication 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.

Section 24. Section 3-7-404, MCA, is amended to read:

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

Section 25. 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.~~ The water division courts have the exclusive jurisdiction to preside over matters assigned to the water division courts pursuant to [NEW SECTION 17] and 3-7-223.

(2) A water division 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 3-1-804 or 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.~~

Section 26. Section 3-7-502, MCA, is amended to read:

3-7-502. Jurisdictional disputes. Whenever a question arises concerning which water division judge shall preside over ~~adjudication of a matter concerning a case certified to the court under 85-2-309~~

~~or the determination or interpretation of existing water rights that could be heard in more than one water division~~, the question shall be settled by the water division judges involved.

Section 27. Section 25-2-123, MCA, is amended to read:

25-2-123. Real property. (1) The proper place of trial for the following actions is the county in which the subject of the action or some part thereof is situated:

(a) for the recovery of real property or of an estate or an interest therein or for the determination, in any form, of such right or interest;

(b) for injuries to real property;

(c) for the partition of real property;

(d) for the foreclosure of all liens and mortgages on real property.

(2) Where the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties and the county so selected is the proper county for the trial of such action.

(3) The proper place of trial for all actions for the recovery of the possession of, quieting the title to, or the enforcement of liens upon real property is the county in which the real property, or any part thereof, affected by such action or actions is situated.

(4) Pursuant to [NEW SECTION 11], the proper place for trial for all actions involving disputes or controversies involving water rights pursuant to the terms of 3-7-212, Title 85, Chapter 2, Title 85, Chapter 3, Title 85, Chapter 5, and Title 85, Chapter 20 is the water division or county in which the controversy arises unless otherwise determined by mutual agreement of the parties.

Section 28. Section 85-2-102, MCA, is amended to read:

85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" or "appropriation" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Appropriation right" has the same meaning as "water right" as defined in this section.

(3) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(4) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

(5) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(6) "Certificate" means a certificate of water right issued by the department.

(7) (a) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(b) The term does not include a change in water use related to the method of irrigation.

(8) "Commission" means the fish and wildlife commission provided for in 2-15-3402.

(9) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(10) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(11) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(12) "Developed spring" means any point where ground water emerges naturally, that has subsequently been physically altered, and from which ground water flows under natural pressures or is artificially withdrawn.

(13) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(14) "Ground water" means any water that is beneath the ground surface.

(15) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(16) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(17) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(18) (a) "National forest system lands" means all lands within Montana that are owned by the United States and administered by the secretary of agriculture through the forest service.

(b) The term does not include any lands within the exterior boundaries of national forest system units that are not owned by the United States and administered by the secretary of agriculture through the forest service.

(19) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(20) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(21) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(22) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

(b) The term does not mean a private corporation, association, or group.

(23) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(24) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(25) "Stream depletion zone" means an area where hydrogeologic modeling concludes that as a result of a ground water withdrawal, the surface water would be depleted by a rate equal to at least 30% of the ground water withdrawn within 30 days after the first day a well or developed spring is pumped at a rate of 35 gallons a minute.

(26) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(27) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(28) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(29) "Montana water court" or "water court" means the water division courts as provided for in Title 3, chapter 1 and chapter 7.

~~(29)~~ (30) "Water division" means a drainage basin as defined in 3-7-102.

~~(30)~~ (31) "Water judge" means, except as used in part 2, a water division judge as provided for in Title 3, chapter 7 unless it is specifically stated that a water adjudication judge applies.

~~(31)~~ (32) "Water master" means a master as provided for in Title 3, chapter 7.

~~(32)~~ (33) "Water right" means the right to appropriate water pursuant to an existing right, a permit, a certificate of water right, a state water reservation, or a compact.

~~(33)~~ (34) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

~~(34)~~ (35) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

Section 29. Section 85-2-112, MCA is amended to read:

85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted under 85-2-113, subject to the powers and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing claims of existing rights with ~~a district court~~ the water division courts under this chapter;

(6) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated basins or subbasins as provided in 85-2-319.

Section 30. Section 85-2-122, MCA, is amended to read:

85-2-122. Penalties. (1) Except as provided in 85-2-410(6), a person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the department is subject to a civil penalty not to exceed \$1,000 per violation. Each day of violation constitutes a separate violation.

(2) Except as provided in subsection (3), fines collected by the department or ~~a district court~~ the water division courts under subsection (1) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114.

(3) If a fine is collected by an independent action brought by:

(a) the county attorney, the fine must be deposited in the general fund of the county; or

(b) the county attorney with assistance from the attorney general or by the attorney general, the fine must be deposited in the water right enforcement account created in 44-4-1101 and must be used to enforce the provisions of 85-2-114.

Section 31. Section 85-2-123, MCA, is amended to read:

85-2-123. Deposit of fees and penalties. Except as provided in 85-2-122 and 85-2-124, all fees and penalties collected under this chapter must be deposited in the water right appropriation account established in 85-2-318. ~~Except for fines collected by a district court under 85-2-122, all penalties or fines imposed by any court other than a justice's court for a violation of this chapter must be deposited in the general fund of the county where the court presides and must be disposed of in the same manner as any other penalty or fine.~~

Section 32. Section 85-2-125, MCA, is amended to read:

85-2-125. Recovery of costs and attorney fees by prevailing party. (1) If a final decision of the department on an application for a permit or a change in appropriation right is appealed to ~~district~~ water division courts, the ~~district~~ water division courts may award the prevailing party reasonable costs and attorney fees.

(2) The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with a water right to enjoin the use of water by a person that does not have a water right.

Section 33. Section 85-2-114, MCA, is amended to read:

85-2-114. Judicial enforcement. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may petition the ~~district court supervising the distribution of water among appropriators from the source~~ water division courts to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; or

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter. Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

(4) The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use, interference, or violation or bring an action under 85-2-122(1) without being requested to do so by the department.

(5) A county attorney who takes action pursuant to subsection (3) or (4) may request assistance from the attorney general.

(6) When enforcing the provisions of this section, the department, the county attorney, and the attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.

(7) After considering the provisions of subsection (6), the department may attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). An attempt to obtain voluntary compliance under this subsection must extend over a period of at least 7 days and may not exceed 30 working days.

(8) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.

(9) The provisions of this section do not limit a water right owner from seeking relief, including injunctive relief, in district court under Title 27, chapter 19, or this chapter.

Section 34. Section 85-2-309, MCA, is amended to read:

85-2-309. Hearings on objections -- jurisdiction. (1) If the department determines that an objection to an application for a permit under 85-2-311 or change in appropriation right under 85-2-402 states a valid objection, it shall hold a contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 90 days from the date set by the department for the filing of objections after serving notice of the hearing by first-class mail upon the applicant and the objector, unless the department certifies an issue to the ~~district~~ water division courts for determination by a water division judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department may extend the 90-day deadline for good cause shown or upon request of the applicant and all objectors. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the ~~district~~ water division courts all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing,

including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by a water adjudication judge over all other adjudication matters.

(b) If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by the department, the water division court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322.

Section 35. Section 85-2-405, MCA, is amended to read:

85-2-405. Procedure for declaring appropriation rights abandoned. (1) When the department has reason to believe that an appropriator may have abandoned an appropriation right under **85-2-404** or when another appropriator in the opinion of the department files a valid claim that the appropriator has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall petition the ~~district~~ water division courts that determined the existing rights in the source of the appropriation in question to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section must be conducted in accordance with the Montana Rules of Civil Procedure, and appeal must be taken in accordance with the Montana Rules of Appellate Procedure.

(2) At the hearing, the burden of proof is on the department, which shall establish by a preponderance of the evidence that the appropriation has been abandoned under **85-2-404**.

(3) The determination of the court must be appended to the final decree. The department shall keep a copy of the determination in its office in Helena.

Section 36. Section 85-2-406, MCA, is amended to read:

85-2-406. ~~District court~~ Water division courts supervision of water distribution. (1) The ~~district~~ water division courts shall supervise the distribution of water among all appropriators within the boundaries of its divisions as defined in 3-7-102. This supervisory authority includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The supervision must be governed by the principle that first in time is first in right.

(2) (a) ~~A~~ The water division courts ~~or district court~~ may order the distribution of water pursuant to a district court decree entered prior to July 1, 1973, until an enforceable decree is entered under part 2 of this chapter or the matter has been adjudicated under the procedure set forth in subsection (2)(b).

(b) When a water distribution controversy arises upon a source of water in which not all existing rights have been conclusively determined according to part 2 of this chapter, any party to the controversy may petition the ~~district~~ water division courts ~~to certify the matter to the chief water judge. If a certification request is made, the district court shall certify to the chief water judge the~~ for a determination of the existing rights that are involved in the controversy according to part 2 of this chapter. The ~~district water division courts~~ from which relief is sought ~~shall retain exclusive jurisdiction to~~ may grant injunctive or other relief that is necessary and appropriate pending adjudication of the existing water rights ~~certified to the water adjudication judge~~. Certified controversies must be given priority over all other adjudication matters. After determination of the matters certified, the water judge shall ~~return the decision to the district court with~~ establish one or more a tabulations or lists of the existing rights and their relative priorities.

(3) A controversy between appropriators from a source that has been the subject of a final decree under part 2 of this chapter must be settled by the ~~district~~ water division courts. The order of the ~~district water division courts~~ settling the controversy may not alter the existing rights and priorities established in the final decree except to the extent the court alters rights based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits issued by the department, the water division courts may not amend the respective rights established in the permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree. The order settling the controversy may amend or supplement ~~must be appended to~~ the final decree, and a copy of the order and modified final decree must be filed with the department. The department must be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

(4) A temporary preliminary decree or preliminary decree or a portion of a temporary preliminary decree or preliminary decree as modified after objections and hearings is enforceable and administrable according to its terms. If an action to enforce a temporary preliminary decree or preliminary decree or portion of a temporary preliminary decree or preliminary decree is commenced, the water division judge shall ~~upon referral from the district court~~ establish, ~~in a form determined to be appropriate by the water judge,~~ one or more tabulations or lists of all existing water rights and their relative priorities within the defined enforcement area. In cases involving permits issued by the department, the water division court may not amend the respective rights established in the permits or alter any terms of the permits. When an

action is brought under this subsection, the water division judge may, upon motion of a party to the action or sua sponte, order the department to provide technical assistance to accurately define the enforcement area.

(5) Upon a determination that a petition filed under the subsections (2), (3), or (4) is sufficient, including a clearly defined enforcement area, the water division judge shall issue an order requiring service of the petition on all water right owners within the enforcement area and setting a time and place by which any interested party may show cause why the petition should not be granted. The provisions of Title 25, chapter 3, parts 2 and 3, and Rules 4 and 12(a), M.R.Civ.P. are applicable to actions brought under subsections (2), (3), or (4), so long as they are not in conflict with this section.

~~(5)~~(6) A person whose existing rights and priorities are determined in a temporary preliminary decree or preliminary decree or a person exercising a suspension under 85-2-217 and part 7 of this chapter may appeal a determination made pursuant to subsection (2).

NEW SECTION. Section 37. Repealer. The following sections of the Montana Code Annotated are repealed:

- 3-7-221 Appointment of chief water judge and associate water judge – terms of office
- 3-7-222. Salary – office space.
- 3-7-224 Jurisdiction of chief water judge and associate water judge.
- 3-7-225 Duties of associate water judge.

NEW SECTION. Section 38. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. Section 39. Codification instruction. (1) [Section 8] is intended to be codified as an integral component of Title 3, chapter 7, and the provisions of Title 3, chapter 7, part 1, apply to [section 8].

(2) [Section 11] is intended to be codified as an integral component of Title 3, chapter 7, and the provisions of Title 3, chapter 7, part 2, apply to [section 11].

(3) [Section 17] is intended to be codified as an integral component of Title 3, chapter 7, and the provisions of Title 3, chapter 7, part 2, apply to [section 17].

NEW SECTION. **Section 40. Effective date.** [This act] is effective on passage and approval.

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