



MONTANA FOURTEENTH JUDICIAL DISTRICT COURT,

MUSSELSHELL COUNTY, MONTANA

**IN THE MATTER OF THE
PETITION OF) Cause No.
DV-05-**

**THE DEADMAN’S BASIN WATER USERS)
ASSOCIATION TO APPOINT A WATER)
COMMISSIONER TO DISTRIBUTE STORED)
WATERS)**

**ORDER APPOINTING
WATER COMMISSIONER(S)**

Upon the Petition of the Deadman’s Basin Water Users Association (hereinafter “Association”),
filed with this Court on February 24, 2005, and the Court being fully advised in the premises thereof,

IT IS HEREBY ORDERED:

1. That **GALE K. STENSVAD** (P.O. Box 285, Melstone, Montana 59054, telephone number (406)
358-2235 and **TRAVIS MECKEL** (152 Goffena Road, Roundup, Montana 59072, telephone

number 406-323-4354 are hereby appointed Water Commissioners for the 2005 irrigation season. Said Water Commissioners and any Water Commissioner(s) subsequently appointed by this Court shall deliver the stored water purchased by the Deadman's Basin Water Users Association and held under water purchaser contracts by various water users and released from Deadman's Basin Reservoir during the time of their appointment and under the authority of § 85-5-101(3), Montana Code Annotated and other related statutes.

2. Said Water Commissioner(s) and any subsequently appointed by this Court shall have those powers and duties attenuate to their office as provided by law including, but not limited to, those powers conferred by §§ 85-5-108 and 85-5-404, Montana Code Annotated.
3. That the Water Commissioners shall deliver and distribute down river the stored water from Deadman's Basin Reservoir in accordance with the water user's water purchase contracts with Deadman's Basin Water User's Association and in accordance with the rules and regulations of the Association's Board of Directors as promulgated from time to time. Pursuant to § 85-5-301, Montana Code Annotated, any water user owning or using any of the waters of the stream or ditch or extension of the ditch who is dissatisfied with the method of distribution of the waters of the stream or ditch by the water commissioner or water commissioners and who claims to be entitled to more water than he is receiving or to a right prior to that allowed him by the water commissioner or water commissioners may file his written complaint, duly verified, setting forth the facts of the claim. No water user may use any stored water flowing in the Musselshell River except as distributed by the Water Commissioner(s).
4. The compensation of the water commissioners is hereby fixed in the sum of fifteen dollars and 50/100's (\$15.50) dollars per hour for services actually rendered.
5. That during the term of his or her appointment and in accordance with § 85-5-107, Montana Code Annotated, each Water Commissioner must keep daily record of the amount of water

distributed to each water user when under rotation, and the Chief Water Commissioner must file a summary of such records with the Clerk of this Court seasonally, and showing in detail the amount of water distributed daily to each water user during the 2005 irrigation season or, as otherwise directed by the Court.

6. That all persons using water under water purchase contract from Deadman's Basin Reservoir whereon said Water Commissioner(s) are appointed are required to have and maintain suitable head gates, or other means to assure that water can be shut off. Also, at some suitable place on the delivery system, and each of their ditches, and as near the Musselshell River as practicable, said

person or persons shall place and maintain a proper measuring device which totals and reads flow rates of the water flowing in such delivery system, ditch, or ditches. In the event that any person

or

persons shall fail to place or maintain a proper measuring appliance as required hereby, it shall be the duty of said Water Commissioner(s) not to apportion or distribute any water to said person or persons.

7. That the Water Commissioner's term shall commence upon appointment and end on the 30th day of September, 2005, unless sooner terminated by order of this Court. Each Water Commissioner appointed by this Court shall sign and file with the Clerk of this Court the usual and customary constitutional oath of office and proof of worker's compensation coverage before commencing the discharge of his or her duties as Water Commissioner, and shall likewise file with said Clerk, after approval by the Court or Judge thereof, a good and sufficient bond executed by said Water Commissioner with two or more sureties or a bonding company, in the sum of One Thousand and no/100's Dollars (\$1,000.00) for each Water Commissioner, to insure the faithful discharge of his duties.

2005 Rules for Water Distribution

1. Active flow rate and totalizing measuring devices and recorders must be installed at each location that Contract Water is diverted from the Musselshell River, the Barber Outlet Canal, the Careless Creek Outlet. (As per the Deadman's Basin Water Management Plan of March 1991).
2. Each Contract holder will provide maps with the location of the point(s) of diversion and the location of his or her measuring device(s) to the Deadman's Basin Manager. Current maps on file are valid. Each must also receive Board approval if the point of diversion or the measuring device locations are changed.
3. Any violation of the above rule will mean that the contract holder will not be able to divert any contract water until the infraction is corrected.
4. All contract water must be ordered and meter readings given to the Manager when ordering water **PRIOR** to diverting water. All contract water must be ordered with sufficient lead time prior to diversion.
5. During the 2005 irrigation season, each shareholder will be allowed to divert a percentage of their of their contract shares as determined by the board of directors for the Deadman's Basin Water User's Association. **This diversion percentage may be adjusted due to changes in conditions.**
6. The Board may choose to implement the rotation plan at any time during irrigation season. If the rotation plan is implemented, contract holders will be allowed to divert as follows:
A maximum of 5% per day:
 - C For flood irrigation, 10 days on and 4 days off
 - C For sprinkler irrigation, on continuous, or
 - C A maximum of 3.5% per day steady flow of the total contract water within a canal, or
 - C If either of the above is an undue hardship, and cannot provide adequate irrigation, the

water commissioner can work out usage days to allow for equitable distribution.

7. Water commissioner zones will be as follows:
 - * Zone 2: Mosby to Roundup - Gale Stensvad
 - * Zone 3: Roundup to Deadman's Basin - Travis Meckel
1. Water Commissioners and the Deadman's Basin Project Manager shall have unlimited access to measuring devices.
2. The Board of Directors of Deadman's Basin Water Users' Association may develop additional or different rules for water distribution with the District Court's approval.
3. Contract water will be delivered on a pro rata basis. However, those opting to leave their contract water in the reservoir until later in the irrigation season are advised that they assume the risk of possibly having less water available to them for distribution due to circumstances beyond the control of the Court and/or the Deadman's Basin Water Users' Association.
4. The duties of the stored water commissioners may extend into the Deadman's Basin supply canal.
12. **Water users shall not directly or indirectly communicate with the Court or its staff regarding substantive disputes involving irrigation/water matters. Rather, water users shall file their complaint(s) with the Clerk of the District Court and pay any requisite filing fee. The Clerk of Court shall in turn relay such information to the Judge of the District Court who will take the necessary action on such complaint. The Court can not and will not suffer ex-parte communications with it regarding matters that may ultimately be brought before it for its unbiased consideration.**

**DISOBEDIENCE OF THIS ORDER SHALL BE PUNISHABLE AS A
CONTEMPT OF COURT.**

DONE AND DATED this ____ day of April, 2005.

DISTRICT COURT JUDGE

cc: Teri Hice (DBWA)
Gale Stensvad
Travis Meckel
Deadman's Basin Water Users