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Water Division Court DRAFT

*** Bill No. ***

Introduced By *****

By Request of the (Agency or Department)

A Bill for an Act entitled: "An Act providing for the continuation of the water divisions and water judges in the comprehensive and centralized adjudication and administration of water rights; revising the water divisions; __ ;amending section 3-1-101, MCA; repealing sections 3-7-211, 3-7-212, 3-7-224 and 3-7-502, MCA; providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-702, MCA, is amended to read:

2-4-702. *(Temporary)* **Initiating judicial review of contested cases.** (1) (a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available

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under other means of review, redress, relief, or trial de novo provided by statute.

(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in 75-2-211, 75-2-213, and subsections (2) (c) and (2) (e) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute, subsection (2) (d), or subsection (2) (e), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

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(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(e) (i) A party who is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, may petition the district court or the water court for judicial review

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of the decision. If a petition for judicial review is filed in the water court, the water court rather than the district court has jurisdiction and the provisions of this part apply to the water court in the same manner as they apply to the district court. The time for filing a petition is the same as provided in subsection (2) (a).

(ii) If more than one party is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3, the district court where the appropriation right is located has jurisdiction. If more than one aggrieved party files a petition but no aggrieved party files a petition in the district court where the appropriation right is located, the first judicial district, Lewis and Clark County, has jurisdiction.

(iii) If a petition for judicial review is filed in the district court, the petition for review must be filed in the district court in the county where the appropriation right is located.

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following

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notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record. (*Terminates September 30, 2025-- sec. 6, Ch. 126, L. 2017.*)

2-4-702. (*Effective October 1, 2025*) **Initiating judicial review of contested cases.** (1) (a) Except as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial review under this chapter. This section does not limit use of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute.

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(b) A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other question not raised before the agency unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Except as provided in 75-2-211, 75-2-213, and subsection (2)(c) of this section, proceedings for review must be instituted by filing a petition in district court within 30 days after service of the final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is rendered. Except as otherwise provided by statute or subsection (2)(d), the petition must be filed in the district court for the county where the petitioner resides or has the petitioner's principal place of business or where the agency maintains its principal office. Copies of the petition must be promptly served upon the agency and all parties of record.

(b) The petition must include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-4-

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704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.

(c) If a petition for review is filed pursuant to 33-16-1012(2)(c), the workers' compensation court, rather than the district court, has jurisdiction and the provisions of this part apply to the workers' compensation court in the same manner as the provisions of this part apply to the district court.

(d) If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title 75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be located or where the action is proposed to occur.

(e) A party who is aggrieved by a final decision on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3 or part 4, may petition the water division court for judicial review of the decision. The time for filing a petition is the same as provided in subsection (2)(a).

(3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the agency's

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decision. The agency may grant or the reviewing court may order a stay upon terms that it considers proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without notice only if the provisions of 27-19-315 through 27-19-317 are met.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs. The court may require or permit subsequent corrections or additions to the record.

{*Internal References to 2-4-702:*

1-2-116 2-4-603 18-4-242 39-71-2904 *
49-2-505 53-9-131 *}

Section 2. Section 3-1-102 , MCA, is amended to read:

3-1-102. Courts of record. The court of impeachment, the supreme court, the district courts, the water division court, the workers' compensation court, the municipal

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courts, the justices' courts of record, and the city courts of record are courts of record.

{Internal References to 3-1-102: None}

Section 3. *Section 3-1-804, MCA, is amended to read:*

3-1-804. Substitution of district judges.

SUBSTITUTION OF DISTRICT JUDGES

This section applies to judges presiding in district courts and the water division court, except it does not apply to any judge sitting as a water court judge presiding in an adjudication proceeding under Title 85, Chapter 2, Part 2. This section does not apply to a workers' compensation court judge.

(1) Each adverse party is entitled to one substitution of a district judge.

(a) In a civil action other than those noted in subsection (1)(c), a motion for substitution by the party filing the action must be filed within 30 calendar days after the first summons is served or an adverse party has appeared. A motion for substitution by the party served must be filed within 30 calendar days after service has been completed in compliance with M. R. Civ. P. 4.

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(b) In a criminal action, a motion for substitution by the prosecution or the defendant must be filed within 10 calendar days after the defendant's arraignment.

(c) A motion for substitution may not be filed in the following cases: a child abuse or neglect proceeding under Title 41, chapter 3; a youth court action proceeding under Title 41, chapter 5; or a mental health commitment proceeding under Title 53, chapter 21, part 1.

(2) (a) When an initial pleading is filed, the clerk of court shall stamp the name of the district judge to whom the case is assigned on the face of the original and all copies of that document.

(b) A motion for substitution of district judge must be made by filing a written motion with the clerk as follows:

The undersigned hereby moves for substitution of District Judge _____ in this case.

The moving party shall serve copies of the motion for substitution upon all other parties to the proceeding. The clerk shall immediately notify the district judge of the motion and, if there has already been a substitution, the first district judge to whom the case was assigned.

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(3) In civil cases, the motion for substitution is not effective for any purpose unless the filing fee for a motion for substitution required by 25-1-201 is paid to the clerk of the district court.

In criminal cases, the motion for substitution is effective upon filing, except as otherwise provided herein for a motion filed by a defendant who is not represented by a public defender, as defined by 47-1-103.

In criminal cases filed by the county attorney, the county attorney shall pay the substitution motion fee required by 25-1-201 within 30 days of receipt of a claim from the clerk of district court. In criminal cases filed by the attorney general, the attorney general shall pay the substitution motion fee required by 25-1-201 within 30 days of receipt of a claim from the clerk of district court.

In criminal cases where the motion is filed by or on behalf of an indigent defendant, as defined by 47-1-103, represented by a public defender, as defined by 47-1-103, the office of public defender, as defined by 47-1-103, shall pay the substitution motion fee within 30 days of receipt of a claim from the clerk of district court. In criminal cases where the motion is filed by or on behalf of a defendant who is not represented by a public defender, as

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defined by 47-1-103, the motion for substitution is not effective for any purpose unless the substitution motion fee required by 25-1-201 is paid to the clerk of the district court except as waived pursuant to 25-10-404.

The substitution motion filing fee required by 25-1-201 is not a district court expense within the meaning of 3-5-901.

(4) Any motion for substitution that is not timely filed is void. The district judge for whom substitution is sought has jurisdiction to determine timeliness, and if the motion for substitution is untimely, shall enter an order denying the motion.

(5) After a timely motion has been filed, the substituted district judge does not have the power to act on the merits of the case or to decide legal issues in the case, except as provided in subsection (10).

(6) The first district judge who has been substituted or disqualified for cause has the duty of calling in all subsequent district judges. In a multijudge district, all other district judges in that district must be called before a district judge from another district is called.

(7) When a new district judge has accepted jurisdiction, the clerk of court shall provide a copy of

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the assumption of jurisdiction to the first district judge to whom the case was assigned and to each attorney or party of record. A certificate of service must be attached to the assumption of jurisdiction form in the court file.

(8) If the presiding judge in any action recuses himself or herself or if a new district judge assumes jurisdiction in any action, the right to move for substitution of a district judge is reinstated, except as to parties who have previously obtained a substitution. The time periods run anew from the date of service of notice or other document identifying the new district judge.

(9) No party who is joined or intervenes has any right of substitution after the time has run as to the original parties to proceed.

(10) A district judge who has previously been substituted from the case may agree to set the calendar, draw a jury, and conduct all routine matters including arraignments, preliminary pretrial conferences in civil cases, and other matters that do not address the merits of the case, if authorized by the presiding district judge.

(11) When a new trial is ordered by the district court, each adverse party shall be entitled to one motion for substitution of district judge. The motion must be

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filed, with the required filing fee, within 20 calendar days after the district court has ordered a new trial.

(12) When a judgment or order is reversed or modified on appeal and the cause is remanded to the district court for a new trial, or when a summary judgment or judgment of dismissal is reversed and the cause remanded, each adverse party is entitled to one motion for substitution of district judge. The motion must be filed, with the required filing fee, within 20 calendar days after the remittitur from the supreme court has been filed with the district court. There is no other right of substitution in cases remanded by the supreme court.

In criminal cases, there is no right of substitution when the cause is remanded for sentencing.

*{Internal References to 3-1-804:
3-20-102}*

Section 4. Section 3-1-901, MCA, is amended to read:

3-1-901. Judicial vacancy -- notice. (1) (a) Upon receiving notice from the chief justice of the supreme court, the governor shall appoint a candidate, as provided in this part, to fill any vacancy on the supreme court or the district court.

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(b) The governor ~~chief justice of the supreme court~~ shall appoint a candidate to fill any term or vacancy for ~~the chief water judge or associate~~ a water division judge from a list of nominees provided to the governor by the chief justice of the Montana supreme court pursuant to 3-7-2013-7-221.

(2) Within 10 days of the date of receipt by the governor of the notice from the chief justice of the supreme court that a vacancy on the supreme court or a district court has occurred or the effective date of a judicial resignation of a supreme court justice or a district court judge has been announced, the governor shall notify the public, including media outlets with general statewide circulation and other appropriate sources, that a vacancy has been announced, including the deadline within which applications must be received.

{Internal References to 3-1-901: None}

Section 5. Section 3-1-904 , MCA, is amended to read:

3-1-904. Public comment. (1) The governor shall establish a reasonable period for reviewing applications and interviewing applicants for a supreme court or district

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court vacancy that provides at least 30 days for public comment concerning applicants.

(2) Each applicant for a supreme court or district court vacancy who has the qualifications set forth by law for holding judicial office and who receives a letter of support from at least three adult Montana residents by the close of the public comment period provided for in subsection (1) must be considered a nominee for the position.

(3) The total time from receipt of notice of a supreme court or district court vacancy until appointment may not exceed 100 days.

(4) The application, public comment, and any related documents are open to the public except when the demands of individual privacy clearly exceed the merits of public disclosure.

{Internal References to 3-1-904: None}

Section 6. Section 3-1-905 , MCA, is amended to read:

3-1-905. Appointments. (1) The governor, ~~or the chief justice of the supreme court for the office described in 3-7-221,~~ shall make an appointment within 30 days of the close of the public comment period from the list of

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applicants- for supreme court or district court or, within 30 days of the receipt of the list of nominees submitted by the chief justice of the supreme court for water division judge as provided in 3-7-201.

(2) For purposes of Article VII, section 8, of the Montana constitution, the governor must be construed to receive the names of the nominees at the close of the public comment period provided for in 3-1-904.

(3) If the governor fails to appoint within 30 days of the close of the public comment period provided for in subsection (1), the chief justice shall make the appointment from the same list of applicants for a supreme court or district court vacancy, or same list of nominees submitted for a water division court vacancy, within 30 days of the governor's failure to appoint.

{Internal References to 3-1-905: None}

Section 7. Section 3-1-907, MCA, is amended to read:

3-1-907. Duration of appointment -- election for remainder of term. (1) If an appointment ~~subject to 3-1-905~~ of a supreme court justice or district court judge is confirmed by the senate, the appointee shall serve until the appointee or another person elected at the first

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general election after confirmation is elected and qualified. The candidate elected at that election holds the office for the remainder of the unexpired term.

(2) If an incumbent judge or justice files for election to the office to which the judge or justice was elected or appointed and no other candidate files for election to that office, the name of the incumbent must nevertheless be placed on the general election ballot to allow voters of the district or state to approve or reject the incumbent. If an incumbent is rejected at an election for approval or rejection, the incumbent shall serve until the day before the first Monday of January following the election, at which time the office is vacant and another appointment must be made.

{Internal References to 3-1-907: None}

Section 8. Section 3-7-101, MCA, is amended to read:

3-7-101. Water divisions court. ~~To adjudicate existing water rights and to conduct hearings in cases certified under 85-2-309,~~ (1) The water division court has jurisdiction over those matters provided for by 3-7-501. The water division court consists of four water divisions ~~are established~~ as defined in 3-7-102. A water division

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shall be presided over by a water division judge. A water division judge may preside over one or more divisions.

(2) All references to a "water judge" in Title 3, chapter 7 and Title 85, chapters 2 and 5 shall mean a "water division judge" as described in this section.

{Internal References to 3-7-101: None}

Section 9. Section 3-7-103, MCA, is amended to read:

3-7-103. Promulgation of rules and prescription of forms -- advisory committee. (1) ~~As soon as practicable t~~The Montana supreme court may promulgate special rules of practice and procedure and shall prescribe forms for use in connection with this chapter and Title 85, chapter 2, parts 2 and 7 in consultation with the chief judge of the water division court ~~water judge~~ and the department of natural resources and conservation.

(2) (a) The chief judge of the water division court ~~water judge~~ shall appoint a water adjudication advisory committee to provide recommendations to the water division court, the Montana supreme court, the department of natural resources and conservation, and the legislature on methods to improve and expedite the water adjudication process.

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(b) The committee consists of three nongovernmental attorneys who practice before the water court, one district court judge, one public member, and three water users who have filed statements of claim with the department of natural resources and conservation under ~~this chapter~~ Title 85, chapter 2, part 2.

(c) The chief judge of the water division court ~~water judge~~ or the judge's designee shall serve as an ex officio member of the committee. The Montana supreme court may appoint the attorney general or the attorney general's designee, a representative from the department of natural resources and conservation, and a representative of the United States government as ex officio members of the committee.

(d) The committee members shall serve at the pleasure of the chief judge of the water division court ~~water court~~ and shall serve without compensation.

(e) The committee shall file a report with the Montana supreme court upon request ~~by October 1, 1996, and as often as determined by the Montana supreme court.~~

(f) After the chief judge of the water division court certifies to the governor and the Montana supreme court that all final decrees in all basins pursuant to 85-2-234

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and 85-2-235, except basins that contain existing water rights pursuant to Title 85, chapter 20, part 10, have been issued the committee shall be terminated.

{Internal References to 3-7-103: None}

NEW SECTION. Section 10. Venue. (1) All matters under Title 3, chapter 7, part 5 must be brought before or immediately transferred to the water division judge in the appropriate water division.

(2) The proper place for water division court proceedings is the water division in which the water right is located or in the county in which the controversy arises. Where the water right or the controversy is situated in more than one water division, the party initiating the action may select either of the water divisions and the water division so selected is the proper water division for the proceeding.

(3) Upon the mutual agreement of all the parties in a matter, water division court proceedings may be held in a location outside the division or county.

NEW SECTION. Section 11. Office of Water Division Court - Administrator. (1) There is a single office of the

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water division court that maintains all records of the water division court. The office of the water division court must be at the location designated by the chief justice of the Montana supreme court.

(2) The chief judge of the water division court shall designate a water division court administrator. The water division court administrator holds the position at the pleasure of the chief judge of the water division court.

(3) The water division court administrator shall:

(a) maintain the office of the water division court;

(b) maintain all records, accept all filings, and conduct other clerical duties in matters filed in the water division court;

(c) perform duties assigned by the chief judge of the water division court; and

(d) perform those duties set forth in Title 3, Chapter 5, Part 5, to the extent required in this chapter.

(4) The water division court administrator may hire clerical staff necessary to perform the duties required in this section.

NEW SECTION. **Section 12. Direct appeal to supreme court.** Except as otherwise provided for by 85-2-235, an

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appeal from a water division court proceeding shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from a district court in civil cases.

Section 13. Section 3-7-201, MCA, is amended to read:

3-7-201. Designation Appointment of water division judges - qualifications. (1) ~~A water judge must be designated for each water division by a majority vote of a committee composed of the district court judge from each single-judge judicial district and the chief district judge from each multijudge judicial district, wholly or partly within the division. Except as provided in subsection (2), a water judge must be a district court judge or retired district court judge of a judicial district wholly or partly within the water division.~~ The water division court consists of at least two water division judges appointed by the governor as provided in Title 3, Chapter 1, Part 9, from a list of not less than two or more than four eligible nominees for each water division court position submitted to the governor by the chief justice of the supreme court. If only one eligible nominee applies for any given water division

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position, then chief justice of the supreme court may submit that sole eligible nominee to the governor.

(a) For nominations to each expiring term of a water division judge, the chief justice of the supreme court shall establish a reasonable period for submitting and reviewing applications prior to the expiration of the term, including a period of at least 21 days for the submission of applications and, following the close of the application period, a period of at least 30 days for public comment concerning applicants. The list of nominees for each expiring term, together with any public comments concerning each nominee, must be submitted to the governor by the chief justice at least 30 days prior to the expiration of the term.

(b) For nominations to each vacancy occurring in the position of a water division judge, the chief justice of the supreme court shall establish a reasonable period for submitting and reviewing applications after the vacancy occurs, including a period of at least 21 days for the submission of applications and a period of at least 30 days following the close of applications for public comment concerning applicants. The list of nominees, together with any public comment concerning each nominee, must be

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submitted to the governor by the chief justice within 70 days of the vacancy.

~~(2) A district court judge or retired district court judge may sit as a water judge in more than one division if requested by the chief justice of the supreme court or the water judge of the division in which the judge is requested to sit.~~ To be eligible for the office of water division judge, a person shall have the qualifications for a district court or supreme court judge set forth in Article VII, section 9, of the Montana Constitution.

(3) The application, public comment, and any related documents for each nominee must be submitted with the list of nominees to the governor and are open to the public except when the demands of individual privacy clearly exceed the merits of public disclosure. ~~A water judge, when presiding over a water division, presides as district court judge in and for each judicial district wholly or partly within the water division.~~

{*Internal References to 3-7-201:*

3-7-202 3-7-203 3-7-501}

Section 14. Section 3-7-202 , MCA, is amended to read:

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3-7-202. Term of office. The term of office for a water division judge is from the date of initial appointment as provided in Title 3, Chapter 1, Part 9 to June 30, 2031. After June 30, 2031, the term of office of a water judge is 6 years. ~~June 30, 1985. After June 30, 1985, the term of office of a water judge is 4 years, subject to continuation of the water divisions by the legislature.~~

{Internal References to 3-7-202: None}

Section 15. Section 3-7-203 , MCA, is amended to read:

3-7-203. Vacancies. If a vacancy in the office of water judge occurs, it must be filled in the manner provided in 3-7-201 and Title 3, Chapter 1, Part 9, ~~for the initial designation of a water judge.~~ A vacancy is created when a water division judge dies, resigns, retires, ~~is not elected to a subsequent term,~~ forfeits the judicial position, is removed, or is otherwise unable to complete the term as a water division judge.

{Internal References to 3-7-203: None}

Section 16. Section 3-7-204 , MCA, is amended to read:

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3-7-204. Supervision and administration by supreme court.

(1) The Montana supreme court shall supervise the activities of the water division judges, water masters, and associated personnel in implementing this chapter and Title 85, ~~chapter 2, part 2.~~

(2) The supreme court shall pay the salaries and expenses of the water division judges and water division court personnel ~~the salaries and expenses of the water judges' staffs and the salaries and expenses of the water masters and the water masters' staffs, from appropriations made for that purpose.~~ "Salaries and expenses" as used in this section include but are not limited to the salaries and expenses of personnel, the cost of office equipment and office space, and other necessary expenses that may be incurred in the administration of this chapter and Title 85, ~~chapter 2, part 2.~~

(3) A water division judge must receive the same salary and expense allowance as provided for a district court judge pursuant to 3-5-211.

(4) The Montana supreme court shall provide in its budget for the salary, expense, and office and staff requirements of the water division judges. Money may be appropriated by the legislature from the general fund for these purposes.

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{*Internal References to 3-7-204:*

85-2-112}

NEW SECTION. **Section 17. Water division judges -**

duties and powers. With regard to consideration of a matter within the water division court's jurisdiction, a water division judge has the same powers as a district court judge in civil matters. A water division 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 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).

(2) A water division judge shall administer the adjudication of existing water rights by:

(a) coordinating with the department of natural resources and conservation in compiling information submitted on water claim forms under Title 85, chapter 2, part 2, to assure that the information is expeditiously and

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properly compiled and transferred to the water division judge in each water division;

(b) ensuring that adjudication proceedings in each water division move without unreasonable delay to enter the required preliminary decree; and

(c) ensuring that any contested or conflicting claims are tried and adjudicated as expeditiously as possible.

Section 18. Section 3-7-221, MCA, is amended to read:

"3-7-221. Appointment of chief water judge and associate water judge -- terms of office. (1) The chief justice of the Montana supreme court shall appoint one sitting water division court judge to serve as a chief water judge of the water division court. ~~as provided in Title 3, chapter 1, part 9. The chief justice of the Montana supreme court may appoint an associate water judge.~~

(2) ~~To be eligible for the office of chief water judge or associate water judge, a person shall have the qualifications for district court or supreme court judges found in Article VII, section 9, of the Montana constitution.~~ The chief judge of the water division court shall serve as the chief judge for all matters regarding

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the efficient management of the water division court's
business in cooperation with other water division judges
and the water division court administrator including:

(a) assign water division court personnel to duties
as needed;

(b) prepare water division court budget requests to
the supreme court; and

(c) oversee the office of the water division court,
including supervision of the water division court
administrator.

(3) The term of office of the chief judge of the water
division court judge and the associate water judge is
concurrent with the appointee's remaining term 4 years
subject to continuation of the water divisions by the
legislature. A water division judge may serve consecutive
terms as chief judge of the water division court.

{*Internal References to 3-7-221:*

3-1-1001 3-1-1011 19-5-301 85-2-705}

Section 19. Section 3-7-301, MCA, is amended to read:

"3-7-301. Appointment of water masters -- removal. (1)
The chief judge of the water division court ~~water judge or~~

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~~the water judge in each water division~~ may appoint one or more water masters to expedite proceedings to adjudicate existing water rights pursuant to Title 85, Chapter 2, Part 2.

(2) ~~A water master may be appointed after July 1, 1980, and must be appointed on or before July 1, 1982.~~

~~(3)~~—In appointing a water master, the chief judge of the water division court ~~water judge~~ shall consider a potential master's experience with water law, water use, and water rights.

(3) A water master shall take the oath required of judges and follow the Montana code of judicial conduct.

(4) An appointed water master is an employee of the water division court under 3-5-901.

(5) A water master is subject to disqualification from proceeding on a matter on the same grounds as a water division judge. On disqualification of a water master, the chief water division judge shall either refer the matter to another water master or move the case back to the water division judge's docket for further proceedings.

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(56) A water master shall serve at the pleasure of the chief ~~water~~ judge of the water division court and may be removed by the chief ~~water~~ judge of the water division court.

(57) A water master may serve in any water division and may be moved among the water divisions at the discretion of the chief ~~water~~ judge of the water division court."

{Internal References to 3-7-301: None}

Section 20. Section 3-7-311 , MCA, is amended to read:

"3-7-311. Duties of water masters. (1) The water master has the general powers given to a master by Rule 53(c), M.R.Civ.P.

(2) A water master shall assist in the performance of the water division court related only to its adjudication activities under Title 85, chapter 2, parts 2 and 7, as directed by the chief judge of the water division court or other water division judges. ~~Within a reasonable time after June 30, 1983, the water master shall issue a report to the water judge meeting the requirements for the preliminary decree as specified in 85-2-231.~~

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~~(3) After a water judge issues a preliminary decree, the water master shall assist the water judge in the performance of the water division's further duties as ordered by the water judge.~~

~~(4) A water master may be appointed by a district court to serve as a special master to a district court for actions brought pursuant to 85-2-114(1) or (3) or 85-5-301 if the appointment is approved by the chief water judge."~~

{Internal References to 3-7-311: None}

Section 21. Section 3-7-404, MCA, is amended to read:

"3-7-404. Procedure exclusive. The procedure for substitution and disqualification of a water judge or water master specified in this section is exclusive unless otherwise specifically altered by the Montana supreme court."

{Internal References to 3-7-404: None}

NEW SECTION. **Section 22. Substitution of water division judge.** (1) A water division judge may not be substituted in an adjudication proceeding under Title 85, Chapter 2, Part 2.

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(2) Except as provided in subsection 1, each adverse party is entitled to one substitution of a water division judge. Unless otherwise provided for in this subsection, a water division judge may be substituted in the same manner as a district court judge pursuant to 3-1-804. The first water division judge who has been substituted has the duty of calling in a subsequent water division judge. Except as provided for by subsection (3), all other water division judges must be called as a substitute judge before a district court judge is called.

(3) A party may file a motion to substitute a water division judge with a district court judge for good cause. A motion to substitute a water division judge under this subsection must be filed within 30 calendar days after the first summons is served or an adverse party has appeared, or within 10 calendar days of the service of the filing of a petition pursuant to 85-5-101. A motion for substitution by the party served must be filed within 30 calendar days after service has been completed in compliance with M. R. Civ. P. 4 for all matters except a petition pursuant to 85-5-101, which must be filed within 10 calendar days after such service is completed. The first water division judge may grant the motion if:

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(a) good cause exists for the substitution of the district court judge;

(b) there will be no undue delay or prejudice to the other parties involved in the water controversy;

(c) the district court judge presides in a judicial district where the water right is located or the controversy arises; and

(d) the water matter does not present any issue of state-wide or basin-wide concern.

(4) If a vacancy occurs, the chief justice of the Montana supreme court may appoint a substitute water division judge to preside over pending matters until the vacancy is filled pursuant to Title 3, Chapter 1, Part 9.

(5) A district court judge substituted for a water division judge presides as a water division judge.

Section 23. Section 3-7-501, MCA, is amended to read:

"3-7-501. Jurisdiction. (1) The water division court has jurisdiction over: ~~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~~

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~~division or water divisions that contain the judicial district wholly or partly.~~

(a) matters concerning the determination and interpretation of cases certified to the court under 85-2-309;

(b) proceedings to adjudicate existing water rights pursuant to Title 85, Chapter 2, including, without limitation, the adjudication of total or partial abandonment of existing water rights occurring at any time before the entry of the final decree;

(c) the interpretation, enforcement, and administration of water rights: (i) subject to a final decree entered under 85-2-234; or (ii) subject to the provisions of a temporary preliminary decree, preliminary decree, or supplemental preliminary decree entered under 85-2-231, as modified after objections and hearings;

(d) the proceedings for the distribution, administration, and enforcement of water rights pursuant to 85-2-406, including such necessary declaratory and injunctive relief;

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() proceedings for appointment of a water commissioner and administration of water rights pursuant to Title 85, Chapter 5;

(f) proceedings related to a water compact pursuant to Title 85, Chapter 20;

(g) proceedings to declare existing water rights abandoned pursuant 85-2-404 and 85-2-405;

(h) proceedings for judicial enforcement pursuant to 85-2-114 and 85-2-122; and

(i) judicial review of a department final decision in contested case involving an application for a provisional permit or for an application for a change in appropriation right as provided for by 2-4-702.

~~judge may not preside of 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.~~

(2) The water division court has jurisdiction over matters brought before the court pursuant to 85-2-424(9).

(4) The water division court's jurisdiction over matters in subsection (1) is exclusive. ~~The water judge for each~~

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~~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.~~

~~(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 a final decree.~~

{Internal References to 3-7-501: None}

Section 24. Section 3-7-502, MCA, is amended to read:
"3-7-502. Jurisdictional disputes. Whenever a question arises concerning which water division judge shall preside over a matter within the jurisdiction of the water division court, the question shall be settled by the water division judges involved.

Section 25. Section 85-2-102, MCA, is amended to read:

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"85-2-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" or "appropriation" means:

(a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a beneficial use;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with 85-2-436;

(d) in the case of the United States department of agriculture, forest service:

(i) instream flows and in situ use of water created in 85-20-1401, Article V; or

(ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;

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(e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(f) a use of water for aquifer recharge or mitigation; or

(g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

(2) "Appropriation right" has the same meaning as "water right" as defined in this section.

(3) "Aquifer recharge" means either the controlled subsurface addition of water directly to the aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to offset adverse effects resulting from net depletion of surface water.

(4) "Aquifer storage and recovery project" means a project involving the use of an aquifer to temporarily store water through various means, including but not limited to injection, surface spreading and infiltration, drain fields, or another department-approved method. The stored water may be either pumped from the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.

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(5) "Beneficial use", unless otherwise provided,

means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks through a change in an appropriation right for instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource authorized under 85-2-436;

(d) a use of water through a temporary change in appropriation right or lease to enhance instream flow to benefit the fishery resource in accordance with 85-2-408;

(e) a use of water for aquifer recharge or mitigation; or

(f) a use of water for an aquifer storage and recovery project as provided in 85-2-368.

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(6) "Certificate" means a certificate of water right issued by the department.

(7) (a) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(b) The term does not include a change in water use related to the method of irrigation.

(8) "Commission" means the fish and wildlife commission provided for in 2-15-3402.

(9) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information for the department to begin evaluating the information.

(10) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(11) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(12) "Developed spring" means any point where ground water emerges naturally, that has subsequently been

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physically altered, and from which ground water flows under natural pressures or is artificially withdrawn.

(13) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(14) "Ground water" means any water that is beneath the ground surface.

(15) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(16) "Mitigation" means the reallocation of surface water or ground water through a change in appropriation right or other means that does not result in surface water being introduced into an aquifer through aquifer recharge to offset adverse effects resulting from net depletion of surface water.

(17) "Municipality" means an incorporated city or town organized and incorporated under Title 7, chapter 2.

(18) (a) "National forest system lands" means all lands within Montana that are owned by the United States

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and administered by the secretary of agriculture through the forest service.

(b) The term does not include any lands within the exterior boundaries of national forest system units that are not owned by the United States and administered by the secretary of agriculture through the forest service.

(19) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(20) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(21) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(22) (a) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water.

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(b) The term does not mean a private corporation, association, or group.

(23) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(24) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(25) "Stream depletion zone" means an area where hydrogeologic modeling concludes that as a result of a ground water withdrawal, the surface water would be depleted by a rate equal to at least 30% of the ground water withdrawn within 30 days after the first day a well or developed spring is pumped at a rate of 35 gallons a minute.

(26) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

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(27) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(28) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(29) "Water court" or "water division court" means the water division court as provided for in Title 3, Chapter 7.

~~(2930)~~ "Water division" means a drainage basin as defined in 3-7-102.

~~(310)~~ "Water judge" and "water division judge" means a judge as provided for in Title 3, chapter 7.

~~(321)~~ "Water master" means a master as provided for in Title 3, chapter 7.

~~(332)~~ "Water right" means the right to appropriate water pursuant to an existing right, a permit, a certificate of water right, a state water reservation, or a compact.

~~(343)~~ "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial

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uses. It does not include ditches, culverts, or other constructed waterways.

(354) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

{Internal References to 85-2-102:

75-5-410 82-4-355 85-2-141 85-2-340}

Section 26. Section 85-2-112 , MCA, is amended to read:

"85-2-112. Department duties. The department shall:

(1) enforce and administer this chapter and rules adopted under 85-2-113, subject to the powers and duties of the supreme court under 3-7-204;

(2) prescribe procedures, forms, and requirements for applications, permits, certificates, claims of existing rights, and proceedings under this chapter and prescribe the information to be contained in any application, claim of existing right, or other document to be filed with the department under this chapter not inconsistent with the requirements of this chapter;

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(3) establish and keep in its Helena office a centralized record system of all existing rights and a public record of permits, certificates, claims of existing rights, applications, and other documents filed in its office under this chapter;

(4) cooperate with, assist, advise, and coordinate plans and activities with the federal, state, and local agencies in matters relating to this chapter;

(5) upon request by any person, cooperate with, assist, and advise that person in matters pertaining to measuring water or filing claims of existing rights with a ~~district~~ water division court under this chapter;

(6) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated basins or subbasins as provided in 85-2-319."

{*Internal References to 85-2-112:*

15-7-308}

Section 27. Section 85-2-114, MCA, is amended to read:

"85-2-114. Judicial enforcement. (1) If the department ascertains, by a means reasonably considered sufficient by it, that a person is wasting water, using water unlawfully,

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preventing water from moving to another person having a prior right to use the water, or violating a provision of this chapter, it may petition the ~~district~~ water division court ~~supervising the distribution of water among appropriators from the source~~ to:

(a) regulate the controlling works of an appropriation as may be necessary to prevent the wasting or unlawful use of water or to secure water to a person having a prior right to its use;

(b) order the person wasting, unlawfully using, or interfering with another's rightful use of the water to cease and desist from doing so and to take steps that may be necessary to remedy the waste, unlawful use, or interference; ~~or~~

(c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter.

Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this chapter is being violated; or

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(d) petition the water division court for the appointment of a water commissioner under Title 85, chapter 5.

(2) Upon the issuance of an order or injunction, the department may attach to the controlling works a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of the water.

(3) The department may also direct its own attorney or request the attorney general or county attorney to bring suit to enjoin the waste, unlawful use, interference, or violation.

(4) The county attorney or the attorney general may bring suit to enjoin the waste, unlawful use, interference, or violation or bring an action under 85-2-122(1) without being requested to do so by the department.

(5) A county attorney who takes action pursuant to subsection (3) or (4) may request assistance from the attorney general.

(6) When enforcing the provisions of this section, the department, the county attorney, and the attorney

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general shall give priority to protecting the water rights of a prior appropriator under an existing water right, a certificate, a permit, or a state water reservation.

(7) After considering the provisions of subsection (6), the department may attempt to obtain voluntary compliance through warning, conference, or any other appropriate means before petitioning the district court under subsection (1). An attempt to obtain voluntary compliance under this subsection must extend over a period of at least 7 days and may not exceed 30 working days.

(8) Pursuant to 85-20-1902, the provisions of this section do not apply within the exterior boundaries of the Flathead Indian reservation.

(9) The provisions of this section do not limit a water right owner from seeking relief, including injunctive relief, ~~in district court~~ under Title 27, chapter 19, or this chapter."

{Internal References to 85-2-114:

3-7-311 44-4-1101 44-4-1102 85-2-122
85-2-381 85-2-427}

Section 28. Section 85-2-122 , MCA, is amended to read:

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"85-2-122. **Penalties.** (1) Except as provided in 85-2-410(6), a person who violates or refuses or neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the department is subject to a civil penalty not to exceed \$1,000 per violation. Each day of violation constitutes a separate violation.

(2) Except as provided in subsection (3), fines collected by the department or a ~~district~~ the water division court under subsection (1) must be deposited in the account established in 85-2-318 for use by the department in the enforcement of 85-2-114.

(3) If a fine is collected by an independent action brought by:

(a) the county attorney, the fine must be deposited in the general fund of the county; or

(b) the county attorney with assistance from the attorney general or by the attorney general, the fine must be deposited in the water right enforcement account created in 44-4-1101 and must be used to enforce the provisions of 85-2-114."

{Internal References to 85-2-122:

44-4-1101 85-2-114 85-2-123 85-2-381
85-2-427 85-20-1001}

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Section 29. Section 85-2-123 , MCA, is amended to read:

"85-2-123. Deposit of fees and penalties. Except as provided in 85-2-122 and 85-2-124, all fees and penalties collected under this chapter must be deposited in the water right appropriation account established in 85-2-318. ~~Except for fines collected by a district court under 85-2-122, all penalties or fines imposed by any court other than a justice's court for a violation of this chapter must be deposited in the general fund of the county where the court presides and must be disposed of in the same manner as any other penalty or fine.~~"

{Internal References to 85-2-123: None}

8

Section 30. Section 85-2-125 , MCA, is amended to read:

"85-2-125. Recovery of costs and attorney fees by prevailing party. (1) If a final decision of the department on an application for a permit or a change in appropriation right is appealed to ~~district~~ the water division court, the ~~district~~ the water division court may award the prevailing party reasonable costs and attorney fees.

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(2) The party obtaining injunctive relief in an action to enforce a water right must be awarded reasonable costs and attorney fees. For the purposes of this section, "enforce a water right" means an action by a party with a water right to enjoin the use of water by a person that does not have a water right."

{Internal References to 85-2-125: None}

Section 31. 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~~ water division 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

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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~~ water division 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 division 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 water division court shall remand the matter to the department for further processing of the application under this chapter.

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(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."

{Internal References to 85-2-309:

3-7-101	3-7-223	3-7-224	3-7-501
3-7-502	85-2-102 *	85-2-314 *	85-2-316 *
85-2-322	85-2-402	85-2-436 *	85-20-1901 *}

Section 32. Section 85-2-405 , MCA, is amended to read:

"85-2-405. Procedure for declaring appropriation rights abandoned. (1) When the department has reason to believe that an appropriator may have abandoned an appropriation right under 85-2-404 or when another appropriator in the opinion of the department files a valid claim that the appropriator has been or will be injured by the resumption of use of an appropriation right alleged to have been abandoned, the department shall petition the ~~district~~ water division court that determined the existing rights in the source of the appropriation in question to hold a hearing to determine whether the appropriation right has been abandoned. Proceedings under this section must be conducted in accordance with the Montana Rules of Civil Procedure,

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and appeal must be taken in accordance with the Montana Rules of Appellate Procedure.

(2) At the hearing, the burden of proof is on the department, which shall establish by a preponderance of the evidence that the appropriation has been abandoned under 85-2-404.

(3) The determination of the court must be appended to the final decree. The department shall keep a copy of the determination in its office in Helena."

{Internal References to 85-2-405: None}

Section 33. Section 85-2-406, MCA, is amended to read:

"85-2-406. ~~District courts~~ Supervision of water distribution. (1) Except as set forth in subsection 2(a), the ~~district courts~~ water division court 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

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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 which not all existing rights have been conclusively determined according to part 2 of this chapter, any party to the controversy may petition the ~~district~~ water division 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~~ determine the existing rights that are involved in the controversy according to part 2 of this chapter. The ~~district~~ water division 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~~ Such petitions must be given priority over all other adjudication matters. After determination of the petitioned matters ~~certified~~, the water division judge shall ~~return the decision to the district court with a~~ issue one or more tabulations or lists of the existing rights and their relative priorities.

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(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~~ water division court. The order of the water division 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

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decree or preliminary decree is commenced, the ~~water judge~~
~~district~~ water division court shall establish, ~~in a form~~
~~determined to be appropriate by the water judge,~~ one or
more tabulations or lists of all ~~existing~~ water rights and
their relative priorities within the enforcement area
defined in the petition. In cases involving permits issued
by the department, the water division court may not amend
the respective rights established in the permits or alter
any terms of the permits.

(5) When an action is brought under subsections (2)(b),
(3), or (4), the water division judge may, upon motion of
a party to the action or sua sponte, order the department
to provide technical assistance to accurately define the
enforcement area set forth in the petition.

(6) Upon a determination that a petition filed under
subsections (2)(b), (3), or (4) is sufficient, including a
clearly defined enforcement area, the water division court
shall issue an order requiring service of the petition on
all water right owners within the enforcement area and the
department. The order must set a time and place by which
any interested party may show cause why the petition
should not be granted. The provisions of Title 25, chapter
3, parts 2 and 3, and Rules 4 and 12(a), M.R.Civ.P. are

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applicable to actions brought under subsections (2), (3), or (4), so long as they are not in conflict with this section.

(56) 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).

(7) Whenever a water distribution controversy involves issues of state-wide or basin-wide importance, the water division judge may, upon motion of a party to the action or the State of Montana, or sua sponte, order the joinder of the State of Montana."

{Internal References to 85-2-406:

3-1-804 85-2-344 85-20-1001}

Section 34. Section 85-5-101, MCA, is amended to read:

85-5-101. Appointment of water commissioners. (1)

Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent

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jurisdiction, including temporary preliminary, preliminary, and final decrees issued by a water judge, it is the duty of the ~~judge of the district~~ court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree or at least 15% of the flow rate of the water rights affected by the decree, in the exercise of the judge court's discretion, to appoint one or more commissioners. In the petition, the petitioners may recommend up to three names of eligible commissioners to be considered for appointment.

The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates, permits, and changes in appropriation right issued under chapter 2 of this title.

When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected or at least 15% of the flow rate of the water rights affected and they are unable to obtain the water to which they are entitled, the ~~judge of the district court~~ of the court having jurisdiction may appoint a water commissioner.

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(2) When the existing rights of all appropriators from a source or in an area have been determined in a temporary preliminary decree, preliminary decree, or final decree issued under chapter 2 of this title, the judge of the ~~district~~ court having jurisdiction may, upon application by both the department of natural resources and conservation and one or more holders of valid water rights in the source, appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court having jurisdiction to have stored waters distributed by the water commissioners appointed by the ~~district~~ court. The court may order the commissioner or commissioners appointed by the court to distribute stored water when and as released to water users entitled to the use of the water.

(4) The Petitioner shall certify that they have served a copy of the petition upon the owners of record for all water rights subject to the petition.

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(45) At the time of the appointment of a water commissioner or commissioners, the ~~district~~ court having jurisdiction shall fix their compensation, require a commissioner or commissioners to purchase a workers' compensation insurance policy and elect coverage on themselves, and require the owners and users of the distributed waters, including permittees, certificate holders, and holders of a change in appropriation right, to pay their proportionate share of fees and compensation, including the cost of workers' compensation insurance purchased by a water commissioner or commissioners. The court may include the department in the apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

(6) Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir that is turned into the natural channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the ~~district~~ water division court may appoint a water commissioner to equitably admeasure and distribute stored water to the irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under

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this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. A commissioner's compensation is set by the court and paid by each district and other users of stored water affected by the admeasurement and distribution of the stored water. In all other matters, the provisions of this chapter apply so long as they are consistent with this subsection.

(7) A water commissioner ~~appointed by a district court~~ is not an employee of the judicial branch, a local government, or a water user.

(8) A water commissioner who fails to obtain workers' compensation insurance coverage required by subsection (4) is precluded from receiving benefits under Title 39, chapter 71, as a result of the performance of duties as a water commissioner."

{*Internal References to 85-5-101:*
85-2-381 85-5-102 85-20-1001}

Section 35. Section 85-5-102, MCA, is amended to read:

85-5-102. Appointment of chief commissioner. When ~~the a judge of the district court~~ appoints two or more commissioners to admeasure and distribute the waters mentioned in 85-5-101, the judge may appoint one of them as chief commissioner and empower the chief commissioner to exercise direction and control over the other commissioners

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in the discharge of their duties. The judge may depose the person appointed as chief commissioner from that position and appoint another as chief commissioner whenever it appears to the judge that better service may be given to the water users by making the change.

Section 36. Section 85-5-103, MCA, is amended to read:

85-5-103. Oath and bond. Each water commissioner appointed by the court shall subscribe and file with the water division court administrator ~~clerk of the district court~~ an oath of office before commencing the discharge of duties as commissioner and shall file with the administrator ~~clerk~~ a bond executed by the commissioner, with two or more sureties, in a sum that the judge of the court may designate, to ensure the faithful discharge of the commissioner's duties. In matters where the water commissioner is supervised by a district court pursuant to 85-2-406(2)(a), the oath and bond shall be filed with the clerk of the district court.

Section 37. Section 85-5-106, MCA, is amended to read:

85-5-106. Maintenance and repair of ditches or systems. Upon written request of the owners of at least 51% of the water rights in any adjudicated ditch or single water system, the court having jurisdiction ~~of the district court~~ may empower the commissioner to maintain and keep in reasonable repair such water ditch or water system at the expense of the owners thereof, and for such purposes the commissioner shall have authority to enter and work upon any ditch, canal, aqueduct, or other source of

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conveying the waters affected by the decree and the right-of-way thereof and to visit, inspect, and adjust all headgates or other means of distribution of such waters.

Section 38. Section 85-5-107, MCA, is amended to read:

85-5-107. Record of distribution of water. (1) Each water commissioner shall keep a daily record, unless a different recording schedule is ordered by the ~~district~~ court having jurisdiction, of the amount of water distributed to each water user and shall file a summary of the record with the water division court administrator ~~clerk of the court~~ monthly or seasonally, at the discretion of the ~~district~~ court. . The report must show in detail the total amount of water distributed to each water user during the month or the season and the cost of distributing the water, based upon the water commissioner's or commissioners' daily salary, other costs of the water commissioner or commissioners approved by the ~~district~~ judge, and the proportionate amount of water distributed. When two or more water commissioners serve under the same decree or decrees by order of the judge, they may file a joint summary of their records with the water division court administrator ~~clerk of the court~~, or the chief commissioner, if one has been appointed by the judge, may file a summary on behalf of all of them. In matters where the water commissioner is supervised by a district court pursuant to 85-2-406(2)(a), the records shall be filed with the clerk of the district court.

(2) If the ~~district court~~ judge determines that it is necessary to establish a billing cycle prior to a distribution

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season, as provided in 85-5-204, the report or reports must serve as the basis for the amounts billed.

Section 39. Section 85-5-109, MCA, is amended to read:

85-5-109. Failure to perform duty as contempt of court. If a commissioner fails to perform any of the duties imposed upon the commissioner by the order of the judge ~~of the district court~~, the commissioner is guilty of contempt of court.

Section 40. Section 85-5-110, MCA, is amended to read:

85-5-110. Appointment of water mediators -- duties. (1) Except as provided in 85-20-1902, the court having jurisdiction ~~of the district court~~ may appoint a water mediator to mediate a water controversy in a decreed or nondecreed basin under the following circumstances:

- (a) upon request of the governor;
 - (b) upon petition by at least 15% of the owners of water rights in a decreed or nondecreed basin; or
 - (c) in the discretion of the ~~district~~ court having jurisdiction.
- (2) A water mediator appointed under this section may:
- (a) discuss proposed solutions to a water controversy with affected water right holders;
 - (b) review options related to scheduling and coordinating water use with affected water right holders;
 - (c) discuss water use and water needs with persons and entities affected by the existing water use;
 - (d) meet with principal parties to mediate differences over the use of water; and

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(e) hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

(3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall pay all or a majority of the costs of the water mediator as determined equitable by the ~~district~~ court having jurisdiction.

(4) The governor may use funds appropriated under 75-1-1101 to pay the costs of a water mediator.

(5) This section does not allow a water mediator to require any valid water right holder to compromise or reduce any of the holder's existing water rights.

(6) If an appropriator voluntarily ceases to use all or part of an appropriation right or voluntarily ceases to use an appropriation right according to its terms and conditions as a result of the efforts of a mediator appointed under this section, the appropriator may not be considered to have abandoned all or any portion of the appropriation right.

Section 41. Section 85-5-111, MCA, is amended to read:

85-5-111. Water commissioner and mediator education. (1) The department of natural resources and conservation, in cooperation with the Montana supreme court, the Montana water division court, the district courts of Montana, the Montana university system, and other appropriate state and federal agencies, shall develop an educational program for water commissioners and mediators that includes:

(a) an annual seminar on commissioner and mediator duties, mediation techniques, and water measuring techniques;

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(b) preparation and, as necessary, revision of a water commissioner and mediator manual; and

(c) an outreach program that identifies persons who might serve as water commissioners or mediators.

(2) Unless the court having jurisdiction determines otherwise, a water commissioner appointed pursuant to 85-5-101 shall complete at least one educational program as provided in subsection (1) prior to administering water.

Section 42. Section 85-5-201, MCA, is amended to read:

85-5-201. Distribution of water and related expenses. (1) Each water commissioner appointed ~~of the district court~~ for the purpose of distributing water has the authority to determine the appropriate quantity and distribute to the parties interested, under a decree, permit, certificate, or change in appropriation right, the water to which those who are parties to the decree or holders of a permit, certificate, or change in appropriation right, or privy to a permit, certificate, or change in appropriation right, are entitled, according to their priority as established by the decree, permit, certificate, or change in appropriation right.

(2) The water commissioner may incur necessary expenses in the making of headgates or dams for the distribution of the waters if the parties fail or refuse to do so. Expenses associated with making headgates or dams for the distribution of water must be assessed against and paid by the party or parties for whom the ditch or ditches were repaired or the dams or headgates were made. In the discretion of the court, the costs or expenses may be assessed against the land upon

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which or for the benefit of which the expense had been incurred.

(3) (a) At the court's discretion, a water commissioner may bill water users prior to the beginning of a distribution season for the purpose of offsetting costs associated with distributing water and water commissioner duties by submitting the information necessary for the billing to the water division court administrator ~~clerk of the district court~~. In matters where the water commissioner is supervised by a district court pursuant to 85-2-406(2)(a), the billing shall be filed with the clerk of the district court. A billing issued prior to the beginning of a distribution season:

(i) must be assessed on a per-user basis;

(ii) must be based on the report provided for in 85-5-107 for the prior year; and

(iii) may not exceed 80% of the amount that was provided to the court pursuant to 85-5-107 for the prior distribution season on a per-user basis.

(b) Upon receipt of the information from the water commissioner, the water division court administrator or clerk of district court ~~clerk of district court~~ shall proceed as provided in 85-5-204.

Section 43. Section 85-5-203, MCA, is amended to read:

85-5-203. Telephone expenses. The judge may also allow as a charge reasonable expenses incurred by a water commissioner in telephoning to the judge for instructions in cases of emergency. When there are two or more commissioners acting under the judge's order, reasonable expenses incurred in communicating with each by telephone

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or with the judge ~~of the district court~~, in order to carry on the distribution of the waters harmoniously and in accordance with the decree, shall be deemed a necessary expense. These expenses shall be reported by the water commissioner or commissioners at the close of the season and shall be taxed against all the water users affected by the decree or decrees ratably in proportion to the whole amount of water distributed to them during the season.

Section 44. Section 85-5-204, MCA, is amended to read:

85-5-204. Apportionment of fees and expenses. (1) Upon the filing of the report by the water commissioner or water commissioners, the water division court administrator ~~clerk of court~~ shall notify by letter each person mentioned in the report:

(a) of the amount the water user is made liable for by the report;

(b) that objections to the report and the amount taxed against the water user may be made by any person interested in the report or the amount assessed against the water user within 20 days after the date of the mailing of the notice; and

(c) that, unless objections are filed, an order will be made by the judge ~~of the district court~~ finally fixing and determining the amount due from each of the water users.

(2) The affidavit of the water division court administrator ~~clerk~~ that the administrator ~~clerk~~ has mailed a notice to each person mentioned in the report at the person's last-known post-office address, in the usual manner, must be

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considered prima facie evidence that the person received the notice provided for in this section.

(3) At the discretion of the ~~district~~ judge, the water commissioner may issue a bill prior to the beginning of a distribution season for the purpose of offsetting costs associated with distributing water and water commissioner duties by submitting the information necessary for the billing to the water division court administrator ~~clerk of the district court~~. The bill for each water user may not exceed 80% of the amount that was provided to the court pursuant to 85-5-107 for the prior distribution season.

(4) If the cost of distributing water during a distribution season is less than the amount that was collected through a bill issued prior to a distribution season, the water commissioner shall refund the money to the water user based on the amount of water that the water user received during the distribution season. The water commissioner shall submit a refund report, along with proof that any refunds were issued, to the water division court administrator ~~clerk of district court~~ for filing.

(5) In matters where the water commissioner is supervised by a district court pursuant to 85-2-406(2)(a), the clerk of the district court, and not the water division court administrator, shall perform the task in subsections (1) through (4).

Section 45. Section 85-5-401, MCA, is amended to read:

85-5-401. Determination of water rights between partners, tenants in common, and corporate stockholders. If a water ditch used for irrigating purposes is owned by a

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partnership, tenants in common, or corporation and there is any dispute between the respective owners, tenants in common, or stockholders respecting the use and division of the waters flowing in the ditch, any partner, tenant in common, or stockholder may commence an action in the water division court ~~any court of competent jurisdiction~~ to determine the rights of the respective parties to the use of the waters and may join in the petition a request for the appointment of a water commissioner to apportion and distribute the waters of the ditch according to the rights of the respective owners, tenants in common, or stockholders during the pendency of the action.

Section 46. Section 85-5-402, MCA, is amended to read:

85-5-402. Appointment of commissioner prior to final decree. After the filing of the complaint in an action under 85-5-401, the court may, upon 5 days' notice to the other parties to the action, appoint a commissioner to divide and distribute the waters of the ditch to the respective parties, according to their respective rights, during the pendency of the action. The court may, upon good cause shown, appoint a commissioner without notice, and when a commissioner is appointed without notice, any party to the action may, on 5 days' notice to the plaintiff, move the court ~~or judge~~ to vacate the appointment or to modify the order as to the distribution of the waters of the ditch. The court ~~or judge~~, on hearing, may affirm, vacate, or modify the order previously made. Each water commissioner appointed shall subscribe to an oath of office before commencing the discharge of duties.

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Section 47. Section 85-5-403, MCA, is amended to read:

85-5-403. Division of water. It shall be the duty of the water commissioner to divide the waters of said ditch between the owners, tenants in common, or stockholders in proportion to their respective rights, as set forth in the complaint or in such other manner or proportion as the court ~~or judge~~ may direct.

Section 48. Section 85-5-404, MCA, is amended to read:

85-5-404. Authority of commissioner. Such commissioner shall have authority to enter upon said ditch; open, close, and set headgates; and do whatever else is necessary to apportion and distribute the waters of said ditch to the respective parties according to their respective rights.

Section 49. Section 85-5-405, MCA, is amended to read:

85-5-405. Compensation and expenses. The court shall fix the compensation of the commissioner and the term of employment and shall make an order apportioning the amount of compensation among the several owners, tenants in common, or stockholders of the ditch, according to their respective rights and interest in the ditch. The amounts apportioned must be taxed as costs in the action against the respective parties.

Section 50. Section 85-5-406, MCA, is amended to read:

85-5-406. Interference with actions of commissioner. A person opening or closing a headgate after being set by the commissioner or who in any manner interferes with the

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commissioner in the discharge of the commissioner's duties is guilty of contempt of court and may be proceeded against for contempt of court as provided in contempt cases.

Section 51. Section 85-5-407, MCA, is amended to read:

85-5-407. Appointment of water commissioner after final decree. When the rights of the respective parties in an action to the use of the waters flowing in a ditch are adjudicated, the ~~judge of the district~~ court having jurisdiction of the subject matter, upon the application of the owners of at least 10% of the waters of the ditch, may, in the exercise of the judge's discretion, appoint a water commissioner to divide, apportion, and distribute the waters of the ditch to the respective parties according to their respective rights as set forth in the decree. When a commissioner is appointed under the provisions of this chapter to apportion and distribute the waters of the stream from which the water flowing in a ditch is taken, the commissioner shall, when directed by the ~~judge or~~ court, apportion and distribute the waters of the ditch according to the decree by which the rights of the respective owners were adjudicated.

Section 52. Section 85-5-408, MCA, is amended to read:

85-5-408. Apportionment of costs. (1) When a commissioner is appointed upon the application of an owner or owners of a ditch, the court may fix the compensation of the commissioner and the term of the commissioner's employment. The court shall make an order apportioning the amount of compensation among the several owner or owners,

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tenants in common, or stockholders of the ditch according to their respective rights and interest. The order has the effect of a judgment against the person to whom the water was admeasured and for whose benefit it was used. When, in the discretion of the court, an order of apportionment of expense is made against the land for which the water was used, it has the effect of a lien against the land to which the apportionment was made. Execution may issue upon the order as upon a judgment by direction of the court, upon the application of any person interested in the order.

(2) When a commissioner is appointed under the provisions of this chapter to distribute the waters of the stream from which the waters flowing in a ditch are taken and to apportion and distribute the waters of the ditch according to the rights of the respective owners of the waters, the judge, in the judge's discretion, may, in addition to the apportionment taxed against the respective owners of the waters of the stream, apportion and tax the amount, if any, that the owners of the ditch shall pay in addition to the amount taxed under the provisions of this chapter.

Section 53. Section 85-5-301, MCA, is amended to read:

85-5-301. Complaint by dissatisfied user. (1) A person owning or using any of the waters of the stream or ditch or extension of the ditch who is dissatisfied with the method of distribution of the waters of the stream or ditch by the water commissioner or water commissioners and who claims to be entitled to more water than the person is receiving or to a right prior to that allowed the person by the water commissioner or water commissioners may file a written

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complaint, duly verified, setting forth the facts of the claim. The complaint shall be filed with the court that appointed the water commissioner or water commissioners.

(2) Upon receipt of the complaint, the judge having jurisdiction shall fix a time for the hearing of the petition and shall direct that notice be given to the parties interested in the hearing as the judge considers necessary. At the time fixed for the hearing, the judge shall hear and examine the complainant and other parties who appear to support or resist the claim and examine the water commissioner or water commissioners and witnesses regarding the charges contained in the complaint.

(3) Upon the determination of the hearing, the judge shall make findings and issue an order that the judge considers just and proper. If it appears to the judge that the water commissioner or water commissioners have not properly distributed the water according to the provisions of the decree, permit, certificate, or change in appropriation right, the judge shall give the proper instructions for distribution of the water.

(4) The judge may remove any water commissioner and appoint a new water commissioner if the judge determines that the interests of the parties in the waters mentioned in the decree, permit, certificate, or change in appropriation right will be best served by appointing a new water commissioner. If it appears to the judge that the water commissioner has willfully failed to perform the water commissioner's duties, the water commissioner may be proceeded against for contempt of court, as provided in contempt cases. The judge shall make an order regarding the

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payment of costs of the hearing that the judge determines is just and proper.

NEW SECTION. **Section 54. {standard} Repealer.** The following sections of the Montana Code Annotated are repealed:

3-7-211. Appointment of water commissioners.

3-7-212. Enforcement of decrees.

3-7-222. Salary - office space

3-7-223. Duties of chief water judge.

3-7-224. Jurisdiction of chief water judge and associate water judge.

3-7-225. Duties of associate water judge.

{Internal References to 3-7-211: None; Internal References to 3-7-212: None; Internal References to 3-7-224: 85-20-601 85-20-901 85-20-1001 85-20-1501, 85-20-1901; Internal References to 3-7-502: None}

NEW SECTION. **Section 55. {standard} Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each federally recognized tribal government in the state of Montana.

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NEW SECTION. **Section 56. {standard} Codification**

instructions.

[Section 10] in part 1.

[Section 11] in part 1.

[Section 12] in part 1.

[Section 17] in part 2.

[Section 22] in part 4.

NEW SECTION. **Section 57. {standard} Effective date.**

[This act] is effective on January 1, 2026.

NEW SECTION. **Section 58. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-END-