

CHAPTER 122.

[H. B. 232.]

REGULATION AND CONTROL OF USE OF WATERS.

AN ACT relating to the regulation and control of waters within the state and rights to the use thereof, and amending Sections 16, 17, 21, 31, 34, 39 and 44 of Chapter 117 of the Laws of 1917, and amending Chapter 117 of the Laws of 1917 by adding a new section to be known as section 39-a.

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

SECTION 1. That section 16, of chapter 117 of the Laws of 1917, (7366 of Remington's Compiled Statutes; 7218 of Pierce's Code) be amended to read as follows:

Amends
§ 7366 Rem.
Comp. Stat. ;
§ 7218
Pierce's
Code.

Section 16. Service of said summons shall be made in the same manner and with the same force and effect as service of summons in civil actions commenced in the superior courts of the state. If the defendants, or either of them, cannot be found within the State of Washington, of which the return of the sheriff of the county in which the proceeding is pending shall be *prima facie* evidence, upon the filing of an affidavit by the state supervisor of hydraulics, or his attorney, in conformity with the statute relative to the service of summons by publication in civil actions, such service may be made by publication in a newspaper of general circulation printed and published at the county seat of the county in which such proceeding is pending, and also publication of said summons in a newspaper published at the county seat of each county in which any portion of the water is situated, once a week for six consecutive weeks (six publications), before the return day thereof. In cases where personal service can be had, such summons shall be served at least twenty (20) days before the return day thereof.

Service of
summons.

Affidavit.

Publication.

Amends
§ 7367 Rem.
Comp. Stat.;
§ 7219
Pierce's
Code.

SEC. 2. That section 17, of chapter 117 of the Laws of 1917, (7367 of Remington's Compiled Statutes; 7219 of Pierce's Code), be amended to read as follows:

Defendant
to file
statement.

Section 17. On or before the return day of such summons, each defendant shall file in the office of the clerk of said court a statement, and therewith a copy thereof for the state supervisor of hydraulics, containing substantially the following, to-wit:

Contents.

- 1. The name and postoffice address of defendant.
- 2. The full nature of the right, or use, on which the claim is based.
- 3. The time of initiation of such right and commencement of such use.
- 4. The date of beginning and completion of construction.

5. The dimensions and capacity of all ditches existing at the time of making said statement.

6. The amount of land under irrigation and the maximum quantity of water used thereon prior to the date of said statement and if for power, or other purposes, the maximum quantity of water used prior to date of said statement.

7. The legal description of the land upon which said water has been, or may be, put to beneficial use, and the legal description of the subdivision of land on which the point of diversion is located.

Statement
verified
by oath.

Such statement shall be verified on oath by the defendant, and in the discretion of the court may be amended.

Amends
§ 7371, Rem.
Comp. Stat.;
§ 7223,
Pierce's
Code.

SEC. 3. That section 21, of chapter 117 of the Laws of 1917, as amended by section 2 of chapter 71 of the Laws of 1919, (7371 of Remington's Compiled Statutes; 7223 Pierce's Code), be amended to read as follows:

Defendant
to pay
filing fee
of \$1.00.

Section 21. At the time of filing the statement 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 supervisor of hydraulics 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 supervisor of hydraulics 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. And where such expense does not exceed five dollars (\$5.00) for each water right, as determined by the court, it shall be divided equally between such rights. If such expense exceeds five dollars for each water right, such allottee shall pay five dollars (\$5.00) plus a share of the amount remaining, which shall be apportioned to the various irrigation and other consumptive rights in such proportion as the quantity of water allotted to each right bears to the total amount of water awarded, and to non-consumptive rights on such basis as the supervisor of hydraulics may determine to be equitable. Such records shall be subject to 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 supervisor of hydraulics.

Record of expenses kept by supervisor.

Statement of expenses filed in court.

Audit of records by bureau of inspection.

SEC. 4. That section 31, of chapter 117, Laws of 1917, (7382 of Remington's Compiled Statutes; 7233 of Pierce's Code), be amended to read as follows:

Amends § 7382, Rem. Comp. Stat. ; § 7233 Pierce's Code.

Section 31. When an application complying with the provisions of this chapter and with the

When application filed, supervisor shall investigate.

Irrigable lands to be determined.

Determine whether power development will prove detrimental.

Temporary permits.

Application cancelled automatically.

Preliminary permit extended.

rules and regulations of the state supervisor of hydraulics has been filed, the same shall be placed on record in the office of the state supervisor of hydraulics, and it shall be his duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If it is proposed to appropriate water for irrigation purposes, the state supervisor of hydraulics shall investigate, determine and find what lands are capable of irrigation by means of water found available for appropriation. If it is proposed to appropriate water for the purpose of power development, the supervisor shall investigate, determine and find whether the proposed development is likely to prove detrimental to the public interest, having in mind the highest feasible use of the waters belonging to the public. If the application does not contain, and the applicant does not promptly furnish sufficient information on which to base such findings, the supervisor may issue a preliminary permit, for a period of not to exceed three (3) years, requiring the applicant to make such surveys, investigations, studies, and progress reports, as in the opinion of the supervisor may be necessary. If the applicant fails to comply with the conditions of the preliminary permit, it and the application or applications on which it is based shall be automatically cancelled and the applicant so notified. If the holder of a preliminary permit shall, before its expiration, file with the supervisor a verified report of expenditures made and work done under the preliminary permit, which, in the opinion of the supervisor, establishes the good faith, intent and ability of the applicant to carry on the proposed development, the preliminary permit may, with the approval of the Governor, be extended, but not to exceed a maximum period of five (5) years from the date of the issu-

ance of the preliminary permit. The state supervisor of hydraulics shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if he shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, he shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied: *Provided*, That where the water applied for is to be used for irrigation purposes, it shall become appurtenant only to such land as may be reclaimed thereby to the full extent of the soil for agricultural purposes. 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, having due regard to the highest feasible development of the use of the waters belonging to the public, it shall be the duty of the state supervisor of hydraulics to reject such application and to refuse to issue the permit asked for. If the permit is refused because of conflict with existing rights and such applicant shall acquire same by purchase or condemnation under section 4 hereof, said supervisor may thereupon grant such permit. Any application may be approved for a less amount of water than that applied for, if there exists substantial reason therefor, and in any event shall not be approved for more water than can be applied to beneficial use for the purposes named in the application. In determining whether or not a permit shall issue upon any application, it shall be the duty of the state supervisor of hydraulics to investigate all facts relevant and material to the application. After the state supervisor of hydraulics approves said application

Written findings of supervisor to be filed.

Permit issued.

Irrigation purposes, extent of use.

Application rejected.

Approved for less amount.

Fee required
of applicant

in whole or in part and before any permit shall be issued thereon to the applicant, such applicant shall pay the fee provided in section 44 of this act.

Amends
§ 7386, Rem.
Comp. Stat.;
§ 7236,
Pierce's
Code.

SEC. 5. That section 34 of chapter 117 of the Laws of 1917, (7386 of Remington's Compiled Statutes; 7236 Pierce's Code), be amended to read as follows:

Certificate
issued
when
appropria-
tion per-
fected.

Section 34. Upon a showing satisfactory to the state supervisor of hydraulics that any appropriation has been perfected in accordance with the provisions of this act, it shall be the duty of such state supervisor of hydraulics to issue to the applicant a certificate stating such facts in a form to be prescribed by him, and such certificate shall thereupon be recorded in his office. Any original water right certificate issued, as provided by this act, shall be recorded in his office and thereafter, at the expense of the party receiving the same, be by such supervisor transmitted to the county auditor of the county or counties where the distributing system or any part thereof is located, and be recorded in the office of such county auditor, and thereafter be transmitted to the owner thereof.

Amends
§ 7391 Rem.
Comp. Stat.;
§ 7241,
Pierce's
Code.

SEC. 6. That section 39, of chapter 117 of the Laws of 1917, (7391 of Remington's Compiled Statutes; 7241 Pierce's Code), be amended to read as follows:

Right to
remain
appurtenant
to land.

Section 39. The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: *Provided, however,* That said right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can

Transfer
authorized.

be made without detriment or injury to existing rights. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the state supervisor of hydraulics, and said application shall not be granted until notice of said application shall be published as provided in section 30 of this act. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the state supervisor of hydraulics shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record in the office of the state supervisor of hydraulics and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water.

Application therefor.

Notice published.

Certificate issued granting transfer.

SEC. 7. That chapter 117 of the Laws of 1917 be amended by adding thereto a new section to be known as section 39-a (7391-a of Remington's Compiled Statutes) to read as follows:

Adds § 7391-a to Rem. Comp. Stat.

Section 39-a. Section 39 of this act shall not be construed to prevent water users from making a seasonal or temporary change of point of diversion or place of use of water when such change can be made without detriment to existing rights, but in no case shall such change be made without the permission of the water master of the district in which such proposed change is located, or of the state supervisor of hydraulics. Nor shall section 39 of this act be construed to prevent rotation in the use of water for bringing about a more economical use of the available supply. Water users owning lands to which water rights are attached may ro-

Seasonal or temporary change of diversion point.

Rotation of use.

Rotated
with rights
of dif-
ferent
priority.

tate in the use of water to which they are collectively entitled, or an individual water user having lands to which are attached water rights of a different priority, may in like manner rotate in use when such rotation can be made without detriment to other existing water rights, and has the approval of the water master or state supervisor of hydraulics.

Amends
§ 7399, Rem.
Comp. Stat.,
1927 Sup. ;
§ 7246,
Pierce's
1926 Code.

SEC. 8. That section 44 of chapter 117 of the Laws of 1917, as amended by section 2 of chapter 161 of the Laws of 1925 Extraordinary Session; (section 7399, Rem. 1927 Sup.; section 7246 Pierce's 1926 Code), be amended to read as follows:

Supervisor
to-collect
fees—
schedule.

Section 44. The following fees shall be collected by the supervisor of hydraulics in advance (a) for the examination of an application for permit to appropriate water a five dollars (\$5.00) fee shall be paid upon filing the application, which shall be a minimum fee but shall be a credit to the extent of five dollars whenever the fee due upon direct diversion or storage totals more than five dollars under the schedule hereinafter provided and in such case the further fee due shall be the total computed amount less five dollars. Not later than five days after receipt of such an application the supervisor of hydraulics shall notify the applicant by registered mail of the further amount of fee, if any, due under the following schedule of fees, and if there is a further amount due and said amount is not received within thirty (30) days after the date of filing said application in the office of the supervisor of hydraulics, said application shall be rejected. After notice and within the time hereinabove provided, such further fee as may be due shall be paid in amounts determined as follows: For all amounts in excess of one cubic foot per second up to and including five hundred cubic feet per second, at the rate of one dollar (\$1.00) per cubic foot per second. For

all amounts in excess of five hundred cubic feet per second up to and including two thousand cubic feet per second, at the rate of twenty-five cents (25c) per cubic foot per second. For all amounts in excess of two thousand cubic feet per second, at the rate of ten cents (10c) per cubic foot per second. For each acre-foot of storage up to and including one hundred thousand acre-feet, at the rate of one-half ($\frac{1}{2}$ c) cent per acre-foot. For each acre-foot of storage over one hundred thousand acre-feet, at the rate of one-tenth cent per acre-foot. (b) For filing and recording permit to appropriate water for irrigation purposes, ten cents (10c) per acre for each acre to be irrigated up to and including one hundred acres, and five cents (5c) per acre for each acre in excess of one hundred acres up to and including one thousand acres, and two and one-half cents ($2\frac{1}{2}$ c) for each acre in excess of one thousand acres; and also ten cents (10c) for each theoretical horsepower up to and including one thousand H. P. and two cents (2c) for each theoretical horsepower in excess of one thousand H. P. For all other beneficial purposes the fee shall be twice the amount of the examination fee except that for individual household and domestic use, which may include water for the irrigation of a family garden, the fee shall be two dollars (\$2.00). (c) For filing and recording any other water right instrument, one dollar (\$1.00) for the first hundred words and ten cents (10c) for each additional hundred words or fraction thereof; (d) for making copy of any document recorded or filed in the office of the supervisor of hydraulics, ten cents (10c) for each hundred words or fraction thereof, but where the amount exceeds five dollars (\$5.00), then only the actual cost in excess of that amount shall be charged; (e) for certifying to copies, documents, records of maps, one dollar (\$1.00) for each certification. (f) For blue-

print copies of any map or drawing, ten cents (10c) per square foot or fraction thereof. For such other work of a similar nature as may be required of his office, at actual cost of the work; (g) for granting each extension of time (under section 7385, Remington's Compiled Statutes); for beginning construction work under a permit to appropriate water, the permittee shall pay an amount equal to one-half of the filing and recording fee. (h) For the inspection of any hydraulic works to insure safety to life and property as provided in section 7358, Remington's Compiled Statutes, sub-section 2, the owner of such works shall pay the actual cost of such inspection, together with the expense incident thereto. (i) For the examination of plans and specifications as to safety as provided in section 7388, Remington's Compiled Statutes, a minimum fee of five dollars (\$5.00) shall be charged; if the cost of such examination exceeds five dollars (\$5.00), the actual cost of such work shall be paid. (j) For recording an assignment either of a permit to appropriate water or of an application for such a permit, as provided for under section 32 of this act (7384 of Remington's Statutes), a fee of two dollars (\$2.00) shall be charged. (k) For issuing a certificate for change of point of diversion, place or purpose of use as provided for under section 39 of this act (7391 of Remington's Compiled Statutes), a fee of five dollars (\$5.00) shall be charged.

Passed the House February 21, 1929.

Passed the Senate March 5, 1929.

Approved by the Governor March 20, 1929.