

## CHAPTER 71.

[H. B. 165.]

## AMENDING WATER CODE AND PROVIDING FOR MAINTENANCE OF JOINT DITCHES.

AN ACT relating to the use of water in the State of Washington, amending sections 11 and 21 of Chapter 117 of the Session Laws of 1917, and further amending said chapter by adding thereto certain sections to be designated sections 42a, 42b and 42c, providing for the joint maintenance of partnership ditches, conferring upon the state hydraulic engineer jurisdiction thereof in certain cases, and creating liens for labor and material furnished in the operation and maintenance thereof.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. That section 11 of Chapter 117 of the Session Laws of 1917 be amended to read as follows:

Section 11: Any person, corporation or association feeling aggrieved at any order, decision, or determination of the state hydraulic engineer, or of any assistant or deputy, or any water master, affecting his interests, may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county in which the matter affected, or a portion thereof is situated. The proceedings in every such appeal shall be heard and tried by the court and shall be informal and summary, but full opportunity to be heard and present evidence shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal containing a statement of the substance of the order, decision, or determination complained of and the manner in which the same injuriously affects the appellant's interests, shall have been served personally upon the state hydraulic engineer, or by registered mail, at his office at the state capital, within twenty days

Appeals to superior court.

Procedure.

following the rendition of the order, decision or determination appealed from and communication thereof in writing to the person affected thereby. No bond shall be required except a stay is desired and an appeal shall not be a stay, unless within five days following the service of notice of appeal a bond shall be filed in an amount to be fixed by the court and with sureties satisfactory to the court, conditioned to perform the judgment of the court. Costs shall be paid as in civil cases brought in the superior court, and the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. In all court proceedings under or pursuant to this section the decision of the state hydraulic engineer shall be *prima facie* correct. The attorney general shall be the legal adviser of the state hydraulic engineer and shall represent him in all proceedings whenever so requested. Wherever it shall appear to the state hydraulic engineer that any litigation, whether now pending or hereafter brought, may adversely affect the rights of the public in water, it shall be his duty to request the attorney general to appear and protect the interests of the state. He shall assign one of his assistants to perform such legal services as may be required in connection with proceedings to determine water rights and may require him to perform such other legal services for the state hydraulic engineer as may be necessary to assist him in the performance of his duties. The proportionate part of the salary and expenses of such assistant for services in connection with the determination of water rights shall be included in the statement of the state hydraulic engineer required by section 21. The state hydraulic engineer may expend such of the funds appropriated for his department for such portion of the salary and expenses of such as-

Attorney  
general to  
advise and  
represent  
engineer.

Compensa-  
tion of  
assistant  
detailed to  
hydraulic  
service.

sistant as may be agreed upon between the state hydraulic engineer and attorney general.

SEC. 2. That section 21 of Chapter 117 of the Session Laws of 1917 be amended to read as follows:

Section 21. At the time of filing the statement Fees. as provided in section 17, each defendant shall pay to the clerk of the superior court a fee of one dollar (\$1.00). The state hydraulic engineer shall keep a record of the expenses incurred by him in the determination of the rights on any stream, including the proportionate share of the expense of his office, such expense to date from the filing of a petition or the institution of any investigation as provided in section 14. Immediately upon receipt of a decree of the superior court determining the rights of parties as provided in section 23, the state hydraulic engineer shall prepare and file in the superior court a statement of such expense, showing the total expense of the determination and apportioning such expense to the various rights as determined by the court in proportion to the amount of such rights. Such records shall be subject to Audit. audit by the bureau of inspection and supervision of public offices as are other accounts of state offices. The amount of such expense apportioned to each diverter shall be paid by such diverter before he shall be entitled to receive a certificate of diversion from the state hydraulic engineer. Certificate of diversion.

SEC. 3. That Chapter 117 of the Session Laws of 1917 be amended by adding a new section after section 42 thereof to be known as section 42a:

Section 42a. In all cases where irrigating ditches Partnership ditches. are owned by two or more persons and one or more of such persons shall fail or neglect to do his, her or their proportionate share of the work necessary for the proper maintenance and operation of such

Recovery of  
maintenance  
expenses.

ditch or ditches or to construct suitable headgates or measuring devices at the points where water is diverted from the main ditch, such owner or owners desiring the performance of such work as is reasonably necessary to maintain the ditch, may, after having given ten days' written notice to such owner or owners who have failed to perform his, her or their proportionate share of such work, necessary for the operation and maintenance of said ditch or ditches, perform his, her or their share of such work, and recover therefor from such person or persons so failing to perform his, her or their share of such work in any court having jurisdiction of the matter the expense or value of such work or labor so performed: *Provided*, that no improvement involving an expenditure in excess of one hundred dollars (\$100.00) shall be made without the written approval of the state hydraulic engineer having first been obtained.

SEC. 4. That Chapter 117 of the Session Laws of 1917 be amended by adding thereto a new section to be known as section 42b:

Division of  
water be-  
tween joint  
owners.

Section 42b. When two or more persons, joint owners in an irrigation ditch or reservoir, not incorporated, or their lessees, are unable to agree relative to the division or distribution of water received through their ditch or from their reservoir, and where there is no disagreement as to the ownership of said water, it shall be lawful for any such owner or owners, his or their lessee or lessees, or either of them, to apply to the state hydraulic engineer, in writing, setting forth such fact and giving such information as shall enable the state hydraulic engineer to estimate the probable expense of such service, asking the state hydraulic engineer to appoint some suitable person to take charge of such ditch or reservoir for the purpose of making a just

Determina-  
tion of dis-  
agreements.

division or distribution of the water from the same to the parties entitled to the use thereof. The state hydraulic engineer shall upon the receipt of such application notify the applicant of the probable expense of such division and upon receipt of certified check for said amount, he shall appoint a suitable person to make such division. The person so appointed shall take exclusive charge of such ditch or reservoir for the purpose of dividing the water therefrom in accordance with the established rights of the diverters therefrom, and continue the said work until the necessity therefor shall cease to exist. The expense of such investigation and division shall be a charge upon all of the co-owners and the person advancing the payment to the state hydraulic engineer shall be entitled to recover in any court of competent jurisdiction from his co-owners their proportionate share of the expense.

Collection of expenses.

SEC. 5. That Chapter 117 of the Session Laws of 1917 be amended by adding thereto a new section to be known as section 42c:

Section 42c. Upon the failure of any co-owner to pay his proportionate share of such expense as mentioned in section 42a within thirty days after receiving a statement of the same as performed by his co-owner or owners, such person or persons so performing such labor may secure payment of said claim by filing an itemized and sworn statement thereof, setting forth the date of the performance and the nature of the labor so performed, with the county auditor of the county wherein said ditch is situated, and when so filed it shall constitute a valid lien against the interest of such person or persons who shall fail to perform their proportionate share of the work requisite to the proper maintenance of said ditch, which said lien when so taken may be enforced in the same manner as provided

Lien for services of co-owner performing maintenance labor.

by law for the enforcement of mechanics' and builders' liens.

Passed the House, February 17, 1919.

Passed the Senate, February 19, 1919.

Approved by the Governor March 3, 1919.

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## CHAPTER 72.

[S. S. B. 28.]

### GAME FARMS FOR PROPAGATION AND SALE OF GAME ANIMALS AND BIRDS.

AN ACT relating to game farming, the securing, domesticating and propagating of game animals and game birds, the possession, transportation, use and disposition of game, granting certain powers to and imposing certain duties upon the state and county game wardens, and providing penalties for violation of the provisions of this act.

*Be it enacted by the Legislature of the State of Washington:*

SECTION 1. For the purpose of encouraging game farming and the domestication and propagation of game, a game farmer's license, which shall authorize the licensee to engage in the business of breeding and selling moose, caribou, elk, deer, beaver, otter, marten, mink and other wild animals or wild birds or game birds, as limited herein, shall be issued, subject to the provisions of this act, by the state game warden to any responsible resident person duly applying therefor, such licenses to expire on March 31st following the date of its issuance. The fee for such license shall be ten dollars (\$10.00). After such license has been issued, it shall be valid as long as said licensee pays the state game warden, for the benefit of the game fund, an annual fee of five dollars (\$5.00), unless otherwise determined under the provisions of this act: *Provided, how-*

Licenses for propagating game animals and birds.

License fees.