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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 filed in the district court for the county where the petitioner resides or has the petitioner's principal place of  
2 business or where the agency maintains its principal office. Copies of the petition must be promptly served  
3 upon the agency and all parties of record.

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

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

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

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

20 (ii) ~~If more than one party 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, the district court where the appropriation right is~~  
22 ~~located has jurisdiction. If more than one aggrieved party files a petition but no aggrieved party files a petition in~~  
23 ~~the district court where the appropriation right is located, the first judicial district, Lewis and Clark County, has~~  
24 ~~jurisdiction.~~

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

27 (3) Unless otherwise provided by statute, the filing of the petition may not stay enforcement of the  
28 agency's decision. The agency may grant or the reviewing court may order a stay upon terms that it considers

1 proper, following notice to the affected parties and an opportunity for hearing. A stay may be issued without  
2 notice only if the provisions of 27-19-315 through 27-19-317 are met.

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

9 **2-4-702. (Effective October 1, 2025) Initiating judicial review of contested cases.** (1) (a) Except  
10 as provided in 75-2-213 and 75-20-223, a person who has exhausted all administrative remedies available  
11 within the agency and who is aggrieved by a final written decision in a contested case is entitled to judicial  
12 review under this chapter. This section does not limit use of or the scope of judicial review available under other  
13 means of review, redress, relief, or trial de novo provided by statute.

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

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

25 (b) ~~The petition must include a concise statement of the facts upon which jurisdiction and venue are~~  
26 ~~based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in 2-~~  
27 ~~4-704(2) upon which the petitioner contends to be entitled to relief. The petition must demand the relief to which~~  
28 ~~the petitioner believes the petitioner is entitled, and the demand for relief may be in the alternative.~~

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

4 (d) ~~If a petition for review is filed challenging a licensing or permitting decision made pursuant to Title~~  
5 ~~75 or Title 82, the petition for review must be filed in the county where the facility is located or proposed to be~~  
6 ~~located or where the action is proposed to occur.~~

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

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

16

17 **Section 3.** Section 3-1-101, MCA, is amended to read:

18 **"3-1-101. The several courts of this state.** The following are courts of justice of this state:

19 (1) the court of impeachment, which is the senate;

20 (2) the supreme court;

21 (3) the district courts;

22 (4) the municipal courts;

23 (5) the justices' courts;

24 (6) the water court; and

25 (6)(7) the city courts and such other courts of limited jurisdiction as the legislature may establish in  
26 any incorporated city or town."

27

28 **Section 4.** Section 3-1-901, MCA, is amended to read:

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 practicable the Montana supreme court may promulgate special rules of practice and procedure and shall  
2 prescribe forms for use in connection with this chapter with 3-7-101(1) and Title 85, chapter 2, parts 2 and 7, in  
3 consultation with the chief water judge and the department of natural resources and conservation.

4 (2) (a) The chief water judge shall appoint a water adjudication advisory committee to provide  
5 recommendations to the water court, the Montana supreme court, the department of natural resources and  
6 conservation, and the legislature on methods to improve and expedite the water adjudication process.

7 (b) The committee consists of three nongovernmental attorneys who practice before the water  
8 court, one district court judge, and three water users who have filed statements of claim with the department of  
9 natural resources and conservation under this chapter.

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

14 (d) The committee members shall serve at the pleasure of the water court and shall serve without  
15 compensation.

16 (e) The committee shall file a report with the Montana supreme court by ~~October 1, 1996, and as~~  
17 often as determined by the Montana supreme court."  
18

19 **NEW SECTION. Section 10. Venue for water rights determinations.** All matters under 3-7-101(2)  
20 through (16) must be brought before or immediately transferred to the water judge in the appropriate water  
21 division. Any proceedings for matters arising under 3-7-101(2) through (16) must be conducted within the water  
22 division or county in which the controversy arises unless otherwise determined by mutual agreement of the  
23 parties.  
24

25 **Section 11.** Section 3-7-201, MCA, is amended to read:

26 **"3-7-201. Designation of water judge.** (1) A water judge must be designated for each water division  
27 ~~by a majority vote of a committee composed of the district court judge from each single judge judicial district~~  
28 ~~and the chief district judge from each multijudge judicial district, wholly or partly within the division. Except as~~

1 provided in subsection (2), a water judge must be a district court judge or retired district court judge of a judicial  
2 district wholly or partly within the water division subject to the terms of office in 3-7-221.

3 (2) A district court judge, ~~or retired district court judge,~~ retired water judge, or water judge  
4 appointed to another water division may sit as a substitute water judge in more than one division if requested by  
5 the chief justice of the supreme court or the water judge of the division in which the judge is requested to sit. A  
6 substitute water judge has the same powers as a water judge appointed pursuant to 3-7-221.

7 (3) A water judge, when presiding over a water division, ~~presides as~~ asthe duties and powers of a  
8 district court judge in and for each judicial district wholly or partly within the water division, including the ability  
9 to appoint a judge pro tempore and standing masters pursuant to Title 3, chapter 5, part 1."

10  
11 **Section 12.** Section 3-7-202, MCA, is amended to read:

12 **"3-7-202. Term of office.** ~~The On a retention election pursuant to 13-14-212 PURSUANT TO 3-5-203,~~  
13 the term of office for water judges is from the date of initial appointment as provided in 3-7-201 to June 30,  
14 1985. After June 30, 1985, the term of office of a water judge is 4 years, subject to continuation of the water  
15 divisions by the legislature a water judge is 6 years."

16  
17 **Section 13.** Section 3-7-203, MCA, is amended to read:

18 **"3-7-203. Vacancies.** (1) If a vacancy in the office of water judge occurs, it must be filled in the  
19 manner provided in 3-7-201 for the initial designation of a water judge ~~3-1-901 TITLE 3, CHAPTER 1, PART 9.~~

20 (2) ~~(A)The senate shall confirm each appointment made pursuant to 3-1-901 and 3-1-905 AN~~  
21 APPOINTMENT OF A WATER JUDGE IS SUBJECT TO SENATE CONFIRMATION AT THE NEXT REGULAR LEGISLATIVE SESSION,  
22 EXCEPT FOR AN APPOINTMENT MADE WHILE THE LEGISLATURE IS NOT IN REGULAR SESSION, FOR WHICH THE  
23 APPOINTMENT EXPIRES PRIOR TO THE NEXT REGULAR LEGISLATIVE SESSION.

24 (B) An appointment made while the senate is not in session is effective until the end of the next  
25 legislative session.

26 (3) Except in basins that contain existing water rights pursuant to Title 85, chapter 20, part 10,  
27 prior to the issuance of final decrees in all basins pursuant to 85-2-234 and 85-2-235, and after the appointment  
28 and confirmation of a water judge, that water judge is subject to a statewide retention election pursuant to 13-

1 ~~14- 212 to be held on the next general election day in an even-numbered year. PRIOR TO THE ISSUANCE OF FINAL~~  
 2 ~~DECREES IN ALL BASINS PURSUANT TO 85-2-234 AND 85-2-235, EXCEPT IN BASINS THAT CONTAIN EXISTING WATER~~  
 3 ~~RIGHTS PURSUANT TO TITLE 85, CHAPTER 20, PART 10, AND AFTER APPOINTMENT BY THE GOVERNOR AND~~  
 4 ~~CONFIRMATION BY THE SENATE OF A WATER JUDGE, AT THE END OF THE WATER JUDGE'S TERM THE JUDGE MUST BE AN~~  
 5 ~~UNOPOSED INCUMBENT CANDIDATE IN A STATEWIDE RETENTION ELECTION. THE BALLOT MUST FOLLOW THE FORM~~  
 6 ~~PROVIDED IN 13-14-212. THE ELECTION MUST BE HELD ON THE NEXT GENERAL ELECTION DAY IN AN EVEN-NUMBERED~~  
 7 ~~YEAR.~~

8 (4) ~~Except in basins that contain existing water rights pursuant to Title 85, chapter 20, part 10,~~  
 9 ~~prior to the issuance of final decrees in all basins pursuant to 85-2-234 and 85-2-235, and after the appointment~~  
 10 ~~and confirmation of a water judge, that water judge is subject to a retention election pursuant to 13-14-212 to be~~  
 11 ~~held on the next general election day in an even-numbered year within the assigned water division. AFTER THE~~  
 12 ~~ISSUANCE OF FINAL DECREES IN BASINS PURSUANT TO 85-2-234 AND 85-2-235, EXCEPT IN BASINS THAT CONTAIN~~  
 13 ~~EXISTING WATER RIGHTS PURSUANT TO TITLE 85, CHAPTER 20, PART 10, AND AFTER APPOINTMENT BY THE GOVERNOR~~  
 14 ~~AND CONFIRMATION BY THE SENATE OF A WATER JUDGE, AT THE END OF THE WATER JUDGE'S TERM THE JUDGE MUST BE~~  
 15 ~~AN UNOPOSED INCUMBENT CANDIDATE IN A RETENTION ELECTION TO BE HELD ON THE NEXT GENERAL ELECTION DAY IN~~  
 16 ~~AN EVEN-NUMBERED YEAR WITHIN THE ASSIGNED WATER DIVISION. THE BALLOT MUST FOLLOW THE FORM PROVIDED IN~~  
 17 ~~13-14-212.~~

18 (5) A vacancy is created when a water judge dies, resigns, retires, is not elected to a subsequent  
 19 term ~~RETAINED IN A RETENTION ELECTION~~, forfeits the judicial position, is removed, or is otherwise unable to  
 20 complete the term as a water judge."

21  
 22 **Section 14.** Section 3-7-204, MCA, is amended to read:

23 **"3-7-204. Supervision and administration by supreme court.** (1) The Montana supreme court shall  
 24 supervise the activities of the water judges, ~~water masters,~~ and associated water court personnel in  
 25 implementing this chapter and Title 85, chapter 2, part 2.

26 (2) The supreme court shall pay the salaries and expenses of the water judges and ~~the salaries~~  
 27 ~~and expenses of the water judges' staffs and the salaries and expenses of the water masters and the water~~  
 28 ~~masters' staffs, from appropriations made for that purpose~~ associated water court personnel. "Salaries and

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 judge after objections and hearings."

2

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

4 **"3-7-221. Appointment of chief water judge and associate water judge water judges -- terms of**

5 **office.** (1) ~~The chief justice of the Montana supreme court shall appoint a chief water judge as provided in Title~~  
6 ~~3, chapter 1, part 9. The chief justice of the Montana supreme court may appoint an associate water judge.~~

7 Prior to the issuance of final decrees in all basins pursuant to 85-2-234 and ~~85-5-235~~ 85-2-235, except in  
8 basins that contain existing water rights pursuant to Title 85, chapter 20, part 10, ~~water judges~~ A WATER JUDGE

9 -serving as of October 1, 2023, shall serve the remainder of THE JUDGE'S term of office. On the expiration of the  
10 term of office OR IN THE CASE OF A VACANCY IN THE OFFICE, the governor shall fill the vacancy subject to 3-7-203,

11 and the governor:

12 (a) may appoint additional water judges;

13 (b) shall assign each water judge to one or more water divisions in order to exercise their powers  
14 and duties under 3-7-101(2) through (16); and

15 (c) shall designate one water judge to serve as chief water judge.

16 (2) ~~After the issuance of~~ AFTER THE CHIEF WATER JUDGE CERTIFIES TO THE GOVERNOR'S OFFICE AND  
17 THE MONTANA SUPREME COURT THAT ALL final decrees in all basins pursuant to 85-2-234 and 85-2-235, except in

18 basins that contain existing water rights pursuant to Title 85, chapter 20, part 10, ~~and after the chief water judge~~  
19 certifies to the governor's office and the Montana supreme court that all final decrees have been issued, the

20 governor:

21 (a) shall assign sitting water judges to a water division or divisions for the remainder of their term;

22 (b) may appoint additional water judges to each of the remaining water divisions to serve as that  
23 division's judge. The governor may appoint additional water judges to any division as needed afterward.

24 (c) shall designate one water judge to serve as chief water judge.

25 (2)(3) To be eligible for the office of chief water judge or associate water judge, a person shall must  
26 have the qualifications for district court or supreme court judges found in Article VII, section 9, of the Montana

27 constitution.

28 (3) ~~The term of office of the chief water judge and the associate water judge is 4 years, subject to~~

1 continuation of the water divisions by the legislature."

2

3 **Section 18.** Section 3-7-223, MCA, is amended to read:

4 **"3-7-223. (Temporary) Duties of chief water judge -- operation of water court.** (1) The chief water  
5 judge shall:

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

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

10 (b) ~~ensuring that the water judge in each water division moves without unreasonable delay to enter~~  
11 ~~the required preliminary decree; and~~

12 (c) ~~ensuring that any contested or conflicting claims are tried and adjudicated as expeditiously as~~  
13 ~~possible;~~

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

15 (3) ~~conduct proceedings for petitions for judicial review filed with the water court under 2-4-702;~~

16 (4) ~~assign court personnel to divisions and duties as needed;~~

17 (5) ~~assign the associate water judge to divisions and cases as needed; and~~

18 (6) ~~request and secure the transfer of water judges between divisions as needed. (Terminates~~  
19 ~~September 30, 2025 -- sec. 6, Ch. 126, L. 2017.)~~

20 (a) provide for the efficient management of the water court business in cooperation with the other  
21 water judges and the water court administrator;

22 (b) assign water court personnel to divisions and duties as needed; and

23 (c) oversee the office of the water court.

24 (2) (a) There is established a single office of the water court that shall maintain all records, accept  
25 all filings, and conduct other clerical duties in matters before the water judges of the water court.

26 (b) The office of the water court is comprised of a water court administrator and all personnel  
27 necessary for the water court administrator to perform their duties.

28 (c) The water court administrator shall perform duties assigned by the chief water judge.

1 (d) As used in this section, a "filing" in the water court or with a water judge means a filing in the  
2 office of the water court.

3 ~~3-7-223. (Effective October 1, 2025) Duties of chief water judge.~~ The chief water judge shall:

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

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

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

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

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

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

14 ~~(4) assign the associate water judge to divisions and cases as needed; and~~

15 ~~(5) request and secure the transfer of water judges between divisions as needed."~~

16

17 **Section 19.** Section 3-7-224, MCA, is amended to read:

18 **"3-7-224. (Temporary) Jurisdiction of chief water judge and associate water judge water**

19 **judges.** (1) The chief water judge and the associate water judge may, at the discretion of the chief justice of the  
20 Montana supreme court, also serve as water judge for one of the water divisions.

21 ~~(2) The chief water judge and the associate water judge have jurisdiction over cases certified to the~~  
22 ~~district court under 85-2-309, all matters relating to the determination of existing water rights within the~~  
23 ~~boundaries of the state of Montana, and all petitions for judicial review filed with the water court under 2-4-702.~~

24 ~~(3) With regard to the consideration of a matter within the chief a water judge's jurisdiction, the chief~~  
25 ~~water judge and the associate water judge have a water judge has the same powers as a district court judge.~~  
26 The chief water judge and the associate A water judge may issue orders, on the motion of an interested party  
27 or on the judge's own motion, that may reasonably be required to allow the judge to fulfill the judge's  
28 responsibilities, including but not limited to requiring the joinder of persons not parties to the administrative

1 hearing being conducted by the department pursuant to 85-2-309 or 85-2-402 as considered necessary to  
2 resolve any factual or legal issue certified pursuant to 85-2-309(2).

3 ~~(2) The water court shall HAS JURISDICTION TO administer and enforce all final decrees pursuant to~~  
4 ~~3-7-212 and Title 85, chapter 20. (Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.)~~

5 ~~**3-7-224. (Effective October 1, 2025) Jurisdiction of chief water judge and associate water**~~  
6 ~~**judge.** (1) The chief water judge and the associate water judge may, at the discretion of the chief justice of the~~  
7 ~~Montana supreme court, also serve as water judge for one of the water divisions.~~

8 ~~(2) The chief water judge and the associate water judge have jurisdiction over cases certified to the~~  
9 ~~district court under 85-2-309 and all matters relating to the determination of existing water rights within the~~  
10 ~~boundaries of the state of Montana.~~

11 ~~(3) With regard to the consideration of a matter within the chief water judge's jurisdiction, the chief~~  
12 ~~water judge and the associate water judge have the same powers as a district court judge. The chief water~~  
13 ~~judge and the associate water judge may issue orders, on the motion of an interested party or on the judge's~~  
14 ~~own motion, that may reasonably be required to allow the judge to fulfill the judge's responsibilities, including~~  
15 ~~but not limited to requiring the joinder of persons not parties to the administrative hearing being conducted by~~  
16 ~~the department pursuant to 85-2-309 or 85-2-402 as considered necessary to resolve any factual or legal issue~~  
17 ~~certified pursuant to 85-2-309 (2)."~~

18

19 **Section 20.** Section 3-7-301, MCA, is amended to read:

20 **"3-7-301. Appointment of water masters -- removal.** (1) ~~The chief water judge or the A~~ water judge  
21 in each water division may appoint one or more water masters when performing the duties of 3-7-101(1).

22 ~~(2) A water master may be appointed after July 1, 1980, and must be appointed on or before July 1,~~  
23 ~~1982.~~

24 ~~(3)(2)~~ In appointing a water master, ~~the a~~ water judge shall consider a potential master's experience  
25 with water law, water use, and water rights.

26 ~~(4)(3)~~ A water master shall serve at the pleasure of the chief water judge who appointed the water  
27 master and may be removed by the chief water judge.

28 ~~(5) A water master may serve in any water division and may be moved among the water divisions at~~



1 the discretion of the chief water judge."

2

3 **Section 21.** Section 3-7-311, MCA, is amended to read:

4 **"3-7-311. Duties of water masters.** (1) The water master has the general powers given to a master  
5 by Rule 53(c), M.R.Civ.P.

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

8 ~~(3)(2) After a water judge issues a preliminary decree, the~~The water master shall assist the water  
9 judge in the performance of the water division's further duties under 3-7-101(1) as ordered by the water judge.

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

13

14 **Section 22.** Section 3-7-401, MCA, is amended to read:

15 **"3-7-401. Definitions.** For the purposes of this part, the following definitions apply:

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

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

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

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

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

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

28 (3) "Proceeding" includes a prehearing, hearing, or appellate review, ~~or other stages of~~

1 adjudication conducted by the water master or water judge."

2

3 **Section 23.** Section 3-7-501, MCA, is amended to read:

4 **"3-7-501. Jurisdiction.** (1) ~~The jurisdiction of each judicial district concerning the determination and~~  
5 ~~interpretation of cases certified to the court under 85-2-309 or of existing water rights is exercised exclusively~~  
6 ~~by it through the water division or water divisions that contain the judicial district wholly or partly. The water~~  
7 ~~court has the EXCLUSIVE jurisdiction to preside over and determine all matters assigned to the water court~~  
8 ~~pursuant to 3-7-101.~~

9 (2) A water judge may not preside over matters ~~concerning the determination and interpretation of~~  
10 ~~cases certified to the court under 85-2-309 or of existing water rights beyond the boundaries specified in 3-7-~~  
11 ~~102 for the judge's division except as provided in 3-7-201.~~

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

16 (4) ~~The determination and interpretation of existing water rights includes, without limitation, the~~  
17 ~~adjudication of total or partial abandonment of existing water rights occurring at any time before the entry of the~~  
18 ~~final decree."~~

19

20 **Section 24.** Section 3-7-502, MCA, is amended to read:

21 **"3-7-502. Jurisdictional disputes.** Whenever a question arises concerning which water judge shall  
22 preside over adjudication of a matter concerning a case certified to the court under 85-2-309 or the  
23 ~~determination and interpretation of existing water rights~~ a case that could be heard in more than one water  
24 division, the question shall be settled by the ~~water judges involved~~ chief water judge."

25

26 **Section 25.** Section 19-5-301, MCA, is amended to read:

27 **"19-5-301. Membership -- inactive vested members -- inactive nonvested members.** (1) Except  
28 for a judge or justice who elected in writing to remain under the public employees' retirement system on or

1 before October 1, 1985, a judge of a district court, a justice of the supreme court, and ~~the chief water judge or~~  
2 ~~associate water judge~~ a water judge provided for in 3-7-221 must be members of the Montana judges'  
3 retirement system.

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

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

8 (4) A member with less than 5 years of membership service who terminates service and leaves the  
9 member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not  
10 eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund  
11 of the member's accumulated contributions."  
12

13 **Section 26.** Section 85-2-112, MCA, is amended to read:

14 **"85-2-112. Department duties.** The department shall:

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

17 (2) prescribe procedures, forms, and requirements for applications, permits, certificates, claims of  
18 existing rights, and proceedings under this chapter and prescribe the information to be contained in any  
19 application, claim of existing right, or other document to be filed with the department under this chapter not  
20 inconsistent with the requirements of this chapter;

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

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

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

28 (6) adopt rules necessary to reject, modify, or condition permit applications in highly appropriated

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

27

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

1           **"85-2-123. Deposit of fees and penalties.** Except as provided in 85-2-122 and 85-2-124, all fees and  
2 penalties collected under this chapter must be deposited in the water right appropriation account established in  
3 85-2-318. ~~Except for fines collected by a district court under 85-2-122, all penalties or fines imposed by any~~  
4 ~~court other than a justice's court for a violation of this chapter must be deposited in the general fund of the~~  
5 ~~county where the court presides and must be disposed of in the same manner as any other penalty or fine."~~

6

7           **Section 30.** Section 85-2-125, MCA, is amended to read:

8           **"85-2-125. Recovery of costs and attorney fees by prevailing party.** (1) If a final decision of the  
9 department on an application for a permit or a change in appropriation right is appealed to ~~district court~~ the  
10 water court, the ~~district water~~ court may award the prevailing party reasonable costs and attorney fees.

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

14

15           **Section 31.** Section 85-2-236, MCA, is amended to read:

16           **"85-2-236. Certificate of water right.** When a final decree is entered, the water judge shall send a  
17 copy to the department. Except as provided in 85-2-306 and subject to 85-2-315, the department shall on the  
18 basis of the final decree issue a certificate of water right to each person decreed an existing right. The original  
19 of the certificate shall be sent to the person to whom the right is decreed. The department shall keep a copy of  
20 the certificate in its office in Helena."

21

22           **Section 32.** Section 85-2-309, MCA, is amended to read:

23           **"85-2-309. Hearings on objections -- jurisdiction.** (1) If the department determines that an objection  
24 to an application for a permit under 85-2-311 or change in appropriation right under 85-2-402 states a valid  
25 objection, it shall hold a contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 90  
26 days from the date set by the department for the filing of objections after serving notice of the hearing by first-  
27 class mail upon the applicant and the objector, unless the department certifies an issue to the ~~district water~~  
28 court for determination by a water judge under subsection (2). The department may consolidate hearings if

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



1 department may modify or revoke the permit or change in appropriation right.

2 (2) (a) ~~A permittee, or holder of a change in appropriation right, or holder of a water right may~~  
3 ~~petition the department to enforce subsection (1) or 85-2-313 to:~~ modify or remove a condition of approval or  
4 ~~reduce the amount of the permit or change authorization.~~

5 (i) ~~revoke;~~

6 (ii) ~~modify;~~

7 (iii) ~~modify a condition of approval; or~~

8 (iv) ~~reduce the amount of the permit or change authorization.~~

9 (b) ~~A petition brought to enforce 85-2-313 must be filed within 120 days after the issuance of the~~  
10 ~~final decree for the basin in which the permit or change in appropriation right is located. A PERMITTEE OR HOLDER~~  
11 ~~OF A CHANGE IN APPROPRIATION RIGHT MAY PETITION THE DEPARTMENT TO MODIFY OR REMOVE A CONDITION OF~~  
12 ~~APPROVAL OR TO REDUCE THE AMOUNT OF THE PERSON'S OWN PERMIT OR CHANGE AUTHORIZATION.~~

13 (b)(c)(B) ~~The~~ A correct and complete petition must be submitted on a form designated by the  
14 department, is subject to the criteria of 85-2-311 and 85-2-402, and must be processed in the same manner as  
15 an application made pursuant to 85-2-302, 85-2-307 through 85-2-309, and 85-2-310(1) through (5) except that:

16 (i) the department may waive the public notice of a preliminary determination to grant the petition  
17 if the department finds, on the basis of information reasonably available to it, that the petition as proposed in the  
18 application will not adversely affect the rights of other appropriators;

19 (ii) if the department issues a preliminary determination to grant the petition and waives public  
20 notice, the determination becomes final;

21 (iii) the department may condition a preliminary determination to grant the petition in order to meet  
22 the criteria under 85-2-311 and 85-2-402; and

23 (iv) a preliminary determination to deny a petition is final. Denial of a petition does not affect the  
24 permit or change authorization.

25 (3) ~~The department shall provide written notice of its determination concerning the petition. Within~~  
26 ~~30 days of the notice, the petitioner, permittee, or holder of the change in appropriation right may request a~~  
27 ~~hearing to show cause by a preponderance of the evidence why the proposed action should not be taken. If a~~  
28 ~~request for a show cause hearing is not made, the determination becomes final."~~

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**Section 35.** Section 85-2-315, MCA, is amended to read:

**"85-2-315. Certificate of water right.** ~~Upon~~On actual application of water to the proposed beneficial use within the time allowed, ~~the permittee~~a person holding an issued permit or a change in appropriation right shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed. ~~The~~After the resolution of any petition filed under 85-2-314 85-2-313, the department shall review the certified statement and may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit or change authorization in addition to any final determination made pursuant to 85-2-313 OR 85-2-314, it shall issue the ~~permittee~~person a certificate of water right. The original of the certificate shall ~~must~~ be sent to the ~~permittee~~person holding an issued permit or a change in appropriation right, and a duplicate COPY shall ~~must~~ be kept in the office of the department in Helena and maintained in a centralized database."

**Section 36.** Section 85-2-405, MCA, is amended to read:

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

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

(3) The determination ~~of the court must be appended to the final decree. The department shall keep a copy of the determination in its office in Helena~~ that the water right is abandoned must include an order to the department to update the centralized records system."

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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~~ 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~~, 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."

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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."  
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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 -