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SENATE BILL NO. 72

INTRODUCED BY S. FITZPATRICK

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE POWERS, DUTIES, TERMS, DESIGNATIONS, APPOINTMENTS, OPERATIONS, AND JURISDICTION OF THE WATER COURT; PROVIDING FOR THE GOVERNOR'S APPOINTMENT OF WATER JUDGES; PROVIDING FOR WATER COURT JURISDICTION OVER WATER DISTRIBUTION; REVISING THE APPOINTMENT OF WATER COMMISSIONERS; DESIGNATING WATER JUDGES TO WATER DIVISIONS; PROVIDING THAT WATER JUDGES ENFORCE FINAL DECREES; PROVIDING FOR A WATER COURT ADMINISTRATOR; REVISING THE POWERS AND DUTIES OF WATER MASTERS; REVISING THE PROCESS TO PETITION FOR DEPARTMENT ACTION ON UNPERFECTED WATER RIGHTS; REVISING JUDICIAL REVIEW OF CERTAIN CONTESTED CASES; PROVIDING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 2-4-702, 3-1-101, 3-1-901, 3-1-905, 3-7-101, 3-7-102, 3-7-103, 3-7-201, 3-7-202, 3-7-203, 3-7-204, 3-7-211, 3-7-212, 3-7-221, 3-7-223, 3-7-224, 3-7-301, 3-7-311, 3-7-401, 3-7-501, 3-7-502, 19-5-301, 85-2-112, 85-2-114, 85-2-122, 85-2-123, 85-2-125, 85-2-236, 85-2-309, 85-2-313, 85-2-314, 85-2-315, 85-2-405, 85-2-406, 85-5-101, 85-5-102, 85-5-103, ~~85-5-104~~, 85-5-106, 85-5-107, 85-5-108, 85-5-109, 85-5-110, 85-5-111, 85-5-201, 85-5-202, 85-5-203, 85-5-204, 85-5-205, 85-5-206, 85-5-301, AND 85-5-407, MCA; REPEALING SECTIONS 3-7-222 AND 3-7-225, MCA; AND PROVIDING AN EFFECTIVE DATES DATE."

WHEREAS, Article VII, section 1, of the Montana Constitution provides that the "judicial power of the state is vested in one supreme court, district courts, justice courts, and such other courts as may be provided by law"; and

WHEREAS, the Montana Legislature possesses the authority to constitute a water court and similarly set forth mechanisms for the appointment and election of judges for the court; and

WHEREAS, neither the Water Court nor its judgeships are mandated or created by the Montana Constitution but rather are judgeships maintained by the Montana Legislature.

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

2

3 NEW SECTION. **Section 1. Coordination of court jurisdiction.** (1) A petition initiating a cause of
4 action filed with the water court may include a request to transfer the action to a district court judge for:

- 5 (a) judicial enforcement pursuant to 3-7-101(6);
- 6 (b) actions for common law remedies pursuant to 3-7-101(7);
- 7 (c) supervision of water commissioners pursuant to 3-7-101(11); or
- 8 (d) appointments of water commissioners and water mediators pursuant to 3-7-101(12).

9 (2) When a petition filed under subsection (1) contains a request to transfer the action to a district
10 court judge, the water court shall grant the request if the requested district court judge is within a judicial district
11 located in a hydrologically interrelated portion of the water division, as described in 85-2-231(3), in which the
12 controversy arises.

13 (3) The district court judge shall sit as a substitute water judge pursuant to 3-7-201(2).

14

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

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

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

25 (2) (a) Except as provided in 75-2-211, 75-2-213, and subsections (2)(c) and (2)(e) of this section,
26 proceedings for review must be instituted by filing a petition in district court within 30 days after service of the
27 final written decision of the agency or, if a rehearing is requested, within 30 days after the written decision is
28 rendered. Except as otherwise provided by statute, subsection (2)(d), or subsection (2)(e), the petition must be

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

4 (b) The ~~chief justice of the supreme court~~governor shall appoint a candidate to fill any water judge
5 term or vacancy ~~for the chief water judge or associate water judge~~ pursuant to 3-7-221.

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

11

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

13 **"3-1-905. Appointments.** (1) The governor, ~~or the chief justice of the supreme court for the office~~
14 ~~described in 3-7-221,~~ shall make an appointment within 30 days of the close of the public comment period from
15 the list of applicants.

16 (2) For the purposes of Article VII, section 8, of the Montana constitution, the governor must be
17 construed to receive the names of the nominees at the close of the public comment period provided for in 3-1-
18 904.

19 (3) If the governor fails to appoint within 30 days of the close of the public comment period
20 provided for in subsection (1), the chief justice shall make the appointment from the same list of applicants
21 within 30 days of the governor's failure to appoint."

22

23 NEW SECTION. **Section 6. Definitions.** As used in this chapter, the following definitions apply:

24 (1) "Water court" means a court comprised of four water division courts that preside over water
25 disputes and controversies that arise within the boundaries of the water division as described in 3-7-102.

26 (2) "Water judge" means a judge presiding over any matter under 3-7-101 in a water division.

27

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

1 **"3-7-101. Water divisions Powers and duties of water court.** ~~To adjudicate existing water rights~~
 2 ~~and to conduct hearings in cases certified under 85-2-309, water divisions are established as defined in 3-7-~~
 3 ~~102.~~ A water division shall be presided over by a water judge one or more water judges. A water judge WATER
 4 JUDGES of the water court shall:

5 (1) prior to and including the issuance of a final decree in a basin pursuant to 85-2-234 and 85-2-
 6 235, administer the adjudication of existing water rights in the basin by:

- 7 (a) coordinating with the department of natural resources and conservation to:
- 8 (i) compile information submitted on water claim forms under Title 85, chapter 2, part 2; and
- 9 (ii) expeditiously and properly transfer that information to the water judge in each division; and
- 10 (b) ensuring any contested or conflicting claims are expeditiously tried and adjudicated.

11 (2) conduct proceedings for petitions for judicial review filed with the water court under 2-4-
 12 702(2)(e);

13 (3) review decisions made by a compact board or other administrative entity as provided in Title
 14 85, chapter 20;

15 (4) review motions brought pursuant to Rule 59 or 60, M.R.Civ.P., concerning the adjudication of
 16 an existing water right and orders pursuant to 85-2-234(8);

17 (5) hear and resolve disputes arising under the interpretation of a final decree issued under 85-2-
 18 234;

19 (6) subject to [section 1], hear and resolve issues related to judicial enforcement actions for waste,
 20 unlawful use, interference, or other violations pursuant to 85-2-114 and 85-2-122;

21 (7) subject to [section 1], hear and resolve issues related to enforcement actions brought pursuant
 22 to common law remedies, including but not limited to the waste of water, unlawful use of water, abandonment,
 23 or interference with the use of water, including the right to injunctive relief under Title 27, chapter 19;

24 (8) conduct abandonment proceedings under 85-2-404 and 85-2-405;

25 (9) hear and determine matters related to objections to permits or changes in appropriation rights
 26 FACTUAL AND LEGAL ISSUES INVOLVING THE ADJUDICATION OR DETERMINATION OF WATER RIGHTS certified to the water
 27 court under 85-2-309;

28 (10) hear and determine matters related to a dispute over ownership of a water right certified to the

1 water court under 85-2-424(9);

2 (11) subject to [section 1], hear and determine rights and issues related to water distribution

3 controversies under 85-2-406;

4 (12) subject to [section 1], appoint and supervise water commissioners or water mediators under

5 Title 85, chapter 5;

6 (13) hear and resolve ditch easement matters ancillary to a water right dispute or controversy, as a

7 water right is defined in 85-2-102;

8 (14) promulgate rules for use across all water divisions for practice and procedure pursuant to Title

9 3, chapter 7;

10 (15) prescribe forms for use pursuant to Title 3, chapter 7; and

11 (16) determine and interpret existing water rights, including without limitation the adjudication of total

12 or partial abandonment of existing water rights occurring at any time."

13

14 **Section 8.** Section 3-7-102, MCA, is amended to read:

15 **"3-7-102. Water divisions court division boundaries.** There are four water court divisions whose
16 boundaries are formed by the natural divides between drainages and the borders of the state of Montana and
17 which are described as follows:

18 (1) The Yellowstone River basin water division consists of those areas drained by the Yellowstone
19 and Little Missouri Rivers and any remaining areas in Carter County.

20 (2) The lower Missouri River basin water division consists of those areas drained by the Missouri
21 River from below the mouth of the Marias River and any remaining areas in Glacier and Sheridan Counties.

22 (3) The upper Missouri River basin water division consists of those areas drained by the Missouri
23 River to below the mouth of the Marias River.

24 (4) The Clark Fork River basin water division consists of the areas drained by the Clark Fork River,
25 the Kootenai River, and any remaining areas in Lincoln County."

26

27 **Section 9.** Section 3-7-103, MCA, is amended to read:

28 **"3-7-103. Promulgation of rules and prescription of forms -- advisory committee.** (1) As soon as

1 expenses" as used in this section include but are not limited to the salaries and expenses of personnel, the cost
2 of office equipment and office space, and other necessary expenses that may be incurred in the administration
3 of this chapter and Title 85, chapter 2, part 2.

4 (3) A water judge must receive the same salary and expense allowance as provided for a district
5 court judge pursuant to 3-5-211.

6 (4) The office of the water court, as described in 3-7-223, must be at a location designated by the
7 chief justice of the Montana supreme court. "

8

9 **Section 15.** Section 3-7-211, MCA, is amended to read:

10 **"3-7-211. Appointment of water commissioners.** (1) Except as provided in 85-20-1902 and [section
11 1], the district court having jurisdiction over the hydrologically interrelated portion of a water division, as
12 described in 85-2-231(3), water judge having jurisdiction over a water division in which the controversy arises
13 may appoint and supervise a water commissioner as provided for in Title 85, chapter 5.

14 (2) A water judge having jurisdiction over a water division in which the judicial district is situated
15 may-shall transfer a petition for a water commissioner under Title 85, chapter 5, to the appropriate district court
16 judge, who shall sit as a substitute water division judge in the matter, if the petition:

17 (a) seeks the appointment of a water commissioner that would act wholly within a single judicial
18 district; and

19 (b) requests that the district court judge appoint and supervise the water commissioner; and

20 (c) the requested district court judge is within a judicial district located in a hydrologically
21 interrelated portion of the water division, as described in 85-5-231(3), in which the controversy arises. "

22

23 **Section 16.** Section 3-7-212, MCA, is amended to read:

24 **"3-7-212. Enforcement of decrees.** The district water court judge having jurisdiction may over a
25 water division shall WATER COURT HAS JURISDICTION TO enforce the provisions of a final decree within that water
26 division. In the absence of any final decree having been issued, the district water court judge having jurisdiction
27 over the water division may WATER COURT HAS JURISDICTION TO enforce the provisions of a temporary preliminary
28 decree, preliminary decree, or supplemental preliminary decree entered under 85-2-231, as modified by a water

1 basins or subbasins as provided in 85-2-319."

2

3 **Section 27.** Section 85-2-114, MCA, is amended to read:

4 **"85-2-114. Judicial enforcement.** (1) If the department ascertains, by a means reasonably
5 considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving
6 to another person having a prior right to use the water, or violating a provision of this chapter, it may petition the
7 district court supervising the distribution of water among appropriators from the source water court to:

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

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

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

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

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

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

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

28 (6) When enforcing the provisions of this section, the department, the county attorney, and the

1 attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water
2 right, a certificate, a permit, or a state water reservation.

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

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

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

11 (10) Pursuant to [section 1], a petition filed under this section may include a request to transfer the
12 action to a district court judge."

13

14 **Section 28.** Section 85-2-122, MCA, is amended to read:

15 **"85-2-122. Penalties.** (1) Except as provided in 85-2-410(6), a person who violates or refuses or
16 neglects to comply with the provisions of 85-2-114, any order of the department, or any rule of the department
17 is subject to a civil penalty not to exceed \$1,000 per violation. Each day of violation constitutes a separate
18 violation.

19 (2) Except as provided in subsection (3), fines collected under subsection (1) by the department, ~~or~~
20 ~~a district-the water~~ court, under subsection (1) or a district court pursuant to [section 1] must be deposited in the
21 account established in 85-2-318 for use by the department in the enforcement of 85-2-114.

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

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

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

27

28 **Section 29.** Section 85-2-123, MCA, is amended to read:

1 more than one objection is filed to an application. The department may extend the 90-day deadline for good
2 cause shown or upon request of the applicant and all objectors. The department shall file in its records proof of
3 the service by affidavit of the department.

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

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

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

13 (3) Subsection (2) does not apply in the case of a matter considered at a hearing under this
14 section pursuant to 85-2-316 or 85-2-322."
15

16 **Section 33.** Section 85-2-313, MCA, is amended to read:

17 **"85-2-313. Provisional permit permits and change authorizations CHANGES IN APPROPRIATION**
18 **RIGHTS -- PETITIONS AFTER FINAL DECREE.** (1) A permit or change in appropriation right issued prior to a final
19 determination of existing water rights pursuant to 85-2-234 is provisional and is subject to that final
20 ~~determination~~ final decree. ~~Upon~~On a petition pursuant to 85-2-314(2) SUBSECTION (2), the amount of the
21 appropriation granted in a provisional permit or change in appropriation right must be reduced, modified, or
22 revoked by the department following a show cause hearing in which it is determined that reduction,
23 modification, or revocation is necessary to protect and guarantee existing water rights determined in the final
24 decree. Because a provisional permit is issued on a reasonable determination of legal availability under 85-2-
25 311(1)(b), in a show cause hearing under this section, legal availability must be determined on a consideration
26 of the final decree in the affected basin or subbasin. A person may not obtain any vested right to an
27 appropriation obtained under a provisional permit or change in appropriation right by virtue of construction of
28 diversion works, purchase of equipment to apply water, planting of crops, or other action by the person where

1 the permit or change in appropriation right would have been denied or modified if the final decree had been
2 available to the department.

3 (2) (A) A PERSON HAS STANDING TO FILE A PETITION UNDER THIS SECTION IF A WATER RIGHT OF THE
4 PETITIONER IS ADVERSELY AFFECTED BY THE PERMIT OR CHANGE IN APPROPRIATION RIGHT AUTHORIZED PRIOR TO THE
5 FINAL DECREE.

6 (B) ~~A~~ Except as provided in subsection (2)(c), a CORRECT AND COMPLETE PETITION MUST BE
7 SUBMITTED ON A FORM DESIGNATED BY THE DEPARTMENT WITHIN 120 DAYS AFTER THE ISSUANCE OF THE FINAL DECREE
8 FOR THE BASIN OR SUBBASIN IN WHICH THE PERMIT OR CHANGE IN APPROPRIATION RIGHT IS LOCATED.

9 (c) In basins for which a water judge has entered a final decree pursuant to 85-2-234 prior to [the
10 effective date of this act], a correct and complete petition must be submitted on a form designated by the
11 department within 120 days after [the effective date of this act].

12 (c)(d) THE DEPARTMENT SHALL PROVIDE WRITTEN NOTICE OF ITS DETERMINATION CONCERNING THE
13 PETITION TO THE PETITIONER AND THE PERMITTEE OR HOLDER OF THE CHANGE IN APPROPRIATION RIGHT SUBJECT TO
14 THE PETITION. WITHIN 30 DAYS OF THE NOTICE, THE PETITIONER OR THE PERMITTEE OR HOLDER OF THE CHANGE IN
15 APPROPRIATION RIGHT MAY REQUEST A HEARING TO SHOW CAUSE BY A PREPONDERANCE OF EVIDENCE AS TO WHY THE
16 PROPOSED ACTION SHOULD NOT BE TAKEN. IF A REQUEST FOR A SHOW CAUSE HEARING IS NOT REQUESTED, THE
17 DETERMINATION BECOMES FINAL."

18

19 **Section 34.** Section 85-2-314, MCA, is amended to read:

20 **"85-2-314. Revocation or modification of permit or change in appropriation right.** (1) (a) If the
21 work on an appropriation or change in appropriation right is not commenced, prosecuted, or completed within
22 the time stated in the permit or an extension of the time stated in the permit, if the water is not being applied to
23 the beneficial use contemplated in the permit or change in appropriation right, if the permit or change in
24 appropriation right would have been denied or modified had the final decree been available to the department,
25 or if the permit or change in appropriation right is otherwise not being followed, the department may, after
26 notice, require the permittee or the holder of the change in appropriation right to show cause why the permit or
27 change in appropriation right should not be modified or revoked.

28 (b) If the permittee or holder of the change in appropriation right fails to show sufficient cause, the

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Section 37. Section 85-2-406, MCA, is amended to read:

"85-2-406. District Water court supervision of water distribution. (1) The water court shall retain jurisdiction over the administration and enforcement of any final judgment or decree issued by the water court, including those pursuant to Title 85, chapter 20, consistent with the provisions of those compacts. The district ~~courts~~ water court or a district court judge pursuant to [section 1] shall supervise the distribution of water among all appropriators. This supervisory authority includes the supervision of all water commissioners ~~appointed prior or subsequent to July 1, 1973.~~ The supervision must be governed by the principle that first in time is first in right.

(2) (a) ~~A district~~ The water court or a district court judge pursuant to [section 1] may order the distribution of water pursuant to ~~a district court decree entered prior to July 1, 1973, until an enforceable decree is entered under part 2 of this chapter or the matter has been adjudicated under the procedure set forth in subsection (2)(b).~~ the terms of the governing decree and by the terms of an applicable certificate of water right, permit, state water reservation, compact, or change in appropriation right. A decree entered prior to July 1, 1973, is enforceable:

(i) ~~for the valid claims filed pursuant to 85-2-221 that are based on an existing right contained in the decree;~~

(ii) ~~until an enforceable decree is entered under part 2 of this chapter; or~~

(iii) ~~until the existing rights have been adjudicated under the procedure set forth in subsections (2)(b), (3), or (4)~~ FOR A VALID CLAIM FILED PURSUANT TO 85-2-221 THAT IS BASED ON AN EXISTING RIGHT CONTAINED IN THE DECREE UNTIL AN ENFORCEABLE DECREE IS ENTERED UNDER PART 2 OF THIS CHAPTER OR UNTIL THE EXISTING RIGHTS HAVE BEEN ADJUDICATED UNDER THE PROCEDURE SET FORTH IN SUBSECTIONS (2)(B), (3), OR (4).

(b) (i) ~~When a water distribution controversy arises upon on~~ When a water distribution controversy arises upon a source of water in which not all existing rights have been conclusively determined according to part 2 of this chapter, any party to the controversy may petition ~~the district court to certify the matter to the chief water judge. If a certification request is made, the district court shall certify to the chief water judge~~ the water court for a determination of for the water court to determine the existing rights that are involved in the controversy according to part 2 of this chapter.

1 (ii) ~~The district court from which relief is sought presiding water judge~~ or a district court judge
2 pursuant to [section 1] shall retain exclusive jurisdiction to grant injunctive or other relief that is necessary and
3 appropriate pending adjudication of the existing water rights certified to the water judge. ~~Certified controversies~~

4 (iii) ~~Controversies arising under this subsection (2)(b)~~ must be given priority over all other
5 adjudication matters.

6 (iv) ~~After determination of the matters certified, the water judge shall return the decision to the~~
7 ~~district court~~ issue a decision with a tabulation or list of the existing rights and their relative priorities that are
8 subject to the water distribution controversy.

9 (3) A controversy between appropriators ~~from a source concerning a water right~~ that has been the
10 subject of a final decree under part 2 of this chapter must be settled by the ~~district court~~ water judge presiding
11 over the water division or a district court judge pursuant to [section 1]. The order of the ~~district court~~ water judge
12 or a district court judge pursuant to [section 1] settling the controversy may not alter the ~~existing rights and~~
13 ~~priorities established in the final decree~~ water rights except to the extent the court alters rights based upon ~~on~~
14 abandonment, waste, or illegal enlargement or change of right. ~~In cases involving permits issued by the~~
15 ~~department, the court may not amend the respective rights established in the permits or alter any terms of the~~
16 ~~permits unless the permits are inconsistent or interfere with rights and priorities established in the final decree.~~
17 The order settling the controversy must be ~~appended to the final decree, and a copy must be filed with the~~
18 ~~department~~ include an order to the department to update its centralized records system for an altered water
19 right. The department must be served with process in any proceeding under this subsection, and the
20 department may, in its discretion, intervene in the proceeding.

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

27 (5) A person whose existing rights and priorities are determined in a temporary preliminary decree
28 or preliminary decree or a person exercising a suspension under 85-2-217 and part 7 of this chapter may

1 appeal a determination made pursuant to subsection (2)."

2

3 **Section 38.** Section 85-5-101, MCA, is amended to read:

4 **"85-5-101. Appointment of water commissioners.** (1) (a) Whenever the rights of persons to use the
5 waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply
6 have been determined by a decree of a court of competent jurisdiction, including temporary preliminary,
7 preliminary, and final decrees issued by a water judge, it is the duty of the ~~judge of the district court having~~
8 ~~jurisdiction of the subject matter~~ water judge having jurisdiction, ~~upon~~ on the application of the owners of at
9 least 15% of the water rights affected by the decree or at least 15% of the flow rate of the water rights affected
10 by the decree and after notice of the application and an opportunity to comment by all water right holders
11 subject to enforcement under the application, in the exercise of the judge's discretion, to appoint one or more
12 commissioners.

13 (b) The commissioners have authority to admeasure and distribute to the parties owning water
14 rights in the source affected by the decree the waters to which they are entitled, according to their rights as
15 fixed by the decree and by any certificates, permits, and changes in appropriation right issued under chapter 2
16 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners
17 of at least 15% of the water rights affected or at least 15% of the flow rate of the water rights affected and they
18 are unable to obtain the water to which they are entitled, the ~~judge of the district court~~ water judge of the water
19 division having jurisdiction may appoint a water commissioner.

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

26 (3) The department of natural resources and conservation or any person or corporation operating
27 under contract with the department or any other owner of stored waters may petition the ~~court~~ water judge
28 having jurisdiction to have stored waters distributed by the water commissioners appointed by the ~~district~~ water

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

3 ~~(4)~~ Pursuant to 3-7-211 and [section 1], a water judge having jurisdiction over a water
4 commissioner appointment made under this chapter may appoint a district court judge to preside as ~~the~~ a
5 substitute water judge supervising the water commissioner.

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

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

23 ~~(6)(7)~~ A water commissioner appointed by a ~~district-water~~ court is not an employee of the judicial
24 branch, a local government, or a water user.

25 ~~(7)(8)~~ A water commissioner who fails to obtain workers' compensation insurance coverage required
26 by subsection ~~(4)-(5)~~ is precluded from receiving benefits under Title 39, chapter 71, as a result of the
27 performance of duties as a water commissioner."
28

1 **Section 39.** Section 85-5-102, MCA, is amended to read:

2 "**85-5-102. Appointment of chief commissioner.** When the judge of the district court a water judge
3 or a district court judge pursuant to [section 1] appoints two or more commissioners to admeasure and
4 distribute the waters mentioned in 85-5-101, the water judge may appoint one of them as chief commissioner
5 and empower the chief commissioner to exercise direction and control over the other commissioners in the
6 discharge of their duties. The water judge may depose the person appointed as chief commissioner from that
7 position and appoint another as chief commissioner whenever it appears to the judge that better service may be
8 given to the water users by making the change."

10 **Section 40.** Section 85-5-103, MCA, is amended to read:

11 "**85-5-103. Oath and bond.** ~~Each water commissioner appointed by the water court shall subscribe~~
12 ~~and file with the clerk of the district court water court administrator an oath of office before commencing the~~
13 ~~discharge of duties as commissioner and shall file with the clerk water court administrator a bond executed by~~
14 ~~the commissioner, with two or more sureties, in a sum that the judge of the court water judge may designate, to~~
15 ~~ensure the faithful discharge of the commissioner's duties~~ BEFORE COMMENCING THE DISCHARGE OF DUTIES AS
16 COMMISSIONER, EACH WATER COMMISSIONER APPOINTED BY THE WATER JUDGE or a district court judge pursuant to
17 [section 1] SHALL FILE WITH THE CLERK OF THE DISTRICT COURT OR WATER COURT ADMINISTRATOR, AS DIRECTED BY
18 THE WATER JUDGE:

- 19 (1) AN OATH OF OFFICE SUBSCRIBED BY THE COMMISSIONER; AND
- 20 (2) A BOND EXECUTED BY THE COMMISSIONER, WITH TWO OR MORE SURETIES, IN A SUM THAT THE WATER
21 JUDGE MAY DESIGNATE, TO ENSURE THE FAITHFUL DISCHARGE OF THE COMMISSIONER'S DUTIES."

23 ~~**Section 40.** Section 85-5-104, MCA, is amended to read:~~

24 ~~"**85-5-104. Term of office.** A water commissioner holds office for the time during the irrigation season~~
25 ~~of each year that may be designated by the water judge in the order making the appointment. The water judge~~
26 ~~may fix the date of the commencement of the term and may, in in the judge's discretion or when requested in~~
27 ~~writing by at least three persons entitled to the use of the waters, change the term for closing of the~~
28 ~~commissioner's service."~~

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Section 41. Section 85-5-106, MCA, is amended to read:

"85-5-106. Maintenance and repair of ditches or systems. ~~Upon~~On written request of the owners of at least 51% of the water rights in any adjudicated ditch or single water system, the water judge ~~of the district court~~ may empower the commissioner to maintain and keep in reasonable repair ~~such~~the water ditch or water system at the expense of the owners thereof, and for ~~such~~these purposes the commissioner shall have authority to enter and work ~~upon~~on any ditch, canal, aqueduct, or other source of conveying the waters affected by the decree and the right-of-way thereof and to visit, inspect, and adjust all headgates or other means of distribution of ~~such~~the waters. A petition filed under this section may request to transfer the action to a district court judge pursuant to [section 1]."

Section 42. Section 85-5-107, MCA, is amended to read:

"85-5-107. Record of distribution of water. (1) Each water commissioner shall keep a daily record, unless a different recording schedule is ordered by the ~~district water judge~~ or a district court judge pursuant to [section 1], of the amount of water distributed to each water user and shall file a summary of the record with the ~~clerk of the court~~ water court administrator CLERK OF THE DISTRICT COURT OR WATER COURT ADMINISTRATOR, AS DIRECTED BY THE WATER JUDGE, monthly or seasonally, at the discretion of the ~~district water judge~~ water judge during the judge's term of service. The report must show in detail the total amount of water distributed to each water user during the month or the season and the cost of distributing the water, based ~~upon~~on the water commissioner's or commissioners' daily salary, other costs of the water commissioner or commissioners approved by the ~~district water judge~~ water judge, and the proportionate amount of water distributed. When two or more water commissioners serve under the same decree or decrees by order of the water judge, they may file a joint summary of their records with the ~~clerk of the court~~ water court administrator THE CLERK OF THE DISTRICT COURT OR WATER COURT ADMINISTRATOR, AS DIRECTED BY THE WATER JUDGE, or the chief commissioner, if one has been appointed by the water judge, may file a summary on behalf of all of them.

(2) If the ~~district water~~ court judge or a district court judge pursuant to [section 1] determines that it is necessary to establish a billing cycle prior to a distribution season, as provided in 85-5-204, the report or reports must serve as the basis for the amounts billed."

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Section 43. Section 85-5-108, MCA, is amended to read:

"85-5-108. Authority and arrest power. For the purposes of carrying out the provisions of Title 85, chapter 5, parts 1 through 3, each commissioner appointed by the water court or a district court judge pursuant to [section 1] has the authority to enter upon any ditch, canal, aqueduct, or other source for conveying the waters affected by the decree and to visit, inspect, and adjust all headgates or other means of distributing the waters and has the same powers as a sheriff or constable to arrest any person interfering with the distribution made by the commissioner, to be dealt with according to law."

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

"85-5-109. Failure to perform duty as contempt of court. If a commissioner fails to perform any of the duties imposed ~~upon~~on the commissioner by the order of the ~~judge of the district~~water court or a district court judge pursuant to [section 1], the commissioner is guilty of contempt of court."

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

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

- (a) ~~upon~~on request of the governor;
 - (b) ~~upon~~on petition by at least 15% of the owners of water rights in a decreed or nondecreed basin; or
 - (c) in the discretion of the ~~district court~~water judge or a district court judge pursuant to [section 1] having jurisdiction.
- (2) A water mediator appointed under this section may:
- (a) discuss proposed solutions to a water controversy with affected water right holders;
 - (b) review options related to scheduling and coordinating water use with affected water right holders;
 - (c) discuss water use and water needs with persons and entities affected by the existing water

1 use;

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

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

5 (3) If the governor requests or a state agency petitions for a water mediator, the governor or
6 agency shall pay all or a majority of the costs of the water mediator as determined equitable by the ~~district court~~
7 water judge having jurisdiction.

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

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

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

16

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

18 **"85-5-111. Water commissioner and mediator education.** (1) The department of natural resources
19 and conservation, in cooperation with the Montana supreme court, the Montana water courts, ~~the district courts~~
20 ~~of Montana~~, the Montana university system, and other appropriate state, tribal, and federal agencies, shall
21 develop an educational program for water commissioners and mediators that includes:

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

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

25 (c) an outreach program that identifies persons who might serve as water commissioners or
26 mediators.

27 (2) Unless a ~~district court~~ water judge or a district court judge pursuant to [section 1] having
28 jurisdiction determines otherwise, a water commissioner appointed pursuant to 85-5-101 shall complete at least

1 one educational program as provided in subsection (1) prior to administering water."

2

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

4 **"85-5-201. Distribution of water and related expenses.** (1) Each water commissioner appointed by
5 the water judge of the ~~district court~~ appropriate water division or a district court judge pursuant to [section 1] for
6 the purpose of distributing water has the authority to determine the appropriate quantity and distribute to the
7 parties interested, under a decree, permit, certificate, or change in appropriation right, the water to which those
8 who are parties to the decree or holders of a permit, certificate, or change in appropriation right, or privy to a
9 permit, certificate, or change in appropriation right, are entitled, according to their priority as established by the
10 decree, permit, certificate, or change in appropriation right.

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

17 (3) (a) At the ~~district water~~ court's or, pursuant to [section 1], a district court judge's discretion, a
18 water commissioner may bill water users prior to the beginning of a distribution season for the purpose of
19 offsetting costs associated with distributing water and water commissioner duties by submitting the information
20 necessary for the billing to the water court administrator or clerk of the district court, as directed by the water
21 judge. A billing issued prior to the beginning of a distribution season:

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

26 (b) ~~Upon~~ On receipt of the information from the water commissioner and as directed by the water
27 judge, the water court administrator or clerk of district court shall proceed as provided in 85-5-204."

28

1 **Section 48.** Section 85-5-202, MCA, is amended to read:

2 **"85-5-202. Repair expenses.** The water judge or a district court judge pursuant to [section 1] may
3 allow as a charge any expenses necessarily incurred by the water commissioner in the discharge of duties in
4 the employment of extra labor for the repair of dams, headgates, ditches, or flumes when immediate action is
5 necessary to preserve the rights of the parties entitled to the waters of a stream or when the water judge has, in
6 the order appointing the commissioner, required the commissioner to repair ditches and keep in repair
7 necessary headgates, ditches, or flumes. The water commissioner shall report all expenses, and the cost must
8 be taxed against the party or parties for whose benefit the expenses were incurred. In the discretion of the
9 court, the costs or expenses may be assessed against the land ~~upon~~on which or for the benefit of which the
10 expense had been incurred."
11

12 **Section 49.** Section 85-5-203, MCA, is amended to read:

13 **"85-5-203. Telephone expenses.** The water judge or a district court judge pursuant to [section 1]
14 may also allow as a charge reasonable expenses incurred by a water commissioner in telephoning to the water
15 judge for instructions in cases of emergency. When there are two or more commissioners acting under the
16 water judge's order, reasonable expenses incurred in communicating with each by telephone or with the water
17 judge ~~of the district court~~, in order to carry on the distribution of the waters harmoniously and in accordance with
18 the decree, shall be deemed a necessary expense. These expenses ~~shall~~must be reported by the water
19 commissioner or commissioners at the close of the season and ~~shall~~must be taxed against all the water users
20 affected by the decree or decrees ratably in proportion to the whole amount of water distributed to them during
21 the season."
22

23 **Section 50.** Section 85-5-204, MCA, is amended to read:

24 **"85-5-204. Apportionment of fees and expenses.** (1) ~~Upon~~On the filing of the report by the water
25 commissioner or water commissioners, the ~~clerk of court~~ water court administrator CLERK OF THE DISTRICT COURT
26 OR WATER COURT ADMINISTRATOR, AS DIRECTED BY THE WATER JUDGE or a district court judge pursuant to [section
27 1], shall notify by letter each person mentioned in the report:

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

1 (b) that objections to the report and the amount taxed against the water user may be made by any
2 person interested in the report or the amount assessed against the water user within 20 days after the date of
3 the mailing of the notice; and

4 (c) that, unless objections are filed, an order will be made by the water judge of the district court
5 finally fixing and determining the amount due from each of the water users.

6 (2) The affidavit of the ~~clerk~~ water court administrator that the ~~clerk~~ administrator has mailed a
7 notice to each person mentioned in the report at the person's last-known post-office address, in the usual
8 manner, must be considered prima facie evidence that the person received the notice provided for in this
9 section.

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

15 (4) If the cost of distributing water during a distribution season is less than the amount that was
16 collected through a bill issued prior to a distribution season, the water commissioner shall refund the money to
17 the water user based on the amount of water that the water user received during the distribution season. The
18 water commissioner shall submit a refund report, along with proof that any refunds were issued, to the clerk of
19 the district court or ~~clerk of district court~~ water court administrator for filing."

21 **Section 51.** Section 85-5-205, MCA, is amended to read:

22 **"85-5-205. Objections to expenses -- hearing.** At the expiration of the 20 days' notice, as provided
23 for in the preceding section, if objections to ~~said~~ the report have been filed or a motion to retax the same has
24 been made, the ~~court or~~ water judge or a district court judge pursuant to [section 1] shall fix a time for the
25 hearing of ~~such~~ the objections or motion to retax, ~~which~~ and the time of hearing shall must be as soon as the
26 water judge ~~or a court~~ can conveniently hear the same. Any person objecting to ~~said~~ the report shall be entitled
27 to at least 5 days' notice of the date and time of ~~such~~ the hearing. At ~~such~~ the hearing the ~~court or~~ water judge
28 shall hear and determine the motion or objections and shall make an order fixing and determining the amount

1 found due from each of said ~~the~~ water users to such ~~the~~ commissioner or commissioners. In case no objections
2 are filed within the 20 days, ~~as hereinbefore provided for pursuant to this section~~, such ~~the~~ order shall ~~must~~ be
3 made as a matter of course, and in either case said ~~the~~ order shall ~~must~~ be ~~the~~ final determination of the
4 matter."

5

6 **Section 52.** Section 85-5-206, MCA, is amended to read:

7 **"85-5-206. Effect of order fixing fees.** After the order of the water court or a district court judge
8 pursuant to [section 1] fixing the fees and compensation and expenses of the water commissioner is final, the
9 order has the force and effect of a judgment against the person to whom the water was or will be distributed
10 and for whose benefit it was used or will be used. When the expenses of a commissioner or commissioners has
11 been assessed against the land for which the service of the commissioner or commissioners has been
12 rendered, the assessment is a lien against the land. The lien has the same effect as a judgment. The lien may
13 be executed in the same manner as a judgment ~~upon~~ on order of the water court. The water commissioner, at
14 the water commissioner's discretion, may withhold further determinations of quantity or distribution of water to
15 any person entitled to the water until the person has paid all fees, compensation, and expenses of the water
16 commissioner or commissioners fixed by the water court and apportioned and charged to the person, including
17 bills sent prior to the beginning of a distribution season. The commissioner may withhold the determination of
18 quantity and distribution of water from any land against which there exists any lien that is the result of lack of
19 payment pursuant to this section until the lien has been fully discharged."

20

21 **Section 53.** Section 85-5-301, MCA, is amended to read:

22 **"85-5-301. Complaint by dissatisfied user.** (1) A person owning or using any of the waters of the
23 stream or ditch or extension of the ditch who is dissatisfied with the method of distribution of the waters of the
24 stream or ditch by the water commissioner or water commissioners and who claims to be entitled to more water
25 than the person is receiving or to a right prior to that allowed the person by the water commissioner or water
26 commissioners may file a written complaint, duly verified, setting forth the facts of the claim to the appropriate
27 water division.

28 (2) ~~Upon~~ On receipt of the complaint, the chief water judge shall assign the complaint to a judge

1 ~~who is not supervising the water commission against whom the complaint is filed.~~ The assigned judge shall
2 fix a time for the hearing of the petition and shall direct that notice be given to the parties interested in the
3 hearing as the water judge considers necessary. At the time fixed for the hearing, the water judge shall hear
4 and examine the complainant and other parties who appear to support or resist the claim and examine the
5 water commissioner or water commissioners and witnesses regarding the charges contained in the complaint.

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

11 (4) The water judge may remove any water commissioner and appoint a new water commissioner
12 if the water judge determines that the interests of the parties in the waters mentioned in the decree, permit,
13 certificate, or change in appropriation right will be best served by appointing a new water commissioner. If it
14 appears to the water judge that the water commissioner has willfully failed to perform the water commissioner's
15 duties, the water commissioner may be proceeded against for contempt of court, as provided in contempt
16 cases. The water judge shall make an order regarding the payment of costs of the hearing that the water judge
17 determines is just and proper."
18

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

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

1 owners were adjudicated. A petition filed under this section may include a request to transfer the action to a
2 district court judge pursuant to [section 1]."

3
4 NEW SECTION. Section 55. Repealer. The following sections of the Montana Code Annotated are
5 repealed:

6 3-7-222. Salary -- office space.

7 3-7-225. (Temporary) Duties of associate water judge.

8
9 NEW SECTION. Section 56. Notification to tribal governments. The secretary of state shall send a
10 copy of [this act] to each federally recognized tribal government in Montana.

11
12 NEW SECTION. Section 57. TRANSITION. IN ORDER TO STAGGER THE TERMS OF WATER COURT JUDGES
13 AND TO END INITIAL TERMS CONSISTENTLY WITH 3-5-203, THE INITIAL TERM OF A WATER JUDGE MAY BE LESS THAN 6
14 YEARS AT THE DISCRETION OF THE APPOINTING OFFICIAL.

15
16 NEW SECTION. Section 58. Codification instruction. (1) ~~[Section 5]~~[Section 6] is intended to be
17 codified as an integral part of Title 3, chapter 7, and the provisions of Title 3, chapter 7, apply to [section ~~56~~].

18 (2) ~~[Section 9]~~[Section 10] is intended to be codified as an integral part of Title 3, chapter 7, part 1,
19 and the provisions of Title 3, chapter 7, part 1, apply to [section ~~910~~].

20
21 NEW SECTION. Section 59. Effective ~~dates~~ date. ~~(1) Except as provided in subsection (2), [this act]~~
22 [This act] is effective on passage and approval.

23 ~~(2) [Section 33] [SECTION 32] is effective 120 days after [the effective date provided in subsection~~
24 ~~(1)] in basins that FOR WHICH a water judge has entered a final decree pursuant to 85-2-234.~~

25 - END -