_____ BILL NO. _____

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PROCEDURES FOR EXPEDITED PROCESSING IN DISTRICT COURTS OF WATER CASES ARISING UNDER FINAL DECREES; PROVIDING FOR THE CESSATION OF OPERATIONS OF THE WATER COURT, WATER DIVISIONS, AND WATER JUDGES AS FINAL DECREES ARE ENTERED; PROVIDING THAT DISTRICT COURTS ASSUME JURISDICTION ONCE FINAL DECREES ARE ENTERED; AMENDING SECTIONS 3-7-101, 3-7-212, 3-7-224, 3-7-501, 85-2-214, 85-2-234, 85-2-236, 85-2-309, AND 85-2-406, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE."

WHEREAS, the Montana general stream adjudication established by Senate Bill No. 76 during the 1979 Montana Legislature was explicitly designed as a temporary judicial system with limited jurisdiction to adjudicate water rights as they existed on July 1, 1973; and

WHEREAS, the Montana Water Court, created to implement this system, has operated in Bozeman for over 44 years and is projected to complete its work within the next decade; and

WHEREAS, the temporary nature of the Water Court was a core feature of the original legislation, with the express understanding that the Water Court's sole purpose was to adjudicate pre-1973 water rights; and

WHEREAS, maintaining the Water Court beyond its intended role represents an unnecessary expansion of government, especially when local District Courts are fully capable of and have historically handled water rights enforcement; and

WHEREAS, maintaining local control of water rights administration and enforcement, as outlined in Senate Bill No. 76 in 1979, was a foundational principle of the legislation and remains the most effective way to ensure accountability and responsiveness to the needs of Montanans; and

WHEREAS, transitioning water rights jurisdiction back to local District Courts once the limited work of the Water Court is complete upholds the principles of limited government and good governance, reinforces local control, and fulfills the commitment to eliminate unnecessary administrative layers; and

WHEREAS, the 69th Legislature intends to fulfill the original intent of Senate Bill No. 76 (1979) by

providing for the systematic phaseout of the Water Court as adjudication is completed on a basin-by-basin basis, ultimately returning jurisdiction to local District Courts and ensuring that future legislatures finalize the necessary statutes to fully eliminate the Water Court from state government.

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.** (1) To adjudicate existing water rights and to conduct hearings in cases certified under 85-2-309, water divisions are established as defined in 3-7-102. A water division ~~shall~~ must be presided over by a water judge.

(2) When a final decree has been issued for every basin, the water courts, water divisions, and water judges created by Title 3, chapter 7, and Title 85, chapter 2, shall cease operation entirely as provided in 85-2-214."

Section 2. Section 3-7-212, MCA, is amended to read:

"**3-7-212. Enforcement of decrees.** The district court having jurisdiction ~~may~~ shall enforce the provisions of a final decree or a portion of a final decree if a petition is filed and granted pursuant to Title 85, chapter 5, part 1. In the absence of any final decree having been issued, the district court having jurisdiction may enforce the provisions of a temporary preliminary decree, preliminary decree, or supplemental preliminary decree entered under 85-2-231, as modified by a water judge after objections and hearings, or may enforce portions of the decree if a petition is filed and granted pursuant to Title 85, chapter 5, part 1."

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

"~~**3-7-224. (Temporary) Jurisdiction of chief water judge and associate water judge. (1) The chief water judge and the associate 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 and the associate water judge have jurisdiction over cases certified to the district court under 85-2-309, all matters relating to the determination of existing water rights within the~~

~~boundaries of the state of Montana, and all petitions for judicial review filed with the water court under 2-4-702.~~

~~(3) With regard to the consideration of a matter within the chief water judge's jurisdiction, the chief water judge and the associate water judge have the same powers as a district court judge. The chief water judge and the associate water judge may issue orders, on the motion of an interested party or on the judge's own motion, that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including but not limited to requiring the joinder of persons not parties to the administrative hearing being conducted by the department pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue certified pursuant to 85-2-309(2). (Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.)~~

3-7-224. ~~(Effective October 1, 2025)~~ Jurisdiction of chief water judge and associate water judge -- cessation of jurisdiction. (1) The chief water judge and the associate 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) (a) The chief water judge and the associate water judge have jurisdiction over cases certified to the district court under 85-2-309 and all matters relating to the determination of existing water rights within the boundaries of the state of Montana.

(b) Once a final decree is issued for a basin, the jurisdiction of the chief water judge and the associate water judge ceases for that basin, as provided in 85-2-214.

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

Section 4. Section 3-7-501, MCA, is amended to read:

"**3-7-501. Jurisdiction -- cessation of jurisdiction.** (1) The jurisdiction of each judicial district concerning the determination and interpretation of cases certified to the court under 85-2-309 or 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) A water judge may not preside over matters concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights beyond the boundaries specified in 3-7-102 for the judge's division except as provided in 3-7-201.

(3) (a) The water judge for each division shall exercise jurisdiction over all matters concerning cases certified to the court under 85-2-309 or concerning the determination and interpretation of existing water rights within the judge's division as specified in 3-7-102 that are considered filed in or transferred to a judicial district wholly or partly within the division.

(b) Once a final decree is issued for a basin, the water judge shall cease exercising jurisdiction over matters for that basin as provided in 85-2-214.

(4) The determination and interpretation of existing water rights includes, without limitation, the adjudication of total or partial abandonment of existing water rights occurring at any time before the entry of the final decree."

Section 5. Section 85-2-214, MCA, is amended to read:

"**85-2-214. Commencement of action -- completion of action -- postcompletion administration, enforcement, and other judicial actions related to final decrees -- definition.** (1) The action for the adjudication of all existing water rights under Title 3, chapter 7, Title 85, chapter 2, part 7, and this part is commenced with the issuing of the order by the Montana supreme court to file a statement of a claim of an existing water right as provided in 85-2-212. For each claim, the action is considered filed in the judicial district of the county in which the diversion is made or, if there is a claimed right with no diversion, in the judicial district of the county in which the use occurs.

(2) The water judge shall monitor the claim filing procedure for claims within the judge's water division and make orders necessary to ensure timely and accurate compliance with the claim filing procedure.

(3) (a) When the water court enters a final decree for a basin, the department shall send a copy of the final decree to the judicial district or districts where the claims contained in the decree were filed as provided in subsection (1).

(b) Once a final decree is issued for a basin and after all appeals and related postdecree motions

and orders pertaining to the final decree are resolved, the water courts and water judges created by Title 3, chapter 7, and Title 85, chapter 2, no longer have jurisdiction over the final decree or matters arising under it, including but not limited to actions brought for abandonment, waste, or illegal enlargement of right, actions brought under 85-2-406, or any other distribution, administration, or enforcement matter.

(4) When the water court has entered a final decree for every basin, the remaining water courts, water divisions, and water judges created by Title 3, chapter 7, and Title 85, chapter 2, shall cease operation entirely within 180 days of the resolution of all appeals and related postdecree motions and orders pertaining to all final decrees.

(5) Any matter arising under a final decree after the water court enters a final decree for a basin and after all appeals and related postappeal motions and orders pertaining to the final decree are resolved, including but not limited to actions brought for abandonment, waste, or illegal enlargement of right, and distribution, administration, and enforcement actions pursuant to 85-2-406 and Title 85, chapter 5, must be filed in an appropriate district court.

(6) When presiding over water cases and when necessary, district court judges may use judges pro tempore, special masters, and standing masters as provided in Title 3, chapter 5, part 1, and the rules of civil and criminal procedure, and in accordance with the following procedure. Upon the filing of any water case, the district court in which the case has been filed shall, within 5 business days after the appearance or service of the complaining party and adverse party:

(a) determine whether venue is proper and, if it is not, resolve the venue question and transfer the matter immediately;

(b) determine, with the advice of the parties, whether the matter calls for either expedited review and possibly emergency relief or specialized judicial assistance from a judge pro tempore, a special master, or a standing master, in which case the assistance must be immediately selected in accordance with Title 3, chapter 5, part 1; and

(c) if expedited review and the consideration of emergency relief have been sought, schedule the matter immediately for hearing.

(7) After a final decree for a basin is entered, when a district court judge renders a judgment, decree, or order affecting the title to any water right, claim, appropriation, or permit, the clerk of court shall

immediately transmit to the department a certified copy of the judgment, decree, or order.

(8) For the purposes of this section, "water case" means a case related to the review, administration, or enforcement of water rights contained in a final decree."

Section 6. Section 85-2-234, MCA, is amended to read:

"**85-2-234. Final decree.** (1) The water judge shall, on the basis of the preliminary decree and any supplemental preliminary decree, on the basis of any hearing that may have been held, and on final resolution of all issue remarks, as defined in 85-2-250, enter a final decree affirming or modifying the preliminary decree.

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233. However, the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree must establish the existing rights and priorities within the water judge's jurisdiction of persons who have filed a claim in accordance with 85-2-221 and 85-2-222, of persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree must establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all water rights and their relative priorities.

(5) The final decree must state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree must state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water included in the right, as follows:

(i) by flow rate for direct flow rights, such as irrigation rights;

(ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not

susceptible to measurement by flow rate; or

(iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the inclusive dates during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree must state:

(a) the name and mailing address of the holder of the right;

(b) the source or sources of water included in the right;

(c) the quantity of water included in the right;

(d) the date of priority of the right;

(e) the purpose for which the water included in the right is currently used, if at all;

(f) the place of use and a description of the land, if any, to which the right is appurtenant;

(g) the place and means of diversion, if any; and

(h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702.

(8) The chief water judge shall notify the governor, the Montana supreme court, and the majority and minority leaders of each house of the legislature when a final decree is issued in a basin pursuant to 85-2-235 and this section.

(9) Clerical mistakes in a final decree may be corrected at any time on the initiative of ~~the water~~ an appropriate district court judge or on the petition of any person who possesses a water right. The ~~water~~ district court judge shall order the notice of a correction proceeding that the judge determines to be appropriate to advise all persons who may be affected by the correction. An order of the ~~water~~ district court judge making or

denying a clerical correction is subject to appellate review."

Section 7. Section 85-2-236, MCA, is amended to read:

"**85-2-236. Certificate of water right.** When a final decree for a basin is entered, the water judge shall send a copy to the department, and the department shall send a copy to the judicial districts as provided in 85-2-214. Except as provided in 85-2-306, the department shall on the basis of the final decree issue a certificate of water right to each person decreed an existing right. The original of the certificate shall be sent to the person to whom the right is decreed. The department shall keep a copy of the certificate in its office in Helena."

Section 8. Section 85-2-309, MCA, is amended to read:

"**85-2-309. Hearings on objections -- jurisdiction.** (1) If the department determines that an objection to an application for a permit under 85-2-311 or change in appropriation right under 85-2-402 states a valid objection, it shall hold a contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 90 days from the date set by the department for the filing of objections after serving notice of the hearing by first-class mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by a ~~water~~ judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department may extend the 90-day deadline for good cause shown or upon request of the applicant and all objectors. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by a ~~water~~ judge ~~over all other adjudication matters~~.

(b) If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by the department, the court shall remand the

matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322."

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

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

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

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

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

established in the final decree. The order settling the controversy must be appended to the final decree, and a copy must be filed with the department. The department must be served with process in any proceeding under this subsection, and the department may, in its discretion, intervene in the proceeding.

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

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

NEW SECTION. **Section 10. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to final decrees issued prior to [the effective date of this act].

- END -