SENATE BILL NO. 37

Introduced: 1/3/83

Referred to Committee on Judiciary: 1/3/83

Hearing: 1/12/83

Report: 02/04/83, Do Pass, As Amended

2nd Reading: 02/08/83 3rd Reading: 02/10/83

Transmitted to House: 2/10/83

Referred to Committee on Judiciary: 02/11/83

Hearing: 3/15/83

Report: 03/15/83, Be Concurred In, As Amended

2nd Reading: 3/21/83, Be Not Concurred In

Bill Killed.

4 5

7

9

10

11

12

13 14

15

16

17

18

19

20

21

22

23

24

25

1	SENATE BILL NO. 3/
2	INTRODUCED BY HAGER
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE
5	MONTANA WATER COURTS HAVE JURISDICTION OF WATER RIGHTS
6	ARISING BOTH SEFORE AND AFTER 1973; CLARIFYING THE
7	COMPOSITION OF WATER COURTS; PROVIDING FOR JUDICIAL REVIEW
8	OF ADMINISTRATIVE PROCEEDINGS BY THE APPROPRIATE WATER
9	DIVISION; AMENDING SECTIONS 3-7-101, 3-7-224, 3-7-501,
10	3-7-502, AND 85-2-121, MCA.*
11	
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13	Section 1. Section 3-7-101, MCA, is amended to read:
14	#3-7-101. Water divisions <u>and water courts</u> . <u>(1)</u> To
15	adjudicate existing water rights water divisions are
16	established as defined in 3-7-102. A water division shall be
17	presided over by a water judge.
18	12) The water courts are composed of water judges,
19	water masters, and other personnel directed to adjudicate
20	the waters of the state of Montana.
21	Section 2. Section 3-7-224, MCA, is amended to read:
22	"3-7-224. Jurisdiction of chief water judge. (1) The
23	chief water judge may, at the discretion of the chief
24	justice of the Montana supreme court, also serve as water
25	judge for one of the water divisions.

1 (2) The chief water judge has jurisdiction over all 2 matters relating to the determination of existing water rights within the boundaries of the state of Montana.

(3) With regard to the determination of existing water

- rights, the chief water judge has the same powers as a district judge. He may issue such orders, on the motion of an interested party or on his own motion, as may reasonably be required to allow him to fulfill his responsibilities." Section 3. 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 existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly.
- (2) No water judge may preside over matters concerning the determination and interpretation of existing water rights beyond the boundaries specified in 3-7-102 for his division except as provided in 3-7-201 and 3-7-213.
- (3) The water judge for each division shall exercise jurisdiction over all matters concerning the determination and interpretation of existing water rights within his division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division." INTRODUCED BILL

Section 4. Section 3-7-502, MCA, is amended to read:
M3-7-502. Jurisdictional disputes. Whenever a question
arises concerning which water judge shall preside over
adjudication of a matter concerning the determination and
interpretation of $\frac{1}{2}$ of $\frac{1}{2}$ water rights, the question shall
be settled by the water judges involved."

7

В

9

10 11

12

13

14

15

16

17

18

Section 5. Section 85-2-121, MCA, is amended to read:

#85-2-121. Administrative proceedings and judicial

review. The Montana Administrative Procedure Act governs

administrative proceedings conducted under parts 1 through 4

of this chapter, except that:

(11) the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a such an administrative proceeding; and

(¿) judicial review pursuant to the Montana
Administrative Procedure Act shall be exercised exclusively
by the appropriate water division of the Montana water
court.*

-End-

10 11

12

13 14

15

16 17

18

21

22

Approved by Committee on Judiciary

2	INTRODUCED BY HAGER, ETCHART, BOYLAN, STIMATZ, THOFT, NEUMAI
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT TH
5	MONTANA WATER COURTS HAVE JURISDICTION OF WATER RIGHTS
6	ARISING BOTH BEFORE AND AFTER 1973; CLARIFYING THE
7	COMPOSITION OF WATER COURTS; PROVIDING FOR JUDICIAL REVIEW
8	OF ADMINISTRATIVE PROCEEDINGS BY INC. HATER 100GE OF THE
9	APPROPRIATE WATER DIVISION; PROVIDING FOR THE LOCATION OF
.0	HEARINGS UPON JUDICIAL REVIEW: AMENDING SECTIONS 3-7-101
1	3-7-224, 3-7-501, 3-7-502, AND 85-2-121, MCA."
2	
3	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
4	Section 1. Section 3-7-101, MCA, is amended to read
5	*3-7-101. Water divisions and water courts. [1] To
16	adjudicate existing water rights water divisions are
17	established as defined in 3-7-102. A water division shall b
18	presided over by a water judge.
۱9	[2] The water courts are composed of water judges
20	water masters, and other personnel directed to adjudicat
21	the waters of the state of Montana.*
22	Section 2. Section 3-7-224, MCA, is amended to read
23	"3-7-224. Jurisdiction of chief water judge. (1) Th
24	chief water judge may, at the discretion of the chie
25	justice of the Montana supreme court, also serve as wate
	Jestine of the transferred and the transferred as many

SENATE BILL NO. 37

judge for one of the water divisions.
(2) The chief water judge has jurisdiction over all
matters relating to the determination of existing water
rights within the boundaries of the state of Montana.
(3) With regard to the determination of existing water
rights, the chief water judge has the same powers as a
district judge. He may issue such orders, on the motion of
an interested party or on his own motion, as may reasonably
be required to allow him to fulfill his responsibilities."
Section 3. 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 existing water rights is exercised
exclusively by it through the water division or water
divisions that contain the judicial district wholly or
partly.

(2) No water judge may preside over matters concerning the determination and interpretation of existing water rights beyond the boundaries specified in 3-7-102 for his division except as provided in 3-7-201 and 3-7-213.

(3) The water judge for each division shall exercise jurisdiction over all matters concerning the determination and interpretation of existing water rights within his division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly

1	within the division."
S	Section 4. Section 3-7-502, MCA, is amended to read:
3	#3-7-502. Jurisdictional disputes. Whenever a question
4	arises concerning which water judge shall preside over
5	adjudication of a matter concerning the determination and
6	interpretation of existing water rights, the question shall
7	be settled by the water judges involved.™
8	Section 5. Section 85-2-121, MCA, is amended to read:
9	#85-2-121. Administrative proceedings and judicial
10	ւջ <u>ջլնա</u> . (1) The Montana Administrative Procedure Act governs
11	administrative proceedings conducted under parts 1 through 4
12	of this chapter, except that:
13	<pre>fit(A) the common law and statutory rules of evidence</pre>
14	shall apply only upon stipulation of all parties to a such
15	an_administrative proceeding:_and
16	f21(8) judicial review pursuant to the Montana
17	Administrative_Procedure_Act_shall_be_exercised_exclusively
18	by the WAIER JUDGE DE THE appropriate water division of the
19	Montana_water_court•
20	121 ANY HEARING HELD UPON JUDICIAL REVIEW PURSUANI ID
21	THIS SECTION SHALL BE HELD IN THE COUNTY OF THE PLACE OF
22	BENEFICIAL_USE_QE_IHE_WAIER_APPLIED_EOR.**

-Ena-

25

1	SENATE BILL NO. 37
2	INTRODUCED BY HAGER, ETCHART, BOYLAN, STIMATZ, THOFT, NEUMAN
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE
5	MONTANA WATER COURTS HAVE JURISDICTION OF WATER RIGHTS
6	ARISING BOTH BEFORE AND AFTER 1973; CLARIFYING THE
7	COMPOSITION OF WATER COURTS; PROVIDING FOR JUDICIAL REVIEW
8	DF ADMINISTRATIVE PROCEEDINGS BY THE WATER JUDGE OF THE
9	APPROPRIATE WATER DIVISION; PROVIDING FOR THE LOCATION OF
10	HEARINGS UPON JUDICIAL REVIEW: AMENDING SECTIONS 3-7-101,
11	3-7-224, 3-7-501, 3-7-502, AND 85-2-121, MCA.*
12	
1.3	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14	Section 1. Section 3-7-101, MCA, is amended to read:
15	*3-7-101. Water divisions and water courts. (1) To
16	adjudicate extsting water rights water divisions are
17	established as defined in 3-7-102. A water division shall be
18	presided over by a water judge.
19	[2] The water courts are composed of water judges:
20	water_wasters:_and_other_personnel_directed_to_adjudicate
21	tbe_waters_of_tbe_state_of_Montaga.**
22	Section 2. Section 3-7-224, MCA, is amended to read:
23	"3-7-224. Jurisdiction of chief water judge. (1) The

chief water judge may, at the discretion of the chief

justice of the Montana supreme court, also serve as water

1	judge for one of the water divisions.
2	(2) The chief water judge has jurisdiction over all
3	matters relating to the determination of ex isting water
4	rights within the boundaries of the state of Montana.
5	(3) With regard to the determination of existing water
6	rights, the chief water judge has the same powers as a
7	district judge. He may issue such orders, on the motion of
8	an interested party or on his own motion, as may reasonably
9	be required to allow him to fulfill his responsibilities."
10	Section 3. Section 3-7-501, MCA, is amended to read:
11	*3-7-501. Jurisdiction. (1) The jurisdiction of each
12	judicial district concerning the determination and
13	interpretation of ex isting water rights is exercised
14	exclusively by it through the water division or water
15	divisions that contain the judicial district wholly or
16	partly.
17	(2) No water judge may preside over matters concerning
18	the determination and interpretation of extating water
19	rights beyond the boundaries specified in 3-7-102 for his
20	division except as provided in 3-7-201 and 3-7-213.

21

24

25

jurisdiction over all matters concerning the determination

and interpretation of existing water rights within his

division as specified in 3-7-102 that are considered filed

in or transferred to a judicial district wholly or partly

(3) The water judge for each division shall exercise

	WILLIA CHE MIALZIONE
2	Section 4. Section 3-7-502, MCA, is amended to read:
3	#3-7-502. Jurisdictional disputes. Whenever a question
4	arises concerning which water judge shall preside over
5	adjudication of a matter concerning the determination and
6	interpretation of existing water rights, the question shall
7	be settled by the water judges involved.**
8	Section 5. Section 85-2-121, MCA, is amended to read:
9	#85-2-121. Administrative proceedings and judicial
10	review. (1) The Montana Administrative Procedure Act governs
11	administrative proceedings conducted under parts 1 through 4
12	of this chapter, except that:
13	tit(A) the common law and statutory rules of evidence
14	shall apply only upon stipulation of all parties to e such
15	an_administrative proceeding:_and
16	\$21[Bl_judicial_review_pursuant_to_the_Montana
17	Administrative_Procedure_Act_shall_be_exercised_exclusively
18	by the WAIER JUDGE DE THE appropriate water division of the
19	Montana_water_court•
20	121 ANY MEARING HELD UPON JUDICIAL REVIEW PURSUANT IO
21	THIS SECTION SHALL BE HELD IN THE COUNTY OF THE PLACE OF
22	BENEFICIAL USE OF THE WATER APPLIED FORA

-End-

HOUSE JUDICIARY COMMITTEE

AMENDMENTS TO SENTATE BILL 37

March 15, 1983

Third Reading Copy (blue)

1. Title, line 7.
Following: "WATER"
Strike: "COURTS"
Insert: "DIVISIONS"

2. Page 1, line 15.
Following: "divisions"
Strike: "and water courts"

3. Page 1, line 19.
Following: "The water"
Strike: "courts"
Insert: "divisions"

4. Page 1, line 20. Following: "other"
Insert: "division"

Following: "personnel"

Strike: "directed" through "Montana" on line 21.

5. Page 3, line 18.
Following: "division"
Strike: "of" through "court" on line 19.

AND AS AMENDED BE CONCURRED IN