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Introduced By \*\*\*\*\*

By Request of the (Agency or Department)

A Bill for an Act entitled: "An Act ; amending section 85-2-214, MCA; amending sections 25-2-115 and 25-2-123, MCA; providing a retroactive applicability date."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** 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 judge, 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), a motion for substitution by the party

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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) 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.

(d) A motion for substitution by the party filing a "water case," as defined in ~~XXXXX~~ must be filed within 5 days after filing the complaint or an adverse party has appeared. A motion for substitution by the adverse party must be filed within 5 business days after either it has been served or its initial appearance, which ever is sooner.

(e) 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

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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.

(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 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.

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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.

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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.

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(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

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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."

{Internal References to 3-1-804:  
3-20-102}

**Section 2.** Section 3-1-805 , MCA, is amended to read:

**"3-1-805. Disqualification for cause.**

DISQUALIFICATION FOR CAUSE

This section is limited in its application to judges presiding in district courts, including those district courts supervising the distribution of water under 85-2-406 or sitting on any "water case" as defined in **XXXX**, justice of the peace courts, municipal courts, small claims courts, and city courts.

1. Whenever a party to any proceeding in any court shall file an affidavit alleging facts showing personal bias or prejudice of the presiding judge, such judge shall proceed

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no further in the cause. If the affidavit is filed against a district judge, the matter shall be referred to the Montana Supreme Court. If the affidavit is in compliance with subsections (a), (b), and (c) below, the Chief Justice shall assign a district judge to hear the matter. If the affidavit is filed against a judge of a municipal court, justice court, or city court, any district judge presiding in the district of the court involved may appoint either a justice of the peace, a municipal judge or a city court judge, to hear any such proceeding.

(a) The affidavit for disqualification must be filed more than thirty (30) days before the date set for hearing or trial.

(b) The affidavit shall be accompanied by a certificate of counsel of record that the affidavit has been made in good faith. An affidavit will be deemed not to have been made in good faith if it is based solely on rulings in the case which can be addressed in an appeal from the final judgment.

(c) Any affidavit which is not in proper form and which does not allege facts showing personal bias or prejudice may be set aside as void.



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(d) The judge appointed to preside at a disqualification proceeding may assess attorneys fees, costs and damages against any party or his attorney who files such disqualification without reasonable cause and thereby hinders, delays or takes unconscionable advantage of any other party, or the court."

{*Internal References to 3-1-805:*  
*3-10-231*}

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

**"3-7-201. Designation of water judge.** (1) A water judge must be designated for each water division by a majority vote of a committee composed of the district court judge from each single-judge judicial district and the chief district judge from each multijudge 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.

(2) A district court judge or retired district court judge may sit as a water judge in more than one division if requested by the chief justice of the supreme court or the water judge of the division in which the judge is requested to sit.

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(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.

(4) The chief judge of the water court shall certify 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."

{*Internal References to 3-7-201:*  
3-7-202 3-7-203 3-7-501}

**Section 4.** Section 3-7-212 , MCA, is amended to read:

**"3-7-212. Enforcement of decrees.** The district court having jurisdiction shall may enforce the provisions of a final decree or portion of a final decree if a petition is filed and granted pursuant to 85-5-101 et seq. In the absence of any final decree having been issued, the district court having jurisdiction may enforce the provisions of a temporary preliminary decree, preliminary decree, or supplemental preliminary decree entered under 85-2-231, or portions of such decrees if a petition is filed and granted pursuant to 85-5-101 et seq., as modified by a water judge after objections and hearings."

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{Internal References to 3-7-212: None}

**Section 5.** Section 85-2-214, MCA, is amended to read:

**"85-2-214. Commencement of action and completion of action; post completion administration, enforcement, and other judicial actions related to final decrees.** (1) The action for the adjudication of all existing water rights under Title 3, chapter 7, Title 85, chapter 2, part 7, and this part is commenced with the issuing of the order by the Montana supreme court to file a statement of a claim of an existing water right as provided in 85-2-212. For each claim, the action is considered filed in the judicial district of the county in which the diversion is made or, if there is a claimed right with no diversion, in the judicial district of the county in which the use occurs.

(2) The water judge shall monitor the claim filing procedure for claims within the judge's water division and make orders necessary to ensure timely and accurate compliance with the claim filing procedure.

(3) When the water court enters a final decree for a basin, the department shall send a copy of the final decree to the judicial district or districts of each county where the claims contained in that decree were filed as provided

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in (1). After the water court enters a final decree for a basin and after all appeals and related post-decree motions and orders pertaining to that final decree are resolved, the water courts and water judges created by Title 3, chapter 7 and Title 85, chapter 2, no longer have jurisdiction over the final decree or matters arising under it, including but not limited to actions brought for abandonment, waste or illegal enlargement of right, or under 85-2-406 or any other distribution, administration and enforcement matter.

(4) When the water court has entered a final decree for every basin, the remaining water courts, division and water judges created by Title 3, chapter 7, and Title 85, chapter 2, shall cease operation entirely within 180 days of the resolution of all appeals and related post-decree motions and orders pertaining to all final decrees.

(5) Any matters arising under a final decree after the water court enters a final decree for a basin and after all appeals and related post-decree motions and orders pertaining to that final decree are resolved, including but not limited to actions brought for abandonment, waste or illegal enlargement of right, and distribution,

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administration and enforcement actions pursuant to 85-2-406 and Title 85, chapter 5, must be filed in an appropriate judicial district court.

(6) When presiding over water cases as defined in this title, district court judges may use judges pro tempore, special masters, and standing masters as provided in Title 3, chapter 5, Part1, and the Rules of Civil and Criminal Procedure as appropriate and necessary and in accordance with the procedure provided herein.

(a) Upon the filing of any water case, the district court in which it has been filed shall within five business days of the appearance or service of the complaining party and adverse parties:

(i) determine whether venue is proper within five business days and if it is not resolve the venue question and transfer the matter immediately;

(ii) determine, with the advice of the parties, whether the matter is one calling for either expedited review and possibly emergency relief or specialized judicial assistance from either a judge pro tempore, a special master, or a standing master and:

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(iii) If expedited review and the consideration of emergency relief has been sought, schedule the matter immediately for hearing;

(iv) If the court determines specialized judicial assistance from either a judge pro tempore, a special master, or a standing master is appropriate immediately select such assistance in accordance with the procedures in Title 3, Chapter five, Part 1.

(7) After a final decree in a basin is entered, when any judicial district renders a judgment, decree, or order affecting the title to any water right, claim, appropriation, or permit, the clerk of the court shall immediately transmit to the department a certified copy of the judgment, decree, or order.

(8) A "water case" subject to the provisions 85-2-214 is: DEFINE THEM."

*{Internal References to 85-2-214: None}*

**Section 6.** Section 85-2-234, MCA, is amended to read:

**"85-2-234. Final decree.** (1) The water judge shall, on the basis of the preliminary decree and any supplemental preliminary decree, on the basis of any hearing that may

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have been held, and on final resolution of all issue remarks, as defined in 85-2-250, enter a final decree affirming or modifying the preliminary decree.

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233. However, the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree must establish the existing rights and priorities within the water judge's jurisdiction of persons who have filed a claim in accordance with 85-2-221 and 85-2-222, of persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree must establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all water rights and their relative priorities.

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(5) The final decree must state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree must state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water included in the right, as follows:

(i) by flow rate for direct flow rights, such as irrigation rights;

(ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or

(iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;



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(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the inclusive dates during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree must state:

(a) the name and mailing address of the holder of the right;

(b) the source or sources of water included in the right;

(c) the quantity of water included in the right;

(d) the date of priority of the right;

(e) the purpose for which the water included in the right is currently used, if at all;

(f) the place of use and a description of the land, if any, to which the right is appurtenant;

(g) the place and means of diversion, if any; and

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(h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702.

(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of ~~the water~~an appropriate district court judge or on the petition of any person who possesses a water right. The water judge shall order the notice of a correction proceeding that the judge determines to be appropriate to advise all persons who may be affected by the correction. An order of the ~~water~~district court judge making or denying a clerical correction is subject to appellate review."

{Internal References to 85-2-234:

85-2-141	85-2-222	85-2-231	85-20-401
85-20-601	85-20-701	85-20-801	85-20-901
85-20-1001	85-20-1101	85-20-1201	85-20-1301
85-20-1401	85-20-1501	85-20-1901}	

**Section 7.** Section 85-2-236, MCA, is amended to read:

"**85-2-236. Certificate of water right.** When a final decree for a basin is entered, the water judge shall send a copy to the department and the department shall send a copy to the judicial districts referenced in 85-2-214. Except as provided in 85-2-306, the department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the

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certificate shall be sent to the person to whom the right is decreed. The department shall keep a copy of the certificate in its office in Helena."

{*Internal References to 85-2-236:*  
*85-2-306*}

NEW SECTION. **Section 8. {standard} Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to **SOME DECRPTION ON HOW THIS APPLIES TO DECREES ENTERED BEFORE ENACTMENT.**

-END-