

WATER COURT

LEGISLATOR NOTICE

The Legislative Services Division is required to offer a brief history on the subject matter of a bill draft request prior to drafting (5-4-105, MCA; [Chapter 309, Laws of 2017](#)). The history must include related legislation introduced over the last five sessions and hyperlinks to the bill, hearing information, and fiscal notes. The legislation links below open to the page showing the status and history of bills introduced on this topic in the past. The bill text and any related fiscal notes can be accessed through the link at the top of that page.

Legislation can be complex and this history is not intended to be exhaustive. Please contact the drafter of the requested bill for more information.

Background Materials and Research

Topic Summary: The 1979 Legislature created the Montana Water Court to conduct the litigation phase of water right adjudication. The Legislature had previously created the process of water right adjudication in 1973 to determine the quantity and priority date of all existing water rights in a hydrologic basin. Prior to this legislation, a person held a water right through a district court decree or by simply putting water to use. The 1973 legislation, known as the Water Use Act, required water users to file a water right claim with the state by 1982 (with exceptions).

The Department of Natural Resources and Conservation examines each claimed water right and forwards this information to the Water Court. The court then subjects each right to public notice and subsequently holds hearings on any objections to a water right. For example, a neighbor may assert that a water right claimant claims too much water, an incorrect diversion point, or wrong diversion date. After a hearings process and a settlement or court ruling, the court issues decrees for each of the state's 85 hydrologic basins. District courts use these decrees when enforcing water right priorities during times of water shortage.

The Water Court is comprised of a chief water judge, an associate water judge, and various water masters. After adjudication, state law envisions a much-smaller role for the court, including aiding district courts in a water distribution controversy and reviewing appeals of DNRC decisions on water right permit and change applications (until 2025).

Legislative Services Division Materials:

HJ14: Prospects for a future Water Court (2020)

Water Policy Interim Committee, [Water Rights in Montana](#) handbook (2018)

Water Policy Interim Committee, A Short History of the Water Court (2016)

Legislative Legal Services Office, [Constitutionality of Water Court Jurisdiction](#) (2016)

[Montana Water Court website](#)

Other Materials:

Introduced Legislation

2019:

House Bill 220--Chapter number assigned. EXTENDING THE TIME PERIOD IN WHICH IT IS REALISTIC AND FEASIBLE FOR THE WATER COURT TO ISSUE A PRELIMINARY OR TEMPORARY PRELIMINARY DECREE.

House Joint Resolution 14--(H) Filed with Secretary of State. REQUESTING AN INTERIM STUDY OF THE FUTURE OF THE MONTANA WATER COURT.

2017:

[Senate Bill 28](#) – Chapter number assigned. AN ACT GENERALLY REVISING WATER LAWS REGARDING JUDICIAL REVIEW OF WATER RIGHTS; AUTHORIZING THE WATER COURT TO REVIEW CERTAIN DECISIONS OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION RELATING TO APPLICATIONS FOR WATER RIGHT PERMITS AND CHANGES TO WATER RIGHT PERMITS; EXPANDING JURISDICTION OF THE WATER COURT; CLARIFYING DUTIES OF THE CHIEF WATER JUDGE AND ASSOCIATE WATER JUDGE.

2015:

[SB37](#) – (S) Vetoed by the governor. AN ACT PROVIDING FOR FILING OF CERTAIN WATER RIGHTS CLAIMS; CREATING A DEADLINE FOR FILING THESE CLAIMS; PROVIDING FOR A SUPPLEMENTAL PRELIMINARY DECREE; ELIMINATING CERTAIN PROCESSING FEES; AMENDING SECTIONS 3-7-212, 85-2-221, 85-2-222, 85-2-231, 85-2-232, 85-2-233, AND 85-2-234, MCA; AND REPEALING SECTION 85-2-225, MCA.

[SB57](#) – Chapter number assigned. AN ACT REVISING WATER RIGHTS ADJUDICATION LAWS; REVISING PROVISIONS OF THE WATER ADJUDICATION ACCOUNT; REVISING DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION PERFORMANCE BENCHMARKS RELATED TO WATER RIGHTS ADJUDICATION; REVISING REPORTING REQUIREMENTS RELATED TO WATER RIGHTS ADJUDICATION; AMENDING SECTIONS 17-7-102, 85-2-231, 85-2-237, 85-2-270, 85-2-271, 85-2-280, 85-2-281, AND 85-2-282, MCA; AMENDING SECTION 18, CHAPTER 288, LAWS OF 2005, AND SECTION 11, CHAPTER 319, LAWS OF 2007.

[SB362](#) – (S) Missed deadline for general bill transmittal. AN ACT PROVIDING PERMANENT DUTIES FOR THE WATER COURT; CREATING THE COURT OF WATER APPEALS; PROVIDING THAT APPEALS OF CERTIFIED DISTRIBUTION CONTROVERSIES MUST BE APPEALED TO THE COURT OF WATER APPEALS; PROVIDING JURISDICTION FOR THE COURT OF WATER APPEALS; PROVIDING THAT THE COURT OF WATER APPEALS IS A COURT OF RECORD; PROVIDING FOR SUPREME COURT SUPERVISION; REVISING DUTIES OF THE CHIEF WATER COURT JUDGE; REVISING JURISDICTION OF CHIEF WATER JUDGE AND ASSOCIATE WATER JUDGE; AMENDING SECTIONS 3-1-102, 3-7-204, 3-7-223, 3-7-224, 19-5-103, AND 85-2-406, MCA.

2013:

SJ5 – (H) Died in standing committee. A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY TO EXAMINE MONTANA'S LEGAL PROCESSES FOR WATER AND DITCH RIGHTS; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 65TH LEGISLATURE.

[SB330](#) – (S) Died in standing committee. AN ACT REQUIRING THE WATER COURT TO CONDUCT JUDICIAL REVIEW OF WATER RIGHT PERMIT OR CHANGE APPLICATIONS WHEN A PARTY SEEKS JUDICIAL REVIEW; AND AMENDING SECTIONS 2-4-702, 3-7-223, 3-7-224, 3-7-501, AND 85-2-125, MCA.

[SB355](#) – Chapter number assigned. AN ACT CREATING A PETITION PROCESS TO JUDICIALLY DETERMINE CLAIMS FOR EXISTING WATER RIGHTS THAT WERE EXEMPT FROM FILING FOR THE ADJUDICATION OF WATER RIGHTS; PROVIDING THAT WITHOUT A DETERMINATION WATER RIGHTS EXEMPT FROM FILING ARE NOT ADMINISTERED BY FIRST IN TIME, FIRST IN RIGHT; AMENDING SECTIONS 85-2-222, 85-2-233, AND 85-2-234, MCA.

2011:

[House Bill 587](#) – Chapter number assigned. AN ACT PROVIDING THE OPTION FOR AN ASSOCIATE WATER JUDGE; DEFINING THE DUTIES OF AN ASSOCIATE WATER JUDGE; GRANTING THE ASSOCIATE WATER JUDGE STATEWIDE JURISDICTION; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 3-1-1001, 3-1-1010, 3-7-221, 3-7-222, 3-7-223, 3-7-224, AND 19-5-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

2009: None.

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