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# WATER CODE

OF THE

## State of Arizona

CHAPTER 164

Laws of 1919 -- Amended 1921

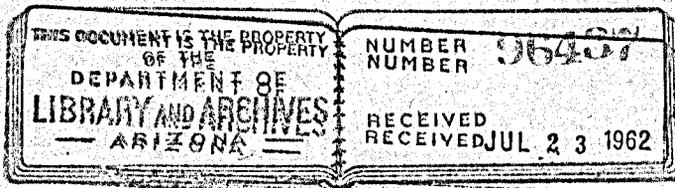
Chapter 64



Compiled in the Office of the  
STATE WATER COMMISSIONER

June 10, 1921

THE MANUFACTURING STATIONERS INC., PHOENIX, ARIZONA



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CHAPTER 164

AN ACT

Pertaining to the Use of Water, and to Regulate the Appropriation of the Natural Waters of Arizona; Protecting the Rights of Prior Appropriations; Creating a State Water Commissioner, Defining and Limiting His Powers and Duties; Regulating the Manner of Making Appropriations and the Purposes for Which Water May be Appropriated; Giving to the Water Commissioner Control Over Dams, Gates and Wiers; Empowering the Water Commissioner to Measure the Flow of Streams, and to Investigate Water Resources; Providing for the Division of the State Into Water Districts, and for the Distribution of the Water to Those Entitled to its Use; Providing for the Determination of Existing Water Rights, Providing for the Method of Hearings in Contested Appropriations and Rules for Determining a Preference as Between Conflicting Appropriations; And Providing for Public Hearings, Limiting the Value to be Placed on Water Rights in Certain Cases; Providing for Appeals From Decisions of the Water Commissioner; Defining Certain Duties of Superior Courts, the Attorney General and County Officers; Providing the Manner in Which Reservoirs May be Located, and Defining and Limiting the Purposes for Which They May be Located; Providing Penalties for the Violation of the Provisions of This Act, and Giving Power to Enforce Decrees and Findings; Appropriating Moneys for the Purposes of This Act; And Repealing all Acts and Parts of Acts in Conflict With the Provisions of This Act.

**Be it Enacted by the Legislature of the State of Arizona:**

**PUBLIC WATERS**

Section 1. The water of all sources of supply, flowing in natural streams, canyons, ravines or other natural channels, or in definite underground channels, whether perennial, intermittent or flood waters, waste or surplus water, and of lakes, ponds and springs, on the surface, belongs to the public, and is subject to beneficial use as herein provided. Beneficial use shall be the basis and the measure and the limit to the use of water in the State, and whenever hereafter the owner of a perfected and developed right shall cease or fail to use the water appropriated for a period of five (5) successive years the right to use shall thereupon cease and revert to the public and become again

subject to appropriation in the manner herein provided. But nothing herein contained shall be so construed as to take away or impair the vested rights which any person, firm, corporation or association may have to any water at the time of passage of this act. [As amended 1921.]

#### **Appointment—**

Section 2. The office of State Water Commissioner is hereby created. The State Water Commissioner who shall hereafter in this act be designated and referred to as the Commissioner, shall be appointed by the Governor to hold office for a period of six years and until his successor is appointed and qualified. He may be removed by the governor for cause. He shall be familiar with water law, with hydraulics and with irrigation practice. He shall have office quarters at the State Capitol. The Commissioner shall have general control and supervision of the waters of the State of Arizona and of the appropriation and of the distribution thereof, excepting such distribution as is hereinafter reserved to Water Commissioners appointed by the courts under existing decrees. He shall receive a salary of Four Thousand Dollars (\$4,000.00) and his traveling expenses when away from his office, to be paid from the State Water Fund.

#### **Investigation, Etc.—**

Section 3. In order to promote the best and fullest use of the waters of the State of Arizona, the Commissioner is hereby authorized and empowered to make such surveys, investigations and compilations of the water resources and their development in the State as shall in his judgment be for the best interests of the State and to make co-operative arrangements for such purposes with the National Government; and the Commissioner is hereby directed upon the passage of this act to at once begin the establishment of a permanent, safe and convenient public depository in the State Capitol Building for existing and future records of stream flow and all other data relating to the water resources of the State.

#### **Rules and Regulations—**

Section 4. The Commissioner is authorized subject to the provisions herein contained to formulate and pass such necessary rules and regulations concerning the appropriation and distribution of the waters of the State as he may deem advisable, and is further authorized to employ such expert technical and clerical assistants and labor and upon such terms as may be deemed necessary and proper, not exceeding the funds appropriated for these purposes. The Commissioner shall have an official seal

bearing the words, "Arizona State Water Commissioner" which shall be affixed to papers, maps, plans and other instruments issued from his office.

#### **Applications—**

Section 5. Any person, association or corporation, irrigation district, municipality or the State of Arizona or the United States of America hereafter intending to acquire the right to the beneficial use of any waters shall, before commencing the construction, enlargement or extension of any dam, ditch, canal or other distributing or controlling works, or performing any work in connection with said construction, or proposed appropriation, make an application to the Commissioner for a permit to make such appropriation. [As amended 1921.]

#### **Data Required—**

Section 6. Each application for a permit to appropriate water shall set forth the name and postoffice address of the applicant, the source of water supply, the nature and amount of the proposed use, the location, point of diversion and description of the proposed ditch, canal, or other work; the time within which it is proposed to begin construction, the time required for 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 subdivisions of the land and the acreage to be irrigated as near as may be. If for power purposes, it shall give the nature of the works by means of which the power is to be developed, the pressure head and amount of water to be utilized, the points of diversion and release of the water, and the uses to which the power is to be applied. If for the construction of a reservoir, it shall give the dimensions and description of dam, the capacity of the reservoir for each foot in depth, the description of the land to be submerged, 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 requirements of the city. If for mining purposes it shall give the location and the nature of the mines to be served, and the methods of supplying and utilizing the waters. All applications shall be accompanied by such maps and drawings, and such other data as may hereafter be prescribed by the Commissioner, and such accompanying data shall be considered as a part of the application. [As amended 1921.]

#### **Acceptance Record—**

Section 7. Upon receipt of an application it shall be the duty of the Commissioner to make an endorsement thereon of the date of its receipt and to keep a record of the same. If upon exam-

ination the application is found to be defective it shall be returned for correction or completion, and the date of and reasons for the return thereof shall be endorsed thereon and made of record in his office. No application shall lose its priority of filing on account of such defects, provided acceptable maps and drawings and data are filed in the office of the Commissioner within sixty days from the date of said return to the applicant. All applications which shall comply with the provisions of this act shall be recorded in a suitable book kept for that purpose, and it shall be the duty of the Commissioner to approve all applications made in proper form which contemplate the application of water to a beneficial use, when the provisions of this act are complied with; but when the proposed use conflicts with vested rights, or is a menace to the safety or against the interests and welfare of the public, the application shall be rejected.

Before approving or rejecting the application the Commissioner may require such additional information as will enable him to properly guard the public interest, and may, in case of applications proposing to divert more than ten cubic feet of water per second, require a statement of the following facts: In case of incorporated companies he may require the submission of the articles of incorporation, the names and the places of residence of directors and officers, and the amount of its authorized and its paid-up capital. If the applicant is not an incorporated company, he may require a statement as to the name or names of the party or parties proposing to construct the work, and a showing of facts necessary to enable him to determine whether or not they have the financial ability to carry out the proposed work. He may also require of the applicant additional data as to the unappropriated water in the source of supply as will enable him to determine whether the proposed diversion will conflict with vested rights.

#### **Relative Values—**

An application may be approved for a less amount of water than that applied for, if there exists substantial reasons therefor, and in any event shall not be approved for more water than can be applied to a beneficial use. Applications for municipal water supplies may be approved to the exclusion of all subsequent appropriations, if the exigencies of the case demand, upon consideration and order by the Commissioner. As between two or more conflicting applications under consideration of the Commissioner at the same time for the use of any water from a given stream, lake, or other source of water supply where the capacity of the supply is not sufficient for all applications and for which no permit has been granted, preference shall be given by the

Commissioner according to the relative values to the public of the proposed uses to which the water is supplied. The said relative values to the public shall be taken by the Commissioner for this purpose in the following order of importance:

First: Domestic and municipal uses.

Domestic use shall be construed to include gardens not exceeding one-half acre to each family.

Second: Irrigation and stock watering.

Third: Water power and mining uses.

[As amended 1921.]

#### **Approval—**

Section 8. The approval or rejection of an application shall be endorsed thereon, and a record made of such endorsement in the Commissioner's office. The application so endorsed shall be returned immediately to the applicant in person or by mail. If approved, the applicant shall be authorized, on receipt thereof, to proceed with the construction of the necessary works and to take all steps required to apply the water to a beneficial use, and to perfect the proposed appropriation. If the application is refused, the applicant shall take no steps toward the construction of the proposed work or the diversion and the use of water so long as such refusal shall continue in force.

#### **Assignment—**

Section 9. Any permit to appropriate water may be assigned, subject to the conditions of the permit, but no such assignment shall be binding, except upon the parties thereto, unless approved by and filed for record with the Commissioner; and every permittee, under the provisions of this act, if he accepts such permit, shall accept the same under the conditions precedent, that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted under the provisions of this act, or for any rights granted or acquired under the provisions of this act; in respect to the regulation by any competent public authority of the services to be rendered by any permittee, his heirs, successors or assigns; or in respect to any valuation for purposes of sale to, or purchase whether through condemnation proceedings or otherwise by, the State or any city, county, municipal water district, irrigation district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted or acquired under the provisions of this act.

**Construction—**

Section 10. Actual construction work, except under applications by municipal corporations for municipal uses or purposes shall begin within one year from the date of approval of the application, and the construction on any proposed irrigation or other work shall thereafter be prosecuted with reasonable diligence and be completed within a reasonable time, as fixed in the permit, not to exceed five years from the date of such approval. The commissioner shall, for a good cause shown, order and allow an extension of time, including an extension beyond the five year limitation, and in determining such extension, shall give due weight to the magnitude, physical difficulties and cost of the proposed work.

**Appeal—**

Section 11. An applicant may appeal to the court hereinafter specified for relief, which may modify the decisions of the Commissioner if it shall appear that he has abused the authority reposed in him by law. Such appeal shall be taken within sixty days from the date of such decision by the Commissioner and shall be perfected when the applicant shall have filed with the court a copy of the order appealed from, together with a petition setting forth the appellant's reason for appeal, and such appeal shall be heard and determined upon such competent proof as shall be adduced by the applicant, and such like proofs as shall be adduced by the commissioner.

**Reservoirs—**

Section 12. All applications for reservoir permits shall be subject to the provisions of the foregoing sections except that an enumeration of any lands proposed to be irrigated under this act shall not be required in the primary permit. But the party or parties proposing to apply to a beneficial use the water stored in any such reservoir shall file an application for permit, to be known herein as the secondary permit, in compliance with the provisions of the foregoing sections. Said application shall refer to such reservoir for a supply of water and shall show by 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 beneficial use has been completed and perfected under the secondary permit, the Commissioner shall take the proof of the water user under such permit and the final certificate of appropriation shall refer to both the ditch described in the secondary permit and the reservoir described in the primary permit. If at any time it shall appear to

the Commissioner after a hearing of the parties interested and on investigation that the holder of the said appropriation will not or cannot within a reasonable period develop the streams then the Commissioner in his discretion may permit the joint occupancy and use with the holder of the appropriation by any and all applicants qualified under the provisions of this act and applying for such joint occupancy to the extent deemed advisable by the Commissioner provided that the applicant or applicants shall be required to pay to the party owning such works a pro-rata portion of the total cost of the old and the new works, such pro-rata cost to be based on the proportion of water used by the original and the additional users of such works.

#### **Certificates—**

Section 13: Upon it being made to appear to the satisfaction of the Commissioner that any appropriation has been perfected in accordance with the provisions of this act, it shall be his duty to issue to the applicant a certificate of the same character as that described in Section 27. Said certificate shall be recorded and transmitted to the applicant as provided in said section. Certificates issued for rights to the use of water for power development acquired under the provisions of this act shall limit the right or franchise to a period of forty years from the date of application, subject to a preference right of renewal under the laws existing at the date of expiration of such franchise or right.

#### **Priority—**

Section 14. The right acquired by such appropriation shall date from the filing of the application in the office of the Commissioner.

#### **Reciprocity Between States—**

Section 15. No permit for the appropriation of water shall be denied because of the fact that the point of diversion described in the application for such permit, or any portion of the works in such application described and to be constructed for the purpose of storing, conserving, diverting or distributing such water, or the place of intended use or the lands to be irrigated by means of such water, or any part thereof, may be situated in some other State; but in all such cases where either the point of diversion or any of such works or the place of intended use, or the lands, or part of the lands, to be irrigated by means of such water, are situated within the State of Arizona, the permit shall issue as in other cases; provided, however, that the Commissioner may in his discretion, decline to issue a permit where the point of diversion described in the application is within the State of Arizona but the place of beneficial use in some other

State, unless under the laws of such State water may be lawfully diverted within such State for beneficial use in the State of Arizona.

#### **Determination—**

Section 16. Upon the initiative of the Commissioner or upon a petition to him signed by one or more water users upon any stream, requesting the determination of the relative rights of the various claimants to the waters of that stream, it shall be his duty, if, upon investigation he finds the facts and conditions are such as to justify, to make a determination of the said rights, fixing a time for beginning the taking of testimony and the making of such examination as will enable him to determine the rights of the various claimants. In case suit has been brought in any State Court for the determination of rights to the use of water, the case may, in the discretion of the Court be transferred to the Commissioner for determination as in this act provided. But in such case, no proceedings shall be had by the Commissioner until such transfer is made. Provided, that in the determination of water rights on any water shed or any part thereof or upon any other source of supply where the dates of appropriation of water on all or any part of such water shed shall have been determined in a judgment or decree of any court in any action or proceeding concluded prior to or pending at the date of the taking effect of this act, the Commissioner shall accept such dates of appropriation as found or fixed in such decree or judgment as correct and nothing herein shall be held or construed to require the owner of any appropriation which shall have been adjudicated in such decree or judgment, to appear in or for any purpose take notice of, any of the proceedings, investigations or hearings authorized by this act. Abandonment or other loss of any right of any appropriation awarded in any such decree may be affirmatively shown, but nothing in this act shall be so construed as to revive any rights to the used water which have been lost by abandonment, forfeiture or non-user.

#### **Newspaper Notices—**

Section 17. The Commissioner shall prepare a notice setting forth a date when he will begin an investigation of the flow of the stream and of the ditches diverting water therefrom, and the land irrigated thereby; such notice shall set forth that all claimants to rights in the water of said stream will be required, as in this act provided, to make proof of their claims when called upon by the Commissioner, which notice shall be published in two issues of one or more newspapers having general circulation in the counties in which such stream is situated. [As amended 1921.]

**Stream Examination—**

Section 18. It shall be the duty of the Commissioner to make an examination of said stream and the works diverting water therefrom, said examination to include a study of the discharge of said stream from existing data and from additional measurements and of the carrying capacity to the various ditches and canals, examination of the irrigated lands, and a substantially accurate measurement of the lands irrigated or susceptible of irrigation from the various ditches and canals; and to take such other steps and gather such other data and information as may be essential to the proper understanding of the relative rights of the parties interested; which said investigations shall be reduced to writing and made a matter of record in this office, and such records and data shall be made conveniently accessible to the public. It shall be the duty of the Commissioner to make or cause to be made a map or plat on a scale of not less than one inch to the mile, showing with substantial accuracy the course of said stream, the location of such ditch or canal diverting water therefrom, and the legal subdivisions of lands which have been irrigated or which are susceptible of irrigation from the ditches and canals already constructed. [As amended 1921.]

**Notice to Claimants—**

Section 19. During the said investigation the Commissioner shall send by registered mail to each person, firm, corporation, irrigation district or municipality hereafter designated as claimant claiming the right to the use of any of the waters of said stream, insofar as such claimants can reasonably be ascertained, a notice setting forth the date when the Commissioner will begin the taking of testimony as to the rights to the waters of said stream, or source of supply, said notice must be mailed at least thirty days prior to the date set therein for the taking of testimony, and shall also be published in two issues of one or more newspapers having general circulation in the counties in which such stream is situated. The Commissioner shall have the power to adjourn the taking of testimony from time to time and from place to place to suit the convenience of those interested. [As amended 1921.]

**Statement by Claimant—**

Section 20. The commissioner shall, in addition, enclose with said notice a blank form on which said claimant or owner shall present in writing all the particulars necessary for the determination of his right to the waters of the stream to which he lays claim, the said statement to include the following: The name and postoffice address of the claimant; the nature of the right or use on which the claim is based; the time of initiation of such (right

and) or the commencement of such use, and if distributing works are required; the date of beginning of construction; the date when completed; date of beginning and completion of enlargements; the dimensions of the ditch as originally constructed and as enlarged; the date when water was first used for irrigation or other beneficial purposes, and if used for irrigation, the amount of land reclaimed the first year, the amount in subsequent years, with the date of reclamation, and the amount and general location of the land such ditch is intended to irrigate; the character of the soil and the kind of crops cultivated and such other facts as will show a compliance with the law in acquiring the right. [As amended 1921.]

#### **Oath of Claimant—**

Section 21. Each claimant or owner shall be required to certify to his statements under oath and the Commissioner and those deputized by him are hereby authorized to administer such oaths, which shall be done without charge, as also shall be the furnishing of blank forms for said statement. [As amended 1921.]

#### **Fees—**

Section 22. At the time of the submission of proof of appropriation, or at the time of the taking of testimony for the determination of rights to water, the Commissioner shall collect from each of the claimants or owners a fee of two dollars (\$2.00) for the purpose of recording the water right certificate, when issued, in the office of the county recorder together with the additional fee of twelve cents for each acre of irrigated lands up to and including one hundred acres, and ten cents per acre for each acre in excess of one hundred acres; also twenty-five cents for each theoretical horsepower up to and including one hundred horsepower, and fifteen cents for each horsepower in excess of one hundred up to and including one thousand horsepower, and five cents for each horsepower in excess of one thousand horsepower up to and including two thousand horsepower, and two cents for each horsepower in excess of two thousand horsepower as set forth in such proof, the minimum fee, however, for any claimant or owner in such cases to be \$2.50; also a fee of \$5.00 for any other character of claim to water. All fees collected by the Commissioner shall be paid into the State Treasury to become a part of a fund to be known as the State Water Fund; which fund shall be kept separately from all other state funds by the State Treasurer and used by him to the extent of its resources and in preference to the use of any other appropriation of the State funds, for the payment of the duly authorized expenses of the Commissioner. [As amended 1921.]

**Inspection—**

Section 23. Upon the completion of the taking of testimony the Commissioner shall at once give notice by registered mail to the various claimants that at a time and place named in the notice not less than ten days thereafter, all of said evidence shall be open to inspection of the various claimants or owners, and said Commissioner shall keep said evidence open to inspection at said places not less than thirty days, and such other time as fixed in the notice. [As amended 1921.]

**Contests—**

Section 24. Should any person, corporation or association owning or operating any irrigation works, or claiming any interest in the stream or streams involved in the determination, desire to contest any of the rights of the persons, corporations or associations who have submitted their evidence to the Commissioner as aforesaid, such persons, corporations or associations shall within five days after the expiration of the period as fixed in the notice for public inspection, notify the Commissioner in writing, stating with reasonable certainty the grounds of their proposed contest, which statement shall be verified by the affidavit of the contestant, his agent or attorney, and the said Commissioner shall notify the said contestant and the person, corporation or association, whose rights are contested, to appear before him at such convenient place as he shall designate in said notice. [As amended 1921.]

**Hearing Contest—**

Section 25. The Water Commissioner shall fix the time and place for the hearing of said contest, which date shall be not less than 30 days nor more than 60 days from the date the notice is served on the party, association or corporation, which notice may be served either by registered mail addressed to the claimants to their postoffice addresses as stated in the statement and proof of claimant, or personally and returns made thereof in the same manner as summons are served in civil actions in the Superior Courts of this state. The Commissioner shall have power to adjourn hearings from time to time upon reasonable notice to all the parties interested, and to issue subpoenas and compel the attendance of witnesses to testify upon such hearings, which shall be served in the same manner as subpoenas issued out of the Superior Courts of the state, and shall have the power to compel such witnesses so subpoenaed to testify or give evidence in said matter, and shall have the power to order the taking of depositions and to issue commissions therefor in such manner as he may provide by rule, and said witnesses shall receive fees as

in civil cases, the costs to be taxed in the same manner as are the costs in suits in equity. The evidence in such proceedings shall be confined to the subjects enumerated in the notice and statement of contest. [As amended 1921.]

#### **Order of Determination—**

Section 26. As soon as practicable after the compilation of said data and the filing of said evidence in the office of the Commissioner he shall make and cause to be entered of record in his office, findings of fact and an order of determination determining and establishing the several rights to the waters of said stream. The original evidence filed with the Commissioner and certified copies of the observations and measurements and maps of record in his office, in connection with such determination, together with a copy of the order of determination and findings of the Commissioner, as the same appears of record in his office, shall be certified to and filed with the clerk of the Superior Court in the county in which reside the greatest number of water users whose rights are determined by such order of determination; and such court, subject to the provisions of law for change of venue and change of judge, shall be the court in which determination of the water rights shall be made, and is referred to in this act as the court. It shall become the duty of the judge or judges of said court to hear the determination and to enter a decision and decree and all expenses of the court in connection therewith not chargeable as costs shall be paid out of the State Water Fund. A certified copy of such order of determination and findings shall be filed in every county in which such stream, or any portion of a tributary, is situated with the county recorder. Upon the filing of such evidence and order with the Court the Commissioner shall procure an order from said Court or any judge thereof, fixing the time at which the determination shall be heard in said court, which hearing shall be at least forty days subsequent to the date of such order. The clerk of said court shall, upon the making of such order, forthwith deliver a certified copy thereof, to the Commissioner and said Commissioner shall immediately upon receipt thereof notify each claimant or owner who has appeared in the proceeding, of the time and place for such hearing. Service of such notice shall be deemed complete upon depositing such notice in the postoffice as registered mail, addressed to such claimant or owner at his postoffice address, as set forth in his proof, theretofore filed in the proceedings. Proof of such service shall be made and filed with the Court by the Commissioner as soon as possible after the mailing of such notices. The determination of the Commissioner shall be in full force and effect from the date of its entry in the records of his office.

**Filing Exceptions to Order—**

Section 27. From and after the filing of the evidence and order of determination in the Court, the proceedings shall be as near as may be like those in a suit in equity, except that any proceedings, including the entry of a decree, may be had in vacation with the same force and effect as in term time. At any time prior to the hearing provided for, any party, or parties jointly interested, may file exceptions in writing to such findings and order of determination, or any part or parts thereof, which exceptions shall state with a reasonable degree of certainty the grounds of the exceptions and shall specify the particular paragraphs or parts of such findings and order excepted to. A copy of such exceptions, verified by such exceptor, or certified to by his attorney, shall be served upon such claimant, who was an adverse party to any contest or contests wherein such exceptor was party in the proceedings prior to such hearing. Such service shall be made by the exceptor or his attorney upon each of such adverse parties in person, or upon the attorney of such party if he has appeared by attorney, or upon his agent, and if such adverse party is a nonresident of the State, such service may be made by mailing such copy to such adverse party by registered mail, addressed to his place of residence, as set forth in his proof filed in the proceedings. If no exceptions are filed, the Court shall on the day set for the hearing enter a decree affirming the determination of the Commissioner. If exceptions are filed upon the day set for the hearing the Court shall fix a time not less than thirty days (30) thereafter, unless for good cause shown such time be extended by the Court, at which time a hearing will be had upon such exceptions. All parties may be heard upon the consideration of the exceptions, and the Commissioner may appear on behalf of the State either in person or by the Attorney General. The Court may, if necessary, remand the case to the Commissioner for such further testimony as it may direct, and upon the completion of such testimony, said Commissioner may be required to make a further order of determination. After final hearing the Court shall enter a decree affirming or modifying the order of the Commissioner and may assess such costs as it may deem just. The clerk of the Court, immediately upon the entry of any decree by the said Court shall transmit a certified copy of said decree to the Commissioner, who shall immediately enter the same upon the record of his office.

**Order Pending—**

Section 28. During the time the hearing of the order of the Commissioner is pending in the Court, and until a certified copy

of the judgment, order or decree of the Court is transmitted to the Commissioner, the division of water from the stream involved in such appeal shall be made in accordance with the order of the Commissioner.

#### **Certificate—**

Section 29. Upon the final determination of the rights to the waters of any stream, it shall be the duty of the Commissioner to issue to each person, association or corporation represented in such determination a certificate to be signed by the Commissioner and attested under his seal, setting forth the name and postoffice address of the owner of the right; the priority of date and the extent and purpose of such right; and if such water be for irrigation purposes, a description of the legal subdivisions of land to which said water is appurtenant, such certificate shall be transmitted by the Commissioner in person or by registered mail to the county recorder of the county in which such right is located, and it shall be the duty of the county recorder upon receipt of the recording fee of \$2.00 collected as hereinbefore provided, to record the same in a book especially prepared and kept for that purpose, and thereupon immediately transmit the certificates to the respective owners. [As amended 1921.]

#### **Re-Hearing—**

Section 30. Within six months from the date of the decree of the Court determining the rights upon any stream, the Commissioner or any party interested may apply to the Court for a **rehearing** upon grounds to be stated in the application. Thereupon, if in the discretion of the court it shall appear that there are good grounds for rehearing, the Court shall make an order fixing a time when such application shall be heard. The clerk of the Court shall, at the expense of the petitioner, forthwith mail written notice of said application to the Commissioner and to every party interested, and state in such notice the time and place when such application will be heard.

#### **Determination—When Conclusive—**

Section 31. The Determination of the Commissioner as confirmed or modified as provided by this act in proceedings shall be conclusive as to all prior rights and the rights of all existing claimants upon the stream or other body of water lawfully embraced in the determination.

#### **Intervention—**

Section 32. Whenever proceedings shall be instituted for the determination of the rights to the use of any water, it shall be the

duty of all claimants interested therein to appear and submit proof of their respective claims at the time and in the manner required by law; and any such claimant who shall fail to appear in such proceedings and submit proof of his claims shall be barred and estopped from subsequently asserting any right theretofore acquired upon the stream or other body of water embraced in such proceedings, and shall be held to have forfeited all rights to the use of said water theretofore claimed by him. Any person, association or corporation interested in the water of any stream upon whom or which no service of notice shall have been had of the pendency of proceedings for the determination of the rights to the use of the water of said stream, and who or which shall have no actual knowledge or notice of the pendency of said proceedings, may at any time prior to the expiration of one year after the entry of the determination of the Commissioner file a petition to intervene in said proceedings. Such petition shall contain, among other things, all matters required by this act, of claimants who have been duly served with notice of said proceedings and also a statement that the intervenor had not actual knowledge or notice of the pendency of said proceedings. Upon the filing of said petition in intervention, the petitioner shall be allowed to intervene upon such terms as may be equitable and thereafter shall have all rights vouchsafed by this act to claimants who have been duly served.

#### **Preparing Record for Inspection—**

Section 33. Whenever the rights to the waters of any stream have been determined as herein provided, and it shall appear by the record of such determination that it had not been at one and the same proceeding, then in such case the Commissioner may open to public inspection, all proofs and evidence of rights to the water, and his finding in relation thereto in the manner provided in Section 22; and any person, corporation, or association who may desire to contest the claims or rights of other persons, corporations or associations, as set forth in the proofs or established by the Commissioner shall proceed in the manner provided for in Sections 23 and 24; provided, that contests may not be entered into and shall not be maintained except between claimants who were not parties to the same adjudication proceedings in the original hearings.

#### **Water Districts—**

Section 34. The Commissioner shall divide the State into water districts with due reference to drainage watersheds, said water districts to be so constituted as to secure the best protection

to the claimants for water and the most economical supervision on the part of the State; said water districts shall not be created until a necessity therefor shall arise but shall be created from time to time as the claims thereof from the streams of the State shall be determined. [As amended 1921.]

### WATER SUPERINTENDENT APPOINTED

Section 35. There shall be appointed by the Commissioner one water superintendent for each water district. Each water superintendent shall take and subscribe to an oath to support the provisions of this act and to fulfil the orders of the Commissioner. He shall hold his office until his successor is appointed and qualifies, and the Commissioner shall by like selection and appointment fill all vacancies which shall occur in the office of water superintendent. Each water superintendent shall receive such compensation as the Commissioner shall direct, such compensation to be paid by the water users in the respective districts. Each water superintendent shall keep a true and just account of the time spent by him and his assistants in the duties of each county respectively in which his duties may extend and he shall present a true copy thereof verified by oath to the Superior Court of each county at the end of each month, whereupon the judge of the Superior Court shall order the same paid, according to such a distribution of the amount among the water users as the judge shall deem equitable.

### Duties of Water Superintendent—

Section 36. It shall be the duty of each said water Superintendent to divide the water of the natural streams or other sources of supply of his district among the several ditches and reservoirs taking water therefrom, and among the laterals and ditches according to the rights of each respectively in whole or in part, and to shut and fasten, or cause to be shut and fastened, the head gates of ditches, and shall regulate or cause to be regulated, the controlling works of reservoirs, in time of scarcity of water, as may be necessary by reason of the rights existing from said streams of his district. The water superintendent shall have authority to regulate the distribution of water among the various users under any partnership ditch or reservoir where rights have been determined, in accordance with existing decrees. Whenever, in this pursuance of his duties, the water superintendent regulates a head gate to a ditch or the controlling works of reservoirs, it shall be his duty to attach to such head gate or controlling works, a written notice properly dated and signed, setting forth the facts that such head gate or controlling works has been

properly regulated and is wholly under his control, and such notice shall be legal notice to all parties interested in the division and distribution of the water of such ditch or reservoir. It shall be the duty of the county attorney to appear for or on behalf of the water superintendent in any case which may arise in the pursuance of the official duties of any such officer within the jurisdiction of said County Attorney.

#### **Right of Appeal—**

Section 37. Said Water Superintendents shall, as near as may be, divide, regulate and control the use of the water of all streams within their districts by such closing or partially closing of the head gates as will prevent the waste of water, or its use in excess of the volume to which the owner of the right is lawfully entitled, and any person who may be injured by the action of any water superintendent shall have the right to appeal to the Superior Court of the county for an injunction. Such injunction shall only be issued in case it can be shown at the hearing that the water superintendent has failed to carry into effect the order of the Commissioner or decrees of the Court determining the existing rights to the use of water.

#### **Assistant Superintendents—**

Section 38. Said water superintendent shall have power, in case of need, to employ suitable assistants to aid him in the discharge of his duties. Such assistants shall take the same oath as the water superintendent, and shall obey his instructions, and each shall be entitled to such compensation per diem as the Commissioner shall have fixed for such cases. Payment for such services is to be made upon certificates of the superintendent in the same manner as provided for the payment of the water superintendent himself.

#### **Water Lawfully Denied—**

Section 39. Any person who shall wilfully open, close, change or interfere with any lawfully established head gate, measuring device, or water box without authority, or who shall wilfully use water or conduct water into or through his ditch which has been lawfully denied him by the water superintendent or other competent authority, shall be deemed guilty of a misdemeanor. The possession or use of water when the same shall have been lawfully denied by the water superintendent or other competent authority, shall be prima facie evidence of the guilt of the person using it.

#### **Power to Arrest—**

Section 40. The water superintendent or his assistants within

his district, shall have power to arrest any person or persons violating any of the provisions of this act and turn them over to the Sheriff or other competent police officer within the county; and upon delivering any such person so arrested into the custody of the sheriff it shall be the duty of the water superintendent or assistant making such arrest to immediately, in writing and upon oath, make complaint before the proper justice of the peace against the person so arrested.

#### DUTIES OF CANAL OWNERS, ETC.

Section 41. The owner or owners of any ditch or canal shall maintain a substantial head gate at the point where the water is diverted, which shall be of such construction that it can be locked and kept closed by the water superintendent; and such owners shall construct and maintain when required by the Commissioner suitable measuring devices at such points along such ditch as may be necessary for the purpose of assisting the water superintendent in determining the amount of water that is to be diverted into said ditch from the stream, or taken away from it by the various users. Any and every owner or manager of a reservoir, located across or upon the bed of a natural stream, shall be required to construct and maintain, when required by the Commissioner, a measuring device of a plan to be approved by the Commissioner below such reservoir, a gage graduated to feet and tenths of feet inside the reservoir, together with capacity table for same; and if necessary a measuring device above such reservoir on each stream or source of supply discharging into such reservoir, for the purpose of assisting the water superintendent in determining the amount of water to which appropriators are entitled and thereafter diverting it for such appropriator's use. When it may be necessary for the protection of other water users, the Commissioner may require flumes to be installed along the line of any ditch. If any such owner or owners of irrigation works shall refuse or neglect to construct and put in such head gates, flumes, or measuring devices after twenty days notice, the Commissioner may close such ditch and the same shall not be opened or any water diverted from the source of supply, under the penalties prescribed by law for the opening of head gates lawfully closed until the requirements of the Commissioner as to such head gate, flumes or measuring device have been complied with; and if any owner or manager of a reservoir located across the bed of a natural stream shall neglect to put in such measuring device after twenty days' notice, the said Commissioner may open the sluice gate or outlet of such reservoir and the same shall not be closed under penalties of the law for chang-

ing or interfering with head gates, until such measuring devices are installed. [As amended 1921.]

### INSPECTION OF DAMS

Section 42. Before the beginning of construction of a storage dam whose maximum height is to be ten feet or more, or one which will impound fifty acre feet or more of water, the owner shall present complete plans of same to the Commissioner for his approval, and construction shall not commence until such approval shall be received in writing. Under no circumstances shall water be stored in such a reservoir until the dam as constructed shall have been accepted by the Commissioner. The violation of this clause shall be considered a misdemeanor.

The Commissioner shall have authority to examine any dam, authorized under the provisions of this act or any ditch, canal, obstruction, diversion, or other work, and shall have authority to examine and inspect said dam or other work during construction; and at the time of such examination or inspection, or thereafter, the Commissioner shall notify in writing the parties constructing or owning such dam or other works, of any addition or alteration which he considers necessary for the security of the work or the safety of the public or of any person or persons residing on or owning land in the vicinity or below such works, or for the safety of their property, even to the extent of requiring the lowering of the water line. Failure to comply with the Commissioner's instructions shall be considered a misdemeanor. [As amended 1921.]

#### Application for Inspection—

Section 43. No storage dam shall be constructed, the capacity of whose outlet is not large enough to pass the normal flow of the stream on which the dam is located.

Should any person or persons residing on or owning land in the neighborhood of any irrigation works after completion, or in the course of construction, apply to the Commissioner in writing desiring an inspection of such works the Commissioner may order an inspection thereof. Before doing so he may require the applicant for such inspection to make a deposit of a sum of money sufficient to pay the expenses of an inspection, and in case the application appears to said Commissioner not to have been justified, he may cause the whole or part of such expense to be paid out of such deposit. In case the application appears to the Commissioner to have been justified, he may require the owner of the works to pay the whole or any part of the expenses of the inspection, and the same shall constitute a valid lien against the

works, which may be enforced in the same manner as provided for the enforcement of mechanics' liens. [As amended 1921.]

### USE OF BED OF STREAM AS CARRIER

Section 44. Whenever the owner, manager or lessee of a reservoir, constructed under the provisions of this act, shall desire to use the bed of a stream, or other watercourse, for the purpose of carrying stored or impounded water from the reservoir to the consumer thereof, he shall in writing, notify the water superintendent of the district in which the stored or impounded waters are to be used, giving the date when it is desired to discharge water from such reservoir, its volume, and the names of all persons and ditches entitled to its use. It shall then be the duty of such water superintendent to supervise the opening of such reservoir gates and to close or to so adjust the head gates of all ditches from the stream of water courses, not entitled to the use of such stored water, as will enable those having the right to secure the volume to which they are entitled.

### DISAGREEMENT OF WATER USERS

Section 45. Whenever any water users from any ditch or reservoir, are unable to agree relative to the distribution or division of water through or from said ditch or reservoir, it shall be lawful for such water users to apply to the water superintendent of the district in which said ditch or reservoir is located, by written notice, setting forth such facts, asking the water superintendent to regulate such ditch or reservoir for the purpose of making a just division or distribution of water from the same to the parties entitled to the use thereof. The judge of any Superior Court may also direct the water superintendent of the district to take charge of and enforce any decree relative to water rights made under the jurisdiction of said Court pending a determination of all the water rights of the watershed. Upon receiving such order, the said water superintendent shall regulate such ditch or reservoir for the purpose of dividing or distributing the water therefrom in accordance with the established rights continuing the said work until the necessity therefor shall cease to exist. Said rights shall be deemed to have been established when the same have been determined by the Commissioner, by any decree of any Superior Court of this State or by contract or other written agreement.

### USE BY ROTATION

Section 46. To bring about a more economical use of the available water supply, it shall be lawful for water users owning

lands which have attached water rights, to rotate in the use of supply to which they may be collectively entitled, and whenever two or more water users shall notify the water superintendent that they desire to use the water by rotation and shall present a written agreement as to the manner of such rotation, the water superintendent shall distribute the water in accordance with such written agreement.

### INJUNCTIONS

Section 47. In suits for injunction affecting the use of water from streams upon which the rights to use water have been determined, no restraining order shall be granted before hearing had after at least ten days' notice thereof served upon all persons defendant. All suits for injunction involving the use of water shall be heard, either in term time or during vacation, not later than fifteen days' after issues joined, unless for good cause shown further time be allowed.

### TRANSFER OF WATER RIGHT

Section 48. All water used in this State for irrigation purposes shall remain appurtenant to the land upon which it is used; provided, that if for any natural cause beyond control of the owners it should at any time become impracticable to beneficially or economically use water for irrigation of any land to which water is appurtenant, said right may be severed from said land, and simultaneously transferred and become appurtenant to other land, without losing priority of right theretofore established, if such change can be made without detriment to existing rights, on the approval of an application of the owner to the Commissioner. Before the approval of such transfer an inspection shall be made by the Commissioner or persons deputized by him, and the Commissioner shall approve or disapprove such transfer and prescribe the conditions therefor. Such order shall be subject to appeal as in this act provided. [As amended 1921.]

### MISDEMEANOR

Section 49. The unauthorized use of water to which another person is entitled, or the unauthorized diversion of water from a stream, or the wilful waste of water to the detriment of another, or the diversion of a stream to the injury or threatened injury of the lands of another shall be a misdemeanor and the possession or such use of water 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 waters.

**Misdemeanor—**

Section 50. 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. Any violation of the provisions of this Section shall be a misdemeanor.

**FEEES**

Section 51. The following fees shall be collected by the Commissioner in advance and be paid by him into the State Water Fund of the State Treasury on the last day of each month.

1. For examining an application for permit to appropriate water, \$3.00.

2. For filing and recording permit to appropriate water for irrigation purposes, twelve cents per acre for each acre to be irrigated up to and including one hundred acres, and ten cents per acre for each acre in excess of one hundred acres, or in case the application is for power purposes, twenty-five cents for each theoretical horsepower to be developed up to and including one hundred, and ten cents for each horsepower in excess of one hundred and up to and including one thousand, and five cents for each horse power in excess of one thousand; or in case the application is for any other purpose, \$5.00 for filing and recording each permit.

3. For filing or recording any other water right instrument, \$1.00 for the first hundred words and ten cents for each additional hundred words or fraction thereof.

4. For making copy of any document recorded or filed in his office, ten cents for each hundred words or fraction thereof; but where the amount exceeds \$5.00, then only the actual cost in excess of that amount shall be charged.

5. For certifying copies, documents, records, or maps, \$1.00 for each certificate.

6. For blue print copy of any map or drawing, ten cents per square foot or fraction thereof. For such other work as may be required of his office, actual cost of the work. [As amended 1921.]

**METHOD OF APPEAL**

Section 52. The decisions of the Commissioner shall be subject to appeal to the Court, as heretofore prescribed, which appeal shall be governed by the practice of suits in equity, unless otherwise provided herein.

**Oaths, Subpoena, Etc.—**

Section 53. The Commissioner may administer oaths, certify official acts, subpoena witnesses, issue subpoenas duces tecum for the production of books, papers, drawings and documents, in the manner and with like powers as those provided for the corporation commission in the performance of their official duties. [As amended 1921.]

**APPROPRIATION**

Section 54. There is hereby appropriated out of any moneys in the general fund of the State Treasury not otherwise appropriated, the sum of \$15,000.00 annually, or so much thereof as may be necessary for the payment of the salaries and expenses incurred under the provisions of this act. And there is hereby appropriated out of the General Fund of the State Treasury for the year 1919-20 a special fund of \$10,000.00 for the purpose of collecting data for the adjudication of the Gila River, exclusive of the Salt River, such sum to be the basis of a revolving fund to be used consecutively in the adjudication of the water sheds of the State. These moneys shall be paid into the State Water Fund.

**ATTORNEY-GENERAL**

Section 55. The Attorney General shall be the legal advisor of the Commissioner in all matters appertaining to the operation of this act, and shall perform any and all legal duties necessary in connection with this work without other compensation than his salary as fixed by law.

**VESTED AND DECREED RIGHTS**

Section 56. Nothing in this act contained, shall impair the vested rights of any person, association or corporation to the use of water.

Nor shall anything in this act contained, affect relative priorities to the use of water between or among parties to any decree of the courts rendered in causes determined or pending prior to the taking effect of this act.

Nor shall the right of any person, association or corporation to take and use water be impaired or affected by any of the provisions of this act where appropriations have been initiated prior to the filing of this act in compliance with laws then existing, and such appropriators, their heirs, successors or assigns shall, in good faith and in compliance with the laws existing at the time of the filing of this act in the office of the Secretary of State, commence the construction of works for the application

of the water so appropriated to a beneficial use and thereafter prosecute such work diligently and continuously to completion, but all such rights shall be adjudicated in the manner provided in this act.

### PENALTY

Section 57. All violations of the provisions of this act, declared herein to be misdemeanors, shall be punished by a fine not exceeding \$250.00 nor less than \$10.00, or by imprisonment in the county jail, not exceeding six months, or by both such fine and imprisonment.

### EMINENT DOMAIN

Section 58. Nothing herein contained shall be construed to deprive the State or any City, municipal water district, irrigation district, or political subdivision of the State or any person, company or corporation, of any rights which under the law of this State they may have, to acquire property by or through eminent domain proceedings.

### BIENNIALLY REPORT

Section 59. The Commissioner shall prepare and render to the Governor, biennially, and oftener if required, full and true reports of his work relating to the matters and duties devolving upon him by virtue of his office, which biennial report shall be delivered to the Governor, on or before the 31st day of December of the year preceding the regular sessions of the Legislature. In these reports he shall include such suggestions as to the amendments of existing laws or the necessity for new laws as his information and experience in office shall suggest. [As amended 1921.]

Section 60. All acts and parts of acts in conflict herewith are hereby repealed.

Section 61. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of this act.

Section 62. This act shall be known as the State Water Code Act.

"This Bill having remained with the Governor ten days, Sundays excluded, after the final adjournment of the legislature, and not having been filed with his objections, has become a law this 26th day of March, 1919."

(Signed) MIT SIMMS,  
Secretary of State,