

# **WATER COMMISSIONER TRAINING MANUAL**



Montana Department of Natural Resources and  
Conservation

124 9<sup>th</sup> Avenue, PO Box 201601  
Helena, MT 59620-1601

# WATER CONVERSION TABLE

## Volume:

The standard unit of volume is acre-foot (AC-FT)

1 AC-FT	325,851 Gallons	43,560 Cubic Feet
---------	--------------------	----------------------

## Flow Rate:

The standard units for flow rate discharge are cubic feet per second (CFS) or gallons per minute (GPM). Historically, miner's inches (MI) were used as a standard.

1 CFS	40 MI	448.8 GPM	1.983 AC-FT / Day
1 MI	0.025 CFS	11.22 GPM	0.05 AC-FT / Day
1 GPM	0.089 MI	0.002 CFS	0.004 AC-FT/DAY

# TABLE OF CONTENTS

<b>WATER CONVERSION TABLE .....</b>	<b>1</b>
<b>CONTACT INFORMATION .....</b>	<b>4</b>
<b>PREFACE .....</b>	<b>8</b>
PURPOSE .....	8
INTRODUCTION .....	9
<b>PETITION PROCESS.....</b>	<b>10</b>
ESTABLISHING A DISTRIBUTION PROJECT .....	10
<b>GETTING STARTED .....</b>	<b>12</b>
FIRST STEPS FOR COMMISSIONERS .....	13
<b>UNDERSTANDING TABULATIONS .....</b>	<b>17</b>
OVERVIEW.....	17
PURPOSE AND USE OF EACH DELIVERABLE .....	18
<b>WATER COMMISSIONER RESPONSIBILITIES .....</b>	<b>22</b>
AUTHORITIES OF A WATER COMMISSIONER .....	22
RECORDS.....	24
BILLING .....	25
<b>POINT OF DIVERSION OPERATIONS.....</b>	<b>32</b>
OVERVIEW.....	32
PODS & WATER COMMISSIONER AUTHORITY.....	34
<b>WATER DISTRIBUTION .....</b>	<b>35</b>
OVERVIEW.....	35
APPROACHING DISTRIBUTION.....	37
<b>WATER MEASUREMENT .....</b>	<b>39</b>

MEASUREMENT DEVICES.....	39
INSTALLATION AND MAINTENANCE.....	42
MEASUREMENT CONSIDERATIONS.....	44
USEFUL TIPS AND TRICKS .....	47
<b>COMMUNICATION &amp; CONFLICT RESOLUTION .....</b>	<b>49</b>
COMMUNICATION .....	49
BUILDING RELATIONSHIPS.....	50
IMPORTANCE OF DOCUMENTATION .....	51
DEALING WITH NONCOMPLIANT WATER USERS.	52
POST-SEASON WRAP-UP .....	53
<b>ROLE OF COURTS .....</b>	<b>54</b>
DISTRICT COURTS.....	54
WATER COURT.....	56
<b>ROLE OF WATER USERS .....</b>	<b>57</b>
<b>ROLE OF DNRC .....</b>	<b>60</b>
<b>FREQUENTLY ASKED QUESTIONS.....</b>	<b>62</b>
<b>NOTES.....</b>	<b>70</b>
<b>INTRODUCTION LETTER EXAMPLE .....</b>	<b>73</b>
<b>LEGAL LAND DESCRIPTIONS.....</b>	<b>76</b>
<b>STREAMFLOW CALCULATIONS .....</b>	<b>78</b>
<b>QUICK CONVERSIONS.....</b>	<b>79</b>
<b>BILLING RECORDS EXAMPLE .....</b>	<b>80</b>
<b>RELEVANT STATUTES.....</b>	<b>82</b>

# CONTACT INFORMATION

## **Local District Court**

Contact Montana District Courts by calling the Clerk of Court's office in the county where the court is located. You can also call the Judicial Branch at (406) 444-3660.

## **Water Court**

601 Haggerty Lane, P.O. Box 1389  
Bozeman, MT 59771-1389

1-800-624-3270 or (406) 586-4364

[watercourt@mt.gov](mailto:watercourt@mt.gov)

## **DNRC Water Resources HQ**

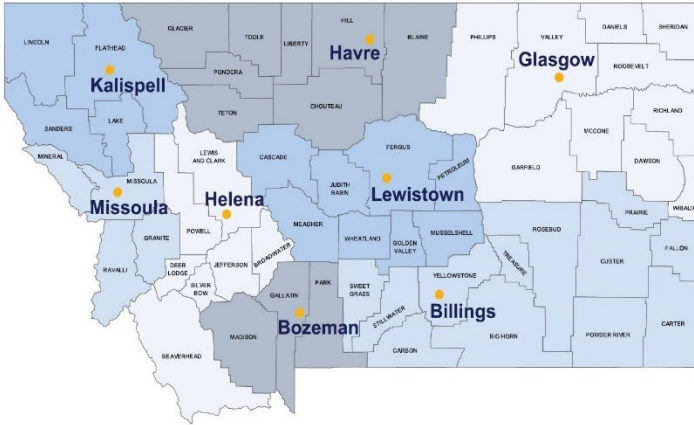
1424 Ninth Ave., P.O. Box 201601  
Helena, MT 59620-1601

(406) 444-6601

## **DNRC Water Resources Regional Offices**

Eight Water Resources Regional Offices are located throughout the state. These offices are available to assist with questions related to

water rights and provide support to Water Commissioners.



## **Billings (406) 247-4415**

Airport Business Park, 1371 Rimtop Drive  
Billings, MT 59105-1978

*Serving: Big Horn, Carbon, Carter, Custer, Fallon, Powder River, Prairie, Rosebud, Stillwater, Sweet Grass, Treasure, and Yellowstone counties.*

## **Bozeman (406) 586-3136**

2273 Boot Hill Court, Suite 110  
Bozeman, MT 59715

*Serving: Gallatin, Madison, and Park counties.*

## **Glasgow (406) 228-2561**

222 Sixth Street South, P.O. Box 1269  
Glasgow, MT 59230-1269

*Serving: Daniels, Dawson, Garfield, McCone,  
Phillips, Richland, Roosevelt, Sheridan Valley, and  
Wibaux counties.*

## **Havre (406) 265-5516**

210 Sixth Ave., P.O. Box 1828  
Havre, MT 59501-1828

*Serving: Blaine, Chouteau, Glacier, Hill, Liberty,  
Pondera, Teton, and Toole counties.*

## **Helena (406) 444-6999**

1424 Ninth Ave., P.O. Box 201601  
Helena, MT 59620-1601

*Serving: Beaverhead, Broadwater, Deer Lodge,  
Jefferson, Lewis and Clark, Powell, and Silver Bow  
counties.*

## **Kalispell (406) 752-2288**

655 Timberwolf Parkway, Ste 4  
Kalispell, MT 59901-1215

*Serving: Flathead, Lake, Lincoln, and Sanders  
counties.*

## **Lewistown (406) 538-7459**

613 NE Main, Suite E  
Lewistown, MT 59457-2020

*Serving: Cascade, Fergus, Golden Valley, Judith Basin, Meagher, Musselshell, Petroleum, and Wheatland counties.*

## **Missoula (406) 721-4284**

2705 Spurgin Road Building C, P.O. Box 5004  
Missoula, MT 59806-5004

*Serving: Granite, Mineral, Missoula, and Ravalli counties.*



# PREFACE

## PURPOSE

The Montana Department of Natural Resources and Conservation (DNRC) compiled this manual for Water Commissioners pursuant to 85-5-111, Montana Code Annotated (MCA). The DNRC also coordinates with the District Courts of Montana and other appropriate state and federal agencies to develop an annual Water Commissioner training seminar.

Notice: Neither the DNRC, nor any of its administrators or employees, makes any warranty, express or implied, or assumes legal liability or responsibility for the accuracy, completeness, or usefulness of any apparatus, product, or technique disclosed, or represents that its use would not infringe upon privately owned rights. Reference herein to any specific commercial product, by trade name, mark, manufacturer, or other otherwise, does not necessarily constitute or imply its endorsement by the DNRC.

# INTRODUCTION

The DNRC assembled this Water Commissioner Manual to provide Water Commissioners with the foundational information needed to do their jobs. It is meant to be used in conjunction with the annual Water Commissioner training seminars hosted by DNRC. Water Commissioners are required by law to complete at least one of DNRC's annual seminars prior to administering water (85-5-101, MCA).

This manual will not cover every scenario a Water Commissioner may run into in the field. DNRC's goal is for this manual to equip Water Commissioners with foundational knowledge and additional resources they need to work effectively. Commissioners need to get to know their distribution project intimately and seek help as issues or questions arise.

## ESTABLISHING A DISTRIBUTION PROJECT

Water Commissioners are appointed to distribute waters at the request of water users. For this purpose, a “water user” is an individual or entity holding a valid water right. Water users request Commissioners by petitioning the District Court. Typically, a successful petition must represent either 15% of the flow rate or 15% of the water users on a given source (most often a stream or ditch system) (85-5-101, MCA). In some cases, one water user is enough for a successful petition.

A successful petition results in the Judge appointing a Water Commissioner. If petitioners do not make a proper showing of 15%, the Judge can still decide to appoint a Water Commissioner. In either scenario, all water users covered in the petition, not just those that signed it, are responsible for paying for the Water Commissioner.

## **The Petition Process:**

1. Conflict arises among water users and makes water appropriation difficult.
2. Water users submit a petition to the District Court to set up a distribution project.
  - a. This petition is a written request from the water users that serves as the basis for subsequent orders.
3. District Court grants the petition and issues an Order Appointing a Water Commissioner.
  - a. This order is the key document for defining Commissioner duties specific to the distribution project and administrative details.
4. The District Court issues a Request for a Tabulation of Water Rights.
  - a. This order is the key document for defining the scope of the distribution project.
5. DNRC provides the tabulations to the District Court. These detail all water rights within the scope of the distribution project.
6. The Water Commissioner begins distributing waters according to priority.

## Chapter 2:

# GETTING STARTED

Once a District Court Judge approves a petition for a Water Commissioner, they issue an Order Appointing the Water Commissioner(s) (“Appointing Order”). The Appointing Order stipulates important details such as payment amount, payment schedule, term of office, geographic jurisdiction (i.e., the boundaries of the distribution project), and other specific instructions, such as division of duties between Commissioners when an Appointing Order names multiple Commissioners.

In cases where multiple Commissioners are appointed for the same watercourse, the Judge may designate a Chief Water Commissioner in the Appointing Order, along with defining the specific duties for each Water Commissioner. It is important to note that Water Commissioners function as independent contractors; they are not employees of the District Court, Water Court, or DNRC. They do, however, receive support from these entities and remain under the supervision of the District Courts.

# FIRST STEPS FOR COMMISSIONERS

Once the Commissioner has been appointed, Commissioners should begin with the following steps:

## **1. Read the Appointing Order**

The Appointing Order is the key document for Commissioners to understand their specific distribution project. Commissioners must thoroughly review the Appointing Order; this document provides details regarding administrative duties, unique stipulations, Commissioner pay, and distribution project scope.

## **2. Take Oath and Pay Bond**

The Commissioner must meet with the District Clerk of Court to take an oath to faithfully fulfill their duties and responsibilities. Statute also requires the Commissioner to file a bond to the District Court to ensure their commitment to distribute water fairly and according to law (85-5-103, MCA).

## **3. Obtain Insurance**

Commissioners must purchase workers' compensation insurance and elect coverage on themselves. Commissioners can call Montana

State Fund (1-406-495-5000) with questions. Commissioners should plan to file proof of coverage with the District Court.

## **4. Complete Water Commissioner Education**

Commissioners must attend at least one educational program before beginning as a Water Commissioner, unless a District Court judge waives this requirement. This program is typically the annual seminar hosted by DNRC. Notifications about these trainings will be sent to the District Courts, and additional information is available on the DNRC website.

## **5. Receive Tabulation from the District Court.**

The DNRC and the Water Court provide District Courts with the tabulation information specific to each distribution project. Commissioners receive their tabulation from the District Court. Commissioners need these tabulations to legally enforce water rights according to Water Court decrees.

## **6. Meet with Previous Commissioners**

Commissioners should, if possible, arrange a meeting with former Commissioners from the same distribution project to gather valuable

insight and practical advice. Commissioners should discuss topics such as point of diversion (POD) locations, access points, haying schedules, stream reach management, and potential conflicts.

## **7. Meet with Water Users**

Commissioners should schedule a pre-season meeting with all water users to introduce themselves, review duties and responsibilities, discuss access issues, outline communication protocols, and exchange contact information.

## **8. Plan Daily Travel Routes**

Commissioners should familiarize themselves with their area to effectively plan travel routes to each POD. While daily visits to every POD may not be necessary, knowledge of their locations and access routes is crucial.

## **9. Establish Start Date for Distribution**

Commissioners must determine when distribution needs to begin. The Commissioner start date can vary depending on water availability and the periods of diversions on the water rights. Commissioners can talk with water users and utilize former Commissioner records, snowpack data, and historic streamflow data to make predictions.



## **10. Inspect Headgates and Measuring Devices**

Commissioners should regularly inspect headgates and measuring devices to ensure they are functioning correctly and address any necessary maintenance with water users as quickly as possible.

## Chapter 3:

# UNDERSTANDING TABULATIONS

## OVERVIEW

Once a District Court has approved a petition for a Water Commissioner to distribute water, the Court obtains a list of the water rights included in the distribution project to give to Water Commissioners. This list is called a Tabulation (formerly known as “Redbook”). District Courts issue a Request for Enforcement Tabulation (Tabulation Request). This request is sent to the Montana Water Court. The Water Court forwards these requests to DNRC.

In response, DNRC compiles a list of active water rights based on the information in the Tabulation Request. This request describes what sources, stream reaches, and tributaries (if any) should be included in the distribution project.

Once DNRC compiles the water right data, DNRC delivers the tabulations digitally to the Water Court. The Water Court then forwards them to the District Courts. Water Commissioners may request a printed copy of the tabulations from their District Court. District Courts can decide whether to provide printed copies.

Each distribution project has one tabulation, organized in five different deliverables. Water Commissioners utilize these deliverables to distribute water accurately. The five deliverables included in a tabulation are:

- Maps of diversion sites.
- Water rights sorted by legal land description.
- Water rights sorted by priority date.
- Water rights sorted by owners alphabetically.
- Water rights sorted numerically.

## **PURPOSE AND USE OF EACH DELIVERABLE**

### **Maps of diversion sites:**

This deliverable provides a small-scale map of the entire distribution project, with the public land survey system (PLSS) overlain. It also includes several larger-scale maps to help Commissioners identify each point of diversion (POD).

The PLSS is a grid overlain across much of the Western and Southern United States. This grid is composed of townships, which each contain 36 sections. Every POD on a water right has a 18

legal land description (LLD) that corresponds to this grid system. Understanding how to locate LLDs on a map helps in identifying diversion points (see guide in appendix B). These maps can provide a helpful starting place for Commissioners to familiarize themselves with the POD's. However, Commissioners will still need to familiarize themselves with driving routes and access points prior to the start of distribution season.

## **Water Rights Sorted by Legal Land Description:**

The water rights sorted by LLD deliverable pairs nicely with the maps, as it organizes each POD based on its LLD. A Commissioner can look at all the points of diversion in a section on a map and find a list of all the water right numbers corresponding to those points of diversion in the LLD index.

## **Water Rights Sorted by Priority Date:**

The index of water rights sorted by priority date highlights which rights hold the highest priority on the source. Each senior water right is entitled to 100% of its flow rate before junior rights can be fulfilled. Commissioners must always distribute water based on priority date, not based on location. Shortages are not shared,

unless there is a specific stipulation settled in court.

Example: Priority Date Index

**2024**

<b>Enf. Priority Date</b>	<b>Owner</b>	<b>Owner (first)</b>
<b>43B 12281 00</b>		
1880-01-01	CRAZY CREEK RANCHES WATER USERS ASSOC	
<b>43B 27157 00</b>		
1880-03-15	STENE	JOHN

## **Water Rights Sorted Alphabetically by Owner:**

This alphabetical index of owners assists Commissioners in identifying rights that share common ownership. This index is most useful when Commissioners are getting to know a source and the water users on it. The alphabetical sorting allows Commissioners to quickly find who they are looking for and understand where their water rights fit into the big picture.

## **Water Rights Sorted by Numerical Order:**

This chronological index of water rights is most helpful for getting details on a particular water right quickly if the Commissioner knows the water right number.



# Chapter 4: WATER COMMISSIONER RESPONSIBILITIES

Water Commissioners have the power and duty to measure and distribute water based upon the priority date of water rights for a specific stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply (85-5-105, MCA). If Commissioners fail to perform their duties, they could be cited for contempt of court (85-5-109, MCA).

## **AUTHORITIES OF A WATER COMMISSIONER**

To accomplish their job, Commissioners have the authority to:

- Enter ditches (85-5-404, MCA).
- Access headgates and measuring devices (85-5-108, MCA).
- Adjust headgates in accordance with priority and flow rate of decreed water rights (85-5-105 and 85-5-404, MCA).
- Maintain and repair ditches, if necessary (85-5-106 and 85-5-401-408, MCA).

- Shut water off based on:
  - Priority date (85-5-201, MCA),
  - Non-payment by water users, in consultation with the District Court Judge (85-5-206, MCA), and
  - Non-functioning headgates or measuring devices, in consultation with the District Court Judge (85-5-302, MCA).
- Arrest individuals in accordance with statute (85-5-108, MCA).

Commissioners do **not** have the authority to:

- Deliver water to non-water right holders.
- Deliver water based exclusively on use; delivery is based on the water right priority date and flow rate.
- Change points of diversion, periods of use, places of use or priority dates.
- Modify the bed or banks of a stream without the appropriate 310 permits from local conservation districts.  
Commissioners should check with their local conservation district before major repairs to diversions.



# RECORDS

Daily records are an essential responsibility for every Commissioner (85-5-107, MCA). Daily records directly affect billing. Commissioners must keep records that indicate:

- Daily quantity of water distributed to each point of diversion (POD) and water user.
  - The daily quantity is required regardless of whether the Commissioner physically went to that POD each day.
- The total monthly quantity of water distributed to each water user.
- The total cost of distributing water based upon the Commissioner's daily salary and other expenses approved by the judge.
- The proportion of water distributed to each water user.
- The amount each water user owes based on this proportion and the total cost.

Commissioners must submit these records to their District Clerk of Court monthly or seasonally (85-5-107, MCA). Commissioners should work with their District Clerk of Court to verify this frequency of record submittal if the Appointing Order does not specify.

If there are two or more Commissioners on a distribution project, these Commissioners may file a joint summary of records to the District Court (85-5-107, MCA).

Most Courts prefer to receive records digitally, in the form of an excel spreadsheet sent via email. Many Commissioners might opt to keep analog field notes and type them into a digital record at the end of each day. Commissioners should retain copies of their records for future use, such as dispute resolution or tracking water supply.

## **BILLING**

Water Commissioner billing procedures are outlined in a handful of different statutes, which are cited in turn in this section. These billing procedures require involvement from Water Commissioners, District Judges, Clerks of Court, and water users.

District Courts determine Commissioner compensation at the time of appointment (85-5-101 and 85-5-405, MCA). District Courts also frequently outline other fee reimbursement rates for Commissioners at the time of appointment (85-5-101, MCA).

Water users are responsible for paying a share of Commissioner expenses (compensation and fees) that is proportionate to the amount of water distributed to them.

Commissioners keep daily records that include total costs accrued and amount each water user owes based on the proportion of water distributed to them. Commissioners submit these records to their District Court either monthly or seasonally (85-5-107, MCA).

Example: If a Commissioner distributes 25% of the water in a project to Jane Doe, Jane Doe is responsible for 25% of the Commissioner's bill.

### Example: Billing Report and Commissioner Expenses Tables

Water User	Ditch	Total Inches	Percent of Total	Monthly Bill
Smith	Old Barn	1500	23%	\$520.03
Smith	Two Horse	400	6%	\$138.67
Jones	Old Barn	2200	34%	\$762.71
Meloy	Smitty	600	9%	\$208.01
Roberts	Two Horse	450	7%	\$156.01
Downey	D-O	720	11%	\$249.61
McLane	Chicken	120	2%	\$41.60
Dolan	Ginger	500	8%	173.34
Total =		6490	100%	\$2,250

<b>DAILY WAGE:</b>	<i>\$100 per day</i>	14 days	\$1400
<b>MILEAGE:</b>	<i>\$0.50 per mile</i>	1100 miles	\$550
<b>WORKERS' COMP:</b>	<i>\$200 per month</i>		\$200
<b>OTHER EXPENSES (LIST):</b>		phone, log books	\$100
<b>TOTAL COMMISSIONER EXPENSES FOR THE MONTH:</b>			<b>\$2,250</b>

The District Clerk of Court is responsible for sending a letter to each water user informing them of:

- The amount they owe to the Commissioner, based on the Commissioner's report (85-5-204 (1)(a), MCA).
- That water users have 20 days to object to the Commissioner's report and amount owed (85-5-204(1)(b), MCA).
- That unless objections are filed, the District Judge will issue a final order fixing the amount due to the Commissioner from each water user (85-5-204(1)(c), MCA).

The District Judge is responsible for handling any objections and issuing the final order (85-5-204, 205, and 206, MCA).

Water users are responsible for paying the Commissioner compensation and fees set in the order. It is the Commissioner's job to carefully track additional fee expenditures and indicate whether they are to be shared between all,

some, or just one water user so that this process can flow smoothly.

## **Preseason Billing**

If authorized by the District Courts, Commissioners may issue a bill prior to the beginning of a distribution season to offset costs associated with distributing water and Commissioner duties. Commissioners can “issue” this preseason bill by submitting the information necessary for the billing to the District Clerk (85-5-201(3)(a) and 85-5-204(3), MCA). The District Clerk would then notify each water user with the amount owed via a letter, as outlined above (85-5-201(3)(b), MCA). The preseason bill must be assessed per user, be based on the records provided the previous year, and may not exceed 80% of the amount identified in the previous year’s records (85-5-201(3), MCA). This means that new distribution projects cannot use preseason billing.

If the cost of distributing water throughout the season ends up being less than what was billed preseason, the Commissioner must refund money based on the amount of water that user received (85-5-204(4), MCA). Conversely, if distribution costs exceed the pre-season billing, the Commissioner is allowed to have the Clerk of Court bill proportionally for the remaining unpaid expenses.

If a water user does not pay their bills, Commissioners should consult with their District Court Judge to halt delivery of water to that user until the Commissioner is paid (85-5-206, MCA).

## **Fees**

Water Commissioners can bill for fees, in addition to compensation. Fees may cover expenses such as insurance, repairs, communications, training, and travel. District Judges and statute determine which fees are reasonable.

- Insurance: Every Water Commissioner must obtain workers' compensation Insurance prior to beginning distribution. Often, District Courts will allow Commissioners to bill water users pre-season to cover this expense. If not, this expense should be tracked by the Commissioner and divided proportionally among the water users based on the amount of water distributed to them.
- Commissioners can obtain workers' compensation Insurance by calling the Montana State Fund at 1-406-495-5000 with questions. Commissioners will likely need to file proof of coverage with the District Court.

- Maintenance and Repairs: The responsibility for maintenance and repairs falls on the water users, unless they petition the Courts to have a Commissioner take over this responsibility. Commissioners have the authority to make repairs and maintenance decisions in situations where it is necessary for them to do so to distribute water properly.
  - Commissioners may be empowered to maintain ditches or system at the expense of the owners if owners of 51% of water rights submit a written request to the Court to have a Commissioner do this (85-5-106, MCA).
  - Commissioners may incur necessary expenses in repairing headgates or dams for the distribution of waters if the parties fail or refuse to do so. Expenses associated with this must be assessed against and paid by the party or parties for whom the repairs were made (85-5-201, MCA).
  - Commissioner may incur repair expenses when immediate action is necessary to preserve the rights of the parties or when the order

appointing the Commissioner calls for them to do repairs (85-5-202, MCA).

- Telephone Expenses: District Court Judges can allow Commissioners to charge water users for expenses related to emergency telephone calls to the Judge or to other Commissioners. These expenses would be reported at the end of the season and charged proportionally to water users based on the whole amount of water distributed to them throughout the season (85-5-203, MCA).
- Training Requirements: Every Water Commissioner must attend a training seminar prior to distributing water. District Court Judges may set an hourly rate and mileage rate for Commissioners attending this training. The cost of attending this training is shared proportionally amongst water users based on the amount of water distributed to them.
- Travel Reimbursements: Lastly, District Court Judges may also establish a mileage reimbursement rate within the order appointing the Water Commissioner for travel-related expenses.



# Chapter 5: POINT OF DIVERSION OPERATIONS

## OVERVIEW

Every Water Commissioner has the authority to access any ditch, canal, aqueduct, or other source for conveying the waters affected by the decree and to visit, inspect, and adjust all headgates or other means of distributing the waters (85-5-108, MCA). Commissioners must familiarize themselves with the means of diversion at each point of diversion (POD) and know how to operate and fix them in a pinch. In Montana, the common means of diversion include headgates, individual or shared ditches, pumps, pipelines, and siphons. Commissioners should evaluate each means of diversion for defects before, during, and after the appointed season, and work with water users if repairs are needed.

Suitable headgates:

- Must be capable of being fully closed.
- Should be appropriately sized to manage the entire range of legal diversion.

- Must be capable of being operated by one person.

#### Suitable ditches:

- Must allow for free-flowing water without any obstacles.
- Should be designed to contain the entire legal diversion flow without risk of overflowing.

#### Suitable Pumps, Pipelines, and Siphons:

- Must be able to handle the entire range of legal diversion as necessary.
- Should be maintained and kept clear of debris.

Water Commissioners should use measuring devices to determine what adjustments need to be made to obtain the desired flow rate. It is important for Commissioners to remember that there could be a lag time in flow adjustments, depending on the distance from the measuring device to the means of diversion. Therefore, the Commissioner may need to wait for the flow in the measuring device to stabilize before making further changes.

# PODs & WATER COMMISSIONER AUTHORITY

The Water Commissioner has the authority to deliver and distribute water and to operate primary PODs, as stated in section 85-5-108.

- Primary PODs: The Commissioner's responsibility is the operation of primary PODs, and DNRC maps only show primary PODs. Keep in mind that one POD may service multiple rights.
- Secondary PODs: Typically, water users are responsible for maintaining and operating secondary PODs. But some distribution projects require a Commissioner to operate secondary, down-ditch POD's as well to deliver water. Water users should formally request a Commissioner to do this.

## Chapter 6:

# WATER DISTRIBUTION

## OVERVIEW

A Water Commissioner's job is to distribute water by priority date. Distributing accurately requires a good understanding of the amount of water available to deliver to water users. During high flow periods, there may be enough water available to satisfy all water rights on a stream. Low flow periods present challenges. At these times, priority water rights are fulfilled, and junior water users are restricted or shut off. As flows decline, more juniors are restricted or shut off.

The order in which a Commissioner makes daily adjustments to headgates is dependent on water availability, priority, and logistics. A Commissioner's knowledge of local stream conditions like return flows, tributary contributions, and natural seepage losses all factor into daily decisions regarding who receives water, where and when. Resources such as the United States Geological Survey or DNRC streamflow gages and Natural Resources Conservation Service and DNRC water supply reports are helpful, though not always available for all streams.

## **Water Distribution**

Water distribution is based on the Prior Appropriation Doctrine, or the “first in time, first in right” principle. In this priority system the most senior water users receive the full amount of their appropriated amount of water first. As water supply diminishes over the course of the irrigation season, junior priority users are shut off to allow water to reach senior users. Water must not be delivered in excess of the flow rate or volume of that water right, or outside of the period of use.

Commissioners shut water off based on:

- Priority date.
- Lack of payment (in consultation with District Court Judges).
- Non-cooperation regarding infrastructure (in consultation with District Court Judges).

### **Distribution is not based on:**

- Who uses the most water.
- Whose operation needs the most water.
- Ease of access to points of diversion.
- Individual relationships with water users.

## **Commissioners may not:**

- Change points of diversion (PODs).
- Deliver water based on preferred use.
- Deliver water to non-water right holders.
- Deliver water outside of priority unless senior user asks to be shut off.
- Perform construction in or near a stream without a 310 permit. Commissioners must talk to their local Conservation District to determine if a 310 permit is needed.

## **APPROACHING DISTRIBUTION**

In distributing water, Commissioners should:

- Know the seniority of priority dates in the distribution project.
- Know the flows and anticipate when users are going to get shut off.
- Utilize former Commissioner records, snowpack records, and average flow rates on the source and compare these against total appropriated flow rates.
- Have accurate and well-placed measuring devices installed.

- Know where all the points of diversion are and how to operate them. Only utilize primary PODs unless specifically directed otherwise.

# Chapter 7: WATER MEASUREMENT

Accurate water measurement is essential for accurate water distribution. Commissioners have the option to utilize FlowTrackers or fixed measuring devices. The proper installation of fixed measuring devices according to their specific guidelines is essential; otherwise, readings will be inaccurate. Therefore, Commissioners must familiarize themselves with the unique specifications of each measuring device. DNRC is available to support and assist if any questions or concerns arise regarding field conditions.

*See Appendix B and C for stream flow calculations and quick conversions.*

## MEASUREMENT DEVICES

### FlowTrackers

FlowTrackers are the best method for manual streamflow measurements. They provide the capability to acquire instantaneous flow readings and verify the accuracy of standardized measuring devices. Among the traditional FlowTrackers, Price Meters (such as Price AA Current Meters and Price Pygmy Current



Meters) continue to be manufactured and recognized for their exceptional accuracy. Although Marsh-McBirney meters are somewhat outdated, they remain viable for use.

## **Fixed Measuring Devices**

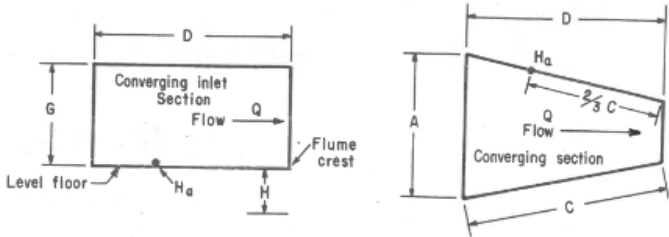
The most common fixed measuring devices in Montana are the Parshall Flume and the Montana (Short Parshall) Flume. Other measuring devices used include Rectangular Contracted Weirs, Ramp (Replogle) Flumes, Cutthroat Flumes, Cipoletti Weirs, V-notch Weirs, Submerged Orifices, Weir Sticks, and Meters.

When installed and used correctly, fixed measuring devices are much quicker water measurement tools than any manual water measurement tools. However, these fixed devices each have unique complexity and sensitivity, as discussed in greater detail below. It is extremely important for Commissioners to understand these variables to ensure reliability and accuracy. DNRC is a resource for questions and concerns about both fixed and manual measuring devices.

## **Flume Installation**

Flumes must be perfectly leveled and require an adequate drop to mitigate backwater effects. Thus, site selection is important.

### Example: Typical Montana Flume



## V-Notch Weirs

While V-notch weirs can be a perfect tool, they are prone to sediment accumulation in turbid waters, often rendering them less reliable for measurement.

## Staff Gages

A staff gage, calibrated to indicate water level, is mounted on most standardized measuring devices. With increments measured in feet, tenths of feet, and hundredths of feet, each hundredth of a foot corresponds to a specific flow rate based on the size and type of measuring device. Accurate staff gage readings are essential and must be cross-referenced with the corresponding rating tables, available online or in publications such as the U.S. Bureau of Reclamation's Water Measurement Manual (1997).

# **INSTALLATION AND MAINTENANCE**

Water users generally bear the responsibility of installing and maintaining measuring devices, unless they petitioned for Commissioners to have this burden (85-5-302, MCA).

In practice, many water users may lack measuring devices. Commissioners can be practical in their approach to missing measuring devices by prioritizing measurement for senior water users over juniors that are shut off early season. Commissioners should communicate well and work with water users to get measuring devices installed properly where needed. Some Commissioners may already have the installation skills needed – others may not. If Commissioners find themselves in a situation where they need to choose and/or install a measuring device, Commissioners should reach out to the DNRC for assistance. Device selection is highly dependent on site-specific factors, and device installation must be done well to allow for accurate water measurement.

## **Prior to Distribution**

Commissioners should evaluate the measuring devices on their source prior to the start of distribution. This assessment should involve:

- Identifying which water users have measuring devices and which do not.
  - If senior users are missing measuring devices, Commissioners should contact them immediately to work out a plan. Commissioners should work to approach junior appropriators without measuring devices as practicable.
- Tracking measuring device locations.
- Knowing the types of devices.
- Evaluating the condition of the devices.
- Promptly requesting water users fix any problem devices as soon as possible.

To guarantee accurate water measurement, all active measuring devices should be:

- Level and plumb.
- Installed properly.
- Compliant with engineering standards.
- Appropriately sized and situated for the specific diversion site.
- Located near the headgate.
- Able to accommodate the entire flow diverted in a free-flowing condition.

Commissioners should work with water users to get faulty devices fixed prior to the distribution season. It is much harder to replace faulty devices midseason. Commissioners should become familiar with the measuring devices in their distribution project and utilize the wealth of resources in the appendix to learn how to maintain, read, and otherwise utilize each of the measuring devices they will be working with. DNRC staff is available to advise and consult on the condition of devices and potential problem areas.

## **MEASUREMENT CONSIDERATIONS**

Understanding the differences between natural flows, stored waters, instream flows, and carriage losses is essential for Commissioners to accurately measure and distribute water.

### **Natural Flows**

Natural flows are naturally occurring water that creates in-channel flows. Natural flows do not include water imported from other basins, water stored in or released from a reservoir, or artificially added groundwater. Natural flows may include tributary streams, springs, bank storage, and return flow.

## **Stored Waters**

Stored water is water stored in a reservoir that may be released into a natural channel for conveyance. Water stored in a reservoir that is turned into a natural channel of a stream to be withdrawn or diverted at some point downstream for beneficial use must be measured at the original point of diversion (POD) – typically, the reservoir outlet.

## **Instream Flows**

Instream flows are water rights that require water to remain instream to provide benefits to flows. Instream flow rights are administered in order of priority like any other surface water right. Many instream flow rights are irrigation water rights that have been changed temporarily to an instream flow right and are leased by non-profit entities. In these situations, Commissioners are required to work with the original owner (lessor) of the right, rather than the lessee. Commissioners will likely track instream flows using a staff gage, gaging station, or manual methods.

## **Carriage Losses**

Carriage losses are the amount of water lost (due to, for example, ditch seepage) in transit from the POD to the place of use.

Commissioners measure water at the primary POD on the source, not at secondary diversions.

Carriage losses get subtracted from the quantity that can be diverted at the delivery point. Carriage losses never allow for users to get more than their water right.

## **Carriage Losses on Shared Ditches**

The carriage loss may be allocated proportionally between the water users, at least through the “shared portion of the ditch”; each user jointly shares in the losses. Normally, a Water Commissioner will not account for carriage losses in their distribution, since they operate primary PODs.

However, some stipulations may specify that a Water Commissioner account for losses, if they are requested to operate secondary PODs. These situations are project specific.

## **Carriage Losses Conveying Stored Waters**

Stored water can be conveyed in a natural stream or stream course. However, stored water must be measured at the primary POD, which is always the dam or reservoir outlet. If stored water is diverted into a ditch further downstream, the amount of water lost in carriage must be subtracted from the amount of water on the water right. Water users carry this burden of carriage losses, so they do not get the full quantity of water on their water right at

their second POD. This situation necessitates measuring devices at both PODs. In some cases, stored and natural flow water users may have an informal agreement to share in the carriage losses that occur during transport between the primary and secondary POD. This agreement cannot expand the limitations of the water rights involved including priority date, period of use, flow rate, POD, and place of use.

## **USEFUL TIPS AND TRICKS**

Ideally, every water user in a distribution project would have a well maintained, accurate measuring device. However, this is unrealistic in many areas, particularly on new distribution projects. Over time, it may be possible to work toward this ideal. In the meantime, Commissioners can familiarize themselves with substitute water measurement solutions, such as the container method and float area method.

### **The Container Method**

The container method is a practical approach for measuring water using a stopwatch and a container with a known volume, like a one or five-gallon bucket, to measure flow rates. This method involves timing how long it takes water from an outlet (such as a pipe) to fill the five-gallon bucket and convert to a standard flow rate.



## **Float Area Method**

This technique is used to estimate flow rates based on the channel's cross-sectional area. Water speed is estimated by measuring how long it takes a float, such as a stick, to float over a set distance.

By understanding these measurement considerations, Commissioners can better navigate the complexities of water measurement and effectively distribute water.

# Chapter 8: COMMUNICATION & CONFLICT RESOLUTION

## COMMUNICATION

The Water Commissioner's job is to distribute water accurately and lawfully, not to resolve disputes. However, disputes do arise around water use. Some water users will not agree with the way water is distributed and may even try to interfere with a Commissioner's duties.

Commissioners should communicate openly, positively, proactively, objectively, and transparently with water users to build working relationships and help avoid unnecessary conflict.

The following are key principles that can guide effective conflict resolution.

**Active Listening:** By understanding different perspectives, one can build rapport and foster open dialogue.

**Flexibility:** Adaptability is crucial for finding solutions that meet varied needs while adhering to legal requirements.

### **Documentation and Legal Framework:**

Thorough documentation and consistent application of the law will ensure fairness and transparency in decision-making.

By combining these key elements - active listening, flexibility, and a firm understanding of the law - you can effectively navigate the complexities of water management. Embracing these principles will help you maintain open dialogue and proactive engagement among water users, minimize the challenges of distributing water, and ensure that all users feel valued and protected under the law.

## **BUILDING RELATIONSHIPS**

Effective water management hinges on positive working relationships with water users. Developing trust and understanding can dramatically lessen the likelihood of future disputes. Below are some best practices for fostering these essential relationships.

### **A Commissioner should:**

- Send out a letter to all water users introducing themselves and explaining their duties. This should be done annually to make sure every water user is adequately informed.

- Hold a pre-season meeting, either individually or preferably with all water users, to get acquainted, discuss water year predictions, the timing and logistics of water distribution, payment schedule, property access and timing issues, infrastructure requirements, and any other issues pertinent to the delivery of water in the basin.
- Establish a clear and effective communication plan, which may involve using phone calls, emails, or text messages to ensure that all users are kept informed.
- In some cases, especially situations that include the delivery of stored water, consider using or even creating a simple webpage to provide daily updates of reservoir levels, streamflow, and priority cutoffs. This approach has proven successful for some distribution projects.

## **IMPORTANCE OF DOCUMENTATION**

The Commissioners can help protect themselves in these disputes by keeping accurate and meticulous written records of daily distribution along with photo documentation where

necessary. These records can provide invaluable evidence in case of a dispute. If unhappy water users file a complaint with the District Court, thorough documentation can safeguard Commissioners from liability.

If there is a dispute between users, the District Court Judge has the option of appointing a mediator to resolve issues between the parties. A mediator can help broker long-term solutions that are less burdensome and costly in time, money, and goodwill than going to court.

DNRC's webpage ([dnrc.mt.gov/Water-Resources](http://dnrc.mt.gov/Water-Resources)) has record and billing templates available for Water Commissioners to utilize to aid in accurate record keeping.

## **DEALING WITH NONCOMPLIANT WATER USERS**

At times, water users may actively interfere with Commissioner duties. If a Commissioner suspects water users are tampering with headgates, they may:

- Post a notice citing the District Court's authority on the headgates.
- Install game cameras to document the interference.

- Install a physical lock on a headgate to prevent further tampering.

If a water user confronts or threatens a Commissioner directly, it is important not to escalate the situation. Commissioners should carefully document any incidents in writing and communicate them to the District Court Judge. In extreme cases, they need to involve local law enforcement. **Remember, safety is the most important thing.**

## **POST-SEASON WRAP-UP**

The end of the season is a good time for the Commissioner to assess the status of infrastructure, address access issues, and make sure all payments are collected. This is a chance to address any issues with water users before the next season.

If Commissioners identify issues with improperly functioning headgates, measuring devices or outstanding bills, this is an excellent time to notify the water user that they will not receive water next season until these issues have been resolved. Discussing these issues at the end of the season allows time for the water user to address them. Similarly, water users may want to discuss the logistics of property access or timing of water distribution that did not get addressed during the season.

## Chapter 9:

# ROLE OF COURTS

## DISTRICT COURTS

The District Courts oversee the enforcement of Water Court decrees and settle water right disputes. District Court judges and clerks receive petitions for Water Commissioners, appoint Water Commissioners, bill water users for the Water Commissioner's services, address dissatisfied water user complaints, mediate water user disputes, and address other issues that arise over the course of an irrigation season.

The District Court's responsibilities are broken down into two main roles: the District Court Judges and the Clerks of Court. Their roles and responsibilities are defined according to statute (85-5-204; 85-2-406; 3-7-212, MCA).

### District Court Judges

- Address dissatisfied water user complaints.
- Evaluate and subsequently approve or deny petitions submitted by water users.
- Issue Orders Appointing Water Commissioners that set forth the Commissioner's salary, commencement date, record submittal, billing frequency, worker's compensation requirement, and

any other specific responsibilities of the Commissioner.

- Issue Orders Requesting Tabulation of Water Rights that sets the scope of the distribution project.
- May issue orders fixing and determining amounts water users owe to Commissioners.
- Have supervisory authority over all Water Commissioners.
- Appoint water mediators to address disputes related to water if necessary.
- May issue injunctions on noncompliant water users.
- May assist Commissioners with noncompliance issues.

## **District Court Clerks**

- File a sworn oath and a bond from the appointed Water Commissioner.
- Provide tabulations to the Commissioner.
- Receive and store records submitted by the Water Commissioners.
- Send letters to water users identifying how much they owe Commissioners and notifying them of a 20-day objection period to object to the bill.
- Remain available throughout the distribution season to help Water



Commissioners, especially new ones, with administrative questions, legal questions, or related issues.

## **WATER COURT**

The Montana Water Court has exclusive jurisdiction over the adjudication of water rights claims (pre-July 1, 1973, water rights). Montana Water Court decrees are typically enforced through the establishment of distribution projects.

### **The Water Court**

- Issues decree to finalize Statement of Claims.
- Processes and approves tabulation requests and tabulations.
- Serves as liaison between DNRC and the District Courts.
- Mediates water right disputes at the District Court's request.
- Helps water users if they notice a problem with their Statement of Claim.
- Answers questions related to water rights themselves or water right issues.

# Chapter 10: ROLE OF WATER USERS

Water users are individuals or entities that hold valid water rights. They are responsible for petitioning their District Court to appoint a Water Commissioner and for compensating that Commissioner for their services.

Water users' rights and duties are outlined in the following steps and can be found in sections 85-5-101; 85-5-108; 85-5-201-206; 85-5-301; 85-5-302; and 85-5-406, MCA. Understanding and fulfilling these roles and responsibilities are essential for water users to ensure effective management and equitable distribution of water resources in accordance with their rights.

## **Representative Requirement and Financial Responsibility**

To start the petition process for an enforcement project, water users must meet the following criteria:

At least 15% of the water rights or flow rate on the source must be represented by the users who sign the petition. All water users, not just those included in the petition, must pay for water deliveries within the Commissioner's jurisdiction. If the petition is granted, all water

users who have rights subject to the Order Requesting Tabulation are part of the distribution project. Water users will receive bills based on the proportion of water delivered to them.

## **Other Responsibilities**

Water users must install and maintain infrastructure, including water measurement devices, means of diversion, and ditches. Water users must cooperate with Water Commissioners, which includes allowing access to points of diversion, fulfilling their financial obligations, performing maintenance, and not interfering with the distribution of waters.

## **Maintenance Requirements**

Water users are required to maintain a properly functioning headgate or other means of diversion and a properly functioning measuring device near their diversion works. A properly functioning headgate should be easily adjustable by one person, can be completely shut off, and allows for a range of flows that comply with the water rights associated with that diversion point (ARM 36.13.101). A properly functioning measuring device is a standardized apparatus installed according to the manufacturer's design specifications (ARM 36.13.101).

## **Cooperation with Water Commissioners**

Water users are not allowed to interfere with or adjust diversions once a Commissioner is appointed, unless directly instructed to do so by the Commissioner.

Water users must allow Water Commissioners access to inspect and adjust diversions.

Water users must pay their Water Commissioner bill, which may include expenses for water delivered, workers' compensation insurance, training, infrastructure repair, and travel. Failure to pay could result in their water being shut off.

## **File Objection to Expenses**

As needed, water users can file an objection to the Water Commissioner's expenses by contacting their District Court. Water users have 20 days to object once they are notified by their Clerk how much they owe the Commissioner.

## **File Dissatisfied Water User Complaints**

Water users can file a dissatisfied water user complaint against the Water Commissioner if issues concerning water distribution arise and cannot be resolved.

## Chapter 11:

# ROLE OF DNRC

## Education

Pursuant to statute (85-5-111, MCA), DNRC provides an educational program for Water Commissioners. Although Commissioners are court-appointed, DNRC is responsible for equipping Commissioners to do their job.

DNRC hosts an annual Water Commissioner seminar, maintains and updates this Water Commissioner Manual, provides supplemental resources digitally and at in-person trainings, and offers one-on-one field training.

## Technical Assistance

DNRC provides technical assistance to the other parties involved in distribution. Specialists from the Water Sciences Bureau and the Regional Offices are available to assist water users, Commissioners, and Court officials. At a Water Commissioner's request, a DNRC specialist can come assist with water measurement, device inspection, or other field issues.

DNRC's website ([dnrc.mt.gov/Water-Resources](http://dnrc.mt.gov/Water-Resources)) houses or links online resources such as stream gage data, SNOTEL Stations, forecasts and reservoir data, and more that a Commissioner may find helpful.

## Record Management

DNRC is responsible for maintaining and updating public records associated with water rights. All water right types, including change authorizations, are recorded by DNRC. All records are available on DNRC's Water Rights Query System (WRQS), <https://gis.dnrc.mt.gov/apps/WRQS/>. The WRQS is a publicly available tool for anyone to search for and access water right data.

DNRC also provides data for distribution projects in the form of tabulations. These tabulations are intended to break down water rights on a distribution project in a way that allows Water Commissioners to accurately distribute water.

DNRC's Water Mapper tool provides this same information in a digital format. Water Commissioners can access water right information, tabulations, mapped diversion points, and copies of Orders Requesting Tabulations from DNRC's various methods of record keeping.

# FREQUENTLY ASKED QUESTIONS

## **What is the Commissioner's role in enforcing the "first in time, first in right" principal?**

"First in time, first in right" is a summary of the prior appropriation doctrine. This doctrine means that whoever first used water for a beneficial purpose has the highest priority water right. In practice, this means the water right with the oldest priority date on the source gets fulfilled in its entirety before any other water rights on the source. This principle is the main legal guideline for water rights administration in Montana. Water Commissioners are responsible for distributing water based on priority dates. Water Commissioners must make sure that senior water rights (i.e., oldest priority dates) get their share of water before junior water rights (i.e., younger priority dates), especially when there isn't enough to go around.

## **What should a Commissioner do if the actual POD location doesn't match the paper POD location?**

Commissioners should talk to the water user and share the following information: Water users should contact the Water Court to notify them of the discrepancy in POD location. A simple email to the Water Court will suffice. The Water Court can then formally investigate how to resolve this issue, based on whether the change occurred before or after July 1, 1973.

## **How can a Commissioner distinguish between natural flow and stored water?**

“Natural flow” is water that naturally moves within channels. Natural flows can be determined by measuring all inflows into a source with a flowmeter, streamflow gage, or some other form of measuring device. Natural flow does not include water brought in from other basins, water stored in a reservoir or artificially added groundwater.

“Stored water” is water held in a reservoir and can be released into a natural channel for conveyance. When stored water is released into a natural stream channel for use downstream, it needs to be measured at the reservoir outlet, which is the primary point of diversion (POD). When stored water reaches a downstream secondary POD, Commissioners must measure water again and account for carriage losses. The quantity of natural flow must not be diminished



because of the added stored water (85-2-411, MCA). Consequently, the quantity of water distributed at the secondary POD will typically be less, rather than equal to, the quantity on the paper water right.

## **How can a Commissioner address losing or gaining reaches?**

“Shrink” or “losing reach” is the natural decrease in flow in a stream or ditch. It is common for streams and ditches to shrink due to seepage, evaporation, and transpiration. However, it is also possible for streams and ditches to gain water, either from surface or subsurface return flows. Streams and ditches can also have sections of gaining and losing reaches. Gaining and losing reaches can affect water availability. Water Commissioners must pay attention to changes in flow to deliver water to users accurately. Commissioners should acknowledge that gains and losses are not constant. The percentage of water lost or gained can change during the season due to factors like water availability, storms, and irrigation cycles. The key is for Commissioners to become familiar with the source(s) in their distribution project and pay attention to changes over a period of multiple distribution seasons.

## **How should a Commissioner handle instream flow water rights?**

Instream flow water rights are water rights that require water to be left instream, typically to support fisheries. Most instream flow rights have a designated reach in the stream where they are applicable. Instream flow water rights are valid water rights like any other. Water Commissioners must treat an instream flow right in the same way as any other water right and make sure it is delivered in priority.

## **What is submergence?**

Submergence is when the water depth downstream of a measuring device, known as  $H_b$ , reaches a certain percentage of the water depth upstream of the measuring device, called  $H_a$ . In simple terms, water should be free flowing through measuring devices and not backed up. To determine if a measuring device is submerged, Commissioners need to measure the downstream head (water depth).

## **How to address a submerged measuring device?**

Sometimes submergence occurs because downstream obstructions (e.g., sediment, check structure, vegetation, dead cow) are backing water up. If this is happening, Commissioners may be able to remove or alter the obstruction

to allow an unimpeded flow through the measuring device. Optimal downstream conditions greatly reduce the likelihood of submergence on upstream measuring devices.

Other times, measuring devices need to be reset or relocated to promote free flow.

Lifting measuring devices decreases the submergence ratio, making it less likely for changes downstream to cause submergence. However, conditions can limit opportunities for lifting measuring devices and Commissioners should approach this solution cautiously. It may be possible for Commissioners to adjust the height of the device floor instead.

Commissioners should consult publicly available resources and reach out to DNRC for assistance identifying and troubleshooting submergence.

## **What can a Commissioner do if a water user is manipulating their headgate?**

Unless otherwise noted in the District Court order, Water Commissioners have full jurisdiction over headgates during their appointment. Water users are not allowed to tamper with the Commissioner's adjustments or otherwise interfere with the Commissioner's duties in distributing water. Such interference is considered contempt of court (85-5-406, MCA).

A Commissioner may lock a headgate in place to deter interference with settings and place game cameras to collect evidence of tampering. A Commissioner can also request the District Court issue a notice they can post on the headgate that explains the Commissioner's jurisdiction and duties. If interference persists, Commissioners can contact the District Court to seek resolution or appointment of a mediator.

## **What can the Commissioner do if a water user is wasting water?**

A frequent issue raised by water users is the concern that someone is misusing water by over-irrigating, which is often indicated by water pooling in drain ditches, on neighboring fields, and near public roads. Unless specified otherwise in a Judge's order, the Water Commissioners only have authority at the headgate, meaning that any water waste further down the ditch is not something they can legally address as part of the distribution project. However, Water Commissioners can still take note of waste and report back to the District Court.

Under statute (85-2-114, MCA), the DNRC may work with the District Court, Department attorneys, the County attorney, or the Attorney General to address the waste. Additionally, the

District Court can issue orders and injunctions to prevent a user from wasting water.

## **What authority does a Water Commissioner have to carry out water distribution?**

Montana law provides that a Water Commissioner appointed by the Court has: the authority to enter any property necessary to access a ditch or other source for conveying waters for the purpose of distributing water; the authority to inspect and adjust headgates or other means of distributing water; and the same powers as a sheriff or constable to arrest any person interfering with the distribution made by the commissioner, to be dealt with according to law (85-5-108, MCA). However, to ensure compliance with applicable Montana law, it is advisable for Water Commissioners to discuss and agree on access routes through private property and consult with the District Court, local law enforcement, and/or an attorney prior to taking any action related to unlawful interference with water distribution.

## **What if the water user does not pay their bill?**

If water users do not pay their bill, Water Commissioners can shut off water in consultation with District Court Judges.

## **What is a futile call and how should the Water Commissioner handle one?**

If curtailment of a junior user's water would not result in water being made available to the senior appropriator (i.e., would only result in a waste of water), then the junior user could be entitled to invoke the Futile Call Doctrine, described in *Kelly v Teton Prairie LLC*, 2016 MT 179, 384 Mont. 174, 376 P.3d 143.

In this scenario, a junior user can petition the District Court for a hearing to present evidence showing that no usable water will ultimately arrive at the senior's POD. The Water Commissioner must wait for the District Court's determination before they change how they distribute water.









## Appendix A:

# INTRODUCTION

# LETTER EXAMPLE

**This letter is simply an example of one a Water Commissioner might send at the start of the distribution season. Commissioners should modify this letter to meet their individual needs.**

[Date]

Dear [Water User(s)],

I am writing to introduce myself as the [Year] Water Commissioner for the [Distribution Source Name] per the [Petition and Order]. I was appointed by the [County] District Court due to a petition from some of the water users on this source.

As Water Commissioner, my job is to distribute water according to the law. Together, we share the responsibility to ensure that the waters you depend on are distributed justly. Here are a few important things to note:

- I will be responsible for distributing water by priority date.

- I will be responsible for operating headgates and other primary diversions.
- I will keep detailed records of my distribution.
- You will be billed monthly for my services.
- You are responsible for maintaining infrastructure including diversions and measuring devices.
- If you fail to make payment or fulfill your responsibilities, your water may be shut off.
- If I fail to fulfill my duties, you may file a complaint with the District Court Judge: [Judge Name].
- If you feel as though you are being billed unfairly, you may object to the expenses to the District Court Judge: [Judge Name].

I want open communication, so please reach out with your concerns, ideas, or questions.

To kick this distribution season off, I'd like to invite you to a pre-season meeting on [Date] at [Time]. This meeting will take place at [Address or Meeting Link]. This will be a chance for us to connect and discuss important topics related to water distribution, including timing, payment

schedules, access, measuring and device requirements, and communication plans. If you're unable to attend, please let me know as soon as possible.

You can reach me at [Phone Number] or [Email Address]. If you need further assistance, please reach out to your [District Court] District Court Clerk at [Phone Number] or [Email Address].

I look forward to meeting you.

Sincerely,

[Your Name]

[Your Title]

[Contact Information, Best Hours to Reach You]

[Optional\* Enclose Court Order]

## Appendix B:

# LEGAL LAND DESCRIPTIONS

Townships are a grid overlaying a state. Township and range numbers are associated with the land to help identify location. The numbers associated with township are their number east or west of the state's principal meridian. The range is the number north or south of the state's baseline.

Most townships are divided into 36 sections. The numbering of the parcels always begins with 1 in the NE corner of a township.

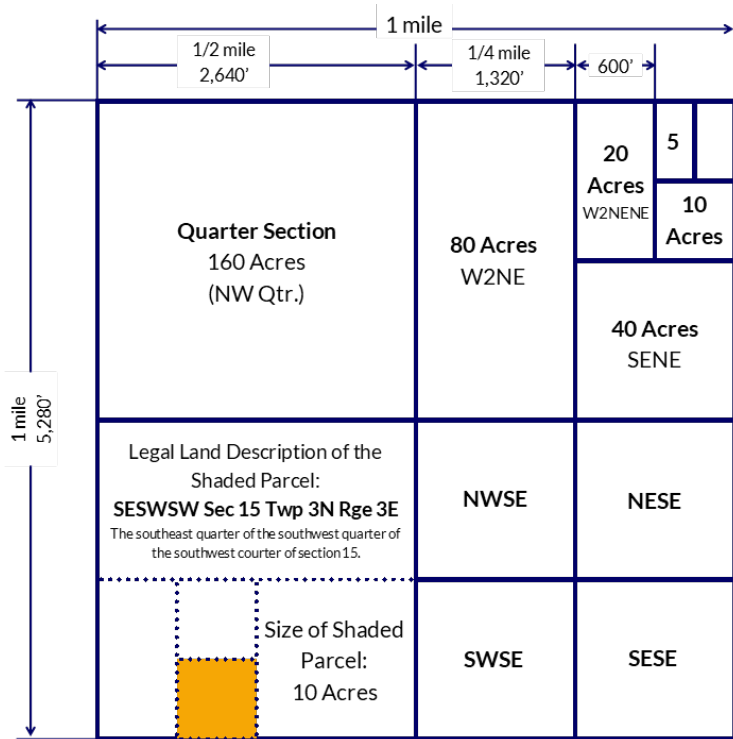
### Township Divided into Sections

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
<del>31</del> 31	32	33	34	35	36

Each section in a township is one square mile, containing 640 acres (typically). A section of land can be further divided into smaller parcels.

A legal land description describes where in the section a parcel is located and the township and range in which the section is located.

## Section Divided into Parcels



# Appendix C: STREAMFLOW CALCULATIONS

## BASED ON FLOW CROSS- SECTIONAL AREA X VELOCITY ( $Q=AV$ )

AVERAGE WIDTH \_\_\_\_\_ FT

AVERAGE LENGTH \_\_\_\_\_ FT

AVERAGE TIME \_\_\_\_\_ SEC

AVERAGE DEPTH \_\_\_\_\_ FT

CROSS SECTIONAL AREA = \_\_\_\_\_ FT<sup>2</sup>

VELOCITY = \_\_\_\_\_ FT/SEC

FLOW =

CROSS SECTIONAL AREA x VELOCITY x  
ROUGHNESS FACTOR (\_\_\_\_) = \_\_\_\_\_ CFS

CFS x 448.8 = \_\_\_\_\_ GPM

CFS ÷ 11.22 = \_\_\_\_\_ MINERS INCH

# Appendix D: QUICK CONVERSIONS

## Miners Inches (MI)

$$\text{MI} \times 11.22 = \text{GPM}$$

$$\text{MI} \div 40 = \text{CFS}$$

$$\text{MI} \times 0.0495 = \text{AF/DAY}$$

## Gallons Per Minute (GPM)

$$\text{GPM} \div 11.22 = \text{MI}$$

$$\text{GPM} \div 448.8 = \text{CFS}$$

$$\text{GPM} \div 226.67 = \text{AF/DAY}$$

## Cubic Feet Per Second (CFS)

$$\text{CFS} \times 40 = \text{MI}$$

$$\text{CFS} \times 448.8 = \text{GPM}$$

$$\text{CFS} \times 1.98 = \text{AF/DAY}$$

## Acre-Feet Per Day (AF/DAY)

$$\text{AF/DAY} \div 1.98 = \text{CFS}$$

$$\text{AF/DAY} \times 226.67 = \text{GPM}$$

$$\text{AF/DAY} \div 0.0495 = \text{MI}$$



# Appendix E: BILLING RECORDS EXAMPLE

## Distribution Report Summary

July 2018	Water User Ditch	Smith Old Barn	Smith Horse	Jones Old Barn	Imeloy Smitty	Roberts Horse	Downey D-O	McLane Chicken	Dolan Ginger
DATE	MILES	INCHES	INCHES	INCHES	INCHES	INCHES	INCHES	INCHES	INCHES
7/1									
7/2	100	50	50	110	50	15	40	10	25
7/3	100	50	50	110	50	15	40	10	25
7/4		50	50	110	50	15	40	10	25
7/5		50	50	110	50	15	40	10	25
7/6	50	50	50	110	50	15	40	10	25
7/7	50	50	50	110	50	15	40	10	25
7/8		50	50	110	50	15	40	10	25
7/9		50	50	110	50	15	40	10	25
7/10	75	50	0	110	50	15	40	10	25
7/11	75	50	0	110	50	15	40	10	25
7/12		50	0	110	50	15	40	10	25
7/13		50	0	110	50	15	40	10	25
7/14	100	50	0	110	0	15	0	0	25
7/15	100	50	0	110	0	15	0	0	25
7/16		50	0	110	0	15	0	0	25
7/17		50	0	110	0	15	0	0	25
7/18	50	50	0	110	0	15	0	0	25
7/19	50	50	0	110	0	15	0	0	25
7/20		50	0	110	0	15	0	0	25
7/21		50	0	110	0	15	0	0	25
7/22	75	50	0	0	0	15	0	0	0
7/23	75	50	0	0	0	15	0	0	0
7/24		50	0	0	0	15	0	0	0
7/25		50	0	0	0	15	0	0	0
7/26	100	50	0	0	0	15	40	0	0
7/27	100	50	0	0	0	15	40	0	0
7/28		50	0	0	0	15	40	0	0
7/29		50	0	0	0	15	40	0	0
7/30		50	0	0	0	15	40	0	0
7/31		50	0	0	0	15	40	0	0
TOTAL	1100	1500	400	2200	600	450	720	120	500

## Expenses Report

DAILY WAGE:	\$100 per day	14 days	\$1400
MILEAGE:	\$0.50 per mile	1100 miles	\$550
WORKERS' COMP:	\$200 per month		\$200
OTHER EXPENSES (LIST):		phone, log books	\$100
<b>TOTAL COMMISSIONER EXPENSES FOR THE MONTH:</b>			<b>\$2,250</b>

## Billing Summary

Water User	Ditch	Total Inches	Percent of Total	Monthly Bill
Smith	Old Barn	1500	23%	\$520.03
Smith	Two Horse	400	6%	\$138.67
Jones	Old Barn	2200	34%	\$762.71
Meloy	Smitty	600	9%	\$208.01
Roberts	Two Horse	450	7%	\$156.01
Downey	D-O	720	11%	\$249.61
McLane	Chicken	120	2%	\$41.60
Dolan	Ginger	500	8%	173.34
Total =		6490	100%	\$2,250

# Appendix F: RELEVANT STATUTES

## **§85-2-243. Department Assistance to Water Judges**

(1) The department, subject to the direction of the water judge, shall:

provide such information and assistance as may be required by the water judge to adjudicate claims of existing rights;

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

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

(c) provide the water judge with all information in its possession bearing upon existing rights, including all declarations filed with and all information gathered by the department with respect to existing rights in the Powder River basin.

(2) Department assistance to a water judge must be without cost to the judicial districts wholly or partly within the affected water division. Expenses incurred by the department

under subsection (1) must be paid from the money appropriated to it for the adjudication program by the legislature to carry out its function under subsection (1) and when that appropriation is expended then the department is no longer required to provide further assistance.

## **§85-2-406. District Courts Supervision of Water Distribution**

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

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

(b) When a water distribution controversy arises upon a source of water in 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 court to certify the matter to the chief

water judge. If a certification request is made, the district court shall certify to the chief water judge the determination of the existing rights that are involved in the controversy according to part 2 of this chapter. The district court from which relief is sought shall retain exclusive jurisdiction to grant injunctive or other relief that is necessary and appropriate pending adjudication of the existing water rights certified to the water judge. Certified controversies must be given priority over all other adjudication matters. After determination of the matters certified, the water judge shall return the decision to the district court with a tabulation or list of the existing rights and their relative priorities.

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

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

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

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

## **§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 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's discretion, to appoint one or more commissioners. 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 having jurisdiction may appoint a water commissioner.

(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 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 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) At the time of the appointment of a water commissioner or commissioners, the district court 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 judge may include the department in the apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

(5) 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 court of the judicial district where the most irrigable acres of the irrigation district or districts are situated 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 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 appointing judge 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.

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

(7) 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.

## **§85-5-102. Appointment of Chief Commissioner**

When the 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 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.

## **§85-5-103. Oath and Bond**

Each water commissioner appointed by the court shall subscribe and file with the clerk of the district court an oath of office before commencing the discharge of duties as commissioner and shall file with the 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.

### **§85-5-104. Term of Office**

A water commissioner holds office for the time during the irrigation season of each year that may be designated by the judge in the order making the appointment. The judge may fix the date of the commencement of the term and may, in in the judge's discretion or when requested in writing by at least three persons entitled to the use of the waters, change the term for closing of the commissioner's service.

### **§85-5-105. Power and Duty to Distribute Water**

Upon the issuance of an order, the water commissioner or commissioners have authority and it is the commissioner's or commissioners' duty to admeasure and distribute to the users of water, as their interests may appear and be required, the stored and supplemental water stored and as released by the department of natural resources and conservation under provisions of Title 85, chapter 1, to be diverted into and through a stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules as decreed water rights are admeasured and distributed. The water commissioner or commissioners and the owners

and users of the stored and supplemental water are bound by and are subject to the provisions of this chapter. However, the admeasurements and distribution of the stored and supplemental water may not interfere with decreed water rights. The purpose of Title 85, chapter 5, parts 1 through 3, is to provide a uniform, equitable, and economical distribution of adjudicated, stored, and supplemental waters.

### **§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 judge 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 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.

### **§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 judge, of the amount of water distributed to each water user and shall file a summary of the record with the clerk of the court monthly or seasonally, at the discretion of the district judge during the judge's term of service. 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 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.

(2) If the district court judge determines that it is necessary to establish a billing cycle prior to a distribution season, as provided in 85-5-204, the report or reports must serve as the basis for the amounts billed.

## **§85-5-108. Authority and Arrest Power**

For the purposes of carrying out the provisions of Title 85, chapter 5, parts 1 through 3, each

commissioner appointed by the court has the authority to enter upon any ditch, canal, aqueduct, or other source for conveying the waters affected by the decree and to visit, inspect, and adjust all headgates or other means of distributing the waters and has the same powers as a sheriff or constable to arrest any person interfering with the distribution made by the commissioner, to be dealt with according to law.

### **§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 85-5-110. Appointment of Water Mediators – Duties**

(1) Except as provided in 85-20-1902, the judge 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

(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.

## **§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 courts, 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;
- (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 a district court judge 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.

## **§85-5-201. Distribution of Water and Related Expenses**

(1) Each water commissioner appointed by the judge 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 which or for the benefit of which the expense had been incurred.

(3) (a) At the district 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 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 district 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 clerk of district court shall proceed as provided in 85-5-204.

## **§85-5-202. Repair Expenses**

The judge may allow as a charge any expenses necessarily incurred by the water commissioner in the discharge of duties in the employment of

extra labor for the repair of dams, headgates, ditches, or flumes when immediate action is necessary to preserve the rights of the parties entitled to the waters of a stream or when the judge has, in the order appointing the commissioner, required the commissioner to repair ditches and keep in repair necessary headgates, ditches, or flumes. The water commissioner shall report all expenses, and the cost must be taxed against the party or parties for whose benefit the expenses were incurred. In the discretion of the court, the costs or expenses may be assessed against the land upon which or for the benefit of which the expense had been incurred.

### **§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 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.

## **§85-5-204. Apportionment of Fees and Expenses**

(1) Upon the filing of the report by the water commissioner or water commissioners, the 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 clerk that the 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 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 clerk of the district court. The bill for each water user may not exceed 80% of the amount that was provided to the district 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 clerk of district court for filing.

## **§85-5-205. Objections to Expenses – Hearing**

At the expiration of the 20 days' notice, as provided for in the preceding section, if objections to said report have been filed or a motion to retax the same has been made, the court or judge shall fix a time for the hearing of such objections or motion to retax, which time

of hearing shall be as soon as the judge or a court can conveniently hear the same. Any person objecting to said report shall be entitled to at least 5 days' notice of the date and time of such hearing. At such hearing the court or judge shall hear and determine the motion or objections and shall make an order fixing and determining the amount found due from each of said water users to such commissioner or commissioners. In case no objections are filed within the 20 days, as hereinbefore provided for, such order shall be made as a matter of course, and in either case said order shall be final determination of the matter.

### **§85-5-206. Effect of Order Fixing Fees**

After the order of the court fixing the fees and compensation and expenses of the water commissioner is final, the order has the force and effect of a judgment against the person to whom the water was or will be distributed and for whose benefit it was used or will be used. When the expenses of a commissioner or commissioners has been assessed against the land for which the service of the commissioner or commissioners has been rendered, the assessment is a lien against the land. The lien has the same effect as a judgment. The lien may be executed in the same manner as a judgment upon order of the court. The water

commissioner, at the water commissioner's discretion, may withhold further determinations of quantity or distribution of water to any person entitled to the water until the person has paid all fees, compensation, and expenses of the water commissioner or commissioners fixed by the court and apportioned and charged to the person, including bills sent prior to the beginning of a distribution season. The commissioner may withhold the determination of quantity and distribution of water from any land against which there exists any lien that is the result of lack of payment pursuant to this section until the lien has been fully discharged.

### **§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 complaint, duly verified, setting forth the facts of the claim.

(2) Upon receipt of the complaint, the judge 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 payment of costs of the hearing that the judge determines is just and proper.

## **§85-5-302. Maintenance of Headgates and Measuring Devices**

All persons using water from any stream or ditch for which a water commissioner is appointed are required to have suitable headgates at the point where a ditch taps a stream and shall also, at some suitable place on the ditch and as near the head as practicable, place and maintain a proper measuring box, weir, or other appliance for the measurement of the waters flowing in the ditch. If a person fails to place or maintain a proper measuring appliance, it is the duty of the water commissioner not to apportion or distribute any water through the ditch. The commissioner shall notify all parties interested by certified mail or in person 1 week before making the annual repair or cleaning of a stream or ditch or performing necessary labor or expenses to divert water to a ditch. The sending of a certified letter to the last-known post-office address of any interested party is prima facie evidence of the fact that the party was duly notified. Any work in the way of repairing a ditch made necessary by an emergency may be done

without notice when injury would result from a delay.

### **§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 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 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.

### **§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.

### **§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.

### **§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.

### **§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.

### **§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 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.

### **§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.

## **§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, 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.

### **§3-7-212. Enforcement of Decrees**

The district court having jurisdiction may enforce the provisions of a final decree. In the absence of any final decree having been issued, the district court having jurisdiction may enforce the provisions of a temporary

preliminary decree, preliminary decree, or supplemental preliminary decree entered under 85-2-231, as modified by a water judge after objections and hearings.

## **§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, 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 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.

(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 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.

the 1990s, the number of people in the UK who are employed in the public sector has increased from 10.5 million to 12.5 million, and the number of people in the public sector who are employed in health care has increased from 2.5 million to 3.5 million (Department of Health 2000).

There are a number of reasons for the increase in the number of people employed in the public sector. One reason is that the public sector has become a major employer in the UK. Another reason is that the public sector has become a major employer in the health care sector. A third reason is that the public sector has become a major employer in the social care sector.

The increase in the number of people employed in the public sector has led to a number of challenges for the public sector. One challenge is that the public sector has become a major employer in the UK, and this has led to a number of challenges for the public sector. Another challenge is that the public sector has become a major employer in the health care sector, and this has led to a number of challenges for the public sector. A third challenge is that the public sector has become a major employer in the social care sector, and this has led to a number of challenges for the public sector.

One of the challenges for the public sector is that the public sector has become a major employer in the UK, and this has led to a number of challenges for the public sector. Another challenge is that the public sector has become a major employer in the health care sector, and this has led to a number of challenges for the public sector. A third challenge is that the public sector has become a major employer in the social care sector, and this has led to a number of challenges for the public sector.

One of the challenges for the public sector is that the public sector has become a major employer in the UK, and this has led to a number of challenges for the public sector. Another challenge is that the public sector has become a major employer in the health care sector, and this has led to a number of challenges for the public sector. A third challenge is that the public sector has become a major employer in the social care sector, and this has led to a number of challenges for the public sector.

One of the challenges for the public sector is that the public sector has become a major employer in the UK, and this has led to a number of challenges for the public sector. Another challenge is that the public sector has become a major employer in the health care sector, and this has led to a number of challenges for the public sector. A third challenge is that the public sector has become a major employer in the social care sector, and this has led to a number of challenges for the public sector.

One of the challenges for the public sector is that the public sector has become a major employer in the UK, and this has led to a number of challenges for the public sector. Another challenge is that the public sector has become a major employer in the health care sector, and this has led to a number of challenges for the public sector. A third challenge is that the public sector has become a major employer in the social care sector, and this has led to a number of challenges for the public sector.

One of the challenges for the public sector is that the public sector has become a major employer in the UK, and this has led to a number of challenges for the public sector. Another challenge is that the public sector has become a major employer in the health care sector, and this has led to a number of challenges for the public sector. A third challenge is that the public sector has become a major employer in the social care sector, and this has led to a number of challenges for the public sector.