

# WATER DISTRIBUTION IN MONTANA

2024 MADCS CONFERENCE  
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# WATER DISTRIBUTION IN MONTANA

A Guide for Water Commissioners,  
Water Users and District Courts



- This guide offers practical steps for water distribution in Montana. It includes best practices for water commissioners, district court clerks, district court judges and water users as well as useful references to Montana law and frequently asked questions.

[https://dnrc.mt.gov/docs/water/Planning\\_implementation\\_coor/Watr-Distr-Guide---Low-Res.pdf](https://dnrc.mt.gov/docs/water/Planning_implementation_coor/Watr-Distr-Guide---Low-Res.pdf)

# WATER DISTRIBUTION IN MONTANA

- Prior Appropriation & Montana's Dual Court System
- Why hire a Water Commissioner?
- How is a commissioner appointed?



An aerial photograph of a river winding through a vibrant green, forested landscape. The water is a clear, light blue-green color, contrasting with the dark green of the surrounding trees. The river flows from the top right towards the bottom left. The text is overlaid on the upper left portion of the image.

# WATER DISTRIBUTION IN MONTANA

## PRIOR APPROPRIATION

**First in time; First in right.**

Priority is determined by date of first beneficial use—the earlier the priority date, the more senior the right.



# WATER DISTRIBUTION IN MONTANA

## WATER ADJUDICATION

### The Montana Water Court

Adjudication establishes all 'existing' water rights in the state. The Water Court has exclusive jurisdiction over the settling of filed historical (pre-1973) rights

The Water Court issues Basin Decrees & Tabulations of rights in priority

BITTERROOT RIVER NEAR HAMILTON BY RON LOWERY/ROLOWERY.COM



# WATER DISTRIBUTION IN MT ENFORCEMENT OF WATER

## Montana District Courts

- Appointing/Supervising Water Commissioners (based on Petition)
- Resolving water right disputes
- Enforcement of Decrees and Distribution Actions
  - Historical, Temporary, Preliminary, Supplemental & Final Decrees
- New Appropriations (Post 1973 Changes/Permits)?
  - Sometimes these are enforced, and sometimes not

# WATER DISTRIBUTION IN MONTANA

Why hire a Water Commissioner?

Commissioner Duties:

- Measure water
- Distribute available flow (in priority)
- Collaborate/Mediate?

Independent third-party distribution

- Mitigation of conflict
- Transparency of water use



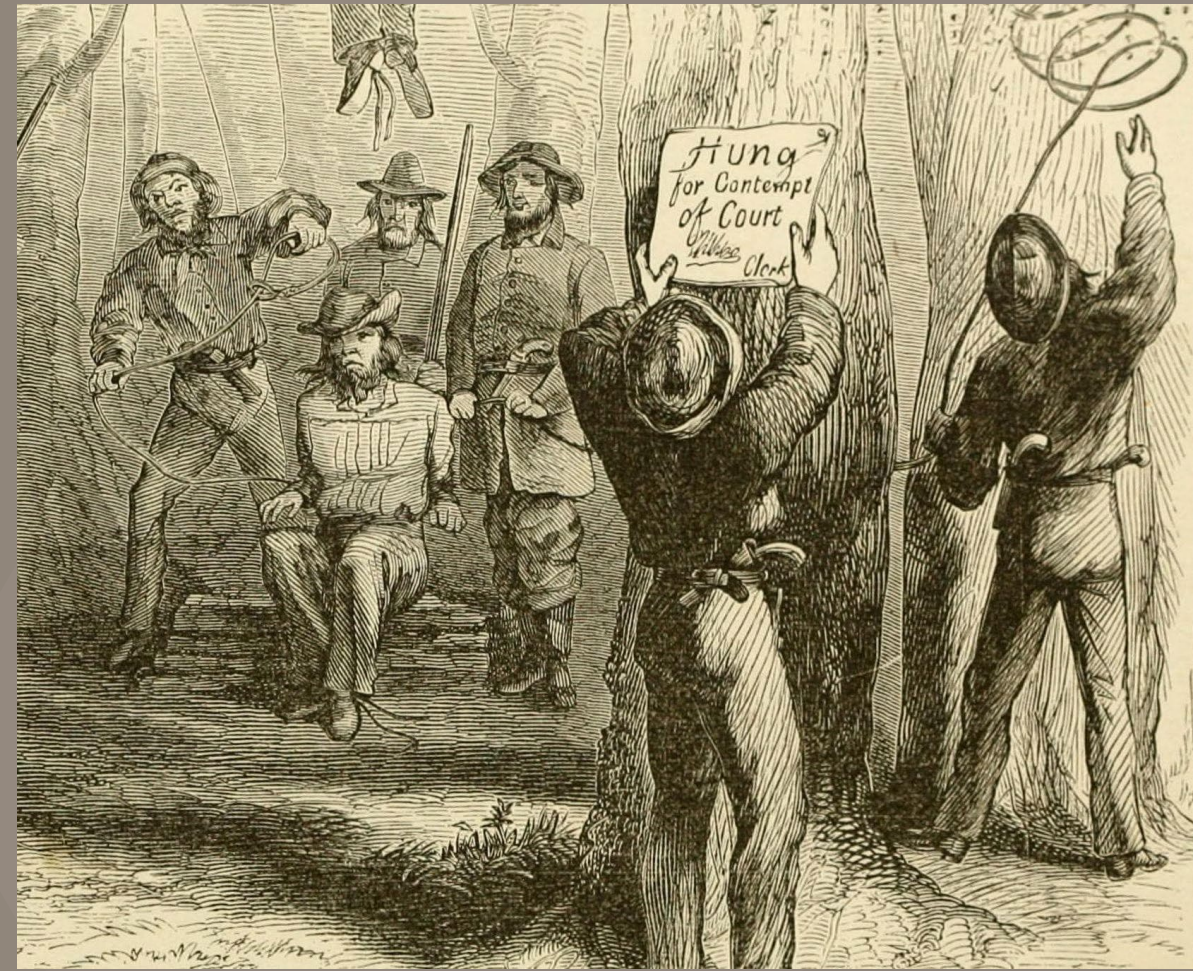
*Discussing Water Rights, A Western Pastime*

# WATER DISTRIBUTION IN MONTANA

- Step 1 - Finding a ~~Sucker~~ Commissioner:

- Familiar with Area
- Trustworthy
- Irrigation Know-how
- Basic Math
- Good Communicator
- Listen to (and Sort) Advice
- Able to “Stand his/her Ground”
- Diligent Records Keeping

- Step 2 - Petitioning the Court





# WATER DISTRIBUTION IN MONTANA

## Who Can File a Petition: Water Right Holders

Governed by Statute MCA 3-7-212; 85-2-406; 85-5-101



**Water Users:** "owners of at least 15% of the water rights affected by the decree or at least 15% of the flow rate of the water rights affected by the decree, *in the exercise of the judge's discretion*" MCA § 85-5-101(1)



**In Practice:** Most district court grant petitions filed by 15% of the water right holders (or the holder(s) of 15% of the flow rate) within a defined enforcement area (not 15% of an entire decree, particularly Water Court decrees)



**DNRC + One or More water right holder** MCA § 85-5-101(2)



**DNRC or Stored Water Owner** MCA § 85-5-101(3)

# WATER DISTRIBUTION IN MONTANA

## PETITION

### Include (at least):

- Petitioner Name(s) & Signatures
- Decree
- Demonstrate 15%
- Enforcement Area
- Proposed Commish
- Proposed Pay
- Terms of Appointment

MONTANA \_\_\_\_\_ JUDICIAL DISTRICT COURT, \_\_\_\_\_ COUNTY

IN THE MATTER OF THE PETITION OF \_\_\_\_\_ )  
CREEK WATER USERS ) Cause No.  
TO ENFORCE WATER COURT DECREE )  
AND APPOINT A WATER COMMISSIONER )

### PETITION TO ENFORCE WATER COURT DECREE AND APPOINT WATER COMMISSIONER

This petition is brought under Sections 3-7-212, 85-2-406(4), and 85-5-101, MCA. The holders of at least fifteen percent (15%) of the water rights on \_\_\_\_\_ Creek petition the District Court for an order to enforce the \_\_\_\_\_ Decree issued by the Montana Water Court for the portion of Basin \_\_\_\_\_ described as:

Water rights in the \_\_\_\_\_ River basin diverted or beneficially used from \_\_\_\_\_ (Creek) (River):

between its confluence with the \_\_\_\_\_ (Creek) (River) and its confluence with \_\_\_\_\_ (Creek) (River)

(OR) from its headwaters to its confluence with \_\_\_\_\_ (Creek) (River) with \_\_\_\_\_ (Creek) (River);



# WATER DISTRIBUTION IN MT

## PETITION



### For Best Results - Include:

- Joinder(s) demonstrating multifaceted support
- Proposed “Draft” Order Granting the Petition
- Proposed “Draft” Order Requesting Water Court Tabulation
- Invoicing Template
- Recommended Pay

½ Day Rate (< 4 hrs)  
Full Day Rate (> 4 hrs)  
Mileage Reimb. Rate

Assessed Proportionate to Each User’s Monthly Diversions

Pro-Rata Reimbursement of Training, Work  
Comp. based on prior year’s diversions

# WATER COMMISSIONER'S MONTHLY WATER DIVERSION AND BILLING LOG SHEET

Drainage: **Cowflap Creek**

Commissioner: **Mr. Authority**

Page: **1 of** \_\_\_\_\_

conversion from cfs-day to ac-ft: 1.98347

Month: **August**

**2024 Water Season**

Order No.	Owner	Tenant	Ditch/ Turnout	Flow Rate [cfs]	Start		Stop		Crop	Acres	Ac-Ft Used per order
					Date [Mo./Day]	Time [Mil - 24:00]	Date [Mo./Day]	Time [Mil - 24:00]			
1	User 1		D-Canal	4.08	8/1	0:00	8/31	23:59	Reservoir	72,000	250.53
2	User 2		Flosh Ditch	1.50	8/4	8:00	8/12	10:00	Alfafa	120	24.05
3	User 3		Haystack Canal	10.00	8/21	14:00	8/31	16:00	Various	845	200.00
4	User 4		Howard Pipe	2.20	8/22	10:00	8/25	16:00	Barley	135	14.18
5											0.00
6											0.00
7											0.00
8											0.00

**Total Ac-Ft Delivered, (All Users) on this Page**

**488.76**

Mark days worked on the calendar below with "X".

{Inputs below in yellow}

April						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

**Total Days worked in August: 8** (Max. Typical: 23)

**Total Ac-Ft Diverted (All Users) on All Pages 488.76**

Fixed Day Rate Pay: \$235.00

Select User Below to Compute Individual Water Invoicing Amounts:

**Gross Compensation Due: \$1,880.00**

**Mo. Workman's Compensation Expense: \$14.00**

User 3

Total August Water Diverted to User 3 :  
200 Ac-Ft

**Total Miles Driven in August: 1000.0**

**Other Reimbursable Expense: \$0.00**

Mileage Reimbursement Rate: \$0.655

**Total August Invoice to User 3 :**

**Mileage Reimbursement: \$655.00**

**Total Non-Taxable Reimbursement: \$669.00**

**\$1,043.04**

Total Combined April Invoice (ALL USERS):  
\$2,549.00



# WATER DISTRIBUTION IN MONTANA

- Questions following DNRC Presentation

THANK YOU!

**Cole Peebles, PE**

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