

Appendix B2:
Assembly Bill No. 642 (1913) (as amended in Senate May 10, 1913)

REVIEW OF THE LAWS ESTABLISHING THE SWRCB'S PERMITTING AUTHORITY OVER APPROPRIATIONS OF
GROUNDWATER CLASSIFIED AS SUBTERRANEAN STREAMS AND THE SWRCB'S IMPLEMENTATION OF THOSE LAWS

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January 19, 2002
(SWRCB Contract No. 0-076-300-0)

Amended in Senate May 10, 1913.

ASSEMBLY BILL

No. 642

INTRODUCED BY MR. W. A. JOHNSTONE,

JANUARY 23, 1913.

REFERRED TO COMMITTEE ON CONSERVATION.

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 COOPERATION 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 SUMMONSED 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; REGULATING 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.

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

- 1 SECTION 1. For the purpose of carrying out the provisions
- 2 of this act a state water commission consisting of five persons

1 is hereby created and established. Two members of said com-
2 mission shall be, *ex officio*, the governor of the state and the
3 state engineer, respectively. Three members of said commis-
4 sion shall be appointed by the governor for the term of four
5 years; *provided, however*, that of the members first appointed
6 one shall be appointed to hold office until the first day in
7 January, nineteen hundred and fourteen, one until the first
8 day in January, nineteen hundred and fifteen, and one until
9 the first day in January, nineteen hundred and sixteen.
10 [Such appointive commissioners shall be men of practical
11 knowledge or experience in the application and use of water
12 for irrigation, mining and municipal purposes, and shall be
13 so appointed that at least one thereof shall have had practical
14 knowledge and experience in the use of water for agricultural
15 purposes, and one thereof shall have had practical knowledge
16 and experience in the use of water for mining purposes, and
17 one thereof shall have had practical knowledge and experience
18 in the use of water for municipal purposes.] The commis-
19 sioners shall elect one of their number president of the
20 commission. The appointed members of said commission shall
21 each receive as compensation for his services the sum of
22 five thousand dollars per annum. No commissioner who is
23 directly or indirectly interested in any matter before the com-
24 mission shall sit with the commission during the hearing of such
25 matter; nor shall he be detailed by the commission to investigate
26 or report on any such matter; nor shall he take part in any
27 determination of any such matter. But the governor shall
28 have the power and authority, upon request of the commission,
29 to appoint *pro tempore* some disinterested person to sit and
30 act in the place and stead of such interested commissioner.
31 [Such *pro tempore* commissioner shall have compensation for
32 the time of service equal to the compensation of a commissioner
33 during such service and shall have the power and authority of
34 the same,] only in the matter for the investigation and deter-
35 mination of which he shall have been appointed and his con-
36 nection with the commission shall cease and determine upon
37 the completion of the investigation and determination for

1 which he was appointed. But the commissioner in whose place
2 and stead he sits shall have power, compensation and authority
3 in all other cases.

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

15 SEC. 3. A majority of the appointed commissioners shall
16 constitute a quorum for the transaction of any business, for the
17 performance of any duty, or for the exercise of any power of
18 the commission. No vacancy in the commission shall impair
19 the right of the remaining commissioners to exercise all the
20 powers of the commission. The act of a majority of the com-
21 missioners present, when in session as a board, shall be deemed
22 to be the act of the commission; but any investigations, inquiry
23 or hearing which the commission has power to undertake
24 or hold may be undertaken or held by or before any commis-
25 sioners or commissioner designated for the purpose by the com-
26 mission; and every finding, order, ascertainment or decision
27 made by the commissioners or the commissioner so designated
28 pursuant to such investigation, inquiry or hearing, when
29 approved by the commission and ordered filed in its office, shall
30 be and be deemed to be the finding, order, ascertainment or
31 decision of the commission.

32 SEC. 4. (a) Each commissioner shall have power to admin-
33 ister oaths, certify to all official acts, and to issue subpoenas
34 for the attendance of witnesses and the production of papers,
35 books, maps, accounts, documents and testimony in any
36 inquiry, investigation, hearing, ascertainment or proceeding
37 ordered or undertaken by the commission in any part of the

1 state. Each witness who shall appear by order of the com-
2 mission or any commissioners or a commissioner shall receive
3 for his attendance the same fees and mileage allowed by law to
4 witnesses in civil cases, which amount shall be paid by the
5 party at whose request such witness is subpoenaed. When any
6 witness who has not been required to attend at the request of
7 any party shall be subpoenaed by the commission his fees and
8 mileage shall be paid from the funds appropriated for the use
9 of the commission in the same manner as other expenses of the
10 commission are paid. Any witness subpoenaed, except one
11 whose fees and mileage may be paid from the funds of the
12 commission, may, at the time of service, demand the fee to
13 which he is entitled for travel to and from the place at which
14 he is required to appear and one day's attendance. If such
15 witness demands such fees at the time of service, and they are
16 not at that time paid or tendered, he shall not be required to
17 attend before the commission or commissioners as directed in
18 the subpoena. All fees and mileage to which any witness is
19 entitled under the provisions of this section may be collected
20 by action therefor instituted by the person to whom such fees
21 are payable. But no witness shall be compelled to attend as a
22 witness before the water commission or any water commis-
23 sioner or water commissioners out of the county in which he
24 resides, unless the distance be less than thirty miles from his
25 place of residence to the place of hearing.

26 (b) The superior court of the county or city and county in
27 which any inquiry, investigation, hearing or proceedings may
28 be held by the commission or any commissioner or commis-
29 sioners shall have the power to compel the attendance of wit-
30 nesses and the production of papers, maps, books, accounts,
31 documents and testimony as required by any subpoena issued
32 by the commission or any commissioner or commissioners. The
33 commission, commissioners or commissioner before whom the
34 testimony is to be given or produced may, in case of the refusal
35 of any witness to attend or testify or produce any papers,
36 maps, books, accounts or documents required by such sub-
37 pcena, report to the superior court in and for the county or

1 city and county in which the proceeding is pending by petition,
2 setting forth that due notice has been given of the time and
3 place of attendance of said witness, or for the production of
4 said papers, maps, books, accounts or documents and that the
5 witness has been summoned in the manner prescribed in this
6 act, and that the witness has failed and refused to attend or
7 produce the papers, maps, books, accounts or documents re-
8 quired by the subpoena before the commission, commissioners
9 or commissioner in the cause or proceeding named in the notice
10 and subpoena, or has refused to answer questions propounded
11 to him in the course of such cause or proceeding, and ask an
12 order of said court, compelling the witness to attend, testify
13 and produce said papers, maps, books, accounts or documents
14 before the commission, or commissioners, or commissioner.
15 The court, upon the petition of the commission or commis-
16 sioners or commissioner, shall enter an order directing the
17 witness to appear before the court at a time and place to be
18 fixed by the court in such order, the time to be not more than
19 ten days from the date of the order, and then and there show
20 cause, if any he have, why he refused to obey said subpoena or
21 refused to answer questions propounded to him by said com-
22 mission, or any commissioners or any commissioner, or neg-
23 lected, failed or refused to produce before said commission or
24 any commissioners or any commissioner the books, papers,
25 maps, accounts or documents called for in said subpoena. A
26 copy of said order and the petition therefor shall be served
27 upon said witness. If it shall appear to the court that said
28 subpoena was regularly issued by the commission or any com-
29 missioners or a commissioner, the court shall thereupon enter
30 an order that said witness appear before the commission or
31 commissioners or commissioner at the time and place fixed in
32 said order, and testify or produce the required papers, maps,
33 books, accounts or documents, or both testify and produce,
34 and upon failure to obey said order said witness shall be dealt
35 with as for contempt of court.

36 (c) The state water commission or any commissioners or
37 commissioner, or any party to a proceeding before the com-

1 mission or any commissioners or any commissioner, may in
2 any investigation or hearing before the commission or any
3 commissioners or any commissioner cause the deposition of wit-
4 nesses residing within or without the state to be taken in the
5 manner prescribed by law for depositions in civil actions in the
6 superior courts of this state.

7 (d) No person shall be excused from testifying or from pro-
8 ducing any book, map, document, paper or account in any in-
9 vestigation or inquiry by or hearing before the commission or
10 any commissioners or commissioner upon the ground that the
11 testimony or evidence, book, map, document, paper or account
12 required of him may tend to incriminate him or subject him
13 to penalty or forfeiture. But no person shall be prose-
14 cuted, punished or subjected to any penalty or forfeiture for
15 or on account of any act, transaction, matter or thing material
16 to the matter under investigation by said commission, or any
17 commissioners, or any commissioner concerning which he shall
18 have been compelled to testify or to produce documentary evi-
19 dence; *provided*, that no person so testifying or producing shall
20 be exempt from prosecution and punishment for any perjury
21 committed by him in his testimony.

22 SEC. 5. A full and accurate record of business or acts per-
23 formed or of testimony taken by the commission or any mem-
24 ber or members thereof in pursuance of the provisions of this
25 act shall be kept and be placed on file in the office of said water
26 commission.

27 SEC. 6. The state water commission shall take, charge and
28 collect the following fees: for copies and records not required
29 to be certified or otherwise authenticated by the commission,
30 ten cents for each folio; for certified copies of official docu-
31 ments and orders filed in its office, fifteen cents for each folio,
32 and one dollar for every certificate under seal affixed thereto;
33 for certified copies of evidence and proceedings before the
34 commission, fifteen cents for each folio. The commission may
35 fix reasonable charges for publications issued under its author-
36 ity. All fees charged and collected under this section shall be

1 paid, at least once each week, accompanied by a detailed state-
2 ment thereof, into the treasury of the state.

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

13 SEC. 8. For the purpose of carrying out the provisions of
14 this act the sum of [] fifty thousand dollars is hereby appro-
15 priated for the fiscal years 1913-1914 and 1914-1915 out of
16 any money in the state treasury not otherwise appropriated,
17 and the state controller is hereby authorized and directed to
18 draw warrants upon such sum from time to time upon the
19 requisition of the state water commission approved by the state
20 board of control, and the state treasurer is hereby authorized
21 and directed to pay such warrants.

22 SEC. 9. All indebtedness incurred for salaries, and all neces-
23 sary costs in traveling and other expenses of said commission,
24 and each of its members and persons employed by it, while
25 actually engaged in the business of said commission, shall be
26 paid by the state out of the funds hereby appropriated, upon
27 the sworn statement of the person or persons incurring such
28 indebtedness, and upon the requisition of the state water com-
29 mission, approved by the state board of control, and the state
30 controller is hereby authorized to draw warrants upon the state
31 treasurer for said indebtedness, salaries, costs and expenses,
32 as provided by law for the payment of similar costs and
33 expenses and the drawing of similar warrants.

34 SEC. 10. The state water commission is hereby authorized
35 and empowered to investigate for the purpose of this act all
36 streams, stream systems, portions of stream systems, lakes, or
37 other bodies of water, and to take testimony in regard to the

1 rights to water or the use of water thereon or therein, and to
2 ascertain whether or not such water, or any portion thereof,
3 or the use of said water or any portion thereof, heretofore
4 filed upon or attempted to be appropriated by any person,
5 firm, association, or corporation, is appropriated under the
6 laws of this state.

7 Sec. 11. All water or the use of water which has never
8 been appropriated, or which has been heretofore appropriated
9 and which has not been in process, from the date of the initial
10 act of appropriation, of being put, with due diligence in pro-
11 portion to the magnitude of the work necessary properly to
12 utilize for the purpose of such appropriation such water or the
13 use of water, or which has not been put, or which has ceased
14 to be put [to some useful or beneficial purpose,] or which may
15 hereafter be appropriated and cease to be put, to the useful
16 or beneficial purpose for which it was appropriated, [] or
17 which in the future may be appropriated and not be, in the
18 process of being put, from the date of the [initial] act of
19 appropriation, to the useful or beneficial purpose for which it
20 was appropriated, with due diligence in proportion to the magni-
21 tude of the work necessary properly to utilize for the purpose
22 of such appropriation such water or the use of water, is hereby
23 declared to be unappropriated. And all waters flowing in
24 any river, stream, canyon, ravine or other natural channel,
25 excepting so far as such waters have been or are being applied
26 to useful and beneficial purpose upon, or in so far as such
27 waters are or may be reasonably needed for useful, and bene-
28 ficial purposes upon lands riparian there to, [or otherwise
29 appropriated,] is and are hereby declared to be public waters
30 of the State of California and subject to appropriation in
31 accordance with the provisions of this act. If any portion of
32 the waters of any stream shall not be put to a useful or bene-
33 ficial purpose to or upon lands riparian to such stream for
34 any continuous period of ten consecutive years after the pas-
35 sage of this act, such non-application shall be deemed to be
36 conclusive presumption that the use of such portions of the
37 waters of such stream is not needed upon said riparian lands

1 for any useful or beneficial purpose; and such portion of the
2 waters of any stream so non-applied, unless otherwise appro-
3 priated for a useful and beneficial purpose [] is hereby
4 declared to be in the use of the state and subject to appropria-
5 tion in accordance with the provisions of this act. [In any
6 case where a reservoir or reservoirs have been or shall here-
7 after under the provisions of this act be constructed or sur-
8 veyed, laid out and proposed to be constructed for the storage
9 of water for a system, which water is to be used at one or
10 more points under appropriations of water heretofore or here-
11 after made, which appropriations and rights thereunder
12 are now, or shall hereafter be held and owned by the person or
13 corporation owning such reservoir site or sites and construct-
14 ing such reservoir or reservoirs, such reservoir or reservoirs
15 and appropriations and rights shall, in the discretion of the
16 state water commission, constitute a single enterprise and unit,
17 and work of constructing such reservoir or reservoirs, or any
18 of them, or work on any one of such appropriations shall, in
19 the discretion of said commission, be sufficient to maintain and
20 preserve all such applications for appropriations and rights
21 thereunder.]

22 SEC. 12. The state water commission shall have authority
23 to, and may, for good cause shown, upon the application of
24 any appropriator or user of water under an appropriation
25 made [and maintained] according to law prior to the passage
26 of this act, prescribe the time within which the full amount of
27 the water appropriated shall be applied to a useful or bene-
28 ficial purpose; *provided*, that said appropriator or user shall
29 have proceeded, with due diligence in proportion to the magni-
30 tude of the project, to carry on the work necessary to put the
31 water to a beneficial use; and in determining said time said
32 commission shall grant a reasonable time after the construction
33 of the [works or canal or ditch or conduits or storage system
34 used for the diversion, conveyance or storage of water;] and in
35 doing so said commission shall also take into consideration the
36 cost of the application of such water to the useful or beneficial
37 purpose, the good faith of the appropriator, the market for

1 water or power to be supplied, the present demand therefor,
2 and the income or use that may be required to provide fair
3 and reasonable returns upon the investment [and any other
4 facts or matters pertinent to the inquiry.] Upon prescribing
5 such time the state water commission shall issue a certificate
6 showing its determination of the matter. For good cause
7 shown, the state water commission may extend the time by
8 granting further certificates. And, for the time so prescribed
9 or extended, the said appropriator or user shall be deemed
10 to be putting said water to a beneficial use.

11 And if at any time it shall appear to the state water commis-
12 sion, after a hearing of the parties interested and an investiga-
13 tion, that the full capacity of the works built or constructed, or
14 being built or constructed, under an appropriation of water or
15 the use thereof made under the provisions of this act has not
16 developed or cannot develop the full capacity of the stream at
17 the point where said works have been or are being built or con-
18 structed, and that the holder of the said appropriation will
19 not or cannot, within a period deemed to be reasonable by the
20 commission, develop the said stream at said point to such a
21 capacity as the commission deems to be required by the public
22 good, then and in that case the said commission, in its discre-
23 tion, may permit the joint occupancy and use, with the holder
24 of the appropriation, to the extent necessary to develop the
25 stream to its full capacity or to such portion of said capacity
26 as may appear to the state water commission to be advisable,
27 by any and all persons, firms, associations, or corporations
28 applying therefor, of any dam, tunnel, diversion works, ditch,
29 or other works or constructions already built or constructed or
30 in process of being built or constructed under this act; *pro-*
31 *vided*, that said commission shall take into consideration the
32 reasonable cost of the original and new work, the good faith
33 of the applicant, the market for water or power to be supplied
34 by the original and the new work, and the income or use that
35 may be required to provide fair and reasonable returns upon
36 such cost; *provided, further*, that the applicant or appli-
37 cants shall be required to pay to the party or parties own-

1 ing said dam, tunnel, diversion works, ditch, or other
2 works or constructions a pro rata portion of the total
3 cost of the old and the new works, said pro rata por-
4 tion to be based upon the proportion of the water used by
5 the original and the subsequent users of said dam, tunnel,
6 diversion works, ditch, or other works or constructions, if the
7 water is used or to be used for irrigation or domestic purposes;
8 or, if the water is used or to be used for the generation of
9 electricity, or electrical or other power, the said pro rata por-
10 tion shall be based upon the relative amount of electricity or
11 electrical or other power capable of being developed by the
12 original and the new works; or, if a portion of the water util-
13 ized under a joint occupancy of any dam, tunnel, diversion
14 works, ditch, or other works or construction, shall be used for
15 the purpose of irrigation and another portion of said water
16 shall be used for the generation of electricity or electrical or
17 other power, then and in that case the applicant or applicants
18 for joint occupancy shall be required to pay to the party or
19 parties owning said dam, tunnel, diversion works, ditch, or
20 other works or constructions a pro rata portion of the total
21 cost of the old and new works, said pro rata portion to be
22 based upon the proportion of the relative amount of water
23 used by each joint occupant and the income derived by each
24 said joint occupant from said joint occupancy; or, if any of
25 the waters used under such joint occupancy shall be utilized
26 for purposes other than those specified above, then and in that
27 case the applicant or applicants for such joint occupancy shall
28 be required to pay to the party or parties owning said dam,
29 tunnel, diversion works, ditch, or other works or constructions
30 such a pro rata portion of the total cost of the old and new
31 works as shall appear to the state water commission to be just
32 and equitable. Said applicant or applicants shall also be
33 required to pay a proper pro rata share, based as above, of the
34 cost of maintaining said dam, tunnel, diversion works, ditch or
35 other works or constructions, on and after beginning the occu-
36 pancy and use thereof. Furthermore, the state water commis-
37 sion if it appears to the said commission that the full

1 capacity of the works built or constructed, or being built or
2 constructed, under an appropriation of water or the use there-
3 of under this act, will not develop the full capacity of the
4 stream at that point, and it appears to the commission that
5 the public good requires it, and the commission specifically
6 so finds after investigation and hearing of the parties
7 interested, may permit any person, firm, association or
8 corporation to repair, improve, add to, supplement, or
9 enlarge, at his or its proper cost, charge and expense,
10 any dam, tunnel, diversion works, ditch, or other works or
11 constructions already built or constructed or in process of being
12 built or constructed under the provisions of this act, and to
13 use the same jointly with the owners thereof; *provided*, that
14 the said repairing, improving, adding to, supplementing, or
15 enlarging, shall not materially interfere with the proper use
16 thereof by the owner of said dam, tunnel, diversion works,
17 ditch, or other works or constructions or shall not materially
18 injure said dam, tunnel, diversion works, ditch or other works
19 or constructions. And the state water commission shall deter-
20 mine the pro rata and other costs provided for in this section.

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

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

28 SEC. 15. The state water commission shall allow, under
29 the provisions of this act, the appropriation of unappro-
30 priated water or of the use thereof, or of water or of
31 the use thereof which may hereafter cease to be appropriated,
32 or which may hereafter be declared to be unappropriated, or
33 which, having been used under claim of riparian proprietor-
34 ship or appropriation finds its way back into a stream, lake or
35 other body of water and also such water as is declared under
36 section eleven of this act to be subject to appropriation.

37 SEC. 16. Every [application] for a permit to appropriate

1 water shall set forth the name and postoffice address of the ap
2 plicant, the source of water supply, the nature and amount of
3 the proposed use, the location and description of the proposed
4 headworks, ditch, canal and other works; the proposed place of
5 diversion and the place where it is intended to use the water;
6 the time within which it is proposed to begin construction, the
7 time required for completion of the construction, and the time
8 for the complete application of the water to the proposed use.
9 If for agricultural purposes, the application shall, besides the
10 above general requirements, give the legal subdivisions of the
11 land and the acreage to be irrigated, as near as may be; if for
12 power purposes, it shall give, besides the general requirements
13 prescribed above, the nature of the works by means of which
14 the power is to be developed, the head and amount of water to
15 be utilized, and the use to which the power is to be applied;
16 if for storage in a reservoir, it shall give, in addition to the
17 general requirements prescribed above, the height of dam, the
18 capacity of the reservoir, and the use to be made of the
19 impounded waters; if for municipal water supply, it shall give,
20 besides the general requirements specified above, the present
21 population to be served, and, as near as may be, the future
22 requirements of the city; if for mining purposes, it shall give,
23 in addition to the general requirements prescribed above, the
24 nature and location of the mines to be served and the methods
25 of supplying and utilizing the water. All applications shall
26 be accompanied by as many copies of such maps, drawings,
27 and other data as may be prescribed or required by the state
28 water commission, and such maps, drawings, and other data
29 shall be considered as part of the application. If any per-
30 mittee or licensee, or the heirs, successors, or assigns of any
31 permittee or licensee, desire to change the point of diversion
32 from the point of diversion specified in the original applica-
33 tion, or after the granting of any permit or license, such change
34 or changes may be made only upon the permission of the state
35 water commission; *provided*, that, before granting such
36 permission, such applicant must establish, to the satisfaction
37 of the state water commission, and such commission must so

1 find, that such change in the place of diversion will not oper-
2 ate to the injury of any other appropriator or legal user of
3 such waters before permitting such change in the place of
4 [the] diversion. Upon receipt of application for permission
5 to make such change [in the place of] diversion, the commis-
6 sion shall, by order, fix a time within which any person inter-
7 ested may appear in opposition to such application, and such
8 applicant shall [, if the commission so require.] cause to be
9 published at least once a week for four consecutive weeks, in
10 a newspaper or newspapers of general circulation in the
11 county in which is situated both the old and new points of
12 diversion, a copy of said order. Proof of such publication
13 shall be by affidavit of the publisher of such newspaper.
14 Should any objection be made to the change in point of
15 diversion so applied for, the state water commission shall fix
16 a time for the hearing of said application and of the objec-
17 tions thereto, which time shall be not less than thirty days
18 nor more than sixty days after the period of said publication,
19 and upon such hearing the said commission shall grant or
20 refuse, as the facts shall warrant, such permission to change
21 place of diversion.

22 Sec. 17. Any person, firm, association or corporation may
23 apply for and secure from the state water commission, in con-
24 formity with this act and in conformity with reasonable rules
25 and regulations adopted from time to time by the state water
26 commission, a permit for any unappropriated water or for
27 water which having been appropriated or used flows back into
28 a stream, lake or other body of water within this state. And
29 any application so made shall give to the applicant a priority
30 of right as of the date of said application to such water or the
31 use thereof until such application shall have been approved or
32 rejected by said commission; *provided*, that such priority shall
33 continue only so long as the provisions of law and the rules
34 and regulations of the water commission shall be followed by
35 the applicant. Upon the approval of any application by the
36 commission, said approval shall give priority of right as of the
37 date of said application, and shall give the right to take and

1 use the amount of water specified in said approval until the
2 issuance by the state water commission of a license for the use
3 of said amount of water; or until the said commission refuses
4 to issue said license. But the approval of any application shall
5 give the right to take and use water only to the extent and for
6 the purpose allowed in said approval; *provided*, that any
7 defective application made in a bona fide attempt to conform
8 to the rules and regulations of the state water commission and
9 to the law shall secure to the applicant a priority of right, as of
10 the date of said application until he shall have been notified by
11 said commission in what respect his application is defective.
12 And said applicant shall be allowed sixty days after notice of
13 said defect in which to file an amended and perfected applica-
14 tion. If, within said sixty days, said applicant shall not file an
15 amended and perfected application, said priority of right shall
16 cease and determine[, unless] for good cause shown the state
17 water commission [shall] allow said applicant to file a
18 further amended and perfected application; *provided, also*
19 that any priority of right secured under this section shall not
20 be effective for more than thirty days after service of notice
21 of such approval, personally or by registered mail, on the
22 applicant, unless within said period of thirty days a true copy
23 of said approval upon which such priority is based shall have
24 been filed in the office of the recorder of the county or city and
25 county in which the water is to be diverted, and, within ten
26 days thereafter, a certificate of such filing by the county
27 recorder is also filed with the state water commission.

28 SEC. 18. Actual construction work upon any project shall
29 begin within such time after the date of the approval of the
30 application as shall be specified in said approval [which time
31 shall not be less than sixty days from date of said approval]
32 and the construction of the work thereafter shall be prosecuted
33 with due diligence in accordance with this act, the terms of the
34 approved application, and the rules and regulations of said
35 commission; and said work shall be completed in accordance
36 with law, the rules and regulations of the state water com-
37 mission, and the terms of the approved application and within

1 a period specified in the permit; but the period of completion
2 specified in the permit may, for good cause shown, be extended
3 by the state water commission. And if such work be not so
4 commenced, prosecuted and completed, the water commission
5 shall, after notice in writing and mailed in a sealed, postage-
6 prepaid and registered letter addressed to the applicant at
7 the address given in his application for a permit to appropri-
8 ate water, and a hearing before the commission, revoke its
9 approval of the application. But any applicant, the approval
10 of whose application shall have been thus revoked, shall have
11 the right to bring an action in the superior court of the county
12 in which is situated the point of proposed diversion of the
13 water for a review of the [order of the commission revoking
14 said approval of the application]. And thirty days after the
15 revocation of said permit all rights of the said permittee under
16 said permit shall cease and lapse, unless said permittee shall
17 within said thirty days after said revocation bring an action
18 in the superior court for a review of the [order of] revocation.
19 The priority of right of any permittee so bringing an action
20 shall continue under said permit until a final [judgment] is
21 rendered as to the reasonableness of the revocation of said
22 permit. But until and unless the revocation of the permit
23 shall be finally [decreed by such] court [], the permittee shall
24 not take or use any of the water the right to take and use
25 which is granted by said permit.

26 Sec. 19. Immediately upon completion, in accordance with
27 law, the rules and regulations of the state water commission,
28 and the terms of the permit, of the project under such appli-
29 cation, the holder of a permit for the right to appropriate
30 water shall report said completion to the state water commis-
31 sion. The said commission shall immediately thereafter cause
32 to be made a full inspection and examination of the works
33 constructed and shall determine whether the construction of
34 said works is in conformity with law, the terms of the approved
35 application, the rules and regulations of the state water com-
36 mission, and the permit. The said water commission shall, if
37 said determination is favorable to the applicant, issue a license

1 which shall give the right to the diversion of such an amount
2 of water and to the use thereof as may be necessary to fulfill
3 the purpose of the approved application. Said license shall be
4 in such form as may be prescribed by the state water commis-
5 sion under the provisions of this act. But if the said commis-
6 sion shall find, upon inspection and examination of the works
7 constructed, that the construction and condition of said works
8 are not in conformity with the law, the rules and regulations
9 of the state water commission, the terms of the approved
10 application and the terms of the permit, then and in that case
11 the said commission may, after due notice in writing and in
12 the manner provided in sections one thousand and eleven, one
13 thousand and twelve, and one thousand and thirteen of the
14 Code of Civil Procedure to the applicant or the holder of the
15 permit, and a public hearing thereon, refuse to issue said
16 license. And thirty days after the refusal of said commission
17 to issue said license all rights of the applicant and the holder
18 of the permit under said application and permit shall lapse
19 and cease. But the holder of any permit to whom the said
20 water commission may have refused to issue said license, shall
21 have the right to bring an action within thirty days after
22 the said refusal, in the superior court [to review said order
23 and to obtain a decree requiring the issuance of such license.]
24 And the rights of the holder of any permit so bringing an
25 action shall continue under said permit until [the decree in
26 such action has been entered and become final. But until the
27 refusal of the commission to issue said license shall be finally
28 [determined] by the courts, the permittee shall not take or use
29 any of the water, the taking and using of which is granted to
30 him by said permit. And if the holder of any permit which
31 has been revoked by the state water commission shall not
32 bring an action within said thirty days in the superior court
33 [to determine the validity] of said revocation, then and in that
34 case all rights of the applicant and of the holder of said per-
35 mit shall lapse and cease.

36 Sec. 20. All permits and licenses for the appropriation
37 of water shall be under the terms and conditions of this act.

1 and shall be effective for such time as the water actually
2 appropriated under such permits and licenses shall actually be
3 used for the useful and beneficial purpose for which said water
4 was appropriated, but no longer; and every such permit or
5 license shall include the enumeration of conditions therein
6 which in substance shall include all of the provisions of this
7 section and likewise the statement that any appropriator of
8 water, to whom said permit or license may be issued, shall take
9 the same subject to such conditions as therein expressed;
10 *provided*, that if, at any time after the expiration of twenty
11 years after the granting of a license, the state, or any city, city
12 and county, municipal water district, irrigation district, light-
13 ing district, or any political subdivision of the state shall
14 [have the right to purchase] the works and property occupied
15 and used under said license and the works built or constructed
16 for the enjoyment of the rights granted under said license [];
17 and in the event that the said state, city, city and county,
18 municipal water district, irrigation district, lighting district
19 or political subdivision of the state so desiring to purchase and
20 the said owner of said works and property cannot agree upon
21 said purchase price, said price shall be determined in such
22 manner as is now or may hereafter be determined in eminent
23 domain proceedings. [] If it shall appear to the state water
24 commission at any time after a permit or license is issued as in
25 this act provided; that the permittee or licensee, or the
26 heirs, successors, or assigns of said permittee or licensee, has
27 not put the water granted under said permit or license to
28 the useful or beneficial purpose for which the permit or
29 license was granted, or that the permittee or licensee, or
30 the heirs, successors, or assigns of said permittee or licensee,
31 has ceased to put said water to such useful or beneficial pur-
32 pose, or that the permittee or licensee, or the heirs, succes-
33 sors or assigns of said permittee or licensee, has failed to
34 observe any of the terms and conditions in the permit or
35 license as issued, then and in that case the said commission,
36 after due notice to the permittee, licensee, or the heirs, suc-
37 cessors or assigns of such permittee or licensee, and a hearing

1 thereon, may revoke said permit or license and declare the
2 water to be unappropriated and open to further appropriation
3 in accordance with the terms of this act. And the findings
4 and declaration of said commission shall be deemed to be *prima*
5 *facie* correct until modified or set aside by a court of compe-
6 tent jurisdiction; *provided*, that any action brought so to
7 modify or set aside such finding or declaration must be com-
8 menced within thirty days [after the service] of notice of said
9 revocation on said permittee or licensee, his heirs, successors
10 or assigns. [] And every licensee or permittee [] under
11 the provisions of this act if he accept such permit or license
12 shall accept the same under the conditions precedent that no
13 value whatsoever in excess of the actual amount paid to the
14 state therefor shall at any time be assigned to or claimed for
15 any permit or license granted or issued under the provisions
16 of this act, or for any rights granted or acquired under the
17 provisions of this act, in respect to the regulation by any
18 competent public authority of the services or the price of the
19 services to be rendered by any permittee or licensee, his heirs,
20 successors or assigns or by the holder of any rights granted or
21 acquired under the provisions of this act, or in respect to any
22 valuation for purposes of sale to or purchase [whether through
23 condemnation proceedings or otherwise] by the state or
24 any city, city and county, municipal water district, irriga-
25 tion district, lighting district or any political subdivision of
26 the state, of the rights and property of any permittee or
27 licensee, or the possessor of any rights granted, issued, or
28 acquired under the provisions of this act. The application
29 for a permit by municipalities for the use of water for said
30 municipalities or the inhabitants thereof for domestic pur-
31 poses shall be considered first in right, irrespective of whether
32 they are first in time; [*provided, however*, that such applica-
33 tion for a permit or the granting thereafter of permission
34 to any municipality to appropriate waters, shall not authorize
35 the appropriation of any water for other than municipal pur-
36 poses, and providing further that where permission to appro-
37 priate is granted by the State Water Commission to any

1 municipality for any quantity of water in excess of the exist-
2 ing municipal needs therefor, that pending the application of
3 the entire appropriation permitted, the state water commission
4 shall have the power to issue permits for the temporary appro-
5 priation of the excess of such permitted appropriation over and
6 above the quantity being applied from time to time by such
7 municipality; *and providing further*, that in lieu of the grant-
8 ing of such temporary permits for appropriation, the state
9 water commission may authorize such municipality to become as
10 to such surplus a public utility, subject to the jurisdiction and
11 control of the railroad commission of the State of California
12 for such period or periods from and after the date of the
13 issuance of such permission to appropriate, as may be allowed
14 for the application to municipal uses of the entire appropria-
15 tion permitted; *and provided, further*, that when such munic-
16 ipality shall desire to use the additional water granted in its
17 said application it may so do upon making just compensation
18 for the facilities for taking, conveying and storing such addi-
19 tional water rendered valueless for said purposes, to the
20 person, firm or corporation which constructed said facilities
21 for the temporary use of said excess waters, and which com-
22 pensation, if not agreed upon between the municipality and
23 said person, firm or corporation, may be determined in the
24 manner provided by law for determining the value of property
25 taken by and through eminent domain proceedings.]

26 SEC. 21. Nothing herein contained shall be construed to
27 deprive the state or any city, city and county, municipal
28 water district, irrigation district, lighting district or political
29 subdivision of the state, or any person, company or corpora-
30 tion of any rights which, under the law of this state they may
31 have, to acquire property [by or through] eminent domain
32 proceedings.

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

36 SEC. 23. Every person, firm, association or corporation
37 making application for a permit to appropriate water or the

1 use of water under this act shall pay to the state water com-
2 mission, at the time of filing said application, if the pur-
3 pose or use is for the generation of electricity, or electrical or
4 other power, a fee of two dollars and fifty cents for each
5 theoretical horsepower capable of being developed by the
6 works up to one hundred theoretical horsepower, with a
7 minimum fee of twenty-five dollars, and above said one hundred
8 theoretical horsepower the fee shall be five hundred dollars
9 up to and including ten thousand theoretical horsepower,
10 and one thousand dollars above ten thousand theoretical horse-
11 power capable of being so developed or a fee of ten dollars
12 if the purpose be other than for the generation of electricity,
13 or electrical or other power. Every person, firm, association
14 or corporation at the time of receiving a license to appropriate
15 water or the use of water, if the purpose be for the generation
16 of electricity, or electrical or other power, shall pay to said
17 commission when the said license is issued, and annually there-
18 after, a charge of twenty-five cents for each theoretical horse-
19 power capable of being developed by the proposed works. If
20 the purpose of use is for other than the generation of electricity,
21 or electrical or other power, every person, firm, associa-
22 tion or corporation receiving a license to appropriate water
23 shall pay to the said commission when said license is issued,
24 and annually thereafter, a charge of ten cents per miner's
25 inch for each miner's inch specified in the license, and for the
26 purpose of this act forty miner's inches shall be equivalent to
27 one cubic foot per second. *Provided, however,* that no an-
28 nual charge shall be made when the appropriation is made
29 for use for irrigation purposes upon lands, not exceeding
30 one hundred and sixty acres in area, to be actually occupied
31 by such appropriator and cultivated in whole or in part by
32 him, or when said water is used for mining purposes, and
33 the amount of water so used for such mining purposes does
34 not exceed five hundred miner's inches[, or when the water
35 is used for the generation of power when the same does not
36 exceed fifty horsepower and is for the private use of the appro-
37 priator.] And all such fees and charges shall forthwith be

1 paid into the state treasury by the state water commission, and
2 the fee and annual charges provided in this section shall be
3 subject to change by law at not less than ten year intervals
4 beginning with the date of the license issued by the state water
5 commission.

6 SEC. 24. Upon its own initiative or upon petition signed
7 by one or more claimants to water or the use of water upon any
8 stream, stream system, lake, or other body of water, requesting
9 the ascertainment of the relative rights of the various claim-
10 ants to the water or the use of water of that stream, stream
11 system, lake or other body of water, it shall be the duty of
12 the state water commission, if, upon investigation it finds
13 the facts and conditions are such as to justify, to make an
14 ascertainment of the said rights, fixing a time for the begin-
15 ning of the taking of testimony and the making of such inves-
16 tigation as will enable it to ascertain the rights of the various
17 claimants. In case suit is brought in the superior court for
18 determination of rights to water or the use of water, the case
19 may, in the discretion of the court, be transferred to the state
20 water commission for investigation, as referee. In any case
21 wherein the water commission shall proceed to investigate or
22 ascertain water rights the said commission shall notify in
23 writing in the manner provided in sections one thousand and
24 eleven, one thousand and twelve and one thousand and thir-
25 teen of the Code of Civil Procedure all persons, firms, asso-
26 ciations or corporations claiming or possessing any water
27 rights which are to be the subject of ascertainment by the said
28 commission.

29 SEC. 25. Upon the completion of the taking of testimony
30 and evidence by the state water commission, the said commis-
31 sion shall immediately give notice by registered mail to the
32 various claimants or possessors of water rights that, at a date
33 and place named in the said notices, which date shall not be
34 less than fifteen days nor more than thirty days later than
35 the date of said notice, all of said testimony and evidence will
36 be open to public inspection. And said testimony and evi-
37 dence shall be held open to public inspection at said places

1 for a specified period of not less than thirty days nor more
2 than ninety days[, and thereafter the said commission shall
3 cause its findings and ascertainment of the rights of the respec-
4 tive claimants to said water to be made and filed in the superior
5 court in each of the counties where said water is appropriated.]

6 SEC. 26. If any person, firm, association or corporation
7 claiming or possessing any interest in or right to the waters
8 of any stream, stream system, lake or other body of water
9 involved in any investigation or ascertainment by the state
10 water commission of the rights to the water of said stream,
11 stream system, lake or other body of water, desires to contest
12 any of the interests in or rights to any of the said waters of
13 any other person, firm, association or corporation [.] such per-
14 son, firm, association or corporation desiring so to contest
15 shall, within ten days after the expiration of the period for
16 public inspection prescribed in section twenty-five of this
17 act, notify, in writing, the state water commission of said desire
18 so to contest. Said notice shall state the ground of contest,
19 which shall be verified by the oath of the contestant, his agent
20 or attorney. Within ten days of the receipt of the notice of
21 contest the state water commission shall notify the contest-
22 ant and the person, firm, association or corporation whose
23 rights are contested to appear before it at a time and place
24 specified in said notice, and that at said time and place said
25 contest will be heard; *provided*, that said time shall not be
26 less than thirty days nor more than sixty days from the date
27 [of the service] of the notice of the commission; *provided*,
28 *further*, that if any person, firm, association or corporation
29 desires to contest any such ascertainment by the state water
30 commission as hereinbefore provided, such contest may be
31 brought as provided in sections 31 and 32 hereof.

32 SEC. 27. Said notice by said water commission shall be
33 served and return made thereon in the same manner in which
34 summons and return thereon are made in civil actions in the
35 superior courts of this state. The water commission shall have
36 power to adjourn hearings of contest from time to time upon
37 reasonable notice to all parties in interest, and to issue sub-

1 pœnas for and compel[,], the attendance of witnesses to testify
2 before it and produce papers, books, maps and other docu-
3 ments.

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

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

22 SEC. 30. The water commission may, in its discretion and
23 in addition to the testimony and evidence submitted to it by the
24 parties claimant to or possessors of water rights on any stream,
25 stream system, lake or other body of water cause to be made
26 an examination of said stream, stream system, lake or other
27 body of water and the works diverting or utilizing water
28 therefrom. Said examination may include the gathering of
29 whatever data covering said stream, stream system, lake or other
30 body of water and the various ditches and canals taking water
31 therefrom [as] the said commission may require, as well as such
32 other data and information as may, in the discretion of the said
33 commission, be necessary to enable it properly to ascertain the
34 relative rights of the parties claiming rights to use the waters of
35 said stream, stream system, lake, or other body of water. The
36 results of said examination shall be filed in the office of said
37 commission and be open to public inspection as provided in

1 this act for the filing and public inspection of other evidence
2 of a like nature.

3 SEC. 31. As soon as practicable after the hearing of testi-
4 mony and evidence, the hearing [] of contest, and the
5 gathering and filing of such data and information as the
6 water commission shall, of its own motion, direct to be gathered,
7 the said water commission shall record in its office its ascer-
8 tainment of and specific findings upon the rights of the
9 several claimants to the use of the waters of any stream,
10 stream system, lake or other body of water. Immediately
11 thereafter, the said water commission shall file a certified
12 copy of said ascertainment and specific findings together
13 with the original evidence and testimony taken before it and
14 all data and information gathered by its order with the clerk
15 of the superior court in and for the county in which such
16 stream, stream system, lake or other body of water or any part
17 thereof is situated.

18 SEC. 32. After the filing with the clerk of the superior
19 court of the evidence, data, information, specific findings
20 and ascertainment as required by section 31 of this act, the
21 same shall be received in the superior court as *prima facie*
22 evidence of the facts, specific findings and ascertainment
23 therein set forth. And at any time within one year after
24 such filing an action [may] be brought, upon the direction of
25 the state water commission, by the attorney general in said
26 superior court in which said evidence, data, information, spe-
27 cific findings and ascertainment shall have been so filed. Or
28 an action may be brought in said court by any one or more of
29 the possessors or claimants concerning whose rights to any of
30 the waters of the stream, stream system, lake or other body of
31 water the state water commission shall have made the spe-
32 cific findings and ascertainment filed in said court. Said
33 action if brought by the attorney general shall be brought
34 in the name and behalf of the people of the State of
35 California to quiet the title of the State of California
36 or the people thereof to any and all water or water
37 rights which it may have in or on said stream, stream

1 system, lake or other body of water, and, to cause all parties
2 whose rights have been so ascertained to appear and interplead
3 in said action in defense and determination of each and all of
4 their respective rights, which rights, as against the state and
5 with regard to the different rights and priorities of said rights
6 among themselves, shall be determined by the court in said
7 action. And if an action be brought by any one or more of
8 said claimants or possessors, said action may be brought in the
9 name of the said possessor or claimant and to cause all parties,
10 whose rights have been ascertained, to appear and interplead in
11 said action in defense and determination of each and all of their
12 respective rights, which rights, as against the state or the
13 people thereof, and with regard to the different rights and
14 priorities of said rights among themselves shall be determined
15 by the court in said action. And from and after the filing of
16 the complaint in such action, the proceedings therein shall be as
17 in other cases heard and determined in said court, and in
18 accordance with the provisions of the Code of Civil Procedure
19 of this state; *provided*, that the evidence, data, information,
20 specific findings and ascertainment so filed with the superior
21 court as provided in section 31 of this act must be considered
22 by said court in its determination of both or either of said
23 actions, and the court may affirm, modify or reject such spe-
24 cific findings and ascertainment [and may make other or dif-
25 ferent findings as in its judgment the evidence justifies.]

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

34 SEC. 34. Whenever proceedings shall be instituted for
35 the ascertainment by the state water commission of rights to
36 water or the use of water, it shall be the duty of all claimants
37 interested therein and having notice thereof as in this act

1 provided to appear and submit proof of their respective claims
2 at the time and in the manner required by law; and any such
3 claimant who shall fail to appear in such proceedings and
4 submit proof of his claim shall be barred and estopped from
5 subsequently asserting any rights theretofore acquired upon
6 the stream, stream system, lake or other body of water, or
7 portion of such stream, stream system, lake or other body of
8 water, embraced in such proceedings, and shall be held to have
9 forfeited all rights to said water or the use of water therefo-
10 fore claimed by him on such stream, stream system, lake or
11 other body of water, unless entitled to relief under the laws
12 of this state; *provided*, that such proceedings shall result in
13 an ascertainment by the state water commission and a decree
14 by the superior court based upon such ascertainment and
15 specific findings or a modification of said ascertainment or
16 specific findings.

17 SEC. 35. In any suit wherein the state is or the people of
18 the state are a party for the determination of a right to the
19 use of the water of any stream, stream system, lake or other
20 body of water, or of any portion of any stream, stream system,
21 lake or other body of water, all who claim the right to use such
22 water shall be made parties. When any such suit has been
23 filed the court may call upon the state water commission to
24 make or furnish a complete hydrographic survey of such
25 stream, stream system, lake or other body of water, in order to
26 obtain all the data necessary to the determination of the rights
27 involved. The disbursements made in litigating the rights
28 involved in such suit may be taxed by the court as in other
29 equity suits[, exclusive of the cost of such hydrographic
30 survey.]

31 SEC. 36. Upon the adjudication of the rights to the use
32 of the water of a stream, or stream system, lake or other body
33 of water, or any portion of a stream, stream system, lake or
34 other body of water, a certified copy of the decree shall be
35 prepared by the clerk of the court, without charge, and filed
36 in the office of the state water commission, and said commission
37 shall deliver to every party in such decree a certified copy

1 thereof upon demand and the payment of the fees provided in
2 this act. And the said commission shall file, for record, in the
3 office of the recorder of each county in which any portion of
4 said stream, stream system, lake or other body of water is
5 situated, a certified copy of said decree. Said decree shall in
6 every case declare as to the water right adjudged to each
7 party, whether riparian or by appropriation, the extent, the
8 priority, amount, purpose of use, point of diversion, and place
9 of use of said water; and, as to water used for irrigation, such
10 decree shall also declare the specific tracts of land to which it
11 shall be appurtenant together with such other conditions as
12 may be necessary to define the right and its priority. But the
13 failure of any party entitled thereto to demand or receive a
14 copy of said decree shall not be considered to have prejudiced
15 him or his rights in any way.

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

21 SEC. 38. The diversion or use of water subject to the pro-
22 visions of this act other than as it is in this act authorized is
23 hereby declared to be a trespass, and the state water commis-
24 sion is hereby authorized to institute in the superior court in
25 and for any county wherein such diversion or use is attempted
26 appropriate action to have such trespass enjoined.

27 SEC. 39. Water or the use of water which has heretofore
28 been appropriated or acquired, or which shall hereafter be ap-
29 propriated or acquired for one specific purpose shall not be
30 deemed to be appropriated or acquired for any other or differ-
31 ent purpose. And any person, firm, association or corporation
32 applying to the state water commission for a license to appro-
33 priate water or the use of water shall state in the application
34 for said license the specific purpose to which it is proposed to
35 put such water or the use thereof. Water heretofore or here-
36 after appropriated for other than domestic use, may be applied
37 to domestic use, in whole or in part, without a separate and

1 distinct appropriation being made therefor. And water appro-
2 priated for one purpose under the provisions of this act may be
3 subsequently appropriated for other purposes under the provi-
4 sions of this act; *provided*, that such subsequent appropriation
5 shall not injure any previous appropriation.

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

15 SEC. 41. Nothing in this act shall be construed as depriv-
16 ing any city, city and county, municipal water district, irri-
17 gation district or lighting district of the benefit of any law
18 heretofore or hereafter passed for their benefit in regard to
19 the appropriation or acquisition of water or the use of water;
20 [and nothing in this act shall affect or limit in any manner
21 whatsoever the right or power of any municipality which has
22 heretofore appropriated or acquired water or the use of water
23 for municipal purposes, to use or to sell or otherwise dispose
24 of such water or the use thereof, either within or without its
25 limits for domestic, irrigation or other purposes, in accordance
26 with laws in effect at the time of the passage of this act.]

27 SEC. 42. The word "water" in this act shall be construed as
28 embracing the term "or use of water"; and the term "or use
29 of water" in this act shall be construed as embracing the word
30 "water." Whenever the terms stream, stream system, lake or
31 other body of water or water occurs in this act, such term
32 shall be interpreted to refer only to surface water, and to sub-
33 terranean streams flowing through known and definite chan-
34 nels. But nothing in this act shall be construed as giving or
35 confirming any right, or title, or interest to or in the corpus
36 of any water; *provided*, that the term "useful or beneficial
37 purposes" as [used] in this act shall not be construed to mean

1 the [use in any one year of more than two and one half acre
2 feet of water per acre in the] irrigation of uncultivated areas
3 of land not devoted to cultivated crops.

4 SEC. 43. Nothing in this act shall be construed as depriv-
5 ing any person, firm, association or corporation of the right of
6 appeal conferred under the laws of this state.

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

9 SEC. 45. This act shall be known as the "water commis-
10 sion act."

11 SEC. 46. If any section, subsection, sentence, clause or
12 phrase of this act is for any reason held to be unconstitutional,
13 such decision shall not affect the validity of the remaining por-
14 tions of this act. The legislature hereby declares that it would
15 have passed this act, and each section, subsection, sentence,
16 clause and phrase thereof, irrespective of the fact that any one
17 or more other sections, subsections, sentences, clauses or phrases
18 be declared unconstitutional.