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U. S. DEPARTMENT OF AGRICULTURE,
OFFICE OF EXPERIMENT STATIONS.

ABSTRACT OF LAWS

FOR

ACQUIRING TITLES TO WATER

FROM THE

MISSOURI RIVER AND ITS TRIBUTARIES,

WITH THE

LEGAL FORMS IN USE.

COMPILED BY

ELWOOD MEAD,
STATE ENGINEER OF WYOMING.



WASHINGTON:
GOVERNMENT PRINTING OFFICE.

1899.

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LETTER OF TRANSMITTAL.

U. S. DEPARTMENT OF AGRICULTURE,
OFFICE OF EXPERIMENT STATIONS,
Washington, D. C., January 11, 1899.

SIR: I have the honor to transmit herewith a compilation of abstracts of laws for acquiring titles to water from the Missouri River and its tributaries, with the legal forms in use, prepared by Prof. Elwood Mead, State engineer of Wyoming, in accordance with instructions given by the Director of this Office. This compilation is supplementary to Bulletin No. 58 of this Office on Water Rights on the Missouri River and its Tributaries, by the same author.

This bulletin is respectfully submitted, with the recommendation that it be published as Bulletin No. 60 of this Office.

Respectfully,

A. C. TRUE,
Director.

Hon. JAMES WILSON,
Secretary of Agriculture.

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LAWS AND LEGAL FORMS FOR ACQUIRING TITLES TO WATER IN THE MISSOURI RIVER BASIN.

INTRODUCTION.

The diversion of water from streams by the irrigators and ditch builders of the arid States has made it necessary to enact laws for the establishment and protection of their individual rights therein. It is essential that the farmer under irrigation look as carefully after his title to a share in the common water supply as he does after his land title. Emigrants from regions of abundant rainfall often fail to recognize the importance of doing this or are at a loss to know what is required to safeguard their interests. Because of this many suffer serious financial loss and the success and orderly administration of irrigation codes are often called in question. Bulletin No. 58 of this series contains a discussion of the water-right laws of those States drained in whole or in part by the Missouri River. It was prepared to aid water users in establishing their rights and to promote the agricultural development of that great region. It directs attention to the need of simpler, cheaper, and more effective methods of disposing of the public water supplies than those which now prevail in some of those States. It is believed that a publication of the laws which that bulletin discusses and the legal forms which irrigators and other appropriators of water must use will be another and valuable aid in removing the anxiety and uncertainty of many to whom the problems of irrigation are new and strange.

Irrigation laws have to deal with many subjects besides the control and division of the public water supply. There are elaborate statutes for the regulation of canals, for the determination of the rights of carriers and users, and for the promotion of new works. From this bulletin all such laws have been excluded in the belief that by separating the laws which govern water titles and public control of streams from all other irrigation legislation a clearer understanding of their scope and purpose would be secured than by a compilation of all the laws. The forms which are given are copies of those now in use and comply with existing laws.

WATER LAWS OF COLORADO.

CONSTITUTION.

Water public property.

SEC. 5. 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 the same is dedicated to the use of the people of the State, subject to appropriation as hereinafter provided.

Diverting unappropriated water; priority.

SEC. 6. The right to divert unappropriated waters of any 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.

REVISED STATUTES.

Priority of right.

SEC. 2269. That all ditches now constructed or hereafter to be constructed for the purpose of utilizing the waste, seepage, or spring waters of the State shall be governed by the same laws relating to priority of right as those ditches constructed for the purpose of utilizing the waters of running streams: *Provided*, That the person upon whose lands the seepage or spring waters first arise shall have the prior right to such waters if capable of being used upon his lands.

Reservoirs; right to water; right of way; condemnation.

SEC. 2270. Persons desirous to construct and maintain reservoirs for the purpose of 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 for carrying such water to and from such reservoir, and to condemn lands for such reservoirs and ditches, in the same manner provided by law for the condemnation of land for right of way for ditches.

Filing statements of claims; ditch, name, description, post-office address.

SEC. 2400. In order that all parties may be protected 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 shall, on or before the 1st day of June, A. D. 1881, file with the clerk of the district 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 of the proper court, and in the matter of priorities of water rights in district No. —, as the case may be, which statement shall contain the name or names, together 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, if any such thereof may have been made, and 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.

Proceedings in court; order; evidence; examination; proofs; what facts; decree; certificate of clerk.

SEC. 2403. When, at any time after the 1st day of June, A. D. 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 use the water for irrigation in such water district according to the provisions of an act entitled "An act to regulate the use of water for irrigation and providing for settling the priority of rights thereto and for 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 to be entered of record upon such motion, petition, or application, appoint a day in some regular or special term of said court 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 which may be offered by or on behalf of any ditch, canal, or reservoir in such district, either as owner or consumer of water therefrom, in support of or against any claim or claims of priority of appropriation of water 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 any and all evidence, if any, which may have been heretofore offered and taken in such district in the same matter by any referee heretofore appointed under the provisions of said act above herein mentioned, and also the arguments of parties or their counsel, and shall ascertain and find from such evidence, as near as may be, the date of the commencement of such ditch, canal, or reservoir, together with the original size and carrying capacity thereof as originally constructed, the time of the commencement of each enlargement or extension thereof, if any, with the increased capacity thereby occasioned, 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 the 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 reservoir [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 that each and every party interested 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 the 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, 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.

Copy of decree; authority of commissioner; recording; copy; evidence.

SEC. 2404. The holder of such certificate shall exhibit the same 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, and said certificate, or statement thereof in his book, shall be the warrant of authority to said water commissioner for regulating the flow of water in relation to such ditch, canal, or reservoir. Said certificate shall be recorded at the same rate of charges as in cases of deeds of conveyance, in the records of each county into which the ditch, canal, or reservoir to which such certificate relates shall extend; and said certificate, or

said record thereof, or a duly certified copy of such record, 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.

Clerk publish notice; post copy; ten copies posted by party petitioning.

notice shall be so published in such paper once in each week until four successive weekly publications shall have been made, the last of which shall be on a day previous to the day appointed as aforesaid. Said notice shall contain a copy of said order, and shall 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 been before filed by him, her, 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 owners thereof, which statement may be made by any one of the owners of such ditch, canal, or reservoir, for and in behalf of all; and also that all persons interested as owners or consumers may then and there present his, her, 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 be posted in such water district not less than twenty days before the day so appointed, which copies shall be so posted by the party or parties moving the adjudication.

Proof of publication; of posting copies; entry by clerk.

been made in accordance with the provisions of section three of this act, which certificate shall be procured by the party or parties moving the adjudication, at his or their expense, and on said certificate being filed with the clerk, shall enter the amount of the printer's fee therefor as costs advanced by the party procuring the same, which sum shall be counted to his, her, or their credit in distribution of costs. Proof of the posting of said printed copies shall be made by the affidavit of some credible person, certified to be such by the clerk or other officer administering the oath, showing when, where, and how said copies were posted.

Notices served on all parties; how served; notice by mail.

shown by the statement of claim on file, as provided in section one hereof; which service shall be made within ten days from the time of the first publication by the clerk, by any credible person certified by said 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 such person can not be found, as aforesaid, then by leaving such copy at his or her usual place of residence, if he or she have such residence, in charge of some person of the age of fourteen years or over, there residing; and on any corporation, by delivering the copy to the president, or vice-president, or secretary, or treasurer thereof, or the manager or superintendent in charge of their ditch, canal, or reservoir, or authorized agent or attorney, or by leaving such copy at the office or usual place of business of such corporation; and the proof of such service shall be made by affidavit of the person or persons serving said copies, showing when and how such service has been made on such party. In case of parties not served in any manner as aforesaid, the clerk shall deposit in the post-office, duly enclosed in an envelope, with the proper postage stamp thereon, a copy directed to the address of such party, shown in the statement of claim aforesaid, filed by him or her under section one hereof.

Decree; court number all ditches; reservoirs; number appropriations.

ing to priority of appropriation of water thereby made by the original construction thereof, as near as may be, having reference to the date of each decree as rendered, and also number the reservoirs in like manner separately 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

SEC. 2405. Notice shall be given by the clerk of said court of the time so appointed, by publishing the same in one public newspaper in such county into which such water district may extend, which

SEC. 2406. Proof of the proper publication of said notice or notices in said public papers shall consist in such case of the sworn certificate of the publisher of such newspaper, showing the publication to have

SEC. 2407. The party or parties moving such adjudication shall cause a printed or written copy of the notice aforesaid, published as aforesaid, to be served on every person, association, or corporation

SEC. 2408. The court, in making such decree, as aforesaid, shall number the several ditches and canals in the water district, concerning which adjudication is made, in consecutive order, according

appropriations 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 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 one 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 date of decrees as rendered.

When court may appoint referee; what referred.

SEC. 2409. If for any cause the judge of said court shall deem it impracticable or inexpedient to proceed to hear such evidence in open court, he shall, instead of the order mentioned in section four of this act, make and cause to be entered of record an order appointing some discreet person properly qualified a referee of said court, to whom shall be referred the statement of claim aforesaid on file in said matter, 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 also in the case of any water district in which a referee has been heretofore appointed, and evidence taken by him under the provisions of this act, the title of which is recited in section four of this act; such evidence so already taken, together with the abstract thereof, and report to the referee who took the same, shall be also referred to said referee, to be appointed as aforesaid, and he shall proceed with his duties as hereinafter provided, first taking an oath of office, such as is required to be taken by referees in other cases under the provisions of the code of civil procedure.

Referee's notice; contents; how published; posting copies.

SEC. 2410. Said referee shall prepare and publish a notice containing a copy of the order appointing him, in which notice he shall appoint a time or times, and place or places, suitable and convenient for the claimants in such water district, at which he will attend for the purpose of hearing and taking evidence touching the priority of right of the several ditches, canals, and reservoirs in said district, and notifying all persons, associations, and corporations interested as owners or consumers of waters [water] to attend by themselves, their agents or attorneys, at the times and places appointed in said notice, and notifying such owners to then and there file a statement of claim in case such statement has not already been filed under the provisions of section one hereof, such as mentioned in section six hereof, and present their proofs touching any priority of right claimed by them for any ditch, canal, or reservoir in said district, which notice shall be published in the same manner and times, and in all respects according to the provisions for publication of newspaper notices mentioned in section six of this act, and proof of such publication shall be made in same manner as is provided in section seven of this act; and he shall also post ten or more printed copies of such notice in ten or more public places in said district, which copies shall be so posted at least twenty days before the time of commencing to take such evidence.

Proof of posting notices.

SEC. 2411. Proof of the posting of said copies shall be made by affidavit of said referee or other person certified by him to be a credible witness, which shall show when, where, and how the said copies were posted, and shall be filed by him with his report.

Proceedings before referee; former evidence; who may offer evidence.

SEC. 2412. Said referee shall attend at the times and places mentioned in his said notice for the purpose therein mentioned, and all persons or associations choosing to do so, and being interested as owners of or consumers of water from any ditch, canal, or reservoir in said district, and may also attend by themselves, their agents or attorneys, before said referee, at some one or more of said times and places so appointed, and shall have the right to offer any and all evidence they may think advisable for their interests in the matter to be adjudicated, as well in districts in which evidence has been heretofore taken as in other districts. All such evidence as has been heretofore taken, if any, in such district, shall be kept present by said referee, subject to inspection by any party desiring to examine the same for purposes of the investigation.

Powers and duties of referee; books and records; evidence.

SEC. 2413. Said referee shall have power to administer oaths to all witnesses and to issue subpoenas for witnesses and subpoenas duces tecum, which subpoenas may be served by any party or constable, or sheriff or deputy sheriff, and may require witnesses to appear at any of the places appointed by said referee for taking evidence. He shall permit all witnesses to be examined

by the parties calling them, respectively, and to be cross-examined by any party interested, and he shall take all testimony in writing and note all objections offered to any part of the testimony taken, with the cause assigned for the objection, and shall proceed in all other respects as in case of taking depositions. He shall certify all books and papers offered by any one in his own behalf, and preserve them with the testimony offered concerning the same, and in case of books and papers offered in evidence, which shall not be under the control of the party desiring the evidence for which such books may be offered, said referee shall make a true copy of the parts demanded and certify the same, and preserve the same, together with the evidence offered concerning the same and concerning said books and papers, as part of the evidence in the matter.

Refusal to produce books or papers; effect.

SEC. 2414. No person, association, or corporation willfully refusing to produce any book or paper, if in his or their power to do so, when rightfully demanded for examination and copying, shall be allowed the benefit of any testimony or proofs in his, her, or their behalf, in making final adjudication, if the court shall be satisfied, from all the evidence shown concerning such refusal, that the same was willful.

What facts to be ascertained by proofs.

SEC. 2415. Said referee shall also examine all witnesses to his own satisfaction touching any point involved in the matter in question, and shall ascertain, as far as possible, the date of the commencement of each ditch, canal, or reservoir, with the original size and carrying capacity thereof, the time of the commencement of each enlargement thereof, with the increased carrying capacity thereby occasioned, the length of time spent in such construction or enlargement, the diligence with which the work was 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 requiring the priority of right claimed for such ditch, canal, or reservoir; and upon all the facts so obtained shall be determined the relative priorities among the several ditches, canals, and reservoirs, the volume or amount of water lawfully appropriated by each, as well as by means of the construction, as by the enlargements thereof, and the time when each such several appropriations took effect.

Disturbing proceedings; penalty.

SEC. 2416. Every person present before said referee at any time when he shall be engaged in hearing testimony, who shall willfully disturb the proceedings; and every person who shall willfully refuse or neglect to obey any subpoena issued by said referee, when his lawful fees shall be tendered him for his attendance before the referee, shall be guilty of contempt of the court appointing such referee, and on complaint, under oath, of the referee or other person, before the said district court, or judge thereof in vacation, may be brought before the court or judge and dealt with accordingly.

Fees of witnesses; by whom paid.

SEC. 2417. Every witness who shall attend before said referee under subpoena by request of any party shall be entitled to the same fees and mileage as witnesses before the district court in the county in which he shall so attend, and shall be paid by the party requiring his testimony.

Duties of referee; rights of parties; adjournment; notice.

SEC. 2418. The said referee shall take all the testimony offered, and for that purpose shall give reasonable opportunity to all parties to be heard, and may at any place, when the time limited thereat shall expire, adjourn the further taking of testimony then proposed or desired to be offered to the next place in order, according to his published appointments, and at the last place may continue until all testimony shall be taken, or make further appointment at any former place or places as may seem best and most convenient for all parties, giving reasonable notice thereof.

Referee shall examine all testimony; numbering; findings; decree; report.

SEC. 2419. Said referee, upon closing the testimony, shall proceed to carefully examine the same, together with all testimony and proofs which may have been heretofore taken by any former referee in the same district, if any such shall have been taken, under the provisions of said act, the title of which is recited in section four of this act. He shall make an abstract of all the testimony and proofs in his possession concerning each ditch, canal, and reservoir separately, and shall number each ditch and canal in order, and likewise each reservoir, each class consecutively, and also number the several appropriations of water shown by the evidence, all in manner and form as provided in section nine hereof; 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 four of this act, and conformable also to the provisions of section nine hereof, so far as the same are 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.

Filing report; court proceed to determine; exceptions; approval; entry.

at which time any party interested may appear by himself or counsel and move exceptions to any matter in the findings or decree made by said referee; and after hearing the same the court shall, if the decree reported be approved, cause the same to be entered of record, or otherwise, such modifications thereof or other decree as shall be found just and conformable to the evidence and the true intent of this act, and to so much of any and all former laws of the State as shall be adjudged consistent therewith.

Failure to offer evidence; water commissioner disregard claims until, etc.; party obtain decree and present certificate.

section four hereof, shall be regarded by any water commissioner in distributing water in times of scarcity thereof until such time as such party shall have, by application to the court having jurisdiction, obtained leave and made proof of the priority of right which such ditch, canal, or reservoir shall be justly entitled, which leave shall be granted in all cases upon terms as to notice to other parties interested, and upon payments of all costs, and upon affidavits or petitions sworn to, showing the rights claimed, and the ditches, canals, or reservoirs, with the names of the owners thereof against which such priority to such ditch, canal, or reservoir has been entered, and certificate, such as mentioned in section four hereof, shall have been issued to claimant and presented to the water commissioner.

Rights of parties against referee for neglect, oppression, etc.

such party shall have been aggrieved, either by refusal of said referee to hear or take evidence offered or by preventing reasonable opportunity to offer such evidence; and the court may order such proceedings in the premises as will give redress of the grievance, at the cost of said referee, if he appear willfully in fault; otherwise in case of accident or mistake costs will be awarded as to the court shall seem just.

Power of court to make just rules; laws construed liberally.

during the progress of the case for carrying out the intent of this act, and of all parts consistent therewith of the said act, the title of which is recited in section four hereof; as well touching the proceedings in court as of the acts and doings of said referee, for the purpose of securing to any party aggrieved by the acts of said referee, or any proceeding of the court, opportunity for redress; and this act shall be construed liberally in all courts in favor of securing to all persons interested the just determination and protection of their rights.

Party must file claim before offering evidence.

referee until he, she, or they shall have filed a statement of claim in substance the same in all respects as is required to be filed under the provisions of section one hereof.

Reargument; review; limitation two years.

such manner as may seem meet, a reargument or review, with or without additional evidence, of any decree made under the provisions of this act, whenever said court or judge shall find from the cause shown for that purpose by any party

SEC. 2420. Upon the filing of said report the court, or judge thereof in vacation, shall cause an order to be entered setting some day in a regular or special term of court as soon as practicable, when the court shall proceed to hear and determine the report,

SEC. 2421. No claim of priority of any person, association, or corporation on account of any ditch, canal, or reservoir, as to which he, she, or they shall have failed or refused to offer evidence under any adjudication herein provided for or heretofore provided for by said act, the title of which is recited in

SEC. 2422. Every party interested shall have the right to complain to the court of any act of willful neglect or oppression on the part of the said referee, in exercising his powers under this act, whereby

SEC. 2423. The district court, or judge thereof in vacation, shall have the power to make all orders and rules consistent with this act which may be found necessary and expedient from time to time

SEC. 2424. No persons, association, or corporation representing any ditch, canal, or reservoir shall be permitted to give or offer any evidence before said

SEC. 2425. The district court, or judge thereof in vacation, shall have power to order for good cause shown, and upon terms just to all parties and in

or parties feeling aggrieved that the ends of justice will be thereby promoted; but no such review or reargument shall be ordered unless applied for by petition or otherwise within two years from the time of entering the decree complained of.

Testimony. SEC. 2426. Whenever testimony shall or may be taken in any district created by this act, for the purpose of procuring decree as to appropriation of water and priorities thereof under the statutes of this State, any testimony theretofore taken before any former referee may be introduced and shall be received as evidence.

Appeals; who may appeal; statement; approval; contents; order; bond; conditions.

SEC. 2427. Any party or parties representing any ditch, canal, or reservoirs, or any party or parties representing two or more ditches, canals, or reservoirs, which are affected in common with each other by any portion of such decree, by which he or she or they may feel aggrieved, may have an appeal from said district court to the supreme court, and in such case the party or parties joining, desiring an appeal, shall be the appellants, and the parties representing any one or more ditches, canals, or reservoirs affecting in common adversely to the interests of appellants shall be the appellees. The party or parties joining in such appeal shall file a statement in writing, verified by affidavit properly entitled in such cause in the district court, which statement shall show that the appellants claim a valuable interest in the ditch, canal, or reservoir, or two or more of such, which are affected in common with each other by some portion of said decree, also stating the name or names or otherwise the description of the same, and the name or names or otherwise the description of any one or more other ditches, canals, or reservoirs, which by said decree derive undue advantage in respect of priority as against that or those represented by appellants; and also setting forth the name or names of the party or parties claiming such other one or more ditches, canals, or reservoirs affected in common by said decree adversely to the interest of appellants, and praying that an appeal be allowed against such other parties as appellees. If the court or judge in vacation on examination find such statement in accordance with the statements of claim filed by the parties named as appellees, mentioned in section one of this act, he shall approve the same and make an order to be prepared and presented by the appellants allowing the appeal and showing the name or names of the appellants and appellees, with the name or names or description of the one or more ditches, canals, or reservoirs claimed by the party or parties appellant and appellee, as shown by their several statements of claim filed as aforesaid, before the taking of testimony, and fixing the amount of the appeal bond, which bond shall be executed by one or more of appellants, as principal or principals, and by sufficient securities, and approved by the court or judge in vacation, and shall be conditioned for the payment of all costs which may be awarded against the appellants, or any of them, in the supreme court.

Copy of order served on appellees; publication; posting copies; proof.

SEC. 2428. The order last aforesaid shall be entered of record and the appellant or appellants shall cause a certified copy thereof to be served on each of the appellees, by delivering the same to him or her, if he or she may be found, or otherwise serving the same in manner the same as may be at the time provided for serving summons from the district court by the laws then in force, and shall also cause the said order to be published in the same manner as the notices required in section eleven of this act, and proof of the publication in any newspaper shall be the same as in case of said referee's notice, and proof of the posting of the ten printed copies in the district shall be by affidavit of the party posting the same, with the certificate of the clerk of the district court appealed from, that the affiant is a known and credible person.

Transcript to be filed in six months; bill of exceptions.

SEC. 2429. The appellant or appellants shall file transcript of record of the district court with the clerk of the supreme court at any time within six months after the appeal shall be allowed as aforesaid. Only so much of the decree appealed from, and so much of the evidence as shall affect the appropriations of water claimed by means of the construction or enlargement of the several ditches, canals, and reservoirs mentioned in the order allowing the appeal need be copied into the bill of exceptions.

Supreme court amend or make new decree, or remand with instructions.

SEC. 2431. The supreme court in all cases in which judgment is rendered and any part of the decree appealed from is reversed, and in which it may be practicable, shall make such decree in the matters involved in the appeal as should have been made by the district court, or direct in what manner the decree of that court shall be amended.

Filing proof of service and notice; sixty days; supreme court makes rules.

filed the supreme court shall, on motion of the appellee or any of the appellees, at any time after such default in filing said proof and before the said proof shall be filed, dismiss such appeal, and if the transcript of record be not filed within the time limited by section twenty-nine of this act such appeal shall, on motion, be dismissed. After the filing of the record and proof of service aforesaid, the cause on appeal shall be proceeded with as the rules of the supreme court, or such special rules as said court may make in such cases, and their order from time to time thereunder may require. Said court shall have power to make any and all such rules concerning such appeals as may be necessary and expedient in furtherance of this act, as well as to preparation of the case for submission, as to supplying deficiencies of record, if any, and for avoiding unnecessary costs and delay.

Court may dismiss referee; vacancy; new appointment.

to such judge appearing, shall appoint such other properly qualified person in his stead as he shall deem proper, who shall proceed without delay to perform all the duties of his office, as herein pointed out, which shall remain unperformed by his predecessor in office.

Suits must be brought in four years; injunctions in what cases; what districts; commissioner's duty.

by appropriation thereof for irrigation or other purposes, at any time within four years after the rendering of a final decree under this act in the water district in which such rights may be claimed, save that no writ of injunction shall issue in any case restraining the use of water for irrigation in any water district wherein such final decree shall have been rendered which shall affect the distribution or use of water in any manner adversely to the rights determined and established by and under such decree; but injunctions may issue to restrain the use of water in such district not affected by such decree, and restrain violations of any right thereby established; and the water commissioner of every district where such decree shall have been rendered shall continue to distribute water according to the rights of priority determined by such decree, notwithstanding any suits concerning water rights in such district; until any suits between parties the priorities between them 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 said judge shall order.

After four years suit barred.

shall be deemed and held to have acquiesced in the same, except in case of suits before them brought; and thereafter all persons shall be forever barred from setting up any claim of priority of rights to water for irrigation in such water district adverse or contrary to the effect of such decree.

Sheriff not serve writ outside his county.

to any record by way of notice or otherwise in any county other than that in which it belongs.

Fees of district clerk; how audited; paid.

as the fees of the water commissioners, upon said clerk rendering his account, certified by the district judge to the boards of county commissioners by the county or counties embracing the water district in case of which the service shall have been rendered.

SEC. 2432. The said proof of the service and publication of said order allowing the appeal shall be filed with the clerk of the supreme court within sixty days after the making of said order, and if not so

SEC. 2433. The district court, or judge thereof in vacation, in case of the death, resignation, absence, or other disability of the referee hereby provided for, or for any misconduct in him, or other good cause

SEC. 2434. Nothing in this act or any decree rendered under the provisions thereof shall prevent any person, association, or corporation from bringing and maintaining any suit or action whatsoever hitherto allowed in any court having jurisdiction to determine any claim of priority of right of water

SEC. 2435. After the lapse of four years from the time of rendering a final decree in any water district, all parties whose interests are thereby affected

SEC. 2438. Nothing herein contained shall be construed to authorize any sheriff to serve any writ outside of the limits of his own county, or give effect

SEC. 2439. The fees of the clerk of the district court for a service rendered under this act shall be paid by the counties interested, in the same manner

State engineer; governor to appoint a State engineer; office; salary; oath; bond.

SEC. 2458. The governor shall appoint a State engineer, who shall hold his office for the term of two years, or until his successor shall be appointed and qualified. The governor may at any time, for cause shown, remove said State engineer. The said State engineer shall have his office at the State capitol, in suitable rooms, to be provided for him by the secretary of state, who shall furnish him with suitable furniture, postage, and such proper and necessary stationery, books, and instruments as are required to best enable him to discharge the duties of his office. He shall be paid a salary of three thousand dollars per annum, payable monthly by the State treasurer, on warrants drawn by the State auditor. The said State engineer shall, before entering on the discharge of his duties, take and subscribe to an oath, before the judge of a State court of record, to faithfully perform the duties of his office, and file said oath with the secretary of state, together with his official bond, in the penal sum of ten thousand dollars, said bond to be signed by sureties approved by the secretary of state and conditioned upon the faithful discharge of the duties of his office, and for delivering to his successor or other officer authorized by the governor to receive the same all moneys, books, instruments, and other property belonging to the State then in his possession or under his control, or with which he may be legally chargeable as such State engineer.

Engineer control waters, make measurements, collect data.

SEC. 2459. The State engineer shall have general supervising control over the public waters of the State. He 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 also collect all 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 purpose to which the water from the same may be put. He shall also collect all data and information regarding the snowfall 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.

State engineer to have general charge of work; require reports.

SEC. 2461. The State engineer shall have general charge over the work of the division water superintendents and district water commissioners, and shall furnish them with all data and information necessary for the proper and intelligent discharge of the duties of their offices, and shall require them to report to him at suitable times their official actions, and require of them annual statements on blanks to be 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 the judgment of the State engineer will be of benefit to the State.

Appoint a deputy to measure.

SEC. 2462. The State engineer shall, on request of any party interested, and on payment of his per diem charges and reasonable expenses, 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, or for filing statements in compliance with law in the county clerk's records.

Perform all duties imposed upon him; expenses.

SEC. 2463. The State engineer shall, without any extra pay or compensation beyond the salary provided in section one of this act, perform all duties imposed upon him by law, and shall, when called upon by the governor, give his counsel and services without extra pay or compensation to any State department or institution: *Provided, however,* That he shall be allowed all actual traveling and other necessary expenses, and the actual cost of preparing necessary maps and drawings, which actual expenses shall be paid by the department or institution requiring his services.

Require owners of ditches to construct and maintain a measuring weir.

SEC. 2466. For the more accurate and convenient measurement of any water appropriated pursuant to any judgment or decree rendered by any court establishing the claims of priority of any ditch, canal, or reservoir, the owners thereof may be required by the State engineer to construct and maintain, under the supervision of the State engineer, a measuring weir or other device for measuring the flow of the water at the head of such ditch, canal, or reservoir, or as near thereto as practicable. The State engineer shall compute and arrange in tabular form the amount of water that

will pass such weir or measuring device at the different stages thereof, and he shall furnish a copy of a statement thereof to any water superintendents or commissioners having control of such ditch, canal, or reservoir.

Unit of measurement. SEC. 2467. The State engineer 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.

Water commissioners; number; how appointed; bonds; term of office. SEC. 2381. There shall be one water commissioner for each of the above-named districts and for each district hereafter formed, who shall be appointed by the governor, to be selected by him from persons recommended to him by the several boards of county commissioners of the counties into which water districts may extend; and the water commissioner so appointed shall, before entering upon his duties, give a good and sufficient bond for the faithful discharge of his duties, with not less than three sureties, in a sum not less than one thousand nor more than five thousand dollars, the amount of said bond to be fixed by the county commissioners and approved by the governor and State engineer. The commissioner so appointed shall hold his office until his successor is appointed and qualified: *Provided, however,* That if such water district shall be embraced in more than one county, and the several counties in which such water district is situated disagree as to the amount of the bond as herein required of water commissioners, then and in that event the governor shall fix the amount thereof, with the same effect as though fixed by the county commissioners.

Duty of water commissioners; open and shut head gates. SEC. 2384. It shall be the duty of said water commissioners to divide the water in the natural stream or streams of their district among the several ditches taking water from the same, according to the prior rights of each, respectively, 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 such ditch is situated, the head gates of any ditch or ditches heading in any of the natural streams of the district, which, in a 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.

Water for domestic purposes. SEC. 1. Water claimed and appropriated for domestic purposes shall not be employed or used for irrigation or for application to lands or plants in any manner to any extent whatever: *Provided,* That the provisions of this section shall not prohibit any citizens or town or corporation organized solely for the purpose of supplying water to the inhabitants of such city or town from supplying water thereto for sprinkling streets and extinguishing fires, or for household purposes.

SEC. 2. Any person claiming the right to divert water for domestic purposes from any natural stream, who shall apply or knowingly permit the water so diverted to be applied for other than domestic purposes, to the injury of any other person entitled to use such water for irrigation, shall be deemed guilty of a misdemeanor, and upon conviction shall pay a fine of not less than fifty dollars and not exceeding two hundred dollars, in the discretion of the court wherein conviction is had. Each day of such improper application of water obtained in the manner aforesaid shall be deemed a separate offense. Justices of the peace in their several precincts shall have jurisdiction of the aforesaid offense, subject to the right of appeal as in cases of assault and battery.

Irrigation; conveyance of water rights. SEC. 1. In the conveyance of water rights hereafter made in this State, in all cases except where the ownership of stock in ditch companies or other companies constitute the ownership of a water right, the same formalities shall be observed and complied with as in the conveyance of real estate.

Approved April 7, 1893.

Irrigation; flow of water in ditches. SEC. 1. That section one of an act entitled "An act regulating the distribution of water, the superintendence of canals or ditches used for the purposes of irrigation, and providing a penalty for the violation thereof," approved March 19, 1887, be and the same is amended to read as follows:

SEC. 1. Every person or company owning or controlling any canal or ditch used for the purposes of irrigation and carrying water for pay shall, when demanded by the users during the time from April 1 to November 1, in each year, keep a flow of water therein, so far as may be reasonably practicable for the purpose of

irrigation, sufficient to meet the requirements of all such persons as are properly entitled to the use of water therefrom, to the extent, if necessary, to which such persons may be entitled to water, and no more: *Provided, however*, That whenever the rivers or public streams or sources from which the water is obtained are not sufficiently free from ice, or the volume of water therein is too low and inadequate for that purpose, then such canal or ditch shall be kept with as full a flow of water therein as may be practicable, subject, however, to the rights of priorities from the streams or other sources, as provided by law, and the necessity of cleaning, repairing, and maintaining the same in good condition.

Approved March 25, 1893.

WATER-RIGHT FORMS USED IN COLORADO.

No. 1.

Form of statement of claim for priority.

STATE OF COLORADO, *County of* ——— *ss:*

In the district court.

In the matter of the adjudication of priorities of water rights in water district No. —.

The undersigned hereby makes statement of claim in the above-entitled matter for the purpose of securing the benefits of the provisions of the law of the State of Colorado in relation to the adjudication of priorities of water rights, and states:

First. That he is the owner of the ditch (canal or reservoir) hereinafter named and described, and situated in said water district No. —; that his full name is _____, and his post-office address is _____.

Second. The name of said ditch (canal or reservoir) is the _____.

Third. The head gate of said ditch (canal or feeder for said reservoir) is located on the _____ bank of _____, from which natural stream said ditch derives and diverts its supply of water, at a point whence the _____ corner of section —, T. —, R. —, bears _____ feet.

Fourth. From said head gate said ditch runs in a general _____ direction a distance of _____ feet, thence (etc., describing the general course of the ditch or feeder).

Fifth. The length of said ditch is _____; its width is _____ feet at the bottom and _____ feet at high-water line; the depth of water carried by said ditch is _____ feet; its grade is _____ feet per mile.

Sixth. The carrying capacity of said ditch (or feeder) is _____ cubic feet per second of time. (The capacity of said reservoir is _____ cubic feet when filled to high-water mark.)

Seventh. The amount of water claimed by appropriation under and by means of the construction of said ditch is _____ cubic feet per second of time. (The amount of water claimed under and by means of the construction of said reservoir is _____ cubic feet.)

Eighth. Work was commenced on said ditch (canal or reservoir) on the _____ day of _____, A. D. 18—, from which time said appropriation of water is claimed to date.

Ninth. The number of acres of land lying under and along said ditch (canal or reservoir) and being irrigated by water therefrom is _____.

Tenth. The size of said ditch (canal or reservoir) as enlarged (and extended) is as follows: Its length is _____; its width is _____ feet at the bottom, and _____ feet at high-water line; its depth of water is _____ feet.

Eleventh. The increased capacity of said ditch (canal) arising from such enlargement is _____ cubic feet per second of time. (The increased capacity of said reservoir arising from such enlargement is _____ cubic feet.)

Twelfth. Work was commenced on said enlargement on the _____ day of _____, A. D. 189—, from which time the additional appropriation of water by means of such enlargement is claimed to date.

Thirteenth. The amount of water claimed by appropriation under and by means of such enlargement of said ditch (canal) is _____ cubic feet per second of time. (The amount of water claimed by appropriation under and by means of such extension of said reservoir is _____ cubic feet.)

Fourteenth. The number of acres of land lying under and along said ditch (canal or reservoir) as enlarged and irrigated by water therefrom, is —.

Witness — hand— and seal— this — day of —, A. D. 18—.

_____. [SEAL.]
 _____ [SEAL.]

STATE OF COLORADO, *County of* _____ ss:

_____, being first duly sworn, on his oath says that he has read the foregoing, and that the matters and things set forth in such statement are true of his own personal knowledge.

Subscribed and sworn to before me this — day of —, A. D. 189—.

No. 2.

Form for map and statement.

A map, showing the point of location of the head gate, the route of the ditch or canal, the high-water line of the reservoir, the route of the feeder to and the ditches or canals from such reservoirs; the legal subdivisions of the lands upon which such structures are or are to be built, the names of the owners of such lands as far as the same are of record in the office of the county clerk of the county in which the same are situated; the courses, distances, and corners being given by reference to legal subdivisions on surveyed lands, or to natural objects if on unsurveyed lands; of a ditch (canal or feeder for a ditch or reservoir) for irrigation: being constructed (or about to be constructed or enlarged) by — of _____.

(Here insert map, with particulars as above set forth.)

STATE OF COLORADO, *County of* _____, ss:

Water division No. —, district No. —.

The undersigned hereby makes statement of claim for priority in the use of water by appropriation, for the purpose of irrigation, and attaches the said statement to the foregoing map for the purpose of securing the benefits of the law of the State of Colorado in relation to such priority of water rights, and states:

(Here make statements as in form for adjudication of priorities, which see.)

STATE OF COLORADO, *County of* _____, ss:

_____, being first duly sworn, on his oath says that he has examined the above map and read the foregoing statement thereto attached, and that the matters and things shown on said map and set forth in said statement are true of his own personal knowledge.

Subscribed and sworn to before me this — day of —, A. D. 189—.

No. 3.

Form of petition for adjudication of priority.

STATE OF COLORADO, *County of* _____, ss:

In the district court.

In the matter of the application of _____ and _____ for the adjudication of the priorities of right to the use of water for irrigation purposes in water district No. — in said State of Colorado.

To the honorable district court of the — judicial district of the State of Colorado within and for the county of _____, and to the honorable _____, judge of said court:

Your petitioners respectfully represent that they are the owners, respectively, of the — and — ditches (or reservoirs), located in said water district, taking

and using water from —, and the tributaries thereof, in said water district, for irrigation purposes in the cultivation of lands adjacent to and under said ditches along the line thereof: that the petitioners herein are interested, as such owners aforesaid, in the settlement and adjudication of the priorities of right to the use of the waters of said stream, and the tributaries thereof, for irrigation purposes, between the several ditches, canals, and reservoirs, and owners of water rights in said water district No. —.

Wherefore your petitioners pray that your honor will proceed to an adjudication of the priorities of rights to the use of water for irrigation purposes between the several ditches, canals, and owners of water rights in said district No. — in said State, under the provisions of the constitution and the laws of the said State of Colorado in that behalf provided.

[NOTE.—It is customary to have the petition verified, although the statute does not seem to require it. The verification may be in the following form:]

STATE OF COLORADO, *County of* —, ss:

I, —, —, one of the petitioners, whose name is subscribed to the foregoing petition, do solemnly swear that I believe the matters and things set forth and stated in said petition are true in substance and in fact.

Subscribed and sworn to before me this — day of —, A. D. 18—.

No. 4.

Form for order for adjudication and appointment of referee.

In the district court.

In the matter of the application of — — and — — for the adjudication of the priorities of right to the use of water for irrigation purposes in water district No. — in said State of Colorado.

On this — day of —, A. D. 189—, the same being one of the judicial days of the —, A. D. 189—, term of said district court (or before the Hon. —, judge of said court, in vacation, at his chambers in the city of —, in — County, in the State of Colorado), come the above-named petitioners, and present their petition praying for an adjudication of the rights of petitioners and all other owners of or persons interested in ditches, canals, reservoirs, or water rights therein, taking water from the natural stream known as —, and the tributaries thereof, in water district No. — in said State of Colorado.

And the said petition being read and considered by the court (or judge), it is hereby ordered that the same be filed in the office of the clerk of the district court in said county of —, in the State of Colorado.

And it being deemed by the (judge of) said court impracticable to hear the evidence touching the rights of petitioners and others in this behalf in open court, it is further ordered that — —, esq., of the county of — and State of Colorado (he being, in the opinion of the court (or judge), a discreet and qualified person), be, and he is hereby, appointed referee of the court in said matter, to whom is referred the said petition and all statements of claims to the use of water for irrigation from the natural streams of said water district heretofore filed, or that may hereafter be filed, in said court or in this proceeding.

Said referee shall take all evidence in the matter of said petition and the several priorities of right to water for irrigation purposes in said water district offered by parties who have filed or shall file their statements of claims, as required by law, and shall consider the same, and also any other evidence and testimony, if any there be, heretofore taken in said water district in any like proceeding, and shall make an abstract of said evidence and his findings upon the same, and draft a decree thereon, and report the same to this court; and generally said referee shall have all the powers and perform all the duties required of a referee of said court by the laws of the State of Colorado regulating the matter of the adjudication and determination of water rights and defining the duties and powers of referees appointed by courts of record; that before entering upon the discharge of his duties as such referee, and within ten days from the date of this order, the said referee shall file, in the office of the clerk of the district court for the county of —, his written acceptance of this appointment and his oath of office as such referee.

No. 5.

Form of notice by referee.

In the matter of the adjudication of the priorities of water rights in water district No. —:

Whereas by an order (of the judge) of the district court of the ——— judicial district in the State of Colorado in and for the county of ———, the undersigned was appointed referee in the above matter, of which order the following is a copy: (Here insert copy of order.)

Now, therefore, I do hereby give notice to all persons, associations, and corporations interested as owners or consumers of water in said water district No. — that I will, at the place and on the days hereinafter designated, attend for the purpose of hearing and taking evidence touching the priority of rights of the several ditches, canals, and reservoirs in said district, and will continue such hearing from day to day until all such evidence shall be taken, to wit:

At ———, at the office of ———, on the ——— day of ———, A. D. 189—, at — o'clock —. m.

At ———, at the office of ———, on the ——— day of ———, A. D. 189—, at — o'clock —. m.

And I do hereby notify all persons, corporations, and associations interested as owners or consumers of water in said district to attend by themselves, their agents or attorneys, at the time and places appointed herein, and then and there file a statement of claim in case no statement has been heretofore filed in the office of the clerk of the district court of ——— County aforesaid, such statement to be under oath and showing the ditch, canal, or reservoir in which the interest is claimed, together with the names of the owners thereof, and such other particulars as are prescribed by law; and all persons interested may then and there present proofs for or against any priority of right 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.

Referee.

(Date.)

No. 6.

Form for order setting report of referee for hearing.

In the matter of the application of ——— ——— and ——— ——— for the adjudication of the priorities of the right to the use of water for irrigation purposes in water district No. — in said State of Colorado.

On this ——— day of ———, A. D. 189—, the same being one of the judicial days of the ———, A. D. 189—, term of said district court, come again the above-named petitioners, by ———, esq., their attorney; come also the following-named persons, corporations, and associations, who have severally filed claims herein for the right to use water for irrigation purposes in said water district No. —, to wit: ———, by ———, esq., his attorney; ———, by ———, esq., its attorney; comes also ———, esq., referee heretofore appointed by the court herein to take the testimony and hear the evidence in this cause and make an abstract of such testimony and evidence and his findings upon the same, and to draft a decree thereon, and presents his report to the court of his action herein, together with his abstract of such testimony and evidence and his findings upon the same, and also with his draft of a decree herein.

And the said report, abstract, findings, and decree of said referee being read and considered by the court, it is hereby ordered that the same be filed in the office of the clerk of this court and set for hearing on the ——— day of ———, A. D. 189—, to which time this cause is continued.

No. 7.

Form for decree adjudging priority.

In the matter of the application of ——— ——— and ——— ——— for the adjudication of the priorities of right to the use of water for irrigation purposes, in water district No. — in said State of Colorado.

And now on this — day of —, A. D. 189—, the same being one of the judicial days of the —, A. D. 189—, term of said district court, come again the above-named petitioners by —, esq., their attorney; and the following-named persons, corporations, and associations, who have severally filed claims herein for the right to use water for irrigation purposes, in said water district No. —, to wit: (Here insert names of such persons, etc., together with the names of the attorneys representing them.)

And the said — having filed herein his exceptions to the report, abstract, findings, and decree of —, referee, heretofore filed in this cause, which exceptions the court on consideration thereof doth overrule:

And it appearing to the court that no other exceptions to such report, abstract, findings, and decree have been filed herein:

And now this cause coming on to be heard upon the report of —, referee herein, and upon the evidence and testimony taken by said referee herein, together with his abstract of such evidence and testimony, and his findings thereon, and his draft of a decree submitted with his said report; and the court having heard the arguments of counsel herein and being fully advised in the premises, and upon consideration of such evidence, testimony, abstract, findings, draft of decree, and arguments of counsel, doth find:

That said referee has in every respect proceeded according to law and the judgment of the court appointing him as such referee in taking the testimony and hearing the evidence herein; and the actions and proceedings of said referee herein, together with his report, abstract, findings, and draft of decree, are hereby approved and confirmed by the court.

In regard to the ditch owned by —, whose post-office address is —, which said ditch is named and known as the — ditch, the court finds:

That work was commenced on said ditch on the — day of —, A. D. 189—, from which time the appropriation of water therethrough should date; that work was prosecuted on said ditch with due diligence until its completion; that the nature of the work in constructing said ditch was rock cutting for a distance of — from the head gate, and sand and gravel excavation for a further distance of —; that the water is carried through flumes along the line thereof for a distance of —; that the head gate of said ditch is on the — bank of —, from which stream said ditch derives and diverts its water, at a point whence the — corner of Section —, T. —, R. —, bears — feet; that from said head gate said ditch runs in a general — direction for a distance of —, thence (etc., describing the course of the ditch in its general course); that the size and carrying capacity of said ditch as originally constructed was as follows: The length of said ditch was —, its width at the bottom was — feet; its width at high-water line was — feet, the depth of water carried by said ditch was — feet, its grade was — feet per mile, its carrying capacity was — cubic feet per second of time;¹ that the size and carrying capacity of said ditch has remained substantially the same from the date of its construction up to this time; that the number of acres of land lying under and along said ditch and irrigated by water therefrom is —; and that the owner of said ditch and of the water appropriated there-through is entitled to a priority in the use of — cubic feet of water per second of time by virtue of such appropriations.

In regard to the canal owned by the — Company, whose post-office address is —, which said canal is named and known as the — canal, the court finds:

(Here insert particulars as in case of a ditch.)

In regard to the reservoir, feeder, and distributing ditches connected with such reservoir, owned by the — Association, whose post-office address is —, which said reservoir, feeder, and distributing ditches are named and known as the —, the court finds:

(Here describe commencement and location of work, its nature, location of head gate, from what stream and where water is diverted, the general course of

¹ The court further finds that said ditch was afterwards enlarged (and extended) by the owners thereof (find facts substantially as in case of the original ditch, as shown above); that the increased capacity of said ditch arising from such enlargement (and extension) is — cubic feet per second of time; that the number of acres of land lying under and along said ditch as enlarged (and extended) and irrigated by water therefrom is —; that the owner of said ditch and of the water appropriated there-through is entitled to an additional priority in the use of — cubic feet of water per second of time by virtue of such enlargement (and extension), and of the appropriation thereby made.

the feeder and distributing ditches, their length, width, depth, grade, and carrying capacity; the location, dimensions, and capacity of the reservoir; the number of acres of land lying under and along such reservoir, feeder, and distributing ditches, and irrigated by water therefrom, substantially as in case of a ditch.)

That the owners of said reservoir, feeder, and distributing ditches and the water so appropriated are entitled to the priority in the use of — cubic feet of water per second of time, which they are entitled to divert during the irrigating season from such stream after all prior appropriators have been supplied with the amount of water they are entitled to by virtue of their appropriations; that the owners of said reservoir, feeder, and distributing ditches are also entitled to divert sufficient water from such stream during the nonirrigating season to fill their said reservoir to its capacity as hereinbefore found.

The court doth therefore order, adjudge, and decree that the owner of the ditch named and known as the — ditch is entitled to a priority in the use of — cubic feet of water per second of time from said natural stream known as —, in said water district No. —; to date from the — day of —, A. D. 189—; that said ditch shall be numbered as ditch number one, and said appropriation therethrough shall be numbered as appropriation number one, in said water district No. —; that the owner of said ditch number one is entitled to an additional priority in the use of — cubic feet per second of time from said stream, to date from the — day of —, A. D. 18—, on account of such enlargement (and extension) of said ditch and appropriation of water therethrough as aforesaid; that said additional appropriation shall be numbered as appropriation number three in said water district No. —.

That the owners of the canal named and known as — are entitled to a priority in the use of — cubic feet of water per second of time from said stream known as — in said water district No. —, to date from the — day of —, A. D. 18—; that said canal shall be numbered as canal number two, and the appropriation therethrough as aforesaid shall be numbered as appropriation number two in said water district No. —.

That the owners of the reservoir named, known as —, are entitled to a priority in the use of — cubic feet of water per second of time, which they are entitled to divert from said stream during the irrigating season, provided the prior appropriations numbered one and two have been first supplied with the amount of water such appropriations are entitled to as aforesaid. The owners of said reservoir are also entitled to divert sufficient water from said stream during the nonirrigating season to fill said reservoir to its capacity of — cubic feet, as heretofore found; that said reservoir shall be numbered as reservoir number one, said distributing ditch as ditch number three, and the appropriation therethrough as appropriation number four in said water district No. —.

The court doth further order, adjudge, and decree that each appropriation as aforesaid shall be entitled to the number of cubic feet of water per second of time from said stream in the order as the same are numbered as aforesaid, beginning at the lowest number or number one; and that each reservoir as aforesaid shall be entitled to the number of cubic feet of water from said stream up to its capacity as aforesaid, to be taken during the nonirrigating season from said stream in the order in which reservoirs are numbered as aforesaid, beginning with the lowest number of such reservoirs. In case all the water is not used during the irrigating season by prior appropriations, then said reservoirs are to be allowed to use such unused water from said stream as may be needed to fill the said reservoirs in the same order as aforesaid.

The court doth further order that each and every party interested in or claiming any ditch, canal, or reservoir as aforesaid, or any interest therein or in the water appropriated as aforesaid, shall receive from the clerk of this court, on payment of a fee of —, which amount is adjudged by the court to be a reasonable fee, a certificate under the seal of the court showing the date or dates and the amount or amounts of such appropriations adjudged in favor of such ditch, canal, or reservoir, under and by virtue of the construction, extension, and enlargement thereof, severally as aforesaid, together with the number of said ditch, canal, or reservoir, and also of each appropriation or priority to which the same may be entitled by reason of such construction, enlargement, or extension.

Form of petition to fix rates.

STATE OF COLORADO, *County of* ———, *ss:*

Before the board of county commissioners.

In the matter of the application of ——— and ———, parties interested in procuring water for irrigation purposes from the ——— Canal and Reservoir Company.

To the honorable board of county commissioners of ——— County, in the State of Colorado:

Your petitioners respectfully represent that they are the owners of the following described tracts and parcels of land lying in said county, to wit:

(Here describe lands of each petitioner.)

That such lands are farming and orchard lands which were originally of a wholly arid nature, on which crops could not be raised without artificial irrigation, but which have been reclaimed and brought into a state of cultivation by means of water which has been furnished petitioners by the ——— Canal and Reservoir Company.

Your petitioners show that they are wholly dependent on the water furnished them by said ——— Canal and Reservoir Company in irrigating and cultivating their said land, and have no other source from which they can secure water for such purposes.

Your petitioners show that said ditch and reservoir company has been charging your petitioner for such water at the rate of ———, which rate your petitioners believe to be unreasonable, unjust, and exorbitant; and although your petitioners have frequently applied to the proper officers of said company to have said rate reduced to a reasonable and just amount, yet said company has at all times refused and still does refuse to so reduce such rate.

Your petitioners aver that a reasonable and just rate of charge for such water would not be over ———, which amount your petitioners are now and have been at all times ready and willing to pay said company.

Your petitioners further show that the ditches, canals, and reservoirs of said ——— Canal and Reservoir Company lie in great part within the boundaries of said county of ——— and the remainder thereof lie in the county of ———, in said State of Colorado.

Your petitioners therefore pray that your honorable board will proceed to fix a just and reasonable rate for such company to charge your petitioners for such water, as provided by the law of the State of Colorado in such matters.

—————
—————

STATE OF COLORADO, *County of* ———, *ss:*

————— and ———, being each duly sworn on their several oaths, say that they have read the foregoing petition; that they are the same persons whose names are subscribed to said petition, and that the matters and things in said petition charged and stated are true of their own personal knowledge.

Subscribed and sworn to before me this ——— day of ———, A. D. 189—.

STATE OF COLORADO, *County of* ———, *ss:*

—————, being duly sworn, on his oath says that he is a resident of said county and has been for ——— years last past; that he is well acquainted with the lands of ——— and of ———, as described in the foregoing petition, and also with the ditches, canals, and reservoirs of the said ——— Canal and Reservoir Company in said counties of ——— and ———; affiant is also acquainted with the rates of charges for furnishing water for irrigating purposes in said counties of ——— and ———; affiant has read the foregoing petition, and verily believes the matters and things therein charged and stated are true, and that the rate of ——— charged by said company for furnishing water, as therein stated, is unreasonable and unjust to said petitioners.

Subscribed and sworn to before me this ——— day of ———, A. D. 189—.

(Add other affidavits if desired.)

Form of order setting petition down for hearing.

STATE OF COLORADO, County of ———, ss:

Before the board of county commissioners.

In the matter of the application of ——— and ———, parties interested in procuring water for irrigation purposes from the ——— Canal and Reservoir Company.

On this ——— day of ———, A. D. 189—, the same being one of the ———, A. D. 189—, sessions of said board of county commissioners, come before the said board ——— and ——— and present their petition, and affidavit thereto attached, representing and showing to the board that the ——— Canal and Reservoir Company are charging said petitioners unjust and unreasonable rates for water furnished for irrigation purposes to said petitioners by said company, and that said company refuses to reduce such rates to a just and reasonable amount; and the board having examined said petition and affidavits, and having heard the testimony of other witnesses in regard thereto, find from said petition, affidavits, and testimony that the facts sworn to show such application to be and to have been made in good faith, and that there is reasonable ground to believe that unjust rates are or are about to be charged by said company for furnishing water for irrigation purposes as aforesaid.

The board doth therefore order that said petition be set for hearing on the ——— day of ———, A. D. 189—, when all parties interested in said company or the ditches, canals, or reservoirs thereof, or in procuring water therefrom, will be heard by the board in regard thereto; to which time this matter is hereby continued.

WATER LAWS OF KANSAS.

CHAPTER 78.—GENERAL STATUTES OF KANSAS.

Water may be appropriated.

As between appropriators, the one first in time is the first in right.

Place of diversion may be changed.

change, and may extend the canal, ditch, flume, or aqueduct by which the diversion is made to places beyond that to where the first use was made.

Notice required.

SEC. 1. The right to the use of running water flowing in a river or stream in this State for the purposes of irrigation may be acquired by appropriation. As between appropriators, the one first in time is the first in right.

SEC. 2. Any person, company, or corporation entitled to the use of water may change the place of diversion if others are not injured by such change, and may extend the canal, ditch, flume, or aqueduct by which the diversion is made to places beyond that to where the first use was made.

SEC. 3. Any person, company, or corporation desiring hereafter to appropriate water must post a notice in writing at a conspicuous place at the point of diversion, stating therein, first, that such person, company, or corporation claims the water there flowing to the extent of — (giving the number of) inches, measured under a four-inch pressure, and describing and defining as accurately as may be the place of diversion; second, the means by which such person, company, or corporation intends to divert it, and the size of the canal, ditch, or flume, or aqueduct in which he intends to divert it. A copy of such notice must, within ten days after it is posted at the place of diversion, be also posted in a conspicuous place in the office of the county clerk of the county in which such place of diversion is situated, and be recorded by the county clerk in a book to be kept for that purpose.

NOTE.—The notices required by this section are, as regards the counties lying west of the ninety-ninth degree of west longitude, required by section one hundred and seven of chapter seventy-nine to be filed with and recorded by the register of deeds, and the notices previously filed with and recorded by the county clerk are by such clerk to be turned over to the register of deeds of his county for record by such register.

SEC. 107. Upon the passage and taking effect of this act the county clerk of any county wherein has been provided a record of appropriation of water, and proof of the posting of notices thereof, as required by section five of chapter one hundred and fifteen of the laws of 1886 (section five of chapter seventy-eight of this work), shall forthwith turn over the same to the register of deeds of said county; and such notices and proof of posting thereof shall be recorded by the register of deeds of any such county, instead of by the county clerk thereof; and hereafter any person, company, or corporation posting any notice of the appropriation of water from any source shall specify the amount appropriated in cubic feet per second, instead of inches, measured under a four-inch pressure, as heretofore required.

Work must be prosecuted with diligence.

SEC. 4. Within sixty days after the notice is posted the claimant must commence the excavation or construction of the works in which such claimant intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless interrupted by stress of weather. By completion is meant conducting the water to the place of its intended use.¹ 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. A failure to comply with such rules shall deprive the claimant of the right to the use of the water as against a subsequent claimant who complies therewith.

Commissioner of irrigation.

SEC. 36. The investigation of the two sciences of forestry and irrigation shall be continued under one commissioner, whose official title shall be "commissioner of forestry and irrigation," who shall be appointed by the governor, by and with the advice and con-

¹This is modified by section 2, chapter 79.

sent of the senate, and who shall hold his office for the period of four years, subject only to removal for cause. Said commissioner shall be a person who has made a thorough study of both sciences and is versed in practical forestry and irrigation. The said commissioner shall have charge of the work contemplated by this act, in addition to that mentioned in the forestry law.

CHAPTER 79.—STORAGE OF WATER AND IRRIGATION.

[West of the ninety-ninth degree of west longitude.]

Water may be appropriated.

SEC. 1. In all that portion of the State of Kansas situated west of the ninety-ninth meridian all natural waters, whether standing or running and whether surface or subterranean, shall be devoted, first, to purposes of irrigation in aid of agriculture, subject to ordinary domestic uses; and, secondly, to other industrial purposes, and may be diverted from natural beds, basins, or channels for such purposes and uses: *Provided*, That no such diversion shall interfere with, diminish, or divest any prior vested right of appropriation for the same or a higher purpose than that for which such diversion is sought to be made without the due legal condemnation of and compensation for the same; and natural lakes and ponds of surface water having no outlet shall be deemed parcel of the lands whereon the same may be situate, and only the proprietors of such lands shall be entitled to draw off or appropriate the same.

Right limited to the volume applied to beneficial use.

SEC. 2. The appropriation of water hereafter shall in every case be deemed and be taken to be accomplished and effectual only as to so much water as shall have been actually applied to beneficial uses within a reasonable time after the commencement of the works by means of which such appropriation is intended to be made, or afterward where no appropriation has in the meantime been initiated by others, together with the reasonable amount necessary to supply losses by waste, seepage, and evaporation. All the residue of the water within the capacity of the canal or other works shall be deemed to be derelict and liable to appropriation by any subsequent appropriator.

Natural streams may be used.

SEC. 3. Any person may conduct water into and along any of the natural streams or channels of the State, and may withdraw all such waters so by him turned into such channel at any point desired, without regard to prior appropriations of water from said stream, due allowance being made for evaporation and seepage.

Place of diversion may be changed.

SEC. 4. In case the channel of any natural stream shall have become so cut down, lowered, turned aside, or otherwise changed from any cause as to prevent any ditch or conduit for the diversion of water from receiving the proper inflow of water to which it may be entitled, the proprietors of such ditch or conduit may, within a reasonable time after such change, extend such ditch or conduit to such stream, or along the course thereof, or may erect a dam or embankment for turning water into the same; and the right of such proprietors to take water from such stream through such ditch or conduit as so extended, to the same amount and during the same period as prior to such change, shall be of the same priority as before such extension: *Provided*, That no such extension shall be allowed in such manner as to interfere with the operation or enjoyment of any other ditch, conduit, or other works for the diversion, conveyance, or storage of water.

Subterranean waters may be appropriated.

SEC. 5. Waters flowing in well-defined subterranean channels and courses, or flowing or standing in subterranean sheets or lakes, shall be subject to appropriation with the same effect as the water of superficial channels; and no person shall be allowed by drains, ditches, fountains, subterranean galleries, or other works to collect and divert percolating waters manifestly supplying such subterranean supplies, to the prejudice of any prior appropriator thereof: *Provided*, That nothing in this section contained shall be so construed as to render any person 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 for excavating drains for draining and improving his own lands, nor so as to prohibit the proprietor of any lands from sinking wells therein, and thereby 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 provided further*, That any appropriation and diversion of subterranean waters which simply lower a water level without in fact exhausting or seriously diminishing the actual and needful supply of any

prior appropriator for domestic or other beneficial uses shall not be considered an unlawful appropriation or diversion thereof.

SEC. 6. No person shall be permitted to take or 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.

Rights of users to artesian waters.

SEC. 7. Every person complying with the provisions of this act, and applying the waters obtained by means of any artesian well to beneficial uses, shall be deemed to have appropriated such waters to the extent to which the same shall be so applied within a reasonable time after the commencement of the works, and such appropriation shall have effect as of the day of commencement of such works provided the same is prosecuted with reasonable diligence; otherwise, from the time of the application of the waters thereof to beneficial uses.

Rights depend on continuous use.

SEC. 8. Any prior right of appropriation shall exist and continue only by the exercise thereof in a lawful manner, and any failure of such appropriator continuously to apply such water to lawful and beneficial uses, without due and sufficient cause shown for such failure, shall be deemed an abandonment and surrender of such right.

Appropriations subject to eminent domain.

SEC. 9. Every vested right of prior appropriation or diversion of water for industrial uses shall be subject to the right of eminent domain, and may be condemned and compensated for, for public and beneficial uses, in the same manner and under the same restrictions and regulations as govern the condemnation of other private property.

SEC. 11. Any person may at any time take water from any natural stream or open ditch, conduit, or reservoir at any public road crossing, or at any place upon his own lands, or upon the lands of others, by license of the proprietor thereof, or without such license where such lands are uninclosed and uncultivated, for filling barrels or other vessels for his domestic uses.

Right to store water.

SEC. 13. Any person entitled to the use of water for the irrigation of lands or other purposes whatsoever may, at any time while so entitled to the use thereof, collect and store the same up for use presently thereafter, and the failure to apply or use such waters during the period of such collection and storage shall not be deemed or taken to impair his right in that behalf.

When sale of right constitutes abandonment.

SEC. 14. Any person transferring, selling, leasing, assigning, or bargaining with reference to the transfer, sale, lease, or assignment of any water, or any right he may have acquired to the use thereof, and any person receiving any money or other valuable thing whatsoever in consideration of the prorate or rotating of water, or in consideration of his agreement to prorate or rotate water, shall be deemed and taken to have abandoned all right to the use or enjoyment of such water; provided, however, such abandonment shall not operate to the prejudice of the rights of any incumbrancer or equitable owner of the lands, mill, manufactory, or other works to which such water is appurtenant.

NOTE.—Section fifteen is similar to section nine.

Water shall be prorated in time of scarcity.

SEC. 28. It shall be the duty of the superintendent of every such ditch, conduit, or reservoir to measure the water therefrom through the outlets to those entitled thereto, and in time of scarcity to apportion the waters flowing in such ditch or conduit or collected in such reservoir among those entitled thereto ratably, and according to the amounts to which they are severally entitled. Where any such ditch, conduit, or reservoir hath, subsequent to the original construction been enlarged, the water diverted, collected, conveyed, or stored by means of such enlargement shall be distributed and apportioned in like manner. The several consumers of water under any lateral may at any time, by a vote of a majority thereof, appoint a superintendent to such lateral, who shall be charged with the distribution of the water allotted thereto by the superintendent of the ditch among those entitled to the use of water from such lateral. A meeting may at any time be called by not less than two of the consumers under such lateral, by notice in writing, specifying the time, place, and purpose thereof, for electing such superintendent, or removing him and appointing another. Such superintendent shall hold his office during the pleasure of the consumers of water from such lateral, or a majority of them, and shall receive only such salary or compensation as they may appoint.

When head gates may be closed.

SEC. 29. The waters of the several streams and sources of supply shall be distributed among the several canals, ditches, conduits, and other works so that the proprietors of each of said works, and those entitled to water therefrom shall, as nearly as may be and to the extent of their needs, at all times receive and enjoy the waters to which they are severally entitled; and whenever it shall appear that there is flowing into any such works water to which the proprietor of any other such works having a prior right is entitled and that such other works having priority of right, is not receiving the water necessary for the consumers of water therefrom and which ought to flow to the same, the head gate of such works having the excess, and being subsequent in right, shall be closed, or partly closed, so that a sufficient amount of water of such stream or source of supply may pass and flow to the said works having the priority of right to the amount to which the same shall be entitled; and if the proprietors of any such works having such excess and being subsequent in right shall fail or refuse to turn out such supply of water when requested by the party entitled to receive the same so to do, the head gate or waste gate of the works receiving such excess shall be so set and locked by the officer authorized by law to perform such duty as to permit a sufficient amount of said water to pass and flow to the party having the right to receive the same.

Records of artesian wells.

SEC. 30. Any person sinking or boring for an artesian well shall cause to be kept thereat a record of the work, setting forth the name and post-office address of the proprietor of such well, or of the person causing such well to be sunk or bored, the name of the contractor therefor, and the name of the person actually in charge of the work; the particular location thereof, specifying the particular forty acres and the part thereof whereon the same 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 work in sinking or boring such well (which may be the commencement of the work of placing machinery therefor); all suspension of the work and the duration 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 thereof 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 strata 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 fraction thereof; and within a period of thirty days next after 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 wherein the said well is situate a statement or certificate, verified by his affidavit, or the affidavit of the person 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 such well is or are cased, and the interior diameter or diameters of such casing or casings.

Water-right filings on artesian wells.

SEC. 31. Every person who is the proprietor of or entitled to the waters of any artesian well heretofore sunk or bored shall, within ninety days after this act takes effect, make and cause to be filed in said office a like statement, setting forth all the foregoing matters so far as within his knowledge, and according to the best of his knowledge, information, and belief.

Artesian priorities.

SEC. 32. Any person owning or controlling any artesian well may record such certificate provided for in sections ten and eleven of this article (sections thirty and thirty-one of this chapter) in any county or counties in addition to the county wherein such well is situated; and such record shall be to all parties boring or sinking any artesian well in any such county notice of the priority of the appropriation of water claimed by the party recording such certificate, and the prior right of such appropriation may be enforced as against any and all parties in such county or counties having acquired or seeking to acquire any subsequent right of appropriation of such waters.

SEC. 44. The proprietors of two or more canals, ditches, reservoirs, or other works taking water from the same source of supply may, by a consent in writing of those entitled to the use of the water therefrom, agree in like manner for the rotation of the whole or any part of the water lawfully allotted from such stream or source of supply to such ditches, conduit, or other works in such way and manner and for such time as may be in such agreement specified; provided, however, that the rotation of the water to which the several consumers, parties to such agreement, are entitled shall not be conducted in such manner as to diminish the supply of water from any other ditch, conduit, or other works (to which such parties or any of them) may be entitled.

SEC. 45. Whenever any agreement shall be entered for the rotation of the water of any ditch, conduit, reservoir, or other works, or any lateral of such ditch or conduit, or any part of such water, among those entitled to the use of such water, such agreement, or one part or copy thereof, shall be delivered to the superintendent of the ditch, conduit, reservoir, or lateral, and be by him carefully preserved, and he shall cause the water to which the parties thereto may be entitled to be rotated and distributed conformably to the said agreement during the time mentioned therein for the continuance in force of such agreement.

When rotation may not be permitted.

SEC. 46. No agreement entered into between the proprietors of any two or more canals, ditches, conduits, reservoirs, or other works for the rotation of the water thereof in manner as hereinbefore provided shall be permitted to go into effect if it shall be manifestly injurious to the proprietors of other canals or other works, or the consumers of water therefrom; and if after experiment the execution of such agreement be found injurious to other persons, the further rotation of the waters pursuant to such agreement must be discontinued.

When agreement for rotation may be annulled.

SEC. 47. The proprietors of any canal or other works not party to such agreement, or any consumer of water therefrom, shall be entitled to make application to the judge of the district court in and for the county wherein said applicant shall reside, asking that such agreement be annulled. Reasonable notice of every such application shall be given to the proprietors of the canals and other works, parties to such agreement, and the district judge may require like notice to be given to all others in interest, by application as may by him be prescribed. The proprietors of any such canal or other works, or any consumer of water, or person entitled to the use of water from any such works, shall be heard, and the district judge shall make such order in the premises as right and justice may require; provided, however, that during the pendency of any such application the waters allotted to the canals, ditches, or other works, the proprietors whereof are parties to such agreement, shall be distributed and rotated conformably to such agreement.

When agreement for rotation may not be permitted.

SEC. 48. No agreement for the rotation of water shall in any manner impair or affect the rights of any prior incumbrancer of lands theretofore customarily irrigated by any part of the waters mentioned in such agreement, he not being a party to such agreement; nor shall such agreement, or the rotation of the waters pursuant thereto, in any manner affect or impair the rights or the priority of right of the parties thereto, or the persons using or entitled to use the waters referred to in such agreement, or any of them, as against other persons.

When agreement for rotation must be recorded.

SEC. 49. Whenever any such agreement for the rotation of water, either between or among several ditches, conduits, reservoirs, or other works, or among those entitled to the use of the waters of any ditch, conduit, reservoir, or other works, or any lateral therefrom or any part of such water, shall be for a space exceeding one season, the same shall be recorded in the office of the register of deeds of the county wherein is situate the head gate of such ditch or conduit, or wherein is situate such reservoir or the head of the lateral.

Appropriation of seepage waters.

SEC. 53. The proprietor of any lands which have become saturated by seepage waters flowing out of any ditch, canal, reservoir, or conduit shall be entitled to cut and open drains or trenches, or lay pipes or conduits for draining such lands and withdrawing the water therefrom, and conveying the same into any natural stream, arroyo, or water course; or may at his election convey such waters to other lands or places whatsoever, and apply the same to domestic, agricultural, manufacturing, or other purposes, in his pleasure.

Royalties for water furnished.

SEC. 81. It shall not be lawful for any person, association, or corporation owning or controlling, or claiming to own or control, any ditch, canal, or reservoir carrying or storing, or designed for the carrying or storing, of water

taken from any natural stream, or other source of supply within this State, to be carried or stored and delivered for compensation, for irrigation, milling, sanitary or domestic purposes to persons not interested in such ownership or control, to demand, bargain for, accept, or receive from any person who may apply for water for any of the aforesaid purposes any money or other valuable thing whatsoever, or any promise or agreement therefor, directly or indirectly, as royalty, bonus, or premium, prerequisite or condition precedent to the right or privilege of applying or bargaining for or procuring such water; but such water shall be carried or stored and delivered according to the right of the person entitled to the enjoyment thereof, upon the payment or tender of the charges fixed by the county commissioners of the proper county, as is or may be provided by law. Any and all moneys and every valuable thing or consideration of whatsoever kind which shall be so as aforesaid demanded, charged, bargained for, accepted, received, or retained contrary to the provisions of this section, shall be deemed and held an additional and corrupt rate, charge, or consideration for the water intended to be furnished and delivered therefor, or because thereof, and wholly extortionate and illegal, and when paid or delivered or surrendered may be recovered back by the party or parties paying, delivering, or surrendering the same, from the party to whom or for whose use the same shall have been paid, delivered, or surrendered, together with all costs of suit, including reasonable fees of attorneys of plaintiff, by proper action in any court having jurisdiction.

Penalty for demanding royalty.

SEC. 82. Every person, association, or corporation owning or controlling, or claiming to own or control, any ditch, canal, or reservoir as is mentioned in the first section of this article (section eight of this chapter), any officer or agent of such association or corporation, who shall, after demand in writing made upon him for the supply or delivery of water for irrigation, manufacturing, milling, or domestic purposes, to be delivered from the ditch, canal, or reservoir owned, possessed, or controlled by him, and after tender of the lawful rates of compensation therefor in lawful money, demand, require, bargain for, accept, or retain from the party making such application any money or other thing of value, or any promise or contract or any valuable consideration whatever as such royalty, bonus, premium, prerequisite, or condition precedent, as is by the provisions of the first section of this article prohibited, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars, or imprisonment for a term of not less than three months nor more than one year, or both such fine and imprisonment, in the discretion of the court.

District courts have jurisdiction in determining priorities.

SEC. 103. Exclusive jurisdiction for the ascertainment and settlement of the several rights and priorities of right of persons interested, either as carrier or consumer, in water at any time appropriated is hereby conferred upon the several district courts having jurisdiction within the limits prescribed by this act: and the judge of any such district court may, whenever necessity therefor shall arise, appoint a water bailiff, commissioning him under the seal of the court of the county wherein said judge shall at the time be, ordering and empowering such water bailiff to prevent the waste of water from any artesian well, or the unlawful use thereof, or from the artesian wells of any district by any person or persons, and to enforce priority of right of appropriation of such waters, or to demand and receive any key or keys to any head gate or head gates, waste gate or waste gates, or any other works in this act specified, and to safely keep the same so long as shall be necessary to carry out the orders of said court (returning the same thereafter to the owner or owners thereof or disposing of the same according to the order of the court), and to divide the waters of any source of supply according to the rights and priorities of the parties entitled to receive the same, and conformably to the order of said court, and to open or close any such head gate or waste gate, or fill any such canal or ditch as may be required to enforce the orders of such court under the provisions of this act respecting the distribution of water to the parties lawfully entitled to receive the same. Such water bailiff shall be by said order authorized and empowered to employ such assistance as may be necessary to discharge his duties, and shall receive a compensation of two dollars per day for each day actually and necessarily employed in executing the orders of said court, and all expenses necessarily incurred in the discharge of his duties, to be paid on the certificate of the district judge by the board of county commissioners of the county wherein such services were rendered and such expenses incurred, such service and expense being apportioned and certified by said district judge to the county or several counties concerned.

WATER LAWS OF 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.

STATUTORY ENACTMENTS.

All the Montana laws on the subject of irrigation are found in the civil code of the Revised Statutes.

Rights may be acquired by appropriation.

SEC. 1880. The right to the use of running water flowing in the rivers, streams, canyons, and ravines of this State may be acquired by appropriation.

Must be for some useful purpose.

ceases to use the water for such purpose the right ceases; but questions of abandonment shall be questions of fact, and shall be determined as other questions of fact.

SEC. 1881. The appropriation must be for some useful or beneficial purpose, and when the appropriator or his successor in interest abandons and

Place of diversion and use may be changed.

pipe, or aqueduct by which the diversion is made, to any place other than where the first use was made, and may use the water for other purposes than that for which it was originally appropriated.

SEC. 1882. The person entitled to the use of water may change the place of diversion, if others are not thereby injured, and may extend the ditch, flume,

May be turned into another stream.

reclaiming it, water already appropriated by another must not be diminished in quantity or deteriorated in quality.

SEC. 1883. The water appropriated may be turned into the channel of another stream and mingled with its waters, and then be reclaimed; but, in

Surplus must be returned to the stream.

shall not be an amount sufficient left therein for those having a subsequent right to the waters of such stream, and there shall at any time be a surplus of water so diverted, over and above what is actually used by the prior appropriator, such person shall be required to turn and to cause to flow back into the stream such surplus water, and upon failure so to do, within five days after demand being made upon him in writing by any person having a right to the use of such surplus water, the person so diverting the same shall be liable to the person aggrieved thereby in the sum of twenty-five dollars for each and every day such water shall be withheld after such notice, to be recovered by civil action by any person having a right to the use of such surplus water.

SEC. 1884. 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

First in time first in right.

SEC. 1885. As between appropriators the one first in time is first in right.

Notice of appropriation.

conspicuous place at the point of intended diversions, stating therein:

1. The number of inches claimed, measured as hereinafter provided.
2. The purpose for which it is claimed, and place of intended use.
3. The means of diversion, with size of flume, ditch, pipe, or aqueduct by which he intends to divert it.
4. The date of appropriation.
5. The name of the appropriator.

SEC. 1886. Any person hereafter desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversions, stating therein:

1. The number of inches claimed, measured as hereinafter provided.
2. The purpose for which it is claimed, and place of intended use.
3. The means of diversion, with size of flume, ditch, pipe, or aqueduct by which he intends to divert it.
4. The date of appropriation.
5. The name of the appropriator.

Within twenty days after the date of appropriation the appropriator shall file with the county clerk of the county in which such appropriation is made a notice of appropriation, which, in addition to the facts required to be stated in the posted notice, as hereinbefore prescribed, shall contain the name of the stream from which the diversion is made, if such stream have a name, and if it have 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 notice shall be verified by the affidavit of the appropriator, or some one in his behalf, which affidavit must state that the matters and facts contained in the notice are true.

Work must be prosecuted with diligence.

SEC. 1887. Within forty days after posting such notice the appropriator must proceed to prosecute the excavation or construction of the work by which the water appropriated is to be diverted, and must prosecute the same with reasonable diligence to completion. If the ditch or flume, when constructed, is inadequate to convey the amount of water claimed in the notice aforesaid, the excess claimed above the capacity of the ditch or flume shall be subject to appropriation by any other person, in accordance with the provisions of this title.

Right to date from posting of notice.

SEC. 1888. A failure to comply with the provision of this title 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 title the right to the use of the water shall relate back to the date of posting the notice.

Record with county clerk.

SEC. 1889. Persons who have heretofore acquired rights to the use of water shall, within six months after the publication of this title, file in the office of the county clerk of the county in which the water right is situated a declaration in writing, except notice be already given of record as required by this title, or a declaration in writing be already filed as required by this section, containing the same facts as required in the notice provided for record in section eighteen hundred and eighty-six of this title, and verified as required in said last-mentioned section, in cases of notice of appropriation of water; provided, that a failure to comply with the requirements of this section shall in no wise work a forfeiture of such heretofore acquired rights, or prevent any such claimant from establishing such rights in the courts.

Record prima facie evidence.

SEC. 1890. The record provided for in sections eighteen hundred and eighty-six and eighteen hundred and eighty-nine of this title, when duly made, shall be taken and received in all courts of this State as prima facie evidence of the statements therein contained.

Water right procedure in district court.

SEC. 1891. 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 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, of 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.

Clerk must keep a record.

SEC. 1892. The county clerk must keep a well-bound book, in which he must record the notices and declarations provided for in this title, and he shall be entitled to have and receive the same fees as are now or hereafter may be allowed by law for recording instruments entitled to be recorded.

Manner of measuring water.

SEC. 1893. The measurement of water appropriated under this title shall be conducted in the following manner: A box or flume shall be constructed with a head gate placed so as to leave an opening of six inches between the bottom of the box or flume and lower edge of the head gate, with a slide to enter at one side of, 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 three 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.

Sale of surplus. SEC. 1897. Any person having the right to use, sell, or dispose of water and engage in using, selling, or disposing of the same, who has a surplus of water not used or sold, or any person having a surplus of water and the right to sell and dispose of the same, is required, upon the payment or tender to the person entitled thereto an amount equal to the usual and customary rates per inch, to convey and deliver to the person such surplus of unsold water, or so much thereof for which said payment or tender shall have been made, and shall continue so to convey and deliver the same weekly, so long as said surplus of unused or unsold water exists and said payment or tender be made as aforesaid.

Purchaser of surplus must build channel to convey same. SEC. 1898. Any person desiring to avail himself of the provisions of the preceding section, must, at his own cost and expense, construct or dig the necessary flumes or ditches to receive and convey the surplus water so desired by him, and pay or tender to the person having the right to the use, sale, or disposal thereof an amount equal to the necessary cost and expense of tapping any gulch, stream, reservoir, ditch, flume, or aqueduct and putting in gates, gauges, or other proper and necessary appliances usual and customary in such cases, and, until the same shall be so done, the delivery of the said surplus water shall not be required as provided in the preceding section.

May enforce rights to purchase surplus. SEC. 1899. Any person constructing the necessary ditches, aqueducts, or flumes, and making the payments or tenders hereinbefore provided, is entitled to the use of so much of the said surplus water as said ditches, flumes, or aqueducts have the capacity to carry, and for which payment or tender is made, and may institute and maintain any appropriate action at law or in equity for the enforcement of such right or recovery of damages arising from a failure to deliver or wrongful diversion of the same.

Purchaser of surplus may not resell the same. SEC. 1900. Nothing in the three preceding sections shall be so construed as to give the person acquiring the right to the use of water as therein provided the right to sell or dispose of the same after being so used by him, or prevent the original owner or proprietor from retaking, selling, and disposing of the same in the usual and customary manner, after it is so used as aforesaid.

WATER-RIGHT FORMS USED IN MONTANA.

Notice of water right.

STATE OF MONTANA, *County of* _____, *ss:*

To all whom these presents may concern:

Be it known, That _____, of _____, in said county and State, do hereby publish and declare, as a legal notice to all the world, _____:

I. That _____ ha— a legal right to the use, possession, and control of and claim _____ inches of the waters of _____ in said county and State, for irrigating and other purposes.

II. That the special purpose for which said water is intended to be used, and the place of intended use is _____.

III. That _____ have taken said water out of, and diverted it from said _____ by means of _____, which said _____ is _____ inches by _____ inches in size and carries or conducts _____ inches of water from said _____; said _____ taps and diverts the water from said stream at a point upon its _____ bank _____; thence running, or to run, to and upon said described land (and through said land, if _____ so desire, to any requisite point of final discharge).

IV. That _____ appropriated and took said water on the _____ day of _____, A. D. 189—, by means of said _____.

V. That the name— of the appropriator — of said water _____.

VI. That _____ also hereby claim said ditch and the right of way therefor, and for said water by it conveyed, or to be conveyed, from said point of appropriation to said land or point of final discharge, and also the right of location upon any lands of any dams, flumes, reservoirs, constructed, or to be constructed, by _____ in appropriating, and in using said water.

VII. That ——— also claim the right to keep in repair and to enlarge said means of water appropriation at any time, and the right to dispose of the said right, water, ditch, or said appurtenances, in part or whole, at any time.

Claiming the same, all and singular, under any and all laws, national and State, and ——— rulings and decisions thereunder, in the manner of water rights.

Together with all and singular the hereditaments and appurtenances thereunto belonging or appertaining, or to accrue to the same.

Witness ——— hand at ———, Montana, this ——— day of ———, 189—, _____.

THE STATE OF MONTANA, *County of* ———, ss:

—————, having first been duly sworn, depose- and say- that he ——— of lawful age and ——— the appropriator- and claimant of the water and water right mentioned in the foregoing notice and statement of appropriation and claim, and the person- whose name ——— subscribed thereto as the appropriator- and claimant-; that he knows the contents of said notice and statement foregoing, and that the matters and things therein stated are true. _____.

Subscribed and sworn to before me this ——— day of ———, A. D. 189—, _____.

————— *County, Montana.*

I hereby certify that the within notice of location of water right was filed for record on the ——— day of ———, 189—, at ——— o'clock — m. and is duly recorded in volume ——— of water-right location records on page ———, records of ——— County, Montana.

Attest my hand and seal of said county.

County Recorder.
 By _____
Deputy.

Fee—\$——.

WATER LAWS OF NEBRASKA.

ARTICLE I.

Priority of rights. SEC. 7. As between appropriators, the one first in time is first in right.

ARTICLE II.

Determination of priorities. SEC. 16. It shall be the duty of the State board at its first meeting to make proper arrangements for beginning the determination of the priorities of right to use the public waters of the State, which determination shall begin on streams most used for irrigation, and be continued as rapidly as practicable until all the claims for appropriation now on record shall have been adjudicated. The method of determining the priority and amount of appropriation shall be determined by the said State board, which at its first meeting shall designate the streams to be first adjudicated.

Secretary; measurement of waters. SEC. 17. It shall be the duty of the secretary of the State board of irrigation as soon as practicable after the passage of this act to measure, or cause to be measured, the quantity of water flowing in the several streams of the State and to make a record thereof in the office of said board, and he shall from time to time make such additional measurements as may be necessary, or cause the same to be made, for the information of such board in considering applications for water appropriations and such controversies as may arise regarding the distribution of water.

Purpose of appropriation. SEC. 18. All appropriations for water must be for some beneficial or useful purpose, and when the appropriator or his successor in interest ceases to use it for such purpose the right ceases.

Priorities; order determining. SEC. 19. When the adjudication of a stream shall have been completed it will be the duty of the State board to make and cause to be entered of record in its office an order determining and establishing the several priorities of right to use the water of said stream, and the amount of the appropriation of the several persons claiming water from such stream and the character and kind of use for which such appropriation shall be found to have been made.

Appropriation; priority; amount. SEC. 20. Each appropriation shall be determined in its priority and amount by the time at which it shall have been made, and the amount of water which the works are constructed to carry: *Provided*, That such appropriator shall at no time be entitled to the use of more than he can beneficially use for the purposes for which the appropriation may have been made, and the amount of any appropriation made by means of enlargement of the distributing works heretofore shall be determined in like manner: *Provided*, That no allotment for irrigation shall exceed one cubic foot per second for each seventy acres of land for which said appropriation shall be made.

Certificates; how issued; when recorded. SEC. 21. Within thirty days after the determination of the priorities of appropriation to the use of water of any stream, it shall be the duty of the State board, through its secretary, to issue to each person, association, or corporation a certificate to be signed by the president of the State board and attested by the secretary of said board, setting forth the name and post-office address of the appropriator, the priority number each of appropriation, the amount of water appropriated, and the amount of prior appropriation, and if such appropriation be for irrigation, a description of the land to which the water is to be applied and the amount thereof. Said certificate shall be transmitted by the said State board of irrigation, through its secretary, by registered mail to the county clerk of the county in which said appropriation shall have been made, and it shall

be the duty of said county clerk, within ten days after the receipt of said certificate, to record the same in a book especially prepared and kept for that purpose, and to notify the party or parties in whose favor the said certificate is issued of such record, and transmit said certificate to said party or parties on payment of the fees for recording, which fee shall not exceed seventy-five cents for each certificate so recorded.

Appeal from determination. SEC. 22. Any party or number of parties acting jointly who may feel themselves aggrieved by the determination of the State board may have an appeal to the district court of the county within which the appropriation or appropriations of the party or parties so aggrieved may be situated. All persons joining in the appeal shall be joined as appellants, and all persons having interests adverse to the parties appealing or either of them shall be joined as appellees.

Appeal; notice; bond. SEC. 23. The party or parties appealing shall, within sixty days of the determination of the State board which is appealed from and the entry thereof on the records of the board, file in the office of the clerk of the district court to which the appeal is taken a notice in writing stating that such party or parties appeal to the district court from the determination and order of the State board, and upon the filing of such notice the appeal shall be deemed to have been taken: *Provided, however,* That the party or parties appealing shall, within the sixty days mentioned, enter into an undertaking, to be approved by the district court or the clerk thereof, and to be given to all parties in said suit or proceedings, other than the parties appealing, conditioned that the parties giving the said undertaking shall prosecute their appeal to effect and without unnecessary delay, and will 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: *Provided,* Such case is decided against the appellant.

Order; service. SEC. 24. The order mentioned in the preceding section shall be entered of record in the records of the State board and the appellant or appellants shall cause a certified copy thereof to be served with the summons hereinafter provided on each of the appellees in the manner provided for serving summons from the district court.

Petition; proceedings; costs. SEC. 25. The appellant or appellants shall, within sixty days after giving the undertaking hereinafter mentioned, file in the office of the clerk of such district court a certified transcript of the order of determination made by the State board and which is appealed from; and the measurement of streams, tributaries, or ditches that may have been made, together with a petition setting out the cause of the complaint of the party or parties appealing to which all parties named as appellants shall be made parties, summons in such appeal to be issued by the clerk of such district court and served in the manner provided by law for the service of summons in action of law; and all proceedings on appeal shall be conducted according to the proceedings of the code of civil procedure. All costs made and accruing by reason of such appeal shall be adjudged to be paid by the party or parties against whom such an appeal shall be finally determined.

Transcript of claims; duty of county clerk. SEC. 26. Within thirty days from the passage of this act it shall be the duty of the county clerk of each of the counties of this State to prepare a full and complete transcript of all the claims to appropriations of water now on file in their respective offices, and to transmit the same without delay to the secretary of the State board by express or registered mail, for which service he shall be paid by the county the sum of five cents per folio to prepare said transcript: *Provided,* That the county clerk may, in place of such abstract, transmit the original record of claims to water that are recorded in books kept especially for the purpose, in which case he shall receive no compensation.

Classification by State board. SEC. 27. Immediately on receipt of said transcripts or the original records, it shall be the duty of the State board to file them in its office, and to classify and arrange said claims by placing all the claims to the waters of one stream and its tributaries together.

Application to appropriate water. SEC. 28. Every person, association, or corporation hereafter intending to appropriate any of the public waters of the State of Nebraska shall, before commencing the construction, enlargement, or extension of any distributing works, or performing any work in connection with said appropriation, make an application to the State board for a permit to make such appropriation. Said application shall set forth the name and post-office address of the applicant, the source from which said appropriation shall be made, the amount thereof as near as may be, location of any proposed work in connection therewith,

What to contain. SEC. 29. The application shall set forth the name and post-office address of the applicant, the source from which said appropriation shall be made, the amount thereof as near as may be, location of any proposed work in connection therewith, the time required for their completion, said time to embrace the period required

for the construction of the ditches thereon and the time at which the application of the water for beneficial purposes shall be made, which said time shall be limited to that required for the completion of the work when prosecuted with diligence, the purpose for which water is to be supplied, and if for irrigation a description of the land to be irrigated thereby, and the amount thereof, and any additional facts which may be required by the State board. On receipt of this application, which shall be of a form prescribed by the State board and to be furnished by the secretary without cost to the applicant, it shall be the duty of

To be recorded. the State board, through its secretary, to make a record of the receipt of said application and cause the same to be recorded in its office, and to make a careful examination of the application to ascertain whether it sets forth all the facts necessary to enable the State board to determine the nature and amount of the proposed appropriation. If such an examination shows the application in any way defective, it shall be the duty of the State board to return the same to the applicant for correction. If there is unappro-

When approved. priated water in the source of supply named in the application, and if such appropriation is not otherwise detrimental to the public welfare, the State board, through its secretary, shall approve the same by endorsement thereon and shall make a record of such endorsements in some proper manner in his office and return the same so endorsed to the applicant, who shall, on receipt thereof, be authorized to proceed with the work and to take such measures as may be necessary to perfect such appropriation: *Provided, however,* That the State board, through its secretary, may, upon examination of such application, endorse it approved for a less amount of water than the amount of water stated in the application, or for a less amount of land or for a less period of time for perfecting the proposed appropriation than that named in the applica-

Appeal allowed from ac- tion: *And provided further,* That an applicant feeling himself aggrieved by the endorsement made upon his application may take an appeal therefrom

tion of board. to the district court of the county in which may be situated the point of diversion of the proposed appropriation. Such appeal shall be perfected when the applicant shall have filed in the office of the clerk of the district court a copy of the order appealed from, certified by the secretary of the State board as a true copy, together with the petition to such court, setting forth appellant's reason for such appeal. Such appeal shall be heard and determined upon such competent proofs as shall be produced by the applicant and such like proofs as shall be produced by the State board to any person duly authorized in its behalf. If there

When refused. is no unappropriated water in the source of supply, or if a prior appropriation has been made to water the same land to be watered by the applicant, the State board, through its secretary, shall refuse such appropriation, and the party making such application shall not prosecute such work so long as such refusal shall continue in force.

Map; when filed. SEC. 29. Upon the approval and allowance of an application the applicant shall send to the State board's office within six months thereafter a map or plat, upon a scale of not less than two inches to the mile, showing the location of the course of the distributing works, the source from which the appropriation is taken and the legal subdivisions of the land upon which the water appropriated is to be applied, which said map shall be filed and be preserved in said office as part of the records.

Certificate. SEC. 30. Upon its being made to appear to the satisfaction of the State board that the application in this act provided for has been perfected in accordance with law, and the endorsement thereon by the secretary of the State board, it shall be the duty of said board by the hand of its president, attested by the secretary, to send to the county clerk a certificate of the same character as that described in section twenty-one of this act, which said certificate shall be recorded in the office of the county clerk, and provided for in section twenty-one of this act.

Priority; date. SEC. 31. The priority of such appropriation shall date from the filing of the application in the office of the State board.

Dams. SEC. 38. Any person, corporation, or association hereafter intending to construct any dam for reservoir purposes or across the channel of any running stream above ten feet in height, shall, before beginning such construction, submit the plan of the same to the State board of irrigation for their examination and approval, and no dam above ten feet in height shall be constructed until the same shall have been approved by such board.

Water; public property. SEC. 42. The water of every natural stream not heretofore appropriated, within the State of Nebraska, 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 hereinbefore provided.

**Priority of appropriation;
priority of right.**

SEC. 43. The right to divert unappropriated waters of every natural stream for beneficial use 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 use 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.

**Priorities; ditches like
running streams.**

SEC. 44. All ditches constructed for the purpose of utilizing the waste, seepage, swamp, or spring waters of the State shall be governed by the same laws relating to the priority of right as those ditches constructed for the purpose of utilizing the waters of running streams: *Provided*, That the person upon whose lands the waste, seepage, swamp, or spring waters first arise shall have the prior right to the use of such waters for all purposes upon his lands.

Reservoirs.

SEC. 56. Any person, company, or corporation desirous of constructing and maintaining a reservoir for the purpose of storing water for irrigation purposes shall have the right to take water from the natural streams of this State when not needed for immediate use for irrigation or domestic purposes; to construct and maintain ditches for the purpose of conducting water to and from such reservoirs and to condemn land for such reservoirs and ditches in the same manner as is provided by law for the condemnation for right of way for ditches, and the owner or owners of such reservoirs shall be liable for all damages arising from leakage or overflow of the water therefrom and by the breaking of the embankments of such reservoir.

**Waterworks exempt from
taxation.**

SEC. 61. All ditches, canals, laterals or other works used for irrigation purposes shall be exempt from all taxation, whether State, county, or municipal.

**Prosecution of work on
appropriation.**

SEC. 62. Within six months after the approval of any application for water under this act by the State board of irrigation the person, persons, corporation or association making such application shall commence the excavation or construction of the works in which it is intended to divert the water and shall vigorously, diligently, and uninterruptedly prosecute such work to completion, unless temporarily interrupted by some unavoidable and natural cause, and a failure to comply with this section shall work a forfeiture of the appropriation and all rights thereunder.

**Deeds and contracts for
water rights.**

SEC. 63. Whenever any person, persons, or corporation owning any irrigation ditch or canal shall convey by deed or contract the right to use the water from such ditch or canal for any tract of land for irrigation purposes, such deed or contract shall be recorded in the county where such land is situated, in the same manner and under the same conditions as deeds for real estate are recorded, and such deed or contract, from the date of recording thereof, shall be binding upon the grantor of such deed or contract, his, their, or its successors or assigns, and all persons, companies, or corporations claiming any interest in such ditch or canal, and no foreclosure or other proceedings to collect money from or subject the sale of the property of the owners of such ditch or canal, shall in any manner impair the right of such grantee, his heirs, administrators or assigns to the use of the water from such ditch or canal in the quantity and manner provided in such deed or contract.

Appeals advanced on docket.

SEC. 64. Upon any appeal being taken as is by this act provided, from the board of irrigation to the district court of this State, it shall be the duty of said court to advance such appeal to the head of the trial docket and to give such appeal precedent over other civil cases, in hearing and determination thereof, and if an appeal be taken in such action from the judgment or decree of the district court to the supreme court of the State it shall in like manner be the duty of the supreme court to advance such appeal to the head of its docket for the trial of civil cases and give such causes like precedent as to trial.

Water a natural want.

SEC. 65. Water for the purposes of irrigation in the State of Nebraska is hereby declared to be a natural want.

WATER-RIGHT FORMS USED IN NEBRASKA.

Claim for the waters of the State of Nebraska.

Claim, No. —. Priority, No. —. Water division, No. —. District, No. —.

I, —, of the — county of —, State of —, being duly sworn, upon my oath say:

1. That the name of the claimant is —, post-office address, No. —, street, —, county, —.

2. That the water is claimed for the purpose of —.

3. That the name adopted for the ditch or canal is the —.

4. That the source of the appropriation claimed is —.

5. That the amount of the appropriation claimed is — cubic feet per second of time.

6. That the head gate is located on the — bank of the stream, in — of section —, township —, range — of the — principal meridian.

7. That the said ditch or canal, — miles in length, passes through the following sections of land, as shown on the accompanying township plat, viz: (Describe each section through which canal passes, stating township and range.)

(a) That the portion of said ditch or canal, — miles in length, indicated on said plats by a black line, is completed.

(b) That the portion of said ditch or canal, — miles in length, indicated on said plats by a red line, is not completed.

8. That the dimensions of said ditch or canal are (and will be for the uncompleted portions) as follows: Head gate—width in clear — feet; depth of water on floor at low water — feet.

9. That the total excavation amounts to — cubic yards of material, consisting of —, and that the total length of fluming required is — feet.

(a) That the material thus far removed amounts to — cubic yards.

(b) That the fluming completed amounts to — feet.

10. That the estimated cost of said ditch or canal is as follows: Earthwork, \$—; fluming, \$—; head gate, \$—; other expenses, \$—; total, \$—.

(a) That the expenditures thus far incurred are as follows: Earthwork, \$—; fluming, \$—; head gate, \$—; other expenses, \$—; total, \$—.

11. That it is the intention that the said ditch or canal shall supply water to irrigate the following sections or quarter sections of land, viz: (Give sections and quarter sections, stating number, township, and range) amounting in all to — acres.

12. That the actual work of excavation and construction was begun on the — day of —, 18—, and the works — completed, and the appropriation perfected on or before the — day of —, 18—.

(a) That this claim is made under and by virtue of rights deemed to have been acquired by —.

(b) That water — turned into said ditch or canal on or before the — day of —, 18—.

13. That the time estimated as necessary to provide for the application of the amount of water herein claimed to the beneficial use above stated is — years from April 4.

(a) That there were — acres of crops actually irrigated from said ditch or canal during 18—.

14. That the relation which the subscriber to this affidavit bears to said ditch or canal, or other works, is that of —, and that he is authorized to make this affidavit in behalf of the interests affected.

STATE OF —, County of —, ss:

I hereby certify that the foregoing claim was signed in my presence and sworn to before me by — this — day of —, 18—.

Notary Public.

STATE OF NEBRASKA, Office State Board of Irrigation, ss:

This instrument was filed for record at — o'clock — noon, on the — day of —, 18—, and duly recorded in book — of the record of claims for appropriations, on page —.

State Engineer, Secretary.

Application for a permit to appropriate the waters of the State of Nebraska.

Permit, No. —. Water division, No. —. District, No. —.

I, —, of the —, county of —, State of —, being duly sworn, upon my oath say:

1. That the name of the applicant herefor is —; post-office address, No. — street. — County, —.

2. That it is proposed to use the water applied for herein for —.

3. That the name adopted for the proposed ditch or canal is the —.

4. That the source of the proposed appropriation is —.

5. That the amount of the appropriation desired is — cubic feet per second of time.

6. That it is proposed to locate the head gate on the — bank of the stream, in — of section —, township —, range — of the — principal meridian.

7. That the said ditch or canal will be — miles in length, and pass through the following sections of land, as shown on the accompanying township plats, viz: (Describe each section through which canal passes, stating township and range.)

8. That the dimensions of the proposed ditch or canal will be as follows: Head gate, width in clear, — feet; depth of water on floor at low water — feet.

9. That the material to be removed amounts to — cubic yards, consisting of — and that the total length of fluming required is — feet.

10. That the estimated cost of the proposed construction is as follows: Earth-work, \$—; fluming, \$—; head gate, \$—; other expenses, \$—; total, \$—.

11. That the proposed ditch or canal is to be built with the intention of supplying water to irrigate the following sections or quarter-sections of land, viz: —, amounting in all to — acres.

12. That construction is to be begun within — of the date hereof, and the proposed works are to be completed, and the appropriation perfected on or before —.

13. That the time estimated as necessary to provide for the application of the amount of water herein applied for to the beneficial use above stated, is — years from —, 189—.

STATE OF —, *County of —, ss:*

I hereby certify that the foregoing application was signed in my presence and sworn to before me by —, this — day of —, 189—.

[SEAL.]

Notary Public.

STATE OF NEBRASKA, *Office State Board of Irrigation, ss:*

This is to certify that the foregoing application has been examined.

State Board of Irrigation.

State Engineer, Secretary.

This is to certify that the foregoing application has been examined and is hereby granted, subject to the following limitations and conditions:

First. The work of excavation or construction shall begin on or before —, 189—.

Second. The time for completing the work, or perfecting the appropriation, shall extend to —, 18—.

Third. The time for completing the application of water to the beneficial use indicated shall extend to —, 1—.

Fourth. The amount of the appropriation shall not exceed — cubic feet per second, and shall be limited to 1 cubic foot per second of time for each — acres of land reclaimed on —, 1—.

State Board of Irrigation.

State Engineer, Secretary.

STATE OF NEBRASKA, *Office State Board of Irrigation, ss:*

This instrument was filed for record at — o'clock, — noon, on the — day of —, 189—, and duly recorded in book — of the record of applications for appropriations on page —.

State Engineer, Secretary.

NOTE.—This application, if approved, must be followed within six months by a map or plat on a scale of 2 inches to the mile, showing the location of the distributing works, the source of supply, and the legal subdivisions of land to be irrigated.

Petition for a permit to relocate irrigation works.

Petition, No. —. No. —. Water division, No. —. District, No. —.

I, —, of the —, county of —, State of —, being duly sworn, upon my oath say:

1. That the name of the petitioner herefor is —; post-office address, —, — County, —.

2. That this is a petition for a permit to relocate —.

3. That the name of the ditch, canal, or other works referred to in this petition is the —.

4. That the source of the water supply thereof is —.

5. That the appropriation therefor is claimed by virtue of rights acquired by —.

6. (a) That the present location of the head gate is on the — bank of the stream, in — of section —, township —, range — of the — principal meridian.

(b) That the proposed location of the head gate is on the — bank of the stream, in — of section —, township —, range — of the — principal meridian.

7. That the said ditch or canal — miles in length passes through the following quarter sections of land, as shown on the accompanying township plats, viz: (Describe each quarter section through which ditch or canal passes, stating township, range, etc.)

(a) That the portions of said ditch or canal, — miles in length, indicated on said plats by a continuous black line, is completed.

(b) That the portion of said ditch or canal, — miles in length, indicated on said plats by a dotted black line, is not completed.

8. That the said ditch or canal, when relocated, will be — miles in length and pass through the following quarter sections of land, as shown on the accompanying township plats, viz: (Describe each quarter section through which ditch or canal passes, stating township, range, etc.)

(a) That the portions of said ditch or canal, — miles in length, indicated on said plats by continuous and dotted black lines, show course thereof as originally located.

(b) That the portion of said ditch or canal, — miles in length, indicated on said plats by red lines, show course thereof as relocated.

9. That the estimated cost of proposed relocation is as follows: Earthwork, \$—; fluming, \$—; head gate, \$—; other expenses, \$—; total, \$—.

10. That the work of relocation is to be begun within — of the date hereof, and the same will be completed on or before —.

STATE OF —, *County of —, ss:*

I hereby certify that the foregoing petition was signed in my presence and sworn to before me by — —, this — day of —, 18—.

[SEAL.]

Notary Public.

STATE OF NEBRASKA, *Office State Board of Irrigation, ss:*

This is to certify that the foregoing petition has been examined.

_____,
 _____,
State Board of Irrigation.
 _____,
State Engineer, Secretary.

STATE OF NEBRASKA, *Office State Board of Irrigation, ss:*

This instrument was filed for record at _____ o'clock, _____ noon, on the _____ day of _____, 189-, and duly recorded in book _____ of the record of petitions for relocations, on page _____.

_____,
State Engineer, Secretary.

NOTE.—This petition, if approved, must be followed within sixty days by a map or plat on a scale of 2 inches to the mile, showing the location of the diverting and distributing works as relocated, the source of supply, and the legal subdivisions of land irrigated.

WATER LAWS OF SOUTH DAKOTA.

SEC. 1. That all surface waters in the State of South Dakota are hereby appropriated to the use and benefit of the public. (Chapter 75, Session Laws 1897.)

SEC. 1. That all surplus water above the normal amount in lakes, rivers, creeks, or other bodies of water is hereby appropriated to the use and benefit of the people of this State. (Chapter 77, Session Laws 1897.)

SEC. 1. It shall be lawful for any person, company, or corporation to construct and maintain, or permit to be constructed and maintained, a dam or dams upon and adjacent to their own lands in any of the natural streams of the State, and to take from said streams any unappropriated water not needed for immediate use for domestic and irrigating purposes, and also to construct and maintain, or permit to be maintained and constructed, reservoirs for the purpose of storing water, taken from said streams to be used for irrigating agricultural lands; and to construct and maintain ditches, sluiceways, or waterways for carrying such water to and from such streams or to and from such reservoirs, and to construct and maintain water wheels and machinery, to be propelled by the waters of such streams or otherwise, for the purpose of raising the water therefrom for the aforesaid purposes, or to keep, maintain, and use other machinery and appliances for like purposes: *Provided*, That no dam shall be built or constructed so as to cause the waters of such stream to flow out of the natural channel or banks of such stream at its ordinary stage, and the party damaging or injuring the lands or possessions of another by reason of such dams or reservoirs shall be liable to the party so injured for the actual damage occasioned thereby. (Chapter 104, Session Laws 1895.)

Construction of artesian wells lawful.

SEC. 1. It shall be lawful for any person or persons, corporation or corporations, company or companies, to construct artesian wells upon lands owned or leased by such person, company, or corporation for the purpose of power and the irrigation of lands for agricultural purposes, and for any and all purposes for which said water from such wells may be utilized. (Chapter 103, Laws 1890.)

Who may construct.

SEC. 2. Any person or company, or any 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 such person, company, or corporation, by themselves, their agent, or servants, may enter upon the lands of any other person, company, or corporation, and shall only be liable for actual damages sustained by reason of such entrance and examination: *Provided*, That no routes for waterways shall be located without the written consent of the owner, within fifteen rods of the dwelling house or other buildings on the premises, or across any orchard or garden, without such written consent.

Surplus water.

SEC. 5. For the purpose of disposing of the surplus water from any artesian well it shall be lawful for the said person, company, or corporation to construct the necessary waterways from said well on the routes as provided in sections two and four of this act.

Surplus water.

SEC. 18. Whenever any waterway shall be located and constructed under the provisions of this act across the lands of any person other than the lands owned by the proprietors of said well, such person may apply to the proprietors for the right to use the surplus water flowing in such waterway or ditch to irrigate his own lands, and the said proprietor shall allow him to use and appropriate such water by paying a just rental therefor. The rates to be paid and terms and conditions under which said surplus water may be used shall, upon proper application by the parties, be fixed and defined in a just and equitable manner 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 within

which the said waterway is located from the decision of said board, in the manner provided by law for appeals from said board, and the decision of said circuit court shall be final: *Provided*, That nothing in this section contained shall be construed to prevent the use of all the water which may flow from said well by the proprietor thereof upon his own lands, except that when the said proprietor shall own land located beyond the lands across which said ditch is constructed, an equitable adjustment of the rights of all the parties shall be made by the said board, subject to appeal as aforesaid.

Public use. SEC. 19. Whenever waterways or ditches are located or constructed along any public highway the water which may be flowing therein shall be for the use of the public: *Provided*, That when any owner or occupant of the lands adjoining or lying along such highway desires to use any portion of the water flowing in such highway or ditch, he shall make application to the proprietor of said well, and the adjustment of the amount of rental to be paid to said proprietor for the use of such water and the terms and conditions thereof shall be made by the board of county commissioners, as provided in section eighteen of this act, with right of appeal as therein provided; but the right of the use and appropriation of such water shall be subject to the rights of the public therein.

Use of water from private wells limited. SEC. 42. Any person, association, or corporation owning land shall have the right to sink or bore an artesian well or wells on his, their, or its lands for the purpose of procuring water for domestic use, for irrigation, or for manufacturing purposes; but in wells hereinafter constructed, no more water shall be appropriated by such person, association, or corporation than is needed for said purpose when such additional use of water interferes with the flow of wells on adjacent lands. (Chapter 80, Laws 1895.)

Location of wells. SEC. 43. In locating wells in townships which have established and put down wells under the provisions of this act for public use, or by private parties, due regard shall be had for their proper distribution in order that the flow of the wells may be properly equalized and least likely to interfere with each other. Should any well in such township, public or private, be located so near any well already completed or in process of completion as to be likely to interfere with the same, any person may complain in writing to the State engineer, who shall, without delay, proceed to examine the 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 course of completion. If in his judgment there will be no material interference, the location will not be changed, but if in his opinion the well as located will materially interfere with the one completed or in the course of completion, he shall change the location of said well to some more suitable locality: *Provided*, That when permanent buildings have been located on any farm prior to the sinking of any artesian well on any adjoining farm, this act shall not be construed as prohibiting the agent or proprietor of said farm from sinking an artesian well at or near said building without reference to the proximity of any other artesian well. The State engineer shall, within five days after said examination, make a written statement of his decision and file the same or a copy thereof in the office of the clerk of the circuit court of the county wherein the said wells are located. Any person aggrieved by the decision of the State engineer may, within ten days after the filing of his decision in the office of the clerk of the circuit court, and upon such appeal the question shall be tried *de novo*. (Chapter 80, Laws 1895.)

Flow and pressure of wells to be determined. SEC. 44. The State engineer is hereby authorized and it is made his duty to measure or cause to be measured the flow and pressure of all artesian wells established and put down under the provisions of this act, public and private, at such times as he may deem proper, for the purpose of determining the increase or diminution of the flow or pressure of said well, and is hereby authorized to enter upon any grounds for the purposes aforesaid, and the owner or owners of such well or wells are hereby directed to furnish the necessary material to construct a suitable weir to measure the flow, and all reasonable conveniences shall be afforded for this purpose.

Water shall not be wasted. SEC. 46. No person controlling an artesian well shall suffer or permit the waters thereof to flow to waste unless, and so far as reasonably necessary, to prevent the obstruction thereof, or to flow or to be taken therefrom save for beneficial uses: *Provided*, This shall not be construed as to prevent the reasonable use of said water for the necessary irrigation of trees standing along or upon any street, road, or highway, or for ornamental ponds or fountains, or the propagation of fish.

Inspection of wells. SEC. 47. Any township supervisor, the county commissioners, road overseers, and aldermen, or other city officers within their respective townships, counties, cities, and towns, upon complaint of any person that the proprietor of any artesian well, or person controlling the same, is wont to suffer the waters thereof to unreasonably run to waste therefrom, or have in any respect violated this act, may, at any reasonable hour of the day or night, enter upon any premises where such well is situated, for inspecting the same and for ascertaining whether there is sufficient cause for such complaint, and in order to institute, or cause to be instituted, criminal prosecutions for any violations of this act, and every person sinking or boring for an artesian well upon his own land, or suffering others to do so, shall be deemed in law to expressly license such entry of the officers aforesaid, or any of them, for the purposes of such inspection and examination.

Number of wells in each township; when located.

SEC. 2. Whenever a majority of the qualified electors of any civil township in the State of South Dakota shall make an application in writing to the State engineer of irrigation, requesting him to locate within said civil township artesian wells, not to exceed nine in number if said wells shall be six inches in diameter, and not to exceed sixteen in number if said wells shall be four and one-half inches in diameter, for the purpose of supplying the public with water, it shall be the duty of said engineer, within twenty days from the presentation to him of said application, to locate, or cause to be located, in said township the number of wells mentioned in said application, not exceeding nine if said wells be six inches in diameter, and not exceeding sixteen if said wells be four and one-half inches in diameter, at such places as shall, in the judgment of the State engineer of irrigation, best subserve the interests of the landholders of the township. The majority of electors is to be determined by the vote of the civil township, as shown by the poll list thereof at the last preceding election. (Chapter 80, Session Laws 1895.)

Application and report to be filed.

SEC. 3. The State engineer shall, within thirty days after the receipt of said written application, file the same, together with his report locating said wells, in the office of the register of deeds in and for said county.

Report to contain what.

SEC. 4. The report of the State engineer, mentioned in section three of this act, shall state the number of wells, the size of each well, and the exact location of the same, together with a full description thereof.

Application for use of water.

SEC. 18. At any time after the contract for sinking of any well has been completed any person owning land in said township desiring the use of any water from said well for the purpose of irrigation shall make to the board of supervisors of the township an application, in writing, describing the tract of land to be irrigated and the number of acres to which water is to be applied, and that the applicant is willing to pay for the same in acre-feet.

Board of supervisors to contract for use of water.

SEC. 19. Within ten days after the filing of said application for water the board of supervisors shall enter into a contract to furnish water to the owner for the land described at a price per acre-foot of water to be fixed in said contract, which shall in no event be less than one dollar per acre-foot per annum, which shall in no event be used and employed for the maintenance and payment of said well until the well, ditches, and reservoirs are fully paid for out of the rentals: *Provided*, That whenever the owner of said land applies to the board to furnish him water that the board may provide that the water be conveyed to the land to be irrigated at said owner's expense: *Provided further*, That for the purpose of conveying said water to the land proposed to be irrigated the owner thereof, or the township, shall have the right of condemnation, as provided in chapter one hundred and three, laws of eighteen hundred and ninety. The lessees, or any number or one of them, obtaining water flowing from any well constructed under the provisions of this act shall have the right at any time to purchase from the township, by and with the consent of a majority of the freeholders of said township, determined at a general or special election called by the board of supervisors for that purpose, in which said well is located, the well from which he or they may obtain water, by paying to said township the cost of construction of said wells, ditches, and reservoirs, together with the amount for which said well was bonded. In case the waters from any such well are not leased to any person, then the board of supervisors of such township shall have the power and right, by and with the consent of a majority of the freeholders of said township, determined at a general or special election called by the board of supervisors for that purpose,

to sell unto any person owning land in the vicinity where such well is located such well constructed under the provisions of this act for the amount of bonds issued for the construction of said well, ditches, and reservoirs: *Provided*, That said land be so situated as to be susceptible of irrigation from the waters from said well.

Application and contract to be filed with the register of deeds.

SEC. 20. The board of supervisors of the township shall file or caused to be filed for record in the office of the register of deeds of the county in which said township is located the said application and a duplicate of the water contract, which shall be recorded by the register of deeds, and from that time the said rights given under the said contract shall run with the title of the land, and shall not be severable therefrom until default is made in the payment of water rent, which default must have continued thirty days before the right to the water mentioned in said contract shall be severable from the land.

Lien upon land for water rent.

SEC. 21. Every township having constructed wells under this act shall have a lien upon the lands mentioned in said water contract from the time said contract is filed with the register of deeds, as provided in section twenty hereof, and may foreclose the said lien upon the said lands described in the contract by advertisement, as now or as may be hereafter provided for the foreclosure of real estate mortgages.

Water rent; how collected; disposition of.

SEC. 22. It shall be the duty of every township treasurer to collect the water rents mentioned in this act, and immediately pay the same to the county treasurer of the county, whose duty it is to set the same aside as a fund, out of which he is directed to pay the interest upon the water bonds of the township as said interest shall become due.

Township board may levy tax.

SEC. 23. In case there shall not have been sufficient money paid into the county treasury for water rents on the first day of April in any year to pay the amount of interest on the water bonds for the year, then it shall be the duty of the civil officers of said township to levy and collect a sufficient tax to pay the interest upon the said bonds; and it is hereby made the duty of the township board to levy upon the taxable property of the civil township a sufficient tax to pay the interest upon the water bonds whenever there shall be an insufficiency of funds from water rent to pay the interest as in this section provided, 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 three per cent upon the taxable property of the township in any one year.

Wells for filling artificial reservoirs, etc.

SEC. 30. If at any time the petitioners for artesian wells, as herein provided, shall state in their petition to the State 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 of this act in reference to obtaining the same shall apply to such wells, excepting that the constant flow 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 are diminished thereby, and it is hereby 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 providing for said wells.

Number of wells may exceed sixteen.

SEC. 32. Whenever the application to the State engineer for artesian wells shall call for a well smaller than four and one-half inches in diameter, authority is hereby given for the location and sinking in said township of more than sixteen artesian wells.

Rules for use of water.

SEC. 34. The State engineer may, and when requested by the township board 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.

Record to be kept by the person sinking well.

SEC. 35. It is hereby made the duty of the township board to embody in the contract for the sinking of said public artesian wells a provision that the person sinking said wells 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 hereby made the essence of the contract, and a violation thereof shall be construed to be a violation of the contract.

Water to be applied; how. SEC. 36. The waters derived from artesian wells pursuant to this act shall be applied for the purposes of irrigation, for domestic purposes, which is hereby defined to mean for household use, for the supply of domestic animals kept with and for the use of the household and farm, and the watering and sustaining of trees, grass, flowers, and shrubbery about the house of the consumer in an area not exceeding one-half acre of land, and for manufacturing purposes: *Provided*, That whenever the use of said wells for manufacturing purposes will in no manner obstruct or materially diminish the waters for irrigation purposes the board of township supervisors are authorized to lease the power for such manufacturing purposes as in their judgment will best subserve the interest of the people; said license shall not be for a period exceeding ten years: *Provided further*, That the lessee, his heirs or assigns, may at the end of ten years renew said lease by paying the rental at which said power shall be appraised at the end of that period, and the moneys arising from the rentals of said power shall be paid into the county treasury and be used as a fund out of which shall be paid the interest and principal of said water bonds.

Public watering place provided. SEC. 37. The State engineer may, at the expense of the township, conduct the water from each well to a point on the public highway nearest thereto, and provide for the reception of said water a tank not less than ten feet in length, three feet in width, and two feet in depth, in which sufficient water shall be kept to supply the general public for the purpose of watering stock and other domestic uses.

WATER-RIGHT FORMS USED IN SOUTH DAKOTA.

Form of notice required under Territorial law.

Location certificate (water right).

Know all men by these presents, that the undersigned, _____, hereby locates and appropriates the waters of _____ stream, creek, or gulch, to be taken and diverted therefrom at a point on the same _____ and carried thence by ditch and flume on a line as near as may be _____ to _____, the place of intended use.

The number of inches of water claimed and appropriated is _____ miners' inches. The purpose of the appropriation is for mining, milling, manufacturing, and domestic uses.

Date of appropriation _____, 18—. Date of posting at the head of ditch _____, 18—. Date of certificate _____, 18—.

WATER LAWS OF WYOMING.

CONSTITUTION OF WYOMING.

ARTICLE I.

Water control in State. 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.

ARTICLE VIII.

Water is property of State. SECTION 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.

Board of control. 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 decisions to be subject to review by the courts of the State.

Appropriation. 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.

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

State engineer. 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 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.

ARTICLE XIII.

May acquire water by appropriation and condemnation. SEC. 5. Municipal corporations shall have the same right as individuals to acquire rights, by prior appropriation and otherwise, to the use of water for domestic and municipal purposes, and the legislature shall provide by law for the exercise upon the part of incorporated cities, towns, and villages of the right of eminent domain for the purpose of acquiring from prior appropriators upon the payment of just compensation, such water as may be necessary for the well being thereof and for domestic uses.

SESSION LAWS OF WYOMING, 1890-91.

CHAPTER VIII.

Water divisions defined. SECTION 1. The State of Wyoming is hereby divided into four water divisions, denominated water division No. 1, water division No. 2, water division No. 3, water division No. 4, respectively.

SEC. 2.¹ Water division No. 1 shall consist of all lands within this State drained by the North Platte River and the tributaries of the North Platte River and the

¹ As amended, 1895.

South Platte River, Snake River (a tributary of Green River) and its tributaries, and Running Water Creek and its tributaries.

SEC. 3.¹ Water division No. 2 shall consist of all lands within this State drained by the tributaries of the Yellowstone and Missouri rivers north of the watershed of the North Platte and Running Water Creek and east of the summit of the Big Horn Mountains.

SEC. 4.¹ Water division No. 3 shall consist of all lands within this State drained by the Big Horn River and its tributaries and by Clarks Fork and its tributaries.

SEC. 5. Water division No. 4 shall consist of all lands within this State drained by the Green, Bear, and Snake rivers, and the tributaries thereof; except Snake River, a tributary of Green River, and its tributaries.

Salary of engineer. SEC. 6. The State engineer shall receive a salary of two thousand five hundred dollars per annum, payable in monthly installments by the State treasurer upon warrants drawn by the State auditor.

His office. SEC. 7. The State engineer shall keep his office at the State capital in the capitol building.

His oath and bond. SEC. 8. Before entering upon the duties of his office he 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, and 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 governor of the State, 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. No person shall be appointed as such State engineer who is not known to have such theoretical knowledge and practical skill and experience as shall fit him for the position.

Duties of engineer. SEC. 9. The State engineer shall perform such duties as are prescribed in the law defining the duties of the board of control, and in addition shall make or cause to be made measurements and calculations of the discharge of streams from which water shall be taken for beneficial purposes, commencing such work upon those streams as are most used for irrigation or other beneficial purposes. He shall 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 shall examine reservoir sites and shall, in his reports, 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 shall 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 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, 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.

Assistant engineer. SEC. 10. The State engineer shall have the power to employ an assistant engineer, at an expense not to exceed twelve hundred dollars per year, and to employ other assistants at a total additional expense not to exceed five hundred dollars per year; such assistant engineer and such additional assistants to be paid out of any money appropriated for that purpose, on certificates of the State engineer showing the amount of such employment and the compensation therefor, and on the presentation of such certificate to the State auditor he shall issue a warrant on the State treasurer for the amount thereof.

Traveling expenses allowed. SEC. 11. When the State engineer or his assistant engineer is called away from his office 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; such certificate shall be presented to the State auditor, who shall thereupon draw upon the State treasurer for the amount thereof.

Report of engineer. SEC. 12. The State engineer shall prepare and render to the governor biennially, and oftener if required, full and true reports of his work touching all the matters and duties devolving upon him by virtue of his office, which report shall be delivered to the governor on or before the thirtieth day of November of the year preceding the regular session of the legislature.

¹ As amended, 1895.

Division Superintendents.

Appointment and term. SEC. 13. There shall be one superintendent for each of the water divisions by this act created, who shall be appointed by the governor, with the consent of the senate, who shall hold his office for four years, or until his successor is appointed and shall have qualified, and who shall reside in the water district [division] for which he is appointed. 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 shall perform such duties as shall devolve upon him as a member of the board of control.

Duties. SEC. 14. Said division superintendent shall have general control over the water commissioners of the several districts within his division. He shall, under the general supervision of 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 to him by the State engineer.

May make regulations. SEC. 15. Said division superintendent shall, in the distribution of water, be governed by this act and acts now in force, but, for the better discharge of his duties, he shall have authority to make such other regulations to secure the equal and fair distribution of water, in accordance with the rights of priority of appropriation, as may, in his judgment, be needed in his division: *Provided*, Such regulations shall not

Proviso. be in violation of any part of this act or other laws of the State, but shall be merely supplementary to and necessary to enforce the provisions of the general laws and amendments thereto.

Appeal from. SEC. 16. Any person, ditch company, or ditch owner who may deem himself injured or discriminated against by any such order or regulations of such division superintendent shall have the right to appeal from the same to the State engineer, by filing with the State engineer a copy of the order or regulation complained of and a statement of the manner in which the same injuriously affects the petitioner's interest. The State engineer shall, after due notice, hear whatever testimony may be brought forward by the petitioner, either orally or by affidavit, and through the division superintendent shall have power to suspend, amend, or confirm the order complained of.

Water commissioners to report to superintendent; reports filed; order of superintendent. SEC. 17. All water commissioners shall make reports to the division superintendent of their division as often as may be deemed necessary by said superintendent. Said reports shall contain the following information: 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 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, and the probability as to what the supply will be during the period before the next report will be required; and such other further information as the division superintendent of that division may suggest. Said division superintendent shall carefully file and preserve such reports, and shall from them 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 division of that district (district of that division) any ditch, canal, or reservoir is receiving water whose priority post-dates that of the ditch, canal, or reservoir in another district as ascertained from his register, 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 directed at all times 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, or reservoirs may be located. The reports of water commissioners to the division superintendents of irrigation shall be filed and kept in the office of State engineer.

Pay of superintendent; his oath and bond. SEC. 18.¹ Said division superintendents of water divisions Nos. 2, 3, and 4 shall each be paid eight dollars per day for every day actually consumed in the performance of his duties as such division superintendent. Superintendent of water division No. 1 shall receive annually a salary of one thousand five hundred dollars payable in monthly installments, and shall, in addition, be paid his actual traveling expenses when called away from home to the performance of his duties. Before entering upon the duties of his office such division superintendent shall

¹ As amended, 1899.

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, and file with the secretary of state said oath and his official bond in the penal sum of two thousand five hundred dollars, with not less than two sureties, to be approved by the governor of the State, and conditioned for the faithful discharge of the duties of his office.

How constituted; meetings and officers.

SEC. 19.¹ There is hereby constituted a board of control, composed of the State engineer and the superintendents of the four water divisions. Said board shall have an office with the State engineer, in the capitol, at Cheyenne, and shall hold two meetings each year for the transaction of such business as may come before it, the first of said meetings to begin on the second Wednesday in March and the second on the third Wednesday in October. The State engineer shall be ex officio president of said board, and shall have the right to vote on all questions coming before it, and a majority of all the members of said board shall constitute a quorum to transact business. The superintendent of water division No. 1 shall be the secretary of the State board of control, and it shall be his duty to keep a full, true, and complete record of the transactions of said board and to certify under seal all certificates of appropriation of water made in accordance with the provisions of this act.

Duty at first meeting; measurement of streams; taking testimony; notice to claimants; statement of claimant.

SEC. 20. It shall be the duty of said board at its first meeting to make proper arrangements for beginning the determination of the priorities of right to the use of the public waters of the State, which determination shall begin on the streams most used for irrigation and be continued as rapidly as practicable until all the claims for appropriation now on record shall have been adjudicated. The method of determining the priority and amounts of appropriation shall be as follows:

The board of control shall decide at their first meeting the streams to be first adjudicated, and shall fix a time for beginning the taking of testimony and the making of such examination as will enable them to determine the rights of the various claimants. Said board shall prepare a notice, setting forth the date when the engineer will begin a measurement of the stream and the ditches diverting the water therefrom, and a place and a day certain when the superintendent of the water 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 shall be published in two issues of a newspaper having general circulation in the county in which such stream is situated, the publication of said notice to be at least thirty days prior to the beginning of taking testimony by said division superintendent, or for the measurement of the stream by the State engineer or his assistant, and the superintendent taking such testimony shall have the power to adjourn the taking of evidence from time to time and from place to place: *Provided*, All places appointed and adjourned to by the superintendent shall be so situated, as related to the streams, as shall best suit the proper convenience of the persons interested in the determination of such priorities and appropriations. It shall also be the duty of said division superintendent to mail to each party having a recorded claim to the waters of such stream, by registered mail, a similar notice, setting forth the date when the State engineer or his assistant will begin the examination of the stream and ditches diverting water therefrom, and also the date when the superintendent will begin the taking of testimony and the date when the taking of such testimony by said division 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 water of said stream to which he lays claim; the said statement to include the following:

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 the 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 enlargements.

The dimensions of the ditch as originally constructed and as enlarged.

The date when water was first used for irrigation or other beneficial purposes, and if used for irrigation, the amount of land reclaimed the first year; the amount

¹ As amended, 1895.

in subsequent years, with the 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.

Statements to be under oath. SEC. 21. Each of said claimants shall be required to certify to his statements under oath, and the superintendent of the water division in which the testimony is taken is hereby authorized to administer such oath, which shall be done without charge to the claimant, as also shall be the furnishing of blank forms for said statement.

Superintendent takes testimony, when; notice upon completion of testimony. SEC. 22. Upon the date named in the preceding notice the division superintendent shall begin the taking of said testimony, and shall continue until said testimony shall be completed: *Provided*, That in case the division superintendent of any water district [division] is directly or indirectly interested in the water of any stream of his division, the taking of evidence in 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. Upon the completion of the taking of evidence by the division superintendent it shall be his duty to 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 place named in the notice all of said evidence shall be open to the inspection of the various claimants, and said superintendent shall keep said evidence open to inspection at said place not less than one day and not more than five days.

Contests. SEC. 23.¹ Should any person, corporation, or association of persons owning any irrigation works claim[ing] any interest in the stream or streams involved in the adjudication, desire to contest any of the rights of the persons, corporations, or associations who have submitted their evidence to the superintendent as aforesaid, such persons, corporations, or associations shall, within fifteen days after the testimony so taken shall have been opened to public inspection, as provided in section twenty-two of said act, in writing, notify the superintendent of the water division in which is located said irrigation works or stream or streams, stating with reasonable certainty the ground of their proposed contest, which statement shall be verified by the affidavit of the contestant, his agent or attorney, and the said division superintendent shall notify the said contestant and the person, corporation, or association whose rights are contested, to appear before him at such convenient place as the superintendent shall designate in such notice. Said superintendent shall also fix the time, both as to the day and hour, for the hearing of said contest, which date shall not be less than thirty nor more than sixty days from the date the notice is served on the party, association, or corporation, which notice and the return thereof shall be made in the same manner as summons are served in civil actions in the district court of this State.

Superintendents of water divisions shall have power to adjourn hearings from time to time upon reasonable notice to all the parties interested, and to issue subpoenas and compel the attendance of witnesses to testify upon such hearings, which shall be served in the same manner as subpoenas issued out of the district courts of the State, and shall have the power to compel such witnesses so subpoenaed to testify and give evidence in said matter; said witnesses shall receive fees as in civil cases, to be paid by the party or parties against whom the contest shall be finally determined.

The evidence on such proceeding shall be confined to the subjects enumerated in the notice of contest.

The superintendent shall require a deposit of eight dollars from each party for each day he shall be so engaged in taking evidence on said contest.

Upon the final determination of the adjudication of the matters by the board of control, an order shall be entered directing that the money so deposited shall be refunded to the persons, associations, or corporations, in whose favor such contest shall be determined, and that all moneys deposited by other parties therein shall be turned over by the superintendent to the State treasury to the credit of the fund provided for the maintenance of the board of control.

Upon the completion of the evidence in the original hearing before the superintendent, as provided in the previous section, and the evidence taken in all contests, it shall be his duty to transmit all the evidence and testimony in said adjudication to the office of the board of control, in person or by registered mail.

¹ As amended, 1895.

Measurement of stream and ditches.

SEC. 24. It shall be the duty of the State engineer, or some qualified assistant, to proceed at the time specified in the notice to the parties on said stream to be adjudicated, to make an examination of said stream, and 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 shall be the duty of the State engineer to make, or cause to be made, a map or plat, on a scale of not less than one inch to the mile, showing, with substantial accuracy, the course of said stream, the location of each ditch or canal diverting water therefrom, and the legal subdivisions of land which have been irrigated, or which are susceptible of irrigation, from the ditches and canals already constructed.

Order determining priorities.

SEC. 25. At the first regular meeting of the board of control, after the completion of such measurement by the State engineer, and the return of said evidence by said division superintendent, it shall be the duty of the board of control 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 waters of said stream, and the amounts of appropriations of the several persons claiming water from such 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: *Provided*, That such appropriator shall at no time be 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 an 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.

Certificate of appropriation.

SEC. 26.¹ Within a reasonable time after the determination of the priorities of appropriation of the use of waters of any stream, it shall be the duty of the secretary to issue to each person, association, or corporation represented in such determination, a certificate, to be signed by the State engineer, as president of the board of control, and attested under seal by the secretary of said board, setting forth the name and post-office address of the appropriator; the priority number of such appropriation; the amount of water appropriated; and if such appropriation be for irrigation, a description of the legal subdivisions of land to which said water is to be applied. Such certificate shall be transmitted by said State engineer, or by a member of the board of control in person, or by registered mail, to the county clerk of the county in which such appropriation shall have been made, and it shall be the duty of said county clerk, on receipt of the same, to notify said party or parties in whose favor the said certificate is issued, that on payment of the fee for recording, which fee shall be seventy-five cents, he will record the same; and on receipt of said fee he shall so record the same in a book especially prepared and kept for that purpose.

Appeal from board allowed.

SEC. 27. Any party, or number of parties acting jointly, who may feel themselves aggrieved by the determination of the board of control, may have an appeal from the board of control to the district court of the judicial district within which the appropriation or appropriations of the party or parties so aggrieved may be situated. All persons joining in the appeal shall be joined as appellants, and all persons having interests adverse to the parties appealing, or either of them, shall be joined appellees.

Proceedings on appeal.

SEC. 28. The party or parties appealing shall, within sixty days of the determination of the board of control, which is appealed from, and the entry thereof in the records of the board, 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 shall be deemed to have been taken: *Provided, however*, That the party or parties appealing shall, within the sixty days mentioned, enter into an undertaking, to be approved by the district court or judge thereof, and to be given to all the parties in the said suit or proceeding, other than the parties appealing, and to be in such an amount as the court or judge thereof shall fix, conditioned that the parties

¹ As amended, 1895.

giving their said undertaking shall prosecute their appeal to effect, and without unnecessary delay, and will 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.

Notice of appeal. SEC. 29.¹ The clerk of the district court shall immediately upon filing of said notice of appeal and the approval of the bond mentioned in section twenty-eight, transmit to the secretary of the board of control a notice over the seal of the court to the effect that said appeal has been perfected, which notice shall be entered of record by the secretary in the records of the board of control, and the appellant or appellants [shall] cause a certified copy thereof to be served on each of the appellees, serving the same in the manner provided for the serving of a summons in the district court.

Transcript and petition to be filed. SEC. 30.¹ The appellant or appellants shall within six months after the appeal, as provided for in sections twenty-seven, twenty-eight, and twenty-nine, is perfected, file in the office of the clerk of the district court a certified transcript of the order of determination made by the board of control, and which is appealed from, a certified copy of all the records of the board of control relating to such determination, and a certified copy of all the evidence offered before the board of control, including the measurements of streams, tributaries, and ditches, provided for by section twenty-four, together with the petition setting out the cause of complaint of the party or parties appealing, to which petition all parties joined as appellees shall be served with notice by the issuance of summons out of the office of the clerk of such district court within the time and manner provided by law for the issuance and service of summons in actions of law; and all proceedings of appeal shall be conducted according to the provisions of the civil code of procedure and the practice of appeals from the district courts of the State to the supreme court: *Provided*, That all hearings in the district court on appeal be had upon the evidence theretofore taken, and certified from the office of the board of control, and no new evidence shall be permitted, unless it shall appear by proper and satisfactory showing that new evidence has been discovered which could not with reasonable diligence have been discovered prior to the final hearing before the board.

It shall be the duty of the clerk of the district court immediately upon the entry of any judgment, order, or decree by the district court, or by the judge thereof, in an appeal from the decision of the board of control to transmit a certified copy of said judgment, order, or decree to the secretary of the State board of control. It shall be the duty of the secretary to immediately enter the same upon the records of such office, and the State engineer shall forthwith issue to the superintendent or superintendents of water divisions instructions in compliance with the said judgment, order, or decree, and in execution thereof. All costs made and accruing by reason of such appeal shall be adjudged to be paid by the party or parties against whom such appeal shall be finally determined.

During the time an appeal from order of the board of control is pending in the district court, and until a certified copy of the judgment, order, or decree of the district court is transmitted to the State engineer, the division of water from the stream involved in such appeal shall be made in accordance with the order of the board of control.

Proviso. *Provided*, That at any time after the appeal has been perfected the appellant or appellants may stay the operations of said decree appealed from by filing a bond in the district court, wherein such appeal is pending, in such amount as the judge thereof may designate, conditioned that he will pay all damages that may accrue to the appellee or appellees by reason of such order or decree not being enforced, should the proceedings and appeal be decided against the appellant. And immediately upon the filing and approval of such bond to stay the operations of the decree, the clerk of the district court shall transmit to the board of control a notice over the seal of the court to the effect that such bond has been filed, and that the operations of such decree are stayed during the pending of such appeal proceedings. This notice shall be recorded in the records of the board of control, and the State engineer shall immediately give proper notice to the superintendent of the water division wherein such appeal may have been taken.

Transfer of county records to engineer. SEC. 31. Within thirty days from the passage of this act it shall be the duty of the county clerk, in each of the counties of this State, to prepare a full and complete transcript of all the claims to appropriations of water now on file in their respective offices, and to transmit the same without delay to the State engi-

¹ As amended, 1895.

neer, by express or registered mail, for which service he shall be paid by the county the sum of four dollars per day for each and every day required to prepare said transcript: *Provided*, That the county clerk shall, in place of such abstract, transmit such original records of claims to water as are recorded in books kept specially for that purpose. It shall also be 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, now on file in the offices of said clerks of the district courts in the various counties of the State.

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

Who to be notified. SEC. 33. In issuing notices to claimants, in priority adjudications of the waters of any stream and its tributaries, as provided in section twenty of this act, 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.

Application for right to appropriate water. SEC. 34.¹ Any person, association, or corporation hereafter intending to acquire the right to the beneficial use of the public water of the State of Wyoming, shall, before commencing the construction, enlargement, or extension of any ditch, canal, or other distributing works, or performing any work in connection with said construction or proposed appropriation, make an application to the State engineer for a permit to make such appropriation. Such application must set forth the name and post-office address of the applicant; the source of the water supply; the nature of the proposed use; the location and descriptions of the proposed ditch, canal, or other work; the time within which it is proposed to begin construction; the time required for the completion of construction; and the time required for the complete application of the water to the proposed use.

In case the proposed right of use is for agricultural purposes, the application shall give the legal subdivisions of land proposed to be irrigated, with the total acreage to be reclaimed, as near as may be. On receipt of this application, which shall be of a form prescribed by the State engineer, it shall be the duty of that officer to make an indorsement thereon of the date of its receipt, and to make a record of such receipt in some suitable book in his office. It shall be his duty to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature, and amount of the proposed use. If upon such examination the application is found defective, it shall be the duty of the State engineer to return the same for correction; the date of such return, with the reasons therefor, shall be indorsed on the application and a record made thereof in the book kept for recording receipts of such applications. A like record shall be kept of the date of the return of corrected applications and of the date of the refusal and return of applications rejected.

All applications which shall comply with the provisions of this act and with the regulations of the engineer's office, shall be recorded in a suitable book kept for that purpose; and it shall be the duty of the State engineer to approve all applications made in proper form, which contemplate the application of the water to a beneficial use and where the proposed use does not tend to 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 conflicts 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 and refuse to issue the permit asked for.

The refusal or approval of an application shall be indorsed thereon and a record made of such indorsement in the State engineer's office. The application so indorsed 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 a beneficial use and to perfect the proposed appropriation. If the application is refused, the applicant shall take no steps toward the prosecution of the proposed work, or the diversion and use of the public water, so long as such refusal shall continue in force.

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, in the case of applications proposing to divert more than

¹As amended, 1895.

twenty-five cubic feet of water per second of time, or to reclaim over one thousand acres of land, 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, the amount of its authorized and of 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 construct the work, 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.

In his indorsement of approval on any application, the State engineer shall require that actual construction work shall begin within one year from the date of such approval, and that the construction of any proposed irrigation work shall be completed within a period of five years from the date of such approval. He may limit the application to a less period of time for the completion of work than is asked for, and likewise the perfecting of the proposed right for a less period than named in the application. That the State engineer shall have authority, for good cause shown, to extend the time within which irrigation or other works shall be completed, and under any permit therefor issued by said engineer.

Any applicant feeling himself aggrieved by the indorsement made by the State engineer upon his application, may, in writing, in an informal manner, and without pleadings of any character, appeal to the board of control for an examination and reversal of the indorsement of the State engineer; and if he shall deem himself aggrieved by the order made by the board of control, with reference to his application, he may take an appeal therefrom to the district court of the county in which the point of diversion of the proposed appropriation shall be situated. Such appeal shall be taken within sixty days from the issuance of the order by the board of control, and shall be perfected when the applicant shall have filed in the office of the clerk of such district court a copy of the order appealed from, certified by the secretary of the board of control as a true copy, together with the petition to such court setting forth the appellant's reason for appeal. Such appeal shall be heard and determined upon such competent proof as shall be adduced by applicant, and such like proofs as shall be adduced by the board of control, or some person duly authorized in its behalf.

Map to be filed. SEC. 35.¹ Each application for permit to appropriate water for beneficial uses must be accompanied by a map or plat in duplicate showing accurately the location and extent of the proposed work.

These maps or plats must be drawn on tracing linen, on a scale not less than two inches to the mile; they must show the location of the head gate or point of diversion by courses and distances from some Government corner; they must show the actual location of the ditch or canal, or water line of the reservoir, and must show, wherever section lines are crossed, the distance to the nearest Government corner. The map or plat must show the course of the river, stream, or other source of supply, the location and area of all land proposed to be reclaimed, the position and area of all reservoirs or basins intended to be created for the purpose of storing water; the location of the intersection with all other canals, ditches, laterals, or reservoirs which are crossed by this work or with which connections are made; but all streams and all intersecting ditches, canals, and reservoirs not connected with the proposed work must be represented in ink of a different color from that used to represent the proposed work. These maps must contain the name of the proposed work, and, where possible, the number of the permit. They must, in addition, have the name or names of the applicant or applicants, and a certificate of the surveyor giving the date of survey, his name and post-office address.

It shall be the duty of the State engineer to examine these maps or plats and to ascertain if they agree with the description contained in the application, and when found to agree, or made to agree, to approve the same, file one copy in his office and return the other, approved, to the party filing them.

In case of ditches or canals carrying more than fifty cubic feet of water per second the engineer may require, in addition to maps or plats above described, the following:

A longitudinal profile of the ditch showing the bottom and proposed water line; the horizontal scale of this line shall not be less than one inch to one thousand feet, and the vertical scale not less than one inch to twenty feet.

A plan showing cross sections at a sufficient number of points to show all the different forms which the ditch when completed will take, and showing what

¹ As amended, 1895.

portion of the water is to be conveyed in excavation, and what portion to be conveyed in fill. These plans shall be drawn on a horizontal and vertical scale of one inch to twenty feet.

Plans of any dams, cribs, embankments or other proposed works to obstruct any river, stream, lake or pond, or other source of water supply, shall be drawn on a longitudinal scale of not less than one inch to two hundred feet, and for cross sections on a scale of not less than one inch to twenty feet; and shall show what material is intended to be used and placed in such work. Timber, brush, stone or other material except earth used in such works shall be shown in detail on a plan, the scale of which shall not be less than one inch to four feet. The maps of all proposed reservoirs shall show the surface of the ground under water, and a sufficient number of lines of level shall be shown so that the contents of the reservoir or basin may be accurately determined. If the levels shall be shown by contour lines, they shall be on a scale sufficiently large to show vertical levels not exceeding five feet, and with all such reservoir plans there shall be furnished a plan, on a scale of not less than one inch to four feet, showing the method of providing a waste way for such reservoir and the method of drawing off the water from such reservoir or basin.

Certificate to appropriator. SEC. 36. Upon it being made to appear to the satisfaction of the board of control that any appropriation made in pursuance of the application of this act provided for has been perfected in accordance with such application, and the endorsement thereon by the State engineer, it shall be the duty of the board of control, by the hand of its president, attested under the seal of the secretary, to send to the county clerk certificate of the same character as that described in section twenty-six of this act, which said certificate shall be recorded in the office of the county clerk, as provided in section twenty-six of this act.

Date of priority. SEC. 37. The priority of such appropriation shall date from the filing of the application in the engineer's office.

Legal standard. SEC. 38. A cubic foot of water per second of time shall be the legal standard for the 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.

County to pay expense of printing. SEC. 39. All bills for the printing of notices to claimants of water in the adjudications provided for in this act shall be paid for by the county in which the stream, the appropriation of whose waters shall have been so adjudicated, shall be situated, the said bills to be approved by the superintendent of the water division in which the adjudication is made.

Districts. SEC. 40. The board of control shall divide the State into water districts, said 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; said water districts shall not 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.

Commissioner, how appointed. SEC. 41. For each water district created under this act there shall be appointed one commissioner, who shall be a resident of the district in which he is to serve, and who shall be appointed by the governor, to be selected by him from persons recommended to him by the superintendent of the water division in which such water district is situated. Each commissioner shall hold his office two years and until his successor is appointed and has qualified, and the governor shall by like selection and appointment fill all vacancies which may occur in the office of water commissioner, and may at any time remove any water commissioner for failure to perform his duties as such water commissioner, upon complaint in that respect being made to him in writing.

Duties; penalty for interference; power to arrest. SEC. 42. It shall be the duty of said water commissioner to divide the water in the natural stream or streams of his district among the several ditches taking water therefrom, according to the prior rights of each, respectively, 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 water 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 so to do by reason of the priority of rights of others taking water from the same stream, or its tributaries. Every person who shall wilfully open, close, change, or interfere with any head gate or water box without authority shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined a sum not exceeding one hundred dollars, or to be imprisoned in the county jail for a term not to exceed six months, or by both such fine and imprisonment.

The water commissioners or their assistants, within their districts, shall have power to arrest any person or persons offending, and turn them over to the sheriff of the proper county, and immediately upon delivering any such person so arrested into the custody of the sheriff, it shall be the duty of the water commissioner making such arrest to immediately, in writing and upon oath, make complaint before the proper justice of the peace against the person so arrested.

Pay of. SEC. 43. Water commissioners herein provided for shall each be entitled to pay at the rate of five dollars per day for each day he shall be actively employed in the duties of his office, to be paid by the county in which the work is performed. Each water commissioner shall keep a just and true account of the time spent by him in the duties of his office, and the time spent by him in the performance of his duties in each county, respectively, into which his water 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 the same.

Assistants. SEC. 44. Said water commissioner shall have power, in case of emergency, to employ suitable assistants to aid him in the discharge of his duties. Such assistants shall take the same oaths as the water commissioner, and shall obey his instructions, and each shall be entitled to four dollars per day for every day he is employed, not to exceed thirty-five days in one year, to be paid upon certificates of the division superintendent, in the same manner as provided for the payment of the water commissioners.

When to begin work. SEC. 45. Said water commissioners shall not begin their work until they have been called upon by two or more owners or managers of ditches, or persons controlling ditches in the several districts, by application in writing, stating that there is a necessity for the use of water; and they shall not continue performing services after the necessity therefor shall cease.

Head gate; measuring flume; when not constructed. SEC. 46. The appropriator of any of the public waters of the State shall maintain, to the satisfaction of the division superintendent of the district in which such appropriation is made, a substantial head gate at the point where the water is diverted, which shall be of such construction that it can be locked and kept closed by the water commissioner; and such appropriator shall 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 purpose of assisting the water commissioner in determining the amount of water that may be diverted into said ditch from the stream. If any owner or appropriator of public waters that may have been adjudicated upon should neglect or refuse to put in such head gate, or measuring device, after thirty days' notice to do so by the division superintendent, the said superintendent may notify the county commissioners of the county where such head gate, flume, or measuring device is [should be] situated, and it shall be the duty of said county commissioners, when so notified by said division superintendent, to put in such head gate, flume, or measuring device at the expense of the county where the expense is incurred, and present a bill of costs to the owner or owners of the ditch, and if such owner or owners shall refuse or neglect, for three days after the presentation of such bill of costs, to pay the same, the said costs shall be made a charge upon the said ditch, and shall be collected as delinquent taxes, and be subject to the same conditions and penalties as other delinquent taxes, and until the full and complete payment of such bill of costs, it shall be the duty of the water commissioner of the district in which such ditch is situated 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 from the source of supply.

Pending cases, procedure in. SEC. 47. All cases relating to the adjudication of priorities of rights to the use of water for beneficial purposes, in any of the water districts of this State, now pending in any of the district courts of the State, excepting such cases which may have been, by any such courts by order, referred to the board of control may remain in said courts, and said courts shall proceed with the adjudication thereof in accordance with the laws in force at the time of the inception of such cases: *Provided*, That said court, or judge thereof in vacation, may, in its discretion, on the application of the parties interested, transfer any such case for adjudication to the board of control. All such cases which may have been, in the manner aforesaid, referred by any district court to the board of control shall, together with all the testimony heretofore taken in said cases, and with all the papers and pleadings relative thereto, and a copy of all journal entries made in the case, at once, on the passage of this act, be transferred by the

clerk of such district court into the custody of the division superintendent of the division in which said adjudication may have been begun, and said division superintendent shall, as soon as possible, complete the taking of such testimony, and it shall be the duty of the board of control to first determine the rights of the parties on those streams where such determination has begun, and is unfinished at the time of the passage of this act.

WATER-RIGHT FORMS USED IN WYOMING.

Application for a permit to divert and appropriate the water of the State of Wyoming.

Water division No. —. District No. —.

I, ———, of ———, county of ———, State of ———, being duly sworn according to law, upon my oath say:

1. The name of the applicant ———.
2. The post-office address of the applicant ———.
3. The use to which the water is to be applied is ———.
4. The name of the ditch or canal is ———.
5. The source of the proposed appropriation is ———.
6. The head gate of the proposed ditch or canal is located ——— of section ———, township ———, range ———.
7. The said ditch or canal is to be ——— miles long and to pass through the following lands (give route by courses and distances, or by naming legal subdivisions crossed).

8. The dimensions of said works are: (a) [At head gate] width on top (at water line), ——— feet; width on bottom, ——— feet; depth of water, ——— feet; grade, ——— feet per mile.

(b) Give diminsions at each point where reduced in size, stating miles from head gate.

[At ———] width on top (at water line), ——— feet; width on bottom, ——— feet; depth of water, ——— feet; grade, ——— feet per mile.

[At ———] width on top (at water line) ——— feet; width on bottom, ——— feet; depth of water, ——— feet; grade, ——— feet per mile.

[At ———] width on top (at water line), ——— feet; width on bottom, ——— feet; depth of water, ——— feet; grade, ——— feet per mile.

9. Describe the character of proposed works, stating: First. The nature of material to be moved. Second. Number and length of tunnels, if any. Third. Amount of fluming, if any.

10. The estimated cost of said ditch is ——— dollars.

11. The land to be irrigated has a total area of ——— acres, described as follows: (Give estimated acreage in fractions of subdivisions.)

12. Construction will begin on proposed works on or before ———, 1——.

13. The time required for the completion of ditches and other distributing works is ——— year from ———, 1——.

14. The time required to complete the application of water to the beneficial use stated in this application is ——— year from ———, 1——.

15. A map of the proposed ditch or canal, prepared in accordance with chapter 45, Session Laws of 1895, accompanies this application.

Signed: ———.

NOTE.—The statements in the foregoing application must comply with the requirements of chapter 45, Session Laws of 1895.

THE STATE OF WYOMING, *County of* ———, ss:

I hereby certify that the foregoing application was signed in my presence and sworn to before me by ——— this ——— day of ———, 1——.

THE STATE OF WYOMING, *State Engineer's Office*, ss:

This is to certify that I have examined the foregoing application and have returned the same without my approval for the following reasons: ———.

Witness my hand this ——— day of ———, A. D. 1——.

State Engineer.

THE STATE OF WYOMING, *State Engineer's Office, ss:*

This is to certify that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions:

Construction of proposed work shall begin within one year from date of approval.

The time for completing the work shall terminate on December 31, 1—.

The time for completing the appropriation of water for beneficial use shall terminate on December 31, 1—.

The amount of the appropriation shall be limited to 1 cubic foot per second of time for each 70 acres of land reclaimed on or before December 31, 1—, and the additional volume used for — purposes on or before said date.

Witness my hand this — day of —, A. D. 1—.

State Engineer.

No. —.

Application for a permit to appropriate the water of the State of Wyoming.

Division No. —. District No. —.

THE STATE OF WYOMING, *State Engineer's Office, ss:*

This instrument was received and filed for record on the — day of —, A. D. 1—, at — o'clock —, m., and duly recorded in book — of — on page —.

State Engineer.

Letter which accompanies blank form of proof of appropriation mailed to irrigators in advance of submission of testimony showing right to the beneficial use of water.

_____, 189—.

M _____.

DEAR SIR: Your attention is called to the inclosed proof of appropriation. It is the intention of the law and also of the board of control to make the adjudication of rights to the use of water as inexpensive to the appropriator as possible. Consequently you are requested to cooperate with the division superintendent to whom you submit your testimony to the extent that you prepare yourself to answer all questions readily and accurately before the day set for submitting said testimony.

Your special attention is called to those questions whose answers indicate the date of your appropriation and use of the water, and to the acreage of land irrigated and description thereof.

By complying with this request you will not only facilitate the taking of testimony, but will insure the correct establishment of the respective rights and possibly prevent expensive and aggravating litigation.

Yours, truly,

Division Superintendent.

Proof of appropriation of water.

Permit No. —.

(In accordance with the provisions of chapter 8, Session Laws of Wyoming, 1890-91, and amendment of 1895.)

From _____, Division No. —, District No. —.

1. Q. State your name. A. _____.
2. Q. Post-office address. A. _____.
3. Q. Are you the original applicant for permit No. —? A. _____.
4. Q. If not, state the date of your securing an interest therein and the nature of your interest in the works constructed under such permit. A. _____.
5. Q. When did construction of the — ditch (or other distributing works described in said permit) begin? A. _____.
6. Q. When was it completed? A. _____.

7. Q. What are the dimensions of the ditch (or other distributing works) built under said permit? A. _____.

8. Q. Give the legal subdivisions of land owned or controlled by you on which water has been used, and if an appropriation of water for irrigation is claimed, give the acreage which has been irrigated in each legal subdivision. A. _____.

9. Give the date when, under the terms of this permit, water was first beneficially used. A. _____.

10. Q. If for irrigation, give the location and acreage irrigated the first year and the location and acreage irrigated each subsequent year to the present. A. _____.

11. Q. What crops were grown on this land in 189—? Give estimated acreage of each crop. A. _____.

12. Q. During what months is water beneficially used? A. _____.

13. Q. Give amount of your investment in the construction of ditch and laterals. A. _____.

14. Q. Give estimated cost per acre of preparing land for irrigation. A. _____.

15. Q. Does the map which accompanies this proof show correctly the size and location of diverting works and area of land where water was used? A. _____.

THE STATE OF WYOMING, *County of* _____, ss:

I, _____, being first duly sworn, do depose and say that I have read the above and foregoing proof of appropriation of water; that I know the contents thereof, and that the facts therein stated are true.

In witness whereof I have hereunto set my hand this _____ day of _____, A. D. 189—.

_____,
_____, Wyo., _____, 189—.

I hereby certify that the foregoing affidavit was read to the affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by _____), and that I verily believe him to be a credible person and the person he represents himself to be; and that this affidavit was subscribed and sworn to before me at _____ on this _____ day of _____, 189—.

NOTE.—This proof is intended to be used only by parties making appropriations under permits issued in accordance with chapter 8, Session Laws 1890-91.

The map referred to in paragraph 15 must show the entire work in the case of individual ditches. In the case of larger works only one map of the entire canal need be filed. Individual proof must, however, show ditch from point of diversion from main canal and all laterals on land reclaimed. Where the duplicate map filed in the State engineer's office and returned to the applicant gives necessary details and shows accurately the location of completed work, it may be filed.

This proof should be carefully verified and acknowledged before a person authorized to administer oaths.

The map which accompanies this proof must be on tracing linen, be accurately drawn on a scale not less than 2 inches to the mile, and verified by the party making the measurements.

Application No. —. _____ ditch. Taking water from _____. Water division No. _____, in _____ County.

I, _____, do hereby certify that after giving notice to _____, the applicant for certificate of appropriation of water, in accordance with the conditions of the above-named permit, I made on _____ an examination of the above-named ditch and of the lands for which an appropriation is claimed.

A measurement of the ditch at _____ gave the following dimensions:

Width on bottom, _____ feet; width at surface of water, _____ feet; depth, _____ feet.

I found the ditch (here state, if the ditch is carrying water, the depth and velocity of flow; if not carrying water, the depth of water it has carried).

I would further report that I visited and personally examined each legal subdivision of land for which an appropriation is claimed, and found that the following acreage has been irrigated in each 40-acre tract: _____.

On this land the following crops were grown in 189—: _____ acres _____.

I found _____ laterals which showed evidence of use, and that they are large enough and so located as to fully irrigate and reclaim the land above described.

I recommend that a certificate of appropriation be issued for the lands reclaimed.

Report of official examiner.

I hereby certify that an official inspection and measurement of the ——— and of the lands described in the foregoing proof of appropriation of water was made by ——— on the ——— day of ———, 189—, and that the results of such inspection are given in the foregoing report. In accordance therewith I hereby submit the following recommendation: ———.

Superintendent Water Division No.—.

Proof of appropriation under permit No.—

Division No. —. District No. —. From ———. Name of appropriator,

Filed with me this ——— day of ———, 189—.

Superintendent.

Filed in this office this ——— day of ———, 189—.

President Board of Control.

STATE OF WYOMING.

Proof of the appropriation of water.

From ———. Division No. —. State your name, ———.

1. Q. Post-office. A. ———.
 2. Q. State the use to which the water has been applied. A. ———.
 3. Q. State the means of diversion employed. A. ———.
 4. Q. If through a ditch, state its name. A. ———.
 5. Q. (a) State the date of the survey of the ditch or other distributing works through which the water claimed is diverted. (b) The date when the construction of such ditch was begun and when completed. A. (a) ———. (b) ———.
 6. Q. If any enlargements were made, state the date when begun and the date when completed. A. ———.
 7. Q. State the dimensions of the ditch as originally constructed, and as enlarged, and, if measured by the county surveyor under the provisions of the act of 1886, give the results of such measurements. A. ———.
 8. Q. State the name of person, association of persons, or corporation who built the ditch or canal, and the name or names of its present owners. A. ———.
 9. Q. If water is claimed for irrigation, give the legal subdivisions of land owned or controlled by you for which an appropriation is claimed. A. ———.
 10. Q. State the nature of your title to the above-described land, and if not owned by you give the name of the owner and the nature of the possessory right which you exercise. A. ———.
 11. Q. State the year when water was first used for irrigation or other beneficial purposes, and by whom. A. ———.
 12. Q. If for irrigation, give the number of acres watered the first year, giving the legal subdivisions on which used and, as near as may be, the acres irrigated in each subdivision. A. ———.
 13. Q. State the number of acres watered each subsequent year, and give the legal subdivisions on which the water was used, and as near as may be the acres irrigated in each legal subdivision. A. ———.
 14. Q. State the number of acres irrigated from said ditch in 189—, and give the legal subdivisions on which water was used, and as near as may be the acres irrigated in each subdivision. A. ———.
 15. Q. State the acreage said ditch is capable of watering, give the legal subdivisions of land which it can be made to irrigate, and state who owns said land. A. ———.
 16. Q. State your proportionate interest in said ditch. A. ———.
- (16) The plat prepared by the State engineer is hereby accepted as showing correctly the location of the ——— ditch and the land which can be irrigated therefrom.¹ A. ———.

¹ In case there is objection to the official plat the parties objecting must, when giving proof, file a written statement of the reasons therefor, and must within thirty days file with the division superintendent a map of said ditch and irrigated lands, with affidavit of surveyor, giving date of survey, attached thereto.

17. Q. When does your irrigation season begin and when does it end? A. _____.
18. Q. If water is used for other purposes than irrigation, state the nature of such use and the time when such use began. A. _____.
19. Q. How much water is required for such purpose? A. _____.
20. Q. During what months is the water used? A. _____.
21. Q. Have you or any other claimant of said appropriation filed a claim to water in the office of the county clerk? If so, give date of filing and the name of the party or parties interested in said claim. A. _____.
22. Q. Have you had sufficient water each year since the use for which an appropriation is claimed began? A. _____.
23. Q. If not, state the years of scarcity, the months when the supply was insufficient, and the reason of such scarcity. A. _____.

Remarks: _____.

Signed: _____.

_____, Wyo., _____, 189—.

I hereby certify that the foregoing affidavit was read to the affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by _____), and that I verily believe him to be a credible person and the person he represents himself to be; and that this affidavit was subscribed and sworn to before me at _____ on this _____ day of _____, 189—.

Division Superintendent.

Division No. —. District No. —. From _____ Name of claimant,

Filed with me this _____ day of _____, 189—.

Superintendent.

Filed in this office this _____ day of _____, 189—.

President Board of Control.

THE STATE OF WYOMING.

Certificate of appropriation of water.

Whereas _____, of _____ County, Wyoming, has presented to the board of control of the State of Wyoming proof of the appropriation of water from _____ through the _____ for _____.

Now know ye, that the board of control, under the provisions of chapter 8 of the Session Laws of 1890-91, entitled "An act providing for the supervision and use of the waters of the State," approved December 22, 1890, has, by an order dated the _____ day of _____, A. D. 189—, determined and established the priority and amount of appropriation as follows: Name of appropriator, _____; post-office address, _____; number of general priority, _____; first appropriation, _____; number of priority on _____; first appropriation, _____; amount of first appropriation, _____ cubic feet per second; date of first appropriation, _____; description of land to be irrigated, _____.

In testimony whereof I, _____, president of the State board of control, have hereunto set my hand this _____ day of _____, A. D. 189—. and caused the seal of said board to be hereunto affixed.

[SEAL.]

Attest:

Secretary.

President.

WATER LAWS OF NORTHWEST TERRITORIES OF CANADA.

61 VICTORIA, CHAPTER 35.

AN ACT to amend and consolidate the northwest irrigation acts of 1894 and 1895. [Assented to 13th June, 1898.]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short title. 1 This act may be cited as the Northwest Irrigation Act, 1898.

Interpretation. 2. In this act, unless the context otherwise requires—

Minister. (a) The expression "minister" means the minister of the interior;

Department. (b) The expression "department" means the department of the interior at Ottawa;

Commissioner. (c) The expression "commissioner" means the commissioner of public works for the Northwest Territories;

Chief engineer. (d) The expression "chief engineer" means the chief engineer and surveyor of the department of the public works for the Northwest Territories;

Dominion land surveyor. (e) The expression "Dominion land surveyor" means a surveyor duly authorized, under the provisions of the Dominion lands act, to survey Dominion lands.

Company. (f) The expression "company" means any incorporated company, the object and powers of which extend to or include the construction or operation of irrigation or other works under this act, or the carrying on thereunder of the business of the supply or the sale of water for irrigation or other purposes, and includes any person who has been authorized or has applied for authority to construct or operate such works or carry on such business, or who has obtained a license under section 11 of this act, and also includes any irrigation district incorporated under an ordinance of the Northwest Territories;

Works. (g) The expression "works" means and includes any dykes, dams, weirs, flood gates, breakwaters, drains, ditches, basins, reservoirs, canals, tunnels, bridges, culverts, cribs, embankments, headworks, flumes, aqueducts, pipes, pumps, and any contrivance for carrying or conducting water or other works which are authorized to be constructed under the provisions of this act;

Duty of water. (h) The expression "duty of water" means the area of land that a unit of water will irrigate, which unit is the discharge of one cubic foot per second;

Licensee. (i) The expression "licensee" means any person or company who is granted a license in accordance with the provisions of this act.

Application. 3. This act shall apply to the Northwest Territories, except the provisional districts of Yukon, Mackenzie, Franklin, and Ungava.

Right to use waters. 4. The property in and the right to the use of all the water at any time in any river, stream, water course, lake, creek, ravine, cañon, lagoon, swamp, marsh, or other body of water shall, for the purposes of this act, be deemed to be vested in the Crown, unless and until except only so far as some right therein, or to the use thereof, inconsistent with the right of the Crown, and which is not a public right or a right common to the public, is established, and, save in the exercise of any legal right existing at the time of such diversion or use, no person shall divert or use any water from any river, stream, water course, lake, creek, ravine, cañon, lagoon, swamp, marsh, or other body of water, otherwise than under the provisions of this act.

Rights of grantee of Crown lands. 5. Except in pursuance of some agreement or undertaking existing at the time of the passing of this act, no grant shall be hereafter made by the

Crown of lands or of any estate, in such terms as to vest in the grantee any exclusive or other property or interest in or any exclusive right or privilege with

respect to any lake, river, stream, or other body of water, or in or with respect to the water contained or flowing therein, or the land forming the bed or shore thereof.

Right to use waters may be acquired only under this act.

6. After the passing of this act, no right to the permanent diversion or to the exclusive use of the water in any river, stream, water course, lake, creek, ravine, cañon, lagoon, swamp, marsh, or other body of water, shall be acquired by any riparian owner or any other person by length of use or otherwise than as it may be acquired or conferred under the provisions of this act, unless it is acquired by a grant made in pursuance of some agreement or undertaking existing at the time of the passing of this act.

Persons already holding a right must obtain license.

7. Every company or person who holds water rights of a class similar to those which may be acquired under this act, or who, with or without authority, has constructed or is operating works for the utilization of water, shall obtain a license under this act before the first day of July, one thousand eight hundred and ninety-eight.

If license is not obtained within stated time.

2. If such license is obtained within the time limited, the exercise of such rights may thereafter be continued, and such works may be carried on under the provisions of this act; otherwise such rights or works, and all the interest of such person therein, shall, without any demand or proceeding, be absolutely forfeited to Her Majesty, and may be disposed of or dealt with as the governor in council sees fit.

Application for license.

3. Except in case of applications for water for domestic purposes, as hereinafter provided, the applications for such license shall be made in the same manner as for other licenses under this act, and the like proceedings shall be had thereon and like information furnished in connection therewith.

Application for water rights which are vested in the Crown.

8. Any water the property in which is vested in the Crown may be acquired, for domestic, irrigation, or other purposes, upon application therefor as hereinafter provided; and all applications made in accordance with the provisions of this act shall have precedence, except applications under section seven, according to the date of filing them with the commissioner.

Water rights classified.

2. The purposes for which the right to water may be acquired are of three classes, namely: First, domestic purposes, which shall be taken to mean household and sanitary purposes and the watering of stock, and all purposes connected with the working of railways or factories by steam, but shall not include the sale or barter of water for such purposes; second, irrigation purposes; and, third, other purposes.

Rights of riparian proprietors.

9. No application for any purpose shall be granted where the proposed use of the water would deprive any person owning lands adjoining the river, stream, lake, or other source of supply of whatever water he requires for domestic purposes.

Preliminary work by licensee.

10. Any person contemplating or projecting any works under this act, may, upon submitting a general description of such works and upon payment of a fee of three dollars, obtain from the chief engineer a license to do the necessary preliminary work in connection with the location of such works; and after he obtains such license he

Entering lands.

may, with such assistants as are necessary, enter into and upon any public or private lands to take levels, make surveys, and do other necessary work in connection with such location, doing no unnecessary damage.

Form of application.

11. Every applicant for license under this act, except as hereinafter provided, shall file with the commissioner the following documents:

Memorial.

(a) A memorial, in duplicate, on forms provided by the commissioner, in which the applicant shall set forth his name, residence, and occupation, his financial standing, the source from which water is to be diverted, the point of diversion, the probable quantity of water to be used, the size and character of the works to be constructed, the area and location of the land to be irrigated, the value of such land in its present state, including improvements, the probable number of consumers, and the rate, if any, to be charged for water sold; but if the applicant is an incorporated company, the memorial shall also set forth the names of its directors and officers and their

If applicant is an incorporated company.

places of residence, the date of its incorporation, the amount of the company's subscribed capital, the amount of its paid-up capital, the proposed method of

raising further funds, if needed, and the purposes for which the company is incorporated:

Application to cross road allowance or surveyed road; general plan.

(b) An application, on forms provided by the commissioner, for the right to construct any canal, ditch, reservoir, or other works referred to in the memorial, across any road allowance or surveyed

public highway, which may be affected by such works:

(c) A general plan, in duplicate, on tracing linen, drawn to a scale of not less than one inch to a mile, showing the source of supply, the position of the point of intake, the location of the main canals or ditches, the tract of land to be irrigated, the name of the owner of each parcel of land crossed by the canal, or ditch, or by any reservoir or other works connected therewith, or to be irrigated therefrom, and the position and area of all ponds, reservoirs, and basins intended to be constructed for the storage of water; and

Detail plan. (d) A plan, in duplicate, on tracing linen, showing in detail all head works, dams, flumes, bridges, culverts, or other structures to be erected in connection with the proposed undertaking.

Additional plans in the case of certain canals.

12. In the case of all ditches or canals carrying more than twenty-five cubic feet of water per second, in addition to the above information, the

applicants shall furnish the following maps or plans, in duplicate:

(a) A longitudinal profile of the ditch, showing the bottom and the proposed service water line, the horizontal scale being not less than one inch to four hundred feet, and the vertical scale not less than one inch to twenty feet:

(b) A plan showing cross sections at a sufficient number of points to fully illustrate all the different forms which the ditch when constructed will take, particularly on side hills or elsewhere where any portion of the water is to be conveyed in fill. When water is to be conveyed in cut there shall also be shown on this plan cross sections at points where the shortest horizontal distance from either side of the bottom of the ditch to the surface of the ground is less than double the bottom width of the ditch at that point. This plan shall be drawn on a horizontal and vertical scale of one inch to twenty feet:

Plans of works in connection with reservoirs.

(c) Plans of any dams, cribs, embankments, or other works proposed to obstruct any river, stream, lake, or other source of water supply, or in order to

create a pond, reservoir, or basin of water anywhere, or which may have that effect, prepared on a longitudinal scale of not less than one inch to one hundred feet, and for cross sections on a scale of not less than one inch to twenty feet, and showing what material is intended to be used and how placed in such works. The timber, brush, stone, brick, or other material used in such works shall be shown in detail to a scale of not less than one inch to four feet:

Plans of grounds under reservoirs.

(d) Cross-section maps or plans showing the surface of the ground under such pond, reservoir, or basin of water, and also the surface of the water

proposed to be held therein; the horizontal scale of the said maps or plans shall be not less than one inch to one hundred feet, and the vertical scale shall be not less than one inch to twenty feet, and a sufficient number of lines of levels shall be shown, so that the contents of the pond, reservoir, or basin of water may be accurately determined. If the maps or plans show the levels by contour lines, they shall be on a scale sufficiently large that the contour lines shall show a vertical distance between them not exceeding one foot. The maps or plans shall have sufficient information to show clearly the property likely to be affected by the creation of such ponds, reservoirs, or basins of water, and the manner in which affected, and shall show in detail, on a scale of not less than one inch to four feet, the proposed manner of controlling and drawing off the water from any such pond, reservoir, or basin.

Memorials and plans to be open for inspection.

13. The memorials and plans filed as above prescribed, or a true copy thereof, shall be open for examination by the public at all times in the department and at the office of the commissioner at Regina.

Filing elsewhere.

14. In any case in which he thinks proper, the minister may direct that a copy of the memorial and plans shall be filed in such other place or with such other official or person as he names for that purpose, and such copy also shall be open to public inspection.

Public notice of application.

15. Public notice of the filing of the memorial and plans shall forthwith be given by the applicant in some newspaper published in the neighborhood,

to be named by the commissioner, not less than once a week for a period of thirty days, within which time all protests against granting the rights applied for shall

be forwarded to the minister, and such notice shall contain a statement of the nature of the rights applied for, and the general character and location of the proposed works.

Protests to be considered by minister.

changes or variations as he deems necessary.

Memorial and plans to be examined and approved.

by him, one copy shall be forwarded for record purposes in the department; and upon receipt of such memorial and plans, properly approved, together with a certificate that the proper notice of the filing of such memorial and plans has been published, and that permission has been granted by the commissioner to construct such works across road allowances or surveyed public roads affected thereby, the minister may authorize the construction of the proposed works, fixing in such authorization a term within which the construction of the works is to be completed.

Changes in plans to be filed.

must be filed by the applicant in the office of the commissioner, and shall form a portion of the record open for public inspection.

Deviation from plans.

3. No material deviation from the plans filed shall be made without permission, and any question arising as to whether any deviation is material or otherwise shall be decided by the chief engineer, or such other officer as the minister designates.

Filing of plans may be waived in certain cases.

required by section eleven of this act, and may require the applicants to file a memorial only; but he may order that such memorial shall contain all the information necessary to a full and complete understanding of the rights applied for.

Inspection of works.

18. Any works authorized under this act shall, if the minister so determines, be constructed, subject to inspection during construction by the chief engineer, or any other officer to be named by the minister; and the cost of such inspection, or such portion thereof as the minister decides, shall be borne by the person or company constructing such works.

Inspection on application of proprietor near works.

2. Should any person residing on or owning land in the neighborhood of any works, either completed or in course of construction, apply to the minister in writing, desiring an inspection of such works, the minister may order an inspection thereof.

Deposit to be made by applicant.

of an inspection, and in case the application appears to him not to have been justified may cause the whole or part of the expenses to be paid out of such deposit.

Enforcing payment of costs.

company to pay the whole or any part of the expenses of the inspection, and such payment may be enforced as a debt due to Her Majesty.

Works to be made secure.

5. Upon any inspection under the provisions of this section the minister may order the person or company to make any addition or alteration which he considers necessary for their security to or in any works of the person or company, and noncompliance with such order may be dealt with in the same manner as is provided with respect to an order of the minister under section forty of this act.

6. Provided, that where under section seventeen the minister waives the necessity for plans this section shall not apply.

When work may be commenced.

the purposes of such construction shall have the powers conferred by the railway act upon railway companies, so far as the same are applicable to the undertaking of the person or company and are not inconsistent with the provisions of this act or with the authority given to the person or company, the provisions conferring such powers being

Powers under c. 29 of 1888.

19. The person or company, immediately after the receipt of the authorization, may proceed with the construction of the works authorized, and for the purposes of such construction shall have the powers conferred by the railway act upon railway companies, so far as the same are applicable to the undertaking of the person or company and are not inconsistent with the provisions of this act or with the authority given to the person or company, the provisions conferring such powers being

taken for this purpose to refer to any work of the person or company where in the said act they refer to the railway.

Time for commencing works limited.

20. The construction of any work authorized under this act shall be commenced not later than two months after the date of the authorization, unless such two months expire between the first day of November and the first day of May following, in which case the time of commencement shall not be later than the first day of May following, and shall proceed continuously until sufficiently completed to supply water to all applicants within the area described in the authorization, provided there is sufficient water available for that purpose; and the minister or such officer as he designates shall be the sole arbiter as to whether the work is being prosecuted with sufficient vigor.

Extension of time in case of disaster.

2. Should any unforeseen disaster intervene to prevent the construction or completion of the works within the time limited, or for any other reasons which he deems sufficient, the minister may authorize an extension of time for the commencement or completion of the works.

Forfeiture of right if works are not completed within time limited.

3. Upon the expiration of the time limited for the completion of the works, the rights granted to the person or company shall cease and determine, except in so far as they are necessary for effectually operating the works then completed; and any works at the date of such forfeiture constructed or acquired may be taken over and operated or disposed of by the minister in the manner and upon the terms hereinafter provided.

Inspection of works on completion and issue of certificate for license.

21. Upon the expiration of the time mentioned in the authorization for the construction of any works, or at any time before such date, if the construction is sooner completed, an inspection shall be made by the chief engineer or such other officer as the minister appoints; and a certificate shall be issued by the chief engineer and be forwarded to the department setting forth that the works have been completed in accordance with the application, that the right of way for the works has been obtained, that agreements have been entered into for the supply of water for the irrigation of lands which are not the property of the applicant, and that the works as constructed are capable of carrying and utilizing a stated quantity of water.

2. Upon receipt of such certificate the minister shall issue a license to the applicant for the quantity of water to which he is entitled, and such license shall be recorded in the office of the commissioner at Regina.

Priority of right.

25. Licensees shall have priority among themselves according to the number of their licenses, so that each licensee shall be entitled to receive the whole of the supply to which his license entitles him before any licensee whose license is of a higher number has any claim to a supply;

Settlement of disputes.

and if a complaint is made to the minister, or to an officer authorized by him to receive such complaints, that any licensee is receiving water from a source of supply to which another licensee is entitled by virtue of priority of right, and that the licensee having such priority of right is not receiving the supply to which he is entitled, some officer, to be named by the minister or the officer to whom complaint is so made, as the case may be, shall inquire into the circumstances of the case, and, if he finds that there is ground for the complaint, shall cause the head gates of the ditch or other works of the licensee who is receiving an undue supply of water to be closed, so that the supply to which the other licensee is entitled shall pass and flow to his works.

Licensee's rights limited by capacity of works.

26. When any works for carrying water are not of sufficient capacity to carry the quantity of water acquired by their owner, his exclusive right shall be limited to the quantity which such ditch, flume, or other contrivance is capable of carrying; and in case of dispute as to such quantity the minister may order an inspection of the works; and the report and finding of the inspecting officer as to the capacity thereof shall, for the purpose of this section, be final and conclusive.

Cancellation of license and reservation of water right in certain cases.

27. When the land to be irrigated by the water granted to a licensee is land for which letters patent from the Crown have not been issued, being held by the licensee under a homestead or other conditional entry or a lease in accordance with the provisions of the Dominion land act, or under an agreement to purchase such land, the license for such water shall be canceled upon receipt by the minister of a certificate of the cancellation of

such homestead or other conditional entry, lease, or sale agreement; but the water right necessary for the irrigation of such land may be reserved for such time as the minister determines, and may be disposed of, together with all works connected therewith, to the next occupant or purchaser of such land, upon such terms and conditions as the minister determines; and the new license issued for such water shall have the same number and hold the same priority of right as the original or canceled license.

Information to be afforded to inspecting engineer.

28. Every person and every company and the officers and directors thereof shall afford to any inspecting officer such information as is within their knowledge and power in all matters inquired into by him, and shall submit to such inspecting officer all plans, specifications, drawings, and documents relating to the construction, repair, or state of repairs of the works or any portion thereof.

Proof of his authority.

2. The production of instructions in writing signed by the minister or his deputy or the secretary of the department of the interior shall be sufficient evidence of the authority of such inspecting officer.

Penalty for obstructing him.

29. Every person who willfully obstructs an inspecting officer in the execution of his duty shall be liable, on summary conviction, to a penalty not exceeding twenty dollars, or to imprisonment for a term not exceeding two months, with or without hard labor, or to both.

Penalty for improper diversion by any person.

31. Every person who willfully, without authority, takes or diverts any water from any river, stream, lake, or other waters, or from any works authorized under this act, or who takes or diverts therefrom any greater quantity of water than he is entitled to, is guilty of an offence, and liable, upon summary conviction, to a fine not exceeding five dollars per day or fraction of a day for each unit or fraction of a unit of water improperly diverted, or to imprisonment for a term not exceeding thirty days, or to both, and upon indictment to a fine not exceeding five dollars per day or fraction of a day for each unit or fraction of a unit of water improperly diverted, or to imprisonment for a term not exceeding thirty days, or to both.

Penalty for improper diversion of water.

32. No licensee shall divert more water than the quantity actually granted by his license, and any licensee so doing shall be guilty of an offence punishable on summary conviction by a fine not exceeding five dollars per day or fraction of a day for each unit or fraction of a unit of water so diverted.

Disputes as to quantity of water diverted.

2. In case of dispute as to the quantity of water diverted, the minister may order an inspection of the works of the licensee by an officer named by him for that purpose and for the purposes of this section; the report and finding of such officer as to the quantity diverted shall be final and conclusive.

Forfeiture of licensee's rights by waste or non-user.

33. When any licensee abandons or ceases to use or wastes any waters to which his license entitles him, and any charge of such abandonment or ceasing to use or wasting waste water is made to the minister, such charge may be inquired into by him or by any person or officer appointed by him for that purpose; and the minister, if he deems just and proper, may by order declare a forfeiture of the license, and the license so ordered or declared to be forfeited shall be canceled and shall cease and determine.

Disposal of surplus water to applicants.

34. Any licensee shall dispose of any surplus water flowing in his works which is not being utilized or used for the purposes authorized to any person applying therefor for irrigation purposes and tendering payment for one month in advance at the regular prices.

Payment by applicant.

2. Persons so applying shall pay an amount equal to the cost and expense of the works required to convey the surplus water to them, or shall themselves construct such works; and until this is done the delivery of surplus water need not be made.

Quantity of water to which applicant is entitled.

3. When the necessary works have been constructed and the payment or tender herein provided for has been made, the applicant shall be entitled to the use of so much of the surplus water as such works have the capacity to carry.

Limitation.

4. Nothing in this section shall be construed to give to any person acquiring the right to use surplus water any right to said surplus water when it is needed by the licensee for the purposes authorized, or to waste

or sell or dispose thereof after being used by him, or shall prevent the original owners from retaking, selling, or disposing thereof in the usual or customary manner after it has been so used as aforesaid.

No discrimination in prices after stated time.

35. No licensee undertaking to sell water conveyed by his works shall, subsequent to the first four years after the construction of such works as are necessary to convey the water to the user, discriminate between the users of such water regarding the price thereof.

If supply of water is insufficient.

2. If from any cause the whole amount of water agreed to be supplied by a licensee is not available, then each user shall have furnished to him by the licensee so much water as shall bear to the available water the same proportion as his usual supply bears to the whole amount agreed to be furnished.

Penalty. **3.** Any licensee violating these provisions shall be guilty of an offence against this act and liable upon summary conviction to a fine not exceeding one thousand dollars for each and every such offence, or to imprisonment for a period not exceeding two months, or to both.

Storage of water.

36. The minister may grant to any licensee the right to store for irrigation purposes during periods of floods or high water, or during those portions of the year when water is not required for irrigation purposes, any water not being used during such periods.

Utilization for the purpose of existing works.

2. Should there be any works for the carriage of water which are not being utilized to their full capacity by their owner, and which can with advantage be utilized to carry the whole or any portion of the water desired to be stored any portion of the distance it is required to be so carried or conducted, without interfering with the use made of the said works by their owner, then the said works shall be placed at the disposal of the company desiring to so use it: and if the parties can not agree to the compensation to be paid for such service, the minister may fix the rate to be paid therefor.

Highway crossings.

37. Any person or company constructing any works under the provisions of this act shall, during such construction, keep open for safe and convenient travel all public highways theretofore publicly traveled as such, when they are crossed by such works, and shall, before water is diverted into, conveyed or stored by any such works extending into or crossing any such highway, construct, to the satisfaction of the minister, a substantial bridge, not less than fourteen feet in breadth, with proper and sufficient approaches thereto, over such works; and every such bridge and the approaches thereto shall be always thereafter maintained by such person or company.

Unit of measurement.

38. Under this act the discharge of one cubic foot of water per second shall be the unit of measurement of flowing water, and the cubic foot or acre-foot the unit of measurement of quantity. The acre-foot is equivalent to forty-three thousand five hundred and sixty cubic feet.

Annual return by company.

39. Companies obtaining a license under this act shall, on or before the thirty-first day of January in each year, make a return to the minister, attested by the oath of its president and secretary, for the year ending the thirty-first day of December preceding, showing:

- The amount expended on construction;
- The amount expended on repairs;
- The amount received from shareholders;
- The amount of bonds issued;
- The amount received for water supplied for irrigation;
- The amount received from other sources;
- The amount of dividend declared and paid;
- The amount of capital stock authorized;
- The amount of capital stock subscribed;
- The amount of capital stock paid up to date;
- The amount of bonded indebtedness;
- The amount bonds sold for;
- The rate of interest bonds bear;
- The amount of indebtedness other than bonds, and the rate of interest such indebtedness is bearing;
- The cost of management;
- A statement of the works, and their extent and character;
- The number of miles of canals, ditches, etc.;
- The number of users;

The number of acres actually under irrigation;
 The number of acres of irrigable land in the system;
 The names of officers and employees;

The proposed extensions during ensuing years and the acreage to be covered thereby;

Such other data as the governor in council sees fit to order.

Copy of by-laws. 2 Attached to such annual return shall be a copy of the by-laws of the company, showing all amendments thereto during the year covered by the said return.

Exception. 3. The returns required by this section may be waived by the minister in the case of a private person supplying water solely to himself.

Order by minister in case of complaint against licensee.

40. When a complaint, under oath of the complainant and of at least one witness, is made to the minister or the commissioner by a consumer of water who has paid his rates, that a licensee who has engaged or is under obligation to supply him with water is failing to do so, or is failing to keep his works in proper condition, the minister or some person or officer appointed by him for the purpose may make immediate inquiry and take all necessary steps to ascertain the truth of the complaint, and, if he considers the complaint established, may order and direct that the licensee shall take forthwith such action as he considers necessary in order as far as possible to remove the cause of complaint.

Reference to judge. 2. If the licensee fails to obey such order, the minister shall forthwith issue a certificate to that effect, reciting all the facts, which certificate being presented to the judge of the supreme court for the judicial district within which such works lie, the judge shall hear and determine the matter in a summary manner, and shall order the licensee to proceed with all dispatch to take such measures as he considers necessary in the premises; and refusal or neglect to obey any order made by a judge

Refusal to obey order of judge.

under this section may be treated and punished as contempt of court, and such other proceedings may be had and taken thereon as in the case of noncompliance with any other mandatory order of the said court or a judge thereof.

Amalgamation of companies.

41. The governor in council may authorize two or more companies, whose works are contiguous, to unite and form one company, with a view to providing increased water supply and extending their works, when he is satisfied that the holders of more than fifty per cent of the capital stock of each company are in favor of the union, that users dependent upon the water supply will not be injured, and that the companies to be united have the necessary financial means for carrying out the proposed undertaking, the same particulars being furnished to the governor in council as are required to be furnished upon an application for authorization to construct works under this act; and public notice of the authorization of the united companies and their proposed works shall be given in the manner prescribed in the case of an application under section fifteen.

Minister may issue summons.

42. The minister or any one specially authorized by him may, when he deems it necessary for the satisfactory carrying out of the provisions of this act or the regulations to be framed under it, summon before him any person by subpoena, examine such person under oath, and compel the production of papers

and writings; and for neglect to obey such summons or refusal to give evidence, or to produce the papers or writings demanded of him, the minister or the person authorized may, by warrant under his hand, order the person in default to be imprisoned in the nearest common jail as for contempt of court, for a period not exceeding fourteen days.

Before whom affidavits may be taken.

43. All affidavits, oaths, solemn declarations, or affirmations required to be taken under this act or any regulations made thereunder, may be taken before any agent authorized under this act, a Dominion lands agent or officer, or any persons specially authorized by the minister to take them, or any other persons authorized to take affidavits in the Northwest Territories; and the minister may require any statement called for under this act, or under any such regulation, to be verified by oath, affidavit, affirmation, or declaration.

Minister may order surveys, etc.

44. The minister may take such steps as he deems necessary at any time to secure a complete or partial survey of the sources of the water supply for irrigation and other purposes, with an estimate of the extent and location of irrigable lands, and of the site or sites suitable for ponds, basins, and reservoirs

for water storage, and may reserve lands forming such sites from general sale and settlement and dispose thereof by sale or lease to be utilized for purposes within the purview of this act. He may also take such steps as he thinks necessary to protect the sources of water supply and to prevent any act likely to diminish or injure the said supply.

High-water marks, analysis of water, etc. **45.** The minister may from time to time authorize the establishing in rivers, streams, lakes, and other waters, water gauges for computing the approximate volume and discharge of waters, the placing of high-water marks on rivers and streams, lakes and other waters when in flood, the taking of steps for securing analyses of the water of rivers, streams, lakes, and other waters, and the adopting of such other measures and proceedings for promoting the beneficial use of water, and for controlling and regulating the diversion and the application thereof as he finds necessary and expedient and as are consistent with the provisions of this act.

Expropriation of works by Government. **46.** The governor in council may, if in the public interest it is at any time deemed advisable so to do, take over and operate or otherwise dispose of

Proviso. the works of any licensee authorized under this act: *Provided*, That compensation shall be paid for such works at their value—such value to be ascertained by reference to the exchequer court, or by arbitration, one arbitrator to be appointed by the governor in council, the second by the owner of the works to be taken over, and the third by the two so appointed, or in case these can not agree as to the third arbitrator, by the exchequer court—and that in estimating such value the court or the arbitrators may take into account the expenditure of the company and interest on such expenditure, and the value of

Proviso. its property, works, and business: *Provided also*, That no person who at such date is using the water of the said works shall be deprived of the quantity of water he is entitled to: *Provided further*, That in any

Proviso. such case the governor in council shall have due regard to the claims to consideration of any persons who have prepared or have in course of preparation any land to be supplied with water by the works taken over.

By-laws of company. **47.** The by-laws and regulations of companies operating under this act shall not contain anything contrary to the true intent and meaning of this act, and shall be subject to revision and approval by the governor in council; and no tariff of charges for water furnished by any company shall come into operation until it has been approved by the governor in council.

General powers of minister. **51.** The minister may—
Define the manner in which the measure of water shall be arrived at;

Define the duty of water according to locality and soil;

Define the portion of the year during which water shall be supplied for irrigation;

Fix the fee or charge to be paid for licenses issued under this act, which fees or charges may be varied according to the capital employed or volume of water diverted;

Regulate the extent of diversion from rivers, streams, lakes, or other waters;

Regulate the passage of logs, timber, and other products of the forests through or over any dams or other works erected in rivers, streams, lakes, and other waters under the authority of this act;

Regulate from time to time the water rates which may be charged by licensees, and the publication of tariffs of rates;

Prescribe forms to be used in proceedings under this act;

Impose penalties for violations of any regulation made under the authority of this act, which penalties shall in no case exceed a fine of two hundred dollars or three months' imprisonment, or both;

Regulate the manner in which water is to be supplied to persons entitled thereto, whether continuously or at stated intervals, or under both systems.

Authorize some person or officer, whose decision shall be final and without appeal, to decide in cases of dispute as to what constitutes surplus water as mentioned in this act;

Make such orders as are deemed necessary, from time to time, to carry out the provisions of this act according to their true intent, or to meet any cases which arise and for which no provision is made in this act; and further, make any regulations which are considered necessary to give the provisions of this act full effect.

Publication of regulations. **52.** All regulations made and forms prescribed by the minister under this act shall be published in the Canada Gazette and shall be laid before both houses of Parliament within the first fifteen days of the session next after the date thereof.

Application of act to companies now existing.

53. Any companies already formed to promote irrigation shall be subject to all the provisions of this act, except so far as the powers mentioned in section forty-eight are concerned.

Exemption. **54.** The provisions of sections forty-one, forty-eight, and forty-nine of this act shall not apply to any irrigation district incorporated under an ordinance of the Northwest Territories.

Repeal. **55.** The Northwest irrigation act, being chapter thirty of the statutes of eighteen hundred and ninety-four, and chapter thirty-three of the statutes of eighteen hundred and ninety-five, in amendment thereof, are hereby repealed.

WATER-RIGHT FORMS USED IN NORTHWEST TERRITORIES OF CANADA.

Regulations for the measurement and use of water, the disposal of reservoir sites and right of way for irrigation works, the establishment of gauge rods in streams and in rating flumes of irrigation canals and ditches, and the license and certificates to be issued, approved by his excellency the governor-general in council on the 29th day of April, 1895.

MEASUREMENT OF WATER.

SECTION 1. The measurement of the discharge of any stream, made for the purposes of determining the quantity of water available for licenses, authorizing the diversion of water therefrom, or to settle disputes between the holders of such licenses, shall be effected as follows:

The area of the actual water cross section, at time of measurement, shall be determined by careful measurement of the total width of stream, and by soundings under the line of cross section at sufficiently frequent intervals to give a close approximation of the contour of bottom of the stream.

The velocity of the stream shall be determined by measurement with any approved make of current meter, which must have been previously rated at the government rating station at Calgary, these measurements being taken at such intervals along the line of cross section as will enable the velocity to be determined for each subsection between soundings.

In streams of not more than three feet in depth surface and bottom velocities must be measured, or the meter may be moved slowly, during time of observation, from bottom to top and vice versa. In streams of more than three feet in depth, middepth readings of current meter may be taken, the resulting discharge being corrected by necessary factor for velocities thus determined.

(a) The flow of water into any irrigation ditch or canal shall be determined by careful measurement of the cross section of the rating flume, constructed as hereinafter provided, and of the velocity by current meter of the water flowing therein, at extreme low water, high water, and flood-discharge stages of water in the source of supply, these heights of water being fixed by the marking on the gauge rod placed in the said rating flume of such ditch or canal, as hereinafter provided. The flow of water between low, high, and flood stages of water shall be determined by a table showing flow of water at these heights, and for each six inches marked on the gauge rod, which table, in the form of a certificate, signed by the inspecting officer, shall be issued for each ditch or canal, and shall accompany the license hereinafter provided for.

(b) The quantity of water supplied to consumers by any person or company having a license for the use of water for irrigation shall be measured by water meter, measuring flume, measuring weir, spill box, or any other device for the measurement of the water, but such water meter, measuring flume, measuring weir, spill box, or other device must be first approved and sanctioned by the minister of the interior, or by some officer appointed by him, who shall issue a certificate authorizing the person or company to use such device.

(c) The volume of water in any lake, pond, or reservoir, or other body of still water, shall be measured by careful survey of the outline of such body of water to determine its superficial area, and measurement of the depth of water at sufficiently frequent intervals to give a correct contour of the bottom of such lake, pond, or reservoir, so that the contents thereof may be accurately calculated. The flow of water into or out of any reservoir shall be measured by determination of the area of the cross section of channel of inflow or discharge and of the velocity of the water flowing therein by current meter.

(d) The discharge of spring shall be determined by causing all the water flowing therefrom to discharge into a vessel or reservoir of known contents, and noting

the time taken to fill such vessel or reservoir, or by measurement of cross section of the channel carrying flow of such spring, as near as possible to its head, and determination of velocity of flow therein with current meter.

DUTY OF WATER.

SEC. 2. The duty of water, or the ratio between a given quantity of water and the amount of land it will irrigate, shall be one hundred acres for each cubic foot of water per second flowing constantly during the irrigation season, and all applications for water to irrigate any given area, and the division of the available water supply among applicants therefor, shall be made upon the basis of this duty of water.

LICENSES.

SEC. 3. Whenever any company or person, applying for a license or authorization under the provisions of the act, has complied with all the requirements thereof, and has completed the construction of the works authorized, an inspection of the works shall be made by an officer named by the minister, who shall determine the capacity of such works and certify that they have been completed in accordance with the provisions of the act.

(a) Upon receipt of such certificate, and of a fee of ten dollars, to be paid by the company or person constructing such works, the minister of the interior shall issue to such company or person a license in the form given in the schedule hereto, which license shall be registered by the company or person to whom it is issued in the registry office in and for the district within which the lands affected by the system covered by such license are situated, by producing the same, or an exemplification thereof, to the registrar, with a true copy, sworn to by any person who has compared the same with the original, and the copy shall be filed with the registrar.

RATING FLUME AND GAUGE RODS.

SEC. 4. Every irrigation ditch or canal shall be provided by the owners thereof with a rating flume, which is to be constructed in the ditch or canal not less than one hundred nor more than eight hundred feet between the head gate thereof, such flume to be built in accordance with plans approved by some officer appointed by the minister.

(a) Every rating flume shall be provided with a gauge rod, which is to be placed on the side at the center of such flume. The gauge rod shall be two inches in thickness and three inches wide, painted white, with heights above the floor of the rating flume clearly marked thereon in feet and tenths of a foot with black lines and figures. The height of low water, high water, and flood stage of water shall be shown on the gauge rod at elevations to correspond with the marking of these stages of water on the government gauge rod placed in the stream from which water is taken for such ditch or canal.

GOVERNMENT GAUGE RODS.

SEC. 5. The minister may authorize some officer to place a gauge rod, or rods, in all streams or reservoirs used as a source of supply for irrigation ditches or canals. The gauge rod, or rods, are to be permanently placed at some point for convenient reference, and clearly marked, so that the rise or fall of water in such stream or reservoir can be readily noted therefrom. The height of low water, high water, and flood water shall be designated on the rod with special marks and lettering, so that these stages of water may be apparent by inspection.

RESERVOIR SITES.

SEC. 6. The lands forming sites suitable for ponds, basins, and reservoirs, which have been reserved from general sale and settlement, may be leased to any company or person applying therefor who have satisfied the minister of their or his ability to construct the works necessary to utilize the proposed site for the storage of water and the beneficial use of the same in irrigation.

(a) The lease shall be for one year, with privilege of renewal from year to year, provided the lessee continues to use the lands for the purposes mentioned, and complies with all the provisions of the irrigation act.

(b) The rental to be paid for lands leased for reservoir purposes shall be one cent per acre per annum, payable upon the first day of November in each and every year.

(c) Should the lessee at any time cease to use the lands for the purposes mentioned, the lease shall be cancelled and the lands become available for lease to any applicant therefor who shall have satisfied the minister of his ability to utilize the lands for the beneficial storage of water.

RIGHT OF WAY.

SEC. 7. The right of way for any irrigation ditch or canal, or for the works connected therewith, through any and all lands, the title to which is vested in the Crown, as shown by the plans and books of reference filed in the department of the interior and approved by the surveyor-general, may be granted to the company or person constructing such irrigation ditch, canal, or works in connection therewith free of charge.

Schedule. Form of license. Department of the Interior.

[Coat of arms.]

— License No. —. Source of supply —. First issued —.

Know all men by these presents, that by virtue of the authority vested in me by the Northwest irrigation act, I, —, minister of the interior of Canada, do hereby grant unto —, hereinafter called the licensee, — executors and administrators, full right, power, and license, subject to the conditions and restrictions contained in the Northwest irrigation act, to divert from the — the following quantity of water, for use in the — system constructed by —, and as shown by application of the licensee and by the plans of the same, dated the — and filed in the department of the interior and in the registry office in and for —, and authorized by order in council dated —, 189—, that is to say: At flood level, — cubic feet per second; at high water, — cubic feet per second; at low water, — cubic feet per second; and to take and keep possession of the said quantity of water for and during the period during which this license may be in force under the provisions of the Northwest irrigation act.

But this license shall be subject to the following conditions, viz:

1. That the license shall only come into force and effect after it has been registered by the licensee in the registry office in and for the —.

2. That the period of flood discharge, high water and low water in the said — shall be fixed and determined by the marking on the gauge rod placed in the said stream by the department of the interior.

3. That this license shall be subject to forfeiture, as provided by the Northwest irrigation act.

4. That this license can only be assigned or transferred by approval of the minister of the interior and by using the form printed on the back thereof, and that such transfer must be recorded in the department of the interior and in the registry office in and for — before a new license will be issued in name of transferee.

Dated at Ottawa, this — day of — one thousand eight hundred and ninety —.

Witness:

Deputy Minister of the Interior.

— License No. —. Source of supply. —. The minister of the interior to —. License to divert water for — from —. Recorded in —.

Transfer.

— for and in consideration of the sum of — dollars to — in hand paid (the receipt whereof is hereby acknowledged), do hereby sell, transfer, and make over to —, executors and administrators, all my right, title, and interest of in and to the license within contained.

In witness whereof I have hereunto set my hand at — this — day of —, 189—.

Witness:

Memorial filed in accordance with provisions of section — of the Northwest irrigation act.

The memorial of ———, of section —, township —, range —, west of the — meridian, in the district of —, sheweth:

1. That the name— and residence— of the memorialist— are set forth above, and that — occupation — and — post-office address is —.

2. That the memorialist— ask— for authority under the provisions of the Northwest irrigation act to divert from —, on the —, quarter of section —, in township —, range —, west of the — meridian, — cubic feet of water per second to be used for — purposes on the following lands, viz. —, and comprising a total acreage of — acres, and to construct the necessary works to enable the water so diverted to be used for the said — purposes.

3. That the works proposed to be constructed consist of —, and the location of and proposed method of constructing these works are shown on the maps, plans, profiles, and specifications accompanying this memorial.

4. That the financial standing of the memorialist— is as follows: —, and that the probable expenditure necessary to complete the proposed works will not exceed \$—.

5. That the extent of settlement along or in the vicinity of the said — is — residents.

6. That the probable number of the consumers of the water to be diverted is —.

7. That the character of the land upon which the water is to be used is —, and the value of such land in its present condition, with improvements, is \$— per acre.

To ———.

Dated at ———, ———, 189—.

Certified a true copy of the memorial filed with the ———, this ——— day of ———, 189—.

—————,
Chief Inspector.

