

CHAPTER 117.

[S. B. 127.]

WATER CODE.

AN ACT relating to the use of water in the State of Washington and the right to the use thereof, providing penalties for its violation, and for the exercise of the power of eminent domain in certain cases, making an appropriation and repealing certain acts and parts of acts.

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

SECTION 1. The power of the state to regulate and control the waters within the state shall be exercised as hereinafter in this act provided. Subject to existing rights all waters within the state belong to the public, and any right thereto, or to the use thereof, shall be hereafter acquired only by appropriation for a beneficial use and in the manner provided and not otherwise; and, as between appropriations, the first in time shall be the first in right. Nothing contained in this act shall be construed to lessen, enlarge, or modify the existing rights of any riparian owner, or any existing right acquired by appropriation, or otherwise. They shall, however, be subject to condemnation as provided in section 4 hereof, and the amount and priority thereof may be determined by the procedure set out in sections 14 to 26 inclusive hereof.

State control.

Water rights to be acquired by appropriation.

Existing rights preserved.

SEC. 2. The legally recognized units of water measurement shall be as follows: For flowing water—one cubic foot of water per second of time, and to be designated “second-foot.” For absolute volume or quantity of water—forty-three thousand five hundred sixty cubic feet of water, and to be designated “acre-foot.”

Units of measurement.

SEC. 3. Any person may convey any water which he may have a right to use along any of the natural streams or lakes of this state, but not so as to raise the water thereof above ordinary highwater mark, without making just compensation to persons injured thereby; but due allowance shall be made for evaporation and seepage, the amount of such seepage to be determined by the state

hydraulic engineer, upon the application of any person interested.

Right of eminent domain extended to beneficial use of water.

SEC. 4. The beneficial use of water is hereby declared to be a public use, and any person may exercise the right of eminent domain to acquire any property or rights now or hereafter existing when found necessary for the storage of water for, or the application of water to, any beneficial use, including the right to enlarge existing structures employed for the public purposes mentioned in this act and use the same in common with the former owner, and including the right and power to condemn an inferior use of water for a superior use. In condemnation proceedings the court shall determine what use will be for the greatest public benefit, and that use shall be deemed a superior one: *Provided*, That no property right in water or the use of water shall be acquired hereunder by condemnation for irrigation purposes, which shall deprive any person of such quantity of water as may be reasonably necessary for the irrigation of his land then under irrigation to the full extent of the soil, by the most economical method of artificial irrigation applicable to such land according to the usual methods of artificial irrigation employed in the vicinity where such land is situated. In any case, the court shall determine what is the most economical method of irrigation. Such property or rights shall be acquired in the manner provided by law for the taking of private property for public use by private corporations.

Restriction on condemnation for irrigation purposes.

SEC. 5. The administration of this act is imposed upon an engineer to be known as the state hydraulic engineer.

Administration of water code.

SEC. 6. There shall be a state hydraulic engineer appointed by the governor, who, at the time of his appointment shall be a technically qualified and experienced civil and hydraulic engineer in the practice of his profession. He shall, unless sooner removed for cause, hold office for a term of six years or until his successor shall be appointed

State hydraulic engineer.

and shall have qualified. The governor may remove said hydraulic engineer for inefficiency, neglect of duty or misconduct in office, giving to him a copy of the charges against him, and an opportunity of being publicly heard in person or by counsel in his own defense upon not less than ten (10) days notice. If such officer shall be removed the governor shall file in the office of the secretary of state a complete statement of all charges made against such officer, and his findings thereon, together with a complete record of the proceedings, and there shall be no right to a review of the same in any court whatsoever. The governor shall fill all vacancies in the office of hydraulic engineer by appointment, and the person so appointed shall fill out the unexpired term of his predecessor. His office shall be located at the seat of state government. He shall receive a salary of five thousand dollars (\$5,000.00) per annum, payable in the same manner as other state officers, and reimbursement for actual necessary expenses incurred while absent from his office on official business, and shall not accept any other employment during his term of office. Before entering upon the duties of his office, he shall take and subscribe an oath faithfully to perform the duties of his office and file with the secretary of state said oath and his official bond in the penal sum of twenty thousand dollars (\$20,000.00), with surety or sureties, to be approved by the governor, and conditioned for the faithful discharge of the duties of his office.

Appoint-
ment and
removal.

Salary.

Oath and
bond.

SEC. 7. The state hydraulic engineer may appoint an assistant and a sufficient number of deputies to aid in the administration of this act, and may employ such clerical assistance and purchase such supplies and equipment as he may deem necessary for the proper conduct and development of his department, in pursuance of appropriations made by the legislature for such purposes. The state hydraulic engineer may authorize such assistant or deputy to execute any power or perform any duty vested in the engineer and he shall be liable on his official bond for their acts.

Assistant
and deputies.

Powers and
duties of
engineer.

SEC. 8. There is hereby imposed upon the state hydraulic engineer the following duties and powers:

1. The supervision of public waters within the state and their appropriation, diversion and use, and of the various officers connected therewith.

2. Insofar as may be necessary to assure safety to life or property, he shall inspect the construction of all dams, canals, ditches, irrigation systems, hydraulic power plants, and all other works, systems and plants pertaining to the use of water, and he may require such necessary changes in the construction or maintenance of said works, to be made from time to time, as will reasonably secure safety to life and property.

3. He shall regulate and control the diversion of water in accordance with the rights thereto.

4. He shall determine the discharge of streams and springs and other sources of water supply and the capacities of lakes and of reservoirs whose waters are being or may be utilized for beneficial purposes.

5. He shall keep such records as may be necessary in the administration of his department and for the recording of the financial transactions and statistical data of his department, and shall procure all necessary documents, forms and blanks. He shall keep a seal of the office, and all certificates by him covering any of his acts or the acts of his office, or the records and files of his office, under said seal, shall be taken as evidence thereof in all courts.

6. He shall render to the governor, on or before the last day of November immediately preceding the regular session of the legislature, and at other times when required by the governor, a full written report of the work of his office, including a detailed statement of the expenditure thereof, with such recommendations for legislation as he may deem advisable for the better control and development of the water resources of the state.

7. He shall establish and promulgate rules governing the administration of this act.

8. The state hydraulic engineer and his duly authorized deputies shall be empowered to administer oaths, and shall perform such other duties as may be prescribed by this act or imposed by law.

SEC. 9. Water masters shall be appointed by the state hydraulic engineer upon application by interested parties making a reasonable showing of the necessity therefor, at such time, for such districts, and for such periods of service, as local conditions may indicate to be necessary to provide the most practical supervision on the part of the state and to secure to water users and owners the best protection in their rights. The districts for or in which the water masters serve shall be designated water districts, which shall be fixed from time to time by the state hydraulic engineer, as required, and they shall be subject to revision as to boundaries or to complete abandonment as local conditions may indicate to be expedient, the spirit of this provision being that no districts need be created or maintained, or water masters appointed therefor, where the need for the same does not exist. Water masters shall be under the supervision of the state hydraulic engineer, and shall be technically qualified to the extent of understanding the elementary principles of hydraulics and irrigation, and of being able to make water measurements in streams and in open and closed conduits of all characters, by the usual methods employed for that purpose. Each water master shall, if employed by the day, receive a wage of not to exceed five dollars (\$5.00) per day for each day he shall be actually employed in the duties of his office, or, if employed continuously he shall receive a salary of not to exceed one hundred dollars (\$100.00) per month, to be paid by the county in which the work is performed. In case the service extends over more than one county each county shall pay its equitable part of such wage to be apportioned by the state hydraulic engineer. He shall be reimbursed for actual necessary expenses when absent from his designated headquarters in the performance of his duties, such expenses to be paid

District
water
masters.

Compensa-
tion payable
by counties.

by the county in which he renders the service. The accounts of the water master shall be audited and certified by the state hydraulic engineer and the county auditor shall issue a warrant therefor upon the current expense fund.

SEC. 10. It shall be the duty of the water master, acting under the direction of the state hydraulic engineer, to divide in whole or in part, the water supply of his district among the several water conduits and reservoirs using said supply, according to the right and priority of each, respectively. He shall, as near as may be, divide, regulate and control the use of water within his district by such closure or partial closure of headgates as will prevent its use in excess of the amount to which the owner of the right is lawfully entitled. He shall as may be required in times of scarcity of water, and in respect of priorities of rights, shut and fasten or cause to be shut and fastened the headgates of water conduits, and shall regulate or cause to be regulated the controlling works of reservoirs. Whenever, in the pursuance of his duties, the water master regulates a headgate of a water conduit or the controlling works of a reservoir, he shall attach to such headgate or controlling works a written notice, properly dated and signed, stating that such headgate or controlling works has been properly regulated and is wholly under his control and such notice shall be a legal notice to all parties. He shall enforce such rules and regulations as the state hydraulic engineer shall from time to time prescribe.

SEC. 11. Any person, corporation or association feeling aggrieved at any order, decision, or determination of the state hydraulic engineer, or of any assistant or deputy, or any water master, affecting his interests, may have the same reviewed by a proceeding for that purpose, in the nature of an appeal, initiated in the superior court of the county in which the matter affected, or a portion thereof is situated. The proceedings in every such appeal shall be heard and tried by the court and shall

Duties of
water
master.

Appeals to
superior
court by
aggrieved
parties.

Procedure
on appeal.

be informal and summary, but full opportunity to be heard and present evidence shall be had before judgment is pronounced. No such appeal shall be entertained unless notice of appeal containing a statement of the substance of the order, decision, or determination complained of and the manner in which the same injuriously affects the appellant's interests, shall have been served personally upon the state hydraulic engineer, or by registered mail, at his office at the state capital, within twenty days following the rendition of the order, decision or determination appealed from and communication thereof in writing to the person affected thereby. No bond shall be required except a stay is desired and an appeal shall not be a stay, unless within five days following the service of notice of appeal a bond shall be filed in an amount to be fixed by the court and with sureties satisfactory to the court, conditioned to perform the judgment of the court. Costs shall be paid as in civil cases brought in the superior court, and the practice in civil cases shall apply. Appeal shall lie from the judgment of the superior court as in other civil cases. In all court proceedings under or pursuant to this section the decision of the state hydraulic engineer shall be *prima facie* correct. The attorney general shall be the legal adviser of the state hydraulic engineer and shall represent him in all proceedings whenever so requested. Wherever it shall appear to the state hydraulic engineer that any litigation, whether now pending or hereafter brought, may adversely affect the rights of the public in water, it shall be his duty to request the attorney general to appear and protect the interests of the state.

Stay of proceedings.

Costs.

Attorney general to advise and represent engineer.

SEC. 12. The water master shall have the power, within his district, to arrest any person in the act of violating any of the provisions of this act and to deliver such person promptly into the custody of the sheriff or other competent officer within the county and immediately upon such delivery the water master making the arrest shall, in writing and upon oath, make complaint before

Water master vested with power of arrest.

the proper justice of the peace against the person so arrested.

Prosecuting attorney to represent engineer and deputies.

SEC. 13. It shall be the duty of the prosecuting attorney of any county to appear for or on behalf of the state hydraulic engineer or his deputy, or any water master, upon request of any such officer in any case which may arise in the performance of the official duties of any such officer within the jurisdiction of said prosecuting attorney.

Determination of rights to water.

SEC. 14. Upon the filing of a petition with the state hydraulic engineer by one or more persons claiming the right to divert any waters within the state or when, after investigation, in the judgment of the state hydraulic engineer, the interest of the public will be subserved by a determination of the rights thereto, it shall be the duty of the state hydraulic engineer to prepare a statement of the facts, together with a plan or map of the locality under investigation, and file such statement and plan or map in the superior court of the county in which said water is situated, or, in case such water flows or is situated in more than one county, in the county which the state hydraulic engineer shall determine to be the most convenient to the parties interested therein. Such statement shall contain substantially the following matter, to-wit:

Engineer to file statement and map in superior court.

1. The names of all known persons claiming the right to divert said water, the right to the diversion of which is sought to be determined, and

2. A brief statement of the facts in relation to such water, and the necessity for a determination of the rights thereto.

Summons to claimants.

SEC. 15. Upon the filing of the statement and map as provided in the preceding section the judge of such superior court shall make an order directing summons to be issued, and fixing the return day thereof, which shall be not less than sixty nor more than ninety days, after the making of such order. A summons shall thereupon be issued out of said superior court, signed and attested

by the clerk thereof, in the name of the State of Washington, as plaintiff, against all known persons claiming the right to divert the water involved and also all persons unknown claiming the right to divert the water involved, which said summons shall contain a brief statement of the objects and purpose of the proceedings and shall require the defendants to appear on the return day thereof, and make and file a statement of claim to, or interest in, the water involved and a statement that unless they appear at the time and place fixed and assert such right, judgment will be entered determining their rights according to the evidence: *Provided, however,* That any persons claiming the right to the use of water by virtue of a contract with claimant to the right to divert the same, shall not be necessary parties to the proceeding.

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

SEC. 17. On or before the return day of such summons, each defendant shall file in the office of the clerk of said court a statement, and therewith a copy thereof

Service
of summons.

Publication.

Defendants
to file
verified
statements.

for the state hydraulic engineer, containing substantially the following, to-wit:

1. The name and postoffice address of defendant.
2. The full nature of the right, or use, on which the claim is based.
3. The time of initiation of such right and commencement of such use.
4. The date of beginning and completion of construction.
5. The dimensions and capacity of all ditches existing at the time of making said statement.
6. The amount of land under irrigation and the maximum quantity of water used thereon prior to the date of said statement and if for power, or other purposes, the maximum quantity of water used prior to date of said statement.
7. The legal description of the land upon which said water has been, or may be, put to beneficial use.

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

SEC. 18. Whenever any defendant in any proceeding instituted under this act is an infant, insane or incompetent person, the court shall, on application of any party thereto, appoint a guardian *ad litem* for such person as in civil actions. If such infant, insane or incompetent person has a general guardian, such general guardian shall be appointed guardian *ad litem*.

SEC. 19. Upon the completion of the service of summons as hereinbefore provided, the superior court in which said proceeding is pending shall make an order referring said proceeding to the state hydraulic engineer to take testimony, by himself or by his duly authorized deputy, as referee, and he or his said deputy shall report to and file with the superior court of the county in which such cause is pending a transcript of such testimony for adjudication thereon by such court.

SEC. 20. Thereupon the state hydraulic engineer shall fix a time and place for such hearing and serve written

Guardians
ad litem.

Reference to
engineer
to take
testimony.

Notice of
hearing.

notice thereof upon all persons who have appeared in said proceeding, their agents or attorneys. Notice of such hearing shall be served at least ten days before the time fixed therefor. Such hearings may be adjourned from time to time and place to place. The state hydraulic engineer or his duly authorized deputy shall have authority to subpoena witnesses and administer oaths in the same manner and with the same powers as referees in civil actions. The fees and mileage of witnesses shall be advanced by the party at whose instance they are called as in civil actions. A final decree adjudicating rights or priorities, entered in any case decided prior to taking effect of this act, shall be conclusive among the parties thereto and the extent of use so determined shall be *prima facie* evidence of rights to the amount of water and priorities so fixed as against any person not a party to said decree.

Referee
powers.

Conclusive-
ness of prior
decree.

SEC. 21. At the time of filing the statement as provided in section 17 each defendant shall pay to the clerk of the superior court a fee of one dollar (\$1.00) and no other fee shall be required in such proceeding.

Fees.

SEC. 22. Upon the completion of the taking of testimony it shall be the duty of the state hydraulic engineer to prepare and file with the clerk of the superior court where such proceeding is pending, a transcript of the testimony taken at such hearing, in triplicate, together with all papers and exhibits offered and received in evidence and not already a part of the record. He shall also make and file in said court a full and complete report as in other cases of reference in the superior court. Two of said transcripts shall be for the use of the parties as the court may direct. The court shall set a time for the hearing and the state hydraulic engineer shall thereupon prepare a notice designating a time for the hearing of said report and serve a copy thereof, together with a copy of his report, on all persons, their agents or attorneys who have appeared in such proceeding. Such service shall be made not less than twenty days before the time for said

Transcript of
testimony
filed in court.

Court to
set time for
hearing.

hearing, either personally or by registered mail, and an affidavit of such service filed with the clerk.

Exceptions
to engineer's
report.

SEC. 23. Upon the filing of the evidence and the report of the state hydraulic engineer, any interested party may, on or before five days prior to the date of said hearing, file exceptions to such report in writing and such exceptions shall set forth the grounds therefor and a copy thereof shall be served personally or by registered mail upon all parties who have appeared in the proceeding. If no exceptions be filed, the court shall enter a decree determining the rights of the parties according to the evidence and the report of the state hydraulic engineer, whether such parties have appeared therein or not. If exceptions are filed the action shall proceed as in case of reference of a suit in equity and the court may in its discretion take further evidence or, if necessary, remand the case for such further evidence to be taken by the state hydraulic engineer, and may require further report by him. Costs, not including taxable attorneys fees, may be allowed or not; if allowed, may be apportioned among the parties in the discretion of the court. Appeal may be taken to the supreme court from such decree in the same manner as in other cases in equity, except that notice of appeal must be both served and filed within sixty days from the entry thereof.

Procedure.

Appeals to
supreme
court.

Estoppel
of defendant.

SEC. 24. Whenever proceedings shall be instituted for the determination of the rights to the use of water, any defendant who shall fail to appear in such proceedings, after legal service, and submit proof of his claim, shall be estopped from subsequently asserting any right to the use of such water embraced in such proceeding, except as determined by such decree.

Entry of
decree.

SEC. 25. The clerk of the superior court, immediately upon the entry of any decree by the superior court, shall transmit a certified copy thereof to the state hydraulic engineer, who shall immediately enter the same upon the records of his office.

SEC. 26. Upon the final determination of the rights to the diversion of water it shall be the duty of the state hydraulic engineer to issue to each person entitled to the diversion of water by such determination, a certificate under his official seal, setting forth the name and post-office address of such person; the priority and purpose of the right; the period during which said right may be exercised, the point of diversion and the place of use; the land to which said water right it appurtenant and when applicable the maximum quantity of water allowed.

Certificates
of right to
diversion.

SEC. 27. Any person, municipal corporation, firm, irrigation district, association, corporation or water users' association hereafter desiring to appropriate water for a beneficial use shall make an application to the state hydraulic engineer for a permit to make such appropriation, and shall not use or divert such waters until he has received a permit from such state hydraulic engineer as in this chapter provided. The construction of any ditch, canal or works, or performing any work in connection with said construction or appropriation, or the use of any waters, shall not be an appropriation of such water nor an act for the purpose of appropriating water unless a permit to make said appropriation has first been granted by the state hydraulic engineer: *Provided*, That a temporary permit may be granted upon a proper showing made to the hydraulic engineer to be valid only during the pendency of such application for a permit unless sooner revoked by said hydraulic engineer: *Provided, further*, That nothing in this act contained shall be deemed to affect chapter 88 of the Laws of 1905 except that the notice and certificate therein provided for in section 3 thereof shall be addressed to the state hydraulic engineer after the passage of this act, and the state hydraulic engineer shall exercise the powers and perform the duties prescribed by said section 3.

Applications
for permits
to use water.

Temporary
permits.

SEC. 28. Each application for permit to appropriate water shall set forth the name and postoffice address of the applicant, the source of water supply, the nature and

Contents of
applications.

amount of the proposed use, the time during which water will be required each year, the location and description of the proposed ditch, canal, or other work, the time within which the completion of the construction and the time for the complete application of the water to the proposed use. If for agricultural purposes, it shall give the legal subdivision of the land and the acreage to be irrigated, as near as may be, and the amount of water expressed in acre-feet to be supplied per season. If for power purposes, it shall give the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the uses to which the power is to be applied. If for construction of a reservoir, it shall give the height of the dam, the capacity of the reservoir, and the uses to be made of the impounded waters. If for municipal water supply, it shall give the present population to be served, and, as near as may be, the future requirement of the municipality. If for mining purposes, it shall give the nature of the mines to be served and the method of supplying and utilizing the water; also their location by legal subdivisions. All applications shall be accompanied by such maps and drawings, in duplicate, and such other data, as may be required by the state hydraulic engineer, and such accompanying data shall be considered as a part of the application.

SEC. 29. Upon receipt of an application it shall be the duty of the state hydraulic engineer to make an endorsement thereon of the date of its receipt, and to keep a record of same. If upon examination, the application is found to be defective, it shall be returned to the applicant for correction or completion, and the date and the reasons for the return thereof shall be endorsed thereon and made a record in his office. No application shall lose its priority of filing on account of such defects, provided acceptable maps, drawings and such data as is required by the state hydraulic engineer shall be filed in the office of the state hydraulic engineer within such reasonable time as he shall require.

Agricultural purposes.

Power purposes.

Reservoirs.

Municipal water supply.

Mining purposes.

Date of filing with engineer.

Defective applications not to lose priority.

SEC. 30. Upon filing an application which complies with the provisions of this act and the rules and regulations established hereunder, the state hydraulic engineer shall instruct the applicant to publish notice thereof, in a form prescribed by said state hydraulic engineer, in one newspaper of general circulation published at the county seat of the county or counties in which the storage, diversion and use is to be made, and in such other newspapers as the state hydraulic engineer may direct, once a week for two consecutive weeks.

Publication of notice of proposed use or diversion.

SEC. 31. When an application complying with the provisions of this chapter and with the rules and regulations of the state hydraulic engineer has been filed, the same shall be placed on record in the office of the state hydraulic engineer, and it shall be his duty to investigate the application, and determine what water, if any, is available for appropriation, and find and determine to what beneficial use or uses it can be applied. If it is proposed to appropriate water for irrigation purposes, the state hydraulic engineer shall investigate, determine and find what lands are capable of irrigation by means of water found available for appropriation. The state hydraulic engineer shall make and file as part of the record in the matter, written findings of fact concerning all things investigated, and if he shall find that there is water available for appropriation for a beneficial use, and the appropriation thereof as proposed in the application will not impair existing rights or be detrimental to the public welfare, he shall issue a permit stating the amount of water to which the applicant shall be entitled and the beneficial use or uses to which it may be applied: *Provided*, That where the water applied for is to be used for irrigation purposes, it shall become appurtenant only to such land as may be reclaimed thereby to the full extent of the soil for agricultural purposes. But where there is no unappropriated water in the proposed source of supply, or where the proposed use conflicts with existing rights, or threatens to prove detrimental to the public interest,

Investigation and report on application.

Issuance of permit.

Refusal of permit.

having due regard to the highest feasible development of the use of the waters belonging to the public, it shall be the duty of the state hydraulic engineer to reject such application and to refuse to issue the permit asked for. If the permit is refused because of conflict with existing rights and such applicant shall acquire same by purchase or condemnation under section 4 hereof, said engineer may thereupon grant such permit. Any application may be approved for a less amount of water than that applied for, if there exists substantial reason therefor, and in any event shall not be approved for more water than can be applied to beneficial use for the purposes named in the application. In determining whether or not a permit shall issue upon any application, it shall be the duty of the state hydraulic engineer to investigate all facts relevant and material to the application. After the state hydraulic engineer approves said application in whole or in part and before any permit shall be issued thereon to the applicant, such applicant shall pay the fee provided in section 44 of this act.

Approval
in part.

Payment
of fees.

Assignment
of permits.

SEC. 32. Any permit to appropriate water may be assigned subject to the conditions of the permit, but no such assignment shall be binding or valid unless filed for record in the office of the state hydraulic engineer. Any application for permits to appropriate water prior to permit issuing, may be assigned by the applicant, but no such assignment shall be valid or binding unless the written consent of the state hydraulic engineer is first obtained thereto, and unless such assignment is filed for record in the office of the state hydraulic engineer.

Time for
construction
work under
permits.

SEC. 33. Actual construction work shall be commenced on any project for which permit has been granted within such reasonable time as shall be prescribed by the state hydraulic engineer, and shall thereafter be prosecuted with diligence and completed within the time prescribed by the state hydraulic engineer. The state hydraulic engineer, in fixing the time for the commencement of the work, or for the completion thereof and the appli-

cation of the water to the beneficial use prescribed in the permit, shall take into consideration the cost and magnitude of the project and the engineering and physical features to be encountered, and shall allow such time as shall be reasonable and just under the conditions then existing, having due regard for the public welfare and public interests affected: and, for good cause shown, he shall extend the time or times fixed as aforesaid, and shall grant such further period or periods as may be reasonably necessary, having due regard to the good faith of the applicant and the public interests affected. If the terms of the permit or extension thereof, are not complied with the state hydraulic engineer shall give notice by registered mail that such permit will be cancelled unless the holders thereof shall show cause within sixty days why the same should not be so cancelled. If cause be not shown, said permit shall be cancelled.

Extension
of time.

Cancellation
of permits.

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

Certificate
of due ap-
propriation.

Registration
and record-
ing of
certificates
and permits.

SEC. 35. The right acquired by appropriation shall relate back to the date of filing of the original application in the office of the state hydraulic engineer.

Date of
initiation of
water right.

SEC. 36. Any person, corporation or association intending to construct any dam or controlling works for the

Storage
dams to be
approved by
engineer.

storage of ten-acre feet or more of water, shall, before beginning said construction, submit plans and specifications of the same to the state hydraulic engineer for his examination and approval as to its safety. Such plans and specifications shall be submitted in duplicate, one copy of which shall be retained, as a public record, by the state hydraulic engineer, and the other returned with his approval or rejection endorsed thereon. No such dam or controlling works shall be constructed until the same or any modification thereof shall have been approved as to its safety by the state hydraulic engineer.

Maintenance
of control-
ling works
and measur-
ing devices.

SEC. 37. The owner or owners of any ditch or canal shall maintain, to the satisfaction of the state hydraulic engineer, substantial controlling works, and a measuring device at the point where the water is diverted, and these shall be so constructed as to permit of accurate measurement and practical regulation of the flow of water diverted into said ditch or canal. Every owner or manager of a reservoir for the storage of water shall construct and maintain, when required by the state hydraulic engineer, any measuring device necessary to ascertain the natural flow into and out of said reservoir.

Reservoir
permits.

SEC. 38. All applications for reservoir permits shall be subject to the provisions of sections 27 to 33 of this act, both inclusive. But the party or parties proposing to apply to a beneficial use the water stored in any such reservoir shall also file an application for a permit, to be known as the secondary permit, which shall be in compliance with the provisions of sections 27 to 33 of this act, both inclusive. Such secondary application shall refer to such reservoir as its source of water supply and shall show documentary evidence that an agreement has been entered into with the owners of the reservoir for a permanent and sufficient interest in said reservoir to impound enough water for the purposes set forth in said application. When the beneficial use has been completed and perfected under the secondary permit, the state hydraulic engineer shall take the proof of the water users

Applications
for second-
ary permits.

under such permit and the final certificate of appropriation shall refer to both the ditch and works described in the secondary permit and the reservoir described in the primary permit.

SEC. 39. The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: *Provided, however,* That said right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the state hydraulic engineer, and said application shall not be granted until notice of the hearing upon said application shall be published as provided in section 30 of this act. If upon such hearing it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the state hydraulic engineer shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record in the office of the state hydraulic engineer and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water. The applicant shall pay the fee of one dollar (\$1.00) for the certificate provided for by this section.

Water appurtenant to land.

Transfer of right to other land.

Change in point of diversion.

Necessity of notice and hearing.

Certificates of transfer or of change of diversion.

SEC. 40. The unauthorized use of water to which another person is entitled or the wilful or negligent waste of water to the detriment of another, shall be a misdemeanor.

Unauthorized use of water.

The possession or use of water without legal right shall be *prima facie* evidence of the guilt of the person using it. It shall also be a misdemeanor to use, store or divert any water until after the issuance of permit to appropriate such water.

SEC. 41. (1) Any person or persons who shall wilfully interfere with, or injure or destroy any dam, dike, headgate, weir, canal or reservoir, flume, or other structure or appliance for the diversion, carriage, storage, apportionment or measurement of water for irrigation, reclamation, power or other beneficial uses, or who shall use or conduct water into or through his ditch or shall wilfully injure or destroy any telegraph, telephone or electric transmission line, or any other property owned, occupied or controlled by any person, association, or corporation, or by the United States and used in connection with said beneficial use of water, shall be guilty of a misdemeanor.

(2) Any person or persons who shall wilfully or unlawfully take or use water, or conduct the same into his ditch or to his land, or land occupied by him, and for such purpose shall cut, dig, break down or open any headgate, bank, embankment, canal or reservoir, flume or conduit, or interfere with, injure or destroy any weir, measuring box or other appliance for the apportionment and measurement of water, or unlawfully take or cause to run or pour out of such structure or appliance any water, shall be guilty of a misdemeanor.

(3) The use of water through such structure or structures, appliance or appliances hereinbefore named after its or their having been interfered with, injured or destroyed, shall be *prima facie* evidence of the guilt of the person using it.

SEC. 42. Whenever any appropriator of water has the lawful right of way for the storage, diversion, or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto or trespass thereon.

Interference
with
appliances
for beneficial
use of water.

Penalty.

Prima facie
evidence
of guilt.

Obstruction
of appropriator's right-
of-way.

SEC. 43. That nothing in this act contained shall operate to effect an impairment of any inchoate right to divert and use water while the application of the water in question to a beneficial use is being prosecuted with reasonable diligence, having due regard to the circumstances surrounding the enterprise, including the magnitude of the project for putting the water to a beneficial use and the market for the resulting water right for irrigation or power or other beneficial use, in the locality in question.

Inchoate
rights not
impaired.

SEC. 44. The following fees shall be collected by the state hydraulic engineer in advance and be paid by him into the general fund of the state treasury on the last day of March, June, September and December of each year; (a) for examining an application for a permit to appropriate water, five dollars (\$5.00); (b) for filing and recording permit to appropriate water for irrigation purposes, ten cents (10c) per acre for each acre to be irrigated up to and including one hundred acres, and five cents (5c) per acre for each acre in excess of one hundred acres up to and including one thousand acres, and two and one-half cents ($2\frac{1}{2}c$) for each acre in excess of one thousand acres; and also ten cents (10c) for each theoretical horsepower up to and including one hundred h. p. and five cents (5c) for each theoretical h. p. up to and including one thousand h. p. and one cent (1c) for each theoretical h. p. in excess of one thousand h. p.; (c) for filing and recording any other water right instrument, one dollar (\$1.00) for the first hundred words and ten cents (10c) for each additional hundred words or fraction thereof; (d) for making copy of any document recorded or filed in his office, ten cents (10c) for each hundred words or fraction thereof, but where the amount exceeds five dollars (\$5.00), then only the actual cost in excess of that amount shall be charged; (e) for certifying to copies, documents, records, or maps, one dollar (\$1.00) for each certification; (f) for blue print copies of any map or drawing, ten cents (10c) per square foot or fraction

Schedule
of fees.

thereof. For such other work of a similar nature as may be required of his office, at actual cost of the work.

Appropriation, \$25,000.

SEC. 45. There is hereby appropriated from the moneys in the state treasury not otherwise appropriated the sum of twenty-five thousand dollars (\$25,000) or so much thereof as is necessary to cover the salary of the state hydraulic engineer, services of the assistant state hydraulic engineer and deputies and the expenses of the office of the state hydraulic engineer.

"Person" defined.

SEC. 46. The term "person," whenever used in this act, may be construed to mean firm, association, water users' association, corporation, irrigation district, or municipal corporation, as well as an individual.

Repealing clause.

SEC. 47. Sections 6315 to 6341, inclusive; 6343, 6344, 6346 to 6363, inclusive; 6365 to 6403, inclusive, of Remington & Ballinger's Annotated Codes and Statutes of Washington, and all other acts or parts of acts in conflict herewith are hereby repealed.

Passed the Senate February 27, 1917.

Passed the House March 7, 1917.

Approved by the Governor March 14, 1917.

CHAPTER 118.

[H. B. 195.]

MAINTENANCE OF PERMANENT HIGHWAYS.

AN ACT relating to public highways, providing a system for maintaining the same; prescribing a method for apportioning automobile license fees; providing for a tax levy for the construction of state roads; amending section 4, chapter 65, Laws of 1913 and repealing chapter 59 Laws of 1915.

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

County permanent highway maintenance fund.

SECTION 1. There is hereby created in each county of the state a county fund to be known as the permanent highway maintenance fund. The county officers of the various counties having the custody and disposition thereof