

R655. Natural Resources, Water Rights.

R655-15. Administrative Procedures for Distribution Systems and Water Commissioners.

R655-15-1. Authority.

(1) This rule is promulgated pursuant to Subsections 73-2-1(5)(a) and 73-2-1(5)(b) which authorize the State Engineer to make rules governing water distribution systems, water commissioners, water measurement and reporting that are consistent with Chapter 73-5, "Administration and Distribution."

R655-15-2. Purpose.

(1) Pursuant to authority delegated to the State Engineer by Section 73-5-1, this rule establishes procedures governing the creation, organization, and operation of water Distribution Systems administered by the State Engineer, including the appointment, responsibilities, and authority of Water Commissioners to assist in the administration of Distribution Systems.

(2) The purpose of this rule is to provide guidance and mechanisms enabling the State Engineer to fulfill the duties delegated by Section 73-5-3.

R655-15-3. Application of Rule.

(1) This rule is applicable statewide to the regulation, distribution, diversion, and use of the waters of the state.

(2) This rule shall be liberally construed to permit the Division of Water Rights to effectuate the intent and purposes of applicable Utah law.

(3) The State Engineer may make exceptions to the provisions of this rule as necessary to ensure adequate and appropriate regulation, distribution, and measurement of water for Distribution Systems involving interstate streams.

R655-15-4. Definitions.

(1) Terms used in this rule are defined as follows:

(a) "Assessment " means monies paid by water users to the State Engineer specifically to defray the costs of a Distribution System as described in Subsection 73-5-1(3). Assessments are deposited into and appropriate payments made from the "Water Commissioner Fund" established by Section 73-5-1.5.

(b) "Control Structure" means any structure or device including but not limited to diversion dams, head gates, check dams, valves, or other installation that the State Engineer determines to be necessary for the proper regulation and distribution of water.

(c) "Deputy Water Commissioner" (Deputy Commissioner) means a person appointed by the State Engineer in accordance with

Subsection 73-5-1(1). A Deputy Water Commissioner is an official and, in the performance of official duties, is a duly authorized assistant of the Water Commissioner.

(d) "Distribution Account" means the accounting unit established by the Division of Water Rights ("Division") for calculation of assessments and for tracking the assessments made to and payments collected from each water user.

(e) "Distribution Order" means an Order of the State Engineer interpreting the water rights included within a Distribution System, confirming priorities of water rights, giving instruction or direction regarding the regulation, distribution, and/or measurement of water based on those water rights, and may order the installation or repair of measuring devices, head gates, and control structures as authorized by Chapter 73-5. Distribution Orders are enforceable under the provisions of Sections 73-2-25 and 73-2-26.

(f) "Distribution Season" means that period of the year during which the regulation of water distribution and/or the measurement of water by a Water Commissioner is necessary as determined by the State Engineer.

(g) "Distribution System" means an organization of the owners of water rights within a river system or hydrologic unit, or a portion of a river system or hydrologic unit, that have been designated by the State Engineer for regulation by one or more Water Commissioners in accordance with Subsections 73-5-1(1)(b), 73-5-1(1)(c), and 73-5-1(2).

(h) "Distribution System Committee" (Committee) means the subgroup of water users properly designated to represent all water users within a Distribution System.

(i) "Division" means the Division of Water Rights of the State of Utah. The terms "Division" and "State Engineer" may be used interchangeably unless indicated otherwise by the context of the usage.

(j) "Enforcement Tag" means any orange tag attached by a water commissioner to or near a control structure or water measuring device in situations where the water user is ordered to comply with the water commissioner's regulation and distribution of water. An enforcement tag constitutes a distribution order and is enforceable in the same manner.

(k) "Measuring Device" means any structure or device approved by the State Engineer but not limited to flumes, weirs, meters, or similar devices that can be used to adequately determine the instantaneous flow of water or the volume of water measured over a period of time with an accuracy commensurate with industry standards.

(l) "Regulation Tag" means a white tag used by a water commissioner to inform and instruct the water users regarding the

regulation and distribution of water at the location where the tag is placed.

(m) "State Engineer" means the Director of the Division of Water Rights appointed in accordance with Section 73-2-1 or other person acting in a legally delegated capacity as an agent, assistant, employee or representative of the Director. The terms "State Engineer" and "Division" may be used interchangeably unless indicated otherwise by the context of the usage.

(n) "Voluntary Agreement" means an agreement entered into by a group of water right owners whereby the owners stipulate to have the Water Commissioner regulate and distribute the water rights described in the agreement to the group of owners as if the group were a single entity such as a water company.

(o) "Voting Block" means a group of water users, designated as such by the State Engineer, who share a common interest within a Distribution System because of the nature of their water rights, the geographic location of their water use, or any other element of their water rights or water usage.

(p) "Water Commissioner" (Commissioner) means a person appointed by the State Engineer in accordance with Subsection 73-5-1(1)(a). A Water Commissioner is an official and, in the performance of official duties, is a duly authorized assistant of the State Engineer as contemplated at Section 73-5-3.

(q) "Water Company" means a water user organization that owns water rights, to which water is distributed by a Commissioner and which, in turn, delivers and distributes water to its members on the basis of proportional ownership of shares or other interest. A water company must be formally incorporated under applicable State of Utah statutes and may be either a for-profit entity or a mutual, non-profit entity.

(r) "Water User" means an individual person, a group acting cooperatively under a voluntary agreement, a water company, a municipality, a special district, a state or federal agency, or any other legal entity that meets the following criteria:

(i) Owns a water right included within a Distribution System;

(ii) Is subject to payment of an assessment;

(iii) Has an identifiably separate and distinct interest in the use of water in the distribution system.

The members of a group acting under a voluntary agreement; a water company's members, shareholders or officers; and those persons served by a municipality, special district, or other governmental entity are not considered water users under this definition, but are represented at Annual Meetings or other meetings of the Distribution System by one duly appointed representative of the group or entity. A group of co-owners, including a husband and wife, who jointly own a water right with

an undivided interest are not considered separate water users under this definition, but are also represented at Annual Meetings or other meetings of the Distribution System by one duly appointed representative of the group. This definition applies only to Rule R655-15.

R655-15-5. Distribution Systems.

(1) To achieve the purposes set forth in Section 73-5-3, the State Engineer:

(a) Shall create a Distribution System when ordered by the district court: or

(b) May create a Distribution System when the State Engineer determines that a Distribution System is necessary as a result of:

(i) Investigations initiated by the Division; or

(ii) A request submitted by water users with sufficient supporting information.

(2) As authorized in Section 73-5-1, the State Engineer shall:

(a) Designate by geographical or political boundary, or other suitable criteria, the water rights that shall be included in the Distribution System; and

(b) Determine whether one or more Commissioners are required to regulate and distribute water according to the water rights included in the Distribution System.

(3) To establish a new Distribution System, the State Engineer shall consult with the water users who would potentially be included within the system in accordance with Section 73-5-1. The State Engineer shall:

(a) Provide timely notice to water users shown on the records of the Division as owning water rights within the proposed Distribution System.

(b) Hold a public meeting to:

(i) Inform the water users of the justifications for the Distribution System, the boundaries or the Proposed Distribution System, the water rights that would be regulated within the Distribution System, and the estimated costs of operating a Distribution System;

(ii) Explain the State Engineer's purposes, policies, and procedures regarding Distribution Systems; and

(iii) Receive comments from the water users regarding the justifications for a Distribution System and the other information presented at the meeting. The State Engineer may allow comments to be received after the meeting. The period of time for submitting comments will be set at the meeting.

(c) Hold an organizational meeting or meetings to:

(i) Establish a Committee or select a Distribution System Chair;

(ii) Prepare an operational budget for the Distribution System;

(iii) Establish a method of calculating assessments; and

(iv) Receive a recommendation(s) regarding the appointment of a Commissioner(s) and, if necessary, one or more Deputy Commissioners.

(d) Issue an Order of the State Engineer establishing the Distribution System. The Order shall be issued to all water users within the Distribution System and shall set forth:

(i) The organization of the Distribution System;

(ii) The method of calculating assessments; and

(iii) Any other information required for the effective operation of the Distribution System.

(e) Appoint one or more Commissioners and/or Deputy Commissioners;

(f) Establish and maintain a system of distribution accounts that shall be the basis for making assessments to the water users in the Distribution System.

(4) To modify the extent, organizational structure, or any other aspect of a Distribution System the State Engineer shall:

(a) Provide timely notice to each water user shown on the Division's records as being responsible for a Distribution Account included in the Distribution System; and

(b) In accord with said notice, schedule and hold a Distribution System meeting to:

(i) Explain the State Engineer's findings and conclusions regarding the proposed modifications;

(ii) Receive comments regarding the proposed modifications to the Distribution System. The State Engineer may allow comments to be received after the meeting. The period of time for submitting comments will be set at the meeting.

(c) Issue an Order of the State Engineer modifying the Distribution System. The Order shall be delivered to all water users within the modified Distribution System and shall describe the modifications made to the Distribution System.

(5) The State Engineer may determine, based on an investigation or other pertinent information, that an established Distribution System is no longer necessary to achieve the purposes set forth in Section 73-5-3. To dissolve a Distribution System, the State Engineer shall:

(a) Provide timely notice to the water users included in the Distribution System;

(b) In accord with said notice, schedule and hold a Distribution System meeting to:

(i) Explain the State Engineer's findings and conclusions regarding the dissolution of the Distribution System;

(ii) Receive comments regarding the dissolution of the

Distribution System. The State Engineer may allow comments to be received after the meeting. The period of time for submitting comments will be set at the meeting.

(c) Relieve the Commissioner of responsibilities and authority regarding the regulation and distribution of water;

(d) Retire any outstanding financial obligations of the Distribution System and return any funds pertaining to the Distribution System remaining in the Water Commissioner Fund to the water users on a pro-rata basis according to the assessments paid over the previous five years;

(e) Take custody of all records maintained by the Distribution System; and

(f) Take custody of all equipment, vehicles and other physical assets accumulated in the operation of the Distribution System, said assets to be disposed in a manner consistent with pertinent statute or other regulation.

(g) Issue to all water users within the Distribution System an Order of the State Engineer dissolving the Distribution System.

(6) A Distribution System consists of the following parties:

(a) The State Engineer;

(b) One or more Commissioners and any appointed Deputy Commissioners;

(c) A Committee or Distribution System Chair; and

(d) The water users.

(7) The composition, authority, duties and responsibilities of the parties identified immediately above are described in the following sections.

R655-15-6. State Engineer.

(1) May, as authorized in Subsection 73-2-1(5), make administrative rules regarding Water Commissioners and Distribution Systems.

(2) May, as authorized in Section 73-5-1, establish a Committee or Distribution System Chair to represent water users.

(3) Shall consult with the water users, directly or through the Committee, regarding the qualifications, duties, compensation and appointment of the Commissioner(s);

(4) Shall appoint the Water Commissioner(s);

(5) May appoint one or more Deputy Commissioners;

(6) Shall retain authority and responsibility for supervision of the Commissioner and Deputy Commissioner(s) to assure that water is measured, divided, regulated, and distributed in a manner consistent with the rights of the water users.

(7) Shall provide fiduciary supervision, accounting and operation of the Water Commissioner Fund, including the calculation of assessments, mailing of assessment notices, collection of assessments, issuance of payments for the expenses

of the Distribution System, and an annual reporting to the Committee and/or the water users of the status of finances of the Distribution System.

(8) Shall hold an Annual Meeting with the Committee and/or the water users as described in this rule.

(9) Shall, in consultation with the Committee Chair or the Distribution System Chair, designate a date, time and place of an Annual Meeting of the water users and provide a timely notice of the Annual Meeting and the proposed agenda to all necessary parties.

(10) May issue Distribution Orders.

R655-15-7. Water Commissioners.

(1) An applicant for the position of Water Commissioner ("Commissioner") shall, at a minimum:

(a) Be a high school graduate;

(b) Demonstrate a level of education and experience commensurate with the level of complexity and difficulty involved in regulating the Distribution System;

(c) Have demonstrated knowledge of:

(i) Irrigation practices and technologies;

(ii) The local area and the water users involved in the Distribution System;

(iii) The use and maintenance of water control and measurement equipment and devices;

(iv) Water measurement units, calculations and conversions; and

(v) Maps, standard land description terminology, units of measure and conversions,

(d) Have a demonstrated knowledge of or the ability and willingness to learn;

(i) Principles and terminology of Utah water rights law; and

(ii) Technology necessary for the effective regulation, distribution, measurement and reporting of water use in the Distribution System.

(e) Have a demonstrated ability to communicate effectively verbally and in writing;

(f) Have a demonstrated ability to work cooperatively with persons with conflicting interests to find appropriate solutions to challenges and /or resolve disputes;

(g) Be available at all times necessary throughout the distribution season to fulfill the duties of Water Commissioner set forth herein;

(h) Hold a valid Utah Drivers License

(i) Be able to walk over rough and uneven terrain for distances up to a half mile.

(j) Be less than 75 years of age. A person who is 75 years

of age or older will not be appointed as Commissioner by the State Engineer.

(k) The applicant must disclose to the State Engineer and the interview panel any conflict of interest related to exercising the duties of the Commissioner. The State Engineer will determine whether a disclosed conflict of interest would prevent objective regulation and distribution of water on the Distribution System in accordance with the water rights and the instructions and Distribution Orders from the State Engineer. If such a conflict of interest exists, the applicant will be deemed ineligible for appointment. If such a conflict develops or is found to exist subsequent to an appointment, the Commissioner will be removed as described in this rule.

(2) Selection Process

(a) Public notice of the intent to fill a Commissioner position shall be advertised in a newspaper of local circulation in the area where the distribution system is located. The notice shall:

(i) Include a general description of the qualifications, duties, and compensation related to the position;

(ii) include the method of making application for the position; and

(iii) Be published in a manner and for a duration determined by the State Engineer as reasonable and sufficient.

(b) Application for the Water Commissioner position shall be made in writing to the Committee Chair or the Distribution System Chair as directed in the public notice. The application shall include a summary of the applicant's qualifications and experience. The Chair, in consultation with the State Engineer, shall determine, based on the relative qualifications of the applicants, those applicants to be invited for an interview.

(c) Interviews for the position of Water Commissioner shall be conducted by an interview panel. The interview panel shall consist of the Committee and the State Engineer. At the discretion of the Committee and with the consent of the State Engineer, the Committee may include additional water users on the interview panel to assure all interests are adequately represented. If a Committee has not been established on the Distribution System, the panel shall include the Distribution System Chair, a representative group of water users selected by the Distribution System Chair, and the State Engineer.

(d) The recommendation to the State Engineer concerning the appointment of the Commissioner shall be based on the results of the applicant interviews as determined by a majority vote of:

(i) The water users of the Distribution System if:

(A) The interview panel consisted of selected water users;

or

(B) The interview panel consisted of a Committee that prepares recommendations for the water users' ratification.

(ii) The Committee if the Committee is established to act without ratification by the water users.

(e) If a majority of the water users, as determined by a vote of the water users or by a vote of the Committee as described above, agrees on a qualified applicant to recommend to the State Engineer, the State Engineer shall appoint the recommended applicant as Commissioner based on the recommendation. If the water users cannot agree as evidenced by a majority vote, the State Engineer shall select a person from among the qualified applicants for appointment as Commissioner.

(3) If the person selected and appointed as Commissioner as a result of the process outlined in (2) above is an employee of one of the water users on the distribution system (such as a water company or water conservancy district) and, if the Commissioner's duties will be performed during the hours of employment by the water user, the State Engineer shall enter into an agreement with the Commissioner's employer. The agreement shall cover, at minimum, the following issues:

(a) The duties to be performed by the Commissioner during the hours of employment;

(b) Supervision by the State Engineer and accountability of the Commissioner to the State Engineer in the performance of all official duties; and

(c) The compensation that will be paid by the Distribution System to the employer for the time spent by the Commissioner in the performance of his/her official duties.

(4) The Commissioner shall be appointed for a term of four years in accordance with Subsection 73-5-1(1)(a).

(a) A new four-year term shall commence with each appointment.

(b) The four-year term shall commence at the Annual Meeting or other Distribution System meeting or Committee meeting wherein the Commissioner appointment recommendation was made to the State Engineer.

(c) The four-year term shall run until the Annual Meeting or Committee Meeting held during the fourth year following the Commissioner's appointment.

(d) Regardless of the number of years remaining in a term, a Commissioner's term of appointment will terminate at the Annual Meeting prior to the Commissioner's 75th birthday.

(e) In exceptional situations, the State Engineer may extend a person's appointment as water commissioner to one additional term beyond the person's 75th birthday or until age 79 (whichever comes first). The decision to extend the person's appointment for one additional term must be based on consideration of a written

request signed by at least five or a majority (whichever is less) of the water users of the water distribution system. The request must include the following:

(i) An attestation that the person currently demonstrates that he/she is physically and mentally capable of adequately performing the water commissioner duties;

(ii) An explanation why the replacement of the water commissioner would pose a burden and a hardship on the water distribution system; and

(iii) The steps that will be taken by the water users to resolve the concerns described in (ii) above by the end of the extended appointment.

(f) If a person is appointed as water commissioner to an extended term beyond his/her 75th birthday, that appointment will be reviewed with the water users on a year-by-year basis at the annual distribution meeting. If, as a result of that review, the State Engineer determines that the person is no longer physically or mentally capable of adequately performing the water commissioner duties, the person's appointment as water commissioner will be ended.

(5) If a Commissioner retires, resigns, or is otherwise removed prior to completing the full four-year term of appointment, the uncompleted term shall not be filled. The process described in these rules for selecting a Commissioner shall be followed in making a new appointment.

(6) A vacant Commissioner position shall be filled as soon as possible after the vacancy occurs. However, sufficient time will be taken as required to adequately complete the selection process as described in these rules.

(7) Should a Commissioner vacancy occur during the distribution season, Division staff shall act in the stead of the Commissioner to regulate and distribute water in the Distribution System until such time as a new Commissioner is appointed.

(8) A person may be appointed to serve successive terms as Commissioner without limit.

(9) Authority

(a) The Commissioner is an assistant to the State Engineer and is authorized to act as described in Sections 73-5-3 and 73-5-4 to assure that water is properly measured, divided and distributed to the water users in accord with their respective water rights.

(b) As described in Section 73-5-3, the Commissioner is authorized to enter upon private property whenever necessary to carry out the provisions of statute and these rules.

(c) In all official duties and responsibilities of the position, the Commissioner is authorized to act as directed by the State Engineer.

(10) A person may serve concurrently as Commissioner for more than one Distribution System.

(11) Duties

(a) The Commissioner shall consult with the State Engineer to exchange information and receive direction. The Commissioner may also consult with the Committee or Distribution System Chair to exchange information.

(b) The Commissioner shall regulate the diversion and distribution of water:

(i) In accordance with properly established water rights on the records of the Division; and

(ii) In accordance with State Engineer Distribution Orders.

(c) The Commissioner shall measure and make records of the measurements of:

(i) The water delivered to each Distribution Account;

(ii) Any flows or volumes of water and reservoir water levels necessary for the proper regulation of water distribution in the Distribution System; and

(iii) Any other flows or volumes of water and reservoir water levels as directed by the State Engineer.

(d) The Commissioner shall regularly inspect Distribution System facilities, including water measuring devices, head gates, and other water control structures, to ensure they are operating properly and adequately maintained to meet the purposes of the Distribution System.

(i) The Commissioner shall perform or arrange for the performance of such facilities maintenance work as is included within the scope of the duties assigned and consistent with the appointment.

(ii) If inadequacies related to the regulation, distribution, and measurement of water are identified in the Distribution System facilities, said inadequacies being outside the scope of the Commissioner's designated duties, the Commissioner shall notify the responsible water user(s), the Distribution Committee Chair or Distribution System Chair, and the State Engineer.

(e) The Commissioner shall assist the State Engineer as requested to improve water measurement and accounting practices and procedures in the Distribution System.

(f) As new technologies are implemented to improve the efficiency of water delivery and distribution, the Commissioner shall become proficient in the use and application of the technology. Should a Commissioner prove unable or unwilling to acquire such proficiency in a reasonable time, this condition shall constitute grounds for termination of the Commissioner's appointment.

(g) The Commissioner shall maintain records and make reports

including:

(i) Complete, accurate, current, and legible records sufficient to demonstrate faithful performance of the duties designated.

(A) All records shall be available to the State Engineer upon request.

(B) All records shall be submitted to the State Engineer upon termination of the Commissioner's service.

(ii) A written Annual Report of the Distribution System including all information determined necessary by the State Engineer in consultation with the Committee or Distribution System Chair.

(A) The report shall include water use data based on actual water measurements, a record of regulation and distribution issues and decisions made during the distribution season, and any other information required by the State Engineer.

(B) The report shall be prepared in a format approved by the State Engineer.

(C) The report shall be delivered to the State Engineer and the Committee and/or water users each year at the Annual Meeting unless another reporting deadline has been approved by the State Engineer.

(h) The Commissioner shall assist, as requested, in acquiring current ownership, mailing address, and other information required to update Distribution Accounts.

(i) The Commissioner shall provide to the State Engineer, in a timely manner, an accounting of the water delivered to each water user as required for the calculation of Distribution Assessments.

(j) When necessary to effect the proper distribution of water, the Commissioner may adjust or close and lock a head gate and/or control structure to prevent changes in the control settings.

(i) Such adjustments and locks shall remain as set by the Commissioner until a change in regulation or distribution is required.

(ii) In such cases, the Commissioner may attach a State Engineer Water Regulation Tag at or near the head gate or control structure.

(k) As necessary in effecting a State Engineer Distribution Order or in a Division enforcement proceeding, the Commissioner may close and lock a head gate and/or control structure to cease delivery of water to the affected water user.

(i) Such closure and locking of a head gate and/or control structure shall remain in place until the conditions of the Distribution Order or enforcement proceeding have been met.

(ii) In such cases, the Commissioner shall attach a State

Engineer Water Enforcement Tag at or near the head gate or control structure.

(l) The Commissioner shall assist the State Engineer as necessary in any Division enforcement proceeding related to the Distribution System.

(m) The Commissioner shall perform all other duties specific to the Distribution System as determined by the water users or the Committee and approved by the State Engineer.

(n) The Commissioner shall accurately complete and submit to the State Engineer all necessary forms provided by the State Engineer and supporting documentation of the expenses of the Distribution System.

(o) The Commissioner shall supervise and be responsible for the efforts of any Deputy Commissioner(s) appointed to assist in the regulation, distribution, and measurement of water on the Distribution System.

(p) The Commissioner shall devote the time necessary for the completion of the duties outlined in these rules and shall be generally available for contact at any reasonable time during the period of the distribution season.

(12) Compensation and Benefits:

(a) The salary or wage for a Commissioner shall be set within the guidelines established by the State Engineer.

(i) The salary or wage shall be paid through the State of Utah payroll system and shall be subject to all federal and state taxes and other required withholdings.

(ii) A Commissioner who retires, resigns or is otherwise removed during a distribution season will be compensated for only the portion of the distribution season completed prior to the termination of the Commissioner's service.

(b) A Commissioner shall be provided with a means of transportation for all travel related to fulfillment of official duties related to the Distribution System. The transportation may be provided by either of the following means:

(i) The Distribution System may provide a suitable vehicle to be used by the Commissioner solely in the performance of the Commissioner duties, with all vehicle expenses paid through the Distribution System; or

(ii) The Distribution System may compensate the Commissioner for the use of a personal vehicle in the performance of the Commissioner's official duties. Compensation shall include the total costs of operating and maintaining the vehicle for that portion of the vehicle use dedicated to the Commissioner's official duties. Compensation may be made:

(A) For actual vehicle operation and maintenance costs as reported and documented by the Commissioner; or

(B) At a per-mile rate determined from industry standards

for operation and maintenance of similar vehicles in similar conditions; or

(C) Based on a flat monthly or yearly amount agreed upon by the water users' representatives and the Commissioner and approved by the State Engineer. The agreed amount must reasonably represent the actual costs of operating the vehicle.

(c) A Commissioner shall be provided with communication and computer equipment necessary for the effective performance of the Commissioner duties. The cost of purchasing, operating, and maintaining such equipment shall be borne by the Distribution System. If a Commissioner chooses to use personally owned equipment, compensation shall be made on the basis of documentation showing the costs of acquisition, maintenance and operation of said equipment and the proportion of said costs directly attributable to the performance of the Commissioner's official duties. Cost documentation must be acceptable to the Committee or Distribution System Chair and approved by the State Engineer.

(d) A Commissioner shall be provided with adequate office space and clerical assistance to enable regulation and distribution of water on the Distribution System. The need for office space will be determined in consultation among the State Engineer, the Commissioner, and the Committee or Distribution System Chair.

(e) A Commissioner shall be provided, at the expense of the Distribution System, such other equipment as is needed to effectively measure, distribute, and regulate water on the Distribution System.

(f) At the discretion of the Committee and with the consent of the water users and the State Engineer, the Commissioner may be provided with health insurance with premiums paid all or in-part by the Distribution System.

(g) A Commissioner shall be provided with Workers Compensation Insurance at the expense of the Distribution System in accordance with pertinent regulations governing the same.

(h) The Distribution System shall pay the cost of the retirement benefit for any Commissioner whose salary meets or exceeds the minimum salary level set by the Utah State Retirement Office to qualify for retirement benefits.

(i) The Commissioner shall be reimbursed according to the Distribution System budget for expenses incurred in the performance of the Commissioner's duties. The Commissioner must request reimbursement by properly completing and submitting reimbursement forms and documentation as directed by the State Engineer. Unless prior arrangements have been made with the Committee or the Distribution Chair and approved by the State Engineer, reimbursement forms and supporting documentation must be

submitted to the State Engineer no later than December 15th of the calendar year in which the expense was incurred. Unless prior arrangements have been made, reimbursement will not be made on reimbursement forms submitted after December 15th of the year in which the expense was incurred.

(j) If the Commissioner is an employee of a regulated water user as described in (3) above, the Commissioner's salary, health insurance, worker's compensation insurance, retirement, and related payroll costs will be as provided by the employer. The Distribution System will compensate the employer for that portion of these costs that pertain directly to the performance of Commissioner's duties. Any other Commissioner expenses required for the operation of the Distribution System will be paid by the Distribution System as outlined above.

(13) Removal

(a) A Commissioner may be removed by the State Engineer for cause.

(i) The process to remove a Commissioner may be instigated by the State Engineer or as a result of a petition to the State Engineer from the water users or Committee.

(ii) The process for removing a Commissioner shall be governed by the provisions of the Utah Administrative Procedures Act.

(b) Water users may petition the District Court for the removal of a Commissioner.

R655-15-8. Deputy Water Commissioner.

(1) One or more Deputy Water Commissioners ("Deputy Commissioner") may be appointed by the State Engineer to assist the Commissioner.

(2) The need for a Deputy Commissioner shall be determined by the Commissioner and the Committee or Distribution System Chair and approved by the State Engineer.

(3) An applicant for the position of Deputy Commissioner shall, at a minimum:

(a) Be a high school graduate;

(b) Demonstrate a level of education and experience commensurate with the level of complexity and difficulty involved in assisting the Commissioner.

(c) Be less than 75 years of age. A person who is 75 years of age or older will not be appointed as Deputy Commissioner by the State Engineer.

(d) Hold a valid Utah Drivers License

(e) Be able to walk over rough and uneven terrain for distances up to a half mile.

(4) Selection Process

(a) Application for the position of Deputy Commissioner

shall be made to the current Commissioner.

(b) The current Commissioner shall interview applicants as necessary and present a recommendation to the Committee or Distribution Committee Chair for consideration.

(c) If the current Commissioner and the Committee or Distribution System Chair are in unanimous agreement on a qualified applicant to recommend to the State Engineer, the State Engineer shall appoint the applicant as Deputy Commissioner based on that recommendation. If there is no unanimity, the State Engineer shall select a person from among the qualified applicants to appoint as Deputy Commissioner.

(5) A Deputy Commissioner shall be appointed to a term corresponding to the term of the current Commissioner.

(a) If a Deputy Commissioner is appointed part way through the term of a currently serving Commissioner, the Deputy Commissioner's first term shall be equal to the remaining term of the current Commissioner.

(b) When a Commissioner retires, resigns, or is otherwise removed from appointment, the appointments of all Deputy Commissioners shall be concurrently terminated. However, should the Commissioner position become vacant during a distribution season, the appointment of any Deputy Commissioner may be extended until the end of the distribution season.

(c) Regardless of the number of years remaining in a term, a Deputy Commissioner's term of appointment will terminate at the last Annual Meeting prior to the Deputy's 75th birthday.

(6) A person may be appointed to serve successive terms as Deputy Commissioner without limit.

(7) When acting under specific direction of the Commissioner, a Deputy Commissioner shall have the same authority as delegated to the Commissioner as an agent of the State Engineer.

(8) A person may serve concurrently as Deputy Commissioner for more than one Distribution System.

(9) The duties of the Deputy Commissioner(s) shall be to assist the Commissioner, as assigned, in the performance of the Commissioner's duties to fulfill the purposes of the Distribution System.

(10) Compensation and Benefits:

(a) The salary or wage for a Deputy Commissioner shall be set within the guidelines established by the State Engineer.

(i) The salary or wage shall be paid through the State of Utah payroll system and shall be subject to all federal and state taxes and other required withholdings.

(ii) The total amount of salary or wage budgeted each year shall be paid to the Deputy Commissioner within the calendar year upon successful completion of the duties and responsibilities of

the position.

(b) A Deputy Commissioner may be provided with a means of transportation for all travel related to regulation of the Distribution System. The transportation may be provided by any of the means described in the above Section entitled "Water Commissioner".

(c) A Deputy Commissioner shall be provided, at the expense of the Distribution System, such equipment and supplies as are needed to effectively assist the Commissioner in the assigned duties on the Distribution System. Compensation shall be in a manner equivalent to that adopted for compensation of the Commissioner for similar expenses.

(d) At the discretion of the Committee and with the consent of the water users and the State Engineer, the Deputy Commissioner may be provided with health insurance with premiums paid all or in-part by the Distribution System.

(e) A Deputy Commissioner shall be provided with Workers Compensation Insurance at the expense of the Distribution System and in accordance with pertinent regulations governing same.

(f) The Distribution System shall pay the cost of the retirement benefit for any Deputy Commissioner whose salary meets or exceeds the minimum salary level set by the Utah State Retirement Office to qualify for retirement benefits.

(11) Removal

(a) A Deputy Commissioner may be removed by the State Engineer for cause.

(i) The process to remove a Deputy Commissioner may be instigated by the State Engineer or as a result of a petition to the State Engineer from the Commissioner, Committee, or the water users.

(ii) The process for removing a Deputy Commissioner shall be governed by the provisions of the Utah Administrative Procedures Act.

(b) Water users may petition the District Court for the removal of a Deputy Commissioner.

R655-15-9. Distribution System Committee.

(1) The Distribution System Committee ("Committee") shall be established in a manner that will provide equitable representation of the interests of all water users in the Distribution System.

(2) A Committee may be established by the State Engineer in a manner such that either:

(a) The Committee prepares recommendations for ratification by the water users of the Distribution System; or

(b) The decisions and recommendations of the Committee need no ratification by the water users of the Distribution System.

(3) The Committee shall be composed of no less than five and

no more than 15 representatives of the water users. The number of Committee members and the terms of office shall be determined by majority vote of the water users present at an Annual Meeting or specially called organizational meeting, subject to the approval of the State Engineer.

(4) Members of the Committee are to equitably represent the water users of the Distribution System and may be:

(a) Elected from among the water users for a specified term of office; or

(b) Duly appointed representatives of water user groups such as water companies, voluntary agreement groups, municipalities, or special districts who serve at the pleasure of the organization represented; or

(c) A combination of the foregoing under (a) and (b);

(d) Re-elected or reappointed without term limits unless barred by other policy or rule duly adopted.

(5) Representation on the Committee shall be limited to one Committee member from each: group acting cooperatively according to a voluntary agreement; water company; municipality; special district; state or federal agency; voting block; or other grouping of water users according to geography or type of water right.

(6) Committee members representing a group or other legal entity shall be elected from among the group or legal entity to be represented on the committee unless the governing documents of said group or legal entity mandate another method of selection.

(7) A quorum of the Committee must be present in order for the Committee to act on any issue regarding the Distribution System. A quorum shall consist of no less than one-half of the Committee members. The business of the Committee shall be conducted by a simple majority vote of the Committee members present at the meeting. Each member of the Committee shall have one vote. In the event of a tie vote, the business at hand may be deferred. If the business is sufficiently urgent that deferment is not practical, the matter shall be decided by the State Engineer in accordance with Subsection 73-5-1(2)(c).

(8) Changes in the composition, number of members, terms of office, etc., of the Committee may be made upon majority vote of the water users present at a properly scheduled Annual Meeting, subject to the approval of the State Engineer;

(9) The Committee shall elect from among its members:

(a) A Chair who shall have responsibility to:

(i) Conduct all Annual Meetings of the water users;

(ii) Conduct all special meetings of the Committee; and

(iii) Act as agent of the Committee in communications with the State Engineer, the water users and other entities.

(b) A Vice-Chair who shall assist in all duties of the Chair and assume the duties of the Chair when the Chair is absent or

otherwise unable to fulfill those duties.

(10) The Committee shall select and retain the services of a qualified Secretary who shall:

(a) Keep accurate and complete minutes of all Annual Meetings of the water users and all meetings of the Committee in a format approved by the State Engineer, the minutes shall be prepared and submitted to the Chair and to the Division of Water Rights within 30 days after the Annual Meeting;

(b) Prepare copies of the minutes of each Annual Meeting of the water users for distribution, review and approval by the water users present at the next subsequent Annual Meeting;

(c) Prepare copies of the minutes of each special meeting of the Committee for distribution, review and approval by the Committee at the next subsequent special meeting;

(d) Maintain a permanent record of all minutes of the meetings of the water users and the Committee;

(e) Maintain a complete and current record of the names, contact information, representation, and terms of office of all members of the Committee;

(f) Maintain a permanent record of all materials, reports, agendas, budgets, etc., presented or considered in Annual Meetings of the water users or special meetings of the Committee;

(g) Submit to the Chair for approval by the Committee an annual (or more frequent, as needed) itemized billing for services rendered and a statement of associated expenses for payment from the funds of the Distribution System;

(h) Submit all records of the Distribution System thus maintained:

(i) To the Chair of the Committee upon termination of service as Secretary; or

(ii) To the State Engineer upon dissolution of the Distribution System.

(11) A Committee whose actions are ratified by the water users shall prepare recommendations for the water users regarding:

(a) The recommendation to the State Engineer concerning the appointment of a Commissioner;

(b) The recommendation to the State Engineer concerning the appointment of a Deputy Commissioner need not be ratified by the water users;

(c) The duties of the Commissioner or Deputy Commissioner specific to the Distribution System;

(d) The operating budget for the Distribution System including compensation for the Commissioner and Deputy Commissioner(s);

(e) The total of the assessments to be levied to meet the operating expenses of the Distribution System; and

(f) Any other business necessary for the proper operation of

the Distribution System.

(12) A Committee whose actions need not be ratified by the water users shall make all decisions and recommendations on behalf of the water users regarding the items listed above.

(13) The Committee may recognize and authorize the seating of a substitute member of the Committee to act in the place of any member absent or otherwise unable to attend to those duties. The substitute member shall be selected from among the same group represented by the absent member.

R655-15-10. Distribution System Chair and Vice-Chair.

(1) If a Committee is not established, the water users shall elect a Distribution System Chair and Vice-Chair ("Chair and Vice-Chair") by majority vote of the water users present at an Annual Meeting or specially called organizational meeting.

(2) A Chair shall have responsibility to:

(a) Conduct all Annual Meetings of the water users; and

(b) Act as agent of the water users in communications with a Commissioner, a Deputy Commissioner, the State Engineer, the water users and other entities.

(3) The Vice-Chair shall assist in all duties of the Chair and assume the duties of the Chair when the Chair is absent or otherwise unable to fulfill those duties.

(4) The Chair shall select and retain the services of a qualified Secretary who shall:

(a) Keep accurate and complete minutes of all Annual Meetings of the water users, the minutes shall be prepared and submitted to the Chair and to the Division of Water Rights within 30 days after the Annual Meeting;

(b) Prepare copies of the minutes of each Annual Meeting of the water users for distribution, review and approval by the water users present at the next subsequent Annual Meeting;

(c) Maintain a permanent record of all minutes of the Annual Meetings of the water users;

(d) Maintain a permanent record of all materials, reports, agendas, budgets, etc., presented or considered in Annual Meetings of the water users;

(e) Submit to the Chair an annual (or more frequent, as needed) itemized billing for services rendered and a statement of associated expenses for payment from the funds of the Distribution System;

(f) Submit all records of the Distribution System thus maintained:

(i) To the Chair upon termination of service as Secretary;
or

(ii) To the State Engineer upon dissolution of the Distribution System.

R655-15-11. Water Users.

(1) Water users shall pay distribution assessments within the deadlines established in this rule.

(2) Water users may participate in organizational or Annual Meetings to:

(a) Select representatives to serve as members of the Committee or to elect a Distribution System Chair and Vice-Chair;

(b) Exchange information with the State Engineer, Commissioner and Committee or Distribution System Chair pertinent to the fulfillment of the purposes of the Distribution System.

(c) Vote on Distribution System business as described in this rule.

(3) A water user who is unable to attend an Annual Meeting or other meeting of the Distribution System may designate a person by proxy to act in the water user's stead in the conduct of official business of the Distribution System. The proxy shall:

(a) Be in writing;

(b) Name the person who is giving the proxy and who is recognized as a water user on the Distribution System;

(c) Name the person who is designated to act in the place of the absent water user;

(d) State the meeting and the date of the meeting at which the proxy is to be used;

(e) State any limitations on the authority of the proxy to act in the place of the absent water user;

(f) Be signed by the water user giving the proxy;

(g) Be submitted to the Committee or the Distribution System Chair at the meeting where the proxy is to be used prior to any attempt to act as proxy; and

(h) Be retained by the officers of the Distribution System as part of the records of the meeting.

(4) Except as provided below for a voting block, each water user shall have one vote in the conduct of official business of the Distribution System.

(5) To assure equitable representation of the interests of all water users in conducting the business of the Distribution System, the State Engineer may organize water users into voting blocks.

(a) A simple majority of the water users in a voting block shall determine the vote to be cast by the voting block.

(b) Each voting block in a Distribution System so organized shall have one vote in the conduct of the official business of the Distribution System.

(6) All water users shall assist the Commissioner in fulfilling the duties of that appointment as they pertain to the rights of the water user.

(7) Each water user shall abide by the regulation and distribution directions issued or set by a Commissioner and any appointed Deputy Commissioner, including but not limited to head gate and/or control structure settings. A water user who fails to abide by the direction of a Commissioner or Deputy in the performance of official duties is subject to enforcement proceedings and resulting administrative penalties as established by statute.

(8) Each water user shall maintain in workable and accessible condition all head gates, control structures, measuring devices and other equipment determined necessary by the State Engineer for the Commissioner's control, measurement and delivery of water.

(a) Measuring devices, head gates, and control structures shall be installed by and at the expense of the water user at each location determined necessary by the State Engineer.

(b) Measuring devices, head gates, and control structures shall be of a design approved by the State Engineer.

(c) Safe and reasonable access shall be provided to all head gates, control structures, measuring devices and other installations required for the Commissioner's control, measurement, and delivery of water.

(9) Water users shall provide reports on water use as required by the State Engineer pursuant to Section 73-5-8.

R655-15-12. Annual Meetings.

(1) The State Engineer shall hold an Annual Meeting of the water users and/or the Committee prior to the start of each distribution season.

(2) The purpose of the Annual Meeting shall be to address the following matters:

(a) Review, amend as necessary, and approve the minutes of the next previous Annual Meeting;

(b) Review the finances of the Distribution System including:

(i) Current account balance of Distribution System funds;

(ii) Budgeted amounts and expenditures of the previous fiscal period;

(iii) Status of assessment collections including delinquent accounts;

(c) Set a budget for the current or prospective fiscal period. The budget shall provide for the following expenses:

(i) Compensation of the Commissioner(s), Deputy Commissioner(s), and Secretary;

(ii) Office and clerical expenses as are necessary for the effective distribution and regulation of water on the Distribution System;

(iii) Equipment expenses as are necessary for the effective distribution and regulation of water on the Distribution System;

(iv) Other expenses necessary for the effective distribution and regulation of water and operation of the Distribution System including those determined necessary by the State Engineer such as the State Engineer's Assessment for disbursement of funds, accounting, and assessment collection.

(d) Set a total assessment to be collected from the water users to defray the expenses of the adopted budget.

(e) Hear, review, and approve the Commissioner's Annual Report; if the report is unacceptable, motions may be adopted to amend the report;

(f) Review and amend, subject to approval of the State Engineer, the duties of the Commissioner;

(g) Review the performance of the Commissioner and any Deputy Commissioners and hear any commendations, comments, or complaints relative to the previous year.

(h) Recommend the appointment of a Commissioner, as may be necessary;

(i) Elect members of the Committee, as may be necessary

(j) Receive a report or other information from the State Engineer concerning matters pertinent to the operation of the Distribution System;

(k) Conduct any other business as may be necessary to fulfill the purposes of the Distribution System.

R655-15-13. Distribution System Committee Meetings.

(1) Meetings of the Distribution System Committee ("Committee") shall be held as necessary to fulfill the purposes of the Distribution System.

(2) Committee meetings may be held in lieu of or in addition to the Annual Meeting with the water users as determined by the State Engineer.

(3) The Committee Chair and Vice-Chair shall be elected at a Committee Meeting.

(4) If the Committee meeting is held in lieu of the Annual Meeting with the water users, the purpose of the meeting shall be to address the matters described in Section entitled "Annual Meetings" herein.

(5) If the Committee meeting is held in addition to the Annual Meeting with the water users, the purpose of the meeting shall be to review information and develop recommendations on the matters described in the Section entitled "Annual Meetings," herein, for presentation to the water users.

R655-15-14. Assessments.

(1) A Distribution Account shall be established by the State

Engineer for each water right or group of water rights within the Distribution System that shall include:

(a) An account number;

(b) The name, full mailing address, and other pertinent contact information for the person responsible for payment of the assessment associated with the account;

(c) The water right or rights associated with the account;

(d) Any other information that may be pertinent and useful in enabling identification of the water sources, beneficial use of water and place of use of the water rights associated with the account.

(2) Assessments to each Distribution Account shall be calculated so as to collect from each water user a pro rata share of the monies necessary to defray the expenses of the budget adopted at the Annual Meeting of the water users or at the Committee meeting.

(3) The method of calculating assessments shall be determined by the State Engineer, in consultation with the water users, Committee or Chair, to best meet the needs of the Distribution System and assure an equitable distribution of costs among the water users. The assessment calculation method for a Distribution System may be based upon:

(a) The proportion of the total annual assessment amount which the allowed irrigated acreage under the Distribution Account bears to the total allowed irrigated acreage within the Distribution System; or

(b) The proportion of the total annual assessment amount which the allowed water flow in cubic feet per second (cfs) or allowed annual diversion in acre-feet (AF) under the water right(s) in the Distribution Account bears to the total allowed flow or diversion allowance for all water rights within the Distribution System; or

(c) The proportion of the total annual assessment amount which the quantity (AF) of water actually taken by or delivered under the water right(s) in the Distribution Account (as reported by the Commissioner for the year prior) bears to the total quantity of water actually taken or delivered within the Distribution System; or

(d) Any other method of calculation which shall be acceptable to the water users and approved by the State Engineer and which results in an equitable and proportional sharing of system costs among the water users.

(4) Water users who place disproportionate demands on the Commissioner, as based on the relative amount of their assessment and as determined by the State Engineer, may receive an increased assessment. The amount of the increase will be determined by the State Engineer to compensate for the increased time required of

the Commissioner to satisfy or properly distribute water to the water user.

(5) Assessment notices shall be mailed to the responsible party for each Distribution Account no later than April 1 of each year unless unusual circumstances require a delay.

(6) Assessment payments shall be made payable to the Utah State Engineer.

(7) As set forth in Section 73-5-1(3), assessments for Distribution Systems shall be due on or before May 1 of the year in which they are levied.

(8) A delinquency charge shall be levied against Distribution Account balances that remain unpaid as of June 1 of each year.

(a) The amount of the delinquency charge shall be 10% of the unpaid Distribution Account balance unless otherwise determined by the State Engineer in consultation with the water users, Committee or Chair.

(b) The delinquency charges collected shall be deposited in the Water Commissioner Fund dedicated to the Distribution System.

(9) Actions taken for collection of delinquent accounts shall be at the discretion of the State Engineer as provided in Subsection 73-5-1(3)(c). Costs incurred by the Division in collection of delinquent accounts shall be included in the administrative costs budgeted as the State Engineer's Assessment for disbursement of funds, accounting, and assessment collection.

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