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IRRIGATION LAW

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IRRIGATION LAW

Utah Laws, 1895-1903, etc.

PASSED BY THE

FIFTH SESSION OF THE

Legislature of the State of Utah

1903.

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IRRIGATION LAW.

An Act Providing for Determining and Recording Water Rights; Regulating the Diversion, Use and Apportionment of Water; Prescribing the Manner in which water May be Appropriated; Providing for the Appointment of a State Engineer and Prescribing His Qualifications, Powers, Duties and Compensation; Requiring Claimants to the Use of Water to File Statement of Their Claims, and Declaring the Forfeiture of Rights for Failure to File Such Statements; Providing for the Taking of Testimony and the Entering of Decrees Determining Rights to the Use of Water and Permitting Appeals; Requiring Certificates of Water Rights to be Issued, Filed and Recorded; Directing that the State shall be Divided Into Water Divisions and Districts, and that Superintendents and Supervisors shall be Appointed to Apportion the Water Requiring Applications for the Appropriation of Water to be Filed, and Permitting the Construction of Diverting Works; Providing for the Issuance and Recording of Certificates of Appropriation; Declaring Water to be Public Property, Subject to Existing Rights; Fixing Units of Measurement of Water; Establishing Basis, Measure and Limit of Right; Providing for the Abandonment of Use, Change in Manner or Place of Use, and Commingling and Recovery of Water; Defining Rights of Appropriators; Permitting Irrigation Companies to Take Stock in Similar Companies; Providing for the Acquisition of Rights of Way, and the Use and Enlargement of Existing Canals; Directing that Canals, Bridges and Crossings be Kept in Repair; Declaring when Water Rights are Appurtenant to Land, and How Transfers are to be Made and Recorded; Fixing Penalties for Violations of this Act; Providing Legal Advisers for State Engineer; Establishing Fees and Prescribing How They

Shall be Collected and Paid to the State; Providing for the Payment of Fees, Costs and Expenses Under this Act; Prescribing Who May be Parties in Actions Concerning Water, Preserving the Existence and Providing for the Dissolution of Irrigation Districts; Repealing Title 33 of the Revised Statutes of Utah of 1898, on "Irrigation and Water Rights," Being Sections 1261 to 1288, Inclusive, and Chapter 125 of the Laws of Utah of 1901, Entitled "An Act Defining the Duties of the State Engineer; Providing for the Creation of Water Districts and for the Appointment of a Water Commission for Each District; Providing for the Reclamation of Stored Water, and Repealing Chapter 8, Title 63, Revised Statutes of Utah, 1898," Approved March 25, 1901, and All Other Laws and Parts of Laws in Conflict with the Provisions of this Act; But Preserving Vested Rights to the Use of Water, and Providing that Any Right Initiated under the Laws Repealed, May be Completed and Perfected; Continuing the Term of Office of the State Engineer; Providing that Water Commissioners Heretofore Appointed Shall Continue to Perform Their Duties until Superseded by Division Superintendents and District Supervisors, and that Similar Water Commissioners may be Appointed if Necessary.

Be it enacted by the Legislature of the State of Utah:

Section 1. State Engineer. Appointment. Qualifications. Powers. Supervision of Waters of State. — There shall be a State Engineer, who shall be appointed by the Governor of the State and be confirmed by the Senate. He shall hold his office for the term of four years and until his successor shall have been appointed and qualified. He shall have general supervision of the waters of the state and of their measurement, apportionment and appropriation, and of all division superintendents and district supervisors. He shall have power to make and publish such rules and regulations as he may deem necessary from time to time, to fully carry out the provisions of this act and secure the equitable and fair apportionment of the water according to

the respective rights of appropriators. No person shall be appointed to the office of State Engineer who has not such theoretical knowledge and practical experience and skill as shall fit him for the position.

Sec. 2. Compensation. — The State Engineer shall receive a salary of three thousand dollars per annum, payable in quarterly installments by the State Treasurer upon warrants drawn by the State Auditor. When the State Engineer is called away from his office on official business, he shall be entitled to his actual traveling expenses, which shall be paid out of any money appropriated for that purpose, on the certificate of said State Engineer.

Sec. 3. Office at State Capital —The State Engineer shall keep his office at the State capital.

Sec. 4. Oath and Bond.—Before entering upon the duties of his office, the State Engineer shall take and subscribe an oath before some officer authorized by the laws of the State to administer oaths, to faithfully perform the duties of his office. He shall file with the Secretary of State said oath and his official bond in the penal sum of five thousand dollars, with not less than two sureties, to be approved by the State board of examiners, and conditioned for the faithful discharge of the duties of his office, and for delivery to his successor or other officer appointed by the Governor to receive the same, all moneys, books and other property belonging to the State then in his hands or under his control, or with which he may be legally chargeable as such officer.

Sec. 5. Reports. Records Open to Public. Copies. —The State Engineer shall prepare and render to the Governor biennially, and oftener if required, full and true reports of his work relating to the matters and duties devolving upon him by virtue of his office, which biennial report shall be delivered to the Governor on or before the 31st day of December of the year preceding the regular session of the Legislature. He shall become conversant with the water ways of the State, and its needs as to irrigation matters, and in his reports to the

Governor he shall make such suggestions as to the amendment of existing laws or the enactment of new laws as his information and experience shall suggest. He shall keep on file in his office full and proper records of his work, including all field notes, computations and facts made or collected by him, all of which shall be duly certified by him, and be part of the records of his office and the property of the State. All records, maps and other papers recorded or filed in the office of the State Engineer shall be open to the public during business hours, and copies thereof, certified by said engineer, shall be furnished on payment of the fees provided for by this act.

Sec. 6. Duties. Hydrographic Surveys. Maps.—

The State Engineer shall make a complete hydrographic survey of each river system and water source of the State, beginning such work upon those streams and sources which are most used for irrigation, and from the data so obtained the State Engineer shall construct maps, which shall exhibit the essential facts relating to the supply, diversion and use of the water of each of such river systems or water sources. He shall also collect such other facts as will, in his judgment, aid in ascertaining the existing rights to the use of the water and in determining the volume of the surplus or unappropriated water, if any, of each of such streams or sources. He shall have general supervision of the appropriation of all surplus or unappropriated water in the manner provided by law. His surveys and collection of facts shall include the location of all suitable sites for dams and reservoirs, and a determination of the approximate capacity and cost of each.

Sec. 7. Notice of Survey.—Before commencing the hydrographic survey of any river system or water source the State Engineer shall cause notice to be published in some newspaper having general circulation on said river system or water source, stating the time and place of beginning said survey, and said notice shall be published continuously in said newspaper for a period of not less than fifteen days immediately prior to the commencement of said work.

Sec. 8. Plans for Dams Must be Submitted to State Engineer, Who Shall Inspect Dams.—Duplicate plans, drawings and specifications for any dam above five feet in height, across the natural channel of a running stream, or of any other dam intended to retain water above ten feet in height, shall be submitted to the State Engineer for his approval, who shall examine such plans, drawings and specifications, and, if he approves the same, he shall return one copy of each of such plans, drawings and specifications, with his approval, to the party or parties submitting the same and file the other in his office. If the State Engineer disapproves any of such plans, drawings or specifications, he shall return the same, with his reasons for such disapproval. The State Engineer shall have authority to keep an inspector on any such dam during the construction thereof, and to see that the work is done in accordance with the plans, drawings and specifications, and the State Engineer may require the parties constructing the same to make any additions or alterations during construction which he considers necessary for the security of the work, the safety of persons or the protection of property. Any person, corporation or association beginning the construction of any such dam, before the plans, drawings and specifications shall have been submitted to and approved by the State Engineer, or proceeding with such work in the absence of an inspector appointed by said engineer, or who shall fail to comply with any of the requirements made by him in pursuance of this section, shall be guilty of a misdemeanor.

Sec. 9. Examination of Completed Works.—Should any person, corporation or association residing on or owning land in the neighborhood of any completed dam or diverting works, apply to the State Engineer in writing, requesting an examination of such dam or works, the State Engineer may order an examination thereof. Before doing so, he may require the applicant for such examination to deposit a sum of money sufficient to pay the expenses of the examination, and in case the application appears to him not to have been justified, he may cause the whole or part of such expense to be paid out

of such deposit. In case the request appears to the State Engineer to have been justified, he may require the owner of the works to pay the whole or any part of the expenses of such examination.

Sec. 10. Engineer to Inspect Diverting Works.—The State Engineer shall have authority to examine and inspect, during construction, any ditch or other diverting works, and, at the time of such inspection, he may order the parties constructing the same to make any addition or alteration which he considers necessary for the security of such works, the safety of persons or the protection of property. Any person refusing or neglecting to comply with such requirements of the State Engineer shall be guilty of a misdemeanor.

DETERMINATION OF WATER RIGHTS.

Sec. 11. State Engineer to File Statement.—When the State Engineer has completed the hydrographic survey of any river system or water source he shall file a written statement with the clerk of the district court of the county in which the same is situated, or if the system or source extends into more than one county, the statement shall be filed in any county which embraces any part of such river system or water source that the State Engineer shall select as most convenient for the water users of the system or source. Said statement shall set forth the fact of the completion of such survey, the names and postoffice addresses of all persons, corporations and associations using water of said river system or water source, so far as the same are known to the State Engineer, and shall contain such other facts and information as he may deem necessary. On the filing of such statement, the district court in the county where the same is filed shall have exclusive jurisdiction to determine all water rights on said river system or water source, in accordance with the provisions of this act.

Sec. 12. Notice to be Published and Mailed.—Within thirty days after the filing of the statement men-

tioned in the last preceding section, the clerk of the court in which the same shall be filed must give public notice that all persons claiming the right to the use of any of the water of said river system or water source must file a written statement with the clerk of said court, within six months after the first publication of said notice, setting forth their respective claims to the use of such water, which notice shall be published at least once a week for three successive months in some newspaper printed and published within the boundaries of said river system or water source and having a general circulation therein; or, if there be no such newspaper, then it shall be published in some newspaper printed and published in this State and having a general circulation on said river system or water source. The clerk of said court shall also mail, by registered letter, to each of the persons, corporations or associations whose names and addresses are given in such statement filed by the State Engineer, a copy of said notice, and a blank form on which said claimant shall present, in writing, as provided in the next succeeding section, all the particulars relating to the appropriation of the water of said river system or water source to which he lays claim.

Sec. 13. Statements of Claim to be Filed. What to Contain. —Each person, corporation or association claiming the right to use any water of said river system or water source, shall, within six months after the first publication of the notice provided for in the last preceding section, file in the office of the clerk of the court giving said notice, a statement in writing, which shall be signed and verified by the oath of the claimant, and shall include as near as may be the following:

The name and postoffice address of the person, corporation or association making the claim; the nature of the use on which the claim of appropriation is based; the flow per second of water used and the time during which it has been used each year; the name of the stream or other source from which the water is diverted; the place on such stream or source where the water is diverted, and the nature of the diverting works; the date when the first work for diverting the water

was begun, and the nature of such work; the dimensions, grade, shape and nature of the diverting channel, as originally constructed; the date when the original diverting channel was completed; the date when the water was first used, the flow per second, and the time during which the water was used the first year; the date and nature of each subsequent change made in the original diverting channel; the flow per second of the water used and the time it was used each year between each of the changes so made, and the dimensions, grade, shape and nature of the present diverting channel; the place where and the manner in which the water was first used; the nature of each subsequent change in the place, or manner of use, and the place and manner of present use; and such other facts as will clearly define the extent and nature of the appropriation claimed.

If the water claimed to have been appropriated is used for irrigation, the statement shall show, in addition to the above required facts, the area of land irrigated the first year and each subsequent year; the total area at present irrigated, and its location in the section, township and range wherein it is situated; the character of the soil and the kind of crops raised during the first year of use and the first year after each subsequent change of channel, and during the last year in which the water was applied.

If the water claimed to have been appropriated is used for developing power, the statement shall show, in addition to the above required facts, the number, size and kind of water wheels employed; the head under which each wheel is operated; the extent of the power produced, and the purposes for which and the places where it is used, and the point where the water is returned to the natural stream.

If the water claimed to have been appropriated is used for mining, the statement shall show, in addition to the above required facts, the name of the mine and the mining district in which it is situated; the nature of the material mined, and the place where the water is returned to the natural channel of the stream. Within sixty days after the expiration of the six months allowed for filing statements of claim, the State Engineer

shall tabulate the facts contained in the different statements filed; a copy of said tabulation shall be immediately filed in the office of the clerk of said court, and a copy in the office of the County Recorder of each county which embraces any part of said river system or water source.

Sec. 14. Statements to be Entered. Persons Failing to File Statements of Claim Barred from Asserting Rights.—The clerk of said court shall enter the statements in a book to be kept for that purpose, and shall file and preserve the same in his office, noting the date of filing. The filing of each statement shall be considered notice to all persons of the claim of the party making the same, and any person failing to make and deliver such statement of claim to the clerk of the court within six months after the first publication of the notice provided for in the last preceding section, shall be forever barred and estopped from subsequently asserting any rights theretofore acquired to the use of water of said river system or water source, and shall be held to have forfeited all rights to the use of said water theretofore claimed by him; provided, that any claimant upon whom no other service of said notice shall be made than by publication in the newspaper, may apply to the court for permission to file a statement of claim after the time therefor has expired, and the court or judge thereof may extend the time for filing said statement, not exceeding one year from the first publication of said notice, but, before said time is extended, the applicant shall give notice by publication in some newspaper having general circulation on said river system, to all other persons interested in the water of that river system or water source, and shall make it appear to the satisfaction of the court that, during the pendency of the proceedings, he had no actual notice thereof in time to appear and file a statement and make proof of his claim; and all parties interested may present affidavits as to the matter of actual notice of the application.

Sec. 15. Appointment of Referee. Objections.—At the expiration of six months after the first publication of the aforesaid notice, the district court of the

county in which said statements of claim have been filed may appoint a referee or referees, not exceeding three, to take testimony and determine the rights of said claimants to the use of the water of said river system or water source, as in other equity cases. Any claimant may object to the appointment of any person as referee for the same cause for which challenges for cause may be taken to a petit juror in the trial of a civil action. Such objections must be heard and disposed of by the court, or a judge thereof, and affidavits may be read and witnesses examined concerning the same.

Sec. 16. Referee to Take Oath and Swear Witnesses.—The referee, or referees, before proceeding to hear any testimony, must be sworn well and truly to hear and determine the facts and issues referred to them, and true findings render according to the evidence, and he or they shall have power to administer oaths to all witnesses produced before him or them.

Sec. 17. Statements Shall be Pleadings. State Engineer Shall File Maps With Clerk of Court and County Recorders. Records of His Office Shall be Prima Facie Evidence.—The statements filed by the claimants shall stand in the place of pleadings, and issue may be made thereon. They shall, unless the court determines the matter itself without a reference, be referred and delivered to the referee or referees, with all other files and papers relating to water claims of said river system or water source, including the statement and map filed by the State Engineer, who shall, before the expiration of the six months allowed for filing statements of claim, as aforesaid, file with the clerk of said court, and with the county recorder of each county which embraces any part of said river system or water source, a copy of the map of said river system or water source, made in pursuance of his survey thereof; and whenever requested so to do, the State Engineer shall furnish the court or referee or referees with any information which he may possess, or copies of any of the records of his office which relate to the water of said river system or water source, and in all proceedings for the determination of the rights of claimants to the water of said river system or water source the said maps and records, or cer-

tified copies thereof, shall be competent and prima facie evidence of the facts stated therein or delineated thereon.

Sec. 18. Referee May Allow Amendments and Adjournments. Must Give Notice and Take Testimony.—

The referee or referees shall have power to allow amendments to any statement or pleading, as the court might do and upon the same terms and with like effect. He or they shall have power, and it shall be the duty of the court or referee or referees to take testimony at such times and places within the boundaries of the river system or water source as may be convenient to the respective claimants interested, and the court or referee or referees shall determine the rights of all said claimants. The court, referee or referees shall give not less than fifteen days' notice to the claimants, stating when and where he or they will begin to take testimony; said notice shall be published in some newspaper having general circulation on said river system or water source, and, upon the date named in the notice, the court, referee or referees shall begin to take the said testimony, and shall continue the same until all the testimony relating to claims to water of said river system or water source is completed; provided, that a notice shall be served upon each claimant at least fifteen days before the testimony is taken upon his or its claim, stating the time and place, when and where such testimony will be taken, and said notice shall be served in the same manner as a summons issued out of the district court. But he or they may grant adjournments from time to time, as occasion may require, and during all of said time the map or maps and other records furnished by the State Engineer, as hereinbefore provided, shall be open to the inspection of all parties interested.

Sec. 19. Contest. Notice.— Any person, corporation or association owning any irrigation works, or claiming any interest in the water of said river system or water source, may contest the rights of any person, corporation or association who have filed statements of claim for any water of said river system or water source, by filing a written statement of the grounds of their

contest with the clerk of said court, within thirty days after the filing of the tabulation of facts provided for in Section 13; which statement of contest shall be verified by the oath of the contestant. Upon the filing of said contest, the referee or referees shall fix the time for hearing the same, which date shall be not less than thirty days nor more than sixty days from the time when the notice is served on the party, which notice and the return thereof shall be made in the same manner as summons is served in civil actions in the district courts of this State.

Sec. 20. Subpoenas. Service. Witnesses to Attend and Testify. Books and Papers. — The referee or referees shall have power to issue subpoenas to witnesses, which shall be served in the same manner as subpoenas issued out of the district court, and all witnesses so subpoenaed shall attend and testify and produce books and papers and documents, as required, before such referee or referees, and said witnesses shall receive the same fees as in civil cases in the district court, to be paid by the party or parties against whom the contest shall be finally determined.

Sec. 21. Referee Shall Report Findings of Fact, Conclusions and Decree. Testimony to be Reported. Court to Enter Decree. — On the completion of the evidence, the referee or referees shall state, in writing, the facts found by him or them, as to each claim submitted, and the conclusions of law in relation thereto, separately, and shall report the same, with a form of decree, to the district court; and said court may review said report and enter decree thereon, or set aside, alter or modify the same and enter decree thereon so altered or modified, and, when necessary, may require the referee or referees to amend his or their reports. All the testimony taken by any referee or referees shall be stenographically reported, and the same, together with all other evidence in the matter, shall be transmitted to, preserved and filed in the office of the clerk of said district court, with the report of such referee or referees. Notice of the filing of the report of the referee or referees shall be given by the clerk, as the court may direct,

and exceptions to the findings and report of the referee may be taken by the parties, as the court shall prescribe by rule.

Sec. 22. Decree Shall Determine Rights of Claimants to the Use of Water.—The decree shall determine and establish the rights of the several claimants to the use of the water of said river system or water source, and among other things shall set forth the name and postoffice address of the person, corporation or association entitled to the use of the water; the flow per second of water entitled to be used; the purpose for which the water is to be used; the time during which the water is to be used each year; the name of the stream or other source from which the water is diverted; the place on the stream or other source where the water is diverted; the priority number of the right; the date of the right, and such other matter as will fully and completely define the right of said person, corporation or association to the use of the water.

Sec. 23. Appeals to Supreme Court. — The decree so entered by the district court may be appealed from to the Supreme Court, in like manner as from decrees and judgments in other cases; provided, that such appeal shall be taken within six months after the entry of said decree, and all proceedings on appeal shall be conducted according to the provisions of the Code of Civil Procedure, and the practice on appeals from the district court to the Supreme Court.

Sec. 24. Clerk to Issue Certificate. — If no appeal is taken from said decree within six months after the same has been entered, or if the case is appealed, within thirty days after the final decree is entered, it shall be the duty of the clerk of the court making said decree to issue to each person, corporation or association having been awarded the use of water by said decree, a certificate in duplicate, attested under the seal of the court, setting forth the substance of said decree, as specified in Section 22. One copy of said certificates shall be transmitted, in person or by registered mail, to the appropriator, who shall, within thirty days, have the same re-

corded in the office of the county recorder of the county in which the water is diverted from its natural channel, and the other shall be delivered to the State Engineer and filed in his office as a part of the records thereof.

Sec. 25. When Judge or Referee is Claimant.—If the referee shall be a claimant to any water of said river system or water source, all testimony and evidence pertaining to his claim shall be taken by the district court of the county in which the statements are filed; and if the district judge is a claimant of any of the water of said river system or water source, he shall file his statement in the district court of the adjoining district, and a copy of the statement in the court of his own county. In such case the court of the adjoining district shall receive and act upon the referee's report and enter decree in the matter.

APPORTIONMENT OF WATER.

Sec. 26 State to be Divided into Water Divisions and Districts.— To enable an equitable and orderly apportionment of the water to be made among the several persons, corporations and associations, according to their respective rights, the State shall be divided into water divisions by the State Engineer, who shall subdivide the same into districts, which shall be so constituted as to secure the best protection to the water users and the most economical supervision on the part of the State. Said water divisions and districts shall be created from time to time, as necessity therefor arises. The divisions shall be designated by names, and the districts by numbers.

Sec. 27. Superintendents of Divisions. Supervisors of Districts.— There shall be a superintendent of each water division, who shall be appointed by the State Engineer with the consent of the Governor, and shall hold his position during the pleasure of the Engineer. The superintendent shall have power, with the consent of the engineer, to appoint a supervisor for each water district in his division, who shall be a resident of the county

and district in which he is to serve, and shall hold his position during the pleasure of the superintendent. The supervisor shall be confirmed by the board of county commissioners of the county in which he serves.

Sec. 28. Duties of Superintendents.— The superintendent of each water division shall have control of the district supervisors and of the apportionment of the water in the several districts of his division, under the direction of the State Engineer. He shall execute the laws of the State, and enforce the regulations of the State Engineer relative to the distribution of water, and perform such other duties as shall be assigned to him by the State Engineer, under whose general supervision he shall act.

Sec. 29. Duties of Supervisors.—The supervisor of each district shall apportion the water in the natural stream or streams of his district, among the several ditches taking water therefrom, according to their respective rights, under the direction of the superintendent of his division. He shall so apportion, regulate and control the use of the waters of all strams within his district as will prevent waste.

Sec. 30. Supervisor May Employ Assistants. Each supervisor shall have power, in cases of emergency, with the consent of the superintendent of his division, to employ suitable assistants to aid him in the discharge of his duties. The employment of all such assistants shall terminate when the emergency ceases to exist, or when directed by the superintendent of the division.

Sec. 31. Appeals to State Engineer.— Any person who may deem himself injured or discriminated against by the enforcement of any rule or regulation, or by any act of a division superintendent or district supervisor, shall have the right to appeal from the same to the State Engineer, by filing with him a statement of the manner in which he is injured or discriminated against. The State Engineer shall, after due notice, hear whatever testimony may be produced by the petitioner, either orally or by affidavit, and he shall have power to sus-

pend, amend or confirm the regulation or act as justice may require; provided, that nothing herein shall be construed to prevent the petitioner from appealing to the court.

Sec. 32. Compensation of Superintendent. — Each division superintendent shall receive from the State such compensation as shall be fixed by the State Engineer, and the same shall be determined with reference to the extent and character of the service performed by each.

Sec. 33. Compensation of Supervisor and Assistants. — Each district supervisor shall keep a true and just account of the time spent by him in performing his duties, stating the time spent in each county, respectively, into which his district may extend, and shall present a true copy thereof, verified by oath, to the board of county commissioners of the county in which the work may have been done. And the said board of county commissioners shall, upon approval thereof by the superintendent of the water division, allow him the sum of three dollars per day for each day he shall have been actively employed, to be paid by the county in which the work has been performed. He shall, in like manner, keep and report the time of all assistants employed in his district, which, when approved in the manner aforesaid, shall be paid by the board of county commissioners of the county in which the work was done, at the rate of two dollars per day.

APPROPRIATION OF WATER.

Sec. 34. Water Rights Acquired by Appropriation. — Rights to the use of any of the unappropriated water in the State may be acquired by appropriation, in the manner hereinafter provided, and not otherwise. The appropriation must be for some useful or beneficial purpose, and, as between appropriators, the one first in time shall be first in right.

Sec. 35. Application to Appropriate. What it Must Contain. — Any person, corporation or association, to hereafter acquire the right to the use of any public

water in the State of Utah, shall, before commencing the construction, enlargement or extension of any ditch, canal or other distributing works, or performing similar work tending to acquire the said right or appropriation, make an application in writing to the State Engineer, which shall include a map, profile and drawings, as hereinafter provided. Such application shall be upon a blank to be furnished by the State Engineer, and shall set forth the name and postoffice address of the person, corporation or association making the application; the nature of the proposed use for which the appropriation is intended; the flow per second of water to be used, and the time during which it is to be used each year; the name of the stream or other source from which the water is to be diverted; the place on such stream or source where the water is to be diverted, and the nature of the diverting works; and the dimensions, grade, shape and nature of the proposed diverting channel; and such other facts as will clearly define the full purpose of the proposed appropriation.

If the proposed use is for irrigation, the application shall show, in addition to the above required facts, the legal subdivisions of land proposed to be irrigated, with the total area thereof, and the character of the soil.

If the proposed use is for developing power, the application shall show, in addition to the above required facts, the number, size and kind of water wheels to be employed; the head under which each wheel is to be operated: the extent of the power to be produced, and the purposes for which and the places where it is to be used; also, the point where the water is to be returned to the natural stream or source.

If the proposed use is for mining, the application shall show, in addition to the above required facts, the name of the mine and the mining district in which it is situated; the nature of the material mined, and the place where the water is to be returned to the natural stream or source.

Sec. 36. State Engineer's Action on Application.
—On receipt of said application, it shall be the duty of the State Engineer to make an indorsement thereon of the date of its receipt, and to make a record of such

receipt in a book in his office kept for that purpose. It shall be his duty to examine said application and ascertain if it sets forth all the above required facts, and if not, he shall return the same for correction. The date of such return, with the reasons therefor, shall be endorsed on the application, and a record made thereof in the book kept for recording receipts of applications. Like entries shall be made of the date of the return of all corrected applications, and of the date of the refusal and return of rejected applications.

Sec. 37. Notice of Appropriation to be Published.—If not corrected as required, no further proceedings shall be had on such application, but when filed in compliance with this act, the State Engineer shall at once, at the expense of the applicant, to be paid in advance, publish in some newspaper having a general circulation within the boundaries of the river system or water source from which said appropriation is to be made, a notice of the application, showing by whom made; the quantity of water sought to be appropriated; the stream from which the appropriation is to be made, and at what point on the stream; the use for which it is to be appropriated, and by what means; which notice shall be published as often as such paper is issued, for thirty days.

Sec. 38. Protest and Hearing Thereon.— Any person, corporation or association interested may, at any time within thirty days after the completion of the publication of said notice, file with the State Engineer a written protest against the granting of said application, stating the reasons therefor, which shall be duly considered by said engineer. He may, in his discretion, hear evidence in support of or against such application, and shall take such action thereon as he may deem proper and just.

Sec. 39. Approval or Rejection of Applications.— All applications which shall comply with the provisions of this act and with the regulations of the State Engineer's office, shall be filed and recorded in a suitable book kept for that purpose; and it shall be the duty of said engineer to approve all applications made in proper form, where the proposed use will not impair the value

of existing rights, or be otherwise detrimental to the public welfare. But, where there is no unappropriated water in the proposed source of supply, or where the proposed use will conflict with existing rights, or threatens to prove detrimental to the public interest, it shall be the duty of the State Engineer to reject such application.

Sec. 40. Application. How Endorsed. — The approval or rejection of an application shall be endorsed thereon and a record made of such endorsement in the State Engineer's office. The application, so endorsed, shall be returned to the applicant. If approved, the applicant shall be authorized, on receipt thereof, to proceed with the construction of the necessary works and to take all steps required to apply the water to the use named in the application and to perfect the proposed appropriation. If the application is rejected, the applicant shall take no steps towards the prosecution of the proposed work, or the diversion and use of the public water, so long as such rejection shall continue in force.

Sec. 41. Additional Information. — Before either approving or rejecting an application, the State Engineer may require such additional information as will enable him to properly guard the public interests, and may require a statement of the following facts: In case of incorporated companies, he may require the submission of the articles of incorporation; the names and places of residence of its directors and officers, and the amount of its authorized and its paid up capital. If the applicant is not an incorporated company, he may require a showing as to the name or names of the party or parties proposing to make the appropriation, and a showing of facts necessary to enable him to determine whether or not they have the financial ability to carry out the proposed work, and whether or not the said application has been made in good faith.

Sec. 42. Limitation of Time for Completing Work. — In his endorsement of approval on any application, the State Engineer shall require that actual construction work must begin within ninety days from the date of such approval, and that the construction of the pro-

posed irrigation works shall be completed within a period of five years from the date of such approval. He may limit the applicant to a less period for the completion of the work and the perfection of the right. The State Engineer shall have authority, for good cause shown, to extend the time within which any irrigation or other works shall be completed, and the appropriation perfected.

Sec. 43. Appeals.— Any applicant feeling himself aggrieved by the action of the State Engineer in rejecting his application, may appeal therefrom to the district court of the county in which the point of diversion of the water of the proposed appropriation shall be situated, for an examination and reversal of the action of said engineer. Such appeal shall be taken within sixty days from the time the applicant receives the rejected application, and shall be perfected when the applicant shall have filed in the office of the clerk of such district court a copy of the application and endorsement appealed from, certified by the State Engineer as a true copy thereof, together with the petition to such court, setting forth the appellant's reasons for appeal, and such appeal shall be heard and determined upon such competent proof as shall be adduced by the applicant, and such like proof as shall be adduced by the State Engineer, or some person duly authorized in his behalf.

Sec. 44. Map and Profile to be Filed.— At the time of filing his written application, or within sixty days thereafter, unless the time therefor is extended by the State Engineer, the applicant shall file a map and profile, in duplicate, which shall be a part of said application. The map shall be drawn on tracing linen and shall show accurately the location and extent of the proposed works; also the location of the point of diversion by courses and distances from some government corner; it must show the actual location of the diverting channel, and wherever section lines are crossed, must show the course, and distance to the nearest government corner; it must show the course of the river, stream, or other source of supply; the position and area of all reservoirs or basins used or intended to be used for the purpose of

storing water; the point of intersection with all other ditches, canals, laterals or reservoirs which will be crossed by the proposed work, or with which connections are to be made, and, if for irrigation, the location and area of all lands proposed to be irrigated. The profile shall show the ground and grade lines, and a cross section of the various forms of the proposed diverting channel. All streams and intersecting ditches, canals and reservoirs not connected with the proposed works must be represented in ink of different color from that used to represent the proposed work. The map and profile shall also be accompanied by such detailed drawings as will exhibit the character of the material to be used in construction; the several appliances to be used in diverting and regulating the water; the nature of bridges or other structures connected with the works, and such other matter as will enable a proper understanding of the work which is proposed to be done. All of which shall be certified as being correct by the engineer making the survey, and as being part of the application, with the number thereof, by the party making the same.

Sec. 45. Certificate to Appropriator. — Upon it being made to appear to the satisfaction of the State Engineer that any appropriation has been perfected in accordance with the application therefor, it shall be the duty of the State Engineer to issue a certificate, in duplicate, to the party making the same, setting forth the name and postoffice address of the person, corporation or association by whom the water is to be used; the flow per second of water to be used; the purpose for which the water is to be used; the time during which the water is to be used each year; the name of the stream or source from which the water is to be diverted; the place on the stream or source where the water is to be diverted; the priority number of the right; the date of the appropriation; and such other matter as will fully and completely define the right of said person, corporation or association to the use of the water. One copy of said certificate shall be filed in the office of the State Engineer, and the other copy shall be delivered to the appropriator, and shall, within thirty days, be recorded by him in the office of the county recorder of the county

where the water is diverted from the natural stream or source. The certificate so issued and filed shall vest in the appropriator the right and title to the use of the water in the volume, for the purpose and during the time mentioned therein, and shall be evidence of such right.

Sec. 46. Date of Priority. — The priority number of such appropriation shall be determined by the date of filing the written application in the State Engineer's office.

MISCELLANEOUS.

Sec. 47. Water Public Property.— The water of all streams and other sources in this State, whether flowing above or under ground, in known or defined channels, is hereby declared to be the property of the public, subject to all existing rights to the use thereof.

Sec. 48. Units of Measurement. — The discharge of one cubic foot per second of time, which shall be known as a second foot, shall be the unit of measurement of flowing water, and the acre foot shall be the unit of measurement of quantity. The acre foot is equivalent to forty-three thousand five hundred and sixty cubic feet.

Sec. 49. Basis, Measure and Limit of Right.— Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this State.

Sec. 50. Abandonment. - When the appropriator or his successor in interest abandons or ceases to use water for a period of seven years, the right ceases, and thereupon such water reverts to the public and may be again appropriated, as provided in this act; but questions of abandonment shall be questions of fact, and shall be determined as are other questions of fact.

Sec. 51. Change of Use or Place of Diversion.— Any person, corporation, or association entitled to the use of water may change the place of diversion and may use the water for other purposes than those for which it was originally appropriated, but no such change shall be made if it impairs any vested right, without just com-

pensation; and every change, so made, shall be immediately reported to the State Engineer, and, if the place of diversion is changed, then the report shall be accompanied by a map, which shall clearly represent such change and show the places from and to which the change has been made, and the course and distance between the two places. Any person, corporation or association failing to make such report shall be guilty of a misdemeanor.

Sec. 52. Commingling and Recovering Water. —

Any appropriated water may be turned into the channel of any natural stream, or into a reservoir constructed across the bed of any natural stream, and commingled with its water and then be recovered, but, in so doing, the original water in such stream or reservoir must not be diminished in quantity or deteriorated in quality.

Sec. 53. Appropriator of Water to Maintain Headgate and Flume. — Every person, corporation or association using water in this State shall construct and maintain a substantial headgate at the point where the water is diverted, and a measuring device, as near the head of the diverting channel as is practicable, for the purpose of regulating and measuring the quantity of water that may be diverted into the said channel from the stream or other source. Said headgate and measuring device shall be of such pattern as the State Engineer shall approve, and shall be constructed within thirty days after request from him. Any person, corporation or association failing to comply with the provisions of this section shall be guilty of a misdemeanor.

Sec. 54. Rights of Appropriators. — Appropriators shall have priority among themselves according to the dates of their respective appropriations, so that each appropriator shall be entitled to receive the whole supply to which his certificate entitles him before any subsequent appropriator shall have any right; provided, that, whenever the natural flow of any stream shall have receded in volume to the annual low water stage, then the rights of all users to such flow at such stage shall be deemed to be equal as to priority, and the water when at or below such stage, shall be apportioned pro rata

among said users. But, in times of scarcity, while priority of appropriation shall give the better right as between those using water for the same purpose, the use for domestic purposes shall have preference over use for all other purposes, and use for agricultural purposes shall have preference over use for any other purpose, except domestic use.

Sec. 55. Irrigation or Reservoir Company May Take Stock in Similar Company.—Any irrigation or reservoir company, incorporated and existing under the laws of this State, may purchase or subscribe for the capital stock of any other similar corporation, which, at the time of such purchase or subscription, shall be or is about to be incorporated; provided, that such purchase or subscription shall be made only when permitted by the original articles of incorporation or by amendment thereto proposed and adopted according to law, and such corporations are hereby permitted and authorized to amend their articles of incorporation so as to authorize such purchase or subscription.

Sec. 56. Right of Way. Eminent Domain. Public Use —The use of water for beneficial purposes, as provided in this act, is hereby declared to be a public use. Any person, corporation or association shall have a right of way across and upon public, private and corporate lands, or other right of way, for the construction, maintenance, repair and use of all necessary reservoirs, dams, water gates, canals, ditches, flumes, tunnels, or other means of securing, storing and conveying water for irrigation or for any necessary public use, or for drainage, upon payment of just compensation therefor, but 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, nor to unnecessarily injure any public or private property. Such right may be acquired in the manner provided by law for the taking of private property for public use.

Sec. 57. Use and Enlargement of Existing Canal.—When any person, corporation or association desires to convey water for irrigation or for any other beneficial

purpose and there is a canal or ditch already constructed that can be enlarged to convey the required quantity of water, then such person, corporation or association, or the owner or owners of the land through which a new canal or ditch would have to be constructed to convey the quantity of water necessary, shall have the right to enlarge said canal or ditch already constructed, by compensating the owner of the canal or ditch to be enlarged, for the damage, if any, caused by said enlargement; provided, that said enlargement shall be done at any time from the first day of October to the first day of March, or at any other time that may be agreed upon with the owner of said canal or ditch.

Sec. 58. Canals, Bridges and Crossings to be Kept in Repair. — The owner or owners of any ditch, canal, flume or other water course shall maintain the same in repair, so as to prevent waste of water or damage to the property of others. Such persons are required, by bridge or otherwise, to keep such ditch, canal, flume or other water course in good repair where the same crosses any public road or highway, so as to prevent obstruction to travel, or damage or overflow to such public road or highway.

Sec. 59. Liability of Joint Users of Water Course for Repairs. — When two or more persons, companies or corporations are associated, by agreement or otherwise, in the use of any dam, canal, reservoir, ditch, flume or other means of conserving or conveying water for the irrigation of land, or for other purposes, each of them shall be liable to the other for the reasonable expense of maintaining, operating and controlling the same, in proportion to the share in the use or ownership of the water to which he is entitled. If any person, company or corporation refuse or neglect to pay his proportion of such expense, after five days' notice in writing demanding such payment, he shall be liable therefor in an action for contribution; provided, that in any company or corporation owning or controlling more than one canal or ditch, for the purpose of improving or keeping the same in repair, the users of water shall not be required to pay any expenses or assessments in any canal or ditch, other than the one in which they are directly interested.

Sec. 60. Water Rights Appurtenant to Land. Exceptio n.—A right to the use of water appurtenant to the land shall pass to the grantee of such land, and, in cases where such right has been exercised in irrigating different parcels of land at different times, such rights shall pass to the grantee of any parcel of land 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 upon any such right; provided, that any such right to the use of water, or any part thereof, may be reserved by the grantor in any such conveyance, by making such reservation in express terms inserted in such conveyance, or may be separately conveyed.

Sec. 61. Water Rights Shall be Transferred by Deeds, Which Must be Recorded. Record Imparts Notice.—Water rights shall be transferred by deeds, in substantially the same manner as real estate, except when they are represented by shares of stock in a corporation, and such deeds shall be recorded in the office of the recorder of the county where the place of diversion of the water from its natural channel is situated. Every deed of water right so recorded shall, from the time of filing the same with the recorder for record, impart notice to all persons of the contents thereof, and subsequent purchasers, mortgagees and lien holders shall be deemed to purchase and take with notice.

Sec. 62. Effect of Failure to Record.—Every deed of water right within this State hereafter made, which shall not be recorded as provided in this act, shall be void as against any subsequent purchaser, in good faith, and for a valuable consideration, of the same water right, or any portion thereof, where his own deed shall be first duly recorded.

Sec. 63. Unlawful Taking or Using of Water, or Interference with Headgates, Weirs, or Other Device for Measuring and Apportioning Water.—Any person, corporation or association who shall in any way interfere with, injure, destroy or remove any dam, headgate, weir or other appliance for the diversion, apportionment or measurement of water, or who shall interfere with any of the persons authorized by this act to apportion water,

while in the discharge of their duties, shall be guilty of a misdemeanor, and shall also be liable in damages to any person injured by such unlawful act.

Sec. 64. Obstructing Canal. Penalty.—Whenever any person, corporation or association has the right of way for canals or other water courses, it shall be unlawful for any person to place or maintain in place any obstruction, by fence or otherwise, along or across such canals or water courses, without providing gates sufficient for the passage of the owners of such canals or water courses, or their agents. Any person, corporation or association violating the provisions of this section shall be guilty of a misdemeanor.

Sec. 65. Attorney General and District Attorney Shall be Advisers of State Engineer.—In all matters requiring legal advice in the performance of his duties and the prosecution or defense of any action growing out of the performance of his duties, the Attorney General of the State and the district attorney of the district in which any legal question arises, shall be the legal advisers of the State Engineer, and they are hereby required to perform any and all legal services required of them by him, without other compensation than their salaries now or hereafter fixed by law.

Sec. 66. State Engineer Shall Collect Fees and Pay Same Into the Treasury.— The State Engineer shall collect the following fees, which shall be paid by him into the State treasury on the first Monday in January, April, July and October of each year:

For examining and approving plans and specifications for any dam, twenty-five dollars; and if necessary to inspect the site where the dam is to be built, an additional charge of ten dollars per day and expenses shall be made.

For inspecting any diverting works, by request, ten dollars per day and expenses.

For examining and filing applications to appropriate water, each, two and 50-100 dollars.

For examining map, profile and drawings that are part of the application, five dollars.

For approving and recording completed application, two and 50-100 dollars.

For issuing certificates of appropriation, each, one dollar.

For examining and filing notices of protest, each, two and 50-100 dollars.

For filing any other paper, one dollar.

For certified copy of any paper, per folio, twenty cents.

For copy of any map, profile or drawing, per square foot, ten cents.

For each certificate to copy of paper, drawing or map, fifty cents.

Sec. 67. Cost of Assistants and Expenses Incurred by State Engineer to be Paid by State.—For the purpose of carrying into effect the provisions of this act, the State Engineer shall have power to employ all necessary assistants, purchase all necessary equipment, and do all other necessary things, the cost of which shall be paid by the State, upon presentation to the State Auditor of monthly statements, certified by the State Engineer; provided, that no expense shall be incurred by the State Engineer in the performance of his duties which will exceed the amount appropriated for that purpose.

Sec. 68. Fees of Referee and Stenographer to be Paid Out of the State Treasury.—The fees of referees and stenographers shall be fixed by the court, and together with any other expenses not herein provided for that may be incurred in carrying out the provisions of this act, shall be paid out of the State treasury, upon certificates from the proper district judge to the State Auditor of the amount due each person for such service.

Sec. 69. Parties and Judgments in Action Concerning Water.—In any action hereafter commenced for the protection of rights acquired to water under the laws of this State, the plaintiff may make any or all persons who have diverted water from the same stream or source parties to such action, and the court may in one judgment settle the relative priorities and rights of all the parties to such action. When damages are claimed for the wrongful diversion of water in any such action, the same may be assessed and apportioned by the jury in their verdict, or by a court if the case be tried without a jury, 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 the parties to the action, the court shall hear and determine such controversy as if the same were several as well as joint.

Sec. 70. Existing Irrigation Ditches Not Affected by Repeal.—The repeal by the Revised Statutes of Sections twenty-four hundred and three to twenty-four hundred and twenty-seven, both inclusive, of the Compiled Laws of Utah, 1888, shall not be construed to affect the existence of any district or company organized under the aforesaid sections; but any such company or district shall, notwithstanding such repeal, continue in existence with all the rights, privileges and limitations heretofore conferred or imposed upon it by law, until disincorporated or dissolved according to law. In any case in which an irrigation company or district shall have a right of action against a delinquent member of such company or district for the non-payment of taxes voted according to law, the board of directors thereof may proceed to sell the interest of such members in the canals or ditches of such company or district and his right to the use of the water flowing therein.

Sec. 71. Dissolution of Existing Irrigation Districts.—Whenever a petition is presented to the board of trustees of any irrigation company or district organized under the sections mentioned in the next preceding section, signed by one-fourth of the landholders in the district, asking for the abandonment of further operations by the company or district, the board of trustees thereof shall call a special meeting, at which the question of such abandonment shall be submitted. Notice of the time and place and subject of such meeting shall be given by the board of trustees of the district at least ten days previous thereto, by advertising at least three times in some newspaper having general circulation in the district, or by posting notices in three public places therein. If three-fifths of the landholders of the district voting at such election shall vote for such abandonment, it shall be the duty of the board of trustees to

petition the district court of the county in which the greater portion of the lands of the district are situated for the winding up of the affairs of such company or district; and thereafter proceedings shall be had which shall conform as nearly as may be with the proceedings for the voluntary dissolution of corporations.

Sec. 72. Repeal. Rights Preserved.—All of Title 33 of the Revised Statutes of Utah of 1898, on "Irrigation and Water Rights," being Sections 1261 to 1288, inclusive, and Chapter 125 of the Laws of Utah of 1901, entitled, "An Act Defining the Duties of the State Engineer; Providing for the Creation of Water Districts, and for the Appointment of a Water Commissioner for Each District; Providing for the Proper Measurement and Division of Water; Providing for the Reclamation of Stored Water, and Repealing Chapter 8, Title 63, Revised Statutes of Utah, 1898," approved March 25, 1901, and all other laws and parts of laws in conflict with the provisions of this act, are hereby repealed; but such repeal shall not affect any vested rights, and any person, corporation or association who may have heretofore filed notice of appropriation of water, or initiated any right under the provisions of said laws, may complete and perfect such appropriation or right in the same manner and with like effect as if this repeal had not been made; and such repeal shall not affect the term of office of the present incumbent of the office of State Engineer, nor prevent the water commissioners appointed under said act of 1901 from performing the duties therein prescribed, until they are superseded by the appointment of division superintendents and district supervisors as provided in this act, and, if necessary, other water commissioners may be appointed in the manner provided in said act, to serve until they are superseded, as provided herein.

Sec. 73. Appropriations to Pay Expenses Incurred by Engineer.—The sum of twenty-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury not otherwise appropriated, to be drawn on the order of the State Engineer, for the purpose of defraying the cost and expenses of carrying out the provisions of this act.

Approved March 12th, 1903.





