

Amendments to House Bill No. 275
1st Reading Copy

Requested by Representative Robin Hamilton

For the House Natural Resources Committee

Prepared by Joe Kolman
January 31, 2009 (12:41pm)

1. Title, page 1, line 6 through line 7.

Following: "ENFORCEABLE BY" on line 6

Strike: "THE DEPARTMENT" on line 6 through "CONSERVATION" on line 7

Insert: "VARIOUS ENTITIES"

2. Title, page 1, line 7.

Strike: "SECTION 85-2-113,"

Insert: "SECTIONS 3-5-311, 3-7-223, 3-7-311, 85-5-105, and 85-7-305,"

3. Page 2, line 10 through page 3, line 18.

Strike: sections 3 and 4 in their entirety

Insert: "NEW SECTION. Section 3. Emergency streamflow -- declaration -- enforcement. The following entities shall, to the extent allowed by laws applicable to each entity, monitor streamflows, declare the need for an emergency streamflow, or curtail water use to maintain streamflows in accordance with the purposes in [section 1]:

- (1) district judges pursuant to 3-5-311;
- (2) the chief water judge pursuant to 3-7-223;
- (3) water masters pursuant to 3-7-311;
- (4) water commissioners pursuant to 85-5-105;
- (5) the board of commissioners of an irrigation district pursuant to 85-7-305."

Insert: "Section 4. Section 3-5-311, MCA, is amended to read:

"3-5-311. Powers of judges at chambers. (1) The judge of the district court may at chambers:

(a) issue, hear, and determine writs of mandamus, quo warranto, certiorari, prohibition, and injunction, other original and remedial writs, and all writs of habeas corpus on petition by or on behalf of any person held in actual custody in the judicial district;

(b) grant all orders and writs that are usually granted in the first instance upon an ex parte application and hear and dispose of those orders and writs;

(c) hear and determine any matter necessary in the exercise of the judge's powers in matters of probate or in any action or proceeding provided by law and any action in which all party defendants have made default;

(d) issue any process, make any order, and make and enter any default judgment;

(e) to the extent allowed by law, curtail water use to maintain streamflows in accordance with the purposes in [section 1].

(2) When default judgments are entered in default cases, the judge shall forward to the clerk of the court of the county in which the action is pending the judgment, together with a minute entry of the proceedings. The clerk shall incorporate the judgment and minute entry into the minutes of the court.

(3) If a jury is necessary, the judge may open court and obtain a jury as in other cases."

{Internal References to 3-5-311: None.}"

Insert: "Section 5. Section 3-7-223, MCA, is amended to read:

"3-7-223. Duties of the chief water judge. The chief water judge shall:

(1) administer the adjudication of existing water rights by:

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

(b) assuring that the water judge in each water division moves without unreasonable delay to enter the required preliminary decree;

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

(2) conduct hearings in cases certified to the district court under 85-2-309;

(3) assign court personnel to divisions and duties as needed; and

(4) request and secure the transfer of water judges between divisions as needed; and

(5) to the extent allowed by law, curtail water use to maintain streamflows in accordance with the purposes in [section 1]."

{Internal References to 3-7-223: None.}"

Insert: "Section 6. Section 3-7-311, MCA, is amended to read:

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

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

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

(4) A water master shall, to the extent allowed by law, curtail water use to maintain streamflows in accordance with the

purposes in [section 1]."

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

Insert: "Section 7. Section 85-5-105, MCA, is amended to read:

"85-5-105. **Power and duty to distribute water.** (1) Upon the issuance of such an order, the a water commissioner or commissioners shall have authority and it is hereby made his or their duty to admeasure and distribute to the water users thereof, as their interests may appear and be required, the stored and supplemental waters stored and as released by the department of natural resources and conservation under provisions of chapter 1 of this title, to be diverted into and through said the streams, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules as decreed water rights are admeasured and distributed.

(2) ~~Such water~~ A water commissioner or commissioners and the owners and users of such stored and supplemental waters shall be bound by and be subject to the provisions of this chapter and all acts amendatory thereof and supplemental thereto, provided, that the admeasurements and distribution of such stored and supplemental waters shall in no way interfere with decreed water rights comply with the provisions of this chapter.

(3) A water commissioner shall monitor streamflows, declare the need for an emergency streamflow, and curtail water use to maintain streamflows in accordance with the purposes in [section 1].

(4) The purpose of parts 1 through 3 of this chapter is to provide a uniform, equitable, and economical distribution of adjudicated, stored, and supplemental waters."

{Internal References to 85-5-105: None.}"

Insert: "Section 8. Section 85-7-305, MCA, is amended to read:

"85-7-305. **Apportionment of water by commissioners.** (1) The board of commissioners shall apportion the water for irrigation among the lands of the district in a just and equitable manner and in compliance with the decree adjudicating the water rights thereto, but the maximum amount apportioned to any land shall must be the amount that can be beneficially used thereon on the land.

(2) The board of commissioners shall monitor streamflows, declare the need for an emergency streamflow, and curtail water use to maintain streamflows in accordance with the purposes in [section 1]."

{Internal References to 85-7-305: None.}"

Renumber: subsequent sections

- END -

Amendments to House Bill No. 275
1st Reading Copy

Requested by Representative Robin Hamilton

For the House Natural Resources Committee

Prepared by Joe Kolman
January 31, 2009 (12:41pm)

1. Title, page 1, line 6 through line 7.

Following: "ENFORCEABLE BY" on line 6

Strike: "THE DEPARTMENT" on line 6 through "CONSERVATION" on line
7

Insert: "VARIOUS ENTITIES"

2. Title, page 1, line 7.

Strike: "SECTION 85-2-113,"

Insert: "SECTIONS 3-5-311, 3-7-223, 3-7-311, 85-5-105, and 85-7-
305,"

3. Page 2, line 10 through page 3, line 18.

Strike: sections 3 and 4 in their entirety

Insert: "NEW SECTION. **Section 3. Emergency streamflow --
declaration -- enforcement.** The following entities shall, to the
extent allowed by laws applicable to each entity, monitor
streamflows, declare the need for an emergency streamflow, or
curtail water use to maintain streamflows in accordance with the
purposes in [section 1]:

- (1) district judges pursuant to 3-5-311;
- (2) the chief water judge pursuant to 3-7-223;
- (3) water masters pursuant to 3-7-311;
- (4) water commissioners pursuant to 85-5-105;
- (5) the board of commissioners of an irrigation district
pursuant to 85-7-305."

Insert: "**Section 4.** Section 3-5-311, MCA, is amended to read:

"**3-5-311. Powers of judges at chambers.** (1) The judge of
the district court may at chambers:

(a) issue, hear, and determine writs of mandamus, quo
warranto, certiorari, prohibition, and injunction, other original
and remedial writs, and all writs of habeas corpus on petition by
or on behalf of any person held in actual custody in the judicial
district;

(b) grant all orders and writs that are usually granted in
the first instance upon an ex parte application and hear and
dispose of those orders and writs;

(c) hear and determine any matter necessary in the exercise
of the judge's powers in matters of probate or in any action or
proceeding provided by law and any action in which all party
defendants have made default;

(d) issue any process, make any order, and make and enter any default judgment;

(e) to the extent allowed by law, curtail water use to maintain streamflows in accordance with the purposes in [section 1].

(2) When default judgments are entered in default cases, the judge shall forward to the clerk of the court of the county in which the action is pending the judgment, together with a minute entry of the proceedings. The clerk shall incorporate the judgment and minute entry into the minutes of the court.

(3) If a jury is necessary, the judge may open court and obtain a jury as in other cases."

{Internal References to 3-5-311: None.}"

Insert: "Section 5. Section 3-7-223, MCA, is amended to read:

"3-7-223. Duties of the chief water judge. The chief water judge shall:

(1) administer the adjudication of existing water rights by:

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

(b) assuring that the water judge in each water division moves without unreasonable delay to enter the required preliminary decree;

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

(2) conduct hearings in cases certified to the district court under 85-2-309;

(3) assign court personnel to divisions and duties as needed; and

(4) request and secure the transfer of water judges between divisions as needed; and

(5) to the extent allowed by law, curtail water use to maintain streamflows in accordance with the purposes in [section 1]."

{Internal References to 3-7-223: None.}"

Insert: "Section 6. Section 3-7-311, MCA, is amended to read:

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

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

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

(4) A water master shall, to the extent allowed by law, curtail water use to maintain streamflows in accordance with the

purposes in [section 1]."

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

Insert: "Section 7. Section 85-5-105, MCA, is amended to read:

"85-5-105. **Power and duty to distribute water.** (1) Upon the issuance of such an order, the ~~a~~ water commissioner or commissioners shall have authority and it is hereby made his or their duty to admeasure and distribute to the water users thereof, as their interests may appear and be required, the stored and supplemental waters stored and ~~as~~ released by the department of natural resources and conservation under provisions of chapter 1 ~~of this title~~, to be diverted into and through said ~~the~~ streams, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules as decreed water rights are admeasured and distributed.

(2) ~~Such water~~ A water commissioner or commissioners and the owners and users of such stored and supplemental waters shall be bound by and be subject to the provisions of this chapter and all acts amendatory thereof and supplemental thereto; provided, that the admeasurements and distribution of such stored and supplemental waters shall in no way interfere with decreed water rights comply with the provisions of this chapter.

(3) A water commissioner shall monitor streamflows, declare the need for an emergency streamflow, and curtail water use to maintain streamflows in accordance with the purposes in [section 1].

(4) The purpose of parts 1 through 3 of this chapter is to provide a uniform, equitable, and economical distribution of adjudicated, stored, and supplemental waters."

{Internal References to 85-5-105: None.}"

Insert: "Section 8. Section 85-7-305, MCA, is amended to read:

"85-7-305. **Apportionment of water by commissioners.** (1) The board of commissioners shall apportion the water for irrigation among the lands of the district in a just and equitable manner and in compliance with the decree adjudicating the water rights thereto, but the maximum amount apportioned to any land shall must be the amount that can be beneficially used thereon on the land.

(2) The board of commissioners shall monitor streamflows, declare the need for an emergency streamflow, and curtail water use to maintain streamflows in accordance with the purposes in [section 1]."

{Internal References to 85-7-305: None.}"

Renumber: subsequent sections

- END -