

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING COORDINATION BETWEEN DISTRICT COURT
5 AND WATER COURT AUTHORITY; REVISING AUTHORITY OF THE WATER COURT; PROVIDING FOR
6 THE GOVERNOR'S APPOINTMENT OF WATER JUDGES; PROVIDING WATER COURT AUTHORITY
7 OVER DITCH EASEMENT DISPUTES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 3-
8 1-101, 3-1-901, 3-1-905, 3-7-101, 3-7-103, 3-7-202, 3-7-203, 3-7-204, 3-7-211, 3-7-212, 3-7-221, 3-7-223, 3-7-
9 224, 85-2-114, 85-2-406, AND 85-5-101, MCA; AND REPEALING SECTION 3-7-225, MCA."

10
11 WHEREAS, the sovereign State of Montana owns all the surface, underground, flood, and atmospheric
12 waters within the boundaries of the state, according to Article IX, section 3, of the Montana Constitution; and

13 WHEREAS, the Montana Constitution also states that the state owns this asset for the use of its
14 people; and

15 WHEREAS, these rights to use this water are constitutionally protected; and

16 WHEREAS, these rights are usufructuary, or use rights, allowing the owner to use some of the state's
17 property; and

18 WHEREAS, the Montana Constitution also requires and empowers the Legislature to provide for the
19 administration, control, and regulation of water rights; and

20 WHEREAS, Article II of the Montana Constitution states that all legal, governmental, and judicial
21 authority exercised by institutions of the state derive their authority from the sovereignty of its people, next from
22 the constitution they adopted, and then from the statutes enacted by their representatives; and

23 WHEREAS, Article VII of the Montana Constitution states the courts of the state, both constitutional
24 and statutory, derive their jurisdiction from this source as distributed by the constitution and statutes and that
25 jurisdiction, unless otherwise limited, is both in personam and in rem; and

26 WHEREAS, these courts include constitutional courts specified in the constitution that are required to
27 be elected, such as the Supreme Court, district courts, and statutory courts, such as the temporary water court,
28 and that have limited jurisdiction as specified statutorily; and

1 WHEREAS, the Legislature, exercising its constitutional powers, created the temporary water court in
2 1979 for the specific, limited purpose of adjudicating the existence of water rights as of July 1, 1973, and limited
3 its jurisdiction accordingly; and

4 WHEREAS, simultaneously with the water court's adjudication, the district courts have historically been
5 and remain today the courts with jurisdiction to resolve water use disputes; and

6 WHEREAS, it appears the water court may conclude the adjudication of all pre-July 1, 1973, water
7 rights sometime in or around 2028; and

8 WHEREAS, under current statutes, the water court would cease operation and existence on completion
9 of the adjudication and the district courts would continue to resolve water use disputes, including those that
10 arise from or in relation to final basin and subbasin decrees of the water court; and

11 WHEREAS, the McCarran Amendment, a federal law enacted by Congress, waives federal sovereign
12 immunity to allow state courts to adjudicate and administer federal water rights; and

13 WHEREAS, the Montana courts historically possess and continue to possess in rem jurisdiction over all
14 water and water rights in the state, which the legislature also endowed, in part, on the water court when it was
15 established and began the Montana adjudication, including, pursuant to the McCarran Amendment waiver,
16 federal water rights, giving it a share of the Montana district courts' prior exclusive jurisdiction over the res at
17 issue—water and the rights to its use in the state, for purposes of the adjudication; and

18 WHEREAS, the Montana water rights adjudication has been fully supported by the state with funds and
19 expertise since its inception, and it has been fully adequate to allow the Montana courts to exercise prior
20 exclusive and continuing in rem jurisdiction over all water rights in the state, including federal water rights; and

21 WHEREAS, the certainty of this McCarran Amendment adequacy from legal challenge may be
22 enhanced for the administration phase, as some have suggested, by the explicit statutory recognition of the
23 historical and continuing sharing of the water court in rem jurisdiction with the district courts when they sit as
24 courts resolving water rights disputes arising from or related to the results of the water court's adjudication,
25 explicitly stating that, when acting in that capacity, they possess and are exercising the same prior exclusive in
26 rem jurisdiction they have always possessed and that the Legislature shared with the water court; and

27 WHEREAS, the jurisdiction of any and all Montana courts is unified and indivisible in the sense that it
28 arises from the sovereignty of the people and given to the courts as specified in the constitution and statutes,

1 empowering the Montana legislature, the authority of which derives from the same source, to specify the
2 jurisdiction the state's statutory courts exercise when handling certain cases; and

3 WHEREAS, the Montana Legislature possesses the constitutional authority to constitute a water court,
4 as it did in 1979 to be a temporary court, and similarly to set forth mechanisms for the appointment and election
5 of judges for the court; and

6 WHEREAS, the Montana Legislature, in constituting a water court, also has the authority to describe
7 the use and distribution of its in rem jurisdiction shared by other Montana courts, including constitutional district
8 courts, in the process of administering water rights; and

9 WHEREAS, the Montana Legislature, therefore, also possesses the constitutional authority to change
10 the water court from temporary to permanent and to describe and limit its authorities and duties.

11

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

13

14 NEW SECTION. Section 1. Definitions. As used in this chapter, the following definitions apply:

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

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

18

19 NEW SECTION. Section 2. Coordination of court jurisdiction. (1) A district court retains
20 jurisdiction unless all parties or petitioners agree to transfer the matter to the water court for:

- 21 (a) judicial enforcement pursuant to 85-2-114;
- 22 (b) supervision of water commissioners pursuant to 85-2-406;
- 23 (c) appointments of water commissioners pursuant to 85-5-101.

24 (2) The parties or petitioners agreeing to a transfer of jurisdiction pursuant to subsection (1) shall
25 pay a fee of \$100 for each submitted request.

26

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

28 **"3-1-101. The several courts of this state.** The following are courts of justice of this state:

- 1 (1) the court of impeachment, which is the senate;
- 2 (2) the supreme court;
- 3 (3) the district courts;
- 4 (4) the municipal courts;
- 5 (5) the justices' courts;
- 6 (6) the water court; and
- 7 ~~(6)(7)~~ the city courts and such other courts of limited jurisdiction as that the legislature may establish
- 8 in any incorporated city or town."

9

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

11 **"3-1-901. Judicial vacancy -- notice.** (1) (a) ~~Upon~~On receiving notice from the chief justice of the
12 supreme court, the governor shall appoint a candidate, as provided in this part, to fill any vacancy on the
13 supreme court or the district court.

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

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

21

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

23 **"3-1-905. Appointments.** (1) ~~The governor, or the chief justice of the supreme court for the office~~
24 ~~described in 3-7-221,~~ shall make an appointment within 30 days of the close of the public comment period from
25 the list of applicants.

26 (2) For the purposes of Article VII, section 8, of the Montana constitution, the governor must be
27 construed to receive the names of the nominees at the close of the public comment period provided for in 3-1-
28 904.

1 (3) If the governor fails to appoint within 30 days of the close of the public comment period
2 provided for in subsection (1), the chief justice shall make the appointment from the same list of applicants
3 within 30 days of the governor's failure to appoint."
4

5 **Section 6.** Section 3-7-101, MCA, is amended to read:

6 **"3-7-101. ~~Water divisions~~Powers and duties of water court.** To adjudicate existing water rights
7 and to conduct hearings in cases certified under 85-2-309, water divisions are established as defined in 3-7-
8 102. A water division ~~shall be presided over by a water judge~~ of the water court shall:

9 (1) prior to and including the issuance of a final decree in a basin pursuant to 85-2-234 and 85-2-
10 235, administer the adjudication of existing water rights in the basin by:

11 (a) coordinating with the department of natural resources and conservation to:

12 (i) compile information submitted on water claim forms under Title 85, chapter 2, part 2; and

13 (ii) expeditiously and properly transfer that information to the water judge in each division; and

14 (b) ensuring any contested or conflicting claims are expeditiously tried and adjudicated;

15 (2) conduct proceedings for petitions for judicial review filed with the water court under 2-4-
16 702(2)(e);

17 (3) review decisions made by a compact board or other administrative entity as provided in Title
18 85, chapter 20;

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

21 (5) hear and resolve disputes arising under the interpretation of a final decree issued under 85-2-
22 234;

23 (6) hear and determine matters related to factual and legal issues involving the adjudication or
24 determination of water rights certified to the water court under 85-2-309;

25 (7) hear and determine matters related to a dispute over ownership of a water right certified to the
26 water court under 85-2-424(9);

27 (8) hear and resolve ditch easement matters ancillary to a water right dispute or controversy, as a
28 water right is defined in 85-2-102;

1 (9) promulgate rules for use across all water divisions for practice and procedure pursuant to Title
2 3, chapter 7; and

3 (10) prescribe forms for use pursuant to Title 3, chapter 7."
4

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

6 **"3-7-103. Promulgation of rules and prescription of forms -- advisory committee.** (1) As soon as
7 practicable the Montana supreme court may promulgate special rules of practice and procedure and shall
8 prescribe forms for use ~~in connection with this chapter with 3-7-101(1)~~ and Title 85, chapter 2, parts 2 and 7, in
9 consultation with the chief water judge and the department of natural resources and conservation.

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

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

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

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

22 (e) The committee shall file a report with the Montana supreme court by October 1, 1996, and as
23 often as determined by the Montana supreme court."
24

25 **Section 8.** Section 3-7-202, MCA, is amended to read:

26 **"3-7-202. Term of office.** ~~The Pursuant to 3-5-203, the~~ term of office for water judges is from the date
27 of initial appointment as provided in ~~3-7-201 to June 30, 1985. After June 30, 1985, the term of office of a water~~
28 judge is 4 years, ~~subject to continuation of the water divisions by the legislature~~ a water judge is 6 years."

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Section 9. Section 3-7-203, MCA, is amended to read:

"3-7-203. Vacancies. (1) If a vacancy in the office of water judge occurs, it must be filled in the manner provided in 3-7-204 for the initial designation of a water judge. A vacancy is created when a water judge dies, resigns, retires, is not elected to a subsequent term, forfeits the judicial position, is removed, or is otherwise unable to complete the term as a water judge Title 3, chapter 1, part 9.

(2) (a) An appointment of a water judge is subject to senate confirmation at the next regular legislative session, except for an appointment made while the legislature is not in regular session, for which the appointment expires prior to the next regular legislative session.

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

(3) Prior to the issuance of final decrees in all basins pursuant to 85-2-234 and 85-2-235, except in basins that contain existing water rights pursuant to Title 85, chapter 20, part 10, and after appointment by the governor and confirmation by the senate of a water judge, at the end of the water judge's term the judge must be an unopposed incumbent candidate in a statewide retention election. The ballot must follow the form provided in 13-14-212. The election must be held on the next general election day in an even-numbered year.

(4) After the issuance of final decrees in basins pursuant to 85-2-234 and 85-2-235, except in basins that contain existing water rights pursuant to Title 85, chapter 20, part 10, and after appointment by the governor and confirmation by the senate of a water judge, at the end of the water judge's term the judge must be an unopposed incumbent candidate in a retention election to be held on the next general election day in an even-numbered year within the assigned water division. The ballot must follow the form provided in 13-14-212.

(5) A vacancy is created when a water judge dies, resigns, retires, is not retained in a retention election, forfeits the judicial position, is removed, or is otherwise unable to complete the term as a water judge."

Section 10. Section 3-7-204, MCA, is amended to read:

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

1 (2) The supreme court shall pay the salaries and expenses of the water judges and the salaries
 2 ~~and expenses of the water judges' staffs and the salaries and expenses of the water masters and the water~~
 3 ~~masters' staffs, from appropriations made for that purpose~~ associated water court personnel. "Salaries and
 4 expenses" as used in this section include but are not limited to the salaries and expenses of personnel, the cost
 5 of office equipment and office space, and other necessary expenses that may be incurred in the administration
 6 of this chapter and Title 85, chapter 2, part 2.

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

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

11

12 **Section 11.** Section 3-7-211, MCA, is amended to read:

13 **"3-7-211. Appointment of water commissioners.** (1) Except as provided in 85-20-1902, the district
 14 ~~court having jurisdiction over the hydrologically interrelated portion of a water division, as described in 85-2-~~
 15 ~~231(3),~~ water judge having jurisdiction over a water division in which the controversy arises may appoint and
 16 supervise a water commissioner as provided for in Title 85, chapter 5.

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

20 (a) seeks the appointment of a water commissioner; and

21 (b) requests that the district court judge appoint and supervise the water commissioner."

22

23 **Section 12.** Section 3-7-212, MCA, is amended to read:

24 **"3-7-212. Enforcement of decrees.** ~~The district court having and the water court have jurisdiction~~
 25 ~~may to~~ enforce the provisions of a final decree. In the absence of any final decree having been issued, the
 26 ~~district court having and the water court have jurisdiction may to~~ enforce the provisions of a temporary
 27 preliminary decree, preliminary decree, or supplemental preliminary decree entered under 85-2-231, as
 28 modified by a water judge after objections and hearings."

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Section 13. Section 3-7-221, MCA, is amended to read:

"3-7-221. Appointment of ~~chief water judge and associate water judge~~ water judges -- terms of office. (1) ~~The chief justice of the Montana supreme court shall appoint a chief water judge as provided in Title 3, chapter 1, part 9. The chief justice of the Montana supreme court may appoint an associate water judge. Prior to the issuance of final decrees in all basins pursuant to 85-2-234 and 85-5-235, except in basins that contain existing water rights pursuant to Title 85, chapter 20, part 10, a water judge serving as of October 1, 2023, shall serve the remainder of the judge's term of office. On the expiration of the term of office or in the case of a vacancy in the office, the governor shall fill the vacancy subject to 3-7-203, and the governor:~~

(a) shall assign each water judge to one or more water divisions in order to exercise their powers and duties under 3-7-101(2) through (10); and

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

(2) After the chief water judge certifies to the governor's office and the Montana supreme court that all final decrees in all basins pursuant to 85-2-234 and 85-2-235, except in basins that contain existing water rights pursuant to Title 85, chapter 20, part 10, have been issued, the governor shall:

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

(b) designate one water judge to serve as chief water judge.

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

(3) ~~The term of office of the chief water judge and the associate water judge is 4 years, subject to continuation of the water divisions by the legislature.~~"

Section 14. Section 3-7-223, MCA, is amended to read:

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

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

~~(a) coordinating with the department of natural resources and conservation in compiling information~~

1 submitted on water claim forms under Title 85, chapter 2, part 2, to ensure that the information is expeditiously
2 and properly compiled and transferred to the water judge in each water division;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 ~~**3-7-223. (Effective October 1, 2025) Duties of chief water judge.** The chief water judge shall:~~

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

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

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

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

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

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

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

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

9

10 **Section 15.** Section 3-7-224, MCA, is amended to read:

11 **"3-7-224. (Temporary) Jurisdiction of chief water judge and associate water judge.** (1) The chief
12 water judge and the associate water judge may, at the discretion of the chief justice of the Montana supreme
13 court, also serve as water judge for one of the water divisions.

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

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

24 (4) The water court and district courts have jurisdiction to administer and enforce all final decrees
25 pursuant to 3-7-212 and Title 85, chapter 20. (Terminates September 30, 2025--sec. 6, Ch. 126, L. 2017.)

26 ~~**3-7-224. (Effective October 1, 2025) Jurisdiction of chief water judge and associate water**~~
27 ~~**judge.** (1) The chief water judge and the associate water judge may, at the discretion of the chief justice of the~~
28 ~~Montana supreme court, also serve as water judge for one of the water divisions.~~

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

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

11

12 **Section 16.** Section 85-2-114, MCA, is amended to read:

13 **"85-2-114. Judicial enforcement.** (1) If the department ascertains, by a means reasonably
14 considered sufficient by it, that a person is wasting water, using water unlawfully, preventing water from moving
15 to another person having a prior right to use the water, or violating a provision of this chapter, except as
16 provided in [section 2], it may petition the district court supervising the distribution of water among appropriators
17 from the source to:

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

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

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

27 (2) Upon the issuance of an order or injunction, the department may attach to the controlling works
28 a written notice, properly dated and signed, setting forth the fact that the controlling works have been properly

1 regulated by it. The notice constitutes legal notice to all persons interested in the appropriation or distribution of
2 the water.

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

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

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

10 (6) When enforcing the provisions of this section, the department, the county attorney, and the
11 attorney general shall give priority to protecting the water rights of a prior appropriator under an existing water
12 right, a certificate, a permit, or a state water reservation.

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

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

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

21

22 **Section 17.** Section 85-2-406, MCA, is amended to read:

23 **"85-2-406. District court supervision of water distribution.** (1) ~~The~~ Except as provided in [section
24 2], district courts shall supervise the distribution of water among all appropriators. This supervisory authority
25 includes the supervision of all water commissioners appointed prior or subsequent to July 1, 1973. The
26 supervision must be governed by the principle that first in time is first in right.

27 (2) (a) A district court may order the distribution of water pursuant to a district court decree entered
28 prior to July 1, 1973, until an enforceable decree is entered under part 2 of this chapter or the matter has been

1 adjudicated under the procedure set forth in subsection (2)(b).

2 (b) When a water distribution controversy arises upon a source of water in which not all existing
3 rights have been conclusively determined according to part 2 of this chapter, any party to the controversy may
4 petition the district court to certify the matter to the chief water judge. If a certification request is made, the
5 district court shall certify to the chief water judge the determination of the existing rights that are involved in the
6 controversy according to part 2 of this chapter. The district court from which relief is sought shall retain
7 exclusive jurisdiction to grant injunctive or other relief that is necessary and appropriate pending adjudication of
8 the existing water rights certified to the water judge. Certified controversies must be given priority over all other
9 adjudication matters. After determination of the matters certified, the water judge shall return the decision to the
10 district court with a tabulation or list of the existing rights and their relative priorities.

11 (3) A controversy between appropriators from a source that has been the subject of a final decree
12 under part 2 of this chapter must be settled by the district court. The order of the district court settling the
13 controversy may not alter the existing rights and priorities established in the final decree except to the extent
14 the court alters rights based upon abandonment, waste, or illegal enlargement or change of right. In cases
15 involving permits issued by the department, the court may not amend the respective rights established in the
16 permits or alter any terms of the permits unless the permits are inconsistent or interfere with rights and priorities
17 established in the final decree. The order settling the controversy must be appended to the final decree, and a
18 copy must be filed with the department. The department must be served with process in any proceeding under
19 this subsection, and the department may, in its discretion, intervene in the proceeding.

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

25 (5) A person whose existing rights and priorities are determined in a temporary preliminary decree
26 or preliminary decree or a person exercising a suspension under 85-2-217 and part 7 of this chapter may
27 appeal a determination made pursuant to subsection (2)."

28

1 **Section 18.** Section 85-5-101, MCA, is amended to read:

2 **"85-5-101. Appointment of water commissioners.** (1) ~~Whenever~~ Except as provided in [section 2],
3 whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring,
4 lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction,
5 including temporary preliminary, preliminary, and final decrees issued by a water judge, it is the duty of the
6 judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least
7 15% of the water rights affected by the decree or at least 15% of the flow rate of the water rights affected by the
8 decree, in the exercise of the judge's discretion, to appoint one or more commissioners. The commissioners
9 have authority to admeasure and distribute to the parties owning water rights in the source affected by the
10 decree the waters to which they are entitled, according to their rights as fixed by the decree and by any
11 certificates, permits, and changes in appropriation right issued under chapter 2 of this title. When petitioners
12 make proper showing that they are not able to obtain the application of the owners of at least 15% of the water
13 rights affected or at least 15% of the flow rate of the water rights affected and they are unable to obtain the
14 water to which they are entitled, the judge of the district court having jurisdiction may appoint a water
15 commissioner.

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

22 (3) The department of natural resources and conservation or any person or corporation operating
23 under contract with the department or any other owner of stored waters may petition the court to have stored
24 waters distributed by the water commissioners appointed by the district court. The court may order the
25 commissioner or commissioners appointed by the court to distribute stored water when and as released to
26 water users entitled to the use of the water.

27 (4) At the time of the appointment of a water commissioner or commissioners, the district court
28 shall fix their compensation, require a commissioner or commissioners to purchase a workers' compensation

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

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

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

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

21

22 NEW SECTION. Section 19. Repealer. The following section of the Montana Code Annotated is
23 repealed:

24 3-7-225. (Temporary) Duties of associate water judge.

25

26 NEW SECTION. Section 20. Notification to tribal governments. The secretary of state shall send a
27 copy of [this act] to each federally recognized tribal government in Montana.

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