

HOUSE BILL NO. 140

INTRODUCED BY S. STEWART-PEREGOY

BY REQUEST OF THE WATER POLICY INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE THRESHOLD FOR WATER COMMISSIONER APPOINTMENTS; AND AMENDING SECTION 85-5-101, MCA."

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 or at least 15% of the flow rate of the water rights affected by the decree, in the exercise of the judge's discretion, to appoint one or more commissioners. The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates, permits, and changes in appropriation right issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected 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

1 distributed by the water commissioners appointed by the district court. The court may order the commissioner  
2 or commissioners appointed by the court to distribute stored water when and as released to water users entitled  
3 to the use of the water.

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

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12 water stored in a reservoir that is turned into the natural channel of any stream and withdrawn or diverted at a  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

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

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

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