

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.

SENATE BILL NO. 37

INTRODUCED BY HAGER

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE MONTANA WATER COURTS HAVE JURISDICTION OF WATER RIGHTS ARISING BOTH BEFORE AND AFTER 1973; CLARIFYING THE COMPOSITION OF WATER COURTS; PROVIDING FOR JUDICIAL REVIEW OF ADMINISTRATIVE PROCEEDINGS BY THE APPROPRIATE WATER DIVISION; AMENDING SECTIONS 3-7-101, 3-7-224, 3-7-501, 3-7-502, AND 85-2-121, MCA."

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

Section 1. Section 3-7-101, MCA, is amended to read:

"3-7-101. Water divisions ~~and water courts.~~ (1) To adjudicate ~~existing~~ water rights water divisions are established as defined in 3-7-102. A water division shall be presided over by a water judge.

~~(2) The water courts are composed of water judges, water masters, and other personnel directed to adjudicate the waters of the state of Montana."~~

Section 2. Section 3-7-224, MCA, is amended to read:

"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 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 within the division."

INTRODUCED BILL

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

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

8       "85-2-121. Administrative proceedings and judicial  
9 review. The Montana Administrative Procedure Act governs  
10 administrative proceedings conducted under parts 1 through 4  
11 of this chapter, except that:

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

15       (2) judicial review pursuant to the Montana  
16 Administrative Procedure Act shall be exercised exclusively  
17 by the appropriate water division of the Montana water  
18 court."

-End-

Approved by Committee  
on Judiciary

## SENATE BILL NO. 37

INTRODUCED BY HAGER, ETCHART, BOYLAN, STIMATZ, THOFT, NEUMAN

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE MONTANA WATER COURTS HAVE JURISDICTION OF WATER RIGHTS ARISING BOTH BEFORE AND AFTER 1973; CLARIFYING THE COMPOSITION OF WATER COURTS; PROVIDING FOR JUDICIAL REVIEW OF ADMINISTRATIVE PROCEEDINGS BY THE WATER JUDGE OF THE APPROPRIATE WATER DIVISION; PROVIDING FOR THE LOCATION OF HEARINGS UPON JUDICIAL REVIEW; AMENDING SECTIONS 3-7-101, 3-7-224, 3-7-501, 3-7-502, AND 85-2-121, MCA."

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

Section 1. Section 3-7-101, MCA, is amended to read:

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~~(2) The water courts are composed of water judges, water masters, and other personnel directed to adjudicate the waters of the state of Montana."~~

Section 2. Section 3-7-224, MCA, is amended to read:

"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

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."

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

16 ~~§11(B)~~ judicial review pursuant to the Montana  
17 Administrative Procedure Act shall be exercised exclusively  
18 by the WATER JUDGE OF THE appropriate water division of the  
19 Montana water court.

20 (2) ANY HEARING HELD UPON JUDICIAL REVIEW PURSUANT TO  
21 THIS SECTION SHALL BE HELD IN THE COUNTY OF THE PLACE OF  
22 BENEFICIAL USE OF THE WATER APPLIED FOR."

-End-

## SENATE BILL NO. 37

INTRODUCED BY HAGER, ETCHART, BOYLAN, STIMATZ, THOFT, NEUMAN

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE MONTANA WATER COURTS HAVE JURISDICTION OF WATER RIGHTS ARISING BOTH BEFORE AND AFTER 1973; CLARIFYING THE COMPOSITION OF WATER COURTS; PROVIDING FOR JUDICIAL REVIEW OF ADMINISTRATIVE PROCEEDINGS BY THE WATER JUDGE OF THE APPROPRIATE WATER DIVISION; PROVIDING FOR THE LOCATION OF HEARINGS UPON JUDICIAL REVIEW; AMENDING SECTIONS 3-7-101, 3-7-224, 3-7-501, 3-7-502, AND 85-2-121, MCA."

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(2) The water courts are composed of water judges, water masters, and other personnel directed to adjudicate the waters of the state of Montana."

Section 2. Section 3-7-224, MCA, is amended to read:

"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

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."

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

16 ~~that~~ (B) judicial review pursuant to the Montana  
17 Administrative Procedure Act shall be exercised exclusively  
18 by the WATER JUDGE OF THE appropriate water division of the  
19 Montana water court.

20 (2) ANY HEARING HELD UPON JUDICIAL REVIEW PURSUANT TO  
21 THIS SECTION SHALL BE HELD IN THE COUNTY OF THE PLACE OF  
22 BENEFICIAL USE OF THE WATER APPLIED FOR."

-End-

HOUSE JUDICIARY COMMITTEE

AMENDMENTS TO SENATE 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