

Glenway Ranch,  
San Dimas, California.

Sept. 20, 1921.

Mr. Ed Fletcher,  
San Diego, California.

My dear Colonel:

I received yesterday, from friend  
A. E. Chandler, the enclosed copy of the Supreme Court  
decision on the appeal in the so called Antioch Case on  
the Sacramento and the San Joaquin Rivers. This is a  
most important and interesting decision and aside from  
its general interest will, I think, attract your attention  
because of similar riparian claims asserted by the City of  
Oceanside. It seems to me that this decision rather  
effectively disposes of such claims. It is true that the  
cases are not exactly parallel but I believe that the asser-  
tions of riparian rights are identical. I would like to  
have the paper back when you are through with it.

Sincerely,

(Signed) W. A. Johnson.



Notes on Riparian Rights Taken from the Decision in the Supreme Court of California. Case S. F. No. 9737. Sept. 13, 1921.

TOWN OF ANTIOCH, Plaintiff and Respondent, v. WILLIAMS IRRIGATION DISTRICT et al., Defendants and Appellants.

Explanatory note by T. H. King: This was case where the Town of Antioch had secured an order from the Superior Court of Alameda County restraining irrigators on the river above "from diverting so much water from the Sacramento river and its tributaries to non-riparian land, that the amount of water flowing past the City of Sacramento in the County of Sacramento, State of California, shall be less than 5500 cubic feet per second. The Supreme Court reversed this order.

The following quotations are of general interest in determining riparian rights in California. The first part of the quotation refers particularly to the right claimed by the City of Oceanside on the San Luis Rey River. The second part pertains to posting of notice of appropriation where there has been actual use of water and the third pertains to the diversion of water above a dam and reservoir already constructed:

"The fact that the city of Antioch is situated upon the San Joaquin river is wholly immaterial in the consideration of its rights in this case. The rights in a stream or body of water which attach to land because it abuts thereon are not of a political nature, but are private rights. They are vested exclusively and only in the owner of the abutting land and they extend only to the use of the water upon the abutting land and none other. There are cases in some of the eastern states which, upon somewhat strained reasoning, have held that a municipality whose boundaries extend to a stream of water has some rights, by reason of that situation, to apply the water of the stream to public uses within the city, rights similar in nature to that of a riparian proprietor to use the water of such stream upon his land. We need not go into the discussion of the soundness of the reasoning of those cases. The litigation which has arisen in this state from the doctrine of riparian rights has been of great volume and it is sufficient to warn us that we should not extend the doctrine so as to make it political and confer it upon cities abutting on a stream, but owning no land abutting thereon. Such cases are contrary to the common law doctrine as settled in this state whereby such rights are confined exclusively to the owner of the abutting land and are wholly of a private nature. The status of the city of Antioch in this action, therefore, and its rights in the San Joaquin river are those of a diverter and user of the water thereof for beneficial purposes, and nothing more. (San Bernardino v. Riverside, 198 Pac. 787, clauses 1, 3, 9 and 10a.)"



"An affidavit was filed at the hearing in the court below, stating that the city owns a small tract of land bordering on the river, upon which its pumping plant is situated, and that it makes some use of the water of the river on that land for the flushing of sewers. But the complaint does not allege any of these facts and does not claim protection for that right.

"The fact that the city has never posted a notice of appropriation as provided in section 1415 of the Civil Code, is likewise immaterial. "Where there has been actual appropriation of water, a right to it is acquired without following the course laid down in the code. *Dolencochoa v. Curtis*, 60 Cal. 397; *Burrows v. Burrows*, 82 Cal. 564; *Wells v. Mantos*, 99 Cal. 583." (*Waterson v. Saldunehere*, 101 Cal. 112. See also *Duckworth v. McKinlay*, 153 Cal. 211; *Haight v. Costanich*, 194 Pac. 28, 60 Cal. Dec. 637.)

"Appellants make the claim that the city, by its diversion and use of the water of the river, could not acquire any right thereto against other persons who afterward began to divert water at points further up the stream. They base this claim on what they say is a "fundamental axiom, based upon natural laws, that prescription does not run up stream". We know of no such rule existing anywhere and no authority is cited in support of it. To the contrary the rule has long been settled that one who has acquired the right to divert water from a stream by prescription may enjoin the subsequent diversion of water from the stream at points above his place of diversion, whenever he can show that such subsequent diversion above will so diminish the flow of the stream that not enough water will come down to his dam to supply the quantity to which he has acquired the prior right, or otherwise injure his water right. (*McDonald v. Bear River etc. Co.*, 13 Cal. 220; *Phoenix Water Co. v. Fletcher*, 23 Cal. 421; *Matoma etc. Co. v. McCoy*, 23 Cal. 490; *Hill v. Smith*, 27 Cal. 476; *Junkens v. Bergin*, 67 Cal. 269; *Lower Kings etc. Co. v. Kings River etc. Co.*, 60 Cal. 408; *Raffner v. Sawday*, 153 Cal. 92.)"



May 15 - 1912

"WATER COMMISSION BILL"

1           Section 1-     Subject to vested and existing rights, all  
2     water or the use thereof, including surplus and flood waters,  
3     may be appropriated for any useful or beneficial purpose as  
4     provided by this act and not otherwise; provided, that no  
5     water or the use thereof for the generation of electricity, or  
6     electrical or other power shall be appropriated for a longer  
7     period than forty years.     (Or if you don't like the forty  
8     years, write an indeterminate franchise section.)

9           Section 2-     Riparian proprietors are, for the purposes  
10    of this act, hereby defined to be the owners of riparian lands,  
11    Riparian lands are, for the purposes of this act, defined here-  
12    by to be such lands, in continuous tracts or adjacent and con-  
13    tiguous subdivisions, which abut upon the banks of streams and  
14    are the property of the owners of the banks of said streams,  
15    and which naturally drain directly into the streams on the  
16    banks of which they abut.     But riparian lands passing out of  
17    the ownership of riparian proprietors in tracts or subdivisions  
18    not abutting directly on the banks of streams to which they  
19    were riparian, or passing in such tracts or subdivisions from  
20    the ownership of one riparian proprietor to other ownership,  
21    shall thereupon cease to be considered to be riparian lands.  
22    And riparian lands not directly abutting on the banks of  
23    streams shall not be deemed or considered to be riparian lands  
24    by reason of becoming the property of riparian proprietors,  
25    and lands which have ceased to be riparian lands shall not  
26    thereafter be deemed to be riparian lands.     Riparian propriet-  
27    ors may, as riparian proprietors, take water from the streams  
28    to which their lands are riparian and conduct it only for use-  
29    ful and beneficial purposes, and only upon their riparian lands  
30    which are riparian to the streams from which they take said



1 water. Provided, however, that such water, after being so  
2 conducted, or so much of said water as will naturally return  
3 to said stream, after being so used, shall be allowed to re-  
4 turn to the stream. Provided also that each said riparian  
5 proprietor desiring so to take and use said water shall, with-  
6 in one year after having been notified by the State Water Com-  
7 mission so to do, or may, in his discretion, at any time prior  
8 to being so notified by the said Commission, file with the  
9 said Commission, in writing and under oath and upon blanks  
10 furnished by the said Commission, a statement showing the  
11 following things: The amount of water, measured in second  
12 feet at the point of diversion, he is already taking, by ap-  
13 propriation or otherwise, and using for a beneficial or useful  
14 purpose upon his said riparian lands; also the amount of water,  
15 measured in second feet at the point of diversion, he proposes  
16 to take and use, as a riparian proprietor, for a beneficial or  
17 useful purpose on his said riparian lands; also the source  
18 from which he proposes to take such water and the point of  
19 diversion from said source; also the particular beneficial  
20 use or purpose to which he proposes to put said water after  
21 diverting it; also the correct number of acres comprised in  
22 the riparian lands upon which he proposes to conduct and use  
23 said water. The said notice by the said Commission shall be  
24 given by registered mail addressed to the last known post-  
25 office address of the said riparian proprietor and also by  
26 publication once a week for ten consecutive weeks in a news-  
27 paper of general circulation, published in the county or  
28 counties in which said riparian lands are situated. Or, if  
29 there be no such newspapers published in said county or count-  
30 ies, then and in that case said notice shall be given by pub-

*and the beneficial purpose for which he is using it*

*and the number of acres on which it is being used*



1 lication in the same manner in such newspaper published in the  
2 county next adjacent to such riparian lands. The said notice by  
3 publication may, in the discretion of the said Water Commission, be  
4 addressed in one notice, published as above, to each and all the  
5 riparian proprietors on any certain stream or branch thereof, or on  
6 any certain stream system or part thereof. But when said notice ap-  
7 plies to such stream system it shall be published as above provided  
8 in each county in which there is situated such riparian lands owned  
9 by the said riparian proprietors. If said statement of the said  
10 riparian proprietor be not filed with the State Water Commission  
11 within one year after said notice shall have been given as provided  
12 above, then and in that case said riparian proprietor shall be  
13 deemed to have forfeited and abandoned any right he, as riparian  
14 proprietor, may have had to the water, or the use thereof, in the  
15 stream or streams to which his lands are riparian and concerning  
16 which he has been notified by the said Commission to file his said  
17 statement. If, however, the riparian proprietor shall, either of  
18 his own motion or in pursuance of the said notice from the said  
19 Commission, file said statement as above specified and required,  
20 then he shall, within four years from the date of filing said  
21 statement with the said Commission, complete the putting of the  
22 said water upon his said riparian lands and to the said beneficial  
23 use and purpose, but in quantity not exceeding the amount set forth  
24 in said statement to said Commission and only for the beneficial  
25 use or purpose specified in said statement. But if any riparian  
26 proprietor shall neglect or refuse to complete the putting of  
27 said water upon his said riparian lands and to the said bene-  
28 ficial use or purpose within the said fours, then and in that  
29 case the said riparian proprietor shall be deemed to have for-  
30 feited and abandoned any right which, as riparian proprietor,  
he may have had to that portion of the said water he had not put



1 upon his said lands for the said useful or beneficial purpose.  
2 But no riparian proprietor shall hereunder conduct upon his  
3 riparian lands more of the unappropriated water of the stream to  
4 which his lands are riparian than a proportionate share thereof  
5 calculated from the relative average owned by him on said stream  
6 as compared to the total acreage of riparian lands on said streams.  
7 And any riparian proprietor who, having conducted water as herein  
8 provided upon his riparian lands shall neglect, refuse or cease,  
9 for a period of three successive years, to put said water, or any  
10 portion thereof, to the beneficial use or purpose set forth in his  
11 said statement to the said Commission, shall be deemed to have for-  
12 feited and abandoned any right he may have had as riparian prop-  
13 rietor to such portion of said water as he may have refused, neg-  
14 lected or ceased to have put to such beneficial use or purpose.  
15 And the State Water Commission is hereby given the power and au-  
16 thority and is hereby directed and authorized to bring the nec-  
17 essary suit or other proceeding in the Superior Court of the coun-  
18 ty in which are situated for the purpose of judicially declaring  
19 such abandonment and forfeiture as are in this act mentioned, and  
20 to carry such suit or other proceeding to final settlement in the  
21 courts of last resort.

22 Section 3- Water or the use of water which has heretofore  
23 been appropriated, or which shall hereafter be appropriated, or  
24 which has been acquired under riparain proprietorship, or which  
25 shall hereafter be acquired under riparian proprietorship, for  
26 one specific purpose shall not be deemed to be appropriated  
27 or acquired for any other or different purpose, except under a  
28 separate and distinct appropriation therefor made as provided  
29 in this act. And any person, firm, association or corporation  
30 applying for a license to appropriate water or the use of water  
31 shall state in the application for said license the specific use



1 to which it is proposed to put such water or the use thereof.  
2 But no appropriation shall be made for more than one beneficial  
3 purpose in any one appropriation.

4 Section 4- (a) For the purpose of carrying out the provisions  
5 of this act a state water commission consisting of five persons  
6 is hereby created and established. Three members of said com-  
7 mission shall be appointed by the governor for the term of four  
8 years and shall consist of one engineer, one lawyer, one business  
9 man; provided, however, that of the members first appointed one shall  
10 be appointed to hold office until the first day of January, nineteen  
11 hundred and , one until the first day of January, nine-  
12 teen hundred and , and one until the first day of  
13 January, nineteen hundred and . The governor and state  
14 engineer are hereby made ex officio members of the said com-  
15 mission in addition to three members appointed by the  
16 governor. The commissioners shall elect one of their number  
17 president of the commission. The appointed members of said  
18 commissiom shall receive as compensation for services ren-  
19 dered by them as said members the sum of per day  
20 for each day's service actually rendered and the total compen-  
21 sation of any one member shall not exceed \$5,000 per annum.

22 (b) Whenever a vacancy in the state water commission shall occur,  
23 the governor shall forthwith appoint a qualified person to fill  
24 the same for the unexpired term. The legislature, by a two thirds  
25 vote of all members elected to each house, or the governor, may  
26 remove any one or more of said commissioners from office for  
27 dereliction of duty or corruption or incompetency, (provide for  
28 sworn charges and public hearing).

29 The commission shall have a seal bearing the following  
30 inscription: "Water Commission State of California. The seal  
31 shall be affixed to all authentications of copies of records



1 and to such other instruments as the commission shall direct.

2 All courts shall take judicial notice of said seal.

3 Section 5- All water or the use of water which has been here-  
4 tofore appropriated and which has not been put, or which has  
5 ceased to be put, or which may hereafter cease to be put, or  
6 which may hereafter be appropriated and cease to be put, to some  
7 useful or beneficial purpose, or which is not now in process of  
8 being put to useful purpose or beneficial use as provided in this  
9 act, with due diligence in proportion to the magnitude of the work  
10 necessary properly to utilize for the purpose of such appropri-  
11 ation such water or such use of water, is hereby declared to be  
12 unappropriated. And the state water commission is hereby  
13 authorized, empowered and directed to bring the necessary suits  
14 or other proceedings to have such water or the use thereof  
15 judicially determined to be unappropriated, as is in this section  
16 the same is declared to be unappropriated, and to carry such suit  
17 or proceeding to final adjudication in the courts of last resort.  
18 Such suits or proceedings shall be brought by the said commission  
19 in the Superior Court of the county or counties in which said  
20 water is situated.

21

22 Section 6- The State Water Commission is hereby authorized and  
23 empowered to investigate for the purposes of this act all stream  
24 systems, portions of stream systems or other sources of water  
25 supply, and to take testimony in regard to the rights to water  
26 or the use of water thereon or therein, and to determine whether  
27 or not such water or any portion thereof, or the use of said  
28 water or any portion thereof heretofore, filed upon or appro-  
29 priated by any person, firm, association, or corporation is un-  
30 appropriated. The findings and conclusions of the Commission



1 on questions of fact shall be prima facie correct, and unless  
2 changed by judicial decree, on a suit brought in a court of com-  
3 petent jurisdiction within three years after the passage of this  
4 act, shall be conclusive.

5 Section 7. A majority of the commissioners shall constitute  
6 a quorum for the transaction of any business, for the performance  
7 of any duty or for the exercise of any power of the commission.  
8 No vacancy in the commission shall impair the right of the remain-  
9 ing commissioners to exercise all the powers of the commission.  
10 The act of a majority of the commissioners when in session as a  
11 board shall be deemed to be the act of the commission; but any  
12 investigation, inquiry or hearing which the commission has power  
13 to undertake or to hold may be undertaken or held by or before any  
14 commissioner designated for the purpose by the commission. The  
15 findings of such commissioner shall be furnished to all parties to  
16 the hearing prior to the approval or confirmation of such finding,  
17 order or decision by the Commission. Either party to such hearing  
18 shall have the right to appeal to the whole Commission prior to  
19 their approval of the findings of such commissioner. And every  
20 finding, order or decision made by a commissioner so designated,  
21 pursuant to such investigation, inquiry or hearing, when approved  
22 by the Commission and ordered filed in its office, shall be and be  
23 deemed to be the finding, order or decision of the Commission.

24 The Commission may allow, under the provisions of this act,  
25 the appropriation of unappropriated water or the use thereof, and  
26 of water or the use thereof which is not now appropriated or being  
27 used for a beneficial purpose, or which has ceased to be applied  
28 to beneficial use, or which may hereafter be declared, in accord-  
29 ance with the provisions of this act, to have ceased to be applied  
30 to beneficial use.



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24 The Commission may allow, under the provisions of this act,  
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26 of water or the use thereof which is not now appropriated or being  
27 used for a beneficial purpose, or which has ceased to be applied  
28 to beneficial use, or which may hereafter be declared, in accord-  
29 ance with the provisions of this act, to have ceased to be applied  
30 to beneficial use.



1           Section 8.       Underground water, for the purpose of this  
2 act, is defined as any water that occurs or is found beneath  
3 the surface of the ground.

4           Section 9.       An overlying land owner, for the purpose of  
5 this act, is defined as the owner of a tract of land under any  
6 portion of which such water is situated.

7           Section 10.     Overlying land, for the purpose of this act,  
8 is defined as a tract of land overlying in whole or in part such  
9 underground water.

10          Section 11.     Owners of overlying land shall have the right  
11 to use such underground water on such overlying land only, and  
12 such use shall be for useful and beneficial purposes only, and  
13 may be had without appropriating the same or filing notice of  
14 appropriation.

15          Section 12.     Where an overlying land owner has developed  
16 and used, for useful and beneficial purpose, underground water  
17 on overlying land, for a period of five years consecutively  
18 last past, such overlying land may be segregated into more than  
19 one tract, and all of such overlying land shall be entitled to  
20 continue the same use of such underground water, for useful and  
21 beneficial purposes only, as though said tract of land should  
22 continue to be held in one ownership.

23          Section 13.     The right to appropriate underground water for  
24 use on other than overlying land may be acquired by filing appli-  
25 cation for appropriation of such underground water with the said  
26 Water Commission of the State of California, and complying with  
27 all conditions required from appropriation of water from streams  
28 of water in the State of California; provided such development  
29 and use of water shall not in any way diminish the supply of  
30 water theretofore developed and used by other overlying land



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29 and use of water shall not in any way diminish the supply of  
30 water theretofore developed and used by other overlying land



1 owners on their own land, or the supply of water theretofore  
2 appropriated by other overlying land owners under the provisions  
3 of this act and used on other than overlying lands. And provided  
4 further that said appropriation, use and development shall be for  
5 useful and beneficial purposes only.

6 Section 14. When underground water has been developed and  
7 used for useful and beneficial purposes on other than overlying  
8 land, for a period of at least one year prior to the passage of  
9 this act, such use of water shall be considered a vested right,  
10 and may be continued on other than overlying lands or for domest-  
11 ic use or other beneficial purposes, in such quantity as the same  
12 shall have been used for useful and beneficial purposes for a  
13 period of at least one year prior to the passage of this act.  
14 But failure so to use such water for a period of two years after  
15 its use has been begun, shall be construed as an abandonment of  
16 the right to use such water on other than overlying land.

17 Section 15. Overlying land owners, as defined in this  
18 act, shall have the right to file complaints against any person  
19 developing or having developed, water, and carrying, or having  
20 carried, such developed water away from overlying lands, as  
21 follows:

22 (a) Where such development and carrying away of water can  
23 be shown to be diminishing the supply of water of such complaining  
24 overlying land owner who is using underground water for useful  
25 and beneficial purposes on overlying land only.

26 (b) Where such development and carrying away of water is  
27 shown to be diminishing the supply of water of one who has  
28 secured the right under this act to develop water on overlying  
29 land and to use the same on other than overlying land.

30 Such complaint shall be in writing on blank forms provided



1 by the Water Commission of the State of California, shall be  
2 sworn to and filed with said water commission within one year  
3 after the first diminishing of water, which it is sought to  
4 prevent, occurs.

5 Section 16. The water commission shall investigate  
6 such complaint and notify all parties concerned of the time  
7 and place of hearing thereon, and the commission shall file  
8 its findings within three months after the hearing on such  
9 complaint, and such findings shall be prima facie correct.

10 Section 17. Riparian proprietors or appropriators of  
11 water from the streams of water or from underground waters of  
12 the State of California may file complaints against overly-  
13 ing land owners who are developing water and carrying the  
14 same away from overlying land for use on other than overly-  
15 ing land, where it is claimed that such development and  
16 carrying away of water is diminishing the supply of water of  
17 such riparian owner or appropriator of water from the streams  
18 of water or underground water of the State of California.

19 Section 18. Such complaint shall be filed with the  
20 water commission of the State of California within one year  
21 after the first diminishing of water, which it is sought  
22 to prevent, occurs. Such complaint shall be made on blank  
23 forms provided by the water commission of the State of Cali-  
24 fornia and shall be sworn to in the presence of a notary by  
25 such complaining riparian proprietor or appropriator of water.

26 Section 19. The water commission shall investigate such  
27 complaint and notify all parties concerned as to the time and  
28 place of hearing and shall file its findings within three  
29 months after the final hearing on such complaint, and such  
30 findings shall be prima facie correct.



1           Section 20.       Upon application for the right to appropri-  
2       ate and use underground water on other than over-lying land,  
3       for useful and beneficial purpose, the State Water Commission  
4       may grant a temporary permit for such development and carrying  
5       away of underground water. But such temporary permit may be  
6       revoked by the Water Commission at any time within eighteen  
7       months after the granting of the same, where it is shown to the  
8       satisfaction of said water commission that such development and  
9       carrying away of such water by authority of such temporary per-  
10      mit is preventing over-lying land owners who are using such  
11      underground water on over-lying land, or others who have ac-  
12      quired the right to use and are using such underground water on  
13      other than overlying land, from securing the water to which  
14      they are entitled or, in lieu of such revocation of said per-  
15      mit, the water commission may determine the amount of damage  
16      accruing to adverse claimants by reason of the development and  
17      carrying away of such water, by authority of said temporary  
18      permit, and assess said damage against the grantee of said  
19      temporary permit; and the amount of such damage, so determined  
20      and assessed, shall be paid to the party so damaged by the  
21      party causing such damage; and thereupon the said temporary  
22      permit shall remain in full force and effect so long as the  
23      conditions imposed by the water commission are complied with,  
24      and not otherwise.

25           Section 21.       (a)       The complaint of an overlying land  
26      owner against another overlying land owner shall not be valid  
27      where the person complained of is developing and using only his  
28      proportional part of such underground water for useful and  
29      beneficial purposes only upon his own overlying land.

30           (b)       The complaint of an overlying land owner, riparian



1 proprietor, or appropriator of underground water or stream  
2 flow, against one who has complied with the provisions of this  
3 act and the regulations of the Water Commission of the State of  
4 California for the developing and carrying away of underground  
5 water from overlying land shall not be valid unless filed with  
6 the Water Commission of the State of California within one year  
7 after the actual development and carrying away of such water.

8 Section 22. No complaint of any riparian proprietor or  
9 appropriator of water from any stream of the State of California  
10 charging the diminishing of the water of the stream shall be  
11 valid where such complaint is based on the action of an overly-  
12 ing land owner in developing and using only his proportional  
13 part of such water for beneficial and useful purpose upon his  
14 own overlying land only.

15 Section 23. When the commission shall have investigated  
16 the right to water or to the use of water in any stream system  
17 or part of any stream system, or other source of water supply,  
18 it shall cause a notice to be prepared declaring that fact and  
19 also setting a date and place when and where a hearing shall be  
20 had to determine such right. At such time any party or parties  
21 claiming any right, title or interest in or to the water of such  
22 stream system, part of stream system, or other source of water  
23 supply, or in or to the use of said water, may present to said  
24 water commission any facts, by deposition or oral sworn testi-  
25 mony, in support of any such claim. At least thirty days before  
26 the date when such testimony is to be presented, said notice  
27 shall be served personally upon all claimants the names and  
28 addresses of whom are known. Where the person on whom service  
29 is to be made resides out of the state, or has departed from  
30 the state or can not after due diligence be found within



1 the state, or at the place designated in any notice he may have  
2 filed under section one thousand one hundred and sixty-three of  
3 the Civil Code, or is a foreign corporation having no managing  
4 or business agent, cashier or secretary within the state, and  
5 the fact appears by affidavit to the satisfaction of the com-  
6 mission, the commission may make an order that the service be  
7 made by publication of the notice, and a copy of said notice  
8 shall be recorded in the office of the county recorder of every  
9 county in which the stream system, or part thereof under inves-  
10 tigation is situated, at least thirty days prior to the date as  
11 hereinabove provided. Where all of the claimants are not per-  
12 sonally served as provided herein said notice shall be publish-  
13 ed once a week for four successive weeks in some newspaper of  
14 general circulation in each county in which the stream system  
15 or portion of stream system or other source of water supply  
16 under investigation is situated. Such publication shall be  
17 completed at least thirty days prior to the date set for the  
18 presentation of such testimony, and shall be a notice to all  
19 persons, except as herein provided, and shall be equivalent to  
20 personal service upon all claimants whose addresses are not  
21 known. A copy of said notice shall also be posted in a con-  
22 spicuous place for thirty days prior to said date of hearing  
23 in the office of the water commission. Where the claimant to  
24 any of the rights under investigation is an association of per-  
25 sons, or a domestic or foreign corporation, personal service  
26 upon the president, secretary or manager thereof, or upon the  
27 person designated by law to receive service of process, shall  
28 be service upon all of the members thereof, or of the corpor-  
29 ation, for the purposes of this act. When the notice of such  
30 hearing is recorded as herein provided any subsequent transfer



1 of any rights therein shall be made subject to such notice,  
2 and no additional service need be made upon persons acquiring  
3 such right subsequent to the date of record. For the purpose  
4 of this act, the commission is empowered to resort to any  
5 source of information available. The evidence introduced at  
6 such hearing shall be reduced to writing and certified under  
7 the seal of this commission. The commission shall make and  
8 file in its office in writing its findings of fact upon all  
9 matters concerning which evidence shall have been introduced  
10 before it, which in its judgment have bearing on the matters  
11 sought to be determined by said hearing. The findings of the  
12 commission so made and filed, when properly certified under  
13 the seal of the commission, shall be admissible in evidence  
14 in any action, proceeding or hearing before the commission or  
15 any court in which the commission, the state or any officer,  
16 department or institution thereof, or any county, city and  
17 county, municipality or other body politic, or any claimant  
18 whose rights are affected by said determination, may be in-  
19 terested, whether arising under the provisions of this act or  
20 otherwise. After such hearing, the commission may, upon good  
21 cause shown, or upon its own motion, order a reinvestigation  
22 of such rights and grant a rehearing to the parties interest-  
23 ed therein and may permit additional affidavits to be filed  
24 or new testimony to be presented, but no such rehearing or  
25 reinvestigation shall be had unless requested within one year  
26 from the date of such determination.

27 Section 24. (a) The commission and each commissioner  
28 shall have the power to administer oaths, certify to all of-  
29 ficial acts, and to issue subpoenas for the attendance of  
30 witnesses and the production of papers, maps, books, accounts,



1 documents and testimony in any inquiry, investigation, hearing  
2 or proceeding in any part of the state. Each witness who  
3 shall appear by order of the commission or a commissioner,  
4 shall receive for his attendance the same fees and mileage al-  
5 lowed by law to witnesses in civil cases, which amount shall  
6 be paid by the party at whose request such witness is sub-  
7 poenaed. When any witness who has not been required to attend  
8 at the request of any party shall be subpoenaed by the commis-  
9 sion, his fees and mileage shall be paid from the funds ap-  
10 propriated for the use of the commission in the same manner as  
11 other expenses of the commission are paid. Any witness sub-  
12 poenaed except one whose fees and mileage may be paid from the  
13 funds of the commission, may, at the time of service, demand  
14 the fee to which he is entitled for travel to and from the  
15 place at which he is required to appear, and one day's attend-  
16 ance. If such witness demands such fees at the time of ser-  
17 vice, and they are not at that time paid or tendered, he shall  
18 not be required to attend before the commission or commission-  
19 er as directed in the subpoena. All fees and mileage to which  
20 any witness is entitled under the provisions of this section  
21 may be collected by action therefor instituted by the person  
22 to whom such fees are payable.

23 (b) The superior court of the county or city and county  
24 in which any inquiry, investigation, hearing or proceedings  
25 may be held by the commission or any commissioner shall have  
26 the power to compel the attendance of witnesses and the pro-  
27 duction of papers, maps, books, accounts, documents and testi-  
28 mony as required by any subpoena issued by the commission or  
29 any commissioner. The commission or the commissioner before  
30 whom the testimony is to be given or produced, in case of the



1 refusal of any witness to attend or testify or produce any  
2 papers required by such subpoena, may report to the super-  
3 ior court in and for the county or city and county in which  
4 the proceeding is pending, by petition, setting forth that  
5 due notice has been given of the time and place of attend-  
6 ance of said witness, or the production of said papers, and  
7 that the witness has been summoned in the manner prescribed  
8 in this act, and that the witness has failed and refused to  
9 attend or produce the papers required by the subpoena, be-  
10 fore the commission or commissioner, in the cause or pro-  
11 ceeding named in the notice and subpoena, or has refused to  
12 answer questions propounded to him in the course of such  
13 proceeding, and ask an order of said court, compelling the  
14 witness to attend and testify before the commission. The  
15 court, upon the petition of the commission or such commis-  
16 sioner, shall enter an order directing the witness to ap-  
17 pear before the court at a time and place to be fixed by  
18 the court in such order, the time to be not more than ten  
19 days from the date of the order, and then and there show  
20 cause why he has not responded to said subpoena. A copy of  
21 said order shall be served upon said witness. If it shall  
22 appear to the court that said subpoena regularly issued by  
23 the commission or a commissioner, the court shall thereupon  
24 enter an order that said witness appear before the commis-  
25 sion or said commissioner at the time and place fixed in  
26 said order, and testify or produce the required papers, and  
27 upon failure to obey said order, said witness shall be  
28 dealt with as for contempt of court.

29 (c) The commission or any commissioner or any party  
30 to a proceeding before the commission or a commissioner may



1 in any investigation or hearing before the commission, cause  
2 the deposition of witnesses residing within or without the  
3 state to be taken in the manner prescribed by law for like  
4 depositions in civil actions in the superior courts of this  
5 state, and to that end may compel the attendance of witnesses  
6 and the production of books, documents, papers and accounts.

7 (d) No person shall be excused from testifying or  
8 from producing any book, map, document, paper or account in  
9 any investigation or inquiry by or hearing before the com-  
10 missioner any commissioner, when ordered to do so, upon the  
11 ground that the testimony or evidence, book, map, document,  
12 paper or account required of him may tend to incriminate him  
13 or subject him to penalty or forfeiture. But no person  
14 shall be prosecuted, punished or subjected to any penalty or  
15 forfeiture for or on account of any act, transaction, matter  
16 or thing concerning which he shall, under oath, have been  
17 compelled, <sup>to testify</sup> or shall have testified or produced documentary  
18 evidence; <sup>such evidence may not be used against him prima facie</sup> provided, that no person so testifying shall be  
19 exempt from prosecution or punishment for any perjury com-  
20 mitted by him in his testimony. Nothing herein contained  
21 shall be construed as in any manner giving to any public  
22 utility or person immunity of any kind.

23 Section 25. A full and accurate record of busi-  
24 ness or acts performed by the commission or any member  
25 thereof in pursuance of the provisions of this act shall be  
26 kept and be placed on file in the office of said water com-  
27 mission.

28 Section 26. The commission shall take charge and  
29 collect the following fees: for copies and records not  
30 required to be certified or otherwise authenticated by the



1 commission, ten cents for each folio; for certified copies of  
2 official documents and orders filed in its office, fifteen cents  
3 for each folio and one dollar for every certificate under seal  
4 affixed thereto; for certified copies of evidence and proceed-  
5 ings before the commission, fifteen cents for each folio. The  
6 commission may fix reasonable charges for publications issued  
7 under its authority. All fees charged and collected under this  
8 section shall be paid, at least once each week, accompanied by  
9 a detailed statement thereof, into the treasury of the state to  
10 the credit of the Water Commission.

11 Section 27. Any person, firm, association or corpora-  
12 may apply for and secure from the commission a permit for any  
13 unappropriated water or the use of unappropriated water within  
14 this state in conformity with such rules and regulations as may  
15 be adopted from time to time by such Water Commission, and any  
16 application made in conformity with such rules and regulations,  
17 or with any law applicable to the appropriation of water, shall  
18 give a priority of right for such water or the use thereof to  
19 the applicant until such application shall have been approved or  
20 rejected by said commission; provided that such priority shall  
21 continue only so long as the rules and regulations of the Water  
22 Commission shall be followed by the applicant. Upon the approv-  
23 al of any application by the commission, said approval shall  
24 give priority of right, and shall give the right to take and use  
25 the amount of water for the period allowed by said commission in  
26 the approval of such application, but only to the extent and for  
27 the purpose or purposes allowed in said approved application;  
28 provided, further, that any application made in a bona fide at-  
29 tempt to conform to said rules and regulations, or to any law  
30 applicable to the appropriation of Water which shall not be made



1 in conformity therewith, shall secure to the applicant a priority  
2 of right until he shall have been notified by said commission in  
3 what respect his application is defective, and said applicant  
4 shall be allowed fifteen days after notice of said defect in  
5 which to file an amended application; provided, further, that any  
6 priority of right secured under this section shall not be effect-  
7 ive for more than thirty days after service of notice of such  
8 approval, personally or by registered mail, on the applicant,  
9 unless within said period of thirty days a true copy of said ap-  
10 proved application upon which such priority is based shall have  
11 been filed in the office of the recorder of the county or city  
12 and county in which the water is to be diverted.

13 Section 28. Actual construction work upon the project for  
14 which the water or the use thereof is applied for shall begin  
15 within six months from the date of the approval of the applica-  
16 tion, and the construction of the work thereafter shall be pros-  
17 ecuted with reasonable diligence in accordance with the terms of  
18 the approved application and the rules and regulations of said  
19 commission; and said work shall be completed in accordance with  
20 the terms of the approved application, but the period of comple-  
21 tion shall not exceed five years from the date of said approval.  
22 The Water Commission, however, may, for good cause shown, extend  
23 the time within which said work shall be completed, but no such  
24 extension shall be for a longer period than one year. And if  
25 such work be not so commenced, prosecuted and completed as pro-  
26 vided in this act, the Water Commission may, after due notice to  
27 the applicant, revoke its approval of the application, and immedi-  
28 ately upon such revocation any priority of right under said ap-  
29 plication shall lapse.

30 Section 29. Immediately upon completion, in accordance with



1 the terms of the permit, of the project under such application,  
2 the holder of said permit shall report said completion to the  
3 Water Commission, which shall immediately thereafter cause to be  
4 made a full inspection and examination of the works constructed  
5 and shall determine whether the construction and condition of the  
6 project are in conformity with the terms of the approved applica-  
7 tion and permit, and shall, if said determination is favorable to  
8 the applicant, issue a license which shall give the right to the  
9 diversion of such water and the use thereof as may be necessary  
10 to fulfill the purpose of the approved application. Said license  
11 shall be in such form as may be prescribed by the Water Commiss-  
12 ion under the conditions of this act.

13 Section 30. If the purpose of the use of water be for the  
14 generation of electricity, or electrical or other power, the li-  
15 cense issued therefor shall be effective only for a period of  
16 forty years, and if the use of water be for any other purpose  
17 than the generation of electricity, or electrical or other power,  
18 such license shall be effective for such time as the water so ap-  
19 propriated is actually used for the beneficial purpose for which  
20 it was appropriated. If it shall appear to the State Water Com-  
21 mission at any time after a license is issued to any person,  
22 firm, association or corporation, as herein provided, that such  
23 person, firm, association, or corporation has not put the water,  
24 or use of water, sought to be appropriated under said license to  
25 the useful and beneficial use for which it was appropriated; or  
26 has ceased to put said water, or use of water, to such useful or  
27 beneficial purpose, or has failed to observe any of the terms and  
28 conditions in the license as issued, then and in that case the  
29 said commission, after due notice to the licensee and a hearing  
30 thereon, may revoke said license and declare the water or the use



1 of the water sought to be appropriated thereunder to be unappro-  
2 priated and open to further appropriation in accordance with the  
3 terms of this act.

4 Section 31. Every person, firm, association, or corporation  
5 which shall have secured a license from said Water Commission  
6 for the purpose of generating electricity, or electrical or oth-  
7 er power shall have a preference right to the renewal of said  
8 license upon such terms as the Water Commission may prescribe in  
9 accordance with law, and such license shall be renewed upon ap-  
10 plication therefor unless the licensee shall have failed to com-  
11 ply with the terms and conditions thereof or of this act, or un-  
12 less the State, in any manner hereafter authorized, shall deter-  
13 mine to acquire such right for its own use; provided, that any  
14 application for renewal of such license shall be filed with the  
15 Water Commission at a time not less than six months nor more than  
16 one year prior to the expiration of the time specified in the li-  
17 cense. And provided, further, that no such renewal shall be for  
18 a longer period than twenty years.

19 Section 32. Licenses hereafter granted for water or the use  
20 of water shall be subject to the right of the State to impose the  
21 fees and charges herein provided.

22 Section 33. Every person, firm, association or corporation  
23 making application for permission to appropriate water or the  
24 use thereof under this act shall pay to the State Water Commiss-  
25 ion, at the time of filing said application, a fee of two hun-  
26 dred and fifty (250) dollars if the purpose of use is for the  
27 generation of electricity, or electrical or other power, or a  
28 fee of ten (10) dollars if the purpose be other than for the  
29 generation of electricity, or electrical or other power. Every  
30 person, firm, association or corporation at the time of receiving



1 a license to appropriate water or the use of water, if the pur-  
2 pose be for the generation electricity, or electrical or other  
3 power, as provided by this act, shall pay said commission when  
4 the said license is issued, and annually thereafter, a charge of  
5 twenty (20) cents for each theoretical horse power capable of  
6 development by the proposed works. \* If the purpose of use is  
7 for other than the generation of electricity, or electrical or  
8 other power, every person, firm, association, or corporation,  
9 shall pay to the said commission when said license is issued,  
10 and annually thereafter, a charge of twenty-five (25) cents per  
11 miner's inch for each miner's inch specified in the license, and  
12 for the purpose of this act fifty miner's inches shall be equiv-  
13 alent to one cubic foot per second.

14 Section 34. For the purpose of carrying out the provisions  
15 of this act the said Water Commission is authorized to pass such  
16 necessary rules as it may from time to time deem advisable, and  
17 to appoint a secretary who shall have charge of the books and  
18 records of said Water Commission and perform such other duties  
19 as the Commission may from time to time prescribe, and said Water  
20 Commission may also employ such expert, technical, professional  
21 and clerical assistance, and upon such terms, as it may deem  
22 proper. And for the purpose of carrying out the provisions of  
23 this act the sum of fifty thousand dollars is hereby appropriat-  
24 ed out of any money in the state treasury not otherwise appropri-  
25 ated, and the State Controller is hereby authorized and directed  
26 to draw his warrants from time to time upon the requisition of  
27 the State Water Commission, approved by the State Board of Con-  
28 trol, and the State Treasurer is hereby authorized and directed  
29 to pay such warrants.

30 Section 35. All indebtedness incurred for salaries, and all  
necessary costs in traveling and other expenses of said Commiss-



1 sion, and each of its members and persons employed by it, while  
2 actually engaged in the business of said commission, shall be  
3 paid by the state out of the funds hereby appropriated, upon the  
4 sworn statement of the person or persons incurring such indebted-  
5 edness, and upon the approval of the Water Commission, approved  
6 by the State Board of Control, and the State Controller is here-  
7 by authorized to draw warrants upon the State Treasurer as pro-  
8 vided by law for the payment of similar costs and expenses and  
9 the drawing of similar warrants.

10 Section 36. None of the provisions of this act, except as  
11 hereinafter provided, shall apply to any city, city and county,  
12 municipal water district, or lighting district, nor to the ap-  
13 propriation or use of the waters of the state by any city, city  
14 and county, municipal water district, or lighting district; pro-  
15 vided, however, that every city, city and county, municipal  
16 water district, and lighting district shall, within thirty days  
17 from the time that it posts and records notices of appropriation  
18 as required by law, file with the Water Commission a notice of  
19 said appropriation, together with the post office address of the  
20 appropriator, the source of the water to be appropriated or  
21 used, the nature and amount of the proposed use, the head or  
22 amount of water to be utilized, the uses to which the waters are  
23 to be applied, the nature, location, character and estimated  
24 capacity of the works, and whether the water is to be and will  
25 be returned to the stream or source from which it is to be tak-  
26 en, and if so, at what point on such stream or source. If the  
27 construction contemplates a reservoir for the purposes of stor-  
28 ing water for the use of any city, city and county, municipal  
29 water district, or lighting district, the notices filed with the  
30 Board shall also give the estimated height of the dam and



1 estimated capacity of the reservoir in addition to the other  
2 requirements above set forth; and, provided, also, that any  
3 city, city and county, municipal water district, or lighting  
4 district may participate in any of the investigations herein  
5 provided for, involving a right to appropriate or use any of  
6 the waters of the state, when such investigation affects the  
7 rights or claims of any such city, city and county, municipal  
8 water district, or lighting district; and in such case any such  
9 city, city and county, municipal water district, or lighting  
10 district, the rights of which are so affected, shall be served  
11 with notice in the same manner as herein provided for the  
12 serving of notice upon persons, associations and corporations.

13 Section 37. All other acts or parts of acts in conflict  
14 herewith are hereby repealed.

15 Section 38. This act shall be known as the "Water Com-  
16 mission Act".

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Amended in Assembly April 22, 1915.

Amended in Assembly April 19, 1915.

Amended in Senate April 7, 1915.

**SENATE BILL**

**No. 884**

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**INTRODUCED BY SENATOR BREED,**

**JANUARY 28, 1915.**

**REFERRED TO COMMITTEE ON MUNICIPAL CORPORATIONS.**

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## **AN ACT**

**PROVIDING FOR THE INCORPORATION OF PUBLIC UTILITY DISTRICTS BY MUNICIPALITIES AND UNINCORPORATED TERRITORY, AUTHORIZING SUCH DISTRICTS TO INCUR BONDED INDEBTEDNESS FOR THE PURPOSE OF THE CONSTRUCTION OF WORKS AND THE ACQUISITION OF PROPERTY, AND TO LEVY AND COLLECT TAXES TO PAY THE PRINCIPAL AND INTEREST ON BONDS AND FOR CARRYING ON THEIR OPERATIONS, AND PROVIDING FOR THE POWERS, MANAGEMENT AND GOVERNMENT OF SUCH DISTRICTS, AND IMPOSING CERTAIN DUTIES AND FUNCTIONS IN CONNECTION WITH SUCH DISTRICTS UPON CERTAIN COUNTY OFFICERS.**

*The people of the State of California do enact as follows:*

- 1 SECTION 1. A public utility district may be incorporated
- 2 and managed as herein provided, and may exercise the powers
- 3 herein expressly granted. Such a district may include
- 4 municipalities only, or both incorporated and unincorporated
- 5 territory, but no municipal corporation shall be divided in the
- 6 formation of such a district.



SEC. 2. Two or more municipalities may join in the formation of such a district. When any two or more municipalities desire to organize such a public utility district, as herein provided for, the legislative body of each such municipal corporation, at a regular meeting of such body, shall pass an ordinance declaring that the public interest requires the incorporation by such municipality, jointly with the other municipality or municipalities, naming the same, of a public utility district under this act, comprising its territory with that of the other or others, and stating the name of the proposed district, which shall include the words "public utility district." Such ordinance shall also provide for the submission of the proposition by the council or other legislative body of the city to the qualified electors thereof at a special municipal election.

SEC. 3. Whenever the people of two or more municipal corporations shall desire to organize such a public utility district, and shall present a petition, signed by qualified electors of each such municipality severally and respectively equal in number to fifteen per centum of all the votes cast within each such municipal corporation for all the candidates for governor at the last preceding general election, at which a governor was elected, to the city council or other legislative body of their respective municipalities, it shall be the duty of the clerk of the city council or other legislative body of each such municipality to immediately proceed to examine and verify the signatures to such petition and to certify the result of such examination to such city council or other legislative body.

SEC. 4. Whenever the people of unincorporated territory shall join in the formation of such a district, their petition shall describe such territory, and shall be signed by electors of such territory equal in number to fifteen per centum of all the votes cast for all candidates for governor within the same at the last preceding general election at which a governor was elected, and shall be presented to the board of supervisors of the county within which such territory is situ-

ated, and it shall be the duty of the clerk of such board to immediately proceed to examine and verify the signatures to such petition and to certify the result of such examination to such board of supervisors. Nothing herein contained shall be so construed as to prevent such board of supervisors from responding to such petition by proceeding to pass at any regular meeting an ordinance declaring that the public interest requires the incorporation by such unincorporated territory jointly with other like territory and with municipalities, naming and describing the same, of a public utility district under this act, comprising such unincorporated territory with that of said cities and other unincorporated territory, if any, and stating the name of the proposed district, which shall include the words "public utility district." Such ordinance, if enacted, shall provide for the submission of the proposition by such board of supervisors to the electors of such unincorporated territory at a special election.

SEC. 5. A petition may consist of any number of separate instruments, all of which together shall constitute one petition. A separate petition is required from each unit of the proposed district. All unincorporated territory participating in the proceedings and situated in one and the same county shall be regarded and treated for the purposes of the proceedings as an entirety and as a unit, and each municipality so participating shall be so regarded and treated as a unit. No elector within any one such unit of the proposed district shall sign any such petition of the electors of any other such unit of the proposed district. Each such petition shall, in addition to all other matters required to be stated therein, also name or describe the municipality or other territory within which the electors signing the same reside, and state that it is filed concurrently with the petition or petitions of electors of other incorporated or unincorporated territory, naming or describing the same. Any or all such petitions may declare, in addition, that the electors of the municipal or unincorporated territory signing or presenting the same favor the incorporation of a public utility district in the alternative, that is to



1 say, either with all of the proposed territory, or with less  
2 territory to be named and described in such petition.

3 Every petition for the formation of a public utility district  
4 shall set forth the boundaries of the proposed district, and the  
5 names of the municipalities included therein, and the name of  
6 the proposed district, which shall include the words "public  
7 utility district." If such proposed district includes only  
8 municipalities, it shall be sufficient to state the names thereof  
9 without further setting forth the boundaries of the district.  
10 Every such petition shall also contain a prayer that a public  
11 utility district comprising all of the proposed territory, or  
12 such portions thereof as are designated in the petitions as  
13 essential to its formation as hereinabove provided, be incor-  
14 porated under the provisions of this act. Every elector  
15 signing any such petition shall write his address opposite his  
16 signature thereto.

17 SEC. 6. An "elector," or "voter," or "qualified elector,"  
18 for all purposes of this act, is any voter whose name appears on  
19 the great register of the county in which the public utility dis-  
20 trict is located, or any supplement thereto, as is then allowed  
21 by general law to be used to determine the eligibility of persons  
22 to vote at municipal or county elections, and whose address  
23 appearing on such great register or supplement is in the same  
24 municipality or unincorporated territory, as the case may be,  
25 as the address given by him on the certificate or petition that  
26 may be signed by him. All words used anywhere in this act  
27 in the masculine gender include the feminine. The singular  
28 number includes the plural and the plural the singular.

29 Such great register or supplement thereto, and certificates in  
30 due form of notaries public, or verification deputies provided  
31 for by this act, acknowledging the signature of any voter to  
32 any petition or certificate under the provisions of this act, shall  
33 be sufficient evidence for all purposes of this act.

34 All verification deputies under this act shall be qualified  
35 electors residing within the territory of the proposed district,  
36 or of the district formed under this act, for which they are  
37 appointed. Verification deputies required to verify signatures

1 to petitions for the formation of a district, or to certificates  
2 or petitions nominating candidates for election to the first  
3 board of directors of newly formed districts, hereunder shall  
4 be appointed by the county clerk or county clerks of the  
5 county or counties in which the territory of the district is  
6 situated, and verification deputies required for any other  
7 purpose under the provisions of this act after the formation  
8 of a district hereunder shall be appointed by the clerk of  
9 the district. Such appointments shall be made upon written  
10 application of not less than five (5) nor more than ten (10)  
11 qualified electors of any territorial unit or units of the pro-  
12 posed district, or of the district formed hereunder, as the case  
13 may be. The said application shall set forth that the signers  
14 desire the appointment of the person whose name and address  
15 is given therein to be a verification deputy for the purpose of  
16 taking the oaths of signers of petitions (or certificates) in the  
17 matter of ----- Such verification deputies need  
18 not use a seal, and shall not have power to administer oaths for  
19 any purpose other than that for which they are appointed.  
20 Their appointment shall continue only for ninety (90) days  
21 from the date of said appointment. No verification deputy  
22 shall be paid, in whole or in part, directly or indirectly, out  
23 of the county treasury or the treasury of a district formed  
24 hereunder. All verification deputies must, before their  
25 appointment, make and file with the clerk or clerks appointing  
26 them, respectively, an oath as to their ages, places of residence,  
27 occupation and whether or not they are qualified electors  
28 residing within the territory of the proposed district, or of the  
29 district formed hereunder, for which they are appointed.

30 SEC. 7. If, by the certificate of the city or county clerk,  
31 respectively, any petition hereinabove provided for is found to  
32 be insufficient, he shall certify to the number of qualified elec-  
33 tors required to make such petition sufficient in addition to the  
34 signatures already thereon and verified by him, and said peti-  
35 tion may then be amended by filing a supplemental petition  
36 within ten days from the date of such certificate. The city or  
37 county clerk, respectively, shall within ten days after the filing



1 of such supplemental petition make a like examination of the  
2 same and certify to the result of such examination, as herein  
3 provided. If this certificate shall show any such petition as  
4 amended to be insufficient, it shall be filed by him in his office  
5 and kept as a public record, without prejudice, however, to the  
6 filing of any other petition to the same effect at some future  
7 time not less than six months thereafter. But if by such cer-  
8 tificate such petition, or such petition as amended, is shown to  
9 be sufficient, the clerk shall present the same to the city council  
10 or other legislative body of such municipality, or to the board  
11 of supervisors of such county, as the case may be, without delay,  
12 with his certificate attached thereto and properly dated.

13 If any supplemental petition be filed, all signatures appended  
14 to the petition and to the supplemental petition shall be con-  
15 sidered in determining the number of qualified electors signing  
16 the petition. After the election for the incorporation of such  
17 proposed public utility district, the sufficiency of the petition,  
18 in any respects, shall not be subject to judicial review or be  
19 otherwise questioned.

20 Sec. 8. Each city council or other legislative body of a  
21 municipality, which has passed the ordinance provided for in  
22 section two of this act, shall within fifteen days after its said  
23 ordinance has gone into effect publish a copy of the same,  
24 together with a statement that the proposition involved therein,  
25 which shall be briefly specified, will be submitted by it to the  
26 qualified electors of its respective municipality at a special  
27 election to be held thereafter in such municipality.

28 Each city council or other legislative body of a municipality,  
29 and each board of supervisors of a county, to whom a petition  
30 of electors shall have been presented, as hereinabove provided,  
31 shall within fifteen days after such presentation publish a copy  
32 of the said petition, together with a statement that the propo-  
33 sition involved therein, which shall be briefly specified, will be  
34 submitted by it to the qualified electors of its respective incor-  
35 porated or unincorporated territory at a special election to be  
36 held thereafter in each such respective territory.

37 The publication hereinabove provided for shall be for at

1 least ten consecutive times in a daily newspaper of general  
2 circulation, printed, published and circulated in the respective  
3 city or unincorporated territory, or, so far as unincorporated  
4 territory may be concerned, if no such newspaper is printed,  
5 published and circulated in such territory, then in such daily  
6 newspaper printed and published elsewhere in the county and  
7 deemed most likely to give notice to the electors of such ter-  
8 ritory; or for at least three consecutive times in a weekly  
9 newspaper of general circulation similarly printed, published  
10 and circulated, if there be no such daily newspaper.

11 Sec. 9. Such special election shall be held not less than  
12 twenty, nor more than forty, days after the completion of said  
13 publication, and shall be called by each such city council, or  
14 other municipal legislative body, and board of supervisors,  
15 respectively, by ordinance, which shall specify the purpose and  
16 time of such election, and shall establish the election precincts,  
17 and designate the polling places therein and the names of the  
18 election officers for each precinct. Such ordinance shall, prior  
19 to such election, be published five times in a daily newspaper,  
20 or twice in a weekly newspaper, if there be no such daily news-  
21 paper, printed, published and circulated in the respective  
22 municipality, or unincorporated territory, or, so far as  
23 unincorporated territory may be concerned, if no such news-  
24 paper is printed, published and circulated in such territory,  
25 then in such daily or weekly newspaper printed and published  
26 elsewhere in the county and deemed most likely to give notice  
27 to the electors of such territory. The notice of such elec-  
28 tion shall also be posted in at least two public places in  
29 each precinct within each municipality and unincorporated  
30 territory in which such election is held for at least ten days  
31 prior to such election. Such election shall be held and con-  
32 ducted, the returns thereof canvassed, and the result thereof  
33 declared by said city council, or other municipal legislative  
34 body, and board of supervisors, respectively, in the manner  
35 that is now or may hereafter be provided by general law for  
36 such elections in the particulars wherein such provision is now  
37 or may hereafter be made therefor, and in all other respects in



1 the manner provided by law for the holding of special elections  
2 within such municipalities and counties, respectively.

3 **Sec. 10.** When any petition, presented as hereinabove pro-  
4 vided, declares that the electors of the municipality or unin-  
5 corporated territory signing and presenting the same favor the  
6 incorporation of a public utility district in the alternative,  
7 either with all the proposed territory, or with certain territory  
8 described therein less than all the proposed territory, as here-  
9 inabove provided, the proposition to be submitted at such  
10 election shall be stated upon the ballot to be used in the  
11 municipality and unincorporated territory, respectively, in  
12 which such petition is signed and presented, in the alternative,  
13 as hereinafter provided, to wit:

14 "1. Shall ----- public utility district (naming it)  
15 be organized under the provisions of the public utility district  
16 act of 1915?

17 Yes   
18 No  "

19 "2. Are you in favor of so organizing ----- public  
20 utility district (naming it) with certain territory less than all  
21 of the territory proposed, as stated in the alternative in the  
22 petition of the electors asking for the formation of said dis-  
23 trict?

24 Yes   
25 No  "

26 The ballot containing such alternative propositions shall, in  
27 addition, have printed upon its face in a conspicuous place  
28 appropriate words calling to the voter's attention the fact that  
29 he may vote upon both alternatives of the proposition so sub-  
30 mitted.

31 When the petition presented as hereinabove provided, con-

1 tains no alternative proposition, the proposition to be submit-  
2 ted at such election shall be stated upon the ballot to be used in  
3 the municipality and unincorporated territory, respectively,  
4 in which such petition is signed and presented, substantially as  
5 follows, to wit:

6 "Shall ----- public utility district (naming it)  
7 be organized under the provisions of the public utility district  
8 act of 1915?

9 Yes   
10  
11  
12 No  "

13  
14 **Sec. 11.** In case the proposition is submitted to the electors  
15 in any municipality or unincorporated territory, in which such  
16 election is held, in the alternative, as hereinabove provided,  
17 and is carried, the said city council or other legislative mu-  
18 nicipal authority, or board of supervisors shall, upon declaring  
19 the result of the election, as hereinabove provided, by order  
20 entered on its minutes, state and declare carried the original  
21 or primary proposition, unless both alternatives are so ap-  
22 proved, in which case said order shall so state and declare the  
23 proposition carried in both alternatives.

24 **Sec. 12.** Within five days after the result of the election is  
25 declared; and the order is made where required, as herein-  
26 above provided, the mayor, or other chief executive officer, of  
27 each municipality, and the chairman of the board of super-  
28 visors of each county containing unincorporated territory,  
29 wherein such elections are held, shall make and execute a cer-  
30 tificate, to be signed by him as such official and authenticated  
31 under the seal of such municipality or county, setting forth the  
32 proposition submitted to the electors, the fact of such sub-  
33 mission, and the result of the said election in his respective  
34 municipality or in such unincorporated territory, as so  
35 declared.

36 In case the proposition is submitted to the electors in the  
37 alternative, as hereinabove provided, the said certificate shall



1 state the proposition as submitted in the alternative, the fact  
2 of such submission, the result of the election, as so declared,  
3 and also the order required in and by section eleven of this act.

4 The certificate hereinabove provided shall be made and exe-  
5 cuted in duplicate, and shall be delivered in duplicate without  
6 delay to the board of supervisors of the county in which the  
7 proposed public utility district, or the greater portion thereof  
8 in point of population, is situated, or to the clerk of such  
9 board.

10 Sec. 13. All of said certificates shall be so delivered, and  
11 the board of supervisors receiving the same shall meet and  
12 examine said certificates within three weeks after all of said  
13 elections are held; and if it appears from said certificates that  
14 a majority of the votes cast at said elections in each munici-  
15 pality and unincorporated territory, in which such elections  
16 are held, is in favor of the incorporation of the utility district,  
17 the said board of supervisors shall, by order entered on its  
18 minutes, so declare and shall in and by said order state the  
19 name and boundaries of the district, and that such district  
20 is formed accordingly under the provisions of this act.

21 When the proposition is submitted at such election in the  
22 alternative, as hereinabove provided, in two or more munici-  
23 palities, or in two or more municipalities and unincorporated  
24 territory, wherein such election is held, and the original or  
25 primary proposition appears from the prescribed certificates to  
26 be carried in each municipality and unincorporated territory in  
27 which the proposition is so submitted, and if it further appears  
28 from said certificates that a majority of the electors voting  
29 at such election voted for the formation of the district  
30 in each of the other municipalities and unincorporated ter-  
31 ritory, in which such election is held, the said board of super-  
32 visors shall, by order entered on its minutes, so declare, and  
33 shall in and by said order state the name and boundaries of  
34 the district, and that the district is formed accordingly under  
35 the provisions of this act.

36 When the proposition is submitted at such election in the  
37 alternative, as hereinabove provided, in two or more munici-

1 palities, or two or more municipalities and unincorporated  
2 territory, wherein such election is held, and the proposition  
3 appears from the prescribed certificates to be carried in both  
4 alternatives in each municipality and unincorporated territory  
5 wherein the proposition is so submitted, and it further appears  
6 from the required certificates that a majority of the electors  
7 voting at such election voted against the formation of  
8 the district in all, either, or any of the other municipalities  
9 or unincorporated territory, wherein such election is held,  
10 the said board of supervisors shall, by order entered on its  
11 minutes, so declare, and shall state or describe the munici-  
12 palities, or municipalities and unincorporated territory, where  
13 in the proposition is so submitted and approved in the alter-  
14 native, and the name and boundaries of such district, and  
15 that such district is formed accordingly under the provisions  
16 of this act.

17 In case it appears from said certificates that a majority of  
18 the electors voting at such election of all, either, or any of  
19 the municipalities, or unincorporated territory, wherein such  
20 election is held, has voted against the formation of the district,  
21 the proceedings shall fail entirely, unless the proposition is  
22 submitted at such election in the alternative, as hereinabove  
23 provided, in two or more municipalities, or two or more  
24 municipalities and unincorporated territory, wherein such elec-  
25 tion is held, in which case the proceedings shall fail entirely  
26 if it appears from said certificates that a majority of the  
27 electors voting at such election of all, either or any of  
28 the municipalities or unincorporated territory, wherein the  
29 proposition is submitted in the alternative, has voted against  
30 the formation of the district.

31 Wherever in this act the words "original and primary  
32 proposition" are used, the same are hereby declared to mean  
33 the proposition to incorporate the proposed district with all of  
34 the proposed territory joining in the proceedings and men-  
35 tioned and described in the several petitions presented by the  
36 electors, as hereinabove provided.

37 Sec. 14. When the said board of supervisors has completed



1 its examination of said certificates, and has made the order  
2 provided in the last preceding section of this act, it shall forth-  
3 with cause to be attached together said duplicate certificates  
4 in two rolls, each roll to contain one of each of said certificates  
5 and a copy of said order of said board of supervisors, duly  
6 certified under the hand and the official seal of the clerk of  
7 said board of supervisors, and one of said rolls shall be by  
8 said board caused to be forthwith deposited and filed in the  
9 office of the secretary of state, and the other, after being  
10 recorded in the office of the recorder of each county in which  
11 any part of said district is situated, shall be filed in the office  
12 of the county clerk of the county wherein the district, or  
13 the greater portion thereof in point of population, is situated.  
14 Upon the receipt of said duplicate roll by the secretary of  
15 state he shall issue his certificate reciting that said duplicate  
16 roll is filed in his office and that the public utility district,  
17 naming it, is incorporated as a public utility district under  
18 the provisions of this act; which said certificate shall be for-  
19 warded to the said board of supervisors and by it held and  
20 delivered to the board of directors of the district after the  
21 election and organization of said board, as hereinafter pro-  
22 vided. No charge shall be made by either the secretary of  
23 state or any county recorder or county clerk for the services  
24 required of him under the provisions of this section. From  
25 and after the date of the filing of said duplicate roll with the  
26 secretary of state, the public utility district named therein shall  
27 be deemed incorporated as a public utility district under the  
28 provisions of this act, with all the rights, privileges and powers  
29 set forth in this act.

30 SEC. 15. No informality in any proceeding, or informality  
31 in the conduct of any election, not substantially affecting  
32 adversely the legal rights of any citizen, shall be held to invali-  
33 date the incorporation of any public utility district, and any  
34 proceedings wherein the validity of such incorporation is  
35 denied shall be commenced within twenty days after the date  
36 of the certificate of incorporation; otherwise said incorporation  
37 and the legal existence of said public utility district, and all

1 proceedings in respect thereto, shall be held to be valid and in  
2 every respect legal and incontestible. If any such contest is  
3 brought, it shall be brought in the superior court of the county  
4 where the public utility district, or the greater portion thereof  
5 in point of population, is situated; *provided*, that if more than  
6 one contest be pending they shall be consolidated and tried  
7 together. The court having jurisdiction shall speedily try such  
8 contest and determine upon the hearing whether the election  
9 was fairly conducted and in substantial compliance with this  
10 act, and enter its judgment accordingly. The right of appeal  
11 is hereby given to either party to the record within thirty days  
12 from the entry of judgment, and the appeal must be heard and  
13 determined by the supreme court within sixty days from the  
14 filing of the notice of appeal.

15 SEC. 16. At an election to be held within such public utility  
16 district under the provisions of this act, the public utility  
17 district thus organized shall proceed within ninety days after  
18 its formation to the election of a board of directors, consist-  
19 ing of as many members as there are territorial units in the  
20 district, and as many additional members, not less than three  
21 nor more than four, as may be required to constitute a board  
22 composed of an odd number of directors. Such election shall  
23 be held in each municipality and unincorporated territory  
24 included within the district and shall be called by the board of  
25 supervisors of the county in which the district, or the greater  
26 portion thereof in point of population, is situated, and shall be  
27 called, held and conducted, the returns thereof canvassed, and  
28 the result thereof declared by such board of supervisors, in the  
29 manner and form now or hereafter provided by law for the  
30 holding of special elections within such county. Nominations  
31 for the office of director shall be had and made for the purposes  
32 of such election in all respects as is now or may hereafter be  
33 provided by law for the nomination of county officers elected  
34 within counties. A certificate of election shall be issued by  
35 said board of supervisors to each person elected and declared  
36 elected.

37 SEC. 17. Each municipality within the district shall for



1 the purposes of this act be regarded and treated as a terri-  
2 torial unit of the district, and all unincorporated territories  
3 situated in one and the same county and included within the  
4 district shall be so regarded and treated as an entirety and as  
5 a territorial unit of the district. Each municipal territorial  
6 unit, and each unit of unincorporated territory having a  
7 population of at least five thousand, shall be entitled to  
8 one director, and candidates for the office of one director  
9 shall be nominated from each such respective municipi-  
10 pality and unincorporated territory, and the remaining  
11 number of directors shall be nominated from the district at  
12 large. Each director shall have the status of a separate  
13 office for the purpose of nomination and election thereto, and,  
14 in case of a vacancy, for the purpose of filling such vacancy.  
15 Candidates for directors at large shall be designated in all  
16 declarations of candidacy, nominating certificates, and on all  
17 official election ballots as candidates for director at large No. 1,  
18 No. 2, No. 3, or No. 4 (said numbers to be stated after the  
19 designating title "director at large," there being as many num-  
20 bers from 1 up as there are directors at large to be elected),  
21 in accordance with the declarations of candidacy, which said  
22 candidates shall have filed with the county clerk or the clerk  
23 of the district, as the case may be.

24 Candidates for director for or from the several municipal  
25 units and units of unincorporated territory in the dis-  
26 trict entitled to one director each, as above provided, shall  
27 be designated in all declarations of candidacy, nominating cer-  
28 tificates, and on all official election ballots as candidates for  
29 director from \_\_\_\_\_ unit, \_\_\_\_\_ unit, \_\_\_\_\_ unit, and so  
30 forth (giving the name of the respective municipality or the  
31 name or other designation, herein provided, of the respective  
32 unincorporated territory, constituting the unit entitled to the  
33 office of director to be filled and for which said candidates  
34 severally declare themselves and are nominated as candidates,  
35 and are to be designated as candidates upon the official election  
36 ballots; said name or other designation, or names or other des-  
37 ignations, to be stated after the designating title "director

1 from," in accordance with the declarations of candidacy which  
2 said candidates shall have filed with the proper clerk, as herein  
3 provided.

4 In case only one unit of unincorporated territory is con-  
5 tained in the district, it is sufficient for naming or designating  
6 the same to refer to it as "the unincorporated territorial unit,"  
7 but in case two or more such units are contained in the district,  
8 they shall be numbered, named and designated by the board of  
9 supervisors in charge of the election of the first board of  
10 directors, and subsequently from time to time by the board of  
11 directors of the district as unincorporated territorial unit  
12 No. 1, No. 2, No. 3 and so forth, there being as many numbers  
13 from 1 up as there are such units in the district.

14 Such number, name and designation shall be given to each  
15 such unit by said board of supervisors by ordinance at a regu-  
16 lar or special meeting of said board held after the formation  
17 of the district, and in time to permit of the publication and  
18 taking effect of such ordinance before the earliest time when  
19 nominating certificates and declarations of candidacy may be  
20 filed, as herein provided, and shall thereafter remain in force  
21 until the board of directors of the district, by ordinance, shall  
22 number, name and designate such units as herein provided.

23 None of said designations by name or number of all or any  
24 of the directors shall have any significance whatever after  
25 election and qualification of the directors elected at such elec-  
26 tion, or after appointment and qualification of a director  
27 appointed to fill a vacancy, but shall fix the name or other  
28 designation and status of each such designated office as a  
29 separate office for the purpose of nomination and election  
30 thereto, or for the purpose of filling the same in the case of a  
31 vacancy therein by appointment as herein provided. The  
32 foregoing provisions of this section shall apply to the election  
33 of the first board of directors of the district organized under  
34 this act, as well as to all elections of directors held by the  
35 district at any time after its incorporation and organization.

36 Said population of each unit of unincorporated territory  
37 within the district shall, at the time of calling the election



1. herein provided for the election of the first board of directors  
2 of the district, be determined by the board of supervisors  
3 charged with the duty of calling such election and such deter-  
4 mination shall be stated in the ordinance calling such election  
5 and in the notice of the election. Such determination shall  
6 continue in force until set aside by the board of directors of  
7 the district. The board of directors of every district formed  
8 under the provisions of this act shall determine from time to  
9 time, as to them shall seem proper or necessary, the number of  
10 inhabitants of each unit of unincorporated territory within  
11 their district, and declare the same by ordinance, and every  
12 such determination shall continue in force until another such  
13 determination is subsequently made. All such determinations  
14 shall be based upon the last preceding census taken by the  
15 United States, or upon the last preceding census of the county  
16 in which such unit of unincorporated territory is situated in  
17 case the board of supervisors of such county shall have taken  
18 or caused to be taken a census of their county since the last  
19 preceding census of the United States.

20 **Sec. 18.** All subsequent elections of directors shall be  
21 called and held by the board of directors of the district, and  
22 the same shall be called, held and conducted, nominations for  
23 the office of director made, the returns thereof canvassed, and  
24 the result thereof declared by the board of directors as herein-  
25 after provided.

26 **Sec. 19.** The directors of any district created after the  
27 passage of this act, on the first Tuesday after their election,  
28 and after they shall have qualified, shall meet and classify  
29 themselves by lot, so that the largest possible minority shall  
30 hold office for two years, and a majority of them for four years.  
31 Thereafter at each biennial public utility district election a  
32 number of directors corresponding to the number whose term of  
33 office shall so expire shall be elected for the term of four years.

34 **Sec. 20.** In case of a vacancy in the office of director from  
35 or for a municipal or unincorporated territorial unit within the  
36 district, the vacancy shall be filled by appointment by the  
37 city council, or other legislative body, of the municipality, or

1 by the board of supervisors of the county, respectively, from  
2 which such vacancy occurs. In case of a vacancy in the office  
3 of a director, at large the vacancy shall be filled by appoint-  
4 ment by the board of directors of the district. The officer  
5 appointed as above provided shall hold his office for the unex-  
6 pired term of the director whom he is appointed to succeed,  
7 and until his successor is elected and qualified. If a person  
8 elected fails to qualify, the office shall be filled as if there was  
9 a vacancy in such office.

10 **Sec. 21.** A director [at large] shall be a resident and quali-  
11 fied elector of the public utility district, but not necessarily of  
12 the municipality or other territorial unit, from which he is  
13 nominated.

14 **Sec. 22.** The provisions of law, now or hereafter made and  
15 provided, relating to the manner of holding and conducting  
16 general elections held for the election of state and county  
17 officers, the mode and manner of nominating county offi-  
18 cers, of voting, the duties of election officers, the canvassing of  
19 returns, and all particulars in respect to the management of  
20 such general elections, as far as they may be applicable,  
21 shall, except as in this act otherwise provided, govern all  
22 public utility district elections. The returns of all such  
23 elections shall be directed to the clerk of the district, and shall  
24 be immediately delivered by the inspector, or by some other  
25 safe and responsible carrier designated by said inspector, to  
26 said clerk, and the ballots shall be kept unopened for at least  
27 six months; but if any elector of the district be of the  
28 opinion that the votes of any precinct have not been correctly  
29 counted, he may contest the election in the manner and form  
30 and within the time provided by general law for contests of  
31 state and county elections, and all the provisions of the general  
32 law relating to election contests and the recounting of ballots  
33 cast at general state and county elections, shall be applicable,  
34 so far as practicable, to contest of district elections and the  
35 recounting of ballots cast thereat.

36 **Sec. 23.** The board of directors must meet at its usual place  
37 of meeting on the first Monday after each district election to



1 canvass the returns. If at the time of the meeting the returns  
2 from each precinct in the district in which the polls were open  
3 have been received, the board of directors must then and there  
4 proceed to canvass the returns, but if all the returns have not  
5 been received, the canvass must be postponed from day to day  
6 until the returns have been received, or until six postponements  
7 have been had. The canvass must be made in public and by  
8 opening the returns and estimating the vote of the district for  
9 each person voted for or each proposition voted upon, and  
10 declaring the result of the election.

11 **Sec. 24.** The clerk must, as soon as the result is declared,  
12 enter in the record of the board a statement of such result,  
13 which statement must show:

- 14 (1) The whole number of votes cast in the district and in
- 15 each municipality or other territorial unit thereof;
- 16 (2) The proposition or the names of the persons voted for;
- 17 (3) The office to fill which each person was voted for;
- 18 (4) The number of votes given in each precinct to each such
- 19 person, or for and against any proposition voted upon.

20 The board of directors must declare elected the person having  
21 the highest number of votes given for each office. The clerk  
22 must immediately make out and deliver to such person a cer-  
23 tificate of such election, signed by him and authenticated with  
24 the seal of the board.

25 No informality in conducting public utility district elections  
26 shall invalidate the same, if they have been conducted fairly  
27 and in substantial conformity with the requirements of this  
28 act.

29 **Sec. 25.** The biennial public utility district election for  
30 the election of directors shall be held on the first Tuesday of  
31 May in each second year after the formation of the district.  
32 This election shall be known as the general district election.

33 **Sec. 26.** No person shall be entitled to vote at any district  
34 election held under the provisions of this act unless such per-  
35 son possesses all the requirements of an elector under the  
36 general election laws of the state, nor unless he shall be a  
37 duly qualified elector residing within the district.

1 **Sec. 27.** The powers of the district hereinafter enumerated  
2 shall, except as herein otherwise provided, be exercised by the  
3 board of directors of the district.

4 **Sec. 28.** The other officers of the district shall be (1) a  
5 clerk, who shall also be ex officio secretary of the board of  
6 directors; (2) an accountant; (3) a treasurer, and (4) a gen-  
7 eral manager, all of whom shall be appointed by the board  
8 of directors, and shall receive such compensation as may be  
9 provided for them by the board of directors by ordinance, and  
10 they shall hold office during the pleasure of the board. They,  
11 or any of them, shall be required to give such a bond as may  
12 be prescribed by the board of directors, and they shall perform  
13 such duties as are hereinafter provided, and such further  
14 duties as may be imposed upon them by the board of directors;  
15 provided, however, that when the district acquires, constructs,  
16 owns or operates two or more public utilities, a general man-  
17 ager may be appointed and employed, as hereinabove pro-  
18 vided, for each such public utility.

19 **Sec. 29.** The board of directors of the public utility dis-  
20 trict formed under the provisions of this act shall have power  
21 to elect that the duties of treasurer of the district shall be  
22 performed by the county treasurer of the county in which the  
23 district, or the greater portion thereof in point of population,  
24 is situated; and whenever the board of directors of such dis-  
25 trict shall, by ordinance, so determine, such duties shall be  
26 performed by said county treasurer. A certified copy of  
27 such ordinance shall be served on said county treasurer, and  
28 such ordinance shall also prescribe the manner in which money  
29 shall be drawn out of the various funds belonging to such  
30 district in the hands of the treasurer.

31 **Sec. 30.** At the time hereinabove provided for the first  
32 meeting of the board of directors of the district, and after  
33 said board of directors shall have qualified and organized as  
34 hereinabove provided, it shall appoint such clerk, accountant,  
35 general manager and treasurer, or shall, in lieu of appoint-  
36 ing such treasurer, pass the ordinance hereinabove provided  
37 for.



1 SEC. 31. The board of directors shall choose one of its  
2 members president, and shall provide for the time and place  
3 of holding its meetings and the manner in which its special  
4 meetings may be called. All legislative sessions of the board  
5 of directors, whether regular or special, shall be open to the  
6 public. A majority of the board of directors shall constitute  
7 a quorum for the transaction of business. The board of direc-  
8 tors shall establish rules for its proceedings.

9 SEC. 32. The board of directors shall act only by ordinance  
10 or resolution. The ayes and noes shall be taken upon the  
11 passage of all ordinances or resolutions and entered upon the  
12 journal of the proceedings of the board of directors. No  
13 ordinance or resolution shall be passed or become effective  
14 without the affirmative votes of at least a majority of the mem-  
15 bers of the board. The enacting clause of all ordinances passed  
16 by the board shall be in these words:

17 "Be it enacted by the board of directors of -----  
18 public utility district:"

19 All resolutions and ordinances shall be signed by the presi-  
20 dent of the board of directors and attested by the secretary.

21 No ordinance passed by the board shall take effect within less  
22 than [thirty] days after its passage, and before the expiration  
23 of said [thirty] days the same shall be published with the names  
24 of the members voting for and against the same for at least  
25 one week in some daily newspaper of general circulation printed  
26 and published in the district, or at least twice in some weekly  
27 newspaper of general circulation similarly printed and pub-  
28 lished, in case there is no such daily newspaper printed and  
29 published in the district; and posted at the main entrance to  
30 the offices of the board of directors at least one week. An order  
31 entered in the minutes of the board that such ordinance has  
32 been duly published and posted shall be prima facie proof of  
33 such publication and posting.

34 Each member of the board of directors shall receive such  
35 compensation as the board of directors by ordinance shall pro-  
36 vide, not to exceed, however, the sum of three thousand six  
37 hundred dollars per year.

1 SEC. 33. The president shall sign all contracts on behalf of  
2 the district, and perform such other duties as may be imposed  
3 by the board of directors. The clerk shall countersign all  
4 contracts on behalf of the district, and perform such other  
5 duties as may be imposed upon him by the board of directors  
6 or by the provisions of this act. He shall give his full time  
7 during office hours to the affairs of the district, and shall ex  
8 officio act as the secretary of the board of directors and shall  
9 keep a record of its proceedings. The general manager shall,  
10 subject to such restrictions as the board of directors may  
11 impose, have full charge and control of the construction of the  
12 works of the public utility district and of their maintenance  
13 and operation. The general manager shall perform such other  
14 duties as may be imposed upon him by the provisions of this  
15 act or by the board of directors. He shall report to the board  
16 of directors in accordance with such rules and regulations as  
17 they may adopt. The accountant shall be charged with the  
18 duty of installing and maintaining a system of auditing and  
19 accounting which shall completely and at all times show the  
20 financial condition of the district. He shall draw all warrants  
21 to pay demands made against the district when such demands  
22 have been first approved by a majority of the board of direc-  
23 tors present at the meeting at which such demands are acted  
24 upon, and shall perform such other duties as may be imposed  
25 upon him by this act or by the board of directors.

26 The board of directors, at their first meeting in January of  
27 each year, shall render and immediately cause to be published  
28 a verified statement of the financial condition of the district,  
29 showing particularly the receipts and disbursements of the last  
30 preceding year, together with the source of such receipts and  
31 the purpose of such disbursements. Said publication shall be  
32 made at least once a week for two weeks in some newspaper of  
33 general circulation printed and published in the district, or,  
34 if there be no such newspaper in the district, then within some  
35 newspaper of general circulation printed and published in the  
36 county where such district is situated.

37 SEC. 34. The directors of the district, immediately after



1 receiving their certificates of election, and before assuming the  
2 duties of their office, shall take and subscribe an official oath  
3 and file the same in the office of the board of directors and exe-  
4 cutes the bond hereinafter provided for. Each member of the  
5 board of directors shall execute an official bond in the sum of  
6 five thousand dollars, which said bond shall be approved by a  
7 judge of the superior court of the county where the organiza-  
8 tion of the district was effected, and shall be recorded in the  
9 office of the county recorder of such county and filed with the  
10 secretary of said board. All official oaths and bonds herein  
11 provided for shall be in the form provided by law for official  
12 oaths and bonds of county officers.

13 **Sec. 35.** Any public utility district incorporated as herein  
14 provided shall have power:

15 *First*—To have perpetual succession.

16 *Second*—To sue and be sued, except as otherwise provided  
17 herein or by law, in all actions and proceedings, in all courts  
18 and tribunals of competent jurisdiction.

19 *Third*—To adopt a seal and alter it at pleasure.

20 *Fourth*—To take by grant, purchase, gift, devise, or lease,  
21 or otherwise acquire, and to hold and enjoy, and to lease or dis-  
22 pose of, real and personal property of every kind within or  
23 without the district, necessary to the full or convenient exercise  
24 of its powers.

25 *Fifth*—To acquire, construct, own, operate, control or use,  
26 within or without, or partly within and partly without, the  
27 district, works for supplying the inhabitants of said district  
28 and municipalities therein, without preference to such munici-  
29 palities, with light, water, power, heat, transportation,  
30 telephone service, or other means of communication, or means  
31 for the disposition of garbage, sewage, or refuse matter; and  
32 to do all things necessary or convenient to the full exercise of  
33 the powers herein granted. Whenever there is a surplus of  
34 water, light, heat, or power above that which may be required  
35 by such inhabitants or municipalities within the district, such  
36 district shall have power to sell or otherwise dispose of such

1 surplus outside of the district to persons, firms, and public or  
2 private corporations.

3 *Sixth*—To have or exercise the right of eminent domain in  
4 the manner provided by law for the condemnation of private  
5 property for public use. To take any property necessary or  
6 convenient to the exercise of the powers herein granted,  
7 whether such property be already devoted to the same use or  
8 otherwise. In the proceedings relative to the exercise of such  
9 right the district shall have the same rights, powers and privi-  
10 leges as a municipal corporation.

11 *Seventh*—To construct works across or along any street or  
12 public highway, or over any of the lands which are now or  
13 may be the property of this state, and to have the same rights  
14 and privileges appertaining thereto as have been or may be  
15 granted to the municipalities within the state, and to construct  
16 its works across any stream of water or water course. The  
17 district shall restore any such street or highway to its former  
18 state as near as may be, and shall not use the same in a manner  
19 to unnecessarily impair its usefulness.

20 *Eighth*—To borrow money and incur indebtedness, and to  
21 issue bonds or other evidences of such indebtedness; also to  
22 refund or retire any indebtedness that may exist against the  
23 district; *provided, however,* that no district shall incur any  
24 funded indebtedness which shall in the aggregate exceed twenty  
25 per centum of the assessed valuation of all real and personal  
26 property situated within the district.

27 *Ninth*—To levy and collect, or cause to be levied and col-  
28 lected, taxes for the purpose of carrying on the operations and  
29 paying the obligations of the district.

30 *Tenth*—To make contracts, to employ labor, and to do all  
31 acts necessary and convenient for the full exercise of the  
32 powers herein in this act granted.

33 *Eleventh*—[To proceed in the name of the district in case of  
34 condemnation proceedings.]

35 **Sec. 36.** (1) Whenever the board of directors by ordinance,  
36 as hereinafter provided, shall determine that the public interest  
37 or necessity of the district demands the acquisition, construc-



1 tion, or completion of any public utility or utilities by the  
2 district, or whenever the electors of the district shall petition  
3 the board of directors, as hereinafter provided, for the acqui-  
4 sition, construction, or completion of any public utility or  
5 utilities, the board of directors must procure plans and esti-  
6 mates of the cost of original construction and completion by  
7 the district of such public utility or utilities.

8 (2) In securing estimates of the cost of original construc-  
9 tion and completion of water works by the district, the board  
10 of directors must procure and place on file plans and esti-  
11 mates of the cost of obtaining, from such sources as the board  
12 of directors may find and designate as available, a sufficient  
13 supply of good, pure water for the district.

14 (3) Before submitting propositions to the electors for the  
15 acquisition by original construction or condemnation of public  
16 utilities, the board of directors must solicit and consider offers  
17 for the sale to the district of existing utilities, in order that  
18 the electors may have the benefit of acquiring the same at the  
19 lowest possible cost thereof. In case no such offer or offers  
20 can be procured, the board of directors must, or, in case such  
21 offer or offers are procured the board of directors may, apply  
22 to the railroad commission of the State of California to ascer-  
23 tain the value of such existing utility or utilities for the  
24 purpose of submitting to the electors estimates of the cost  
25 of acquiring such public utility or utilities. Such valuation  
26 by the railroad commission shall be made in accordance with  
27 the provisions of section forty-seven of the public utilities  
28 act of the State of California, and said railroad commission  
29 shall have power upon such application, and it shall be its  
30 duty, to make such valuation without delay. When the rail-  
31 road commission shall have made and filed its findings and  
32 decision, the board of directors of the public utility district  
33 may have said findings reviewed, as in sections forty-seven  
34 and seventy of said public utilities act provided; or such board  
35 of directors may immediately adopt such findings and decision  
36 as the basis of its estimate of the cost of acquiring such public  
37 utility or utilities by purchase or by condemnation.

1 (4) Whenever any petition or petitions, each signed by  
2 electors of the district equal in number to fifteen per centum  
3 of all the votes cast within the territory of the district at the  
4 last preceding general election held for the election of state  
5 and county officers, shall be presented to the board of directors  
6 asking for the construction, completion or acquisition of the  
7 public utility or utilities therein named, it shall be the duty  
8 of the clerk of the district to immediately proceed to examine  
9 and verify the signatures to such petition or petitions and to  
10 certify the result of such examination to the board of directors.  
11 If the required number of signatures be found to be genuine,  
12 the clerk shall transmit to the president of the board of  
13 directors an authentic copy of such petition or petitions, with-  
14 out the signatures thereto.

15 Upon receiving the petition or petitions, with the certificate  
16 of the clerk stating that it or they contain the required number  
17 of signatures, the board of directors shall formulate for sub-  
18 mission to the electors of the district at a general district elec-  
19 tion or at a special election called for that purpose, a separate  
20 proposition for the construction, completion, or acquisition of  
21 each public utility named in such petition or petitions.

22 All propositions formulated under the provisions of this  
23 subdivision shall be completed within six months after the  
24 filing of such petition or petitions, unless more time is required  
25 by reason of the making of a valuation applied for to the rail-  
26 road commission under the provisions of subdivision three of  
27 this section, in which case the said proposition or propositions  
28 shall be completed as soon as may be possible after such valua-  
29 tion shall have been made and become final.

30 [ ]

31 At the next regular meeting after the completion of the  
32 proposition or propositions for the acquisition, construction or  
33 completion of the public utility or utilities named in said peti-  
34 tions, the board of directors of the district by ordinance shall  
35 submit the proposition or propositions to the electors of the  
36 district at a general district election or at a special district  
37 election called for the purpose.



1 When the cost of any public utility or utilities named in  
2 such petition or petitions can be paid out of the revenues of the  
3 district derived from the operation of its public utilities, in  
4 addition to the other necessary expenses of the district, each  
5 proposition therefor, submitted to the electors, shall specify  
6 the cost of the public utility therein proposed for acquisition,  
7 construction, or completion by the district, the proposed method  
8 and manner of payment thereof, and the board of directors  
9 shall submit therein to the electors the question whether the  
10 same shall be acquired upon such terms. The affirmative vote  
11 of a majority of the electors voting at such election shall be  
12 necessary to accept such proposition.

13 At as early a date after the determination of the result of  
14 such election as the board of directors shall deem for the  
15 best interests of the district, it shall undertake proceedings  
16 and enter into such negotiations and contracts as may be neces-  
17 sary for the acquisition, construction, or completion of any  
18 public utility or utilities named in any proposition or proposi-  
19 tions accepted by the majority of the electors voting at such  
20 election.

21 If, however, the cost of any public utility or utilities named  
22 in such petition or petitions shall so far exceed the revenues of  
23 the district derived from the operation of its public utilities,  
24 in addition to the other necessary expenses of the district, as  
25 to render it necessary to incur a district bonded indebtedness  
26 therefor, each such proposition shall specify the amount of the  
27 bonded indebtedness necessary therefor, and the rate of in-  
28 terest thereon, and the board of directors shall submit to  
29 the electors, at such election, the question of whether such  
30 bonded indebtedness shall be incurred. The assent of at  
31 least two-thirds of the electors voting at such election upon  
32 the proposition shall be necessary to secure the construction,  
33 completion, or acquisition of such public utility or utili-  
34 ties and to warrant the issuance of district bonds therefor.

35 (5) Whenever the board of directors shall determine that the  
36 public interest or necessity of the district demands the acquisi-  
37 tion, construction or completion of any public utility or utilities,

1 it shall specifically declare such determination by an ordinance,  
2 which shall be published for at least two weeks in some news-  
3 paper or newspapers of general circulation printed and pub-  
4 lished in the district.

5 When the cost of such public utility or utilities, or any of  
6 them, can be paid out of the revenues of the district derived  
7 from the operation of its public utilities, in addition to the  
8 other necessary expenses of the district, the board of directors  
9 shall, as soon after the filing of the plans and estimates of the  
10 cost thereof as it may deem for the best interests of the district,  
11 enter into such negotiations and contracts as may be necessary  
12 for the acquisition, construction or completion of the same;  
13 *provided, however,* that in such case the ordinance declaring  
14 the determination of the board of directors to acquire, con-  
15 struct or complete such utility or utilities, and published as  
16 hereinabove provided, shall state the proposed cost of such  
17 acquisition, construction or completion, and the proposed  
18 method and manner of payment therefor; *and provided, fur-*  
19 *ther,* that no such ordinance, in case it involves the expenditure  
20 of more than one hundred thousand dollars, shall become  
21 effective before thirty days from and after its final passage.

22 If, however, the cost of such public utilities, or any of them,  
23 shall so far exceed the revenues of the district derived from the  
24 operation of its public utilities, in addition to the other neces-  
25 sary expenses of the district, as to render it necessary to incur  
26 a district bonded indebtedness therefor, the board of directors  
27 shall, at a regular meeting held within sixty days after the filing  
28 of the plans and estimates of cost thereof, by ordinance, as here-  
29 inafter in subdivision six of this section provided, submit the  
30 proposition or propositions to the electors of the district at a  
31 general district election or at a special district election called  
32 for the purpose. Such propositions shall specify the amount  
33 of bonded indebtedness necessary for the acquisition, con-  
34 struction or completion of the public utility or utilities  
35 therein named, and the rate of interest thereon, and the  
36 board of directors shall submit to the electors the question or  
37 questions whether such bonded indebtedness shall be incurred.



1 The affirmative vote of at least two-thirds of the electors  
2 voting at such election upon the proposition or propositions  
3 shall be necessary to warrant the issuance of district bonds  
4 for the acquisition, construction, or completion of such public  
5 utilities, or any of them.

6 (6) Whenever under the provisions of section thirty-six of  
7 this act, of which this subdivision is a part, a special elec-  
8 tion is called for the purpose of submitting to the electors a  
9 proposition or propositions for the incurring of a bonded  
10 indebtedness, the board of directors shall pass an ordinance  
11 calling such election.

12 At such special election all propositions formulated under  
13 the provisions of this section may be submitted to the electors  
14 of the district, but no question other than such propositions  
15 shall be submitted at such special election.

16 The ordinance calling such election shall set forth the pur-  
17 poses for which it is called, the estimated cost of each utility  
18 proposed for acquisition, construction or completion by the  
19 district, the proposed method and manner of payment thereof,  
20 and shall fix a day on which such special election shall be  
21 held, the manner of holding such election, and the manner of  
22 voting for or against each proposition thereat submitted to  
23 the electors; and if it shall be necessary to incur a district  
24 indebtedness for any utility or utilities therein proposed, the  
25 ordinance shall specify the objects and purposes for which  
26 such indebtedness is proposed to be incurred, and that bonds  
27 of the district shall issue for the payment of the cost of such  
28 utility or utilities, as in said ordinance set forth (if the prop-  
29 osition or propositions therefor be accepted by the electors).  
30 Such election shall be held as provided for holding elections  
31 in the district.

32 SEC. 37. The bonds issued by the district under the pro-  
33 visions of this act shall be of such form as the board of direc-  
34 tors in the ordinance calling the election therefor shall deter-  
35 mine; but such bonds shall be payable, principal and interest,  
36 in gold coin of the United States. The interest on such bonds  
37 shall not exceed six per cent per annum, and they shall be

1 redeemed at such times and in such amounts as the board of  
2 directors shall determine, as set forth in the ordinance calling  
3 the election therefor; *provided*, that redemption of such bonds  
4 shall begin in not more than fifteen years and shall be com-  
5 pleted in not more than seventy-five years from the date of  
6 issue.

7 The bonds so issued shall be issued in denominations of  
8 not less than one hundred dollars and not more than one  
9 thousand dollars, and may be sold by the board of directors  
10 at such times and in such manner as they shall determine, but  
11 shall not be sold at less than par and accrued interest. Any  
12 such bonds shall have the same force, value, and use as bonds  
13 issued by a municipality of this state.

14 The proceeds from the sale of bonds shall be placed in the  
15 treasury to the credit of the proper fund, and shall be applied  
16 exclusively to the purposes and objects mentioned in the ordi-  
17 nance authorizing their issue until such objects are fully accom-  
18 plished; after which, if any surplus remains, such surplus may  
19 be transferred to the general fund; except that if such surplus  
20 exceeds the sum of five thousand dollars, then such surplus  
21 and the whole thereof shall be transferred to the appropriate  
22 fund or funds to pay interest and maintain the sinking fund,  
23 or provide for the retirement of the bonded indebtedness in  
24 connection with which such surplus remains.

25 SEC. 38. Such bonds shall be signed by the president of the  
26 board of directors of the district, and shall be countersigned  
27 by the clerk, and shall have the seal of the district attached.  
28 The coupons shall be numbered consecutively and signed by  
29 the treasurer, by original or fac-simile signature, and the  
30 bonds and coupons shall be payable at the office of the treas-  
31 urer. In case any officer whose signature, or counter-signa-  
32 ture, or attestation appears on any bonds or coupons thereof,  
33 issued under the provisions of this act, shall cease to be such  
34 officer before the sale or delivery of such bonds to the pur-  
35 chaser thereof, such signature, counter-signature or attestation  
36 appearing either on the bonds or the coupons, or on both, shall  
37 nevertheless be valid and sufficient for all purposes the same as



1 if such officer had remained in office until the sale or delivery  
2 of such bonds.

3 Sec. 39. The board of directors shall annually levy and  
4 collect a tax sufficient to pay the annual interest on such bonds,  
5 and also to pay such part of the principal as will fall due  
6 within the succeeding year, and as may be necessary to pro-  
7 vide for the sinking fund payments of the next succeeding  
8 fiscal year; *provided*, that when the interest and sinking fund  
9 payments for any fiscal year on the bonds issued for any public  
10 utility can be met out of the surplus earnings of such public  
11 utility, or out of moneys in the general fund of the district  
12 and theretofore appropriated and transferred to the sinkin  
13 fund of such public utility, no tax shall be levied for such  
14 purpose.

15 Sec. 40. A neglect or refusal of the board of directors to  
16 comply with the provisions of sections thirty-six, thirty-seven,  
17 thirty-eight and thirty-nine of this act shall constitute cause  
18 for removal from office of any member or members of the board  
19 guilty of such conduct or refusal.

20 Sec. 41. The receipts from the operation of any public  
21 utility shall be paid daily into the treasury of the district in a  
22 special fund set aside for such public utility. The board of  
23 directors may from time to time make appropriations from such  
24 funds for the following purposes:

25 1. For the payment of operating expenses of such public  
26 utility and for general salary and expense fund;

27 2. For repairs and reconstruction;

28 3. For payment of interest and sinking fund on the bonds  
29 issued for the acquisition, construction, or completion of such  
30 public utility;

31 4. For extensions and improvements;

32 5. For a reserve fund;

33 6. Whenever the reserve fund shall exceed one-half of the  
34 payment for operating expenses in the preceding fiscal year,  
35 the board of directors shall have power to appropriate such  
36 excess to the general fund.

37 Sec. 42. The books of account of the district shall be kept

1 in such manner as to show the true and complete financial  
2 results of the ownership and operation of each public utility,  
3 the actual cost of each public utility, all costs of maintenance,  
4 extension and improvement, and all operating expenses of every  
5 description. The accounts of the district shall be examined at  
6 least once a year by an expert accountant, who shall report  
7 to the directors the result of his examination, and who shall be  
8 employed and selected in such manner as the directors may  
9 direct, and who shall receive for his services such compensation  
10 to be paid out of the income or revenues of the district, as the  
11 directors may prescribe.

12 Every two years the directors of the district shall employ,  
13 at an expense of not to exceed the sum of twenty-five hundred  
14 dollars at any one time, to be paid out of the income and  
15 revenues of the district, as the board of directors may prescribe,  
16 an expert who shall be qualified to, and who shall with all due  
17 diligence, examine and report upon the system of accounts  
18 kept by the district; all the contracts of whatsoever kind made  
19 and entered into by the board of directors within the two years  
20 immediately preceding; the management of the utilities of the  
21 district, the operation of the same, the service furnished, and the  
22 rates charged by the district; the properties and investments of  
23 the district; all official acts of the board of directors relating to  
24 acquisition, construction, completion, extension, improvement,  
25 and betterment of the public utility or utilities of the district;  
26 the efficiency and adequacy of each public utility, and of the  
27 property used in connection therewith or with the operation  
28 thereof, the reasonableness of the service and commodities fur-  
29 nished, and of the rates and charges therefor; and generally  
30 all the business and affairs of the district relating to the own-  
31 ership, management and operation of each public utility of the  
32 district. Said expert shall in his report make such recom-  
33 mendations and suggestions as to him shall seem proper and  
34 required for the good of the district, and the efficient and  
35 economical or advantageous management and operation of the  
36 public utility or utilities of the district, and of the business and  
37 affairs of the district relating to such management and opera-



1 tion; and he shall in his said report make such recommenda-  
2 tions and suggestions as to the system of accounts kept, or in his  
3 judgment to be kept, by the district, in connection with each  
4 public utility, the classification of the public utilities of the  
5 district and the establishment of a system of accounts for each  
6 class, the manner in which such accounts shall be kept, the  
7 forms of accounts, records, and memoranda kept or to be kept,  
8 including accounts, records, and memoranda of receipts and  
9 expenditures of money, and depreciation and sinking fund ac-  
10 counts, as in his judgment may be proper and necessary.

11 Said expert shall be selected by the railroad commission of  
12 the State of California, and his selection shall be by said com-  
13 mission certified to the board of directors of the district,  
14 together with the name and address of the expert so selected,  
15 and several such experts may be so selected and certified. The  
16 board of directors of the district shall at least four months be-  
17 fore the time of each biennial district election in writing request  
18 said railroad commission to make such selection and certifi-  
19 cation, and said railroad commission shall make and transmit  
20 the same to the board of directors making such request within  
21 two weeks after the receipt of such request by said railroad  
22 commission. Within ten days after the receipt of such selec-  
23 tion and certification the board of directors of the district  
24 shall by resolution entered on its minutes employ the expert,  
25 or one of the experts, so selected and certified, fix the amount  
26 of his compensation either absolutely or on a per diem basis,  
27 and notify said expert of such appointment. The expert so  
28 employed shall enter upon the discharge of his duties at least  
29 ninety days before the date of the biennial district election,  
30 and shall complete his examination and file his report at least  
31 thirty days before the date of the biennial district election,  
32 then next impending. Said report shall be made to the electors  
33 of the district, in duplicate, one of said duplicates to be filed  
34 with the board of directors of the district, in the office of the  
35 clerk of the district, and one of said duplicates shall be filed  
36 in the office of the county recorder of the county wherein the  
37 district, or the greater portion thereof in point of population,

1 is situated. Such county recorder shall file, index and keep  
2 said report as a public record in his office, and shall make no  
3 charge for such filing.

4 Sec. 43. Only revenue producing utilities shall be ac-  
5 quired, owned or operated by a district formed under the  
6 provisions of this act. So far as possible the board of direc-  
7 tors shall fix such charges for commodities or service furnished  
8 by any revenue producing utility, as will pay the expenses of  
9 the government of the district, including salaries, office expenses,  
10 and other necessary disbursements; the operating expenses of  
11 the utility; the interest on any bonded indebtedness incurred  
12 for the acquisition, construction and completion thereof; and  
13 provide a sinking or other appropriate fund for the payment of  
14 the principal of such debt as it may become due, and also  
15 provide an appropriate fund for repairs, replacements and  
16 betterments; it being the intention of this section that the dis-  
17 trict pay all of such charges and expenditures, and the interest  
18 and principal of its bonded debt, from the revenues derived by  
19 the district from the operation of its public utilities, and that  
20 each public utility owned and operated by the district shall  
21 be self-sustaining.

22 Sec. 44. The district and any municipalities included  
23 therein, may at any time enter into appropriate contracts  
24 for the use by such municipality or municipalities of commod-  
25 ities or service furnished by any of the utilities acquired,  
26 owned, and operated, or authorized to be acquired, constructed,  
27 or completed by the district, as in this act provided. At any  
28 time after the formation of the district any municipality or  
29 municipalities included therein may advance to the district  
30 funds to meet the expenses of organization or the expenses of  
31 carrying on the work of the district, to be repaid to the munici-  
32 pality or municipalities so advancing said funds with stipu-  
33 lated interest, or to be credited by the district to the munici-  
34 pality as payment on account of commodities or service fur-  
35 nished or to be furnished to it by the district.

36 Sec. 45. (1) If from any cause the revenues of the district  
37 shall be inadequate to pay the principal or interest on any



1 bonded debt as it becomes due, the board of directors must,  
2 or if funds are needed to carry out the objects and pur-  
3 poses of the district, which can not be provided for out of the  
4 revenues of the district, then the board of directors may, levy  
5 a tax for such purposes as herein provided. The board shall  
6 state the purposes for which such taxes are necessary, and  
7 must fix, by ordinance, the amount of money necessary to be  
8 so raised by taxation. If the amount to be raised at any one  
9 time by taxation for a purpose other than interest or sinking  
10 fund payments exceeds the sum of fifty thousand dollars, such  
11 ordinance shall not go into effect before thirty days from its  
12 final passage.

13 (2) The board of directors may by ordinance provide the  
14 mode and manner of assessing, and of correcting and equaliz-  
15 ing assessments upon, the taxable property situated within  
16 the district, for the purpose of levying district taxes, and of  
17 levying and collecting such taxes, and may provide for the  
18 collection of delinquent taxes by actions or legal proceedings  
19 which are hereby authorized to be brought, prosecuted and  
20 maintained in the name of the district against the several  
21 owners of property from whom such taxes may be due and  
22 delinquent, for the purpose of recovering the amount of the  
23 delinquent tax, with penalties, interest, and costs; *provided*,  
24 that the provisions of such ordinance shall be conformable to  
25 general law.

26 (3) The board of directors may elect to avail itself of the  
27 assessment or assessments made by the assessor or assessors of  
28 the county or counties in which the district is situated, and may  
29 take such assessment or assessments as the basis for district  
30 taxation; *provided*, that the board of directors shall declare its  
31 said election by ordinance and file a certified copy of the  
32 same with the auditor or auditors of the county or counties in  
33 which the district is situated, on or before the first Monday  
34 in February of each year. Thereafter all assessments shall  
35 be made and taxes collected by the county assessor and tax  
36 collector, or county assessors or tax collectors, of the county  
or counties in which the district is situated until the board

1 of directors of the district by ordinance elect otherwise.  
2 The said county auditor or auditors thereupon must, on or  
3 before the second Monday in August of each year, transmit  
4 to the board of directors of the district a statement in writing  
5 showing the total value of all property within the district,  
6 which value shall be ascertained from the assessment book  
7 of the said county or counties for that year as equalized and  
8 corrected by the board or boards of supervisors of such county  
9 or counties. In case the board of directors shall so elect, as  
10 hereinabove provided, it shall, on the first week day in Sep-  
11 tember, or if such week day falls upon a holiday then on  
12 the first business day thereafter, fix the rate of taxes, desig-  
13 nating the number of cents upon each hundred dollars, using  
14 as a basis the value of property as assessed by the county  
15 assessor or assessors and so returned to such board of  
16 directors by the county auditor or auditors, as hereinabove  
17 provided, which rate of taxation shall be sufficient to raise the  
18 amount previously fixed by the board, as hereinabove pre-  
19 scribed; which acts by said board of directors are declared to  
20 be a valid assessment of such property and a valid levy of such  
21 taxes so fixed. The board of directors must immediately  
22 thereafter transmit to the county auditor or auditors of the  
23 county or counties in which the district is situated a statement  
24 of such rate so fixed by the board of directors.

25 The said auditor or auditors must then compute and enter in  
26 a separate column in the assessment book or assessment books,  
27 to be headed "Utility district tax, ----- public utility  
28 district (naming it)," the respective sums in dollars and cents  
29 [or dollars or cents] to be paid as a district tax on the prop-  
30 erty therein enumerated and assessed as being in the public  
31 utility district, using the rate of levy so fixed by the board of  
32 directors of the district, and the assessed value as found in such  
33 assessment book or assessment books. Such taxes so levied shall  
34 be collected at the same time and in the same manner as county  
35 taxes; and when collected the net amount, as ascertained as  
36 hereinafter provided, shall be paid to the treasurer of the



1 district, under the general requirements and penalties provided  
2 by law for the settlement of other taxes.

3 Each county auditor and tax collector affected by the pro-  
4 visions of this act shall annually file with the board of super-  
5 visors of his county itemized statements showing the additional  
6 expense to his office caused by the performance of the duties  
7 imposed upon him or his office under the provisions of this act,  
8 and upon the filing of such statements the board of supervisors  
9 shall, by an order spread upon its minutes, deduct such  
10 expenses from the tax money of the district, while in the hands  
11 of the tax collector, and transfer the amount deducted into the  
12 county salary fund; *provided*, that not more than one half of  
13 one per centum on the amount collected shall be so charged or  
14 deducted by any county. The board or boards of supervisors  
15 of such county or counties may provide such extra help for  
16 their county offices or officers as in their judgment may be  
17 necessary for the proper performance of their duties here-  
18 under.

19 Whenever any real property situate in any public utility  
20 district formed under the provisions of this act, which district  
21 has availed itself of the provisions of this subdivision of this  
22 section, has been sold for taxes and has been redeemed, the  
23 money paid for such redemption shall be apportioned and paid  
24 by the county treasurer or treasurers receiving the same to  
25 such public utility district, in the proportion which the tax due  
26 to such district bears to the total tax for which such property  
27 was sold.

28 (4) All taxes levied under the provisions of this act shall be  
29 a lien on the property on which they are levied; and the  
30 enforcement of the collection of such taxes may be had in the  
31 same manner and by the same means as is provided by law for  
32 the enforcement of liens for state and county taxes, all the  
33 provisions of law relating to the enforcement of the latter  
34 being hereby made a part of this act, so far as applicable; *pro-*  
35 *vided*, that where a public utility district has not availed itself  
36 of the provisions of subdivision (3) of this section, the delin-  
37 quent property sold by the tax collector of the district for

1 delinquent taxes shall be struck off by him to the district and  
2 shall thereafter be redeemed or disposed of as is provided by  
3 law in the case of delinquent property sold to the state for  
4 delinquent state and county taxes.

5 **Sec. 46.** (1) The board of directors shall classify all the  
6 places of employment in or under the district, and in or under  
7 all the offices and departments of the district, with reference to  
8 the examinations hereinafter provided for, excepting the places  
9 and offices specified in subdivision four hereof. The places so  
10 classified by the board of directors shall constitute the classified  
11 civil service of the district, and no appointment to any such  
12 place shall be made except according to the rules hereinafter  
13 mentioned.

14 (2) The board of directors shall make rules to carry out the  
15 purposes of this section, and for examinations, appointments,  
16 promotions, and removals, and may from time to time make  
17 changes in existing rules. All rules and all changes therein  
18 shall be forthwith printed for distribution by the board of  
19 directors.

20 (3) The examinations shall be practical in their character,  
21 and shall relate to those matters only which will fairly test the  
22 relative capacity of the persons examined to discharge the  
23 duties of the positions to which they seek to be appointed, and  
24 shall include, when appropriate, tests of manual or professional  
25 skill. The selection of laborers shall be governed by priority  
26 of application as far as may be practicable. No question in  
27 any examination shall relate to political or religious opinions  
28 or affiliations. The board of directors shall control all exami-  
29 nations.

30 (4) The manager, the engineer, the clerk, accountant, and  
31 the treasurer of the district shall not be included within the  
32 classified civil service of the district.

33 **Sec. 47.** Except as otherwise provided in this act, the board  
34 of directors shall annually advertise, for at least five days in a  
35 newspaper of general circulation in the district, for sealed bids  
36 for furnishing the district with goods, merchandise, stores, sub-



1 subsistence, printing, materials, and all other supplies; and  
2 advertising.

3 All bids shall be upon a schedule showing all articles needed  
4 by the district and the several offices thereof, prepared by the  
5 clerk of the district, and shall state separately the price of each  
6 article to be furnished; and any person may bid upon any  
7 article separately.

8 Except as otherwise provided by this act, the board of  
9 directors shall determine annually what goods, merchandise,  
10 stores, subsistence, materials and other supplies will be needed  
11 by the district for the ensuing year.

12 In considering such bids the board of directors may accept  
13 or reject all or any of them, or may accept or reject a part of  
14 any such bid, preference being given, however, to the lowest  
15 responsible bidder. All supplies furnished the district, or any  
16 officer thereof, shall be furnished at a price no greater than  
17 is specified in the bid which may be accepted by the board. The  
18 award as to each article shall in all cases be made to the lowest  
19 bidder for such article.

20 All bids shall be opened by the board at an hour and place  
21 to be stated in the advertisements for proposals, in the presence  
22 of all bidders who attend, and the bidders may inspect the bids.  
23 All contracts shall be made with the lowest responsible bid-  
24 der, who shall give bonds with sufficient sureties for the faithful  
25 performance of his contract.

26 Notices of proposals for furnishing the aforesaid articles  
27 shall mention said articles in general, and shall state that the  
28 conditions and schedule may be found in the office of the  
29 clerk of the district, and shall also state that such articles are  
30 to be delivered at such times, in such quantities, and in such  
31 manner as the board of directors may designate.

32 All proposals shall be accompanied with a certificate of  
33 deposit, or certified check on a solvent bank within the dis-  
34 trict, or county wherein the district is located, of ten per-  
35 centum of the amount of the bid, payable at sight to the order  
36 of the clerk of the district. If the bidder to whom the con-

1 tract is awarded shall for five days after such award fail or  
2 neglect to enter into the contract and file the required bond,  
3 the clerk shall draw the money due on such certificate of  
4 deposit or check and pay the same into the treasury of the  
5 district; and under no circumstances shall the certificate of  
6 deposit or check or the proceeds thereof be returned to such  
7 defaulting bidder.

8 The clerk shall furnish printed blanks for all such proposals,  
9 contracts and bonds.

10 Advertising shall not be classified, and shall be construed to  
11 mean the advertising and publication of all official reports,  
12 orders, ordinances, resolutions, notices inviting proposals, and  
13 all notices of every nature relating to work or business of the  
14 district. No part or kind of such advertising shall be charged  
15 or contracted for at a higher rate than any other part or kind  
16 of the same is charged or contracted for; except in the case  
17 of the delinquent tax list. The advertising of the delinquent  
18 tax list shall be let to the lowest responsible bidder, on a sep-  
19 arate bidding from all other advertising. A square of adver-  
20 tising shall be two hundred and thirty-four ems nonpareil.

21 No officer or employee of the district shall order any article  
22 or shall make any publication which is not expressly author-  
23 ized by this act or by the board of directors.

24 Unless the amount involved in the purchase at any one time  
25 of any articles, for which no contract has been entered into as  
26 hereinabove provided, exceeds the sum of five hundred dollars,  
27 the board of directors may purchase such article or articles  
28 without the necessity of advertising or letting contracts there-  
29 for; but where the cost of any article or articles, for which no  
30 contract has been entered into as hereinabove provided, exceeds  
31 the sum of five hundred dollars, the board of directors shall  
32 advertise for at least five days in a newspaper of general circu-  
33 lation in the district for sealed bids for furnishing the district  
34 such article or articles, and shall in the matter of opening and  
35 accepting such bids and the letting of contracts for the fur-  
36 nishing of such article or articles in all respects proceed in the



1 manner and form in this section hereinabove provided in the  
2 case of contracts for annual supplies.

3 SEC. 48. Where the cost of any construction, replace-  
4 ment, improvement, alteration, extension, or other proposed  
5 work of the district exceeds the sum of one thousand dollars,  
6 the board of directors must adopt plans and specifications,  
7 strain-sheets, and working details, as may be proper, and must  
8 advertise for bids for such work in accordance with the plans  
9 and specifications so adopted. All bidders shall be afforded  
10 an opportunity to examine such plans and specifications and  
11 said board shall award the contract to the lowest responsible  
12 bidder, and the plans and specifications so adopted shall be  
13 attached to and become part of the contract; and the person  
14 or corporation to whom the contract is awarded shall be  
15 required to execute a bond, to be approved by the board of  
16 directors, for the faithful performance of the contract: *pro-*  
17 *vided*, that in cases of great emergency, by the consent of at  
18 least two-thirds of the board of directors, they may proceed  
19 at once to do or cause to be done all repair or replacement  
20 work necessary to meet such emergency without notice; and  
21 *provided, further*, that nothing herein contained shall be  
22 deemed to prohibit the board of directors from doing or caus-  
23 ing to be done directly by the district, and without any con-  
24 tract therefor, any or all work necessary or proper in or about  
25 the making of all current and ordinary repairs or in or about  
26 current and ordinary upkeep or maintenance.

27 No plans and specifications when once adopted shall be  
28 altered or changed in any manner whereby the cost of the  
29 proposed work shall be increased, except by a vote of two-  
30 thirds of the board of directors.

31 Whenever the board of directors shall enter into a contract  
32 for any such work, such contract shall not be altered or changed  
33 in any manner, unless they shall, by a vote of two-thirds of  
34 their number, and with the consent of the contractor, first so  
35 order. And whenever any such change or alteration is so  
36 ordered, the particular change or alteration shall be specified,  
37 in writing, and the cost thereof agreed upon between the board

1 and the contractor. In no case shall the board pay or become  
2 liable to pay for any extra work done or extra material  
3 furnished.

4 SEC. 49. No claim shall be paid until allowed by the board,  
5 and only upon a warrant signed by the president and counter-  
6 signed by the clerk.

7 SEC. 50. The cost and expense of purchasing and acquiring  
8 property and works, and of constructing the works and  
9 improvements herein provided for, shall be wholly paid out of  
10 the construction fund.

11 The maximum time of labor or service required of any  
12 laborer, workman, or mechanic employed upon any work of  
13 the district, whether so employed directly by the district and  
14 its officers, or by a contractor or sub-contractor, shall be eight  
15 hours during any one calendar day, except in case of emer-  
16 gency.

17 The board of directors shall fix the hours of labor or service  
18 required of all employees of the district, and their compensa-  
19 tion; and shall employ all necessary employees or may by ordi-  
20 nance provide for their employment by the several officers of  
21 the district. The board of directors may from time to time  
22 contract for or employ any professional services required by  
23 the district, or by the board, or any officer of the district.

24 SEC. 51. The board of directors or other officers of the dis-  
25 trict shall have no power to incur any debt or liability what-  
26 ever, either by issuing bonds or otherwise, in excess of the  
27 express provisions of this act, and any debt or liability incurred  
28 in excess of such express provisions shall be and remain abso-  
29 lutely void.

30 SEC. 52. All expenditures of money for the benefit of the  
31 district on any account or for any purpose, all contracts of  
32 every kind, and all tax levies for a purpose other than interest  
33 or sinking fund payments shall be first authorized by the board  
34 of directors, by ordinance, in every case when any such  
35 expenditure, or the amount involved in any such contract,  
36 exceeds the sum or amount of one hundred thousand dollars,  
37 or the amount proposed to be raised by such tax levy exceeds



1 the sum or amount of fifty thousand dollars, and no such  
2 ordinance shall go into effect before thirty days from its final  
3 passage. During said thirty days a petition, signed by quali-  
4 fied voters of the district equal to ten per centum of the entire  
5 vote cast within such district for all candidates for governor  
6 of the state at the last preceding general election at which a  
7 governor was voted for, and protesting against the passage of  
8 such ordinance, may be presented to the board of directors.  
9 Immediately upon the receipt of such petition the board of  
10 directors shall cause the clerk of the district to examine and  
11 verify the signatures to such petition, and to certify the result  
12 of such examination to the board of directors within ten days.  
13 If the petition is found to be insufficient, the clerk shall certify  
14 to the number of qualified electors required to make such  
15 petition sufficient in addition to the signatures already thereon  
16 and verified or found genuine by him, and said petition may  
17 then be amended by filing a supplemental petition within ten  
18 days from the date of such certificate. The clerk shall within  
19 ten days after the filing of such supplemental petition make  
20 a like examination of the same and certify to the result of  
21 such examination, as herein provided. Said ordinance shall  
22 remain suspended from going into operation until the com-  
23 pletion of such examination and verification of said petition  
24 or supplemental petition, and the certification of the result of  
25 such examination; and in case said petition, or petition as  
26 amended, is shown to be sufficient by such certificate said ordi-  
27 nance shall be suspended from going into effect or operation  
28 and it shall be the duty of the board of directors to reconsider  
29 such ordinance. If said board of directors shall thereupon not  
30 entirely repeal said ordinance, it shall submit the same to a  
31 vote of the electors either at a general district election or at  
32 a special district election to be called for the purpose, and such  
33 ordinance shall not go into effect or become operative unless a  
34 majority of the voters voting upon the same shall vote in favor  
35 thereof. Such petitions, in the matter of form, signatures, and  
36 preparation thereof, and the proceedings based thereon, in the  
37 matter of holding or calling and conducting said election, the

1 manner of voting thereat; canvassing the return and declaring  
2 the result, shall conform as nearly as may be practicable, and  
3 except as herein otherwise expressly provided, to the pro-  
4 visions of the general law of the state governing and relating  
5 to direct legislation or the referendum by incorporated cities  
6 and towns, which are hereby made applicable hereto as far as  
7 may be practicable.

8 SEC. 53. No director or any other officer of the district shall  
9 in any manner be interested, directly or indirectly, in any con-  
10 tract awarded or to be awarded by the board of directors, or in  
11 the profits to be derived therefrom; and for any violation of  
12 this provision such officer shall be deemed guilty of a misde-  
13 meanor, and such conviction shall work a forfeiture of his  
14 office, and he shall be punished by a fine not exceeding five  
15 hundred dollars, or by imprisonment in the county jail not  
16 exceeding six months, or by both such fine and imprisonment.

17 SEC. 54. The board of directors may at any time within  
18 sixty days from the date of the election authorizing the issu-  
19 ance of any bonds cause to be brought in the name of the dis-  
20 trict an action in the superior court of the county in which  
21 said district or the greater portion thereof is located, to deter-  
22 mine the validity of any such bonds. Such action shall be in  
23 the nature of a proceeding *in rem*, and jurisdiction of all  
24 parties interested may be had by publication of summons for  
25 at least once a week for three weeks in some paper of general  
26 circulation published in the county where the action is pending,  
27 such paper to be designated by the court having jurisdiction  
28 of the proceedings. Jurisdiction shall be complete within ten  
29 days after the full publication of such summons in the manner  
30 herein provided. Any one interested may at any time before  
31 the expiration of said ten days appear and by proper pro-  
32 ceedings contest the validity of such bonds. Such action shall  
33 be speedily tried and judgment rendered declaring such bonds  
34 to be valid or invalid. Either party may have the right to  
35 appeal to the supreme court at any time within thirty days  
36 after the rendition of such judgment, which appeal must be  
37 heard and determined within three months from the time of



1 taking such appeal. After the expiration of ninety days from  
2 the date of such election no action may be brought by any  
3 person to contest or question the validity of said bonds and  
4 proceedings thereto. If there be more than one action or  
5 proceeding involving the validity of any such bonds, they shall  
6 be consolidated and tried together. The court hearing any pro-  
7 ceeding or action inquiring into the regularity, legality or cor-  
8 rectness of the proceedings leading up to the issuance of bonds  
9 or the validity of such bonds must disregard any error, irregu-  
10 larity, or omission which does not affect the substantial rights  
11 of the parties to said action or proceeding. The rules of  
12 pleading and practice provided by the Code of Civil Procedure,  
13 which are not inconsistent with the provisions of this act, are  
14 applicable to all actions or proceedings herein provided for.  
15 The motion for a new trial of any such action or proceeding  
16 must be heard and determined within ten days from the filing  
17 of the notice of intention. The costs on any proceeding or  
18 action herein provided for may be allowed and apportioned  
19 between the parties, or taxed to the losing party, in the dis-  
20 cretion of the court.

21 **SEC. 55.** Every incumbent of an elective office of a public  
22 utility district formed hereunder is subject to recall by the  
23 voters of such public utility district, in accordance with the  
24 recall provisions of the general laws of the state with refer-  
25 ence to county officers.

26 **SEC. 56.** The legal title to all property acquired under  
27 the provisions of this act shall immediately, and by operation  
28 of law, be vested in such public utility district, and shall be  
29 held by such district in trust, and is hereby dedicated and set  
30 apart to the uses and purposes set forth in this act.

31 **SEC. 57.** No suit shall be brought against the district on  
32 any claim for money or damages until a claim or demand  
33 therefor, setting forth with reasonable certainty the nature  
34 and various items of the claim or demand and verified by the  
35 claimant, or his authorized agent, has been presented to the  
36 directors and rejected in whole or in part. In case the board  
37 of directors shall fail or refuse to allow or reject such claim,

1 either wholly or in part, for a period of six months after its  
2 presentation, such failure or refusal shall upon the expiration  
3 of such period be deemed a rejection of the claim. All claims  
4 against the district must be presented to the board of directors  
5 and filed with the clerk of the district within one year after  
6 the debt, or the last item thereof, for which the claim is made,  
7 shall have been incurred, or within one year after the occur-  
8 rence from which the damages are claimed to have arisen.  
9 Otherwise there shall be no recovery on any such claim.

10 **SEC. 58.** Nothing in this act shall be so construed as re-  
11 pealing or in anywise modifying the provisions of any other  
12 act relating to public utility districts, except in so far as  
13 any of the provisions of such act may be inconsistent with any  
14 of the provisions of this act.

15 **SEC. 59.** If any section, sub-section, sentence, clause or  
16 phrase of this act is for any reason held to be unconstitutional,  
17 such decision shall not affect the validity of the remaining  
18 portions of the act. The legislature hereby declares that it  
19 would have passed this act, and each section, sub-section, sen-  
20 tence, clause and phrase thereof, irrespective of the fact that  
21 any one or more other sections, sub-sections, sentences, clauses  
22 or phrases be declared unconstitutional.

23 **SEC. 60.** The term "municipality" as used in this act  
24 shall include a consolidated city and county, city or town, and  
25 shall be understood and so construed as to include, and is  
26 hereby declared to include, all corporations heretofore organ-  
27 ized and now existing or those hereafter organized for  
28 municipal purposes within such public utility district. The  
29 word "district" shall apply, unless otherwise expressed or  
30 used, to a public utility district formed under the provisions  
31 of this act. And the word "board" and the words "board  
32 of directors" shall apply to board of directors of such district.



Water Com. Bill in force 1915

Assembly Bill No. 642.

CHAPTER 586.

**An act to regulate the use of water which is subject to such control by the State of California, and in that behalf creating a state water commission; specifying and providing for the appointment of the members of said commission; fixing the terms of office and compensation of the members of said commission; fixing the powers, duties and authority of said commission and its members; providing for the filling of vacancies in the membership of said commission; providing for the removal from office of the appointed members of said commission; providing for the co-operation of courts with said commission; providing that certain courts shall take judicial notice of certain acts of the state water commission; specifying the duties of all persons summoned as witnesses before said commission or any of its members; appropriating money for carrying out the provisions of this act; providing for the payment of the indebtedness and expenses of said commission, its members and employees; declaring what water is unappropriated; providing for the utilization of water and the works necessary to such utilization to the full capacity of streams or of such portion or portions of such capacity as the public good may require; declaring what water may be appropriated; declaring that the non-application for ten consecutive years of any portion of the waters of any stream to lands riparian to such stream shall be conclusive presumption that the use of such non-applied water is not needed on said riparian lands for a useful or beneficial purpose; declaring that such non-applied water shall be deemed to be in the use of the state and subject to appropriation; declaring the duties of those who desire to appropriate water; declaring the periods for which water may be appropriated and the conditions under which water may be appropriated; providing for the payment of fees and charges by the applicants for permission to appropriate water and by the appropriators of water; providing for the ascertainment and adjudication of water rights; providing for the bringing of actions by certain persons, or, upon the direction of the state water commission, by the attorney general, for the quieting of title to water rights; specifying certain duties of the claimants, possessors or users of water or water rights; declaring water rights forfeited under certain conditions; regulat-**



ing the appropriation of water; excepting cities, cities and counties, municipal water districts, irrigation districts and lighting districts from certain provisions of this act; defining certain words and terms used in this act; repealing all acts or parts of acts in conflict with this act; declaring how this act shall be known; making legislative declaration concerning those parts of this act which may not be declared unconstitutional.

[Approved June 16, 1913.]

*The people of the State of California do enact as follows:*

**SECTION 1.** For the purpose of carrying out the provisions of this act a state water commission consisting of five persons is hereby created and established. Two members of said commission shall be, ex officio, the governor of the state and the state engineer, respectively. Three members of said commission shall be appointed by the governor for the term of four years; *provided, however,* that of the members first appointed one shall be appointed to hold office until the first day in January, nineteen hundred and fourteen, one until the first day in January, nineteen hundred and fifteen, and one until the first day in January, nineteen hundred and sixteen. Such appointive commissioners shall be men of practical knowledge or experience in the application and use of waters for irrigation, mining and municipal purposes, and shall be so appointed that at least one thereof shall have had practical knowledge and experience in the use of water for agricultural purposes, and one thereof shall have had practical knowledge and experience in the use of water for mining purposes, and one thereof shall have had practical knowledge and experience in the use of water for municipal purposes. The commissioners shall elect one of their number president of the commission. The appointed members of said commission shall each receive as compensation for his services the sum of five thousand dollars per annum. No commissioner who is directly or indirectly interested in any matter before the commission shall sit with the commission during the hearing of such matter; nor shall he be detailed by the commission to investigate or report on any such matter; nor shall he take part in any determination of any such matter. But the governor shall have the power and authority, upon request of the commission, to appoint *pro tempore* some disinterested person to sit and act in the place and stead of such interested commissioner. Such *pro tempore* commissioner shall have compensation for the time of service equal to the compensation of a commissioner during such service and shall have the power and authority of

the same, only in the matter for the investigation and determination of which he shall have been appointed and his connection with the commission shall cease and determine upon the completion of the investigation and determination for which he was appointed. But the commissioner in whose place and stead he sits shall have power, compensation and authority in all other cases.

**SEC. 2.** Whenever a vacancy in the state water commission shall occur, the governor shall forthwith appoint a qualified person to fill the same for the unexpired term. The legislature, by a two-thirds vote of all members elected to each house, or the governor, may remove any one or more of the appointed commissioners from office. The commission shall have a seal bearing the following inscription: State water commission of California. The seal shall be affixed to all authentications of copies of records and to such other instruments as the commission may direct. All courts shall take judicial notice of said seal.

**SEC. 3.** A majority of the appointed commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. The act of a majority of the commissioners present, when in session as a board, shall be deemed to be the act of the commission; but any investigations, inquiry or hearing which the commission has power to undertake or hold may be undertaken or held by or before any commissioner or commissioner designated for the purpose by the commission; and every finding, order, ascertainment or decision made by the commissioners or the commissioner so designated pursuant to such investigation, inquiry or hearing, when approved by the commission and ordered filed in its office, shall be and be deemed to be the finding, order, ascertainment or decision of the commission.

**SEC. 4.** (a) Each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, maps, accounts, documents and testimony in any inquiry, investigation, hearing, ascertainment or proceeding ordered or undertaken by the commission in any part of the state. Each witness who shall appear by order of the commission or any commissioners or a commissioner shall receive for his attendance the same fees and mileage allowed by law to witnesses in civil cases, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness who has not been required to attend at the request of any party shall be subpoenaed by the commission his fees and



mileage shall be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission or commissioners as directed in the subpoena. All fees and mileage to which any witness is entitled under the provisions of this section may be collected by action therefor instituted by the person to whom such fees are payable. But no witness shall be compelled to attend as a witness before the water commission or any water commissioner or water commissioners out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of hearing.

(b) The superior court of the county or city and county in which any inquiry, investigation, hearing or proceedings may be held by the commission or any commissioner or commissioners shall have the power to compel the attendance of witnesses and the production of papers, maps, books, accounts, documents and testimony as required by any subpoena issued by the commission or any commissioner or commissioners. The commission, commissioners or commissioner before whom the testimony is to be given or produced may, in case of the refusal of any witness to attend or testify or produce any papers, maps, books, accounts or documents required by such subpoena, report to the superior court in and for the county or city and county in which the proceeding is pending by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or for the production of said papers, maps, books, accounts or documents and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers, maps, books, accounts or documents required by the subpoena before the commission, commissioners, or commissioner in the cause or proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such cause or proceeding, and ask an order of said court, compelling the witness to attend, testify, and produce said papers, maps, books, accounts or documents before the commission, or commissioners, or commissioner. The court, upon the petition of the commission or commissioners or commissioner, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than

ten days from the date of the order, and then and there show cause, if any he have, why he refused to obey said subpoena, or refused to answer questions propounded to him by said commission, or any commissioners or any commissioner, or neglected, failed or refused to produce before said commission, or any commissioners or any commissioner the books, papers, maps, accounts or documents called for in said subpoena. A copy of said order and the petition therefor shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission or any commissioners or a commissioner, the court shall thereupon enter an order that said witness appear before the commission or commissioners or commissioner at the time and place fixed in said order, and testify or produce the required papers, maps, books, accounts or documents, or both testify and produce; and upon failure to obey said order said witness shall be dealt with as for contempt of court.

(c) The state water commission or any commissioners or commissioner, or any party to a proceeding before the commission or any commissioners or any commissioner, may in any investigation or hearing before the commission or any commissioners or any commissioner cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state.

(d) No person shall be excused from testifying or from producing any book, map, document, paper or account in any investigation or inquiry by or hearing before the commission or any commissioners or commissioner upon the ground that the testimony or evidence, book, map, document, paper or account required of him may tend to incriminate him or subject him to penalty or forfeiture. But no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing material to the matter under investigation by said commission, or any commissioners, or any commissioner concerning which he shall have been compelled to testify or to produce documentary evidence; *provided*, that no person so testifying or producing shall be exempt from prosecution and punishment for any perjury committed by him in his testimony.

SEC. 5. A full and accurate record of business or acts performed or of testimony taken by the commission or any member or members thereof in pursuance of the provisions of this act shall be kept and be placed on file in the office of said water commission.

SEC. 6. The state water commission shall take, charge and collect the following fees: for copies and records not required to be certified or otherwise authenticated by the commission,



ten cents for each folio; for certified copies of official documents and orders filed in its office, fifteen cents for each folio, and one dollar for every certificate under seal affixed thereto; for certified copies of evidence and proceedings before the commission, fifteen cents for each folio. The commission may fix reasonable charges for publications issued under its authority. All fees charged and collected under this section shall be paid, at least once each week, accompanied by a detailed statement thereof, into the treasury of the state.

SEC. 7. For the purpose of carrying out the provisions of this act the state water commission is authorized to pass such necessary rules and regulations as it may from time to time deem advisable, and to appoint and remove at its pleasure a secretary who shall have charge of its books and records and perform such other duties as from time to time may be prescribed and whose salary shall be fixed by the water commission; and the state water commission may also employ such expert, technical and clerical assistance, and upon such terms, as it may deem proper.

SEC. 8. For the purpose of carrying out the provisions of this act the sum of fifty thousand dollars is hereby appropriated for the fiscal years 1913-1914 and 1914-1915 out of any money in the state treasury not otherwise appropriated; and the state controller is hereby authorized and directed to draw warrants upon such sum from time to time upon the requisition of the state water commission approved by the state board of control, and the state treasurer is hereby authorized and directed to pay such warrants.

SEC. 9. All indebtedness incurred for salaries, and all necessary costs in traveling and other expenses of said commission, and each of its members and persons employed by it, while actually engaged in the business of said commission, shall be paid by the state out of the funds hereby appropriated, upon the sworn statement of the person or persons incurring such indebtedness, and upon the requisition of the state water commission, approved by the state board of control, and the state controller is hereby authorized to draw warrants upon the state treasurer for said indebtedness, salaries, costs and expenses, as provided by law for the payment of similar costs and expenses and the drawing of similar warrants.

SEC. 10. The state water commission is hereby authorized and empowered to investigate for the purpose of this act all streams, stream systems, portions of stream systems, lakes, or other bodies of water, and to take testimony in regard to the rights to water or the use of water thereon or therein, and to ascertain whether or not such water, or any portion thereof, or the use of said water or any portion thereof, heretofore

filed upon or attempted to be appropriated by any person, firm, association, or corporation, is appropriated under the laws of this state.

SEC. 11. All water or the use of water which has never been appropriated, or which has been heretofore appropriated and which has not been in process, from the date of the initial act of appropriation, of being put, with due diligence in proportion to the magnitude of the work necessary properly to utilize for the purpose of such appropriation such water or the use of water, or which has not been put, or which has ceased to be put to some useful or beneficial purpose, or which may hereafter be appropriated and cease to be put, to the useful or beneficial purpose for which it was appropriated, or which in the future may be appropriated and not be, in the process of being put, from the date of the initial act of appropriation, to the useful or beneficial purpose for which it was appropriated, with due diligence in proportion to the magnitude of the work necessary properly to utilize for the purpose of such appropriation such water or the use of water, is hereby declared to be unappropriated. And all waters flowing in any river, stream, canyon, ravine or other natural channel, excepting so far as such waters have been or are being applied to useful and beneficial purpose upon, or in so far as such waters are or may be reasonably needed for useful, and beneficial purposes upon lands riparian thereto, or otherwise appropriated, is and are hereby declared to be public waters of the State of California and subject to appropriation in accordance with the provisions of this act. If any portion of the waters of any stream shall not be put to a useful or beneficial purpose to or upon lands riparian to such stream for any continuous period of ten consecutive years after the passage of this act, such non-application shall be deemed to be conclusive presumption that the use of such portion of the waters of such stream is not needed upon said riparian lands for any useful or beneficial purpose; and such portion of the waters of any stream so non-applied, unless otherwise appropriated for a useful and beneficial purpose is hereby declared to be in the use of the state and subject to appropriation in accordance with the provisions of this act. In any case where a reservoir or reservoirs have been or shall hereafter under the provisions of this act be constructed or surveyed, laid out and proposed to be constructed for the storage of water for a system, which water is to be used at one or more points under appropriations of water heretofore or hereafter made, which appropriations and rights thereunder are now, or shall hereafter be held and owned by the person or corporation owning such reservoir site or sites and constructing such reservoir or reservoirs, such reservoir or reservoirs



and appropriations and rights shall, in the discretion of the state water commission, constitute a single enterprise and unit, and work of constructing such reservoir or reservoirs, or any of them, or work on any one of such appropriations shall, in the discretion of said commission, be sufficient to maintain and preserve all such applications for appropriations and rights thereunder.

SEC. 12. The state water commission shall have authority to, and may, for good cause shown, upon the application of any appropriator or user of water under an appropriation made and maintained according to law prior to the passage of this act, prescribe the time within which the full amount of the water appropriated shall be applied to a useful or beneficial purpose; *provided*, that said appropriator or user shall have proceeded, with due diligence in proportion to the magnitude of the project, to carry on the work necessary to put the water to a beneficial use; and in determining said time said commission shall grant a reasonable time after the construction of the works or canal or ditch or conduits or storage system used for the diversion, conveyance or storage of water; and in doing so said commission shall also take into consideration the cost of the application of such water to the useful or beneficial purpose, the good faith of the appropriator, the market for water or power to be supplied, the present demand therefor, and the income or use that may be required to provide fair and reasonable returns upon the investment and any other facts or matters pertinent to the inquiry. Upon prescribing such time the state water commission shall issue a certificate showing its determination of the matter. For good cause shown, the state water commission may extend the time by granting further certificates. And, for the time so prescribed or extended, the said appropriator or user shall be deemed to be putting said water to a beneficial use.

And if at any time it shall appear to the state water commission, after a hearing of the parties interested and an investigation, that the full capacity of the works built or constructed, or being built or constructed, under an appropriation of water or the use thereof made under the provisions of this act has not developed or can not develop the full capacity of the stream at the point where said works have been or are being built or constructed, and that the holder of the said appropriation will not or can not, within a period deemed to be reasonable by the commission, develop the said stream at said point to such a capacity as the commission deems to be required by the public good, then and in that case the said commission, in its discretion, may permit the joint occupancy and use, with the holder of the appropriation, to the extent necessary to develop the stream to its full capacity or to such portion of said capacity

as may appear to the state water commission to be advisable, by any and all persons, firms, associations, or corporations applying therefor, of any dam, tunnel, diversion works, ditch, or other works or constructions already built or constructed or in process of being built or constructed under this act; *provided*, that said commission shall take into consideration the reasonable cost of the original and new work, the good faith of the applicant, the market for water or power to be supplied by the original and the new work, and the income or use that may be required to provide fair and reasonable returns upon such cost; *provided, further*, that the applicant or applicants shall be required to pay to the party or parties owning said dam, tunnel, diversion works, ditch, or other works or constructions a pro rata portion of the total cost of the old and the new works, said pro rata portion to be based upon the proportion of the water used by the original and the subsequent users of said dam, tunnel, diversion works, ditch, or other works or constructions, if the water is used or to be used for irrigation or domestic purposes; or, if the water is used or to be used for the generation of electricity or electrical or other power, the said pro rata portion shall be based upon the relative amount of electricity or electrical or other power capable of being developed by the original and the new works; or, if a portion of the water utilized under a joint occupancy of any dam, tunnel, diversion works, ditch or other works or construction, shall be used for the purpose of irrigation and another portion of said water shall be used for the generation of electricity or electrical or other power, then and in that case the applicant or applicants for joint occupancy shall be required to pay to the party or parties owning said dam, tunnel, diversion works, ditch, or other works or constructions a pro rata portion of the total cost of the old and new works, said pro rata portion to be based upon the proportion of the relative amount of water used by each joint occupant and the income derived by each said joint occupant from said joint occupancy; or, if any of the waters used under such joint occupancy shall be utilized for purposes other than those specified above, then and in that case the applicant or applicants for such joint occupancy shall be required to pay to the party or parties owning said dam, tunnel, diversion works, ditch, or other works or constructions, such a pro rata portion of the total cost of the old and new works as shall appear to the state water commission to be just and equitable. Said applicant or applicants shall also be required to pay a proper pro rata share, based as above, of the cost of maintaining said dam, tunnel, diversion works, ditch or other works or constructions, on and after beginning the occupancy and use thereof. Furthermore, the state water commis-



sion if it appears to the said commission that the full capacity of the works built or constructed, or being built or constructed, under an appropriation of water or the use thereof under this act, will not develop the full capacity of the stream at that point, and it appears to the commission that the public good requires it, and the commission specifically so finds after investigation and hearing of the parties interested, may permit any person, firm, association or corporation to repair, improve, add to, supplement, or enlarge, at his or its proper cost, charge and expense, any dam, tunnel, diversion works, ditch, or other works or constructions already built or constructed or in process of being built or constructed under the provisions of this act, and to use the same jointly with the owners thereof; *provided*, that the said repairing, improving, adding to, supplementing, or enlarging, shall not materially interfere with the proper use thereof by the owner of said dam, tunnel, diversion works, ditch, or other works or constructions or shall not materially injure said dam, tunnel, diversion works, ditch or other works or constructions. And the state water commission shall determine the pro rata and other costs provided for in this section.

SEC. 13. All rights granted or declared by this act shall be ascertained, adjudicated and determined in the manner and by the tribunals as provided in this act.

SEC. 14. This act shall not be held to bestow, except as expressly provided in this act, upon any person, firm, association or corporation, any right where no such right existed prior to the time this act takes effect.

SEC. 15. The state water commission shall allow, under the provisions of this act, the appropriation of unappropriated water or of the use thereof, or of water or of the use thereof which may hereafter cease to be appropriated, or which may hereafter be declared to be unappropriated, or which, having been used under claim of riparian proprietorship or appropriation finds its way back into a stream, lake or other body of water and also such water as is declared under section eleven of this act to be subject to appropriation.

SEC. 16. Every application for a permit to appropriate water shall set forth the name and post-office address of the applicant, the source of water supply, the nature and amount of the proposed use, the location and description of the proposed headworks, ditch, canal and other works; the proposed place of diversion and the place where it is intended to use the water; the time within which it is proposed to begin construction, the time required for completion of the construction, and the time for the complete application of the water to the proposed use. If for agricultural purposes, the application shall, besides the above general requirements, 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, besides the general requirements prescribed above, 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 use to which the power is to be applied; if for storage in a reservoir, it shall give, in addition to the general requirements prescribed above, the height of dam, the capacity of reservoir, and the use to be made of the impounded waters; if for municipal water supply, it shall give, besides the general requirements specified above, 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, in addition to the general requirements prescribed above, the nature and location of the mines to be served and the methods of supplying and utilizing the water. All applications shall be accompanied by as many copies of such maps, drawings, and other data as may be prescribed or required by the state water commission, and such maps, drawings, and other data shall be considered as part of the application. If any permittee or licensee, or the heirs, successors, or assigns of any permittee or licensee, desire to change the point of diversion from the point of diversion specified in the original application, or after the granting of any permit or license, such change or changes may be made only upon the permission of the state water commission; *provided*, that, before granting such permission, such applicant must establish, to the satisfaction of the state water commission, and such commission must so find, that such change in the place of diversion will not operate to the injury of any other appropriator or legal user of such waters before permitting such change in the place of the diversion. Upon receipt of application for permission to make such change in the place of diversion, the commission shall, by order, fix a time within which any person interested may appear in opposition to such application, and such applicant shall, if the commission so require, cause to be published at least once a week for four consecutive weeks, in a newspaper or newspapers of general circulation in the county in which is situated both the old and new points of diversion, a copy of said order. Proof of such publication shall be by affidavit of the publisher of such newspaper. Should any objection be made to the change in point of diversion so applied for, the state water commission shall fix a time for the hearing of said application and of the objections thereto, which time shall be not less than thirty days nor more than sixty days after the period of said publication, and upon such hearing the said commission shall grant or refuse, as the facts shall warrant, such permission to change place of diversion.



SEC. 17. Any person, firm, association or corporation may apply for and secure from the state water commission, in conformity with this act and in conformity with reasonable rules and regulations adopted from time to time by the state water commission, a permit for any unappropriated water or for water which having been appropriated or used flows back into a stream, lake or other body of water within this state. And any application so made shall give to the applicant a priority of right as of the date of said application to such water or the use thereof until such application shall have been approved or rejected by said commission; *provided*, that such priority shall continue only so long as the provisions of law and the rules and regulations of the water commission shall be followed by the applicant. Upon the approval of any application by the commission, said approval shall give priority of right as of the date of said application, and shall give the right to take and use the amount of water specified in said approval until the issuance by the state water commission of a license for the use of said amount of water, or until the said commission refuses to issue said license. But the approval of any application shall give the right to take and use water only to the extent and for the purpose allowed in said approval; *provided*, that any defective application made in a bona fide attempt to conform to the rules and regulations of the state water commission and to the law shall secure to the applicant a priority of right as of the date of said application until he shall have been notified by said commission in what respect his application is defective. And said applicant shall be allowed sixty days after notice of said defect in which to file an amended and perfected application. If, within said sixty days, said applicant shall not file an amended and perfected application, said priority of right shall cease and determine, unless for good cause shown the state water commission shall allow said applicant to file a further amended and perfected application; *provided, also*, that any priority of right secured under this section shall not be effective for more than thirty days after service of notice of such approval, personally or by registered mail, on the applicant, unless within said period of thirty days a true copy of said approval upon which such priority is based shall have been filed in the office of the recorder of the county or city and county in which the water is to be diverted, and, within ten days thereafter, a certificate of such filing by the county recorder is also filed with the state water commission.

SEC. 18. Actual construction work upon any project shall begin within such time after the date of the approval of the application as shall be specified in said approval which time shall not be less than sixty days from date of said approval, and the construction of the work thereafter shall be prosecuted

with due diligence in accordance with this act, the terms of the approved application, and the rules and regulations of said commission; and said work shall be completed in accordance with law, the rules and regulations of the state water commission, and the terms of the approved application and within a period specified in the permit; but the period of completion specified in the permit may, for good cause shown, be extended by the state water commission. And if such work be not so commenced, prosecuted and completed, the water commission shall, after notice in writing and mailed in a sealed, postage-prepaid and registered letter addressed to the applicant at the address given in his application for a permit to appropriate water, and a hearing before the commission, revoke its approval of the application. But any applicant, the approval of whose application shall have been thus revoked, shall have the right to bring an action in the superior court of the county in which is situated the point of proposed diversion of the water for a review of the order of the commission revoking said approval of the application. And thirty days after the revocation of said permit all rights of the said permittee under said permit shall cease and lapse, unless said permittee shall within said thirty days after said revocation bring an action in the superior court for a review of the order of revocation. The priority of right of any permittee so bringing an action shall continue under said permit until a final judgment is rendered as to the reasonableness of the revocation of said permit. But until and unless the revocation of the permit shall be finally decreed by such court, the permittee shall not take or use any of the water the right to take and use which is granted by said permit.

SEC. 19. Immediately upon completion, in accordance with law, the rules and regulations of the state water commission, and the terms of the permit, of the project under such application, the holder of a permit for the right to appropriate water shall report said completion to the state water commission. The said commission shall immediately thereafter cause to be made a full inspection and examination of the works constructed and shall determine whether the construction of said works is in conformity with law, the terms of the approved application, the rules and regulations of the state water commission, and the permit. The said water commission shall, if said determination is favorable to the applicant, issue a license which shall give the right to the diversion of such an amount of water and to the use thereof as may be necessary to fulfill the purpose of the approved application. Said license shall be in such form as may be prescribed by the state water commission under the provisions of this act. But if the said commission shall find, upon inspection and examination of the works



constructed, that the construction and condition of said works are not in conformity with the law, the rules and regulations of the state water commission, the terms of the approved application and the terms of the permit, then and in that case the said commission may, after due notice in writing and in the manner provided in sections one thousand and eleven, one thousand and twelve, and one thousand and thirteen of the Code of Civil Procedure to the applicant or the holder of the permit, and a public hearing thereon, refuse to issue said license. And thirty days after the refusal of said commission to issue said license all rights of the applicant and the holder of the permit under said application and permit shall lapse and cease. But the holder of any permit to whom the said water commission may have refused to issue said license, shall have the right to bring an action within thirty days after the said refusal, in the superior court to review said order and to obtain a decree requiring the issuance of such license. And the rights of the holder of any permit so bringing an action shall continue under said permit until the decree in such action has been entered and become final. But until the refusal of the commission to issue said license shall be finally determined by the courts, the permittee shall not take or use any of the water, the taking and using of which is granted to him by said permit. And if the holder of any permit which has been revoked by the state water commission shall not bring an action within said thirty days in the superior court to determine the validity of said revocation, then and in that case all rights of the applicant and of the holder of said permit shall lapse and cease.

SEC. 20. All permits and licenses for the appropriation of water shall be under the terms and conditions of this act, and shall be effective for such time as the water actually appropriated under such permits and licenses shall actually be used for the useful and beneficial purpose for which said water was appropriated, but no longer; and every such permit or license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this section and likewise the statement that any appropriator of water, to whom said permit or license may be issued; shall take the same subject to such conditions as therein expressed; *provided*, that if, at any time after the expiration of twenty years after the granting of a license, the state, or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the state shall have the right to purchase the works and property occupied and used under said license and the works built or constructed for the enjoyment of the rights granted under said license; and in the event that the said state, city, city and county,

municipal water district, irrigation district, lighting district or political subdivision of the state so desiring to purchase and the said owner of said works and property can not agree upon said purchase price, said price shall be determined in such manner as is now or may hereafter be determined in eminent domain proceedings. If it shall appear to the state water commission at any time after a permit or license is issued as in this act provided that the permittee or licensee, or the heirs, successors, or assigns of said permittee or licensee, has not put the water granted under said permit or license to the useful or beneficial purpose for which the permit or license was granted, or that the permittee or licensee, or the heirs, successors, or assigns of said permittee or licensee, has ceased to put said water to such useful or beneficial purpose, or that the permittee or licensee, or the heirs, successors or assigns of said permittee or licensee, has failed to observe any of the terms and conditions in the permit or license as issued, then and in that case the said commission, after due notice to the permittee, licensee, or the heirs, successors or assigns of such permittee or licensee, and a hearing thereon, may revoke said permit or license and declare the water to be unappropriated and open to further appropriation in accordance with the terms of this act. And the findings and declaration of said commission shall be deemed to be prima facie correct until modified or set aside by a court of competent jurisdiction; *provided*, that any action brought so to modify or set aside such finding or declaration must be commenced within thirty days after the service of notice of said revocation on said permittee or licensee, his heirs, successors or assigns. And every licensee or permittee under the provisions of this act if he accept such permit or license 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 or license granted or issued 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 or the price of the services to be rendered by any permittee or licensee, his heirs, successors or assigns or by the holder of any rights granted or acquired under the provisions of this act, 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, city and county, municipal water district, irrigation district, lighting district or any political subdivision of the state, of the rights and property of any permittee or licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this act. The application



for a permit by municipalities for the use of water for said municipalities or the inhabitants thereof for domestic purposes shall be considered first in right, irrespective of whether they are first in time; *provided, however*, that such application for a permit or the granting thereafter of permission to any municipality to appropriate waters, shall not authorize the appropriation of any water for other than municipal purposes, and providing further than where permission to appropriate is granted by the state water commission to any municipality for any quantity of water in excess of the existing municipal needs therefor, that pending the application of the entire appropriation permitted, the state water commission shall have the power to issue permits for the temporary appropriation of the excess of such permitted appropriation over and above the quantity being applied from time to time by such municipality; *and providing further*, that in lieu of the granting of such temporary permits for appropriation, the state water commission may authorize such municipality to become as to such surplus a public utility, subject to the jurisdiction and control of the railroad commission of the State of California for such period or periods from and after the date of the issuance of such permission to appropriate, as may be allowed for the application to municipal uses of the entire appropriation permitted; *and provided, further*, that when such municipality shall desire to use the additional water granted in its said application it may so do upon making just compensation for the facilities for taking, conveying and storing such additional water rendered valueless for said purposes, to the person, firm or corporation which constructed said facilities for the temporary use of said excess waters, and which compensation, if not agreed upon between the municipality and said person, firm or corporation, may be determined in the manner provided by law for determining the value of property taken by and through eminent domain proceedings.

SEC. 21. Nothing herein contained shall be construed to deprive the state or any city, city and county, municipal water district, irrigation district, lighting 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.

SEC. 22. Licenses hereafter granted for water or use of water shall be subject to the right of the state to impose the fees and charges provided in this act.

SEC. 23. Every person, firm, association or corporation making application for a permit to appropriate water or the use of water under this act shall pay to the state water commission, at the time of filing said application, if the pur-

pose or use is for the generation of electricity, or electrical or other power, a fee of two dollars and fifty cents for each theoretical horsepower capable of being developed by the works up to one hundred theoretical horsepower, with a minimum fee of twenty-five dollars, and above said one hundred theoretical horsepower the fee shall be five hundred dollars up to and including ten thousand theoretical horsepower, and one thousand dollars above ten thousand theoretical horsepower capable of being so developed or a fee of ten dollars if the purpose be other than for the generation of electricity, or electrical or other power. Every person, firm, association or corporation at the time of receiving a license to appropriate water or the use of water, if the purpose be for the generation of electricity, or electrical or other power, shall pay to said commission when the said license is issued, and annually thereafter, a charge of twenty-five cents for each theoretical horsepower capable of being developed by the proposed works. If the purpose of use is for other than the generation of electricity, or electrical or other power, every person, firm, association or corporation receiving a license to appropriate water shall pay to the said commission when said license is issued, and annually thereafter, a charge of ten cents per miner's inch for each miner's inch specified in the license, and for the purpose of this act forty miner's inches shall be equivalent to one cubic foot per second; *provided, however*, that no annual charge shall be made when the appropriation is made for use for irrigation purposes upon lands, not exceeding one hundred and sixty acres in area, to be actually occupied by such appropriator and cultivated in whole or in part by him, or when said water is used for mining purposes, and the amount of water so used for such mining purposes does not exceed five hundred miner's inches, or when the water is used for the generation of power when the same does not exceed fifty horsepower and is for the private use of the appropriator. And all such fees and charges shall forthwith be paid into the state treasury by the state water commission, and the fee and annual charges provided in this section shall be subject to change by law at not less than ten year intervals beginning with the date of the license issued by the state water commission.

SEC. 24. Upon its own initiative or upon petition signed by one or more claimants to water or the use of water upon any stream, stream system, lake, or other body of water, requesting the ascertainment of the relative rights of the various claimants to the water or the use of water of that stream, stream system, lake or other body of water, it shall be the duty of the state water commission, if, upon investigation it finds



the facts and conditions are such as to justify, to make an ascertainment of the said rights, fixing a time for the beginning of the taking of testimony and the making of such investigation as will enable it to ascertain the rights of the various claimants. In case suit is brought in the superior court for determination of rights to water or the use of water, the case may, in the discretion of the court, be transferred to the state water commission for investigation, as referee. In any case wherein the water commission shall proceed to investigate or ascertain water rights the said commission shall notify in writing in the manner provided in sections one thousand and eleven, one thousand and twelve and one thousand and thirteen of the Code of Civil Procedure all persons, firms, associations or corporations claiming or possessing any water rights which are to be the subject of ascertainment by the said commission.

SEC. 25. Upon the completion of the taking of testimony and evidence by the state water commission, the said commission shall immediately give notice by registered mail to the various claimants or possessors of water rights that, at a date and place named in the said notices, which date shall not be less than fifteen days nor more than thirty days later than the date of said notice, all of said testimony and evidence will be open to public inspection. And said testimony and evidence shall be held open to public inspection at said places for a specified period of not less than thirty days nor more than ninety days, and thereafter the said commission shall cause its findings and ascertainment of the rights of the respective claimants to said water to be made and filed in the superior court in each of the counties where said water is appropriated.

SEC. 26. If any person, firm, association or corporation claiming or possessing any interest in or right to the waters of any stream, stream system, lake or other body of water involved in any investigation or ascertainment by the state water commission of the rights to the water of said stream, stream system, lake or other body of water, desires to contest any of the interests in or rights to any of the said waters of any other person, firm, association or corporation such person, firm, association or corporation desiring so to contest shall, within ten days after the expiration of the period for public inspection prescribed in section twenty-five of this act, notify, in writing, the state water commission of said desire so to contest. Said notice shall state the ground of contest, which shall be verified by the oath of the contestant, his agent or attorney. Within ten days of the receipt of the notice of contest the state water commission shall notify the contestant and the person, firm, association or corporation whose rights are contested to appear before it at a time and place

specified in said notice, and that at said time and place said contest will be heard; *provided*, that said time shall not be less than thirty days nor more than sixty days from the date of the service of the notice of the commission; *provided*, *further*, that if any person, firm, association or corporation desires to contest any such ascertainment by the state water commission as hereinbefore provided, such contest may be brought as provided in sections 31 and 32 hereof.

SEC. 27. Said notice by said water commission shall be served and return made thereon in the same manner in which summons and return thereon are made in civil actions in the superior courts of this state. The water commission shall have power to adjourn hearings of contest from time to time upon reasonable notice to all parties in interest, and to issue subpoenas for and compel the attendance of witnesses to testify before it and produce papers, books, maps and other documents.

SEC. 28. The state water commission shall require from the party bringing the contest before it under section twenty-six of this act a deposit of five dollars for each day it shall be engaged in taking testimony in such contest. Upon the final ascertainment by the state water commission in any contest, the said commission shall enter an order directing the return of the deposit to the depositor if the contest shall be determined in his favor, but, if the contest shall be determined against the person bringing it, the said deposit shall be immediately paid into the state treasury.

SEC. 29. Not less than fifteen days nor more than thirty days after the expiration of the period during which the testimony and evidence is to be kept open for public inspection, or if any contest shall be made, not less than fifteen days nor more than thirty days after the settlement of said contest by the water commission, the testimony and evidence in the original hearing and the testimony and evidence taken in said contest shall be filed in the office of the water commission.

SEC. 30. The water commission may, in its discretion and in addition to the testimony and evidence submitted to it by the parties claimant to or possessors of water rights on any stream, stream system, lake or other body of water cause to be made an examination of said stream, stream system, lake or other body of water and the works diverting or utilizing water therefrom. Said examination may include the gathering of whatever data covering said stream, stream system, lake or other body of water and the various ditches and canals taking water therefrom as the said commission may require, as well as such other data and information as may, in the discretion of the said commission, be necessary to enable it properly to ascertain the relative rights of the parties claiming rights to use the waters of



said stream, stream system, lake, or other body of water. The results of said examination shall be filed in the office of said commission and be open to public inspection as provided in this act for the filing and public inspection of other evidence of a like nature.

SEC. 31. As soon as practicable after the hearing of testimony and evidence, the hearing of contest, and the gathering and filing of such data and information as the water commission shall, of its own motion, direct to be gathered, the said water commission shall record in its office its ascertainment of and specific findings upon the rights of the several claimants to the use of the waters of any stream, stream system, lake or other body of water. Immediately thereafter, the said water commission shall file a certified copy of said ascertainment and specific findings together with the original evidence and testimony taken before it and all data and information gathered by its order with the clerk of the superior court in and for the county in which such stream, stream system, lake or other body of water or any part thereof is situated.

SEC. 32. After the filing with the clerk of the superior court of the evidence, data, information, specific findings and ascertainment as required by section 31 of this act, the same shall be received in the superior court as prima facie evidence of the facts, specific findings and ascertainment therein set forth. And at any time within one year after such filing an action may be brought, upon the direction of the state water commission, by the attorney general in said superior court in which said evidence, data, information, specific findings and ascertainment shall have been so filed. Or an action may be brought in said court by any one or more of the possessors or claimants concerning whose rights to any of the waters of the stream, stream system, lake or other body of water the state water commission shall have made the specific findings and ascertainment filed in said court. Said action if brought by the attorney general shall be brought in the name and behalf of the people of the State of California to quiet the title of the State of California or the people thereof to any and all water or water rights which it may have in or on said stream, stream system, lake or other body of water, and, to cause all parties whose rights have been so ascertained to appear and interplead in said action in defense and determination of each and all of their respective rights, which rights, as against the state and with regard to the different rights and priorities of said rights among themselves, shall be determined by the court in said action. And if an action be brought by any one or more of said claimants or possessors,

said action may be brought in the name of the said possessor or claimant and to cause all parties, whose rights have been ascertained, to appear and interplead in said action in defense and determination of each and all of their respective rights, which rights, as against the state or the people thereof, and with regard to the different rights and priorities of said rights among themselves shall be determined by the court in said action. And from and after the filing of the complaint in such action, the proceedings therein shall be as in other cases heard and determined in said court, and in accordance with the provisions of the Code of Civil Procedure of this state; *provided*, that the evidence, data, information, specific findings and ascertainment so filed with the superior court as provided in section 31 of this act must be considered by said court in its determination of both or either of said actions, and the court may affirm, modify or reject such specific findings and ascertainment and may make other or different findings as in its judgment the evidence justifies.

SEC. 33. All existing lawful appropriations of water or the use thereof, shall be and hereby are respected and upheld to extent of the amount of water appropriated and actually put or in process of being put, from the initial date of the act of appropriation, with due diligence in proportion to the magnitude of the work necessary properly to utilize the water for the useful or beneficial purpose for which it was appropriated, or for which it is being used.

SEC. 34. Whenever proceedings shall be instituted for the ascertainment by the state water commission of rights to water or the use of water, it shall be the duty of all claimants interested therein and having notice thereof as in this act provided 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 claim shall be barred and estopped from subsequently asserting any rights theretofore acquired upon the stream, stream system, lake or other body of water, or portion of such stream, stream system, lake or other body of water, embraced in such proceedings, and shall be held to have forfeited all rights to said water or the use of water theretofore claimed by him on such stream, stream system, lake or other body of water, unless entitled to relief under the laws of this state; *provided*, that such proceedings shall result in an ascertainment by the state water commission and a decree by the superior court based upon such ascertainment and specific findings or a modification of said ascertainment or specific findings.

SEC. 35. In any suit wherein the state is or the people of the state are a party for the determination of a right to the



use of the water of any stream, stream system, lake or other body of water, or of any portion of any stream, stream system, lake or other body of water, all who claim the right to use such water shall be made parties. When any such suit has been filed the court may call upon the state water commission to make or furnish a complete hydrographic survey of such stream, stream system, lake or other body of water, in order to obtain all the data necessary to the determination of the rights involved. The disbursements made in litigating the rights involved in such suit may be taxed by the court as in other equity suits, exclusive of the cost of such hydrographic survey.

SEC. 36. Upon the adjudication of the rights to the use of the water of a stream, or stream system, lake or other body of water, or any portion of a stream, stream system, lake or other body of water, a certified copy of the decree shall be prepared by the clerk of the court, without charge, and filed in the office of the state water commission, and said commission shall deliver to every party in such decree a certified copy thereof upon demand and the payment of the fees provided in this act. And the said commission shall file, for record, in the office of the recorder of each county in which any portion of said stream, stream system, lake or other body of water is situated, a certified copy of said decree. Said decree shall in every case declare as to the water right adjudged to each party, whether riparian or by appropriation, the extent, the priority, amount, purpose of use, point of diversion, and place of use of said water; and, as to water used for irrigation, such decree shall also declare the specific tracts of land to which it shall be appurtenant together with such other conditions as may be necessary to define the right and its priority. But the failure of any party entitled thereto to demand or receive a copy of said decree shall not be considered to have prejudiced him or his rights in any way.

SEC. 37. The power to supervise the distribution of water in accordance with the priorities established under this act, when such supervision does not contravene the authority vested in the judiciary of the state, is hereby vested in the state water commission.

SEC. 38. The diversion or use of water subject to the provisions of this act other than as it is in this act authorized is hereby declared to be a trespass, and the state water commission is hereby authorized to institute in the superior court in and for any county wherein such diversion or use is attempted appropriate action to have such trespass enjoined.

SEC. 39. Water or the use of water which has heretofore been appropriated or acquired, or which shall hereafter be appropriated or acquired for one specific purpose shall not be deemed to be appropriated or acquired for any other or differ-

ent purpose. And any person, firm, association or corporation applying to the state water commission for a license to appropriate water or the use of water shall state in the application for said license the specific purpose to which it is proposed to put such water or the use thereof. Water heretofore or hereafter appropriated for other than domestic use, may be applied to domestic use, in whole or in part, without a separate and distinct appropriation being made therefor. And water appropriated for one purpose under the provisions of this act may be subsequently appropriated for other purposes under the provisions of this act; *provided*, that such subsequent appropriation shall not injure any previous appropriation.

SEC. 40. The state water commission is also authorized and empowered to investigate any natural situation available for reservoirs or reservoir systems for gathering and distributing flood or other waters not under beneficial use in any stream, stream system or lake or other body of water, and to ascertain the feasibility of such projects, including the supply of water that may thereby be made available, the extent and character of the areas that may be thereby irrigated, and make estimate of the cost of such project.

SEC. 41. Nothing in this act shall be construed as depriving any city, city and county, municipal water district, irrigation district or lighting district of the benefit of any law heretofore or hereafter passed for their benefit in regard to the appropriation or acquisition of water or the use of water; and nothing in this act shall affect or limit in any manner whatsoever the right or power of any municipality which has heretofore appropriated or acquired water or the use of water for municipal purposes, to use or to sell or otherwise dispose of such water or the use thereof, either within or without its limits for domestic, irrigation or other purposes, in accordance with laws in effect at the time of the passage of this act.

SEC. 42. The word "water" in this act shall be construed as embracing the term "or use of water"; and the term "or use of water" in this act shall be construed as embracing the word "water." Whenever the terms stream, stream system, lake or other body of water or water occurs in this act, such term shall be interpreted to refer only to surface water, and to subterranean streams flowing through known and definite channels. But nothing in this act shall be construed as giving or confirming any right, or title, or interest to or in the corpus of any water; *provided*, that the term "useful or beneficial purposes" as used in this act shall not be construed to mean the use in any one year of more than two and one half acre feet of water per acre in the irrigation of uncultivated areas of land not devoted to cultivated crops.



SEC. 43. Nothing in this act shall be construed as depriving any person, firm, association or corporation of the right of appeal conferred under the laws of this state.

SEC. 44. All acts or parts of acts in conflict herewith are hereby repealed.

SEC. 45. This act shall be known as the "water commission act."

SEC. 46. 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. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional.

CHAPTER 41.

*An act regulating and limiting the appropriation of water and the use of water for generating electricity or electrical or other power; fixing the terms and conditions and providing the manner and procedure upon which water or the use of water for generating electricity or electrical or other power may be appropriated and providing for the renewal of licenses granted hereunder; providing for the issuing of licenses for water or the use of water for generating electricity or electrical or other power and limiting rights under such licenses; prohibiting the appropriation of water or the use of water for generating electricity or electrical or other power for a longer period than forty years; limiting the right to water or the use of water appropriated for generating electricity or electrical or other power to the specific purposes for which it is appropriated; declaring certain water to be unappropriated; providing for the granting of licenses to divert and store surplus and flood waters for generating electricity, or electrical or other power and declaring what is surplus water; reserving to the state the right to regulate and fix the rates of compensation for which electricity or electrical or other power generated by water or the use of water appropriated may be sold, rented or distributed; reserving to the state the right to impose charges for water or the use of water appropriated for electricity or electrical or other power and fixing fees and charges; preventing the combination or formation of any unlawful trust by appropriators of water or the use of water for generating electricity or electrical or other power and providing a penalty therefor; creating and establishing a state water commission; providing the powers and duties of said water commission and fixing their compensation; compelling persons, firms, associations and corporations supplying electricity or electrical or other power generated by the use of appropriated water to keep their plants and systems in repair and requiring an annual report from them to said water commission; providing for the appointment and compensation of employees and assistants to said water commission; limiting the expenses of said water commission and providing for the payment thereof; making an appropriation to carry out the provisions of this act; fixing the place of business of said water commission; declaring the diver-*



sion of water or use of water for generating electricity, or electrical or other power, otherwise than provided in this act, to be a misdemeanor and providing a penalty therefor, and also providing penalties for other violations of this act; repealing an act entitled "An act regulating and limiting the appropriation of water for generating electricity or electrical or other power; fixing the terms and conditions and providing the manner and procedure upon which water for generating electricity or electrical or other power may be appropriated and providing for the renewal of licenses granted hereunder; providing for the issuing of licenses for the use of water for generating electricity or electrical or other power and limiting rights under such licenses; prohibiting the appropriation of water or the use of water for generating electricity or electrical or other power for a longer period than twenty-five years; limiting the right to the use of water appropriated for generating electricity or electrical or other power to the specific purposes for which it is appropriated; declaring certain water to be unappropriated; providing for the granting of licenses to divert and store surplus and flood waters for generating electricity, or electrical or other power and declaring what is surplus water; reserving to the state the right to regulate and fix the rates of compensation for which electricity or electrical or other power generated by water appropriated may be sold, rented or distributed; reserving to the state the right to impose charges for the use of water appropriated for electricity or electrical or other power and fixing fees and charges; preventing the combination or formation of any unlawful trust by appropriators of water or the use of water for generating electricity or electrical or other power and providing a penalty therefor; creating and establishing a state board of control; providing the powers and duties of said board of control and fixing their compensation; compelling persons, firms, associations and corporations supplying electricity or electrical or other power generated by the use of appropriated water to keep their plants and systems in repair and requiring an annual report from them to said board of control; providing for the appointment and compensation of employees and assistants to said board of control; limiting the expenses of said board of control and providing for the payment thereof; fixing the place of business of said board of control; declaring the diversion or use of water for generating electricity, or electrical or other power, otherwise than provided in this act, to be a misdemeanor and providing a penalty therefor, and also providing penalties

for other violations of this act; repealing all acts and parts of acts in conflict with this act," approved April 8, 1911, and all acts and parts of acts in conflict with this act.

[Approved January 2, 1912.]

*The people of the State of California do enact as follows:*

SECTION 1. Water or the use of water for the generation of electricity or of electrical or other power shall not be appropriated for a longer period than forty years.

SEC. 2. Subject to vested and existing rights, in so far as such vested and existing rights are based upon actual needs and application to useful or beneficial purposes, the appropriation of water or of the use of water for the generation of electricity or of electrical or other power shall be made as provided by this act, and not otherwise; provided, however, that nothing in this act shall be construed to validate any right or privilege now invalid or hereafter becoming invalid under any law of this state.

SEC. 3. Water or the use of water appropriated for purposes other than the generation of electricity or of electrical or other power shall not be used for the generation of electricity or of electrical or other power except under a separate and distinct appropriation made as provided in this act for such purpose.

SEC. 4. All water or the use of water which has been heretofore appropriated and which has not been put, or which has ceased to be put to some useful or beneficial purpose, or which is not now in process of being put to some useful or beneficial purpose with due diligence in proportion to the magnitude of the work necessary properly to utilize for the purpose of such appropriation such water or such use of water, is hereby declared to be unappropriated.

SEC. 5. All appropriations of water or the use of water for generating electricity or electrical or other power shall be subject to the right of the state to regulate and fix the rates of compensation for which such electricity or electrical or other power may be sold, rented or distributed.

SEC. 6. Any person, firm, association or corporation hereafter intending to appropriate water or the use of water for the generation of electricity, or of electrical or other power, before commencing the construction or enlargement or extension of any building, power house, ditch, canal or any distributing or controlling works, or performing any work in connection with said appropriation or proposed appropriation, shall make an application in duplicate to the state water commission, provided for in this act, for a permit to make such



appropriation. No person, firm, association or corporation shall wilfully divert or use water or shall wilfully attempt to divert or use water for generating electricity or electrical or other power without first complying with the provisions of this act. The possession or use of water for generating electricity or electrical or other power, except when a right to said water or the use thereof shall have been acquired in accordance with law, shall be prima facie evidence of such wilful diversion or use or attempted diversion or use of such water.

SEC. 7. Every application for a permit to appropriate water or the use of water for the generation of electricity or of electrical or other power shall set forth the residence, or principal place of business if the applicant be a corporation, and post office address of the applicant, the source of the water or the use of water to be appropriated or used, the nature and amount of the proposed use, the head of and amount of water to be utilized, the uses to which the water and electricity or electrical or other power are to be applied, the nature, the location (which may be changed by permission of the state water commission), the character, the estimated capacity, and the estimated cost of the works, and whether the water is to be and will be returned to the stream or source from which it is to be taken, and if so at what point on the stream or source it is proposed to return said water to said stream or source. If the application is for the construction of a reservoir for the purpose of storing water to be used for the generation of electricity or of electrical or other power, it shall give the estimated height of the dam and the estimated capacity of the reservoir in addition to the other requirements above set forth. All applications shall be accompanied by such maps and drawings in duplicate and such other data in duplicate as may be prescribed by the water commission, and such accompanying data shall be considered as a part of the application. A true copy of such application without such accompanying data and maps and drawings shall be recorded by the applicant in the office of the recorder of the county, or city and county, in which the proposed works are to be erected, within ten days after said application is filed with said commission.

SEC. 8. Upon receipt of an application under this act, it shall be the duty of the water commission immediately to cause to be made an endorsement thereon of the date of its receipt, and to keep the duplicate of said application and its endorsement on file as a record of the same. The water commission shall immediately examine the said application after it has been filed. If, upon such examination, the application is found to be defective, one copy of it and its accompanying

data, maps and drawings shall be returned to the applicant for correction or completion, and the date of and reasons for the return thereof shall be endorsed thereon, and a record kept of such endorsement in the office of the water commission. No application shall lose its priority of filing on account of such defect; *provided*, a proper application is filed in the office of the water commission within thirty days of the date of said return to the applicant. It shall be the duty of the water commission within six months to enter an order directing the rejection of such application if after further hearing the public interests shall seem to the water commission so to demand. Applications may be approved for a less amount of water or the use of water than that applied for, if there exist substantial reasons therefor, but in any event shall not be approved for more water or the use of water than can be applied to the use for which application is made under an efficient and economical use thereof.

SEC. 9. The approval or rejection of an application shall be endorsed thereon and a record made of such endorsement in the office of the water commission. One copy of the application so endorsed shall be returned immediately to the applicant in person or by registered mail. If said application be approved, the applicant shall immediately record said approved application, together with the endorsement thereon, in the office of the recorder of the county, or city and county, in which the proposed works are to be constructed, and shall be authorized on receipt of said approval and on recording the same, to proceed with the construction of the necessary works, and to take all steps required to apply the water or the use of the water to the purpose of generating electricity or electrical or other power, as provided in the approved application, and to perfect the proposed appropriation; *provided, however*, that no right in or to such water or the use thereof shall vest in or accrue to the said applicant until the final permit is issued as is hereinafter provided.

SEC. 10. Actual construction work shall begin within six months from the date of the approval of the application, and the construction of the work shall thereafter be prosecuted with reasonable diligence in proportion to the magnitude of the undertaking, and if such work is not so commenced and prosecuted, the water commission may revoke its approval of the application; and such work shall be completed within a reasonable time as fixed in the permit not to exceed five years from the date of such approval. Upon application of the proposed appropriator the water commission may for good cause shown extend the time within which such work shall be completed under any permit, but no such extension shall be for



a longer period than one year beyond the period fixed in the permit.

SEC. 11. Upon the completion of the works for the diversion and application of water or the use of water under this act, the holder of such permit, or his assigns, shall report such completion to the water commission, and the water commission without delay shall cause to be made a full inspection and examination of the works constructed and a report upon their construction and condition, and whether or not they conform to the terms of the application and permit and are adequate for the purposes intended.

SEC. 12. Upon the receipt of such report, the commission shall, if the law has been fully complied with, and if the work shall have been completed in accordance with the application, issue a license to the applicant or his assigns, allowing him or them to divert and use said water, or so much thereof as may be necessary, for the use proposed, for a certain period of time therein specified, but in no case for more than forty years. Licenses granted upon application made under this act for water or the use of water shall be numbered consecutively as to each stream or other source in the order as to the dates when such applications are filed.

SEC. 13. Said license shall set forth the name of the licensee, his place of residence, and if a corporation or firm or association the date of its organization and its principal place of business, the stream or source from which the water is to be diverted or used, the quantity of water the licensee is authorized to divert from the stream or source, the point or points on said stream or source at which said water is to be diverted or used, the location of the proposed works, the period of time for which the water may be used, which in no case shall be for more than forty years, by what means, and the purposes for which the licensee is authorized to use the same.

SEC. 14. Any license issued as above provided for water or the use of water appropriated under this act shall vest in the licensee the right to the use of the amount of water mentioned therein for the period of time therein set forth, in the manner and for the purposes therein mentioned and not otherwise; *provided*, that such license shall not impair or affect any rights to water or the use of water which shall have become vested prior to the making of the application above provided for.

SEC. 15. Any appropriator of water or the use of water under the provisions of this act for the purpose of generating electricity or electrical or other power, or the successor or assigns of said appropriator, if a renewal or extension of the license herein provided for is desired, shall, not less than one

or more than two years prior to the termination of the license granted as herein provided, notify the water commission that a renewal and extension of such license is desired. The water commission shall thereupon issue to said appropriator a renewal and extension of said license for a fixed period, but in no case for more than a period of forty years from the date of such renewal in compliance with such laws of the state as shall then be in force regulating the renewal, issuing and granting of any license for water or the use of water for generating electricity or electrical or other power.

SEC. 16. No license for the appropriation of water or the use of water as herein provided shall be valid as to any excess of the capacity of the works actually constructed.

SEC. 17. The water commission may, upon application made therefor in the manner provided in this act and upon like procedure, grant to any person, firm, association or corporation a license to divert and store for the purpose of generating electricity or electrical or other power the surplus waters of any stream during floods or high water, or during those portions of the year when such water is not required or being stored for irrigation purposes, and for the purpose of this act all water which is not used during the season of flood or high water is declared to be surplus water.

SEC. 18. All appropriation of water or the use of water for generating electricity or electrical or other power heretofore or hereafter made shall be subject to the right of the state to impose the fees and charges herein provided, and shall also be subject to the right of the state to increase or decrease such fees and charges from time to time thereafter.

SEC. 19. Every person, firm, association or corporation making application for permission to appropriate water or the use of water under this act shall, at the time of filing the said application, pay to said water commission a fee of ten dollars. Every person, firm, association or corporation at the time of receiving a license to appropriate water or the use of water, as provided in this act, shall pay to said commission a fee of one hundred dollars, and shall also pay to said commission when the said license is issued, and, in addition thereto and annually thereafter, shall pay to said commission a charge for each theoretical horse power of the works estimated as follows: For the first one hundred (100) horse power there shall be no charge; and for all above one hundred (100) horse power ten (10) cents for each horse power. All fees collected shall be accounted for at the following regular meeting of the water commission and paid by said commission into the general fund of the state treasury within thirty days thereafter.

SEC. 20. For the purpose of carrying out the provisions of this act, a commission, to consist of five persons, is hereby



created and established to be known as the state water commission. Three members of said commission shall be appointed by the governor for a term of four years; *provided*, that the members first appointed shall be appointed so that one of them shall go out of office at the end of one year, one at the end of two years, and one at the end of three years. The governor and the state engineer are hereby made *ex officio* members of said commission in addition to the three members appointed by the governor. The appointed members of said commission shall receive as compensation for services rendered by them, as such members, the sum of ten (10) dollars per day for each day's service actually rendered.

SEC. 21. The water commission is hereby authorized and empowered to do and perform the acts and things required of it by this act and to adopt rules and regulations necessary to carry out the provisions of this act, and it shall be the duty of the commission to provide for the public hearing upon the merits of all applications filed with the commission and to prescribe the rules of procedure to be observed at such hearings.

SEC. 22. Every member of said water commission is hereby authorized to administer oaths and to cause the production of persons, papers, records and books in all matters of business transacted before said commission.

SEC. 23. A full and accurate record of the business transacted or acts performed by any member of the water commission, and the proceedings of the meetings of said commission, shall be kept and shall be placed on file in the office of said water commission.

SEC. 24. Said commission is hereby granted power to employ such persons and to engage such assistants, clerical, professional and other, as it may see fit, and at such salaries or compensation as the commission may determine. And for the purpose of carrying out the provisions of this act so much of the sum appropriated by chapter 406 of the laws of 1911, approved April 8, 1911, entitled "An act regulating and limiting the appropriation of water for generating electricity," etc., as may not have been expended is hereby reappropriated, and the state controller is hereby authorized and directed to draw his warrants from time to time on the requisition of the state water commission approved by the state board of control, and the state treasurer is hereby authorized and directed to pay such warrants.

SEC. 25. All indebtedness incurred for salaries, and all necessary costs and traveling and other expenses of said commission, and each of its members and persons employed by it, while actually engaged in the business of said commission, shall be paid by the state out of the funds hereby appropriated upon

a sworn statement of the person or persons incurring such indebtedness and upon the approval of the water commission and the state board of control upon warrants drawn upon the state treasurer as provided by law for the payment of similar costs and expenses and the drawing of similar warrants.

SEC. 26. All persons, firms, associations or corporations generating electricity or electrical or other power by water or the use of water appropriated under the provisions of this act shall keep their plants and systems in proper repair, and shall upon the first day of January after the passage of this act, and annually thereafter, report to said water commission the condition of their plants and distributing systems, the number of kilowatt hours of electricity or electrical or other power generated during each month of said year, the number of kilowatt hours of electricity or electrical or other power rented, sold or distributed during each month of said year, and the names of the persons, firms, associations or corporations to whom said power has been rented, sold or distributed.

SEC. 27. The water commission shall maintain its office at Sacramento, California. The superintendent of capitol building and grounds shall furnish and set aside in the capitol rooms suitable for offices for said water commission, and if the superintendent of capitol building and grounds shall make and file an affidavit with the said commission that it is not possible for him as such superintendent of capitol building and grounds to provide offices for said commission in the capitol, then the said commission may rent rooms suitable for offices, in the city of Sacramento, and said rental shall be deemed a necessary expense of said commission.

SEC. 28. No person, firm, association or corporation appropriating water or the use of water hereunder shall enter into any agreement, combination or trust in restraint of trade contrary to law, and if any of the works owned or operated by any licensee under this act or his assign or assigns shall be owned, leased, trusted, possessed or controlled by any device, permanently, temporarily, directly or indirectly, tacitly, or in any manner whatsoever, so that it or they form a part of or in any way effect any combination, or if it or they are in anywise controlled by any combination or conspiracy to limit the output of electricity or electrical or other power, or to increase the price at which electricity or electrical or other power is sold, rented or distributed, or to prevent the lowering of said price or in restraint of trade with foreign nations, or between two or more states or territories or with any state or territory, in the generation, sale, distribution of electricity or electrical or other power, all rights to the appropriation of water or the use of water shall cease and be forfeited to the people of the state by proceedings instituted in the courts for that purpose by



the attorney general of the state either upon his own initiative or upon demand of the water commission.

SEC. 29. Any violation of the provisions of this act, or of any order or regulation of the water commission, is hereby declared to be a misdemeanor, and shall be punished by a fine not exceeding five thousand (5,000) dollars or by imprisonment in the county jail not exceeding one (1) year, or by both such fine and imprisonment. It shall be the duty of the water commission to enforce the provisions of this act, and to prosecute violations thereof by proceeding in a court of competent jurisdiction against any person, firm, association or corporation violating any such provisions, or failing or refusing to comply with any regulation or requirement of the water commission made pursuant to the provisions of this act.

SEC. 30. None of the provisions of this act shall apply to municipal corporations, other than irrigation districts or lighting districts, nor to the use by any irrigation district of water for the generation of electricity, electrical or other power only for use and distribution within its own limits, and as subsidiary to and mainly for the purpose of serving and carrying out irrigation, nor to the use by any lighting district of water for the generation of electricity, electrical or other power only for use and distribution within its own limits; *provided, however,* that all municipal corporations, other than irrigation districts and lighting districts, desiring to appropriate water for the generation of electricity, electrical or other power, and all irrigation districts and lighting districts desiring to appropriate water for the generation of electricity, electrical or other power, and all irrigation districts and lighting districts desiring to appropriate water for the generation of electricity, electrical or other power, for the uses hereinabove in this section specified shall within ten days from the time that they post and record notices of appropriation, as required by law, file with the water commission a notice of said appropriation together with the name and post office address of the appropriator, the source of the water to be appropriated or used, the nature and amount of the proposed use, the head of an amount of water proposed to be utilized, the uses to which the water and power are to be applied, the nature, location, character, estimated capacity and estimated cost of the works and whether the water is to be and will be returned to the stream or source from which it is to be taken and, if so, at what point on said stream or source. If the appropriation contemplates the construction of a reservoir for the purpose of storing water to be used for the generation of electricity or electrical or other power, the notices filed with the commission shall also give the estimated height of the dam and the esti-

mated capacity of the reservoir in addition to the other requirements above set forth.

SEC. 31. Wherever in this act the performance or doing of certain acts or things by any firm, association or corporation is made a misdemeanor, and a penalty provided therefor, the person, officer, member, manager, agent, director or employee of any such firm, association or corporation who by vote, act, authorization, direction, order or request shall have caused such act or thing to be done is likewise and in the same manner guilty of a misdemeanor, and shall be punished likewise and in the same manner as the person actually performing or doing the act or thing.

SEC. 32. An act entitled "An act regulating and limiting the appropriation of water for generating electricity or electrical or other power; fixing the terms and conditions and providing the manner and procedure upon which water for generating electricity or electrical or other power may be appropriated and providing for the issuing of licenses granted hereunder; providing for the issuing of licenses for the use of water for generating electricity or electrical or other power and limiting rights under such licenses; prohibiting the appropriation of water or the use of water for generating electricity or electrical or other power for a longer period than twenty-five years; limiting the right to the use of water appropriated for generating electricity or electrical or other power to the specific purposes for which it is appropriated; declaring certain water to be unappropriated; providing for the granting of licenses to divert and store surplus and flood waters for generating electricity, or electrical or other power and declaring what is surplus water; reserving to the state the right to regulate and fix the rates of compensation for which electricity or electrical or other power generated by water appropriated may be sold, rented or distributed; reserving to the state the right to impose charges for the use of water appropriated for electricity or electrical or other power and fixing fees and charges; preventing the combination or formation of any unlawful trust by appropriators of water or the use of water for generating electricity or electrical or other power and providing a penalty therefor; creating and establishing a state board of control; providing the powers and duties of said board of control and fixing their compensation; compelling persons, firms, associations and corporations supplying electricity or electrical or other power generated by the use of appropriated water to keep their plants and systems in repair and requiring an annual report from them to said board of control; providing for the appointment and compensation of employees and assistants to said board of control; limiting the expenses of said board of control and providing for the pay-



ment thereof; fixing the place of business of said board of control; declaring the diversion or use of water for generating electricity, or electrical or other power, otherwise than provided in this act, to be a misdemeanor and providing a penalty therefor, and also providing penalties for other violations of this act; repealing all acts and parts of acts in conflict with this act," approved April 8, 1911. and all acts or parts of acts in conflict herewith are hereby repealed.

SEC. 33. This act shall take effect ninety days after the final adjournment of this session of the legislature.

*70 v. Weeks Bldg.*

DEVELOPMENT OF WATER POWER.

FEBRUARY 2, 1915.—Ordered to be printed.

Mr. WORKS, from the Committee on Public Lands, submitted the following

VIEWS OF THE MINORITY.

[To accompany H. R. 16673.]

The report of the majority of the committee states the object of the bill as follows:

The object of the measure is the better and speedier development for useful and beneficial purposes of the great undeveloped water power of the country, now lagging on account of inadequate and inefficient laws.

If this were the real object and purpose of the bill and this object would be attained even in reasonable degree and without unwarranted and dangerous encroachments by the National Government on the constitutional rights of the States, the signers of this minority report of the committee would not be found contending against its enactment, as they represent a constituency that is vitally interested in the development of all natural resources and their application to beneficial uses, freed as far as possible from limitations, obstructions, or unnecessary burdens of any kind. In any attempt to bring about such legislation we should carefully consider:

1. The rights of the States in the waters flowing through them in the natural streams and to regulate and control their appropriation, diversion, and use.
2. The limitations of the National Government in dealing with the appropriation, regulation, and use of these waters.
3. The rights of the people of the States to the use of the waters of the streams, as provided by law, commonly called the consumers.

But after all and in the last analysis it is the consumer that should be protected and his individual right to the use of the water maintained and preserved under reasonable rules and regulations that will insure the greater and more beneficial use of the water for all legitimate purposes.

The western semiarid States, where irrigation is necessary to their full development and prosperity, are peculiarly and vitally interested in making every drop of water beneficially useful, and in supplying every acre of land possible with the water without which much of



their lands are sterile and unproductive. This being true it must be seen that these States are interested and will support any just law that will extend the use of water either for the irrigation of their land or the development of power. And if it were believed by us that this bill, if it should become a law, would have that effect without violating any of the fundamental and constitutional rights of the States it would receive our earnest and united support. It is because we are fully convinced by our own knowledge of the subject and the testimony taken at the hearings before the committee that the bill will not conduce to the better or speedier development of the water power of the country, but will hinder and retard such development, and that its real object, purpose, and effect is to usurp by the National Government the rights and jurisdiction of the States in and over the flowing waters of the streams to the detriment of the States and to water consumers that we earnestly oppose the passage of the bill. And this attempt at what seems to us to be revolutionary, detrimental, and unwise legislation is so far-reaching and important that we feel it to be our duty to lay before the Senate our reasons for opposing the passage of the bill.

In dealing with the subject we assume that certain fundamental principles of law, controlling in their influence as affecting such legislation as this, have been firmly and unalterably established by both Federal and State decisions. They are as follows:

1. The ownership of flowing water and the right to dispose of and to regulate and control the use thereof within their borders belong exclusively to the States as a part of their sovereign power, subject only, in case of navigable streams, to the power of the Federal Government to regulate and promote commerce between the States.

*Pollard's Lessee v. Hagan* (3 How., U. S., 212);  
*Withers v. Buckley* (20 How., 84);  
*Escanaba Co. v. Chicago* (107 U. S., 678);  
*Kansas v. Colorado* (206 U. S., 46);  
*Illinois Central Railroad v. Illinois* (146 U. S., 387);  
*Shively v. Bowlby* (152 U. S., 1);  
*Sands v. Manistee River Improvement Co.* (123 U. S., 288);  
*Veazie v. Moor* (14 How., U. S., 568);  
*Hudson Water Co. v. McCarter* (209 U. S., 349);  
*City of New York v. Miln* (11 Pet., 102);  
*Gutierras v. Albuquerque* (188 U. S., 545);  
*County of Mobile v. Kimball* (102 U. S., 691);  
*Cardwell v. American Bridge Co.* (113 U. S., 205);  
*Willamette Iron Bridge Co. v. Hatch* (125 U. S., 1);  
*United States v. Railroad Bridge Co.* (6 McLean, 517).

2. That as a consequence the United States have no such right either of ownership, regulation, or control.

*Pollard's Lessee v. Hagan* (3 How., U. S., 212);  
*Kansas v. Colorado* (206 U. S., 46);  
*Ward v. Race Horse* (163 U. S., 504).

3. The rights of consumers to the use of the water are dependent upon State and not Federal laws and subject to State regulation and control, exclusively, unless the use is interstate.

*Kansas v. Colorado* (206 U. S., 46);  
*Osborne v. San Diego Land & Town Co.* (178 U. S., 22);  
*Los Angeles v. Los Angeles Water Co.* (177 U. S., 558);  
*St. Anthony Falls Water Power Co. v. St. Paul Water Commissioners* (168 U. S., 349);  
*Bean v. Morris* (221 U. S., 485).

4. The Federal Government owns the public lands as a proprietor only and not in its sovereign capacity.

*Pollard's Lessee v. Hagan* (3 How., U. S., 212);  
*Ward v. Race Horse* (163 U. S., 504);  
*Woodruff v. North Bloomfield Gravel Mining Co.* (18 Fed. Rep., 753);  
*Boggs v. Merced Mining Co.* (14 Cal., 279, 376).

5. The Federal Government has no power or jurisdiction to fix rates or regulate the use or disposition of water within a State.

*Sands v. Manistee River Improvement Co.* (123 U. S., 288);  
*Osborne v. San Diego Land & Town Co.* (178 U. S., 22).

6. The power to fix rates or regulate the use of water not given to the Federal Government by the Constitution can not be bestowed by act of Congress as a condition to the leasing or sale of the public lands.

*New Orleans v. United States* (10 Pet., 662, 736);  
*Leovy v. United States* (177 U. S., 921).

7. Absolute property in and dominion and sovereignty over the soils under the tide waters in the States are reserved to the several States.

*Kansas v. United Land Association* (142 U. S., 161).

8. Public lands owned by the United States are not subject to taxation by the States.

*California v. Shearer* (30 Cal., 645, 655, 658);  
*Van Brocklin v. Tennessee* (117 U. S., 151).

9. The power of Congress to legislate or exercise sovereignty over lands within a State is confined to lands acquired by the Federal Government for certain specific purposes, and with the consent of the State.

*United States v. Cornell* (2 Mason, 60);  
*Woodruff v. North Bloomfield Gravel Mining Co.* (18 Fed. Rep., 753).

The far-reaching effects of this proposed legislation and the evident attempt of the Federal Government to usurp the sovereign powers of the States move us to consider more extensively the effect of the principles above laid down and the cases supporting our views. In doing so we rest our views and conclusions largely upon the following premises:

1. Before the formation of the present Government all sovereign powers were vested in the several States within their borders.

2. The Federal Government formed by the States has only such powers as the States bestowed upon it by the Constitution. All others are reserved to the States.

3. The powers thus granted do not include the power to regulate or control the use of the waters of streams flowing within a State except to maintain and regulate commerce between the States, with foreign nations, and under treaties with the Indians.

4. The ownership of land within a State as a proprietary owner and not for governmental uses and purposes gives the Federal Government no power or jurisdiction to regulate or control the use of the waters of a stream on which the land borders.

5. Therefore any legislation attempting to vest any such power in the Government will be unconstitutional and void.

That the bill under consideration does provide for such usurpation of power we will show further along.



Having laid down these general principles that should guide and control our action, we quote, for the information of the Senate, some of the language of the courts on the subject which we regard as conclusive.

In *Pollard's Lessee v. Hagan* (3 How., 212) the question was as to the title to lands covered by the waters of a navigable stream and involved the power and jurisdiction of the United States Government over such lands. The court said:

The right which belongs to the society, or to the sovereign, of disposing in case of necessity, and for the public safety, of all the wealth contained in the State, is called the eminent domain. It is evident that this right is, in certain cases, necessary to him who governs and is consequently a part of the empire, or sovereign power. (Vat. Law of Nations, sec. 244.) This definition shows, that the eminent domain, although a sovereign power, does not include all sovereign power, and this explains the sense in which it is used in this opinion. The compact made between the United States and the State of Georgia was sanctioned by the Constitution of the United States, by the third section of the fourth article of which it is declared that "New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States or parts of States, without the consent of the legislatures of the States concerned, as well as of Congress."

When Alabama was admitted into the Union, on an equal footing with the original States, she succeeded to all the rights of sovereignty, jurisdiction, and eminent domain which Georgia possessed at the date of the cession, except so far as this right was diminished by the public lands remaining in the possession and under the control of the United States, for the temporary purposes provided for in the deed of cession and the legislative acts connected with it. Nothing remained to the United States, according to the terms of the agreement, but the public lands. And, if an express stipulation had been inserted in the agreement, granting the municipal right of sovereignty and eminent domain to the United States, such stipulation would have been void and inoperative, because the United States have no constitutional capacity to exercise municipal jurisdiction, sovereignty, or eminent domain, within the limits of a State or elsewhere, except in the cases in which it is expressly granted.

By the sixteenth clause of the eighth section of the first article of the Constitution power is given to Congress "to exercise exclusive legislation in all cases whatsoever over such district (not exceeding 10 miles square) as may by cession of particular States, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same may be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings." Within the District of Columbia, and the other places purchased and used for the purposes above mentioned, the nation and municipal powers of government of every description are united in the government of the Union. And these are the only cases within the United States in which all the powers of government are united in a single government, except in cases already mentioned of the temporary territorial governments, and there a local government exists. The right of Alabama and every other new State to exercise all the powers of government, which belong to and may be exercised by the original States of the Union, must be admitted and remain unquestioned, except so far as they are, temporarily, deprived of control over the public lands.

We will now inquire into the nature and extent of the right of the United States to these lands, and whether that right can in any manner affect or control the decision of the case before us. This right originated in voluntary surrenders, made by several of the old States, of their waste and unappropriated lands to the United States, under a resolution of the old Congress of the 6th of September, 1780, recommending such surrender and cession, to aid in paying the public debt incurred by the War of the Revolution. The object of all the parties to these contracts of cession was to convert the land into money for the payment of the debt and to erect new States over the territory thus ceded; and as soon as these purposes could be accomplished the power of the United States over these lands, as property, was to cease.

Whenever the United States shall have fully executed these trusts the municipal sovereignty of the new States will be complete throughout their respective borders, and they and the original States will be upon an equal footing in all respects whatever. We, therefore, think the United States hold the public lands within the new States by force of the deeds of cession, and the statutes connected with them, and

not by any municipal sovereignty which it may be supposed they possess or have reserved by compact with the new States for that particular purpose. The provision of the Constitution above referred to shows that no such power can be exercised by the United States within a State. Such a power is not only repugnant to the Constitution, but it is inconsistent with the spirit and intention of the deeds of cession. The argument so much relied on by the counsel for the plaintiffs, that the agreement of the people inhabiting the new States, "that they forever disclaim all right and title to the waste or unappropriated lands lying within the said territory, and that the same shall be and remain at the sole and entire disposition of the United States," can not operate as a contract between the parties, but is binding as a law. Full power is given to Congress "to make all needful rules and regulations respecting the territory or other property of the United States." This authorized the passage of all laws necessary to secure the rights of the United States to the public lands and to provide for their sale, and to protect them from taxation.

The case of *Withers v. Buckley* (20 How., 84) involved the powers of the Federal and State Governments over navigable streams. It also lays down the rule since adhered to that the fifth and other amendments to the Constitution were intended to modify the powers granted to the Federal Government and do not limit or affect the powers of the State.

Quoting from the language of Chief Justice Marshall in *Barron v. Baltimore* (7 Peters, 247-248), the court said:

The question thus presented we think of great importance but not of much difficulty. The Constitution was ordained and established by the people of the United States for themselves; for their own government, and not for the government of the individual States. Each State established a constitution for itself, and in that constitution provided such limitations and restrictions on the powers of its particular government as its judgment dictated. The people of the United States framed such a government for the United States as they supposed best adapted to their situation and best adapted to promote their interests. The powers they conferred on this government were to be exercised by itself; and the limitations on power, if expressed in general terms, are naturally, and we think necessarily, applicable to the government created by the instrument. They are limitations of power granted by the instrument itself, not of distinct governments framed by different persons and for different purposes.

If these propositions be correct, the fifth amendment must be understood as restraining the power of the General Government, not as applicable to the States. In their several constitutions they have imposed such restrictions on their respective governments as their own wisdom suggested, such as they deemed most proper for themselves. It is a subject on which they judge exclusively and with which others interfere no further than they are supposed to have a common interest.

Again, reverting to the causes which led to the proposal and adoption of the amendments of the Constitution, the same judge remarks (*ib.*, p. 250)—and these remarks embrace the whole series of articles adopted: "In almost every convention in which the Constitution was adopted, amendments to guard against the abuse of power were recommended. These amendments demanded security against the apprehended encroachments of the General Government, not against those of the local governments.

"In compliance with a sentiment thus generally expressed, to quiet fears thus extensively entertained, amendments were proposed by the required majority in Congress and adopted by the States. These amendments contain no expression indicating an intention to apply them to the State governments. This court can not so apply them. (Vide also the cases of *Fox v. The State of Ohio*, 5 How., 411; and of *The West River Bridge Co. v. Dix et al.*, 6 How., 507.)"

And further, in considering an act of Congress relating to the subject, the court, in the same case, used this language:

In considering this act of Congress of March 1, 1817, it is unnecessary to institute any examination or criticism as to its legitimate meaning, or operation, or binding authority, further than to affirm that it could have no effect to restrict the new State in any of its necessary attributes as an independent sovereign Government, nor to inhibit or diminish its perfect equality with the other members of the Confederacy with which it was to be associated. These conclusions follow from the very nature and objects of the Confederacy, from the language of the Constitution adopted by the States, and from the rule of interpretation pronounced by this court in the case of *Pollard's Lessee*



*v. Hagan* (3 How., p. 223). The act of Congress of March 1, 1817, in prescribing the free navigation of the Mississippi and the navigable waters flowing into the river, could not have been designed to inhibit the power inseparable from every sovereign or efficient Government, to devise and to execute measures for the improvement of the State, although such measures might induce or render necessary changes in the channels or courses of rivers within the interior of the State, or might be productive of a change in the value of private property. Such consequences are not infrequently and indeed unavoidably incident to public and general measures highly promotive of and absolutely necessary to the public good. And here it may be asked whether the law complained of and the measures said to be in contemplation for its execution are in reality in conflict with the act of Congress of March 1, 1817, with respect either to the letter or the spirit of the act. On this point may be cited the case of *Veazie et al. v. Moor* (in 14 How., 568).

The case of *Escanaba Co. v. Chicago* (107 U. S., 678) involved the right of the States to legislate respecting the use of navigable streams over which, for purposes of commerce between the States, the Federal Government has jurisdiction. In dealing with this question the court said:

The power vested in the General Government to regulate interstate and foreign commerce involves the control of the waters of the United States which are navigable in fact, so far as it may be necessary to insure their free navigation, when by themselves or their connection with other waters they form a continuous channel for commerce among the States or with foreign countries. \* \* \*

But the States have full power to regulate within their limits matters of internal police, including in that general designation whatever will promote the peace, comfort, convenience, and prosperity of their people. This power embraces the construction of roads, canals, and bridges and the establishment of ferries, and it can generally be exercised more wisely by the States than by a distant authority. They are the first to see the importance of such means of internal communication and are more deeply concerned than others in their wise management. Illinois is more immediately affected by the bridges over the Chicago River and its branches than any other State and is more directly concerned for the prosperity of the city of Chicago, for the convenience and comfort of its inhabitants, and the growth of its commerce. And nowhere could the power to control the bridges in that city, their construction, form and strength, and the size of their draws and the manner and times of using them be better vested than with the State or the authorities of the city upon whom it has devolved that duty. When its power is exercised so as to unnecessarily obstruct the navigation of the river or its branches, Congress may interfere and remove the obstruction. If the power of the State and that of the Federal Government come in conflict, the latter must control and the former yield. This necessarily follows from the position given by the Constitution to legislation in pursuance of it as the supreme law of the land. But until Congress acts on the subject the power of the State over bridges across its navigable streams is plenary.

And further:

The doctrine declared in these several decisions is in accordance with the more general doctrine now firmly established—that the commercial power of Congress is exclusive of State authority only when the subjects upon which it is exercised are national in their character and admit and require uniformity of regulation affecting alike all the States. Upon such subjects only that authority can act which can speak for the whole country. Its nonaction is therefore a declaration that they shall remain free from all regulation.

*Kansas v. Colorado* (206 U. S., 46) involves directly the power of the Federal Government to legislate respecting the irrigation of arid lands. The question presented for decision is thus stated by the court:

Turning now to the controversy as here presented, it is whether Kansas has a right to the continuous flow of the waters of the Arkansas River, as that flow existed before any human interference therewith, or Colorado the right to appropriate the waters of that stream so as to prevent that continuous flow, or that the amount of the flow is subject to the superior authority and supervisory control of the United States. \* \* \*

The primary question is, of course, of national control. For, if the Nation has a right to regulate the flow of the waters, we must inquire what it has done in the way

of regulation. If it has done nothing the further question will then arise, What are the respective rights of the two States in the absence of national regulation?

In discussing this question, as stated by the court, it was said:

Congress has, by virtue of the grant to it of power to regulate commerce "among the several States," extensive control over the highways, natural or artificial, upon which such commerce may be carried. It may prevent or remove obstructions in the natural waterways and preserve the navigability of those ways. \* \* \*

That involves the question whether the reclamation of arid lands is one of the powers granted to the General Government. As heretofore stated, the constant declaration of this court from the beginning is that this Government is one of enumerated powers. "The Government, then, of the United States, can claim no powers which are not granted to it by the Constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication." (Story, J., in *Martin v. Hunter's Lessee*, 1 Wheat., 304, 326.) "The Government of the United States is one of delegated, limited, and enumerated powers." (*United States v. Harris*, 106 U. S., 629, 635.)

Turning to the enumeration of the powers granted to Congress by the eighth section of the first article of the Constitution, it is enough to say that no one of them by any implication refers to the reclamation of arid lands. The last paragraph of the section, which authorizes Congress to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or office thereof, is not the delegation of a new and independent power, but simply provision for making effective the powers theretofore mentioned. \* \* \*

We must look beyond section 8 for congressional authority over arid lands, and it is said to be found in the second paragraph of section 3 of Article IV, reading: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State."

The full scope of this paragraph has never been definitely settled. Primarily, at least, it is a grant of power to the United States of control over its property. That is implied by the words "territory or other property." It is true it has been referred to in some decisions as granting political and legislative control over the Territories, as distinguished from the States of the Union. It is unnecessary in the present case to consider whether the language justifies this construction. Certainly we have no disposition to limit or qualify the expressions which have heretofore fallen from this court in respect thereto. But, clearly, it does not grant to Congress any legislative control over the States and must, so far as they are concerned, be limited to authority over the property belonging to the United States within their limits. Appreciating the force of this, counsel for the Government relies upon "the doctrine of sovereign and inherent power," adding, "I am aware that in advancing this doctrine I seem to challenge great decisions of the court, and I speak with deference." His argument runs substantially along this line: All legislative power must be vested in either the State or the National Government; no legislative powers belong to a State government other than those which affect solely the internal affairs of that State, consequently all powers which are national in their scope must be found vested in the Congress of the United States. But the proposition that there are legislative powers affecting the Nation as a whole which belong to, although not expressed in the grant of powers, is in direct conflict with the doctrine that this is a Government of enumerated powers. That this is such a Government clearly appears from the Constitution, independently of the amendments, for otherwise there would be an instrument granting specific things made operative to grant other and distinct things. This natural construction of the original body of the Constitution is made absolutely certain by the tenth amendment. This amendment, which was seemingly adopted with prescience of just such contention as the present, disclosed the widespread fear that the National Government might, under the pressure of a supposed general welfare, attempt to exercise powers which had not been granted. With equal determination, the framers intended that no such assumption should ever find justification in the organic act, and that if in the future further powers seemed necessary they should be granted by the people in the manner they had provided for amending that act. It reads, "The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States, respectively, or to the people. \* \* \*

One cardinal rule underlying all the relations of the States to each other is that of equality of right. Each State stands on the same level with all the rest. It can impose its own legislation on no one of the others and is bound to yield its own views



to none. Yet, whenever, as in the case of *Missouri v. Illinois* (180 U. S., 208) the action of one State reaches through the agency of natural laws into the territory of another State, the question of the extent and the limitations of the rights of the two States becomes a matter of justiciable dispute between them, and this court is called upon to settle that dispute in such a way as will recognize the equal rights of both and at the same time establish justice between them.

The court then proceeded to consider and determine the rights, not of the Federal Government, but of the States of Kansas and Colorado, in the waters of the Arkansas River, a stream which flows through both States.

The case of *Shively v. Bowlby* (152 U. S., 1) involved the title to lands below high-water mark in the Columbia River in the State of Oregon. It is one of the leading cases on the subject of the powers of the Federal and State Governments over navigable streams. That the power and jurisdiction of the States over nonnavigable streams and lands lying under them is exclusive is not questioned. It is only where the question of navigation for interstate purposes is involved that any question of sovereign power in the States has ever been controverted. In this case the laws of the several States on the subject and the numerous decided cases bearing upon it are fully reviewed and the doctrine laid down in *Pollard's Lessee v. Hagan*, quoted from above, confirmed and approved. The opinion in the case is an exceedingly interesting and instructive one and should receive attention in this connection. In closing, the court said:

The United States, while they hold the country as a Territory, having all the powers both of national and municipal government, may grant for appropriate purposes, titles or rights in the soil below high-water mark of tidewaters. But they have never done so by general laws; and, unless in some case of international duty or public exigency, have acted upon the policy, as most in accordance with the interest of the people and with the object for which the Territories were acquired, of leaving the administration and disposition of this sovereign rights in navigable waters and in the soil under them to the control of the States, respectively, when organized and admitted into the Union.

Grants by Congress of portions of the public lands within a Territory to settlers thereon, though bordering on or bounded by navigable waters, convey, of their own force, no title or right below high-water mark, and do not impair the title and dominion of the future State when created; but leave the question of the use of the shores by the owners of uplands to the sovereign control of each State, subject only to the rights vested by the Constitution in the United States.

The donation land claim, bounded by the Columbia River, upon which the plaintiff in error relies, includes no title or right in the land below high-water mark; and the statutes of Oregon, under which the defendants in error hold, are a constitutional and legal exercise by the State of Oregon of its dominion over the lands under navigable waters.

The following statement in the opinion in *Illinois Central Railroad v. Illinois* (146 U. S., 387, 435) is to the same effect:

It is the settled law of this country that the ownership of and dominion and sovereignty over lands covered by tidewaters, within the limits of the several States, belong to the respective States within which they are found, with the consequent right to use or dispose of any portion thereof, when that can be done without substantial impairment of the interest of the public in the waters, and subject always to the paramount right of Congress to control their navigation as far as may be necessary for the regulation of commerce with foreign nations and among the States. This doctrine has been often announced by this court and is not questioned by counsel of any of the parties. (*Pollard's Lessee v. Hagan*, 3 How., 212; *Weber v. Harbor Commissioners*, 18 Wall., 57.)

As establishing the claim we make that the Constitution vests no power in the Federal Government to regulate or control the use of the waters of a stream within a State, and that this power

can not be given by a statute enacted by Congress, we quote this language from the opinion in *New Orleans v. United States* (10 Peters, 662, 736):

The Government of the United States, as was well observed in the argument, is one of limited powers. It can exercise authority over no subjects, except those which have been delegated to it. Congress can not, by legislation, enlarge the Federal jurisdiction, nor can it be enlarged under the treaty-making power.

That the States have the right to regulate the use of even navigable streams within their borders where Congress has not acted or where such action does not interfere with the paramount power of the Federal Government to regulate commerce between the States, is affirmed by *Leovy v. United States* (177 U. S., 621), in which it is said:

Subject, then, to the paramount jurisdiction of Congress over the navigable waters of the United States, the State of Louisiana has full power to authorize the construction and maintenance of levees, drains, and other structures necessary and suitable to reclaim swamp and overflowed lands within her limits.

And in the *Daniel Ball* (177 U. S., 10 Wall., 557) it is said:

Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

Respecting the right of a State to control the navigation of a stream wholly within its limits it was said in the case of *Veazie v. Moor* (14 How., 568, 573):

Upon a comparison of this decree and of the statute upon which it is founded with the provision of the Constitution already referred to, we are unable to perceive by what rule of interpretation either the statute or the decree can be brought within either of the categories comprised in that provision.

These categories are: 1. Commerce with foreign nations. 2. Commerce amongst the several States. 3. Commerce with the Indian tribes. Taking the term commerce in its broadest acceptation, supposing it to embrace not merely traffic but the means and vehicles by which it is prosecuted, can it properly be made to include objects and purposes such as those contemplated by the law under review? Commerce with foreign nations must signify commerce which in some sense is necessarily connected with these nations, transactions which either immediately or at some stage of their progress must be extraterritorial. \* \* \* The phrase can never be applied to transactions wholly internal, between citizens of the same community, or to a polity and laws whose ends and purposes and operations are restricted to the territory and soil and jurisdiction of such community. Nor can it be properly concluded that, because the products of domestic enterprise in agriculture or manufactures, or in the arts may ultimately become the subjects of foreign commerce, the control of the means of the encouragements by which enterprise is fostered and protected is legitimately within the import of the phrase foreign commerce, or fairly implied in any investiture of the power to regulate such commerce. A pretension as far-reaching as this would extend to contracts between citizen and citizen of the same State, would control the pursuits of the planter, the grazier, the manufacturer, the mechanic, the immense operations of the collieries and mines and furnaces of the country; for there is not one of these avocations the results of which may not become the subjects of foreign commerce and be borne either by turnpikes, canals, or railroads from point to point within the several States toward an ultimate destination, like the one above mentioned. Such a pretension would effectually prevent or paralyze every effort at internal improvement by the several States; for it can not be supposed that the States would exhaust their capital and their credit in the construction of turnpikes, canals, and railroads, the remuneration derivable from which and all control over which might be immediately wrested from them, because such public works would be facilities for a commerce which, while availing itself of those facilities, was unquestionably internal, although intermediately or ultimately it might become foreign.

The rule here given with respect to the regulation of foreign commerce equally excludes from the regulation of commerce between the States and the Indian tribes



the control over turnpikes, canals, or railroads, or the clearing and deepening of watercourses exclusively within the States, or the management of the transportation upon and by means of such improvements.

In *New York v. Miln* (11 Pet., 102, 139) the absolute right of the State in this respect is more clearly and emphatically declared in this language:

But we do not place our opinion on this ground. We choose rather to plant ourselves on what we consider impregnable positions. They are these: That a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That, by virtue of this, it is not only the right, but the bounden and solemn duty of a State to advance the safety, happiness, and prosperity of its people, and to provide for its general welfare by every act of legislation which it may deem to be conducive to these ends; where the power over the particular subject or the manner of its exercise is not surrendered or restrained in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained, and that consequently, in relation to these, the authority of a State is complete, unqualified, and exclusive.

We are aware that it is at all times difficult to define any subject with proper precision and accuracy; that if this be so in general, it is emphatically so in relation to a subject so diversified and multifarious as the one which we are now considering.

If we were to attempt it, we should say that every law came within this description which concerned the welfare of the whole people of a State or any individual within it, whether it related to their rights or their duties, whether it respected them as men or as citizens of the State, whether in their public or private relation, whether it related to the rights of persons or of property or of the whole people of the State or any individual within it, and whose operation was within the territorial limits of the State and upon the persons and things within its jurisdiction.

Applying this doctrine to the right of a State to protect and control the flow of water in the streams within its limits, the court said, in *Hudson Water Co. v. McCarter* (209 U. S., 349, 356):

The problems of irrigation have no place here. Leaving them on one side, it appears to us that few public interests are more obvious, indisputable, and independent of particular theory than the interest of the public of a State to maintain the rivers that are wholly within it substantially undiminished, except by such drafts upon them as the guardian of the public welfare may permit for the purpose of turning them to a more perfect use. This public interest is omnipresent wherever there is a State, and grows more pressing as population grows. It is fundamental, and we are of opinion that the private property of riparian proprietors can not be supposed to have deeper roots. Whether it be said that such an interest justifies the cutting down by statute without compensation, in the exercise of the police power, of what otherwise would be private rights of property, or that apart from statute those rights do not go to the height of what the defendant seeks to do, the result is the same. But we agree with the New Jersey courts, and think it quite beyond any rational view of riparian rights that an agreement, of no matter what private owners, could sanction the diversion of an important stream outside the boundaries of the State in which it flows. \* \* \*

The right to receive water from a river through pipes is subject to territorial limits by nature, and those limits may be fixed by the State within which the river flows, even if they are made to coincide with the State line.

Respecting the effect of the admission of Wyoming as a State upon a treaty with the Indians by which they were given the right to hunt on the public domain, the court in *Ward v. Race Horse* (163 U. S. 504) used this language:

The argument now advanced in favor of the continued existence of the right to hunt over the land mentioned in the treaty, after it had become subject to State authority, admits that the privilege would cease by the mere fact that the United States disposed of its title to any of the land, although such disposition, when made to an individual, would give him no authority over game, and yet that privilege continued when the United States had called into being a sovereign State, a necessary incident of whose authority was the complete power to regulate the killing of

game within its borders. This argument indicates at once the conflict between the right to hunt in the unoccupied lands within the hunting districts and the assertion of the power to continue the exercise of the privilege in question in the State of Wyoming in defiance of its laws. \* \* \*

The act which admitted Wyoming into the Union, as we have said, expressly declared that that State should have all the powers of the other States of the Union, and made no reservation whatever in favor of the Indians. These provisions alone considered would be in conflict with the treaty if it was so construed as to allow the Indians to seek out every unoccupied piece of Government land and thereon disregard and violate the State law, passed in the undoubted exercise of its municipal authority. But the language of the act admitting Wyoming into the Union, which recognized her coequal rights, was merely declaratory of the general rule.

As to the limitation of the powers of the Federal Government based upon its proprietary ownership of lands within a State, this is said in *Woodruff v. North Bloomfield Gravel Mining Co.* (18 Fed. Rep., 753, 772):

Upon the cession of California by Mexico, the sovereignty and proprietorship of all the lands within its borders in which no private interest had vested passed to the United States. Upon the admission of California into the Union, upon an equal footing with the original States, the sovereignty for all internal municipal purposes, and for all purposes except such purposes and with such powers as are expressly conferred upon the National Government by the Constitution of the United States, passed to the State of California. Thenceforth the only interest of the United States in the public lands was that of a proprietor, like that of any other proprietor except that the State, under the express terms upon which it was admitted, could pass no laws to interfere with their primary disposal, and they were not subject to taxation. In all other respects the United States stood upon the same footing as private owners of land.

Having demonstrated, by reference to the decided cases, the respective rights of the Federal Government and the States in the subject matter of the bill, we proceed to consider the provisions of the bill itself and the bearing of the principles we have discussed above on its terms and conditions.

But before taking up the various provisions of the bill in detail we desire to consider it briefly as a whole.

The bill in its entire scope and purpose is an infringement upon and an usurpation of the sovereign powers of the States. This is not only its effect, but it is the avowed intention of its friends to transfer, in part, at least, from the States to the National Government the control over the use of the waters of the stream within the States. Ostensibly it is proposed to authorize the Government to lease its own lands. To this there are serious objections, as we shall point out further along. But the public lands that may be leased for power sites are of themselves practically worthless. The Government has no ownership or interest in the water flowing in the stream except that of a riparian owner, and that only in States where riparian rights are recognized. In most of the Western States riparian rights are abolished and the ownership of the water vested in the whole people of the State, to be appropriated and applied to beneficial uses, as the laws of the State may provide. The Government owns the land precisely as a private individual owns his land, and with the same rights and privileges as to the use of the water that flows by it—no more, no less. It does not own it in its sovereign capacity, as we have shown, and has no sovereign power over it or over the water that flows past it. But the effect of the bill is to lease, not alone the land it owns, but the waters of the stream upon which it borders, and by conditions and restrictions in the lease to determine how and for what purposes the lessee shall use the



water, as well as the land. This is in violation of the principles enunciated by the courts, as above pointed out, and an encroachment upon, and a plain and open violation of, the sovereign rights of the States to govern and control such use.

It is an ingenious effort to fasten upon the private ownership of the land, by the Government, the sovereign right to control the use of the waters, a right that the Government does not possess under the Constitution and can not be given it by statute, and which admittedly does belong to the States. The rental to be paid by the lessee is not based upon the value of the use of the land, but upon the amount of power that can be produced by the water, which belongs to the State, and, as the water, in which the Government has no ownership or interest, is thus leased, the attempt is made to control the use of the thing leased, namely, the water. It may be conceded that the Government, as lessor, and the lessee may agree upon any basis they please in fixing the rental or royalty to be paid. Of this the State could not justly complain. The trouble is that because the Government fixes the amount to be paid for the land by the amount of power that can be produced by the water, over which it can have no right or control, it is attempting to vest in itself the unwarranted power to determine how the water shall be used and what for. Ostensibly this is done to protect the Government, as lessor, and secure to it a compliance, on the part of the lessee, with the terms of the lease. But the intention and the effect of it is to draw to the Federal Government the right to control the use of the water. And this is the matter in controversy. Of this the States have every reason to complain. The granting of any such privilege is a betrayal of the sovereign rights of the State.

If any private owner of lands bordering on a stream should lease his lands for a power site and impose any such terms and conditions, affecting the use of the water, as this bill provides for, they would undoubtedly be inoperative and void. And, as the National Government, in this respect, has only the rights of a private owner, such conditions, made by the Government, would be equally so.

Having submitted these views on the general scope and effect of the bill, we proceed to verify what we have said of it by calling attention to some of its specific provisions.

In its first section the bill authorizes the Secretary of the Interior to lease lands of the Government for the "development, generation, transmission, and utilization of hydroelectric power." The effort is to devote not only the land leased, but the water, to a specific and exclusive purpose, namely, the generation of power. This is a direct violation of the right of the States to regulate and control the use or uses to which water should be applied, and in direct opposition to the policies of the States. In nearly all of the States where irrigation is practiced and in which this law, if enacted, will operate, have, either by direct statutory provisions or rules and regulations adopted by utility commissioners or other authorized official bodies, provided what uses of water shall be preferred over others where the water supply from any source is insufficient to meet all needs, usually in the following order: Domestic use, irrigation, development of power. This whole bill proceeds upon the theory that the Government can fix and designate the use to which the water shall be devoted, in spite of contrary rules fixed by the States. But we apprehend that if such

a lease as is proposed were made and the power plant erected, the State could at any time require that the water used for the purpose of generating power be applied to domestic use or irrigation, if the water is needed for that purpose, and the lessee's lease and plant rendered valueless. If not, then the Government has, by its lease and the application of the water to a single and specific use, deprived the State of its undoubted sovereign right to determine the uses to which the water shall be applied. No one can doubt under the authorities we have cited that in a conflict of this kind between the two governments the right of the State to say how and for what purposes water shall be used would be sustained.

The vice of this first section runs through the whole bill. All of its provisions and limitations relate wholly to the use of the water for the generation of power. There is a feeble attempt to remedy this defect by section 20, added as an amendment by this committee, which provides that the plant *may* be enlarged by the lessee "for the purpose of impounding and conveying water for irrigation, mining, municipal, domestic, and other beneficial purposes." But this does not correct the evil. It is a mere consent of the Government that the water *may* be used for other purposes if the lessee desires. It is a consent given in a matter over which the Government has no control and about which it has no power either to give or withhold consent. And its consent, when given, amounts to nothing as affecting the use to which the water shall be applied. That is a matter exclusively within the power and jurisdiction of the States.

There is another apparent effort to avoid this and other void provisions in the bill that we will come to directly, by section 14, which provides that it shall not affect or interfere with the laws of any State relating to the control, appropriation, use, or distribution of water. Either this provision must have no effect at all or it will nullify every important provision of the bill, because the whole scope and effect of the bill, as we have shown, directly interferes with such laws of the States.

We now pass to the consideration of other provisions of the bill equally objectionable.

#### 1. LIMITATION OF LEASE TO 50 YEARS.

Any attempt to limit the life of a plant for the distribution and use of water is wholly at variance with the whole theory of water rights in the Western States. Where water is put to use for irrigation, for example, the use must be perpetual and not for a limited term, otherwise a landowner might have the use of the water until his trees are matured then lose his supply, bringing destruction upon his trees and his crops. To prevent this it is provided by statute in most, if not all of the irrigation States, that if a public service corporation shall once supply water to land for irrigation the right to its continued and perpetual use, as an appurtenant to his land, attaches and passes, like other appurtenances, by a conveyance of the land. This is not so important as applied to the use of water for the development of power, except where the power is used, as it is very generally, for the pumping and other means of supplying water for irrigation. In that case it is equally important with the direct supply of water for irrigation.



## 2. RIGHT TO USE WATER MUST FIRST BE OBTAINED FROM STATE.

It is provided that no lease shall be granted until the right to the water is secured from the State. In some of the States this provision will be impossible of execution because no right to the water can be obtained from the State until the plant to be used in applying it to a beneficial purpose is completed and approved by the State authorities and then no title to the water is granted, but only a license to use it. For example, in California a water commission is provided for by law. This commission is given complete and plenary power over the appropriation and use of water for any and all purposes. The commission is authorized to investigate all streams and determine the amount of total flow of the different streams in the State, the amount appropriated and in proper and necessary use, and the quantity open to appropriation. Anyone desiring to appropriate water from any stream must apply to this commission and state in his petition therefor certain required facts. Upon a proper showing being made, a permit is issued allowing the construction of proper works for its diversion and distribution.

The statute provides:

SEC. 16. Every application for a permit to appropriate water shall set forth the name and post-office address of the applicant, the source of water supply, the nature and amount of the proposed use, the location and description of the proposed head works, ditch, canal, and other works; the proposed place of diversion and the place where it is intended to use the water; the time within which it is proposed to begin construction, the time required for completion of the construction, and the time for the complete application of the water to the proposed use. If for agricultural purposes, the applicant shall, besides the above general requirements, 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, besides the general requirements prescribed above, 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 use to which the power is to be applied; if for storage in a reservoir, it shall give, in addition to the general requirements prescribed above, the height of dam, the capacity of the reservoir, and the use to be made of the impounded waters; if for municipal water supply, it shall give, besides the general requirements specified above, 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, in addition to the general requirements prescribed above, the nature and location of the mines to be served and the methods of supplying and utilizing the water. (Cal. Stat., 1913, pp. 1012, 1021.)

The statute further provides:

SEC. 19. Immediately upon completion, in accordance with law, the rules and regulations of the State water commission, and the terms of the permit, of the project under such application, the holder of a permit for the right to appropriate water shall report said completion to the State water commission. The said commission shall immediately thereafter cause to be made a full inspection and examination of the works constructed and shall determine whether the construction of said works is in conformity with law, the terms of the approved application, the rules and regulations of the State water commission, and the permit. The said water commission shall, if said determination is favorable to the applicant, issue a license which shall give the right to the diversion of such an amount of water and to the use thereof as may be necessary to fulfill the purpose of approved application. (Cal. Stat., 1913, pp. 1012, 1023.)

So it will be seen that in California the provision that the applicant must first secure the right from the State can have no effect, because his right can not be passed upon until the whole works are completed and approved by the water commission. And if not approved, the applicant is refused a license to divert and use the water. And under the following provision of the statute all water not appropriated in

accordance with the laws of the State is declared to belong to the people:

And all waters flowing in any river, stream, canyon, ravine, or other natural channel, excepting so far as such waters have been or are being applied to useful and beneficial purpose upon, or in so far as such waters are or may be reasonably needed for useful and beneficial purposes upon lands riparian thereto, or otherwise appropriated, is and are hereby declared to be public waters of the State of California and subject to appropriation in accordance with the provisions of this act. (Cal. Stat., 1913, pp. 1012, 1023.)

## 3. PROVISION AS TO TIME AND MANNER OF DOING THE WORK OF ESTABLISHING THE PLANT.

This matter is completely covered by State laws, and the provision conflicts directly with those laws. The California statute to which we have referred places in the hands of the water commissioners the power to determine when, where, and how the water shall be applied and continued in actual use. It provides:

SEC. 12. The State water commission shall have authority to, and may, for good cause shown, upon the application of any appropriator or user of water under an appropriation made and maintained according to law prior to the passage of this act, prescribe the time within which the full amount of the water appropriated shall be applied to a useful or beneficial purpose.

And certain rules for determining what is a reasonable prosecution and completion of the work are laid down for the guidance of the commission. The statute further provides:

SEC. 18. Actual construction work upon any project shall begin within such time after the date of the approval of the application as shall be specified in said approval, which time shall not be less than sixty days from date of said approval, and the construction of the work thereafter shall be prosecuted with due diligence in accordance with this act, the terms of the approved application, and the rules and regulations of said commission; and said work shall be completed in accordance with law, the rules and regulations of the State water commission and the terms of the approved application, and within a period specified in the permit; but the period of completion specified in the permit may, for good cause shown, be extended by the State water commission. And if such work be not so commenced, prosecuted, and completed, the water commission shall, after notice in writing and mailed in a sealed, postage-prepaid and registered letter addressed to the applicant at the address given in his application for a permit to appropriate water, and a hearing before the commission, revoke its approval of the application. But any applicant the approval of whose application shall have been thus revoked shall have the right to bring an action in the superior court of the county in which is situated the point of the proposed diversion of the water for a review of the order of the commission revoking said approval of the application.

Thus we have a complete system of regulation in the State intended to secure an early application of the water to a beneficial use. To this end work is required to be commenced in *not less than sixty days* and prosecuted with due diligence, under rules and regulations prescribed by the commission.

This bill provides in section 2:

That each lease made in pursuance of this act shall provide for the diligent, orderly, and reasonable development and continuous operation of the water power subject to market conditions.

In other words, the State, admittedly the only authority having jurisdiction over the matter, provides that the work must commence within 60 days, be prosecuted with diligence, and completed under rules and regulations prescribed by the water commission. By this act we fix no time when the work shall be begun, prosecuted, and



completed, but require it to be done as the Secretary of the Interior shall prescribe in a lease and subject to market conditions. We have shown that the Federal Government has no power or jurisdiction over this matter of supplying water or power in a State; but if it had, this would involve a conflict of authority between the State and Federal Governments that must lead to conflicts and be intolerable.

#### 4. ALLOWING INTERSTATE COMMERCE COMMISSION TO FIX RATES AND DETERMINE THE ISSUE OF STOCKS AND BONDS.

It is possible that where a corporation is engaged in transmitting power into another State the Federal Government would, because it is interstate business, have power to fix the rates to be charged against consumers, at least in the State to which it is transmitted. It is submitted, however, that it has no such power respecting power furnished by the corporation in its own State. And in no event could the Government justify itself in assuming to control the issue of stocks and bonds of a corporation as against the laws of the State of its creation. This would be an unwarranted exercise of authority based upon the mere fact that the corporation is its tenant, holding Government land within the State. Referring again to California, the railroad commission of the State has authority, conferred upon it by statute, to fix and determine not only the rates to be charged by a corporation furnishing power within the State, but to determine its bond and stock issue and other indebtedness. In other words, that commission has full and ample power to deal with the whole subject. Now it is proposed by this bill to give the same power to a Federal commission. This necessarily brings the two into direct conflict. The power can not be exercised by both Governments. It belongs of right to the State where it is organized and doing business and dealing with the water that belongs to the State and is being supplied to its people. There can be no just or valid claim that this power belongs to the Government, or can properly and legally be vested in it by statute.

#### 5. AUTHORIZING COMBINATION OF PLANTS OR LINES.

The bill provides in section 3 that the Secretary of the Interior, in his discretion, may allow "the physical combination, distribution, and use of power or energy under this act or under leases given hereunder not in violation of law."

By what possible right could the Government, as a mere lessor of land, grant or withhold any such privilege? It is completely within the control and jurisdiction of the State.

Referring again to California. In that State the water can be diverted and used only under a license issued by the water commission after the works are completed, and for the purposes and in the manner the commission shall determine. And thereafter the exercise of the right is under complete control of the State authorities, as we have stated. The statute, after providing for the issuance of the license, further provides:

All permits and licenses for the appropriation of water shall be under the terms and conditions of this act, and shall be effective for such time as the water actually appropriated under such permits and licenses shall actually be used for the useful

and beneficial purpose for which said water was appropriated, but no longer; and every such permit or license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this section and likewise the statement that any appropriator of water, to whom said permit or license may be issued, shall take the same subject to such conditions as therein expressed.

The commission has ample power to determine whether there shall be combinations of plants or lines or not. They are fully authorized to say, in the license granted, whether this shall be done or not. And any effort to place this power, in whole or in part, in a Federal officer is in plain violation of the rights of the States and a usurpation of power.

#### 6. FORBIDDING THE INCUMBRANCE OF THE PROPERTY LEASED.

Section 4 of the bill provides against the incumbrance of the property leased if within a Territory, or where the intention is to transmit power into two or more States, except upon the approval of the Secretary of the Interior for certain purposes.

This is much the same as the last previous question presented. It is, where the property leased is within a State, and, it may be the corporation organized under the laws of that State, the assumption of a power that belongs to and, in some of the States, is being actively and satisfactorily exercised. It is no part of the authority, power, or duty of the Federal Government and can not be acquired by the mere proprietary ownership and leasing of lands. The incumbrance may be necessary to carry on the work authorized and required by the State to complete the works and put the water which it owns to a beneficial use. This matter of determining whether the property devoted to a public use shall or shall not be incumbered, and if so, in what amount, belongs exclusively to the State and can not be exercised legally by the Government. To do so is a plain infringement of the sovereign rights of the States. It may prevent a public improvement that the people of the State need and have the right to have.

#### 7. PROVISION AUTHORIZING THE GOVERNMENT TO TAKE OVER THE LAND AT THE EXPIRATION OF THE LEASE.

By this provision the Government is authorized to take over not only the land it has leased but a water-power plant to be used, and which must continue to be used, for the generation of power for public use and to become a public-utility corporation, obligated to operate the plant and supply power to the public. When it assumes this function, it becomes at once bound by the contracts and other obligations of the lessee to supply the power. It at once becomes amenable to the State authorities having power to regulate its business. If not then, the effect is to deprive the State of the right to regulate the use of the waters of the State as an exercise of its sovereign power. It may well be asked how, when the National Government becomes a utility corporation, the State can exercise as against it the power it has to regulate rates or otherwise control the use and operation of the plant, even to the extent, as it may, of taking away the use of the water and requiring it to be used for other purposes more necessary for the public good than the development of power.



Neither the State nor any consumer under the system could sue the Government or compel it in any way to perform its duty as a public-service corporation. This provision, if not illegal, is, it seems to us, absurd. It would lead to untold and innumerable conflicts of governmental authority and complications.

#### 8. MAKING CONTRACTS FOR POWER.

Section 7 of the bill provides for the making of contracts for power upon the approval of the proper State authority and of the Secretary of the Interior.

We think we have demonstrated above that the Federal Government has no power or jurisdiction over this subject within a State. In this instance the right of the State to deal with it is recognized, but the Secretary of the Interior is given the power to nullify the action of the State in giving its approval by refusing to give his own. So action by the Secretary of the Interior, an officer who has no jurisdiction in the matter, and can be given none legally, is made necessary to any such action on the part of the utility corporation, for no better reason than that this particular corporation rents its power site from the Government. Other power corporations are not subject to any such limitation or double regulation. The State can not thus be shorn of its sovereign power over the subject matter by the Government in its capacity of a real estate dealer. It can not be possible that a renter from the Government must be subject to two regulating powers and two rules of regulation and other corporations owning their power sites or leasing them from some one else subject to but one. The mere statement of some of the results should be sufficient to condemn this provision.

#### 9. OBJECTIONABLE MEANS OF ARRIVING AT RENT TO BE PAID.

The amount of rent to be paid for the land to be used as a power site is not fixed by the rental or other value of the land, but the amount of power produced by the use of the water belonging to the State. The land in and of itself is practically of no value. The profit, if any, resulting from the use of the water depends upon the rates collected by the corporation for the powers, which must be fixed by the State, if by anybody. In fixing the rates the State must allow the corporation the amount of rental it is required to pay to the Government as a part of its yearly operating expenses. The consumers must pay, not the interest on this amount only, as a part of the capital investment, but must pay it all each year as a part of the fixed annual charges of the company. A reasonable charge by the Government for the use of its land may be justified as a real estate transaction. It is not the exercise of sovereign power. It is nothing but a contract of lease, the same in all material respects as a transaction of a like kind by a private individual, with the Secretary of the Interior acting as the real estate agent. This should be kept constantly in mind. But the basis upon which the rental is founded is a false and unjust one. It compels the consumers of water belonging to the State to pay a charge to the Government that it is unconscionable to make. It compels the people of the State to pay the Government for the use of the water that belongs to them

and to which the Government has no right and over which it has no power nor jurisdiction. The whole thing is unjust and unconscionable.

#### 10. DISPOSITION OF PROCEEDS OF THE LEASE.

The injustice of the rental founded on the use of the water is made clear and accentuated by the provision, in the eighth section of the bill, that the proceeds shall be paid one half to the State and the other half to the Reclamation Service. This is clearly unjust to the State. The use of the water that belongs wholly to the State is the valuable thing. The Government has no interest in the water and is entitled to none of its benefits. But it assumes to rent it with the practically worthless land, the people of the State pay back the whole of it to the corporation, and the Government provides how the rental shall be divided without the approval or consent of the State. This is extending the power of the Federal Government over the sovereign rights of the States with a vengeance.

#### 11. CONTROL GIVEN TO THE GOVERNMENT WHERE STATE HAS NO UTILITY COMMISSION.

In section 9 of the bill it is provided that where a State has no utility commission or other authority having power to regulate rates and service of electrical energy and the issuance of stock and bonds by public-utility corporations engaged in power development, these powers shall be vested in the Secretary of the Interior or committed to such body as may be authorized by Federal statute until such time as the State shall provide a commission or other authority for such regulation and control.

This attempt to vest in an officer of the Federal Government the power to control the power-developing corporations in their service and to determine their issuance of stock and bonds is in violation of the rights of the States and unconstitutional. We have shown that the Federal Government has no power whatever to deal with these questions within a State and that the power can not be created or conferred by statute. The fact that the State, for the time being, does not exercise the power can not have the effect of vesting it in the National Government. As the power of the Government can be conferred only by the Constitution and as this was not so conferred, it is reserved to the States. This we submit is beyond question.

#### 12. AUTHORITY TO EXAMINE BOOKS OF LESSEE.

By section 11 the Secretary of the Interior is given authority to examine the books and accounts of the lessees and to require them to submit "statements, representations, or reports, including information as to cost of water rights, lands, easements, and other property acquired, production, use, distribution, and sale of energy; all of which statements, representations, or reports so required shall be upon oath, unless otherwise specified, and in such form and upon such blanks as the Secretary of the Interior may require."

This again is a plain usurpation of the power that belongs to the States. Both the water commission and the railroad commission of the State of California, under its laws, have the right to require all



of the information that is provided for in this section. This would subject a corporation that rents from the Federal Government to double examinations and double reports for which the consumers under that particular system must pay while other corporations, not renting from the Government, would be subject to only one examination and one report. Besides, the Government, as a mere lessor, of the property used as a power site, has no interest whatever in any of the things that are required to be reported upon by this section of the bill. As it is proposed to base the rents to be paid for the land upon the amount of power developed—if that be legal and justified, the Government has the right to satisfy itself of the amount of power developed. It has no interest further than that, and any effort to interfere with the business of the corporation or the operation of its plant, which belong alone to the State, is entirely unauthorized.

### 13. FORFEITURE OF LEASE.

Section 12 provides that this "lease may be forfeited and canceled, by appropriate proceedings, in a court of competent jurisdiction whenever the lessee, after reasonable notice, in writing, as prescribed in the lease, shall fail to comply with the terms of this act or with such conditions not inconsistent therewith as may be specifically recited in the lease."

This would place the lessee in a very unhappy situation. As the State has the undoubted power to regulate the use of the water and the operation of the plant, the lessee might be compelled by State regulations to violate numerous terms provided for in the lease or the regulations of the Secretary of the Interior. Where the power exercised by the Government—and that authority would be exercised by the Secretary of the Interior by this bill—and the State commission should conflict, the unfortunate lessee would have to take his chances of being prosecuted by the State authorities and his right to furnish power forfeited, or to comply with the rules, regulations, and orders of the Federal Government whereby his lease may be subject to forfeiture. This perhaps shows quite as clearly as anything else why it is utterly impossible that the provisions of this statute and the rules and regulations that may be prescribed by the Secretary of the Interior can not by any possibility be allowed to stand as against the sovereign power of the State to regulate and control all these things.

*Can the Government by a system of long leases perpetuate its ownership in the States of untaxed lands?*—We have shown by the decided cases that the Government owns the public lands as a proprietor and not in its sovereign capacity. This is too clearly and firmly established to admit of doubt. In a sense the Government owns the land in trust to dispose of it for use by the citizens of the country. Laws have been enacted, from time to time, providing for their disposition. Until now the national policy has been to convey the absolute title to the land in whatever way it may be disposed of. But it is now proposed to hold the title to the land in the Federal Government and lease it on long leases. This would be a radical change in Governmental policy. It is a very important one to the States. The land in the hands of the Government is not subject to taxation by the States.

In the hearings by the committee this startling statement was made by the Senator from Colorado (Mr. Shafroth):

I believe that any leasing bill for the public domain or resources thereof is a direct attack on the sovereignty of the States containing the same, because it must result in a perpetual ownership of the property in the United States Government. Inasmuch as taxes can not be imposed upon property owned by the Federal Government, it means, to carry it to its ultimate result, the depriving of the States of their means of existence.

I want to call the attention of the committee to a list contained in an article by Mr. W. V. M. Powelson of the number of acres of land in the various Western States now in the ownership of the Government. In Arizona, 92 per cent of the lands within the area of that State are in Government ownership; California, 52.58 per cent; Colorado, 56.67 per cent; Idaho, 83.80 per cent; Montana, 65.80 per cent; Nevada, 87.82 per cent; New Mexico, 62.83 per cent; Oregon, 51 per cent; Utah, 80.18 per cent; Washington, 40 per cent; Wyoming, 68 per cent.

Thus it is shown that lands in the several Western States ranging from 40 to 92 per cent are held in Government ownership and not subject to taxation by the State. And it is proposed by this and other bills pending in the Senate, making up the system of conservation proposed to be inaugurated, to perpetuate this condition and perpetually deprive the States of the right to tax this large percentage of the lands within its borders to maintain and support the State government. Whether the Government has the power to deal with its lands in that way or not, it must be seen by any observing person that it will be a rank injustice to the States in which these lands are situated. But we go further and maintain that the Government, holding the public lands in trust to dispose of them, has no right or authority to thus perpetuate its ownership of nontaxable lands and withhold them from purchase by the people of the country where the title should be vested.

Referring again to the case of *Pollard's Lessee v. Hagan* (3 How., 212), one of the leading cases on the subject, and from which we have quoted above, it will be seen that as to the public domain, not including lands acquired for permanent use for the erection of forts, magazines, arsenals, dockyards, and other needful buildings in the District of Columbia, the right and ownership of the land by the Government is "temporary," and so it has always, up to this time, been considered. The theory and understanding has always been that public lands are held by the Government temporarily and in trust to dispose of them and vest the permanent fee simple title in those who might acquire them under rules and regulations prescribed by Congress. It was never intended that title to such lands should be held permanently in the Government, and in our judgment any law that vests this right to permanently hold the lands free from State taxation will be an open violation of the trust under which the lands are held and of the sovereign rights of the States.

At the expense of further extending this already long report, we quote again a short extract from the case last mentioned:

We will now inquire into the nature and extent of the right of the United States to these lands, and whether that right can in any way affect or control the decision of the case before us. This right originated in voluntary surrenders, made by several of the old States, of their waste and unappropriated lands, to the United States, under a resolution of the old Congress of the 6th of September, 1780, recommending such surrender and cession to aid in paying the public debt incurred by the War of the Revolution. The object of all the parties to these contracts of cession was to convert the land into money for the payment of the debt and to erect new States over the territory thus



ceded; and as soon as these purposes could be accomplished the power of the United States over these lands, as property, was to cease.

Whenever the United States shall have fully executed these trusts the municipal sovereignty of the new States will be complete throughout their respective borders, and they and the original States will be upon an equal footing in all respects whatever. We therefore think the United States hold the public lands within the new States by force of the deeds of cession and the statutes connected with them, and not by any municipal sovereignty which it may be supposed they possess or have reserved by compact with the new States for that particular purpose.

It clearly appears from this decision that the title of the Government in such lands is not permanent, but ceded only for the purpose of disposing of them, and that the Government can not make its title permanent or deprive itself for any length of time of the power to comply with the obligation of its trust to dispose of them.

*Will the bill, if enacted, bring the desired results?*—As stated in the beginning, the purpose of this proposed legislation, as stated by the majority of the committee, is to bring about a speedier development of our undeveloped water power. It may be said that this is a purpose not within the power or jurisdiction of the Federal Government. The whole purpose of the bill, as thus stated, is beyond the power of the Government. It has no undeveloped water power. It is only a landowner in the States and nothing else. The development, as well as the regulation and control of undeveloped water and water power, is a purely State matter. The States alone have power to deal with the subject. The Government may, in its generosity, offer its land to the State, as any other landowner might do, to aid the State to develop its natural resources. It can not constitutionally do anything more. The assumption of some conservationists that the National Government has anything to do, as a Government, with the development of the natural resources in a State is without the slightest foundation. As a landowner it may be interested in such development as a means of increasing the value of the land it holds in trust for the people, but nothing more. It may hinder the State in its efforts to develop its resources by withholding its lands, available for dam, reservoir, or power sites, or by placing burdensome terms and conditions of sale or lease of its lands, if it has power to lease them, as would make it impossible or impracticable to use them for such purposes. But any private landowner might do the same thing and with the same effect.

And we submit that this is just what Congress will do for the Government if it enacts this bill. The terms upon which the Secretary of the Interior is authorized to lease land for power purposes are so unreasonable and burdensome and so clearly in conflict with State rights and State laws as to prevent any prudent business man from investing any money in a power site in any State. He would be unable to determine whether, in constructing and managing his plant, he would be bound by the Federal or State law, or both where they are not in direct conflict. If he obeyed one, in many instances, as we have pointed out, he would violate the other. A compliance with the State law would in some cases forfeit his lease. On the other hand, if he followed the provisions of the lease, particularly as to the time of commencing and completion of his plant, he would, in California at least, forfeit his right to the water, the really valuable thing, and a license to use the water would have to be denied him for failure to comply with the State laws. This would be true in other States as well. We have used California and its laws only as an

illustration of the conflicts that would arise between the Government and the States if this bill should pass. The same conflicts would arise in the other Western States.

The present law relating to the use of public lands for power and irrigation purposes is entirely inadequate because of its uncertainty. But this proposed legislation would be infinitely worse because it is so certainly and fatally wrong. It would, if enacted, soon put an end to any development of water power. Witness after witness, practical and experienced men, appeared before the committee and pointed out that the law would be impractical and unrevokable and prevent investments in enterprises of this kind, and the reasons were clearly pointed out. On the other hand, we had information to the contrary from Government officials who sincerely believed the law would be beneficial; but they could only theorize about a very practical matter. They had no practical knowledge on the subject. There were others who appeared in support of the bill equally sincere, but without knowledge. And the friends of the bill made no effort to sustain its constitutionality or to defend it against the legal objections that we have been pointing out in this report.

We have given but little attention to the merely business objections made to the bill. To our minds the legal objections to it are so numerous and so conclusive that this is unnecessary. As to this phase of it we refer Senators to the public hearings that were full and fair. The friends of the bill gave its opponents every opportunity to point out and support their objections to it. These hearings on so important a matter should receive the careful attention of every Senator who desires to be informed on the subject.

For the reasons we have pointed out and for others that may be developed later on, we could not concur in the favorable report on the bill, and submit that it should not pass.

REED SMOOT.  
JOHN D. WORKS.  
C. D. CLARK.



*WSP*

IN THE SENATE OF THE UNITED STATES.

AUGUST 25, 1914.

Read twice and referred to the Committee on Public Lands.

**AN ACT**

To provide for the development of water power and the use of public lands in relation thereto, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 That the Secretary of the Interior be, and hereby is, author-  
4 ized and empowered, under general regulations to be fixed  
5 by him, and under such terms and conditions as he may  
6 prescribe, not inconsistent with the terms of this Act, to lease  
7 to citizens of the United States, or to any association of such  
8 persons, or to any corporation organized under the laws of the  
9 United States, or any State or Territory thereof, any part  
10 of the public lands of the United States (including Alaska),  
11 reserved or unreserved, including lands in national forests,  
12 the Grand Canyon and Mount Olympus national monu-  
13 ments, and other reservations, not including national parks  
14 or military reservations, for a period not longer than fifty

VIEWS OF SENATOR CHARLES S. THOMAS.

I am unable to accept the reasoning of the minority report in toto, but agree in the conclusions announced. My own view of the proper solution of the so-called water-power problem in the "public-land States" is the transfer by the Government to the States wherein they are located of all power sites upon the public domain in trust, and, conditioned upon their development by the transferers for the use and benefit of the public at rates sufficient to defray the cost of construction and operation, the sites to be forfeited to the General Government upon noncompliance with the terms and conditions of the trust. This insures development, prevents monopoly, and assures to the people an adequate supply of cheap power. It is conservation in the true meaning of the term.

C. S. THOMAS.



1 years for the purpose of constructing, maintaining, and oper-  
 2 ating dams, water conduits, reservoirs, power houses, trans-  
 3 mission lines, and other works necessary or convenient to  
 4 the development, generation, transmission, and utilization of  
 5 hydroelectric power, which leases shall be irrevocable except  
 6 as herein provided, but which may be declared null and  
 7 void upon breach of any of their terms: *Provided*, That such  
 8 leases shall be given within or through any of said national  
 9 forests or other reservations only upon a finding by the chief  
 10 officer of the department under whose supervision such forest,  
 11 national monument, or reservation falls that the lease will  
 12 not injure, destroy, or be inconsistent with the purpose for  
 13 which such forest, national monument, or reservation was  
 14 created or acquired: *Provided further*, That in the granting  
 15 of leases under this Act the Secretary of the Interior may,  
 16 in his discretion, give preference to applications for leases for  
 17 the development of electrical power by States, counties, or  
 18 municipalities, or for municipal uses and purposes: *Provided*  
 19 *further*, That for the purpose of enabling applicants for a  
 20 lease to secure the data required in connection therewith, the  
 21 Secretary of the Interior may, under general regulations to  
 22 be issued by him, grant preliminary permits authorizing the  
 23 occupation of lands valuable for water-power development  
 24 for a period not exceeding one year in any case, which time  
 25 may, however, upon application, be extended by the Secre-

1 tary of the Interior if the completion of the application for  
 2 lease has been prevented by unusual weather conditions or  
 3 by some special or peculiar cause beyond the control of the  
 4 permittee.

5 SEC. 2. That each lease made in pursuance of this Act  
 6 shall provide for the diligent, orderly, and reasonable devel-  
 7 opment and continuous operation of the water power, subject  
 8 to market conditions, and shall provide that the lessee shall  
 9 at no time contract for the delivery to any one consumer of  
 10 electrical energy in excess of fifty per centum of the total  
 11 output.

12 SEC. 3. That in case of the development, generation,  
 13 transmission, and use of power or energy under such a lease  
 14 in a Territory, or in two or more States, the regulation and  
 15 control of service and of charges for service to consumers and  
 16 of the issuance of stock and bonds by the lessee is hereby  
 17 conferred upon the Secretary of the Interior or committed to  
 18 such body as may be provided by Federal statute: *Pro-*  
 19 *vided*, That the physical combination of plants or lines for  
 20 the generation, distribution, and use of power or energy  
 21 under this Act or under leases given hereunder may be per-  
 22 mitted, in the discretion of the Secretary of the Interior, but  
 23 combinations, agreements, arrangements, or understandings,  
 24 express or implied, to limit the output of electrical energy,  
 25 to restrain trade with foreign nations or between two or



1 more States or within any one State, or to fix, maintain, or  
 2 increase prices for electrical energy or service are hereby  
 3 forbidden.

4 SEC. 4. That except upon the written consent of the  
 5 Secretary of the Interior no sale or delivery of power shall  
 6 be made to a distributing company, except in case of an  
 7 emergency and then only for a period not exceeding thirty  
 8 days, nor shall any lease issued under this Act be assignable  
 9 or transferable without such written consent: *Provided,*  
 10 *however,* That no lessee under this Act shall create any lien  
 11 upon any power project developed under a permit issued  
 12 under this Act by mortgage or trust deed, except approved  
 13 by the Secretary of the Interior and for the bona fide purpose  
 14 of financing the business of the lessee. Any successor or  
 15 assign of such property or project, whether by voluntary  
 16 transfer, judicial sale, foreclosure sale, or otherwise, shall be  
 17 subject to all the conditions of the approval under which  
 18 such rights are held, and also subject to all the provisions  
 19 and conditions of this Act to the same extent as though such  
 20 successor or assign were the original lessee hereunder.

21 SEC. 5. That upon not less than three years' notice,  
 22 which may be issued at any time after three years immedi-  
 23 ately prior to the expiration of any lease under this Act, the  
 24 United States shall have the right to take over the properties  
 25 which are dependent, in whole or in part, for their useful-

1 ness on the continuance of the lease herein provided for,  
 2 and which may have been acquired by any lessee acting  
 3 under the provisions of this Act, upon condition that it shall  
 4 pay, before taking possession, first, the actual costs of rights  
 5 of way, water rights, lands, and interests therein purchased  
 6 and used by the lessee in the generation and distribution of  
 7 electrical energy under the lease, and, second, the reasonable  
 8 value of all other property taken over, including struc-  
 9 tures and fixtures acquired, erected, or placed upon the lands  
 10 and included in the generation or distribution plant, and  
 11 which are dependent as hereinabove set forth, such reason-  
 12 able value to be determined by mutual agreement between  
 13 the Secretary of the Interior and the lessee, and, in case  
 14 they can not agree, by proceedings instituted in the United  
 15 States district court for that purpose: *Provided,* That such  
 16 reasonable value shall not include or be affected by the  
 17 value of the franchise or good will or profits to be earned  
 18 on pending contracts or any other intangible element.

19 SEC. 6. That in the event the United States does not  
 20 exercise its right to take over, maintain, and operate the  
 21 properties as provided in section five hereof, or does not  
 22 renew the lease to the original lessee upon such terms and  
 23 conditions and for such periods as may be authorized under  
 24 the then existing applicable laws, the Secretary of the Inte-  
 25 rior is authorized, upon the expiration of any lease under



1 this Act, to lease the properties of the original lessee to a  
 2 new lessee upon such terms, under such conditions, and  
 3 for such periods as applicable laws may then authorize, and  
 4 upon the further condition that the new lessee shall pay for  
 5 the properties as provided in section five of this Act.

6 SEC. 7. That where, in the judgment of the Secretary  
 7 of the Interior, the public interest requires or justifies the  
 8 execution by any lessee of contracts for the sale and delivery  
 9 of electrical energy for periods extending beyond the life  
 10 of the lease, but for not more than twenty years thereafter,  
 11 such contracts may be entered into upon the approval of  
 12 the said Secretary, and thereafter, in the event of the exer-  
 13 cise by the United States of the option to take over the plant  
 14 in the manner provided in sections five or six hereof, the  
 15 United States or its new lessee shall assume and fulfill all  
 16 such contracts entered into by the first lessee.

17 SEC. 8. That for the occupancy and use of lands and  
 18 other property of the United States permitted under this  
 19 Act the Secretary of the Interior is authorized to specify in  
 20 the lease and to collect charges or rentals for all power  
 21 developed and sold or used by the lessee for any purpose  
 22 other than the operation of the plant, and the proceeds shall  
 23 be paid into, reserved, and appropriated as a part of the  
 24 reclamation fund created by the Act of Congress approved  
 25 June seventeenth, nineteen hundred and two, known as

1 the reclamation Act, and after use thereof in the construction  
 2 of reclamation works and upon return to the reclamation  
 3 fund of any such moneys in the manner provided by the rec-  
 4 lamation Act and Acts amendatory thereof and supple-  
 5 mental thereto, fifty per centum of the amounts so utilized in  
 6 and returned to the reclamation fund shall be paid by the  
 7 Secretary of the Treasury after the expiration of each fiscal  
 8 year to the State within the boundaries of which the hydro-  
 9 electric power or energy is generated and developed, said  
 10 moneys to be used by such State for the support of public  
 11 schools or other educational institutions or for the construc-  
 12 tion of public improvements, or both, as the legislature of the  
 13 State may direct: *Provided*, That leases for the develop-  
 14 ment of power by municipal corporations solely for municipi-  
 15 pal use shall be issued without rental charge, and that leases  
 16 for development of power not in excess of twenty-five horse-  
 17 power may be issued to individuals or associations for do-  
 18 mestic, mining, or irrigation use without such charge.

19 SEC. 9. That in case of the development, generation,  
 20 transmission, or use of power or energy under a lease given  
 21 under this Act in a State which has not provided a commis-  
 22 sion or other authority having power to regulate rates and  
 23 service of electrical energy and the issuance of stock and  
 24 bonds by public-utility corporations engaged in power  
 25 development, transmission, and distribution, the control of



1 service and of charges for service to consumers and stock  
2 and bond issues shall be vested in the Secretary of the  
3 Interior or committed to such body as may be authorized by  
4 Federal statute until such time as the State shall provide a  
5 commission or other authority for such regulation and control.

6 SEC. 10. That where the Secretary of the Interior  
7 shall determine that the value of any lands, heretofore or  
8 hereafter reserved as water-power sites or for purposes in  
9 connection with water-power development or electrical trans-  
10 mission, will not be materially injured for such purposes by  
11 either location, entry, or disposal, the same may be allowed  
12 under applicable land laws upon the express condition that  
13 all such locations, entries, or other methods of disposal shall  
14 be subject to the sole right of the United States and its  
15 authorized lessees to enter upon, occupy, and use any part  
16 or all of such lands reasonably necessary for the accomplish-  
17 ment of all purposes connected with the development, gen-  
18 eration, transmission, or utilization of power or energy, and  
19 all rights acquired in such lands shall be subject to a reserva-  
20 tion of such sole right to the United States and its lessees,  
21 which reservation shall be expressed in the patent or other  
22 evidence of title: *Provided*, That locations, entries, selec-  
23 tions, or filings heretofore allowed for lands reserved as  
24 water-power sites or in connection with water-power devel-  
25 opment or electrical transmission may proceed to approval

1 or patent under and subject to the limitations and conditions  
2 in this section contained, but nothing herein shall be con-  
3 strued to deny or abridge rights now granted by law to those  
4 seeking to use the public lands for purposes of irrigation or  
5 mining alone.

6 SEC. 11. That the Secretary of the Interior is hereby  
7 authorized to examine books and accounts of lessees, and to  
8 require them to submit statements, representations, or  
9 reports, including information as to cost of water rights,  
10 lands, easements, and other property acquired, production,  
11 use, distribution, and sale of energy, all of which statements,  
12 representations, or reports so required shall be upon oath,  
13 unless otherwise specified, and in such form and upon such  
14 blanks as the Secretary of the Interior may require; and  
15 any person making any false statement, representation, or  
16 report under oath shall be subject to punishment as for  
17 perjury.

18 SEC. 12. That any such lease may be forfeited  
19 and canceled, by appropriate proceedings, in a court of  
20 competent jurisdiction whenever the lessee, after reasonable  
21 notice, in writing, as prescribed in the lease, shall fail to  
22 comply with the terms of this Act or with such conditions  
23 not inconsistent herewith as may be specifically recited in the  
24 lease.



1       SEC. 13. That the Secretary of the Interior is hereby  
2 authorized to perform any and all acts and to make such  
3 rules and regulations as may be necessary and proper for  
4 the purpose of carrying the provisions of this Act into full  
5 force and effect.

6       SEC. 14. That nothing in this Act shall be construed  
7 as affecting or intended to affect or to in any way interfere  
8 with the laws of any State relating to the control, appro-  
9 priation, use, or distribution of water.

10       SEC. 15. That all Acts or parts of Acts providing for  
11 the use of the lands of the United States for any of the pur-  
12 poses to which this Act is applicable are hereby repealed  
13 to the extent only of any conflict with this Act: *Provided,*  
14 *however,* That the provisions of the Act of February fifteenth,  
15 nineteen hundred and one (Thirty-first Statutes at Large,  
16 page seven hundred and ninety), shall continue in full force  
17 and effect as to lands within the Yosemite, Sequoia, and  
18 General Grant National Parks in the State of California:  
19 *And provided further,* That the provisions of this Act shall  
20 not be construed as revoking or affecting any permits or  
21 valid, existing rights of way heretofore given or granted pur-  
22 suant to law, but at the option of the permittee any permit  
23 heretofore given for the development, generation, transmis-  
24 sion, or utilization of hydroelectric power may be sur-

1 rendered and the permittee given a lease for the same prem-  
2 ises under the provisions of this Act.

3       SEC. 16. That this Act shall not apply to navigation  
4 dams or structures under the jurisdiction of the Secretary  
5 of War or Chief of Engineers, or to lands purchased or  
6 acquired by condemnation by the United States, or with-  
7 drawn by the President under the Act approved June  
8 twenty-fifth, nineteen hundred and ten, entitled "An Act  
9 to authorize the President of the United States to make with-  
10 draws of public lands in certain cases," where such lands  
11 are purchased, acquired by condemnation, or withdrawn by  
12 the President for the sole purpose of promoting navigation.

Passed the House of Representatives August 24, 1914.

Attest:

SOUTH TRIMBLE,

*Clerk.*



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# AN ACT

To provide for the development of water power and the use of public lands in relation thereto, and for other purposes.

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AUGUST 25, 1914.—Read twice and referred to the Committee on Public Lands.

*W.S. Pat*  
*English 8\**  
*San Diego*  
*Calf.*



**Ed Fletcher Papers**

**1870-1955**

**MSS.81**

**Box: 45 Folder: 19**

**Business Records - Water Companies - Volcan  
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