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

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

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

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

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

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

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

History: En. Sec. 1, Ch. 43, L. 1911; re-en. Sec. 7136, R.C.M. 1921; amd. Sec. 1, Ch. 125, L. 1925; re-en. Sec. 7136, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1939; amd. Sec. 1, Ch. 231, L. 1963; amd. Sec. 39, Ch. 452, L. 1973; amd. Sec. 1, Ch. 51, L. 1975; R.C.M. 1947, 89-1001(1) thru (3), (5), (6); amd. Sec. 1, Ch. 444, L. 1979; amd. Sec. 1, Ch. 246, L. 1983; amd. Sec. 1, Ch. 468, L. 1989; amd. Sec. 7, Ch. 604, L. 1989; amd. Sec. 1, Ch. 179, L. 2003; amd. Sec. 37, Ch. 416, L. 2005; amd. Sec. 1, Ch. 92, L. 2007.

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85-5-103. Oath and bond. Each water commissioner appointed by the court shall subscribe and file with the clerk of the district court an oath of office before commencing the discharge of duties as commissioner and shall file with the clerk a bond executed by the commissioner, with two or more sureties, in a sum that the judge of the court may designate, to ensure the faithful discharge of the commissioner's duties.

History: En. Sec. 3, Ch. 43, L. 1911; amd. Sec. 1, Ch. 12, Ex. L. 1919; re-en. Sec. 7138, R.C.M. 1921; re-en. Sec. 7138, R.C.M. 1935; R.C.M. 1947, 89-1003; amd. Sec. 2771, Ch. 56, L. 2009.

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

History: En. Sec. 4, Ch. 43, L. 1911; amd. Sec. 1, Ch. 116, L. 1921; re-en. Sec. 7139, R.C.M. 1921; re-en. Sec. 7139, R.C.M. 1935; amd. Sec. 1, Ch. 68, L. 1955; R.C.M. 1947, 89-1004; amd. Sec. 2772, Ch. 56, L. 2009.

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85-5-105. Power and duty to distribute water. Upon the issuance of an order, the water commissioner or commissioners have authority and it is the commissioner's or commissioners' duty to admeasure and distribute to the users of water, as their interests may appear and be required, the stored and supplemental water stored and as released by the department of natural resources and conservation under provisions of Title 85, chapter 1, to be diverted into and through a stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply in the same manner and under the same rules as decreed water rights are admeasured and distributed. The water commissioner or commissioners and the owners and users of the stored and supplemental water are bound by and are subject to the provisions of this chapter. However, the admeasurements and distribution of the stored and supplemental water may not interfere with decreed water rights. The purpose of Title 85, chapter 5, parts 1 through 3, is to provide a uniform, equitable, and economical distribution of adjudicated, stored, and supplemental waters.

History: En. Sec. 1, Ch. 43, L. 1911; re-en. Sec. 7136, R.C.M. 1921; amd. Sec. 1, Ch. 125, L. 1925; re-en. Sec. 7136, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1939; amd. Sec. 1, Ch. 231, L. 1963; amd. Sec. 39, Ch. 452, L. 1973; amd. Sec. 1, Ch. 51, L. 1975; R.C.M. 1947, 89-1001(4); amd. Sec. 2773, Ch. 56, L. 2009.

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85-5-106. Maintenance and repair of ditches or systems. Upon written request of the owners of at least 51% of the water rights in any adjudicated ditch or single water system, the judge of the district court may empower the commissioner to maintain and keep in reasonable repair such water ditch or water system at the expense of the owners thereof, and for such purposes the commissioner shall have authority to enter and work upon 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 waters.

History: En. Sec. 6, Ch. 43, L. 1911; re-en. Sec. 7141, R.C.M. 1921; re-en. Sec. 7141, R.C.M. 1935; R.C.M. 1947, 89-1006.

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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 judge, of the amount of water distributed to each water user and shall file a summary of the record with the clerk of the court monthly or seasonally, at the discretion of the district 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 the water commissioner's or commissioners' daily salary, other costs of the water commissioner or commissioners approved by the district 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 judge, they may file a joint summary of their records with the clerk of the court, or the chief commissioner, if one has been appointed by the judge, may file a summary on behalf of all of them.

(2) If the district court judge 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.

History: En. Sec. 9, Ch. 43, L. 1911; re-en. Sec. 7144, R.C.M. 1921; re-en. Sec. 7144, R.C.M. 1935; R.C.M. 1947, 89-1009; amd. Sec. 1, Ch. 305, L. 1983; amd. Sec. 1, Ch. 513, L. 2007.

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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 court 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.

History: En. Sec. 8, Ch. 43, L. 1911; re-en. Sec. 7143, R.C.M. 1921; re-en. Sec. 7143, R.C.M. 1935; R.C.M. 1947, 89-1008; amd. Sec. 2774, Ch. 56, L. 2009.

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85-5-109. Failure to perform duty as contempt of court. If a commissioner fails to perform any of the duties imposed upon the commissioner by the order of the judge of the district court, the commissioner is guilty of contempt of court.

History: En. Sec. 7, Ch. 43, L. 1911; re-en. Sec. 7142, R.C.M. 1921; re-en. Sec. 7142, R.C.M. 1935; R.C.M. 1947, 89-1007; amd. Sec. 2775, Ch. 56, L. 2009.

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85-5-110. Appointment of water mediators -- duties. (1) Except as provided in [85-20-1902](#), the judge 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 request of the governor;
- (b) upon 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 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 use;
- (d) meet with principal parties to mediate differences over the use of water; and
- (e) hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

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

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

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

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

History: En. Sec. 1, Ch. 625, L. 1989; amd. Sec. 1, Ch. 108, L. 1991; amd. Sec. 2776, Ch. 56, L. 2009; amd. Sec. 11, Ch. 294, L. 2015.

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

- (1) an annual seminar on commissioner and mediator duties, mediation techniques, and water measuring techniques;
- (2) preparation and, as necessary, revision of a water commissioner and mediator manual; and
- (3) an outreach program that identifies persons who might serve as water commissioners or mediators.

History: En. Sec. 2, Ch. 625, L. 1989.

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