

HOUSE BILL NO. 324

INTRODUCED BY VELEBER

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

IN THE HOUSE

January 18, 1983	Introduced and referred to Committee on Agriculture, Livestock and Irrigation.
January 26, 1983	Committee recommend bill do pass. Report adopted.
January 27, 1983	Bill printed and placed on members' desks.
January 29, 1983	Second reading, do pass.
January 31, 1983	Considered correctly engrossed.
February 2, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 3, 1983	Introduced and referred to Committee on Natural Resources.
March 11, 1983	Committee recommend bill be concurrent in. Report adopted.
March 14, 1983	Second reading, concurred in.
March 16, 1983	Third reading, concurred in. Ayes, 48; Noes, 0.

IN THE HOUSE

March 16, 1983

Returned to House.

March 17, 1983

Sent to enrolling.

Reported correctly enrolled.

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2 INTRODUCED BY Heck  
3 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES  
4 AND CONSERVATION  
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6 A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTIONS  
7 85-5-101 AND 85-5-201, MCA, TO INCLUDE WATER USERS WITH  
8 PERMITS AND CERTIFICATES ISSUED BY THE DEPARTMENT OF NATURAL  
9 RESOURCES AND CONSERVATION IN PROVISIONS PROVIDING FOR THE  
10 PAYMENT OF FEES AND COMPENSATION TO WATER COMMISSIONERS; AND  
11 PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
14 Section 1. Section 85-5-101, MCA, is amended to read:  
15 "85-5-101. Appointment of water commissioners. (1)  
16 Whenever the rights of persons to use the waters of any  
17 stream, ditch or extension of ditch, watercourse, spring,  
18 lake, reservoir, or other source of supply have been  
19 determined by a decree of a court of competent jurisdiction,  
20 it shall be the duty of the judge of the district court  
21 having jurisdiction of the subject matter, upon the  
22 application of the owners of at least 15% of the water  
23 rights affected by the decree, in the exercise of his  
24 discretion, to appoint one or more commissioners. The  
25 commissioners shall have authority to admeasure and

1 distribute to the parties owning water rights in the source  
2 affected by the decree the waters to which they are  
3 entitled, according to their rights as fixed by the decree  
4 and by any certificates and permits issued under chapter 2  
5 of this title. When petitioners make proper showing that  
6 they are not able to obtain the application of the owners of  
7 at least 15% of the water rights affected and they are  
8 unable to obtain the water to which they are entitled, the  
9 judge of the district court having jurisdiction may, in his  
10 discretion, appoint a water commissioner.

11 (2) When the existing rights of all appropriators from  
12 a source or in an area have been determined in a final  
13 decree issued under chapter 2 of this title, the judge of  
14 the district court ~~which issued the final decree~~ shall upon  
15 application by the department of natural resources and  
16 conservation appoint a water commissioner. The water  
17 commissioner shall distribute to the appropriators, from the  
18 source or in the area, the water to which they are entitled.

19 (3) The department of natural resources and  
20 conservation or any person or corporation operating under  
21 contract with the department or any other owner of stored  
22 waters may petition the court to have such stored waters  
23 distributed by the water commissioners appointed by said  
24 court. The court may thereupon make an order requiring the  
25 commissioner or commissioners appointed by the court to

1 distribute such stored water when and as released to water  
2 users entitled to the use thereof.

3 (4) At the time of the appointment of such water  
4 commissioner or commissioners, the district court shall fix  
5 their compensation, and the owners and users of the  
6 distributed waters, including permittees and certificate  
7 holders, shall pay their proportionate share of such fees  
8 and compensation.

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

1 as they are consistent with this subsection."

2 Section 2. Section 85-5-201, MCA, is amended to read:

3 "85-5-201. Distribution of water and related expenses.

4 Every water commissioner appointed by the judge of the  
5 district court for that purpose shall have the authority to  
6 admeasure and distribute to the parties interested, under  
7 such decree ~~or-decrees~~, permit, or certificate, the water to  
8 which those who are parties to the decree ~~or-decrees~~ or  
9 holders of a permit or certificate, or privy thereto, are  
10 entitled, according to their priority as established by the  
11 decree ~~or-decrees~~, permit, or certificate. The water  
12 commissioner, in case the parties fail or refuse to do so,  
13 may incur necessary expenses in the making of headgates or  
14 dams for the distribution of the waters. Such expense shall  
15 be assessed against and paid by the party or parties for  
16 whom such services in the repair of the ditch or ditches and  
17 the making of any dams or headgates were necessary. In the  
18 discretion of the court, such costs or expenses may be  
19 assessed against the land upon which or for the benefit of  
20 which such expense had been incurred."

21 NEW SECTION. Section 3. Effective date. This act is  
22 effective on passage and approval.

-End-

Approved by Committee  
on Agriculture Livestock  
& Irrigation

1 House BILL NO. 324  
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17 stream, ditch or extension of ditch, watercourse, spring,  
18 lake, reservoir, or other source of supply have been  
19 determined by a decree of a court of competent jurisdiction,  
20 it shall be the duty of the judge of the district court  
21 having jurisdiction of the subject matter, upon the  
22 application of the owners of at least 15% of the water  
23 rights affected by the decree, in the exercise of his  
24 discretion, to appoint one or more commissioners. The  
25 commissioners shall have authority to admeasure and

1 distribute to the parties owning water rights in the source  
2 affected by the decree the waters to which they are  
3 entitled, according to their rights as fixed by the decree  
4 and by any certificates and permits issued under chapter 2  
5 of this title. When petitioners make proper showing that  
6 they are not able to obtain the application of the owners of  
7 at least 15% of the water rights affected and they are  
8 unable to obtain the water to which they are entitled, the  
9 judge of the district court having jurisdiction may, in his  
10 discretion, appoint a water commissioner.

11 (2) When the existing rights of all appropriators from  
12 a source or in an area have been determined in a final  
13 decree issued under chapter 2 of this title, the judge of  
14 the district court ~~which issued the final decree~~ shall upon  
15 application by the department of natural resources and  
16 conservation appoint a water commissioner. The water  
17 commissioner shall distribute to the appropriators, from the  
18 source or in the area, the water to which they are entitled.

19 (3) The department of natural resources and  
20 conservation or any person or corporation operating under  
21 contract with the department or any other owner of stored  
22 waters may petition the court to have such stored waters  
23 distributed by the water commissioners appointed by said  
24 court. The court may thereupon make an order requiring the  
25 commissioner or commissioners appointed by the court to

1 distribute such stored water when and as released to water  
2 users entitled to the use thereof.

3 (4) At the time of the appointment of such water  
4 commissioner or commissioners, the district court shall fix  
5 their compensation, and the owners and users of the  
6 distributed waters, including permittees and certificate  
7 holders, shall pay their proportionate share of such fees  
8 and compensation.

9 (5) Upon the application of the board or boards of one  
10 or more irrigation districts entitled to the use of water  
11 stored in a reservoir which is turned into the natural  
12 channel of any stream and withdrawn or diverted at a point  
13 downstream for beneficial use, the district court of the  
14 judicial district wherein the most irrigable acres of the  
15 irrigation district or districts are situated may appoint a  
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17 such stored water to said irrigation district or districts  
18 from the channel of the stream into which it has been  
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2 Section 2. Section 85-5-201, MCA, is amended to read:

3 "85-5-201. Distribution of water and related expenses.  
4 Every water commissioner appointed by the judge of the  
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