

HOUSE BILL NO. 413

INTRODUCED BY WESTLAKE, BOYLAN, HOFMAN,  
ELLISON, HOFFMAN, ANDERSON, SPAETH

IN THE HOUSE

JANUARY 25, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 26, 1989	FIRST READING.
FEBRUARY 3, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 4, 1989	PRINTING REPORT.
FEBRUARY 6, 1989	SECOND READING, DO PASS.
FEBRUARY 7, 1989	ENGROSSING REPORT.
FEBRUARY 8, 1989	THIRD READING, NOT PASSED.  ON MOTION, TAKEN FROM THIRD READING AND REREFERRED TO COMMITTEE ON NATURAL RESOURCES.
FEBRUARY 14, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 15, 1989	PRINTING REPORT.
FEBRUARY 16, 1989	SECOND READING, DO PASS.
FEBRUARY 17, 1989	ENGROSSING REPORT.
FEBRUARY 18, 1989	THIRD READING, PASSED. AYES, 93; NOES, 3.  TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION.
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FIRST READING.

MARCH 20, 1989

COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 21, 1989

SECOND READING, CONCURRED IN.

MARCH 23, 1989

THIRD READING, CONCURRED IN.  
AYES, 47; NOES, 2.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 30, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

MARCH 31, 1989

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 413  
 2 INTRODUCED BY Westlake, Baglan, Hefner, Ellison  
 3 Hoffman, Anderson, Heath  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING AUTHORITY OF  
 5 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO  
 6 APPLY TO THE DISTRICT COURT FOR MANDATORY APPOINTMENT OF A  
 7 WATER COMMISSIONER IN A SOURCE OR AREA WHERE A FINAL DECREE  
 8 HAS BEEN ISSUED; AMENDING SECTION 85-5-101, MCA; AND  
 9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 85-5-101, MCA, is amended to read:

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

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

9 ~~{2}--When the existing rights of all appropriators from~~  
 10 ~~a source or in an area have been determined in a final~~  
 11 ~~decree issued under chapter 2 of this title, the judge of~~  
 12 ~~the district court shall upon application by the department~~  
 13 ~~of natural resources and conservation appoint a water~~  
 14 ~~commissioner. The water commissioner shall distribute to the~~  
 15 ~~appropriators, from the source or in the area, the water to~~  
 16 ~~which they are entitled.~~

17 ~~{3}~~ (2) The department of natural resources and  
 18 conservation or any person or corporation operating under  
 19 contract with the department or any other owner of stored  
 20 waters may petition the court to have such stored waters  
 21 distributed by the water commissioners appointed by said the  
 22 district court. The court may thereupon make an order  
 23 requiring the commissioner or commissioners appointed by the  
 24 court to distribute such stored water when and as released  
 25 to water users entitled to the use thereof of the water.

1        ~~†4†~~(3) At the time of the appointment of ~~such~~ a water  
 2 commissioner or commissioners, the district court shall fix  
 3 their compensation, and the owners and users of the  
 4 distributed waters, including permittees and certificate  
 5 holders, shall pay their proportionate share of ~~such~~ fees  
 6 and compensation.

7        ~~†5†~~(4) Upon the application of the board or boards of  
 8 one or more irrigation districts entitled to the use of  
 9 water stored in a reservoir which is turned into the natural  
 10 channel of any stream and withdrawn or diverted at a point  
 11 downstream for beneficial use, the district court of the  
 12 judicial district wherein the most irrigable acres of the  
 13 irrigation district or districts are situated may appoint a  
 14 water commissioner to equitably admeasure and distribute  
 15 ~~such~~ stored water to ~~said~~ the irrigation district or  
 16 districts from the channel of the stream into which it has  
 17 been turned. A commissioner appointed under this subsection  
 18 has the powers of any commissioner appointed under this  
 19 chapter, limited only by the purposes of this subsection.  
 20 His compensation is set by the appointing judge and paid by  
 21 each district and other users of stored water affected by  
 22 the admeasurement and distribution of ~~such~~ the stored water.  
 23 In all other matters the provisions of this chapter apply so  
 24 long as they are consistent with this subsection."

25        NEW SECTION. **Section 2.** Effective date. [This act] is

1        effective on passage and approval.

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

1 *HOUSE* BILL NO. *413*  
 2 INTRODUCED BY *Wentheke, Bogdan, Hoffman & ...*  
 3 *Hoffman, Anderson, Smith*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING AUTHORITY OF  
 5 THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO  
 6 APPLY TO THE DISTRICT COURT FOR MANDATORY APPOINTMENT OF A  
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 8 HAS BEEN ISSUED; AMENDING SECTION 85-5-101, MCA; AND  
 9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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 15 stream, ditch or extension of ditch, watercourse, spring,  
 16 lake, reservoir, or other source of supply have been  
 17 determined by a decree of a court of competent jurisdiction,  
 18 it ~~shall be~~ is the duty of the judge of the district court  
 19 having jurisdiction of the subject matter, upon the  
 20 application of the owners of at least 15% of the water  
 21 rights affected by the decree, in the exercise of his  
 22 discretion, to appoint one or more commissioners. The  
 23 commissioners ~~shall~~ have authority to admeasure and  
 24 distribute to the parties owning water rights in the source  
 25 affected by the decree the waters to which they are

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

9 ~~{2}--When the existing rights of all appropriators from~~  
 10 ~~a source or in an area have been determined in a final~~  
 11 ~~decree issued under chapter 2 of this title, the judge of~~  
 12 ~~the district court shall upon application by the department~~  
 13 ~~of natural resources and conservation appoint a water~~  
 14 ~~commissioner. The water commissioner shall distribute to the~~  
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 16 ~~which they are entitled.~~

17 ~~{3}~~ (2) The department of natural resources and  
 18 conservation or any person or corporation operating under  
 19 contract with the department or any other owner of stored  
 20 waters may petition the court to have ~~such~~ stored waters  
 21 distributed by the water commissioners appointed by ~~said~~ the  
 22 district court. The court may thereupon make an order  
 23 requiring the commissioner or commissioners appointed by the  
 24 court to distribute ~~such~~ stored water when and as released  
 25 to water users entitled to the use thereof of the water.

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

7       †5)†(4) Upon the application of the board or boards of  
8 one or more irrigation districts entitled to the use of  
9 water stored in a reservoir which is turned into the natural  
10 channel of any stream and withdrawn or diverted at a point  
11 downstream for beneficial use, the district court of the  
12 judicial district wherein the most irrigable acres of the  
13 irrigation district or districts are situated may appoint a  
14 water commissioner to equitably admeasure and distribute  
15 such stored water to said the irrigation district or  
16 districts from the channel of the stream into which it has  
17 been turned. A commissioner appointed under this subsection  
18 has the powers of any commissioner appointed under this  
19 chapter, limited only by the purposes of this subsection.  
20 His compensation is set by the appointing judge and paid by  
21 each district and other users of stored water affected by  
22 the admeasurement and distribution of such the stored water.  
23 In all other matters the provisions of this chapter apply so  
24 long as they are consistent with this subsection."

25       NEW SECTION. **Section 2.** Effective date. [This act] is

1       effective on passage and approval.

-End-

## RE-REFERRED AND

APPROVED BY COMM. ON  
NATURAL RESOURCES

AS AMENDED

HOUSE BILL NO. 413

INTRODUCED BY WESTLAKE, BOYLAN, HOFMAN,

ELLISON, HOFFMAN, ANDERSON, SPAETH

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING AUTHORITY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO APPLY TO THE DISTRICT COURT FOR MANDATORY APPOINTMENT OF A WATER COMMISSIONER IN A SOURCE OR AREA WHERE A FINAL DECREE HAS BEEN ISSUED; AMENDING SECTION 85-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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**Section 1.** Section 85-5-101, MCA, is amended to read:**"85-5-101. Appointment of water commissioners. (1)**

Whenever the rights of persons to use the waters of any stream, ditch or extension of ditch, watercourse, spring, lake, reservoir, or other source of supply have been determined by a decree of a court of competent jurisdiction, it ~~shall be~~ is the duty of the judge of the district court having jurisdiction of the subject matter, upon the application of the owners of at least 15% of the water rights affected by the decree, in the exercise of his discretion, to appoint one or more commissioners. The commissioners ~~shall~~ have authority to admeasure and distribute to the parties owning water rights in the source

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

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

(2) WHEN THE EXISTING RIGHTS OF ALL APPROPRIATORS FROM A SOURCE OR IN AN AREA HAVE BEEN DETERMINED IN A FINAL DECREE ISSUED UNDER CHAPTER 2 OF THIS TITLE, THE JUDGE OF THE DISTRICT COURT MAY UPON APPLICATION BY BOTH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND ONE OR MORE HOLDERS OF VALID WATER RIGHTS IN THE SOURCE APPOINT A WATER COMMISSIONER. THE WATER COMMISSIONER SHALL DISTRIBUTE TO THE APPROPRIATORS, FROM THE SOURCE OR IN THE AREA, THE

1 WATER TO WHICH THEY ARE ENTITLED.

2 ~~(3)~~~~(2)~~~~(3)~~ The department of natural resources and  
 3 conservation or any person or corporation operating under  
 4 contract with the department or any other owner of stored  
 5 waters may petition the court to have ~~such~~ stored waters  
 6 distributed by the water commissioners appointed by ~~said the~~  
 7 district court. The court may ~~thereupon~~ make an order  
 8 requiring the commissioner or commissioners appointed by the  
 9 court to distribute ~~such~~ stored water when and as released  
 10 to water users entitled to the use ~~thereof of the water~~.

11 ~~(4)~~~~(3)~~~~(4)~~ At the time of the appointment of ~~such a~~  
 12 water commissioner or commissioners, the district court  
 13 shall fix their compensation, and the owners and users of  
 14 the distributed waters, including permittees and certificate  
 15 holders, shall pay their proportionate share of ~~such~~ fees  
 16 and compensation. THE JUDGE MAY INCLUDE THE DEPARTMENT IN  
 17 THE APPORTIONMENT OF COSTS IF IT APPLIED FOR THE APPOINTMENT  
 18 OF A WATER COMMISSIONER UNDER SUBSECTION (2).

19 ~~(5)~~~~(4)~~~~(5)~~ Upon the application of the board or boards  
 20 of one or more irrigation districts entitled to the use of  
 21 water stored in a reservoir which is turned into the natural  
 22 channel of any stream and withdrawn or diverted at a point  
 23 downstream for beneficial use, the district court of the  
 24 judicial district wherein the most irrigable acres of the  
 25 irrigation district or districts are situated may appoint a

1 water commissioner to equitably admeasure and distribute  
 2 ~~such~~ stored water to ~~said the~~ irrigation district or  
 3 districts from the channel of the stream into which it has  
 4 been turned. A commissioner appointed under this subsection  
 5 has the powers of any commissioner appointed under this  
 6 chapter, limited only by the purposes of this subsection.  
 7 His compensation is set by the appointing judge and paid by  
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 10 In all other matters the provisions of this chapter apply so  
 11 long as they are consistent with this subsection."

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 13 effective on passage and approval.

-End-



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 2 INTRODUCED BY *Westlake, Bergman, Hefner & Eakin*  
 3 *Hoffman, Anderson, Smith*  
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17 ~~(3)(2)~~ The department of natural resources and  
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 21 distributed by the water commissioners appointed by ~~said the~~  
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14 water commissioner to equitably admeasure and distribute  
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19 chapter, limited only by the purposes of this subsection.  
20 His compensation is set by the appointing judge and paid by  
21 each district and other users of stored water affected by  
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INTRODUCED BY WESTLAKE, BOYLAN, HOFMAN,

ELLISON, HOFFMAN, ANDERSON, SPAETH

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING AUTHORITY OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO APPLY TO THE DISTRICT COURT FOR MANDATORY APPOINTMENT OF A WATER COMMISSIONER IN A SOURCE OR AREA WHERE A FINAL DECREE HAS BEEN ISSUED; AMENDING SECTION 85-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

~~{2}--When the existing rights of all appropriators from a source or in an area have been determined in a final decree issued under chapter 2 of this title, the judge of the district court shall upon application by the department of natural resources and conservation appoint a water commissioner. The water commissioner shall distribute to the appropriators, from the source or in the area, the water to which they are entitled.~~

(2) WHEN THE EXISTING RIGHTS OF ALL APPROPRIATORS FROM A SOURCE OR IN AN AREA HAVE BEEN DETERMINED IN A FINAL DECREE ISSUED UNDER CHAPTER 2 OF THIS TITLE, THE JUDGE OF THE DISTRICT COURT MAY UPON APPLICATION BY BOTH THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND ONE OR MORE HOLDERS OF VALID WATER RIGHTS IN THE SOURCE APPOINT A WATER COMMISSIONER. THE WATER COMMISSIONER SHALL DISTRIBUTE TO THE APPROPRIATORS, FROM THE SOURCE OR IN THE AREA, THE

1 WATER TO WHICH THEY ARE ENTITLED.

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3 conservation or any person or corporation operating under  
4 contract with the department or any other owner of stored  
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7 district court. The court may thereupon make an order  
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18 OF A WATER COMMISSIONER UNDER SUBSECTION (2).

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20 of one or more irrigation districts entitled to the use of  
21 water stored in a reservoir which is turned into the natural  
22 channel of any stream and withdrawn or diverted at a point  
23 downstream for beneficial use, the district court of the  
24 judicial district wherein the most irrigable acres of the  
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7 His compensation is set by the appointing judge and paid by  
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10 In all other matters the provisions of this chapter apply so  
11 long as they are consistent with this subsection."

12       NEW SECTION. Section 2. Effective date. [This act] is  
13 effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT

March 20, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 413 (third reading copy -- blue), respectfully report that HB 413 be amended and as so amended be concurred in:

Sponsor: Westlake (Boylan)

1. Title, line 5.

Strike: "REMOVING AUTHORITY OF"

Insert: "ALLOWING"

2. Title, line 6.

Following: "CONSERVATION"

Insert: ", IN CONJUNCTION WITH ONE OR MORE HOLDERS OF VALID WATER RIGHTS IN THE SOURCE,"

3. Title, line 7.

Strike: "MANDATORY"

4. Title, line 9.

Following: "ISSUED;"

Insert: "PROVIDING THAT THE DEPARTMENT MAY BE INCLUDED IN THE APPORTIONMENT OF COSTS IF IT APPLIES FOR APPOINTMENT OF A WATER COMMISSIONER;"

AND AS AMENDED BE CONCURRED IN

Signed: 

Thomas A. Beck, Chairman

SENATE

HB 413

## HOUSE BILL NO. 413

INTRODUCED BY WESTLAKE, BOYLAN, HOFMAN,

ELLISON, HOFFMAN, ANDERSON, SPAETH

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING--AUTHORITY--OF  
ALLOWING THE DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION, IN CONJUNCTION WITH ONE OR MORE HOLDERS OF  
VALID WATER RIGHTS IN THE SOURCE, TO APPLY TO THE DISTRICT  
COURT FOR MANDATORY APPOINTMENT OF A WATER COMMISSIONER IN A  
SOURCE OR AREA WHERE A FINAL DECREE HAS BEEN ISSUED;  
PROVIDING THAT THE DEPARTMENT MAY BE INCLUDED IN THE  
APPORTIONMENT OF COSTS IF IT APPLIES FOR APPOINTMENT OF A  
WATER COMMISSIONER; AMENDING SECTION 85-5-101, MCA; AND  
PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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"85-5-101. Appointment of water commissioners. (1)  
Whenever the rights of persons to use the waters of any  
stream, ditch or extension of ditch, watercourse, spring,  
lake, reservoir, or other source of supply have been  
determined by a decree of a court of competent jurisdiction,  
it ~~shall--be~~ is the duty of the judge of the district court  
having jurisdiction of the subject matter, upon the  
application of the owners of at least 15% of the water

rights affected by the decree, in the exercise of his  
discretion, to appoint one or more commissioners. The  
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A SOURCE OR IN AN AREA HAVE BEEN DETERMINED IN A FINAL  
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THE DISTRICT COURT MAY UPON APPLICATION BY BOTH THE

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND ONE OR MORE HOLDERS OF VALID WATER RIGHTS IN THE SOURCE APPOINT A WATER COMMISSIONER. THE WATER COMMISSIONER SHALL DISTRIBUTE TO THE APPROPRIATORS, FROM THE SOURCE OR IN THE AREA, THE WATER TO WHICH THEY ARE ENTITLED.

~~{3}~~~~{2}~~~~(3)~~ The department of natural resources and conservation or any person or corporation operating under contract with the department or any other owner of stored waters may petition the court to have such stored waters distributed by the water commissioners appointed by said the district 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 of the water.

~~{4}~~~~{3}~~~~(4)~~ At the time of the appointment of such a water commissioner or commissioners, the district court shall fix their compensation, and the owners and users of the distributed waters, including permittees and certificate holders, shall pay their proportionate share of such fees and compensation. THE JUDGE MAY INCLUDE THE DEPARTMENT IN THE APPORTIONMENT OF COSTS IF IT APPLIED FOR THE APPOINTMENT OF A WATER COMMISSIONER UNDER SUBSECTION (2).

~~{5}~~~~{4}~~~~(5)~~ Upon the application of the board or boards of one or more irrigation districts entitled to the use of water stored in a reservoir which is turned into the natural

channel of any stream and withdrawn or diverted at a point downstream for beneficial use, the district court of the judicial district wherein the most irrigable acres of the irrigation district or districts are situated may appoint a water commissioner to equitably admeasure and distribute such stored water to ~~said the~~ irrigation district or districts from the channel of the stream into which it has been turned. A commissioner appointed under this subsection has the powers of any commissioner appointed under this chapter, limited only by the purposes of this subsection. His compensation is set by the appointing judge and paid by each district and other users of stored water affected by the admeasurement and distribution of ~~such the~~ stored water. In all other matters the provisions of this chapter apply so long as they are consistent with this subsection."

NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

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