

## CHAPTER CXXXI.

[ H. B. No. 388. ]

RELATING TO RIGHT OF WAY FOR DITCHES, CANALS  
AND FLUMES.

AN ACT providing for condemnation proceedings for right-of-way for irrigating ditches, canals, and flumes for agricultural and mining purposes and relating to right of appropriation of water.

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

SECTION 1. That any person, corporation or association of persons is entitled to take from the natural streams or lakes in this state water for the purposes of irrigation and mining, not theretofore 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.

SEC. 2. All persons who claim, own or hold possessory right or title to any land, or parcel of land or mining claim within the boundaries of the State of Washington, when such lands, mining claims 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 mining and irrigation to the full extent of the soil for agricultural purposes.

Riparian proprietors.

SEC. 3. When any person owning claims, lands or mining claims as specified in the foregoing section, is not a riparian proprietor or being such has not sufficient frontage on said stream, lake, artificial stream, ditch or reservoir, to obtain a sufficient flow of water to irrigate his land or use on his mining claim, he shall be entitled to the right of way through the farms or tracts of lands or other mining claims which lie between him and said stream, lake, artificial stream, ditch or reservoir, or the farms, tracts of lands or mining

Non-riparian proprietors.

claims which lie above and below him on said stream, lake, artificial stream, ditch or reservoir.

**Right-of-way.** SEC. 4. Such right-of-way shall extend only to a ditch sufficient for the purpose required, together with the right of ingress and egress to construct maintain and repair the same; and whenever any person or persons find it necessary to convey water for the purposes of irrigation or mining 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 can be constructed with uniform or nearly uniform grade, and discharging the water at a point where it can be conveyed to and used upon the land or lands or mining claim of the person or persons constructing such ditch canal or works.

**Condemnation.**

SEC. 5. Upon the refusal of the owner of the lands, lessees or those in possession, through which it is proposed to run said canal ditch or works to permit the passage of the same through their property the person or persons desiring the right-of-way for such ditch canal or works may proceed to condemn and take the right-of-way therefor, as hereinafter provided.

**Complaint.**

SEC. 6. In case of the refusal of the owners or claimants of any lands or mining claims through which such ditch, canal or other works are proposed to be made or constructed, to allow the right-of-way or the passage thereof, the persons, company or corporation desiring the right-of-way shall file in the superior court of the county, a complaint describing the land or mining claim to be crossed, the size of the ditch, canal or works, the quantity of land required to be taken and the value of the land and damages to the property, setting forth the names of the owners or reputed owners or parties interested in the lands to be crossed, and praying that the right-of-way be granted. A summons shall issue and be served on all parties interested, as in all other cases of civil nature. In case the defendant fails to appear the court shall when the cause shall come on to be heard, impanel a jury in the cause, and

**Summons.**

they shall determine the value of the land occupied by said ditch, canal or works and the damages, and, upon the return of the verdict, the court shall enter a decree, directing that the right-of-way for the ditch, canal or works be established according to the description in the complaint, and that the plaintiff shall pay to the clerk of the court the full amount of the value of the land and damages found by the jury, before the plaintiff shall begin work on said ditch, canal or works.

Judgment  
upon default.

SEC. 7. That whenever the defendant shall appear in the cause, he shall allege in his answer the value of the land proposed to be used by said ditch, canal or works and the jury shall determine the value and the proceedings shall be had as in the preceding section: *Provided*, That plaintiff shall not be required to reply to the answer of the defendant, but the sole issue to be determined by the jury shall be the value of the land to be occupied by said ditch, canal or works, and the damages thereto.

Issue to be  
joined.

SEC. 8. The word person, whenever used in this act, shall be construed to mean either a natural person, an association, or corporation, and the word he shall be construed to mean she, it, or they, and the word ditch shall be construed to include and mean dike, flume-way and irrigating canal.

SEC. 9. The provisions of this act shall be liberally construed so that the ultimate object and the intent of this act shall be fully carried out.

Passed the House March 2, 1899.

Passed the Senate March 9, 1899.

Approved March 14, 1899.