

1914

WATER COMMISSION ACT

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WATER COMMISSION ACT.

Submitted to electors by referendum.

Creates state water commission for control of appropriation and use of waters; defines right in riparian and unappropriated waters; prescribes procedure for investigation of waters and water rights, appropriation thereof, apportionment of same between claimants, issuance of licenses, and revocation thereof; declares present rights of municipal corporations unaffected.

WHEREAS, the legislature of the State of California, in regular session in May, 1913, passed, and the governor of the State of California, on the 16th day of June, 1913, approved a certain law and act, which law and act, together with its title, is in the words and figures following, to wit:

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; 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:

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

Forty-two

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 com-

missioners 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 shall be undertaken or held by or before any commissioners or any commissioner designated for the purpose by the commission; and any 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 the 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 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 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 persons 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 purposes 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 portions 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 prepared 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 commission 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 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 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 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 water; 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 competent jurisdiction; provided, that any action brought 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 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 that 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 purpose or use is for the generation of electricity, or electrical or power, a fee of two dollars and fifty cents for each theoretical horsepower capable of being developed by the works up to 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 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 its interests in or rights to any of the said waters of any stream, 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 inspec-

tion 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 summonses and returns 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 as

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 stopped 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 different 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 not devoted to cultivated crops.

c. 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.

AND WHEREAS, said regular session of the said legislature finally adjourned May 12, 1913, and ninety days having not expired since said final adjournment:

Now, therefore, sufficient qualified electors of the State of California have presented to the secretary of state their petitions asking that said law and act hereinbefore set forth, so passed by the legislature and approved by the governor as hereinbefore stated, be submitted to the electors of the State of California for their approval or rejection.

ARGUMENT IN FAVOR OF WATER COMMISSION ACT.

Full California prosperity without good land titles would be impossible. The same is true of water titles, for California lands need irrigation. Our land titles are good. Titles to our water rights are not good, and can not be made good under our present laws. To illustrate:

First—Our railroad commission valued at \$18,000 the property of the East Side Canal Irrigation Company. The company said it spent \$300,000 litigating its water rights, without settling them.

Second—Certain water rights on Santa Ana river have been "finally settled" four times by four expensive lawsuits. A fifth suit is now threatened to "finally settle" them again.

Third—In six California irrigation counties there are now over one hundred live water right lawsuits—one small county has twenty.

California water rights can not be settled by lawsuits. There is always some one who can either sue for their water rights all the water users on every stream, or can compel them to sue to prevent him from taking their water. If a water user hasn't money to defend his water right as often as he is sued or to sue everybody who tries to take it away from him, he loses it.

Our present water laws, therefore, empower rich men and corporations to law poorer men and corporations out of their water rights, without which their lands are useless.

Another illustration of the badness of our water laws: large areas of fertile Madera county lands go unirrigated, while enormous quantities of water are wasted in San Joaquin river, because Miller & Lux, riparian owners on that river, will not permit Madera farmers to use the wasting waters.

Such conditions interfere with the prosperity of California.

There are no lawsuits over water rights and no riparian rights in other states, where they have water commission laws.

Oregon's water commission, in four years, finally settled over 1,000 water rights, at a cost \$10.00 to each claimant, without a single appeal to the courts. Wyoming's water commission, in twenty years, finally settled over 15,000 water rights, with only ten appeals to the courts.

This California law is modeled on the Oregon law. It is being fought by an association of power and water companies, which spent many thousand dollars lobbying against it in the legislature and in securing forged and unforced signatures to the petition by which it was submitted to the referendum.

Our railroad commission stands between the people and the public service corporations. The water commission will stand, as water commissions in other states stand, between water users and the water grabbers and water hogs.

It is not true that the water commission can take water away from those who have a right to use it. The law, in terms, recognizes "vested rights" in the use of water. But the commission can take water away from those who, only pretending to use it, prevent others from using it. That probably accounts for much of the fierce corporation opposition to this law. Nor can the commission unsettle California water rights; they are already unsettled, and can not be settled under our present laws. The commission will cheaply, quickly, finally settle California water rights, as similar commissions settle them in other states.

GEORGE C. PARDEE.

ARGUMENT AGAINST WATER COMMISSION ACT.

This act seeks to place under the control of a political commission all of the waters of the state, both of surface and underground stream or flow. It repeals all existing laws in regard to the appropriation and use of water, and, if the proposed commission does not perform its duty, or is not able, through lack of means or lack of ability, to handle the vast scheme, we will have no water law.

It is opposed to the policy of such acts as the railroad commission act, in that it does not tend to foster enterprise and prevent oppression, but tends to stifle enterprise and promote oppression. It goes to the inception and not to the use of property rights.

It involves unlimited expense. The \$15,000.00 to cover the salaries of the commissioners is the smallest item. What will it cost to make the ascertainment of a single stream in engineering expenses? But the commission can not grant a license to use the water of any stream until it has made an ascertainment as to how much water there is and what rights already exist.

No water can be taken from a surface or subterranean stream, except under a permit from the commission. In order to obtain this permit it is necessary to employ an attorney and engineers, prepare an elaborate application accompanied by maps and other data (Sec. 16), all at large expense. The commission, before it can grant the permit, must ascertain if there is unappropriated water. To do this, it compels all parties using the waters of the stream to prove their rights, which necessitates the employment of attorneys and expert engineers at more expense. If they do not do this they forfeit their rights. The decision of the commission is only an "ascertainment" and is not final, and the matter may be litigated through the courts. Small users can not afford this expense. The tendency will be to take the water from the small users and put it in the hands of large companies.

It is claimed that this bill will prevent control of water by monopolies, and will permit larger appropriations and more general use. This is incorrect. Under the present law, the right to the use of water can only be acquired by putting the water to beneficial use, and when the use ceases the right ceases. The small user has equal chance with the large corporations. Under the bill it will be only large corporations that

can afford to develop water, and as to them the cost is almost prohibitive. This will retard the development of the state to a large extent.

The power of regulating rates, controlling the use, and compelling adequate service of water to the public, is now vested by the state constitution in the state board of railroad commissioners (State Constitution, Art. XII, Sec. 23).

Besides the expense and cost of appropriating the water, there is an annual charge of ten cents for every miner's inch of water for irrigation; and \$2.50 for each theoretical horse-power up to 100 horse-power, and above that an extra charge, if appropriation is for power purposes. This

puts a continuing charge, tax and burden upon every appropriator of water, and is equivalent to general taxation in as much as it imposes a special charge upon a special industry that will have to be repaid by the public where it is public use, and borne by the industry itself where it is a private use. The consumer ultimately bears all these expenses.

The act does not give the commission power to initiate in any manner the conservation and preservation of water, but imposes litigation and a burden upon users of water and the public.

G. R. FREEMAN.

ABATEMENT OF NUISANCES.

Act submitted to electors by referendum.

Declares nuisance any building or place where acts of lewdness, assignation or prostitution occur, and general reputation admissible to prove existence of nuisance; prescribes procedure for abatement thereof; requires removal and sale of fixtures and movable property used in aid thereof, closing premises to any use for one year unless court releases same upon bond of owner; prescribes fees therefor, making same and all costs payable from proceeds of such sale, requiring sale of premises to satisfy any deficiency; makes fines lien upon interest in premises.

WHEREAS, the legislature of the State of California, in regular session in March, 1913, passed, and the governor of the State of California, on the 7th day of April, 1913, approved a certain law and act, which law and act, together with its title, is in the words and figures following, to wit:

An act declaring all buildings and places nuisances wherein or upon which acts of lewdness, assignation or prostitution are held or occur or which are used for such purposes, and providing for the abatement and prevention of such nuisances by injunction and otherwise.

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

Section 1. The term "person" as used in this act shall be deemed and held to mean and include individuals, corporations, associations, partnerships, trustees, lessees, agents and assignees. The term "building" as used in this act shall be deemed and held to mean and include so much of any building or structure of any kind as is or may be entered through the same outside entrance.

Sec. 2. Every building or place used for the purpose of lewdness, assignation or prostitution and every building or place wherein or upon which acts of lewdness, assignation or prostitution are held or occur, is a nuisance which shall be enjoined, abated and prevented as hereinafter provided, whether the same be a public or private nuisance.

Sec. 3. Whenever there is reason to believe that such nuisance is kept, maintained or exists in any county or city and county, the district attorney of said county or city and county, in the name of the people of the State of California, must, or any citizen of the state resident within said county or city and county, in his own name may, maintain an action in equity to abate and prevent such nuisance and to perpetually enjoin the person or persons conducting or maintaining the same, and the owner, lessee or agent of the building, or place, in or upon which such nuisance exists, from directly or indirectly maintaining or permitting such nuisance.

Sec. 4. The complaint in such action must be verified unless filed by the district attorney. Whenever the existence of such nuisance is shown in such action to the satisfaction of the court or judge thereof, either by verified complaint or affidavit, the court or judge shall allow a temporary writ of injunction to abate and pre-

vent the continuance or recurrence of such nuisance.

Sec. 5. The action when brought shall have precedence over all other actions, excepting criminal proceedings, election contests and hearings on injunctions, and in such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisance. If the complaint is filed by a citizen, it shall not be dismissed by the plaintiff or for want of prosecution except upon a sworn statement made by the complainant and his attorney, setting forth the reasons why the action should be dismissed, and the dismissal ordered by the court. In case of failure to prosecute any such action with reasonable diligence, or at the request of the plaintiff the court, in its discretion, may substitute any such citizen consenting thereto for such plaintiff. If the action is brought by a citizen and the court finds there was no reasonable ground or cause for said action, the costs shall be taxed against such citizen.

Sec. 6. Any violation or disobedience of either any injunction or order expressly provided for by this act shall be punished as a contempt of court by a fine of not less than two hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for not less than one month nor more than six months, or by both such fine and imprisonment.

Sec. 7. If the existence of the nuisance be established in an action as provided herein, an order of abatement shall be entered as a part of the judgment in the case, which order shall direct the removal from the building or place of all fixtures, musical instruments and movable property used in conducting, maintaining, aiding or abetting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released, as hereinafter provided. While such order remains in effect as to closing, such building or place shall be and remain in the custody of the court. For removing and selling the movable property, the officer shall be entitled to charge and receive the same fees as he would for levying upon and selling like property on execution, and for closing the premises and keeping them closed, a reasonable sum shall be allowed by the court.

Sec. 8. The proceeds of the sale of the property, as provided in the preceding section, shall be applied as follows:

- 1st. To the fees and costs of such removal and sale;
- 2nd. To the allowances and costs of so closing and keeping closed such building or place;