CHAPTER NO. <u>444</u>.

SENATE BILL NO. 410

INTRODUCED BY ETCHART, CONOVER, McCALLUM, NELSON

IN THE SENATE

February	7, 1	L979	Introduced and referred to Committee on Agriculture, Livestock, and Irrigation.
February	12,	1979	Committee recommend bill do pass. Report adopted.
February	13,	1979	Printed and placed on members' desks.
February	14,	1979	Motion pass consideration.
February	15,	1979	Second reading, do pass.
February	16,	1979	Considered correctly engrossed
February	17,	1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 19, 1979Introduced and referred to
Select Committee on Water.March 9, 1979Committee recommend bill
be concurred in. Report adopted.March 13, 1979Second reading, concurred in.March 16, 1979Third reading, concurred in.

IN THE SENATE

March 17, 1979 Returned from second house. Concurred in. Sent to enrolling. Reported correctly enrolled. LC 1730/01

INTRODUCED BY Ethert Conver Mc Balle NELSON

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE IRRIGATION 5 DISTRICTS AND OTHER USERS OF STORED WATER TO SHARE THE 6 EXPENSES AND COSTS OF A WATER COMMISSIONER APPOINTED TO 7 ADMEASURE AND DISTRIBUTE WATER STORED IN A RESERVOIR; 8 AMENDING SECTION 85-5-101+ MCA."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 Section 1. Section 85-5-101, MCA, is amended to read: 11 #85-5-101. Appointment of water commissioners. (1) 12 Whenever the rights of persons to use the waters of any 13 stream+ ditch or extension of ditch+ watercourse+ spring+ 14 15 lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, 16 17 it shall be the duty of the judge of the district court 18 having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water 19 richts affected by the decree, in the exercise of his 20 discretion, to appoint one or more commissioners. The 21 22 commissioners shall have authority to admeasure and 23 distribute to the parties owning water rights in the source 24 affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree 25

1 and by any certificates and permits issued under chapter 2 2 of this title. When petitioners make proper showing that 3 they are not able to obtain the application of the owners of 4 at least 152 of the water rights affected and they are 5 unable to obtain the water to which they are entitled, the 6 judge of the district court having jurisdiction may. in his 7 discretion, appoint a water commissioner.

(2) When the existing rights of all appropriators from 8 a source or in an area have been determined in a final 0 decree issued under chapter 2 of this title, the judge of 10 the district court which issued the final decree shall upon 11 application by the department of natural resources and 12 conservation appoint a water commissioner. The water 13 commissioner shall distribute to the appropriators, from the 14 source or in the area, the water to which they are entitled. 15 16 (3) The department of natural resources and conservation or any person or corporation operating under 17 18 contract with the department or any other owner of stored 17 waters may petition the court to have such stored waters **Z**0 distributed by the water commissioners appointed by said court. The court may thereupon make an order requiring the 21 22 commissioner or commissioners appointed by the court to 23 distribute such stored water when and as released to water 24 users entitled to the use thereof. 25

(4) At the time of the appointment of such water SB4/O $^{-2-}$ INTRODUCED BILL LC 1730/01

commissioner or commissioners, the district court shall fix
their compensation, and the owners and users of the
distributed waters shall pay their proportionate share of
such fees and compensation.

(5) Upon the application of the board or boards of one 5 or more irrigation districts entitled to the use of water 6 stored in a reservoir which is turned into the natural 7 8 channel of any stream and withdrawn or diverted at a point 9 downstream for beneficial use, the district court of the 10 judicial district wherein the most irrigable acres of the irrigation district or districts are situated may appoint a 11 water commissioner to equitably admeasure and distribute 12 13 such stored water to said irrigation district or districts from the channel of the stream into which it has been 14 15 turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter. 16 17 limited only by the purposes of this subsection. His 18 compensation is set by the appointing judge and paid by the 19 requesting-district-or-districts each district and other 20 users of stored water affected by the admeasurement and 21 distribution of such stored water. In all other matters the 22 provisions of this chapter apply so long as they are 23 consistent with this subsection."

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46th Legislature

LC 1730/01

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Approved by Cognittee on Agriculture Livestock & Irrigation

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Section 1. Section 85-5-101, MCA, is amended to read: 11 #85-5-101. Appointment of water commissioners. (1) 12 13 Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, 14 lake, reservoir, or other source of supply have been 15 16 determined by a decree of a court of competent jurisdiction, 17 it shall be the duty of the judge of the district court 18 having jurisdiction of the subject matter, upon the 19 application of the owners of at least 15% of the water rights affected by the decree, in the exercise of his 20 21 discretion, to appoint one or more commissioners. The 22 commissioners shall have authority to admeasure and distribute to the parties owning water rights in the source 23 24 affected by the decree the waters to which they are 25 entitled, according to their rights as fixed by the decree

LC 1730/01

and by any certificates and permits issued under chapter 2 1 of this title. When petitioners make proper showing that 2 they are not able to obtain the application of the owners of З at least 15% of the water rights affected and they are 4 unable to obtain the water to which they are entitled, the 5 judge of the district court having jurisdiction may. in his 6 discretion, appoint a water commissioner. 7 (2) When the existing rights of all appropriators from R a source or in an area have been determined in a final 0 decree issued under chapter 2 of this title, the judge of 10 the district court which issued the final decree shall upon 11 application by the department of natural resources and 12 appoint a water commissioner. The water 13 conservation 14 commissioner shall distribute to the appropriators, from the 15 source or in the area, the water to which they are entitled. 16 (3) The department of natural resources and 17 conservation or any person or corporation operating under 18 contract with the department or any other owner of stored waters may petition the court to have such stored waters 19

distributed by the water commissioners appointed by said

court. The court may thereupon make an order requiring the

commissioner or commissioners appointed by the court to

distribute such stored water when and as released to water

users entitled to the use thereof.

 commissioner or commissioners, the district court shall fix
their compensation, and the owners and users of the
distributed waters shall pay their proportionate share of
such fees and compensation.

(5) Upon the application of the board or boards of one 5 or more irrigation districts entitled to the use of water 6 stored in a reservoir which is turned into the natural 7 channel of any stream and withdrawn or diverted at a point 8 9 downstream for beneficial use, the district court of the judicial district wherein the most irrigable acres of the 10 irrigation district or districts are situated may appoint a 11 water commissioner to equitably admeasure and distribute 12 such stored water to said irrigation district or districts 13 14 from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has 15 16 the powers of any commissioner appointed under this chapter. 17 limited only by the purposes of this subsection. His 18 compensation is set by the appointing judge and paid by the 19 requesting-district-or-districts each district and other users of stored water affected by the admeasurement and 20 21 distribution of such stored water. In all other matters the 22 provisions of this chapter apply so long as they are 23 consistent with this subsection."

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(2) When the existing rights of all appropriators from 8 a source or in an area have been determined in a final 9 decree issued under chapter 2 of this title, the judge of 10 the district court which issued the final decree shall upon 11 application by the department of natural resources and 12 conservation appoint a water commissioner. The water 13 14 commissioner shall distribute to the appropriators, from the 15 source or in the area, the water to which they are entitled. 16 (3) The department of natural resources and 17 conservation or any person or corporation operating under 18 contract with the department or any other owner of stored 19 waters may petition the court to have such stored waters distributed by the water commissioners appointed by said 20 21 court. The court may thereupon make an order requiring the 22 commissioner or commissioners appointed by the court to 23 distribute such stored water when and as released to water 24 users entitled to the use thereof.

25 (4) At the time of the appointment of such water

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(5) Upon the application of the board or boards of one 5 or more irrigation districts entitled to the use of water 6 stored in a reservoir which is turned into the natural 7 channel of any stream and withdrawn or diverted at a point 8 downstream for beneficial use, the district court of the 9 judicial district wherein the most irrigable acres of the 10 irrigation district or districts are situated may appoint a 11 water commissioner to equitably admeasure and distribute 12 such stored water to said irrigation district or districts 13 14 from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has 15 16 the powers of any commissioner appointed under this chapter. 17 limited only by the purposes of this subsection. His 18 compensation is set by the appointing judge and paid by the 19 requesting-district-or-districts each district and other 20 users of stored water affected by the admeasurement and 21 distribution of such stored water. In all other matters the 22 provisions of this chapter apply so long as they are 23 consistent with this subsection."

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SENATE BILL NO. 410 1 2 INTRODUCED BY ETCHART. CONOVER. McCALLUM, NELSON 3 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE IRRIGATION 4 DISTRICTS AND OTHER USERS OF STORED WATER TO SHARE THE 5 EXPENSES AND COSTS OF A WATER COMMISSIONER APPOINTED TO 6 ADMEASURE AND DISTRIBUTE WATER STORED IN A RESERVOIR: 7 8 AMENDING SECTION 85-5-101. MCA.* 9 AF IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 Section 1. Section 85-5-101, MCA; is amended to read: 11 12 "85-5-101. Appointment of water commissioners. {1} 13 Whenever the rights of persons to use the waters of any 14 stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been 15 16 determined by a decree of a court of competent jurisdiction, it shall be the duty of the judge of the district court 17 18 having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water 19 20 rights affected by the decree, in the exercise of his discretion, to appoint one or more commissioners. The 21 22 commissioners shall have authority to admeasure and distribute to the parties owning water rights in the source 23

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-2- SB 410 REFERENCE BILL commissioner or commissioners: the district court shall fix
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(5) Upon the application of the board or boards of one 5 6 or more irrigation districts entitled to the use of water 7 stored in a reservoir which is turned into the natural channel of any stream and withdrawn or diverted at a point 8 9 downstream for beneficial use, the district court of the judicial district wherein the most irrigable acres of the 10 11 irrigation district or districts are situated may appoint a 12 water commissioner to equitably admeasure and distribute 13 such stored water to said irrigation district or districts 14 from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has 15 16 the powers of any commissioner appointed under this chapter. 17 limited only by the purposes of this subsection. His 18 compensation is set by the appointing judge and paid by the requesting-district-or-districts <u>each_district_and_other</u> 19 users of stored water affected by the admeasurement and 20 21 distribution of such stored water. In all other matters the provisions of this chapter apply so long as they are 22 consistent with this subsection." 23

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