

CHAPTER XXI.—WATER RIGHTS.

DRAINS AND DITCHES; CONSTRUCTION AND REPAIR OF.

AN ACT to provide for the construction, repairing and protection of drains and ditches for agricultural, sanitary and domestic purposes, and to provide for the organization of drainage districts, and declaring an emergency.

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

Control of water courses.

SECTION 1. That the commissioners of any county may, at any regular or called session, cause to be located and constructed, straightened, widened, altered or deepened, any ditch, drain or water course, as hereinafter provided, when the same is necessary to drain any lots, lands, public or corporate road or railroad, and will be conducive to the public health, convenience or welfare.

Outlet.

SEC. 2. The word "ditch," as used in this act, shall be held to include a drain or water course. The petition for any such improvement shall be held to include any side, lateral, spur or branch ditch, drain or water course necessary to secure the object of the improvement, whether the same is mentioned therein or not; but no improvement shall be located unless a sufficient outlet is provided.

Costs.

SEC. 3. When the improvement will drain the whole or a part of any public or corporate road or a railroad, or will so benefit such road that the traveled track or road-bed thereof will be improved by its construction, there shall be apportioned to the county, if the road is a state, county or free turnpike road, or to the corporation, if a corporate road or railroad, a proper share of the costs and expenses thereof, as hereinafter provided.

SEC. 4. Application for any such improvement shall be

made to the commissioners of the county, signed by one or more owners of lots or lands which will be drained or benefited thereby.

SEC. 5. The petition shall be filed with the clerk of the board of county commissioners, and shall set forth the necessity of the improvement and describe the route and termini thereof; and there shall be filed therewith a bond payable to the county with at least two good sufficient sureties in not less than one hundred dollars, conditioned for the payment of all costs if the prayer of the petition be not granted or be dismissed for any cause. Petition and bond.

SEC. 6. If the bond be approved by the clerk of the board of county commissioners, he shall immediately deliver a copy of the petition to the commissioners, who shall thereupon take to their assistance a competent surveyor or engineer, if in their opinion his services are necessary, and at once proceed to view the line of the proposed improvement, and determine, by actual view of the premises along and adjacent thereto, whether the improvement is necessary, or will be conducive to the public health, convenience or welfare, and whether the line described is the best route; and they shall report their finding in writing, and order the clerk of the board of county commissioners to enter the same on their journal. Proceedings.

SEC. 7. If the commissioners find against the improvement, they shall dismiss the petition and proceedings at the cost of the petitioners; and they shall cause an itemized bill of all the costs to be made up by the clerk for their examination and approval, which shall include the per diem of the surveyor or engineer, together with all other costs necessarily made, except fees of the clerk and compensation of the commissioners. Dismissal.

SEC. 8. If the commissioners find for the improvement, they shall cause to be entered on their journal an order directing the county surveyor, or an engineer, to go upon the line described in the petition, or as changed by them in accordance with this act, and survey and level the same, and set a stake at every hundred feet, numbering down stream; note the intersection of lines and boundaries of lands, township and county lines, land marks and road

Report and profile plat.

crossings, and make a report, profile and plat of the same, and estimate the number of cubic yards of earth or other substance to be removed, and the cost per cubic yard for each working section, as hereinafter provided, and of each section of one hundred feet.

Schedule of lands.

SEC. 9. The commissioners shall also, by their order, direct the surveyor or engineer to make and return a schedule of all the lots and lands, and public or corporate roads or railroads that will be benefited by the improvement, and an apportionment of a number of lineal feet and cubic yards to each lot, tract of land, road or railroad, according to the benefit which will result to each from the improvement, and an estimate of the costs of location and construction to each, and a specification of the manner in which the improvement shall be made and completed, the number of flood gates, water ways, farm crossings and bridges necessary, including kinds and dimensions thereof, and of all county and district lines and railroad crossings.

Size and form of plat.

SEC. 10. The plat provided for in section eight, shall be drawn upon a scale sufficiently large to represent all the meanderings of the proposed improvement, and shall distinctly show the boundary lines of each lot or tract of land, and of each road or railroad to be benefited thereby, the name of the owner of each lot or tract of land as the same appears upon the tax duplicate at the time, the authority or company having in charge or owning or controlling each public or corporate road or railroad, the distance in feet through each tract or parcel of land, together with such other matters as the surveyor or engineer deems material. The profile shall show the surface, the grade line, and the gradient fixed, and the surveyor or engineer shall make and file with his report an itemized bill of all costs made in the proper discharge of his duty under this and the two preceding sections, and shall file his report with the clerk of the board of county commissioners within thirty days after making the survey and level.

Filing report and giving notice.

SEC. 11. Upon the filing of the report of the surveyor or engineer, the clerk shall, without delay, fix a day for the hearing of the same; he shall prepare and deliver to the petitioners, or any one of them, a notice in writing, di-

rected to the resident lot or land owners and to the authorities or municipal or private corporations affected by the improvement, setting forth the pendency, substance and prayer of the petition, together with a tabular statement of the apportionment as made by the surveyor or engineer in his report, a copy of which notice shall be served upon each lot or land owner, and upon each member of any such public board of authority, and upon an officer or agent of such private corporation, at least eight days before the day set for the hearing, and the person who serves the same shall make return on the notice under oath, of the time and manner of service, and file the same with the clerk of the board on or before that day; and the clerk shall, at the same time, give the like notice to each non-resident, or lot or land owner, or by publication in a newspaper printed and of general circulation in the county, for at least two consecutive weeks before the day set for the hearing, which notice shall be verified by the affidavit of the printer, or other person knowing the fact, and filed with the clerk on or before that day.

SEC. 12. The county commissioners shall meet at the clerk's office on the day so fixed by the clerk, and shall first determine whether the required notice has been given. If they find that due notice has not been given, they shall continue the hearing to a day to be fixed by them, and order the notices to be served as hereinbefore provided, and when they find that due notice has been given they shall examine the report of the surveyor or engineer, and the apportionment by him made, and if it is in all respects fair and just according to benefits, they shall approve and confirm the same. Hearing by commissioners.

SEC. 13. If the commissioners find that the apportionment reported by the surveyor or engineer is unfair and unjust and ought not to be confirmed, they shall so order and amend it as to make it fair and just, in proportion to benefits, and if necessary in their opinion, they may adjourn the further hearing, not exceeding twenty days, to a day to be fixed by them, and go upon the premises, and by actual view, apportion the entire cost of location and construction, or any part thereof, as may seem just and Further proceedings.

proper, and on the day so fixed by them they shall again meet at the clerk's office and determine the apportionment.

Damages.

SEC. 14. At any time on or before the day set for hearing, after persons are notified, as provided in section twelve (12), any person or corporation whose lands are taken or affected in any way by the improvement, may make application to the commissioners in writing for compensation and damages; and a failure to make such application shall be deemed and held a waiver of all right thereto.

Allowing compensation.

SEC. 15. The commissioners shall, upon actual view of the premises, fix and allow such compensation for lands appropriated and assess such damages as will, in their judgment, accrue from the construction of the improvement, to each person or corporation making application as provided in the preceding section, and without such application to each idiot, insane person or minor owning lands taken or affected by the improvement.

Filing exceptions.

SEC. 16. A person or corporation, party to the proceedings, may file exceptions to the apportionment, or to any claim for compensation or damages, at any time before the time set for the final hearing of the report and apportionment; the commissioners may hear testimony and examine witnesses upon all questions made by the exceptions, and for that purpose may compel the attendance of witnesses by subpoena, which the clerk of the superior court shall issue on demand; and their decision on the exceptions shall be entered on the journal, and if they sustain the exceptions the cost of hearing thereon shall be paid out of the county treasury, and if they overrule the same, such cost shall be taxed against the person or corporation filing the exceptions.

Appeal.

SEC. 17. Any person or corporation aggrieved thereby may appeal from any final order or judgment of the commissioners made in the proceedings and entered upon their journal, determining either of the following matters, viz.: *First*, whether said ditch will be conducive to the public health, convenience or welfare; *second*, whether the route thereof is practicable; *third*, the compensation for land appropriated; *fourth*, the damage claimed to property affected

by the improvement; and the appellant shall file with the commissioners, at the final hearing before them, a notice in writing, of an intention so to do, and specifying therein the matter appealed from; the commissioners shall fix the amount of the bond to be given by the appellant, and cause an entry thereof, and of the notice, to be made upon their journal; the party appealing shall, within ten days thereafter, file with the clerk a bond in the amount so fixed, with at least two sufficient sureties, to be approved by the clerk, conditioned to pay all the costs made on the appeal in case the appellant fail to sustain the same, or the appeal be dismissed for any cause; and the clerk shall make a complete transcript of the proceedings had before the commissioners, and certify the same, together with all original papers filed in his office, and transmit them to the superior judge of the county within twenty days from the day of the final hearing.

SEC. 18. The superior judge shall file the transcript and original papers, and docket the case, styling the appellant Proceedings before superior judge. plaintiff, and the county commissioners and petitioner defendants, and thereupon he shall fix a day, not exceeding five days thereafter, for the hearing of all preliminary motions, and the examination of the papers so filed; on the day so fixed all preliminary motions shall be heard and determined, as well as all questions arising upon the record, and if he find that the proceedings are irregular in substance, or that the appeal has not been perfected according to law, he shall dismiss the appeal at the cost of the appellant and certify such dismissal, with his findings thereon, back to the commissioners; but the judge may, in his discretion, order and allow the correction of any technical defect, error or omission in such proceedings.

SEC. 19. Appeals shall be tried as in cases of appeals from justices of the peace to the superior court.

SEC. 20. The superior court shall administer to the Oath to jurors. jurors an oath, faithfully, impartially and to the best of their ability, and from actual view of the premises along the whole route of the improvement, to examine and determine the particular matters appealed from, and to render a true verdict according to the facts appearing to them

from actual view of the premises, and the evidence under the charge of the court.

SEC. 21. The sheriff, or his deputy, together with the surveyor or engineer who surveyed, leveled, apportioned and platted the improvement, may accompany the jury and point out its route; no other person shall be permitted to interfere in any way with the jurors in the discharge of their duties, and after the jury has fully examined the premises and returned to court either party may be heard, in person or by counsel, and may offer evidence to the jury, under the direction of the court, upon any matter given it specially in charge.

Form of verdict.

SEC. 22. The jury shall find and return a verdict determining the matter or matters appealed from, being one or more of the following propositions, viz.: *First*, whether said ditch will be conducive to the public health, convenience or welfare; *second*, whether the route thereof is practicable; *third*, the compensation due each appellant for land appropriated; *fourth*, the damages due each appellant for property affected by the improvement. The jury shall return their verdict in writing, signed by the jurors. As to said propositions, it shall be necessary for only nine jurors to agree.

Record.

SEC. 23. Upon the return of the verdict the same shall be recorded, and, together with all papers and records, duly certified, forwarded to the office of the clerk of the board of county commissioners.

Duty of commissioners.

SEC. 24. If the verdict of the jury be in favor of the appellant, the commissioners shall cause to be made on their journal an entry carrying out the findings of the jury; and if the jury find that the improvement is not necessary, or will not be conducive to the public health, convenience or welfare, or is not practicable, the commissioners shall cause an entry to be made upon their journal dismissing the proceedings at the cost of the county, which shall be paid out of the general county ditch fund on the order of the county commissioners.

SEC. 25. If the jury find that the improvement is necessary, and that the same will be conducive to the public

health, convenience or welfare, and is practicable, the commissioners shall assess the cost to the appellant.

SEC. 26. If the jury find that the allowance of compensation and damages, as made by commissioners, fully compensate for all lands appropriated and damage sustained, the commissioners shall assess the costs made by the appeal to the appellant. Assessing costs.

SEC. 27. If more than one party appeal, the superior judge may order the cases to be consolidated and tried together, and the rights of each party as to compensation or damages shall be separately determined by the jury in its verdict.

SEC. 28. After the transcript of the proceedings before the superior judge and all other papers in the case are returned to the clerk of the board of county commissioners, the commissioners shall cause such entry to be made on their journal as may be necessary to give effect to the verdict and findings of the jury, and shall fix a time for the sale of the construction of the improvement at public outcry in sections not less than the number of linear feet apportioned to each lot or separate tract of land, public or corporate road or railroad, and shall cause notice to be given of the time and place of the sale and direct the sale, and direct the surveyor or engineer who made the apportionment, or some other competent surveyor or engineer, to attend at the time and place of sale to superintend and conduct the same, who shall receive all bids for the construction of the improvement and make contracts with the lowest responsible bidders, and take good and sufficient bonds for the labor of the construction of the improvement, conditioned for the faithful performance of the contract so made and for the completion of the work within the time fixed in the contract in a sum not less than double the estimated value of the part bid off and contracted to be performed by each. Record of commissioners. Letting contracts.

SEC. 29. No bid shall be entertained which exceeds the estimated value of the construction in any case. The surveyor or engineer shall sell first the job or labor of the construction of the working section of the outlet or mouth of the improvement, and fix a day when the job shall be Limit of bids.

completed, not exceeding in any case one hundred and fifty days from the day of sale, and then sell each remaining working section, in its order, up stream, and require the labor on each to be completed within a time to be fixed by him, which shall be at least two days earlier than the day fixed for the completion of the working section next above it, so as to secure an outlet for the water as each section is completed; he shall make contracts and take bonds as aforesaid, and report his doings to the commissioners within five days from the date of sale and return the contracts and bonds to the clerk of the board of county commissioners, who shall file and carefully preserve the same; the contracts and bonds shall be examined and approved or disapproved by the commissioners, who shall cause an entry of their decision to be made on their journal, and the contractors to be notified of the approval or disapproval of the contracts and bonds, and the contractor for each job shall be liable on his bond so given for all delays after the expiration of the time named therein for the completion of the job, and for the payment of all damages which accrue by reason of the failure to complete the job within the time required in the contract therefor.

Report of surveyor.

Liability of contractor.

Payment for work.

SEC. 30. The work shall be done under the supervision of the surveyor or engineer, and when a part, not less than one-fourth of the portion thereof included in any contract, is completed in accordance with the specifications, he shall give to the contractor a certificate thereof, showing the proportional amount which the contractor is entitled to be paid by the terms of his contract, and the clerk of the board of county commissioners shall, upon the presentation of such certificate to him, draw his warrant on the treasurer for eighty per cent. of the amount, and the treasurer shall pay the same out of any funds in the treasury applicable to such purpose; or if the commissioners have determined to issue bonds for the construction of such work they may, if the contractor consent, pay in bonds, but proportioned amounts shall not be certified or paid unless the whole job amounts to more than two thousand feet. When the whole contract is completed, the entire price may be paid in the manner aforesaid.

SEC. 31. A job not completed within the time fixed in the contract and bond shall be re-estimated by the surveyor or engineer, and re-sold by him to the lowest responsible bidder, but shall not be sold for a sum greater than such estimate, nor a second time to the same party. A contract bond shall be entered into, as hereinbefore provided, but the commissioners may, for good cause, give further time to any contractor, not exceeding sixty days. The surveyor or engineer shall fix a time for the completion of work re-sold, not exceeding sixty days from the date of the bond, and no contractor shall be prosecuted on his bond until the section below is completed.

Re-estimate.

Limit for completion.

SEC. 32. When the working sections of the improvement are let, as hereinbefore provided, and the costs and expenses of location and construction and all compensation and damages are ascertained, the commissioners shall meet and determine at what time and in what number of assessments they will require the same to be paid, and order that the assessments, as made by them, be placed on the duplicate accordingly, against the lots or lands assessed; they shall also determine whether they will issue the bonds of the county to raise the money necessary to pay such costs and expenses, and if they so determine, the bonds may be issued for a term of years, not exceeding twenty, at a rate of interest not exceeding eight per cent. per annum, payable semi-annually; and they shall cause an entry to be made upon their journal, setting forth their findings and determination under this section.

Number and order of assessments.

SEC. 33. When the commissioners make an assessment they shall cause an entry to be made, directing the clerk of the board of county commissioners to make and furnish to the treasurer of the county a special duplicate with the assessment arranged thereon, as required by their order, and the clerk of the board of county commissioners shall retain a copy thereof in his office, and all assessments shall be collected and accounted for by the treasurer as taxes.

Duplicate assessment roll.

SEC. 34. If the commissioners determine to issue bonds of the county for the money necessary to meet the expenses of construction of any ditch, they shall make an assess-

Levying assessments for bonds.

ment upon all the lots, lands, public or corporate roads or railroads benefited by the improvement, in proportion to the apportionment hereinbefore provided for, sufficient to pay the costs of location and the first year's interest, and including the fees of the surveyor or engineer, made after locating, in superintending the construction of the improvement, and order the same to be placed upon the duplicate for collection; and they shall, thereafter, make such assessments as may be required to raise the money for the prompt payment of such bonds.

Form and
terms of bonds.

SEC. 35. The county commissioners shall issue such bonds of the county in amounts as determined by them, payable out of the funds arising from such assessments, and bearing interest as hereinbefore provided; said bonds shall be signed by the county commissioners and countersigned by the clerk of the board, who shall affix his seal thereto; such bonds shall not be sold for less than their par value, and the money arising from such sale shall be used for no other purpose than the construction and expense of said improvement.

Proceedings by
municipal cor-
porations.

SEC. 36. The council of a municipal corporation may, by resolution, authorize the mayor to present a petition, signed by him officially, and a bond to the county commissioners, to locate and construct a ditch described in the resolution; or such council may authorize the mayor to sign, officially, a petition and bond for a ditch, to be presented by parties interested, whose lands are without the limits of the corporation, whenever the improvement will be conducive to the public health, convenience or welfare of the whole or any portion of the inhabitants of the corporation; in such case the commissioners shall count the municipal corporation as an individual petitioner, and may direct the surveyor or engineer to locate the improvement in accordance with the petition, whether wholly within or wholly without, or partly within and partly without the limits of the corporation; and the surveyor or engineer, in making his schedule of lots and lands benefited, may enumerate such lots and lands within or without the corporate limits as are specially benefited, and also the municipal corporation for benefits to the health and welfare of its inhabitants.

SEC. 37. When the improvement equally drains or otherwise benefits the whole of the territory within the limits of a municipal corporation, or any part thereof, the surveyor or engineer, or the commissioners, or the jury, if a jury be called, may consider and treat such territory as a single parcel of land, and any sum apportioned thereto shall be apportioned by the clerk of the board to the lots or lands included therein, according to the valuation thereof for taxation.

SEC. 38. If the proposed improvement passes through or into a municipal corporation, the mayor of which has not signed the petition therefor, as provided in the preceding section, the mayor shall be notified of the pendency of the petition in the same manner and at the same time that the commissioners are required by section six of this act to be notified; the mayor shall notify the council of the pendency of the petition, at its next regular meeting, or, if necessary, call a special meeting of the council for that purpose; and thereupon the council shall appoint a committee of its members, or the engineer of the corporation, or both, to meet the commissioners at the time and place of their meeting, and view and confer with them in regard to the improvement.

SEC. 39. If the commissioners, upon view of any proposed location, be requested by a person owning or having control of any lands through which the ditch will pass, to report in favor of an underground ditch or tiling through such lands, they may, if satisfied that the same will be equally beneficial, report and fix the capacity of the same, and estimate the additional expense on account thereof, if any, which shall be added to the amount apportioned to such lands as hereinbefore provided.

SEC. 40. If an engineer or clerk of the board, or a commissioner, neglect or refuse to perform any duty imposed upon him by the provisions of this act, he shall forfeit and pay a fine of twenty-five dollars for every such neglect, to be recovered before any officer having competent jurisdiction, in the name of the state, for the benefit of the common schools of the county, at the suit of any person aggrieved thereby.

Two or more
counties.

SEC. 41. When a ditch or improvement is proposed which will require a location in more than one county, application shall be made to the commissioners of each of such counties, and the surveyor or engineer shall make a report for each county; application for damages shall be made, and appeals from the finding of the commissioners, in joint session, locating and establishing such ditch, and from the assessment of damages or compensation, shall be taken to the superior court of the county in which the greatest length of such ditch or improvement is located; a majority of the commissioners of each county, when in joint session, shall be competent to locate and establish such ditch or improvement, but no commissioner shall serve in any case in which he is personally interested; and any two commissioners may form a quorum for the transaction of business under this act for their respective counties.

Ditch along a
public highway.

SEC. 42. The commissioners, if they find the route proposed is not such as best to effect the object sought, or that the proposed drainage can be effected as well in connection with a ditch necessary for the improvement of public highways already established, or such as may be thereafter required, shall proceed to establish the route; if the route proposed is upon a line or subdivision of sections where a public road may be required, and in all cases in which the route proposed is along highways already established, the commissioners shall locate the improvement at a sufficient distance from the center of such highways to admit of a good road along such central line; the earth taken from the ditch shall be so placed upon the roadway as to form a turnpike, and no part of such earth shall be placed nearer to the ditch than two feet, and the commissioners, in locating ditches, shall in all cases, so far as practicable, avoid running the same diagonally across sections or parts of sections.

SEC. 43. The court in which any proceeding is brought to recover any tax or assessment paid, or declare void the proceedings to locate or establish any ditch, or to enjoin any tax or assessment levied or ordered to be levied to pay for the labor and expense as aforesaid, shall, if there

is manifest error in the proceedings, allow the plaintiff in Error. the action to show that he has been injured thereby, and may on application of either party, appoint such person or persons to examine the premises, or to survey the same, or both, as may be deemed necessary; the court in which any such proceedings are begun shall allow parol proof that said improvement is necessary and will be conducive to the public health, convenience and welfare, and that any steps required by law for any improvement have been substantially complied with, notwithstanding the record required to be kept by any board or officer, and without finding error, the court may correct any gross injustice in Court may correct apportionment. the apportionment made by the commissioners; the court shall, on final hearing, make such order in the premises as shall be just and equitable, and may order that such tax and assessment remain on the duplicate assessment roll for collection, or order the same to be levied, or may perpetually enjoin the same or any part thereof; or, if the same has been paid under protest, may order the whole, or such part thereof as is just and equitable, to be refunded, and the cost of such proceeding shall be apportioned among the parties or paid out of the county treasury, as justice requires.

SEC. 44. The county commissioners may hear and determine, at the same time and under the same petition, the necessity of locating any new ditch, or a ditch partly old and partly new, or of deepening, widening, straightening or altering any old ditch, as the necessity of the case requires, and shall cause such entry to be made on their journal as in their judgment is required. All estimates, either by the surveyor or engineer, or by the commissioners, shall be made in the manner provided in this act. No assessment shall be made to any lands upon any principle other than that of benefits derived, and in proportion thereto, in deepening, widening, straightening or altering any ditch; and no land lying below shall be assessed for the benefit of lands lying above, but all assessments shall be made in proportion to the benefits derived. Power of commissioners.

SEC. 45. The commissioners shall require each surveyor or engineer appointed by them under the provisions of Surveyor's bond.

this act, to enter into a good and sufficient bond, with surety to be approved by them, conditioned for the faithful performance of his duties, in a sum to be fixed by the commissioners; and an action may be brought on such bond by any person aggrieved by a failure of the surveyor or engineer to do his duty, in the name of such party, and recovery may be had for his use and benefit.

Enlarging
culverts.

SEC. 46. The commissioners of any county may, when the same is necessary to the public health, convenience or welfare, cause to be constructed, deepened or enlarged any bridge or culvert made necessary by the crossing of any ditch, drain, water course or stream of water, by any railroad, turnpike, plank road, or other road of any corporation, shall have three months from the time this act takes effect in which to construct, deepen or enlarge such bridges and culverts. A failure to construct, deepen or enlarge any such bridge or culvert within the specified time shall be taken as a refusal to do the same, and thereupon the commissioners shall at once proceed to let the work of constructing, deepening or enlarging the same to some suitable person for such reasonable price as they may be able to agree upon, and assess the corporation with the price paid therefor and all costs of letting the same; and such assessment shall be a lien upon the property of the corporation, and be collected as other taxes; but before the commissioners shall let such work they shall give to the corporation, its agent or attorney, at least twenty days' actual notice of the necessity of the work.

Owner of land
must keep ditch
open.

SEC. 47. Every person or corporation through whose lands any ditch improvement is constructed shall be required to keep the same open, free and clear of all obstructions upon his or its premises, and in case of a failure so to do, shall be liable to pay all reasonable and necessary expenses of removing such obstructions; a person or corporation aggrieved by any such obstruction may make a sworn statement of the facts to the board of county commissioners, who shall at once appoint a competent person to examine the premises and inquire into the truth of the statement, who shall proceed without delay to do the same, and if said board find the statement to be true, they

or it shall immediately notify the owner of the land on which such obstruction exists to remove the same within a reasonable time — not exceeding twenty days; and if the owner so notified fail to remove the obstruction, the person appointed by the said board to make the examination shall at once cause the same to be removed at the expense of such owner, and certify such expense to the said board, who shall place the same, together with all fees and other expenses in the case, on the duplicate as an assessment upon the lands of such person or corporation, and the same shall be a lien upon such lands, and shall be collected as other taxes: *Provided*, That nothing in this section shall be so construed as to compel corporations, companies or individuals to keep in repair any drains or ditches passing through high or table lands not requiring drainage; or if any part of a ditch or drain subject to the provisions of this act shall be obstructed by drift wood, the cost of removal of which would exceed the sum of twenty dollars, it shall be the duty of the ditch commissioner to cause such portions of ditch or drain to be kept open and in repair, and he shall apportion the cost to lands benefited in the manner provided in this act for cost of construction.

SEC. 48. The commissioners may, on the proper petition and bond being filed, and the same notice being given as required in cases of the location of a ditch, declare any ditch, whether located by the county commissioners or others, vacated and abandoned, and its location and establishment to be held for naught if, in their judgment, the same has ceased to be of public utility, and the public health, convenience or welfare no longer demand the maintenance thereof; but private rights of persons acquired by reason of the location and establishment of such ditch shall not be interfered with nor in any way impaired thereby.

SEC. 49. When a ditch has been established and constructed for the public health, convenience or welfare, either by private agreement between two or more individuals whose real property has been affected thereby, or by a board of county commissioners, and such ditch has been

used for the purpose of drainage of private lands or public highways for seven years or more, without obstruction or interruption, the same shall and is hereby declared to be a public water course, notwithstanding errors, defects or irregularities in the location, establishment or construction of the same, and the public shall have and possess, in and to such public water course, the same rights and privileges which pertain and relate to natural water courses.

Expense of locating and constructing.

SEC. 50. The county commissioners may appropriate a sum sufficient from the general fund of the county to pay for the location and construction of such portions of the respective ditches located by them, or by the commissioners of two or more counties, as may be apportioned to the county, or upon land owned by the county.

Public lands.

SEC. 51. All state, county, school district and other lands requiring drainage shall be subject to the provisions of this act, and the proper authority having charge of said lands may instigate proceedings for drainage as in the case of private persons: *Provided*, That such public authorities shall not be required to give any bond in such proceedings.

County record of ditches.

SEC. 52. The clerk shall make, in a suitable book to be provided for that purpose, at the expense of the county, a complete record of each ditch improvement made in his county under the provisions of this act, which shall include the petition, bond, reports of the surveyor or engineer, and all journal entries made, together with all plats and other papers necessary to show a complete history of all that is done in each case up to and including the final order made by the board.

Ditch accounts.

SEC. 53. The commissioners of any county wherein a ditch improvement is ordered, whether the same is the construction of a new ditch or the deepening, widening, straightening or alteration of any old ditch, shall provide a suitable book in which to keep the ditch accounts of the county. The clerk shall open therein an account with each improvement in the name by which the same is known, and charge all assessments and credit all payments made in the case; the money collected on each improvement shall constitute a special fund; and the provisions of

this section shall apply in cases of ditches located by the commissioners of more than one county in joint session.

SEC. 54. Fees for service of officers under this act shall ^{Fees.} be the same as for like services in civil cases, or as is or may be provided by law.

SEC. 55. Owners of land may drain the same in the ^{Private drains.} general course of drainage by constructing open or covered drains, discharging the same into any natural water course or into any natural depression whereby the water will be carried into some natural water course, or into some drain in the public highway, with the consent of the commissioners thereto; and when such drainage is wholly upon the owner's land, he shall not be liable in damages therefor to any person or persons or corporation.

SEC. 56. In performing their duties under this act the county commissioners shall be entitled to a per diem ^{Per diem of commissioners.} allowance equal to that allowed by law for other services.

SEC. 57. Any natural water course may be improved by order of the board of county commissioners of any county, in accordance with the provisions of this act, subject to vested rights of land, lot, mill or mine owners along such water course. ^{Natural water courses.}

SEC. 58. The board of county commissioners may appoint one or more ditch commissioners, whose duties shall be to see that all ditches and drains are kept in good order and free from obstruction.

SEC. 59. Whenever complaint shall be made to such ditch commissioner that any owner of land across which a ditch is constructed fails to keep the same clear of obstructions, as provided in section forty-seven, it shall be the duty of such commissioner to examine into said complaint, and if the complaint is found to be true, to cause the ditch to be cleared out, as provided in this act. But if such complaint be found by said ditch commissioner to be frivolous, the costs and expenses of such examination shall be paid by the complainant; and the said ditch commissioner may sue for the same in his own name in any court having competent jurisdiction, and when paid or recovered, the same shall be paid into the county treasury. ^{Ditch commis- sioners.}

SEC. 60. Said ditch commissioner shall perform such

Compensation of.

duties and receive such compensation as shall be determined by the board of county commissioners.

Prosecuting attorney prepare blanks.

SEC. 61. It shall be the duty of the prosecuting attorney in each county to prepare suitable blanks for the use of the board of county commissioners under this act.

Fees; how paid.

SEC. 62. All fees under this act shall be paid out of the county treasury as soon as the bill of items thereof is examined and allowed by the commissioners, and for all amounts so paid, except to the commissioners and clerk, the commissioners shall order the general county fund to be reimbursed for the money raised for the respective improvements.

Ditch improvement fund.

SEC. 63. There shall be and is hereby constituted a county general ditch improvement fund, to consist of taxes on county levies and all balances remaining unexpended of special ditch improvement funds arising from excess of assessments made on ditch improvements after the expenses thereof have been fully paid.

Liability for diverting water.

SEC. 64. Whoever wilfully obstructs any ditch or wilfully diverts the water from its proper channel shall forfeit and pay to the county in which such ditch is situate the sum of twenty-five dollars, to be recovered before any justice of the peace or other court having jurisdiction of the matter, in the name of the state, for the use of the county, and shall be liable for all damages that accrue to any person or corporation by such act.

SEC. 65. The provisions of this act shall apply to ditch improvements petitioned for, located or in process of construction at the time the same takes effect.

SEC. 66. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 67. It is declared that an emergency now exists for the immediate taking effect of this act, and the same is declared to be in force from and after its passage.

Approved March 19, 1890.

IRRIGATING DISTRICTS; ORGANIZATION AND GOVERNMENT OF.

AN ACT providing for the organization and government of irrigating districts, and the sale of bonds arising therefrom, and declaring an emergency.

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

SECTION 1. Whenever fifty or a majority of freeholders owning lands susceptible of one mode of irrigation from a common source, and by the same system of works, desire to provide for the irrigation of the same, they may propose the organization of an irrigation district under the provisions of this act, and when so organized, such district shall have the power conferred, or that may hereafter be conferred, by law upon such irrigation districts. Organizing district.

SEC. 2. A petition shall first be presented to the board of county commissioners of the county in which the lands, or the greatest portion thereof, is situated, signed by the required number of freeholders of such proposed district, which petition shall set forth and particularly describe the proposed boundaries of such district, and shall pray that the same may be organized under the provisions of this act. The petitioners must accompany the petition with a good and sufficient bond, to be approved by the said board of county commissioners, in double the amount of the probable cost of organizing such district, conditioned that the bondsmen will pay all said cost[s] in case such organization shall not be effected. Such petition shall be presented at a regular meeting of the said board, and shall be published for at least two weeks before the time at which the same is to be presented, in some newspaper printed and published in the county where said petition is presented, together with a notice stating the time of the meeting at which the same will be presented. When such petition is presented, the said board of county commissioners shall hear the same, and may adjourn such hearing from time to time, not exceeding four weeks in all; and on the final hearing, may make such changes in the proposed Petition to county board.

Publication of petition.

boundaries as they may find to be proper, and shall establish and define such boundaries: *Provided*, That said board shall not modify said boundaries so as to except from the operation of this act any territory within the boundaries of the district proposed by said petitioners, which is susceptible of irrigation by the same system of works applicable to the other lands in such proposed district, nor shall any lands which will not, in the judgment of the said board, be benefited by irrigation by said system, or which have a sufficient water supply for irrigation from any source, be included within such district: *Provided*, That any person whose lands are susceptible of irrigation from the same source shall, upon application of the owner to said board, be entitled to have such lands included in said district. Said board shall also make an order dividing said district into five divisions, as nearly equal in size as may be practicable, which shall be numbered first, second, third, fourth and fifth, and one director shall be elected from each division. Said board of county commissioners shall then give notice of an election to be held in such proposed district, for the purpose of determining whether or not the same shall be organized under the provisions of this act. Such notice shall describe boundaries so established, and shall designate a name for such proposed district, and said notice shall be published, for at least three weeks prior to such election, in a newspaper published within said county; and if any portion of such proposed district lie within another county or counties, then said notice shall be published in a newspaper published within each of said counties. Such notice shall require the electors to cast ballots which shall contain the words "Irrigation district—yes," or "Irrigation district—no," or words equivalent thereto; and also the names of persons to be voted for to fill the various elective offices hereinafter prescribed. No person shall be entitled to vote at any election held under the provisions of this act unless he shall possess all the qualifications required of electors under the general election laws of this state.

Subdivision of district.

Election.

Form of ballots.

Conduct of election.

SEC. 3. Such election shall be conducted in accordance with the general election laws of the state: *Provided*,

That no particular form of ballot shall be required. The said board of county commissioners shall meet on the second Monday next succeeding such election, and proceed to canvass the votes cast thereat; and if upon such canvass it appear that at least two-thirds of all the votes cast are "Irrigation district — yes," the said board shall, by an order entered on their minutes, declare such territory duly organized as an irrigation district, under the name and style theretofore designated, and shall declare the persons receiving, respectively, the highest number of votes for such several offices, to be duly elected to such offices. Said board shall cause a copy of such order, duly certified, to be immediately filed for record in the office of the county clerk of each county in which any portion of such lands are situated, and must also immediately forward a copy thereof to the clerk of the board of county commissioners of each of the counties in which any portion of the district may lie; and no board of county commissioners of any county including any portion of such district shall, after the date of the organization of such district, allow another district to be formed including any of the lands in such district without the consent of the board of directors thereof; and from and after the date of such filing, the organization of such district shall be complete, and the officers thereof shall be entitled to enter immediately upon the duties of their respective offices, upon qualifying in accordance with law, and shall hold their offices, respectively, until their successors are elected and qualified. For the purposes of the election above provided for, the said board of county commissioners must establish a convenient number of election precincts in said proposed district, and define the boundaries thereof, which said precincts may thereafter be changed by the board of directors of such district.

Permanent boundaries.

Election precincts.

SEC. 4. An election shall be held in such district on the first Tuesday in April, eighteen hundred and ninety-one, and on the first Tuesday in April in each second year thereafter, at which an assessor, a collector, and a treasurer, and a board of five directors for the district shall be elected. The person receiving the highest number of votes for any

Time of election.

Assessor's
bond.

office to be filled at such election, is elected thereto. Within ten days after receiving their certificates of election, hereinafter provided for, said officers shall take and subscribe the official oath and file the same in the office of the board of directors. The assessor shall execute an official bond in the sum of ten thousand dollars, and the collector an official bond in the sum of twenty thousand dollars, and the district treasurer an official bond in the sum of fifty thousand dollars; each of said bonds to be approved by the board of directors; and each member of said board of directors shall execute an official bond in the sum of twenty-five thousand dollars, which said bonds shall be approved by the judge of the superior court of said county where such organization was effected, and shall be recorded in the office of the county clerk thereof, and filed with the secretary of said board. All official bonds herein provided for shall be in the form prescribed by law for the official bonds of county officers.

Notice of elec-
tion.

SEC. 5. Fifteen days before any election held under this act, subsequent to the organization of any district, the secretary of the board of directors shall cause notices to be posted in three public places in each election precinct, of the time and place of holding the election, and shall also post a general notice of the same in the office of said board, which shall be established and kept at some fixed place to be determined by said board, specifying the polling places of each precinct. Prior to the time for posting the notices, the board must appoint for each precinct, from the electors thereof, one inspector and two judges, who shall constitute a board of election for such precinct. If the board fail to appoint a board of election, or the members appointed do not attend at the opening of the polls on the morning of election, the electors of the precinct present at that hour may appoint the board, or supply the place of an absent member thereof. The board of directors must, in its order appointing the board of election, designate the house or place within the precinct where the election must be held.

Conduct of
election.

SEC. 6. The inspector is chairman of the election board, and may — *First*, administer all oaths required in the pro-

gress of an election; *second*, appoint judges and clerks, if during the progress of the election any judge or clerk cease to act. Any member of the board of election, or any clerk thereof, may administer and certify oaths required to be administered during the progress of an election. The board of election for each precinct must, before opening the polls, appoint two persons to act as clerks of the election. Before opening the polls, each member of the board and each clerk must take and subscribe an oath to faithfully perform the duties imposed upon them by law. Any elector of the precinct may administer and certify such oath. The polls must be opened at nine o'clock A. M. on the morning of the election, and be kept open until four P. M., when the same must be closed. The provisions of the general election law of this state concerning the form of ballots to be used shall not apply to elections held under this act.

SEC. 7. Voting may commence as soon as the polls are opened, and may be continued during all the time the polls remain opened. As soon as the polls are closed, the judges shall open the ballot-box and commence counting the votes; and in no case shall the ballot-box be removed from the room in which the election is held until all the ballots have been counted. The counting of ballots shall in all cases be public. The ballots shall be taken out, one by one, by the inspector or one of the judges, who shall open them and read aloud the names of each person contained therein and the office for which every such person is voted for. Each clerk shall write down each office to be filled, and the name of each person voted for for such office, and shall keep the number of votes by tallies, as they are read aloud by the inspector or judge. The counting of votes shall be continued without adjournment until all have been counted.

Canvassing
votes.

SEC. 8. As soon as all the votes are read off and counted, a certificate shall be drawn upon each of the papers containing the poll list and tallies, or attached thereto, stating the number of votes each one voted for has received, and designating the office to fill which he was voted for, which number shall be written in figures and in words at full length. Each certificate shall be signed by the

clerk[s], judge[s], and the inspector. One of said certificates, with the poll list and the tally paper to which it is attached, shall be retained by the inspector, and preserved by him at least six months. The ballots shall be strung upon a cord or thread by the inspector during the counting thereof, in the order in which they are entered upon the tally lists by the clerk; and said ballots, together with the other of said certificates, with the poll list and tally paper to which it is attached, shall be sealed by the inspector, in the presence of the judges and clerks, and endorsed "Election returns of [naming the precinct] precinct," and be directed to the secretary of the board of directors, and shall be immediately delivered by the inspector, or by some other safe and responsible carrier designated by said inspector, to said secretary, and the ballots shall be kept unopened for at least six months, and if any person be of the opinion that the vote of any precinct has not been correctly counted, he may appear on the day appointed for the board of directors to open and canvass the returns, and demand a recount of the vote of the precinct that is so claimed to have been incorrectly counted.

Certificates and returns.

SEC. 9. No list, tally paper or certificate returned from any election shall be set aside or rejected for want of form, if it can be satisfactorily understood. The board of directors must meet at its usual place of meeting on the first Monday after each election, to canvass the returns. If, at the time of meeting, the returns from each precinct in the district in which the polls were opened have been received, the board of directors must then and there proceed to canvass the returns, but if all the returns have not been received, the canvass must be postponed from day to day until all the returns have been received, or until six postponements have been had. The canvass must be made in public; and by opening the returns and estimating the vote of the district for each person voted for, and declaring the result thereof.

Record of election.

SEC. 10. The secretary of the board of directors must, as soon as the result is declared, enter in the records of such board a statement of such result, which statement

must show—*First*, the whole number of votes cast in the district; *second*, the names of the persons voted for; *third*, the office to fill which each person was voted for; *fourth*, the number of votes given in each precinct to each [of] such persons; *fifth*, the number of votes given in each division for the office of director, and the number of votes given in the district for the offices of assessor, collector and treasurer. The board of directors must declare elected the persons having the highest number of votes given for each office. The secretary must immediately make out and deliver to such person a certificate of election, signed by him and authenticated with the seal of the board. In case of the vacancy in the office of assessor, collector or treasurer, the vacancy shall be filled by appointment by the board of directors. In case of a vacancy in the office of director, the vacancy shall be filled by appointment by the board of county commissioners of the county where the office of such board of directors is situated, from the division in which the vacancy occurred. An officer appointed as above provided shall hold his office until the next regular election for said district, and until his successor is elected and qualified.

SEC. 11. On the first Wednesday in May next following their election, the board of directors shall meet and organize as a board, elect a president from their number, and appoint a secretary. The board shall have the power, and it shall be their duty to manage and conduct the business and affairs of the district, make and execute all necessary contracts, employ and appoint such agents, officers and employes as may be required, and prescribe their duties, establish equitable by-laws, rules [and] regulations for the distribution and use of water among the owners of said lands, and generally to perform all such acts as shall be necessary to fully carry out the purposes of this act. The said by-laws, rules and regulations must be printed in convenient form for distribution in the district. And it is hereby expressly provided that all water distributed for irrigation purposes shall be apportioned ratably to each land owner upon the basis of the ratio which the last assessment of such owner for district purposes within said

district bears to the whole sum assessed upon the district: *Provided*, That any land owner may assign the right to the whole or any portion of the waters so apportioned to him.

Meetings.

SEC. 12. The board of directors shall hold a regular monthly meeting, in their office, on the first Tuesday in every month, and such special meetings as may be required for the proper transaction of business: *Provided*, That all special meetings must be ordered by a majority of the board; the order must be entered of record, and five day's notice thereof must, by the secretary, be given to each member not joining in the order. The order must specify the business to be transacted, and none other than that specified must be transacted at such special meeting. All

Quorum.

meetings of the board must be public, and three members shall constitute a quorum for the transaction of business, but on all questions requiring a vote, there shall be a concurrence of at least three members of said board. All

Public records.

records of the board shall be open to the inspection of any elector during business hours. The board and its agents and employes, shall have the right to enter upon any land in the district to make surveys, and may locate the line for any canal or canals, and the necessary branches for the same, on any of said lands which may be deemed best for such location. Said board shall also have the

Acquiring real estate.

right to acquire, either by purchase or condemnation, all lands and waters and other property necessary for the construction, use, supply, maintenance, repair and improvement of said canal or canals and works, including canals and works constructed and being constructed by private owners, lands for reservoirs for the storage of needful waters, and all necessary appurtenances. In case of purchase, the bonds

Bonds of district.

of the district, hereinafter provided for, may be used at their par value in payment; and in case of condemnation, the board shall proceed, in the name of the district, and in accordance with the laws of the state in such cases made and provided. Said board may also construct the necessary dams, reservoirs and works for the collection of water for said district, and do any and every lawful act necessary to be done, that sufficient water may be furnished to each

land owner in said district for irrigation purposes. The use of all water required for the irrigation of the lands of any district formed under the provisions of this act, together with the rights-of-way for canals and ditches, sites for reservoirs, and all other property required in fully carrying out the provisions of this act, is hereby declared to be a public use, subject to the regulation and control of the state in the manner prescribed by law.

SEC. 13. The legal title to all property acquired under the provisions of this act shall immediately and by operation of law vest in such irrigation district, and shall be held by such district in trust for, and is hereby dedicated and set apart to the uses and purposes set forth in this act; and said board is hereby authorized and empowered to hold, use, acquire, manage, occupy and possess said property as herein provided. Title to property.

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

SEC. 15. For the purpose of constructing necessary irrigating canals and works, and acquiring the necessary property and rights therefor, and otherwise carrying out the provisions of this act, the board of directors of any such district must, as soon after such district has been organized as may be practicable, estimate and determine the amount of money necessary to be raised, and shall immediately thereupon call a special election, at which shall be submitted to the electors of such district possessing the qualifications prescribed by this act, the question whether or not the bonds of said district shall be issued in the Special election.

amount so determined. Notice of such election must be given by posting notices in three public places in each election precinct in said district for at least twenty days, and also by publication of such notice in some newspaper published in the county where the office of the board of directors of such district is required to be kept, once a week for at least three successive weeks. Such notice must specify the time of holding the election, the amount of bonds proposed to be issued; and said election must be held and the result thereof determined and declared, in all respects as nearly as practicable, in conformity with the provisions of this act governing the election of officers: *Provided*, That no informalities in conducting such an election shall invalidate the same, if the election shall have been otherwise fairly conducted.

Validity of.

Form of ballots.

At such election the ballots shall contain the words "Bonds — yes," or "Bonds — no," or words equivalent thereto. If a majority of the votes cast are "Bonds — yes," the board of directors shall immediately cause bonds in said amount to be issued; said bonds shall be payable in gold coin of

Terms of bonds.

the United States, in installments as follows, to-wit: At the expiration of fifteen years, not less than six per cent. of said bonds; at the expiration of each succeeding year thereafter, including the twenty-ninth year, not less than six per cent.; and for the thirtieth year, a percentage sufficient to pay off said bonds, and shall bear interest at the rate of six per cent. per annum, payable semi-annually, on the first day of January and July of each year. The principal and interest shall be payable at the office of the treasurer of the district. Said bonds shall be, each, of the denomination of not less than one hundred dollars, nor more than five hundred dollars; shall be negotiable in form, signed by the president and secretary, and the seal of the board of directors shall be affixed thereto. They shall be numbered consecutively as issued, and bear date at the time of their issue. Coupons for the interest shall be attached to each bond, signed by the secretary. Said bonds shall express on their face that they were issued by authority of this act, stating its title and date of approval.

Bond record

The secretary shall keep a record of the bonds sold, their

number, the date of sale, the price received, and the name of the purchaser.

SEC. 16. The board may sell said bonds from time to time, in such quantities as may be necessary and most advantageous, to raise money for the construction of said canals and works, the acquisition of said property and rights, and otherwise to fully carry out the objects and purposes of this act. Before making any sale the board shall, at a meeting, by resolution declare its intention to sell a specified amount of the bonds, and the day and hour and place of such sale, and shall cause such resolution to be entered in the minutes, and notice of the sale to be given, by publication thereof at least twenty days, in such daily newspaper as they shall deem most advantageous. The notice shall state that sealed proposals will be received by the board, at their office, for the purchase of the bonds, till the day and hour named in the resolution. At the time appointed, the board shall open the proposals and award the purchase of the bonds to the highest responsible bidder, and may reject all bids; but said board shall in no event sell any of the bonds for less than ninety per cent. of the face value thereof.

SEC. 17. Said bonds, and interest thereon, shall be paid by revenue derived from an annual assessment upon the real property of the district, and all the real property in the district shall be and remain liable to be assessed for such payments as hereinafter provided.

SEC. 18. The assessor must, between the first Monday in March and the first Monday in June in each year, assess all real property in the district to the persons who own, claim, have the possession or control thereof, at its full cash value. He must prepare an assessment book, with appropriate headings, in which must be listed all such property within the district, in which must be specified, in separate columns, under the appropriate head — *First*, the name of the person to whom the property is assessed. If the name is not known to the assessor, the property shall be assessed to "unknown owners." *Second*, land by township, range, section or fractional section, and when such land is not a congressional division or subdivision, by metes and

bounds, or other description sufficient to identify it, giving an estimate of the number of acres, locality, and the improvements thereon. *Third*, city and town lots, naming the city or town, and the number and block according to the system of numbering in such city or town, and the improvements thereon. *Fourth*, the cash value of real estate, other than city or town lots. *Fifth*, the cash value of improvements on such real estate. *Sixth*, the cash value of city and town lots. *Seventh*, the cash value of improvements on city and town lots. *Eighth*, the cash value of improvements on real estate assessed to persons other than the owners of the real estate. *Ninth*, the total value of all property assessed. *Tenth*, the total value of all property after equalization by the board of directors. *Eleventh*, such other things as the board of directors may require.

Deputy assessors.

SEC. 19. The board of directors must allow the assessor as many deputies, to be appointed by him, as will, in the judgment of the board, enable him to complete the assessment within the time herein prescribed. The board must fix the compensation of such deputies, for the time actually engaged, nor must any allowance be made but for work done between the first Monday in March and the first Monday in August in each year.

Assessment record.

SEC. 20. On or before the first Monday in August in each year the assessor must complete his assessment book and deliver it to the secretary of the board, who must immediately give notice thereof, and of the time the board of directors, acting as a board of equalization, will meet to equalize assessments, by publication in a newspaper published in each of the counties comprising the district. The time fixed for the meeting shall not be less than twenty, nor more than thirty days from the first publication of the notice; and in the meantime the assessment book must remain in the office of the secretary for the inspection of all persons interested.

Equalization of assessment.

SEC. 21. Upon the day specified in the notice required by the preceding section for the meeting, the board of directors, which is hereby constituted a board of equalization for that purpose, shall meet and continue in session from

day to day as long as may be necessary, not to exceed ten days, exclusive of Sundays, to hear and determine such objections to the valuation and assessment as may come before them; and the board may change the valuation, as may be just. The secretary of the board shall be present during its session, and note all changes made in the valuation of property, and in the names of the persons whose property is assessed; and within ten days after the close of the session he shall have the total values, as finally equalized by the board, extended into columns and added.

SEC. 22. The board of directors shall then levy an assessment sufficient to raise the annual interest on the outstanding bonds; and at the expiration of fifteen years after the issuing of bonds by the board, must increase said assessment for the ensuing fifteen years in the following percentage of the principal of the whole amount of bonds then outstanding, to-wit: For the fifteenth year, six per cent.; for each succeeding year thereafter, including the twenty-ninth year, six per cent., and for the thirtieth year, a percentage sufficient to pay off said bonds. The secretary of the board must compute and enter in a separate column of the assessment book the respective sums, in dollars and cents, to be paid as an assessment on the property therein enumerated. When collected the assessment shall be paid into the district treasury, and shall constitute a special fund, to be called the "Bond fund of _____ irrigation district." In case of neglect or refusal of the board of directors to cause such assessment and levy to be made, as in this act provided, then the assessment of property made by the county assessor and the county board of equalization shall be adopted, and shall be the basis of assessments for the district, and the board of county commissioners of the county in which the office of the board of directors is situated shall cause an assessment roll for said district to be prepared, and shall make the levy required by this act in the same manner and with like effect as if the same had been made by said board of directors, and all expenses incident thereto shall be borne by such district. In case of the neglect or refusal of the collector or treasurer of the district to perform the duties

imposed by law, then the tax collector and treasurer of the county in which the office of the board of directors is situated must respectively perform such duties, and shall be accountable therefor on their official bonds as in other cases.

Assessment
lien.

SEC. 23. The assessment upon real property is a lien against the property assessed from and after the first Monday in March for any year, and such lien is not removed until the assessments are paid or the property sold for the payment thereof.

Collection.

SEC. 24. On or before the first day of November, the secretary must deliver the assessment book to the collector of the district, who shall, within twenty days, publish a notice in a newspaper published in each of the counties comprising the district, if there be land situated in more than one county in such district, that said assessments are due and payable and will become delinquent at six o'clock P. M. on the thirty-first day of December next thereafter, and that unless paid prior thereto, five per cent. will be added to the amount thereof, and also the time and place at which payment of assessments may be made. The notice shall also specify a time and place within each election precinct of the district, when and where the collector will attend to receive payment of assessments, and shall be published for fifteen days, and a printed copy of said notice shall be posted for the same time in some public place in each precinct. The collector must attend at the time and place specified in the notice, to receive assessments, which must be paid in gold and silver coin; he must mark the date of payment of any assessment in the assessment book opposite the name of the person paying, and give a receipt to such person, specifying the amount of the assessment and the amount paid, with a description of the property assessed. On the thirty-first day of December of each year all unpaid assessments are delinquent, and thereafter the collector must collect thereon, for the use of the district, an addition of five per cent.

Publication of
notice.

Keeping
records.

Delinquent as-
sessments.

SEC. 25. On or before the first day of February, the collector must publish the delinquent list, which must contain the names of the persons and a description of the

property delinquent, and the amount of the assessments and costs due opposite each name and description. He must append to and publish with the delinquent list a notice that unless the assessments delinquent, together with costs and percentage, are paid, the real property upon which such assessments are a lien will be sold at public auction. The publication must be made once a week for three successive weeks, in a newspaper published in each of the counties comprised in the district. The publication must designate the time and place of sale. The time of sale must not be less than twenty-one nor more than twenty-eight days from the first publication, and the place must be at some point designated by the collector.

SEC. 26. The collector must collect, in addition to the assessments due on the delinquent list and five per cent. added, fifty cents on each lot, piece or tract of land separately assessed, one-half of which must go to the district and the other to the collector for preparing the list. On the day fixed for the sale, or some subsequent day to which he may have postponed it, of which he must give notice, the collector, between the hours of ten o'clock A. M. and three o'clock P. M., must commence the sale of the property advertised, commencing at the head of the list and continuing alphabetically, or in numerical order of the lots or blocks, until completed. He may postpone the day of commencing sales, or the sale, from day to day, but the sale must be completed within three weeks from the day first fixed.

SEC. 27. The owner or person in possession of any real estate offered for sale for assessments due thereon may designate in writing to the collector, prior to the sale, what portion of the property he wishes sold, if less than the whole; but if the owner or possessor does not, then the collector may designate it, and the person who will take the least quantity of the land, or in case an undivided interest is assessed, then the smallest portion of the interest, and pay the assessments and costs due, including two dollars to the collector for the duplicate certificate of sale, is the purchaser. If the purchaser does not pay the assessments and costs before ten o'clock A. M. the follow-

ing day, the property on the next sale day must be re-sold for the assessments and costs. But in case there is no purchaser in good faith for the same on the first day that the property is offered for sale, then, when the property is offered thereafter for sale, and there is no purchaser in good faith for the same, the whole amount of the property assessed shall be struck off to the irrigation district within which such lands are situated as the purchaser, and the duplicate certificate delivered to the treasurer of the district, and filed by him in his office. No charge shall be made for the duplicate certificate where the district is the purchaser, and in such case the collector shall make an entry, "Sold to the district," and he shall be credited with the amount thereof in his settlement. An irrigation district, as a purchaser at such sale, shall be entitled to the same rights as a private purchaser, and the title so acquired by the district, subject to right of redemption herein provided, may be conveyed by deed, executed and acknowledged by the president and secretary of said board: *Provided*, That authority to so convey must be conferred by resolution of the board, entered on its minutes, fixing the price at which such sale may be made, and such conveyance shall not be made for a less sum than the reasonable market value of such property. After receiving the amount of assessments and costs, the collector must make out in duplicate a certificate, dated on the day of sale, stating (when known) the names of the persons assessed, a description of the land sold, the amount paid therefor, that it was sold for assessments, giving the amount and year of the assessment, and specifying the time when the purchaser will be entitled to a deed. The certificate must be signed by the collector, and one copy delivered to the purchaser, and the other filed in the office of the county clerk of the county in which the land is situated.

Property bid in
by district.

Certificate of
purchase.

Record of sales.

SEC. 28. The collector, before delivering any certificate, must, in a book, enter a description of the land sold, corresponding with the description in the certificate, the date of the sale, purchaser's name and amount paid, regularly number the description on the margin of the book, and put

a corresponding number on each certificate; such book must be open to public inspection, without fee, during office hours, when not in actual use. On filing the certificate with such county clerk, the lien of the assessments vests in the purchaser, and is only divested by the payment to him, or to the collector for his use, of the purchase money, and two per cent. per month from the day of sale until redemption.

SEC. 29. A redemption of the property sold may be made by the owner, or any party in interest, within twelve months from the date of purchase. Redemption must be made in gold or silver coin, as provided for the collection of state and county taxes, and when made to the collector he must credit the amount paid to the person named in the certificate, and pay it, on demand, to the person or his assignees. In each report the collector makes to the board of directors, he must name the person entitled to redemption money, and the amount due to each. On receiving the certificate of sale, the county clerk must file it and make an entry in a book similar to that required of the collector. On the presentation of the receipt of the person named in the certificate, or of the collector, for his use, of the total amount of the redemption money, the clerk must mark the word "redeemed," the date, and by whom redeemed, on the certificate and on the margin of the book where the entry of the certificate is made. If the property is not redeemed within twelve months from the sale, the collector, or his successor in office, must make to the purchaser, or his assignee, a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person redeemed the property during the time allowed by law for its redemption. The collector shall receive from the purchaser, for the use of the district, two dollars for making such deed.

SEC. 30. The matter recited in the certificate of sale must be recited in the deed, and such deed duly acknowledged or proved is *prima facie* evidence that — *First*, the property was assessed as required by law; *second*, the property was equalized as required by law; *third*, that the assessments were levied in accordance with law; *fourth*,

the assessments were not paid; *fifth*, at a proper time and place the property was sold as prescribed by law, and by the proper officers; *sixth*, the property was not redeemed; *seventh*, the person who executed the deed was the proper officer. Such deed, duly acknowledged or proved, is (except as against actual fraud) conclusive evidence of the regularity of all the proceedings from the assessment by the assessor, inclusive, up to the execution of the deed. The deed conveys to the grantee the absolute title to the lands described therein free from all incumbrances, except when the land is owned by the United States or this state, in which case it is *prima facie* evidence of the right of possession.

Prima facie evidence.

SEC. 31. The assessment book or delinquent list, or a copy thereof, certified by the collector, showing unpaid assessments against any person or property is *prima facie* evidence of the assessment, the property assessed, the delinquency, the amount of assessments due and unpaid, and that all the forms of law in relation to the assessment and levy of such assessments have been complied with.

SEC. 32. When land is sold for assessments correctly imposed, as the property of a particular person, no misnomer of the owner or supposed owner, or other mistake relating to the ownership thereof, affects the sale or renders it void or voidable.

Monthly settlements.

SEC. 33. On the first Monday in each month the collector must settle with the secretary of the board for all moneys collected for assessments, and pay the same over to the treasurer; and within six days thereafter he must deliver to and file in the office of the secretary a statement under oath, showing—*First*, an account of all his transactions and receipts since his last settlement; *second*, that all money collected by him as collector has been paid. The collector shall also file in the office of the secretary on said first Monday in each month, the receipt of the treasurer for the money so paid.

Redeeming bonds.

SEC. 34. Upon the presentation of the coupons due to the treasurer, he shall pay the same from said bond fund. Whenever, after ten years from the issuance of said bonds, said fund shall amount to the sum of ten thousand dollars,

the board of directors may direct the treasurer to pay such an amount of said bonds not due as the money in said fund will redeem, at the lowest value at which they may be offered for liquidation, after advertising for at least four weeks in some daily newspaper which said board may deem advisable, for sealed proposals for the redemption of said bonds. Said proposals shall be opened by the board in open meeting, at a time to be named in the notice, and the lowest bid for said bonds must be accepted: *Provided*, That no bonds shall be redeemed at a rate above par. In case the bids are equal, the lowest numbered bond shall have the preference. In case none of the holders of said bonds shall desire to have the same redeemed, as herein provided for, said money shall be invested by the treasurer, under the direction of the board, in United States gold-bearing bonds, or the bonds of the state, which shall be kept in said "bond fund," and may be used to redeem said district bonds whenever the holders thereof may desire.

Investment of money.

SEC. 35. After adopting the plan of said canal or canals, storage, reservoirs and works; the board of directors shall give notice, by publication thereof not less than twenty days in some newspaper published in each of the counties comprising the district: *Provided*, A newspaper is published therein, and in such other newspapers as they may deem advisable, calling for bids for the construction of said work, or of any portion thereof; if less than the whole work is advertised, then the portion so advertised must be particularly described in such notice; said notice shall set forth that the plans and specifications can be seen at the office of the board, and that the board will receive sealed proposals therefor, and that the contract will be let to the lowest responsible bidder, stating the time and place for opening said proposals, which, at the time and place appointed, shall be opened in public, and, as soon as convenient thereafter, the board shall let said work, either in portions or as a whole, to the lowest responsible bidder, or they may reject any or all bids and re-advertise for proposals, or may proceed to construct the work under their own superintendence with the labor of the residents of the district. Contracts for the purchase of material

Notice of plan.

Contracts for material.

shall be awarded to the lowest responsible bidder. Any person or persons to whom a contract may be awarded shall enter into a bond, with good and sufficient sureties, to be approved by the board, payable to said district for its use, for double the amount of the contract price, conditioned for the faithful performance of said contract. The work shall be done under the direction and to the satisfaction of the engineer appointed by the board of directors, and be approved by the said board.

Payment of
claims.

SEC. 36. No claim shall be paid by the treasurer until allowed by the board, and upon a warrant signed by the president and countersigned by the secretary: *Provided*, That the board may draw from time to time from the construction fund and deposit in the county treasury of the county where the office of the board is situated, any sum in excess of the sum of twenty-five thousand dollars. The county treasurer of said county is hereby authorized and required to receive and receipt for the same, and place the same to the credit of said district, and he shall be responsible upon his official bond for the safe keeping and disbursement of the same as in this act provided. He shall pay out the same, or any portion thereof, to the treasurer of the district only, and only upon the order of the board, signed by the president and attested by the secretary. The said county treasurer shall report in writing, on the second Monday in each month, the amount of money in the county treasury, the amount of receipts for the month preceding, and the amount or amounts paid out; said report shall be verified and filed with the secretary of the board. The district treasurer shall also report to the board in writing, on the first Monday in each month, the amount of money in the district treasury, the amount of receipts for the month preceding, and the amount and items of expenditures, and said report shall be verified and filed with the secretary of the board.

County treasurer's report.

Construction
fund.

SEC. 37. The costs and expense of purchasing and acquiring property and constructing the works and improvements herein provided for, shall be wholly paid out of the construction fund. For the purpose of defraying the expenses of the organization of the district, and of the care,

operation, management, repair and improvement of such portions of said canal and works as are completed and in use, including salaries of officers and employes, the board may either fix rates of tolls and charges, and collect the same from all persons using said canal for irrigation and other purposes, or they may provide for the payment of said expenses by a levy of assessment therefor, or by both said tolls and assessment; if by the latter method, such levy shall be made on the completion and equalization of the assessment roll, and the board shall have the same powers and functions for the purposes of said levy as are now possessed by boards of county commissioners in this state. The procedure for the collection of assessments by such levy shall in all respects conform to the provisions of this act, relating to the payment of principal and interest of bonds herein provided for.

Powers of board.

SEC. 38. The board of directors shall have power to construct the said works across any stream of water, water course, street, avenue, highway, railway, canal, ditch or flume, which the route of said canal or canals may intersect or cross, in such manner as to afford security for life and property; but said board shall restore the same when so crossed or intersected, to its former state as near as may be, or in a sufficient manner not to have impaired unnecessarily its usefulness; and every company whose railroad shall be intersected or crossed by said works, shall unite with said board in forming said intersections and crossings, and grant the privileges aforesaid; and if such railroad company and said board, or the owners and controllers of the said property, thing or franchise so to be crossed, can not agree upon the amount to be paid therefor, or the points or the manner of said crossings or intersections, the same shall be ascertained and determined in all respects as is herein provided in respect to the taking of land. The right-of-way is hereby given, dedicated and set apart, to locate, construct and maintain said works over and through any of the lands which are now or may be the property of this state; and also there is given, dedicated and set apart, for the uses and purposes aforesaid, all waters and water rights belonging to this state within the district.

Crossing streams, roads, etc.

Right-of-way.

Compensation
of board.

SEC. 39. The board of directors shall each receive four dollars per day, and mileage at the rate of ten cents per mile, in attending the meetings, and actual and necessary expenses paid while engaged in official business under the order of the board. The board shall fix the compensation to be paid to the other officers named in this act, to be paid out of the treasury of the district: *Provided*, That said board shall, upon the petition of at least fifty or a majority of the freeholders within such district therefor, submit to the electors at any general election a schedule of salaries and fees to be paid thereunder. Such petition must be presented to the board twenty days prior to a general election, and the result of such election shall be determined and declared in all respects as other elections are determined and declared under this act.

Election to fix
fees.

Penalty for vio-
lation.

SEC. 40. No director or any other officer named in this act shall, in any manner, be interested directly or indirectly in any contract awarded or to be awarded by the board, or in the profits to be derived therefrom; and for any violation of this provision, such officer shall be deemed guilty of a misdemeanor and such conviction shall work a forfeiture of his office, and he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both fine and imprisonment.

Special election
for special as-
sessment.

SEC. 41. The board of directors may, at any time, when in their judgment it may be advisable, call a special election and submit to the qualified electors of the district the question whether or not a special assessment shall be levied for the purpose of raising money to be applied to any of the purposes provided in this act. Such election must be called upon the notice prescribed, and the same shall be held, and the result thereof determined and declared, in all respects in conformity with the provisions of section fifteen of this act. The notice must specify the amount of money proposed to be raised, and the purpose for which it is intended to be used. At such

Form of ballots.

elections the ballots shall contain the words "Assessment—yes," or "Assessment—no." If two-thirds or more of the votes cast are "Assessment—yes," the board shall, at

the time of the annual levy thereunder, levy an assessment sufficient to raise the amount voted. The rate of assessment shall be ascertained by deducting fifteen per cent. for anticipated delinquencies from the aggregate assessed value of the property in the district, as it appears on the assessment roll for the current year, and then dividing the sum voted by the remainder of such aggregate assessed value. The assessment so levied shall be computed and entered on the assessment roll by the secretary of the board, and collected at the same time and in the same manner as other assessments provided for herein; and when collected shall be paid into the district treasury for the purposes specified in the notice of such special election.

SEC. 42. The board of directors, or other officers of the district, shall have no power to incur any debt or liability whatever, either by issuing bonds or otherwise, in excess of the express provisions of this act, and any debt or liability incurred in excess of such express provisions shall be and remain absolutely void.

SEC. 43. In case the volume of water in any stream or river shall not be sufficient to supply the continual wants of the entire country through which it passes, and susceptible of irrigation therefrom, then it shall be the duty of the water commissioners to apportion, in a just and equitable proportion, a certain amount of said water upon certain or alternate weekly days to different localities, as they may, in their judgment, think best for the interest of all parties concerned, and with due regard to the legal and equitable rights of all.

SEC. 44. It shall be the duty of the board of directors to keep the water flowing through the ditches under their control to the full capacity of such ditches in times of high water.

SEC. 45. Navigation shall never in any wise be impaired by the operation of this act, nor shall any vested interest in or to any mining water rights or ditches, or in or to any water or water rights, or reservoirs or dams, now used by the owners or possessors thereof, in connection with any mining industry, or by persons purchasing or renting the use thereof, or in or to any other property now used

directly or indirectly in carrying on or promoting the mining industry, ever be affected by or taken under its provisions, save and except that rights-of-way may be acquired over the same.

Diverting
water.

SEC. 46. None of the provisions of this act shall be construed as repealing or in any wise modifying the provisions of any other act relating to the subject of irrigation. Nothing herein contained shall be deemed to authorize any person or persons to divert the waters of any river, creek, stream, canal or ditch from its channel, to the detriment of any person or persons having any interest in such river, creek, stream, canal or ditch, or the waters therein, unless previous compensation be ascertained and paid therefor under the laws of this state authorizing the taking of private property for public uses.

DIVISION II.—TO PROVIDE FOR A CHANGE OF THE BOUNDARIES OF IRRIGATION DISTRICTS, BY INCLUDING OTHER LANDS THEREIN.

Limit of change.

SEC. 47. The boundaries of any irrigation district now or hereafter organized under the provisions of this act may be changed in the manner herein prescribed, but such change of the boundaries of the district shall not impair or affect its organization, or its rights in or to property, or any of its rights or privileges of whatsoever kind or nature; nor shall it affect, impair or discharge any contract, obligation, lien or charge for or upon which it was or might become liable or chargeable, had such change of its boundaries not been made.

Petition for
change.

SEC. 48. The holder or holders of title, or evidence of title, representing one-half or more of any body of lands adjacent to the boundary of an irrigation district, which are contiguous and which, taken together, constitute one tract of land, may file with the board of directors of said district a petition in writing, praying that the boundaries of said district may be so changed as to include therein said lands. The petition shall describe the boundaries of said parcel or tract of land, and shall also describe the boundaries of the several parcels owned by the petitioners, if the petitioners be the owners respectively of distinct

parcels, but such descriptions need not be more particular than they are required to be when such lands are entered by the county assessor in the assessment book. Such petition must contain the assent of the petitioners to the inclusion within said district of the parcels or tracts of land described in the petition, and of which said petition alleges they are respectively the owners; and it must be acknowledged in the same manner that conveyances of land are required to be acknowledged.

SEC. 49. The secretary of the board of directors shall cause a notice of the filing of such petition to be given and published in the same manner and for the same time that notices of special elections for the issue of bonds are required by this act to be published. The notice shall state the filing of such petition and the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition; and it shall notify all persons interested in or that may be affected by such change of the boundaries of the district, to appear at the office of said board at a time named in said notice, and show cause in writing, if any they have, why the change in the boundaries of said district, as proposed in said petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice. The petitioners shall advance to the secretary sufficient money to pay the estimated costs of all proceedings under this act.

Notice of petition.

Petitioners must advance costs.

SEC. 50. The board of directors, at the time and place mentioned in said notice, or at such other time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all the objections thereto presented in writing by any person showing cause, as aforesaid, why said proposed change of the boundaries of the district should not be made. The failure by any person interested in said district, or in the matter of the proposed change of its boundaries, to show cause in writing, as aforesaid, shall be deemed and taken as an assent on his part to a change of the boundaries of the district as

Hearing petitions.

prayed for in said petition, or to such a change thereof as will include a part of said lands. And the filing of such petition with said board, as aforesaid, shall be deemed and taken as an assent on the part of each and all of such petitioners to such a change of said boundaries that they may include the whole or any portion of the lands described in said petition.

Granting petition.

SEC. 51. The board of directors to whom such petition is presented shall require, as a condition precedent to the granting of the same, that the petitioners shall severally pay to such district such respective sums, as nearly as can be estimated (the several amounts to be determined by the board), as said petitioners or their grantors would have been required to pay to such district as assessments had such been included in such district at the time the same was originally formed.

SEC. 52. The board of directors, if they deem it not for the best interests of the district that a change of its boundaries be so made as to include therein the lands mentioned in the petition, shall order that the petition be rejected. But if they deem it for the best interests of the district that the boundaries of said district be changed, and if no person interested in said district, or the proposed change of its boundaries, shows cause in writing why the proposed change should not be made, or if, having shown cause, withdraws the same, the board may order that the boundaries of the district be so changed as to include therein the lands mentioned in said petition, or some part thereof. The order shall describe the boundaries as changed, and shall also describe the entire boundaries of the district as they will be after the change thereof, as aforesaid, is made; and for that purpose the board may cause a survey to be made of such portions of such boundary as is deemed necessary.

Order must describe boundaries.

SEC. 53. If any person interested in said district, or the proposed change of its boundaries, shall show cause, as aforesaid, why such boundaries should not be changed and shall not withdraw the same, and if the board of directors deem it for the best interests of the district that the boundaries thereof be so changed as to include therein

the lands mentioned in the petition, or some part thereof, the board shall adopt a resolution to that effect. The resolution shall describe the exterior boundaries of the lands which the board are of the opinion should be included within the boundaries of the district when changed

SEC. 54. Upon the adoption of the resolution mentioned in the last preceding section, the board shall order that an election be held within said district, to determine whether the boundaries of the district shall be changed as mentioned in said resolution; and shall fix the time at which such election shall be held, and shall cause notice thereof to be given and published. Such notice shall be given and published, and such election shall be held and conducted, the returns thereof shall be made and canvassed, and the result of the election ascertained and declared, and all things pertaining thereto conducted, in the manner prescribed by this act in case of a special election to determine whether bonds of an irrigation district shall be issued. The ballots cast at said election shall contain the words "For change of boundary," or "Against change of boundary," or words equivalent thereto. The notice of election shall describe the proposed change of the boundaries in such manner and terms that it can readily be traced.

Election for
change of
boundaries.

Form of ballots.

SEC. 55. If at such election a majority of all the votes cast at said election shall be against such change of the boundaries of the district, the board shall order that said petition be denied, and shall proceed no further in the matter. But if a majority of the votes be in favor of such change of the boundaries of the district, the board shall thereupon order that the boundaries of the district be changed in accordance with said resolution adopted by the board. The said order shall describe the entire boundaries of said district, and for that purpose the board may cause a survey of such portions thereof to be made as the board may deem necessary.

Duty of board.

SEC. 56. Upon a change of the boundaries of a district being made, a copy of the order of the board of directors ordering such change, certified by the president and secretary of the board, shall be filed for record in the county clerk's office of each county within which are situated any

Record of
change.

of the lands of the district, and thereupon the district shall be and remain an irrigation district, as fully and to every intent and purpose as if the lands which are included in the district by the change of the boundaries, as aforesaid, had been included therein at the original organization of the district.

Record evidence.

SEC. 57. Upon the filing of the copies of the order, as in the last preceding section mentioned, the secretary shall record in the minutes of the board the petition aforesaid; and the said minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the petition.

As to an estate.

SEC. 58. A guardian, an executor or administrator of an estate, who is appointed as such under the laws of this state, and who, as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward or the estate which he represents, upon being thereunto authorized by the proper court, sign and acknowledge the petition in this act mentioned, and may show cause, as in this act mentioned, why the boundaries of the district should not be changed.

Subdivision of new district.

SEC. 59. In case of the inclusion of any lands within any district by proceedings under this act, the board of directors must, at least thirty days prior to the next succeeding general election, make an order re-dividing such district into five divisions, as nearly equal in size as may be practicable, which shall be numbered first, second, third, fourth and fifth, and one director shall thereafter be elected by each division. For the purposes of elections the board of directors must establish a convenient number of election precincts in said districts, and define the boundaries thereof, which said precincts may be changed from time to time, as the board may deem necessary.

DIVISION III.—PROVIDING FOR THE EXCLUSION OF CERTAIN LANDS WITHIN ANY SUCH DISTRICT.

SEC. 60. The boundaries of any irrigation district, now or hereafter organized under the provisions of this act, may be changed, and tracts of land which were included

within the boundaries of such district at or after its organization under the provisions of this act, may be excluded therefrom, in the manner herein prescribed; but neither such change of the boundaries of the district, nor such exclusion of lands from the district, shall impair or affect its organization, or its rights in or to property, or any of its rights and privileges of whatever kind or nature; nor shall it affect, impair or discharge any contract, obligation, lien or charge, for or upon which it was or might become liable or chargeable had such change of its boundaries not been made, or had not any land been excluded from the district.

Effect of change.

SEC. 61. The owner or owners in fee of one or more tracts of land which constitute a portion of an irrigation district, may file with the board of directors a petition praying that such tracts, and any other tracts contiguous thereto, may be excluded and taken from said district. The petition shall describe the boundaries of the land which the petitioners desire to have excluded from the district, and also the lands of each of such petitioners which are included within such boundaries; but the description of such lands need not be more particular or certain than is required when the lands are entered in the assessment book by the county assessor. Such petition must be acknowledged in the same manner and form as is required in case of a conveyance of land, and the acknowledgment shall have the same force and effect as evidence as the acknowledgment of such conveyance.

Petition to exclude.

SEC. 62. The secretary of the board of directors shall cause a notice of the filing of such petition to be published for at least two weeks in some newspaper published in the county where the office of the board of directors is situated, and if any portion of such territory to be excluded lie within another county or counties, then said notice shall be so published in a newspaper published within each of said counties; or if no newspaper be published therein, then by posting such notice for the same time in at least three public places in said district, and in case of the posting of said notices, one of said notices must be so posted on the lands proposed to be excluded. The notice shall state the filing

Notice of petition.

of such petition, the names of the petitioners, a description of the lands mentioned in said petition, and the prayer of said petition; and it shall notify all persons interested in or that may be affected by such change of the boundaries of the district, to appear at the office of said board at a time named in said notice, and show cause in writing, if any they have, why the change of the boundaries of said district, as proposed in said petition, should not be made. The time to be specified in the notice at which they shall be required to show cause shall be the regular meeting of the board next after the expiration of the time for the publication of the notice.

Hearing petition.

SEC. 63. The board of directors, at the time and place mentioned in the notice, or at the time or times to which the hearing of said petition may be adjourned, shall proceed to hear the petition and all objections thereto presented in writing, by any person showing cause, as aforesaid, why the prayer of said petition should not be granted. The failure of any person interested in said district to show cause, in writing, why the tract or tracts of land mentioned in said petition should not be excluded from said district, shall be deemed and taken as an assent by him to the exclusion of such tract or tracts of land, or any part thereof, from said district; and the filing of such petition with such board, as aforesaid, shall be deemed and taken as an assent by each and all of such petitioners to the exclusion from such district of the lands mentioned in the petition, or any part thereof.

Power of board.

SEC. 64. The board of directors, if they deem it not for the best interests of the district that the lands mentioned in the petition, or some portion thereof, should be excluded from said district, shall order that said petition be denied; but if they deem it for the best interests of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, and if no person interested in the district show cause, in writing, why the said lands, or some portion thereof, should not be excluded from the district, or if, having shown cause, withdraws the same, and also, if there be no outstanding bonds of the district, then the board may order that the lands men-

tioned in the petition, or some defined portion thereof, be excluded from the district.

SEC. 65. If there be outstanding bonds of the district, ^{Outstanding bonds.} then the board may adopt a resolution to the effect that the board deems it to the best interest of the district that the lands mentioned in the petition, or some portion thereof, should be excluded from the district. The resolution shall describe such lands so that the boundaries thereof can readily be traced. The holders of such outstanding bonds may give their assent in writing to the effect that they severally consent that the board may make an order by which the lands mentioned in the resolution may be excluded from the district. The assent must be acknowledged by the several holders of such bonds in the same manner and form as is required in case of a conveyance of land, and the acknowledgment shall have the same force and effect as evidence as the acknowledgment of such conveyance. The assent shall be filed with the board, and must be recorded in the minutes of the board; and said minutes, or a certified copy thereof, shall be admissible in evidence with the same effect as the said assent; but if such assent be not filed, the board shall deny and dismiss said petition.

SEC. 66. If the assent aforesaid of the holders of said ^{Election for order of exclusion.} bonds be filed and entered of record as aforesaid, and if there be objections presented by any person showing cause as aforesaid, which have not been withdrawn, then the board may order an election to be held in said district to determine whether an order shall be made excluding said land from the district as mentioned in said resolution. The notice of such election shall describe the boundary of all lands which it is proposed to exclude, and such notice shall be published for at least two weeks prior to such election in a newspaper published within the county where the office of the board of directors is situated; and if any portion of such territory to be excluded lie within another county or counties, then said notice shall be so published in a newspaper published within each of such counties. Such notice shall require the electors to ^{Form of ballots.} cast ballots which shall contain the words "For exclusion,"

or "Against exclusion," or words equivalent thereto. Such election shall be conducted in accordance with the general election laws of the state: *Provided*, That no particular form of ballots shall be required.

Duty of board.

SEC. 67. If at any election a majority of all the votes cast shall be against the exclusion of said lands from the district, the board shall deny and dismiss said petition and proceed no further in said matter; but if a majority of such votes be in favor of the exclusion of said lands from the district, the board shall thereupon order that the said lands mentioned in said resolution be excluded from the district. The said order shall describe the boundaries of the district should the exclusion of the said lands from said district change the boundaries of the district; and for that purpose the board may cause a survey to be made of such portions of the boundaries as the board may deem necessary.

Records of district.

SEC. 68. Upon the entry in the minutes of the board of any of the orders hereinbefore mentioned, a copy thereof, certified by the president and the secretary of the board, shall be filed for record in the county clerk's office of each county within which are situated any of the lands of the district, and thereupon said district shall be and remain an irrigation district as fully, to every intent and purpose, as it would be had no change been made in the boundaries of the district, or had the lands excluded therefrom never constituted a portion of the district.

Office of director; when vacant.

SEC. 69. If the lands excluded from any district under this act shall embrace the greater portion of any division or divisions of such district, then the office of director for such division or divisions shall become and be vacant at the expiration of ten days from the final order of the board, under section sixty-seven of this act, excluding said lands, and such vacancy or vacancies shall be filled by appointment by the board of county commissioners of the county where the office of such board is situated, from the district at large. A director appointed as above provided, shall hold his office until the next regular election for said district and until his successor is elected and qualified.

SEC. 70. At least thirty days before the next general

election of such district, the board of directors thereof shall make an order dividing said district into five divisions, as nearly equal in size as may be practicable, which shall be numbered first, second, third, fourth and fifth, and one elector shall be elected by each division. For the purposes of elections in such district, the said board of directors must establish a convenient number of election precincts, and define the boundaries thereof, which said precincts may be changed from time to time, as the board of directors may deem necessary.

Defining and numbering subdivisions.

SEC. 71. A guardian, and executor or an administrator of an estate who is appointed as such under the laws of this state, and who, as such guardian, executor or administrator, is entitled to the possession of the lands belonging to the estate which he represents, may, on behalf of his ward or the estate which he represents, upon being thereto properly authorized by the proper court, sign and acknowledge the petition in this act mentioned, and may show cause, as in this act provided, why the boundaries of the district should not be changed.

SEC. 72. In case of the exclusion of any lands under the provisions of this act, there shall be refunded to any and all persons who have paid any assessment or assessments to such district, on any land so excluded, any sum or sums so paid. Such payments shall be made in the same manner as other claims against such district, and from such fund or funds as the board of directors may designate.

Refunding assessments.

DIVISION IV.—TO PROVIDE FOR THE EXAMINATION, APPROVAL AND CONFIRMATION OF PROCEEDINGS FOR THE ISSUE AND SALE OF BONDS ISSUED UNDER THE PROVISIONS OF THIS ACT.

SEC. 73. The board of directors of an irrigation district, now or hereafter organized under the provisions of this act, may commence a special proceeding in and by which the proceedings of said board and of said district providing for and authorizing the issue and sale of the bonds of said district, whether said bonds or any of them have or have not then been sold, may be judicially examined, approved and confirmed.

Special proceedings.

SEC. 74. The board of directors of the irrigation district

Form of petition.

shall file in the superior court of the county in which the lands of the district, or some portion thereof, are situated, a petition praying, in effect, that the proceedings aforesaid may be examined, approved and confirmed by the court. The petition shall state the facts showing the proceedings had for the issue and sale of said bonds, and shall state generally that the irrigation district was duly organized, and that the first board of directors was duly elected; but the petition need not state the facts showing such organization of the district, or the election of said first board of directors.

SEC. 75. The court shall fix the time for the hearing of said petition, and shall order the clerk of the court to give and publish a notice of the filing of said petition. The notice shall be given and published in the same manner and for the same length of time, that a notice of a special election provided for by this act to determine whether the bonds of said district shall be issued is required to be given and published. The notice shall state the time and place fixed for the hearing of the petition, and the prayer of the petition, and that any person interested in the organization of said district, or in the proceedings for the issue or sale of said bonds, may, on or before the day fixed for the hearing of said petition, demur to or answer said petition. The petition may be referred to and described in said notice as the petition of the board of directors of _____ irrigation district [giving its name], praying that the proceedings for the issue and sale of the bonds of said district may be examined, approved and confirmed by said court.

Demurrer to petition.

SEC. 76. Any person interested in said district, or in the issue or sale of said bonds, may demur to or answer said petition. The statutes of this state respecting the demurrer, and the answer to a verified complaint, shall be applicable to a demurrer and answer to said petition. The person so demurring to or answering said petition shall be the defendant to said special proceeding, and the board of directors shall be the plaintiff. Every material statement to the petition not specifically controverted by the answer must, for the purposes of said special proceed-

ing, be taken as true; and each person failing to answer the petition shall be deemed to admit as true all the material statements of the petition. The rules of pleading and practice, provided by the statutes of this state, which are not inconsistent with the provisions of this act, are applicable to the special proceedings herein provided for. A motion for a new trial must be made upon the minutes of the court. The order granting a new trial must specify the issues to be re-examined on such new trial, and the findings of the court upon the other issues shall not be affected by such order granting a new trial.

SEC. 77. Upon the hearing of such special proceedings, the court shall have power and jurisdiction to examine and determine the legality and validity of, and approve and confirm, each and all of the proceedings for the organization of said district under the provisions of this act, from and including the petition for the organization of the district, and all other proceedings which may affect the legality or validity of said bonds, and the order for the sale, and the sale thereof. The court in inquiring into the regularity, legality or correctness of said proceedings, must disregard any error, irregularity or omission which does not affect the substantial rights of the parties to said special proceedings, and it may approve and confirm such proceedings in part, and disapprove and declare illegal or invalid other and subsequent parts of the proceedings. The court shall find and determine whether the notice of the filing of said petition has been duly given and published, for the time and in the manner in this act prescribed. The costs of the special proceedings may be allowed and apportioned between all the parties, in the discretion of the court.

SEC. 78. An appeal from an order granting or refusing a new trial, or from the judgment, must be taken by the party aggrieved within ten days after the entry of said order or said judgment.

SEC. 79. Whereas, there being at present no adequate law on this subject in this state, and the enactment of a law regulating this subject is seriously needed; therefore,

an emergency does exist, and this act shall be in force and take effect from and after its passage and approval by the governor.

Approved March 20, 1890.

IRRIGATION AND IRRIGATING DITCHES.

AN ACT providing for the use of water for the purposes of irrigation, and providing for the condemnation of the right-of-way for ditches to carry water for such purposes.

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

DIVISION I.—OF THE RIGHT TO USE WATER.

SECTION 1. Any person is entitled to take from any of the natural streams or lakes in this state water for the purposes of irrigation, not heretofore appropriated or subject to rights existing at the time of the adoption of the constitution of this state, subject to the conditions and regulations imposed by law: *Provided*, That the use of water at all times shall be deemed a public use and subject to condemnation as may from time to time be provided for by the legislature of this state.

Public use.

Right of adjacent owners.

SEC. 2. All persons who claim, own or hold a possessory right or title to any land, or parcel of land, within the boundary of the State of Washington, when such lands, or any part of the same, are on the banks of any natural stream of water, shall be entitled to the use of any water of said stream, not otherwise appropriated for the purposes of irrigation, to the full extent of the soil for agricultural purposes.

Right-of-way.

SEC. 3. When any person owning claims in such locality has not sufficient length of area exposed to said stream or lake to obtain a sufficient flow of water to irrigate his land, he shall be entitled to the right-of-way through the farms

or tracts of lands which lie between him and said streams or lakes, or the farms or tracts of lands which lie above and below him on said stream or lake, for the purposes hereinbefore stated.

SEC. 4. Such right-of-way shall extend only to a ditch Limit of. sufficient for the purposes required, together with the right of ingress and egress to construct, maintain and repair the same.

SEC. 5. Upon the refusal of the owner of land or lands through which it is proposed to run said ditch to permit the passage of the same through their property, the person or persons desiring to open such ditch may proceed to condemn and take the right-of-way therefor under the provisions for the condemnation of water and rights-of-way hereinafter provided for in this act. Condemnation of right-of-way.

SEC. 6. In case the volume of water in any natural stream shall not be sufficient to supply the continued wants of the entire country through which it passes, then the judge of the superior court of the county — or in case the said stream shall run through more than one county, then the judge of the superior court of either county — through which said stream runs shall appoint three commissioners, as hereinafter provided, whose duty it shall be to apportion, in a just and equitable manner, a certain amount of said water upon certain alternate days in certain localities, as they may in their judgment think best for the interest of all parties concerned and with due regard to the legal rights of all. Commissioners to apportion.

SEC. 7. Any person who owns or has the possessory right to lands in the vicinity of any natural stream or lake, not abutting such stream or lake, may take water from such stream or lake if there be any surplus or unappropriated water in such stream or lake.

SEC. 8. The persons referred to in the preceding section shall be entitled to the right-of-way sufficient for a ditch to carry the water required to fully irrigate their land, or to carry such water as they may be entitled to, with full right of ingress and egress to construct, repair and maintain such ditch over the lands lying between the land of such person and the point on the natural stream or lake Rights of owners in vicinity.

from which they wish to take water, and from which they are entitled to take water, and the land which they wish to irrigate; which right-of-way shall be subject to condemnation as hereinafter provided for in this act.

SEC. 9. In case at any time the supply of water in any natural stream or lake is below the usual supply of water in said stream or lake, upon application of any person interested, the superior court of any county through which said stream or lake may flow shall appoint three commissioners, whose duty it shall be to immediately go upon said stream or lake and apportion the water running in said stream or lake to the different persons entitled to use the said stream or lake as may to them seem equitable and proper, having due regard for the vested rights of the persons so entitled to use water from said stream or lake: *Provided*, That said commissioners shall apportion to all persons upon such stream or lake, water for domestic purposes before any water is allowed to be taken from said stream or lake for the purposes of irrigation: *And provided*, That in case of unusual drought said commissioners shall endeavor to apportion the water to the persons entitled to use the water from said stream or lake, so that the orchards and perennial plants upon farms of such persons so entitled to use such water shall be supplied with sufficient water to keep them alive.

Preferred rights.

Basis of proportionate rights.

SEC. 10. The vested rights to water, whenever called into question in any court, and whenever the same are required to be determined by any commissioners or commissioner, under the provisions of the laws of this state, shall be based and determined upon the usual volume of water annually flowing in the natural streams and lakes of the state; and in the event of any of the said streams or lakes being unusually low, the rights of all persons to water out of the said stream or lake shall be reduced in accordance with the reduction of the water in said stream or lake below the usual stage of water in said stream or lake at the time of year when the particular matter is brought before said commissioners, commissioner, or court.

For irrigation.

SEC. 11. Any person desiring to dig a ditch or canal from any natural stream or lake of water in this state, for

the purpose of carrying water to irrigate lands, shall be entitled to take water from said stream or lake not appropriated at the time that the construction of said ditch is begun: *Provided*, That such person shall not keep or store, by virtue of the said ditch, any more water than is used for the purposes of irrigation.

SEC. 12. Upon the application of any person interested, Power of court. the superior court of any county in which any ditch, or the part of any ditch, constructed in accordance with the preceding section is situated, may appoint three commissioners to inquire and determine whether or not more water is diverted by means of said ditch than is used, or than is to be properly used during any season, for the purposes of irrigation, and the decision of said commissioners shall be final, and shall have power to order and require the person having charge of said ditch to turn off such part of the water in said ditch as they may deem to be unnecessary for the use of the land being cultivated and to be cultivated; during such season by water taken from said ditch; and any failure upon the part of the person controlling said ditch to comply with the order of said commissioners aforesaid shall be punished as a contempt of the superior court of the county appointing said commissioners; and all persons constructing ditches and taking water from the natural streams or lakes of this state, as provided for herein, shall take the same subject to all the conditions, restrictions and regulations of this section and of the laws hereafter made and provided.

SEC. 13. Any person may take any water, which he may Restrictions. have a right to use, along any of the natural streams or lakes of this state, but not so as to raise the waters thereof above ordinary high water mark; but due allowance shall be made for evaporation and seepage, the amount of such seepage to be determined by the commissioners of irrigation of the district, or if there be no such commissioners, then by the county commissioners of the county in which the water shall be taken out for use, upon the application of any person interested.

SEC. 14. All persons on the margin, brink, neighborhood Right to raise water. or precinct of any natural stream or lake of water shall

have the right and power to place upon the bank of such stream or lake a wheel, steam pump, or other machine for the purpose of raising water to the level required for the use of such water in irrigating any land. The person desiring to use such water shall be entitled to condemn a right-of-way over any tracts of land between the point where he takes the water from any natural stream or lake and the place where he desires to use the same, in accordance with the provisions hereinafter made for the condemnation of rights-of-way and of water.

SEC. 15. 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 covered by the same laws as those ditches constructed for the purpose of utilizing the water of natural streams and lakes: *Provided*, That the person upon whose lands the seepage or spring waters first rise shall have a prior right to such waters, if capable of being used upon his lands.

SEC. 16. All persons who shall have enjoyed the use of the water in any natural stream or lake for the irrigation of any land by the natural overflow or seepage of the water of such stream or lake shall, in case of diminution of the water supplied by such stream or lake, from any cause, so as to prevent such irrigation therefrom in as ample a manner as formerly, have the right to construct a ditch for the irrigation of such land, and to take water from such stream or lake therefor; and his right to water through such ditch shall have the same priority as though such ditch had been constructed at the time he occupied and used such land.

SEC. 17. If at any time any ditch from which water is or shall be drawn for irrigation shall not be entitled to the full supply of water from the natural stream or lake which supplies the same with water actually received into and carried by such ditch, shall be divided among all the consumers of water from such ditch, as well as the owners, shareholders and stockholders thereof, as the parties purchasing water therefrom and the parties taking water, partly under and by virtue of holding shares and partly by purchasing the same, shall each receive his share *pro rata*, according to the amount he (in cases in which several

consume water jointly) shall then be entitled to, so that owners and purchasers shall not suffer from a deficiency rising from the cause aforesaid, each in proportion to the amount of water which he should have received in case no such deficiency of water had occurred.

SEC. 18. Any person who may be entitled to water from any artesian well shall have the right to condemn the right-of-way for a ditch to convey such water for the purpose of irrigation over the lands intervening between such well and the place where the party owning such water wishes to use the same, and such right-of-way may be condemned sufficient for the purposes of conveying the water, together with the right of ingress and egress, to construct, maintain and repair said ditch, as is hereinafter provided for in this act.

Artesian well rights.

SEC. 19. The word "person," wherever used in this act, shall be construed to mean either a natural person, an association or corporation, or to be construed to mean persons; and the word "he" shall be construed to mean she, it or they; and the word "ditch" shall be construed to include and to mean dyke, flumeway and irrigating canal.

Terms defined.

DIVISION II.—DUTIES OF DITCH OWNERS.

SEC. 20. The owner of any ditch shall carefully maintain the embankments thereof, so that the waters of such ditch may not flood or damage the premises of others, and such owner shall make a tail ditch so as to return the water in such ditch with as little waste as possible into the stream or lake from which it was taken.

Duty of owners of ditches.

SEC. 21. Any person constructing a ditch, wherever the same be taken across any public highway, shall put a good substantial bridge, not less than sixteen feet in breadth, over such water course where it crosses said road, which said bridge shall be constructed within three days after any ditch has been constructed across any highway, and in case any bridge is not so constructed within the time named by the owners thereof, it shall be the duty of the supervisors of the road district wherein said crossing is situated to put a bridge over said ditch of the dimensions specified in this section, and call on the owner of the ditch

Bridging crossings of public roads.

to pay the expenses of constructing such bridges; and if the owner of such ditch refuse to pay the said expense, the said supervisor may go before any justice of the peace and make oath to the correctness of the bill, and that the owner of the ditch refuses payment thereof, and thereupon such justice of the peace shall issue a summons against such owner, requiring him to appear and answer to the complaint of such supervisor in an action for the amount due, such summons to be made returnable, and such proceedings to be had and taken thereon as in other cases. And in case judgment shall be given against such owner, the justice of the peace shall assess, in addition to the amount due for the building of said bridge, the sum of ten dollars as damages, arising from the delay of such owner; said judgment to be collected as in other cases, and to be a fund in the hand of the supervisor of roads for such district for the repairs of roads therein, except the ten dollars damages, which shall go to the supervisor to pay him for his trouble and expense in collecting the cost of said bridge.

Limit of use.

SEC. 22. During the irrigating season it shall not be lawful for any person to run any greater quantity of water through his irrigating ditch than is absolutely necessary for irrigating his land, or the land of other persons as provided for in section 55 in this act, and for domestic and stock purposes. And any person who shall wilfully violate the provisions of this section shall be deemed to be guilty of a misdemeanor, and upon conviction thereof shall be fined in an amount not less than one hundred dollars nor more than one thousand dollars, which fine shall go into the county school fund of the county in which the offense is committed.

Head-gate.

SEC. 23. The owner of every irrigating ditch in this state shall be required to erect and keep in good repair the head-gate at the head of their ditch. Such head-gate, together with the necessary embankments, shall be of sufficient height and strength to control the water flowing therein at all ordinary stages. The frame-work of such head-gate shall be constructed of a beam not less than four

inches square, and the bottom, sides and gate or gates shall be of plank not less than two inches in thickness.

SEC. 24. Owners of all ditches shall be liable for damages resulting through neglect or refusal to comply with the provisions of this act. Liability.

SEC. 25. The word "owner," wherever it appears in this division, shall be construed to mean owners or persons having charge or control of the ditch and liable as the owner.

DIVISION III.— OF WATER DISTRICTS.

SEC. 26. Each county in this state shall be constituted an irrigation district, and for each of said districts a commissioner may be appointed by the county commissioners, whose salary, in each district, shall be fixed at the first meeting in each year of the board of county commissioners in each county, which said commissioner shall hold his office from the first day of March in each year for a period of one year, and shall be paid out of the county funds in each county quarterly. Irrigation districts by counties.

SEC. 27. That within ten days after his appointment and before entering upon the duties of his office, said water commissioner shall take and subscribe the oath of office prescribed by the constitution of this state, and shall file a bond in such penalty as may be required by the board of county commissioners in each county, payable to the county, for the faithful and impartial discharge of his duties. Oath of water commissioner.

SEC. 28. It shall be the duty of said water commissioners to divide the water in the natural streams and lakes of their district among the several ditches taking water from the same, when there is in said stream or lake the average annual volume of water, according to the prior rights of each person, respectively. And it shall be the duty of said commissioner, 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 or lakes of the district which, in the time of scarcity of water, shall not be entitled to water by reason of the Duties of.

priority of the rights of others below them upon the same stream or lake: *Provided*, That it shall be his duty to see that persons who, during a year when there is an average volume of water in the streams and lakes, are entitled to water out of any stream or lake and can use the same without injuring others having a prior right to the said water, have sufficient water for domestic and stock purposes and for the preservation of orchards and perennial plants.

Penalty for tampering with ditches.

SEC. 29. Every person who shall wilfully open, close, change or interfere with any head-gate, water-box, ditch or dam without authority shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than fifty dollars nor more than five hundred dollars, or imprisoned not less than thirty days nor more than six months, or may be punished by both fine and imprisonment, at the discretion of the court.

Compensation of commissioner.

SEC. 30. The water commissioner, as herein provided, shall be entitled to pay at the rate of four dollars per day for each day he shall be actually employed in the discharge of the duties of his office, not exceeding one hundred and twenty days in any one year, to be paid by the county for which he is appointed.

Assistants.

SEC. 31. Said water commissioner shall have the power, in case of any emergency, to employ one or more assistants to aid him in the discharge of his duties. Such assistant shall take the same oath as the water commissioner, and shall obey his instructions, and shall receive three dollars per day for every day such assistant is so employed, to be paid by the county for which such commissioner is appointed.

SEC. 32. Said water commissioner shall not begin his work until he shall have been called upon by two or more owners of ditches in his district, by an application in writing, stating that there is necessity for his action, and such commissioner shall not continue performing services after the necessity therefor shall cease.

Register of rights.

SEC. 33. It shall be the duty of the water commissioner of each district to cause to be prepared a book to be entitled "The Register of Priorities of Appropriation of

Water-Rights for the Water Districts of the County of _____, State of Washington," within which he shall enter and preserve the priorities of all persons taking water out of each particular stream or lake in his said district, which said priority shall be determined by said water commissioner from the decrees of any courts establishing such priorities, or where such priorities are not established by decrees, from any other legal source from which he can obtain the same, arranging and numbering the same in consecutive order according to the dates of each respective right.

DIVISION IV.—RIGHT-OF-WAY FOR DITCHES.

SEC. 34. All persons, associations and corporations entitled to the use of water under the provisions of this act, in cases where the right-of-way over intervening lands is necessary to the use of such water, may condemn the right-of-way for any such ditch or ditches as hereinafter provided.

SEC. 35. In case of the refusal of the owners or claimants of any lands through which such ditch, canal or other works are proposed to be made or constructed to allow the passage thereof, the persons, company or corporation desiring the right-of-way may present to the superior court of the county a petition describing the land[s] to be crossed, the size of the ditch, canal or works, the quantity of land required to be taken, and setting forth the names of the owners or parties interested in the lands to be crossed, and praying for the appointment of three appraisers to ascertain the compensation to be made to such owners or parties interested. Upon the filing of said petition the superior court must give notice by publication in a newspaper, if there be any printed in the county, or if there be none, by posting such notice in three of the most public places in the county, one of which must be at the county seat, that at a time and place specified in said notice, said petition will be heard and such appraisers appointed, unless good cause be shown by the parties adversely interested why the petition should be denied. Said notice must be published or posted for not less than ten days prior to the

Proceedings to
condemn.

hearing thereon, and the expenses of the publication or posting of the same must be defrayed by the petitioners.

Oath of appraisers.

SEC. 36. The said appraisers must, before entering on the duties of their office, take an oath to faithfully and impartially perform the duties as such appraisers and make a true and just reward [award] of the amount of the compensation to be paid for the right-of-way over and use of the lands to be crossed by such ditch, canal or other conduit. They must hear the allegations and proofs offered by the respective parties, and after viewing the lands and premises, ascertain and certify the compensation which, in their judgment, it is just and proper to make to the parties owning or interested in the lands to be crossed for the use of the same and for damages, if any, on account of injury to other portions of the tract of land of any owner or interested party. The appraisers, or a majority of them, must subscribe such^e certificate, and the same must be recorded in the office of the county clerk, and upon the payment of the compensation and damages, if any, or the tender thereof to the proper parties, or, in the absence of such parties from the county, then upon deposit of the amount in the county treasury to the credit of said party, the persons, company or corporations, petitioners, have the right of entry upon and of way for the proposed ditch, canal or other works.

Duties of.

SEC. 37. Where the owners of any spring, or the appropriators thereof, or of any stream or lake, desire to conduct the waters thereof to any land for the purpose of irrigation, and to accomplish such object it is necessary to cross with ditches, flumes or other conduit[s], the lands owned or occupied by others than the owners or appropriators of such spring, stream or lake, the right-of-way over and across the lands of others for conducting said water may be acquired in the manner above provided.

Must keep conduits in repair.

SEC. 38. The owners or constructors of ditches, canals, works or other aqueducts, and their successors in interest using and employing the same to convey the waters of any stream, spring or lake, whether the said ditches, canals, works or other aqueducts be upon the lands owned or claimed by them, or upon other lands, must carefully keep

and maintain the same and the embankments, flumes or other conduits by which such waters are or may be conducted, in good repair and condition, so as not to damage or in any way injure the property or premises of others.

SEC. 39. That no tract or parcel of improved or occupied land in this state shall, without the written consent of the owner thereof, be subjected to the burden of two or more irrigating ditches constructed for the purpose of conveying water through said property to lands adjoining or beyond the same, when the same object can feasibly and practicably be attained by uniting and conveying all the water necessary to be conveyed through such property in one ditch. ^{Limit of ditches.}

SEC. 40. Whenever any person or persons find it necessary to convey water for the purposes of irrigation through the improved or occupied lands of another, he or they shall select for the line of such ditch through such property the shortest and most direct route practicable, upon which such ditch can be constructed with uniform or nearly uniform grade, and discharge the water at a point where it can be conveyed to and used upon the land or lands of the person or persons constructing such ditch.

SEC. 41. In case the channel of any natural stream or lake shall become so cut out, lowered, turned aside, or otherwise changed from any cause, as to prevent any ditch or canal from receiving the proper inflow of water to which it may be entitled from such natural stream or lake, the owner or owners of such ditch or canal shall have the right to extend the head of such ditch or canal to such distance up the stream or lake which supplies the same as may be necessary for securing a sufficient flow of water into the same, and for that purpose shall have the right to maintain proceedings for condemnation of right-of-way for such extension as in case of constructing a new ditch, and the priority of right to take water from such stream or lake through such ditch or canal as to any such ditch or canal shall remain unaffected in any respect by reason of such extension: *Provided, however,* That no such extension shall interfere with the complete use or enjoyment of any other ditch or canal. ^{Right to change ditch.}

Must file map.

SEC. 42. Every person, association or corporation hereafter constructing or enlarging any ditch or canal and taking water directly from any natural stream or lake, and of the carrying capacity of more than one cubic foot of water per second of time, as so constructed or enlarged, shall, within ninety days after the construction or enlargement, file in the office of the county clerk in which the head-gate of such ditch may be situated, a map showing the point of location of such head-gate, the route of such ditch or canal, the legal subdivisions of the lands upon which such structures are built, or to be built; if on surveyed lands, 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 they are situated; such courses, distances and corners, by references to legal subdivisions if on surveyed lands, or to natural objects if on unsurveyed lands, as will clearly designate the location of such structures. Upon or attached to such map shall be a statement showing—*First*, the point of location of the head-gate above mentioned; *second*, the depth, width and grade of such ditch or canal; *third*, the carrying capacity of such ditch or canal in cubic feet per second of time; *fourth*, the time of commencement of work on such structures, which time may be dated from the commencement of the surveys therefor. In case of construction or enlargement, such statement shall also show the matters required in items second, third and fourth above as to the enlargement, and state the increased capacity arising from such enlargement. If such statement be filed within the time above limited, priority of right-of-way and water accordingly shall date from the day named as the day of commencing work; otherwise only from the date of the filing of the same: *Provided*, That nothing herein contained shall be taken to dispense with the necessity for due diligence in the prosecution of such structures on the part of the projectors of the same. Such statements shall be signed by the person, association or corporation on whose behalf it is made, and the truth of the matters shown in such map and statement shall be sworn to by some person in whose personal knowledge the truth of the same shall lie.

SEC. 43. This act shall apply to and affect only ditches or canals used for carrying water for the purpose of irrigation, and for no other purpose whatever: *Provided*, That all rights shall be forfeited under the provisions of this act unless due diligence is used in such construction or enlargement. Limit of this act.

DIVISION V.—ON THE CONDEMNATION OF WATER-RIGHTS.

SEC. 44. Any person, association or corporation desiring to condemn the riparian rights of persons in any natural stream or lake in this state may do so as follows: Such persons, firm or corporation shall file his, their or its petition in the superior court of the county wherein said stream or lake or any part thereof is situated, from which such person, association or corporation desires to take such water, setting forth the uses that the said person, association or corporation intends to make of said water, the amount of water desired to be taken, and the extent of time that said water is intended to be used. Condemnation of riparian rights.

SEC. 45. If it appears to the court from the petition that said water is to be used for irrigation, the court shall direct notice to be given to all persons concerned by a notice to be published in some paper printed in the county wherein said petition is filed, or if there be no newspaper published in said county, then copies of said notice shall be posted in at least five places along said stream or lake, and at the front door of the court-house of the county wherein said proceedings are pending; which said notice shall contain the amount of water sought to be appropriated or taken from said stream or lake, the place at which said water is to be taken from said stream or lake, the amount of water to be so taken, and the use to be made of said water, together with the name or names of the person or persons, association or corporation intending to take the same from said stream or lake; and which said notice shall fix the time at which said petition shall be heard by the court, not exceeding twenty days from the time that said notice is first published or posted as aforesaid, as well as the place where said petition shall be heard. Publication of notice.

Claims to water
rights.

SEC. 46. The persons having rights to the waters of any stream or lake, and desiring to maintain them, shall appear at the time and place mentioned in the notice aforesaid, and present such claim, and all persons failing to appear at such time shall be deemed to have waived all rights of every kind whatsoever as against the partition of the waters of said stream or lake to the extent that said petition seeks to appropriate the same and the use set forth in the petition.

Proceedings
thereon.

SEC. 47. Upon the filing of any claim to any rights in said stream or lake by any person or persons adversely to the petitioner, the court, unless the right of the person or persons so claiming rights as against the petitioner are admitted by the petitioner, shall proceed to determine whether or not such persons have a subsisting right to the waters of said stream or lake adverse to the rights sought by the petitioner to the use of the waters thereof, and for the purpose of such determination of the claims to any rights in such stream or lake, shall be deemed defendants, and the petitioner as plaintiff, in such proceedings.

Appraisers.

SEC. 48. In the event that the court finds that any person is entitled to any right adverse to the petitioner in the waters of said stream or lake, the court shall appoint three persons to appraise the right[s] of, as far as the same are sought to be taken from said claimant or claimants by the petitioner, and to fix a just compensation for such rights, which compensation shall be based upon the actual injury done to the claimant by the taking of said waters from said stream or lake by the petitioner.

Report of.

SEC. 49. Such appraisers shall make their report as soon as the same can reasonably be made to the court having the proceedings before it, and on the filing of such report either party or any person interested can appear and file objections thereto, either as to the amount found by the appraisers or because of any irregularity tending to do either party injustice in the proceedings before such appraisers.

Power of court.

SEC. 50. In case the court finds that there have been irregularities affecting the finding of the appraisers, it shall have the power to set aside the appraisement and either

appoint new appraisers, in whole or in part, or direct the former appraisers to proceed anew in making the said appraisalment.

SEC. 51. In case either of the parties object to the appraisalment because of its smallness or excessiveness, the court shall note the case for trial in the same manner as any other civil case at law is noted for trial, the petitioner being defendant and the claimant or claimants being plaintiff, each separate, the claimants for damages being done as plaintiff, and the petitioner as defendant.

SEC. 52. The jury in assessing the damages, if they assess any, shall find separately upon the claims of each person to damages, and each party shall have the same rights to appeal as are provided in other civil cases, and the proceedings shall be similar to the proceedings in other civil cases at law pending in said court. Assessing damages.

SEC. 53. Any person who excepts to the appraisalment on account of the smallness or excessiveness of the amount found for or against such person, shall not at any time be entitled to recover costs, unless he either increases or lessens the finding of the appraisers at least one-fourth, as the case may be.

SEC. 54. In case the appraisers herein provided for should fail to meet from any cause, or having met, shall fail to decide, or in any other manner fail to discharge their duties, the court shall have power at any time thereafter to appoint new appraisers, or to extend their time for performing their duties. Default of appraisers.

DIVISION VI.—OF THE RIGHT OF CORPORATIONS OR OF PERSONS TO CONSTRUCT DITCHES TO CARRY WATER FOR THE PUBLIC.

SEC. 55. Any corporation duly organized under the laws of this state for the purpose of constructing ditches or canals to carry water for irrigating purposes, or any person or persons, or association or firm, may construct irrigating canals, ditches or flume-ways for the purposes of carrying water from any natural stream, reservoir, or any lake within this state, and may condemn the right-of-way therefor as hereinbefore provided for in division IV of this

act, for the purposes of furnishing water to persons upon the line of said ditch, or its lateral branches, to irrigate the lands of any person or persons, whether the same be on any natural stream or lake, or whether or not said corporation, association, person or firm owns any land upon the line of the said ditch, or its laterals.

SEC. 56. Such corporation, person, association or firm shall be deemed to be a public carrier, and shall at all times be subject to the regulations prescribed for said ditch by the legislature from time to time.

Limit of right.

SEC. 57. The right herein given to condemn the use of water shall not extend any further than to the riparian rights of persons to the natural flow of water through lands upon or abutting said streams and lakes, as the same exists at common law, and is not intended in any manner to allow water to be taken from any person that is used by said person himself for irrigation, or that is needed for that purpose by any such person.

DIVISION VII.—OFFENSES.

SEC. 58. Any person or persons who shall knowingly and wilfully cut, dig, break down or open any gate, bank, embankment or side of any ditch, canal, flume, feeder or reservoir in which such person or persons may be a joint owner, or the property of another, or in the lawful possession of another or others, and used for the purpose of irrigation, manufacturing, mining or domestic purposes, with intent maliciously to injure any person, association or corporation, or for his or her own gain, unlawfully, with intent of stealing, taking or causing to run or pour out of such ditch, canal, reservoir, feeder or flume, any water for his or her own profit, benefit or advantage, to the injury of any other person, persons, association or corporation, lawfully in the use of such water or of such ditch, canal, reservoir, feeder or flume, he, she or they so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, or imprisoned not less than thirty days nor more than six months, or may

Penalty for unlawful acts.

be punished by both fine and imprisonment, at the discretion of the court.

DIVISION VIII.—ADJUDICATION OF RIGHTS.

SEC. 59. In order that all parties may be protected in Filing claims. their legal right to their use of water for irrigation, every person, association or corporation owning or claiming any interest in any ditch or canal within any county shall, on or before the first day of June, A. D. 1890, file with the clerk of the superior court in said county a statement of claim, under oath, containing the name or names of persons claiming ownership as aforesaid to any such ditch or canal, the name thereof (if it has any), and if without a name, the owner or owners shall choose and attach a name to be therein stated, by which such ditch or canal shall thereafter be known, a description of such ditch or canal as to location of head-gate, general course of ditch, the name of the natural stream or lake from which such ditch or canal draws its supply of water, the length, width, breadth and grade thereof, as near as may be, the time, fixing a day, a 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 or canal, and also the number of acres of land lying under and being, or proposed to be, irrigated by water from such ditch or canal; and said statement shall be signed by the proper party or parties.

SEC. 60. When at any time after the first day of June, Powers of court. A. D. 1890, any one or more persons, association or corporation, interested as owners of any ditch or canal in any water district, shall present to the superior court of any county a motion, petition or application in writing, moving or praying said court to adjudication of the priorities of rights to use of water for irrigation between the several ditches or canals in such district, the said court shall, without necessary [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 mo-

tion, petition or application, appoint a day for commencing to hear and take evidence in such adjudication, at which time it shall be the duty of the court to hear all evidence which may be offered by or on behalf of any person, association or corporation interested in any ditch or canal in such county, 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 or canal, or by any enlargement or extension thereof in such county, 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 or canal, 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 or canal, and determine the matters put in evidence, and make and cause to be entered a decree of determining and establishing the several priorities of right by appropriation of water of the several ditches or canals 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

Evidence.

Decree.

water intended as the capacity of such ditch or canal in such decree. Said court shall further order that each and every party interested, or claiming any such ditch or canal, shall receive from the clerk on payment of a reasonable fee therefor, to be fixed by the court, a certificate under seal of the court showing the date or dates and amount or amounts of appropriation adjudged in favor of such ditch or canal, 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 enlargement.

Fixing fee.

Certificate.

SEC. 61. 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 or canal. 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 or canal 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.

Record of certificates.

SEC. 62. 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 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 or canal in such water district to appear at said court at the time so appointed, and file a

Notice of hearing.

statement of claims under oath, in case no statement has been before filed by him, her or them, showing the ditch or canal, or two or more such, in which he, she or they claim an interest, together with the names of all the owners thereof; which statement may be made by any one of the owners of such ditch or canal, 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 or canal (either as owner or consumer of water drawn therefrom). Ten printed copies of said notice shall also be posted in ten public places in such water districts not less than twenty days before the day so appointed, which copies shall be so posted by the party or parties moving the adjudication.

SEC. 63. 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 been made in accordance with the provisions of section 62 of this act; which certificates shall be procured by the party or parties moving the adjudication at his or their expense, and on the said certificate being filed, the clerk shall enter the amount of the printer's fee therefor as costs advanced by the parties 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 creditable person, certified to be such by the clerk or other officer administering the oath, showing when, where and how said copies were posted: *Provided*, That notices so posted shall be sufficient in counties where no papers are published.

Costs.

Service of notice.

SEC. 64. 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 shown by the statement of claim on file, as provided in section sixty-one hereof, which service shall be made within ten days from the time of the first publication by the clerk, by any creditable 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 cannot 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 or canal as 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 inclosed 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 fifty-nine hereof.

SEC. 65. 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 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 shall further number each several appropriation of water consecutively, beginning with the oldest appropriation, without respect to the ditches by means of which such appropriations were made, whether such appropriation shall have been made by means of construction, extension or enlargement; which number of each ditch or canal, together with the number or numbers of any appropriations of water held to have been made by means of the construction, extension or enlargement thereof, shall be incorporated in said decree and certificate of the clerk, to be issued to the claimant as provided in section sixty of this act, so as to show the order in priority of such ditch or canal, and also of such successive

Numbering
canals and
ditches.

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 decree as rendered.

SEC. 66. The federal government is hereby authorized to avail itself of all the provisions of this act.

SEC. 67. In consequence of the near approach of the irrigation season, it is deemed that an emergency exists; and, therefore, this act shall take effect from and after its approval.

Approved March 4, 1890.

IRRIGATION AND IRRIGATING DITCHES; ACT AMENDED.

AN ACT to amend section thirty-six of an act entitled "An act providing for the use of water for the purposes of irrigation, and providing for the condemnation of the right-of-way for ditches to carry water for such purposes," approved March 4, 1890.

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

Oath of appraisers.

SECTION 1. That section thirty-six of the above entitled act be amended to read as follows: "The said appraisers must, before entering on the duties of their office, take an oath to faithfully and impartially perform the duties as such appraisers, and make a true and just award of the amount of the compensation to be paid for the right-of-way over, and use of the lands to be crossed by such ditch, canal or other conduit. They must hear the allegations and proofs offered by the respective parties, and after viewing the lands and premises, ascertain and certify the compensation which, in their judgment, it is just and proper to make to the parties owning or interested in the lands to be crossed, for the use of the same, and for damages, if any, on account of injury to other portions of the tract of

land of any owner or interested party. The appraisers, or a majority of them, must subscribe such certificate, and the same must be recorded in the office of the county clerk, and upon the payment of the compensation and damages, if any, or the tender thereof to the proper parties, or in the absence of such parties from the county, then, upon deposit of the amount in the county treasury to the credit of the said party, the persons, company or corporations. Petitioners have the right of entry upon and of way for the proposed ditch, canal or other works: *Provided*, That all parties interested under the provisions of this act shall have the right of appeal to the superior court, and a trial by jury of the cause in question, unless a jury be waived, as in other civil cases, in courts of record." Petitioners have right of entry.

Approved March 20, 1890.

1890

IRRIGATION; UNIT OF MEASURE OF WATER FOR.

AN ACT establishing a unit of measure for water for irrigation, manufacturing, mining, milling and mechanical purposes, and declaring an emergency.

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

SECTION 1. That the unit of measure for water for irrigation, mining, milling and mechanical purposes in this state shall be a cubic foot of water per second of time.

SEC. 2. In consequence of the near approach of the irrigation season, it is deemed that an emergency exists; and, therefore, this act shall take effect from and after its approval.

Approved March 26, 1890.

DYKES AND DAMS.

AN ACT to amend section 2 of an act entitled "An act to provide for the construction and maintenance of dykes and dams in certain cases," approved February 2, 1888.

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

SECTION 1. That section 2 of an act entitled "An act to provide for the construction and maintenance of dykes and dams in certain cases," approved February 2, 1888, be amended to read as follows: Sec. 2. Whenever five or more owners of lands adjoining and contiguous, subject to overflow from tide-water or river freshet, shall petition the board of county commissioners of the county in which such lands are situate, setting forth their intention of constructing and maintaining such dykes and dams as may be necessary for the protection of the same from overflow, and thus render such lands safe and fit for cultivation, and thereby enhance their value for taxable purposes and increase the public revenue, the board of county commissioners shall duly consider the same, and if they find such representations substantially correct and that such proposed improvement shall be for the public good or benefit, they shall so declare on the record of their proceedings, and then appoint three viewers, residents of such district, with the county surveyor, to view out and locate the proposed dykes and dams along the most practicable route to accomplish the object desired at the least possible cost and expense.

Petition of
owners.

Duty of county
commissioners.

Approved February 28, 1890.

PUBLIC WAYS ACROSS TIDE-FLATS NEAR TOWNS.

AN ACT to establish and define public ways for water crafts across the tide-flats within, in front of, and for a mile either way from all incorporated cities and towns in the State of Washington.

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

SECTION 1. There shall be established one or more public ways across all of the tide-flats that are situated within or in front of any incorporated city or town, or within two miles either way from any incorporated city or town within the State of Washington.

SEC. 2. The public ways provided for in section one of this act shall not be less than fifty nor more than one thousand feet wide, and shall commence at the outer or deep-water end, in not less than twenty feet of water at low tide, and shall extend inland across the state's tide-lands. Limit of width.

SEC. 3. The public ways above provided for shall be so located as to include, as near as is practicable, within their bounds, all navigable streams running through the tide-flats in which they are located, and at such other places as may be necessary for the present or future convenience of commence. Navigable streams.

SEC. 4. All public ways established under the provisions of this act shall be well defined by posts, not less than eight inches in diameter, firmly set or driven in the ground, and of sufficient length so that they will project above the water, at high tide, not less than four feet, and such posts shall not be over four hundred feet apart; and all such public ways shall be correctly surveyed and connected, by metes and bounds, with the government surveys, or such other permanent land marks as will make a lasting record; and a correct plat of all public ways so established shall be made, one copy of which shall be filed with the secretary of state, one copy with the commissioner of public lands of the state, one copy shall be kept in the office of the chairman of the board of harbor line commissioners, and each county shall be furnished with a correct plat of Marking limits.

Plats must be filed. all such public ways established within its borders, and such plats shall be filed as city or town plats are filed, and become a part of the county records.

Reservation. SEC. 5. All the public ways that may be established under the provisions of this act are, and shall forever be, reserved from sale or lease as public ways for water crafts.

Terms defined. SEC. 6. Where the words "tide-flats or tide-lands" are used in this act, they shall be construed to mean all lands over which the tide ebbs and flows, and which is bare at low tide; and where the words ordinary water crafts are used, they shall be construed to mean boats, barges and other water crafts drawing two and one-half feet and over of water.

Powers of harbor line commissioners. SEC. 7. The board of harbor line commissioners are hereby authorized and instructed to carry out the provisions of this act, and they shall begin operations as soon as practicable after the passage and approval of this act; and they are hereby authorized to employ such assistance and procure such material as may be necessary to carry out the full intent and purpose of this act, and the compensation for the same shall be such reasonable amount as said commissioners may deem advisable.

Payment of bills. SEC. 8. All bills incurred in carrying out the provisions of this act shall be audited and paid in the same manner as is provided in the act creating the harbor line commissioners, for the payment of bills incurred by them.

Approved March 28, 1890.

PUBLIC HIGHWAYS; CERTAIN STREETS IN
CITIES DECLARED TO BE.

AN ACT declaring certain streets in incorporated cities public highways, and placing the same under corporate authorities.

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

SECTION 1. That all streets in any incorporated city in this state, extending from high tide into the navigable waters of the state be and the same are hereby declared public highways.

SEC. 2. That all streets declared public highways under the provisions of this act shall be under the control of the corporate authorities of the respective cities.

Approved February 28, 1890.

ROADS AND HIGHWAYS; CORRECTING IN-
FORMALITIES.

AN ACT correcting informalities of record in the establishment of the various public roads and highways in this State.

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

SECTION 1. All public roads and highways in this state that have been used as such for a period of not less than seven years, and are now so used, where the same have been worked and kept up at the expense of the public, are hereby declared to be lawful roads and highways within the meaning and intent of the laws now existing governing public roads and highways in this state.

SEC. 2. No informalities in the records in laying out, altering, establishing or vacating any public road or high-

way such as contemplated in section one of this act now existing on file in the offices of the various county auditors of this state shall be construed to invalidate or vacate such public roads or highways.

SEC. 3. All acts or parts of acts in conflict with this act are hereby repealed.

Approved March 6, 1890.