

HOUSE BILL NO. 463

INTRODUCED BY THOFT, HARPER, HANNAH, GRADY, YELLOWTAIL,
ABRAMS, DEVLIN, WALKER, O'KEEFE, RANEY, SEVERSON

IN THE HOUSE

JANUARY 27, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 8, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 9, 1989	PRINTING REPORT.
FEBRUARY 11, 1989	SECOND READING, DO PASS AS AMENDED. ON MOTION, TAKEN FROM PRINTING AND REREFERRED TO COMMITTEE ON APPROPRIATIONS.
MARCH 14, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 15, 1989	PRINTING REPORT.
MARCH 17, 1989	SECOND READING, DO PASS.
MARCH 18, 1989	ENGROSSING REPORT.
MARCH 20, 1989	THIRD READING, PASSED. AYES, 87; NOES, 10.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION.
	FIRST READING.
APRIL 3, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT

ADOPTED.

APRIL 4, 1989

SECOND READING, CONCURRED IN.

APRIL 6, 1989

THIRD READING, CONCURRED IN.
AYES, 46; NOES, 2.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 10, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 11, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 463
 2 INTRODUCED BY Jeff Haysen, Harold Brady,
 3 Yellowtail, Abraham, Robin, Walter, Kye, Roney,
 4 Devasson
 5 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DISTRICT
 6 COURT TO APPOINT A WATER COMMISSIONER TO MEDIATE A WATER
 7 CONTROVERSY IN A DECREED OR NONDECREED BASIN; ENABLING THE
 8 GOVERNOR TO APPLY TO THE DISTRICT COURT FOR APPOINTMENT OF
 9 A WATER COMMISSIONER; ALLOWING THE DISTRICT COURT TO ASSESS
 10 REASONABLE FEES FOR A WATER COMMISSIONER; MAKING OTHER
 11 REVISIONS TO THE WATER COMMISSIONER LAWS TO CLARIFY THEM AND
 12 TO DISTINGUISH THE MEDIATION AND DISTRIBUTION AUTHORITY THAT
 13 MAY BE GIVEN TO A WATER COMMISSIONER; ESTABLISHING AN
 14 EDUCATIONAL PROGRAM FOR WATER COMMISSIONERS; PROVIDING AN
 15 APPROPRIATION; AMENDING SECTIONS 85-5-101, 85-5-102,
 16 85-5-105, 85-5-108, 85-5-201, 85-5-206, 85-5-301, AND
 17 85-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

20 **"85-5-101. Appointment of water commissioners. (1)**
 21 Whenever the rights of persons to use the waters of any
 22 stream, ditch or extension of ditch, watercourse, spring,
 23 lake, reservoir, or other source of supply have been
 24 determined by a decree of a court of competent jurisdiction,
 25 ~~it shall be the duty of~~ the judge of the district court

1 having jurisdiction of the subject matter may, upon the
 2 application of by the owners of at least 15% of the water
 3 rights affected by the decree, ~~in--the--exercise-of-his~~
 4 ~~discretion--to~~ appoint one or more water commissioners. The
 5 ~~commissioners--shall-have~~ judge may give the commissioner or
 6 commissioners authority to mediate among parties to a water
 7 controversy or to admeasure and distribute to the parties
 8 owning water rights in the source affected by the decree the
 9 waters to which they are entitled, according to ~~their~~ the
 10 rights ~~as~~ fixed by the decree and by any certificates and
 11 permits issued under chapter 2 of this title. When
 12 petitioners make proper showing that they are not able to
 13 obtain the application of the owners of at least 15% of the
 14 water rights affected and they are unable to obtain the
 15 water to which they are entitled, the judge of the district
 16 court having jurisdiction ~~may--in-his-discretion--~~ appoint a
 17 water commissioner.

18 (2) When the existing rights of all appropriators from
 19 a source or in an area have been determined in a ~~final~~
 20 decree issued under chapter 2 of this title, the judge of
 21 the district court shall upon application by the governor or
 22 the department of natural resources and conservation appoint
 23 a water commissioner. The judge may give the water
 24 commissioner ~~shall~~ authority to mediate a water controversy
 25 or to distribute to the appropriators, from the source or in

1 the area, the water to which they are entitled.

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

12 (4) (a) In addition to authority provided under
13 subsections (1) through (3), the judge of the district court
14 may appoint a water commissioner to mediate a water
15 controversy under the following circumstances:

16 (i) upon request of the governor;

17 (ii) upon petition by at least 5% of the owners of
18 water rights in a nondecreed basin; or

19 (iii) upon petition by a state agency with
20 water-related interests.

21 (b) A water commissioner appointed under this
22 subsection may:

23 (i) discuss proposed solutions to a water controversy
24 with affected water right holders;

25 (ii) discuss water use and water needs with persons and

1 entities affected by the existing water use;

2 (iii) meet with principal parties to mediate
3 differences over the use of water; and

4 (iv) hold public meetings and conferences to discuss
5 and negotiate potential solutions to controversies over use
6 of water.

7 (5) At the time of the appointment of such a water
8 commissioner or commissioners, the district court shall fix
9 their compensation, and the owners and users of the
10 distributed waters, including permittees and certificate
11 holders, shall pay their proportionate share of such the
12 fees and compensation. If the appointment benefits the
13 state, the district court may also assess reasonable fees to
14 the department of natural resources and conservation. If a
15 state agency petitions for a water commissioner, the agency
16 shall pay all or a majority of the cost of the water
17 commissioner, as determined equitable by the district court.

18 (5)(6) Upon the application of the board or boards of
19 one or more irrigation districts entitled to the use of
20 water stored in a reservoir which that is turned into the
21 natural channel of any stream and withdrawn or diverted at a
22 point downstream for beneficial use, the district court of
23 the judicial district wherein where the most irrigable acres
24 of the irrigation district or districts are situated located
25 may appoint a water commissioner to equitably admeasure and

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

12 **Section 2.** Section 85-5-102, MCA, is amended to read:

13 "85-5-102. Appointment of chief commissioner. When the
 14 judge of the district court ~~shall appoint~~ appoints two or
 15 more commissioners to mediate a water controversy or to
 16 admeasure and distribute the waters mentioned in the
 17 ~~preceding section 85-5-101~~, he may appoint one of them chief
 18 commissioner and empower him to exercise direction and
 19 control over the ~~other or~~ others in the discharge of their
 20 duties. The judge may depose the one appointed chief
 21 commissioner from that position and appoint another ~~in his~~
 22 ~~stead whenever~~ to replace him if it appears to the judge
 23 that better service may be given the water users by making
 24 the change."

25 **Section 3.** Section 85-5-105, MCA, is amended to read:

1 "85-5-105. Power and duty to distribute water. Upon
 2 ~~the issuance of such a court order granting a water~~
 3 ~~commissioner or water commissioners authority to distribute~~
 4 ~~water,~~ the water commissioner or commissioners shall have
 5 ~~authority and it is hereby made his or their duty to~~
 6 admeasure and distribute to the users thereof of the water,
 7 as their interests may appear and be required, the stored
 8 and supplemental waters stored and ~~as~~ released by the
 9 department of natural resources and conservation under
 10 provisions of chapter 1 of this title, to be diverted into
 11 and through said the streams, ditch or extension of ditch,
 12 watercourse, spring, lake, reservoir, or other source of
 13 supply ~~in the same manner and~~ under the same rules and
 14 procedures as decreed water rights are admeasured and
 15 distributed. Such The water commissioner or commissioners
 16 and the owners and users of such the stored and supplemental
 17 waters ~~shall be~~ are bound by and be subject to the
 18 provisions of this chapter, ~~and all acts amendatory thereof~~
 19 ~~and supplemental thereto; provided, that~~ However, the
 20 admeasurements and distribution of such the stored and
 21 supplemental waters ~~shall in no way may not~~ interfere with
 22 decreed water rights. The purpose of parts 1 through 3 of
 23 this chapter is to provide a uniform, equitable, and
 24 economical distribution of adjudicated, stored, and
 25 supplemental waters."

Section 4. Section 85-5-108, MCA, is amended to read:

"85-5-108. Authority and arrest power. For the purposes of carrying out the provisions of parts 1 through 3 of this chapter, each commissioner appointed ~~by the court~~ shall have pursuant to subsections (1) through (3) of [section 1] may be given authority by the court to enter upon any ditch, canal, aqueduct, or other source for conveying the waters affected by the decree and to visit, inspect, and adjust all headgates or other means of distributing the waters and ~~shall have the same powers as~~ may be given the same authority as a sheriff or constable to arrest any ~~and all persons~~ person interfering with the distribution made by ~~him~~ the water commissioner, to be dealt with according to law."

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

"85-5-201. Distribution of water and related expenses. Every A water commissioner appointed ~~by the judge of the district court for that purpose shall have the~~ pursuant to subsections (1) through (3) of [section 1] may be given authority by the judge of the district court to admeasure and distribute to the parties interested, under ~~such the~~ decree, permit, or certificate, the water to which ~~those who~~ are the parties to the decree or holders of a permit or certificate, or privy thereto, are entitled, according to their priority as established by the decree, permit, or

certificate. The water commissioner, ~~in case the parties fail or refuse to do so,~~ may incur necessary expenses in the making of headgates or dams for the distribution of the waters if the parties refuse to undertake these tasks. Such ~~expense shall~~ The expenses must be assessed against and paid by the party or parties for whom ~~such the~~ services in the repair of the ditch or ditches and the making of any dams or headgates were necessary. ~~In the discretion of the~~ The court, ~~such costs or~~ may also assess expenses ~~may be~~ assessed against the land upon which or for the benefit of which ~~such expense had been~~ the expenses were incurred."

Section 6. Section 85-5-206, MCA, is amended to read:

"85-5-206. Effect of order fixing fees. After ~~the order of the a court~~ order fixing the fees and compensation and expenses of the water commissioner is final, it ~~shall~~ have has all the force and effect of a judgment ~~as against~~ against the person, persons, or agency for whom the mediation effort ~~was undertaken or~~ to whom the water was admeasured and for whose benefit it was used. When ~~such expense the fees,~~ compensation, and expenses of ~~the~~ commissioner or commissioners ~~has have~~ been assessed against the land for which ~~such the~~ service ~~of the commissioner or commissioners~~ has been rendered, ~~it shall they~~ they constitute a lien against ~~said the~~ the land. Execution may issue upon the order, as upon a judgment, by direction of the court or judge upon the

1 application of any interested person ~~interested-therein~~.
 2 The water commissioner, ~~at--his--discretion~~ if he has
 3 authority to admeasure or distribute water pursuant to
 4 85-5-101, may withhold further admeasurement or distribution
 5 of water to any person ~~otherwise-entitled-thereto~~ until such
 6 ~~the person shall-have~~ has paid all fees, compensation, and
 7 expenses of ~~such the~~ water commissioner or commissioners ~~so~~
 8 ~~as fixed by the court and apportioned and charged to such~~
 9 ~~the person, and-likewise The commissioner may also~~ withhold
 10 the admeasurement and distribution of water from any land
 11 against which there exists ~~any-such a~~ lien as-foresaid,
 12 until ~~such the~~ the lien ~~shall-have~~ has been fully discharged."

13 **Section 7.** Section 85-5-301, MCA, is amended to read:

14 "85-5-301. Complaint by dissatisfied user. (1) A
 15 person owning or using any of the waters of the stream or
 16 ditch or extension of the ditch who is dissatisfied with the
 17 activities of a water commissioner or with the method of
 18 distribution of the waters of the stream or ditch by the
 19 ~~water commissioner or-water-commissioners~~ and who claims to
 20 be entitled to more water than he is receiving or to a right
 21 prior to that allowed him by the water commissioner ~~or-water~~
 22 ~~commissioners~~ may file his written complaint, duly verified,
 23 setting forth the facts of the claim. ~~Thereupon-the~~ Upon
 24 receiving a complaint, the judge shall fix a time for the
 25 hearing of ~~such-petition~~ the complaint and shall direct that

1 such notice be given to the parties interested in the
 2 hearing as the judge considers necessary. At the time fixed
 3 for the hearing, the judge ~~must~~ shall hear and examine the
 4 complainant and other parties as may appear to support or
 5 resist ~~such the~~ the claim and examine the water commissioner or
 6 ~~water--commissioners~~ and witnesses as to the charges
 7 contained in the complaint.

8 (2) ~~Upon--the--determination-of~~ After the hearing, the
 9 judge shall make such findings and issue a just and proper
 10 ~~order as-he-considers-just-and-proper~~. If it appears to the
 11 judge that the water commissioner or water commissioners
 12 have acted improperly or have not properly distributed the
 13 water according to the provisions of the decree, the judge
 14 shall give the direction that may include proper
 15 instructions for ~~such~~ distribution.

16 (3) The judge may remove any water commissioner and
 17 appoint ~~some--other~~ another person ~~in-his stead~~ to replace
 18 the commissioner if he considers that the interests of the
 19 parties in the waters mentioned in the decree will be best
 20 ~~subservd-thereby,-and-if~~ served by a replacement. If it
 21 appears to the judge that the water commissioner has
 22 willfully failed to perform his duties, ~~he-may-be--proceeded~~
 23 against the water commissioner may be prosecuted for
 24 contempt of court, as provided in contempt cases. The judge
 25 shall make such an order as-to for the payment of costs of

1 the hearing ~~as--appears--to--him--to--be~~ that is just and
2 proper."

3 **Section 8.** Section 85-5-302, MCA, is amended to read:

4 "85-5-302. Maintenance of headgates and measuring
5 devices. (1) All persons using water under a decree from any
6 stream or ditch ~~whereon~~ where a water commissioner with
7 authority to admeasure and distribute water is appointed
8 ~~shall-be~~ are required to have suitable headgates at the
9 point ~~wherein--a~~ where the ditch taps a stream, and The
10 persons shall also, at some suitable place on the ditch and
11 as near the head ~~thereof~~ as practicable, place and maintain
12 a proper measuring box, weir, or other appliance ~~for--the~~
13 ~~measurement--of~~ to measure the waters flowing in such the
14 ditch. In case any person or persons ~~shall~~ fail to place or
15 maintain a proper measuring appliance, ~~it-shall-be-the-duty~~
16 ~~of-such the~~ water commissioner may not to apportion or
17 distribute any water through ~~said~~ the ditch.

18 (2) The A commissioner must with authority to
19 admeasure and distribute water shall notify all interested
20 parties interested by registered--or certified mail or in
21 person 1 week before making the annual repair or cleaning of
22 any stream or ditch or performing necessary labor or
23 expenses to divert water to any ditch. The sending of a
24 ~~registered-or~~ certified letter to the last known post-office
25 address of any ~~such~~ interested party ~~will-be~~ is prima facie

1 evidence of the fact that he was duly notified. Any work in
2 ~~the-way-of-repairing to repair~~ a ditch made necessary by any
3 emergency may be done without ~~such~~ notice when injury would
4 result from delay."

5 NEW SECTION. **Section 9.** water commissioner education.
6 The department of natural resources and conservation, in
7 cooperation with the Montana supreme court, the Montana
8 water courts, the district courts of Montana, the Montana
9 university system, and other appropriate state and federal
10 agencies, shall develop an educational program for water
11 commissioners that includes:

- 12 (1) an annual seminar on commissioner duties,
13 mediation techniques, and water measuring techniques;
14 (2) preparation and, as necessary, revision of a water
15 commissioner manual; and
16 (3) an outreach program that identifies persons who
17 might serve as water commissioners.

18 NEW SECTION. **Section 10.** Appropriation. (1) There is
19 appropriated \$50,000 from the water development special
20 revenue account to the department of natural resources and
21 conservation for the biennium ending June 30, 1991, to pay
22 water commissioner fees and costs.

23 (2) There is appropriated \$10,000 from the water
24 development special revenue account to the department of
25 natural resources and conservation for the biennium ending

1 June 30, 1991, to prepare and offer an educational program
2 for water commissioners.

3 (3) If funding is not available from the water
4 development special revenue account for the activities
5 funded in subsection (1) or (2), there is appropriated from
6 the renewable resources development account any remaining
7 money necessary to provide complete funding.

8 NEW SECTION. Section 11. Codification instruction.
9 [Section 9] is intended to be codified as an integral part
10 of Title 85, chapter 5, part 1, and the provisions of Title
11 85, chapter 5, part 1, apply to [section 9].

12 NEW SECTION. Section 12. Saving clause. [This act]
13 does not affect rights and duties that matured, penalties
14 that were incurred, or proceedings that were begun before
15 [the effective date of this act].

16 NEW SECTION. Section 13. Severability. If a part of
17 [this act] is invalid, all valid parts that are severable
18 from the invalid part remain in effect. If a part of [this
19 act] is invalid in one or more of its applications, the part
20 remains in effect in all valid applications that are
21 severable from the invalid applications.

22 NEW SECTION. Section 14. Effective date. [This act]
23 is effective on passage and approval.

-End-

In compliance with a written request, there is hereby submitted a Fiscal Note for HB463, on second Reading

DESCRIPTION OF PROPOSED LEGISLATION:

HB463 would allow a district court to appoint a water mediator to mediate a water controversy in a nondecreed basin; establish an educational program for water commissioners and mediators; and appropriate \$10,000 for the 1991 biennium from the water development or renewable resources development special revenue account.

ASSUMPTIONS:

1. The \$10,000 biennial appropriation to the Dept. of Natural Resources is for the purpose of preparing and offering an educational program for water commissioners and mediators. University of Montana Law School officials project a cost of approximately \$750 per day plus expenses for DNRC to contract for a one-day teaching seminar.
2. If the Governor or a state agency petitions for a water mediator, the requestor will pay associated costs as determined by the district court.
3. If the owners of water rights in a nondecreed basin successfully petition for appointment of a water mediator, they will be responsible for the costs of the mediator as determined by the district court.
4. The Governor's Office, the Supreme Court and district court operations programs, and the Montana University System will all utilize existing resources to cooperate with DNRC in developing the education program, so there is no fiscal impact on these other agencies.

FISCAL IMPACT:Expenditures:

	Current	FY90 Proposed		Current	FY91 Proposed	
DNRC	<u>Law</u>	<u>Law</u>	<u>Difference</u>	<u>Law</u>	<u>Law</u>	<u>Difference</u>
Biennial Appropriation	-0-	\$10,000	\$10,000	-0-	-0-	-0-

Funding:

Water Development and/or						
Renewable Resources Devel.	-0-	\$10,000	\$10,000	-0-	-0-	-0-

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

The potential exists for district court time requirements in collecting accounts if many individual water users are involved.

TECHNICAL NOTES:

The bill does not state whether or not owners of water rights in nondecreed basins who petition for a mediator will be responsible to pay the costs. If they are not responsible, then there will be another fiscal impact.

Ray Shackleford

DATE 2/11/89

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 2/15/89

BOB THOFT, PRIMARY SPONSOR

Fiscal Note for HB463, on second reading

HB 463

HB 0463/04
RE-REFERRED AND
APPROVED BY COMMITTEE
ON APPROPRIATIONS
AS AMENDED

HOUSE BILL NO. 463

INTRODUCED BY THOFT, HARPER, HANNAH, GRADY, YELLOWTAIL,
ABRAMS, DEVLIN, WALKER, O'KEEFE, RANEY, SEVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DISTRICT COURT TO APPOINT A WATER COMMISSIONER MEDIATOR TO MEDIATE A WATER CONTROVERSY IN A DECREASED OR NONDECREED BASIN; ENABLING THE GOVERNOR TO APPLY TO THE DISTRICT COURT FOR APPOINTMENT OF A WATER COMMISSIONER; ALLOWING THE DISTRICT COURT TO ASSESS REASONABLE FEES FOR A WATER COMMISSIONER; MAKING OTHER REVISIONS TO THE WATER COMMISSIONER LAWS TO CLARIFY THEM AND TO DISTINGUISH THE MEDIATION AND DISTRIBUTION AUTHORITY THAT MAY BE GIVEN TO A WATER COMMISSIONER; ESTABLISHING AN EDUCATIONAL PROGRAM FOR WATER COMMISSIONERS AND MEDIATORS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 85-5-101, 85-5-102, 85-5-105, 85-5-108, 85-5-201, 85-5-206, 85-5-301, AND 85-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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 the duty of the judge of the district court having jurisdiction of the subject matter may, upon the application of by 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 water commissioners. The commissioners shall have judge may give the commissioner or commissioners authority to mediate among parties to a water controversy or 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 the 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 governor or the department of natural resources and conservation appoint a water commissioner. The judge may give the water~~

1 ~~commissioner--shall--authority--to--mediate--a--water--controversy~~
 2 ~~or--to--distribute--to--the--appropriators--from--the--source--or--in~~
 3 ~~the--area--the--water--to--which--they--are--entitled--~~
 4 ~~{3}--The--governor--the--department--of--natural--resources~~
 5 ~~and--conservation--or--any--person--or--corporation--operating~~
 6 ~~under--contract--with--the--department--or--any--other--owner--of~~
 7 ~~stored--waters--may--petition--the--court--to--have--such--the--stored~~
 8 ~~waters--distributed--by--the--water--commissioners--appointed--by~~
 9 ~~said--the--court--The--court--may--thereupon--then--make--an--order~~
 10 ~~requiring--the--commissioner--or--commissioners--appointed--by--the~~
 11 ~~court--to--distribute--such--the--stored--water--when--and--as--it--is~~
 12 ~~released--to--water--users--persons--entitled--to--the--use--thereof~~
 13 ~~the--water--~~
 14 ~~{4}--{a}--In--addition--to--authority--provided--under~~
 15 ~~subsections--{1}--through--{3},--the--judge--of--the--district--court~~
 16 ~~may--appoint--a--water--commissioner--to--mediate--a--water~~
 17 ~~controversy--under--the--following--circumstances--~~
 18 ~~{i}--upon--request--of--the--governor--~~
 19 ~~{ii}--upon--petition--by--at--least--5%--of--the--owners--of~~
 20 ~~water--rights--in--a--nondecreed--basin--or~~
 21 ~~{iii}--upon--petition--by--a--state--agency--with~~
 22 ~~water--related--interests--~~
 23 ~~{b}--A--water--commissioner--appointed--under--this~~
 24 ~~subsection--may--~~
 25 ~~{i}--discuss--proposed--solutions--to--a--water--controversy~~

1 ~~with--affected--water--right--holders--~~
 2 ~~{ii}--discuss--water--use--and--water--needs--with--persons--and~~
 3 ~~entities--affected--by--the--existing--water--use--~~
 4 ~~{iii}--meet--with--principal--parties--to--mediate~~
 5 ~~differences--over--the--use--of--water--and~~
 6 ~~{iv}--hold--public--meetings--and--conferences--to--discuss~~
 7 ~~and--negotiate--potential--solutions--to--controversies--over--use~~
 8 ~~of--water--~~
 9 ~~{5}--At--the--time--of--the--appointment--of--such--a--water~~
 10 ~~commissioner--or--commissioners--the--district--court--shall--fix~~
 11 ~~their--compensation--and--the--owners--and--users--of--the~~
 12 ~~distributed--waters--including--permittees--and--certificate~~
 13 ~~holders--shall--pay--their--proportionate--share--of--such--the~~
 14 ~~fees--and--compensation--if--the--appointment--benefits--the~~
 15 ~~state--the--district--court--may--also--assess--reasonable--fees--to~~
 16 ~~the--department--of--natural--resources--and--conservation--if--a~~
 17 ~~state--agency--petitions--for--a--water--commissioner--the--agency~~
 18 ~~shall--pay--all--or--a--majority--of--the--cost--of--the--water~~
 19 ~~commissioner--as--determined--equitable--by--the--district--court--~~
 20 ~~{5}{6}--Upon--the--application--of--the--board--or--boards--of~~
 21 ~~one--or--more--irrigation--districts--entitled--to--the--use--of~~
 22 ~~water--stored--in--a--reservoir--which--that--is--turned--into--the~~
 23 ~~natural--channel--of--any--stream--and--withdrawn--or--diverted--at--a~~
 24 ~~point--downstream--for--beneficial--use--the--district--court--of~~
 25 ~~the--judicial--district--wherein--where--the--most--irrigable--acres~~

1 of-the-irrigation-district-or-districts-are-situated-located
 2 may--appoint-a-water-commissioner-to-equitably-admeasure-and
 3 distribute-such-the-stored--water--to--said--the--irrigation
 4 district--or--districts--from-the-channel-of-the-stream-into
 5 which-it-has-been-turned;--A--commissioner--appointed--under
 6 this-subsection-has-the-powers-of-any-commissioner-appointed
 7 under--this--chapter;--limited--only-by-the-purposes-of-this
 8 subsection;--His-compensation-is-set-by-the-appointing-judge
 9 and-paid-by-each-district-and-other-users--of--stored--water
 10 affected--by--the-admeasurement-and-distribution-of-such-the
 11 stored-water;--in-all-other-matters-the--provisions--of--this
 12 chapter--apply--so--as--long-as-they-are-consistent-with-this
 13 subsection;."

14 **Section 2.**--Section 85-5-102, MCA, is amended to read:
 15 "85-5-102. Appointment of chief commissioner. When
 16 the judge of the district court shall appoint--appoints--two
 17 or--more--commissioners-to-mediate-a-water-controversy-or-to
 18 admeasure--and--distribute--the--waters--mentioned--in--the
 19 preceding-section-85-5-101; he may appoint one of them chief
 20 commissioner--and--empower--him--to--exercise--direction-and
 21 control-over-the-other-or-others-in-the-discharge--of--their
 22 duties;--The--judge--may--depose--the--one--appointed--chief
 23 commissioner-from-that-position-and-appoint-another--in--his
 24 stead--whenever--to--replace--him-if-it-appears-to-the-judge
 25 that-better-service-may-be-given-the-water-users--by--making

1 the change."

2 **Section 3.**--Section 85-5-105, MCA, is amended to read:
 3 "85-5-105. Power and duty to distribute water. Upon
 4 the--issuance--of--such--a--court--order--granting--a--water
 5 commissioner-or-water-commissioners-authority-to--distribute
 6 water;--the--water--commissioner-or-commissioners-shall-have
 7 authority-and-it--is--hereby--made--his-or--their--duty--to
 8 admeasure--and--distribute-to-the-users-thereof--of-the-water;
 9 as-their-interests-may-appear-and-be--required;--the--stored
 10 and--supplemental--waters--stored--and--as--released--by-the
 11 department--of--natural--resources--and--conservation--under
 12 provisions--of--chapter-1-of-this-title; to-be-diverted-into
 13 and-through-said-the-streams; ditch-or-extension--of--ditch;
 14 watercourse; spring; lake; reservoir; or other source of
 15 supply-in-the-same-manner--and--under--the--same--rules--and
 16 procedures--as--decreed--water--rights--are--admeasured--and
 17 distributed;--Such-The-water--commissioner--or--commissioners
 18 and-the-owners-and-users-of-such-the-stored-and-supplemental
 19 waters--shall--be--are--bound--by--and--be--subject--to--the
 20 provisions-of-this-chapter; and-all-acts-amendatory--thereof
 21 and--supplemental--thereto;--provided;--that--However;--the
 22 admeasurements-and--distribution--of--such--the--stored--and
 23 supplemental--waters--shall-in-no-way-may-not-interfere-with
 24 decreed-water-rights;--The-purpose-of-parts-1--through--3--of
 25 this-chapter--is--to--provide--a--uniform;--equitable--and

1 economical--distribution--of--adjudicated,--stored,--and
2 supplemental-waters."

3 **Section 4.** ~~Section 85-5-108, MCA, is amended to read:~~

4 "85-5-108. Authority and arrest power. For the
5 purposes of carrying out the provisions of parts 1 through 3
6 of this chapter, each commissioner appointed by the court
7 shall have pursuant to subsections (1) through (3) of
8 {section 1} may be given authority by the court to enter
9 upon any ditch, canal, aqueduct, or other source for
10 conveying the waters affected by the decree and to visit,
11 inspect, and adjust all headgates or other means of
12 distributing the waters and shall have the same powers as
13 may be given the same authority as a sheriff or constable to
14 arrest any and all persons person interfering with the
15 distribution made by him, the water commissioner, to be
16 dealt with according to law."

17 **Section 5.** ~~Section 85-5-201, MCA, is amended to read:~~

18 "85-5-201. Distribution of water and related expenses.
19 Every ~~A~~ water commissioner appointed by the judge of the
20 district court for that purpose shall have the pursuant to
21 subsections (1) through (3) of {section 1} may be given
22 authority by the judge of the district court to admeasure
23 and distribute to the parties interested, under such the
24 decree, permit, or certificate, the water to which those who
25 are the parties to the decree or holders of a permit or

1 certificate, or privy thereto, are entitled, according to
2 their priority as established by the decree, permit, or
3 certificate. The water commissioner, in case the parties
4 fail or refuse to do so, may incur necessary expenses in the
5 making of headgates or dams for the distribution of the
6 waters if the parties refuse to undertake these tasks. Such
7 expense shall The expenses must be assessed against and paid
8 by the party or parties for whom such the services in the
9 repair of the ditch or ditches and the making of any dams or
10 headgates were necessary. In the discretion of the The
11 court, such costs or may also assess expenses may be
12 assessed against the land upon which or for the benefit of
13 which such expense had been the expenses were incurred."

14 **Section 6.** ~~Section 85-5-206, MCA, is amended to read:~~

15 "85-5-206. Effect of order fixing fees. After the
16 order of the a court order fixing the fees and compensation
17 and expenses of the water commissioner is final, it shall
18 have has all the force and effect of a judgment as against
19 the person, persons, or agency for whom the mediation effort
20 was undertaken or to whom the water was admeasured and for
21 whose benefit it was used. When such expense the fees,
22 compensation, and expenses of the commissioner or
23 commissioners has have been assessed against the land for
24 which such the service of the commissioner or commissioners
25 has been rendered, it shall they constitute a lien against

1 ~~said the land. Execution may issue upon the order, as upon a~~
 2 ~~judgment, by direction of the court or judge upon the~~
 3 ~~application of any interested person interested therein.~~
 4 ~~The water commissioner, at his discretion if he has~~
 5 ~~authority to admeasure or distribute water pursuant to~~
 6 ~~85-5-101, may withhold further admeasurement or distribution~~
 7 ~~of water to any person otherwise entitled thereto until such~~
 8 ~~the person shall have has paid all fees, compensation, and~~
 9 ~~expenses of such the water commissioner or commissioners as~~
 10 ~~as fixed by the court and apportioned and charged to such~~
 11 ~~the person, and likewise The commissioner may also withhold~~
 12 ~~the admeasurement and distribution of water from any land~~
 13 ~~against which there exists any such a lien as aforesaid,~~
 14 ~~until such the lien shall have has been fully discharged."~~

15 ~~Section 7. Section 85-5-301, MCA, is amended to read:~~
 16 ~~"85-5-301. Complaint by dissatisfied user. (1) A~~
 17 ~~person owning or using any of the waters of the stream or~~
 18 ~~ditch or extension of the ditch who is dissatisfied with the~~
 19 ~~activities of a water commissioner or with the method of~~
 20 ~~distribution of the waters of the stream or ditch by the~~
 21 ~~water commissioner or water commissioners and who claims to~~
 22 ~~be entitled to more water than he is receiving or to a right~~
 23 ~~prior to that allowed him by the water commissioner or water~~
 24 ~~commissioners may file his written complaint, duly verified,~~
 25 ~~setting forth the facts of the claim. Thereupon the Upon~~

1 ~~receiving a complaint, the judge shall fix a time for the~~
 2 ~~hearing of such petition the complaint and shall direct that~~
 3 ~~such notice be given to the parties interested in the~~
 4 ~~hearing as the judge considers necessary. At the time fixed~~
 5 ~~for the hearing, the judge must shall hear and examine the~~
 6 ~~complainant and other parties as may appear to support or~~
 7 ~~resist such the claim and examine the water commissioner or~~
 8 ~~water commissioners and witnesses as to the charges~~
 9 ~~contained in the complaint.~~

10 ~~(2) Upon the determination of After the hearing, the~~
 11 ~~judge shall make such findings and issue a just and proper~~
 12 ~~order as he considers just and proper. If it appears to the~~
 13 ~~judge that the water commissioner or water commissioners~~
 14 ~~have acted improperly or have not properly distributed the~~
 15 ~~water according to the provisions of the decree, the judge~~
 16 ~~shall give the direction that may include proper~~
 17 ~~instructions for such distribution.~~

18 ~~(3) The judge may remove any water commissioner and~~
 19 ~~appoint some other another person in his stead to replace~~
 20 ~~the commissioner if he considers that the interests of the~~
 21 ~~parties in the waters mentioned in the decree will be best~~
 22 ~~suberved thereby, and if served by a replacement. If it~~
 23 ~~appears to the judge that the water commissioner has~~
 24 ~~willfully failed to perform his duties, he may be proceeded~~
 25 ~~against the water commissioner may be prosecuted for~~

1 contempt-of-court, as provided in contempt cases. The judge
2 shall make such an order as to for the payment of costs of
3 the hearing as appears to him to be that is just and
4 proper."

5 **Section 8.** Section 85-5-302, MCA, is amended to read:
6 "85-5-302. Maintenance of headgates and measuring
7 devices. (1) All persons using water under a decree from
8 any stream or ditch whereon where a water commissioner with
9 authority to admeasure and distribute water is appointed
10 shall be are required to have suitable headgates at the
11 point wherein a where the ditch taps a stream, and the
12 persons shall also, at some suitable place on the ditch and
13 as near the head thereof as practicable, place and maintain
14 a proper measuring box, weir, or other appliance for the
15 measurement of to measure the waters flowing in such the
16 ditch. In case any person or persons shall fail to place or
17 maintain a proper measuring appliance, it shall be the duty
18 of such the water commissioner may not to apportion or
19 distribute any water through said the ditch.

20 (2) The A commissioner must with authority to
21 admeasure and distribute water shall notify all interested
22 parties interested by registered or certified mail or in
23 person 1 week before making the annual repair or cleaning of
24 any stream or ditch or performing necessary labor or
25 expenses to divert water to any ditch. The sending of a

1 registered or certified letter to the last known post office
2 address of any such interested party will be is prima facie
3 evidence of the fact that he was duly notified. Any work in
4 the way of repairing to repair a ditch made necessary by any
5 emergency may be done without such notice when injury would
6 result from delay."

7 **NEW SECTION. SECTION 1. APPOINTMENT OF WATER**
8 **MEDIATORS -- DUTIES.** (1) THE JUDGE OF THE DISTRICT COURT MAY
9 **APPOINT A WATER MEDIATOR TO MEDIATE A WATER CONTROVERSY IN A**
10 **NONDECREEED BASIN UNDER THE FOLLOWING CIRCUMSTANCES:**

- 11 (A) UPON REQUEST OF THE GOVERNOR;
12 (B) UPON PETITION BY AT LEAST 15% OF THE OWNERS OF
13 WATER RIGHTS IN A NONDECREEED BASIN; OR
14 (C) UPON PETITION BY A STATE AGENCY WITH WATER-RELATED
15 INTERESTS.
16 (2) A WATER MEDIATOR APPOINTED UNDER THIS SECTION MAY:
17 (A) DISCUSS PROPOSED SOLUTIONS TO A WATER CONTROVERSY
18 WITH AFFECTED WATER RIGHT HOLDERS;
19 (B) REVIEW OPTIONS RELATED TO SCHEDULING AND
20 COORDINATING WATER USE WITH AFFECTED WATER RIGHT HOLDERS;
21 (B)(C) DISCUSS WATER USE AND WATER NEEDS WITH PERSONS
22 AND ENTITIES AFFECTED BY THE EXISTING WATER USE;
23 (C)(D) MEET WITH PRINCIPAL PARTIES TO MEDIATE
24 DIFFERENCES OVER THE USE OF WATER; AND
25 (D)(E) HOLD PUBLIC MEETINGS AND CONFERENCES TO DISCUSS

1 AND NEGOTIATE POTENTIAL SOLUTIONS TO CONTROVERSIES OVER USE
2 OF WATER.

3 (3) IF THE GOVERNOR REQUESTS OR A STATE AGENCY
4 PETITIONS FOR A WATER MEDIATOR, THE GOVERNOR OR AGENCY SHALL
5 PAY ALL OR A MAJORITY OF THE COSTS OF THE WATER MEDIATOR, AS
6 DETERMINED EQUITABLE BY THE DISTRICT COURT HAVING
7 JURISDICTION.

8 (4) THE GOVERNOR MAY USE FUNDS APPROPRIATED UNDER
9 10-3-312 TO PAY THE COSTS OF A WATER MEDIATOR.

10 (5) NOTHING IN THIS SECTION ALLOWS A WATER MEDIATOR TO
11 REQUIRE ANY VALID WATER RIGHT HOLDER TO COMPROMISE OR REDUCE
12 ANY OF HIS EXISTING WATER RIGHTS.

13 NEW SECTION. Section 2. Water commissioner AND
14 MEDIATOR education. The department of natural resources and
15 conservation, in cooperation with the Montana supreme court,
16 the Montana water courts, the district courts of Montana,
17 the Montana university system, and other appropriate state
18 and federal agencies, shall develop an educational program
19 for water commissioners AND MEDIATORS that includes:

20 (1) an annual seminar on commissioner AND MEDIATOR
21 duties, mediation techniques, and water measuring
22 techniques;

23 (2) preparation and, as necessary, revision of a water
24 commissioner AND MEDIATOR manual; and

25 (3) an outreach program that identifies persons who

1 might serve as water commissioners OR MEDIATORS.

2 NEW SECTION. Section 3. Appropriation. (1) There is
3 appropriated \$50,000 from the water development special
4 revenue account to the department of natural resources and
5 conservation for the biennium ending June 30, 1991, to pay
6 water commissioner fees and costs.

7 (2) There is appropriated \$10,000 from the water
8 development special revenue account to the department of
9 natural resources and conservation for the biennium ending
10 June 30, 1991, to prepare and offer an educational program
11 for water commissioners AND MEDIATORS.

12 (3) (2) If funding \$10,000 is not available from the
13 water development special revenue account for the activities
14 funded in subsection (1) or (2), there is appropriated from
15 the renewable resources development account any remaining
16 money necessary to provide complete funding AN AMOUNT OF
17 MONEY EQUAL TO THE DIFFERENCE BETWEEN \$10,000 AND THE MONEY
18 RECEIVED BY THE DEPARTMENT FROM THE WATER DEVELOPMENT
19 SPECIAL REVENUE ACCOUNT UNDER SUBSECTION (1).

20 NEW SECTION. Section 3. Codification instruction.
21 {Section 9} is [SECTIONS 1 AND 2] ARE intended to be
22 codified as an integral part of Title 85, chapter 5, part 1,
23 and the provisions of Title 85, chapter 5, part 1, apply to
24 {section 9} [SECTIONS 1 AND 2].

25 NEW SECTION. Section 4. Saving clause. [This act]

HB 0463/04

1 does not affect rights and duties that matured, penalties
2 that were incurred, or proceedings that were begun before
3 [the effective date of this act].

4 NEW SECTION. Section 5. Severability. If a part of
5 [this act] is invalid, all valid parts that are severable
6 from the invalid part remain in effect. If a part of [this
7 act] is invalid in one or more of its applications, the part
8 remains in effect in all valid applications that are
9 severable from the invalid applications.

10 NEW SECTION. Section 6. Effective date. [This act] is
11 effective on passage and approval.

-End-

HOUSE BILL NO. 463

INTRODUCED BY THOFT, HARPER, HANNAH, GRADY, YELLOWTAIL,
ABRAMS, DEVLIN, WALKER, O'KEEFE, RANEY, SEVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DISTRICT COURT TO APPOINT A WATER COMMISSIONER MEDIATOR TO MEDIATE A WATER CONTROVERSY IN A DECREASED OR NONDECREASED BASIN; ENABLING THE GOVERNOR TO APPLY TO THE DISTRICT COURT FOR APPOINTMENT OF A WATER COMMISSIONER; ALLOWING THE DISTRICT COURT TO ASSESS REASONABLE FEES FOR A WATER COMMISSIONER; MAKING OTHER REVISIONS TO THE WATER COMMISSIONER LAWS TO CLARIFY THEM AND TO DISTINGUISH THE MEDIATION AND DISTRIBUTION AUTHORITY THAT MAY BE GIVEN TO A WATER COMMISSIONER; ESTABLISHING AN EDUCATIONAL PROGRAM FOR WATER COMMISSIONERS AND MEDIATORS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 85-5-101, 85-5-102, 85-5-105, 85-5-108, 85-5-201, 85-5-206, 85-5-301, AND 85-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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 the duty of the judge of the district court having jurisdiction of the subject matter may, upon the application of by 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 water commissioners. The commissioners shall have judge may give the commissioner or commissioners authority to mediate among parties to a water controversy or 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 the 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 governor or the department of natural resources and conservation appoint a water commissioner. The judge may give the water

1 commissioner--shall--authority--to--mediate--a--water--controversy
 2 or--to--distribute--to--the--appropriators,--from--the--source--or--in
 3 the--area,--the--water--to--which--they--are--entitled;
 4 {3}--The--governor,--the--department--of--natural--resources
 5 and--conservation,--or--any--person--or--corporation--operating
 6 under--contract--with--the--department,--or--any--other--owner--of
 7 stored--waters--may--petition--the--court--to--have--such--the--stored
 8 waters--distributed--by--the--water--commissioners--appointed--by
 9 said--the--court. The--court--may--thereupon--then--make--an--order
 10 requiring--the--commissioner--or--commissioners--appointed--by--the
 11 court--to--distribute--such--the--stored--water--when--and--as--it--is
 12 released--to--water--users--persons--entitled--to--the--use--thereof
 13 the--water;
 14 {4}--{a}--In--addition--to--authority--provided--under
 15 subsections--{1}--through--{3},--the--judge--of--the--district--court
 16 may--appoint--a--water--commissioner--to--mediate--a--water
 17 controversy--under--the--following--circumstances:
 18 {i}--upon--request--of--the--governor;
 19 {ii}--upon--petition--by--at--least--5%--of--the--owners--of
 20 water--rights--in--a--nondecreed--basin;--or
 21 {iii}--upon--petition--by--a--state--agency--with
 22 water--related--interests;
 23 {b}--A--water--commissioner--appointed--under--this
 24 subsection--may:
 25 {i}--discuss--proposed--solutions--to--a--water--controversy

1 with--affected--water--right--holders;
 2 {ii}--discuss--water--use--and--water--needs--with--persons--and
 3 entities--affected--by--the--existing--water--use;
 4 {iii}--meet--with--principal--parties--to--mediate
 5 differences--over--the--use--of--water;--and
 6 {iv}--hold--public--meetings--and--conferences--to--discuss
 7 and--negotiate--potential--solutions--to--controversies--over--use
 8 of--water;
 9 {5}--At--the--time--of--the--appointment--of--such--a--water
 10 commissioner--or--commissioners,--the--district--court--shall--fix
 11 their--compensation;--and--the--owners--and--users--of--the
 12 distributed--waters;--including--permittees--and--certificate
 13 holders,--shall--pay--their--proportionate--share--of--such--the
 14 fees--and--compensation;--if--the--appointment--benefits--the
 15 state,--the--district--court--may--also--assess--reasonable--fees--to
 16 the--department--of--natural--resources--and--conservation;--if--a
 17 state--agency--petitions--for--a--water--commissioner,--the--agency
 18 shall--pay--all--or--a--majority--of--the--cost--of--the--water
 19 commissioner,--as--determined--equitable--by--the--district--court;
 20 {5}{6}--Upon--the--application--of--the--board--or--boards--of
 21 one--or--more--irrigation--districts--entitled--to--the--use--of
 22 water--stored--in--a--reservoir--which--that--is--turned--into--the
 23 natural--channel--of--any--stream--and--withdrawn--or--diverted--at--a
 24 point--downstream--for--beneficial--use,--the--district--court--of
 25 the--judicial--district--wherein--where--the--most--irrigable--acres

1 of-the-irrigation-district-or-districts-are-situated-located
 2 may--appoint-a-water-commissioner-to-equitably-admeasure-and
 3 distribute-such-the-stored--water--to--said--the--irrigation
 4 district--or--districts--from-the-channel-of-the-stream-into
 5 which-it-has-been-turned;--A-commissioner--appointed--under
 6 this-subsection-has-the-powers-of-any-commissioner-appointed
 7 under--this--chapter;--limited--only-by-the-purposes-of-this
 8 subsection;--His-compensation-is-set-by-the-appointing-judge
 9 and-paid-by-each-district-and-other-users--of--stored--water
 10 affected--by--the-admeasurement-and-distribution-of-such-the
 11 stored-water;--In-all-other-matters-the--provisions--of--this
 12 chapter--apply--so--as--long-as-they-are-consistent-with-this
 13 subsection;#

14 **Section 2.**--Section 85-5-102, MCA, is amended to read:
 15 "85-5-102.--Appointment--of--chief--commissioner;--When
 16 the-judge-of-the-district-court-shall-appoint--appoints--two
 17 or--more--commissioners-to-mediate-a-water-controversy-or-to
 18 admeasure--and--distribute--the--waters--mentioned--in--the
 19 preceding-section-85-5-101;--he-may-appoint-one-of-them-chief
 20 commissioner--and--empower--him--to--exercise--direction-and
 21 control-over-the-other-or-others-in-the-discharge--of--their
 22 duties;--The--judge--may--depose--the--one--appointed--chief
 23 commissioner-from-that-position-and-appoint-another--in--his
 24 stead--whenever--to--replace--him-if-it-appears-to-the-judge
 25 that-better-service-may-be-given-the-water-users--by--making

1 the-change;#

2 **Section 3.**--Section 85-5-105, MCA, is amended to read:
 3 "85-5-105.--Power-and-duty-to-distribute--water;--Upon
 4 the--issuance--of--such--a--court--order--granting--a--water
 5 commissioner-or-water-commissioners-authority-to--distribute
 6 water;--the--water--commissioner-or-commissioners-shall-have
 7 authority-and-it-is--hereby--made--his--or--their--duty--to
 8 admeasure--and--distribute--to-the-users--thereof--of--the--water,
 9 as-their-interests-may-appear-and-be--required;--the--stored
 10 and--supplemental--waters--stored--and--as--released--by-the
 11 department--of--natural--resources--and--conservation--under
 12 provisions--of--chapter-1-of-this-title,--to-be-diverted-into
 13 and-through-said-the-streams;--ditch-or-extension--of--ditch;
 14 watercourse;--spring;--lake;--reservoir;--or-other-source-of
 15 supply-in-the-same-manner--and--under--the--same--rules--and
 16 procedures--as--decreed--water--rights--are--admeasured--and
 17 distributed;--Such-The-water--commissioner--or--commissioners
 18 and-the-owners-and-users-of-such-the-stored-and-supplemental
 19 waters--shall--be--are--bound--by--and--be--subject--to--the
 20 provisions-of-this-chapter,--and-all-acts-amendatory--thereof
 21 and--supplemental--thereto;--provided;--that--However;--the
 22 admeasurements-and--distribution--of--such--the--stored--and
 23 supplemental--waters--shall-in-no-way-may-not-interfere-with
 24 decreed-water-rights;--The-purpose-of-parts-1--through--3--of
 25 this-chapter--is--to--provide--a--uniform;--equitable;--and

1 economical--distribution---of---adjudicated;---stored;---and
2 supplemental-waters;"

3 **Section 4.**--Section--85-5-100, MCA, is amended to read:

4 "85-5-100. Authority--and--arrest--power.---For---the
5 purposes-of-carrying-out-the-provisions-of-parts-1-through-3
6 of--this--chapter,--each--commissioner-appointed-by-the-court
7 shall-have--pursuant--to--subsections--(1)--through--(3)--of
8 {section--1}--may--be--given--authority--by--the--court--to--enter
9 upon--any--ditch,--canal,--aqueduct,--or--other--source--for
10 conveying--the--waters--affected-by-the-decree-and-to-visit,
11 inspect,--and--adjust--all--headgates--or--other--means--of
12 distributing--the--waters--and-shall-have-the-same-powers-as
13 may-be-given-the-same-authority-as-a-sheriff-or-constable-to
14 arrest-any-and--all--persons--person--interfering--with--the
15 distribution--made--by--him,--the--water-commissioner, to be
16 dealt-with-according-to-law."

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

18 "85-5-201. Distribution-of-water-and-related-expenses.
19 Every--A--water--commissioner--appointed-by-the-judge-of-the
20 district-court-for-that-purpose-shall-have-the--pursuant--to
21 subsections--(1)--through--(3)--of--{section--1}--may-be-given
22 authority-by-the-judge-of-the-district--court--to--admeasure
23 and--distribute--to--the--parties-interested, under-such--the
24 decree, permit, or certificate, the water-to-which those who
25 are--the--parties-to-the-decree-or--holders--of--a--permit--or

1 certificate,--or--privy--thereto, are-entitled, according-to
2 their-priority-as-established--by--the--decree,--permit,--or
3 certificate,--The--water--commissioner,--in-case-the-parties
4 fail-or-refuse-to-do-so, may-incur-necessary-expenses-in-the
5 making-of-headgates-or-dams--for--the--distribution--of--the
6 waters--if-the-parties-refuse-to-undertake-these-tasks. Such
7 expense-shall--The-expenses-must--be-assessed-against-and-paid
8 by-the-party-or-parties-for-whom-such--the--services--in--the
9 repair-of-the-ditch-or-ditches-and-the-making-of-any-dams-or
10 headgates--were--necessary,--in--the--discretion--of--the--The
11 court, such--costs--or--may--also--assess--expenses--may--be
12 assessed--against--the-land-upon-which-or-for-the-benefit-of
13 which-such-expense-had-been--the-expenses-were--incurred."

14 **Section 6.**--Section--85-5-206, MCA, is amended to read:

15 "85-5-206. Effect--of--order--fixing--fees.---After-the
16 order-of-the--a-court-order--fixing-the-fees-and--compensation
17 and--expenses--of--the-water-commissioner-is-final, it-shall
18 have--has--all-the-force-and-effect-of-a-judgment--as--against
19 the-person, persons, or-agency-for-whom--the-mediation-effort
20 was--undertaken--or-to-whom-the-water-was-admeasured-and-for
21 whose-benefit-it-was--used. When--such--expense--the--fees,
22 compensation,--and--expenses--of--the--commissioner--or
23 commissioners--has--have--been-assessed-against--the-land--for
24 which--such--the--service-of-the-commissioner-or-commissioners
25 has-been-rendered, it-shall--they--constitute-a-lien-against

1 ~~said the land. Execution may issue upon the order, as upon a~~
 2 ~~judgment, by direction of the court or judge upon the~~
 3 ~~application of any interested person interested therein.~~
 4 ~~The water commissioner, at his discretion if he has~~
 5 ~~authority to admeasure or distribute water pursuant to~~
 6 ~~85-5-101, may withhold further admeasurement or distribution~~
 7 ~~of water to any person otherwise entitled thereto until such~~
 8 ~~the person shall have has paid all fees, compensation, and~~
 9 ~~expenses of such the water commissioner or commissioners so~~
 10 ~~as fixed by the court and apportioned and charged to such~~
 11 ~~the person, and likewise The commissioner may also withhold~~
 12 ~~the admeasurement and distribution of water from any land~~
 13 ~~against which there exists any such a lien as aforesaid,~~
 14 ~~until such the lien shall have has been fully discharged."~~

15 ~~Section 7: Section 85-5-301, MCA, is amended to read:~~
 16 ~~"85-5-301. Complaint by dissatisfied user. (1) A~~
 17 ~~person owning or using any of the waters of the stream or~~
 18 ~~ditch or extension of the ditch who is dissatisfied with the~~
 19 ~~activities of a water commissioner or with the method of~~
 20 ~~distribution of the waters of the stream or ditch by the~~
 21 ~~water commissioner or water commissioners and who claims to~~
 22 ~~be entitled to more water than he is receiving or to a right~~
 23 ~~prior to that allowed him by the water commissioner or water~~
 24 ~~commissioners may file his written complaint, duly verified,~~
 25 ~~setting forth the facts of the claim. Thereupon the Upon~~

1 ~~receiving a complaint, the judge shall fix a time for the~~
 2 ~~hearing of such petition the complaint and shall direct that~~
 3 ~~such notice be given to the parties interested in the~~
 4 ~~hearing as the judge considers necessary. At the time fixed~~
 5 ~~for the hearing, the judge must shall hear and examine the~~
 6 ~~complainant and other parties as may appear to support or~~
 7 ~~resist such the claim and examine the water commissioner or~~
 8 ~~water commissioners and witnesses as to the charges~~
 9 ~~contained in the complaint.~~

10 ~~(2) Upon the determination of After the hearing, the~~
 11 ~~judge shall make such findings and issue a just and proper~~
 12 ~~order as he considers just and proper. If it appears to the~~
 13 ~~judge that the water commissioner or water commissioners~~
 14 ~~have acted improperly or have not properly distributed the~~
 15 ~~water according to the provisions of the decree, the judge~~
 16 ~~shall give the direction that may include proper~~
 17 ~~instructions for such distribution.~~

18 ~~(3) The judge may remove any water commissioner and~~
 19 ~~appoint some other another person in his stead to replace~~
 20 ~~the commissioner if he considers that the interests of the~~
 21 ~~parties in the waters mentioned in the decree will be best~~
 22 ~~subservd thereby, and if served by a replacement, if it~~
 23 ~~appears to the judge that the water commissioner has~~
 24 ~~willfully failed to perform his duties, he may be proceeded~~
 25 ~~against the water commissioner may be prosecuted for~~

contempt-of-court, as provided in contempt cases. The judge shall make such an order as to for the payment of costs of the hearing as appears to him to be that is just and proper."

Section 8. Section 85-5-302, MCA, is amended to read:

"85-5-302. Maintenance of headgates and measuring devices. (1) All persons using water under a decree from any stream or ditch whereon where a water commissioner with authority to admeasure and distribute water is appointed shall be are required to have suitable headgates at the point wherein a where the ditch taps a stream and The persons shall also, at some suitable place on the ditch and as near the head thereof as practicable, place and maintain a proper measuring box, weir, or other appliance for the measurement of to measure the waters flowing in such the ditch; in case any person or persons shall fail to place or maintain a proper measuring appliance, it shall be the duty of such the water commissioner may not to apportion or distribute any water through said the ditch.

(2) The A commissioner must with authority to admeasure and distribute water shall notify all interested parties interested by registered or certified mail or in person i week before making the annual repair or cleaning of any stream or ditch or performing necessary labor or expenses to divert water to any ditch. The sending of a

registered or certified letter to the last known post office address of any such interested party will be is prima facie evidence of the fact that he was duly notified. Any work in the way of repairing to repair a ditch made necessary by any emergency may be done without such notice when injury would result from delay."

NEW SECTION. SECTION 1. APPOINTMENT OF WATER MEDIATORS -- DUTIES. (1) THE JUDGE OF THE DISTRICT COURT MAY APPOINT A WATER MEDIATOR TO MEDIATE A WATER CONTROVERSY IN A NONDECREED BASIN UNDER THE FOLLOWING CIRCUMSTANCES:

(A) UPON REQUEST OF THE GOVERNOR;

(B) UPON PETITION BY AT LEAST 15% OF THE OWNERS OF WATER RIGHTS IN A NONDECREED BASIN; OR

(C) UPON PETITION BY A STATE AGENCY WITH WATER-RELATED INTERESTS.

(2) A WATER MEDIATOR APPOINTED UNDER THIS SECTION MAY:

(A) DISCUSS PROPOSED SOLUTIONS TO A WATER CONTROVERSY WITH AFFECTED WATER RIGHT HOLDERS;

(B) REVIEW OPTIONS RELATED TO SCHEDULING AND COORDINATING WATER USE WITH AFFECTED WATER RIGHT HOLDERS;

(C) DISCUSS WATER USE AND WATER NEEDS WITH PERSONS AND ENTITIES AFFECTED BY THE EXISTING WATER USE;

(D) MEET WITH PRINCIPAL PARTIES TO MEDIATE DIFFERENCES OVER THE USE OF WATER; AND

(E) HOLD PUBLIC MEETINGS AND CONFERENCES TO DISCUSS

1 AND NEGOTIATE POTENTIAL SOLUTIONS TO CONTROVERSIES OVER USE
2 OF WATER.

3 (3) IF THE GOVERNOR REQUESTS OR A STATE AGENCY
4 PETITIONS FOR A WATER MEDIATOR, THE GOVERNOR OR AGENCY SHALL
5 PAY ALL OR A MAJORITY OF THE COSTS OF THE WATER MEDIATOR, AS
6 DETERMINED EQUITABLE BY THE DISTRICT COURT HAVING
7 JURISDICTION.

8 (4) THE GOVERNOR MAY USE FUNDS APPROPRIATED UNDER
9 10-3-312 TO PAY THE COSTS OF A WATER MEDIATOR.

10 (5) NOTHING IN THIS SECTION ALLOWS A WATER MEDIATOR TO
11 REQUIRE ANY VALID WATER RIGHT HOLDER TO COMPROMISE OR REDUCE
12 ANY OF HIS EXISTING WATER RIGHTS.

13 NEW SECTION. Section 2. Water commissioner AND
14 MEDIATOR education. The department of natural resources and
15 conservation, in cooperation with the Montana supreme court,
16 the Montana water courts, the district courts of Montana,
17 the Montana university system, and other appropriate state
18 and federal agencies, shall develop an educational program
19 for water commissioners AND MEDIATORS that includes:

20 (1) an annual seminar on commissioner AND MEDIATOR
21 duties, mediation techniques, and water measuring
22 techniques;

23 (2) preparation and, as necessary, revision of a water
24 commissioner AND MEDIATOR manual; and

25 (3) an outreach program that identifies persons who

1 might serve as water commissioners OR MEDIATORS.

2 NEW SECTION. Section 3. Appropriation. ~~{1} There is~~
3 ~~appropriated \$50,000 from the water development special~~
4 ~~revenue account to the department of natural resources and~~
5 ~~conservation for the biennium ending June 30, 1991, to pay~~
6 ~~water commissioner fees and costs.~~

7 ~~{2} There is appropriated \$10,000 from the water~~
8 ~~development special revenue account to the department of~~
9 ~~natural resources and conservation for the biennium ending~~
10 ~~June 30, 1991, to prepare and offer an educational program~~
11 ~~for water commissioners AND MEDIATORS.~~

12 ~~{3}{2} If funding \$10,000 is not available from the~~
13 ~~water development special revenue account for the activities~~
14 ~~funded in subsection {1} or {2}, there is appropriated from~~
15 ~~the renewable resources development account any remaining~~
16 ~~money necessary to provide complete funding AN AMOUNT OF~~
17 ~~MONEY EQUAL TO THE DIFFERENCE BETWEEN \$10,000 AND THE MONEY~~
18 ~~RECEIVED BY THE DEPARTMENT FROM THE WATER DEVELOPMENT~~
19 ~~SPECIAL REVENUE ACCOUNT UNDER SUBSECTION {1}.~~

20 NEW SECTION. Section 3. Codification instruction.
21 {Section 9} is [SECTIONS 1 AND 2] ARE intended to be
22 codified as an integral part of Title 85, chapter 5, part 1,
23 and the provisions of Title 85, chapter 5, part 1, apply to
24 {section 9} [SECTIONS 1 AND 2].

25 NEW SECTION. Section 4. Saving clause. [This act]

HB 0463/04

1 does not affect rights and duties that matured, penalties
2 that were incurred, or proceedings that were begun before
3 [the effective date of this act].

4 NEW SECTION. Section 5. Severability. If a part of
5 [this act] is invalid, all valid parts that are severable
6 from the invalid part remain in effect. If a part of [this
7 act] is invalid in one or more of its applications, the part
8 remains in effect in all valid applications that are
9 severable from the invalid applications.

10 NEW SECTION. Section 6. Effective date. [This act] is
11 effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT

April 1, 1989

MR. PRESIDENT:

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 463 (third reading copy -- blue), respectfully report that HB 463 be amended and as so amended be concurred in:

Sponsor: Thoft (Jergeson)

1. Page 12, line 11.

Following: "GOVERNOR;"

Insert: "or"

2. Page 12, lines 13 through 15.

Following: "BASIN" on line 13

Strike: the remainder of line 13 through "INTERESTS" on line 15

3. Page 13, line 9.

Strike: "10-3-312"

Insert: "75-1-1101"

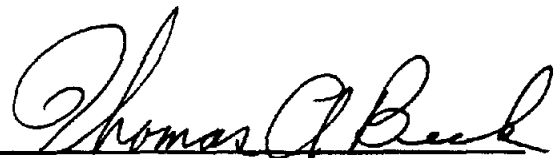
4. Page 13, line 13.

Following: line 12

Insert: "(6) If an appropriator voluntarily ceases to use all or part of his appropriation right or voluntarily ceases to use his appropriation right according to its terms and conditions as a result of the efforts of a mediator appointed under this section, the appropriator may not be considered to have abandoned all or any portion of his appropriation right."

AND AS AMENDED BE CONCURRED IN

Signed:



Thomas A. Beck, Chairman

HB 463

SENATE

HOUSE BILL NO. 463

INTRODUCED BY THOFT, HARPER, HANNAH, GRADY, YELLOWTAIL,
ABRAMS, DEVLIN, WALKER, O'KEEFE, RANEY, SEVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DISTRICT COURT TO APPOINT A WATER COMMISSIONER MEDIATOR TO MEDIATE A WATER CONTROVERSY IN A DECREED OR NONDECREED BASIN; ENABLING THE GOVERNOR TO APPLY TO THE DISTRICT COURT FOR APPOINTMENT OF A WATER COMMISSIONER; ALLOWING THE DISTRICT COURT TO ASSESS REASONABLE FEES FOR A WATER COMMISSIONER; MAKING OTHER REVISIONS TO THE WATER COMMISSIONER LAWS TO CLARIFY THEM AND TO DISTINGUISH THE MEDIATION AND DISTRIBUTION AUTHORITY THAT MAY BE GIVEN TO A WATER COMMISSIONER; ESTABLISHING AN EDUCATIONAL PROGRAM FOR WATER COMMISSIONERS AND MEDIATORS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 85-5-101, 85-5-102, 85-5-105, 85-5-108, 85-5-201, 85-5-206, 85-5-301, AND 85-5-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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 the duty of the judge of the district court having jurisdiction of the subject matter may, upon the application of by 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 water commissioners. The commissioners shall have judge may give the commissioner or commissioners authority to mediate among parties to a water controversy or 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 the 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 governor or the department of natural resources and conservation appoint a water commissioner. The judge may give the water

~~commissioner--shall--authority--to--mediate--a--water--controversy~~
~~or--to--distribute--to--the--appropriators--from--the--source--or--in~~
~~the--area--the--water--to--which--they--are--entitled--~~

~~(3)--The--governor--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--the--stored~~
~~waters--distributed--by--the--water--commissioners--appointed--by~~
~~said--the--court--The--court--may--thereupon--then--make--an--order~~
~~requiring--the--commissioner--or--commissioners--appointed--by--the~~
~~court--to--distribute--such--the--stored--water--when--and--as--it--is~~
~~released--to--water--users--persons--entitled--to--the--use--thereof~~
~~the--water--~~

~~(4)--(a)--in--addition--to--authority--provided--under~~
~~subsections--(1)--through--(3)--the--judge--of--the--district--court~~
~~may--appoint--a--water--commissioner--to--mediate--a--water~~
~~controversy--under--the--following--circumstances--~~

~~(i)--upon--request--of--the--governor--~~

~~(ii)--upon--petition--by--at--least--5%--of--the--owners--of~~
~~water--rights--in--a--nondecreed--basin--or~~

~~(iii)--upon--petition--by--a--state--agency--with~~
~~water--related--interests--~~

~~(b)--A--water--commissioner--appointed--under--this~~
~~subsection--may--~~

~~(i)--discuss--proposed--solutions--to--a--water--controversy~~

~~with--affected--water--right--holders--~~

~~(ii)--discuss--water--use--and--water--needs--with--persons--and~~
~~entities--affected--by--the--existing--water--use--~~

~~(iii)--meet--with--principal--parties--to--mediate~~
~~differences--over--the--use--of--water--and~~

~~(iv)--hold--public--meetings--and--conferences--to--discuss~~
~~and--negotiate--potential--solutions--to--controversies--over--use~~
~~of--water--~~

~~(5)--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--the~~
~~fees--and--compensation--if--the--appointment--benefits--the~~
~~state--the--district--court--may--also--assess--reasonable--fees--to~~
~~the--department--of--natural--resources--and--conservation--if--a~~
~~state--agency--petitions--for--a--water--commissioner--the--agency~~
~~shall--pay--all--or--a--majority--of--the--cost--of--the--water~~
~~commissioner--as--determined--equitable--by--the--district--court--~~

~~(5)(6)--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--that--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--where--the--most--irrigable--acres~~

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

14 **Section 2.**--Section 85-5-102, MCA, is amended to read:
 15 "85-5-102. Appointment--of--chief--commissioner,--When
 16 the-judge-of-the-district-court-shall-appoint--appoints--two
 17 or--more--commissioners-to-mediate-a-water-controversy-or-to
 18 admeasure--and--distribute--the--waters--mentioned--in--the
 19 preceding-section-85-5-101, he-may-appoint-one-of-them-chief
 20 commissioner--and--empower--him--to--exercise--direction-and
 21 control-over-the-other-or-others-in-the-discharge-of--their
 22 duties,--The--judge--may--depose--the--one--appointed--chief
 23 commissioner-from-that-position-and-appoint-another--in--his
 24 stead--whenever--to--replace--him-if-it-appears-to-the-judge
 25 that-better-service-may-be-given-the-water-users--by--making

1 the-change."

2 **Section 3.**--Section 85-5-105, MCA, is amended to read:
 3 "85-5-105. Power-and-duty-to-distribute--water,--Upon
 4 the--issuance--of--such--a--court--order--granting--a--water
 5 commissioner-or-water-commissioners-authority-to-distribute
 6 water,--the--water--commissioner-or-commissioners-shall-have
 7 authority-and-it-is--hereby--made--his--or--their--duty--to
 8 admeasure--and--distribute-to-the-users-thereof--of-the-water,
 9 as-their-interests-may-appear-and-be--required,--the--stored
 10 and--supplemental--waters--stored--and--as--released--by-the
 11 department--of--natural--resources--and--conservation--under
 12 provisions--of--chapter-1-of-this-title,--to-be-diverted-into
 13 and-through-said-the-streams, ditch-or-extension--of--ditch,
 14 watercourse,--spring,--lake,--reservoir,--or-other-source-of
 15 supply-in-the-same-manner--and--under--the--same--rules--and
 16 procedures--as--decreed--water--rights--are--admeasured--and
 17 distributed,--Such-The-water--commissioner--or--commissioners
 18 and-the-owners-and-users-of-such-the-stored-and-supplemental
 19 waters--shall--be--are--bound--by--and--be--subject--to--the
 20 provisions-of-this-chapter,--and-all-acts-amendatory--thereof
 21 and--supplemental--thereto,--provided,--that--However,--the
 22 admeasurements-and--distribution--of--such--the--stored--and
 23 supplemental--waters--shall-in-no-way-may-not-interfere-with
 24 decreed-water-rights,--The-purpose-of-parts-1-through--3--of
 25 this--chapter--is--to--provide--a--uniform,--equitable,--and

1 economical--distribution---of---adjudicated,---stored,---and
2 supplemental--waters--."

3 **Section 4.**--Section 85-5-100, MCA, is amended to read:

4 "85-5-100--Authority--and--arrest--power.---For---the
5 purposes--of--carrying--out--the--provisions--of--parts--1--through--3
6 of--this--chapter,--each--commissioner--appointed--by--the--court
7 shall--have--pursuant--to--subsections--(1)--through--(3)--of
8 {section--1}--may--be--given--authority--by--the--court--to--enter
9 upon--any--ditch,--canal,--aqueduct,--or--other--source--for
10 conveying--the--waters--affected--by--the--decree--and--to--visit,
11 inspect,--and--adjust--all--headgates--or--other--means--of
12 distributing--the--waters--and--shall--have--the--same--powers--as
13 may--be--given--the--same--authority--as--a--sheriff--or--constable--to
14 arrest--any--and--all--persons--person--interfering--with--the
15 distribution--made--by--him,--the--water--commissioner,--to--be
16 dealt--with--according--to--law."

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

18 "85-5-201--Distribution--of--water--and--related--expenses.
19 Every--A--water--commissioner--appointed--by--the--judge--of--the
20 district--court--for--that--purpose--shall--have--the--pursuant--to
21 subsections--(1)--through--(3)--of--{section--1}--may--be--given
22 authority--by--the--judge--of--the--district--court--to--admeasure
23 and--distribute--to--the--parties--interested,--under--such--the
24 decree,--permit,--or--certificate,--the--water--to--which--those--who
25 are--the--parties--to--the--decree--or--holders--of--a--permit--or

1 certificate,--or--privy--thereto,--are--entitled,--according--to
2 their--priority--as--established--by--the--decree,--permit,--or
3 certificate.---The--water--commissioner,--in--case--the--parties
4 fail--or--refuse--to--do--so,--may--incur--necessary--expenses--in--the
5 making--of--headgates--or--dams--for--the--distribution--of--the
6 waters--if--the--parties--refuse--to--undertake--these--tasks. Such
7 expense--shall--The--expenses--must--be--assessed--against--and--paid
8 by--the--party--or--parties--for--whom--such--the--services--in--the
9 repair--of--the--ditch--or--ditches--and--the--making--of--any--dams--or
10 headgates--were--necessary,--in--the--discretion--of--the--The
11 court,--such--costs--or--may--also--assess--expenses--may--be
12 assessed--against--the--land--upon--which--or--for--the--benefit--of
13 which--such--expense--had--been--the--expenses--were--incurred."

14 **Section 6.**--Section 85-5-206, MCA, is amended to read:

15 "85-5-206--Effect--of--order--fixing--fees.---After--the
16 order--of--the--a--court--order--fixing--the--fees--and--compensation
17 and--expenses--of--the--water--commissioner--is--final,--it--shall
18 have--has--all--the--force--and--effect--of--a--judgment--as--against
19 the--person,--persons,--or--agency--for--whom--the--mediation--effort
20 was--undertaken--or--to--whom--the--water--was--admeasured--and--for
21 whose--benefit--it--was--used,--When--such--expense--the--fees,
22 compensation,--and--expenses--of--the--commissioner--or
23 commissioners--has--have--been--assessed--against--the--land--for
24 which--such--the--service--of--the--commissioner--or--commissioners
25 has--been--rendered,--it--shall--they--constitute--a--lien--against

1 said the land. Execution may issue upon the order, as upon a
 2 judgment, by direction of the court or judge upon the
 3 application of any interested person interested therein.
 4 The water commissioner, at his discretion if he has
 5 authority to admeasure or distribute water pursuant to
 6 85-5-101, may withhold further admeasurement or distribution
 7 of water to any person otherwise entitled thereto until such
 8 the person shall have has paid all fees, compensation, and
 9 expenses of such the water commissioner or commissioners so
 10 as fixed by the court and apportioned and charged to such
 11 the person, and likewise The commissioner may also withhold
 12 the admeasurement and distribution of water from any land
 13 against which there exists any such a lien as aforesaid,
 14 until such the lien shall have has been fully discharged."

15 **Section 7.** Section 85-5-301, MCA, is amended to read:

16 "85-5-301. Complaint by dissatisfied user. (1) A
 17 person owning or using any of the waters of the stream or
 18 ditch or extension of the ditch who is dissatisfied with the
 19 activities of a water commissioner or with the method of
 20 distribution of the waters of the stream or ditch by the
 21 water commissioner or water commissioners and who claims to
 22 be entitled to more water than he is receiving or to a right
 23 prior to that allowed him by the water commissioner or water
 24 commissioners may file his written complaint, duly verified,
 25 setting forth the facts of the claim. Thereupon the Upon

1 receiving a complaint, the judge shall fix a time for the
 2 hearing of such petition the complaint and shall direct that
 3 such notice be given to the parties interested in the
 4 hearing as the judge considers necessary. At the time fixed
 5 for the hearing, the judge must shall hear and examine the
 6 complainant and other parties as may appear to support or
 7 resist such the claim and examine the water commissioner or
 8 water commissioners and witnesses as to the charges
 9 contained in the complaint.

10 (2) Upon the determination of After the hearing, the
 11 judge shall make such findings and issue a just and proper
 12 order as he considers just and proper. If it appears to the
 13 judge that the water commissioner or water commissioners
 14 have acted improperly or have not properly distributed the
 15 water according to the provisions of the decree, the judge
 16 shall give the direction that may include proper
 17 instructions for such distribution.

18 (3) The judge may remove any water commissioner and
 19 appoint some other another person in his stead to replace
 20 the commissioner if he considers that the interests of the
 21 parties in the waters mentioned in the decree will be best
 22 subserved thereby, and if served by a replacement. If it
 23 appears to the judge that the water commissioner has
 24 willfully failed to perform his duties, he may be proceeded
 25 against the water commissioner may be prosecuted for

1 contempt-of-court, as provided in contempt cases. The judge
2 shall make such an order as to for the payment of costs of
3 the hearing as appears to him to be that is just and
4 proper."

5 ~~Section 8. Section 85-5-302, MCA, is amended to read:~~
6 ~~"85-5-302. Maintenance of headgates and measuring~~
7 ~~devices. (1) All persons using water under a decree from~~
8 ~~any stream or ditch whereon where a water commissioner with~~
9 ~~authority to admeasure and distribute water is appointed~~
10 ~~shall be required to have suitable headgates at the~~
11 ~~point wherein a where the ditch taps a stream, and the~~
12 ~~persons shall also, at some suitable place on the ditch and~~
13 ~~as near the head thereof as practicable, place and maintain~~
14 ~~a proper measuring box, weir, or other appliance for the~~
15 ~~measurement of to measure the waters flowing in such the~~
16 ~~ditch in case any person or persons shall fail to place or~~
17 ~~maintain a proper measuring appliance, it shall be the duty~~
18 ~~of such the water commissioner may not to apportion or~~
19 ~~distribute any water through said the ditch.~~

20 ~~(2) The A commissioner must with authority to~~
21 ~~admeasure and distribute water shall notify all interested~~
22 ~~parties interested by registered or certified mail or in~~
23 ~~person 1 week before making the annual repair or cleaning of~~
24 ~~any stream or ditch or performing necessary labor or~~
25 ~~expenses to divert water to any ditch. The sending of a~~

1 registered or certified letter to the last known post office
2 address of any such interested party will be is prima facie
3 evidence of the fact that he was duly notified. Any work in
4 the way of repairing to repair a ditch made necessary by any
5 emergency may be done without such notice when injury would
6 result from delay."

7 NEW SECTION. SECTION 1. APPOINTMENT OF WATER
8 MEDIATORS -- DUTIES. (1) THE JUDGE OF THE DISTRICT COURT MAY
9 APPOINT A WATER MEDIATOR TO MEDIATE A WATER CONTROVERSY IN A
10 NONDECREED BASIN UNDER THE FOLLOWING CIRCUMSTANCES:

- 11 (A) UPON REQUEST OF THE GOVERNOR;
12 (B) UPON PETITION BY AT LEAST 15% OF THE OWNERS OF
13 WATER RIGHTS IN A NONDECREED BASIN; OR
14 (C) UPON PETITION BY A STATE AGENCY WITH WATER-RELATED
15 INTERESTS.
16 (2) A WATER MEDIATOR APPOINTED UNDER THIS SECTION MAY:
17 (A) DISCUSS PROPOSED SOLUTIONS TO A WATER CONTROVERSY
18 WITH AFFECTED WATER RIGHT HOLDERS;
19 (B) REVIEW OPTIONS RELATED TO SCHEDULING AND
20 COORDINATING WATER USE WITH AFFECTED WATER RIGHT HOLDERS;
21 (B)(C) DISCUSS WATER USE AND WATER NEEDS WITH PERSONS
22 AND ENTITIES AFFECTED BY THE EXISTING WATER USE;
23 (E)(D) MEET WITH PRINCIPAL PARTIES TO MEDIATE
24 DIFFERENCES OVER THE USE OF WATER; AND
25 (B)(E) HOLD PUBLIC MEETINGS AND CONFERENCES TO DISCUSS

1 AND NEGOTIATE POTENTIAL SOLUTIONS TO CONTROVERSIES OVER USE
2 OF WATER.

3 (3) IF THE GOVERNOR REQUESTS OR A STATE AGENCY
4 PETITIONS FOR A WATER MEDIATOR, THE GOVERNOR OR AGENCY SHALL
5 PAY ALL OR A MAJORITY OF THE COSTS OF THE WATER MEDIATOR, AS
6 DETERMINED EQUITABLE BY THE DISTRICT COURT HAVING
7 JURISDICTION.

8 (4) THE GOVERNOR MAY USE FUNDS APPROPRIATED UNDER
9 10-3-312 TO PAY THE COSTS OF A WATER MEDIATOR.

10 (5) NOTHING IN THIS SECTION ALLOWS A WATER MEDIATOR TO
11 REQUIRE ANY VALID WATER RIGHT HOLDER TO COMPROMISE OR REDUCE
12 ANY OF HIS EXISTING WATER RIGHTS.

13 NEW SECTION. Section 2. Water commissioner AND
14 MEDIATOR education. The department of natural resources and
15 conservation, in cooperation with the Montana supreme court,
16 the Montana water courts, the district courts of Montana,
17 the Montana university system, and other appropriate state
18 and federal agencies, shall develop an educational program
19 for water commissioners AND MEDIATORS that includes:

20 (1) an annual seminar on commissioner AND MEDIATOR
21 duties, mediation techniques, and water measuring
22 techniques;

23 (2) preparation and, as necessary, revision of a water
24 commissioner AND MEDIATOR manual; and

25 (3) an outreach program that identifies persons who

1 might serve as water commissioners OR MEDIATORS.

2 NEW SECTION. Section 3. Appropriation. (1) There is
3 appropriated \$58,000 from the water development special
4 revenue account to the department of natural resources and
5 conservation for the biennium ending June 30, 1991 to pay
6 water commissioner fees and costs.

7 (2) There is appropriated \$10,000 from the water
8 development special revenue account to the department of
9 natural resources and conservation for the biennium ending
10 June 30, 1991, to prepare and offer an educational program
11 for water commissioners AND MEDIATORS.

12 (3) If funding \$10,000 is not available from the
13 water development special revenue account for the activities
14 funded in subsection (1) or (2), there is appropriated from
15 the renewable resources development account any remaining
16 money necessary to provide complete funding AN AMOUNT OF
17 MONEY EQUAL TO THE DIFFERENCE BETWEEN \$10,000 AND THE MONEY
18 RECEIVED BY THE DEPARTMENT FROM THE WATER DEVELOPMENT
19 SPECIAL REVENUE ACCOUNT UNDER SUBSECTION (1).

20 NEW SECTION. Section 4. Codification instruction.
21 {Section 9} is [SECTIONS 1 AND 2] ARE intended to be
22 codified as an integral part of Title 85, chapter 5, part 1,
23 and the provisions of Title 85, chapter 5, part 1, apply to
24 {section 9} [SECTIONS 1 AND 2].

25 NEW SECTION. Section 5. Saving clause. [This act]

1 does not affect rights and duties that matured, penalties
2 that were incurred, or proceedings that were begun before
3 [the effective date of this act].

4 NEW SECTION. Section 6. Severability. If a part of
5 [this act] is invalid, all valid parts that are severable
6 from the invalid part remain in effect. If a part of [this
7 act] is invalid in one or more of its applications, the part
8 remains in effect in all valid applications that are
9 severable from the invalid applications.

10 NEW SECTION. Section 7. Effective date. [This act] is
11 effective on passage and approval.

-End-

HOUSE BILL NO. 463

INTRODUCED BY THOFT, HARPER, HANNAH, GRADY, YELLOWTAIL,
ABRAMS, DEVLIN, WALKER, O'KEEFE, RANEY, SEVERSON

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A DISTRICT COURT TO APPOINT A WATER COMMISSIONER MEDIATOR TO MEDIATE A WATER CONTROVERSY IN A DECREED OR NONDECREED BASIN; ENABLING THE GOVERNOR TO APPLY TO THE DISTRICT COURT FOR APPOINTMENT OF A WATER COMMISSIONER; ALLOWING THE DISTRICT COURT TO ASSESS REASONABLE FEES FOR A WATER COMMISSIONER; MAKING OTHER REVISIONS TO THE WATER COMMISSIONER LAWS TO CLARIFY THEM AND TO DISTINGUISH THE MEDIATION AND DISTRIBUTION AUTHORITY THAT MAY BE GIVEN TO A WATER COMMISSIONER; ESTABLISHING AN EDUCATIONAL PROGRAM FOR WATER COMMISSIONERS AND MEDIATORS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 85-5-101, 85-5-102, 85-5-105, 85-5-108, 85-5-201, 85-5-206, 85-5-301 AND 85-5-302, MCA, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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 the duty of the judge of the district court having jurisdiction of the subject matter may, upon the application of by 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 water commissioners. The commissioners shall have judge may give the commissioner or commissioners authority to mediate among parties to a water controversy or 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 the 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 governor or the department of natural resources and conservation appoint a water commissioner. The judge may give the water

~~commissioner shall authority to mediate a water controversy or to distribute to the appropriators, from the source or in the area, the water to which they are entitled;~~

~~{3}--The governor, 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 the stored waters distributed by the water commissioners appointed by said the court. The court may thereupon then make an order requiring the commissioner or commissioners appointed by the court to distribute such the stored water when and as it is released to water users persons entitled to the use thereof the water.~~

~~{4}--(a) In addition to authority provided under subsections (1) through (3), the judge of the district court may appoint a water commissioner to mediate a water controversy under the following circumstances:~~

~~{i}--upon request of the governor;~~

~~{ii}--upon petition by at least 5% of the owners of water rights in a nondecreed basin; or~~

~~{iii}--upon petition by a state agency with water-related interests.~~

~~{b}--A water commissioner appointed under this subsection may:~~

~~{i}--discuss proposed solutions to a water controversy~~

~~with affected water right holders;~~

~~{ii}--discuss water use and water needs with persons and entities affected by the existing water use;~~

~~{iii}--meet with principal parties to mediate differences over the use of water; and~~

~~{iv}--hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water;~~

~~{5}--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 the fees and compensation. If the appointment benefits the state, the district court may also assess reasonable fees to the department of natural resources and conservation. If a state agency petitions for a water commissioner, the agency shall pay all or a majority of the cost of the water commissioner, as determined equitable by the district court.~~

~~{5}{6}--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 that 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 where the most irrigable acres~~

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

14 **Section 2.** Section 85-5-102, MCA, is amended to read:
 15 "85-5-102.--Appointment-of-chief-commissioner.--When
 16 the-judge-of-the-district-court-shall-appoint--appoints--two
 17 or-more-commissioners-to-mediate-a-water-controversy-or-to
 18 admeasure--and--distribute--the--waters--mentioned--in--the
 19 preceding-section-85-5-101--he-may-appoint-one-of-them-chief
 20 commissioner--and--empower--him--to--exercise--direction-and
 21 control-over-the-other-or-others-in-the-discharge-of-their
 22 duties--The-judge-may-depose--the-one-appointed-chief
 23 commissioner-from-that-position-and-appoint-another--in--his
 24 stead--whenever--to--replace--him-if-it-appears-to-the-judge
 25 that-better-service-may-be-given-the-water-users--by--making

1 the-change."

2 **Section 3.** Section 85-5-105, MCA, is amended to read:
 3 "85-5-105.--Power-and-duty-to-distribute--water.--Upon
 4 the-issuance-of--such--a--court--order--granting--a--water
 5 commissioner-or-water-commissioners-authority-to--distribute
 6 water--the--water--commissioner-or-commissioners-shall-have
 7 authority-and-it-is-hereby-made-his-or-their-duty-to
 8 admeasure--and-distribute-to-the-users-thereof-of-the-water,
 9 as-their-interests-may-appear-and-be-required--the--stored
 10 and-supplemental--waters--stored--and--as--released--by-the
 11 department--of--natural--resources--and--conservation--under
 12 provisions--of--chapter-1-of-this-title--to-be-diverted-into
 13 and-through-said-the-streams--ditch-or-extension--of--ditch,
 14 watercourse--spring--lake--reservoir--or-other-source-of
 15 supply-in-the-same-manner--and--under--the--same--rules--and
 16 procedures--as--decreed--water--rights--are--admeasured--and
 17 distributed--Such-the-water-commissioner--or--commissioners
 18 and-the-owners-and-users-of-such-the-stored-and-supplemental
 19 waters--shall--be--are--bound--by--and--be--subject--to--the
 20 provisions-of-this-chapter--and-all-acts-amendatory--thereof
 21 and--supplemental--thereto--provided--that--However--the
 22 admeasurements-and-distribution--of--such--the--stored--and
 23 supplemental--waters--shall-in-no-way-may-not-interfere-with
 24 decreed-water-rights--The-purpose-of-parts-1--through--3--of
 25 this--chapter--is--to--provide--a--uniform--equitable--and

1 economical--distribution---of---adjudicated,---stored,---and
2 supplemental-waters:."

3 **Section 4.**--Section--05-5-108, MCA, is amended to read:

4 "05-5-108. Authority--and--arrest--power.---For---the
5 purposes-of-carrying-out-the-provisions-of-parts-1-through-3
6 of--this--chapter,--each-commissioner-appointed-by-the-court
7 shall-have--pursuant--to--subsections--(1)--through--(3)--of
8 {section-1}--may--be--given-authority-by-the-court-to-enter
9 upon--any--ditch,--canal,--aqueduct,--or--other--source--for
10 conveying--the--waters--affected-by-the-decree-and-to-visit,
11 inspect,--and--adjust--all--headgates--or--other--means--of
12 distributing--the--waters--and-shall-have-the-same-powers-as
13 may-be-given-the-same-authority-as-a-sheriff-or-constable-to
14 arrest-any-and--all--persons--person--interfering--with--the
15 distribution--made--by--him,--the--water-commissioner, to-be
16 dealt-with-according-to-law."

17 **Section 5.**--Section--05-5-201, MCA, is amended to read:

18 "05-5-201. Distribution-of-water-and-related-expenses.
19 Every--A--water--commissioner--appointed-by-the-judge-of-the
20 district-court-for-that-purpose-shall-have-the--pursuant--to
21 subsections--(1)--through--(3)--of--(section-1) may-be-given
22 authority-by-the-judge-of-the-district--court--to--admeasure
23 and--distribute--to--the--parties-interested,--under-such-the
24 decree, permit, or certificate, the water-to-which-those-who
25 are-the-parties-to-the-decree-or-holders--of--a--permit--or

1 certificate,--or--privy--thereto,--are-entitled,--according-to
2 their-priority-as-established--by--the--decree,--permit,--or
3 certificate. The--water--commissioner,--in-case-the-parties
4 fail-or-refuse-to-do-so, may-incure-necessary-expenses-in-the
5 making-of-headgates-or-dams--for--the--distribution--of--the
6 waters--if-the-parties-refuse-to-undertake-these-tasks. Such
7 expense-shall--~~The-expenses-must-be-assessed-against-and-paid~~
8 by-the-party-or-parties-for-whom-such-the--services--in--the
9 repair-of-the-ditch-or-ditches-and-the-making-of-any-dams-or
10 headgates--were--necessary. In--the--discretion--of-the-The
11 court, such--costs--or--may--also--assess--expenses--may--be
12 assessed--against--the-land-upon-which-or-for-the-benefit-of
13 which-such-expense-had-been-the-expenses-were-incurred."

14 **Section 6.**--Section--05-5-206, MCA, is amended to read:

15 "05-5-206. Effect--of--order--fixing--fees. After-the
16 order-of-the-a-court-order-fixing-the-fees-and--compensation
17 and--expenses--of--the-water-commissioner-is-final, it-shall
18 have--has--all-the-force-and-effect-of-a-judgment--as--against
19 the-person, persons, or agency-for-whom-the-mediation-effort
20 was--undertaken--or-to-whom-the-water-was-admeasured-and-for
21 whose-benefit-it-was--used. When--such--expense--the--fees,
22 compensation,--and--expenses--of--the--commissioner--or
23 commissioners-has-have-been-assessed-against--the--land--for
24 which--such-the-service-of-the-commissioner-or-commissioners
25 has-been-rendered, it-shall-they-constitute-a-lien-against

1 ~~said the land. Execution may issue upon the order, as upon a~~
 2 ~~judgment, by direction of the court or judge upon the~~
 3 ~~application of any interested person interested therein.~~
 4 ~~The water commissioner, at his discretion if he has~~
 5 ~~authority to admeasure or distribute water pursuant to~~
 6 ~~85-5-101, may withhold further admeasurement or distribution~~
 7 ~~of water to any person otherwise entitled thereto until such~~
 8 ~~the person shall have has paid all fees, compensation, and~~
 9 ~~expenses of such the water commissioner or commissioners so~~
 10 ~~as fixed by the court and apportioned and charged to such~~
 11 ~~the person, and likewise The commissioner may also withhold~~
 12 ~~the admeasurement and distribution of water from any land~~
 13 ~~against which there exists any such a lien as aforesaid,~~
 14 ~~until such the lien shall have has been fully discharged."~~

15 **Section 7.** ~~Section 85-5-301, MCA, is amended to read:~~

16 ~~"85-5-301. Complaint by dissatisfied user. (1) A~~
 17 ~~person owning or using any of the waters of the stream or~~
 18 ~~ditch or extension of the ditch who is dissatisfied with the~~
 19 ~~activities of a water commissioner or with the method of~~
 20 ~~distribution of the waters of the stream or ditch by the~~
 21 ~~water commissioner or water commissioners and who claims to~~
 22 ~~be entitled to more water than he is receiving or to a right~~
 23 ~~prior to that allowed him by the water commissioner or water~~
 24 ~~commissioners may file his written complaint, duly verified,~~
 25 ~~setting forth the facts of the claim. Thereupon the Upon~~

1 ~~receiving a complaint, the judge shall fix a time for the~~
 2 ~~hearing of such petition the complaint and shall direct that~~
 3 ~~such notice be given to the parties interested in the~~
 4 ~~hearing as the judge considers necessary. At the time fixed~~
 5 ~~for the hearing, the judge must shall hear and examine the~~
 6 ~~complainant and other parties as may appear to support or~~
 7 ~~resist such the claim and examine the water commissioner or~~
 8 ~~water commissioners and witnesses as to the charges~~
 9 ~~contained in the complaint.~~

10 ~~(2) Upon the determination of After the hearing, the~~
 11 ~~judge shall make such findings and issue a just and proper~~
 12 ~~order as he considers just and proper. If it appears to the~~
 13 ~~judge that the water commissioner or water commissioners~~
 14 ~~have acted improperly or have not properly distributed the~~
 15 ~~water according to the provisions of the decree, the judge~~
 16 ~~shall give the direction that may include proper~~
 17 ~~instructions for such distribution.~~

18 ~~(3) The judge may remove any water commissioner and~~
 19 ~~appoint some other another person in his stead to replace~~
 20 ~~the commissioner if he considers that the interests of the~~
 21 ~~parties in the waters mentioned in the decree will be best~~
 22 ~~subservd thereby, and if served by a replacement, if it~~
 23 ~~appears to the judge that the water commissioner has~~
 24 ~~willfully failed to perform his duties, he may be proceeded~~
 25 ~~against the water commissioner may be prosecuted for~~

contempt-of-court, as provided in contempt cases. The judge shall make such an order as to for the payment of costs of the hearing as appears to him to be that is just and proper."

Section 8. Section 85-5-302, MCA, is amended to read:

"85-5-302. Maintenance of headgates and measuring devices. (1) All persons using water under a decree from any stream or ditch whereon where a water commissioner with authority to admeasure and distribute water is appointed shall be are required to have suitable headgates at the point wherein a where the ditch taps a stream, and The persons shall also, at some suitable place on the ditch and as near the head thereof as practicable, place and maintain a proper measuring box, weir, or other appliance for the measurement of to measure the waters flowing in such the ditch. In case any person or persons shall fail to place or maintain a proper measuring appliance, it shall be the duty of such the water commissioner may not to apportion or distribute any water through said the ditch.

(2) The A commissioner must with authority to admeasure and distribute water shall notify all interested parties interested by registered or certified mail or in person i week before making the annual repair or cleaning of any stream or ditch or performing necessary labor or expenses to divert water to any ditch. The sending of a

registered or certified letter to the last known post office address of any such interested party will be is prima facie evidence of the fact that he was duly notified. Any work in the way of repairing to repair a ditch made necessary by any emergency may be done without such notice when injury would result from delay."

NEW SECTION. SECTION 1. APPOINTMENT OF WATER MEDIATORS -- DUTIES. (1) THE JUDGE OF THE DISTRICT COURT MAY APPOINT A WATER MEDIATOR TO MEDIATE A WATER CONTROVERSY IN A NONDECREED BASIN UNDER THE FOLLOWING CIRCUMSTANCES:

- (A) UPON REQUEST OF THE GOVERNOR; OR
 - (B) UPON PETITION BY AT LEAST 15% OF THE OWNERS OF WATER RIGHTS IN A NONDECREED BASIN; OR
 - (C) UPON PETITION BY A STATE AGENCY WITH WATER RELATED INTERESTS.
- (2) A WATER MEDIATOR APPOINTED UNDER THIS SECTION MAY:
- (A) DISCUSS PROPOSED SOLUTIONS TO A WATER CONTROVERSY WITH AFFECTED WATER RIGHT HOLDERS;
 - (B) REVIEW OPTIONS RELATED TO SCHEDULING AND COORDINATING WATER USE WITH AFFECTED WATER RIGHT HOLDERS;
 - (C) DISCUSS WATER USE AND WATER NEEDS WITH PERSONS AND ENTITIES AFFECTED BY THE EXISTING WATER USE;
 - (D) MEET WITH PRINCIPAL PARTIES TO MEDIATE DIFFERENCES OVER THE USE OF WATER; AND
 - (E) HOLD PUBLIC MEETINGS AND CONFERENCES TO DISCUSS

1 AND NEGOTIATE POTENTIAL SOLUTIONS TO CONTROVERSIES OVER USE
2 OF WATER.

3 (3) IF THE GOVERNOR REQUESTS OR A STATE AGENCY
4 PETITIONS FOR A WATER MEDIATOR, THE GOVERNOR OR AGENCY SHALL
5 PAY ALL OR A MAJORITY OF THE COSTS OF THE WATER MEDIATOR, AS
6 DETERMINED EQUITABLE BY THE DISTRICT COURT HAVING
7 JURISDICTION.

8 (4) THE GOVERNOR MAY USE FUNDS APPROPRIATED UNDER
9 10-3-312 75-1-1101 TO PAY THE COSTS OF A WATER MEDIATOR.

10 (5) NOTHING IN THIS SECTION ALLOWS A WATER MEDIATOR TO
11 REQUIRE ANY VALID WATER RIGHT HOLDER TO COMPROMISE OR REDUCE
12 ANY OF HIS EXISTING WATER RIGHTS.

13 (6) IF AN APPROPRIATOR VOLUNTARILY CEASES TO USE ALL
14 OR PART OF HIS APPROPRIATION RIGHT OR VOLUNTARILY CEASES TO
15 USE HIS APPROPRIATION RIGHT ACCORDING TO ITS TERMS AND
16 CONDITIONS AS A RESULT OF THE EFFORTS OF A MEDIATOR
17 APPOINTED UNDER THIS SECTION, THE APPROPRIATOR MAY NOT BE
18 CONSIDERED TO HAVE ABANDONED ALL OR ANY PORTION OF HIS
19 APPROPRIATION RIGHT.

20 NEW SECTION. Section 2. Water commissioner AND
21 MEDIATOR education. The department of natural resources and
22 conservation, in cooperation with the Montana supreme court,
23 the Montana water courts, the district courts of Montana,
24 the Montana university system, and other appropriate state
25 and federal agencies, shall develop an educational program

1 for water commissioners AND MEDIATORS that includes:

2 (1) an annual seminar on commissioner AND MEDIATOR
3 duties, mediation techniques, and water measuring
4 techniques;

5 (2) preparation and, as necessary, revision of a water
6 commissioner AND MEDIATOR manual; and

7 (3) an outreach program that identifies persons who
8 might serve as water commissioners OR MEDIATORS.

9 ~~NEW SECTION. Section 3. Appropriation. (1) There is~~
10 ~~appropriated \$50,000 from the water development special~~
11 ~~revenue account to the department of natural resources and~~
12 ~~conservation for the biennium ending June 30, 1991, to pay~~
13 ~~water commissioner fees and costs.~~

14 ~~(2) There is appropriated \$10,000 from the water~~
15 ~~development special revenue account to the department of~~
16 ~~natural resources and conservation for the biennium ending~~
17 ~~June 30, 1991, to prepare and offer an educational program~~
18 ~~for water commissioners AND MEDIATORS.~~

19 ~~(3)(2) If funding \$10,000 is not available from the~~
20 ~~water development special revenue account for the activities~~
21 ~~funded in subsection (1) or (2), there is appropriated from~~
22 ~~the renewable resources development account any remaining~~
23 ~~money necessary to provide complete funding AN AMOUNT OF~~
24 ~~MONEY EQUAL TO THE DIFFERENCE BETWEEN \$10,000 AND THE MONEY~~
25 ~~RECEIVED BY THE DEPARTMENT FROM THE WATER DEVELOPMENT~~

1 ~~SPECIAL-REVENUE-ACCOUNT-UNDER-SUBSECTION-11-~~

2 NEW SECTION. Section 3. Codification instruction.
3 {Section-9}-is [SECTIONS 1 AND 2] ARE intended to be
4 codified as an integral part of Title 85, chapter 5, part 1,
5 and the provisions of Title 85, chapter 5, part 1, apply to
6 {section-9} [SECTIONS 1 AND 2].

7 NEW SECTION. Section 4. Saving clause. [This act]
8 does not affect rights and duties that matured, penalties
9 that were incurred, or proceedings that were begun before
10 [the effective date of this act].

11 NEW SECTION. Section 5. Severability. If a part of
12 [this act] is invalid, all valid parts that are severable
13 from the invalid part remain in effect. If a part of [this
14 act] is invalid in one or more of its applications, the part
15 remains in effect in all valid applications that are
16 severable from the invalid applications.

17 NEW SECTION. Section 6. Effective date. [This act] is
18 effective on passage and approval.

-End-