

SENATE BILL NO. 362

INTRODUCED BY B. HAMLETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PERMANENT DUTIES FOR THE WATER COURT;
5 CREATING THE COURT OF WATER APPEALS; PROVIDING THAT APPEALS OF CERTIFIED DISTRIBUTION
6 CONTROVERSIES MUST BE APPEALED TO THE COURT OF WATER APPEALS; PROVIDING
7 JURISDICTION FOR THE COURT OF WATER APPEALS; PROVIDING THAT THE COURT OF WATER
8 APPEALS IS A COURT OF RECORD; PROVIDING FOR SUPREME COURT SUPERVISION; REVISING
9 DUTIES OF THE CHIEF WATER COURT JUDGE; REVISING JURISDICTION OF CHIEF WATER JUDGE AND
10 ASSOCIATE WATER JUDGE; AMENDING SECTIONS 3-1-102, 3-7-204, 3-7-223, 3-7-224, 19-5-103, AND
11 85-2-406, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

14
15 NEW SECTION. **Section 1. Court of water appeals -- terms of office -- qualifications --**
16 **administrative offices -- administrative duties.** (1) There is a court of water appeals for the purpose of hearing
17 appeals of district court rulings pursuant to 85-2-406.

- 18 (2) The court of water appeals consists of the chief water judge and the associate water judge.
19 (3) The office of the court of water appeals is subject to Title 3, chapter 7, part 2.
20 (4) The Montana supreme court shall supervise and pay the expenses of the activities of the court of
21 water appeals and associated personnel.

22
23 NEW SECTION. **Section 2. Court of water appeals jurisdiction -- direct review by supreme court**
24 **-- removal of case.** (1) If taken, appeals of water distribution controversies from Montana district courts pursuant
25 to 85-2-406 must be to the court of water appeals.

26 (2) Any party to a case appealed to the court of water appeals may file a petition in the supreme court
27 for direct review by the supreme court and to bypass the review by the court of water appeals. The procedure
28 and time for filing the petition must be as provided by rules of the supreme court. In deciding whether to grant the
29 petition, the supreme court may consider whether the case:

- 30 (a) involves a question of first impression or presents a novel legal question;

- 1 (b) involves a question of state or federal constitutional interpretation;
- 2 (c) raises a question of law regarding the validity of a statute;
- 3 (d) involves issues about which there is an inconsistency in the decisions of the court of water appeals
- 4 or of the supreme court; or
- 5 (e) is of significant public interest.

6 (3) When a petition for direct review is granted, the case must be docketed for hearing before the

7 supreme court.

8 (4) The supreme court shall by rule provide for the removal of a case from the court of water appeals to

9 the supreme court at any time before a final decision has been made on the case by the court of water appeals.

10 The removal may be on the recommendation of the court of water appeals or on motion of the supreme court.

11 Cases may be removed from the court of water appeals for decision by the supreme court for any of the reasons

12 set forth in subsection (2) or in order to regulate the caseload existing in either the court of water appeals or the

13 supreme court. The chief water judge and the chief justice of the supreme court shall regularly inform each other

14 of the number and nature of cases docketed in the respective court.

15

16 **NEW SECTION. Section 3. Decision -- review by supreme court.** Within 30 days after the court of

17 water appeals has issued its decision in a case, any party to the case may petition the supreme court for further

18 review of the decision in the manner prescribed by the rules of the supreme court.

19

20 **Section 4.** Section 3-1-102, MCA, is amended to read:

21 **"3-1-102. Courts of record.** The court of impeachment, the supreme court, the district courts, the

22 workers' compensation court, the municipal courts, the justices' courts of record, the court of water appeals, and

23 the city courts of record are courts of record."

24

25 **Section 5.** Section 3-7-204, MCA, is amended to read:

26 **"3-7-204. Supervision and administration by supreme court.** (1) The Montana supreme court shall

27 supervise the activities of the water judges, water masters, and associated personnel in implementing this

28 chapter, ~~and~~ Title 85, chapter 2, part 2, and [sections 1 through 3].

29 (2) The supreme court shall pay the expenses of the water judges and the salaries and expenses of the

30 water judges' staffs and the salaries and expenses of the water masters and the water masters' staffs, from

1 appropriations made for that purpose. "Salaries and expenses" as used in this section include but are not limited
 2 to the salaries and expenses of personnel, the cost of office equipment and office space, and other necessary
 3 expenses that may be incurred in the administration of this chapter, ~~and~~ Title 85, chapter 2, part 2, and [sections
 4 1 through 3]."

5

6 **Section 6.** Section 3-7-223, MCA, is amended to read:

7 **"3-7-223. Duties of chief water judge.** The chief water judge shall:

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

9 (a) coordinating with the department of natural resources and conservation in compiling information
 10 submitted on water claim forms under Title 85, chapter 2, part 2, to ~~assure~~ ensure that the information is
 11 expeditiously and properly compiled and transferred to the water judge in each water division;

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

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

16 (2) conduct hearings in cases certified to the district court under 85-2-309;

17 (3) conduct hearings in appeals of water distribution controversies from Montana district courts pursuant
 18 to 85-2-406;

19 ~~(3)~~(4) assign court personnel to divisions and duties as needed;

20 ~~(4)~~(5) assign the associate water judge to divisions and cases as needed; and

21 ~~(5)~~(6) request and secure the transfer of water judges between divisions as needed."

22

23 **Section 7.** Section 3-7-224, MCA, is amended to read:

24 **"3-7-224. Jurisdiction of chief water judge and associate water judge.** (1) The chief water judge and
 25 the associate water judge may, at the discretion of the chief justice of the Montana supreme court, also serve as
 26 water judge for one of the water divisions.

27 (2) The chief water judge and the associate water judge have jurisdiction over cases certified to the
 28 district court under 85-2-309 and all matters relating to the determination of existing water rights within the
 29 boundaries of the state of Montana.

30 (3) The chief water judge and the associate water judge have jurisdiction over appeals of water

1 distribution controversies from Montana district courts pursuant to 85-2-406.

2 ~~(3)(4)~~ With Except as provided in subsection (3), with regard to the consideration of a matter within the
 3 chief water judge's jurisdiction, the chief water judge and the associate water judge have the same powers as
 4 a district court judge. The chief water judge and the associate water judge may issue orders, on the motion of
 5 an interested party or on the judge's own motion, that may reasonably be required to allow the judge to fulfill the
 6 judge's responsibilities, including but not limited to requiring the joinder of persons not parties to the administrative
 7 hearing being conducted by the department pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve
 8 any factual or legal issue certified pursuant to 85-2-309(2)."

9

10 **Section 8.** Section 3-7-225, MCA, is amended to read:

11 **"3-7-225. Duties of associate water judge.** The duties of the associate water judge are the same as
 12 those assigned to the chief water judge pursuant to 3-7-223(1) ~~and (2)~~ through (3)."

13

14 **Section 9.** Section 19-5-103, MCA, is amended to read:

15 **"19-5-103. Call of retired judges and justices and inactive vested members for duty.** (1) (a) If
 16 physically and mentally able, a retired judge or justice who has voluntarily retired after at least 8 years of service
 17 is subject to call for duty by the chief justice to aid and assist any district court, ~~or any water court,~~ or the court
 18 of water appeals under directions that the chief justice may give or to serve as water judge.

19 (b) When called, a retired judge's or justice's duties include the examination of the facts, cases, and
 20 authorities cited and the preparation of opinions for and on behalf of the court to which the judge or justice is
 21 called to serve. The opinions, when and if and to the extent approved by the court, may be ordered by the court
 22 to constitute the opinion of the court. The court and the retired judge or justice may, subject to any rule that the
 23 supreme court may adopt, perform any duties preliminary to the final disposition of cases that are not inconsistent
 24 with the constitution of the state.

25 (2) (a) A retired judge or justice, when called to duty, must be reimbursed for actual expenses, if any,
 26 in responding to the call.

27 (b) In addition, a retired judge or justice is entitled to receive compensation in an amount equal to:

28 (i) the daily salary then currently applicable to the judicial position in which the duty is rendered for each
 29 day of duty rendered, up to a total of 180 days in a calendar year; and

30 (ii) for each day of duty after 180 days in a calendar year, one-twentieth of the monthly salary then

1 currently applicable to the judicial position in which the duty is rendered minus an amount equal to one-twentieth
2 of the monthly retirement benefit that the retired judge or justice is receiving, if any.

3 (3) A judge or justice who is an inactive vested member, who has voluntarily discontinued service as an
4 active judge after 8 years of service, and who, by reason of age, is not eligible to receive a retirement benefit
5 under this chapter may be called for duty as provided in subsection (1). A judge or justice called to duty under
6 this subsection must be reimbursed as provided in subsection (2)(a) and compensated as provided in subsection
7 (2)(b)(i) regardless of the number of days served in a calendar year."

8

9 **Section 10.** Section 85-2-406, MCA, is amended to read:

10 **"85-2-406. District court supervision of water distribution.** (1) The district courts shall supervise the
11 distribution of water among all appropriators. This supervisory authority includes the supervision of all water
12 commissioners appointed prior or subsequent to July 1, 1973. The supervision must be governed by the principle
13 that first in time is first in right.

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

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

26 (3) A controversy between appropriators from a source that has been the subject of a final decree under
27 part 2 of this chapter must be settled by the district court. The order of the district court settling the controversy
28 may not alter the existing rights and priorities established in the final decree except to the extent the court alters
29 rights based upon abandonment, waste, or illegal enlargement or change of right. In cases involving permits
30 issued by the department, the court may not amend the respective rights established in the permits or alter any

1 terms of the permits unless the permits are inconsistent or interfere with rights and priorities established in the
2 final decree. The order settling the controversy must be appended to the final decree, and a copy must be filed
3 with the department. The department must be served with process in any proceeding under this subsection, and
4 the department may, in its discretion, intervene in the proceeding.

5 (4) A temporary preliminary decree or preliminary decree or a portion of a temporary preliminary decree
6 or preliminary decree as modified after objections and hearings is enforceable and administrable according to
7 its terms. If an action to enforce a temporary preliminary decree or preliminary decree is commenced, the water
8 judge shall upon referral from the district court establish, in a form determined to be appropriate by the water
9 judge, one or more tabulations or lists of all existing rights and their relative priorities.

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

13 (6) Any district court order made pursuant to this section may be appealed to the court of water appeals."
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15 NEW SECTION. Section 11. Notification to tribal governments. The secretary of state shall send
16 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
17 Chippewa tribe.

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19 NEW SECTION. Section 12. Codification instruction. [Sections 1 through 3] are intended to be
20 codified as an integral part of Title 3, and the provisions of Title 3 apply to [sections 1 through 3].
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22 NEW SECTION. Section 13. Effective date. [This act] is effective July 1, 2015.
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