

## HOUSE BILL NO. 886

INTRODUCED BY K. WALSH, B. GILLESPIE, J. COHENOUR, R. MINER, J. SECKINGER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE A WATER DIVISION COURT AND WATER DIVISION JUDGES; REVISING THE JURISDICTION OF THE WATER DIVISION COURT; PROVIDING THE GOVERNOR APPOINT MEMBERS TO THE WATER DIVISION COURT; PROVIDING FOR NOMINATIONS, VACANCY REPLACEMENTS, TERMS, AND SUBSTITUTIONS OF WATER DIVISION JUDGES; PROVIDING A DEFINITION; PROVIDING FOR ENFORCEMENT OF WATER RIGHTS AT THE WATER DISTRICT COURT; PROVIDING FOR WATER DIVISION COURT SUPERVISION OF WATER DISTRIBUTION; CLARIFYING COMPLAINTS BY DISSATISFIED WATER USERS; CLARIFYING PROCEDURES; REVISING LAWS RELATED TO WATER COMMISSIONERS AND WATER MEDIATORS; AMENDING SECTIONS 2-4-702, 3-1-102, 3-1-901, 3-1-904, 3-1-905, 3-1-907, 3-7-101, 3-7-103, 3-7-202, 3-7-203, 3-7-204, 3-7-221, 3-7-301, 3-7-311, 3-7-401, 3-7-402, 3-7-403, 3-7-404, 3-7-501, 3-7-502, 19-5-101, 19-5-301, 85-2-102, 85-2-112, 85-2-114, 85-2-122, 85-2-123, 85-2-125, 85-2-309, 85-2-405, 85-2-406, 85-5-101, 85-5-102, 85-5-103, 85-5-106, 85-5-107, 85-5-109, 85-5-110, 85-5-111, 85-5-201, 85-5-203, 85-5-204, 85-5-301, 85-5-401, 85-5-402, 85-5-403, 85-5-407, AND 85-5-408, MCA; REPEALING SECTIONS 3-7-201, 3-7-211, 3-7-212, 3-7-222, 3-7-223, 3-7-224, AND 3-7-225, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

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

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

(b) — A party who proceeds before an agency under the terms of a particular statute may not be precluded from questioning the validity of that statute on judicial review, but the party may not raise any other

1 question not raised before the agency unless it is shown to the satisfaction of the court that there was good  
2 cause for failure to raise the question before the agency.

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

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

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

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

20 (e) — (i) A party who is aggrieved by a final decision on an application for a permit or change in  
21 appropriation right filed under Title 85, chapter 2, part 3, may petition the district court or the water court for  
22 judicial review of the decision. If a petition for judicial review is filed in the water court, the water court rather  
23 than the district court has jurisdiction and the provisions of this part apply to the water court in the same manner  
24 as they apply to the district court. The time for filing a petition is the same as provided in subsection (2)(a).

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

1 jurisdiction.

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

4 (3) — Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the  
5 agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers  
6 proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without  
7 notice only if the provisions of 27-19-315 through 27-19-317 are met.

8 (4) — Within 30 days after the service of the petition or within further time allowed by the court, the  
9 agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding  
10 under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party  
11 unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs.  
12 The court may require or permit subsequent corrections or additions to the record. (Terminates September 30,  
13 2025—sec. 6, Ch. 126, L. 2017.)

14 **2-4-702. (Effective October 1, 2025)-Initiating judicial review of contested cases.** (1) (a) Except  
15 as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available  
16 within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial  
17 review under this chapter. This section does not limit use of or the scope of judicial review available under other  
18 means of review, redress, relief, or trial de novo provided by statute.

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

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

1 parties of record.

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

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

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

12 (e) Subject to the filing deadlines in subsection (2)(a), a party who is aggrieved by a final decision  
13 on an application for a permit or change in appropriation right filed under Title 85, chapter 2, part 3 or 4, may  
14 petition the district court or the water division court for judicial review of the decision.

15 (3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the  
16 agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers  
17 proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without  
18 notice only if the provisions of 27-19-315 through 27-19-317 are met.

19 (4) Within 30 days after the service of the petition or within further time allowed by the court, the  
20 agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding  
21 under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party  
22 unreasonably refusing to stipulate to limit the record may be required by the court to pay the additional costs.  
23 The court may require or permit subsequent corrections or additions to the record."  
24

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

26 **"3-1-102. Courts of record.** The court of impeachment, the supreme court, the district courts, the  
27 water division court, the workers' compensation court, the municipal courts, the justices' courts of record, and  
28 the city courts of record are courts of record."

1

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

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

6           (b) ~~The chief justice of the supreme court~~ governor shall appoint a candidate to fill any term or  
7 vacancy ~~for the chief water judge or associate water judge pursuant to 3-7-221~~ a water division judge from a list  
8 of nominees provided by the chief justice of the supreme court pursuant to [section 12].

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

14

15           **Section 4.** Section 3-1-904, MCA, is amended to read:

16           **"3-1-904. Public comment.** (1) The governor shall establish a reasonable period for reviewing  
17 applications and interviewing applicants for a supreme court or district court vacancy that provides at least 30  
18 days for public comment concerning applicants.

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

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

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

26

27           **Section 5.** Section 3-1-905, MCA, is amended to read:

28           **"3-1-905. Appointments.** (1) The governor, ~~or the chief justice of the supreme court for the office~~

1 described in ~~3-7-221~~, shall make an appointment:

2 (a) within 30 days of the close of the public comment period from the list of applicants for the  
3 supreme court or a district court; or

4 (b) within 30 days after receipt of the list of nominees submitted by the chief justice of the supreme  
5 court pursuant to [section 12] for a water division judge.

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

9 (3) If the governor fails to appoint within ~~30 days of the close of the public comment period~~  
10 ~~provided for in the timelines provided in subsection (1)~~, the chief justice shall make the appointment within 30  
11 days of the governor's failure to appoint from the same list of:

12 (a) applicants for a supreme court or district court vacancy; or

13 (b) nominees submitted for a water division court vacancy within 30 days of the governor's failure  
14 to appoint."

15

16 **Section 6.** Section 3-1-907, MCA, is amended to read:

17 **"3-1-907. Duration of appointment -- election for remainder of term.** (1) If an appointment subject  
18 ~~to 3-1-905 of a supreme court justice or district court judge~~ is confirmed by the senate, the appointee shall  
19 serve until the appointee or another person elected at the first general election after confirmation is elected and  
20 qualified. The candidate elected at that election holds the office for the remainder of the unexpired term.

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

27

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

1           **"3-7-101. Water divisions division court.** ~~To adjudicate existing water rights and to conduct~~  
2 ~~hearings in cases certified under 85-2-309, water divisions are established as defined in 3-7-102. The water~~  
3 ~~division court has jurisdiction pursuant to 3-7-501. The water division court consists of four water divisions as~~  
4 ~~defined in 3-7-102. A water division shall must be presided over by a water division judge. A water division~~  
5 ~~judge may preside over one or more water divisions."~~  
6

7           **Section 8.** Section 3-7-103, MCA, is amended to read:

8           **"3-7-103. Promulgation of rules and prescription of forms -- advisory committee.** (1) ~~As soon as~~  
9 ~~practicable the~~ The Montana supreme court may promulgate special rules of practice and procedure and shall  
10 prescribe forms for use in connection with this chapter and Title 85, chapter 2, parts 2 and 7, in consultation  
11 with the ~~water judge~~ chief judge of the water division court and the department of natural resources and  
12 conservation.

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

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

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

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

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

1           (f) Except for basins containing water rights pursuant to Title 85, chapter 20, part 10, after the  
2 chief judge of the water division court certifies to the governor and the supreme court that the water division  
3 court has issued final decrees in all basins pursuant 85-2-234 and 85-2-235, the chief judge of the water  
4 division court shall terminate the water adjudication advisory committee."

5  
6           **NEW SECTION. Section 9. Venue.** (1) All matters under water division court jurisdiction pursuant to  
7 Title 3, chapter 7, part 5, must be brought before or transferred to the water division judge in the appropriate  
8 water division as provided in subsection (2).

9           (2) The appropriate venue for a water division court proceeding is in the water division in which the  
10 water right is located or the county in which a controversy arises. If a water right or controversy is situated in  
11 more than one water division, the party initiating the action may select the appropriate venue. The selected  
12 venue is the proper place for the proceeding.

13           (3) Upon mutual agreement of all parties in a matter, a water division court proceeding may be  
14 held in a venue outside the water division in which the water right is located or the county in which a  
15 controversy arises.

16  
17           **NEW SECTION. Section 10. Office of water division court -- administrator.** (1) There is a single  
18 office of the water division court that maintains all records of the water division court. The chief justice of the  
19 Montana supreme court shall designate the location of the office.

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

22           (3) The water division court administrator shall:

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

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

26           (c) perform duties assigned by the chief judge; and

27           (d) perform duties for electronic filing and storage of court records pursuant to 3-5-501;

28           (4) The water division court administrator may hire clerical staff necessary to perform the duties



1 required under this section.

2 (5) The chief judge shall establish a fee to be paid only at the commencement of an action or a  
3 proceeding filed with the office of the water division court. The fee may not exceed \$25, and the fee must be  
4 deposited into the water adjudication account provided in 85-2-280.

5  
6 **NEW SECTION. Section 11. Direct appeal to supreme court.** Except as provided in 85-2-235, an  
7 appeal of a water division court proceeding must be filed directly with the supreme court in the manner provided  
8 by law for appeals from the district court in civil cases.

9  
10 **NEW SECTION. Section 12. Nomination of water division judges.** (1) The water division court  
11 consists of at least two and not more than four water division judges appointed by the governor pursuant to Title  
12 3, chapter 1, part 9. The chief justice of the supreme court shall submit not less than two or more than four  
13 eligible nominees for each water division judge position submitted to the governor. If only one eligible nominee  
14 applies for a water division judge position, the chief justice may submit only that nominee to the governor.

15 (2) For a nomination to an expiring term of a water division judge, the chief justice of the supreme  
16 court shall establish a reasonable period for submission and review of applications prior to the expiration of the  
17 term, including at least 21 days for application submissions and, following the close of the application period, at  
18 least 30 days for public comment on the applicants. The chief justice shall submit the list of nominees for each  
19 expiring term with public comments on each nominee to the governor at least 30 days prior to the end of the  
20 term.

21 (3) For a nomination to a vacancy on the water division court, the chief justice of the supreme court  
22 shall establish a reasonable period for submission and review of applications after the vacancy occurs,  
23 including at least 21 days for application submissions and, following the close of the application period, at least  
24 30 days for public comment on the applicants. The chief justice shall submit the list of nominees for each  
25 vacancy with public comments on each nominee to the governor within 70 days of the vacancy.

26 (4) A person is eligible for the office of water division judge if the person meets the qualifications  
27 for a district court or supreme court judge set forth in Article VII, section 9, of the Montana constitution.

28 (5) The chief justice of the supreme court shall submit each nominee's application, public

1 comments, and any related documents to the governor. The records are open to the public except when the  
2 demands of individual privacy clearly exceed the merits of public disclosure.

3  
4 **Section 13.** Section 3-7-202, MCA, is amended to read:

5 **"3-7-202. Term of office.** (1) The Except as provided in subsection (2), the term of office for water  
6 judges a water division court judge is 6 years from the date of initial appointment as provided in 3-7-201 to June  
7 30, 1985. After June 30, 1985, the term of office of a water judge is 4 years, subject to continuation of the water  
8 divisions by the legislature.

9 (2) (a) Pursuant to [section 12], on January 1, 2026, the governor shall appoint a water division  
10 judge to the water division court for a term:

11 (i) ending Dec. 31, 2029, for the upper and lower Missouri River basin water divisions; and

12 (ii) ending Dec. 31, 2032, for the Yellowstone River basin and the Clark Fork River basin water  
13 divisions.

14 (b) Pursuant to subsection (1) and subject to [section 12], all subsequent appointees shall serve  
15 terms of 6 years.

16 (3) The governor may stagger the terms of additional judges appointed to the water division court."  
17

18 **Section 14.** Section 3-7-203, MCA, is amended to read:

19 **"3-7-203. Vacancies.** If a vacancy in the office of water division judge occurs, it must be filled in the  
20 manner provided in 3-7-204 [section 12] and Title 3, chapter 1, part 9 for the initial designation of a water judge.  
21 A vacancy is created when a water division judge dies, resigns, retires, is not elected to a subsequent term,  
22 forfeits the judicial position, is removed, or is otherwise unable to complete the term as a water division judge."  
23

24 **Section 15.** Section 3-7-204, MCA, is amended to read:

25 **"3-7-204. Supervision and administration by supreme court.** (1) The Montana supreme court shall  
26 supervise the activities of the water division judges, water masters, and associated personnel in implementing  
27 this chapter and Title 85, chapter 2, part 2.

28 (2) (a) The supreme court shall pay the salaries and expenses of the water division judges and the

1 salaries and expenses of the water judges' staffs and the salaries and expenses of the water masters and the  
2 water masters' staffs, from appropriations made for that purpose of water division court personnel.

3 (b) ~~"Salaries and expenses" as used in this section include but are not limited to~~ As used in this  
4 section, "salaries and expenses" means the salaries and expenses of personnel, the cost of office equipment  
5 and office space, and other necessary expenses that may be incurred in the administration of this chapter and  
6 Title 85, chapter 2, part 2.

7 (3) The supreme court shall pay a water division judge the same salary and expense allowance as  
8 provided for a district court judge pursuant to 3-5-211.

9 (4) The supreme court shall provide in its budget for the salary, expenses, and office and staff  
10 requirements of the water division judges. The legislature may appropriate from the general fund for these  
11 purposes."

12  
13 **NEW SECTION. Section 16. Water division judges -- duties and powers.** (1) For a matter within  
14 the water division court's jurisdiction, a water division judge has the same powers as a district court judge in  
15 civil matters. A water division judge may issue orders, on the motion of the interested party or on the judge's  
16 own motion, that may be reasonably required to allow the judge to fulfill the judge's responsibilities. This  
17 includes but is not limited to a joinder of persons not parties to an administrative hearing conducted by the  
18 department of natural resources and conservation pursuant to 85-2-309 or 85-2-402, as considered necessary  
19 to resolve a factual or legal issue certified to the court pursuant to 85-2-309(2).

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

21 (a) coordinating with the department of natural resources and conservation to compile information  
22 submitted on water claim forms under Title 85, chapter 2, part 2, ensuring this information is expeditiously and  
23 properly compiled and transferred to the water division judge in each water division;

24 (b) ensuring that adjudication proceedings in each water division proceed without delay for the  
25 required preliminary decree; and

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

1           **Section 17.** Section 3-7-221, MCA, is amended to read:

2           **"3-7-221. Appointment of chief water judge and ~~associate water judge~~ -- terms of office.** (1) The  
3 chief justice of the Montana supreme court shall appoint a ~~chief water judge as provided in Title 3, chapter 1,~~  
4 ~~part 9. The chief justice of the Montana supreme court may appoint an associate water judge~~ water division  
5 court judge to serve as the chief water judge of the water division court.

6           (2) ~~To be eligible for the office of chief water judge or associate water judge, a person shall have~~  
7 ~~the qualifications for district court or supreme court judges found in Article VII, section 9, of the Montana~~  
8 ~~constitution~~ The chief judge of the water division court shall direct all matters regarding the efficient  
9 management of the water division court's business in cooperation with other water division judges and the  
10 water division court administrator including:

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

12           (b) preparing water division court budget requests for the supreme court; and

13           (c) overseeing the office of the water division court, including supervising the water division court  
14 administrator.

15           (3) ~~The term of office of the chief water judge and the associate water judge is 4 years, subject to~~  
16 ~~continuation of the water divisions by the legislature~~ of the water division court is concurrent with the  
17 appointee's remaining term pursuant to 3-7-202. A water division judge may serve consecutive terms as chief  
18 judge."

19  
20           **NEW SECTION. Section 18. Substitution of water division judge.** Except for a water division judge  
21 presiding in an adjudication proceeding pursuant to Title 85, chapter 2, part 2, a water division judge may be  
22 substituted in the manner provided by supreme court rule.

23  
24           **Section 19.** Section 3-7-301, MCA, is amended to read:

25           **"3-7-301. Appointment of water masters -- removal.** (1) ~~The chief water judge or the water judge in~~  
26 ~~each water division of the water division court~~ may appoint one or more water masters to expedite the  
27 adjudication of existing water rights pursuant to Title 85, chapter 2, part 2.

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

1     ~~1, 1982.~~

2             ~~(3)(2)~~ In appointing a water master, the ~~water judge~~ chief judge of the water division court shall  
3 consider a potential master's experience with water law, water use, and water rights.

4             ~~(3)~~ A water master shall take the oath required of a judge and follow the Montana code of judicial  
5 conduct.

6             ~~(4)~~ A water master is an employee of the water division court under 3-5-901.

7             ~~(5)~~ A water master is subject to disqualification from a proceeding on the same grounds as a water  
8 division judge pursuant to 3-7-402. On the disqualification of a water master, the chief judge of the water  
9 division court shall refer the matter to another water master or move the case back to the water division judge's  
10 docket for further proceedings.

11            ~~(4)(6)~~ A water master shall serve at the pleasure of the chief ~~water judge~~ of the water division court  
12 and may be removed by the chief ~~water judge~~.

13            ~~(5)(7)~~ A water master may serve in any water division and may be moved among the water divisions  
14 at the discretion of the chief ~~water judge~~ of the water division court."

15

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

17            **"3-7-311. Duties of water masters.** (1) The water master has the general powers given to a master  
18 by Rule 53(c), M.R.Civ.P.

19            ~~(2) — Within a reasonable time after June 30, 1983, the water master shall issue a report to the~~  
20 ~~water judge meeting the requirements for the preliminary decree as specified in 85-2-231.~~

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

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

26            ~~(2)~~ A water master shall assist the water division court only with adjudication proceedings under  
27 Title 85, chapter 2, parts 2 and 7, as directed by the chief judge of the water division court or a water division  
28 judge."

1

2       **Section 21.** Section 3-7-401, MCA, is amended to read:

3       **"3-7-401. Definitions.** For the purposes of this part, the following definitions apply:

4           (1) "Fiduciary" includes such relationships as executor, administrator, trustee, or guardian.

5           (2) "Financial interest" means ownership of a legal or equitable interest, however small, or a  
6 relationship as director, advisor, or other active participant in the affairs of a party, except that:

7           (a) ownership in a mutual or common investment fund that holds securities is not a financial  
8 interest in such securities unless the judge or water master participates in the management of the fund;

9           (b) an office in an educational, religious, charitable, fraternal, or civic organization is not a financial  
10 interest in securities held by the organization;

11           (c) the proprietary interest of a policyholder in a mutual insurance company or a depositor in a  
12 mutual savings association or a similar proprietary interest is a financial interest in the organization only if the  
13 outcome of the proceeding could substantially affect the value of the interest; and

14           (d) ownership of government securities is a financial interest in the issuer only if the outcome of the  
15 proceeding could substantially affect the value of the securities.

16           (3) "Proceeding" includes prehearing, hearing, appellate review, or other stages of adjudication  
17 conducted by the water master or water division judge."

18

19       **Section 22.** Section 3-7-402, MCA, is amended to read:

20       **"3-7-402. Disqualification of water division judge or master.** (1) A water division judge may  
21 withdraw or may disqualify the water master in any proceeding or pertinent portion of a proceeding in which the  
22 judge's or the water master's impartiality might reasonably be questioned.

23           (2) A water division judge may also withdraw or may disqualify the water master in the following  
24 circumstances:

25           (a) if the judge or the water master has a personal bias or prejudice concerning a party of personal  
26 knowledge or disputed evidentiary facts concerning the proceeding;

27           (b) if in private practice the judge or the water master served as a lawyer in the matter in  
28 controversy or a lawyer with whom the judge or the water master previously practiced law served during the

1 association as a lawyer concerning the matter or the judge or the lawyer has been a material witness

2 concerning it;

3 (c) if the judge or the water master has served in governmental employment and in that capacity  
4 participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion  
5 concerning the merits of the particular case in controversy;

6 (d) if the judge or the water master knows that the judge or the water master, individually or as a  
7 fiduciary, or the judge's or the water master's spouse or minor child residing in the judge's or the water master's  
8 household has a financial interest in the subject matter in controversy or in a party to the proceeding or any  
9 other interest that could be substantially affected by the outcome of the proceeding; or

10 (e) if the judge or the water master or the judge's or the water master's spouse or a person within  
11 the third degree of relationship to any of them (as calculated according to 72-11-101 through 72-11-104) or the  
12 spouse of such a person:

13 (i) is a party to the proceeding or an officer, director, or trustee of a party;

14 (ii) is known by the judge or water master to have an interest that could be substantially affected  
15 by the outcome of the proceeding;

16 (iii) is to the judge's or water master's knowledge likely to be a material witness in the proceeding.

17 (3) A water division judge should be informed about the judge's and the water master's personal  
18 and fiduciary financial interests and make a reasonable effort to be informed about the personal financial  
19 interests of the judge's and the water master's spouse and minor children residing in the judge's or the water  
20 master's respective household."

21  
22 **Section 23.** Section 3-7-403, MCA, is amended to read:

23 **"3-7-403. Waiver of disqualification.** A water division judge may accept from the parties to the  
24 proceeding a waiver of any ground for disqualification if it is preceded by a full disclosure on the record of the  
25 basis for disqualification."

26  
27 **Section 24.** Section 3-7-404, MCA, is amended to read:

28 **"3-7-404. Procedure exclusive.** The procedure for disqualification of a water division judge or water

1 master specified in this ~~section-part~~ is exclusive unless otherwise specifically altered by the Montana supreme  
2 court."

3  
4 **NEW SECTION. Section 25. Substitution of water division judge.** (1) A water division judge may  
5 not be substituted in an adjudication proceeding under Title 85, chapter 2, part 2.

6 (2) In a proceeding other than an adjudication proceeding under Title 85, chapter 2, part 2, each  
7 adverse party is entitled to one substitution of a water division judge. The judge may be substituted in the same  
8 manner as a district court judge pursuant to [section 18]. The judge who has been substituted shall designate a  
9 subsequent water division judge to assume the proceedings. Except as provided in subsection (3)(a), the judge  
10 who has been substituted shall designate a water division judge as the substitute judge before designating a  
11 district court judge.

12 (3) (a) In a proceeding other than an adjudication proceeding under Title 85, chapter 2, part 2, a  
13 party may file a motion for good cause to substitute a water division judge with a district court judge. The motion  
14 to substitute under this subsection (3)(a) must be filed within 30 days after the first summons is served or an  
15 adverse party has appeared or within 10 days of the service of a petition filed to appoint a water commissioner  
16 pursuant to 85-5-101.

17 (b) A party served with a motion for substitution may file a motion for substitution. The motion must  
18 be filed:

19 (i) for all matters except a matter described in subsection (3)(b)(ii), within 30 days after service  
20 has been completed in compliance with Rule 4, M.R.Civ.P.; or

21 (ii) for a matter involving the appointment of a water commissioner pursuant to 85-5-101, within 10  
22 days after service of the motion for substitution is completed.

23 (c) A water division judge may grant a motion to substitute a water division judge for a district court  
24 judge if:

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

26 (ii) there is no undue delay or prejudice to the other parties in the controversy;

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



(iv) the water proceeding does not present an issue of statewide or basinwide concern.

(4) If a vacancy occurs pursuant to 3-7-203, the chief justice of the supreme court may appoint a substitute water division judge to preside over pending matters until the vacancy is filled pursuant to [section 12].

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

**Section 26.** Section 3-7-501, MCA, is amended to read:

**"3-7-501. Jurisdiction.** (1) ~~The jurisdiction of each judicial district water division court has jurisdiction~~  
over:

(a) ~~matters concerning the determination and interpretation of cases certified to the court under 85-2-309 or of existing water rights is exercised exclusively by it through the water division or water divisions that contain the judicial district wholly or partly ;~~

(b) adjudication of existing water rights pursuant to Title 85, chapter 2, part 2, including the adjudication of total or partial abandonment of existing water rights at any time before the issuance of a final decree;

(c) the interpretation, enforcement, and administration of water rights subject to:

(i) a final decree entered pursuant to 85-2-234; or

(ii) the provisions of a temporary preliminary decree, preliminary decree, or supplemental preliminary decree entered under 85-2-234, as modified after objections and hearings;

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

(e) the appointment of water commissioners and the administration of water rights pursuant to Title 85, chapter 5;

(f) proceedings related to a water compact in Title 85, chapter 20;

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

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

(i) judicial review of a department of natural resources and conservation final decision in a contested case involving an application for a provisional permit or an application for a change in appropriation

1 right as provided in 2-4-702.

2 ~~(2) — A water judge may not preside over matters concerning the determination and interpretation of~~  
3 ~~cases certified to the court under 85-2-309 or of existing water rights beyond the boundaries specified in 3-7-~~  
4 ~~102 for the judge's division except as provided in 3-7-201.~~

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

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

12 (2) The water division court has jurisdiction over matters certified to the court by the department  
13 involving disputes over the ownership of a water right under 85-2-424.

14 (3) Except as provided in 85-2-406(2)(a), the water division court's jurisdiction over the  
15 proceedings in subsection (1) is exclusive."

16

17 **Section 27.** Section 3-7-502, MCA, is amended to read:

18 **"3-7-502. Jurisdictional disputes.** Whenever a question arises concerning which water division  
19 judge shall preside over adjudication of a matter concerning a case certified to the court under 85-2-309 or the  
20 determination and interpretation of existing water rights within the jurisdiction of the water division court  
21 pursuant to 3-7-501, the question shall must be settled by the water division judges involved."

22

23 **Section 28.** Section 19-5-101, MCA, is amended to read:

24 **"19-5-101. Definitions.** Unless a different meaning is plainly implied by the context, the following  
25 definitions apply in this chapter:

26 (1) (a) "Compensation" means remuneration, as defined in 2-16-403, and 3-5-211, and 3-7-222,  
27 paid to a member.

28 (b) Compensation does not include bonuses provided after July 1, 2013, that are one-time,

1 temporary payments in addition to and not considered part of base pay.

2 (2) "Current salary" means the current compensation for the office retired from.

3 (3) (a) "Highest average compensation" means a member's highest average monthly  
4 compensation during any 36 consecutive months of membership service.

5 (b) Excess earnings limits must be applied to the calculation of the highest average compensation  
6 pursuant to 19-2-1005(2).

7 (4) "Involuntary retirement" means a retirement not for cause and before retirement age.

8 (5) "Retired judge" means any judge or justice in receipt of a retirement benefit under this chapter."

9

10 **Section 29.** Section 19-5-301, MCA, is amended to read:

11 **"19-5-301. Membership -- inactive vested members -- inactive nonvested members.** (1) Except  
12 for a judge or justice who elected in writing to remain under the public employees' retirement system on or  
13 before October 1, 1985, a judge of a district court, a justice of the supreme court, and the chief water judge or  
14 ~~associate water judge~~ provided for in 3-7-221 and a water division judge provided for in [section 16] must be  
15 members of the Montana judges' retirement system.

16 (2) A judge pro tempore is not eligible for active membership in the retirement system.

17 (3) A member with at least 5 years of membership service who terminates service and does not  
18 take a refund of the member's accumulated contributions is an inactive vested member and retains the right to  
19 purchase service credit and to receive a retirement benefit under the provisions of this chapter.

20 (4) A member with less than 5 years of membership service who terminates service and leaves the  
21 member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not  
22 eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund  
23 of the member's accumulated contributions."

24

25 **Section 30.** Section 85-2-102, MCA, is amended to read:

26 **"85-2-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions  
27 apply:

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

- 1 (a) to divert, impound, or withdraw, including by stock for stock water, a quantity of water for a  
2 beneficial use;
- 3 (b) in the case of a public agency, to reserve water in accordance with 85-2-316;
- 4 (c) in the case of the department of fish, wildlife, and parks, to change an appropriation right to  
5 instream flow to protect, maintain, or enhance streamflows to benefit the fishery resource in accordance with  
6 85-2-436;
- 7 (d) in the case of the United States department of agriculture, forest service:
- 8 (i) instream flows and in situ use of water created in 85-20-1401, Article V; or
- 9 (ii) to change an appropriation right to divert or withdraw water under subsection (1)(a) to instream  
10 flow to protect, maintain, or enhance streamflows in accordance with 85-2-320;
- 11 (e) temporary changes or leases for instream flow to maintain or enhance instream flow to benefit  
12 the fishery resource in accordance with 85-2-408;
- 13 (f) a use of water for aquifer recharge or mitigation; or
- 14 (g) a use of water for an aquifer storage and recovery project as provided in 85-2-368.
- 15 (2) "Appropriation right" has the same meaning as "water right" as defined in this section.
- 16 (3) "Aquifer recharge" means either the controlled subsurface addition of water directly to the  
17 aquifer or controlled application of water to the ground surface for the purpose of replenishing the aquifer to  
18 offset adverse effects resulting from net depletion of surface water.
- 19 (4) "Aquifer storage and recovery project" means a project involving the use of an aquifer to  
20 temporarily store water through various means, including but not limited to injection, surface spreading and  
21 infiltration, drain fields, or another department-approved method. The stored water may be either pumped from  
22 the injection well or other wells for beneficial use or allowed to naturally drain away for a beneficial use.
- 23 (5) "Beneficial use", unless otherwise provided, means:
- 24 (a) a use of water for the benefit of the appropriator, other persons, or the public, including but not  
25 limited to agricultural, stock water, domestic, fish and wildlife, industrial, irrigation, mining, municipal, power,  
26 and recreational uses;
- 27 (b) a use of water appropriated by the department for the state water leasing program under 85-2-  
28 141 and of water leased under a valid lease issued by the department under 85-2-141;

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

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

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

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

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

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

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

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

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

17 (10) "Declaration" means the declaration of an existing right filed with the department under section  
18 8, Chapter 452, Laws of 1973.

19 (11) "Department" means the department of natural resources and conservation provided for in Title  
20 2, chapter 15, part 33.

21 (12) "Developed spring" means any point where ground water emerges naturally, that has  
22 subsequently been physically altered, and from which ground water flows under natural pressures or is  
23 artificially withdrawn.

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

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

28 (15) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption

1 of abandonment under 85-2-226.

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

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

7 (18) (a) "National forest system lands" means all lands within Montana that are owned by the United  
8 States and administered by the secretary of agriculture through the forest service.

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

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

15 (20) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-  
16 2-303 and 85-2-306 through 85-2-314.

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

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

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

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

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

27 (25) "Stream depletion zone" means an area where hydrogeologic modeling concludes that as a  
28 result of a ground water withdrawal, the surface water would be depleted by a rate equal to at least 30% of the

1 ground water withdrawn within 30 days after the first day a well or developed spring is pumped at a rate of 35  
2 gallons a minute.

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

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

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

11 (29) "Water court" or "water division court" means the water division court as provided for in 3-7-  
12 101.

13 ~~(29)~~(30) "Water division" means a drainage basin as defined in 3-7-102.

14 ~~(30)~~(31) "Water judge" or "water division judge" means a judge as provided for in Title 3, chapter 7.

15 ~~(34)~~(32) "Water master" means a master as provided for in Title 3, chapter 7.

16 ~~(32)~~(33) "Water right" means the right to appropriate water pursuant to an existing right, a permit, a  
17 certificate of water right, a state water reservation, or a compact.

18 ~~(33)~~(34) "Watercourse" means any naturally occurring stream or river from which water is diverted for  
19 beneficial uses. It does not include ditches, culverts, or other constructed waterways.

20 ~~(34)~~(35) "Well" means any artificial opening or excavation in the ground, however made, by which  
21 ground water is sought or can be obtained or through which it flows under natural pressures or is artificially  
22 withdrawn."

23

24 **Section 31.** Section 85-2-112, MCA, is amended to read:

25 **"85-2-112. Department duties.** The department shall:

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

28 (2) prescribe procedures, forms, and requirements for applications, permits, certificates, claims of

1 existing rights, and proceedings under this chapter and prescribe the information to be contained in any  
2 application, claim of existing right, or other document to be filed with the department under this chapter not  
3 inconsistent with the requirements of this chapter;

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

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

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

12 (6) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated  
13 basins or subbasins as provided in 85-2-319."  
14

15 **Section 32.** Section 85-2-114, MCA, is amended to read:

16 **"85-2-114. Judicial enforcement.** (1) If the department ascertains, by a means reasonably  
17 considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving  
18 to another person having a prior right to use the water, or violating a provision of this chapter, it may petition the  
19 ~~district court supervising the distribution of water among appropriators from the source~~ water division court to:

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

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

25 (c) issue a temporary, preliminary, or permanent injunction to prevent a violation of this chapter.  
26 Notwithstanding the provisions of Title 27, chapter 19, part 3, a temporary restraining order must be granted if it  
27 clearly appears from the specific facts shown by affidavit or by the verified complaint that a provision of this  
28 chapter is being violated.



1           (d) appoint a water commissioner pursuant to 85-5-101.

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

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

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

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

13          (6)     When enforcing the provisions of this section, the department, the county attorney, and the  
14 attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water  
15 right, a certificate, a permit, or a state water reservation.

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

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

22          (9)     The provisions of this section do not limit a water right owner from seeking relief, including  
23 injunctive relief, ~~in district court~~ under Title 27, chapter 19, or this chapter."  
24

25           **Section 33.** Section 85-2-122, MCA, is amended to read:

26           **"85-2-122. Penalties.** (1) Except as provided in 85-2-410(6), a person who violates or refuses or  
27 neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the department  
28 is subject to a civil penalty not to exceed \$1,000 per violation. Each day of violation constitutes a separate

1 violation.

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

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

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

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

10

11 **Section 34.** Section 85-2-123, MCA, is amended to read:

12 **"85-2-123. Deposit of fees and penalties.** Except as provided in 85-2-122 and 85-2-124, all fees and  
13 penalties collected under this chapter must be deposited in the water right appropriation account established in  
14 85-2-318. ~~Except for fines collected by a district court under 85-2-122, all penalties or fines imposed by any~~  
15 ~~court other than a justice's court for a violation of this chapter must be deposited in the general fund of the~~  
16 ~~county where the court presides and must be disposed of in the same manner as any other penalty or fine."~~

17

18 **Section 35.** Section 85-2-125, MCA, is amended to read:

19 **"85-2-125. Recovery of costs and attorney fees by prevailing party.** (1) If a final decision of the  
20 department on an application for a permit or a change in appropriation right is appealed to ~~district~~ the water  
21 division court, the ~~district~~ court may award the prevailing party reasonable costs and attorney fees.

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

25

26 **Section 36.** Section 85-2-309, MCA, is amended to read:

27 **"85-2-309. Hearings on objections -- jurisdiction.** (1) If the department determines that an objection  
28 to an application for a permit under 85-2-311 or change in appropriation right under 85-2-402 states a valid

1 objection, it shall hold a contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 90  
2 days from the date set by the department for the filing of objections after serving notice of the hearing by first-  
3 class mail upon the applicant and the objector, unless the department certifies an issue to the district water  
4 division court for determination by a water division judge under subsection (2). The department may consolidate  
5 hearings if more than one objection is filed to an application. The department may extend the 90-day deadline  
6 for good cause shown or upon request of the applicant and all objectors. The department shall file in its records  
7 proof of the service by affidavit of the department.

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

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

15 (c) Upon determination of the issues certified to it by the department, the court shall remand the  
16 matter to the department for further processing of the application under this chapter.

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

19  
20 **Section 37.** Section 85-2-405, MCA, is amended to read:

21 **"85-2-405. Procedure for declaring appropriation rights abandoned.** (1) When the department  
22 has reason to believe that an appropriator may have abandoned an appropriation right under 85-2-404 or when  
23 another appropriator in the opinion of the department files a valid claim that the appropriator has been or will be  
24 injured by the resumption of use of an appropriation right alleged to have been abandoned, the department  
25 shall petition the district water division court that determined the existing rights in the source of the  
26 appropriation in question to hold a hearing to determine whether the appropriation right has been abandoned.  
27 Proceedings under this section must be conducted in accordance with the Montana Rules of Civil Procedure,  
28 and appeal must be taken in accordance with the Montana Rules of Appellate Procedure.

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

3 (3) The determination of the water division court must be appended to the final decree. The  
4 department shall keep a copy of the determination in its office in Helena."  
5

6 **Section 38.** Section 85-2-406, MCA, is amended to read:

7 **"85-2-406. District court Court supervision of water distribution.** (1) ~~The district courts~~ Except as  
8 provided in subsection (2)(a), the water division court shall supervise the distribution of water among all  
9 appropriators. This supervisory authority includes the supervision of all water commissioners appointed prior or  
10 subsequent to July 1, 1973. The supervision must be governed by the principle that first in time is first in right.

11 (2) (a) A district court may order the distribution of water pursuant to a district court decree entered  
12 prior to July 1, 1973, until an enforceable decree is entered ~~under part 2 pursuant to subsection (4) of this~~  
13 ~~chapter~~ or the matter has been adjudicated under the procedure set forth in subsection (2)(b).

14 (b) When a water distribution controversy arises upon a source of water in which not all existing  
15 rights have been conclusively determined according to part 2 of this chapter, any party to the controversy may  
16 petition the district water division court to ~~certify the matter to the chief water judge. If a certification request is~~  
17 ~~made, the district court shall certify to the chief water judge the determination of~~ determine the existing rights  
18 that are involved in the controversy according to part 2 of this chapter. The district water division court ~~from~~  
19 ~~which relief is sought~~ shall retain exclusive jurisdiction to grant injunctive or other relief that is necessary and  
20 appropriate pending adjudication of the existing water rights ~~certified to the water judge. Certified controversies~~  
21 A petition must be given priority over all other adjudication matters. After determination of the matters ~~certified~~  
22 in the petition, the water division judge shall ~~return the decision to the district court with a tabulation or list~~ issue  
23 one or more tabulations or lists of the existing rights and their relative priorities.

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

1 the respective rights established in the permits or alter any terms of the permits unless the permits are  
2 inconsistent or interfere with rights and priorities established in the final decree. The order settling the  
3 controversy must be appended to the final decree, and a copy must be filed with the department. The  
4 department must be served with process in any proceeding under this subsection, and the department may, in  
5 its discretion, intervene in the proceeding.

6 (4) A temporary preliminary decree or preliminary decree or a portion of a temporary preliminary  
7 decree or preliminary decree as modified after objections and hearings is enforceable and administrable  
8 according to its terms. If an action to enforce a temporary preliminary decree or preliminary decree is  
9 commenced, ~~the water judge shall upon referral from the district court establish, in a form determined to be~~  
10 ~~appropriate by the water judge, the water division court shall establish~~ one or more tabulations or lists of all  
11 existing rights and their relative priorities within the area defined in the petition. In a case involving water rights  
12 permits issued pursuant to 85-2-302, the water division court may not amend the respective right established in  
13 a permit or the terms of the permit.

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

17 (6) On a determination that an action or petition filed under subsections (2)(b), (3), or (4) is  
18 sufficient and includes a defined enforcement area, the water division court shall issue an order requiring the  
19 action or petition to be served on all water right owners within the enforcement area and the department. The  
20 order must set a time and place for an interested party to show cause why the action or petition should not be  
21 granted. The provisions of Title 25, chapter 3, parts 2 and 3, and Rules 4 and 12(a), M.R.Civ.P., apply to  
22 actions or petitions brought under subsections (2), (3), or (4) if they do not conflict with this section.

23 ~~(5)(7)~~ (7) A person whose existing rights and priorities are determined in a temporary preliminary decree  
24 or preliminary decree or a person exercising a suspension under 85-2-217 and part 7 of this chapter may  
25 appeal a determination made pursuant to subsection (2).

26 (8) When a water distribution controversy involves issues of statewide or basinwide importance,  
27 the water division judge may, on motion of a party to the action or the state of Montana or sua sponte, order the  
28 joinder of the state of Montana."

1

2           **Section 39.** Section 85-5-101, MCA, is amended to read:

3           **"85-5-101. Appointment of water commissioners.** (1) Whenever the rights of persons to use the  
4 waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply  
5 have been determined by a decree of a court of competent jurisdiction, including temporary preliminary,  
6 preliminary, and final decrees issued by a water division judge, it is the duty of the ~~judge of the district~~ court  
7 having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights  
8 affected by the decree or at least 15% of the flow rate of the water rights affected by the decree, in the exercise  
9 of the ~~judge's~~ court's discretion, to appoint one or more commissioners. A petition for appointment of a  
10 commissioner may not recommend more than three eligible commissioners to be considered for appointment.  
11 The commissioners have authority to admeasure and distribute to the parties owning water rights in the source  
12 affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and  
13 by any certificates, permits, and changes in appropriation right issued under chapter 2 of this title. When  
14 petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of  
15 the water rights affected or at least 15% of the flow rate of the water rights affected and they are unable to  
16 obtain the water to which they are entitled, the judge of the ~~district court~~ having jurisdiction may appoint a water  
17 commissioner.

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

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

1           (4)     The petitioners shall certify that they have served a copy of the petition to all water rights  
2     owners subject to the petition.

3           (4)(5)   At the time of the appointment of a water commissioner or commissioners, the ~~district court~~  
4     having jurisdiction shall fix their compensation, require a commissioner or commissioners to purchase a  
5     workers' compensation insurance policy and elect coverage on themselves, and require the owners and users  
6     of the distributed waters, including permittees, certificate holders, and holders of a change in appropriation  
7     right, to pay their proportionate share of fees and compensation, including the cost of workers' compensation  
8     insurance purchased by a water commissioner or commissioners. The judge may include the department in the  
9     apportionment of costs if it applied for the appointment of a water commissioner under subsection (2).

10          (5)(6)   Upon the application of the board or boards of one or more irrigation districts entitled to the use  
11     of water stored in a reservoir that is turned into the natural channel of any stream and withdrawn or diverted at  
12     a point downstream for beneficial use, the ~~district court of the judicial district where the most irrigable acres of~~  
13     ~~the irrigation district or districts are situated~~ water division court may appoint a water commissioner to equitably  
14     admeasure and distribute stored water to the irrigation district or districts from the channel of the stream into  
15     which it has been turned. A commissioner appointed under this subsection (6) has the powers of any  
16     commissioner appointed under this chapter, limited only by the purposes of this subsection (6). A  
17     commissioner's compensation is set by the ~~appointing judge court~~ and paid by each district and other users of  
18     stored water affected by the admeasurement and distribution of the stored water. In all other matters, the  
19     provisions of this chapter apply so long as they are consistent with this subsection (6).

20          (6)(7)   A water commissioner appointed by a ~~district court~~ is not an employee of the judicial branch, a  
21     local government, or a water user.

22          (7)(8)   A water commissioner who fails to obtain workers' compensation insurance coverage required  
23     by subsection (4) (5) is precluded from receiving benefits under Title 39, chapter 71, as a result of the  
24     performance of duties as a water commissioner."

25  
26           **Section 40.** Section 85-5-102, MCA, is amended to read:

27           **"85-5-102. Appointment of chief commissioner.** When the judge of the district court a judge  
28     appoints two or more commissioners to admeasure and distribute the waters mentioned in 85-5-101, the judge

1 may appoint one of them as chief commissioner and empower the chief commissioner to exercise direction and  
2 control over the other commissioners in the discharge of their duties. The judge may depose the person  
3 appointed as chief commissioner from that position and appoint another as chief commissioner whenever it  
4 appears to the judge that better service may be given to the water users by making the change."

5  
6 **Section 41.** Section 85-5-103, MCA, is amended to read:

7 **"85-5-103. Oath and bond.** (1) ~~Each~~ Except as provided in subsection (2), each water commissioner  
8 appointed by the court shall subscribe and file with the ~~clerk of the district court~~ water division court  
9 administrator an oath of office before commencing the discharge of duties as commissioner and shall file with  
10 the ~~clerk~~ water division court administrator a bond executed by the commissioner, with two or more sureties, in  
11 a sum that the judge of the court may designate, to ensure the faithful discharge of the commissioner's duties.

12 (2) For a water commissioner supervised by a district court pursuant to 85-2-406, the oath and  
13 bond must be filed with the clerk of the district court."

14  
15 **Section 42.** Section 85-5-106, MCA, is amended to read:

16 **"85-5-106. Maintenance and repair of ditches or systems.** Upon written request of the owners of at  
17 least 51% of the water rights in any adjudicated ditch or single water system, the ~~judge of the district court~~  
18 having jurisdiction may empower the commissioner to maintain and keep in reasonable repair such water ditch  
19 or water system at the expense of the owners thereof, and for such purposes the commissioner shall have  
20 authority to enter and work upon any ditch, canal, aqueduct, or other source of conveying the waters affected  
21 by the decree and the right-of-way thereof and to visit, inspect, and adjust all headgates or other means of  
22 distribution of such waters."

23  
24 **Section 43.** Section 85-5-107, MCA, is amended to read:

25 **"85-5-107. Record of distribution of water.** (1) (a) Each water commissioner shall keep a daily  
26 record, unless a different recording schedule is ordered by the ~~district judge~~ court having jurisdiction, of the  
27 amount of water distributed to each water user and shall file a summary of the record with the ~~clerk of the court~~  
28 water division court administrator monthly or seasonally, at the discretion of the ~~district judge~~ during the judge's



1 ~~term-of-service~~ court. The report must show in detail the total amount of water distributed to each water user  
2 during the month or the season and the cost of distributing the water, based upon the water commissioner's or  
3 commissioners' daily salary, other costs of the water commissioner or commissioners approved by the ~~district~~  
4 judge, and the proportionate amount of water distributed. When two or more water commissioners serve under  
5 the same decree or decrees by order of the judge, they may file a joint summary of their records with the ~~clerk~~  
6 ~~of the court~~ water division court administrator, or the chief commissioner, if one has been appointed by the  
7 judge, may file a summary on behalf of all of them.

8 (b) For a water commissioner supervised by a district court pursuant to 85-2-406, the records must  
9 be filed with the clerk of the district court.

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

13  
14 **Section 44.** Section 85-5-109, MCA, is amended to read:

15 **"85-5-109. Failure to perform duty as contempt of court.** If a commissioner fails to perform any of  
16 the duties imposed upon the commissioner by the order of the judge ~~of the district court~~, the commissioner is  
17 guilty of contempt of court."

18  
19 **Section 45.** Section 85-5-110, MCA, is amended to read:

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

23 (a) upon request of the governor;

24 (b) upon petition by at least 15% of the owners of water rights in a decreed or nondecreed basin;

25 or

26 (c) in the discretion of the ~~district~~ court having jurisdiction.

27 (2) A water mediator appointed under this section may:

28 (a) discuss proposed solutions to a water controversy with affected water right holders;

1 (b) review options related to scheduling and coordinating water use with affected water right  
2 holders;

3 (c) discuss water use and water needs with persons and entities affected by the existing water  
4 use;

5 (d) meet with principal parties to mediate differences over the use of water; and

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

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

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

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

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

19

20 **Section 46.** Section 85-5-111, MCA, is amended to read:

21 **"85-5-111. Water commissioner and mediator education.** (1) The department of natural resources  
22 and conservation, in cooperation with the Montana supreme court, the Montana water courts division court, the  
23 district courts of Montana, the Montana university system, and other appropriate state and federal agencies,  
24 shall develop an educational program for water commissioners and mediators that includes:

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

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

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

1 mediators.

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

5

6 **Section 47.** Section 85-5-201, MCA, is amended to read:

7 **"85-5-201. Distribution of water and related expenses.** (1) Each water commissioner appointed by  
8 ~~the judge of the district court~~ for the purpose of distributing water has the authority to determine the appropriate  
9 quantity and distribute to the parties interested, under a decree, permit, certificate, or change in appropriation  
10 right, the water to which those who are parties to the decree or holders of a permit, certificate, or change in  
11 appropriation right, or privy to a permit, certificate, or change in appropriation right, are entitled, according to  
12 their priority as established by the decree, permit, certificate, or change in appropriation right.

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

19 (3) (a) ~~At the district court's discretion, a water commissioner may bill water users prior to the~~  
20 ~~beginning of a distribution season for the purpose of offsetting costs associated with distributing water and~~  
21 ~~water commissioner duties by submitting the information necessary for the billing to the clerk of the district court~~  
22 water division court administrator. A billing issued prior to the beginning of a distribution season:

23 (i) must be assessed on a per-user basis;  
24 (ii) must be based on the report provided for in 85-5-107 for the prior year; and  
25 (iii) may not exceed 80% of the amount that was provided to the ~~district court~~ pursuant to 85-5-107  
26 for the prior distribution season on a per-user basis.

27 (b) For a water commissioner supervised by a district court pursuant to 85-2-406, the billing must  
28 be filed with the clerk of the district court.

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

**Section 48.** Section 85-5-203, MCA, is amended to read:

**"85-5-203. Telephone expenses.** The judge may also allow as a charge reasonable expenses incurred by a water commissioner in telephoning to the judge for instructions in cases of emergency. When there are two or more commissioners acting under the judge's order, reasonable expenses incurred in communicating with each by telephone 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~~ must be deemed a necessary expense. These expenses ~~shall~~ must be reported by the water commissioner or commissioners at the close of the season and ~~shall~~ must be taxed against all the water users affected by the decree or decrees ratably in proportion to the whole amount of water distributed to them during the season."

**Section 49.** Section 85-5-204, MCA, is amended to read:

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

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

(b) ~~(ii)~~ (ii) 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) ~~(iii)~~ (iii) 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.

(b) For a water commissioner supervised by a district court pursuant to 85-2-406, the clerk of the district court shall notify each person mentioned in the report in accordance with subsection (1)(a).

(2) The affidavit of the water division court administrator or, if a water commissioner is supervised by a district court pursuant to 85-2-406, that affidavit of the clerk of the district court ~~clerk that the court administrator or clerk~~ has mailed a notice to each person mentioned in the report at the person's last-known

1 post-office address, in the usual manner, must be considered prima facie evidence that the person received the  
2 notice provided for in this section.

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

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

13 (c) For a water commissioner supervised by a district court pursuant to 85-2-406, the water  
14 commissioner shall submit the billing information and refund report to the clerk of the district court."

15  
16 **Section 50.** Section 85-5-301, MCA, is amended to read:

17 **"85-5-301. Complaint by dissatisfied user.** (1) A person owning or using any of the waters of the  
18 stream or ditch or extension of the ditch who is dissatisfied with the method of distribution of the waters ~~of the~~  
19 ~~stream or ditch by the water commissioner or water commissioners and who claims to be entitled to more water~~  
20 ~~than the person is receiving or to a right prior to that allowed the person by the water commissioner or water~~  
21 ~~commissioners may file a written complaint, duly verified, setting forth the facts of the claim. The person shall~~  
22 file the complaint with the court that appointed the water commissioner.

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

28 (3) Upon the determination of the hearing, the judge shall make findings and issue an order that

1 the judge considers just and proper. If it appears to the judge that the water commissioner ~~or water~~  
2 ~~commissioners have~~ has not properly distributed the water according to the provisions of the decree, permit,  
3 certificate, or change in appropriation right, the judge shall give the proper instructions for distribution of the  
4 water.

5 (4) The judge may remove any water commissioner and appoint a new water commissioner if the  
6 judge determines that the interests of the parties ~~in the waters mentioned~~ in the decree, permit, certificate, or  
7 change in appropriation right will be best served by appointing a new water commissioner. If it appears to the  
8 judge that the water commissioner has willfully failed to perform the water commissioner's duties, the ~~water~~  
9 ~~commissioner may be proceeded against for contempt of court~~ judge may proceed with contempt of court  
10 against the water commissioner, as provided in contempt cases. The judge shall make an order regarding the  
11 payment of costs of the hearing that ~~the judge determines is just and proper.~~"

12  
13 **Section 51.** Section 85-5-401, MCA, is amended to read:

14 **"85-5-401. Determination of water rights between partners, tenants in common, and corporate**  
15 **stockholders.** If a water ditch used for irrigating purposes is owned by a partnership, tenants in common, or  
16 corporation and there is any dispute between the respective owners, tenants in common, or stockholders  
17 respecting the use and division of the waters flowing in the ditch, any partner, tenant in common, or stockholder  
18 may commence an action in ~~any court of competent jurisdiction~~ the water division court to determine the rights  
19 of the respective parties to the use of the waters and may join in the petition a request for the appointment of a  
20 water commissioner to apportion and distribute the waters of the ditch according to the rights of the respective  
21 owners, tenants in common, or stockholders during ~~the pendency of the action.~~"

22  
23 **Section 52.** Section 85-5-402, MCA, is amended to read:

24 **"85-5-402. Appointment of commissioner prior to final decree.** After the filing of the complaint in  
25 an action under 85-5-401, the water division court may, upon 5 days' notice to the other parties to the action,  
26 appoint a commissioner to divide and distribute the waters of the ditch to the respective parties, according to  
27 their respective rights, during ~~the pendency of the action.~~ The court may, upon good cause shown, appoint a  
28 commissioner without notice, and when a commissioner is appointed without notice, any party to the action

1 may, on 5 days' notice to the plaintiff, move the court ~~or judge~~ to vacate the appointment or to modify the order  
2 ~~as to the distribution of~~ to distribute the waters of the ditch. The court ~~or judge~~, on hearing, may affirm, vacate,  
3 or modify the order ~~previously made~~. Each water commissioner appointed shall ~~subscribe to~~ take an oath of  
4 office before commencing ~~the discharge of the commissioner's~~ duties."

5  
6 **Section 53.** Section 85-5-403, MCA, is amended to read:

7 **"85-5-403. Division of water.** It shall be the duty of the A water commissioner ~~to shall~~ divide the  
8 waters of ~~said a~~ ditch between the owners, tenants in common, or stockholders in proportion to their respective  
9 rights, as set forth in the complaint or ~~in such other manner or proportion as the~~ water division court ~~or judge~~  
10 ~~may direct~~ directs."

11  
12 **Section 54.** Section 85-5-407, MCA, is amended to read:

13 **"85-5-407. Appointment of water commissioner after final decree.** When the rights of the  
14 respective parties in an action to the use of the waters flowing in a ditch are adjudicated, the ~~judge of the district~~  
15 ~~court having jurisdiction of the subject matter~~ water division court, upon the application of the owners of at least  
16 10% of the waters of the ditch, may, ~~in the exercise of the judge's discretion~~, appoint a water commissioner to  
17 divide, apportion, and distribute the waters of the ditch to the respective parties according to their respective  
18 decreed rights ~~as set forth in the decree~~. When a commissioner is appointed under the provisions of this  
19 chapter to apportion and distribute the waters of the stream from which the water flowing in a ditch is taken, the  
20 commissioner shall, when directed by the ~~judge or court~~, apportion and distribute the waters of the ditch  
21 according to the decree by which the rights of the respective owners were adjudicated."

22  
23 **Section 55.** Section 85-5-408, MCA, is amended to read:

24 **"85-5-408. Apportionment of costs.** (1) When a commissioner is appointed upon the application of  
25 an owner or owners of a ditch, the water division court may fix the compensation of the commissioner and the  
26 term of the commissioner's employment. The court shall make an order apportioning the amount of  
27 compensation among the several owner or owners, tenants in common, or stockholders of the ditch according  
28 to their respective rights and interest. The order has the effect of a judgment against the person to whom the

1 water was admeasured and for whose benefit it was used. When, in the discretion of the court, an order of  
 2 apportionment of expense is made against the land for which the water was used, it has the effect of a lien  
 3 against the land to which the apportionment was made. ~~Execution may issue upon the order as upon a~~  
 4 ~~judgment by direction of the court~~ If the court issues an order, the order may be enforced as a final judgment,  
 5 ~~upon the~~ on application of any person interested in the order.

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

12  
 13 **NEW SECTION. Section 56. Repealer.** The following sections of the Montana Code Annotated are  
 14 repealed:

- 15 3-7-201. Designation of water judge.
- 16 3-7-211. Appointment of water commissioners.
- 17 3-7-212. Enforcement of decrees.
- 18 3-7-222. Salary -- office space.
- 19 3-7-223. (Temporary) Duties of chief water judge.
- 20 3-7-224. (Temporary) Jurisdiction of chief water judge and associate water judge.
- 21 3-7-225. (Temporary) Duties of associate water judge.

22  
 23 **NEW SECTION. Section 57. Codification instruction.** (1) [Sections 9 through 11] are intended to  
 24 be codified as an integral part of Title 3, chapter 7, part 1, and the provisions of Title 3, chapter 7, part 1, apply  
 25 to [sections 9 through 11].

26 (2) [Sections 12, 16, and 18] are intended to be codified as an integral part of Title 3, chapter 7,  
 27 part 2, and the provisions of Title 3, chapter 7, part 2, apply to [sections 12, 16, and 18].

28 (3) [Section 25] is intended to be codified as an integral part of Title 3, chapter 7, part 4, and the



1 provisions of Title 3, chapter 7, part 4, apply to [section 25].

2

3 NEW SECTION. Section 58. Notification to tribal governments. The secretary of state shall send  
4 a copy of [this act] to each federally recognized tribal government in Montana.

5

6 NEW SECTION. Section 59. Severability. If a part of [this act] is invalid, all valid parts that are  
7 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
8 the part remains in effect in all valid applications that are severable from the invalid applications.

9

10 NEW SECTION. Section 60. Effective date. [This act] is effective January 1, 2026.

11 - END -