

Divisional Court Model – Providing continuity of adjudication and administration of water rights while decreasing costs to water users by improving efficiency

- **Promotes a seamless transition from adjudication to administration with final decrees being issued now**
 - The court that issues the decree will administer all aspects of the decree, meaning a qualified one-stop-shop for all issues affecting a water right. The model clearly identifies the roles and responsibilities of the existing water division judges in present law.
 - There are currently 9 final decrees that have been issued, with more on the way on the immediate horizon. That makes this clarification timely and urgent.
 - Current law is incredibly unclear about what happens after adjudication and at best it necessitates a jarring change to district courts that do not have expertise or time to handle water rights cases. Current law does not automatically transition to district courts.
- **Provides for the continuation of the existing water divisions and water judges, ensuring local knowledge and control of water rights issues and providing accountability**
 - The divisional court model doesn't create a new court system; the model uses existing statute that established four water divisions to administer water rights while continuing the work of adjudication simultaneously.
 - The legislature understood that water disputes often cross political boundaries of judicial districts, which is why they created water divisions. The divisional court model reflects hydrogeography ensuring that a water dispute doesn't have to be tried in multiple judicial districts with multiple judges.
 - The division model allows for the recertification of cases back to the District Court.
 - Water users can directly hold water division judges accountable through the appointment and reappointment process, including senate confirmation. The division model increases transparency from current law by providing clear opportunities to provide input and feedback to the selection process by the Governor and in the State Senate.
- **Affirms deadlines to complete the adjudication process**
 - The division model changes nothing related to the current rules or processes for statewide adjudication of water rights. Further, the division model changes nothing related to the current benchmarks in law that hold the adjudication effort accountable.
 - The process and rules of adjudication stay the same, the benchmarks remain, and if nothing else it provides clarity and focus that the duty of water division judges is to complete the statewide adjudication of water rights.
- **Provides for a statutory mechanism to end the adjudication process when complete**
 - Currently statute does not provide a clear termination of the adjudication process when all final decrees have been issued. The divisional court makes it clear in 3-7-201, MCA, that once all final decrees have been issued the nomination process for water adjudication judges ceases.
- **Maintains Montana's comprehensive and centralized system of adjudication and administration**
 - The division model formalizes in statute the existing administrative support for filing, case and database management, expertise, water user outreach, and customer service to ensure that these functions last beyond the statewide adjudication effort.
 - The division model maintains state primacy in the comprehensive and centralized adjudication and administration of both state-based and federal-based water rights. It does that by avoiding the piecemeal and disjointed effects of 22 potentially unique approaches to case management, filing, data and records retention in each individual judicial district.

- All matters related to the adjudication and administration of water rights on the same water source are handled the same, within one water division.
- **Protects the work and expertise of decades of adjudication while improving efficiency**
 - If you had a heart condition, you would not seek medical advice from the family practice doctor just because they are the local doctor. You would find the medical care provider who was the best and most qualified in their field. The divisional court model ensures that water right users are relying on the expertise of judges that know, understand, and have experience in water law.
- **Decreases costs to water users that have spent time and money through adjudication**
 - By providing a one-stop-shop for water users to resolve all elements of water disputes in front of a judge that has expertise on the matter by the way of specialized knowledge which increases the efficiency and decreases cost.
 - All issues relating to a water dispute are heard by one judge, meaning that there is not a need to file multiple lawsuits in multiple courts which saves time, money and provides certainty.
- **Provides for timely resolution to water users**
 - Data matters and Montana’s District Court system currently hears nearly 60,000 cases, most of which are criminal cases that necessarily take priority over water disputes.
 - Multiple district court judges, current and retired, have expressed what we know to be true that they don’t have the time or expertise to take on water cases.
 - A recent survey completed by the Montana Judicial Branch in 2024 affirms that the current opinion of a wide majority of sitting District Court judges do not feel like they have the time to take on water cases amid an overwhelming docket. 96.97% of judges said they would support a permanent judicial venue other than their District Court to hear water cases after statewide adjudication is completed.
- **Retains appointment and supervision of water commissioners with the District Court**
 - The division court model retains the role of the District Court in appointing and supervising water commissioners in regular meat and potato water distribution.
 - If a District Court judge is not able or interested in appointing or supervising commissioners then it allows for the certification of those tasks to the division judge.
- **Fiscally responsible solution to real problems facing water users**
 - Given the overwhelming caseload that our current District Court system is facing, the divisional court model to water disputes is a fiscally responsible approach to resolving water right disputes while not committing significant state dollars to expanding the slate of District Court judges within the districts in the state.
 - Avoids consolidating and expanding the current judicial districts.
 - The model allows for flexibility in number of judges to reflect the need and caseload in a way that just adding more district court judges cannot.
- **Continues a constitutional and McCarran compliant system for adjudicating and administering water rights**
 - The Montana constitution expressly authorizes the legislature to create “other courts” that exercise concurrent jurisdiction in some areas with district courts (Art. VII, Sec. 1, Mont. Const.). Delegates at the constitutional convention contemplated the benefits of these specialized courts to improve efficiency, provide timeliness, hold specialized knowledge, and decrease costs. The division model utilizes narrow jurisdiction, which the delegates debated.

- Montana’s Supreme Court has affirmed the constitutionality of special courts created by law (*State ex rel. Uninsured Employers Fund v. Hunt* 191 Mont. 514 (1981), and *State ex rel. Maier v. City Court of Billings*, 203 Mont. 443 (1983)) when that court exercises limited, special, or exclusive jurisdiction over specified matters. In these cases, the Court has reflected a deference to the legislature’s prerogative to create courts that are not district courts.
- The “Ross Report” commissioned by the Montana Legislature in 1988 concluded that the “Water Court” and its divisions “is clearly a special court created by law, pursuant to article VII, section 1 of the Montana constitution, free from the requirement of election which attaches to district judges.”
- Further, the “Ross Report” considered the comprehensive and centralized aspects of Montana’s current process for adjudicating water rights and termed them to be McCarran compliant. The report did note, “*Montana has not yet provided a modern comprehensive and permanent water rights administration scheme ...*” which the Division model does.