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U. S. DEPARTMENT OF AGRICULTURE.

OFFICE OF IRRIGATION INQUIRY.

BULLETIN No. 1.

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ABSTRACT

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(2)

OF THE

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LAWS OF THE SEVERAL STATES AND TERRITORIES

ON

IRRIGATION AND WATER RIGHTS.

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COMPILED BY

O. A. CRITCHETT.

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PUBLISHED BY AUTHORITY OF THE SECRETARY OF AGRICULTURE.

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1893.





## CONTENTS.

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	Page
Letter of transmittal.....	7
Introductory.....	7
Laws of the States and Territories on irrigation and water rights:	
Colorado.....	9
Wyoming.....	39
California.....	55
Washington.....	73
Montana.....	83
Kansas.....	93
Nebraska.....	101
North Dakota.....	107
South Dakota.....	119
Utah.....	131
Oregon.....	141
Idaho.....	149
Nevada.....	157
Texas.....	161
Arizona.....	169
New Mexico.....	175



## LETTER OF TRANSMITTAL.

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U. S. DEPARTMENT OF AGRICULTURE,  
OFFICE OF IRRIGATION INQUIRY,  
*Washington, D. C., July 18, 1893.*

SIR: I have the honor to transmit herewith the manuscript of an abstract of the laws of the various States and Territories in regard to irrigation and water rights, compiled by Mr. O. A. Critchett, under the direction of the Assistant Secretary of Agriculture, in compliance with his instructions of date December 28, 1892. This work was undertaken and completed prior to my appointment as chief of this division, but has been referred to me for examination. I am satisfied that such a compilation would be valuable for consultation in this office and for distribution in those sections of the country which are interested in the subject of irrigation, and I therefore recommend its publication as Bulletin No. 7 of this office.

Very respectfully,

CHARLES W. IRISH,  
*Chief of Office of Irrigation Inquiry.*

Hon. J. STERLING MORTON,  
*Secretary of Agriculture.*



## INTRODUCTORY.

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In submitting a report of the work undertaken in compliance with instructions directing me to prepare an "abstract of the laws of the several States and Territories on the subject of irrigation, made in such form as to show the similarities, where they exist, of provisions relating to the same subject-matter, as well as the differences," I have endeavored to arrange the statutes of the different States and Territories so far as practicable under corresponding heads, and present the latter in a table of contents to each, so that by turning from a given head in one to the corresponding head in another the comparison may readily be made. I have also given marginal headings as a further aid to such comparison.

It has been necessary in many cases in thus grouping under corresponding heads to partially rearrange the sections, presenting them in somewhat different order from that in which they are found in the various statute books; but in no case has this been allowed to interfere with or qualify their meaning.

In arranging these headings with reference to each other I have endeavored, as far as I could, to conform to the general order of the statutes as published; so that on the whole the general arrangement of the statutes of each State should not be greatly changed. This plan is at best an imperfect one, but the differences between the various laws are such that exactly corresponding divisions are impossible.

I have given the constitutional provisions in full, but I have endeavored to present an abstract only of the statutory enactments; and yet the necessity of giving the full meaning has made it necessary in many cases to use the terms of the statute so fully that less abridgment has resulted than I could have wished. In some cases, as in those of Kansas, Washington, New Mexico, and South Dakota, I have given the gist of a large share of the laws by referring to the same or similar provisions already given as belonging to another State.

Details of procedure not peculiar to the law of irrigation have been omitted, except in cases where, by reason of some peculiarity of method, it has seemed advisable to include them. For example, in the matter of the condemnation of property the method of construction of the tribunal, and in some instances the duty of the tribunal when con-

structed, varies with the different States, and it has been deemed best to give enough of the procedure to show those variations.

Details of the organization of corporations have not been given, except such as are peculiar to the organization of irrigation companies. A comparison of the various statutes shows that there are two distinct systems of irrigation law, one leaving the work to be carried on by individual or private corporate enterprise, facilitated and regulated by law; the other public or quasi-public, making it a matter of municipal enterprise, and compulsorily charging either all the property of a particular district or that portion of the same which is considered as benefited thereby with the burden. And in addition there is also the anomalous system "left over" from the Mexican rule in Texas, New Mexico, and Arizona. The first, or system of private enterprise, is best represented by the laws of Colorado and Wyoming; the second by the laws of California, while several of the States attempt to include both systems. In deciding the order of presentation, therefore, I have first given the statutes of the above States in the order named and followed with those including both systems, or having only one less elaborately worked out, closing with the anomalous systems of Texas, New Mexico, and Arizona.

O. A. CRITCHETT.

PUEBLO, COLO., *April 25, 1893.*

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COLORADO.

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## CONTENTS.

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	Page
Constitutional provisions .....	11
Statutory enactments .....	12
Rights guaranteed or granted .....	12
Irrigation districts .....	13
Water divisions .....	14
Water commissioners .....	14
Superintendents of irrigation .....	16
State engineer .....	18
Procedure of appropriation .....	20
Rights of way for canals, ditches, etc .....	22
Rights and duties of appropriators .....	23
Regulation of water rates .....	27
Measurement of water—rule .....	29
Protection of property of companies and of water rights .....	29
Priorities of appropriation—how adjudicated .....	30
Irrigation of State lands .....	38



# LAWS OF THE SEVERAL STATES AND TERRITORIES ON IRRIGATION AND WATER RIGHTS.

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## COLORADO.

### CONSTITUTIONAL PROVISIONS.

The water of every natural stream not heretofore appropriated, within the State of Colorado, is hereby declared to be the property of the public, and is dedicated to the use of the people of the State, subject to appropriation as hereinafter provided.—Art. XVI, sec. 5.

The right to divert unappropriated waters of every natural stream for beneficial uses shall never be denied. Priority of appropriation shall give the better right, as between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall have the preference over those claiming for any other purpose, and those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes.—Sec. 6.

Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and except for reservoirs, drains, flumes, or ditches, on or across the lands of others, for agricultural, mining, milling, domestic, or sanitary purposes.—Art. II, sec. 14.

Private property shall not be taken or damaged for public or private use without just compensation. Such compensation shall be ascertained by a board of commissioners of not less than three freeholders, or by a jury when required by the owner of the property, in such manner as may be prescribed by law, and until the same shall be paid to the owner, or into court for the owner, the property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.—Sec. 15.

All persons and corporations shall have the right of way across public, private, and corporate lands for the construction of ditches, canals, and flumes, for the purpose of conveying water for domestic purposes, for the irrigation of agricultural lands, and for mining and manufacturing purposes and for drainage, upon payment of just compensation.—Art. XVI, sec. 7.

The general assembly shall provide by law that the board of county commissioners in their respective counties shall have power when

application is made to them by either party interested, to establish reasonable maximum rates to be charged for use of water, whether furnished by individuals or corporations.—Sec. 8.

Ditches, canals, and flumes owned and used by individuals or corporations for irrigating lands owned by such individuals or corporations or the individual members thereof, shall not be separately taxed so long as they shall be owned and used exclusively for such purposes.—Art. X, sec. 3.

#### STATUTORY ENACTMENTS.

The legislative enactments are found in Mill's Annotated Statutes, and the session laws of 1891, but in order that modifications and amendments may be traced, reference to former compilations, or to the original laws, are in many cases also given.

#### RIGHTS GUARANTEED OR GRANTED.

**Marginal owners entitled to water.** All persons claiming, owning, or holding possessory right or title to land within the State, on the bank, margin, or in the neighborhood of any stream of water, creek, or river, shall be entitled to the use of the water of said stream, creek, or river for the purpose of irrigation and making said claims available to the full extent of the soil for agricultural purposes.—General Statutes, 1711; \*M. A. S., 2256.

**Vested rights.** Nothing in this chapter contained shall be so construed as to impair the prior vested rights of any mill or ditch owner to use the water of any such water course.—G. S., 1729; M. A. S., 2275.

**Eminent domain.** Private property may be taken for private use for private ways of necessity, reservoirs, flumes, or ditches, on or across lands of others, for agricultural, mining, milling, domestic, or sanitary purposes.—S. L. of 1885, pp. 201, 202; M. A. S., 287.

**Machines for raising water.** All persons on the margin, brink, neighborhood, or precinct of any stream have the right and power to place on its bank a wheel or other machine for the purpose of raising the water to the required level for irrigation.—Sec. 8, acts of 1861; sec. 6, p. 364, R. S.; sec. 1377, p. 516 G. L. of 1877; M. A. S., 2273.

**Diminution of water in stream.** Persons who have enjoyed the use of water in a natural stream for irrigation of meadow land by the natural overflow shall, in case such irrigation, in as ample a manner as before is prevented by the diminishing of the water in the stream, have the right to construct a ditch to take water from the stream, and shall have the same priority for the water so taken as though such ditch had been constructed at the time said land was first used as meadow land.—Sec. 37, p. 106, acts of 1879; 1723 G. S. of 1883; M. A. S., 2268.

**May extend ditch upstream, when.** When the channel of a natural stream has been so cut out, turned aside, or changed in any way as to prevent any ditch, canal, or feeder for any reservoir, from receiving the inflow to which it is entitled from such stream the owner of the ditch, canal, or feeder has the right to extend its head to such distance up the stream as may be necessary to secure a sufficient flow of water, and for that purpose may maintain

**May condemn right of way.** proceedings to condemn the right of way for such extension as in case of the construction of a new ditch, and the priority of right to take water, as to any such ditch, canal, or feeder, shall remain unaffected by reason of such extension: *Provided*, That no such extension shall interfere with the complete use or enjoyment of any other ditch, canal, or feeder.—Sec. 1, pp. 161, 162, acts of 1881; 1719 G. S. of 1883; M. A. S., 2264.

Persons desiring to construct and maintain reservoirs for storing water shall have the right to take from any of the natural streams of the State and store away any unappropriated water not needed for immediate use for domestic or irrigating purposes, to construct and maintain ditches to and from such reservoir and to condemn land for such reservoir and ditches in the manner provided by law: *Provided*, That no reservoir with embankments or dam exceeding 10 feet in height shall be made without having first submitted the plans thereof to the county commissioners of the county in which it is situated and obtained their approval thereof.—Sec. 38, pp. 106, 107, acts of 1879; 1724 G. S.; M. A. S., 2270.

May maintain reservoirs and ditches  
Proviso.

The owners of any reservoir may conduct the water therefrom into and along any of the natural streams of the State, but not so as to raise the waters thereof above ordinary high-water mark, and may take the same out again at any point desired without regard to the prior rights of others to water from the stream; but due allowance must be made for evaporation and seepage, the amount to be determined by the commissioners of irrigation, or by the county commissioners if in the county in which the water is taken out there is no commissioner of irrigation.—Sec. 39, p. 107, acts of 1879; 1725 G. S.; M. A. S., 2271.

May use natural stream for conduit.

Evaporation and seepage.

Any person or persons, acting jointly or severally, who shall have purchased and used water for irrigation from any ditch or reservoir for lands occupied by him or them, and shall not have ceased to do so with intent to procure water from some other source, shall have a right to continue to purchase to the same amount for his or their lands, on paying or tendering the price thereof fixed by the county commissioners, or if no price shall have been fixed by them, then by paying or tendering the price at which the owners of such ditch or reservoir shall then be selling water, or did sell during the last preceding year. But this does not apply to persons who have taken water as stockholders or shareholders, after they have sold or forfeited their stock, unless they have retained the right to procure such water by contract or understanding and use, between themselves and the ditch owners; and not then to the injury of other purchasers of water, or shareholders in the ditch.—Sec. 3, pp. 96, 97, acts of 1879; 1740 G. S. of 1883; M. A. S., 2297.

Right to continue to purchase water.

Where stock is sold or forfeited.

Waste, seepage, and spring waters are governed by the laws of priority, subject to the prior right of the person owning the land on which the seepage or spring waters first arise to use such waters if capable of being used on his lands.—M. A. S., 2269.

Prior right of landowner.

Water appropriated for domestic use can not be devoted to irrigation.—Laws of 1891, pp. 402, 403.

IRRIGATION DISTRICTS.

By statute of 1879 (pp. 97, 98) it was provided that the lands then irrigated, or that might thereafter be irrigated, from ditches taking their water from certain rivers and natural streams therein mentioned, should constitute irrigation districts, and that other districts might, from time to time, be formed by the governor on petition of parties interested. Various districts and divisions have since been created by various statutes, and at the present time the whole State is divided into districts and divisions by legislative enactment, the law giving the governor power to form districts and divisions having been repealed.—G. S., 1741; M. A. S., 2310.

How constituted.

## WATER DIVISIONS.

**How constituted.** It is also provided that, for the better regulation of the distribution of water for irrigation among the several ditches, canals, and reservoirs into which such water might lawfully be taken, in times of scarcity, the districts then existing and thereafter to be made should be constituted into certain water divisions. The division is the larger in extent and contains several districts.—G. S., secs. 1802-1806; M. A. S., 2440.

## WATER COMMISSIONERS.

**How appointed.** In each irrigation district a water commissioner is appointed by the governor, but selected by him from persons recommended to him by the several boards of county commissioners of the counties into which the districts extend, and such commissioner is required, before entering upon his duties, to take the constitutional oath of office, and give bond, with three sureties, in not less than \$1,000 nor more than and \$5,000, the amount of the bond to be fixed by the county commissioners and approved by the State engineer and governor. The

**Oath and bond.** commissioner holds his office till his successor is appointed and qualified. If the water district extends into more than one county and the several counties disagree as to amount of bond, the amount is then fixed by the governor. The governor may fill all vacancies in the office by like selection and appointment, and may at any time remove the commissioner, and the county commissioners may from time to time recommend persons for the office.—Sec. 16, p. 99, acts of 1879, and 1752 of G. S. of 1883 as amended in 1887; see, also, M. A. S., secs. 2381, 2382.

**Vacancy.**

**Duties.** It is the duty of the water commissioners to divide the water in the natural streams of their districts among the several ditches taking water according to their respective prior rights, and in whole or in part to shut and fasten, or cause to be shut and fastened by order given to any sworn assistant, sheriff, or constable of the county in which the head of the ditch is situated, the head gate of any ditch or ditches heading in any of the natural streams of the district which in time of scarcity shall not be entitled to water by reason of the priority of the rights of others below them on the same stream.—Sec. 18, p. 99, acts of 1879; 1754 G. S.; M. A. S., sec. 2384.

**Compensation.** Such water commissioner is entitled to \$5 per day for each day actually employed in the duties of his office, to be paid by the county or counties in which his district is situated. He must keep a true account of the time spent by him in the discharge of his duties, and present a true copy of the same, verified by oath, to the board of county commissioners, who shall allow the same; but if there is more than one county in his district he is to make such presentation to the commissioners of each county, and each board shall pay its pro rata part thereof.—P. 470, acts of 1889; sec. 2, M. A. S., 2387.

**How audited.** Such commissioner has power, whenever he deems it necessary, to employ a suitable assistant or assistants to aid him in his duties. Such assistant must take the same oath as the commissioner, must obey his instructions, and is entitled to \$2.50 per day for each day employed; an itemized account is to be kept, and he is to be paid upon the certificate of the water commissioner in the same manner as he is paid.—Sec. 3, p. 470, acts of 1889; M. A. S., secs. 2388, 2389.

**May employ assistants.**

The water commissioners are not allowed to begin their work until called upon by two or more owners or managers or persons in control of ditches in their districts by application in writing, stating the necessity for their action, and are not allowed to continue performing service after the necessity has ceased.—M. A. S., 2392; G. S., sec. 1758. When to begin work.

Any water commissioner, his deputy or assistant, who shall willfully neglect or refuse, after being called upon in accordance with section 1758 (above given), to promptly measure water from the stream or source of supply into the irrigating ditches of his district, according to their respective priorities, shall be deemed guilty of a misdemeanor, and upon conviction is subject to a fine of not less than ten nor more than one hundred dollars for each offense, or by imprisonment not exceeding one month, or by both such fine and imprisonment.—Secs. 5 and 4 of act regulating distribution of water, etc., 1887; M. A. S., 2291. Penalty for neglect or refusal.

Each commissioner must report to the superintendent of irrigation (if any) when he is called out, and act under his control.—Act relating to division superintendents, 1887, sec. 5; M. A. S., 2451. Notify superintendent.

Water commissioners are also required to report to the superintendent of their division as often as deemed necessary by the superintendent. Such reports must show: The amount of water necessary to supply all ditches, canals, and reservoirs in the district; the amount actually coming into such district to supply the same; whether such supply is on the increase or decrease; what ditches, canals, and reservoirs are at that time without their proper supply; the probability as to what the supply will be during the period before the next report will be required; and any other information the superintendent may suggest.—M. A. S., 2455; sec. 9, act of 1887. Report to superintendent.

In case of report to him by any owner of ditch, canal, or reservoir that the same does not receive its regular supply of water, the commissioner must immediately apportion the water in his district and report the fact to the superintendent, by telegram if necessary.—Sec. 10, act of 1887, and M. A. S., 2456. What report to contain.

The commissioner must keep a book in which shall be entered a brief statement of the contents of certificates of priority entered by the district courts, after proper adjudication of the claims of priority of ditch owners as provided by the statute providing for such adjudications, which book shall be delivered to his successor in office and which shall be his warrant of authority for regulating the flow of water in relation to the ditches, canals, and reservoirs mentioned therein.—Sec. 5, pp. 146, 147, acts of 1881; 1767, G. S.; M. A. S., 2404. Must apportion water on complaint and notify superintendent.

If at any time any ditch or reservoir for irrigation shall not be entitled to a full supply from the natural stream which supplies it, the water actually received shall be divided among all the consumers of water from it, as well as the owners, shareholders, or stockholders thereof as parties purchasing water therefrom, and parties taking water partly under and by virtue of holding shares and partly by purchasing the same; to each his share pro rata according to the amount he or they shall be then entitled, so that all owners and purchasers shall suffer from the deficiency in proportion to amount they are entitled to receive.—M. A. S., 2267; sec. 4, p. 97, acts of 1879; sec. 1722, G. S. Must record priorities.

Water commissioners in the discharge of duty are vested with the power of constables, and may arrest persons violating their orders in reference to opening or shutting down head gates or the using of water for irrigation, and may take the offender before a justice of the How water divided in case of scarcity.

Pro rata.

Vested with constabulary powers.

peace, who may, on his conviction, impose a fine of not more than \$100, and imprisonment for not more than 30 days in default of payment. But the orders of superintendents in their divisions and of the State engineer are superior to those of the commissioner.—M. A. S., sec. 2386.

Must devote his time.

The commissioner, after being called out, must devote his whole time to the work so long as the necessities of irrigation require it; he must be actively employed on the stream or streams in his district, supervising and directing the putting in of head gates, waste gates, keeping the streams clear of obstructions, etc., and is liable to a fine of \$50 and costs for willful neglect of duty.—M. A. S., sec. 2391.

Taking bribes.

The commissioner, his deputy, assistant, water master, superintendent, ditch rider, or other person in charge of the distribution of water, who takes or receives money, promises, or favors, or anything of value, intended to influence him dishonestly to favor any person in such distribution to the detriment of others, is deemed guilty of a misdemeanor, and may be fined not less than \$50 nor more than \$300.

Penalty.

And the person offering such money, promises, or favors, with such intent, is likewise guilty and subject to the same punishment.—Laws of 1889, p. 39, sec. 1; M. A. S., sec. 2398.

Offering bribes.

Old statutes.

It is provided by sec. 4, p. 68, of laws of 1861, that when the volume of water is not sufficient to supply the continual wants of the country through which it runs the county judge shall appoint three commissioners to apportion the water equitably on alternate days to different localities, as they think best, with due regard to the legal rights of all. This law is still on the statute book and forms section 2259 of M. A. S., but the need of it would seem to be supplied by the statute of 1879, given above, creating the office of water commissioner.

#### SUPERINTENDENTS OF IRRIGATION.

Governor appoints on request of county commissioners.

In each water division there is appointed by the governor a superintendent of irrigation to hold office for the period of two years, or until his successor is appointed and qualified. But such appointment can not be made until the board of county commissioners of one or more counties in the water division shall have, at a meeting regularly called and held, adopted a resolution requesting such appointment, and certified the same to the governor. The governor may, at any time, remove such superintendents, or any of them, and appoint others in their stead for the remainder of the said term of two years.—M. A. S., 2447; act relating to division superintendents, 1887, sec. 1, p. 295.

May remove.

Bond.

Within thirty days of his appointment such superintendent must give bond for the faithful performance of his duties in the sum of \$5,000, to be approved by the board of commissioners of the county where he resides, and filed in the office of the county clerk and recorder.—Sec. 6 of said act; M. A. S., 2452.

Powers and duties.

Such superintendent has general control over the water commissioners of the districts in his division. It is his duty, under the general supervision of the State engineers, to execute the laws relative to the distribution of water according to the rights of priority as established by judicial decree, and perform such other functions as may be assigned to him by the State engineer.—Sec. 2 of said act; M. A. S., 2448.

May make rules.

He shall, in the distribution of water, be governed by the laws in force, but, for the better discharge of his duties, shall have the authority to make such other regulations to secure the equal and fair distribution in accordance with the rights of priority as his judgment may

dictate, which regulations must not be in violation of the laws of the State, but merely supplemental to, and to enforce their provisions.—Sec. 3; M. A. S., 2449.

Any person, ditch company, or ditch owner deeming himself injured or discriminated against by any such regulation, may appeal to the State engineer by filing with him a copy of the order or regulation appealed from, with a statement showing how it injuriously affects him, and the engineer, after due notice, may hear such testimony as may be produced, either orally or by affidavit, and through the superintendent may suspend, amend, or confirm the order complained of.—Sec. 4; M. A. S., 2450.

Appeal.

Such superintendent must commence the discharge of his duties as soon as the first water commissioner in any district in his division shall be called out and continue in such discharge until the last commissioner in his division ceases to be needed. Each commissioner must report to the superintendent when he is first called out, and when he ceases to be needed, and be under his control while in the discharge of his duties.

When to begin work.

The superintendent is entitled to \$5 for each day actually employed in his duties.—Sec. 5; M. A. S., 2451.

Compensation.

It is the duty of the superintendent of irrigation, within thirty days after his appointment, to give notice to the clerks of the district courts in the various counties of his division, where such courts have rendered decrees fixing the priorities of appropriation of water for irrigation purposes for any water district, of his appointment to such office, and to request certified copies of such decrees, which it is the duty of such clerks to prepare and transmit to him within ten days after receiving such request. The superintendent must then enter such decrees in a book entitled "The register of priorities of appropriation of water rights for water division, No. —, State of Colorado," and shall preserve the certified copies. He must then, from such certified copies, make out a list of all ditches, reservoirs, and canals in his division entitled to appropriations of water, arranging and numbering the same in consecutive order according to the dates of their respective appropriations within his division, and without regard to the numbers they bear within their respective districts.

Notice of appointment.

Register of priorities.

He must, then, from such register, make a tabulated statement of all the ditches, canals, and reservoirs in his division whose priorities have been decreed, which statement must give the following information in respect to each ditch, canal, or reservoir, arranged in separate columns, viz: the name of the ditch, canal, or reservoir, its number in its division, the district in which it is situated, the number of it in its proper district, and the number of cubic feet of water per second to which it is entitled, and such other information as he may deem useful. In case decrees of court establishing priorities are made after the transmission of copies of previous decrees to the superintendent, it is made the duty of the clerk of the court where such decrees are rendered to transmit copies thereof to the superintendent of the division in which the county is situated within ten days after it is rendered, and the superintendent must then enter it in his register. Such register is to be filed and kept in the office of the State engineer.—Sec. 7; M. A. S., 2453.

Tabulated statement.

Contests.

Clerks to transmit copies of decrees.

The superintendent of irrigation has the right to call out any water commissioner of any water district within his division at any time he

May call out commissioner.

May act as such. may deem it necessary, and has also power to perform the regular duties of water commissioner in all the districts of his division.—Sec. 8; M. A. S., 2454.

Report of commissioner. All water commissioners are required to report to the superintendent of their respective divisions, as often as the superintendent deems necessary, the following information: The amount of water necessary to supply all ditches, canals, and reservoirs in the district; the amount actually coming into the district to supply such ditches, canals, and reservoirs—whether such supply is on the increase or decrease; what ditches, canals, and reservoirs are at that time without their proper supply; the probability as to what the supply will be during the period before the next report will be required; and such other and further information as the superintendent may suggest. The superintendent must carefully file and preserve these reports, and from them shall ascertain what ditches, canals, and reservoirs are, and what are not, receiving their proper supply of water, and if it shall appear that in any district in that division any ditch, canal, or reservoir is receiving water whose priority postdates that of the ditch, canal, or reservoir in another district, as ascertained from his register, he shall at once order such postdated ditch, canal, or reservoir shut down and the water given to the elder ditch, canal, or reservoir, his orders being at all times directed to the enforcement of priority of appropriation, according to his tabulated statement of priorities, to the whole division, and without regard to the district within which the ditches, canals, and reservoirs may be located.

Contents.

Duty of superintendent.

Must enforce priorities.

The reports of the water commissioners shall, by the superintendent, be filed in the office of the State engineer.—Sec. 9; M. A. S., 2455.

Deficient supply of water.

Duty of superintendent.

In case any canal, ditch, or reservoir in any district within a water division fails to receive its regular supply of water, the owner thereof may report such fact to the water commissioner of his district, who shall immediately apportion the water in his district and report such fact to the superintendent of irrigation, by telegram if necessary; and it shall thereupon be the duty of the superintendent to compare such report with his register, and if any ditch, canal, or reservoir of any other district of his division is receiving water to which any ditch, canal, or reservoir of any other district is entitled he shall at once order the shutting down of the post dated ditches, canals, or reservoirs, and the water given to the ditches, canals, or reservoirs having the priority of appropriation: *Provided*, That nothing in this act shall be construed as interfering with the priority of water for domestic use.—Sec. 10; M. A. S., 2456.

Expenses and salaries, how paid.

The expenses and salary of the superintendents of irrigation are paid pro rata by the counties interested in the same manner as the compensation of the water commissioners; and the fees of the clerks of courts for services rendered under this act are also paid by the counties interested upon the clerks rendering their accounts, duly certified by the judge, to the boards of commissioners of the counties embraced in the water divisions.—Sec. 12; M. A. S., 2457.

#### STATE ENGINEER.

Governor appoints.

May remove.

Salary.

The governor is to appoint a State engineer, who shall hold his office for two years and until his successor is appointed and qualified. He may be removed by the governor at any time on good cause shown. He is to have his office at the State capital, to be furnished with books, stationery, and furniture, and paid a salary of \$3,000 per year out of



the State treasury. He must take an oath to faithfully perform his duties and give bond in the sum of \$10,000, approved by the secretary of state and conditioned for the faithful discharge of his duties, and for delivering to his successor or to an officer authorized by the governor to receive the same, all moneys, books, instruments, and other property belong to the State then in his possession or under his control as such engineer.—Laws of 1889, p. 371, Sec. 1; M. A. S., Sec. 2458.

Oath.  
Bond.

He shall have general supervising control over the public waters of the State, shall make or cause to be made careful measurements of the flow of the public streams of the State from which water is diverted for any purpose, and compute the discharge of the same. He shall collect necessary data and information regarding the location, size, cost, and capacity of dams and reservoirs hereafter to be constructed, and like data regarding the feasibility and economical construction of reservoirs on eligible sites, of which he may obtain information, and the useful purposes to which the water from the same may be put. He shall also collect all data and information regarding the snow fall in the mountains each season, for the purpose of predicting the probable flow of water in the streams of the State, and publish the same.—Laws 1889, p. 372, sec. 2; M. A. S., 2459.

Powers and duties.

Collect data.

He is to approve the designs and plans for the construction and repair of all dams or reservoir embankments built within the State which equal or exceed 10 vertical feet in height.—P. 372, sec. 3; M. A. S., 2460.

Approve plans.

He is to have general charge over the work of the division water superintendents and district water commissioners, and is to furnish them with all necessary data and information for the proper and intelligent discharge of their duties, and shall require them to report to him at suitable times their official actions, and require annual statements of them, on blanks furnished by him, of the amount of water diverted from the public streams in their respective divisions and districts, and such other statistics as in his judgment will be of benefit to the State.—Laws of 1889, p. 373, sec. 4; M. A. S., 2461.

Has charge of commissioners and superintendents.

Annual statements.

On the request of any interested party, and on payment of his per diem charges and reasonable expenses, the State engineer shall appoint a deputy to measure, compute, and ascertain all necessary data of any canal, dam, reservoir, or other construction, as required, or as may be desired to establish court decrees, for filing statement in county clerk's records in compliance with law.—Laws of 1889, p. 373, sec. 5; M. A. S., 2462.

Deputy to measure, compute, etc.

He shall, without extra compensation beyond his salary, perform all duties imposed on him by law, and when called on by the governor shall give his counsel and services, without extra pay, to any State department or institution: *Provided*, That he shall be allowed all actual traveling and all other necessary expenses, and the actual cost of preparing necessary maps and drawings to be paid by the department or institution requiring his services.—Laws of 1889, p. 373, sec. 6; M. A. S., 2463.

Duties on call of governor.

He may appoint one or more deputies as he sees proper, for whose official actions he shall be responsible, and may revoke such appointments at pleasure; and he may deputize any person to do a particular service; and he and his sureties shall be responsible for any default or misconduct of his deputies. Such appointments to be in writing, under his official seal, and filed in office of secretary of state. All such appointees to take the proper official oath, to be filed with their

May appoint deputies.

Oath of deputies.

appointments. He may further employ such assistance as may be necessary.—Laws of 1889, p. 373, sec. 7; M. A. S., 2464.

Pay of deputies. The pay of his deputies is not to exceed \$6 per day for each day employed, and actual expenses, and the whole which may be so expended in a year is limited to \$4,500.—Laws of 1889, p. 374, sec. 8; M. A. S., 2465.

Measuring weir. For accurate and convenient measurement of water appropriated pursuant to judgment or decree of court establishing claims of priority of any ditch, canal, or reservoir, the owners may be required by the State engineer to construct and maintain, under his supervision, a measuring weir or other device for measuring the flow of water at the head of such ditch, canal, or reservoir, or as near thereto as practicable.

Tabular statement. He shall compute and arrange in tabular form the amount of water that will pass such weir at the different stages thereof, and shall furnish a copy of a statement thereof to any water superintendents or commissioners having control of such ditch, canal, or reservoir.—Laws of 1889, p. 374, sec. 9; M. A. S., 2466.

Unit of measurement. He shall use in all his calculations, measurements, records, and reports the cubic foot per second as the unit of measurement of flowing water, and the cubic foot as the unit of measurement of volume.—Laws of 1889, p. 374, sec. 10; M. A. S., 2467.

Report to governor. He shall prepare and render to the governor a full and true report of his work regarding all matters and duties devolving upon him by virtue of his office, which report shall be delivered at the time when reports of other State officers are required to be made.—Laws of 1889, p. 375, sec. 11; M. A. S., 2468.

#### PROCEDURE OF APPROPRIATION.

Irrigation companies are formed under the corporation act.

Statement in certificate of corporations. Whenever any three or more persons associate together under such act for the construction of a ditch, reservoir, pipe line, or anything to convey water from a natural or artificial stream, channel, or source, to any mines, mills, or lands, or for storing the same, they must specify in their certificate, in addition to the matters required in section 2 of chapter 19 of the General Statutes, the stream, channel, or source from which the water is to be taken, the point or place at or near which it is to be taken out, the location as near as may be of any reservoir intended to be constructed, the line as near as may be of any ditch or pipe line intended to be constructed, and the use to which the water is to be applied.—M. A. S., 567; amended by Laws of 1891, p. 97, sec. 72.

May condemn right of way. Any ditch, reservoir, or pipe line company formed under this chapter (19) shall have the right of way over the line named in the certificate, and the right to run water from the stream, channel, or water source, whether natural or artificial, named in the certificate, through its ditch or pipe line, and store the same in its reservoir when not needed for immediate use. But the line proposed must not interfere with any other ditch, pipe line, or reservoir having prior rights,

Prior rights. except to cross by pipe or flume; nor shall the water be diverted from its original channel or source to the detriment of any person having priority of right thereto. But this is not to be construed to prevent the appropriation and use of any water not theretofore utilized and applied to beneficial use.—M. A. S., 568; amended by Laws of 1891, p. 98, sec. 73.

Any company organized under this act for the purpose of constructing a flume shall, in their certificate, in addition to the matters required in section 2 (above mentioned), specify the place of beginning, the terminus, and the route as near as may be, and the purpose for which the flume is intended; and when so organized the company shall have the right of way over the line proposed in the certificate, provided it does not conflict with the rights of any other company.—G. S. 317; M. A. S., 576.

Certificate of flume company.

Every person, association, or corporation constructing or enlarging any ditch, canal, or feeder for any ditch or reservoir for irrigation, and taking water directly from any natural stream, and of a carrying capacity of more than 1 cubic foot of water per second of time, as so constructed or enlarged, shall, within ninety days after such construction or enlargement, file in the office of the county clerk and recorder of the county in which the head gate of the ditch or feeder may be situate, and also in the office of the State hydraulic engineer, a map showing the point of location of such head gate, the route of such ditch or canal, or the high-water line of such reservoir or reservoirs, and the route of the feeder to and ditches or canals from such reservoir or reservoirs; the legal subdivisions of land upon which such structures are built or to be built, if on surveyed land; the names of the owners of such lands, so far as the same are of record in the office of the county clerk of the county in which they are situated; such courses, distances, and corners, by reference to legal subdivisions if on surveyed lands, or to such natural objects if on unsurveyed lands, as will clearly designate the location of such structures. Upon or attached to said map shall be a statement showing, first, the point of location of the head gate above mentioned; second, the depth, width, and grade of such ditch, canal, or feeder; third, the carrying capacity of such ditch, canal, or feeder, in cubic feet per second of time, and the capacity of such reservoir or reservoirs, in cubic feet, when filled to the high-water mark; fourth, the time of commencement of work on such structures, which time may be dated from the commencement of the surveys therefor.

Appropriators must file map.

What map must show.

Statement with map.

Contents of statement.

In case of enlargement, such statement must also show the matters required in items second, third, and fourth, above, as to the enlargement, and state the increased capacity arising from the enlargement.

If such statement is filed within the time above limited (ninety days), priority of right of way and water shall date from the day named as the day of commencing work; otherwise, only from the date of filing: *Provided*, That nothing herein shall be taken to dispense with the necessity of due diligence in the prosecution of such structures by the projectors thereof. Such statement must be signed by the person, association, or corporation on whose behalf it is made, and the truth of the matters shown in such map and statement shall be sworn to by some person in whose personal knowledge the truth of the same shall lie.—Sec. 2, p. 162, acts of 1881, as amended by section 2 of an act to secure the right of way, etc., 1887; M. A. S. 2265.

When priority attaches.

Signature.

Verification.

This act applies only to ditches, canals, and feeders used for the purposes of irrigation and for no other purposes.—Sec. 3, p. 161, acts of 1881; G. S. of 1883, Sec. 1721; M. A. S., sec. 2266.

Any company formed under the provisions of the corporation's act for the construction of any ditch or flume must, within ninety days from the date of their certificate, begin work on their proposed work as named in the certificate and prosecute it with due diligence till com-

When work must begin.

pletion, and the time of completion of any such ditch shall not extend beyond two years from the commencement; and any company failing to begin within the said ninety days or complete within the said two years shall forfeit all right to the water so claimed and the same shall be liable to be claimed by any other company; and the time for the completion of any flume shall not be extended beyond four years. But this section does not apply to ditches or flumes constructed through or on the grounds owned by the corporation: *And provided further*, That any company formed under the provisions of this act to construct a ditch for domestic, agricultural, or irrigating purposes shall have three years within which to complete the same, but no longer.—General Laws of 1877, sec. 296; G. S. of 1883, sec. 314; M. A. S., 573.

Time for completion of ditch.

Of flume.

Proviso.

## RIGHTS OF WAY FOR CANALS, DITCHES, ETC.

Necessary rights of way for irrigating canals, ditches, etc., may be obtained by all persons and corporations by use of the proper proceedings for condemnation, and upon payment of just compensation.—See Constitution, Art. XVI, sec. 7, cited above.

Any person owning claims on the bank, margin, or neighborhood of any stream, not having sufficient length of area exposed to the stream to obtain a sufficient fall of water to irrigate his land, or whose farm or land used for agricultural purposes is too far removed from the stream, and who has no water facilities on his land, is entitled to a right of way through the land lying between his lands and the stream, or the lands lying above and below him on the stream, for irrigation purposes. (This, of course, upon proper condemnation, etc.)—Sec. 2, p. 67, acts of 1861; sec. 2, p. 362, R. S.; sec. 1373 (2), p. 515, General Laws of 1877; G. S. of 1883, sec. 1712; M. A. S., 2257.

Insufficient exposure to stream.

Such right of way shall only extend to a ditch, dike, or cutting sufficient for the purpose required.—Sec. 3, p. 67, acts of 1881; sec. 3, p. 363, R. S.; G. S. of 1883; sec. 1713, M. A. S., 2258.

Limited by necessary requirements.

Upon the refusal of the owner or owners of the lands through which it is proposed to run such ditch or canal to permit its passage through their property, proceedings may be taken to condemn the right of way (under the provisions of the law of eminent domain).—G. L. of 1877, sec. 1376; G. S. of 1883, sec. 1715; M. A. S., 2260.

May condemn.

Any ditch company, formed under the corporations act, is entitled to the right of way over the line named in its certificate.—G. S., of 1883, sec. 309; M. A. S., 568; amended by laws of 1891, p. 98, sec. 73.

Over line in certificate.

No parcel of improved or occupied land can, without the owner's consent in writing, be subjected to the burden of two or more irrigating ditches to convey water to lands beyond or adjoining when the same object can be feasibly attained by conveying all the water in one ditch.—Sec. 1, p. 64, act of 1881; G. S. of 1883, 1716; M. A. S., 2261.

No unnecessary burden.

When it is necessary to convey water through the lands of another, the shortest and most direct route practicable upon which a ditch can be constructed with uniform or nearly uniform grade, and discharge the water where it can be conveyed to or used upon the lands to be irrigated, must be selected.—M. A. S., 2262; sec. 2, p. 164, acts of 1881; G. S. of 1883, 1717.

Shortest line.

Private ditches constructed in pursuance of law by any person or persons can not be forbidden to be enlarged and used by others in common with the owners, upon payment of a reasonable proportion of the cost of construction.—Sec. 3, p. 164, acts 1881; M. A. S., 2263; G. S. of 1883, sec. 1718.

Use of private persons may be condemned.

The right of way shall not be refused by the owner of any tract of land upon which it is required (by those wishing to place wheels upon the bank of a stream), subject to the like regulations as required for ditches.—Sec. 8, pp. 68, 69, acts 1861; sec. 6, p. 364, R. S.; sec. 1377, (6) p. 516, G. S. of 1877; sec. 1728 G. S. of 1883; M. A. S., 2273. For wheels on banks.

Any corporation formed for the purpose of constructing a ditch, unable to agree with the owner for the purchase of real estate required for the purpose of the corporation or the transaction of its business, or for the right of way, or any other lawful purpose connected with or necessary to the operation of the company, may acquire title thereto by proceedings to condemn under the statute; damages to be assessed by commissioners or by jury. It may also condemn water not otherwise appropriated.—G. S. of 183, sec. 237; M. A. S., 1715; G. S. of 1883, sec. 238; M. A. S., sec. 1716; Laws of 1891, p. 98. Corporations may condemn.  
Commissioners or jury.

Any company formed for the construction of a ditch may, by its officers, agents, and servant, enter upon the lands of any person or corporation for the purpose of making such examination and survey as may be necessary to the selection of the most advantageous route, but subject to liability for all actual damages occasioned thereby.—G. S. of 1883, p. 207, sec. 339; M. A. S. 617. Right of entry.

RIGHTS AND DUTIES OF APPROPRIATORS.

Any corporation owning a ditch or canal for conveying, or reservoir for storing, water for irrigation, and its capital stock having been fully subscribed and paid up, and having no income sufficient to keep its ditch, canal, or reservoir in good repair, shall have power to levy an assessment pro rata on its capital stock, payable in money or labor, or both, for keeping the property in good repair and the payment of any claim not otherwise provided for. But such assessment must be first submitted to the stockholders at an annual meeting, or a special meeting called for the purpose, and ordered by a majority of them, voting thereon either in person or by proxy; and assessments so ordered may be recovered against any delinquent shareholders by action at law.—G. S. of 1883, sec. 310; M. A. S., 569. May assess for repairs, etc.  
How assessment ordered.

Companies organized under the laws of the State, holding ditches or canals by virtue of their organization, and deriving their water from the same source of supply, may consolidate and unite under one name and management by filing a certificate of the fact in the office of the secretary of state, and a counterpart thereof in the office of the recorder of the county or counties in which the ditch is situated, which certificate must be signed by the presidents of the companies so uniting, with the common seals of the companies affixed, and must set forth the facts of such union of interests and the name of the company so formed.—G. S., sec. 313; M. A. S., 572. Companies may consolidate.  
How.

Ditches used for irrigation, from which water is not sold for the purpose of revenue, are exempt from taxation, whether for State, county, or municipal purposes.—G. S., sec. 1761; M. A. S., 2397. Exemption from taxation.

Ditch companies are also allowed to take stock in telephone companies to afford them facilities to carry on their business only.—Laws of 1891, p. 92, sec. 1.

Every ditch company is required to keep their ditch in good condition, so that the water shall not be allowed to escape to the injury of any mining claim, road, ditch, or other property; and when it is necessary to convey water across any lode or mining claim the ditch shall be flumed, if necessary, to protect such claim or property from Companies must keep ditches in good repair.

the water of the ditch.—G. L. of 1877, sec. 278; G. S. of 1883, sec. 312; M. A. S., 571.

- Liabie for dam-** The owners of reservoirs are liable for all damage arising from leakage or overflow of the waters therefrom, or from floods caused by the breaking of the embankments.—G. S. of 1883, sec. 1726; sec. 40, p. 107, acts of 1879; M. A. S., 2272.
- Maintain em-** The owners of any irrigating or other ditch are required to carefully bankments. maintain the embankments thereof, so that the waters may not flood or damage the premises of others, and to make a tail ditch to return the water into the stream it was taken from with as little waste as possible.—Sec. 7, p. 364, R. S., with first clause amendment 1872, p. 144; sec. 1, second clause, superseded by sec. 2, p. 78, acts 1876; G. S. of 1883, sec. 1728; M. A. S., sec. 2274.
- Bridges.** Any company or individual having ditches for any purposes which cross the highway must put substantial bridges not less than 14 feet wide over the ditches where they cross the highway.—Sec. 10, p. 364, R. S.; sec. 1381, G. L. of 1877; G. S., 1730; M. A. S., 2276.
- Supervisors** If any ditch or water course is built across a public traveled road may build bridge when. and not bridged within three days it is the duty of the supervisor of the road district to build the proper bridge and require the ditch owner to pay for its construction.—M. A. S., 2277; sec. 11, p. 364, R. S.; sec. 1382, G. L. of 1877; G. S., 1731.
- May collect** If the owner refuses to pay, the supervisor may make oath to the cost of bridge. correctness of the bill and refusal to pay before a justice of the peace and bring suit in an action of debt for the amount; and in case of judgment rendered the justice shall assess, in addition to the amount so sworn to, the sum of \$10 as damages for the delay, such judgment to be collected as in other cases, and to be a fund in the hands of the supervisor of roads for the repair of roads in such precinct or district.—Sec. 12, p. 365, R. S.; sec. 1383, G. L. of 1877; G. S., 1732.
- Damages.**
- Damage to high-** Any person or corporation causing waste water, or the water from way. any ditch, road, drain, flume, or other place to flow upon a highway so as to damage the same, is liable to a fine of not less than \$10 nor more than \$300 for each offense, and a like fine of \$10 for each day such obstruction is permitted to remain, and liable also for damages resulting therefrom; and it is the duty of the overseer of the road district to prosecute for such offense. The penalty for overflow by dam is \$50, and damages to the injured party.—M. A. S., 3960, 3961, p. 326, session laws of 1885; sec. 2988, G. S. of 1883.
- Must build** A person or corporation owning or constructing a ditch, drain, race, bridges. or flume in, upon, or across a highway, is required to keep the highway open for safe and convenient travel by constructing bridges, and, within five days after the construction of such ditch in or across the highway so as to interfere with or obstruct it, must build a good substantial bridge across it not less than 20 feet wide, which shall thereafter be maintained by the county. But if such bridge is more than 20 feet in length it shall thereafter be maintained in good repair by the owner. Any person so constructing a ditch and failing to keep the highway open for safe and convenient travel forfeits the sum of \$25 for each and every day of such failure. And any person or corporation failing to erect the proper bridge across such ditch, etc., within five days, and to keep the same in good repair, forfeits \$25 to the county for each day of failure to erect and keep in repair, together with the cost of erecting the proper bridge or making the proper repairs, which the road overseers are required to build or repair; and
- Penalty for ob-** structing high- way. For failure to build bridge.

the person so in default is also liable in damages to any person damaged by such neglect.—M. A. S., sec. 3962; S. L. of 1885, p. 324, sec. 1.

The owner of any irrigating or mill ditch shall keep the embankments in good repair and prevent the water from wasting.—Sec. 1, p. 78, acts of 1876; sec. 1385, G. L. of 1877; G. S., 1733; M. A. S., 2282.

Embankments.

It is forbidden to allow any more water than is absolutely necessary for irrigating land and for domestic and stock purposes to run through any irrigating ditch in the summer time; the intention being to prevent waste of water.—Sec. 2, p. 78, acts 1876; sec. 1386, G. L. of 1877; G. S., 1734; M. A. S., 2283.

Waste of water forbidden.

Persons willfully violating the above provision shall, on conviction, be fined not less than \$100.—Sec. 3, p. 78, acts of 1876; sec. 1387, G. L. of 1877; G. S., 1735; M. A. S., 2284.

Penalty.

The owner of every irrigating ditch, flume, or canal, is required to erect and keep in good repair a head gate at the head of the ditch, flume, or canal, together with sufficient embankments to control the water at all ordinary stages. The framework of such head gate to be of timber not less than 4 inches square, and the bottom, sides, and gate or gates to be of plank not less than two inches thick. Locks and fastening to be furnished, and keys under control of the water commissioner.—Sec. 1, p. 165, acts of 1881; 1736, G. S.; M. A. S., 2285, 2293 and 2294.

Head gate.

Owners of all ditches are liable for all damages resulting from their neglect to comply with above provision.—Sec. 2, same act; M. A. S., 2286.

Damages.

A person or company owning or controlling a ditch for irrigation purposes shall, from April 15 to November 1 in each year, keep a flow of water therein, so far as reasonably practicable, sufficient to meet the requirements of all persons properly entitled to use water therefrom to the extent, if necessary, to which they are entitled to water and no more: *Provided*, That when the rivers and streams, etc., are not sufficiently free of ice, or the volume of water is too low and inadequate, then the ditch or canal shall be kept with as full a flow as practicable, subject to the rights of priorities and the necessity of cleaning and keeping in good condition.—Sec. 1, act regulating distribution of water, 1887; M. A. S., 2287.

Flow of water must be kept in ditch.

Owners of irrigating ditches shall keep them in good order and repair ready to receive water by April 15, so far as can be done by reasonable diligence, and keep necessary outlets in the banks to deliver water to those having paid up shares or purchased rights, but too many outlets shall be avoided and the location of them shall be at most convenient and practicable points, consistent with safety of the ditch, for distribution of water among claimants, and shall be under control of the superintendent.—Same act, sec. 2; M. A. S., 2288.

When ditches must be ready for water.

A superintendent must be appointed, whose duty it shall be to measure the water through the outlets to those entitled, according to their pro rata shares.—Same act, sec. 3; M. A. S., 2289.

Superintendent.

Ditch owners may also be required by the State engineer to construct and maintain a weir or measuring device at the heads of their ditches or as near as may be thereto. This is fully set out under head of State engineer.—Laws of 1889, p. 374, Sec. 9. M. A. S., 2466.

Measuring weir.

Any company constructing a ditch under the statute is required to furnish water to the class of persons using the same in the way named in the certificate, in the way designated to be used, whether miners, mill men, farmers, or for domestic use, whenever they shall have wa-

Must furnish water.

- ter unsold, and shall give the preference to the use of water to the class named in the certificate; the rates to be fixed by the commissioners as soon as the ditch is completed and prepared to furnish water.—G. L. of 1877, Sec. 277; G. S. of 1883, 311; M. A. S., 570.
- Rates to be fixed.** Any superintendent or person having charge of a ditch who willfully neglects or refuses to deliver water, and any person who prevents or interferes with the proper delivery of water to the person having the right thereto, is guilty of a misdemeanor, and subject upon conviction to a fine of not less than \$10 nor more than \$100 for each offense, or imprisonment not exceeding one month, or both fine and imprisonment, and the money thus collected is paid into the general fund of the county in which the misdemeanor is committed; and the owner of the ditch is liable to damages to the person or persons deprived of the use of water to which they were entitled.—Act regulating distribution of water, 1887, Sec. 4; found in M. A. S., 2290.
- Refusal to deliver water a misdemeanor.** All cases made misdemeanors by this act are triable before a justice of the peace upon complaint duly made; and the justice has full power within the limits of the law to fix penalty or imprisonment, or both; but the accused is entitled to trial by jury.—Same act, Sec. 6; M. A. S., 2292.
- Damages.** The person owning or controlling any ditch, canal, or reservoir is forbidden to accept or receive any royalty, bonus, premium, or prerequisite whatever to the right or privilege of procuring water, but water is to be furnished upon the payment or tender of the charges fixed by the county commissioners. And all charges, or considerations, received in violation of this section is held to be an additional and corrupt rate, extortionate and illegal, and may be recovered back with costs of suit and reasonable attorney's fees, by proper action in the proper court.—M. A. S., Sec. 2304; act to prevent extortion, etc., 1887, Sec. 1.
- Justice of the peace has jurisdiction.** Every person owning or controlling any ditch, canal, or reservoir (as mentioned in Sec. 1) who shall, after demand made upon him in writing for the delivery of water for irrigating, mining, milling, or domestic purposes from such ditch, canal, or reservoir, and after tender of the lawful rate of compensation, demand, require, bargain for, accept, receive or retain any money, promise, or valuable thing whatever as such royalty, bonus, premium, etc., is guilty of a misdemeanor and on conviction punishable by a fine not less than one hundred dollars nor more than five thousand dollars, or imprisonment not less than three months nor more than one year, or both, in discretion of the court.—Same act, Sec. 2; M. A. S., 2305.
- Royalty or bonus forbidden.** To refuse to supply water from such canal, ditch, or reservoir after demand in writing and tender of lawful compensation, when by reasonable diligence and within the carrying capacity of the ditch, canal, or reservoir, such water can be lawfully supplied, without infringement of prior rights, is also a misdemeanor and subject to like fine and imprisonment.—Same act, Sec. 3; M. A. S., 2306.
- Extortionate rates may be recovered back.** When any corporation is guilty of violation of the above section 3 it is the duty of the attorney-general, upon request of the county commissioners, to institute proceedings in quo warranto for the forfeiture of its corporate rights, etc., or by mandamus or other proper proceedings to compel such corporation to perform its duty in that behalf.—Same act, Sec. 4; M. A. S., 2307.
- Penalty for receiving bonus.** Every officer of a corporation, or member of an association, and every agent violating the provisions of this act, is liable to restore
- Refusal to supply water.**
- Forfeiture of corporate rights.**
- Officer or agent liable.**



the unlawful consideration, and punishable under its penal provisions, as if the disobedience were for his sole benefit.—Sec. 5; M. A. S., 2308.

The duties of irrigation companies in respect to procuring proper adjudication and registration of their rights of priority will appear under the head of the adjudication of priorities of appropriation.

REGULATION OF WATER RATES.

Water rates are fixed, upon proper application by any interested parties, by the county commissioners of the respective counties. In 1879 an act was passed authorizing the boards of commissioners to fix rates and determining the mode of procedure, but reserving the rights of parties interested to fix prices by contract. In 1887 an act to regulate rates was passed, repealing all acts and parts of acts inconsistent therewith, but saving interference with proceedings then pending, which might be carried to completion under the new law, and at the same time the act to prevent extortion was passed. The general provisions of both these acts are in substance as follows, viz:

County commissioners fix water rates.

The county commissioners are directed at their regular January session in each year to hear and consider all applications made to them to

Act of 1879.

fix prices of water by interested parties, where the whole or upper part of the ditch is in the county; which applications are to be supported by such affidavit or affidavits as the applicants may see proper to present, showing reasonable cause for the board to fix the price of water

Application to board.

from such ditch or reservoir. If the board, upon examination of the affidavits, and examination of witnesses, if presented, find the application to be made in good faith, and that there is reasonable ground to believe that unjust prices are, or are likely to be, charged for water from

Affidavits.

such ditch or reservoir, they shall fix a day, not sooner than forty days, nor later than the third day of the next regular session of their board, when they will hear all parties interested who may appear, as well as

Day for hearing to be fixed.

testimony by witnesses, or depositions taken on notice as provided, touching the ditch or reservoir and the cost of furnishing water therefrom, at which time all persons interested on either side may appear in person or by agent or attorney; and said commissioners shall then proceed to take action in the matter of fixing such price of water. But the said applicant must, within ten days from the time of entering such order, cause a duly certified copy thereof to be delivered to the owner, or to each of the owners, of such ditch or reservoir, or to the president, secretary, or treasurer of the company, if it belongs to a corporation or association having such officers; and if such owner can not be found then he shall cause such copy to be left at his place of residence with some person over 14 years of age, or at the office or place of business of the company if such officer can not be found, or at his residence if the company has no place of business; and if such ditch has several owners, not an incorporated company, such service may be made by delivering one such copy each to a majority of them, and such applicant shall show by affidavit the fact and manner of such service. Depositions used are to be taken before the proper officer upon reasonable notice of time and place to the opposite party.—Sec. 1, pp. 94-96; acts of 1879; 1738 of G. S. of 1883; M. A. S., 2295.

Copy of order to be served.

How served.

Proof of service.

Such board shall hear and examine the proofs and testimony offered by any interested party concerning the value of the construction of such ditch and reservoir, the cost and expense of maintaining and operating it, and all matters which may affect the price and value of

Hearing.

- May compel production of books and papers. water to be furnished, and shall have power to issue subpoenas and compel attendance of witnesses, and to compel the production of books and papers, the same as the district courts. It may adjourn the hearing from time to time. Upon hearing and considering all matters and facts involved the board shall enter an order describing the ditch or reservoir with sufficient certainty and fixing a just price for water thereafter to be sold, which price shall not thereafter be changed oftener than once in two years: "Provided, That no price so fixed shall affect the rights of parties or their lawful assignees or grantees, who may have contracts with the company, association, or person owning such ditch or reservoir, or their lessees, grantees, or successors, nor the rights of such owners, lessees, or grantees under such contract, nor shall it in any way affect or hinder the making of such contract."—M. A. S., 2296; sec. 2, p. 96, acts of 1879; 1739 of G. S.
- Fix rates. By act of 1887 the county commissioners of each county are required, at their regular sessions, and at such other sessions as they may deem proper in view of the irrigation and harvesting season and the convenience of parties, to hear and consider all applications by parties interested, either in furnishing water for irrigation, mining, milling, or domestic purposes, or in procuring it for such purposes, from any ditch, canal, etc., situate wholly or in part in such county; which applications shall be supported by affidavits showing reasonable cause for the board to fix the rate of compensation for water from such canal, ditch, etc., within such county.—Sec. 1, act of 1887, p. 291; M. A. S., 2298.
- Contract rights sacred. If the board find that the facts sworn to show the application to be in good faith, and that there are reasonable grounds to believe that unjust rates are or may be charged for water from such ditch, canal, etc., they are to enter an order for hearing the matter not less than twenty days thereafter, nor later than the third day of their next regular session, when they are to hear and examine it upon documentary or oral evidence or depositions touching the ditch or other work, as aforesaid, and the cost of furnishing water therefrom.—Same act, sec. 2; M. A. S., 2299.
- Act of 1887. Section 3 provides for the appearance of parties interested in person or by attorney at such hearing, and for the service of copies of the order of hearing substantially as provided for in the law of 1879, given above; with the further provision that "if the applicant be the owner or party controlling such ditch, canal, conduit, or reservoir, such notice shall be given by causing printed copies of such order in handbill form, in conspicuous type, to be posted securely in ten or more public places throughout the district watered from such ditch or other work aforesaid—if the water be used for irrigation—and one copy to be posted for every mile in length of such ditch; but if such ditch or other work be for the supply of water for milling or mining, it shall be sufficient to serve such copy on the parties then taking water therefrom." Proof of the service or posting, and of the manner in which it was done, is to be made by affidavit filed with the board. Depositions are authorized to be taken upon reasonable notice to the other party.—Sec. 3, M. A. S., 2300.
- Application to board. The procedure upon the hearing, the subject-matter of inquiry, the power of the board to issue subpoenas and to compel the production of books and papers are substantially the same as in the act of 1878, given above. After the hearing a similar order is to be entered as provided for in that act, which can not be changed for two years, "unless upon good cause shown." The proper district court, or the judge in
- Day of hearing to be fixed.
- Posting copies of order.
- Service.
- Proof of service and posting.
- Hearing.
- Order good for two years.

vacation, is authorized to enforce obedience to the subpoena, in case of refusal to obey, by proceedings as for contempt.—Sec. 4, M. A. S., 2301.

False swearing in any proceeding under this act is perjury, and punishable accordingly.—Sec. 5, M. A. S., 2302. Perjury.

All acts and parts of acts inconsistent with this act are repealed, with the saving clause mentioned above.—Sec. 6, M. A. S., 2303.

MEASUREMENT OF WATER—RULE.

Water sold by the inch by any individual or corporation shall be measured as follows, viz: Every inch shall be considered equal to an inch-square orifice under a 5-inch pressure; and a 5-inch pressure shall be from the top of the orifice of the box put into the banks of the ditch to the surface of the water; said boxes, or any slot or aperture through which such water shall be measured, shall in all cases be 6 inches perpendicular, inside measurement, except boxes delivering less than 12 inches, which may be square, with or without slides. All slides for the same shall move horizontally, and not otherwise; and said box put into the banks of the ditch shall have a descending grade from the water in the ditch of not less than one-eighth of an inch to the foot.—Sec. 3, p. 638, R. S. 1868, am'd. sec. 3, pp. 308, 309, acts of 1874, and G. L. of 1877; sec. 2779; G. S., 3472; M. A. S., 4643. Rule for measurement of water.

PROTECTION OF PROPERTY OF COMPANIES AND OF WATER RIGHTS.

Every person who shall willfully open, close, change, or interfere with any head gate or water box without authority shall be guilty of a misdemeanor and on conviction fined not less than \$50 nor more than \$300, and may be imprisoned not exceeding sixty days.—M. A. S., 2385; sec. 44, p. 108, acts 1879; 1755 of G. S. Penalty for interfering with head gates.

Any person who shall knowingly or willfully cut, dig, break down, or open any gate, bank, embankment, or side of any ditch, canal, flume, feeder or reservoir in which such person or persons may be joint owner, or the property of another, or in the lawful possession of another or others, and used for the purposes of irrigation, manufacturing, mining, or domestic purposes, with intent maliciously to injure any person, association, or corporation, or for his or her own gain, unlawfully, with intent of stealing, taking, or causing to run out of such ditch, canal, etc., any water for his or her own profit, benefit, or advantage, to the injury of any other person, persons, corporation, or association lawfully in the use of such water, or of such ditch, canal, etc., the person so offending is deemed guilty of a misdemeanor and on conviction subject to a fine of not less than \$5 nor more than \$300, and may be imprisoned in the county jail not exceeding ninety days.—Sec. 1, p. 163, acts of 1881; G. S. of 1883, sec. 1759; M. A. S., 2393. Boxes and slides.

Justices of the peace are given jurisdiction to try all offenses under this act, with right to jury trial and appeal.—Sec. 2, act of 1881; M. A. S., 2394. For injuring works, etc.

A person willfully committing a trespass by entering upon the improved or inclosed land of another without permission with intent to injure or destroy any dam, embankment, reservoir, etc., is punishable by imprisonment in county jail not less than ten days nor more than one year, or by fine not less than \$50 nor more than \$1,000, or both.—Laws of 1885, p. 165; M. A. S., 1419. Justice of the peace has jurisdiction.

Unlawfully breaking or cutting down or destroying any bridge, embankment, milldam, or ditch, the property of another, when the damage to the real or personal property destroyed or injured amounts Trespass.

to the real or personal property destroyed or injured amounts Injury to bridge, etc.

to \$20 or less, is punishable by fine of not more than \$100 or imprisonment in the county jail not more than three months, or both. When the damage is more than \$20 and less than \$100, by a fine not more than \$1,000, or imprisonment in county jail not more than a year, or both; and when the damage is more than \$100, by imprisonment in the penitentiary not less than one year nor more than ten.—Laws of 1889, p. 242, 243, sec. 1; M. A. S., 1409.

Damage to ditch or tools.

Any person willfully interfering with or damaging any ditch, flume, or any of the fixtures, tools, implements, appurtenances, or any property of any company organized under the provisions of this act, upon conviction before any court of competent jurisdiction, is deemed guilty of a misdemeanor and punishable by a fine or imprisonment, or both, in discretion of court, the imprisonment not to exceed a year, and the fine not to exceed \$500, and the offender to pay all damages sustained by the corporation, and costs of suit.—Sec. 297 of G. L. of 1877; G. S. of 1883, sec. 315; M. A. S., 574.

Fouling waters.

Any person throwing or discharging into any running stream, ditch, or flume any obnoxious substance, as refuse from slaughter-house or privy, slops from eating-house or saloons, or any fleshy or vegetable matter subject to decay in the water, may be punished on conviction by a fine not less than \$100 nor more than \$500 for each offense.—Sec. 1, act of 1874, p. 99; G. S. of 1883, sec. 882; M. A. S., 1376.

Bonds to be given on floating timber.

All kinds of timber may be floated down any of the streams of the State, but the person or persons desiring to do such floating must first give bond to the people of each county through which it is to be done in a sum sufficient to cover all damages that may be done to bridges, dams, or ditches, such bonds to be approved by the boards of county commissioners of the counties through which the timber is to be floated.—Sec. 1856, G. L. of 1877; G. S., 3259; M. A. S., 2013.

Duty of consumer.

It is made the duty of every person who is entitled to take water for irrigation from any ditch, canal, or reservoir to see that he receives no more than he is entitled to, and he is required to take every precaution to prevent more from coming upon his land.—Act to protect water rights, 1887, sec. 1, M. A. S., 2395.

Must notify owner or stop leaks.

It is the duty of every person taking water from a ditch, canal, or reservoir for irrigation purposes, on finding that he is receiving more water than he is entitled to, either through his head gate or by means of leaks, or by any means whatever, immediately to take steps to prevent his receiving more than he is entitled to, and if he knowingly permits such extra water to come upon his land from such ditch, canal, or reservoir, and does not immediately notify the owners or take steps to prevent its further flowing upon his land, he is liable to the party injured for the actual damages sustained, with costs of suit and a reasonable attorney fee to be fixed by the court and taxed with the costs.—Act to protect water rights, 1887, sec. 2, M. A. S., 2396.

#### PRIORITIES OF APPROPRIATION—HOW ADJUDICATED.

Jurisdiction in district court.

For the purpose of hearing, adjudicating, and settling all questions concerning the priority of appropriation of water between ditch companies and the owners of ditches drawing water for irrigation from the same stream or its tributaries within the same water district, and all other questions of law and questions of right growing out of or in any way involved or connected therewith, jurisdiction is hereby vested exclusively in the district court of the proper county; but when any

water district extends into two or more counties the district court of the county in which the first regular term after the first day of December in each year shall soonest occur according to the law then in force shall be the proper court in which the proceedings for said purpose, as hereinafter provided for, shall be commenced; but when said proceedings shall be once commenced by the entry of an order appointing a referee in the manner and for the purpose hereinafter in this act provided, such court shall thereafter retain exclusive jurisdiction of the whole subject until final adjudication thereof is had, notwithstanding any law to the contrary now in force.—Sec. 19, pp. 99, 100, acts of 1879; 1762 of G. S. of 1883, M. A. S., 2399.

The mode of procedure under the above section is pointed out and regulated—with great minuteness of detail—by the act of 1881, the substantial provisions of which are given below, with as much brevity as due regard for substance will permit:

For the purpose of protection in their lawful rights to the use of water for irrigation, every person, association, or corporation owning or claiming any interest in any ditch, canal, or reservoir within any water district is required, on or before the first day of June, 1881, to file with the clerk of the court having jurisdiction of priority of right to the use of water for irrigation in such water district a statement of claim under oath, entitled in the proper court and in the matter of the priorities of water rights in district number \* \* \* as the case may be, which statement shall contain the name or names, with the post-office address of the claimant or claimants claiming ownership as aforesaid, of any such ditch, canal, or reservoir, the name thereof (if any), and if without a name the owner or owners shall choose and adopt a name, to be therein stated, by which such ditch, canal, or reservoir shall thereafter be known, the description of such ditch, canal, or reservoir, as to location of head gate, general course of ditch, the name of the natural stream from which such ditch, canal, or reservoir draws its supply of water, the length, width, depth, and grade thereof, as near as may be, the time, fixing a day, month, and year as the date of the appropriation of water by original construction, also by any enlargement or extension, the amount of water claimed by or under such construction, enlargement, or extension, and the present capacity of the ditch, canal, or feeder of reservoir, and also the number of acres of land lying under and being or proposed to be irrigated by water from such ditch, canal, or reservoir. Said statement shall be signed by the proper party or parties.—M. A. S., 2400; sec. 1, pp. 142, 143, acts of 1881; 1763 of G. S. of 1883.

Statement to be filed.

Contents of statement.

How signed.

The secretary of state was required at once after the passage of the act to cause a certified copy of said section 1 to be published in any county in which any part of any water district established by law should be situated at the time of such publication in one of the public newspapers published in such county once in each week and every week continuously until the first day of June, 1881; affidavit of which publication was to be furnished the secretary of state in duplicate, showing proper publication and stating the first and last day thereof, upon receiving which the secretary was to give the publisher a certificate of amount due him for such publication, upon presentation of which the auditor was to issue his warrant upon the treasurer for the amount so due.—Sec. 2, pp. 143-144, acts of 1881; M. A. S., 2401.

Publication by secretary of state.

Proof of publication.

When at any time after the said first day of June, 1881, any one or more persons, associations, or corporations interested as owners of any

ditch, canal, or reservoir in any water district, shall present to the district court of any county having jurisdiction of priority of rights to the use of water for irrigation in such water district, according to the provisions of an act (sec. 19, act of 1879, *supra*) entitled "An act to regulate the use of water for irrigation, and providing for settling the priority of rights thereto, and for the payment of the expenses thereof, and for payment of all costs and expenses incident to said regulation of use," or to the judge thereof in vacation, a motion, petition, or application in writing, moving or praying said court to proceed to an adjudication of the priorities of rights to use of water for irrigation between the several ditches, canals, and reservoirs in such district, the court, or judge thereof in vacation, shall, without unnecessary delay, in case he shall deem it practicable to proceed in open court, as prayed for, by an order entered of record upon such application, appoint a day in regular or special term for commencing to hear and take evidence in such adjudication, at which time it shall be the duty of the court to proceed to hear all evidence offered by or on behalf of any person, association, or corporation interested as owner or consumer of water in any ditch, canal, or reservoir in such district, in support of or against any claims of priority of appropriation made by means of any ditch, canal, or reservoir, or by any enlargement or extension thereof in such district, and consider all such evidence, together with all evidence that may have been theretofore taken by any referee in the same matter, theretofore appointed under the provisions of said act, and also to hear the arguments of counsel or parties, and ascertain and find from such evidence, as near as may be, the date of the commencement of such ditch, canal, or reservoir, together with its original size and carrying capacity, as originally constructed, the time of the commencement of each enlargement or extension thereof, if any, with the increased capacity occasioned thereby, the time spent severally in such construction and enlargement or extension and re-enlargement, if any, the diligence with which the work was in each case prosecuted, the nature of the work as to difficulty of construction, and all such other facts as may tend to show compliance with the law in acquiring the priority of right claimed for each such ditch, canal, or reservoir, and determine the matters put in evidence, and make and cause to be entered a decree determining and establishing the several priorities of right, by appropriation of water, of the several ditches, canals, and reservoirs in such water district, concerning which testimony shall have been offered, each according to the time of its said construction and enlargement, or enlargements or extensions, with the amount of water which shall be held to have been appropriated by such construction and enlargements or extensions, describing such amount by cubic feet per second of time, if the evidence shall show sufficient data to ascertain such cubic feet, and if not, by width, depth, and grade, and such other description as will most certainly and conveniently show the amount of water intended as the capacity of such ditch, canal, or reservoir, in such decree. Said court shall further order (after such hearing) that each and every party interested in or claiming any such ditch, canal, or reservoir, shall receive from the clerk, on payment of a reasonable fee therefor, to be fixed by the court, a certificate under seal of the court showing the date or dates and amount or amounts of appropriations adjudged in favor of such ditch, canal, or reservoir, under and by virtue of the construction, extension, and enlargements thereof

Petition for adjudication.

Order of hearing.

Contents of order.

Decree to be made.

Certificate of appropriations and priorities.

severally; also specifying the number of said ditch and of each priority to which the same may be entitled by reason of such construction, extension, and enlargements.—Sec. 4, pp. 144-146, acts of 1881, M. A. S., 2403.

It is the duty of the clerk of the court to give notice of the time so appointed by publishing the same in one public newspaper in such (each) county into which said water district may extend once in each week until four successive weekly publications shall have been made, the last to be on a day previous to the day appointed as aforesaid. The notice must contain a copy of the said order, and notify all persons, associations, and corporations interested as owners in any ditch, canal, or reservoir in such water district to appear at said court at the time so appointed and file a statement of claim under oath in case no statement has before then been filed by him or them, showing the ditch, canal, or reservoir, or two or more such in which he, she, or they claim an interest, together with the names of all the owners thereof, which statement may be made by anyone of the owners of such ditch, canal, or reservoir on behalf of all; and also that all persons interested as owners or consumers may then and there present his or their proofs for or against any priority of right of water by appropriation sought to be shown by any party by or through any such ditch, canal, or reservoir (either as owner or consumer of water drawn therefrom). Ten printed copies of said notice shall also be posted in ten public places in such water district, not less than twenty days before the day so appointed, which copies shall be posted by the party or parties moving the adjudication.—G. S. of 1883, sec. 1768. Sec. 6, p. 147, acts of 1881, M. A. S., 2405. The parties moving the adjudication are required to furnish and file with the clerk proof by affidavit of the publishing and posting of such notices as above required, and to pay the expense thereof, with which they are to be credited in distribution of costs.—Sec. 7 of said act. M. A. S., 2406. The parties moving the adjudication are also required to cause a written or printed copy of such notice published as aforesaid, to be served on every person, association, or corporation shown by the statement of claim on file, which service shall be made within ten days of the first publication by the clerk, by any credible person certified by the clerk or referee to be such, by delivering such copy as aforesaid to the person to be served, if such person by due diligence can be found in the county of his residence. If he can not so be found then service may be by leaving at his place of residence with some person fourteen years of age or over, and service on a corporation may be made by delivering a copy to the president, vice-president, secretary, treasurer, or manager, or superintendent, or authorized agent or attorney, or by leaving at the office or usual place of business of such corporation, and proof of service must be made by affidavit showing when and how such service was made. If any interested party is not so served the clerk is required to mail him a copy in a postpaid envelope directed to him at his address as shown in the statement of claim as aforesaid.—Sec. 8, pp. 148, 149, act of 1881; 1770, G. S.; M. A. S., 2407.

Clerk to give notice by publication.

Contents of notice.

Notice to be posted.

Proof of notice.

Service of notice.

Proof of service.

Ditches and reservoirs to be numbered.

The court, in making such decree as aforesaid, is to number the several ditches and canals in the water district concerning which adjudication is made in consecutive order, according to priority of appropriation of water thereby made by the original construction as near as may be, having reference to the date of each decree as rendered; and also to number the reservoirs in like manner separately

Appropriations from ditches and canals; and shall further number each several appropriation of water consecutively, beginning with the oldest appropriation, without respect to the ditches or reservoirs by means of which such appropriations were made, whether such appropriation shall have been made by means of construction, extension, or enlargement; which number of each ditch, canal, or reservoir, together with the number or numbers of any appropriations of water held to have been made by means of the construction, extension, or enlargement thereof, shall be incorporated in said decree and certificate of the clerk, to be issued to the claimants, as provided in section 1 (four) of this act, so as to show the order in priority of such ditch or canal, and of such reservoir, and also of such successive appropriation of water pertaining thereto, for the information of the water commissioner of the district in distributing water, such numbering to be as near as may be having reference to the date of decrees as rendered.—Sec. 9, p. 149, acts of 1881; M. A. S., 2408.

In decree and certificate.

The holder of such certificate, when issued, is required to exhibit it to the water commissioner of the district when he commences the exercise of his duties; and such water commissioner shall keep a book in which shall be entered a brief statement of the contents of such certificate, and which shall be delivered to his successor in office; and said certificate or statement thereof in his book shall be the warrant of authority to said commissioner for regulating the flow of water in relation to such ditch, canal, or reservoir. Said certificate shall be recorded in the records of each county into which the ditch, canal, or reservoir shall extend, and the certificate, or the record thereof, or a duly certified copy thereof, shall be prima facie evidence of so much of said decree as shall be recited therein in any suit or proceeding in which the same may be relevant.—Same act, sec. 5, M. A. S., 2404.

Water commissioners shall enter contents of certificate in book.

To be recorded.

Prima facie evidence.

(See last clause under head of Water Commissioners, above.)

Referee.

It is further provided that if the judge of the court shall deem it impracticable or inexpedient to hear the testimony in open court he may, instead of making the order for hearing as above, appoint a referee, to whom shall be referred the statements of claim, the matter of taking evidence and reporting the same, making an abstract and findings upon the same and preparing a decree in said adjudication, and if any referee has already been appointed and taken evidence, such evidence, and the abstract thereof, and report of the referee who took the same shall be referred to such new referee and he shall proceed with the duties of his office, after having taken the oath of office as required in cases under the code of civil procedure.—Sec. 10, same act, M. A. S., 2409.

Notice by referee.

The referee is required to publish and post a notice to interested parties, substantially the same as required of the clerk in section 6, above, appointing a time or times, and place or places, for hearing all parties interested, and to post the same as also required in section 6.—Same act, sec. 11, M. A. S., 2410.

Proof of such publication and posting shall also be made as required above.—Secs. 11 and 12, M. A. S., 2411.

His duties.

The referee is to attend in accordance with the notice and hear all interested persons who may attend, in person or by attorney, and who may offer all such evidence as they deem advisable for their interests. All evidence heretofore taken shall be kept, present and subject to reference by the referee.—Sec. 13, M. A. S., 2412.



He shall have power to administer oaths, to issue subpoenas to witnesses, and subpoenas *duces tecum*, which subpoenas may be served by any party, by a constable, or sheriff or deputy. He shall permit all witnesses to be examined by the parties calling them and cross-examined by the parties interested; shall take all testimony in writing and note all objections to testimony, with the cause of objection assigned, and proceed as in taking depositions. He shall certify books and papers offered, and preserve them with the testimony concerning the same, and in case of books and papers offered, not under control of the party desiring the evidence, he shall make copies of the parts demanded and certify and preserve the same, with the evidence offered concerning them as part of the evidence in the matter.—M. A. S., 2413. Sec. 14, same act.

His powers.

Certify books and papers, etc.

No person or corporation willfully refusing to produce any book or paper in their power to produce, when rightfully demanded, shall be allowed the benefit of any testimony or proof on their behalf, on final adjudication, if the court is satisfied from the evidence concerning such refusal that the same was willful.—Sec. 15, M. A. S., 2414.

Refusal to produce.

The referee is also to examine the witnesses to his own satisfaction, and to ascertain, as far as possible, the facts required in the order of court mentioned in section 4 above to be ascertained and found, upon which facts are to be determined the relative priorities among the several ditches, canals, and reservoirs, the volume or amount of water lawfully appropriated by each, as well by means of the construction as by the enlargements thereof, and the time when each such several appropriations took effect.—Sec. 16, M. A. S., 2415.

Referee to examine witnesses.

Persons present before said referee at such hearings are forbidden to disturb the proceedings, and those refusing to obey his subpoenas when legal fees are tendered are guilty of contempt, and may, upon complaint, be brought before the judge and dealt with accordingly.—Sec. 17, M. A. S., 2416.

Disturbance of proceedings.

Witnesses are entitled to same fees and mileage as in district court.—Sec. 18, M. A. S., 2417.

The referee is required to take all testimony offered, and shall give reasonable opportunity to all persons to be heard, and when his time limited at any place shall expire may adjourn the further taking of testimony to the next place in order of his published appointments, and at the last place may continue until all testimony shall be taken, or make further appointments, as may be best for all parties, giving reasonable notice thereof.—Sec. 19, M. A. S., 2418.

May adjourn.

Upon closing the testimony the referee shall carefully examine the testimony, shall make an abstract of all proofs and testimony before him in his possession concerning each ditch, canal, and reservoir separately, and number each ditch and canal in order, and likewise each reservoir, each class consecutively, and shall number every appropriation of water, shown by the evidence, all in manner and form, as provided in section 9, and shall make a separate finding of all the facts connected with each ditch, canal, and reservoir, touching which evidence shall have been offered; and he shall prepare a draft of a decree in accordance with his said findings in substance the same as the decree mentioned in section 4 of this act, and conformable also to the provisions of section 9 hereof, so far as applicable, which decree so prepared by him shall be returned with his report to the court, and he shall file his report with said evidence, abstract, and findings, and said decree with the clerk of the court, and inform the judge of so doing without delay.—Sec. 20, Act of 1881; M. A. S., 2413.

Abstract of proofs, etc.

Separate findings.

Draft decree.

Report.

- Hearing report. Upon the filing of said report, the court, or the judge in vacation, is to enter an order setting a day in regular or special term of said court, as soon as practicable, for the hearing of the report, at which
- Exceptions. time any interested party may move exceptions to the findings or decree made by the referee, and the court, after hearing the same, may
- Court may approve, modify, or set aside. approve the decree and cause it to be entered of record, or may modify and then approve it, or may make such other decree as shall be found just and conformable to the evidence and true intent of this act and to so much of all former laws as shall be adjudged consistent therewith.—Sec. 21, same act; M. A. S., 2420.
- What claims disregarded in times of scarcity. No claim of priority of any person or association on account of any canal, ditch, or reservoir as to which he or they shall have failed to offer evidence under any adjudication herein provided for shall be regarded by any water commissioner in distributing water in times of scarcity thereof until such party shall have, by application to the court having jurisdiction, obtained leave and made proof of the priority of right to which such ditch, canal, or reservoir shall be entitled; which leave shall be granted in all cases upon terms as to notice to other parties interested, and on payment of all costs, and upon affidavits or petition sworn to, showing the rights claimed, and the ditches, canals, and reservoirs, with the names of the owners thereof against which such priority is claimed; nor until a decree adjudging such priority to such ditch, canal, or reservoir has been entered and certified to, such as mentioned in section 4 hereof shall have been issued to claimant and presented to the water commissioner.—Sec. 22, same act; M. A. S., 2421.
- Leave for hearing may be granted. Every party interested has the right to complain to the court of any act of willful neglect or oppression on the part of the referee in exercising his powers under this act, by which said party is aggrieved, by refusal to hear or take evidence offered, or by preventing reasonable opportunity to offer such evidence; and the court may give full redress at the cost of the referee if willfully at fault; but in case of accident or mistake, costs shall be awarded as to the court shall seem just.—Sec. 23, M. A. S., 2422.
- Neglect or oppression by referee. The district court, or judge in vacation, may make all rules consistent with this act necessary and expedient from time to time to carry out the intent of this act, and of all parts consistent therewith of the act of which the title is recited in section 4 hereof, both as to proceedings in court and the doings of the referee, for the purpose of securing to any party aggrieved by the acts of the referee or proceedings of court opportunity for redress; and this act is to be construed liberally in all courts in favor of securing to persons interested just determination and protection of their rights.—Sec. 24, M. A. S., 2423.
- Court may make rules of procedure. No person or corporation representing any ditch, canal, or reservoir is permitted to offer any evidence before the referee until he or they shall have filed statement of claim in substance as required above.—Sec. 25, M. A. S., 2424.
- No testimony without statement of claim. The district court, or judge, has power, for good cause shown and upon terms just to all parties, and in such manner as to him seems best, to order a reargument or review, with or without additional evidence, of any decree made under this act whenever the court or judge shall find from the cause shown that the ends of justice will be promoted thereby; but no such review or reargument shall be ordered unless applied for within two years from the entry of the decree complained of.—Sec. 26, M. A. S., 2425.
- Rehearing.

Any party feeling aggrieved by the decision of the district court may also have an appeal to the Supreme Court, which must be allowed by the district court or judge on proper application. Such appeal, properly taken and properly entered in the Supreme Court, and properly noticed, takes up so much of the evidence and so much of the decree only as affect the appropriations of water claimed by means of the construction or enlargement, or reëlargement of the several ditches, canals, and reservoirs mentioned in the order allowing the appeal. For the showing necessary to the allowance of an appeal and the procedure in perfecting the appeal and bringing it to hearing, see the same act—1881.—Secs. 27, 28, 29, and 32; M. A. S., Secs. 2427, 2428, 2429, and 2432.

Appeal.

On the hearing of the appeal the decree may be affirmed or reversed, or affirmed in part and reversed in part, and costs may be awarded as may be equitable. The Supreme Court may make such decree as the district court should have made.—Secs. 30 and 31, same act; M. A. S., Secs. 2430 and 2431.

Hearing on appeal.

The district court, or the judge in vacation, has authority in case of death, absence, or any disability or misconduct on the part of the referee, or for misconduct on his part or for any good cause to the judge appearing, to appoint another in his stead.—Sec. 33, same act; M. A. S., 2433.

Court or judge may remove referee.

Nothing in this act or in any decree rendered under it prevents any person or association from maintaining any action hitherto allowed in the proper court to determine rights of priority of appropriation at any time within four years after such final decree in the water district in which such rights are claimed, but no injunction shall issue in any case restraining the use of water for irrigation in any water district where such final decree has been rendered which shall affect the use or distribution of water adversely to the rights established under such decree, but injunctions may issue to restrain the use of water in such district not affected by such decree, and to restrain any violations of right thereby established, and the water commissioner of every district where such decree has been rendered shall continue to distribute water according to the rights determined by such decree, notwithstanding any suits concerning water rights in such district, until in any suit between the parties the priorities may be otherwise determined; and such water commissioner have official notice by order of the court or judge determining such priorities, which notice shall be in such form and so given as the judge shall order.—Sec. 34, M. A. S., 2334.

Four years to bring other actions.

Injunctions.

Water commissioner's duty.

After the lapse of four years from the rendering of final decree in any water district all suits setting up any claim of priority adverse to such decree are barred.—Sec. 35, M. A. S., 2435.

Claims barred after four years.

The referee is entitled to \$6 per diem and mileage, to be paid out of the treasury of the county or counties in which the water district lies. His account must be verified by oath, certified to by the judge, and allowed by county commissioners.—Sec. 36, M. A. S., 2436.

Fees of referee.

All acts and parts of acts inconsistent with this are repealed.—Sec. 37, M. A. S., 2437.

Repealing clause.

Fees of the clerk of court must be rendered by him, certified by the judge, allowed by county commissioners, and paid by the county.—Sec. 43, acts of 1879, M. A. S. 2439.

Fees of clerks.

Testimony taken before any former referee may be introduced and shall be received as evidence.—Sec. 28, p. 259, M. A. S., 2426.

Testimony by former referee.

## IRRIGATION OF STATE LANDS.

State lands may be sold. For the purpose of furnishing irrigation for State lands the State board of land commissioners are authorized to sell, at public sale at not less than the appraised value and not less than \$2.50 per acre, any tract of arid land belonging to the State: *Provided*, That not more than one-half section of land shall be sold, and in alternate half sections, to any responsible person or persons, on condition that such person construct an irrigating ditch in such locality, and of sufficient capacity to furnish water for the entire tract, and so located that said tract may be irrigated therefrom. But before any of the State lands can be offered for sale the party desiring to purchase must enter into a contract with the board guaranteeing to bid at least the minimum price and to complete the ditch within a given time, to be fixed by the board in the contract. The contract must also provide that the party constructing the ditch shall furnish water for the remaining half of the State lands at such reasonable rates as the board and the party may agree upon.

Contract.

By whom drawn and signed. The contract must be drawn by the attorney-general and signed by the governor and register of the board and by the party desiring to construct the ditch. But if any person other than the applicant for the purchase shall be the highest bidder at the sale he shall, within such reasonable time as the board may fix, enter into a contract and bond, as required by the provisions of this act, for the construction of such ditch and furnishing the water therefrom; and if he fails to make such contract and furnish satisfactory bond his bid is to be disregarded. The board are to make the sale upon like conditions as other lands are sold, and require good and sufficient bond for the performance of the contract and conditions of sale. And in no case is the title to the land to pass till the ditch has been completed and accepted by the board.—Laws of 1889, pp. 381, 382, M. A. S., 3657.

When title to pass.

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WYOMING.

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## CONTENTS.

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	Page.
Constitutional provisions .....	41
Statutory enactments .....	41
Rights guaranteed or granted .....	42
Rights of way and how obtained .....	42
Water divisions.....	43
Water districts .....	43
State engineer and his duties.....	43
Division superintendents.....	44
Water commissioners .....	45
Board of control—adjudication of priorities .....	47
Procedure of appropriation .....	51
Duties of appropriators .....	52
Measurement of water .....	54
Fixing rates for water .....	54
Protection of property.....	54

## WYOMING.

### CONSTITUTIONAL PROVISIONS.

#### *Article II.*

SEC. 31. Water being essential to industrial prosperity, of limited amount, and easy of diversion from its natural channels, its control must be in the State, which, in providing for its use, shall equally guard all the various interests involved.

SEC. 32. Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and for reservoirs, drains, flumes, or ditches on or across the land of others for agricultural, mining, milling, domestic, or sanitary purposes, nor in any case due without compensation.

SEC. 33. Private property shall not be taken or damaged for public or private use without just compensation.

#### *Article VIII.*

SEC. 1. The water of all natural streams, springs, lakes, or other collections of still water within the boundaries of the State are hereby declared to be the property of the State.

SEC. 2. There shall be constituted a board of control, to be composed of the State engineer and superintendents of the water divisions, which shall, under such regulations as may be prescribed by law, have the supervision of the waters of the State, and of their appropriation, distribution, and diversion, and of the various officers connected therewith. Its decision to be subject to review by the courts of the State.

SEC. 3. Priority of appropriation for beneficial uses shall give the better right. No appropriation shall be denied except when such denial is demanded by the public interests.

SEC. 4. The legislature shall by law divide the State into four (4) water divisions, and provide for the appointment of superintendents thereof.

SEC. 5. There shall be a State engineer, who shall be appointed by the governor of the State and confirmed by the Senate; he shall hold his office for the term of six (6) years, or until his successor shall have been appointed and shall have qualified. He shall be president of the board of control, and shall have general supervision of the waters of the State and of the officers connected with its distribution.

No person shall be appointed to this position who has not such theoretical knowledge and such practical experience and skill as shall fit him for the position.

### STATUTORY ENACTMENTS.

Prior to 1891 the water laws of Wyoming, not only in relation to the rights and duties of appropriators, the division of the Territory into water districts, and the duties of the various officers, but in rela-

tion to the adjudication of the priorities of the rights of appropriators, were similar to those of Colorado, though less complete. But the legislature of 1890-'91, in carrying out the provisions of the constitution, made extensive changes, repealing the great body of the statutes theretofore in force, and providing not only for water districts and divisions, with water commissioners and superintendents and State engineer, but also for the board of control required by the constitution, to whom is given original jurisdiction to hear and determine controversies with respect to priorities of appropriations as well as general supervision of the waters of the State.

The provisions of the older statutes still in force, together with those of the law of 1891, are substantially given below under the appropriate headings.

The repealing clause is sec. 49 of the act of 1890-'91, on page 105.

#### RIGHTS GUARANTEED OR GRANTED.

The rights to appropriate the public waters of the State for beneficial uses and to condemn rights of way for their diversion are guaranteed in the constitution.—Art. I, sec. 32; art. VIII, sec. 3.

Priority. The rights of priority of appropriators are also guaranteed, and provision for their protection is made.—Revised Statutes of 1887, sections 1324 and 1361, and also the provisions given below for adjustment of priorities.

#### RIGHTS OF WAY AND HOW OBTAINED.

Landowner entitled to right of way. Any person owning lands in the neighborhood or on the margin of any stream and not having sufficient length of area exposed to the stream to obtain sufficient fall to irrigate his land, or where land used by him for agricultural purposes is too far removed from the stream and he has no water facilities, is entitled to a right of way through the lands lying between his lands and the stream, or above and below him on the stream, to conduct water to his land for irrigation purposes; but in the construction, keeping up, and using any ditch through the lands of another person he must keep the same in repair, and is liable to the owner or claimant of the land through which it runs for all damages accruing to such person by reason of the construction, keeping up, and using such ditch.—Revised Statutes of 1887, sec. 1318.

Repair.

Damages.

Limit of right.

Such right of way extends only to a ditch, dike, or cutting sufficient for the purpose required.—R. S. of 1887, sec. 1319.

Procedure to condemn.

If the owner of the land refuses the right of way the person desiring it may present a petition to the county commissioners of the county where the land is located, describing the land required with convenient accuracy, giving the names of the owners or persons interested and praying the appointment of three appraisers to assess the damages. On receipt of the petition the county commissioners must give notice at least thirty days prior to the appointment of such appraisers by a public notice in a newspaper when published in the county, or by posting three or more notices in three different places in the county, stating that such appraisers will be appointed on the — day of —.—R. S. of 1887, sec. 1320.

Petition.

Notice.

Appraisers.  
Hearing.

The said appraisers, when appointed, must take an oath to faithfully discharge their duties. They shall hear the proofs and allegations of the parties, and, after reviewing the premises, ascertain and determine the compensation to be paid for the lands taken and for the



damage in consequence of the condemnation thereof, making deduction for accruing benefits, if any, and they or a majority of them shall subscribe a certificate of such ascertainment and assessment, which shall be recorded in the county clerk's office, and upon payment of such compensation the said person (the petitioner) shall have the right of way to construct his ditch or flume.—R. S. of 1887, sec. 1321.

Finding.

The right of way may be obtained by submission of the matter by the parties interested to a board of arbitration provided for by statute. The board is constituted by the choice of one member by each of the parties to the controversy and of a third by the two members thus chosen. The arbitrators must be "disinterested resident property-holders," and when appointed they may hear the proofs and allegations of the parties, and any two of them may render a decision. If either party is dissatisfied with their determination he may, within ten days from the rendition of their verdict by the arbitrators, appeal to the board of county commissioners, giving security for costs, and the parties then proceed in the same manner as though the matter had been brought before the commissioners in the first instance.—R. S. 1887, secs. 1327, 1328, and 1329.

Arbitration.

Appeal.

If no appeal is taken the finding of the arbitrators is final and binding upon each party, provided that the opposite party shall have complied with the finding of the arbitrators or tendered such compliance.—R. S., sec. 1330.

Final, if no appeal.

#### WATER DIVISIONS.

The State is divided by legislative enactment into four water divisions. The first consists of the lands drained by the North Platte and its tributaries, by the South Platte River, and by the Snake River (a tributary of Green River), and its tributaries. The second consists of the lands drained by the tributaries of the Yellowstone and Missouri rivers, north of the watershed of the North Platte and east of the summit of the Big Horn Mountains. The third is the lands drained by the Big Horn River and its tributaries; and the fourth consists of the lands drained by the Green, Bear, and Snake rivers, except Snake River (a tributary of Green River) and its tributaries.—Laws of 1890-'91, p. 91, secs. 1-5.

Description of the four divisions.

#### WATER DISTRICTS.

It is the duty of the board of control to divide the State into water districts, to be so constituted as to secure the best protection to the claimants for water, and the most economical supervision on the part of the State; but said water districts are not to be created until a necessity therefor shall arise, but shall be created from time to time as the appropriations and priorities thereof from the streams of the State shall be adjudicated.—Laws of 1890-'91, sec. 40, p. 102.

How constituted.

#### STATE ENGINEER AND HIS DUTIES.

The State engineer required by section 5 of article 8 of the constitution—cited above—to be appointed by the governor and confirmed by the senate, is entitled to a salary of \$2,500 per year, payable in monthly installments by the State treasurer upon warrants drawn by the State auditor. He must keep his office at the State capital in the capitol building; must take and subscribe an oath to faithfully perform the duties of the office and give bond for such performance and

Salary.

Office.

Oath and bond.

Who is elig-  
ble. for delivery to his successor, or other officer appointed by the governor to receive the same, of all moneys, books, and other property belonging to the State then in his hands or under his control, etc., as such officer. No person is eligible to the appointment who is not known to have such theoretical knowledge and practical skill and experience as to fit him for the position.—Same act of Laws of 1890-'91, secs. 6 to 8, inclusive.

Duties. He is to perform the duties prescribed for him in the law defining the duties of the board of control (hereinafter given) and to make, or cause to be made, measurements and calculations of the discharge of streams from which water is taken for beneficial purposes, commencing such on those streams most used for irrigation or other beneficial purposes. He is to collect facts and make surveys to determine the most suitable location for constructing works for utilizing the water of the State, and to ascertain the location of the lands best suited for irrigation. He is to examine reservoir sites, and in his reports to embody all the facts ascertained by such surveys and examinations, including, wherever practicable, estimates of the cost of proposed irrigation works, and of the improvement of reservoir sites. He is to become conversant with the waterways of the State, and the needs of the State as to irrigation matters, and in his reports to the governor to make such suggestions as to the amendment of existing laws, or the enactment of new laws, as his information and experience shall suggest; and he shall keep in his office full and proper records of his work, observations, and calculations. All of which shall be the property of the State.—Sec. 9.

Records. He is authorized to employ an assistant engineer at an expense not to exceed \$1,200 per year, and to employ other assistants at a total additional expense of not over \$500 per year; all such assistants to be paid out of money appropriated for that purpose on certificates of the State engineer, showing the amount of such employment and the compensation therefor; and the State auditor, on presentation of such certificate, is to issue a warrant on the State treasurer for the amount.—Sec. 10.

Assistants. When the engineer or his assistant is called away from his office he is entitled to his actual traveling expenses, to be paid from like source and in the same manner as set forth in section 10.—Sec. 11.

Expenses. He must render to the governor biennially, and oftener if required, full and true reports of his work, as to all matters and duties devolving on him by virtue of his office, which report is to be delivered to the governor on or before the 30th day of November of the year preceding the regular session of the legislature.—Sec. 12.

#### DIVISION SUPERINTENDENTS.

Appointment. A superintendent for each of the water divisions is to be appointed by the governor, with the consent of the senate, to hold his office for four years, or until his successor is appointed and qualified, and to reside in the water district (division?) for which he is appointed.

Term. The superintendent of each water division shall have immediate direction and control of the acts of the water commissioners and of the distribution of water in his water division and perform such duties as devolve on him as a member of the board of control.—Sec. 13.

Duties. He shall have general control over the water commissioners of the several districts in his division, and shall, under the supervision of

Execute laws.

the State engineer, execute the laws relative to the distribution of water, in accordance with the rights of priority of appropriation, and perform such other functions as may be assigned him by the State engineer.—Sec. 14.

In the distribution of water he is to be governed by the laws in force; but, for the better discharge of his duties, has authority to make such other regulations to secure equal and fair distribution in accordance with the rights of priority as may, in his judgment, be needed in his division; but such regulations must not violate the law, but be merely supplemental thereto and necessary to enforce the provisions of the general laws and amendments thereto.—Sec. 15.

May make rules.

An appeal may be taken from such orders or regulations, by any one deeming himself injured thereby, to the State engineer, by filing with the engineer a copy of the order or regulation complained of and a statement of the manner in which the same injuriously affects the appellant's interest. The engineer, after due notice, shall hear whatever testimony may be brought forward by the petitioner, and through the superintendent may suspend, amend, or confirm the order complained of.—Sec. 16.

Appeal.

Water commissioners must make reports to the division superintendents of their division as often as deemed necessary by the superintendent, to contain the following information, viz: The amount of water necessary to supply all the ditches, canals, and reservoirs of that district; the amount of water actually coming into the district to supply the ditches, canals, and reservoirs; whether such supply is on the increase or decrease; what ditches, canals, and reservoirs are at that time without their proper supply; the probability as to what the supply will be during the period before the next report will be required, and such further information as the division superintendent may suggest. The division superintendent is to carefully file and preserve such reports and ascertain from them what ditches, canals, and reservoirs are and what are not receiving their proper supply of water, and if it appears that in any division (district) of that district (division) any ditch, canal, or reservoir whose priority post-dates that of the ditch, canal, or reservoir in another district, as ascertained from his register, is receiving water to which the elder ditch is entitled he shall at once order such post-dated ditch, canal, or reservoir shut down and the water given to the elder ditch, canal, or reservoir, his orders being at all times directed to the enforcement of priority of appropriation, according to his tabulated statement of priorities, to the whole division, and without regard to the district within which the ditches, canals, and reservoirs may be located. The reports of the commissioners are to be filed and kept in the office of the State engineer.—Sec. 17.

Report to superintendent.

Contents of reports.

Duty of superintendent.

The division superintendent is entitled to \$10 per day for each day actually consumed in the performance of his duties, and his actual traveling expenses when away from home in the discharge of his duties. He must take and subscribe the oath of office, and file it and an official bond in the sum of \$2,500, with not less than two sureties, approved by the governor, in the office of the secretary of state.—Sec. 18.

Reports to be filed.

Compensation.

Oath and bond.

WATER COMMISSIONERS.

In each water district there is to be appointed one commissioner, who must reside in the district he is to serve, and is to be appointed by the governor from persons recommended to him by the superintendent of

Appointment.

- Term. the water division in which the district is situated. He is to hold his office two years and until his successor is appointed and qualified; and the governor shall in like manner fill all vacancies, and may at any time remove any commissioner for failure to perform his duties, upon complaint made to him in writing.—Laws of 1890-'91, p. 103, sec. 41.
- May be re-  
Duties. It is the duty of the said commissioner to divide the water in the natural stream or streams in his district, among the ditches taking water therefrom, according to the prior rights of each, in whole or in part, and to shut and fasten or cause to be shut and fastened, under the direction of the superintendent of his division, the head gates of ditches heading in any of the natural streams of the district, when, in times of scarcity of water, it is necessary to do so by reason of the priority of the rights of others taking water from the same stream or its tributaries.
- Penalty for in-  
terference. Every person who shall willfully open, close, change, or interfere with any head gate or water box without authority is deemed guilty of a misdemeanor, and on conviction shall be fined not to exceed \$100 or be imprisoned in the county jail not more than six months or both.
- Constabulary  
powers. The commissioners, or their assistants, within their districts, have power to arrest any person or persons offending and turn them over to the sheriff, and, immediately after having delivered any person so arrested to the sheriff, it is the duty of the commissioner making the arrest to make complaint in writing and under oath before the proper justice of the peace against such person.—Same act, sec. 42.
- Compensation. The water commissioner is entitled to pay at the rate of \$5 per day for time actually spent in discharge of duty, to be paid by the county in which the work is performed. He must keep a true account of the time spent by him in his duties in each county in his district and present a true and verified copy thereof to the board of county commissioners of the county or counties in which the work was done, which must be allowed by the commissioners upon the approval thereof by the superintendent of the division.—Sec. 43.
- How his ac-  
counts audited.
- Assistants. He has power in case of emergency to employ suitable assistants. They must take the same oath as he, and obey his instructions, and each is entitled to \$4 per day for the time he is employed, not to exceed thirty-five days in a year, to be paid upon the certificate of the division superintendent, in the same manner as the commissioner is paid.—Sec. 44.
- When to begin  
work. The commissioner must not begin work until called on by two or more ditch owners, managers, or controllers, by application in writing, stating that there is a necessity for the use of water; and he must not continue to perform service after the necessity therefor shall cease.—Sec. 45.
- Must regulate  
use of water. The water commissioners shall so divide, regulate, and control the use of the water of the streams in their districts, as near as may be, as to prevent unnecessary waste of water, and to that end shall so shut and fasten the head gate or head gates of all ditches that no more water will flow into said ditches than is actually required or will be used for the purpose for which it was appropriated, and any person injured by the action of the water commissioner or by his failure to act "pursuant to this chapter" may resort to any court of competent jurisdiction for such relief as he may be entitled to.—Revised Statutes of 1887, sec. 1359.

BOARD OF CONTROL—ADJUDICATION OF PRIORITIES.

The board of control, consisting of the State engineer and the superintendents of the four water divisions, are required to have an office with the State engineer in the capitol at Cheyenne, and to hold two meetings each year for the transaction of such business as may come before it, the first meeting to begin on the second Wednesday of March and the second on the first Wednesday in August. The State engineer is *ex officio* president, and has a right to vote on all questions, and a majority of the board constitutes a quorum for the transaction of business. The board are required to elect a secretary, and he is required to keep a full, true, and complete record of the transactions of the board and to certify under seal all certificates of appropriation of water "made in accordance with the provisions of this act."—Laws of 1890-'91, pp. 94, 95, sec. 19.

Office at capitol.  
Meetings.

President.

Secretary.

Record of doings.

The duties of the board of control under the statute are chiefly to determine priorities of appropriations and to hear appeals in certain cases from the action of the State engineer.

Duties.

It is the duty of the board at its first meeting to make arrangements for beginning the determination of the priorities of right to the use of the public waters of the State, which determination must begin on the streams most used for irrigation, and continue as rapidly as practicable until all claims for appropriation on record shall have been adjudicated, the methods of determining the priority and amounts of appropriation to be as follows:

The board at their first meeting to decide what streams are to be first adjudicated and to fix a time to begin taking testimony and making such examination as will enable them to determine the rights of the various claimants.

Proceduro.

The board are to prepare a notice, giving the date when the engineer will begin a measurement of the stream and the ditches diverting water therefrom, and a place and day certain when the superintendent of the division in which the stream to be adjudicated is situated shall begin the taking of testimony as to the rights of the parties claiming water therefrom, said notice to be published in two issues of a newspaper having general circulation in the county in which the stream is situated, the publication of said notice to be at least thirty days prior to the beginning of taking testimony by the superintendent or the measurement of the stream by the State engineer or his assistant; and the superintendent taking such testimony shall have power to adjourn from time to time and from place to place, provided that all places appointed and adjourned to shall be so situated, as related to the streams, as shall best suit the convenience of the persons interested in the determination of such priorities and appropriations.—Same act, sec. 20.

Notice.

Publication.

May adjourn.

The expense of publication of such notice to be paid by the county in which the stream is situated.—Sec. 39.

It is also the duty of the superintendent to mail to each party having a recorded claim to the waters of said stream, by registered mail, a similar notice, stating when the engineer or his assistant will begin the examination of the stream and the ditches taking water therefrom, and also the date when the taking testimony by said superintendent shall close, and he shall in addition inclose with said notice a blank form on which said claimant shall present in writing all the particulars showing the amounts and dates of appropriations to the use of

Notice by mail.

Statement by claimant.

water of said stream to which he lays claim, the said statement to include the following:

- Contents.** The name and post-office address of the claimant; the nature of the use on which the claim for an appropriation is based; the time of commencement of such use, and, if distributing works are required, the date of beginning of survey; the date of beginning of construction; the date when completed; the date of beginning and completion of enlargement; the dimensions of the ditch as originally constructed and as enlarged; the date when water was first used for irrigation or other beneficial purpose, and if used for irrigation the amount of land reclaimed the first year, the amount in subsequent years, with dates of reclamation and the amount of land such ditch is capable of irrigating; the character of the soil and the kind of crops cultivated, and such other facts as will show a compliance with the law in acquiring the appropriation and the rank of priority claimed.—Sec. 20, cited above.
- To be verified.** Each claimant is required to certify to his statements under oath, and the superintendent is authorized to administer such oaths, which is to be done without charge to claimant. The blank forms for statement are also to be without charge.—Sec. 21.
- Testimony to begin.** Upon the date named in the above-mentioned notice the division superintendent is to begin taking testimony, and is to continue the same until completed; but, if he is in any way interested in the water of any stream of his division, the taking of evidence, so far as relates to said stream, shall be under the direction of the division superintendent of the next nearest water division, or under the direct personal supervision of the State engineer, as may be deemed most expedient. When the taking of evidence is completed the division superintendent must at once give notice in one issue of some newspaper of general circulation in the county where such determination is, and by registered mail, to the various claimants that upon a certain day and at a certain place, named in the notice, all the said evidence shall be open to the inspection of the various claimants, and said superintendent shall keep such evidence open to inspection at said place not less than one day nor more than five days.—Sec. 22.
- Notice.** Any owner of irrigation works, or any claimant to any interest in the stream involved in the adjudication, desiring to contest the rights of others who have submitted evidence to the superintendent, must notify such party in writing to appear before the superintendent, at the place where he has been taking evidence in such adjudication, fixing day and hour, not less than ten nor more than fifteen days from service of notice. He must at the same time notify the superintendent of the time fixed. Service on the party must be shown by affidavit filed before evidence can be taken. The evidence shall be confined to subjects enumerated in this act for establishment of rights to water. Each party shall deposit \$10 for each day he is engaged in taking the evidence. On final determination of the adjudication by the board of control, an order shall be entered directing the money so deposited to be refunded to the party in whose favor the dispute shall be determined, and that all moneys deposited by the other parties be turned over to the State treasurer to the credit of the fund for the maintenance of the board of control. Upon completion of the evidence so taken the superintendent must immediately transmit all evidence and testimony in the adjudication in person, or by registered mail, to the office of the board of control.—Sec. 23.
- Testimony to be transmitted.**

It is the duty of the State engineer, or some qualified assistant, at the time stated in the notice to the parties, to proceed to make an examination of the stream to be adjudicated and of the works diverting water therefrom, said examination to include the measurement of the discharge of said stream and of the carrying capacity of the various ditches and canals diverting water therefrom; an examination of the irrigated lands, and an approximate measurement of the lands irrigated, or susceptible of irrigation from the various ditches and canals, which said observations and measurements shall be reduced to writing and made a matter of record in his office; and it is his duty to make, or cause to be made, a map or plat on a scale not less than an inch to the mile, showing with substantial accuracy the course of the stream, the location of each ditch or canal taking water therefrom, and the legal subdivisions of lands which have been irrigated, or are susceptible of irrigation from the ditches and canals already constructed.—Sec. 24.

Examination of stream and works.

Map.

At the first regular meeting of the board after the completion of such measurement and the return of said evidence, the board are to make and cause to be entered of record in its office an order determining and establishing the several priorities of right to the use of the waters of said stream, and the amounts of appropriations of the several persons claiming water from said stream, and the character and kind of use for which said appropriation shall be found to have been made. Each appropriation shall be determined in its priority and amount by the time by which it shall have been made, and the amount of water which shall have been applied for beneficial purposes. But no appropriator is at any time entitled to the use of more water than he can make a beneficial application of on the lands for the benefit of which the appropriation may have been secured; and the amount of any appropriation made by reason of enlargement of distributing works shall be determined in like manner: "Provided, That no allotment shall exceed one cubic foot per second for each seventy acres of land for which said appropriation shall be made."—Sec. 25.

Determination of priorities.

Time and amount.

Limit of allotment.

Within ten days after the determination of the priorities for any stream, the State engineer is to issue to each person, association, or corporation represented in such determination, a certificate signed by him as president of the board, and under seal by the secretary of the board, setting forth the name and post-office address of the appropriator, the priority number of such appropriation, the amount of water appropriated, and the amount of prior appropriations, and, if such appropriation be for irrigation, a description of the legal subdivisions of the lands to which said water is to be applied. Said certificate is to be sent by the State engineer or a member of the board, by registered mail to the county clerk of the county in which the appropriation shall have been made, and it shall be the duty of said county clerk, within ten days after receipt of the same, to record it in a book specially prepared and kept for the purpose, and to notify the party or parties in whose favor it is issued of such record, and transmit the certificate to said party or parties on payment of the fee for recording, not to exceed 75 cents for each certificate.—Sec. 26.

Certificate of priority.

Contents.

To be recorded in county clerk's office, and transmitted to party.

Any party or parties feeling aggrieved by such determination of the board may appeal to the district court of the judicial district within which his or their appropriation may be situated. All persons joining in the appeal shall be joined as appellants, and all having adverse interests as appellees.—Sec. 27.

Appeal.

The appellant or appellants must, within sixty days of the determination of the board and its entry in their records, file in the district court to which the appeal is taken a notice in writing stating that such party or parties appeals to such district court from the determination and order of the board of control; and upon the filing of such notice the appeal is deemed as taken: *Provided*, That the appellant or appellants shall within said sixty days enter into an undertaking to be approved by the court or judge thereof, and given to all parties interested in the suit or proceeding other than the appellants, and to be in such amount as the court or judge shall fix, conditioned that the parties giving the undertaking shall prosecute their appeal to effect without unnecessary delay and pay all costs and damages which the party to whom the undertaking is given, or either or any of them, may sustain in consequence of such appeal.—Sec. 28.

The order mentioned in section 28 is to be entered of record in the records of the board of control, and the appellant is to cause a certified copy thereof to be served on each of the appellees by delivering the same to him or her if found, serving in the same manner as provided for serving summons from the district court.—Sec. 29.

The appellant must within six months after the appeal, as provided for above, is perfected file in the office of the clerk of the district court a certified transcript of the order appealed from, and all the evidence offered on hearing before the board of control, including the measurement of streams, tributaries, and ditches, together with a petition setting forth the appellant's cause of complaint; to which petition all appellees shall be made parties, and shall be served with notice by the issuance of summons out of the office of the clerk of the court within the time and manner provided by law for the issuance and service of summons in actions at law; and all proceedings on appeal shall be conducted according to the provisions of the civil code of procedure. All costs of appeal shall be adjudged against the parties against whom the appeal is finally determined.—Sec. 30.

The county clerk of each county of the State was required, within thirty days after the passage of this act, to prepare full and complete transcripts of all the claims to appropriations of water on file in his office and transmit the same without delay to the State engineer, by express or registered mail. But, where claims had been recorded in books kept specially for that purpose, he was required, in place of such transcripts, to transmit such original records. It was also made the duty of the clerk of the district court, within thirty days from the date of the passage of this act, to transmit to the State engineer, in like manner, the certificates of measurements of ditches made by county surveyors, on file in the offices of said clerks of district courts in the various counties of the State.—Sec. 31.

Immediately on receipt of such transcripts and such original records, it was the duty of the State engineer to file them in his office and classify and arrange said claims by placing all the claims to water of one stream and its tributaries together.—Sec. 32.

In issuing notices to claimants, in priority adjudications of the waters of any stream and its tributaries, as provided in section 20 of this act (given above), all parties named as claiming the waters of said stream or tributaries in said transcript shall be notified by mail as specified in said section.—Sec. 33.

All cases relating to the adjudication of priorities of rights in any of the water districts of the State, pending at the time of the passage



of the act of 1890-'91, except such as were by order of such courts referred to the board of control, were permitted to remain in said courts and to be adjudicated there in accordance with the laws in force at the time of their inception: *Provided*, That the court or the judge in vacation, might, in his discretion, on the application of the parties interested, transfer any such cases for adjudication to the board of control. And all such cases which had been in such manner referred by any district court to the board of control were required, together with all testimony taken in the cases, and all the papers and pleadings relative to the cases, and a copy of all journal entries made therein, to be at once, "on the passage of this act," transferred by the clerk of such district court into the custody of the division superintendent of the division in which said adjudication might have been begun; and such superintendent was required, as soon as possible, to complete the taking of such testimony; and it was made the duty of the board of control to first determine the rights of the parties on those streams where such determination had begun and was unfinished at the time of the passage of the act.—Sec. 47.

Cases referred.

Duty of board.

The board of control are also authorized to hear appeals from the action of the State engineer in refusing to grant applications for appropriations of water; and an appeal from the decision of the board in cases of this kind lies to the district court of the county in which the diversion of the proposed appropriation is to be made.—Last part of sec. 34.

Appeals from State engineer.

## PROCEDURE OF APPROPRIATION.

Every person, association, or corporation intending to appropriate any of the public waters of Wyoming must, before performing any work in connection with such appropriation, make application to the president of the board of control for a permit to make such appropriation. Such application must set forth the name and post-office address of the applicant, the source from which the appropriation shall be made, the amount thereof, as near as may be, the location and character of any proposed works in connection therewith, and the time required for their completion; said time to embrace the period required for construction of ditches thereon, and the time at which the application of water for beneficial purposes shall be made, which time shall be limited to that required for the completion of work when prosecuted with due diligence; the purpose to which water is applied, and if for irrigation, a description of the lands to be irrigated thereby; and any additional facts which may be required by the board of control. This application shall be of a form prescribed by the board of control, and furnished by the State engineers without cost to the applicant. On receipt of such application the State engineer must make a record of its receipt and cause it to be recorded in his office, and must make a careful examination of the same, to ascertain whether it sets forth all the facts necessary to enable the board of control to determine the nature and amount of the proposed appropriation. If on examination the application is found in any way defective, the State engineer must return it to the applicant for correction. If there is unappropriated water in the source of supply named in the application, and if such appropriation is not otherwise detrimental to the public welfare, the State engineer shall approve the same by indorsement thereon, and shall make a record of such indorsement in some proper manner in his office, and return the same so indorsed to the applicant, who shall, on

Application to president of board.

Application to be recorded and examined.

Corrected.

When to be approved.

- receipt thereof, be authorized to proceed with such work and to take such measures as may be necessary to perfect such appropriation. If there is no unappropriated water in the source of supply, or if, in the judgment of the State engineer, such appropriation is detrimental to the public interests, the State engineer shall refuse such appropriation and the applicant shall not prosecute such work so long as such refusal shall continue in force; provided the State engineer may on examination indorse the application approved for a less amount of water than that stated in the application and for a less period of time for perfecting the proposed appropriation. A party aggrieved by the decision of the State engineer upon his application may appeal therefrom informally to the board of control, as above stated, and if aggrieved by the decision of the board upon his appeal, may then appeal to the district court of the county in which the point of diversion of the proposed appropriation is situated. In perfecting such appeal the applicant must file in the office of the clerk of the district court a copy of the order appealed from, certified by the secretary of the board of control as a true copy, together with a petition setting forth his cause of appeal. Such appeal shall be heard and determined upon such competent proofs as shall be adduced by the applicant, and such like proofs as shall be adduced by the board of control or some person duly authorized in its behalf.—Sec. 34.
- Upon the approval and allowance of an application the applicant shall send to the State engineer's office, within six months thereafter, a map or plat, upon a scale not less than 2 inches to the mile, showing the location and amount of the distributing works, the source from which the appropriation is taken, and the legal subdivisions of the land upon which the water to be appropriated is to be applied, which map or plat shall be filed and preserved in said office.—Sec. 35.
- When it is made to appear to the board of control that any appropriation made in pursuance of such application has been perfected in accordance with the application, and the indorsement thereon by the State engineer, it is the duty of the board of control, by the hand of its president, under seal of the secretary, to send to the county clerk, certificate of the same character as that described in section 26 of this act (see section 26, under head of Adjudication of Priorities, above), which certificate shall be recorded in the office of the county clerk as provided in said section 26.—Sec. 36.
- The priority of such appropriation shall date from the filing of the application in the engineer's office.—Sec. 37.
- Appeals taken to the district or supreme court under this chapter take precedence of all other civil causes, and are entitled to be placed at the head of the civil docket for hearing.—Sec. 50.

## DUTIES OF APPROPRIATORS.

- The appropriator of any public water must maintain to the satisfaction of the division superintendent of the district in which the appropriation is made a substantial head gate at the point where the water is diverted, so made that it can be locked and kept closed by the water commissioner; and he shall also construct and maintain, when required by the division superintendent, a flume or measuring device, as near the head of such ditch as is practicable, for the assistance of the water commissioner in determining the amount of water diverted into said ditch. If any appropriator of public waters that have been adjudicated, upon neglect or refusal to put in such head gate

or measuring device, after thirty days' notice to do so by the division superintendent, the superintendent may notify the county commissioners of the county where the head gate, flume, or measuring device is situated, and it is then the duty of said commissioners to put in such head gate, flume, or measuring device at the expense of the county, and present a bill of costs to the owner of the ditch, and if such owner shall refuse or neglect, for three days after such presentation, to pay the same, they shall be made a charge upon the ditch and collected as delinquent taxes, and be subject to the same conditions and penalties as other delinquent taxes, and until full and complete payment of the same it shall be the duty of the water commissioner of the district to close and keep closed the head gate of such ditch, and to take such needful steps as will prevent any water from being diverted therein.—Sec. 46.

Any person, association, or corporation hereafter intending to construct any dam for reservoir purposes, or across the channel of any running stream above 5 feet in height, shall, before beginning the construction, submit the plans therefor to the State engineer for examination and approval, and no dam above that height shall be constructed until the same shall have been approved.—Sec. 48.

Plan for dam to be approved.

The owner of any ditch for irrigation or other purpose shall carefully maintain the embankments thereof, so that the waters of such ditch may not flood or damage the premises of others, and shall be liable for damage for leakage and overflow.—R. S. of 1887, secs. 1323 and 1356.

Embankments.

Any ditch company constructing a ditch, or any individual having ditches for irrigation or other purposes, whenever the same is taken across a public highway or traveled road, shall put a good, substantial bridge, not less than 14 feet wide, over the same where it crosses said road. On refusal, county commissioners may build, and collect the cost by suit.—R. S. of 1887, secs. 1325, 1326.

Bridges.

It is the duty of every person or corporation constructing or operating any ditch or canal under this chapter (chap. 61, S. L. of 1886) to construct and maintain at the place where the water is diverted from its natural channel some fit and proper obstruction to prevent fish from entering the ditch. Violation of this section is a misdemeanor, and punishable by fine of not more than \$100 or imprisonment in county jail not less than ten nor more than sixty days, or both such fine and imprisonment.—R. S. of 1887, sec. 1360.

Fish weir.

The priority of right is limited to so much water as may necessarily be used for irrigation or other beneficial purposes, irrespective of the carrying capacity of the ditch, and all the water not so appropriated shall be allowed to run in the natural stream, and shall not be considered as having been appropriated thereby; and if the owner of the ditch shall fail to use the water therefrom for irrigation or other beneficial use, or shall refuse to furnish any surplus water to the owners of lands lying under such ditch during two successive years, he is considered as having abandoned the same, and forfeits all water rights, easements, and privileges appurtenant thereto, and the waters formerly appropriated by them shall be again subject to appropriation; neither shall the owners of any such ditch, canal, or reservoir have any right to royalty for the use of water carried thereby, but every such owner having a surplus of water and furnishing the same to others from any ditch, canal, or reservoir, as hereinafter provided, shall be considered a common carrier, and subject to the same laws that govern common carriers.—Laws of 1888, chap. 55, sec. 14, p. 121.

Limit of appropriation.

Nonuse forfeits right.

Common carrier.

The owner of any ditch carrying a greater quantity of water than the owner necessarily uses for irrigation and other beneficial purposes in connection with his own lands shall, when application for that purpose is made, furnish such surplus water at reasonable rates to the owners of lands lying under such ditch for reclamation of such lands, and, in case of refusal, he may be compelled by injunction suit to furnish such water on such terms as the court may deem just, provided the boards of county commissioners in their respective counties shall have power, upon application by either party interested, to establish reasonable maximum rates for the use of water, whether furnished by individuals or corporations.—Sec. 15 of same chapter.

Surplus to be sold.

Rates to be fixed.

#### MEASUREMENT OF WATER.

A cubic foot of water per second of time shall be the legal standard of measurement of water in this State, both for the purpose of determining the flow of water in natural streams and for the purpose of distributing water therefrom.—Laws of 1890-'91, p. 102, sec. 38.

#### FIXING RATES FOR WATER.

Maximum prices to be charged for water may be fixed by county commissioners as stated above.—Laws of 1888, chap. 55, sec. 15.

#### PROTECTION OF PROPERTY.

Any person who shall knowingly and willfully cut, dig, or break down or open any gate, bank, embankment, or side of any ditch, canal, reservoir, flume or tunnel, or feeder, in which any such person may be joint owner, or on the property of another, or in the lawful possession of another or others and used for irrigation, milling, mining, manufacturing, or domestic purposes, with intent maliciously to injure any person or persons, association or corporation, or with intention of stealing, taking, or causing to run out thereof any water for his own profit, benefit, or advantage, to the injury of any other person, association, or corporation lawfully in the use of such water, or of such ditch, canal, etc., shall be deemed guilty of a misdemeanor, and on conviction shall be fined not exceeding one hundred dollars, and may be imprisoned in the county jail not exceeding six months, or both, in the discretion of the court.—R. S. of 1887, sec. 1347

Injury to property.

Penalty.

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CALIFORNIA

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## CONTENTS.

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	Page.
Constitutional provisions .....	57
Statutory enactments, general.....	57
Formation of irrigation districts and election of officers.....	59
Subsequent elections.....	60
Boards of directors—their powers and duties.....	62
Pro rata distribution of water.....	62
Issuance of bonds and provision for payment.....	63
Construction of irrigation works.....	66
Compensation of officers, etc.....	68
Special assessments—how ordered.....	68
Power to incur debt.....	68
Apportionment of water—water commissioners—directors.....	68
Miscellaneous.....	69

### SUPPLEMENTAL ACTS.

Inclusion of other lands.....	69
Exclusion of other lands.....	71
Adjudication of bonds.....	72

## CALIFORNIA.

### CONSTITUTIONAL PROVISIONS.

The original constitution of California contained nothing upon irrigation or water rights; but in the constitution of 1879 was inserted the following:

The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use and subject to the regulation and control of the State, in the manner to be prescribed by law: *Provided*, That the rates or compensation to be collected by any person, company, or corporation in this State for the use of water supplied to any city and county, or city or town, or the inhabitants thereof, shall be fixed, annually, by the board of supervisors, or city and county, or city or town council, or other governing body of such city and county, or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February in each year, and take effect on the first day of July thereafter. Any board or body failing to pass the necessary ordinances or resolutions fixing water rates, where necessary, within such time, shall be subject to peremptory process to compel action at the suit of any party interested, and shall be liable to such further processes and penalties as the legislature may prescribe. Any person, company, or corporation collecting water rates in any city and county, or city or town in this State, otherwise than as so established, shall forfeit the franchises and waterworks of such person, company, or corporation, to the city and county, or city or town where the same are collected, for the public use.—Art. XIV, Sec. 1.

The right to collect rates or compensation for the use of water supplied to any county, city and town, or town, or the inhabitants thereof is a franchise and can not be exercised except by authority of and in the manner prescribed by law.—Art. XIV, sec. 2.

### STATUTORY ENACTMENTS.

From time to time various legislative enactments were adopted, some of them local in character, but including several acts authorizing boards of supervisors to fix rates for water, and including also the following provisions found under head of "Water Rights" in the civil code of 1873:

SEC. 1410. The right to the use of running water flowing in a river or stream, or down a canyon or ravine, may be acquired by appropriation. Water may be appropriated.

SEC. 1411. The appropriation must be for some useful or beneficial purpose, and when the appropriator, or his successor in interest, ceases to use it for such a purpose the right ceases. Must be for beneficial use.

- Place of diversion may be changed. SEC. 1412. The person entitled to the use may change the place of diversion, if others are not injured by such change, and may extend the ditch, flume, pipe, or aqueduct, by which the diversion is made, to places beyond that where the first use was made.
- Natural stream may be used as conduit. SEC. 1413. The water appropriated may be turned into the channel of another stream and mingled with its water and then reclaimed, but in reclaiming it the water already appropriated by another must not be diminished.
- Priority. SEC. 1414. As between appropriators the one first in time is the first in right.
- Notice. SEC. 1415. A person desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversion, stating therein (1) that he claims the water then flowing to the extent of (giving the number) inches, measured under a four-inch pressure; (2) the purposes for which he claims it, and the place of intended use; (3) the means by which he intends to divert it, and the size of the flume, ditch, pipe, or aqueduct in which he intends to divert it. A copy of the notice must, within ten days after it is posted, be recorded in the office of the recorder of the county in which it is posted.
- Contents. SEC. 1416. Within sixty days after the notice is posted, the claimant must commence the excavation or construction of the works in which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted by snow or rain.
- When work must begin. SEC. 1417. By completion is meant the conducting the waters to the place of intended use.
- Completion defined. SEC. 1418. By a compliance with the above rules, the claimant's right to the use of the water relates back to the time the notice was posted.
- When right attaches. SEC. 1419. A failure to comply with such rules deprives the claimants of the right to the use of the water as against a subsequent claimant who complies therewith.
- Forfeiture. SEC. 1420. Persons who have heretofore claimed the right to water, and who have not constructed works in which to divert it, and who have not diverted nor applied it to some useful purpose, must, after this title takes effect, and within twenty days thereafter, proceed as in this title provided, or their right ceases.
- Former appropriator must comply with this title. SEC. 1421. The recorder of each county must keep a book in which he must record the notices provided for in this title. The above provisions are in harmony with the laws of Colorado and other States. But until 1887 another section remained in force as part of the same title, viz:
- Records. SEC. 1422. The rights of riparian proprietors are not affected by the provisions of this title.
- Riparian rights. This section was repealed in 1887, with the proviso that its repeal should not affect any already vested rights.
- Repeal. But the most notable legislation of California upon this subject is found in the act of March 7, 1887, with its amendments and several supplemental acts, an abstract of which, omitting certain details of procedure not relating to irrigation, is given below.
- But this act and the system it embodies are entirely different from the system of Colorado and Wyoming; and the inquiry may well be made whether the system which makes irrigation a public and at least quasi-municipal affair and compels all real property to contribute to it, or that which merely affords facilities and regulations for private enterprise, is, all things considered, the better one.



FORMATION OF IRRIGATION DISTRICTS AND ELECTION OF OFFICERS.

Fifty, or a majority, of the holders of title or evidence of title to lands susceptible of one mode of irrigation from a common source, and by the same system of works, desiring to provide for the irrigation of the same, may propose the organization of an irrigation district under the provisions of this act, and when so organized such district shall have the powers conferred, or that may hereafter be conferred, by law upon such irrigation districts. The equalized county assessment roll next preceding the presentation of a petition for the organization of an irrigation district, under the provisions of this act, shall be sufficient evidence of title for the purpose of this act.— Act of March 7, 1887, sec. 1, as amended in Laws of 1891, p. 142.

Who may petition.

A petition must first be presented to the board of supervisors of the county in which the land, or the greatest portion thereof, is situated, signed by the required number of holders of title, or evidence of title, of such proposed district, evidenced as above provided, setting forth and particularly describing the proposed boundaries of such district, and praying that the same may be organized under the provisions of this act. The petition must be accompanied by a good and sufficient bond, to be approved by the board of supervisors, in double the amount of the probable cost of organizing the district, that the bondsmen will pay such costs if said organization is not effected. It must be presented at a regular meeting of the board and published for at least two weeks before the time of presentation in some newspaper printed and published in the county where it is presented, together with a notice stating the time of the meeting at which it will be presented, and if any portion of the proposed district lie in another county or counties then the petition and notice must be published in a newspaper published in each of said counties. When the petition is presented the board of supervisors are to hear the same, and may adjourn the hearing from time to time, not exceeding four weeks in all, and on final hearing may make such changes in the proposed boundaries as they find proper, and shall establish and define the boundaries, but the board can not except from the operation of this act any territory within the boundaries proposed by the petitioners which is susceptible of irrigation by the same system of works as the other lands in the proposed district, and no lands which, in the judgment of the board, will not be benefited by irrigation by said system shall be included in such district, and any person whose lands may be irrigated from the same source may, in the discretion of the board, upon application of the owner, have such lands included in such district. The board shall also make an order dividing the district into five divisions as nearly equal in size as practicable, numbered from one to five consecutively, and one director, who must be a freeholder in the division and an elector and resident of the district, shall be elected by each division: *Provided*, That if the holders of title, or evidence thereof, petition for the formation of the district the board may, if requested in the petition, order that there be either three or five directors, as they may deem best, for that district, and that they may be elected by the district at large.

Contents of petition.

Bond.

Publication of notice.

Hearing may be adjourned.

Boundaries defined.

Other lands may be included.

Divisions.

Directors.

The board of supervisors must then give notice of an election to be held in the proposed district to determine whether or not the same shall be organized under the provisions of this act. The notice must describe the boundaries of the proposed district, and designate a name for it, and must be published for at least three weeks prior to such election in a newspaper in each county in which said proposed district

Notice of election.

Publication.

What notice to require. or any part thereof may lie. The notice shall require the electors to cast ballots containing the words "Irrigation district, yes," or "Irrigation district, no," or to that effect, and also the names of persons to fill the various offices prescribed in the act. The qualifications for voters are the same required of electors under the general election laws of the State.—Sec. 2 of said act as amended by laws of 1891, pp. 142, 143.

Election.

The election is to be conducted, as nearly as practicable, in accordance with the general election laws of the State, but no particular form of ballot is required. The board of supervisors meet on the second Monday after the election and canvass the vote, and if it appears that two-thirds of the votes cast are in favor of the organization of the district, they are to enter an order in their minutes declaring the district duly organized under the name and style theretofore designated, and declare the persons receiving, respectively, the highest number of votes for the several offices duly elected to such offices; and no action shall be commenced or maintained or defense made affecting the validity of the organization unless the same be commenced within two years after the making and entering of such order.

Board to canvass vote and enter order.

Time to bring action.

Order to be recorded.

The board is to cause a duly certified copy of the order to be immediately filed for record in the office of the county recorder in each county in which any portion of the district lies, and a copy to be furnished to the clerk of the board of supervisors in each of said counties; and after that date no board of supervisors of any county including any portion of said district shall allow another district to be formed including any of the lands of said district without the consent of the board of directors thereof; and from the date of such filing the organization of such district is complete, and the officers are entitled to enter upon the duties of their respective offices upon qualifying in accordance with law, and shall hold their offices until their successors are elected and qualified. For the purposes of this election the board

When district complete.

Election precincts.

of supervisors are to establish convenient election precincts, which may afterwards be changed by the board of directors of the district.

May change number and manner of electing directors.

The board of directors in any district may, upon such petition as mentioned in section two, order that on and after the next general election in the district there shall be either three or five directors, as they may order, and that they be elected either at large or by divisions, as so petitioned and ordered; and thereafter such directors shall be so elected.—Sec. 3 of said act, as amended in Laws of 1891, pp. 143, 144.

#### SUBSEQUENT ELECTIONS.

Officers to be elected.

An election is required in each district on the first Wednesday in February, in the year 1893, and on the first Wednesday in February in each second year thereafter, at which an assessor, a collector, a treasurer, and a board of directors is to be elected. The person receiving the highest number of votes is elected, and holds his office from the first Tuesday in March after the election for two years, and until his successor is elected and qualified. The officers must qualify by taking the oath and giving the bond within ten days after receiving certificates of election. The assessor must give bond in \$5,000, the collector in \$20,000, and the district treasurer in the sum of \$50,000, each of said bonds to be approved by the board of directors; and each member

Oath and bond.

By whom bonds approved.

of the board of directors must give bond in \$5,000, to be approved by the judge of the superior court of the county where the organization was effected, and recorded in the office of the county recorder and filed with the secretary of the board. The said bonds are to be in the form

prescribed by law for the official bonds of county officers.—Sec. 4, amended by Laws of 1891, pp. 144, 145.

Fifteen days before any election subsequent to the organization of any district, the secretary of the board of directors is to cause notices to be posted in the public places in each election precinct of the time and place of holding the election, and shall post a general notice of the same in the office of the board which shall be established and kept at some fixed place, specifying the polling places of each precinct. Before posting the notices the board must appoint for each precinct, from the electors thereof, one inspector and two judges, who shall constitute a board of election for such precinct. If the board fails to appoint a board of election, or if those appointed are not present at the opening of the polls on the morning of election, the electors of the precinct may then appoint the board or supply the place of an absent member. The board of directors must, in its order appointing board of election, designate the house or place in the precinct where the election is to be held.—Sec. 5 of said act.

Election notices.

Boards of election.

Place to be designated.

Section 6 of said act prescribes the powers and duties of the board of election and its various members, the oath they are to take—which may be administered and certified by any elector of the precinct—the time the polls must be opened and kept open, and declares that the provisions of the political code as to form of ballots shall not apply.

Powers and duties of board.

Section 7 relates to the time of voting, the conduct of the election, which is to be as nearly as practicable in accordance with the provisions of the political code, and the counting of the votes.

Section 8 describes the manner of certifying the returns, and the disposition of the same, which are to be returned to the secretary of the board of directors, and provides that the ballots shall be sealed by the inspector and kept sealed for six months, and that any persons of the opinion that they have not been correctly counted in any precinct may appear before the board of directors at the canvass of the returns and demand a recount.

Returns.

Section 9 relates to the canvass of the returns by the board of directors, which must always be in public, and the declaration of the result.

Canvass.

Upon the declaration of the result the secretary of the board of directors must enter in the records of the board a statement thereof, showing (1) The whole number of votes cast in the district and in each division thereof; (2) the names of the persons voted for; (3) the office to fill which each person was voted for; (4) the number of votes given in each precinct to each of such persons; (5) the number of votes given in each division for the office of director, and the number of votes given in the district for the offices of assessor, collector, and treasurer.

Statement to be entered by board.

The board must declare elected the persons having the highest number of votes for each office, and the secretary must issue to each person elected a certificate of election under the seal of the board. A vacancy in the office of assessor, collector, or treasurer is filled by appointment of the board of directors.

Certificates of election.

A vacancy in the office of director is filled by the board of supervisors of the county where the office of the board of directors is situated from the division in which the vacancy occurred. An officer appointed as above holds his office until the next regular election for the district and until his successor is elected and qualified.—Sec. 10, as amended by Laws of 1889, pp. 15, 16.

Vacancies.

## BOARD OF DIRECTORS—THEIR POWERS AND DUTIES.

*Pro rata distribution of water.*

Organization of board directors meet and organize as a board by electing a president from their number and appointing a secretary, each of whom hold office during the pleasure of the board.

Powers and duties. The board have power, and it is their duty, to manage and conduct the business and affairs of the district; to make and execute all necessary contracts; employ and appoint such agents, officers, and employés as may be required, and prescribe their duties; establish equitable by-laws, rules, and regulations for the distribution and use of water among the owners of said lands; and generally to perform all acts necessary to fully carry out the purposes of this act. The said by-laws, rules, and regulations must be printed in convenient form for distribution in the district.

By-laws.

Ratio of distribution of water. And it is expressly provided that all waters distributed for irrigation purposes shall be apportioned ratably to each landowner upon the basis of the ratio which his last assessment for district purposes bears to the whole sum assessed upon the district; but he may assign the right to the whole or any portion of the waters apportioned to him.—Sec. 11, as amended by Laws of 1891, p. 145.

Meetings of board.

The board of directors must hold a regular meeting in their office the first Tuesday in every month, and such special meetings as may be required for the proper transaction of business; but all special meetings must be ordered by a majority of the board by an order entered of record, of which five days' notice must be given by the secretary to each member not joining in the order. The order must specify the business to be transacted, and none other than that specified can be transacted at such special meeting.

Quorum.

All meetings must be public, and three members constitute a quorum; but on all questions requiring a vote there must be a concurrence of at least three members. All records of the board must be kept open to inspection of any elector during business hours.

May enter on lands to make surveys, etc.

The board, its agents, and employés, have the right to enter upon any land to make surveys, and may locate the necessary irrigation works, and the line for any canal or canals, and the necessary branches thereof, on any lands deemed best for such location. They have the

May acquire property by purchase or condemnation.

right to acquire by purchase or condemnation, or other legal means, all lands, waters, water rights, and other property necessary for the construction, use, supply, maintenance, repair, and improvement of said canal, canals, and works, including canals and works constructed or being constructed by private owners, lands for reservoirs, and all necessary appurtenances. In case of purchase, the bonds of the district hereinafter authorized may be used at par in payment; and in

Payment.

Power of board to construct works.

case of condemnation they must proceed under the code of civil procedure. The board may construct the necessary dams, reservoirs, and works for the collection of the water of the district, and do all lawful acts necessary that sufficient water may be furnished to each landholder for irrigation purposes. The use of the water required for irrigation, with the rights of way for canals, ditches, reservoir sites, and all other property required, is declared a public use, subject to regulation and control of the State in manner as prescribed by law.—Sec. 12, as amended by Laws of 1891, pp. 145, 146.

The legal title to property acquired is vested by operation of law in such irrigation district and held by it in trust for the uses and purposes of this act. And the said board is authorized to acquire, hold, use, manage, occupy, and possess said property as herein provided.—Sec. 13 of said act of 1887.

Title to property.

The board is authorized to take conveyances or other assurances for all property acquired by it to and for the uses and purposes herein expressed, and to institute and maintain all actions and proceedings, suits at law or in equity necessary or proper to carry out the provisions of this act, or to enforce, maintain, protect, or preserve any and all rights, privileges, and immunities created by this act or acquired in pursuance thereof. And in all courts, suits, and proceedings the board may sue, appear, and defend, in person or by attorneys, in the name of such irrigation district.—Sec. 14.

Board may take conveyances, bring actions, etc.

*Issuance of bonds and provision for payment.*

For the purpose of constructing necessary irrigating canals and works, and acquiring the necessary property and property rights therefor, and otherwise carrying out the provisions of this act, the board of directors must, as soon as practicable after the organization of the district, and whenever the construction fund has been exhausted by expenditures herein authorized therefrom, and the board deem it necessary or expedient to raise additional money for said purposes, estimate and determine the amount of money necessary to be raised, and shall immediately thereafter call a special election, at which shall be submitted to the electors of such district possessing the qualifications prescribed by this act the question whether or not the bonds of said district in the amount as determined shall be issued. Notice of the election must be given by posting in three public places in each precinct, for at least twenty days, and publication once a week for three successive weeks in some newspaper published in the county in which the office of the board of directors is required to be kept. These notices must specify the time of holding the election and the amount of bonds proposed to be issued; and the election must be held and the result determined and declared as nearly as practicable in conformity with the provisions of this act governing the election of officers, but no informality is to invalidate it if it is otherwise fairly conducted.

Board to call special election.

Notice.

How election held and result determined.

If a majority of the votes cast are opposed to the issuance of bonds the result of the election shall be so declared and entered of record, and whenever thereafter the board in its judgment deems it for the best interest of the district that the question of the issuance of bonds in said amount, or any amount, shall be submitted to the electors it shall so declare of record in its minutes, and may thereupon submit such questions to the electors in the same manner and with like effect as at such previous election. If a majority of the votes cast are in favor of the issuance of bonds, the board shall cause bonds in said amount to be issued. Said bonds shall be payable in gold coin of the United States, in ten series, as follows, to wit: At the expiration of eleven years 5 per cent of said bonds; at the expiration of twelve years 6 per cent; at the expiration of thirteen years, 7 per cent; at fourteen years, 8 per cent; at fifteen years, 9 per cent; at sixteen years, 10 per cent; at seventeen years, 11 per cent; at eighteen years, 13 per cent; at nineteen years, 15 per cent; at twenty years, 16 per cent; and shall bear interest at 6 per cent per annum, payable semiannually on the

Majority vote governs.

How bonds payable, and when.

- 1st day of January and July in each year. Principal and interest shall each be of the denomination of not less than \$100 nor more than \$500; negotiable in form, signed by the president and secretary, and with the seal of the board of directors affixed thereto. Each issue is to be numbered consecutively as issued, and the bonds of each issue to be numbered consecutively, and bear the date of their issue. Coupons for the interest are to be attached, signed by the secretary. The bonds are to express on their face that they are issued by authority of this act, stating its title and date of approval, and shall state the number of the issue of which they are a part. The secretary must keep a record of the bonds sold, their number, the date of sale, the price received, and the name of the purchaser.
- If the money raised by sale of all the bonds is insufficient for the completion of the plan of canal and works adopted, and additional bonds be not voted it is the duty of the board to provide for the completion of the plan by levy of assessments therefor. Any district which has outstanding bonds issued under a former law is allowed under this law to issue new bonds and exchange for the old ones on such terms as may be agreed on with the holders thereof, but such new bonds are not to be exchanged at less than par.—Sec. 15 as amended by Laws of 1891, p. 149.
- The board may sell bonds from time to time in such quantities as may be necessary and most advantageous, to raise money for the construction of said canals and works, the acquisition of said property and rights, and otherwise fully carry out the objects and purposes of this act.
- Before making such sale the board shall, at a meeting, by resolution, declare its intention to sell a specified amount of the bonds, and the day and hour and place of such sale, and cause the same to be entered in the minutes, and notice of the sale to be given by publication thereof at least twenty days in a daily newspaper in San Francisco, Sacramento, and Los Angeles, and any other paper at their discretion. This notice is for sealed proposals for the purchase of the bonds. The bonds are to be sold to the highest responsible bidder, and the board may reject all bids, and shall in no case sell any of the bonds for less than 90 per cent of the face value thereof.—Sec. 16.
- The bonds and the interest on them are to be paid by revenue derived from an annual assessment upon the real property of the district, and all the real property of the district is liable to be assessed for such payments.—Sec. 17.
- Section 18, as amended by Laws of 1891, pp. 244, 245, provides that the assessor must, between the first Monday in March and the first Monday in June in each year, assess all the real property in the district to the persons who own, claim, have the possession or control of the same at its full cash value. It directs the assessor to prepare an assessment book with appropriate headings, and gives directions for the listing of the property of the district under the proper heads with minuteness of detail.
- Section 19 authorizes the board of directors to allow the assessors as many deputies as may be necessary to enable him to complete the assessment within the time prescribed and fixes their compensation, which is to be paid out of the treasury of the district.
- Section 20 requires the assessor to complete his assessment on or before the first Monday in August and deliver the book to the secre-
- Denomination and form.
- How numbered.
- Record.
- Assessments to complete works.
- Exchange of bonds.
- Board may sell bonds.
- Notice of sale.
- Sealed proposals.
- How bonds paid.
- Assessment of property.
- Deputies.

tary of the board, who is to give notice of the meeting of the board of directors, acting as a board of equalization to equalize the assessments, by proper publication in each county in the district. During the publication of this notice the assessment book is to remain in the secretary's office for the inspection of interested parties.

Notice of equalization.

Section 21 constitutes the board of directors a board of equalization and gives direction for their meeting as such, and directs the secretary to extend the values, as equalized, into the proper columns and add the columns within ten days after the close of their session.

Directors equalize.

The board of directors are directed to levy an assessment sufficient to raise the annual interest on the outstanding bonds, and at the expiration of ten years from the issuing the bonds of any issue to increase the assessment to an amount sufficient to raise a sum sufficient to pay the principal of the outstanding bonds as they mature. The secretary of the board is directed to compute and enter in a separate column the respective sums in dollars and cents to be paid as an assessment on the property therein enumerated. When collected they are to be paid into the treasury and constitute a special fund, to be called the "bond fund of ——— irrigation district." If the board of directors neglect or refuse to cause such assessment and levy to be made, then, the assessment made by the county assessor and State board of equalization are to be adopted and to be the basis for assessments for the district, and the board of supervisors of the county in which the office of the board of directors is situated is to cause an assessment roll for the district to be made, and to make the levy required by this act in same manner and with like effect as if made by the board of directors, and all expenses incident thereto are to be borne by the district. If the collector or treasurer of the district refuse or neglect to perform their duties, then, the tax collector and treasurer of the county are to perform such duties and to be accountable upon their official bonds as in other cases.—Sec. 22, amended by Laws of 1891, p. 149.

Amounts to be assessed.

Bond fund.

When supervisors to levy tax.

The assessment upon real property is a lien against the property assessed from and after the first Monday in March in any year, and the lien for the bonds of any issue is a preferred lien to that for any subsequent issue, and such lien is not removed until the assessments are paid or the property sold for the payment thereof.—Sec. 23, amended by Laws of 1891, p. 23.

Lien of bonds.

The assessments are due and payable to the collector in November and December, and are payable in gold and silver coin, and become delinquent on the last Monday in December, after which 5 per cent collection fee must be collected for the use of the district.—Sec. 24, amended Laws of 1891, p. 245.

When assessments due and how payable.

Section 25, amended by Laws of 1891, page 246, gives directions as to publications of delinquent list and notice of sale, which must be published on or before the 1st day of February in each county in which any of the land may lie, sale to be made by the collector and to begin not less than twenty-one nor more than twenty-eight days from the first publication, at some point in the district designated by him.—Sec. 25, amended by Laws of 1891, p. 246.

Publication of delinquent list.

Section 26, amended by laws of 1891, page 246, relates to the manner of conducting the sales, the penalties to be collected by the collector, etc.

Tax sales.

The owner or person in possession of real estate sold may designate in writing what portion of the property is to be sold, but if not, the collector is to sell to the person who will take the least portion and

Owner may designate.

District may buy and sell again. pay the assessment and costs. And if there is no bidder the property is to be struck off to the district and duplicate of sale given to the treasurer. An irrigation district as a purchaser at a sale takes the same rights as a private purchaser, and may convey the property, subject to the right of redemption, by deed executed and acknowledged by the president and secretary of the board; but the authority to convey must be conferred by resolution of the board, entered in its minutes, and fixing the price, and sale is not to be made for less than the market value of the property. Certificates of sale are to be given, etc.—Sec. 27, amended by Laws of 1889, pp. 16, 17.

Memoranda of sale entered in book. Section 28 requires the collector, before delivering any certificate, to enter in a book a description of the land sold, corresponding with that in the certificate, date of sale, name of purchaser, amount paid, and to number the description on the margin of the book and put a corresponding number on the certificate. This book must be open to public inspection. Filing the certificate with the county recorder transfers the lien of the assessment to the purchaser.

Redemption. The property sold may be redeemed any time within twelve months. The collector must make full report of his sales, with names of persons entitled to redemption money, etc., to the board. Full details as to method of redemption are given, and it is provided that if the property is not redeemed within the twelve months, the purchaser, or his assignee, shall receive a deed.—Sec. 29, act of 1887.

Section 30 relates entirely to the recitals to be contained in the deed and the force to be given it as evidence of title.

Section 31 relates to the collector's certificate as prima facie evidence; and section 32 provides that no misnomer or other mistake relating to the ownership of the land shall vitiate the sale.

Section 33 prescribes the time and manner when, and how the collector shall make his settlement with the board and pay over to the treasurer.

Bonds not due may be purchased. The coupons as they fall due are to be paid from the bond fund. After ten years from the issuance of the bonds if the bond fund amounts to ten thousand dollars, the board of directors may direct the treasurer to pay such an amount of bonds not due as the money in said fund will redeem at the lowest value at which they may be offered for liquidation, after advertising four weeks for sealed proposals for redemption of such bonds. The board must accept the lowest bid not above par, and if the bids are equal the lowest numbered bond has the preference. If no bonds are so redeemed the money is to be invested by the treasurer, under direction of the board, in United States gold-bearing bonds, or in bonds of the State, and must be kept in the "bond fund," and may be used to redeem said district bonds whenever the holders may desire.—Sec. 34.

Money invested. The coupons as they fall due are to be paid from the bond fund. After ten years from the issuance of the bonds if the bond fund amounts to ten thousand dollars, the board of directors may direct the treasurer to pay such an amount of bonds not due as the money in said fund will redeem at the lowest value at which they may be offered for liquidation, after advertising four weeks for sealed proposals for redemption of such bonds. The board must accept the lowest bid not above par, and if the bids are equal the lowest numbered bond has the preference. If no bonds are so redeemed the money is to be invested by the treasurer, under direction of the board, in United States gold-bearing bonds, or in bonds of the State, and must be kept in the "bond fund," and may be used to redeem said district bonds whenever the holders may desire.—Sec. 34.

#### CONSTRUCTION OF IRRIGATION WORKS.

Board to advertise for bids. After adopting a plan of canal or canals, storage, reservoirs, and works, the board of directors are to give notice, by publication not less than twenty days in one newspaper in each of the counties of the district, if there be one published therein, and in such other newspapers as they deem advisable, calling for bids for the construction of such work, or any portion thereof, which portion must be particularly described in said notice; the notice must state that plans and specifications can be seen and examined at the office of the board, and that sealed proposals will be received by the board, that the contract will



be let to the lowest responsible bidder, giving time and place of opening proposals, which must be in public. The board may accept the lowest responsible bid, or reject all bids and readvertise, or may proceed to construct the work under their own superintendence. <sup>May reject all bids.</sup> Contracts for the purchase of material shall be awarded to the lowest bidder. Any contractor must give bond with good and sufficient sureties, to be approved by the board, payable to the district for its use, for twenty-five per cent of the contract price, conditioned for the faithful performance of his contract. The work must be done under the direction and to the satisfaction of the engineer, and be approved by the board.—Sec. 35, amended by Laws of 1891, pp. 146-7.

Claims are paid by the treasurer only after allowance by the board, upon warrant signed by the president and countersigned by the secretary; but the board may draw from the construction fund, from time to time, any sum in excess of twenty-five thousand dollars, and deposit in the county treasury of the county where the office is situated. <sup>Contractor to give bond.</sup> The county treasurer is required to receive the same and receipt for it, and place it to the credit of the district, and is responsible upon his official bond for its safe keeping and disbursement. He is to pay it out to the treasurer of the district, and only on the order of the board, signed by the president and attested by the secretary. <sup>How money paid out.</sup> He must report in writing on the second Monday in each month the amount of money in the county treasury, the amount of receipts for the month preceding, and the amounts paid out; which report must be verified and filed with the secretary of the board. <sup>Deposit with county treasurer.</sup> The district treasurer also must make a similar report on the first Monday of each month, which must be verified and filed with the secretary of the board. <sup>How drawn out.</sup>—Sec. 36.

The expense of purchasing and acquiring property and constructing works must be paid out of the construction fund. <sup>Reports of the county and district treasurers.</sup>

To defray the expense of organization of the district, and of the care, operation, management, repair, and improvement of such portions of the canal and work as are completed and in use, including salaries of officers and employes, the board may\* either fix rates of tolls and charges, and collect the same from all persons using said canal for irrigation and other purposes, or they may provide for the payment of said expenditures by a levy of assessments therefor, or by both said tolls and assessments; if by the latter method, the levy shall be made on the completion and equalization of the assessment roll, and the board shall have the same functions and powers for the purposes of said levy as now possessed by boards of supervisors. <sup>How property paid for.</sup> The procedure for collection of assessment by such levy shall conform in all respects to the provisions of this act relating to the payment of principal and interest of bonds herein provided for.—Sec. 37.

The board are given power to construct such works across any stream, water course, street, avenue, highway, railway, canal, ditch, or flume which the route of said canal may intersect or cross in such manner as to afford security for life and property; but are to restore the same, when so crossed or intersected, to its former state as near as may be, or in a sufficient manner not to have unnecessarily impaired its usefulness, and every company whose railroad shall be intersected or crossed by said works shall unite with said board in forming said intersections and crossings, and grant the privileges aforesaid; and if the parties can not agree on the amount to be paid therefor, or the points or manner of crossings or intersections, the same is to be determined as pro- <sup>How current expenses paid.</sup> <sup>May cross streams, highways, etc.</sup> <sup>May condemn right to cross railroads.</sup>

\* See constitution, art. 14, sec. 1.

vided herein in respect to taking of land. The right of way is given over and through any lands which are the property of the State, and all the waters and water rights belonging to the State within the district are given, dedicated, and set apart for the uses and purposes aforesaid.—Sec. 38.

State property given.

#### COMPENSATION OF OFFICERS, ETC.

Compensation of officers, how fixed.

The board of directors are entitled to \$4 per day each and 20 cents per mile in attending meetings, and actual and necessary expenses while engaged in official business under order of the board. The board are to fix the compensation of the other officers; but on petition of fifty, or a majority, of the freeholders of the district twenty days prior to a general election, the board must submit to the electors at a general election a schedule of salaries and fees to be determined by them.—Sec. 39.

Officers must not be interested in contracts.

No director or other officer is allowed to be interested directly or indirectly in any contract awarded by the board, or in the profits thereof; and any violation of this provision is a misdemeanor and works forfeiture of his office, and subjects the offender to a fine not exceeding \$500, or imprisonment in county jail not more than six months, or both.—Sec. 40.

#### SPECIAL ASSESSMENT—HOW ORDERED.

Notice and election.

The board of directors may, when in their judgment it is advisable, call a special election and submit to the electors the question whether or not a special assessment shall be levied to raise money for any of the purposes of this act. The notice must be given and election held as mentioned in section 15, given above. The notice must specify the amount to be raised and the purpose it is to be used for. If two-thirds or more of the votes are in favor of the assessment it is to be levied.

How rate determined.

The rate is determined by deducting 15 per cent for delinquencies from the aggregate assessed valuation of the district as it appears on the roll, and dividing the sum voted by the remainder of such aggregate assessed value. The assessment is then levied and collected in the same manner and at the same time as other assessments, and paid into the treasury for the purposes specified in the notice of such special election.—Sec. 41.

Levy and collection.

#### POWER TO INCUR DEBT.

The board of directors or other officers have no power to incur debt or liability of any kind in excess of the provisions of this act; and any debt or liability so incurred is void, except that for the purposes of organization, or for any of the purposes of this act, the board of directors may, before the collection of the first assessment, incur an indebtedness not exceeding \$2,000, and may cause warrants of the district to issue therefor, bearing interest at 7 per cent per annum.—Sec. 42, amended by Laws of 1891.

#### APPORTIONMENT OF WATER—WATER COMMISSIONERS—DIRECTORS.

Commissioners to apportion on certain days.

In case the volume of water in any stream is not sufficient to supply the continual wants of the entire country through which it passes and susceptible of irrigation therefrom, then it shall be the duty of the water commissioners, constituted as hereinafter provided, to apportion, in a just and equitable proportion, a certain amount of

water upon certain or alternate weekly days to different localities, as they, in their judgment, think best for the interest of all parties concerned and with due regard to the legal and equitable rights of all. Said water commissioners shall consist of the chairmen of the board of directors of each of the districts affected.—Sec. 43.

It is the duty of the board of directors to keep the water flowing through the ditches under their control to the full capacity of such ditches in times of high water.—Sec. 44.

To keep water flowing.

MISCELLANEOUS.

Navigation shall never be impaired by the operation of this act, nor shall any vested interest in or to any mining water right, or reservoirs or dams, now used by the owners or possessors thereof, in connection with any mining industry, or by persons purchasing or renting the use thereof, or in or to any other property now used directly or indirectly in carrying on the mining industry, ever be affected by or taken under its provisions, save that rights of way may be acquired over the same.—Sec. 45.

Navigation.

Vested rights.

None of the provisions of this act are to be construed as repealing or modifying the provisions of any other act relating to the subject of irrigation or water commissioners, or to authorize any person or persons to divert the waters of any river, creek, stream, canal, or ditch, from its channel, to the detriment of any person having any interest in such river, creek, stream, canal, or ditch, or the waters therein, unless previous compensation be ascertained and paid therefor, under the laws of this State authorizing the taking of private property for public uses.—Sec. 46.

Construction of act.

SUPPLEMENTAL ACTS.

Four acts supplemental to the above have been adopted. The first, approved February 16, 1889, provides for a change in boundaries in irrigation districts by including other lands therein; the second, approved at the same date, provides for the exclusion of lands from any irrigation district; the third, approved March 16, 1889, provides for the examination, approval, and confirmation of proceedings for the issue and sale of bonds under the act of March 7, 1887; and the fourth, approved March 10, 1891, relates to delinquent assessments and the redemption of property sold therefor.

INCLUSION OF OTHER LANDS.

The act for the inclusion of other lands, while authorizing change of boundary, provides that such change shall not impair nor affect the organization of the district, or its rights in or to property, or any of its rights or privileges; or affect or impair or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable had no such change of boundaries been made.—Laws of 1889, sec. 1.

No rights to be impaired.

The holders of title, or evidence of title, representing one-half of more of any body of lands adjacent to the boundary of an irrigation district, which are contiguous and which taken together constitute one tract of land, may file with the board of directors of the district a petition in writing praying that the boundaries of said district may be so changed as to include said lands therein. The petition is to describe the boundaries of said parcel or tract of land and describe

Procedure.

Petition.

the boundaries of the several parcels owned by the petitioners, if they are owners of distinct parcels, with as much particularity as is required when lands are entered by the county assessor in the assessment book.

The petition must contain the assent of the petitioners to the inclusion within the district of the lands described in the petition, alleging their ownership, and must be acknowledged in the same manner as conveyances of land are required to be acknowledged.—Sec. 2.

To be acknowledged.

Notice.

The secretary of the board of directors must give notice of the filing of the petition by publishing the same in the same manner and for the same time that notices of special elections for the issue of bonds are required to be published. The notice must state the filing of the petition, the names of the petitioners, a description of the lands mentioned in the petition, and the prayer of the petition, and must notify all persons interested or that may be affected by the change of boundaries to appear at the office of the board at a time named in the notice, and show cause why the change of boundaries proposed in the petition should not be made. The time specified in the notice must be the regular meeting of the board next after the expiration of the time for the publication of the petition. The petitioners must advance to the secretary the estimated costs of the proceeding.—Sec. 3.

Contents.

Hearing.

At the time and place mentioned in the notice the board are to hear the petition and objections in writing to the proposed change. The failure of any person interested to show cause in writing is deemed an assent on his part to the proposed change, or to part thereof. And the filing the petition is taken as an assent on the part of the petitioners to the inclusion in the district of the whole or any portion of their lands described therein.—Sec. 4.

Assent.

May require payment of sums equal to assessments.

The board may require, as a condition precedent to the granting of the petition, that the petitioners severally pay to the district such respective sums, as nearly as they can be estimated (by the board), as they or their grantors would have been required to pay to the district as assessments if such lands had been included in the district when originally formed.—Sec. 5.

Board may reject or grant petition.

The board may reject the petition if they deem it for the best interest of the district so to do. But if they deem it best that the boundaries be changed, and if no interested person shows cause to the contrary in writing, or, having shown cause, withdraws the same, the board may order that the boundaries of the district be so changed as to include the lands mentioned, or some part of them. This order must describe the boundaries as changed and the entire boundaries of the district as they will appear after the change is made; and for that purpose the board may cause a survey to be made of such portions of the boundary as they deem necessary.—Sec. 6.

Survey.

In case of objection.

If any interested person shows cause why the boundaries should not be changed, and does not withdraw the same, and if the board of directors believe the change to be for the best interest of the district, they are to adopt a resolution to that effect. This resolution is to describe the exterior boundaries of the lands which the board believe should be included in the district when its boundaries are changed.—Sec. 7.

Election ordered and held.

On the adoption of this resolution the board are to order an election to be held in the district to determine whether the boundaries shall be changed as mentioned in the resolution, and are to fix the time for the election and give the notice thereof. And the notice is to be given

and the election held, and the returns made and canvassed, and the result declared, in all respects as prescribed in the act of March 7, 1887, in case of special election to determine whether irrigation bonds shall be issued. The notice of election must describe the proposed change of the boundaries in such manner and terms that it can easily be traced.—Sec. 8.

If a majority of the votes cast are against the change in boundaries no further proceedings are to be taken. If the majority favor the change the board are to order the boundaries changed in accordance with the resolution of the board. The order must describe the entire boundaries of the district, and for that purpose the board may cause a survey to be made of such portions as they deem necessary.—Sec. 9.

The majority decides the question.

A certified copy of this order must be filed for record in any county in which are situated any of the lands of the district, and therefore the district is to be and remain an irrigation district as fully to every intent and purpose as if the lands included therein by the change had been included therein on the original organization of the district.—Sec. 10.

Order recorded.

The secretary is to record the petition in the minutes of the board, and the minutes or a certified copy thereof shall be admissible in evidence with the same effect as the petition.—Sec. 11.

Petition to be recorded.

A guardian, executor, or administrator appointed under the laws of the State, and who as such is entitled to the possession of the lands belonging to the estate, may, on behalf of his ward or the estate he represents, on being authorized thereunto by the proper court, sign and acknowledge the petition or show cause why the boundaries should not be changed.—Sec. 12.

Power of guardian or administrator.

After the inclusion of other lands in any district the board of directors must, at least thirty days prior to the next general election, redivide the district into five divisions as nearly equal in size as practicable, numbered from first to fifth, consecutively, and a director for each district shall thereafter be elected.

District must be redivided.

Convenient election precincts are to be established, as the board may deem necessary.—Sec. 13.

#### EXCLUSION OF OTHER LANDS.

The second supplemental act mentioned above, relating to the exclusion of lands from the district, gives the procedure necessary for such exclusion, and provides that "neither such change of boundaries nor such exclusion of lands from the district shall impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatever kind or nature; nor shall it affect, impair, or discharge any contract, obligation, lien, or charge for or upon which it was or might become liable or chargeable had such change of its boundaries not been made, or had not any land been excluded from the district." The procedure is substantially the same as that given above for the inclusion of other lands, with variation as to the method of giving notice of the filing and pendency of the petition, requiring publication of the notice in some newspaper published in each of the counties in which any portion of the district is situated; but if no newspaper is published in any one of the counties, then notices must be posted in at least three public places in the district, one of which must be posted on the lands proposed to be excluded. But if there be any outstanding bonds against the district, then before an order of exclusion can be made, and before the question of exclusion can be

Procedure substantially as above.

Outstanding bonds.

submitted to the electors, the assent in writing of the bondholders to the exclusion "acknowledged by the several holders of such bonds in the same manner and form as is required in case of a conveyance of land," must be filed with the board and recorded in its minutes; and if such assent be not filed the board must dismiss the petition.—Sec. 6, Laws of 1889, p. 23.

Office of director to become vacant, when.

In case of the exclusion of lands from the district under this statute, if the lands excluded embrace the greater portion of any division or divisions in the district, then the office of director for such division or divisions shall become vacant at the expiration of ten days from the final order of the board, and such vacancy or vacancies shall be filled by appointment by the board of supervisors of the county where the office of the board of directors is situated, from the district at large.—Sec. 10, p. 24, Laws of 1889.

District to be again divided.

But, thirty days before the next general election, the board of directors must again divide the district into five divisions, and establish convenient election precincts as provided in case of the inclusion of other lands.

Assessment may be refunded.

In case of the exclusion of any lands under this act the owners thereof are entitled to have such assessments as they may have paid to such district refunded to them; such payments to be made in the same manner as other claims against the district are paid, and from such fund or funds as the board of directors may designate.

[The above-mentioned act is found in the Laws of 1889, pp. 21-25, inclusive.]

#### ADJUDICATION OF BONDS.

The third supplemental act mentioned above authorizes the board of directors of any irrigation district, by procedure there given, to go into court and procure an adjudication and confirmation of their proceedings for the issue and sale of bonds under the act of March 7, 1887. As this is a matter not relating directly to water or water rights, or to the formation of irrigation companies or districts, or priorities of appropriation, but a court procedure merely, it is omitted. It is found in Laws of 1889, pp. 212 and 213.

The fourth supplemental act—found in Laws of 1891, pp. 53 and 54—relates solely to property sold for delinquent assessments under the act of March 7, 1887, and the redemption of the same, and is omitted for like reason.

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WASHINGTON.

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## CONTENTS.

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	Page
Constitutional provision .....	75
Statutory enactments .....	75
Rights declared or granted .....	75
Procedure of appropriation .....	76
Rights of way and how obtained .....	78
Condemnation of water rights .....	79
Apportionment of water .....	79
Irrigation districts—water commissioners .....	80
Rights and duties of appropriators .....	81
Protection of property .....	82
Adjudication of priorities of appropriation .....	82
Measurement of water .....	82
Miscellaneous .....	82



## WASHINGTON.

### CONSTITUTIONAL PROVISION.

The use of the waters of this State for irrigation, mining, and manufacturing purposes shall be deemed a public use.—Art. XXI, sec. 1.

### STATUTORY ENACTMENTS.

The water laws of Washington consist of Title 20 of the General Statutes of 1891, and include four chapters. Chapter 1 is of the right to appropriate water for manifold purposes, chapter 2 of the right to appropriate water for irrigation, chapter 3 of the organization of irrigation districts and sale of their bonds, and chapter 4 is of the measurement of water.

Chapter 3 is in substance the law of California given above, and will therefore be omitted. The provisions of the other three chapters relative to the subject of irrigation appear in substance below. Details of procedure in condemnation of rights and in adjudication of priorities are omitted.

### RIGHTS DECLARED OR GRANTED.

The right to the use of water in any lake, pond, or flowing spring, or the right to the use of water flowing in any river, stream, or ravine, for irrigation, mining, or manufacturing purposes, or for supplying cities, towns, or villages with water, or for water works, may be acquired by appropriation, and as between appropriations the first in time is first in right.—G. S. of 1891, sec. 1709.

Priority.

Any person may take from any of the natural streams or lakes in the State water for the purpose of irrigation, not heretofore appropriated or subject to rights existing at the time of the adoption of the constitution, subject to the conditions and regulations of law, provided that the use shall at all times be deemed a public use and subject to condemnation as the legislature may from time to time provide.—Sec. 1718.

Surplus water.

Persons who claim, own, or hold a possessory right or title to land within the State, on the banks of any natural stream are entitled to the use of any water of said stream not otherwise appropriated, for irrigation, to the full extent of the soil for agricultural purposes.—Sec. 1719.

Unappropriated waters.

A person owning a claim in such locality without sufficient length of area exposed to the stream to obtain sufficient flow for irrigation of his land is entitled to the right of way through intervening lands, or through those above and below him on the stream, for the purpose of such irrigation, but limited to the necessity of the case, and for construction, repair, etc.—Secs. 1720, 1721.

Right of way and its extent.

A person having possessory right to land in the vicinity of a natural stream or lake not abutting on the same may take water therefrom if there be any unappropriated, and is entitled to condemn right of way

Surplus water.

Right of way.

from point of appropriation to his land, with right of ingress or egress to construct, repair, and maintain his ditch.—Secs. 1724, 1725.

When right of appropriation attaches.

When a ditch or canal is dug from a natural stream or lake to carry water for irrigation, the appropriator is entitled to take the water not appropriated at the time the construction of the ditch is begun; but he must not keep or store by virtue of his ditch any more water than is used for purposes of irrigation.—Sec. 1728.

See section 1712, cited below.

Natural stream to conduct water.

A natural stream or lake may be used as a water course to conduct water, but not so as to raise the water above high-water mark; and due allowance must be made for evaporation and seepage, the amount of seepage to be determined by the commissioners of irrigation of the district, if any; if not then by county commissioners upon application of anyone interested.—Sec. 1730.

Machines to raise water.

Persons on the margin, brink, neighborhood, or precinct of a natural stream or lake have the right to place on the bank a steam pump or machine to raise the water to the required level, and are entitled to condemn right of way for the water over intervening land between the point of division and the place of use.—Sec. 1731.

Waste and seepage waters.

Ditches constructed, or that may be constructed, for utilizing the waste seepage or spring waters of the State are covered by the same laws as those constructed for utilizing the water of natural streams and lakes; but the person on whose lands the seepage or spring waters rise has the prior right to such waters, if capable of use on his land.—Sec. 1732.

Lands watered by seepage.

Persons who have enjoyed the use of the water of any stream or lake for irrigation by natural overflow or seepage, in case of diminution of the water from any cause, so as to prevent such irrigation in as ample a manner as formerly, have the right to construct ditches for irrigation of the same land from such stream or lake, and are entitled to the same priority as though such ditches had been constructed at the time of the use and occupancy of the land.—Sec. 1733.

Transfer of water rights.

The right to use water, acquired by appropriation, may be transferred like other property by deed.—Sec. 1714.

Vested rights.

Appropriations heretofore made for any of the purposes of this chapter (chapter 1) are recognized, but this act shall not be construed to interfere with vested rights.—Sec. 1715.

Purpose may be changed.

Water appropriated for any of the purposes in this chapter mentioned (chapter 1, including irrigation purposes) may be changed to any other purpose herein specified, or to any other beneficial use, and the right to such use shall relate back to the original appropriation.—Sec. 1717.

Corporations may construct ditches and take water, etc.

Any corporation organized under laws of the State for the construction of ditches or canals for irrigation, or any person, association, or firm, may construct irrigating canals, ditches, or flumeways for the purpose of carrying water from any natural stream, reservoir, or lake, and may condemn the right of way therefor, for the purpose of furnishing water to persons on the line of their ditch or its lateral branches for irrigation, whether he or they own any land on said lines or not.—Sec. 1772.

#### PROCEDURE OF APPROPRIATION.

Notice.

Any person, persons, or association desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended storage or diversion stating: (1) That such appropriator

claims the water there lying, being, or flowing to the extent of one cubic foot of water per second of time, or some multiple or some fractional portion thereof; (2) The purpose for which said water is appropriated, and the place or places, as near as may be, of intended use; (3) The means by which it is intended to store or direct the same. A copy of the notice must, within ten days after it is posted, be filed for record in the office of the county auditor of the county in which it is posted.—Sec. 1710.

Contents of notice.

If the proposed use is by storage the appropriator must commence the construction of his works within three months after the notice is posted. If by diversion he must begin the excavation, or construction of works, within six months after the notice is posted. The work must be diligently and continuously prosecuted to completion, unless temporarily interrupted by the elements.—Sec. 1711.

Diligence required.

By strict compliance with above rules the right to water actually stored or diverted relates back to the time the notice was posted; but a failure to comply deprives the appropriator of the right to the use of the water as against a subsequent appropriator who faithfully complies with the same.—Sec. 1712.

Effect of compliance; of failure.

See section 1728, cited above.

Persons who have heretofore appropriated water, and have not constructed works or diverted and applied the water, are required to proceed as provided in this chapter within thirty days, or their right ceases.—Sec. 1713.

Appropriations made, but not applied.

(This act took effect March 9, 1891.)

The provisions of sections 1710, 1711, 1712, and 1713 do not apply to appropriations made prior to the passage of this act or to water rights existing at the date of its passage; but in appropriations for irrigation begun but not completed prior to this act the appropriator shall comply with said sections; and said sections are not to interfere with the vested rights of any irrigation district now organized.—Sec. 1716.

Appropriations begun.

Vested rights.

Every person constructing or enlarging a ditch or canal, and taking water directly from any natural stream or lake, and of the carrying capacity of one cubic foot of water per second, as so constructed or enlarged, must, within ninety days after the construction or enlargement, file in the office of the county clerk in which the head gate of the ditch is situated a map showing the point of location of the head gate, the route of the ditch, the legal subdivisions of land on which the structures are built or to be built, if on surveyed lands, the names of their owners, so far as of record in the office of the county clerk of the county where situate, and such courses, distances, and corners, by reference to legal subdivisions, if on unsurveyed lands, as will clearly designate the location of such structures. Upon or attached to the map must be a statement showing: (1) The point of location of the head gate; (2) the depth, width, and grade of such ditch or canal; (3) the carrying capacity of such canal in cubic feet per second; (4) the time of commencement of work on such structures, which may be dated from the commencement of the surveys therefor.

Map to be filed.

Must show what.

Statement attached.

Such statement must also show the matters required in items second, third, and fourth above, as to the enlargement—in case of construction and enlargement—and shall state the increased capacity from such enlargement. If this statement is filed within the time above limited, priority of way and water date from the day named as commencement of the work, otherwise only from the filing; but nothing herein is to be taken as dispensing with due diligence in the prosecution.

Must show what.

- How signed. tion of the work. Such statement is to be filed by the person on whose behalf it is made and the truth of the matters shown in it and in the map is to be verified by some one having personal knowledge of the matters.—Sec. 1759.
- Diligence. This chapter (chapter 2) only applies to irrigating ditches, but all rights are forfeited under it unless due diligence is used in the construction or enlargement.—Sec. 1760.
- Claim of interest must be filed. In order to protect all parties in their legal rights to use of water for irrigation, every person owning or claiming any interest in any ditch is required on or before June 1, 1890, to file with the clerk of the superior court a statement of his claim under oath, containing the name or names of the persons claiming ownership to the ditch, the name of the ditch, if any; and, if not, a name shall be chosen, a description of the ditch as to location of head gate, general course of ditch, name of stream or lake from which it is supplied, length, width, breadth, and grade as near as may be, the date of appropriation by original construction, and by enlargement or extension, the amount of water claimed by or under such construction, enlargement, or extension, and present capacity of the ditch, and the number of acres lying under it and proposed to be irrigated or now irrigated by it, and said statement is to be signed by the proper party or parties.—Sec. 1776.
- To contain what.

## RIGHTS OF WAY AND HOW OBTAINED.

- May be condemned. Upon the refusal of the owner of lands through which it is proposed to run a ditch to permit the passage of the same through his property, the person desiring to open the ditch may proceed to condemn the right of way therefor under the provisions of this chapter, hereinafter given, for condemnation of water and rights of way.—Sec. 1722.
- From artesian well. A person entitled to water from an artesian well may condemn the right of way for a ditch to convey the water for the purpose of irrigation over lands intervening between such well and the place where the water is sought to be used; sufficient to convey the water, with the right of ingress and egress, to construct, maintain, and repair the ditch.—Sec. 1735.
- Over intervening lands. All persons, associations, and corporations "entitled to the use of water under the provisions of this chapter," where the right of way over intervening lands is necessary to the use of such water, may condemn the right of way for such ditch or ditches.—Sec. 1751.
- For flumes and conduits. The owners of a spring, or appropriations of water from any spring, stream, or lake, desiring to conduct the waters to any land for irrigation, where in order to accomplish such object it is necessary to cross with ditches, flumes, or other conduits the lands of others, may acquire the right of way by condemnation in the manner provided in this chapter.—Sec. 1754.
- May extend head of ditch upstream and condemn right of way. If the channel of a natural stream or lake has become so cut, lowered, turned aside, or otherwise changed, from any cause, as to prevent any ditch or canal from receiving the proper inflow of water to which it is entitled, the owner shall have the right to extend the head of such ditch such distance up the stream or lake as may be necessary to secure a sufficient flow of water, and for that purpose may maintain proceedings to condemn the right of way for such extension as in case of construction of a new ditch and the priority of right to water shall remain unaffected by such extension, but such extension shall not interfere with the complete use or enjoyment of any other ditch or canal.—Sec. 1758.

No parcel of improved or occupied land can, without the written consent of the owner, be burdened with two or more irrigating ditches for the purpose of conveying water through it to lands adjoining or beyond it, when the same object can feasibly and practically be attained by conveying all the water in such ditch.—Sec. 1756. Only one ditch, when.

In condemnation of right of way the shortest and most direct route practicable upon which the ditch can be constructed, with uniform or nearly uniform grade, and discharge the water at a point where it can be conveyed to and used upon the land to be irrigated, must be taken.—Sec. 1757. Shortest route.

The procedure of condemnation is practically the same as in other States. A petition describing the land to be crossed, stating the size of the proposed ditch, canal, or works, the quantity of land to be taken, the names of the owners or parties interested, and praying the appointment of three appraisers, is presented to the superior court of the county. Notice of the hearing of the petition is given by publishing or posting, as the case may be, and at the hearing the appraisers are appointed, unless good cause to the contrary is shown. Procedure.

The appraisers act under oath, hear the proofs and allegations of the parties, and view the premises and ascertain and certify the compensation to be paid for the use of the land, and for damage, if any, on account of injury to other portions of the land. Appraisers.

This certificate is recorded in the county clerk's office, and upon payment of compensation, or tender, or, in the absence of the party from the county, on deposit in the county treasury, the right of entry and of way accrues. An appeal to the superior court and trial by jury unless waived are allowed.—Secs. 1752, 1753. Certificate recorded.

#### CONDEMNATION OF WATER RIGHTS.

The water rights of persons in any natural stream or lake may be condemned by any person, association, or corporation for purposes of irrigation. The procedure of condemnation is substantially the same as for right of way.—Secs. 1761–1771, inclusive.

This right to condemn the use of water extends no farther than to the riparian rights of persons to the natural flow of water through lands upon or abutting said streams or lakes, as the same exists at common law, and is not intended in any manner to allow water to be taken from any person that is used by him for irrigation, or needed by him for that purpose.—Sec. 1774.\* Riparian rights only.

#### APPORTIONMENT OF WATER.

Where the volume of water in any natural stream is not sufficient to supply the continued wants of the entire country through which it passes, the judge of the superior court of the county through which it runs—or if it runs through more than one county, then the judge of the superior court of either county—shall appoint three commissioners to apportion in a just and equitable manner a certain amount Where volume of water too small.

Commissioners.

\* It is to be noted in respect to these condemnations for purposes of irrigation in various States that the statutory notice of intended condemnation is not required to be personal, but constructive, and that the necessity of taking the property for the proposed purpose is not required by the statute to be passed upon by the commissioners or jury, but would seem to be taken for granted. The public character of the use is fixed by statute or constitution.

of water, upon certain alternate days, in certain localities, as they may in their judgment think best for the interest of all, with due regard to the legal rights of all.—Sec. 1733.

When below usual supply. If at any time the supply of water in any natural stream or lake is below the usual supply in the same, the superior court of any county Commissioners. through which the same may flow shall, upon application of any person interested, appoint three commissioners who shall go immediately upon the stream or lake and apportion the water to the different persons entitled to the same, as they shall deem equitable and proper, having due regard to the vested rights of the persons so entitled; but said commissioners shall apportion to all persons upon said stream or lake water for domestic purposes before any water is allowed to be taken for irrigation; and in case of unusual drought they shall endeavor to apportion water to the persons entitled to it, so that the orchards and perennial plants on their farms shall be supplied with sufficient water to keep them alive.—Sec. 1726.

Water for domestic use.

For orchards, etc.

Basis of determination.

Pro rata reduction.

Court may appoint commissioners to determine whether ditch is receiving too much water.

Decision final.

Pro rata division in case of scarcity.

Vested rights to water, when called in question in any court or before any commissioners, are to be based and determined upon the usual volume of water annually flowing in the stream or lakes of the State, and when they are unusually low the rights of all parties to water are to be reduced in accordance with the reduction of the water in the stream or lake below its usual stage at the time of year when the particular matter is brought before the commissioner or court.—Sec. 1727.

The superior court of any county in which any ditch or part of the same, constructed in accordance with section 1728 (cited above) is situated, may, on application of any person interested, appoint three commissioners to determine whether or not more water is diverted by any ditch than is used, or than is properly to be used, during any season for purposes of irrigation, and the decision of the commissioners is final, and they have power to order and require the person having charge of the ditch to turn off such part of the water as they deem unnecessary for the use of the land cultivated and to be cultivated during such season by water from such ditch; and any failure on the part of the person controlling the ditch to comply with such order may be punished as a contempt of the court appointing the commissioners; and all persons constructing ditches and taking water take the same subject to this section and the laws of the State.—Sec. 1729.

When there is an insufficient supply of water in any ditch the consumers are required to take the same pro rata.—Sec. 1734.

#### IRRIGATION DISTRICTS—WATER COMMISSIONERS.

Each county a district.

Commissioners take oath and give bond.

Their duties.

Each county in the State constitutes an irrigation district and for each district a water commissioner may be appointed by the county commissioners, who shall fix his salary at their first meeting in each year. Such water commissioner holds his office for one year from the first day of March and is paid out of the county funds.—Sec. 1743.

He must take the oath of office within ten days of his appointment and give bond to the county for the faithful discharge of his duties in a penalty to be fixed by the board of commissioners.—Sec. 1744.

It is the duty of the said commissioners to divide the water in the natural streams and lakes of their districts among the several ditches taking water, when there is in said stream or lakes the average annual supply of water, according to the prior rights of each person respectively.

And it is the duty of the commissioner, in whole or in part, to shut and fasten, or cause to be shut and fastened by order to a sworn assistant, sheriff, or constable of the county in which the head gate is situated, the head gates of any ditch or ditches heading in any of the natural streams or lakes of the district, which, in time of scarcity of water, shall not be entitled to water by reason of the priority of the rights of others below them on the same stream or lake; but he must see that persons who, during a year when there is an average volume of water in the streams and lakes, are entitled to water out of any stream or lake, and can use the same without injuring others having a prior right, have sufficient water for domestic and stock purposes and for the preservation of orchards and perennial plants.—Sec. 1745.

Must fasten gates in time of scarcity.

Apportion water.

The water commissioner is to receive four dollars per day for each day actually employed not to exceed 120 days in any one year.—Sec. 1747.

Compensation.

See sec. 1743, *supra*.

In case of emergency he may employ one or more assistants, who shall take the same oath and obey his instructions, and receive \$3 per day.—Sec. 1748.

Assistants.

The commissioner shall not begin his work until called out by two or more ditch owners in writing, stating the necessity, and shall not continue after the necessity ceases.—Sec. 1749.

Begin work, where.

It is his duty to keep a book entitled "The register of priorities of appropriation of water rights for the water district of the county of \_\_\_\_\_, State of Washington," in which he shall enter and preserve the priorities of all persons taking water out of each particular stream or lake in his district, which said priority he shall determine from the decrees of any courts establishing priorities, or, where they are not established by decrees, from any other legal source from which he can obtain the same, arranging and numbering the same in consecutive order, according to the dates of each respective right.—Sec. 1750.

Register of priorities.

This record is his warrant of authority for regulating the flow of water in the various ditches in his district.—Sec. 1778.

RIGHTS AND DUTIES OF APPROPRIATORS.

The owner of any ditch shall carefully maintain the embankments so that the waters may not flood or damage the premises of others, and must make a tail ditch to return the water with as little waste as possible into the stream it was taken from.—Sec. 1737.

Embankments.

Tail ditch.

He must, when his ditch crosses the public highway, put a good substantial bridge, not less than 16 feet wide, over it, within three days after construction of the ditch across the highway, and if he fails to do so it is the duty of the supervisor of the road district to build it and call on the ditch owner to pay for it, and, if he refuses, such payment may be enforced by suit before a justice of the peace. And in such case the justice is to assess in addition ten dollars damages, which shall go to the supervisor for his trouble and expense in collecting.—Sec. 1738.

Bridges.

Ditch owners are required to erect and maintain in good repair head-gates at the heads of their ditches. Such head gates and the embankments to be of sufficient height and strength to control the water at all ordinary stages. The frame work must be not less than 4 inches square, and the bottom, sides, and gate of plank not less than 2 inches thick.—Sec. 1740.

Maintain head gates.

Owners of ditches are liable for all damages resulting from failure to comply with the provisions of this chapter.—Sec. 1741.

Liability.

Must keep Owners or constructors of irrigating works, and their successors in  
works in good interest, using and employing the same, whether they are upon lands  
repair. owned and controlled by them or on other lands, must carefully keep  
and maintain the same and the embankments, flumes, or other conduits  
by which the water is conducted, in good repair and condition, so as  
not to damage or injure the property or premises of others.—Sec. 1755.

## PROTECTION OF PROPERTY.

Interference Every person who shall willfully open, close, change, or interfere  
with head gates: with any head gate or water box, ditch, or dam, without authority, is  
how punished. deemed guilty of a misdemeanor, and upon conviction fined not less  
than \$50 nor more than \$500, or imprisoned not less than thirty days  
nor more than six months, or may be punished by both such fine and  
imprisonment, in the discretion of the court.—Sec. 1746.

Injuring prop- Any person who shall knowingly and willfully cut, dig, break down,  
erty; how pun- or open any gate, bank, embankment, or side of any ditch, canal, flume  
ished. feeder, or reservoir, in which such person may be joint owner, or the  
property of another, and used for the purpose of irrigating, mining, or  
domestic purposes, with intent maliciously to injure any person or asso-  
ciation, or for gain, unlawfully, with intent of stealing, taking, or caus-  
ing to run out any water for his profit or advantage, to the injury of  
any other person or corporation lawfully in the use of such property  
shall be deemed guilty of a misdemeanor and, on conviction, punished  
as provided in section 1746.—Sec. 1775.

Must not take During the irrigating season it is not lawful for anyone to run any  
more water than his land or the land of other persons, as provided in section 1772 (cited  
necessary. above), and for domestic and stock purposes. Willful violation of this  
section is a misdemeanor, and the penalty is a fine of not less than \$100  
nor more than \$1,000.—Sec. 1739.

## ADJUDICATION OF PRIORITIES OF APPROPRIATION.

The statute providing for adjudication of priorities of appropriation  
is substantially the same as that of Colorado, with the exception that  
there is no provision for the appointment of a referee. It is found in  
General Statutes, sections 1777 to 1782, inclusive.

See abstract of Colorado statutes.

## MEASUREMENT OF WATER.

Unit. The unit of measure for water for irrigation, mining, milling, and  
mechanical purposes in this State shall be a cubic foot of water per  
second of time.—Chap. 4, sec. 1862.

## MISCELLANEOUS.

Person. The word "person" wherever used in this chapter is construed to  
mean either a natural person, an association or a corporation, or to  
mean persons; and the word "he" to mean she, it, or they; and the  
word ditch to include and mean dike, flume way, or irrigating canal.—  
Sec. 1736.

Owner. The word "owner" is construed to mean owners, or persons having  
charge or control of the ditch, and liable as owner.—Sec. 1742.

Public car- A corporation, person, association, or firm constructing a canal as  
rier. authorized in section 1772 (cited under head of Rights declared) is  
deemed a public carrier, and subject to the regulations prescribed for  
such canal by the legislature from time to time.—Sec. 1773.



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MONTANA.

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## CONTENTS.

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	Page
Constitutional provisions.....	85
Statutory enactments .....	85
Rights declared .....	85
Priority of appropriation .....	86
Procedure of appropriation .....	87
Rights of way and how obtained .....	88
Rights and duties of appropriators.....	89
Protection of property .....	90
Measurement of water .....	90
Adjudication of priorities.....	91

# MONTANA.

## CONSTITUTIONAL PROVISIONS.

The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, distribution, or other beneficial use, and the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts, necessarily used in connection therewith, as well as the sites for reservoirs necessary for collecting and storing the same, shall be held to be a public use.—Art. III, sec. 15.

Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for, the owner.—Art. III, sec. 14.

## STATUTORY ENACTMENTS.

The statutory enactments of Montana on the subject of irrigation consist of the Territorial statutes, in force at the time of the adoption of the State constitution, which were continued in force by the schedule of the constitution, and "An act to define the mode of procedure in relation to the right of way for ditches, flumes, or canals for irrigating and other purposes," adopted by the State legislature, and approved March 6, 1891.

## RIGHTS DECLARED.

Any person, corporation, or company, having a title or possessing right or title to any agricultural lands, are entitled to the use of the waters of the streams or creeks for the purpose of irrigation and making said land available for agricultural purposes to the full extent of the soil thereof: *Provided*, That in all cases where by virtue of prior appropriation any person may have diverted all the water of any stream, or to such an extent that there shall not be an amount left sufficient for those having a subsequent right to the waters of such stream for such purpose of irrigation, and there shall be at any time a surplus of such water so diverted, over and above what is actually used for such purpose by such prior appropriator, such person is required to turn and cause to flow back into such stream such surplus water; and upon failure to do so within five days after demand made upon him in writing by any person having a right to the use of such surplus water, such person so diverting the same shall be liable to the person aggrieved in the sum of \$25 for each and every day such water shall be withheld after such notice; to be recovered in a civil action.—Comp. Statutes of 1887; G. L., sec. 1239.

Landowner entitled to water of streams.

Surplus to be turned back.

When any person or persons, corporation, or company owning or holding land as provided in said section 1239 has no available water facilities upon the same, or whenever it may be necessary to raise the waters of said stream or creek to a sufficient height to so irrigate said

Right of way for ditches.

land, or whenever such lands are too far removed from said stream or creek to so use the waters thereof as aforesaid, such person or persons, corporation or company, shall have the right of way through and over any tract of land for the purposes of conducting and conveying said water by means of ditches, dikes, flumes, or canals, for the purpose aforesaid.—G. L., sec. 1240.

**Extent of such right.** Such right to dig and construct ditches, dikes, flumes, and canals over the lands of another shall only extend so far as necessary for the purposes required.—G. L., sec. 1241.

**Damages for right of way.** Any person, corporation, or company damaging the lands of another by reason of cutting or digging ditches, or canals, or erecting flumes, as provided by section 1240 (above), shall be liable to the party so injured therefor.—G. L., sec. 1244.

**Right to use water for other purposes recognized.** This article shall not be so construed as to prevent or exclude the appropriators (appropriation) of the waters of said streams or creeks for mining, manufacturing, or other beneficial purposes, and the right also to appropriate the same is hereby equally recognized and declared.—G. L., sec. 1246.

**Appropriation.** The right to the use of running water in the rivers, streams, canyons, and ravines of this territory, may be acquired by appropriation.—G. L., sec. 1250.

**Must be for beneficial purpose.** The appropriation must be for some useful or beneficial purpose; and when the appropriator or his successor in interest abandons and ceases to use the water for such purpose the right ceases; but questions of abandonment shall be questions of fact and determined as other questions of fact.—G. L., sec. 1251.

**Place and purpose of diversion may be changed.** The person entitled to the use of water may change the place of diversion if others are not injured thereby, and may extend the ditch, flume, pipe, or aqueduct by which the diversion is made to any other place than where the first use was made, and may use the water for other purposes than that for which it was originally appropriated.—Sec. 1252.

**Stream may be used as conductor.** The water appropriated may be turned into another stream, and then reclaimed, but water already appropriated by another must not be diminished in quantity, or deteriorated in quality.—Sec. 1253.

#### PRIORITY OF APPROPRIATION.

As between appropriators the one first in time is first in right.—Sec. 1254.

**Prior appropriation.** In all controversies respecting the rights to water, under the provisions of this chapter, the same shall be determined by the date of the appropriation, as respectively made by the parties.—Sec. 1242.

**Prior rights must be respected.** The waters of streams or creeks may be made available to the full extent of the capacity thereof for irrigating purposes, without regard to deterioration in quality or diminution in quantity, so that the same do not materially affect or impair the rights of the prior appropriator; but in no case shall the same be diverted or turned from the ditches or canals of such appropriator so as to render the same unavailable.—Sec. 1243.

**Rights not impaired.** This chapter shall not be so construed as to impair, or in any way interfere with, the rights of parties to the use of the water of such streams or creeks acquired before its passage.—Sec. 1245.

**Date of appropriation to determine controversy.** In all controversies respecting the right to water for mining, manufacturing, agricultural, or other useful purposes, the rights of the

parties shall be determined by the dates of appropriation respectively, with the modifications heretofore existing under the local laws, rules, or customs and decisions of the supreme court.—Sec. 1249.

PROCEDURE OF APPROPRIATION.

Whenever any three or more persons associate under the provisions of this chapter (or industrial corporations) to form a company to construct a ditch to convey water to any mines, mills, or lands, to be used for mining, milling, or the irrigation of lands, they shall in their certificate of incorporation, in addition to the matters required in section 446, specify the stream or streams from which the water is taken, the point or place on said stream at or near which the water is to be taken out, the line of said ditch as near as may be, and the use to which the water is intended to be applied.—G. L., sec. 473.

Certificate of ditch companies.

When any company shall organize under the provisions of this (the same) chapter for the purpose of constructing a flume, their certificate, in addition to the matter required in section 446, shall specify the place of beginning, termini, and route as near as may be, and the purpose for which the flume is intended; and when organized according to the provisions of this article, said company shall have the right of way over the line proposed in such certificate, provided it does not conflict with the rights of any former fluming, ditching, or other company.—Sec. 477.

Certificate of flume companies.

Any company formed under the provisions of this chapter for the purpose of constructing any ditch or flume shall, within sixty days from the date of their certificate, commence work on such ditch or flume, and shall prosecute the work with due diligence until it is completed, and the time of completion of any such ditch shall not be extended beyond three years from the time work was commenced; and any company failing to commence within said sixty days, or to complete within said three years, forfeits all right to the route so claimed, and the same shall be subject to be claimed by any other company. The time for the completion of any flume constructed under the provisions of this chapter shall not be extended beyond a period of three years.—Sec. 481.

When work to begin on ditch or flume.

Any person desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversion stating, first, the number of inches claimed, measured as hereinafter provided; second, the purpose for which it is claimed and the place of intended use; third, the means of diversion, with size of flume, ditch, pipe, or aqueduct in which he intends to divert it; fourth, the date of appropriation; fifth, the name of the appropriator. Within twenty days after date of appropriation the appropriator must file with the county recorder of the county in which the appropriation is made a notice of appropriation, which, in addition to the facts required to be stated in the posted notice, shall contain the name of the stream from which the diversion is made, if it have a name, and if not, such a description of the stream as will identify it, and an accurate description of the point of diversion on such stream with reference to some natural object or permanent monument. The recorded notice is to be verified by the affidavit of the appropriator, or some one in his behalf.—Sec. 1255.

Notice of appropriation to be posted.

To be filed.

The appropriator must proceed to prosecute the work by which the water is to be diverted within forty days after posting such notice and must prosecute it with reasonable diligence to completion. If

When work must begin.

- the ditch or flume, when constructed, is inadequate to convey the
- Excess of water.** of amount of water claimed in the notice the excess claimed above the capacity of the ditch or flume shall be subject to appropriation by any other person.—Sec. 1256.
- When right attaches.** A failure to comply with the provisions of this chapter deprives the appropriator of the right to the use of water as against a subsequent claimant who complies therewith, but by complying with the provisions of this act the right to the use of the water relates back to the date of posting the notice.—Sec. 1257.
- Former rights.** Persons who have heretofore acquired rights to the use of water shall, within six months after the publication of this act, file in the office of the recorder of the county in which the water right is situated a declaration in writing—except notice be already given of record as required—stating the same facts required in the notice provided for record in section 1255; such declaration to be verified as required in said section, in cases of notice of appropriation of water:
- May be established.** *Provided*, That failure to comply with this section may in no wise work a forfeiture of such heretofore acquired rights, or prevent any such claimant from establishing such rights in court.—Sec. 1258.
- Proviso.** *Provided*, That failure to comply with this section may in no wise work a forfeiture of such heretofore acquired rights, or prevent any such claimant from establishing such rights in court.—Sec. 1258.
- Record prima facie evidence.** The records provided for in sections 1255 and 1258, when duly made, shall be taken and received in all courts as prima facie evidence of the statements therein contained.—Sec. 1259.

## RIGHTS OF WAY AND HOW OBTAINED.

- Ditch company entitled to right of way.** Any ditch company formed under the provisions of this chapter (industrial corporations) shall have the right of way over the line named in the certificate, and the right to run the water of the stream or streams named in the certificate through their ditch: *Provided*, The proposed line shall not interfere with any other ditch whose rights are prior to those acquired under this article, and by virtue of said certificate; nor shall the water of any stream be diverted from its original channel to the detriment of any mines, mill men, or others along the line of said stream, who may have a priority of right.—Sec. 474.
- Flume company.** The same provision as to flume companies appears in section 477 PANV. given above. The mode of obtaining the right of way is given in the **Mode of procedure.** session laws of 1891, pp. 295 to 299, and is substantially the ordinary method of condemnation.
- Petition.** A petition is presented to the district court of the county, duly verified, setting out the facts, containing a particular description of the character and extent of the right sought, a description of the lands or claims of the petitioner, and the lands or claims to be affected by such right or privilege, with names of occupants or owners, and praying for such right of way. On filing petition citation is issued, **Citation.** with return day not less than ten days from the time of service thereof, requiring the land owners to appear, and show cause why the right of way should not be granted as prayed for; which citation must be **How served.** served in the same manner prescribed for service of summons. On the **Hearing.** return day of the citation, or an adjourned day, a hearing is had, and if the judge "is satisfied that the lands of the petitioner can only be conveniently supplied with water by means of the privilege prayed for," he makes an order "adjudging and awarding to the petitioner **Order** such right of way," and appointing three commissioners, disinterested residents of the county, to assess the damages.
- To assess the damages is the only province of the commissioners.

The commissioners act under oath, examine the premises, assess the damages, and make report to the court. For good cause shown the judge may set aside their report and appoint other commissioners.

Upon payment or tender of the damages assessed the petitioner is entitled to the right of way and may immediately occupy the same.

An appeal may be taken to the proper district court, but such appeal brings before the appellate court only the propriety of the amount of damages, and may be tried by the court or before a jury. The prosecution of the appeal is not to hinder or delay the appellee from proceeding with his work if he files with the clerk of the court in which the appeal is pending a bond to be approved by the clerk conditioned to pay the appellant whatever amount he may recover.

The costs and expenses of the proceeding are to be paid by the applicant; but if he shows in his application that before commencing proceedings he tendered the land owner a sum equal to or more than the damages awarded, then the costs and expenses are to be paid by the land owner.—Laws of 1891, pp. 295-299.

#### RIGHTS AND DUTIES OF APPROPRIATORS.

Every ditch company is required to keep the banks of their ditch in good condition, so that the water will not be allowed to escape from the same, to the injury of any mining claim, road, ditch, or other property, and whenever it is necessary to convey any ditch over, across, or above any lode or mining claim the company shall, if necessary to keep the water of said ditch out from any claim, flume the ditch, so far as necessary to protect such claim or property from the water of said ditch.—G. L., Sec. 476.

Any person, corporation, or company constructing ditches, dikes, flumes, or canals across any public highway shall be required to keep the same in good repair at such crossings or other places where the water from any such ditches, dikes, flumes, or canals may flow over or in anywise injure any roads or highways, either by bridging or otherwise.—Sec. 1247.

Any person offending against said section 1247 forfeits on conviction thereof for every such offense not less than \$25 nor more than \$100, to be recovered with costs, in civil action, in the name of the Territory (State), before any court having jurisdiction. One-half the fine goes to the county treasurer for the benefit of the common schools of the county, and the other to the informer, and the same is collected without stay of execution, and the delinquent may be committed to the county jail till fine and costs are paid.—Sec. 1248.

Any company constructing a ditch under the provisions of this chapter (on industrial corporations) shall furnish water in the manner named in the certificate in the manner the water is designated to be used, whether miners, mill men, or farmers, whenever they shall have water in their ditch unsold, and shall at all times give the preference to the use of the water to the class of persons so named in the certificate; the rates at which the water shall be furnished to be fixed by the county commissioners or the tribunal transacting county business as soon as such ditch shall be completed and prepared to furnish water.—Sec. 475.

Any person, company, or corporation having right to use and sell water, and having a surplus on hand unsold and unused, is required, upon payment or tender of an amount equal to the customary rates per inch, to sell such surplus, so long as such surplus of unused or unsold water shall exist and such tender be made.—Sec. 1263.

Judge may set aside report of commissioners.

Appeal.

No delay, when.

Costs and expenses.

Ditches to be kept in good condition.

To be flumed.

Highways to be protected.

Penalty for violation of previous section.

How company to furnish water.

How rates to be fixed.

Sale of water.

- Sale of water.** Parties desiring to so purchase are required to construct their own flumes or ditches that receive and convey the water and pay or tender to the person or persons having the right to sell the same an amount equal to the necessary cost of tapping the gulch, stream, reservoir, ditch, flume, or aqueduct, and putting in gates, gauges, or other proper appliances, and delivery of such surplus water can not be required until this is done.—Sec. 1264.
- Same.** The person constructing the necessary ditches, etc., mentioned above and making the tenders or payments is entitled to the use of so much of said surplus water as his said ditches, flumes, or aqueducts shall have the capacity to carry, with all the rights and privileges incidental thereto, as long as said unsold water exists, and such payment or tender may have been made, and may maintain the appropriate action to enforce such right or recover damage for failure to deliver.—Sec. 1265.
- Limitation to right of sale.** Nothing in this chapter is to give the party acquiring the right to the use of water, as hereinbefore provided, the right to sell the same after being so used by them, or prevent the original proprietor from retaking, selling, and disposing of the same in the usual and customary manner, after it is so used as aforesaid.—Sec. 1266.

## PROTECTION OF PROPERTY.

- Unlawful diversion of water.** Any person who diverts from a water course or ditch any water, and thereby deprives another of the use of water to which he is entitled by law, and refuses immediately to relinquish the water so diverted upon demand of the person to whom it rightfully belongs, is deemed guilty of a misdemeanor, and, on conviction, may be fined in any sum not exceeding \$100, or imprisoned in the county jail not exceeding three months, or both, in discretion of the court.—Sec. 171.
- Preventing lawful diversion of water.** If any person by force or threats or intimidation, or putting in fear with arms or otherwise, near or upon any water course or ditch, prevent or seek to prevent any person from obtaining any water to the use of which he is entitled by law, and which he then desires for some useful purpose, or by said means shall prevent or seek to prevent any person lawfully entitled to the use of water from diverting the same as he may desire, when and where he may desire for a useful purpose, he shall be deemed guilty of a felony, and, on conviction, shall be imprisoned in the Territorial (State) prison not less than one year, nor more than five years.—C. L., Sec. 172.
- Penalty for damaging corporate property.** Any person willfully or maliciously damaging or interfering with any road, ditch, flume, bridge, ferry, telegraph line, or any of the fixtures, tools, implements, appurtenances, or property of the company shall be deemed guilty of a misdemeanor, and, on conviction, punished by fine or imprisonment, or both, at the discretion of the court; the imprisonment not to exceed one year and the fine not to exceed \$500; and the offender is likewise liable for all damages the corporation may sustain, with costs of suit.—G. L., Sec. 484.

## MEASUREMENT OF WATER.

- Measuring device, how constructed.** Measurement of water shall be conducted as follows: A box or flume shall be constructed with a head gate placed so as to leave an opening of 6 inches between the bottom of the box or flume and lower edge of the head gate, with a slide to enter at one side, and of sufficient width to close the opening left by the head gate, by means of



which the dimensions of the opening are to be adjusted. The box or flume shall be placed level and so arranged that the stream in passing through the aperture is not obstructed by backwater or an eddy below the gate; but before entering the opening to be measured the stream shall be brought to an eddy, and shall stand 3 inches on the head gate and above the top of the opening. The number of square inches contained in the opening shall be the measure of inches of water.—G. L., sec. 1262.

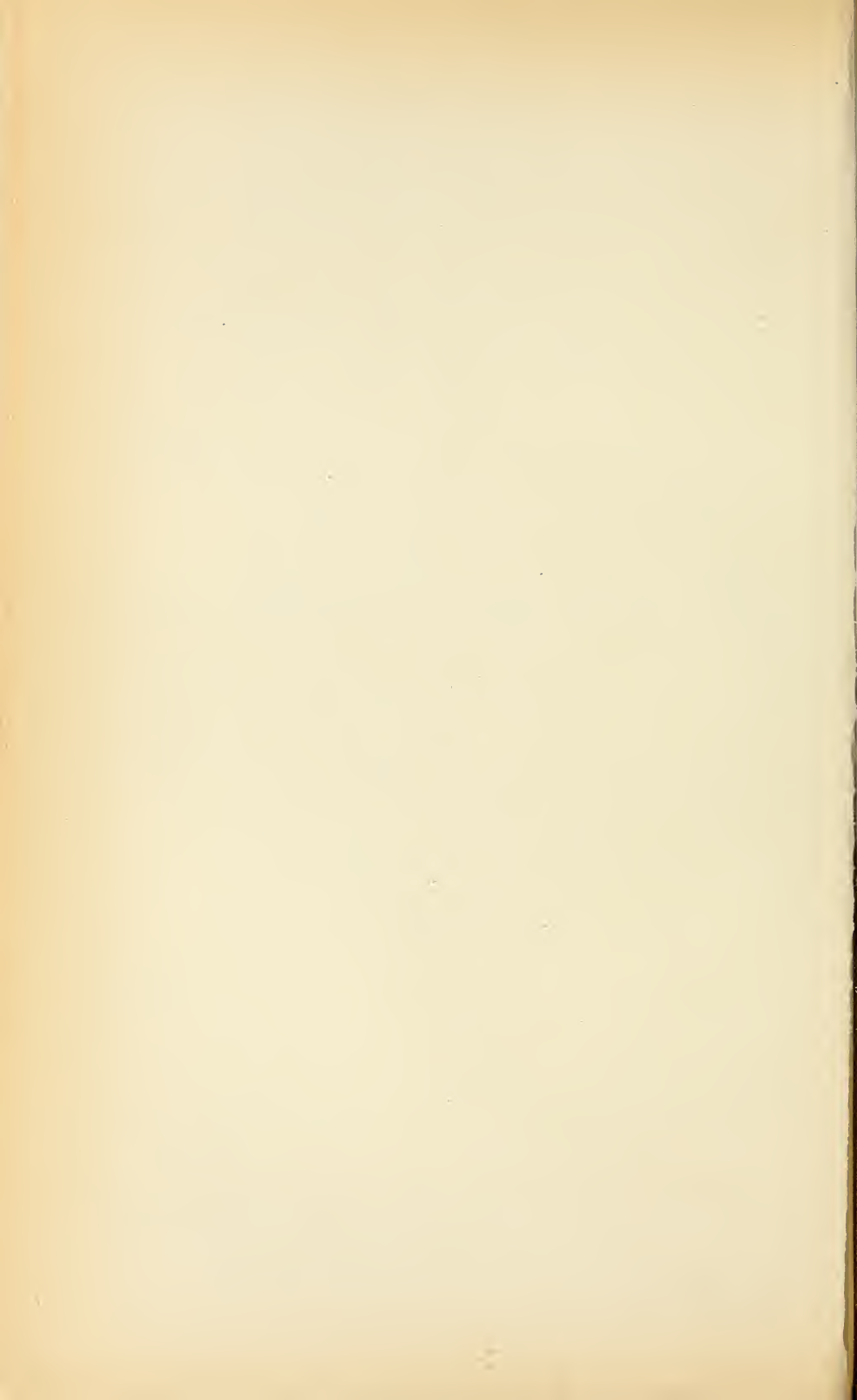
## ADJUDICATION OF PRIORITIES.

In any suit hereafter commenced for the protection of rights acquired to water under the laws of this Territory (State) the plaintiff may make any or all persons who have diverted water from the stream or source parties to such action, and the court may in one decree settle the relative priorities and rights of all the parties to such suit. When damages are claimed for the wrongful diversion of water in any such suit the same may be assessed and apportioned by the jury in their verdicts, and judgment thereon may be entered for or against one or more of several plaintiffs, or for or against one or more of several defendants, and may determine the ultimate rights of the parties between themselves. In any action concerning joint water rights or joint rights in water ditches, unless partition of the same is asked by parties to the action, the court shall hear and determine such controversy as if the same were several as well as joint.—G. L., sec. 1260.

Parties.

Decree.

Damages may  
be apportioned.



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KANSAS.

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## CONTENTS.

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	Page
Statutory enactments .....	95
Limit of damage for right of way, and difference in procedure of appropriation.	95
Subterranean waters .....	95
Artesian wells .....	96
Method of building embankments, dams, etc .....	97
Consumers may appoint superintendent .....	98
Rotation of water .....	98
Lien for irrigation .....	98
Creation of irrigation districts .....	99

# KANSAS.

## STATUTORY ENACTMENTS.

The irrigation laws of Kansas are found in the session laws of that State for the years 1885, 1886, 1889, and 1891. They are similar to the laws of Colorado in respect to the right of appropriation, the priorities of appropriators, the procedure of appropriation, the condemnation of rights of way, the rights and duties of appropriators, the regulation of water rates, the distribution of water, and the protection of property, though less elaborate and much less certain in method of enforcement. The elaborate machinery provided by the Colorado law, the division of the State into water divisions and irrigation districts, the offices of water commissioner, irrigation superintendent, and State engineer, and the elaborate provisions for adjudication of priorities are wanting. Some peculiarities appear, arising, at least in part, from the physical conformation of the State and the underground flow of water, which, in brief, will be presented below without giving full abstracts of the entire statutes.

Similarities to Colorado laws.

Differences.

### LIMIT OF DAMAGE FOR RIGHT OF WAY, AND DIFFERENCE IN PROCEDURE OF APPROPRIATION.

The procedure of appropriation is initiated, as in some other States, by posting a notice in a conspicuous place at the point of diversion, and by posting within ten days thereafter a copy thereof in the office of the county clerk, and recording a copy with proof of posting, in the office of the register of deeds.—Laws of 1886, p. 154; laws of 1891, p. 260.

In procedure of appropriation.

The right of way may be acquired over unoccupied lands by maintaining ditch, canal, flume, or aqueduct, constructed before the passage of the law, over the same for the period of five years succeeding such construction without objection in writing from the owner of the land, or subsequent claimant under the laws of the United States or the State of Kansas, such right of way not to exceed the total width of three times the width of such canal, ditch, flume, or aqueduct.—Laws of 1886, pp. 155, 156.

Right of way not to exceed three times width of ditch.

It is further provided that damages awarded for right of way of ditch, flume, canal, or aqueduct constructed over unoccupied lands of another, shall not exceed the value of the land occupied at the date of construction, and that neither the enhanced value of the land growing out of the construction of the works, nor the subsequent enhancement of its value through settlement made after construction shall be considered in estimating the damages for right of way; provided such canal was constructed with the knowledge and without the protest of the owner of the land.—Laws of 1886, p. 156.

Damages not to exceed value of land.

### SUBTERRANEAN WATERS.

All natural waters, whether standing or running, surface or subterranean, west of the ninety-ninth meridian are declared to be devoted,

Subject to diversion.

- first, to purposes of irrigation in aid of agriculture, subject to ordinary domestic uses, and, secondly, to other industrial purposes, and subject to be diverted from natural beds, basins, or channels for such purposes
- Vested rights. and uses; but no diversion is to interfere with, diminish, or divest any prior vested right of appropriation for the same or a higher purpose than that for which diversion is sought, without legal condemnation
- Lakes having and compensation: and natural lakes and ponds of surface water having no outlet. and no outlet are deemed part of the lands where situate, and the proprietors only are entitled to appropriate them.—Laws of 1891, pp. 223, 224.
- Prior appro- Water flowing in well-defined subterranean channels and courses, priation. or flowing or standing in subterranean sheets or lakes, are subject to appropriation with same effect as the water of superficial channels, and no person is allowed by<sup>s</sup> drains, ditches, fountains, subterranean galleries, or other works to collect and divert percolating waters manifestly supplying such subterranean supplies, to the prejudice of any
- No liability, prior appropriator thereof; but this statute is not to render any person when. liable in damages for the diversion or obstruction of the flow of subterranean waters by lawfully excavating for cellars, or for mining, quarrying, or carrying on like works on his own lands, nor to prohibit the proprietor of lands from sinking wells therein and collecting the waters percolating through lands, and by means of pumps, buckets, and other appliances withdrawing the same for beneficial uses on his own land; and any appropriation and diversion of subterranean waters which simply lower the water level without exhausting or seriously diminishing the actual and needful supply of any prior appropriator for domestic or other beneficial use is not considered an unlawful appropriation or diversion.—Laws of 1891, p. 225.
- No person is permitted to appropriate the waters of any subterranean supply which naturally discharge into any superficial stream, to the prejudice of any prior appropriator of the water of such superficial channel.—Laws of 1891, p. 225.

## ARTESIAN WELLS.

- Record to be Any person boring for an artesian well must keep, or cause to be kept. kept, a record of the work, setting forth the name and post-office address of the proprietor, or person causing the well to be bored, the name of the contractor, and of the person actually in charge of the work; the particular location, specifying the particular forty acres and the part thereof whereon the well is situated; if in any city or town the particular lot or block, or other subdivision upon which or nearest to which the same is situate; the date of commencement of the work in sinking or boring such well (which may be the commencement of the work of placing machinery therefor); all suspensions of the work and the duration and cause of such suspension, the time of completion of the work or final cessation thereof; the different strata passed through and the depth at which each shall be reached and passed as near as may be, showing also each flow of water obtained, and each vein of water or water-bearing stratum passed through, and the depth thereof from the surface, numbering each flow or vein of water consecutively from the surface, and the height to which or the distance from the surface, the water rises in such well after penetrating each separate flow or vein of water; and at the completion of the well, or at the cessation of work thereon, he shall, without first closing or shutting off the flow therefrom, cause to be ascertained the flow

thereof, if a flowing well, in cubic feet per second, or decimal fractions thereof; and within a period of thirty days next after the completion of such well, or the cessation of work thereon the proprietor thereof shall make or cause to be made, and file in the office of the register of deeds of the county a statement or certificate, verified by his affidavit or the affidavit of the party in charge of the work, setting forth all the matters aforesaid, the particular vein or flow of water claimed to be appropriated by means of said well, and the total amount of water so claimed to be appropriated in cubic feet per second or decimal fractions thereof, if such well be a flowing well (otherwise the distance from the surface at which the water customarily stands), what part or parts of said well is cased, and the interior diameter or diameters of such casing.—Laws of 1891, pp. 234, 235.

Statement to be filed.

Such statement or certificate may be recorded in any county or counties in addition to the county where the well is situated; and such record is notice to all parties sinking any artesian well in any such county of the priority of the appropriation of the water claimed in the certificate, and such priority may be enforced as against subsequent rights of appropriation in such counties.—Laws of 1891, p. 235.

Notice, where recorded.

Before such statement is filed such well shall be cased with a proper and sufficient casing so arranged and placed as to prevent the caving in of strata of clay, sand, or other unconsolidated matter carrying water, not apportioned (appropriated?) or claimed by the proprietor of such well; and shall be so cased as to prevent the escape of the waters thereof into such strata, and furnished with such appliances at or near the surface as will readily and effectually arrest and prevent the flow of water from such well.—Laws of 1891, p. 235.

Well to be cased.

No person controlling an artesian well is allowed to suffer the waters thereof to flow to waste, except so far as is reasonably necessary to prevent the obstruction thereof, or to flow or be taken therefrom except for beneficial uses; but the same may be used for the necessary irrigation of trees upon any street, road, or highway, or for ornamental ponds or fountains, or the propagation of fish.—Laws of 1891, p. 236.

Water of well not to be wasted.

#### METHOD OF BUILDING EMBANKMENTS, DAMS, ETC.

Dams or embankments built for the purpose of holding or conveying water, if built wholly or in part of timber or stone, and with a capacity to store water to a depth of more than 10 feet, or to a total quantity exceeding 3,000,000 cubic feet of water, must be constructed according to plans and specifications of some reputable engineer, who is required to file with the county clerk of the county a sufficient bond in a sum fixed by the county commissioners, conditioned that the dam or embankment shall be safe, adequate, and sufficient for the service required of it.—Sec. 15, p. 236.

Plans to be furnished by engineer.

Bond.

Every such dam or embankment built of earth and more than 10 feet high, must be constructed as follows: The place where it is to be constructed must be carefully cleared of all vegetable matter and debris of every kind, and thoroughly prepared by plowing or trenching or both, so that the earth composing said dam or embankment shall be firmly and closely united therewith at the ends and at the bottom; and the earth to be spread evenly and in layers not exceeding a foot in depth, and so dampened, tramped, packed, rolled, or trodden down as to form a thoroughly compact and homogeneous mass.—Sec. 16, p. 236.

How built.

A cross section of such dam shall be of the following proportions, viz: The width at the base shall measure not less than five times the

Cross section.

height, and the width at the top shall be not less than half the height, and the slope of the outer face shall be not more than 1 foot of rise to 1½ feet of spread; and the slope of the inner face, next to the water to be held back, shall be not more than 1 foot of rise to 3 feet of spread; but "nothing in this act is to prohibit the widening of the top of any dam or embankment by adding thereto material in addition to the proportions herein required." When necessary the inner face of the dam or embankment is to be faced with stone or timber, to resist wave action.—Secs. 17 and 18, p. 237.

No water is to be allowed to flow over any dam. Proper waste ways are to be constructed and kept always open when they are necessary.—Sec. 19.

#### CONSUMERS MAY APPOINT SUPERINTENDENT.

**Meeting of consumers to appoint.** The consumers of water under any lateral may at any time call a meeting, by notice in writing signed by not less than two, and may appoint a superintendent to such lateral, who shall be charged with the distribution of the water allotted to the lateral by the superintendent of the ditch, among those entitled to it. He is to hold his office during the pleasure of the consumers, and receive such salary as they may appoint.—Sec. 8, p. 233.

**Salary.**

#### ROTATION OF WATER.

**Consumers may agree.** Any number of consumers of water from irrigation works may agree in writing among themselves for the rotation of the water to which they are entitled, and the delivery upon particular days to certain customers and upon other days to others, but the rotation under such agreement must not be conducted in such a manner as to diminish the supply to other consumers. The proprietors of irrigation works may also, by consent in writing of their customers, agree to like rotation of water, from a common source, to their several works, but with like restriction as to the rights of others.—Secs. 22-24, pp. 238, 239.

**Proprietors may agree.**

**Copy to be given to superintendent.** Such agreement, or a copy of it, is to be delivered to the superintendent of the ditch or works and kept by him, and he is to distribute the water in accordance therewith. But no such agreement, if manifestly injurious to the proprietors of other works, or to the consumers of water therefrom, is to be permitted to go into effect; and if after experiment the execution thereof is found injurious to others further rotation of water under it is to be discontinued.—Secs. 25, 26, p. 239.

**Not to injure others.**

**Agreement may be set aside, when.** The proprietors of any canal or works, or any consumers of water therefrom, not parties to such agreement, may apply to the district court to set the same aside, and on hearing, after notice to interested parties, the judge may make such order in the premises as may be just; but pending such application the waters are to be rotated and distributed in accordance with the agreement. No such agreement is allowed to impair the rights of prior incumbrancers of the land irrigated, or the priority of rights of any persons as against those not parties to the agreement; and when such agreement is for more than one season it is to be recorded in the office of the register of deeds.—Secs. 27, 28, 29, pp. 239, 240.

#### LIEN FOR IRRIGATION.

**Contract by owner, agent, or wife.** Any person, association, or corporation which under contract with the owner of land, his agent, or trustee, or with the husband or wife of such owner, shall furnish water for irrigating any portion of said



tract of land, shall have a lien upon the whole crop grown upon said tract or parcel during the year the water is so furnished, for the full amount of the contract price.—Laws of 1885, p. 205, sec. 1.

#### CREATION OF IRRIGATION DISTRICTS.

In addition to the provisions mentioned above, Kansas, like Washington, has a law for the formation of irrigation districts with certain powers, similar to the law of California, given above, but different in important respects both from the law of California and from that of Washington. Different from the California law.

The most important of these differences are as follows:

1. The petition presented to the county commissioners for the formation of the district must be signed by three-fifths of the resident landowners of the proposed district and must be accompanied by a map or plat showing the tracts of territory to be erected into the proposed district, with a drawing and profile of the main ditch proposed, to the source of supply, and of all other ditches and laterals proposed to be constructed in the district, with an estimate by the county surveyor of the probable cost of building such main ditch and laterals, and all works necessary to be built to irrigate the lands in the district. In the petition.

2. The formation of the district is submitted to the qualified voters of the proposed district by proper notice, and the election is conducted in accordance with the general election laws of Kansas, but a three-fifths majority is sufficient to form the district; and the first officers, consisting of a president, secretary, and treasurer, constituting a board of irrigation commissioners, are appointed by the board of county commissioners; subsequent officers to be elected annually on the second Monday in December in each year thereafter. The majority required; and officers.

3. The irrigation district so formed has power to issue bonds for the purchase or construction of irrigation works, for a total amount not exceeding \$1 per acre for each acre of land irrigated from the works to be so purchased or constructed, and to levy a tax upon the real estate dependent for irrigation upon such works to pay the interest on such bonds and to create a sinking fund to pay the bonds at maturity. The limit to amount of bonds, and lands to be taxed.

4. The question whether such bonds shall be issued must be submitted to the qualified electors of the district by the board of county commissioners on a petition signed by not less than three-fifths of the resident landowners of the district, and a three-fifths majority of the votes cast is necessary to authorize the issue of the bonds. The majority required to authorize bonds.

5. The bonds when issued are signed by the president and secretary of the board of irrigation commissioners, and attested with the seal thereof, and countersigned by the chairman of the board of county commissioners and the county clerk, and attested with the seal thereof, and are duly registered; and are then deposited with the county treasurer and by him negotiated and sold at not less than par value, and the proceeds thereof are deposited in the county treasury to the credit of the irrigation district, and are paid out by the treasurer for the purchase or construction of irrigating works on an order signed by the president of the board of irrigation commissioners, and attested by the secretary of the board with the seal thereof. The execution and sale of bonds.

6. The irrigation commissioners may submit to the qualified voters, in the manner provided for the voting of bonds, a proposition to purchase irrigation works, particularly describing the works proposed to be purchased, and may purchase the same if so ordered by such elec- The power to purchase or build, but not to condemn.

tion, and they may also, when necessary to build irrigation works, let the same upon contract after advertising for bids; but the district has no power to condemn or acquire in any way, except by purchase, any irrigation works belonging to any other person, company, or corporation.

7. When irrigation works have been built or purchased the board of irrigation commissioners are authorized to fix rates for the waters, subject to the maximum rate to be fixed by the county commissioners, and to sell the same, and the money received for such sale is to be used in defraying running expenses of the works, and in repairs, and to create a sinking fund to pay the bonds. The treasurer of the irrigation board makes quarterly reports to the board, and if his report for June disclose to the board that there is not sufficient money in his hands to pay the necessary current expenses and pay interest on the bonds and create a sinking fund for the redemption of the bonds, then it is the duty of the board to levy a tax on all the real estate in the district dependent upon such works for irrigation to meet said expenditures, "as in this section specified."

The manner of providing sinking fund for payment of bonds.

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NEBRAŠKA.

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## CONTENTS.

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	Page.
Rights declared or granted.....	103
Priority of appropriation.....	103
Procedure of appropriation.....	103
Rights of way and how obtained.....	104
Ditch companies may borrow money.....	105
Internal improvements.....	105
Owners to maintain ditches and furnish water.....	106
Protection of property.....	106

## NEBRASKA.

The constitution of the State of Nebraska in force from November 1, 1875, has no provision relating to the subject of irrigation or water rights. The statutory enactments upon the subject are found in Chapter 68 of the general laws of the State for the year 1889.

### RIGHTS DECLARED OR GRANTED.

The right to the use of water flowing in a stream, canyon, or ravine, may be acquired by appropriation by any person or persons, company or corporation organized under the laws of Nebraska: *Provided*, That in all streams not more than 50 feet in width the rights of riparian owners are not affected by the provisions of this act.—Sec. 1 of Art. 1 of Chap. 68, Laws of 1889, p. 503. Appropriation of water.  
Riparian rights.

All persons, companies, and corporations owning or claiming any lands situated on the banks or in the vicinity of any stream are entitled to the use of the waters of such stream for the purpose of irrigating the land so held or claimed.—Sec. 1, Art. 2, Chap. 68, Laws of 1889, p. 506. Use for irrigation.

Any person or corporation having right or title to lands adjacent to a stream has a right to place in the channel or on the bank rams or machines for raising the water to a level above the banks requisite for the flow thereof upon his adjacent lands, and may acquire the right of way across the lands of others for conducting the waters in the same manner as prescribed in this article.—Sec. 5, Art. 2, Chap. 68. Machines for raising water.

The appropriation must be for some useful purpose, and the right ceases when it ceases to be so used.—Sec. 2, Art. 1.

No tract of land can be crossed by more than one ditch without the written consent of the owner, if the first ditch can be made to answer the purpose.—Sec. 3. Only one ditch.

All ditches, canals, and laterals, used for the purpose of irrigation, are exempt from taxation for State, county, or municipal purposes.—Sec. 4. Exemption from taxation.

The person, company, or corporation entitled to the use may change the place of diversion if others are not injured by the change, and may extend the ditch, flume, or aqueduct by which the diversion is made to places beyond that where the first use was made.—Sec. 5. May change place of diversion.

### PRIORITY OF APPROPRIATION.

As between appropriators the one first in time is first in right.—Sec. 7.

### PROCEDURE OF APPROPRIATION.

A person, company, or corporation desiring to appropriate water must post a notice in writing in a conspicuous place at the point of the intended diversion stating: First, that he, they, or it claims the water then flowing to the extent of (giving the number) inches, measured under a 4-inch pressure, and accurately describing the point of Notice to be posted.

diversion; second, the purpose for which it is claimed, and the place of intended use; third, the means by which it is to be diverted, and the size of the flume, ditch, pipe, or aqueduct in which it is intended to divert it.

- And recorded.** A copy of the notice must, within ten days after it is posted, be recorded in the office of the county clerk of the county in which it is posted.—Sec. 8.
- Must prosecute work.** The claimant must commence the excavation or construction of the works in which it is intended to divert the water, and must prosecute the work diligently and uninterruptedly to completion unless temporarily interrupted by rain or snow.—Sec. 9.
- Completion means conducting the water to the place of intended use.—Sec. 10.
- Time right accrues.** By compliance with the above rules the claimant's right to the use of the water relates back to the time the notice was posted.—Sec. 11.
- Failure to comply.** A failure to comply with such rules deprives the claimant of the right to the use of the water as against a subsequent claimant who complies therewith, except as provided in the next section.—Sec. 12.
- Works already built.** Ditches, canals, etc., constructed or provided, by means of which the waters of any stream have been diverted and applied to beneficial use, are taken to have secured the right to the waters claimed to the extent of the quantity which said works are capable of conducting, and not exceeding the quantity claimed, without regard to or compliance with this chapter.—Sec. 13.
- When right ceases.** Persons who have heretofore claimed the right to water and have not constructed works, and have not diverted it or applied it to some useful purpose must, within ninety days after this title takes effect, proceed as above required, or their right ceases.—Sec. 14.
- Book for records.** The county clerk of each county must keep a book in which he must record the notices provided for in this title.—Sec. 15.

#### RIGHTS OF WAY AND HOW OBTAINED.

- Insufficient frontage.** When owners or claimants to lands on the bank or in the vicinity of any stream have not sufficient length of frontage on the stream to afford the requisite fall for a ditch, canal, or conduit on their own premises for the proper irrigation thereof, or where the land proposed to be irrigated is back from the banks of the stream and convenient facilities otherwise for the watering of said lands can not be had, such owners or claimants are entitled to a right of way through the lands of others for the purposes of irrigation: *Provided*, That the ditch, canal, or conduit built must be kept in good repair; and its owners are liable for all damages occasioned by the overflowing thereof, or resulting from any neglect or accident (unless the same be unavoidable) to such ditch or aqueduct.—Sec. 2, Art. 2, Chap. 68.
- Condemnation of right of way.** If the owners of the lands through which such ditch, canal, etc., must pass refuse consent to the same, the person or company desiring the right of way may proceed to condemn the same by making application to the county judge for the appointment of five disinterested freeholders as appraisers to ascertain the compensation to be paid therefor. Notice must be given by publication in a newspaper of general circulation, if there be one in the county, and if not, then by posting in three of the most public places in the county, one of which must be the county seat, for thirty days prior to day of hearing, for appointment of appraisers.—Sec. 3.
- Notice.**

The appraisers are to be sworn and to hear the proofs and allegations of the parties, and view the premises and to ascertain and certify the compensation just and proper to be paid to the interested parties, and for damages, if any, to them on account of injury to other portions of the tract of land of any owner or interested party, after proper allowance for benefits. The appraisers return their finding to the county judge, who, on payment of the proper fees, causes it to be recorded, and upon payment or tender of compensation and damages to the proper party, or, in case of his absence from the county, on deposit of the same in the county treasury to his credit, the petitioner has the right of entry and of way for his proposed work.

Finding of appraisers.

Tender.

Either party has the right of appeal from the finding of the appraisers to the district court of the county within sixty days. But the appeal does not delay the work if the amount so found is deposited with the county treasurer and the costs of first assessment paid. The appellant must pay all costs of appeal, if on the appeal he obtains no more favorable award than was given by the appraisers.

Appeal.

Costs.

An appeal is also allowed from district to supreme court.—Sec. 4.

The right of way across the lands of others may in the same manner be acquired by the owners or appropriators of the waters of any spring or stream who desire to conduct the same to any lands for irrigation, or to any city or town for the use of the inhabitants thereof, or to any reservoir for storing waters for irrigation purposes, or to any factory for beneficial use, when it is necessary to cross such lands.—Sec. 6.

Right of way from spring, etc.

The owner of a ditch or canal deeming it necessary that the same should be enlarged, and being unable to agree with the owners of land required for the enlargement as to terms, can have the damage ascertained and certified as above provided.—Sec. 7.

Enlargement.

#### DITCH COMPANIES MAY BORROW MONEY.

Corporations organized under laws of Nebraska for the construction of canals, etc., may acquire right of way over and upon any land for necessary construction of such canal, including dams, reservoirs, etc., in manner above pointed out, and are given power to occupy State lands as may be necessary, and to borrow money upon mortgage of their property and franchises, and the laws applicable to railroad corporations in this respect are applicable to them.—Sec. 8.

Mortgage, etc.

#### INTERNAL IMPROVEMENTS.

Canals constructed for irrigating or water-power purposes, or both, are declared to be works of internal improvement, and all laws applicable to such works are declared to be applicable to them.—Sec. 9.

Counties, townships, and other subdivisions of the State are authorized to make donations to works of internal improvement, by first submitting the proposition so to do to the qualified electors at an election by authority of law, but the aggregate donations of a county, together with the donations of the subdivisions thereof, must not exceed 10 per cent of the assessed valuation of the county; but the city or county may by a two-third's vote increase such donations 5 per cent in addition to such 10 per cent. And no bonds or evidence of indebtedness so issued shall be valid without the indorsement of the secretary and auditor of state showing the same issued pursuant to law.—Comp. Stat., 1887, p. 34.

Municipalities may vote aid.

## OWNERS TO MAINTAIN DITCHES AND FURNISH WATER.

- Must keep works in repair.** The owners or constructors of ditches and other irrigating works, and their successors in interest using and employing the same, whether upon their own lands or not, must maintain the same, with the embankments, flumes, and conduits by which the waters are conducted, in good repair and condition, so as not to damage the property of others.—Chap. 68, Laws of 1889, Sec. 10, Art. 2.
- Vested rights.** Prior vested rights must not be interfered with, but this does not exempt appropriators from the liability mentioned in section 10.—Sec. 11.
- Allotment according to custom.** If the volume of water in any stream is insufficient to continually supply the wants of proprietors of land in any neighborhood or district for irrigation, where customs exist for distribution among such proprietors, the waters must in such cases be held to be a common right in those accustomed to the enjoyment thereof, and such customs must be upheld in the courts.—Sec. 12.
- Order in which landowners are entitled to water.** In case any person or company has diverted water for the purpose of selling the same for irrigating purposes, the owners or cultivators of land along the line of and covered by the ditch are entitled to the water in the following order: First, persons through whose land the ditch runs are entitled to the water in the order of their location along the line of the ditch; second, after those through whose land the ditch runs those upon either side are entitled to the water. Those equally distant from the line of the ditch are entitled to priority in the order of their location along the line of the ditch: *Provided*, That in times of scarcity the water shall be equally distributed to the consumers, they paying the customary rates for the same. And it is unlawful for the owner of a ditch or canal constructed for the purpose of selling the same for irrigating purposes, to change the line of the ditch so as to prevent or interfere with the use of water therefrom by anyone who, prior to the proposed change, used water from such ditch for irrigating purposes.
- Change of line of ditch.** And it is made the duty of the ditch owners to keep the same in repair and cause the water to flow through it to the extent of its capacity, if needed, during the entire irrigation season: *Provided*, That the source from which the water is taken furnishes sufficient for the purpose, subject to appropriation by the owner of the ditch or canal.
- Must keep water flowing in canal.** For a failure to keep the water flowing as aforesaid the owners or lessees of such ditch are personally liable to anyone for damages resulting therefrom, and such damages are also a lien upon the canal until paid.—Sec. 13.
- Liabie for damages.** One using more water than good husbandry requires is liable to the owner of the canal for the excess, and is also liable for damages sustained by any person who would have been entitled to such excess.—Sec. 14.
- Excessive use of water. Damages.**

## PROTECTION OF PROPERTY.

- Interfering with ditch or gate.** Any person unlawfully interfering with any ditch or canal, or who shuts or opens any ditchgate or dam, with intent to divert the water and thereby deprive any person of the use of the same, or who shall cut, break, or in any way injure any ditch, bank, dike, or flume, or raise any head gate of any main or lateral ditch, whether he be a purchaser of water or not, is deemed guilty of a misdemeanor, and on conviction may be fined for each offense in any sum not exceeding \$50, or imprisoned in the county jail not exceeding thirty days, or both, at discretion of the court, and shall be liable in a civil action to any person injured thereby in three times the actual damage sustained by reason of his unlawful acts.—Sec. 15.
- Penalty.**
- Liabie to injured person.**



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NORTH DAKOTA.

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## CONTENTS.

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	Page.
Constitutional provision.....	109
Statutory enactments .....	109
Priority of appropriation .....	110
Duties of appropriators to bridge canals.....	110
Procedure of appropriation .....	110
Construction of artesian wells .....	111
Township tax for irrigation purposes.....	115
State superintendent of irrigation and forestry .....	115
Irrigation districts.....	116

## NORTH DAKOTA.

The water laws of the Territory of Dakota in force at the time the Territory was erected into States consisted of sections 2029-2038, 2760, and 2771 of the general laws of the Territory and an act relating to the construction of artesian wells approved March 8, 1889.

The enabling act under which the Territory was erected into States provided that "all laws in force made by said Territories, at the time of their admission into the Union, shall be in force in said States except as modified or changed by this act, or by the constitutions of the States respectively." No material modification or change of the water laws was made, however, but a provision as to the ownership of water was included in the constitution of North Dakota, and the legislatures of 1890 and 1891 passed some additional enactments relative to the levy of township tax for irrigation purposes, the appointment of State superintendent of irrigation and forestry, and the formation of irrigation districts.

### CONSTITUTIONAL PROVISION.

All flowing streams and natural water courses shall forever remain the property of the State for mining, irrigating, and manufacturing purposes.—Art. XVII, sec. 210.

### STATUTORY ENACTMENTS.

#### *Rights declared.*

Any person, persons, corporation, or company having a title or possessory right or title to any mineral or agricultural lands is entitled to the usual enjoyment of the waters of the streams or creeks for mining, milling, agricultural, or domestic purposes; provided such use shall not interfere with any prior right or claim to such waters when the law has been complied with in doing the necessary work.—Sec. 2029.

Right to take water.

Prior rights.

The owner of land owns water standing thereon or flowing over or under its surface, but not forming a definite stream. Water running in a definite stream, formed by nature over or under the surface, may be used by him as long as it remains there; but he may not prevent the natural flow of the stream, or of the natural spring from which it commences its course, nor pursue nor pollute the same.—Sec. 2271.

Standing water.

Flowing water.

When any person, corporation, or company owning or holding lands shall have no available water facilities on the same, or where such lands are too far removed from any stream or creek to so use the waters thereof as aforesaid (sec. 2029), such person, company, etc., is entitled to the right of way over any tract of land for the purpose of conveying water by means of ditches, dikes, flumes, or canals, for the purposes above mentioned.—Sec. 2030.

Landowners entitled to water.

Right of way.

Such right is limited to so much digging, cutting, etc., as is necessary for the purposes required.—Sec. 2031.

Limit.

**Liability for damage.** Any person, corporation, or company damaging the lands or possessions of another by cutting ditches, etc., or building flumes, as provided by sec. 2030 is liable to the party injured for the actual damage occasioned.—Sec. 2034.

**Easements.** The following servitudes upon land may be attached to other land as incidents or appurtenances, viz:

- \* \* \* \* \*
- (4) The right of way.
- (5) The right of taking water, etc.
- \* \* \* \* \*
- (9) The right of receiving water from or discharging the same on the land.
- (10) The right of flooding land.
- (11) The right of having water flow without diminution or disturbance of any kind.—Sec. 2760.

PRIORITY OF APPROPRIATION.

**Date deter- mines.** In all controversies respecting rights to water under this act the same shall be determined by the date of appropriations as respectively made by the parties, whether for mining, milling, agricultural, or domestic purposes.—Sec. 2032.

**Extent of right to appropriate.** The waters of the streams or creeks may be made available to the full extent of their capacity for mining, milling, agricultural, or domestic purposes, without regard to deterioration in quality or diminution in quantity, so that the same do not materially affect or impair the rights of the prior appropriation.—Sec. 2033.

**Prior rights.** This act is not to be so construed as to impair or interfere with the rights of parties to the use of waters acquired before its passage; but all water rights or ditches not used or worked upon for one year prior

**Forfeiture.** to its passage are to be deemed abandoned and forfeited and subject to appropriation anew.—First part of sec. 2035.

DUTIES OF APPROPRIATORS TO BRIDGE CANALS.

Any person or corporation who may dig any ditch, canal, dike, or flume across any public road, trail, or highway, or who use the waters thereof, is required to bridge the same at the proper crossings and keep the bridges in good repair.—Sec. 2035.

**Penalty for violation.** The penalty for violation of this requirement is not less than \$25 nor more than \$100, to be recovered with costs of suit in civil action before any court having jurisdiction. One-half the fine belongs to the county treasury and the other half to the informer. No stay of execution is allowed, and the defendant may, by order of court, be confined in the county jail until the fine and costs have been paid.—Sec. 2036.

PROCEDURE OF APPROPRIATION.

**Must begin work.** Any person or corporation appropriating the waters of any stream must turn the waters from the channel and construct at least twenty feet of ditch or flume within thirty days from the date of appropriation, and turn the water therein, and construct at least 20 rods of said ditch or flume, if needed, within six months from the date of appropriation, and turn the water therein; and within twenty days from

**File certificate.** date of location must file a location certificate with the register of deeds of the county within which such water right is situated; a copy

**Post copy.** of the certificate is to be posted at or near the head of the ditch, canal, or flume, and must contain the name of locator, date of location, num-

ber of inches of water claimed, and purpose of appropriation; and the number of inches of water claimed must not exceed the conveying capacity of the first twenty feet of flume or ditch, and the same must not be enlarged to the prejudice of a subsequent appropriator before such enlargement.—Sec. 2037. Rights reserved.

On failure to commence construction of the ditch or flume for sixty days after location and prosecute the work to completion without unnecessary delay, such appropriation shall be deemed abandoned.—Sec. 2038. When abandoned.

#### CONSTRUCTION OF ARTESIAN WELLS.

For the purpose of carrying into effect the provisions of this act the judge of probate of each county is made ex officio artesian well commissioner.—Act of March 8, 1889, sec. 1. Commissioner.

The first step toward the establishment of an artesian well is the presentation to the artesian-well commissioner of an application signed by not less than ten resident freeholders of the township or townships in which the well and the lands to be benefited by and assessed therefor are situated, giving a description of the place where the well is proposed to be located, and also a definite description of the beginning, route, and terminus of the waterway through which it is proposed the water from such well shall flow when the same is completed and in operation, and offering the right of way for said well and waterway through their said land and who shall be subject to direct assessment therefor.—Sec. 2. Application for well.

Twenty days after the filing of the application the commissioner is to appoint three disinterested persons as viewers, who are required, without unnecessary delay, to proceed to personally examine the proposed location of the well, and the course, route, and terminus of the proposed waterway, and to ascertain whether said location of such well and establishment of said waterway are practicable and necessary, and beneficial to the public welfare of the district in which they are proposed to be located, and to report the result of his investigations in writing to said commissioner, having been first duly sworn to discharge their duties as such viewers faithfully and impartially. If, prior to the appointment of the viewers, any person on whose land the well is proposed to be located, or through whose land the proposed waterway is to run, shall have filed any protest against the same, they are to assess the damages, if any, which such person may sustain, and report the same with the report of their proceedings to the commissioner.—Sec. 3. Viewers and their duties.

If a majority of the viewers report damages in favor of the party protesting, their report is to be presented to the board of county commissioners, and if the said board consider the proposed well of sufficient importance to the public they are to order the costs and damages to be paid out of the county treasury; but if a majority report against the claims for damages of such person, he is to be liable for the costs of such appraisal.—Sec. 4. Report.

If the board of county commissioners regard the damages assessed as unreasonable, they may set aside the assessment, and the well commissioner may order another appraisal by different persons, under the same regulations as provided in the first appraisal.—Sec. 5. Damages.

Any person aggrieved by the commissioner's decision may appeal to the district court.—Sec. 6. County commissioners may set aside.

The viewers are entitled to \$2 per day for services, to be paid by the Appeal.

Fees.

signers to the application for the well, who are severally liable for the same.—Sec. 7.

- Survey. If the viewers make and return to the commissioners a written report recommending said location and route as practicable, necessary, and beneficial, the commissioners are required to cause to be made by the county surveyor a survey and measurement of the location of the well and the line of the proposed waterway; and a plat thereof is to be filed in the office of the register of deeds, to be subject to public inspection, and to show the location of the well and the lines and route of the proposed waterway therefrom.—Sec. 8.
- Plat. Upon the filing of the plat and the minutes of said survey, the commissioner is to make an order, in writing, declaring said well and the waterway therefrom to be located in accordance with the plat and survey; but in cases where damages have been appraised and assessed, the same must first be paid to the persons entitled thereto, or paid into the county treasury for their use, before such lands can be actually taken.—Sec. 9.
- Order of location. When it is necessary to construct a waterway from an artesian well across the right of way or road bed of a railroad company, it is the duty of the company, when notified by the commissioners, to make and maintain the necessary openings through said road bed and to build and maintain a suitable culvert. Such notice is to be given in writing and may be served on the company, as provided in the service of summons, at least thirty days before such railroad company shall become liable. If the company refuse or neglect to comply with this requirement it is liable to \$10 for each day's refusal or neglect. Upon complaint by the artesian-well commissioner the district attorney shall bring suit to collect such penalty or fines, and it is his duty to prosecute the same to a final determination in any court having competent jurisdiction.—Sec. 10.
- Duty of railroad company. That part of such artesian well or well course constructed within the limits or across any public highway is under the jurisdiction of the overseer of public highways, or road supervisor, and it is his duty to keep the same open and free from all obstructions, and when any highway is subsequently constructed along or across such artesian-well waterway so much thereof as shall come within the limits of such highway must also be kept open and free from obstructions.—Sec. 11.
- Duty of road overseers. In his order locating the well the commissioner is to give it a name, by which it is to be known and recorded.—Sec. 12.
- Name of well. After making the order of location the commissioner must advertise for bids for contracts for construction of well and waterways. Notice, of not less than sixty days, of time and place where bids may be offered and opened, must be given by publication in the official paper of the county by not less than eight weekly insertions. The bids are filed with the county clerk, and taken subject to the approval of the board of county commissioners. No contract by the well commissioner is valid unless approved by the board of county commissioners, and their approval indorsed thereon by the chairman.
- Advertise for bids. The contract is to be given to the lowest responsible bidder giving adequate security for the performance of the work, the amount of security to be fixed by the artesian-well commissioner.
- Contract. The right to reject all bids is to be reserved, and time for receiving bids may be adjourned from time to time by publishing notice, not exceeding sixty days in all.
- Security. May reject all bids.

The contracts for sinking well and for constructing waterway may be let separately, and to different persons. When the work has been fully completed, and final report made by the well commissioner to the board of county commissioners, the said board is to turn over the control and management of the well and appurtenances to the board of supervisors of the township where the well is situated.—See 13.

Separate contracts.

Immediately after making his order locating the well the well commissioner is to notify the chairman of the board of county commissioners and the county treasurer, who, with the well commissioner constitute a board of assessment. The county clerk is clerk of this board. The members of this board are to meet within twenty days after said notice, and may adjourn from day to day until their duties are performed.—Sec. 14.

Board of assessment.

Meetings.

The said board are to make an estimate of the cost of constructing said artesian well and waterway, for the purpose of raising funds for such construction. They have power to apportion such cost as follows:

Mode of apportionment and assessment.

1. They are to create a county fund to be known as the artesian-well fund, and may levy an assessment on all taxable property in the county not to exceed 2 mills on the dollar, on the basis of value upon which the annual levy of the current or preceding year was made: *Provided*, That not more than one-tenth of the cost of any artesian well, or waterways therefrom, shall be paid out of said fund, and the amount so paid shall be applied to the payment of the expenses and per diem of the well commissioners, the viewers, surveyors, members of the board of assessment, damages for right of way, and other like incidental expenses.

2. They are to determine what portion of the cost of the well and waterways shall be paid by each of the townships in which the same are situated: *Provided*, That in no case shall the amount apportioned to any one township exceed one-fourth of the estimated cost of such well and waterways, and the county clerk shall present a statement of such amount to the respective clerks of such townships, if organized; and said board of assessment shall establish and determine the rate of assessment necessary in such townships to raise the amount so apportioned to such townships.

It is then the duty of the officers of such townships who have similar duties to perform in matters of township revenue to levy an assessment upon the taxable property of the township, not exceeding the rate fixed by the board of assessment for such township which shall be placed on the tax list under head of "General township tax for artesian-well purposes," and collected as other township taxes are collected, and held by the county treasurer as a distinct fund to pay for constructing such well.

Collection.

3. In addition to the foregoing general township and county assessments, the board of assessment are to make a special assessment against each parcel of land directly benefited, carefully adjusting the per cent and amount of such assessments with reference to the relative distance of such lands from the well itself and the water courses, and the amounts so apportioned shall be levied as a special tax upon said land, and shall be placed upon the tax list by the county clerk or auditor under head of "Direct tax for artesian well," and paid into the county treasury as other taxes and kept by the treasurer in a special fund to pay for the cost of constructing said well and waterway; and said assessment is to be for a sufficient amount with the general

Special fund.

county and township tax aforesaid to pay for said well and waterways.—Sec. 15.

The board of assessment may provide that the entire amount levied and collected in one year, or may divide the same into two, three, four, or five equal installments, one to be collected in each year; but the portion designated as county and township tax must all be collected the first year.—Sec. 16.

- Review of assessment. Upon application of any party whose lands are directly assessed for construction, at any time before his tax becomes delinquent, the board of county commissioners have the right to review his assessment and to raise or lower it, so as to make it just and reasonable, and an appeal may be taken from the action of the board as in other cases.—Sec. 17.
- Appeal.
- Disqualifications. No member of the board whose property is directly assessed is qualified to act on the board of assessment. In such case his place is to be filled by the sheriff, or by the coroner if the sheriff is disqualified.—Sec. 18.
- Principle of assessments. Assessments of benefits must be on the principle of benefits derived. Descriptions of land must be by legal subdivisions when practicable, but when the tract benefited is less than such legal subdivision it may be described in some other way by which it may be known.—Sec. 19.
- Additional assessment. An additional assessment may be made to meet the deficit, when the first assessment is insufficient to complete the work. Such further assessment is to be apportioned, assessed, levied, and collected in the same way as the other, and all collected in one year.—Sec. 20.
- Enrollment of tax by clerk. The county clerk is to spread on his roll the total amount to be assessed upon any township at large, as a part of the township tax for the year, and to spread upon the roll separately and immediately following the other descriptions all tracts of land specially assessed, and place opposite each description the amount of tax apportioned thereon. All wells to be entered separately, naming each well.—Sec. 21.
- How tax collected. All taxes under this act are to be collected in the same manner as other general taxes, and to remain a perpetual lien on the lands and a personal claim against the owners thereof until paid.—Sec. 22.
- Sale for delinquency. Such lands may be sold for delinquency of said taxes at the same time and in the same manner as in case of any other tax, and with like effect.—Sec. 23.
- Compensation of officers. The well commissioner and member of the board of assessment are to receive not more than \$3 per day for services actually rendered.
- How paid. All expenses, except on contracts for construction, are to be paid out of the general fund of the county on the order of the board of county commissioners; said fund to be reimbursed out of the first money collected under the provisions of subdivision 1 of section 15.—Sec. 24.
- Blanks. The attorney-general must prepare a set of blank forms necessary under this act, and the county clerks are to provide the necessary books and blanks at the expense of their counties.—Sec. 25.
- Mode of payment to contractor. Payments to the contractor for construction are to be made as follows: One-third when one-third of the whole work is done, one-third when two-thirds of the work is done, and one-third when the work has been completed, accepted, and approved by the artesian-well commissioner.
- How orders to be made payable. The work is to be examined by the artesian-well commissioner, who is to report to the county commissioners, and if they find his report correct they are to issue warrants on the well funds of each particular well, naming it; but if the tax for such well has been divided into installments, they are not to draw orders payable in any one year for



a larger amount than the installment for that year, but must draw as near as may be to the amount of such installment. When such orders are presented to the county treasurer, if he has not the sufficient funds to pay them, they may be indorsed and registered as other county warrants under the law, and bear the same rate of interest as other warrants.—Sec. 26.

The clerk of the board of assessments is to make a statement of the direct assessment for benefits against the several parcels of land, giving a description of the lauds, the amount of the direct assessment against each parcel, and the name of the well for which the assessment is made, and shall file the same with the register of deeds, and the same is thereafter to be a lien upon the lands to secure the payment of any orders or warrants issued as above provided; which lien may be foreclosed by the holder of such warrants or orders, and shall be prior to all other liens except taxes.—Sec. 27.

Statement to be filed with register of deeds.

It is the duty of every man through whose land any water course may pass to keep the same unobstructed. On his failure to do so any person aggrieved may complain to the overseer of highways in the district, and it is the duty of such overseer to call out persons liable for road tax and open said waterway, and the expense thereof is to be entered by the county clerk as a tax against said land.—Sec. 28.

Obstruction of water course.

All prior enactments on the subject of artesian wells are repealed; but all proceedings heretofore had and all contracts made under existing laws on the subject are declared valid, and may be continued and completed under this act.—Sec. 29.

Repeal.

TOWNSHIP TAX FOR IRRIGATION PURPOSES.

An act approved February 11, 1890, to allow organized townships to raise a tax for irrigation purposes is substantially as follows:

1. Whenever ten legal voters of any organized township petition the town board fifteen days previous to any annual town meeting to submit the question of irrigation, by building dams to create ponds or reservoirs on any of the creeks or coulees in said township, it shall be the duty of said town board to submit the question to the voters at the next annual town meeting, and the town clerk shall cause three notices to be posted specifying the place and nature of said improvements.—Laws of 1890, p. 149.

Petition.

Election, when ordered.

2. Whenever two-thirds of the legal voters of any organized town in this State, at their annual town meeting, agree that it is advisable and for the public good that certain specified creeks or coulees should be improved to increase the water supply and for the purpose of irrigation, it shall be lawful for such voters to levy a tax upon said town, to be expended in building dams to create ponds and reservoirs, by and under the direction of the board of supervisors of said town: *Provided*, Such improvements shall be wholly in said town: *Provided further*, That no lands shall be flooded without the consent of the owner or without a just compensation therefor, which compensation shall be determined by arbitration.—P. 149.

Tax.

Proviso.

3. The tax authorized to be levied by section 1 shall not exceed 2 mills on the dollar of assessed valuation of said town.—P. 150.

Maximum levy.

STATE SUPERINTENDENT OF IRRIGATION AND FORESTRY.

An act approved March 7, 1891, creates the office of State superintendent of irrigation and forestry. Such official is to be appointed by the governor, by and with the advice and consent of the senate, to hold his

How appointed. Term of office.

office for two years from the 1st day of March, to take and deposit with the secretary of state the constitutional oath of office, and to receive a salary of \$1,000 per year and \$500 per year for traveling and other expenses.—Laws of 1891, pp. 216, 217.

Salary.

He is to have charge of the development of a system of irrigation within the State by means of artesian wells, dams, reservoirs, storage works, canals, or other methods that may be found practical, or may be adopted by the State or people. \* \* \* “He shall investigate and explain all the laws, causes, and operations of rainfalls, and as far as possible show how they can be increased or produced by scientific methods or inventive skill.” He is to visit different parts of the State and examine and make notes of the geological formation, topography, water supply, its extent, pressure, operation, and utility, and other features bearing upon artesian wells, and all other methods of irrigation and water supply from all attainable sources. He is to cooperate with the officers of the United States Government in any survey or work designed to establish a system of irrigation, or to solve the irrigation problems peculiar to North Dakota. He is to establish irrigation, experimental, and observation stations, and the observers are to note the time and manner of applying water to the soil, to collect data, as to irrigation problems, make annual reports, etc.—Pp. 217, 218.

Powers and duties.

Coöperation.

Experimental stations. Reports.

IRRIGATION DISTRICTS.

Another act, approved March 7, 1891, provides for the formation of irrigation districts and the construction of irrigation works. It is not the California law, and can not be explained by reference to it.

This act provides that when the owners of any body of lands susceptible of one mode of irrigation desire to irrigate the same they may present to the board of county commissioners of the county in which the lands or the greater part of them are situate, at a regular or special meeting of the board, a petition setting forth that they desire to adopt measures to irrigate the same, the description of the lands by legal subdivisions, the number of acres in the whole district and in each tract, with the names of the owners and of three persons who may desire to serve as trustees for the first three months, and the name desired for the proposed irrigation district.—Laws of 1891, p. 213, sec. 1.

Petition.

Trustees.

Publication.

This petition must be verified by the oath of one of the petitioners, and published for two weeks next preceding the hearing of it, in some newspaper published in the county, or if none be published there, then in one having general circulation in the county, and an affidavit of publication must be filed with the petition.—Sec. 2.

When district in two counties.

If the district is situated partly in different counties, the trustees must, after the petition has been granted, forward a copy to the clerk of the board of county commissioners of each of the counties in which any portion of the district may lie, and such board must not allow another district to be formed within such district unless with the consent of the trustees thereof.—Sec. 3.

Approval of county commissioners.

If on the hearing of the petition the board find its statements correct and that no land is improperly included or excepted from the district, they must note their approval on the petition, signed by the president and attested by the county auditor, and from such approval the district is duly formed, and the persons named in the petition are the trustees for the first three months, and until their successors are appointed.—Sec. 4.

- The petition must then be recorded by the register of deeds in a book kept for that purpose.—Sec. 5. Petition recorded.
- The petitioners may then make such by-laws as they deem necessary for future appointment of trustees and to effect the works of irrigation, and keep the same in repair and operation, and for the control and management thereof, by the votes of consent of a majority of the owners of the lands in the district.—Sec. 6. By-laws.
- The by-laws are to be signed by persons owning the majority of the land in the district, and recorded by the register of deeds in the same book and immediately following the petition.—Sec. 7. Signed and recorded.
- The board have power to elect one of their number president thereof, and to employ engineers to survey, plan, locate, and estimate the cost of the works necessary for the irrigation, including dams, canals, sluices, water gates, embankments, and materials for construction, and to construct, maintain, and keep in repair all works necessary to the object in view.—Sec. 8. Power of board.
- The board must report to the board of county commissioners, or if the district is in more than one county, then to the board of each county, the plans of the works and estimates of the cost, together with estimates of the incidental expenses of superintendence, repairs, etc.—Sec. 9. Reports.
- The board by which the district was formed must appoint three disinterested commissioners, resident in the county where the district or some part of it is situated, and the commissioners must view and assess upon the lands situated in the district a charge proportionate to the whole expense and to the benefits which will result from such works, which charge must be collected and paid into the county treasury, and placed by the treasurer to the credit of the district, and paid out for the work of irrigation upon the warrants of the trustees, approved by the board of county commissioners of the county.—Sec. 10. Assessment of benefits.
- The warrants drawn by the trustees are to be approved by the board of county commissioners and presented to the county treasurer, and, if not paid on presentation, like indorsements must be made thereon, and they must be registered in like manner as county warrants.—Sec. 11. Where paid.
- If a district is situate partly in different counties, the charge must be paid into the treasury of the county where the particular tract is situated.—Sec. 12. Warrants, how presented and paid.
- If the original assessment is insufficient to provide for the complete irrigation of the lands of the district, or if further assessments from time to time are required for the protection, maintenance, and repair of the works, the trustees must present to the board of county commissioners in which the district was formed a statement of the work to be done and its estimated cost, and the board must make an order directing the commissioners who made the original assessment, or other commissioners to be named in such order, to assess the amount of such estimated cost as a charge upon the lands within the district, which assessment must be made and collected in the same manner as the original assessment.—Sec. 13. Charge, where paid.
- The commissioners appointed are to make a list of the charges against each tract of land.—Sec. 14. Further assessments, how laid.
- The list must contain: (1) A description by legal subdivisions or natural boundaries of each tract assessed; (2) the number of acres of each tract; (3) names of owners of each tract if known, and, if

List of charges.

What to contain.

unknown, that fact; (4) the amount of the charge assessed against each tract.—Sec. 15.

- List to be filed.** The list must be filed with the county treasurer, or, if the district is partly in different counties, the original list must be filed in the county first in order in alphabetical arrangement, and copies thereof, certified by the commissioners, must be filed with the treasurer of each of the other counties.—Sec. 16.
- Lien.** From the time of filing the list or certified copy the charges assessed on any tract of land within the county constitute a lien thereon.—Sec. 17.
- When may be paid treasurer.** The lists must remain in the office of the treasurer for thirty days, or longer if ordered by the board of trustees, and during the time they so remain any person may pay the charge against any tract without cost.—Sec. 18.
- How collected.** At the end of thirty days, or of the time fixed by the trustees, if the charges have not all been paid, the treasurer must return the list to the State's attorney, who must at once proceed by civil action to collect the charges unpaid.—Sec. 19.
- How work executed.** The work is to be executed under the direction and in the manner prescribed by the board of trustees.—Sec. 20.
- Accounts and contracts.** The board is to keep accurate accounts of all expenditures, and such accounts and all contracts made by them are to be open to the inspection of the board of county commissioners and of every person interested.—Sec. 21.
- Trustees may purchase.** The trustees are authorized to acquire by purchase all property necessary to carry out and maintain the system of irrigation provided for.—Sec. 22.
- May condemn.** They may acquire by condemnation: (1) The right to use of any running water not already used for culinary or domestic purposes or for irrigating, milling, or mining purposes; (2) the right of way for canals, drains, embankments, and other works necessary, and may take materials for the construction, maintenance, and repair thereof from lands within the limits of the district.—Sec. 23.
- How.** Condemnation is made in accordance with the proper statute for that purpose.—Sec. 24.
- Single ownership.** When a district susceptible of one mode of irrigation is owned entirely by parties who desire to irrigate the same and manage the irrigation without trustees or by-laws, they may file the petition mentioned in sections 1 and 2, and state therein that they intend to undertake the irrigation on their own responsibility.—Sec. 25.
- Rights, etc.** If this petition is granted, the owners of the land shall then have all the rights, immunities, and privileges granted to boards of trustees, and in all proceedings the names of the owners may be used instead of the names of the trustees.—Sec. 26.

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SOUTH DAKOTA.

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## CONTENTS.

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	Page.
Statutory enactments.....	121
Rights declared (See North Dakota).....	109
Priority of appropriation (See North Dakota).....	110
Duties of appropriators to bridge canals (See North Dakota).....	110
Procedure of appropriation (See North Dakota).....	110
Construction of artesian wells (See North Dakota).....	111
State engineer of irrigation.....	121
Construction of artesian wells by private enterprise.....	122
Construction of artesian wells for public purposes.....	125

## SOUTH DAKOTA.

### STATUTORY ENACTMENTS.

South Dakota has no constitutional provisions upon the subject of irrigation or water rights. The irrigation laws in force at the time of the formation of the State are still in force. These are also part of the present laws of North Dakota, and appear in the abstract of the laws of that State. The legislation by the State of South Dakota consists of an act approved March 5, 1890, to create the office of State engineer of irrigation; an act approved March 8, 1890, to encourage the construction of artesian wells, and an act approved March 9, 1891, to provide for sinking artesian wells for public purposes and authorizing townships to issue bonds therefor. The legislature of 1890 also re-enacted all laws of the Territory in force at the date of the admission of the State.

#### STATE ENGINEER OF IRRIGATION.

The office of State engineer of irrigation is created, and such officer is required to be appointed by the governor by and with the advice and consent of the senate; but in case of vacancy and when the legislature is not in session the governor may appoint; and "no such officer is to be appointed until the General Government shall have made an appropriation for irrigation development that is available for this State."—Laws of 1890, p. 252, sec. 1. How appointed.

The first term of the office was to expire March 1, 1891, and thereafter the term to be for two years. The State engineer is to take the usual oath of office, and deposit the same with the secretary of state, to be furnished with office, furniture, fuel, and stationery, and to receive a salary of \$1,000 per year and \$500 per year for expenses.—Secs. 2, 3, 4, and 5. Term, salary, etc.

He is to have charge of the development of a system of irrigation within the State by means of artesian wells, dams, reservoirs, basins, or other methods that may be found practicable. He is to recommend to the legislature the enactment of such measures as he may deem necessary to perfect a system of irrigation. It is his duty to visit different parts of the State, as he may think proper or the governor may direct, and make careful note of the formation, topography, water supply, and other features bearing on the subject of irrigation.—Sec. 6. Powers and duties.

It is his duty to cooperate with officers of the United States Government in any survey or work designed to establish a system of irrigation or solve the irrigation problems peculiar to the State of South Dakota.—Sec. 7. Coöperation.

He is to establish experimental and observation stations where the same may be beneficial and where the services of practical farmers can be secured without expense to the State. Experimental stations.

The observers are to note carefully the time and manner of applying water artificially to the soil, and its effects on vegetation, and collect such data as may be beneficial in solving the problem of irrigation Duties of observers.

and make report to the State engineer, under such rules as he may prescribe.—Sec. 8.

**Analysis.**

He is to procure analyses of soil and water of different sections of the State. The president of the agricultural college at Brookings must cooperate with and assist him in the work of analysis, to the end that the adaptability of the water to the soil may be determined.—Sec. 9.

**Implements and freights.**

He is to negotiate with makers of machinery and implements for sinking artesian wells and in constructing other works of irrigation to secure the lowest prices on behalf of those who wish to buy, and with transportation companies to secure the lowest rates of freight on such machinery and implements.—Sec. 10.

**Annual reports.**

He must report annually to the governor on the 1st day of December, giving a detailed account of the work performed by him during the year, with recommendations of such legislation as he may think needful.—Sec. 11.

CONSTRUCTION OF ARTESIAN WELLS BY PRIVATE ENTERPRISE.

**Who may construct.**

Any persons, corporations, or companies are allowed to construct artesian wells upon any lands owned or leased by them for the purpose of power and the irrigation of lands for agricultural purposes, and for any and all purposes for which water from such wells may be utilized. Laws of 1891, p. 246, sec. 1.

**May examine route.**

Any person, company, or corporation formed under the laws of this State for the purposes aforesaid, may, for the purpose of laying water pipes, constructing ditches, and waterways, cause such examination and survey to be made as may be necessary to the location of the most advantageous route, and for such purpose may by themselves, their servants, or agents, enter upon the land of any other person,

**Proviso.**

company, or corporation, being liable only for actual damages: *Provided*, That no routes for waterways shall be located without written consent of the owner within 15 rods of the dwelling house or other buildings on the premises, or across any orchard or garden.—Sec. 2.

**Limitation.**

No tract of improved or occupied land shall, without the written consent of the owner, be subject to the burden of two or more irrigating ditches when the same object can be feasibly and practicably obtained by uniting and conveying all water necessary to be conveyed through such property in one ditch.—Sec. 3.

**Must select shortest route.**

Any person, company, or corporation engaging in the business of supplying water to the public for irrigation, and finding it necessary to convey water through the improved or occupied lands of another, shall select the shortest and most practicable route upon which the ditch can be constructed, with uniform or nearly uniform grade, and discharge the water at a point where it can be conveyed to or used upon the lands of the party constructing the ditch; and in locating such waterway along or across the highway, the same shall be done under the direction of the overseer of highways.—Sec. 4.

**Waterways for surplus.**

The necessary waterways to conduct the surplus water from an artesian well may be constructed from the well on routes as provided in sections 2 and 4 above.—Sec. 5.

**Damages, how ascertained.**

Actual damages for rights of way must be paid, and such damages are to be ascertained, when they can not be agreed on, by a jury of three disinterested persons, to be appointed by the county judge, to assess the same. An appeal lies from their decision to the circuit court of the county, but the construction of the waterway is not to be delayed by the appeal if the amount of damages assessed is deposited

**Appeal.**



with the clerk of the circuit court, with a bond, to be approved by the clerk, to pay any excess that may be adjudged by the circuit court. When such waterways or ditches are constructed across or along a public highway no damages are to be assessed.—Secs. 6 and 7.

The jurors acting in such case are required to be sworn, and five days' notice must be given to the owner or occupant of the land to be taken, the notice to be served as provided for service of summons issued by justice of the peace. But if the landowner is absent from or a nonresident of the county, and the land is unoccupied, notice is to be given as the county judge may order.—Sec. 8.

When such waterway crosses the right of way of a railroad company the railroad company are required, upon being notified by the owner of the well, to make and maintain a suitable culvert. Thirty days' notice in writing must be given, served as provided in the service of summons. Railroad companies neglecting or refusing to comply are liable to penalty of \$10 for each day's refusal or neglect, to be collected by the county attorney upon complaint by the interested party. But such company is not compelled to build or maintain a culvert until the railroad shall have been constructed.—Sec. 9.

Waterways in or across highways are under the jurisdiction of the overseer of highways, and it is his duty to keep them open and free from obstruction, and when any highway is subsequently constructed along or across a waterway, whatever comes within the limits of the highway must be kept open and free, as above provided.—Sec. 10.

Interference with the headgates, water-boxes, pipes, and other appliances for controlling or utilizing the water, for any other purpose than those contemplated by this act, or willfully or maliciously interfering with any ditch, flume, bridge, feeder, or pipe, or any fixtures, tools, implements, or appurtenances, or the property of any person or corporation using the water for any of the purposes contemplated by this act, is a misdemeanor and punishable by fine not less than \$50 nor more than \$300, or imprisonment in county jail not more than ninety days.—Sec. 11.

Section 12 makes it a misdemeanor, with like penalty as above, for any person to knowingly damage the embankments, gate, etc., of any ditch, flume, feeder, pipes, reservoir, or well, in which he may be a joint owner, or the property of another, used for purpose of irrigation, with intent to maliciously injure the property, or for his own gain and with intent of appropriating the water, or causing it to run out to the injury of the person, company, etc., lawfully in possession. As soon as the routes for the waterways mentioned in this act are located, a correct plat thereof is to be made indicating by proper description the lands over which the same is located, showing the points of entering and exit, and general course of said route across or along the same, and the plats shall be certified to by the surveyor who did the work, and acknowledged by the proprietor of the well. The plat is to be recorded in the office of the register of deeds of the county or counties in which the route is located. The minutes of survey shall also be filed with the register, indicating all monuments and landmarks for ascertaining the said route and the location of the land over which it passes. The right so acquired shall be an easement running with the land as long as the waterway thereon constructed shall be used for the water flowing from the well, and such records shall be notice of the rights of the proprietors to said waterways, and binding on all subsequent purchasers, etc., and the right to the waterway shall be

Bond.

Notice.

Nonresident.

Waterway  
across railroad.

Penalty.

Obstructions.

Overseer of  
highways.Penalty for in-  
terference with  
property.Injury to prop-  
erty.

Plat of route.

Record.

Minutes of sur-  
vey.

Easement.

Notice.

- appurtenant to and pass with the transfer of the well and of the lands wherever (whereon) it is situated.—Sec. 13.
- Repair of water-ways.** The proprietor of such wells must keep in good repair the ditches or waterways at all seasons of the year, and for the purpose of making repairs has the right to enter on the lands where they are located, along the line, doing no unnecessary damage and paying for actual damage. Repairs must be made with all reasonable diligence after due notice.—Sec. 14.
- One doing damage must repair.** Where ditches or waterways are injured by the act of any person, or by the stock or animals of any person, it is his duty to repair the same at his own expense, and no compensation for damage can be recovered by such owner where the damage was caused by his own act or negligence, or is the result of injuries caused by his animals or stock.—Sec. 15.
- Owner may designate place of crossing.** The owner of the land, or the occupant, may designate the places, not to exceed one in every 40 rods of the waterway, where a bridge or crossing shall be constructed, which, when so designated, shall be built and maintained by the proprietor of the well. But the owner or occupant may build and maintain as many crossings at his own expense as he may desire. But the well proprietor is not to be required to construct any crossing above the level of the ground at the point designated and at the place where the ditch or waterway is located. Such crossing is to be constructed within thirty days after receiving written notice from the owner or occupant requiring it to be done. If the proprietor neglects or refuses to construct the crossing the owner or occupant may build it and recover the value, with all damages for failure.—Sec. 16.
- Notice to well proprietor.** Expense of constructing and maintaining and keeping in repair artesian wells to be borne by proprietors in proportion to their interest.—Sec. 17.
- Right to buy water.** Proprietors of artesian wells are required to sell their surplus water to the owners of lands through which their waterways run, to irrigate the same, on their paying a just rental therefor. The rates, terms, and conditions are to be fixed and defined in a just and equitable manner, upon proper application by the parties, by the board of county commissioners at a regular or special meeting thereof, and either party may appeal to the circuit court of the county from the decision of the board, and the decision of such court is final.
- How rates fixed.** But nothing in this section is to be construed to prevent the use of all the water from the well by the proprietor on his own land, except that when the proprietor shall own land located beyond the land across which the ditch is constructed, an equitable adjustment of the rights of all parties shall be made by the said board, subject to appeal.—Sec. 18.
- Appeal.**
- Proviso.**
- Public use.** The water in ditches constructed along a highway shall be for the use of the public. But when the owner or occupant of lands adjoining the highway desires to use any portion of the water flowing in the said waterway he must make application to the proprietor of the well, and the adjustment of rental and the terms and conditions shall be made by the board of commissioners, with right of appeal, as provided above, but the right to use such water is subject to the rights of the public therein.—Sec. 19.
- Water ways across school lands.** When it is necessary to construct a waterway across any school lands, except in the highway along the same, permission may be obtained of the commissioner of school and public lands, upon an appli-

cation in writing, duly verified, showing the location and character of such lands, with a proper plat showing the location of the proposed route across the same, and the permission may be granted under such conditions as shall be prescribed by such commissioner and approved by the governor.—Sec. 20.

## ARTESIAN WELLS FOR PUBLIC PURPOSES.

The act of March 8, 1889, in force at the time of the admission of South Dakota as a State, and reenacted by the legislature of 1890, an abstract of which appears under head of North Dakota, is apparently still in force in South Dakota. The act of March 9, 1891, mentioned above, seems more adequately to cover the same ground. Its provisions are substantially as follows:

The water of the artesian basin underlying or being in the shale formation, in all the townships of South Dakota which shall petition for and sink artesian wells, as hereinafter provided, and not heretofore appropriated, is declared to be the property of the public and dedicated to the use of the people of the State subject to appropriation as hereinafter provided.—Laws of 1891, p. 196, sec. 1.

Water of artesian basin public property.

When twenty or more persons, each owning not less than 80 acres of land in any civil township in the State, make application in writing to the State engineer of irrigation requesting him to locate in said township artesian wells not to exceed nine in number, if said wells be 6 inches in diameter, and not to exceed sixteen in number if they be 4½ inches in diameter, for the purpose of supplying the public with water it is the duty of the said engineer, within ten days from the presentation of application, to locate or cause to be located in said township the number of wells mentioned in said application, not exceeding the numbers above mentioned, at such places as shall, in the judgment of the State engineer best subserve the interest of all the resident land owners of the township.—Sec. 2.

Application.

This application is, within twenty days after its reception by him, to be filed in the office of the register of deeds of the county, together with his report of locating said wells.—Sec. 3.

How many wells.

Engineer to locate wells.

Such report is to state the number of wells, the size of each well, and the exact location of the same, with a full description thereof.—Sec. 4.

When application and report to be filed.

What report to state.

Notice of the filing for record in such office of the said application and report, and stating the number, location, and size of the wells, must be immediately given by the register of deeds to the chairman of the board of supervisors of the township in which the wells are located. And the register must file in his own office a duplicate of said notice, with the date of delivery to the chairman of the board of supervisors of said township indorsed thereon.—Sec. 5.

Notice of filing application and report.

The said chairman must, within five days after receiving said notice from the register of deeds, cause to be posted in five public places in the township a notice to the electors thereof, stating the time and place of an election to be held in said township to vote upon the question of issuing bonds for the purpose of sinking artesian wells in said township, the number and location of said wells, and the size thereof, which notice shall be signed by the chairman of the board of supervisors as such.—Sec. 6.

Voting of bonds.

Said notice must be posted at least ten days before the election, and every such election must be held in one of the most centrally located

Time and place of election.

- schoolhouses in the township, upon Tuesday, between the hours of 1 and 5 o'clock p. m.—Sec. 7.
- Duplicate of notice and affidavit to be filed.** Within five days after posting such notice the chairman must file a duplicate thereof, with his affidavit indorsed thereon, showing the fact of posting the notices, the place where and the time when they were posted, and the duplicate and affidavit shall be forthwith delivered to the register of deeds of the county, with whom the application to, and the report of, the State engineer is on file.—Sec. 8.
- How election conducted.** A ballot is prescribed by the statute. The election is to be conducted and the vote canvassed in the same manner as township elections are conducted. If a majority of the votes are in favor of the bonds the town clerk must, within three days after the canvass, deposit a duplicate thereof in the office of the register of deeds.—Sec. 9.
- Papers to be recorded.** All papers filed with the register of deeds are to be forthwith recorded in his office, and the instrument is to remain on file in the office where the record is made.—Sec. 10.
- Board of supervisors to advertise for bids.** If a majority of the votes cast are in favor of the bonds, the board of supervisors of the township shall, within three days after the canvass, advertise in at least one public newspaper published in the county wherein the township is located for two successive issues, asking that bids be made for the sinking and casing of the said wells, or any one of them.
- Notice.** The notice must give the size of the wells, kind of piping used, the valves and appliances necessary to control the flow of water from said wells, and the date, as nearly as may be, when said wells shall be completed, and the fact that no money will be paid or liability incurred by the township until the said well or wells shall be completed and accepted by the State engineer.—Sec. 11.
- When bids to be filed.** All bids are to be filed with the township supervisors within twenty days after the publication of the notice for bids.—Sec. 12.
- When work to begin.** Every person whose bid is accepted shall within twenty days after the acceptance of his bid commence actual work of sinking wells, and continue with all convenient speed, and complete the wells as soon as the work can well be done, "and within the limit in this act prescribed."—Sec. 13.
- State engineer to accept well.** The State engineer must, when notified of the completion of any well, immediately examine the same, and if the well is well constructed and cased with the class of piping mentioned in his bid, and has substantially the same flow as other wells in that locality, it shall be his duty to accept the same and forthwith file his acceptance thereof, duly acknowledged and attested by the supervisors of the township in which the well is located, "and whenever the wells mentioned in this section comply with the provisions of this act it shall be the duty of the supervisors aforesaid to attest the acceptance of the State engineer of irrigation."—Sec. 14.
- Where water to be conveyed.** It is made the duty of the board of supervisors of every township in which wells are located to pipe or convey the water from such well to the highest point of land upon the tract to be irrigated therefrom, and for that purpose they shall cause said piping or conveyance of the water to be done in the manner hereinafter provided.—Sec. 15.
- Deed to be obtained.** Before contract for sinking the well can be let deed must be obtained of 1 acre of land on which the well is located, with right of way from the highway to the well, and the right to lay pipes or make ditches from the well across the land on which it is located to the lands of adjoining owners.—Sec. 16.

All civil townships are authorized and empowered to receive and hold grants of real estate for the purpose mentioned in section 16.—  
 Township may hold real estate.  
 Sec. 17.

At any time after the completion of any well any person owning land in the township desiring to use water from such well for irrigation must apply in writing to the board of supervisors of the town, describing the tract to be irrigated, and the number of acres to which water is to be applied, and stating that the applicant is willing to pay for the same in acre-feet.—Sec. 18.

Within ten days after filing such application the board of supervisors are to enter into a contract to furnish water to said owner for the land described, at a price per acre-foot of water to be fixed in said contract, which shall in no event exceed a pro rata amount of 8 per cent of the bonds issued for the purpose of sinking the wells and piping or conveying the water.—Sec. 19.

The application for water and a duplicate of the water contract are to be filed and recorded in the office of the register of deeds, and from that time the rights given under the contract shall run with the title of the land and not be severable therefrom until default is made in payment of water rent, which default must be continued for thirty days before the right to water mentioned in the contract should be severable from the land.—Sec. 20.

Every township has a lien upon the lands mentioned in the water contract for the water rent unpaid under the contract, and may foreclose said lien by action upon the lands when the water rents are thirty days past due and unpaid.—Sec. 21.

The township treasurer is to collect the water rents and immediately pay the same to the county treasurer, whose duty it is to set the same aside as a fund out of which he is to pay the interest upon the water bonds of the township as it becomes due.—Sec. 22.

If in any year there has not been sufficient paid into the county treasury for water rents on the first day of April to pay the interest on the water bonds for the year, it is the duty of the township officers to levy and collect a tax sufficient to pay the interest upon the taxable property of the civil township, and after five years a sufficient tax shall be levied upon the taxable property of the civil township to provide a sinking fund for the payment of the principal of the bonds when due, but in no event shall such tax exceed 3 per cent upon the taxable property of the township in any one year.—Sec. 23.

Section 24 provides the procedure for redemption of bonds out of the sinking fund, or other unappropriated money, by giving notice by the financial agency at which they are made payable, and provides for their proper cancellation.—Sec. 24.

Section 25 provides for increasing the bond required of the township treasurer, if necessary, when the amount realized on sale of bonds comes to his hands.—Sec. 25.

Section 26 provides for the registry of each bond, and for the certificate to be indorsed thereon, to be signed officially by the county auditor or clerk and attested by the seal of the county; and that the county auditor or clerk shall officially attest the execution of the bond. It further provides that "the validity or obligation of any such water bond, so registered and certified, shall not be questioned in any court or tribunal, but every such bond shall be and remain valid and binding."—Sec. 26.

Section 27 provides that the bonds shall be issued by the board of supervisors of the township, prescribes the denominations and num-

Application for use of water.

Contract for water. Price paid.

Application and contract to be filed.

Lien for water rent.

How water rent collected.

How used.

When board to levy tax.

Limit of tax.

Redemption of bonds.

Bond of township treasurer.

Bonds to be registered.

Validity not to be questioned.

Issued by board of supervisors.

bering of the bonds, the dates, and to whom and when payable, viz, payable to the purchaser or bearer, ten years from date, but redeemable at the option of the township after five years; and to bear interest at not to exceed 8 per cent per annum, payable annually, with interest coupons attached, and principal and interest payable where the board may designate. It directs how the bonds shall be printed or engraved and how signed and attested, and provides that if the coupon of any bond or the bond proper shall not be paid when due and for six months thereafter, the holder may present it to the county clerk or auditor of the proper county, with affidavit to the fact of nonpayment after presentation, and the clerk and auditor shall make a record of the fact and the amount due, and if the proper tax be not already levied by the township board of the proper township the county clerk or auditor shall levy and extend upon the tax lists against all the taxable property of the township a rate sufficient to produce an amount necessary to meet the payment, which tax is to be collected as other township taxes are collected. Out of the first money coming to his hands from this tax the county treasurer is to pay the coupons, then the bonds, and the bonds and coupons so paid are to be delivered to the township treasurer and receipted for same as money. Such tax is to be levied from year to year by the clerk or auditor, and collected and used in the same way until such coupons and bonds are fully redeemed, unless they are meanwhile withdrawn from protest. Such tax is not to exceed 2 per cent in any one year and shall be in addition to all other taxes authorized.—Sec. 27.

How payment enforced.

Lien on township.

The bonds issued are to be a lien upon the civil township, and if other provisions of law fail or seriously delay payment of interest or principal the circuit court on application may cause tax to be levied to pay bonds and coupons.—Sec. 28.

Service of process.

Section 29 directs how process against the civil township shall be served.—Sec. 29.

Wells for filling reservoirs.

If at any time the petitioners for artesian wells state in their petition to the engineer of irrigation that they desire said wells or any of them sunk for the purpose of filling lake beds, streams, or artificial reservoirs in said township for public purposes said wells shall be sunk and all the provisions in reference to obtaining the same shall apply to such wells, except that the constant flowing of said wells shall be allowed, unless in the judgment of the State engineer the flow of other artesian wells used for domestic and irrigation purposes is diminished thereby; and it is made the duty of the township board of supervisors, by proper dams and other appliances to retain as far as possible the waters from said wells within the township.

Lands to be bought or condemned.

When it is necessary to flood lands it is the duty of the township, through its supervisors, to buy the same if they can be bought for the price of other lands in the vicinity; if not then they may be condemned.—Sec. 30.

Same provisions apply.

Whenever it appears necessary from the report of the State engineer to pipe, convey, or dam the water from artesian wells the contract for the same is to be let and money raised, bonds voted, etc., in the same manner as provided for the wells proper.—Sec. 31.

When may locate more than 16 wells.

When the application to the engineer is for wells smaller than  $4\frac{1}{2}$  inches, he may locate more than 16 wells.—Sec. 32.

Second petition.

At any time after the completion of the wells mentioned in the first application and after complete utilization of all the water flowing from said wells in the manner provided in this act twenty or more residents of said township may apply to the State engineer for the loca-

tion of other artesian wells in said township, and the provisions of this act in reference to the first petition shall in all things apply to the proceedings with reference to second petition.—Sec. 33.

The State engineer shall prescribe rules and regulations for the distribution and use of water from public wells, not in conflict with law, subject to the approval of the township board of supervisors.—Sec. 34.

Rules.

It is made the duty of the township board to embody in the contract for sinking public artesian wells a provision that the persons sinking the wells shall make a record of the depth of each well and the formations entered or passed through in the construction of the same, and such provision is made the essence of the contract, and a violation thereof is to be construed to be a violation of the contract.—Sec. 35.

Record to be kept by person sinking wells.

The waters are to be used: (1) For domestic purposes, which is defined to mean for household use, for the domestic animals kept with and for the use of the household and farm, and the watering and sustaining of grass, trees, flowers, and shrubbery about the house of the consumer, not exceeding half an acre in extent. (2) For irrigation; but the township board are authorized to lease the power for such manufacturing purposes as in their judgment will best subserve the interest of the people when such use will in no manner obstruct or materially diminish the waters for irrigation purposes, said lease not to extend for a longer period than ten years. But the lessee, his heirs, or assigns, may at the end of the ten years renew the lease by paying the rental at which the power shall be appraised at that time, and the moneys from the rental shall be paid into the county treasury and used as a fund to pay the water bonds.—Sec. 36.

How waters to be used.

Board may lease power.

The State engineer, at the expense of the township, must conduct the water from such well to a point on the highway nearest thereto and provide for the water a tank not less than 10 feet long, 3 feet wide, and 2 feet deep, in which sufficient water shall be kept to supply the public for watering stock and other domestic purposes.—Sec. 37.

Public watering place.

The board are to advertise for bids for piping and conveying water and let contracts therefor in the same way as provided for letting contracts to sink wells.—Sec. 38.

Bids for piping.

The chairman of the board is to have supervision of the wells at a compensation of \$50 per year in full for all services, including distribution of water and making contracts.—Sec. 39.

Supervision.

Each well is to be inclosed by a substantial building at least 6 feet square and constructed in a substantial manner, sided with 2-inch plank or its equivalent, and properly roofed and anchored, and to be kept securely locked at all times.—Sec. 40.

Wells to be inclosed.

County surveyor is to locate wells in place of State engineer when requested by him to do so, and in such case must join with State engineer in signing the report of location.—Sec. 41.

County surveyor to act, when.

Any person, association, or corporation owning land has the right to sink artesian wells on his or its own lands for water for domestic use, for irrigation or for manufacturing; but in wells hereafter constructed no more water shall be appropriated by such person or corporation than is needed for such purposes when such additional use interferes with the flow of wells on adjacent lands.—Sec. 42.

Use of water from private wells limited.

In locating wells for public or private use, due regard must be had to proper distribution in order that the flow may be properly equalized and least likely to interfere with each other. If any well is located so near any well already completed, or in process of completion, as to be likely to interfere with it, any person may complain in writing to the State engineer, who shall without delay examine the

Proper distribution of wells.

locality and determine from its topography and the proximity of the wells whether in his judgment the wells as located would unduly interfere with the one already completed, or in process of completion. If in his judgment there is no material difference the location will not be changed, but if the well does interfere he will change the location to some more suitable place.

**Prior location of buildings.** But when permanent buildings have been located on any farm prior to the sinking of a well on an adjoining farm, this act is not to prohibit the agent or proprietor of the farm from sinking a well at or near his buildings without reference to any other artesian well.

**Statement of decision.** Within five days after such examination the State engineer shall make and file a written statement of his decision in the office of the clerk of the circuit court of the county. Any person aggrieved by such decision may appeal to the circuit court within ten days.—Sec. 43.

**Flow and pressure to be measured.** It is the duty of the State engineer to measure the flow and pressure of all artesian wells put down under the provisions of this act, public and private, for the purpose of determining the increase or diminution of the flow or pressure, and he is authorized to enter on any ground for the purpose, and the owners of such wells are directed to furnish the necessary material to construct a suitable weir to measure the flow.—Sec. 44.

**Wells to be cased.** All artesian wells are to be cased with proper casing, of strength sufficient and so arranged and placed as to prevent caving in, and to prevent the escape of water therefrom where it is desirable to confine the same, and to provide the necessary valves and appliances to prevent or control the flow of water.—Sec. 45.

**Waters not to be wasted.** The waters are not to be allowed to run to waste, except so far as reasonably necessary to prevent obstruction or to be taken for beneficial use. But reasonable use for necessary irrigation of trees along the highway, or for ornamental ponds, or the propagation of fish, is allowed.—Sec. 46.

**Inspection of wells.** Upon complaint to any township supervisor, the county commissioners, road overseers, aldermen, or other city officers, that any proprietor or person controlling an artesian well is permitting its waters unreasonably to run to waste, such officer or officers may, at any reasonable hour, day or night, enter upon any premises where such well is situated and inspect the same, to ascertain whether the law is being violated. This applies to private wells as well as to others.—Sec. 47.

**Criminal action.** Any person controlling a well and allowing the same to flow without the necessary valves and appliances for arresting the water, or knowingly allowing the water to run to waste unnecessarily and to the injury of others, or who shall prevent any officer entitled to visit and inspect the same, or to measure the flow and pressure, from doing the same, is guilty of a misdemeanor, and punishable by a fine not exceeding one hundred dollars or imprisonment in county jail not more than three months, or both, in discretion of the court.—Sec. 48.

**Misdemeanor.** A township and village located in it may unite in voting bonds to build a well, the vote being taken by all the electors as if there was no separate incorporated village, and the bonds so issued are a lien upon all taxable property of the township and village alike.—Sec. 49.

**Township and village may unite in bonding.** The township board are to keep all wells, ditches, dams, pipes, and appurtenances in good repair at the expense of the township.—Sec. 50.

**Repair of wells.** When the acts required of the State engineer can not be performed by him, or when such office is vacant, the county surveyor is to perform such acts.—Sec. 51.

**Disability of State engineer.**



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UTAH.

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## CONTENTS.

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	Page.
Rights declared.....	133
Organization of irrigation districts and companies .....	133
Rights of way and how obtained.....	136
Water commissioners .....	137
Adjudication of controversies .....	137
Vested rights, primary and secondary.....	138
Measurement of water .....	139
Rights and duties of appropriators .....	139
Protection of property .....	140
Miscellaneous.....	140

## UTAH.

### RIGHTS DECLARED.

When, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, and other purposes have vested and accrued, and are recognized by the local customs, laws, and decisions of the courts, the owners and possessors of such vested rights shall be maintained and protected in them; the right of way for construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but when one, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing the injury is liable to the party injured for the damage.—Comp. laws of 1888, p. 216, sec. 422.

Prior right to water for mining and agricultural purposes. Right of way.

All patents granted, or preëmptions or homesteads allowed, shall be subject to any vested and accrued water right, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired or recognized by the preceding section.—Sec. 423.

Patents, etc., subject to vested rights.

The right to use of water for reclamation of desert lands shall depend on bona fide prior appropriation, and shall not exceed the water actually appropriated and necessarily used for purpose of irrigation and reclamation; and surplus water above such actual appropriation, with the water of lakes, rivers, and other sources of water supply on public lands, and not navigable, shall be free for the appropriation and use of the public, for irrigation, mining, and manufacturing purposes, subject to existing rights.—Sec. 424.

Conditions for use of water on public lands for reclamation.

All navigable rivers within territory occupied by public lands shall remain and be deemed public highways; and where opposite banks of streams not navigable are occupied by different parties the bed of the stream is common to both.—Sec. 425.

Navigable rivers.

### ORGANIZATION OF IRRIGATION DISTRICTS AND COMPANIES.

The county court may, upon petition of the majority of the citizens of any county or part thereof, organize the same into an irrigation district, and thereafter the landholders of the district shall be equally entitled to the use of the water in, or brought into, the district, according to their acknowledged rights, provided they pay their proportion of the expense incurred in the construction and keeping in repair of the necessary canals, flumes, dams, or ditches.—2 Comp. laws of 1888, p. 48, Sec. 2403.

Organization of districts.

The citizens of the district, when so organized, may in mass meeting proceed to form a company, by electing, *viva voce*, not less than three nor more than thirteen trustees, a secretary and treasurer. Notice of the time, place, and object of the meeting is to be given by the clerk of the county court at least ten days previously, by advertising three times in some newspaper having general circulation in the county and posting notices in three public places in the district.—Sec. 2404.

Citizens may form companies. Trustees.

- Trustees to locate canal, estimate cost, etc. The trustees so elected are to locate the proposed ditch or canal, determine the amount and quality of land to be benefited, estimate the cost, including dams, flumes, locks, waste weirs and all the appurtenances, and the amount per acre of the percentage on taxable property necessary to construct the same.—Sec. 2405.
- Trustees to make report, and call meeting. The trustees are then to make a report to the county court of such location and estimate, and to call a meeting of the holders of the lands to be benefited by the canal, at which a copy of the report is to be presented, and the landholders are then to vote "yes" or "no" upon the questions whether they mutually agree to pay the tax per acre required to construct the canal, and whether they approve the action of the mass meeting in the election of officers. At least ten days' notice of said meeting is required to be given by advertising three times in a newspaper of general circulation in the county and posting notices in three public places in the district. The notice must give the time, place, and object of the meeting, and be signed by a majority of the trustees.
- Notice. The voting must be by ballot, and the president and secretary of the meeting are judge and clerk of the election. Poll list is to be kept. Only landholders in the district are to be allowed to vote. The ballots are to be counted by the judge and clerk, assisted by two persons chosen by the voters present. A certificate of the result, signed by the persons who counted the votes, must be forwarded at once to the clerk of the county court by the judge of election.—Sec. 2406.
- Voting by ballot. If two-thirds vote in favor of the tax it becomes the law of the district. The tax when collected is paid over to the treasurer of the company on his order, but not exceeding one-half of the tax voted is to be collected at one time, the residue as the work progresses. But if the first estimate proves insufficient to construct the canal with its appurtenances, then additional taxes may be assessed in the same manner as above provided till the canal is completed.—Sec. 2407.
- Certificate of result. If less than two-thirds vote in the affirmative, all proceedings under this act are null. But if there are objections to the officers elected by the mass meeting the electors may write other names on their tickets, the persons having the most votes to be declared elected; and it is the duty of the county clerk to notify such officers forthwith of their election.—Sec. 2408.
- Two-thirds vote required. Such officers are to file official bonds with the county clerk within twenty days after receiving such notice, the amount of the bonds to be fixed by the county court.—Sec. 2409.
- Additional tax. The term of office of the first officers is until the next general election, and thereafter for two years and until their successors are elected and qualified.—Sec. 2410.
- Other officers may be chosen. Subsequent elections for determining rate of tax are held annually on the first Monday of December, and for electing officers biennially on the same day, at time and place designated by trustees, at which time the number of trustees may be changed by a two-thirds vote to not less than three nor more than thirteen. Votes are to be per acreage and not per capita, 1 acre per vote. The tax voted is a lien on all water rights until paid, but not on the land.—Sec. 2411, amended by laws of 1892, p. 38.
- Official bonds. Subsequent elections for determining rate of tax are held annually on the first Monday of December, and for electing officers biennially on the same day, at time and place designated by trustees, at which time the number of trustees may be changed by a two-thirds vote to not less than three nor more than thirteen. Votes are to be per acreage and not per capita, 1 acre per vote. The tax voted is a lien on all water rights until paid, but not on the land.—Sec. 2411, amended by laws of 1892, p. 38.
- Terms of office. The trustees at their first meeting choose a president from their own number, and they are to fill any vacancy which may occur in the
- Subsequent elections. The trustees at their first meeting choose a president from their own number, and they are to fill any vacancy which may occur in the
- Votes per acreage. The trustees at their first meeting choose a president from their own number, and they are to fill any vacancy which may occur in the
- Tax a lien. The trustees at their first meeting choose a president from their own number, and they are to fill any vacancy which may occur in the
- Powers and duties of trustees. The trustees at their first meeting choose a president from their own number, and they are to fill any vacancy which may occur in the

board caused by death, change of residence, or otherwise, and the persons to chosen are to hold their offices until the next annual election. The trustees have power to make by laws, rules, and regulations necessary to carry into effect the objects of the people, to appoint agents, subordinates, and officers, and employ such workmen as may be requisite, appoint assessors and collectors, or make agreement with county assessors to assess and collect the tax, and notify collectors when additional installments will be needed; to construct and complete the canals and ditches with the appurtenances; to cause accurate accounts of all receipts and disbursements to be kept, and to complete canals and ditches, and settle all accounts of the same. They are to make an annual report of their proceedings to the county court on or before February 1, and file a map of the district with the county clerk, showing location and subdivisions of land therein, and of companies, canals, and ditches.—Sec. 2412.

The trustees have power to sue and be sued, and to hold such real and personal estate as may be necessary to construct their canal or ditch, including all appurtenances.—Sec. 2413.

May sue and hold real estate.

Lands to be benefited by the proposed ditch and not legally claimed may be appraised by the trustees and held, and the possession of them sold by the trustees as opportunity may offer, and the estimated amount of funds necessary to complete such canal or ditch may be decreased by the estimated value of the lands previous to the levy and assessment of any tax.—Sec. 2414.

Unclaimed lands.

Where streams to be taken out for irrigation purposes come from counties other than the one in which the district is situated, but where there are no existing claims to the water, and where no individual or settlement will be injured thereby, the power of said irrigation district is extended to said other county, inasmuch as said extension may be necessary for the construction of dams to turn the waters and ditches and canals with appurtenances to convey the same.—Sec. 2415.

When power of district extended

Lakes or ponds in natural basins having outlets, or such as can be made by dams across hollows, may be used as reservoirs to store water for lands lying on lower levels; and the people of any irrigation district may, under the provisions of this act, construct such artificial or use such natural basins for irrigating purposes; but the waters of such lakes or ponds are to be in no case raised, by dams or otherwise, so as to interfere with or damage settlers upon the margin thereof.—Sec. 2416.

Reservoirs.

Upon the construction or partial construction of any canal, ditch, or reservoir contemplated in this act, it becomes the property of the irrigation district, and thereafter all funds necessary for repairs upon the same, and for keeping in order or altering or enlarging the same, may be levied by a tax upon the lands benefited, the landholders in the district to vote on the same as above provided.

Ditch the property of the district.

And in case of emergency, caused by inundation or otherwise, the trustees may take such measures as they deem best to preserve the property and levy a tax for the necessary amount upon all the lands benefited by the ditches or canal, the tax to be collected as other taxes are.—Sec. 2417.

Emergency.

Property or money in the hands of trustees of an irrigation district, to be expended by them under the provisions of this act, is exempt from city, county, and territorial taxes.—Sec. 2418.

Exemption from taxes.

## RIGHTS OF WAY AND HOW OBTAINED.

- Trustees may buy land.** After a canal or ditch has been laid out under this act, or under any special charter where other provision has not been made, the trustees or company may agree with the owners of land through which it will pass for the purchase of so much thereof as may be necessary for the making of the ditch and appurtenances.—Sec. 2419.
- May condemn.** Section 2420 provides for condemnation and adjustment of damages in cases where the owner is absent from the county or is not capable in law of making agreement, and refuses to agree, or asks an exorbitant price.
- Referees.** Each party may select a referee, and if these do not agree, then the two may select a third, and these referees are to assess the value of the land and fix the damage. If the occupant or owner of the land does not select a referee the trustees may petition the district court, and three commissioners are to be appointed for that purpose; the finding of the referees, when made, to be filed with the clerk of the county court, after being duly signed and acknowledged.—Sec. 2471.
- Right of way.** In the chapter on water rights in 2 Compiled Laws, page 137, section 2788, as amended by laws of 1892, p. 91; and sections 2788*a*, 2788*b*, 2788*c*, and 2788*d*, found on pages 91-94 of the laws of 1892, the right of way for the construction of reservoirs, dams, water gates, canals, or flumes is given across public, private, or corporate lands, upon payment of just compensation. But it is provided that such right of way shall in all cases be exercised in a manner not to unnecessarily impair the practical use of any other right of way, highway, or public or private road, or unnecessarily injure any public or private property. Also that if the parties can not agree each may select an appraiser, and they two a third. Also, that if the landowner neglects for five days to choose an appraiser, the appraiser already chosen shall select another, and they two shall choose a third, and the three so chosen must meet within five days and hear the proofs and allegations of the parties and file their award within another five days. An appeal from this finding may be taken, but, on tender of the damages so found, the company or builder of the canal is entitled to proceed with the work. It is further provided that the canal must be kept in good repair, and that its owner, or owners, is liable to the owners of lands for damages for overflow. And further, that the canal, or works may be enlarged, and that the landowner shall be compensated for the additional land required by the enlargement, the amount of compensation to be ascertained in the same way as above provided, and the enlargement to be made between September 1st and March 1st, and that proper notices of all these proceedings must be given. The trustees, upon payment of the damages found, or tender when the same is refused, are entitled to enter on the lands condemned and hold them for the irrigation company forever.—Sec. 2421.
- Unoccupied lands.** If on any parcel of land there is no person living authorized to receive payment of the damages assessed, and the damages are not lawfully demanded within ten days after filing of the appraisal, the board of trustees may enter without payment or tender, but subject to payment whenever the same shall be lawfully demanded.—Sec. 2422.
- Canals already built.** Persons who have constructed canals, ditches, or dams, and taken out water for irrigation purposes before the passage of the act to which this is amendatory, may organize under the provisions of said

act and enjoy all the rights, powers, and privileges guaranteed therein; provided they shall proceed in the same manner as is provided for the organization of new companies.—Sec. 2426.

Nothing in this chapter is to be so construed as to prevent any association of persons incorporating under the laws of this Territory relating to private corporations for general purposes.—Sec. 2427. Private corporation law.

WATER COMMISSIONERS.

The selectmen of the different counties are made the water commissioners for their respective counties. Their powers and duties are to make, or cause to be made and recorded, such observations from time to time as they may deem necessary of the quantity and flow of water in the natural sources of supply, and determine, as near as may be, the average flow thereof at any season of the year, and to receive, hear, and determine all claims to the use of water, and on receipt of satisfactory proof of any right to the use of water having vested, to issue to the person owning such right a certificate therefor for recording, and to generally oversee, in person or by agents, to the distribution of water within their respective counties from natural sources of supply, to all the corporations or persons having joint rights in and to any natural source of supply, and to fairly distribute, according to the nature and extent of recorded rights and according to law, to each of said corporations or persons their several portions of such water; and in case of dispute between any of such persons or corporations as to the nature or extent of their rights to the use of water, or right of way, or damages therefor, if any one or more of such persons or corporations, to hear and decide upon all such disputed rights, and to file a copy of their findings and decisions as to such rights, with the county recorder, and to distribute water in accordance with such findings and decisions, unless otherwise ordered by a court of competent jurisdiction.—Sec. 2775. Powers and duties.  
To distribute water.  
To decide disputes.

ADJUDICATION OF CONTROVERSIES.

In cases where persons or corporations use water in different counties from the same natural source of supply, the water commissioners from each of said counties shall unite in appointing, from among their number, or otherwise, as they may determine, a board of reference of not less than three competent persons, to hear and decide all disputes in regard to water rights in and to such natural source of supply; and they shall file a copy of their decision with the county recorder of each of said counties, and said water commissioners and members of the board of reference shall each have power to administer oaths.—Sec. 2776. Boards of reference.  
Decision to be filed.

The certificate of the water commissioners shall state generally the nature and extent of the right to use water of the person or corporation to whom it is issued, and must be filed with the county recorder for recording.—Sec. 2777. What certificate to state.

The certificates of water commissioners and the findings and decisions of any commissioners are entitled to record and required to be recorded in the office of the county recorder, which said record is deemed to impart notice to all persons whomsoever of the contents thereof, and shall be prima facie evidence of the existence and verity of the facts recited therein.—Sec. 2778. Effect of record of certificates and records.

When suits  
may be main-  
tained.

No suits at law or in equity for the determination of the existence or extent of any right or rights to the use of water shall be maintained until after the decision of the proper county commissioners, or proper board of reference, as the case may be, unless said commissioners, or board, shall fail and neglect to hear and decide such claim of right for more than three months after the claimant may have presented, in writing, his claim or claims, and evidence in support thereof for adjudication. But this section is not to impair the authority or jurisdiction of any court in the issuance of a temporary injunction in such cases, or to abridge the right of any person aggrieved by any such decision to maintain any lawful suit or appeal after such decision may have been made.—Sec. 2779.

#### VESTED RIGHTS, PRIMARY AND SECONDARY.

What are pri-  
mary rights.

A right to the use of water for any useful purpose such as domestic purposes, irrigating lands, propelling machinery, washing and sluicing ores, and other like purposes, is recognized and acknowledged to have vested and accrued as a primary right to the extent of, and reasonable necessity for use thereof, under any of the following circumstances: (1) Whenever any person shall have taken, diverted, and used any of the unappropriated water of any natural stream, water course, lake, or spring, or other natural source of supply. (2) Whenever any person or persons shall have had the open, peaceable, uninterrupted, and continuous use of water for a period of seven years.—Sec. 2780.

What are sec-  
ondary rights.

A secondary right to the use of water for any of said purposes is recognized and acknowledged to have vested and accrued (subject to the perfect and complete use of all primary rights) to the extent of, and reasonable necessity for such use thereof, under any of the following circumstances: (1) When the whole of the water of any stream, water course, lake, etc., has been diverted and used by prior appropriators for a part or parts of each year only; and other persons have subsequently appropriated any part or the whole of such water during any other part of such year, the latter person has a secondary right. (2) When the average seven years flow of water has been used by prior appropriators, and there is an unusual increase of water exceeding seven years average flow, other persons appropriating and using such increase are deemed to have acquired a secondary right.—Sec. 2781.

How waters  
distributed.

When the waters of any natural source are not sufficient for the service of all those having primary rights to the use of the same, such water is to be distributed to each owner of such right in proportion to its extent, but those using water for domestic purposes shall have the preference over those claiming for any other purpose, and those using for irrigation shall have preference over those using for any other purpose except for domestic uses; provided that such preference shall not be exercised to the injury of any vested right, without just compensation for such injury.—Sec. 2787.

Forfeiture.

A continuous neglect to keep in repair any means of diverting or conveying water, or a continuous failure to use any right to water for a period of seven years, "at any time after the passage of this act," is held to be an abandonment and forfeiture of such right; and whenever hereafter a conveyance of land is executed, and a right to the use of water has been continuously exercised from the time of its first appropriation, in irrigating such land, such right shall pass to the

Right passes  
with land.



grantee of such conveyance; and in cases where such right has been exercised in irrigating different parcels at different times, such right shall pass to the grantee of any parcel on which such right was exercised next preceding the time of the execution of any conveyance thereof; subject, however, in all cases, to payment by the grantee of any such conveyance of all amounts unpaid on any assessment then due on any such right: *Provided*, That in any case the grantor may reserve such right to the use of water, or any part thereof, by making such reservation in express terms in the conveyance.—Sec. 2783.

Subject to assessments.

May be reserved.

All rights to the use of water and means of diverting water shall be exempt from taxation, except for the purpose of regulating the exercise of the use of such right, in all cases where the land, or other property, upon which the water pertaining to such rights is assessable for taxation; but in making assessment the assessor shall estimate the increased value of such land or other property caused by the use of such water.—Sec. 2784.

Taxation.

MEASUREMENT OF WATER.

A right to the use of water may be measured by fractional parts of the whole supply, or by such fractional parts with a limitation as to periods of time when used, or intended to be used, or by cubic inches with limitation specifying the depth, width, and declination of the water at point of measurement, and if necessary with further limitation as to periods of time when used, or intended to be used, and such right may be appurtenant to the land upon which such water is used, or it may be personal property, at the option of the rightful owner, and a change of the place of use of water shall in no manner affect the validity of any person's right to use water, but no person shall change the place of use of water to the damage of his coöwners in such right, without just compensation.—Sec. 2782.

How measured.

Water right.

May be appurtenant or personal property.

RIGHTS AND DUTIES OF APPROPRIATORS.

It is the duty of all persons using water from any natural source of supply to provide suitable ditches for conveying surplus water again into the natural channel, or other place of use, to the satisfaction or approval of the water commissioners; and if through neglect to provide such ditches water is allowed to form pools or marshes, or run to waste, or if any person shall turn or use any water in a manner that damages the property of another except when such turning or using is in the prudent, careful exercise of such person's lawful right to so turn or use, the person so offending shall be liable for damages to any aggrieved person entitled to the use of water from the same source of supply, and the water commissioners may, on application, or of their own motion, cause the water supply to be diverted from such offending party until such waste ditches are provided.—Sec. 2785.

Tail ditch.

Damages.

Power of water commissioner.

All companies or districts organized under the provisions of this act (act of March 13, 1884) are liable for any damage which may occur by the breakage of any canal or ditch. When land in an irrigation district is benefited or damaged by the company's canals or ditches, from soakage or other incidental cause, and the owner of the land and the company can not agree as to the amount of benefit or damage, the matter in dispute, as well as the question of damage through breakage, may be referred and decided as provided in a preceding section of

Liability for breakage.

Benefit or damage may be referred.

this act. No irrigation company organized under the laws of this Territory shall be entitled to divert the waters of any stream to the injury of any irrigation company or person holding a prior right to the use of said waters, and all cases of dispute arising from such unlawful diversion may also be referred and decided as provided by section 18 (Sec. 2420) of this act.—Sec. 2424.

## PROTECTION OF PROPERTY.

Unlawfully taking water, etc. Any person who, in violation of the right of any other person "or of said corporation," willfully turns or uses the water or any portion thereof, of said canal, ditch, or reservoir, except when the use of such water has been duly distributed to such person, or wilfully uses any greater quantity than has been duly distributed to him, or in any way changes the flow of water when lawfully distributed for irrigation or other useful purposes, except when duly authorized to make such change, or willfully or maliciously breaks or injures any dam, canal or water gate, ditch, or other means of diverting or conveying water for irrigation or other useful purpose, is guilty of a misdemeanor.—Secs. 2423 and 4727.

Willful damage. Any person who willfully and maliciously cuts, breaks, injures, or destroys any bridge, dam, embankment, reservoir, aqueduct, etc., erected to create hydraulic power, or drain swamp, overflowed, or marsh land, or to conduct water for reclamation of land or agricultural purposes; or causes to be made any aperture in the same, with intent to injure or destroy the same, etc., is guilty of a misdemeanor.—Sec. 4714.

Floating timber. Persons rafting or floating timber in any of the streams of the Territory are forbidden to allow the same to accumulate at or obstruct the water gates of any person or irrigation company taking water from such stream for irrigation or manufacturing purposes. Violation of this provision is a misdemeanor.—Laws of 1890, p. 21.

## MISCELLANEOUS.

Township trustees. The trustees of an incorporated town have power to lay out, construct, open, and repair canals, water ditches, pipes for irrigation, etc., for the use of the inhabitants.—Sec. 1824, amended by laws of 1890, p. 80.

Ditch owners may organize. Owners of several rights to the use of water, and a joint interest in the means of diverting or conveying the same, or who desire to divert and use any unappropriated water, are authorized to organize themselves into a corporation with power to levy and collect all necessary assessments, and the distribution of water to each stockholder may be regarded as payment of dividends and the corporation may have a perpetual succession unless dissolved by three years non use of its rights, or two-thirds vote of its members.—Sec. 2789.

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OREGON.

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## CONTENTS.

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	Page.
Rights declared.....	143
Procedure of appropriation.....	144
Rights of way and how obtained.....	145
Rights and duties of appropriators.....	146
Protection of property of corporations.....	147
Adjudication of priorities.....	147
Miscellaneous.....	148

## OREGON.

Oregon has no constitutional provisions on irrigation or water rights. Its statutory enactments on the subject consist of two sections in the miscellaneous laws of the State, compiled in 1887, and an act of the legislature filed in the office of the secretary of state February 18, 1891. The substance of these statutes appears below.

### RIGHTS DECLARED.

The use of the water of the lakes and running streams of Oregon, for general rental, sale, or distribution, for purposes of irrigation and supplying water for household and domestic consumption and watering live stock upon dry lands of the State, is a public use, and the right to collect compensation for such use is a franchise. A use shall be deemed general within the purview of this act when the water appropriated shall be supplied to all persons whose lands lie adjacent to or within reach of the line of the ditch or canal or flume in which said water is conveyed, without discrimination other than priority of contract, upon payment of charges therefor, as long as there may be water to supply.—Laws of 1891, p. 52, sec. 1.

Use of water a public use.

General use defined.

A corporation organized for the construction and maintenance of a ditch, canal, or flume for general irrigation purposes, and other purposes above prescribed, may appropriate and divert water from its natural bed or channel and condemn right of way for its ditch, canal, or flume, and may condemn the rights of riparian owners on the lake or stream from which such appropriation is made upon complying with the terms of this act. Such corporation shall also have the right to condemn lands for the sites of reservoirs and for ditches carrying the same away, and distributing ditches, and shall have the right to take from any running stream and store away any water not needed for immediate use by any person having a superior right thereto.—Sec. 2.

Water may be diverted and right of way condemned.

Reservoir sites, etc., may be condemned.

Such corporation may enter upon any land for the purpose of locating point of diversion of water and upon any land lying between such point and the lower terminus of its proposed ditch, etc., for the purpose of examining the same and locating and surveying the line of such ditch, canal, or flume with lines necessary for distributing ditches and feeders and to locate sites for reservoirs.—Sec. 3.

May enter on lands.

All existing appropriations made for beneficial purposes by any person, company, or corporation, in accordance with the laws of this State or of the United States, or the decisions of the courts of the State or the established customs and regulations of the district in which such appropriations have been made, shall be respected and upheld to the extent of the amount of water actually appropriated, nor shall any existing mill be deprived of its water power without consent of its owner; and all controversies respecting rights to water under this act shall be determined by the dates of the appropriations as respectively made thereunder by the parties.—Sec. 10.

Existing appropriations sanctioned.

Priority of appropriation.

When the channel of a natural stream shall have been so cut out, lowered, turned aside, or otherwise changed as to prevent any ditch,

When channel has been changed.

- canal, flume, or feeder from receiving the proper inflow of water to which it may be entitled, the corporation owning the same shall have
- May extend ditch up stream. the right to extend the head of such ditch, canal, etc., to such distance up the stream as may be necessary for securing a sufficient flow of water, and for such purpose may maintain proceedings for condemnation of right of way as in case of constructing a new ditch,
- May condemn right of way. and the priority of right to take water from such stream shall be unaffected in any respect by reason of a change in the place of diversion, provided no such change shall interfere with the complete use of any other ditch, canal, flume, or feeder lawfully constructed; and when from any cause the line of any ditch, canal, flume, or feeder as originally constructed can no longer be maintained the corporation owning
- Priority not affected. it may alter its course, and for such purpose may condemn lands for right of way.—Sec. 11.
- Course of ditch may be changed. Any corporation constructing ditch, etc., under this act is authorized to make use of the natural depressions in the earth along the line as parts thereof, and to conduct its water along the channel of any natural stream, but not so as to raise the water above ordinary high-water mark, and to take the same out again at any desired point without regard to the prior rights of others to water from said stream, but due allowance must be made for evaporation and seepage.—Sec. 14.
- May use natural stream for conduit. Such corporation is also authorized to condemn and appropriate the right to the flow of water in any stream from which it proposes to divert water below the point of diversion vested in the owners of lands lying contiguous to such stream, by virtue of their location. Such condemnation is to be conducted in the same manner as the condemnation of lands, but no person owning lands contiguous to the stream can, without his consent, be deprived of water for domestic use, or for watering stock, or water necessary and used for irrigating crops growing upon such lands.—Sec. 8.
- Evaporation and seepage. Such corporation is also authorized to condemn and appropriate the right to the flow of water in any stream from which it proposes to divert water below the point of diversion vested in the owners of lands lying contiguous to such stream, by virtue of their location. Such condemnation is to be conducted in the same manner as the condemnation of lands, but no person owning lands contiguous to the stream can, without his consent, be deprived of water for domestic use, or for watering stock, or water necessary and used for irrigating crops growing upon such lands.—Sec. 8.
- May condemn the right to the flow of water. Such corporation is also authorized to condemn and appropriate the right to the flow of water in any stream from which it proposes to divert water below the point of diversion vested in the owners of lands lying contiguous to such stream, by virtue of their location. Such condemnation is to be conducted in the same manner as the condemnation of lands, but no person owning lands contiguous to the stream can, without his consent, be deprived of water for domestic use, or for watering stock, or water necessary and used for irrigating crops growing upon such lands.—Sec. 8.
- Vested rights. Such corporation is also authorized to condemn and appropriate the right to the flow of water in any stream from which it proposes to divert water below the point of diversion vested in the owners of lands lying contiguous to such stream, by virtue of their location. Such condemnation is to be conducted in the same manner as the condemnation of lands, but no person owning lands contiguous to the stream can, without his consent, be deprived of water for domestic use, or for watering stock, or water necessary and used for irrigating crops growing upon such lands.—Sec. 8.

## PROCEDURE OF APPROPRIATION.

- Notice to be posted. The corporation appropriating water is required, after selecting point of diversion, to post in a conspicuous place thereat a notice in writing containing a statement of the name of the ditch, canal, or flume, and of the owner thereof, the point at which its head gate is to be constructed, a general description of the course of said ditch, canal, or flume, the size of the same in width and depth, the number of cubic inches of water by miner's measurement under a 6-inch pressure intended to be appropriated, and the number of reservoirs, if any.—Sec. 4.
- Contents. Within ten days of posting such notice the corporation must file for record in the office of the county clerk or recorder of conveyances, as the case may be, of the county where its works are situated a similar notice, and at the same time file a map showing the general route of the ditch, canal, or flume; and in case the said works shall not lie wholly in one county such notice and map shall be filed in each county in which any portion thereof may be situated. Within sixty days from the completion of such ditch, canal, or flume the corporation shall in like manner file a map of definite location thereof by legal subdivisions of land traversed thereby, in case it is surveyed, with the points of location of reservoirs, if any, designated thereon.
- Notice and map to be filed. These notices are required to be recorded in a book kept for the purpose, and the maps are to be filed and preserved among the records of the office.—Sec. 5.
- Map of definite location to be filed. These notices are required to be recorded in a book kept for the purpose, and the maps are to be filed and preserved among the records of the office.—Sec. 5.
- Notices recorded. These notices are required to be recorded in a book kept for the purpose, and the maps are to be filed and preserved among the records of the office.—Sec. 5.

Within six months from the posting of the notice above prescribed the corporation must commence the actual construction of its proposed ditch, canal, or flume, and must prosecute the same without intermission, except as resulting from the act of God, the elements, or unavoidable casualty, until the same is completed; and the actual capacity of the ditch, canal, or flume, when completed, is to determine the extent of the appropriation, anything contained in the notice to the contrary notwithstanding. Upon compliance with these provisions the right to the water relates back to date of posting notice.—Sec. 9.

Must begin work, when.

Capacity of ditch determines extent of appropriation. When right to water attaches.

The right to appropriate water may be lost by abandonment, and a corporation which neglects to use its works for a year at any time is held to have abandoned its appropriation, and the water reverts to the public and is subject to other appropriations in order of priority. Abandonment is a question of fact.—Sec. 22.

Abandonment of appropriation.

RIGHTS OF WAY AND HOW OBTAINED.

A right of way for the construction of a water ditch to be used for irrigation, manufacturing, or mining purposes \* \* \* is hereby granted to any individuals or corporations who may construct such water ditches \* \* \* over any of the State lands belonging to the State of Oregon—tide, swamp, and overflowed lands, and school lands—for a distance on each side of said ditches or water pipes of 25 feet.—Mis. Laws, sec. 4058.

Right of way over State lands to individuals and corporations.

It is the duty of the company or individual constructing such water ditches to file a copy of the field notes of the survey of such ditches with the secretary of state, showing the location thereof.—Mis. Laws, sec. 4059.

Copy of field notes to be filed.

When the corporation has acquired the right to appropriate water in the manner provided above, it is authorized to condemn the land necessary for right of way for its ditch, canal, or flume, and for its distributing ditches, feeders, and reservoirs, but such right of way for the main line of its ditch shall not exceed 100 feet in width, and for each distributing ditch or feeder 30 feet in width, and for each reservoir site 20 acres from one owner, or for every 10,000 inches of water, miner's measurement, as aforesaid, or fraction thereof over one-half of the capacity of the main ditch, or canal, or flume, for every 20 miles of its length.—Sec. 6.

Limit of rights of way, etc.

When the corporation is unable to agree with the owner of property required for such purposes as to the compensation to be paid therefor, or if the owner is absent from the State or incapable of contracting, the corporation may maintain an action in the circuit court of the county where the lands are situated, for condemnation of the same and to determine the compensation. Such proceedings are to be in accordance with title three of chapter thirty-two of the miscellaneous laws of Oregon.—Sec. 7.

Procedure of condemnation.

This is substantially the ordinary method of condemnation of lands by private corporations.

The right of way, to the extent above stated, is granted to such corporations appropriating water, across any and all lands belonging to the State of Oregon and not under contract of sale.—Sec. 25.

Right of way over State lands, to corporations.

The right of way across the improved or occupied lands of another is required to be by the shortest and most direct route practicable, having reference to cost of construction, upon which the ditch, canal, etc., can be constructed with uniform or nearly uniform grade.—Sec. 12.

Shortest route must be chosen.

No unnecessary burden.

No tract of improved or occupied land can, without the written consent of the owner thereof, be subjected to the burden of two or more ditches or flumes constructed for the purpose of conveying water through the same, when the same object can be feasibly and practically attained by conveying all the water in one ditch or flume; and any corporation which has already constructed a ditch or flume for such purpose is required to allow any other corporation to enlarge the same upon payment of a reasonable proportion of the cost of constructing and maintaining it; such corporation is to be jointly liable

Common user.

to any person damaged along the line of common user by reason of the faulty construction of such portion of such ditch or flume; and the corporation securing the use of the same is to be liable to the owner corporation for all damage by it sustained growing out of the enlargement, or the increased volume of water. The corporation seeking to secure the right to make use of such ditch or flume already

Bond.

constructed is required first to give bond to the owner corporation, with sufficient sureties, in an amount equal to the original cost of construction and the estimated cost of enlargement of the ditch or flume, subjected to the double use, and conditioned for the payment on demand to the owner corporation of a reasonable proportion of the original cost of construction of the portion enlarged and of the cost of enlargement thereof, together with a reasonable proportion of the cost of its maintenance as enlarged, and of all damages that may at any time accrue to the owner corporation; "and for which it shall have a right of recovery against such other corporation by reason of the provisions of this section;" provided, that, if the corporation owner

Penalty; how fixed.

shall object to the amount or sufficiency of the sureties on such bond, it shall serve on the corporation desiring to use such ditch or flume, within ten days after receiving said bond, a notice, specifying particularly the objections thereto, and the sufficiency of the sureties. or the amount of the bond, shall be determined by the judge of the circuit court of the county where said ditch, canal, or flume is situated, and said judge may hear evidence at chambers in relation thereto.—Sec. 13.

#### RIGHTS AND DUTIES OF APPROPRIATORS.

Head gate.

A corporation constructing a ditch, canal, or flume is required to erect and keep in good repair a head gate, which, together with the necessary embankments, must be of sufficient height and strength to control the water at all ordinary stages. The frame work of such head gate is to be of timber not less than 4 inches square, and the bottom, sides, and gate or gates, of plank, not less than 2 inches thick.—Sec. 15.

Liability for damages.

Such corporation is liable for all damages done to the person or property of others, arising from leakage or overflow of water from the ditch, flume, or reservoir, growing out of want of strength in the banks or walls, or negligence, or want of care in the management of the same; but damages resulting from extraordinary and unforeseen action of the elements, or attributed in whole or in part to the wrongful interference of another with such ditch, flume, or reservoir, which may not be known to the corporation for such length of time as to enable it, by the exercise of reasonable efforts, to remedy the same, can not be recovered against said corporation.—Sec. 16.

When no liability.

Bridges.

The corporation is required to construct over its ditch or canal where it crosses the public highway a good and substantial bridge



not less than 14 feet in width. This is to be done within three days from the time the highway is intersected. If not so done the road supervisor is to build the bridge and bring suit as such supervisor to recover the expense of construction with costs and disbursements and reasonable attorney fees.—Sec. 17.

The corporation is also required to carefully keep and maintain the embankments and walls of their ditch, canal, flume, and reservoir, to prevent the water from wasting or damaging the premises of others, and is forbidden to divert at any time any water for which it has not actual use or demand.—Sec. 18.

The corporation is authorized to acquire the right of way across contiguous lands for distributing ditches, but it can not be compelled to do so, or to construct distributing ditches. But any person constructing a distributing ditch to the line of the right of way for the ditch or canal at any practicable point, and who shall tender to the corporation the rates usually charged consumers of water along the line of the ditch, for any amount of water the corporation may have, or may have the right and ability to appropriate, above the amount already sold, shall be entitled to receive the amount of water for which tender is made, and the corporation is required to connect such distributing ditch with its ditch, canal, or flume, and turn the water in the same; and on failure or refusal to do so is liable to such person for all loss or damage sustained by reason of the failure to procure such water. But the corporation is not liable for loss occasioned by defective construction or careless management of distributing ditches, and not occasioned in whole or in part by its own wrongful or negligent act.—Sec. 19.

A corporation furnishing water for irrigation is given a lien for the reasonable value of the water furnished upon all crops raised by means thereof, and this lien binds the crops as well after as before they have been gathered, and without record, is preferred to all other liens, and may be enforced by suit in equity.—Sec. 20.

PROTECTION OF PROPERTY OF CORPORATIONS.

Any person who shall knowingly and willfully cut, dig, break down, or open any gate, embankment, or side of any ditch, canal, flume, feeder, or reservoir, the property of another, with intent maliciously to injure the owner of the property, or any other person, or for his own gain, with intent of stealing, or appropriating the water to his own use, without the consent of the owner, is guilty of a misdemeanor, and punishable by fine not less than \$10 nor more than \$300, or by imprisonment in the county jail not less than a month nor more than a year; and is also liable for all damages caused by his wrongful act.—Sec. 23.

ADJUDICATION OF PRIORITIES.

In suits for the protection of water rights the plaintiff may make any and all persons who have diverted water from the same source parties to the suit, and the court may in one decree determine the relative priorities and rights of all parties. Any person claiming a right on the stream or source, and not made a party, may become such on application to the court, when it is made to appear that he is interested in the result of the suit, and may have his right determined; and the court may, at any stage, on its own motion, require any and all persons having or claiming rights to water on the stream or source,

Embankments to be kept up.

Distributing ditches.

Companies must sell water on tender of rates.

Defective construction of distributing ditches.

Lien for water.

Penalty for injuring ditch.

All persons interested may be made parties.

to be made parties, when it appears that a complete determination of the issues involved can not be made without the presence of such person or persons.—Sec. 24.

MISCELLANEOUS.

Ditches, etc., real estate. Ditches, canals, and flumes permanently affixed to the soil are declared to be real estate, and the same, or any interest therein, to be transferable by deed only, duly witnessed and acknowledged. The vendee succeeds to the rights of his vendor, and is subject to the same liabilities during his ownership.—Sec. 21.

How transferable.

Commissioners may be appointed and rates fixed.

Section 26 declares that this act shall at any time be amendable by the legislative assembly and commissioners for the management of water rights and use of water may be appointed, and rates may be fixed by the legislative assembly or by such commissioners; but rates shall not be fixed lower than will allow the net profits of ditch, canal, or flume, or any system thereof, to equal the prevailing legal rate of interest on the amount of money actually paid in and employed in the said works.—Sec. 26.

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IDAHO.

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## CONTENTS.

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	Page.
Constitutional provisions .....	151
Statutory enactments .....	152
Rights declared .....	153
Procedure of appropriation .....	153
Rights of way and how obtained .....	153
Rights and duties of appropriators .....	154
Water districts .....	154

## IDAHO.

### CONSTITUTIONAL PROVISIONS.

ART. I. SEC. 14. The necessary use of lands for the construction of reservoirs, or storage basins, for the purposes of irrigation, or for rights of way for the construction of canals, ditches, flumes, or pipes, to convey water to the place of use, for any useful, beneficial, or necessary purpose, or for drainage, or for the drainage of mines, or the working thereof by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the State, or the preservation of the health of its inhabitants, is hereby declared to be a public use and subject to the regulation and control of the State. Private property may be taken for a public use, but not until a just compensation, to be ascertained in a manner prescribed by law, shall be paid therefor.

ART. XV. SEC. 1. The use of all waters now appropriated or that may hereafter be appropriated for sale, rental, or distribution; also of all water originally appropriated for private use, but which after such appropriation has heretofore been or may hereafter be sold, rented, or distributed, is hereby declared to be a public use, and subject to the regulation and control of the State in the manner prescribed by law.

SEC. 2. The right to collect rates or compensation for the use of water supplied to any county, city, or town, or water district, or the inhabitants thereof, is a franchise, and can not be exercised except by authority of and in the manner prescribed by law.

SEC. 3. The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose; and those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes. And in any organized mining district those using the water for mining purposes or milling purposes connected with mining, shall have preference over those using the same for manufacturing or agricultural purposes. But the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public and private use, as referred to in sec. 14 of Article I of this constitution.

SEC. 4. Whenever any waters have been or shall be appropriated or used for agricultural purposes, under a sale, rental, or distribution thereof, such sale, rental, or distribution shall be deemed an exclusive dedication to such use; and whenever such waters so dedicated shall have once been sold, rented, or distributed to any person who has

settled upon or improved land for agricultural purposes with the view of receiving the benefit of such waters under such dedication, such person, his heirs, executors, administrators, successors, or assigns, shall not thereafter, without his consent, be deprived of the annual use of the same, when needed for domestic purposes, or to irrigate the land so settled upon or improved, upon payment therefor, and compliance with such equitable terms and conditions as to the quantity used and times of use as may be prescribed by law.

SEC. 5. Whenever more than one person has settled upon or improved land with the view of receiving water for agricultural purposes under a sale, rental, or distribution thereof, as in the last preceding section of this article provided, as among such persons priority in time shall give superiority of right to the use of such water in the numerical order of such settlements or improvements; but whenever the supply of such water shall not be sufficient to meet the demands of all those desiring to use the same, such priority of right shall be subject to such reasonable limitations as to the quantity of water used and times of use as the legislature, having due regard to such priority of right and the necessities of those subsequent in time of settlement or improvement, may by law prescribe.

SEC. 6. The legislature shall provide by law the manner in which reasonable maximum rates may be established to be charged for the use of water sold, rented, or distributed for any useful or beneficial purpose.

#### STATUTORY ENACTMENTS.

The State of Idaho has not legislated upon the subject of irrigation. The legislature of 1873 had under consideration, but failed to pass, an elaborate bill covering the whole subject, and providing, among other things, for a State engineer and a board of adjudication of water rights, with a method for the adjudication of priorities, and for water divisions and water districts, and the appointment of water masters and assistants.

Where found. But the Territorial laws in force at the time of the admission of the State are still in force. They are found in the Revised Statutes of 1887, sections 3155-3205, and are summarized below without reference to particular sections.

#### RIGHTS DECLARED.

It is provided—

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| Priority of appropriation.               | That the right to the use of flowing water may be acquired by appropriation, and as between appropriations priority in time shall secure priority of right.  |
| Use may be changed.                      | That the appropriation must be in good faith, for a beneficial purpose, and when once perfected may be converted to any other beneficial use.  |
| Place of diversion may be changed.       | The appropriator or his successors in interest may change the place of diversion if the rights of others are not interfered with, and may extend the ditch, flume, etc., to points beyond such as may have accrued prior to such extension.                                      |
| Claimants in vicinity entitled to water. | All persons, companies, and corporations claiming lands on the banks or in the vicinity of any stream are entitled to the use of the waters for the purpose of irrigating the land so claimed.   |
| Insufficient exposure to stream.         | When any such owner or claimant has not sufficient frontage on a stream to afford the requisite fall on his own premises, or where the land to be irrigated is back from the banks of the stream and convenient facilities for watering can not be had, the owner or claimant is |

entitled to a right of way through the lands of others for the purposes of irrigation, but in making and maintaining his ditch or other conduit through such lands he must keep the same in good repair, and is liable to the owner or claimant of such lands for all damages occasioned by an overflow or which may result from any neglect or accident, unless the same be unavoidable.

Damages.

All persons owning or having possessory right to lands adjacent to any stream have the right to place in the channel or on the banks dams or machines to raise the water to such a level as may be requisite for its flow to the lands, or the right of way over intervening lands may be acquired the same as other rights of way.

Machines for raising water.

## PROCEDURE OF APPROPRIATION.

The person or corporation seeking to appropriate water must post a written notice in a conspicuous place at the point of intended diversion, stating—

Notice.

First. The quantity of water intended to be claimed and diverted, giving the number of inches measured under a 4-inch pressure, and accurately describing the point of diversion.

Contents.

Second. The purpose for which the same is claimed or intended to be used and the place of such intended use.

Third. The means which are designed to be employed for diverting and conducting the waters, and the size or dimensions of the ditch, canal, pipe, flume, or other conduit.

A copy of this notice, within the time allowed for a mining claim, must be furnished to the county officer for record.

To be recorded.

Within sixty days after the above notice is posted, the claimant, or his successor in interest, must commence the construction of the works, and the work for the complete diversion of the water must be diligently prosecuted without unnecessary interruption, unless delayed by unavoidable causes. "Complete diversion" means the conducting of the water to the place of intended use and an actual beneficial use made.

When work to begin.

Diligence required.

By compliance with these conditions the appropriation is perfected and the right to use the waters claimed, to the extent of the capacity of the works constructed, relates back to the time of posting the notice of claim; but nothing is to render any person liable to damages or to make compensation to any appropriator for water used prior to the time of complete diversion. All ditches and other works "heretofore constructed," and by means of which water has been diverted and applied to beneficial use, are taken to have secured the right to the waters to the extent to which the works are capable of conducting, and not exceeding the quantity claimed.

When right to water attaches.

No liability for water before complete diversion. Vested rights.

Where any person, company, or corporation have heretofore made claim to divert water, and the same has not been forfeited or abandoned, and have not constructed the necessary ditch or other conduit, the claimant must within four months from the date of approval of this act commence work in pursuance of these requirements and carry the same to completion, or upon failure to do so the claim shall cease to be of any validity as the foundation of a right to the waters of any stream.

Time allowed to complete appropriation of water already claimed.

## RIGHTS OF WAY AND HOW OBTAINED.

Rights of way for irrigation works are obtained as follows, viz: The party desiring the right of way presents a petition to the county commissioners.

Petition to county commissioners.

- commissioners, describing the lands required, giving the size of the canal or works, the quantity of land required, the names of the owners, and asking the appointment of three appraisers to ascertain the compensation to be made. Notice of hearing is given by publishing or posting notice that appraisers will be appointed unless good cause is shown by the parties adversely interested why the petition should be denied.
- Notice.**
- Duties of appraisers.** The appraisers, when appointed, are to hear the proofs and allegations of the parties, view the premises, ascertain the damages, and the majority are to subscribe a certificate thereof, which is to be recorded in the county recorder's office, and on payment or tender of the compensation and damages, if any, or the deposit of the amount in the county treasury to the credit of the interested party, the right of way becomes complete.
- Tender of damages.**
- The owners of a spring, or appropriators of water, may in like manner condemn the right of way to conduct the water to place of use.

## RIGHTS AND DUTIES OF APPROPRIATORS.

- To maintain ditches.** The owners of irrigating works and their successors in interest, using the same, are required to maintain them and keep banks, flumes, and other parts thereof, in good repair, so as not to injure in any way the property of others.
- Vested rights. Liabilities.** Rights to water appropriated before the passage of the law are reserved, but such reservation is not to exempt the appropriators from the liabilities imposed on others.
- Right to use of water.** Owners and cultivators of land along the line of and covered by a ditch or canal have the right to the use of the water for irrigating purposes in the following order: First, all persons through whose land the ditch runs are entitled to the use of water in the order of their location. Second, after those, through whose land the ditch runs, those on either side are entitled to the water; those equally distant are entitled to priority in the order of their location along the line; provided such owners and cultivators pay the customary rates for the use of water, and when a ditch has been constructed for the purpose of conveying and selling water for irrigating purposes, it is unlawful for the owner to change the line so as to prevent or interfere with the use of water by any one, who, prior to the proposed change, had used the water for irrigation. It is the duty of the ditch owners
- Order of distribution.** to keep it in good repair and to cause water to flow through it to the extent of its capacity, if so much is needed, during the entire time water is needed, and if the source from which the water is taken furnishes enough, subject to appropriation by the ditch owner.
- To pay customary rates.** For a failure to keep the water so flowing, the ditch owner or lessee is personally liable for damage resulting therefrom, and the damages are a lien upon the canal until paid.
- Line cannot be changed when.**
- Duty to repair.**
- To furnish water.**
- Liability for failure.**
- Waste of water forbidden.** No person entitled to use water is allowed to use more than good husbandry requires, and any person using an excess is liable to the owner for such excess and to any other person who would have been entitled to the said excess of water for all damages sustained by him for want thereof.

## WATER DISTRICTS.

- Watermaster may be elected.** It is provided that the inhabitants of any neighborhood who use the waters of any ditch or stream, or claim a common right thereto, for purposes of irrigation shall constitute a water district, and a ma-



majority of the inhabitants having the common right may annually on the fourth Monday of March elect a watermaster to superintend the distribution of the waters among those having the common right. He is required to give bond in \$500, and may employ deputies as authorized by the inhabitants; and his pay is fixed by the inhabitants.

Bond.

The owner of any ditch for distribution and sale of water is required to employ a watermaster for distribution to purchasers, and no demand for water furnished when no watermaster is employed is valid or collectable.

Watermaster must be employed.

The watermaster is to regulate distribution among the ditches of his district and among the inhabitants according to their respective rights and necessities, and when there is not sufficient water to supply those entitled to it he is to regulate the quantity to be used by each person and the time at and during which each may use the same; but the individual rights of companies or corporations, and the control of water which is private property, are not to be interfered with.

His duties.

When a ditch is common property, or there is a common right to use the water of a ditch without payment, and it is necessary that the ditch be cleaned out, or that repairs to the same be made, the watermaster may make a fair pro rata assessment of labor or materials against the inhabitants of the district claiming the use of the water, according to benefits, and the person so assessed, if he neglect or refuse for ten days after notice to furnish his proportion, forfeits all right to the use of the water from the ditch for that year.

He may assess for repairs, etc., when.

The watermaster is to see that proper head gates and dams are provided, that the water is turned and runs into the ditches at the proper season of the year, and may require persons receiving water to construct proper gates at the points at which they take water, and is to have such control of the location of ditches and gates as may be necessary to secure the most equitable distribution of the water.

Forfeiture of water.

Any person who, without consent of the watermaster, diverts any water from the ditch where it was placed by the watermaster or his deputies, or who shall shut or open any ditch, gate, or dam with intent so to divert water, and deprive the person entitled to it of the same, or who shall cut the banks of any ditch, or break or destroy any gate or flume is guilty of a misdemeanor and punishable accordingly, and liable to the person injured in three times the actual damage sustained.

To see to head gates, dams, and location of ditches.

Interference with ditches, misdemeanor.



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NEVADA.

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## NEVADA.

The constitution of Nevada has no provisions relating to irrigation or water rights. The legislation of the State upon the subject has heretofore been, chiefly, in harmony with that of Colorado, but much less elaborate. The public use of water, its ownership by the people, and the right of appropriation are recognized. Corporations for the construction of canals and flumes are authorized, and rights of priority are required to be respected.

But the later legislation has not been of such a character as to be said to constitute a definite system. The legislature of 1889 enacted a law providing for the appointment of a board of reclamation commissioners, with large powers in the matter of constructing irrigation works of the various kinds, but the legislature of 1891 repealed it, almost nothing having been done by virtue of it. The legislature of 1891 also passed a law providing for the organization and government of irrigation and water storage districts—similar to the California district law—but it is said that no action has been taken under it. The legislature of 1893 had before it for discussion and adoption a bill similar to the law of Wyoming, but adjourned without passing it. Probably the next legislature will be able to agree upon some definite system.



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TEXAS.

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2173—No. 1—11

161

## CONTENTS.

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	Page.
Constitutional provisions .....	163
Rights declared or granted.....	163
Prior appropriation.....	163
Procedure of appropriation.....	163
Formation of corporations.....	164
Rights of way .....	164
Measurement of water .....	165
Quantities may be regulated, prices fixed, and commissioner or inspector appointed .....	165
Duties of irrigation companies .....	165
Protection of property devoted to irrigation .....	165
Encouragement of irrigation companies .....	165
Mode of irrigation, etc .....	166



# TEXAS.

## CONSTITUTIONAL PROVISIONS.

Texas has no constitutional provisions upon the subject of irrigation or water rights. The statutory enactments upon the subject are found in "An act to encourage irrigation and to provide for the acquisition of the right to the use of water, and for the construction and maintenance of canals, ditches, flumes, reservoirs, and wells irrigation, and for mining, milling, and stock raising in the arid districts of Texas," enacted in 1889; and in a chapter of the general laws of the State regulating the mode of irrigation.

The substance of these statutes appears below.

### RIGHTS DECLARED OR GRANTED.

The unappropriated waters of every river or natural stream within the arid portion of Texas, where irrigation is necessary for agricultural purposes, may be diverted from its natural channel for irrigation, domestic, and other beneficial uses: *Provided*, That said water shall not be diverted so as to deprive any person who claims, owns, or holds a possessory right to any land lying along the bank or margin of any river or natural stream of the use of the water thereof for his own domestic use.—Sec. 1. Right of diversion.  
Domestic use protected.

The unappropriated waters of every river or natural stream within the arid portions of the State are declared to be the property of the public, and may be acquired by appropriation for the uses and purposes as hereinafter provided.—Sec. 2. Public property.

The appropriation must be for the purpose named in this act, and when the appropriator, or his successor in interest, ceases to use it for such purposes the right ceases.—Sec. 3. Right ceases with use.

### PRIOR APPROPRIATION.

As between appropriators, the one first in time is the one first in right to such quantity of the water only as is reasonably sufficient and necessary to irrigate the land susceptible of irrigation on either side of the ditch or canal.—Sec. 4; see also sec. 9 given below. First in time first in right.

### PROCEDURE OF APPROPRIATION.

Every person, corporation, or association which have constructed or may hereafter construct any ditch, canal, or reservoir for the purposes named in this act, and taking water from any natural stream, shall, within ninety days after this act goes into effect, or within ninety days after the commencement of such construction, file and cause to be recorded in the office of the county clerk of the county where the head gate of such ditch or canal is situated, or to which said county may be attached for judicial purposes, in a well-bound book to be kept by said clerk for that purpose, a sworn statement in writing, showing the name of such ditch or canal, the point at which the head gate thereof is situated, the size of the ditch or canal in width and depth, and the Statement to be filed.

- Contents. carrying capacity thereof in cubic feet per second of time, the name of the stream from which the water is taken, the time when the work was commenced, and the name of the owner or owners thereof, together with a map showing the route of said ditch or canal.—Sec. 5.
- Map. carrying capacity thereof in cubic feet per second of time, the name of the stream from which the water is taken, the time when the work was commenced, and the name of the owner or owners thereof, together with a map showing the route of said ditch or canal.—Sec. 5.
- When to begin work. Within ninety days after the filing of said statement the party claiming the right to appropriate the water shall begin the actual construction of the proposed ditch, canal, or reservoir, and shall prosecute the work thereon diligently and continuously to completion.—Sec. 6.
- Completion. Completion is defined to be the conducting of the water in the main canal to the place of intended use.—Sec. 7.
- Time right accrues. By compliance with the preceding provisions of this act the claimant's right to the use of the water relates back to the time when the work of excavation or construction was commenced: *Provided*, That a failure to file said statement shall not work a forfeiture of such heretofore acquired rights, nor prevent such claimants of such heretofore acquired rights from establishing such rights in court.—Sec. 8.
- Proviso. When any person, corporation, or association, by compliance with the preceding provisions of this act, has become entitled to the use of the waters in any river or stream it shall thereafter be unlawful for any other person, except for domestic use, by any one entitled thereto, to so divert the flow of water in said river or stream in such manner and to the extent of depriving said person or association of persons in priority of the use of the water to which they may be so entitled.—Sec. 9.
- Vested rights. When any person, corporation, or association, by compliance with the preceding provisions of this act, has become entitled to the use of the waters in any river or stream it shall thereafter be unlawful for any other person, except for domestic use, by any one entitled thereto, to so divert the flow of water in said river or stream in such manner and to the extent of depriving said person or association of persons in priority of the use of the water to which they may be so entitled.—Sec. 9.

## FORMATION OF CORPORATIONS.

- For construction of irrigating works, etc. Corporations may be formed and chartered under the provisions of this act and of the general incorporation laws of Texas for the purpose of constructing, maintaining, and operating canals, ditches, flumes, feeders, laterals, reservoirs, and wells, and of conducting and transferring water to all persons entitled to the same, for irrigation and domestic uses, and for the purpose of building storage reservoirs for the collection and storage of water for the uses before mentioned, and for mining, milling, and stock-raising.
- Right to purchase water. All persons who own or hold a possessory right or title to land adjoining or contiguous to any canal, ditch, flume, or lateral, constructed and maintained under the provisions of this act, and who shall have secured a right to the use of water in said canal, ditch, flume, or lateral, shall be entitled to be supplied therefrom with water for irrigation of such land and domestic uses: *Provided*, The party so entitled shall first make available his land for agricultural or grazing purposes, and shall provide cisterns, wells, or storage reservoirs for water for domestic purposes.—Sec. 10.

## RIGHTS OF WAY.

- Over public lands. All corporations and associations formed for the purposes of irrigation, as provided in this act, are hereby granted the right of way, not to exceed 100 feet in width, over all public, university, and asylum lands of the State, with the use of rock, gravel, and timber on the right of way, for construction purposes, and may obtain the right of way over private lands by contract. Any such corporation may also obtain the right of way over private lands by condemnation, by causing the damages for any private property appropriated by such corporations or associations to be assessed and paid for as provided in cases of railroads.—Sec. 11.
- May condemn over private lands. Any such corporation may also obtain the right of way over private lands by condemnation, by causing the damages for any private property appropriated by such corporations or associations to be assessed and paid for as provided in cases of railroads.—Sec. 11.

MEASUREMENT OF WATER.

Surplus water not used must be conducted back to the stream from whence taken. Surplus water.

Water sold or disposed of may be measured in inches, feet, or fractional portion of the whole supply, or distributed by the hour or acre system. But water shall be furnished in the way and manner named in the contract or certificate issued to purchasers, so long as any remains unsold in the ditch. This is subject to the proviso set forth below.—Sec. 12. Measurement.

QUANTITIES MAY BE REGULATED, PRICES FIXED, AND COMMISSIONER OR INSPECTOR APPOINTED.

A proviso to section 12 reads as follows: "Provided, That the commissioner of agriculture, insurance, statistics, and history shall make a report to the legislature at its next regular session and at each regular session thereafter, as to the cost and expense attending the construction and maintenance of canals, ditches, flumes, feeders, and wells for irrigation in various parts of the State, and accompany the same with a statement of the charges made for the uses of water by canal, ditch, and well companies, and the legislature shall at such times as it deems proper, either by direct legislation or by the creation of a commissioner or water inspector or inspectors, with full delegated power, control and regulate the quantity of water which may be diverted by any water company or individual, when and in what manner it may be diverted, and may establish and enforce all such reasonable rules and regulations necessary, and proper governing and controlling such corporations and water construction companies and persons operating under the provisions of this act, and may also regulate, charge, and fix the charges for the use of water made by such ditch, canal, and well companies."—Sec. 12, aforesaid.

Report as to cost of construction, etc.

Legislature may regulate quantity.

And manner of diversion. Make rules.

Fix charges.

DUTIES OF IRRIGATION COMPANIES.

The duty of irrigation companies to furnish water to irrigate contiguous lands appears from sections 10 and 12, whose provisions in this respect are given above, and their duties to the public appear from section 13, which provides that all persons, corporations, and associations shall have the right to run along or across all roads and highways necessary in the construction of their work, and shall at all such crossings construct and maintain necessary bridges for the accommodation of the public, and shall not affect or impair the usefulness or condition of said road or highway.—Secs. 10, 12, and 13.

To furnish water.

Maintain bridges.

PROTECTION OF PROPERTY DEVOTED TO IRRIGATION.

Any person who willfully or through gross negligence injures any irrigating canal or its appurtenances, wells or reservoirs, or who wastes the water thereof, or takes the water without authority, is deemed guilty of a misdemeanor, and for each offense liable to a fine not exceeding \$500.—Sec. 14.

Penalty for damage.

ENCOURAGEMENT OF IRRIGATION COMPANIES.

Any corporation created and organized under the general laws of the State, or the provisions of this act, for the purpose of irrigation, is given power to acquire lands by voluntary donation or purchase or in payment of stock or water rights, and to hold and dispose of the same,

May buy and sell lands.

Borrow money. and to borrow money for the construction, maintenance, and operation of its canals, ditches, flumes, feeders, reservoirs, and wells, and to issue  
 Give mortgage. bonds and mortgage its corporate property and franchises to secure the payment of any debt contracted for the same: *Provided*, That all lands acquired by such corporation except such as are used in the construction, maintenance, and operation of said canals, etc., shall be alienated within twenty years from the date of acquirement or be subject to judicial forfeiture.—Sec. 15.

All laws and parts of laws in conflict with this act are repealed, and this act is given immediate effect.—Secs. 16 and 17.

#### MODE OF IRRIGATION, ETC.

The provisions of the chapter regulating the mode of irrigation are substantially as follows:

Powers of commissioner's court. The commissioner's court are authorized to order, regulate, and control the time, mode, and manner of erecting, repairing, cleaning, guarding, and protecting the dams, ditches, roads, and bridges belonging to any irrigation farms and property, and the fences or other like protection in and around said farms; *Provided*, That such farms, dams, ditches, etc., be conjointly owned by two or more different persons, and that they be situated outside of a corporation having jurisdiction thereof.—Art. 2982.

May establish police regulations. Fines. The said courts are given power to establish needful police regulations for government and control of irrigation farms and property, and may assess and collect fines for breach of regulations established by them or by the joint owners of such farms and property, or recognized by said courts as consistent with ancient usage and the law of the State; they may order meetings of joint owners for the election of commissioners and other officers and for the consideration of any of their other interests, or the said courts may elect said officers, and may regulate the right of way, the stoppage and passage of water, and the right distribution of the shares of water; they may forbid the running of stock at large on the common farm; they may fine for taking water out of time and for carelessness and wantonness in overflowing roads and neighboring lands, and, generally, they may do or cause to be done what they consider just and needful or beneficial to the joint owners.—Art. 2983.

Order meetings. Regulate distribution of water, etc. If any owner of a *suerte* or subdivision lot in said farm fails or refuses to do or pay his proper share of labor and expense on any dam, ditch, fence, bridge, or other appurtenance to such farm, the said court may lease said *suerte*: but such leasing must be at public outcry after at least ten days' public notice, and to the person bidding the shortest term, not over four years, who shall give good security to discharge faithfully all such charge and work.—Art. 2984.

When may lease property. Upon application of the owners of suitable lands and water, and proper security to the county, if required by the court, that no injury will result to public health, the commissioners' courts are authorized to license such owners to dam the waters, and to fence, ditch, and irrigate their lands: *Provided*, That joint owners of all irrigation farms shall be liable for damages done the public or any person by reason of the overflow of such irrigation water; suit to be brought against the person occasioning the injury, or in such other way as may be sanctioned by said court.—Art. 2985.

May license dams. Damages. The commissioners' court may order a dam or ditch built on lands of parties objecting thereto (in the establishment or extension of a

May condemn rights for dam or ditch.

project of irrigation) if they deem it of sufficient importance, but such objectors must first have actual notice in writing and full hearing and consideration of their objections; and in case such order is made the court must depute two or more discreet and disinterested freeholders of the vicinage to arbitrate and fix the damage permanently sustained by such person, which shall, by that or another such commission be levied upon, and paid forthwith by the applicants for such irrigation project in the ratio of the interest and several shares of the said applicants and joint owners; and the courts may, after like personal notice to parties interested, order the multiplication or extension of any ditches for irrigation, and of irrigation farms, at and below or at the sides of such other property, when it shall be the duty of such court to proceed and assess all just fines and equitable damages, and to fix and direct the rate and amount and kind of work, labor, and tax to be paid by any of such applicants and others, according to their interest.—Art. 2986.

May extend  
ditches and irri-  
gation farms.

When the health of the public may be injured by irrigation or the damming up of water for any purpose it shall be the duty of the commissioners' courts, after mature hearing and consideration, to decree the discontinuance, and they shall proceed and break up and discontinue all such dams, ditches, and irrigation, whether the same have been heretofore ever so long in existence or may hereafter be started.—Art. 2987.

When may dis-  
continue dams.

All corporations for irrigation or navigation are granted the right of way not to exceed 100 feet in width over all public university, school, and asylum lands, with use of necessary rock, gravel, and timber for construction purposes, and may attain (obtain) the right of way over private lands by contract, or the damages for any private property appropriated by such corporations shall be assessed and paid for as provided for in cases of railroads.—Art. 2996.

Right of way  
over public prop-  
erty.

Whenever any canal or ditch for irrigation shall be constructed under the provisions of this chapter, all persons owning land adjacent to and irrigable from said canal or ditch, shall have the right to use the water of said canal or ditch, under such regulations as may be prescribed by law or the commissioners' court of the county where such lands are situated.—Art. 3000,

May condemn  
private lands.

Right to use  
water from canal.



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ARIZONA.

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## CONTENTS.

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	Page
Statutory enactments .....	171
Rights declared .....	171
Rights of way—damages .....	172
Overseers of acequias and their duties .....	172
Duty of land owners and occupants to labor on acequia .....	173
Protection of property .....	173
Duties of ditch owners .....	173
Miscellaneous .....	174



# ARIZONA,

## STATUTORY ENACTMENTS.

The irrigation and water laws of Arizona are found in Title LXIII of the Revised Statutes of 1887, pp. 558-562, sections 3198-3230. They can hardly be said to constitute a system of laws like those of Colorado or Wyoming, and do not fall readily under corresponding heads.

### RIGHTS DECLARED.

The common-law doctrine of riparian rights shall not obtain or be of any force or effect in this Territory.—Sec. 3198. Riparian rights not in force.

All rivers, creeks, and streams of running water in the Territory are hereby declared public and applicable to the purposes of irrigating and mining, as hereinafter provided.—Sec. 3199. Public waters.

All rights in acequias or irrigating canals heretofore established shall not be disturbed, nor shall the course of such acequias be changed without the consent of the proprietors of such established rights.—Sec. 3200. Vested rights.

All inhabitants of the Territory who own or possess arable and irrigable lands shall have the right to construct public or private acequias and obtain the necessary water for the same from any convenient river, creek, or stream of running water.—Sec. 3201. Right to appropriate water.

No inhabitant of this Territory shall have the right to erect any dam, or build a mill, or place any machinery, or open any sluice, or make any dike, except such as are used for mining purposes or the reduction of metals, as provided for in sections 6 and 7 (Secs. 3204, 3205), that may impede or obstruct the irrigation of any lands or fields, as the right to irrigate the fields and arable lands shall be preferable to all others; and the justices of the peace of the respective precincts shall hear and determine the question relative to all such obstructions in a summary manner and cause the removal of the same by order directed to the constable of the precincts or sheriff of the county, who shall proceed to execute the same without delay.—Sec. 3203. Right to irrigate preferable.

When any ditch or acequia shall be taken out for agricultural purposes, the person or persons so taking out such ditch or acequia shall have the exclusive right to the water, or so much thereof as shall be necessary for said purposes; and if at any time the waters so required shall be taken for mining operations, the person or persons owning said water shall be entitled to damages to be assessed in the manner provided in section six (3204 given below).—Sec. 3205. Obstructions to be removed.

During years when a scarcity of water shall exist owners of fields shall have preference of the water for irrigation, according to the dates of their respective titles, or their occupation of the lands, either by themselves or their grantors. The oldest titles shall have precedence always.—Sec. 3215. Exclusive right to water appropriated.

All plants and trees of any description growing on the banks of any acequia shall belong to the owners of the land through which said acequia may run.—Sec. 3224. Damages to be assessed.

Priority of rights.

**Private acequias.** Any person owning land including a spring or stream, or upon a river when there is not sufficient population to form a public acequia, may construct a private one for his own use, subject to regulations not interfering with rights of others.—Sec. 3225.

## RIGHTS OF WAY—DAMAGES.

**How damages assessed.** Whenever any public or private acequia shall necessarily run through the lands of any private individuals not benefited by said acequia, the damages resulting such private individuals, on the application of the party interested, shall be assessed by the probate judge of the proper county in a summary manner.—Sec. 3202.

**Arbitrators may be chosen, or suit for damages may be brought.** When reduction works or other mining apparatus shall be placed upon lands previously held for agricultural purposes, or persons so holding such land shall be entitled to remuneration from person or persons erecting or owning said reduction works or mining apparatus, the amount of remuneration shall be adjudged by three or five disinterested persons, or by the probate judge, as the parties interested can agree, and if they can not agree the party injured may bring suit for damages.—Sec. 3204.

**When no damages allowed.** In case a community of people desire to construct an acequia in any part of this Territory, and the persons desiring to construct the same are the owners or proprietors of the land upon which they design constructing the said acequia, no one shall be bound to pay damages for such land, as all persons interested in the construction of the said acequia are to be benefited thereby.—Sec. 3210.

## OVERSEERS OF ACEQUIAS AND THEIR DUTIES.

**Overseers to be elected.** Immediately after the publication of this chapter it shall be the duty of the several justices of the peace of this Territory to call together in their respective precincts all the owners and proprietors of land, irrigated by any public acequia, for the purpose of electing one or more overseers for said acequia for the corresponding year.—Sec. 3211.

**How elections conducted.** The manner of conducting such elections and the number of overseers shall be regulated by the justices of the peace of their respective precincts; and the only persons entitled to vote at said elections shall be the owners and proprietors of lands irrigated by said acequias.—Sec. 3212.

**Compensation of overseers.** The pay and perquisites of said overseer shall be determined by a majority of the owners and proprietors of the lands irrigated by said acequias, and paid by them.—Sec. 3213.

**Their duties.** It shall be the duty of the overseers to superintend the opening, excavations, and repairs of said acequias; to apportion the number of laborers furnished by the owners and proprietors; to regulate them according to the quantity of land to be irrigated by each one from said acequia; to distribute and apportion the water in proportion to the quantity to which each one is entitled according to the land cultivated by him; and in making such apportionment he shall take into consideration the nature of the seed sown or planted, the crops and plants cultivated, and to conduct and carry on such distribution with justice and impartiality.—Sec. 3214.

**Penalty for non performance of duty, or corruption.** If any overseer of any public acequia, after having undertaken to serve as such, shall willfully neglect or refuse to fulfill the duties required of him, or conduct himself with impropriety or injustice in his office, or take any bribe in money, property, or otherwise, as an in-

ducement to act improperly, or neglect the duties of his office, he shall be fined for each of said offenses not exceeding \$100 nor less than \$50, to be recovered before any justice of the peace of the county, one-half to be paid to the county and the other to the person bringing suit, the suit to be brought in the name of the Territory; and the said overseer, on being convicted a second time, shall be removed from his office by the justice of the peace of the precinct, and shall take such pay and perquisites as may be due him for services rendered.—Sec. 3217.

Removal from office.

Upon such removal the justice of the peace shall order a new election to fill the vacancy thereby occasioned, which shall be conducted in the manner above prescribed.—Sec. 3218.

New election.

#### DUTY OF LANDOWNERS AND OCCUPANTS TO LABOR ON ACEQUIA.

All owners of arable and irrigable land bordering on or irrigable by any public acequia shall labor on such public acequia, whether such owners or proprietors cultivate the land or not.—Sec. 3207.

All persons interested in a public acequia, whether owners or lessees of land, shall labor thereon in proportion to the amount of land owned or held by them and which may be irrigated or subject to irrigation.—Sec. 3208.

Labor proportioned to amount of land.

It shall be the duty of each of the owners and proprietors to furnish the number of laborers required by the overseer at the time and place he may designate for the purposes above mentioned and for the time he may deem necessary.—Sec. 3216.

Duty to furnish laborers.

If any owner or proprietor of land irrigated by such acequia shall neglect or refuse to furnish the number of laborers required by the overseer, as required by the foregoing section (3216), after having been duly notified by the overseer, he shall be fined for each offense not more than \$10 for the benefit of said acequia, the fine to be recovered by the overseer before any justice of the peace of the county.—Sec. 3219.

Penalty for refusal.

#### PROTECTION OF PROPERTY.

Any person interfering with, impeding, or obstructing any acequia, or the use of water therefrom, without consent of the overseer, except as provided in section 7 (3205, given above) during the time of cultivation, shall pay for each offense not more than \$10, recoverable in the manner above provided, for the benefit of said acequia; and shall pay all damages that may have accrued to the injured parties, and if he have not wherewith to pay such fine and damages he shall be sentenced to fifteen days' labor on said public acequia.—Sec. 3220.

Penalty for interference with acequia.

Damages.

In all cases of conviction under this chapter an appeal is allowed to the probate court, to be taken and conducted as all other appeals from decisions of justices of the peace.—Sec. 3222.

Appeal.

#### DUTIES OF DITCH OWNERS.

Any person, corporation, or company, owning or using any ditch or canal for the purpose of conveying water is required to construct and maintain suitable crossings wherever the same crosses a public highway, the crossing to be as follows: From the bottom of the ditch in the roadway there shall be a uniform rise of not more than 1 foot in 3 to the top of the embankment; either side the ditch shall be graveled or macadamized with stone to a depth of not less than 10 inches from the top of one embankment to the other, and the macadamized or

To construct crossings.

How constructed.

- paved road across any of said ditches shall not be less than 14 feet wide: *Provided*, That any person, corporation, or company may at any of said crossings construct a good and substantial bridge to be approved by the road overseers of the district.—Sec. 3227.
- Proviso.**
- Supervision of crossings.** The road overseer in each district is given supervision of the said crossings, and it is his duty to see that they are constructed and maintained as provided above.—Sec. 3228.
- Neglect to construct.** Neglect or refusal for ten days after notice in writing from the overseer to construct or repair such crossing is made a misdemeanor punishable by fine not less than \$10 nor more than \$100 for the first offense, and not less than \$25 nor more than \$250 for each subsequent offense; but whenever the highway is constructed after the construction of the ditch or canal it is the duty of the road overseer to construct and maintain such crossing at the expense of the road fund of the district.—Sec. 3229.
- Penalty.**
- When overseer to construct and maintain.**
- Disposition of penalties.** Funds collected as above are to be paid into the road fund of the district wherever such crossings are required.—Sec. 3230.

## MISCELLANEOUS.

- Bypaths forbidden.** All bypaths across cultivated fields are prohibited, under a penalty not to exceed \$10 for the public acequia, to be assessed in a summary manner by a justice of the peace, and if the offender has not money to pay his fine he shall be sentenced to ten days on the public acequia.—Sec. 3206.
- Shepherds required.** Animals running at large are required to be kept in charge of a shepherd to prevent injury to the fields, and their owners are liable for the damage they do.—Sec. 3209.
- How forfeitures used.** Fines and forfeitures received for benefit of a public acequia are required to be used by the overseers in the improvement, repairs, etc., of the acequia and the construction of bridges at crossings.—Sec. 3221.
- Customs of Sonora.** The regulations of acequias which have been worked according to the laws and customs of Sonora and the usages of the people of Arizona shall remain as they were made and used up to this day.—Sec. 3223.

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NEW MEXICO.

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## CONTENTS

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	Page.
Statutory enactments .....	177
Additional regulations .....	177
Corporations for irrigation—their powers and duties .....	178
Procedure of appropriation .....	179
Community springs or tanks .....	180

## NEW MEXICO.

### STATUTORY ENACTMENTS.

The legislation of New Mexico relating to irrigation is found in the compiled laws of 1884 and in the session laws of 1887, 1889, and 1891. As might readily be supposed, they are in most respects similar to those of Arizona, the important differences consisting chiefly of additional regulations pointed out below, and of additions made in the session laws above mentioned more in the line of the legislation of other irrigating communities.

In Arizona irrigation is paramount to all other uses of water, except mining; in New Mexico it is paramount to all. But in the establishment of public acequias, in the protection of vested rights, the prohibition of by-paths, the requirement that animals should be kept under a shepherd, the manner of acquiring rights of way, the obligation to labor on the public acequias, the election of overseers, and the general management of the public ditches, the laws of New Mexico are practically the same as those of Arizona, with the additions mentioned above.

### ADDITIONAL REGULATIONS.

In acequias of extended irrigation and where the lands which they irrigate are unequal, and some persons have at once several sections, and parts in other sections, it is further provided that there shall be elected a chief major-domo, an assistant major-domo, and three acequia commissioners. Chief major-domo and assistant and commissioners.

The duties of the commissioners are to regulate the number of laborers for the respective acequias for which they have been elected, that shall be furnished by each owner or tenant of irrigable lands to be irrigated. Their duties.

The major-domo and his assistant have the care of these acequias, and are required to keep them running in all their vigor from the time the water is let in after cleaning until the crops no longer require it.

The chief majors-domo of all the acequias are the receivers and disbursers of the fines resulting from their acequias, and are required to report the fines received and their disposal of them to the justices of the peace of their respective precincts, on the 10th day of October in each year.

It is the duty of the overseers of the ditches to see that the water currents run so that no injury shall result to the proprietors of lands or to the public convenience, and in case danger is threatened by the ditches, by increase of water or inundation, to report the danger to the justice of the peace, if it is threatened to one precinct, and to the probate judge of the county if to more than one. The justice of the peace, or probate judge, as the case may be, is then to appoint three suitable persons to examine the premises, and if they sustain the report made by the overseer, he is then to order all persons owning real estate within the limits considered in danger to meet together, and un- Danger by inundation.

How prevented.

- der the direction of the overseer, or some other person appointed, to prevent the threatened damage by constructing breakwaters, barriers, or any other work deemed advisable for the purpose; but the work must be performed in proportion to the property of each person interested in the same. In cases where these steps are necessary the person in charge is to direct the labor, and notify interested parties of the number of laborers they are to furnish; and if such persons do not comply with the demand he is to report them to the judge or justice by whom he was appointed, who is to cause the delinquent to appear before him and fine him not less than \$5.
- How work ap-portioned.** As in Arizona penalties are imposed upon such as fail to furnish their due proportion of labor for cleaning and repairing the acequias, and the major-domo is authorized to impose a penalty on anyone who shall illegally absent himself when required to be present for that purpose.
- Refusal to work.** It is also further provided that all currents and sources of water, such as springs, rivers, and ditches flowing from natural sources, shall be free, so that travelers shall have the right to take water therefrom for their own use and that of their animals—but the word traveler is not to include those who travel with a large number of animals. And this does not apply to springs, wells, and reservoirs which are private property.
- Fine. Penalties.** Penalties are provided for any person who shall embarrass, hinder, or molest any person taking water for his animals, or shall claim or demand compensation for the same, as well as for those who foul the water of any stream or spring of flowing water.
- Sources of water free.** All salt lakes, with the salt accumulated on their shores, are declared to be free for all citizens.
- Penalty for molesting one taking water.** The Pueblo Indians enjoying the use of water from the acequias are required to labor thereon the same as other people.
- Salt lakes.** In addition to the above it is provided in section 192 of the compiled laws of 1884 that certain industrial corporations may be formed including corporations for building irrigating ditches, and in section 1293 that bridges shall be constructed over acequias where they cross highways; and section 1294 forbids letting water loose upon the road, or making excavations or dams, or obstructions to embarrass travel, and makes it the duty of justices of the peace to see that these things are not done.
- Pueblo Indians.** And by laws of 1889, page 265, any person or company cultivating, or attempting to cultivate, lands with water pumped from a well, or with an insufficient supply of water, or without irrigation, is required to inclose the lands with a good and substantial barbed-wire fence.
- Corporations.**
- Bridges.**
- Excavations, etc.**
- Fences.**

## CORPORATIONS FOR IRRIGATION—THEIR POWERS AND DUTIES.

A statute passed in 1887, found on pages 29-37 of the session laws of that year, provides for the organization of irrigation companies. When organized such companies are to be corporations with the powers and privileges usually conferred on such organizations.

**May borrow money and issue bonds.** They are given power to borrow money for the purchase of the necessary property and the construction of irrigation works, to issue bonds therefor and to mortgage their property to secure payment thereof; but the bonds must be payable within twenty years and bear interest at a rate not above 10 per cent per annum. Such corporations are also given power—



(1) To make such examinations and surveys for proposed reservoirs, canals, pipe lines, and ditches to be made, as may be necessary to the selection of the most eligible locations and advantageous routes, and for such purpose by their officers, agents, and servants, to enter upon the lands or water of any person, or of the Territory of New Mexico.

Power to enter on lands for examination.

(2) To take and hold such voluntary grants of real estate and other property as shall be made to them in furtherance of the purposes of such corporation.

To hold real estate.

(3) To conduct their canals, pipe lines or ditches upon or along any stream of water.

To use natural streams.

(4) To take and divert from any stream, lake, or spring the surplus water, for the purpose of supplying the same to persons, to be used "for the objects mentioned in section 1 of this act" (the purposes of irrigation); but such corporations have no power to interfere with the rights, or appropriate the property, of any persons except upon the payment of the assessed value thereof, to be ascertained as provided in the act; and no water is to be diverted if it will interfere with the reasonable requirements of any person or persons using or requiring the same when so diverted.

To divert water.

Compensation.

Vested rights.

(5) To furnish water for the purposes mentioned in section 1 (irrigation, etc.), at such rates as the by-laws may prescribe; but equal rates must be conceded to each class of consumers.

To sell water.

(6) To enter upon, condemn, and appropriate any lands, timber, stone, gravel, or material that may be necessary for the uses and purposes of said companies. The manner of condemnation of right of way and other necessary property is prescribed, and the corporations are authorized to construct laterals, the same as the main lines.

To condemn property.

To construct laterals.

The right of way over the public lands, with the right to use timber, stone, and other materials on the same, is given. And such corporations are also given the right of way along the public streets of cities and towns, subject to such regulations as the municipal authorities may impose, and to furnish water to the inhabitants on such terms and conditions as may be fixed by the corporations or agreed to by the consumers and corporations.

Right of way over public lands.

Public streets.

To furnish water.

They are also required to make proper highway crossings, bridges, etc., where necessary, and to keep the same in repair.

Bridges.

And they have no right to divert water from any stream declared by law to be a public acequia, between February 15 and October 15, except with the unanimous consent of all persons holding cultivated lands on the same and obtaining water therefrom.

Public acequias.

And they have no right to interfere in any way with prior vested rights.

Vested rights.

#### PROCEDURE OF APPROPRIATION.

By act of 1891 it is provided that every person, association, or corporation hereafter constructing or enlarging any ditch, canal, or feeder for any reservoir, and taking water from any natural stream, shall within ninety days after commencement of the same file and cause to be recorded in the office of the probate clerk of the county in which the ditch, etc., is situated, a sworn statement in writing showing name of ditch, canal, etc., the point at which the head gate thereof is situated, the size of the ditch or other works, width and depth, and carrying capacity in inches, the description of the line thereof, the time when the work was commenced and the name or names of the owners, with a map showing the route thereof, the legal subdivisions of land,

Statement to be filed and recorded.

Its contents.

*Boone*  
*AK*

- In case of enlargement. if on surveyed lands, with corners and distances; and in case of an enlargement or change the depth and width, also the carrying capacity of the ditch so enlarged or changed, and the increased capacity occasioned thereby, and the time when such change or enlargement was commenced.
- When priority attaches. And no priority of right for any purpose is to attach to any construction, change, or enlargement until such record is made.
- Statement as evidence. A copy of such sworn statement certified by the probate clerk is made prima facie evidence of such appropriation of water in all the courts of the Territory.
- Vested rights. But this act is not to affect any vested rights, or any public acequia.
- When to be completed. And the canals and other works authorized by it must be completed within five years from the time of their commencement.—Laws of 1891, p. 130.

## COMMUNITY SPRINGS OR TANKS.

- Commissioners to be elected. Where there are springs or tanks of water which are the property of any community, and from which the community or any of its members, obtain water, the members of the community are authorized, at such time and in such manner as the acequia commissioners are elected, to elect three commissioners, who shall be members of such community
- Their duties. and partitioners of such water, whose duty it shall be to protect such springs and tanks, and to provide suitable dams and breakwaters for the same.
- Power to protect property. Such commissioners have power to prevent any persons from placing any obstruction in any such community spring and from in any manner injuring or destroying any dam, breakwater, or tank, and have also authority to enter complaint against any person who shall willfully injure, break, or obstruct any such spring, dam, or breakwater, before a justice of the peace, who is authorized, upon conviction, to impose a fine of not less than \$5 nor more than \$25 for such offense. And such offender is also liable to the community in a civil suit for damages, to be brought by the commissioners for the use and benefit of the community.
- To make complaints. Same authority as acequia commissioners. And all general laws and parts of laws in force respecting the construction and management of public acequias are to be in force and applicable to community springs and tanks, and the commissioners named above are given the same authority with reference to such springs and tanks as are conferred on acequia commissioners by the laws of the Territory.—Laws of 1889, pp. 19-20.
- Fine.
- Damages.

















