

HOUSE BILL NO. 87

INTRODUCED BY D. CORDIER

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR WATER COMMISSIONER DISTRIBUTION OF WATER BASED ON A CHANGE IN APPROPRIATION RIGHT; AMENDING SECTIONS 85-5-101, 85-5-201, AND 85-5-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 85-5-101, MCA, is amended to read:

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

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

(3) The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have stored waters distributed by the water commissioners appointed by the district court. The court may order the commissioner

or commissioners appointed by the court to distribute stored water when and as released to water users entitled to the use of the water.

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

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

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

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

Section 2. Section 85-5-201, MCA, is amended to read:

"85-5-201. Distribution of water and related expenses. ~~Every~~ Each water commissioner appointed by the judge of the district court for ~~that the purpose of distributing water shall have~~ has the authority to admeasure and distribute to the parties interested, under ~~such a~~ a decree, permit, ~~or~~ or certificate, or change in appropriation right, the water to which those who are parties to the decree or holders of a permit, ~~or~~ or certificate, or change in appropriation right, or privy ~~thereto~~ to a permit, certificate, or change in appropriation right, are

entitled, according to their priority as established by the decree, permit, ~~or certificate,~~ or change in appropriation right. The water commissioner, in case the parties fail or refuse to do so, may incur necessary expenses in the making of headgates or dams for the distribution of the waters. ~~Such expense shall~~ Expenses associated with making headgates or dams for the distribution of water must be assessed against and paid by the party or parties for whom the ditch or ditches were repaired or the dams or headgates were made. ~~such services in the repair of the ditch or ditches and the making of any dams or headgates were necessary.~~ In the discretion of the court, ~~such~~ the costs or expenses may be assessed against the land upon which or for the benefit of which ~~such~~ the expense had been incurred."

Section 3. Section 85-5-301, MCA, is amended to read:

"85-5-301. Complaint by dissatisfied user. (1) A person owning or using any of the waters of the stream or ditch or extension of the ditch who is dissatisfied with the method of distribution of the waters of the stream or ditch by the water commissioner or water commissioners and who claims to be entitled to more water than ~~he~~ the person is receiving or to a right prior to that allowed ~~him~~ the person by the water commissioner or water commissioners may file ~~his~~ a written complaint, duly verified, setting forth the facts of the claim. ~~Thereupon~~

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

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

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

the payment of costs of the hearing ~~as appears to him to be~~ that the judge determines is just and proper."

NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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