

HOUSE BILL NO. 754

INTRODUCED BY BRADLEY, IVERSON, SPAETH  
BY REQUEST OF THE WATER POLICY COMMITTEE

IN THE HOUSE

FEBRUARY 14, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 23, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 24, 1987	PRINTING REPORT.  SECOND READING, DO PASS AS AMENDED.  ON MOTION, RULES SUSPENDED TO PLACE BILL ON THIRD READING THIS DAY.  ON MOTION, CONSIDERATION PASSED FOR THE DAY.
FEBRUARY 25, 1987	ON MOTION, TAKEN FROM ENGROSSING AND REREFERRED TO COMMITTEE ON RULES.
MARCH 27, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 28, 1987	PRINTING REPORT.
MARCH 31, 1987	SECOND READING, DO PASS.
APRIL 1, 1987	ENGROSSING REPORT.  THIRD READING, PASSED. AYES, 55; NOES, 40.  TRANSMITTED TO SENATE.

IN THE SENATE

APRIL 3, 1987                   INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

APRIL 10, 1987                  COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

APRIL 14, 1987                  SECOND READING, CONCURRED IN.

ON MOTION, RULES SUSPENDED TO PLACE  
BILL ON THIRD READING THE 83RD  
LEGISLATIVE DAY.

THIRD READING, CONCURRED IN.  
AYES, 35; NOES, 15.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 16, 1987                  RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 17, 1987                  ON MOTION, TAKEN FROM THIRD READING  
AND PLACED ON SECOND READING.

APRIL 20, 1987                  SECOND READING, AMENDMENTS NOT  
CONCURRED IN.

ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 21, 1987                  ON MOTION, FREE CONFERENCE COMMITTEE  
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 23, 1987                  FREE CONFERENCE COMMITTEE REPORTED.

IN THE SENATE

APRIL 23, 1987

FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 23, 1987

SECOND READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

THIRD READING, FREE CONFERENCE  
COMMITTEE REPORT ADOPTED.

SENT TO ENROLLING.

1 House BILL NO. 754  
 2 INTRODUCED BY Bradley Jensen Smith  
 3 BY REQUEST OF THE WATER POLICY COMMITTEE  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE WATER  
 6 JUDGE APPOINTMENT PROCESS TO EXPAND THE POPULATION OF  
 7 ELIGIBLE CANDIDATES AND TO INCLUDE A JUDICIAL NOMINATION  
 8 COMMISSION PROCESS; PROVIDING FOR ADJUDICATION BY PRIORITY  
 9 BASINS; AUTHORIZING AN APPROPRIATION FOR RANDOM SAMPLING AND  
 10 ANALYSIS OF CLAIMS WITHIN DECREES ISSUED BY THE WATER  
 11 COURTS; AMENDING SECTIONS 3-1-1001, 3-1-1006, 3-1-1008,  
 12 3-1-1010, 3-1-1011, 3-7-201, 3-7-213, 3-7-221, AND 85-2-701,  
 13 MCA; AND PROVIDING AN EFFECTIVE DATE."  
 14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 16 Section 1. Section 3-1-1001, MCA, is amended to read:  
 17 "3-1-1001. Creation, composition, and function of  
 18 commission. (1) A judicial nomination commission for the  
 19 state is created. Its function is to provide the governor  
 20 with a list of candidates for appointment to fill any  
 21 vacancy on the supreme court or any district court and to  
 22 provide the chief justice of the supreme court with a list  
 23 of candidates for appointment to fill any term or vacancy  
 24 for the chief water judge or a water judge pursuant to  
 25 3-7-201 and 3-7-221. The commission shall be composed of

1 seven members as follows:  
 2 (a) four lay members who are neither judges nor  
 3 attorneys, active or retired, who reside in different  
 4 geographical areas of the state, and each of whom is  
 5 representative of a different industry, business, or  
 6 profession, whether actively so engaged or retired, who  
 7 shall be appointed by the governor;  
 8 (b) two attorneys actively engaged in the practice of  
 9 law, one from each congressional district, who shall be  
 10 appointed by the supreme court;  
 11 (c) one district judge elected by the district judges  
 12 under an elective procedure initiated and conducted by the  
 13 supreme court and certified to such election by the chief  
 14 justice of the supreme court. The election shall be  
 15 considered an appointment for the purposes of this part.  
 16 (2) Appointments provided for in this section shall be  
 17 made within 30 days of the completion of the preceding  
 18 terms."  
 19 Section 2. Section 3-1-1006, MCA, is amended to read:  
 20 "3-1-1006. Secretary -- election and duties. (1) The  
 21 commission shall elect one of its members to serve as the  
 22 secretary and upon such election shall notify the governor  
 23 of the name and mailing address of such person.  
 24 (2) The secretary shall keep a record of all  
 25 proceedings by the commission and act as corresponding



1 secretary with the governor's office and with the office of  
2 the chief justice of the supreme court."

3 Section 3. Section 3-1-1008, MCA, is amended to read:

4 "3-1-1008. Quorum. Four members of the commission  
5 shall constitute a quorum for the transaction of business.  
6 To submit a name to the governor or to the chief justice of  
7 the supreme court, there must be a concurrence of at least  
8 four members."

9 Section 4. Section 3-1-1010, MCA, is amended to read:

10 "3-1-1010. ~~list~~ Lists submitted to governor and chief  
11 justice -- report on proceedings. (1) The commission shall  
12 meet forthwith after a vacancy occurs on the supreme court  
13 or district court and submit to the governor within 30 days  
14 from the date of the vacancy a list of not less than three  
15 or more than five nominees for appointment.

16 (2) The commission shall meet to prepare and submit to  
17 the chief justice of the supreme court a list of not less  
18 than three or more than five nominees for appointment to  
19 fill any term or vacancy for the chief water judge or a  
20 water judge. The list must be submitted at least 30 days  
21 prior to a new term or within 30 days from the date of a  
22 vacancy.

23 (3) ~~The~~ Any list must be accompanied by a written  
24 report ~~to the governor~~ indicating the vote on each nominee,  
25 the content of the application submitted by each nominee,

1 and the commission's reasons for recommending each nominee  
2 for appointment."

3 Section 5. Section 3-1-1011, MCA, is amended to read:

4 "3-1-1011. Governor or chief justice of the supreme  
5 court to appoint from list. The governor, or the chief  
6 justice of the supreme court for offices described in  
7 3-7-201 or 3-7-221, must make an appointment from the list  
8 of nominees submitted by the commission."

9 Section 6. Section 3-7-201, MCA, is amended to read:

10 "3-7-201. Designation of water judge. (1) A water  
11 judge shall be designated within 30 days after May 11, 1979,  
12 for each water division ~~by a majority vote of a committee~~  
13 ~~composed of the district judge from each single judge~~  
14 ~~judicial district and the chief district judge from each~~  
15 ~~multiple judge judicial district, wholly or partly within~~  
16 ~~the division. Except as provided in subsection (2) and~~  
17 ~~3-7-213, a water judge must be a district judge or retired~~  
18 ~~district judge of a judicial district wholly or partly~~  
19 ~~within the water division. A water judge shall have the~~  
20 ~~qualifications for district court or supreme court judges~~  
21 ~~found in Article VII, section 9, of the Montana~~  
22 ~~constitution.~~

23 (2) The chief justice of the supreme court shall  
24 appoint a water judge as provided in Title 3, chapter 1,  
25 part 10.

1       ~~(2)(3)~~ A ~~district-judge-or-retired-district-judge--may~~  
 2 ~~sit--as--a~~ water judge may sit in more than one division if  
 3 requested by the chief justice of the supreme court, the  
 4 chief water judge, or the water judge of the division in  
 5 which he is requested to sit.

6       ~~(3)(4)~~ A water judge, when presiding over a water  
 7 division, presides as district judge in and for each  
 8 judicial district wholly or partly within the water  
 9 division."

10       Section 7. Section 3-7-213, MCA, is amended to read:

11       "3-7-213. Designation of alternate judge. The water  
 12 judge may designate ~~any--other--district-judge-or-retired~~  
 13 ~~district-judge~~ a district judge, retired district judge, or  
 14 another water judge to preside in his absence on his behalf  
 15 as water judge for the immediate enforcement of an existing  
 16 decree or the immediate granting of extraordinary relief as  
 17 may be provided for by law upon an allegation of irreparable  
 18 harm."

19       Section 8. Section 3-7-221, MCA, is amended to read:

20       "3-7-221. Appointment of chief water judge -- term of  
 21 office. (1) The chief justice of the Montana supreme court  
 22 shall appoint a chief water judge ~~from-among-the-district~~  
 23 ~~judges-serving-or-retired-as-of-the-time-of--appointment~~ as  
 24 provided in Title 3, chapter 1, part 10.

25       (2) To be eligible for the office of chief water

1       judge, a person shall have the qualifications for district  
 2 court or supreme court judges found in Article VII, section  
 3 9, of the Montana constitution.

4       ~~(2)(3)~~ The term of office of the chief water judge is  
 5 from the date of initial appointment until June 30, 1985.  
 6 After June 30, 1985, the term of office is 4 years, subject  
 7 to continuation of the water divisions by the legislature."

8       Section 9. Section 85-2-701, MCA, is amended to read:

9       "85-2-701. Legislative intent. (1) Because the water  
 10 and water rights within each water division are  
 11 interrelated, it is the intent of the legislature to conduct  
 12 unified proceedings for the general adjudication of existing  
 13 water rights under the Montana Water Use Act. Therefore, it  
 14 is the intent of the legislature that the attorney general's  
 15 petition required in 85-2-211 include all claimants of  
 16 reserved Indian water rights as necessary and indispensable  
 17 parties under authority granted the state by 43 U.S.C. 666.  
 18 However, it is further intended that the state of Montana  
 19 proceed under the provisions of this part in an effort to  
 20 conclude compacts for the equitable division and  
 21 apportionment of waters between the state and its people and  
 22 the several Indian tribes claiming reserved water rights  
 23 within the state.

24       (2) To the maximum extent possible, the reserved water  
 25 rights compact commission established under 2-15-212 should

1 make the negotiation of water rights claimed by the federal  
 2 government or Indian tribes in or affecting the basins  
 3 identified by [section 10] its highest priority."

4 NEW SECTION. Section 10. Process and criteria for  
 5 designating priority basins or subbasins. (1) The water  
 6 judges and the department, in performing their functions in  
 7 the adjudication process, shall give priority to basins or  
 8 subbasins designated each biennium by the legislature.  
 9 Basins or subbasins must be designated according to the  
 10 following criteria:

11 (a) recurring water shortages within the basin or  
 12 subbasin have resulted in urgent water rights controversies  
 13 that require adjudication to determine relative rights;

14 (b) federal or Indian reserved rights are nearing  
 15 determination, either by compact or adjudication, thus  
 16 making adjudication of other rights in the basin or subbasin  
 17 important for timely issuance of preliminary or final  
 18 decrees;

19 (c) the basin or subbasin's location would help ensure  
 20 efficient use of department and water court resources; and

21 (d) the adjudication process in the basin or subbasin  
 22 is nearing the issuance of a decree.

23 (2) The water judge may designate a basin for priority  
 24 adjudication upon petition of 100 or more persons who have  
 25 filed claims within the basin, or he may designate a

1 subbasin for priority adjudication upon petition of a  
 2 majority of persons who have filed claims within the  
 3 subbasin. The basin or subbasin shall receive priority,  
 4 however, only if it meets one or more of the criteria in  
 5 subsection (1).

6 (3) If adjudication work in one or more of the  
 7 priority basins or subbasins has been completed or has been  
 8 suspended for good cause, the water judge may select other  
 9 basins or subbasins for priority adjudication, based on the  
 10 criteria in subsection (1).

11 NEW SECTION. Section 11. Appropriation for sample of  
 12 claims within decrees. (1) There is appropriated to the  
 13 environmental quality council for use by the water policy  
 14 committee \$92,000 from the water development state special  
 15 revenue fund for the biennium ending June 30, 1989, to  
 16 undertake a random sampling and analysis for accuracy and  
 17 consistency of claims in basins that have undergone  
 18 adjudication efforts and for which a temporary preliminary,  
 19 preliminary, or final decree has been issued. The analysis  
 20 must be based on the requirements for final decrees provided  
 21 in 85-2-234.

22 (2) The office of the legislative auditor shall assist  
 23 the water policy committee in conducting the random sampling  
 24 and analysis. The water policy committee may contract with a  
 25 qualified consultant to conduct the random sampling and

1 analysis. The analysis must be completed by June 30, 1988,  
 2 and water policy committee recommendations resulting from  
 3 the analysis must be submitted to the legislature by January  
 4 1, 1989.

5 (3) In devising the random sampling and analysis, the  
 6 water policy committee shall consult with the department of  
 7 natural resources and conservation and with the Montana  
 8 water courts.

9 (4) All claimants whose claims are randomly selected  
 10 for the sampling and analysis shall assist the water policy  
 11 committee and its consultant in reviewing claims for  
 12 accuracy and consistency. Assistance provided by a claimant  
 13 may not involve financial cost to the claimant.

14 (5) The water policy committee and its consultant may  
 15 enter the property of a claimant to conduct field  
 16 investigations upon providing written notice to the claimant  
 17 at least 14 days in advance of the investigation.

18 (6) Information derived from the random sampling and  
 19 analysis that is specific to an individual claimant must be  
 20 kept confidential and may not prejudice the final  
 21 adjudication of that claimant's water rights. However,  
 22 information derived from the random sampling and analysis  
 23 may be described in general terms and is public information.

24 NEW SECTION. Section 12. Extension of authority. Any  
 25 existing authority of the judicial nomination commission and

1 the board of natural resources and conservation to make  
 2 rules on the subject of the provisions of this act is  
 3 extended to the provisions of this act.

4 NEW SECTION. Section 13. Codification instruction.  
 5 Section 10 is intended to be codified as an integral part of  
 6 Title 85, chapter 2, part 2, and the provisions of Title 85,  
 7 chapter 2, part 2, apply to section 10.

8 NEW SECTION. Section 14. Effective date. This act is  
 9 effective July 1, 1987.

-End-



STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB754, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This act would change the Water Judge appointment process to expand the population of eligible candidates and to include a judicial nomination commission process; providing for adjudication by priority basins; authorizing an appropriation for random sampling and analysis of claims within decrees issued by the Water Courts.

ASSUMPTIONS:

1. The effective date would be July 1, 1987.
2. The bill would appropriate \$92,000 to the Environmental Quality Council from the water development state special revenue fund for the biennium.
3. Department of Natural Resources and Conservation (DNRC) would not change its type or schedule adjudication functions; but would change its application to basins with legislatively prioritized designation.
4. There will be no transfer of DNRC office staff or resources.
5. Re-examination of claims within basins under temporary preliminary or preliminary decree will be performed as currently scheduled.
6. Consultation with the DNRC by the Water Policy Committee and/or the contracted consultant will not require extensive research, training or report preparation by the DNRC.
7. No appropriated funds for the DNRC are expected to be used to assist with the random sampling and analysis to determine accuracy and consistency of decrees.
8. No contracting for services to satisfy the purpose of this legislation will be conducted by the DNRC.
9. The DNRC will be reimbursed by the contracted consultant for copies of decrees, indexes and other materials used in their random sampling and analysis.
10. The Montana Reserved Water Rights Compact Commission (RWRCC) will not change the nature or scope of technical and legal analysis required for negotiation of federal reserved water rights claims; however, the RWRCC will focus negotiations on prioritized basins; in accordance with this bill.
11. Utilizing a sample selected during FY88, the Office of the Legislative Auditor would: 1) calculate the sample size; 2) extract the random sample; 3) assist in evaluating the results of the testing; 4) would not be involved in testing the sample; 5) would bill the EQC for costs incurred (estimated cost 407, in the first year); and 6) would deposit the revenue in the Legislative Audit special revenue fund.
12. It is assumed that the terms of all the judges currently serving will not expire in FY88-89 and that none of the current judges will retire during FY88-89.

David L. Hunter DATE 2/20/87

DAVID L. HUNTER, BUDGET DIRECTOR  
Office of Budget and Program Planning

Bradley DATE \_\_\_\_\_  
DOROTHY BRADLEY, PRIMARY SPONSOR

Fiscal Note for HB754, as introduced.

**HB 754**

Fiscal Note Request, HB754, as introduced.

Form BD-15

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FISCAL IMPACT:

Expenditures:

	<u>Current Law</u>	<u>FY88 Proposed Law</u>	<u>Difference</u>
Personal Services	\$ 0		
Operating	0	\$ 92,000*	\$ 92,000
Grants	\$ 500,000	<del>408,000</del>	( 92,000)
TOTAL	\$ 500,000	\$500,000	\$ 0

Funding:

Water Development			
State Special	\$ 500,000	\$500,000	\$ 0

\*Biennial appropriation in the first year.

If a judgeship is filled by other than a current sitting judge there will be a fiscal impact.

HB 754

RE-REFERRED AND  
APPROVED BY COMMITTEE  
ON RULES AS AMENDED

STATEMENT OF INTENT

HOUSE BILL 754

A statement of intent is provided for this bill because the legislature desires to indicate to the Montana water courts and the department of natural resources and conservation the basins that should receive priority adjudication efforts.

The legislature finds and determines the basins described in I through IX below to be priority basins. The basins are selected according to the criteria in section 10 of this bill and the priority provided for the Milk River basin in 85-2-321. They are listed by the department's field office GEOGRAPHICAL areas because it is assumed priority basins are needed in each area to ensure efficient use of water court and department staff. The legislature recognizes that deviations from the order of priority provided may be necessary to ensure efficiency in the adjudication process, THAT THE WATER JUDGE MAY VARY EFFORTS FROM AREA TO AREA BASED ON AVAILABLE RESOURCES, and that additional priority basins may be added upon petition to and determination by the water judge.

I. Basins in the Billings field-office area:

Yellowstone River from Bridger Creek to the Clark's Fork of the Yellowstone River (43QJ)

Yellowstone River above and including Bridger Creek (43B)  
Sweet Grass Creek (43BV)  
Stillwater River (43C)  
Boulder River tributary of Yellowstone River (43BJ)  
Clark's Fork of the Yellowstone River (43D)  
Yellowstone River between the Clark's Fork of the Yellowstone River and the Bighorn River (43Q)

II. Basins in the Bozeman field-office area:

Madison River (41F)  
Gallatin River (41H)  
Shields River (43A)  
Ruby River (41C)  
Beaverhead River (41B)  
Red Rock River (41A)  
Big Hole River (41D)

III. Basins in the Glasgow field-office area:

Rock Creek tributary of the Milk River (40N)  
Frenchman Creek (40L)  
Milk River below Whitewater Creek including Porcupine Creek (40O)  
Beaver Creek tributary of the Milk River (40M)  
Whitewater Creek (40K)  
Dry Creek (40D)  
Missouri River between the Musselshell River and Fort



1 Peck Dam (40E)  
 2 IV. Basins in the Havre field-office area:  
 3 Sage Creek (40G)  
 4 Milk River between Fresno Reservoir and Whitewater  
 5 Creek (40J)  
 6 Peoples Creek (40I)  
 7 Willow Creek (41N)  
 8 Teton River (41O)  
 9 Sun River (41K)  
 10 V. Basins in the Helena field-office area:  
 11 Dearborn River (41U)  
 12 Clark Fork above the Blackfoot River (76G)  
 13 Boulder River tributary of the Jefferson River (41E)  
 14 Jefferson River (41G)  
 15 Missouri River above Holter Dam (41I)  
 16 VI. Basins in the Kalispell field-office area:  
 17 Milk River above Fresno Reservoir (40F)  
 18 Big Sandy Creek (40H)  
 19 Yaak River (76B)  
 20 Fisher River (76C)  
 21 Kootenai River (76D)  
 22 Clark Fork below Flathead Lake (76N)  
 23 South Fork of the Flathead River (76J)  
 24 Middle Fork of the Flathead River (76I)  
 25 Swan River (76K)

1 Flathead River above Flathead Lake (76LJ)  
 2 VII. Basins in the Lewistown field-office area:  
 3 Milk River between Fresno Reservoir and Whitewater  
 4 Creek (40J)  
 5 Judith River (41S)  
 6 Musselshell River above Roundup (40A)  
 7 Musselshell River below Roundup (40C)  
 8 Flatwillow Creek including Box Elder Creek (40B)  
 9 VIII. Basins in the Miles City field-office area:  
 10 Beaver Creek tributary of the Little Missouri River  
 11 (39G)  
 12 Yellowstone River between the Tongue River and the  
 13 Powder River (42K)  
 14 Little Missouri River above Little Beaver Creek (39F)  
 15 Rosebud Creek (42A)  
 16 Little Beaver Creek (39FJ)  
 17 Box Elder Creek (39E)  
 18 Yellowstone River below Powder River (42M)  
 19 IX. Basins in the Missoula field-office area:  
 20 Rock Creek tributary of the Clark Fork River (76E)  
 21 Flint Creek (76GJ)  
 22 Clark Fork between the Blackfoot River and the Flathead  
 23 River (76M)  
 24 Bitterroot River (76H)  
 25 Blackfoot River (76F)

RE-REFERRED AND  
APPROVED BY COMMITTEE  
ON RULES AS AMENDED

STATEMENT OF INTENT

HOUSE BILL 754

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The legislature finds and determines the basins described in I through IX below to be priority basins. The basins are selected according to the criteria in section 10 of this bill and the priority provided for the Milk River basin in 85-2-321. They are listed by the department's field office GEOGRAPHICAL areas because it is assumed priority basins are needed in each area to ensure efficient use of water court and department staff. The legislature recognizes that deviations from the order of priority provided may be necessary to ensure efficiency in the adjudication process, THAT THE WATER JUDGE MAY VARY EFFORTS FROM AREA TO AREA BASED ON AVAILABLE RESOURCES, and that additional priority basins may be added upon petition to and determination by the water judge.

- I. Basins in the Billings field-office area:  
Yellowstone River from Bridger Creek to the Clark's Fork of the Yellowstone River (43QJ)

- Yellowstone River above and including Bridger Creek (43B)
- Sweet Grass Creek (43BV)
- Stillwater River (43C)
- Boulder River tributary of Yellowstone River (43BJ)
- Clark's Fork of the Yellowstone River (43D)
- Yellowstone River between the Clark's Fork of the Yellowstone River and the Bighorn River (43Q)
- II. Basins in the Bozeman field-office area:  
Madison River (41F)
- Gallatin River (41H)
- Shields River (43A)
- Ruby River (41C)
- Beaverhead River (41B)
- Red Rock River (41A)
- Big Hole River (41D)
- III. Basins in the Glasgow field-office area:  
Rock Creek tributary of the Milk River (40N)
- Frenchman Creek (40L)
- Milk River below Whitewater Creek including Porcupine Creek (40O)
- Beaver Creek tributary of the Milk River (40M)
- Whitewater Creek (40K)
- Dry Creek (40D)
- Missouri River between the Musselshell River and Fort



SECOND READING  
SECOND PRINTING  
HB-754

1 Peck Dam (40E)

2 IV. Basins in the Havre field-office area:

3 Sage Creek (40G)

4 Milk River between Fresno Reservoir and Whitewater

5 Creek (40J)

6 Peoples Creek (40I)

7 Willow Creek (41N)

8 Teton River (41O)

9 Sun River (41K)

10 V. Basins in the Helena field-office area:

11 Dearborn River (41U)

12 Clark Fork above the Blackfoot River (76G)

13 Boulder River tributary of the Jefferson River (41E)

14 Jefferson River (41G)

15 Missouri River above Holter Dam (41I)

16 VI. Basins in the Kalispell field-office area:

17 Milk River above Fresno Reservoir (40F)

18 Big Sandy Creek (40H)

19 Yaak River (76B)

20 Fisher River (76C)

21 Kootenai River (76D)

22 Clark Fork below Flathead Lake (76N)

23 South Fork of the Flathead River (76J)

24 Middle Fork of the Flathead River (76I)

25 Swan River (76K)

1 Flathead River above Flathead Lake (76LJ)

2 VII. Basins in the Lewistown field-office area:

3 Milk River between Fresno Reservoir and Whitewater

4 Creek (40J)

5 Judith River (41S)

6 Musselshell River above Roundup (40A)

7 Musselshell River below Roundup (40C)

8 Flatwillow Creek including Box Elder Creek (40B)

9 VIII. Basins in the Miles City field-office area:

10 Beaver Creek tributary of the Little Missouri River

11 (39G)

12 Yellowstone River between the Tongue River and the

13 Powder River (42K)

14 Little Missouri River above Little Beaver Creek (39F)

15 Rosebud Creek (42A)

16 Little Beaver Creek (39FJ)

17 Box Elder Creek (39E)

18 Yellowstone River below Powder River (42M)

19 IX. Basins in the Missoula field-office area:

20 Rock Creek tributary of the Clark Fork River (76E)

21 Flint Creek (76GJ)

22 Clark Fork between the Blackfoot River and the Flathead

23 River (76M)

24 Bitterroot River (76H)

25 Blackfoot River (76F)

## 1 HOUSE BILL NO. 754

2 INTRODUCED BY BRADLEY, IVERSON, SPAETH

3 BY REQUEST OF THE WATER POLICY COMMITTEE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE CHIEF  
6 WATER JUDGE APPOINTMENT PROCESS TO EXPAND THE POPULATION OF  
7 ELIGIBLE CANDIDATES AND TO INCLUDE A JUDICIAL NOMINATION  
8 COMMISSION PROCESS; PROVIDING FOR ADJUDICATION BY PRIORITY  
9 BASINS; ~~AUTHORISING AN APPROPRIATION FOR RANDOM SAMPLING AND~~  
10 ~~ANALYSIS OF CLAIMS WITHIN DECREEES ISSUED BY THE WATER COURTS~~  
11 ~~APPROPRIATING MONEY FOR JUDICIAL NOMINATION COMMISSION~~  
12 ~~EXPENSES RELATING TO WATER COURT APPOINTMENTS; CLARIFYING~~  
13 ~~PAYMENT OF EXPENDITURES FOR DEPARTMENT ASSISTANCE TO WATER~~  
14 ~~JUDGES; ; AMENDING SECTIONS 3-1-1001, 3-1-1006, 3-1-1008,~~  
15 ~~3-1-1010, 3-1-1011, 3-7-201, 3-7-213, 3-7-221, 85-2-243, AND~~  
16 ~~85-2-701, MCA; REPEALING SECTION 85-2-242, MCA; AND~~  
17 ~~PROVIDING AN EFFECTIVE DATE."~~

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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1 provide the chief justice of the supreme court with a list  
2 of candidates for appointment to fill any term or vacancy  
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4 3-7-201 and 3-7-221. The commission shall be composed of  
5 seven members as follows:

6 (a) four lay members who are neither judges nor  
7 attorneys, active or retired, who reside in different  
8 geographical areas of the state, and each of whom is  
9 representative of a different industry, business, or  
10 profession, whether actively so engaged or retired, who  
11 shall be appointed by the governor;

12 (b) two attorneys actively engaged in the practice of  
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14 appointed by the supreme court;

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21 made within 30 days of the completion of the preceding  
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13 ~~Section-6--Section--3-7-201--MCA--is-amended-to-read--~~  
14 ~~"3-7-201--Designation-of-water--judge--(1)--A--water~~  
15 ~~judge--shall--be--designated--within--30--days--after--May--11--1979~~  
16 ~~for--each--water--division--by--a--majority--vote--of--a--committee~~  
17 ~~composed--of--the--district--judge--from--each--single--judge~~  
18 ~~judicial--district--and--the--chief--district--judge--from--each~~  
19 ~~multiple--judge--judicial--district--wholly--or--partly--within~~  
20 ~~the--division--Except--as--provided--in--subsection--(2)--and~~  
21 ~~3-7-213--a--water--judge--must--be--a--district--judge--or--retired~~  
22 ~~district--judge--of--a--judicial--district--wholly--or--partly~~  
23 ~~within--the--water--division--A--water--judge--shall--have--the~~  
24 ~~qualifications--for--district--court--or--supreme--court--judges~~  
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1 constitution:

2 (2) The chief justice of the supreme court shall  
3 appoint a water judge as provided in Title 3, chapter 1,  
4 part 10.

5 (3) A district judge or retired district judge may  
6 sit as a water judge may sit in more than one division if  
7 requested by the chief justice of the supreme court, the  
8 chief water judge, or the water judge of the division in  
9 which he is requested to sit.

10 (4) A water judge, when presiding over a water  
11 division, presides as district judge in and for each  
12 judicial district wholly or partly within the water  
13 division."

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8 (3) The term of office of the chief water judge is  
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10 After June 30, 1985, the term of office is 4 years, subject  
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13 "85-2-243. Department assistance to water judges.

14 (1) The department, subject to the direction of the water  
15 judge, shall, without cost to the judicial districts, wholly  
16 or partly within his water division:

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18 be required by the water judge to adjudicate claims of  
19 existing rights;

20 (b) establish information and assistance programs  
21 to aid claimants in the filing of claims for existing rights  
22 required by 85-2-221;

23 (c) conduct field investigations of claims that the  
24 water judge in consultation with the department determines  
25 warrant investigation; and

1        ~~4~~(d) provide the water judge with all information in  
 2 its possession bearing upon existing rights, including all  
 3 declarations filed with and all information gathered by the  
 4 department with respect to existing rights in the Powder  
 5 River Basin.

6        (2) Department assistance to a water judge must be  
 7 without cost to the judicial districts wholly or partly  
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 9 the department under subsection (1) must be paid from the  
 10 money appropriated by the legislature for the expenses of  
 11 the chief water judge under 3-7-222 except to the extent a  
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 18 unified proceedings for the general adjudication of existing  
 19 water rights under the Montana Water Use Act. Therefore, it  
 20 is the intent of the legislature that the attorney general's  
 21 petition required in 85-2-211 include all claimants of  
 22 reserved Indian water rights as necessary and indispensable  
 23 parties under authority granted the state by 43 U.S.C. 666.  
 24 However, it is further intended that the state of Montana  
 25 proceed under the provisions of this part in an effort to

1 conclude compacts for the equitable division and  
 2 apportionment of waters between the state and its people and  
 3 the several Indian tribes claiming reserved water rights  
 4 within the state.

5        (2) To the maximum extent possible, the reserved water  
 6 rights compact commission established under 2-15-212 should  
 7 make the negotiation of water rights claimed by the federal  
 8 government or Indian tribes in or affecting the basins  
 9 identified by [section 10] its highest priority."

10        NEW SECTION. Section 10. Process and criteria for  
 11 designating priority basins or subbasins. (1) The water  
 12 judges and the department, in performing their functions in  
 13 the adjudication process, shall give priority to basins or  
 14 subbasins designated each biennium by the legislature.  
 15 Basins or subbasins must be designated according to the  
 16 following criteria:

17        (a) recurring water shortages within the basin or  
 18 subbasin have resulted in urgent water rights controversies  
 19 that require adjudication to determine relative rights;

20        (b) federal or Indian reserved rights are nearing  
 21 determination, either by compact or adjudication, thus  
 22 making adjudication of other rights in the basin or subbasin  
 23 important for timely issuance of preliminary or final  
 24 decrees;

25        (c) the basin or subbasin's location would help ensure

1 efficient use of department and water court resources; and  
 2 (d) the adjudication process in the basin or subbasin  
 3 is nearing the issuance of a decree.

4 (2) The water judge may designate a basin for priority  
 5 adjudication upon petition of 100 or more persons who have  
 6 filed claims within the basin, or he may designate a  
 7 subbasin for priority adjudication upon petition of a  
 8 majority of persons who have filed claims within the  
 9 subbasin. The basin or subbasin shall receive priority,  
 10 however, only if it meets one or more of the criteria in  
 11 subsection (1).

12 (3) If adjudication work in one or more of the  
 13 priority basins or subbasins has been completed or has been  
 14 suspended for good cause, the water judge may select other  
 15 basins or subbasins for priority adjudication, based on the  
 16 criteria in subsection (1).

17 ~~NEW SECTION. Section 11. Appropriation for sample of~~  
 18 ~~claims within decrees. (1) There is appropriated to the~~  
 19 ~~environmental quality council for use by the water policy~~  
 20 ~~committee \$92,000 from the water development state special~~  
 21 ~~revenue fund for the biennium ending June 30, 1989, to~~  
 22 ~~undertake a random sampling and analysis for accuracy and~~  
 23 ~~consistency of claims in basins that have undergone~~  
 24 ~~adjudication efforts and for which a temporary preliminary,~~  
 25 ~~preliminary, or final decree has been issued. The analysis~~

1 ~~must be based on the requirements for final decrees provided~~  
 2 ~~in 85-2-234.~~

3 ~~(2) The office of the legislative auditor shall assist~~  
 4 ~~the water policy committee in conducting the random sampling~~  
 5 ~~and analysis. The water policy committee may contract with a~~  
 6 ~~qualified consultant to conduct the random sampling and~~  
 7 ~~analysis. The analysis must be completed by June 30, 1989,~~  
 8 ~~and water policy committee recommendations resulting from~~  
 9 ~~the analysis must be submitted to the legislature by January~~  
 10 ~~17, 1989.~~

11 ~~(3) In devising the random sampling and analysis, the~~  
 12 ~~water policy committee shall consult with the department of~~  
 13 ~~natural resources and conservation and with the Montana~~  
 14 ~~water courts.~~

15 ~~(4) All claimants whose claims are randomly selected~~  
 16 ~~for the sampling and analysis shall assist the water policy~~  
 17 ~~committee and its consultant in reviewing claims for~~  
 18 ~~accuracy and consistency. Assistance provided by a claimant~~  
 19 ~~may not involve financial cost to the claimant.~~

20 ~~(5) The water policy committee and its consultant may~~  
 21 ~~enter the property of a claimant to conduct field~~  
 22 ~~investigations upon providing written notice to the claimant~~  
 23 ~~at least 14 days in advance of the investigation.~~

24 ~~(6) Information derived from the random sampling and~~  
 25 ~~analysis that is specific to an individual claimant must be~~

1 kept---confidential---and---may---not---prejudice--the--final  
2 adjudication-of--that--claimant's--water--rights:---However,  
3 information--derived--from--the--random--sampling--and--analysis  
4 may-be-described-in-general-terms-and-is-public-information:

5 NEW SECTION. SECTION 11. APPROPRIATION. THERE IS  
6 APPROPRIATED \$1,200 TO THE MONTANA SUPREME COURT FOR  
7 EXPENSES OF THE JUDICIAL NOMINATION COMMISSION IN PERFORMING  
8 FUNCTIONS RELATING TO WATER COURT APPOINTMENTS.

9 NEW SECTION. SECTION 12. REPEALER. SECTION 85-2-242,  
10 MCA, IS REPEALED.

11 NEW SECTION. Section 13. Extension of authority. Any  
12 existing authority of the judicial nomination commission and  
13 the--board--of--natural--resources--and--conservation to make  
14 rules on the subject of the provisions of this act is  
15 extended to the provisions of this act.

16 NEW SECTION. Section 14. Codification instruction.  
17 Section 10 is intended to be codified as an integral part of  
18 Title 85, chapter 2, part 2, and the provisions of Title 85,  
19 chapter 2, part 2, apply to section 10.

20 NEW SECTION. Section 15. Effective date. This act is  
21 effective July 1, 1987.

-End-

## 1 STATEMENT OF INTENT

## 2 HOUSE BILL 754

3  
4 A statement of intent is provided for this bill because  
5 the legislature desires to indicate to the Montana water  
6 courts and the department of natural resources and  
7 conservation the basins that should receive priority  
8 adjudication efforts.

9 The legislature finds and determines the basins  
10 described in I through IX below to be priority basins. The  
11 basins are selected according to the criteria in section 10  
12 of this bill and the priority provided for the Milk River  
13 basin in 85-2-321. They are listed by the department's field  
14 office GEOGRAPHICAL areas because it is assumed priority  
15 basins are needed in each area to ensure efficient use of  
16 water court and department staff. The legislature recognizes  
17 that deviations from the order of priority provided may be  
18 necessary to ensure efficiency in the adjudication process,  
19 THAT THE WATER JUDGE MAY VARY EFFORTS FROM AREA TO AREA  
20 BASED ON AVAILABLE RESOURCES, and that additional priority  
21 basins may be added upon petition to and determination by  
22 the water judge.

## 23 I. Basins in the Billings field-office area:

24 Yellowstone River from Bridger Creek to the Clark's  
25 Fork of the Yellowstone River (43QJ)

1 Yellowstone River above and including Bridger Creek  
2 (43B)

3 Sweet Grass Creek (43BV)

4 Stillwater River (43C)

5 Boulder River tributary of Yellowstone River (43BJ)

6 Clark's Fork of the Yellowstone River (43D)

7 Yellowstone River between the Clark's Fork of the  
8 Yellowstone River and the Bighorn River (43Q)

## 9 II. Basins in the Bozeman field-office area:

10 Madison River (41F)

11 Gallatin River (41H)

12 Shields River (43A)

13 Ruby River (41C)

14 Beaverhead River (41B)

15 Red Rock River (41A)

16 Big Hole River (41D)

## 17 III. Basins in the Glasgow field-office area:

18 Rock Creek tributary of the Milk River (40N)

19 Frenchman Creek (40L)

20 Milk River below Whitewater Creek including Porcupine  
21 Creek (40O)

22 Beaver Creek tributary of the Milk River (40M)

23 Whitewater Creek (40K)

24 Dry Creek (40D)

25 Missouri River between the Musselshell River and Fort

- 1 Peck Dam (40E)
- 2 IV. Basins in the Havre field-office area:
- 3 Sage Creek (40G)
- 4 Milk River between Fresno Reservoir and Whitewater
- 5 Creek (40J)
- 6 Peoples Creek (40I)
- 7 Willow Creek (41N)
- 8 Teton River (41O)
- 9 Sun River (41K)
- 10 V. Basins in the Helena field-office area:
- 11 Dearborn River (41U)
- 12 Clark Fork above the Blackfoot River (76G)
- 13 Boulder River tributary of the Jefferson River (41E)
- 14 Jefferson River (41G)
- 15 Missouri River above Holter Dam (41I)
- 16 VI. Basins in the Kalispell field-office area:
- 17 Milk River above Fresno Reservoir (40F)
- 18 Big Sandy Creek (40H)
- 19 Yaak River (76B)
- 20 Fisher River (76C)
- 21 Kootenai River (76D)
- 22 Clark Fork below Flathead Lake (76N)
- 23 South Fork of the Flathead River (76J)
- 24 Middle Fork of the Flathead River (76I)
- 25 Swan River (76K)

- 1 Flathead River above Flathead Lake (76LJ)
- 2 VII. Basins in the Lewistown field-office area:
- 3 Milk River between Fresno Reservoir and Whitewater
- 4 Creek (40J)
- 5 Judith River (41S)
- 6 Musselshell River above Roundup (40A)
- 7 Musselshell River below Roundup (40C)
- 8 Flatwillow Creek including Box Elder Creek (40B)
- 9 VIII. Basins in the Miles City field-office area:
- 10 Beaver Creek tributary of the Little Missouri River
- 11 (39G)
- 12 Yellowstone River between the Tongue River and the
- 13 Powder River (42K)
- 14 Little Missouri River above Little Beaver Creek (39F)
- 15 Rosebud Creek (42A)
- 16 Little Beaver Creek (39FJ)
- 17 Box Elder Creek (39E)
- 18 Yellowstone River below Powder River (42M)
- 19 IX. Basins in the Missoula field-office area:
- 20 Rock Creek tributary of the Clark Fork River (76E)
- 21 Flint Creek (76GJ)
- 22 Clark Fork between the Blackfoot River and the Flathead
- 23 River (76M)
- 24 Bitterroot River (76H)
- 25 Blackfoot River (76F)

## 1 HOUSE BILL NO. 754

2 INTRODUCED BY BRADLEY, IVERSON, SPAETH  
3 BY REQUEST OF THE WATER POLICY COMMITTEE  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE CHIEF  
6 WATER JUDGE APPOINTMENT PROCESS TO EXPAND THE POPULATION OF  
7 ELIGIBLE CANDIDATES AND TO INCLUDE A JUDICIAL NOMINATION  
8 COMMISSION PROCESS; PROVIDING FOR ADJUDICATION BY PRIORITY  
9 BASINS; ~~AUTHORIZING AN APPROPRIATION FOR RANDOM SAMPLING AND~~  
10 ~~ANALYSIS OF CLAIMS WITHIN DECREES ISSUED BY THE WATER COURTS~~  
11 ~~APPROPRIATING MONEY FOR JUDICIAL NOMINATION COMMISSION~~  
12 ~~EXPENSES RELATING TO WATER COURT APPOINTMENTS; CLARIFYING~~  
13 ~~PAYMENT OF EXPENDITURES FOR DEPARTMENT ASSISTANCE TO WATER~~  
14 ~~JUDGES; ; AMENDING SECTIONS 3-1-1001, 3-1-1006, 3-1-1008,~~  
15 ~~3-1-1010, 3-1-1011, 3-7-201, 3-7-213, 3-7-221, 85-2-243, AND~~  
16 ~~85-2-701, MCA; REPEALING SECTION 85-2-242, MCA; AND~~  
17 ~~PROVIDING AN EFFECTIVE DATE."~~  
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21 petition required in 85-2-211 include all claimants of  
22 reserved Indian water rights as necessary and indispensable  
23 parties under authority granted the state by 43 U.S.C. 666.  
24 However, it is further intended that the state of Montana  
25 proceed under the provisions of this part in an effort to

1 conclude compacts for the equitable division and  
2 apportionment of waters between the state and its people and  
3 the several Indian tribes claiming reserved water rights  
4 within the state.

5       (2) To the maximum extent possible, the reserved water  
6 rights compact commission established under 2-15-212 should  
7 make the negotiation of water rights claimed by the federal  
8 government or Indian tribes in or affecting the basins  
9 identified by [section 10] its highest priority."

10       NEW SECTION. Section 10. Process and criteria for  
11 designating priority basins or subbasins. (1) The water  
12 judges and the department, in performing their functions in  
13 the adjudication process, shall give priority to basins or  
14 subbasins designated each biennium by the legislature.  
15 Basins or subbasins must be designated according to the  
16 following criteria:

17       (a) recurring water shortages within the basin or  
18 subbasin have resulted in urgent water rights controversies  
19 that require adjudication to determine relative rights;

20       (b) federal or Indian reserved rights are nearing  
21 determination, either by compact or adjudication, thus  
22 making adjudication of other rights in the basin or subbasin  
23 important for timely issuance of preliminary or final  
24 decrees;

25       (c) the basin or subbasin's location would help ensure

1 efficient use of department and water court resources; and  
 2 (d) the adjudication process in the basin or subbasin  
 3 is nearing the issuance of a decree.

4 (2) The water judge may designate a basin for priority  
 5 adjudication upon petition of 100 or more persons who have  
 6 filed claims within the basin, or he may designate a  
 7 subbasin for priority adjudication upon petition of a  
 8 majority of persons who have filed claims within the  
 9 subbasin. The basin or subbasin shall receive priority,  
 10 however, only if it meets one or more of the criteria in  
 11 subsection (1).

12 (3) If adjudication work in one or more of the  
 13 priority basins or subbasins has been completed or has been  
 14 suspended for good cause, the water judge may select other  
 15 basins or subbasins for priority adjudication, based on the  
 16 criteria in subsection (1).

17 ~~NEW SECTION: Section 11. Appropriation for sample of~~  
 18 ~~claims within decrees. (1) There is appropriated to the~~  
 19 ~~environmental quality council for use by the water policy~~  
 20 ~~committee \$92,000 from the water development state special~~  
 21 ~~revenue fund for the biennium ending June 30, 1989, to~~  
 22 ~~undertake a random sampling and analysis for accuracy and~~  
 23 ~~consistency of claims in basins that have undergone~~  
 24 ~~adjudication efforts and for which a temporary preliminary,~~  
 25 ~~preliminary, or final decree has been issued. The analysis~~

1 ~~must be based on the requirements for final decrees provided~~  
 2 ~~in 85-2-234.~~

3 ~~(2) The office of the legislative auditor shall assist~~  
 4 ~~the water policy committee in conducting the random sampling~~  
 5 ~~and analysis. The water policy committee may contract with a~~  
 6 ~~qualified consultant to conduct the random sampling and~~  
 7 ~~analysis. The analysis must be completed by June 30, 1989,~~  
 8 ~~and water policy committee recommendations resulting from~~  
 9 ~~the analysis must be submitted to the legislature by January~~  
 10 ~~17, 1989.~~

11 ~~(3) In devising the random sampling and analysis, the~~  
 12 ~~water policy committee shall consult with the department of~~  
 13 ~~natural resources and conservation and with the Montana~~  
 14 ~~water courts.~~

15 ~~(4) All claimants whose claims are randomly selected~~  
 16 ~~for the sampling and analysis shall assist the water policy~~  
 17 ~~committee and its consultant in reviewing claims for~~  
 18 ~~accuracy and consistency. Assistance provided by a claimant~~  
 19 ~~may not involve financial cost to the claimant.~~

20 ~~(5) The water policy committee and its consultant may~~  
 21 ~~enter the property of a claimant to conduct field~~  
 22 ~~investigations upon providing written notice to the claimant~~  
 23 ~~at least 14 days in advance of the investigation.~~

24 ~~(6) Information derived from the random sampling and~~  
 25 ~~analysis that is specific to an individual claimant must be~~

1 ~~kept---confidential---and---may---not---prejudice---the---final~~  
2 ~~adjudication-of---that---claimant's---water---rights.---However,~~  
3 ~~information---derived---from---the---random---sampling---and---analysis~~  
4 ~~may-be-described-in-general-terms-and-is-public-information.~~

5 NEW SECTION. SECTION 11. APPROPRIATION. THERE IS  
6 APPROPRIATED \$1,200 TO THE MONTANA SUPREME COURT FOR  
7 EXPENSES OF THE JUDICIAL NOMINATION COMMISSION IN PERFORMING  
8 FUNCTIONS RELATING TO WATER COURT APPOINTMENTS.

9 NEW SECTION. SECTION 12. REPEALER. SECTION 85-2-242,  
10 MCA, IS REPEALED.

11 NEW SECTION. Section 13. Extension of authority. Any  
12 existing authority of the judicial nomination commission and  
13 the--board--of--natural--resources--and--conservation to make  
14 rules on the subject of the provisions of this act is  
15 extended to the provisions of this act.

16 NEW SECTION. Section 14. Codification instruction.  
17 Section 10 is intended to be codified as an integral part of  
18 Title 85, chapter 2, part 2, and the provisions of Title 85,  
19 chapter 2, part 2, apply to section 10.

20 NEW SECTION. Section 15. Effective date. This act is  
21 effective July 1, 1987.

-End-

HOUSE BILL NO. 754

INTRODUCED BY BRADLEY, IVERSON, SPAETH  
BY REQUEST OF THE WATER POLICY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE CHIEF WATER JUDGE APPOINTMENT PROCESS TO EXPAND THE POPULATION OF ELIGIBLE CANDIDATES AND TO INCLUDE A JUDICIAL NOMINATION COMMISSION PROCESS; PROVIDING FOR ADJUDICATION BY PRIORITY BASINS; ~~AUTHORIZING AN APPROPRIATION FOR RANDOM SAMPLING AND ANALYSIS OF CLAIMS WITHIN DECREEES ISSUED BY THE WATER COURTS~~ APPROPRIATING MONEY FOR JUDICIAL NOMINATION COMMISSION EXPENSES RELATING TO WATER COURT APPOINTMENTS; CLARIFYING PAYMENT OF EXPENDITURES FOR DEPARTMENT ASSISTANCE TO WATER JUDGES; AMENDING SECTIONS 3-1-1001, 3-1-1006, 3-1-1008, 3-1-1010, 3-1-1011, ~~3-7-201~~, 3-7-213, 3-7-221, 85-2-243, AND 85-2-701, MCA; REPEALING SECTION 85-2-242, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
Section 1. Section 3-1-1001, MCA, is amended to read:  
"3-1-1001. Creation, composition, and function of commission. (1) A judicial nomination commission for the state is created. Its function is to provide the governor with a list of candidates for appointment to fill any vacancy on the supreme court or any district court and to

provide the chief justice of the supreme court with a list of candidates for appointment to fill any term or vacancy for the chief water judge or--a-water-judge pursuant to 3-7-201 and 3-7-221. The commission shall be composed of seven members as follows:

(a) four lay members who are neither judges nor attorneys, active or retired, who reside in different geographical areas of the state, and each of whom is representative of a different industry, business, or profession, whether actively so engaged or retired, who shall be appointed by the governor;

(b) two attorneys actively engaged in the practice of law, one from each congressional district, who shall be appointed by the supreme court;

(c) one district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to such election by the chief justice of the supreme court. The election shall be considered an appointment for the purposes of this part.

(2) Appointments provided for in this section shall be made within 30 days of the completion of the preceding terms."

Section 2. Section 3-1-1006, MCA, is amended to read:  
"3-1-1006. Secretary -- election and duties. (1) The commission shall elect one of its members to serve as the



1 secretary and upon such election shall notify the governor  
2 of the name and mailing address of such person.

3 (2) The secretary shall keep a record of all  
4 proceedings by the commission and act as corresponding  
5 secretary with the governor's office and with the office of  
6 the chief justice of the supreme court."

7 Section 3. Section 3-1-1008, MCA, is amended to read:  
8 "3-1-1008. Quorum. Four members of the commission  
9 shall constitute a quorum for the transaction of business.  
10 To submit a name to the governor or to the chief justice of  
11 the supreme court, there must be a concurrence of at least  
12 four members."

13 Section 4. Section 3-1-1010, MCA, is amended to read:  
14 "3-1-1010. ~~List~~ Lists submitted to governor and chief  
15 justice -- report on proceedings. (1) The commission shall  
16 meet forthwith after a vacancy occurs on the supreme court  
17 or district court and submit to the governor within 30 days  
18 from the date of the vacancy a list of not less than three  
19 or more than five nominees for appointment.

20 (2) The commission shall meet to prepare and submit to  
21 the chief justice of the supreme court a list of not less  
22 than three or more than five nominees for appointment to  
23 fill any term or vacancy for the chief water judge or a  
24 water-judge. The list must be submitted at least 30 days  
25 prior to a new term or within 30 days from the date of a

1 vacancy.

2 (3) The Any list must be accompanied by a written  
3 report ~~to the governor~~ indicating the vote on each nominee,  
4 the content of the application submitted by each nominee,  
5 and the commission's reasons for recommending each nominee  
6 for appointment."

7 Section 5. Section 3-1-1011, MCA, is amended to read:  
8 "3-1-1011. Governor or chief justice of the supreme  
9 court to appoint from list. The governor, or the chief  
10 justice of the supreme court for offices THE OFFICE  
11 described in 3-7-201 or 3-7-221, must make an appointment  
12 from the list of nominees submitted by the commission."

13 ~~Section 6. Section 3-7-201, MCA, is amended to read:~~  
14 ~~"3-7-201. Designation of water judge. (1) A water~~  
15 ~~judge shall be designated within 30 days after May 11, 1979,~~  
16 ~~for each water division by a majority vote of a committee~~  
17 ~~composed of the district judge from each single judge~~  
18 ~~judicial district and the chief district judge from each~~  
19 ~~multiple judge judicial district, wholly or partly within~~  
20 ~~the division. Except as provided in subsection (2) and~~  
21 ~~3-7-213, a water judge must be a district judge or retired~~  
22 ~~district judge of a judicial district wholly or partly~~  
23 ~~within the water division. A water judge shall have the~~  
24 ~~qualifications for district court or supreme court judges~~  
25 ~~found in Article VII, section 9, of the Montana~~

1 constitution;  
 2 {2}--The--chief--justice--of--the--supreme--court--shall  
 3 appoint--a--water--judge--as--provided--in--Title--3,--chapter--17  
 4 part--10;  
 5 {2}{3}--A--district--judge--or--retired--district--judge--may  
 6 sit--as--a--water--judge--may--sit--in--more--than--one--division--if  
 7 requested--by--the--chief--justice--of--the--supreme--court,--the  
 8 chief--water--judge,--or--the--water--judge--of--the--division--in  
 9 which--he--is--requested--to--sit;  
 10 {3}{4}--A--water--judge,--when--presiding--over--a--water  
 11 division,--presides--as--district--judge--in--and--for--each  
 12 judicial--district--wholly--or--partly--within--the--water  
 13 division;"  
 14 Section 6. Section 3-7-213, MCA, is amended to read:  
 15 "3-7-213. Designation of alternate judge. The water  
 16 judge may designate any--other--district--judge--or--retired  
 17 district--judge--a--district--judge,--retired--district--judge,--or  
 18 another--water--judge to preside in his absence on his behalf  
 19 as water judge for the immediate enforcement of an existing  
 20 decree or the immediate granting of extraordinary relief as  
 21 may be provided for by law upon an allegation of irreparable  
 22 harm."  
 23 Section 7. Section 3-7-221, MCA, is amended to read:  
 24 "3-7-221. Appointment of chief water judge -- term of  
 25 office. (1) The chief justice of the Montana supreme court

1 shall appoint a chief water judge from--among--the--district  
 2 judges--serving--or--retired--as--of--the--time--of--appointment--as  
 3 provided in Title 3, chapter 1, part 10.  
 4 {2} To be eligible for the office of chief water  
 5 judge, a person shall have the qualifications for district  
 6 court or supreme court judges found in Article VII, section  
 7 9, of the Montana constitution.  
 8 {2}{3} The term of office of the chief water judge is  
 9 from the date of initial appointment until June 30, 1985.  
 10 After June 30, 1985, the term of office is 4 years, subject  
 11 to continuation of the water divisions by the legislature."  
 12 SECTION 8. SECTION 85-2-243, MCA, IS AMENDED TO READ:  
 13 "85-2-243. Department assistance to water judges.  
 14 {1} The department, subject to the direction of the water  
 15 judge, shall, without--cost--to--the--judicial--districts--wholly  
 16 or--partly--within--his--water--division:  
 17 {1}{a} provide such information and assistance as may  
 18 be required by the water judge to adjudicate claims of  
 19 existing rights;  
 20 {2}{b} establish information and assistance programs  
 21 to aid claimants in the filing of claims for existing rights  
 22 required by 85-2-221;  
 23 {3}{c} conduct field investigations of claims that the  
 24 water judge in consultation with the department determines  
 25 warrant investigation; and

1        ~~(d)~~ provide the water judge with all information in  
2 its possession bearing upon existing rights, including all  
3 declarations filed with and all information gathered by the  
4 department with respect to existing rights in the Powder  
5 River Basin.

6        (2) Department assistance to a water judge must be  
7 without cost to the judicial districts wholly or partly  
8 within the affected water division. Expenses incurred by  
9 the department under subsection (1) must be paid from the  
10 money appropriated by the legislature for--the--expenses--of  
11 the--chief--water--judge--under--3-7-222--except--to--the--extent--a  
12 specific--appropriation--has--been--made--to--the--department--to  
13 carry--out--its--functions--under--subsection--(1) AND WHEN THAT  
14 APPROPRIATION IS EXPENDED THEN THE DEPARTMENT IS NO LONGER  
15 REQUIRED TO PROVIDE FURTHER ASSISTANCE."

16        Section 9. Section 85-2-701, MCA, is amended to read:

17        "85-2-701. Legislative intent. (1) Because the water  
18 and water rights within each water division are  
19 interrelated, it is the intent of the legislature to conduct  
20 unified proceedings for the general adjudication of existing  
21 water rights under the Montana Water Use Act. Therefore, it  
22 is the intent of the legislature that the attorney general's  
23 petition required in 85-2-211 include all claimants of  
24 reserved Indian water rights as necessary and indispensable  
25 parties under authority granted the state by 43 U.S.C. 666.

1        However, it is further intended that the state of Montana  
2 proceed under the provisions of this part in an effort to  
3 conclude compacts for the equitable division and  
4 apportionment of waters between the state and its people and  
5 the several Indian tribes claiming reserved water rights  
6 within the state.

7        (2) To the maximum extent possible, the reserved water  
8 rights compact commission established under 2-15-212 should  
9 make the negotiation of water rights claimed by the federal  
10 government or Indian tribes in or affecting the basins  
11 identified by [section 10] its highest priority."

12        NEW SECTION. Section 10. Process and criteria for  
13 designating priority basins or subbasins. (1) The water  
14 judges and the department, in performing their functions in  
15 the adjudication process, shall give priority to basins or  
16 subbasins designated each biennium by the legislature.  
17 Basins or subbasins must be designated according to the  
18 following criteria:

19        (a) recurring water shortages within the basin or  
20 subbasin have resulted in urgent water rights controversies  
21 that require adjudication to determine relative rights;

22        (b) federal or Indian reserved rights are nearing  
23 determination, either by compact or adjudication, thus  
24 making adjudication of other rights in the basin or subbasin  
25 important for timely issuance of preliminary or final



1 decrees;

2 (c) the basin or subbasin's location would help ensure  
3 efficient use of department and water court resources; and

4 (d) the adjudication process in the basin or subbasin  
5 is nearing the issuance of a decree.

6 (2) The water judge may designate a basin for priority  
7 adjudication upon petition of 100 or more persons who have  
8 filed claims within the basin, or he may designate a  
9 subbasin for priority adjudication upon petition of a  
10 majority of persons who have filed claims within the  
11 subbasin. The basin or subbasin shall receive priority,  
12 however, only if it meets one or more of the criteria in  
13 subsection (1).

14 (3) If adjudication work in one or more of the  
15 priority basins or subbasins has been completed or has been  
16 suspended for good cause, the water judge may select other  
17 basins or subbasins for priority adjudication, based on the  
18 criteria in subsection (1).

19 NEW SECTION:--Section 11--Appropriation for sample of  
20 claims within decrees--(1)--There is appropriated to the  
21 environmental quality council for use by the water policy  
22 committee \$927,000 from the water development state special  
23 revenue fund for the biennium ending June 30, 1989 to  
24 undertake a random sampling and analysis for accuracy and  
25 consistency of claims in basins that have undergone

1 adjudication efforts and for which a temporary preliminary,  
2 preliminary or final decree has been issued--The analysis  
3 must be based on the requirements for final decrees provided  
4 in 85-2-234-

5 (2)--The office of the legislative auditor shall assist  
6 the water policy committee in conducting the random sampling  
7 and analysis--The water policy committee may contract with a  
8 qualified consultant to conduct the random sampling and  
9 analysis--The analysis must be completed by June 30, 1989  
10 and water policy committee recommendations resulting from  
11 the analysis must be submitted to the legislature by January  
12 17, 1989-

13 (3)--In devising the random sampling and analysis, the  
14 water policy committee shall consult with the department of  
15 natural resources and conservation and with the Montana  
16 water courts-

17 (4)--All claimants whose claims are randomly selected  
18 for the sampling and analysis shall assist the water policy  
19 committee and its consultant in reviewing claims for  
20 accuracy and consistency--Assistance provided by a claimant  
21 may not involve financial cost to the claimant-

22 (5)--The water policy committee and its consultant may  
23 enter the property of a claimant to conduct field  
24 investigations upon providing written notice to the claimant  
25 at least 14 days in advance of the investigation-

1       ~~(6) information derived from the random sampling and~~  
2 ~~analysis that is specific to an individual claimant must be~~  
3 ~~kept confidential and may not prejudice the final~~  
4 ~~adjudication of that claimant's water rights. However,~~  
5 ~~information derived from the random sampling and analysis~~  
6 ~~may be described in general terms and is public information.~~

7       NEW SECTION. SECTION 11. APPROPRIATION. THERE IS  
8 APPROPRIATED \$1,200 TO THE MONTANA SUPREME COURT FOR  
9 EXPENSES OF THE JUDICIAL NOMINATION COMMISSION IN PERFORMING  
10 FUNCTIONS RELATING TO WATER COURT APPOINTMENTS.

11       NEW SECTION. SECTION 12. REPEALER. SECTION 85-2-242,  
12 MCA, IS REPEALED.

13       NEW SECTION. Section 13. Extension of authority. Any  
14 existing authority of the judicial nomination commission and  
15 the board of natural resources and conservation to make  
16 rules on the subject of the provisions of this act is  
17 extended to the provisions of this act.

18       NEW SECTION. Section 14. Codification instruction.  
19 Section 10 is intended to be codified as an integral part of  
20 Title 85, chapter 2, part 2, and the provisions of Title 85,  
21 chapter 2, part 2, apply to section 10.

22       NEW SECTION. Section 15. Effective date. This act is  
23 effective July 1, 1987.

-End-

# STANDING COMMITTEE REPORT

SCRHB754

## SENATE

..... April 9, ..... 19.87.....

MR. PRESIDENT

### Judiciary

We, your committee on.....

House Bill

754

having had under consideration..... No.....

third

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PROVIDES APPOINTMENT PROCESS FOR WATER JUDGES & ESTABLISHES PRIORITY BASINS

Bradley (Stimatz)

Respectfully report as follows: That..... House Bill..... No. 754.....

BE AMENDED AS FOLLOWS:

1. Page 4, line 10.

Strike: "offices"

Insert: "the office"

2. Page 4, line 11.

Strike: "3-7-201 or"

3. Page 7, lines 10 through 13.

Following: "legislature" on line 10

Strike: remainder of line 10 through "(1)" on line 13

Insert: "and when that appropriation is expended then the department is no longer required to provide further assistance"

C:\LANE\WP\AMDHB754.

AR

XXXXXX

XXXXXX  
DO NOT PASS

AND AS AMENDED  
BE CONCURRED IN

*J. Mazurek*  
.....  
Senator Mazurek

Chairman.

4/9/87  
4:40  
JK

# CONFERENCE COMMITTEE REPORT

Report No. One

4-23 1987

MR. SPEAKER

We, your FREE Conference Committee on

HB 754

met and considered House Bill 754 in its entirety.

We recommend as follows:

THAT HOUSE BILL 754, reference copy salmon, BE AMENDED AS FOLLOWS:

1. Statement of Intent, page 4.

Following: line 25

Insert: "The legislature intends by the amendment to 85-2-243 in section 8 of this bill that it be interpreted to restrict the department to utilize funds that have been appropriated for the adjudication program. The department's funding level in adjudicating water claims for the 1987-89 biennium is as specifically set forth in House Bill 2."

2. Page 7, line 10.

Following: "appropriated"

Insert: "to it for the adjudication program"

Following: "legislature"

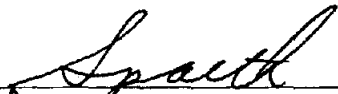
Insert: "to carry out its function under subsection (1)"

And that this Conference Committee report be adopted.

FOR THE SENATE

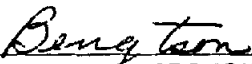
FOR THE HOUSE


  
SENATOR STIMATZ

  
REP. SPAETH

  
SENATOR KOLSTAD

  
REP. IVERSON

  
SENATOR BENGSTON

  
REP. THOEN

## 1 STATEMENT OF INTENT

## 2 HOUSE BILL 754

3  
4 A statement of intent is provided for this bill because  
5 the legislature desires to indicate to the Montana water  
6 courts and the department of natural resources and  
7 conservation the basins that should receive priority  
8 adjudication efforts.

9 The legislature finds and determines the basins  
10 described in I through IX below to be priority basins. The  
11 basins are selected according to the criteria in section 10  
12 of this bill and the priority provided for the Milk River  
13 basin in 85-2-321. They are listed by the department's field  
14 office GEOGRAPHICAL areas because it is assumed priority  
15 basins are needed in each area to ensure efficient use of  
16 water court and department staff. The legislature recognizes  
17 that deviations from the order of priority provided may be  
18 necessary to ensure efficiency in the adjudication process,  
19 THAT THE WATER JUDGE MAY VARY EFFORTS FROM AREA TO AREA  
20 BASED ON AVAILABLE RESOURCES, and that additional priority  
21 basins may be added upon petition to and determination by  
22 the water judge.

## 23 I. Basins in the Billings field-office area:

24 Yellowstone River from Bridger Creek to the Clark's  
25 Fork of the Yellowstone River (43QJ)

1 Yellowstone River above and including Bridger Creek  
2 (43B)  
3 Sweet Grass Creek (43BV)  
4 Stillwater River (43C)  
5 Boulder River tributary of Yellowstone River (43BJ)  
6 Clark's Fork of the Yellowstone River (43D)  
7 Yellowstone River between the Clark's Fork of the  
8 Yellowstone River and the Bighorn River (43Q)

## 9 II. Basins in the Bozeman field-office area:

10 Madison River (41F)  
11 Gallatin River (41H)  
12 Shields River (43A)  
13 Ruby River (41C)  
14 Beaverhead River (41B)  
15 Red Rock River (41A)  
16 Big Hole River (41D)

## 17 III. Basins in the Glasgow field-office area:

18 Rock Creek tributary of the Milk River (40N)  
19 Frenchman Creek (40L)  
20 Milk River below Whitewater Creek including Porcupine  
21 Creek (40O)  
22 Beaver Creek tributary of the Milk River (40M)  
23 Whitewater Creek (40K)  
24 Dry Creek (40D)  
25 Missouri River between the Musselshell River and Fort

1 Peck Dam (40E)  
 2 IV. Basins in the Havre field-office area:  
 3 Sage Creek (40G)  
 4 Milk River between Fresno Reservoir and Whitewater  
 5 Creek (40J)  
 6 Peoples Creek (40I)  
 7 Willow Creek (41N)  
 8 Teton River (41O)  
 9 Sun River (41K)  
 10 V. Basins in the Helena field-office area:  
 11 Dearborn River (41U)  
 12 Clark Fork above the Blackfoot River (76G)  
 13 Boulder River tributary of the Jefferson River (41E)  
 14 Jefferson River (41G)  
 15 Missouri River above Holter Dam (41I)  
 16 VI. Basins in the Kalispell field-office area:  
 17 Milk River above Fresno Reservoir (40F)  
 18 Big Sandy Creek (40H)  
 19 Yaak River (76B)  
 20 Fisher River (76C)  
 21 Kootenai River (76D)  
 22 Clark Fork below Flathead Lake (76N)  
 23 South Fork of the Flathead River (76J)  
 24 Middle Fork of the Flathead River (76I)  
 25 Swan River (76K)

1 Flathead River above Flathead Lake (76LJ)  
 2 VII. Basins in the Lewistown field-office area:  
 3 Milk River between Fresno Reservoir and Whitewater  
 4 Creek (40J)  
 5 Judith River (41S)  
 6 Musselshell River above Roundup (40A)  
 7 Musselshell River below Roundup (40C)  
 8 Flatwillow Creek including Box Elder Creek (40B)  
 9 VIII. Basins in the Miles City field-office area:  
 10 Beaver Creek tributary of the Little Missouri River  
 11 (39G)  
 12 Yellowstone River between the Tongue River and the  
 13 Powder River (42K)  
 14 Little Missouri River above Little Beaver Creek (39F)  
 15 Rosebud Creek (42A)  
 16 Little Beaver Creek (39FJ)  
 17 Box Elder Creek (39E)  
 18 Yellowstone River below Powder River (42M)  
 19 IX. Basins in the Missoula field-office area:  
 20 Rock Creek tributary of the Clark Fork River (76E)  
 21 Flint Creek (76GJ)  
 22 Clark Fork between the Blackfoot River and the Flathead  
 23 River (76M)  
 24 Bitterroot River (76H)  
 25 Blackfoot River (76F)

HB 0754/si

1       THE LEGISLATURE INTENDS BY THE AMENDMENT TO 85-2-243 IN  
2       SECTION 8 OF THIS BILL THAT IT BE INTERPRETED TO RESTRICT  
3       THE DEPARTMENT TO UTILIZE FUNDS THAT HAVE BEEN APPROPRIATED  
4       FOR THE ADJUDICATION PROGRAM. THE DEPARTMENT'S FUNDING LEVEL  
5       IN ADJUDICATING WATER CLAIMS FOR THE 1987-89 BIENNIUM IS AS  
6       SPECIFICALLY SET FORTH IN HOUSE BILL NO. 2.

## 1 HOUSE BILL NO. 754

2 INTRODUCED BY BRADLEY, IVERSON, SPAETH  
3 BY REQUEST OF THE WATER POLICY COMMITTEE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE CHIEF  
6 WATER JUDGE APPOINTMENT PROCESS TO EXPAND THE POPULATION OF  
7 ELIGIBLE CANDIDATES AND TO INCLUDE A JUDICIAL NOMINATION  
8 COMMISSION PROCESS; PROVIDING FOR ADJUDICATION BY PRIORITY  
9 BASINS; ~~AUTHORIZING AN APPROPRIATION FOR RANDOM SAMPLING AND~~  
10 ~~ANALYSIS OF CLAIMS WITHIN DECREES ISSUED BY THE WATER COURTS~~  
11 ~~APPROPRIATING MONEY FOR JUDICIAL NOMINATION COMMISSION~~  
12 ~~EXPENSES RELATING TO WATER COURT APPOINTMENTS; CLARIFYING~~  
13 ~~PAYMENT OF EXPENDITURES FOR DEPARTMENT ASSISTANCE TO WATER~~  
14 ~~JUDGES; AMENDING SECTIONS 3-1-1001, 3-1-1006, 3-1-1008,~~  
15 ~~3-1-1010, 3-1-1011, 3-7-201, 3-7-213, 3-7-221, 85-2-243, AND~~  
16 ~~85-2-701, MCA; REPEALING SECTION 85-2-242, MCA; AND~~  
17 PROVIDING AN EFFECTIVE DATE."

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 Section 1. Section 3-1-1001, MCA, is amended to read:

21 "3-1-1001. Creation, composition, and function of  
22 commission. (1) A judicial nomination commission for the  
23 state is created. Its function is to provide the governor  
24 with a list of candidates for appointment to fill any  
25 vacancy on the supreme court or any district court and to

1 provide the chief justice of the supreme court with a list  
2 of candidates for appointment to fill any term or vacancy  
3 for the chief water judge or--a-water-judge pursuant to  
4 3-7-201 and 3-7-221. The commission shall be composed of  
5 seven members as follows:

6 (a) four lay members who are neither judges nor  
7 attorneys, active or retired, who reside in different  
8 geographical areas of the state, and each of whom is  
9 representative of a different industry, business, or  
10 profession, whether actively so engaged or retired, who  
11 shall be appointed by the governor;

12 (b) two attorneys actively engaged in the practice of  
13 law, one from each congressional district, who shall be  
14 appointed by the supreme court;

15 (c) one district judge elected by the district judges  
16 under an elective procedure initiated and conducted by the  
17 supreme court and certified to such election by the chief  
18 justice of the supreme court. The election shall be  
19 considered an appointment for the purposes of this part.

20 (2) Appointments provided for in this section shall be  
21 made within 30 days of the completion of the preceding  
22 terms."

23 Section 2. Section 3-1-1006, MCA, is amended to read:

24 "3-1-1006. Secretary -- election and duties. (1) The  
25 commission shall elect one of its members to serve as the



1 secretary and upon such election shall notify the governor  
2 of the name and mailing address of such person.

3 (2) The secretary shall keep a record of all  
4 proceedings by the commission and act as corresponding  
5 secretary with the governor's office and with the office of  
6 the chief justice of the supreme court."

7 Section 3. Section 3-1-1008, MCA, is amended to read:  
8 "3-1-1008. Quorum. Four members of the commission  
9 shall constitute a quorum for the transaction of business.  
10 To submit a name to the governor or to the chief justice of  
11 the supreme court, there must be a concurrence of at least  
12 four members."

13 Section 4. Section 3-1-1010, MCA, is amended to read:  
14 "3-1-1010. ~~List~~ Lists submitted to governor and chief  
15 justice -- report on proceedings. (1) The commission shall  
16 meet forthwith after a vacancy occurs on the supreme court  
17 or district court and submit to the governor within 30 days  
18 from the date of the vacancy a list of not less than three  
19 or more than five nominees for appointment.

20 (2) The commission shall meet to prepare and submit to  
21 the chief justice of the supreme court a list of not less  
22 than three or more than five nominees for appointment to  
23 fill any term or vacancy for the chief water judge or a  
24 water-judge. The list must be submitted at least 30 days  
25 prior to a new term or within 30 days from the date of a

1 vacancy.

2 (3) The Any list must be accompanied by a written  
3 report ~~to the governor~~ indicating the vote on each nominee,  
4 the content of the application submitted by each nominee,  
5 and the commission's reasons for recommending each nominee  
6 for appointment."

7 Section 5. Section 3-1-1011, MCA, is amended to read:  
8 "3-1-1011. Governor or chief justice of the supreme  
9 court to appoint from list. The governor, or the chief  
10 justice of the supreme court for offices ~~THE OFFICE~~  
11 described in 3-7-201 or 3-7-221, must make an appointment  
12 from the list of nominees submitted by the commission."

13 ~~Section 6. Section 3-7-201, MCA, is amended to read:~~  
14 ~~"3-7-201. Designation of water judge. (1) A water~~  
15 ~~judge shall be designated within 30 days after May 17, 1979~~  
16 ~~for each water division by a majority vote of a committee~~  
17 ~~composed of the district judge from each single judge~~  
18 ~~judicial district and the chief district judge from each~~  
19 ~~multiple judge judicial district, wholly or partly within~~  
20 ~~the division. Except as provided in subsection (2) and~~  
21 ~~3-7-213, a water judge must be a district judge or retired~~  
22 ~~district judge of a judicial district wholly or partly~~  
23 ~~within the water division. A water judge shall have the~~  
24 ~~qualifications for district court or supreme court judges~~  
25 ~~found in Article VII, section 97 of the Montana~~

1 constitution:  
 2 {2}--The--chief--justice--of--the--supreme--court--shall  
 3 appoint--a--water--judge--as--provided--in--Title--3,--chapter--17  
 4 part--10:  
 5 {3}{3}--A--district--judge--or--retired--district--judge--may  
 6 sit--as--a--water--judge--may--sit--in--more--than--one--division--if  
 7 requested--by--the--chief--justice--of--the--supreme--court,--the  
 8 chief--water--judge,--or--the--water--judge--of--the--division--in  
 9 which--he--is--requested--to--sit:  
 10 {3}{4}--A--water--judge,--when--presiding--over--a--water  
 11 division,--presides--as--district--judge--in--and--for--each  
 12 judicial--district--wholly--or--partly--within--the--water  
 13 division:"  
 14 Section 6. Section 3-7-213, MCA, is amended to read:  
 15 "3-7-213. Designation of alternate judge. The water  
 16 judge may designate any--other--district--judge--or--retired  
 17 district--judge a district judge, retired district judge, or  
 18 another water judge to preside in his absence on his behalf  
 19 as water judge for the immediate enforcement of an existing  
 20 decree or the immediate granting of extraordinary relief as  
 21 may be provided for by law upon an allegation of irreparable  
 22 harm."  
 23 Section 7. Section 3-7-221, MCA, is amended to read:  
 24 "3-7-221. Appointment of chief water judge -- term of  
 25 office. (1) The chief justice of the Montana supreme court

1 shall appoint a chief water judge from--among--the--district  
 2 judges--serving--or--retired--as--of--the--time--of--appointment as  
 3 provided in Title 3, chapter 1, part 10.  
 4 (2) To be eligible for the office of chief water  
 5 judge, a person shall have the qualifications for district  
 6 court or supreme court judges found in Article VII, section  
 7 9, of the Montana constitution.  
 8 {2}{3} The term of office of the chief water judge is  
 9 from the date of initial appointment until June 30, 1985.  
 10 After June 30, 1985, the term of office is 4 years, subject  
 11 to continuation of the water divisions by the legislature."  
 12 SECTION 8. SECTION 85-2-243, MCA, IS AMENDED TO READ:  
 13 "85-2-243. Department assistance to water judges.  
 14 (1) The department, subject to the direction of the water  
 15 judge, shall,--without--cost--to--the--judicial--districts--wholly  
 16 or--partly--within--his--water--division:  
 17 {1}{a} provide such information and assistance as may  
 18 be required by the water judge to adjudicate claims of  
 19 existing rights;  
 20 {2}{b} establish information and assistance programs  
 21 to aid claimants in the filing of claims for existing rights  
 22 required by 85-2-221;  
 23 {3}{c} conduct field investigations of claims that the  
 24 water judge in consultation with the department determines  
 25 warrant investigation; and

1       {4}(d) provide the water judge with all information in  
2 its possession bearing upon existing rights, including all  
3 declarations filed with and all information gathered by the  
4 department with respect to existing rights in the Powder  
5 River Basin.

6       (2) Department assistance to a water judge must be  
7 without cost to the judicial districts wholly or partly  
8 within the affected water division. Expenses incurred by  
9 the department under subsection (1) must be paid from the  
10 money appropriated TO IT FOR THE ADJUDICATION PROGRAM by the  
11 legislature TO CARRY OUT ITS FUNCTION UNDER SUBSECTION (1)  
12 for--the--expenses--of--the--chief--water--judge--under--3-7-222  
13 except-to-the-extent-a-specific-appropriation-has-been--made  
14 to---the---department--to--carry--out--its--functions--under  
15 subsection-{1} AND WHEN THAT APPROPRIATION IS EXPENDED THEN  
16 THE DEPARTMENT IS NO LONGER REQUIRED TO PROVIDE FURTHER  
17 ASSISTANCE."

18       Section 9. Section 85-2-701, MCA, is amended to read:

19       "85-2-701. Legislative intent. (1) Because the water  
20 and water rights within each water division are  
21 interrelated, it is the intent of the legislature to conduct  
22 unified proceedings for the general adjudication of existing  
23 water rights under the Montana Water Use Act. Therefore, it  
24 is the intent of the legislature that the attorney general's  
25 petition required in 85-2-211 include all claimants of

1 reserved Indian water rights as necessary and indispensable  
2 parties under authority granted the state by 43 U.S.C. 666.  
3 However, it is further intended that the state of Montana  
4 proceed under the provisions of this part in an effort to  
5 conclude compacts for the equitable division and  
6 apportionment of waters between the state and its people and  
7 the several Indian tribes claiming reserved water rights  
8 within the state.

9       (2) To the maximum extent possible, the reserved water  
10 rights compact commission established under 2-15-212 should  
11 make the negotiation of water rights claimed by the federal  
12 government or Indian tribes in or affecting the basins  
13 identified by [section 10] its highest priority."

14       NEW SECTION. Section 10. Process and criteria for  
15 designating priority basins or subbasins. (1) The water  
16 judges and the department, in performing their functions in  
17 the adjudication process, shall give priority to basins or  
18 subbasins designated each biennium by the legislature.  
19 Basins or subbasins must be designated according to the  
20 following criteria:

21       (a) recurring water shortages within the basin or  
22 subbasin have resulted in urgent water rights controversies  
23 that require adjudication to determine relative rights;

24       (b) federal or Indian reserved rights are nearing  
25 determination, either by compact or adjudication, thus

1 making adjudication of other rights in the basin or subbasin  
2 important for timely issuance of preliminary or final  
3 decrees;

4 (c) the basin or subbasin's location would help ensure  
5 efficient use of department and water court resources; and

6 (d) the adjudication process in the basin or subbasin  
7 is nearing the issuance of a decree.

8 (2) The water judge may designate a basin for priority  
9 adjudication upon petition of 100 or more persons who have  
10 filed claims within the basin, or he may designate a  
11 subbasin for priority adjudication upon petition of a  
12 majority of persons who have filed claims within the  
13 subbasin. The basin or subbasin shall receive priority,  
14 however, only if it meets one or more of the criteria in  
15 subsection (1).

16 (3) If adjudication work in one or more of the  
17 priority basins or subbasins has been completed or has been  
18 suspended for good cause, the water judge may select other  
19 basins or subbasins for priority adjudication, based on the  
20 criteria in subsection (1).

21 NEW SECTION Section 11--Appropriation--for--sample--of  
22 claims--within--decrees;--(1)--There--is--appropriated--to--the  
23 environmental--quality--council--for--use--by--the--water--policy  
24 committee--\$92,000--from--the--water--development--state--special  
25 revenue--fund--for--the--biennium--ending--June--30,--1989,--to

1 undertake--a--random--sampling--and--analysis--for--accuracy--and  
2 consistency--of--claims--in--basins--that--have--undergone  
3 adjudication--efforts--and--for--which--a--temporary--preliminary,  
4 preliminary,--or--final--decree--has--been--issued;--The--analysis  
5 must--be--based--on--the--requirements--for--final--decrees--provided  
6 in--85-2-234.

7 (2)--The--office--of--the--legislative--auditor--shall--assist  
8 the--water--policy--committee--in--conducting--the--random--sampling  
9 and--analysis;--The--water--policy--committee--may--contract--with--a  
10 qualified--consultant--to--conduct--the--random--sampling--and  
11 analysis;--The--analysis--must--be--completed--by--June--30,--1989,  
12 and--water--policy--committee--recommendations--resulting--from  
13 the--analysis--must--be--submitted--to--the--legislature--by--January  
14 17,--1989.

15 (3)--In--devising--the--random--sampling--and--analysis,--the  
16 water--policy--committee--shall--consult--with--the--department--of  
17 natural--resources--and--conservation--and--with--the--Montana  
18 water--courts.

19 (4)--All--claimants--whose--claims--are--randomly--selected  
20 for--the--sampling--and--analysis--shall--assist--the--water--policy  
21 committee--and--its--consultant--in--reviewing--claims--for  
22 accuracy--and--consistency;--Assistance--provided--by--a--claimant  
23 may--not--involve--financial--cost--to--the--claimant.

24 (5)--The--water--policy--committee--and--its--consultant--may  
25 enter--the--property--of--a--claimant--to--conduct--field

1 investigations-upon-providing-written-notice-to-the-claimant  
2 at-least-14-days-in-advance-of-the-investigation.

3 (6)--Information-derived-from-the-random--sampling--and  
4 analysis--that-is-specific-to-an-individual-claimant-must-be  
5 kept--confidential--and--may---not---prejudice---the---final  
6 adjudication--of--that--claimant's--water--rights.--However,  
7 information-derived-from-the-random--sampling--and--analysis  
8 may-be-described-in-general-terms-and-is-public-information.

9 NEW SECTION. SECTION 11. APPROPRIATION. THERE IS  
10 APPROPRIATED \$1,200 TO THE MONTANA SUPREME COURT FOR  
11 EXPENSES OF THE JUDICIAL NOMINATION COMMISSION IN PERFORMING  
12 FUNCTIONS RELATING TO WATER COURT APPOINTMENTS.

13 NEW SECTION. SECTION 12. REPEALER. SECTION 85-2-242,  
14 MCA, IS REPEALED.

15 NEW SECTION. Section 13. Extension of authority. Any  
16 existing authority of the judicial nomination commission and  
17 the-board-of-natural--resources--and--conservation to make  
18 rules on the subject of the provisions of this act is  
19 extended to the provisions of this act.

20 NEW SECTION. Section 14. Codification instruction.  
21 Section 10 is intended to be codified as an integral part of  
22 Title 85, chapter 2, part 2, and the provisions of Title 85,  
23 chapter 2, part 2, apply to section 10.

24 NEW SECTION. Section 15. Effective date. This act is  
25 effective July 1, 1987.