

Appendix B1:

Assembly Bill No. 642 (1913) (as introduced Jan. 23, 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

Joseph L. Sax
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(SWRCB Contract No. 0-076-300-0)

INTRODUCED BY MR. W. A. JOHNSTONE,

JANUARY 23, 1913.

REFERRED TO COMMITTEE ON CONSERVATION.

AN ACT

CREATING A STATE WATER COMMISSION; SPECIFYING AND PROVIDING FOR THE APPOINTMENT OF ITS MEMBERS; FIXING THE TERMS OF OFFICE AND COMPENSATION OF ITS MEMBERS; FIXING THE POWERS, DUTIES AND AUTHORITY OF SAID COMMISSION AND ITS MEMBERS; PROVIDING FOR THE FILLING OF VACANCIES IN SAID COMMISSION AND THE REMOVAL FROM OFFICE OF MEMBERS THEREOF; PROVIDING FOR THE COOPERATION OF THE 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; 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, FOR THE GUIDANCE OF SAID COMMISSION, WHAT WATER IS UNAPPROPRIATED; DECLARING WHAT WATER MAY BE APPROPRIATED; DECLARING THE DUTIES OF THOSE WHO DESIRE TO APPROPRIATE WATER; DECLARING THE PERIODS FOR WHICH WATER MAY BE APPROPRIATED AND THE CONDITIONS UNDER WHICH SUCH APPROPRIATIONS MAY BE MADE; 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 BY WATER RIGHTS; SPECIFYING CERTAIN DUTIES OF THE CLAIMANTS, POSSESSORS OR USERS OF WATER OR WATER RIGHTS; DECLARING WATER RIGHTS FORFEITED UNDER CERTAIN CONDITIONS; DECLARING THE USE OR POSSESSION OF WATER WITH CERTAIN EXCEPTIONS EXCEPT UNDER THE PROVISIONS OF THIS ACT TO BE A MISDEMEANOR; REGULATING THE APPROPRIATION OF WATER; EXEMPTING CITIES, CITIES AND COUNTIES, MUNICIPAL WATER DISTRICTS AND LIGHTING DISTRICTS FROM CERTAIN PROVISIONS OF THIS ACT BUT PERMITTING THEM TO COME UNDER ITS PROVISIONS; 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.

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
3 is hereby created and established. Two members of said commission
4 shall be, *ex officio*, the governor of the state and the
5 state engineer, respectively. Three members of said commission
6 shall be appointed by the governor for the term of four
7 years; *provided, however*, that of the members first appointed
8 one shall be appointed to hold office until the first day in
9 January, nineteen hundred and fourteen, one until the first
10 day in January, nineteen hundred and fifteen, and one until
11 the first day in January, nineteen hundred and sixteen. The
12 commissioners shall elect one of their number president of the
13 commission. The appointed members of said commission shall
14 receive as compensation for services rendered by them as said
15 members the sum of \$25.00 per day for each day's services
16 actually rendered but the total compensation of any member
17 shall not exceed \$5,000 per annum. No commissioner who is
18 directly or indirectly interested in any matter before the com

1 mission shall sit with the commission during the hearing of such
2 matter; nor shall he be detailed by the commission to investigate
3 or report on any such matter; nor shall he take part in any
4 determination of any such matter. But the governor shall
5 have the power and authority, upon request of the commission,
6 to appoint *pro tempore* some disinterested person to sit and
7 act in the place and stead of such interested commissioner.
8 Such *pro tempore* commissioner shall have all the compensa-
9 tion, power and authority of a member of the commission, but
10 only in the matter for the investigation and determination of
11 which he shall have been appointed and his connection with
12 the commission shall cease and determine upon the completion
13 of the investigation and determination for which he was
14 appointed. But the commissioner in whose place and stead he
15 sits shall have power, compensation and authority in all other
16 cases.

17 SEC. 2. Whenever a vacancy in the state water commission
18 shall occur, the governor shall forthwith appoint a qualified
19 person to fill the same for the unexpired term. The legislature,
20 by a two-thirds vote of all members elected to each house, or the
21 governor, may remove any one or more of said commissioners
22 from office for dereliction of duty or corruption or incompe-
23 tency; *provided*, that no commissioner shall be removed from
24 office until after public hearing upon sworn charges. The com-
25 mission shall have a seal bearing the following inscription:
26 State water commission of California. The seal shall be affixed
27 to all authentications of copies of records and to such other
28 instruments as the commission may direct. All courts shall
29 take judicial notice of said seal.

30 SEC. 3. A majority of the appointed commissioners shall
31 constitute a quorum for the transaction of any business, for the
32 performance of any duty, or for the exercise of any power of
33 the commission. No vacancy in the commission shall impair
34 the right of the remaining commissioners to exercise all the
35 powers of the commission. The act of a majority of the com-
36 missioners present, when in session as a board, shall be deemed
37 to be the act of the commission; but any investigations, inquiry

1 or hearing which the commission has power to undertake
2 or hold may be undertaken or held by or before any commis-
3 sioners or commissioner designated for the purpose by the com-
4 mission; and every finding, order, ascertainment or decision
5 made by the commissioners or the commissioner so designated
6 pursuant to such investigation, inquiry or hearing, when
7 approved by the commission and ordered filed in its office, shall
8 be and be deemed to be the finding, order, ascertainment or
9 decision of the commission.

10 SEC. 4. (a) Each commissioner shall have power to admin-
11 ister oaths, certify to all official acts, and to issue subpoenas
12 for the attendance of witnesses and the production of papers,
13 books, maps, accounts, documents and testimony in any
14 inquiry, investigation, hearing, ascertainment or proceeding
15 ordered or undertaken by the commission in any part of the
16 state. Each witness who shall appear by order of the com-
17 mission or a commissioner shall receive for his attendance the
18 same fees and mileage allowed by law to witnesses in civil
19 cases, which amount shall be paid by the party at whose
20 request such witness is subpoenaed. When any witness who
21 has not been required to attend at the request of any party
22 shall be subpoenaed by the commission his fees and mileage
23 shall be paid from the funds appropriated for the use of the
24 commission in the same manner as other expenses of the com-
25 mission are paid. Any witness subpoenaed, except one whose
26 fees and mileage may be paid from the funds of the commis-
27 sion, may, at the time of service, demand the fee to which he
28 is entitled for travel to and from the place at which he is
29 required to appear and one day's attendance. If such wit-
30 ness demands such fees at the time of service, and they are
31 not at that time paid or tendered, he shall not be required to
32 attend before the commission or commissioners as directed in
33 the subpoena. All fees and mileage to which any witness is
34 entitled under the provisions of this section may be collected
35 by action therefor instituted by the person to whom such fees
36 are payable. But no witness shall be compelled to attend as a
37 witness before the water commission or any water commis-

1. sioner or water commissioners out of the county in which he
2. resides, unless the distance be less than thirty miles from his
3. place of residence to the place of hearing.

4. (b) The superior court of the county or city and county in
5. which any inquiry, investigation, hearing or proceedings may
6. be held by the commission or any commissioner or commis-
7. sioners shall have the power to compel the attendance of wit-
8. nesses and the production of papers, maps, books, accounts,
9. documents and testimony as required by any subpoena issued
10. by the commission or any commissioner or commissioners. The
11. commission, commissioners or commissioner before whom the
12. testimony is to be given or produced may, in case of the refusal
13. of any witness to attend or testify or produce any papers,
14. maps, books, accounts or documents required by such sub-
15. poena, report to the superior court in and for the county or
16. city and county in which the proceeding is pending by petition,
17. setting forth that due notice has been given of the time and
18. place of attendance of said witness, or for the production of
19. said papers, maps, books, accounts or documents and that the
20. witness has been summoned in the manner prescribed in this
21. act, and that the witness has failed and refused to attend or
22. produce the papers, maps, books, accounts or documents re-
23. quired by the subpoena before the commission, commissioners,
24. or commissioner in the cause or proceeding named in the notice
25. and subpoena, or has refused to answer questions propounded
26. to him in the course of such cause or proceeding, and ask an
27. order of said court, compelling the witness to attend, testify,
28. and produce said papers, maps, books, accounts or documents
29. before the commission, or commissioners, or commissioner.
30. The court, upon the petition of the commission or commis-
31. sioners or commissioner, shall enter an order directing the
32. witness to appear before the court at a time and place to be
33. fixed by the court in such order, the time to be not more than
34. ten days from the date of the order, and then and there show
35. cause, if any he have, why he refused to obey said subpoena, or
36. refused to answer questions propounded to him by said com-
37. mission, or any commissioners or any commissioner, or neg-

1 lected, failed or refused to produce before said commission, or
2 any commissioners or any commissioner the books, papers,
3 maps, accounts or documents called for in said subpoena. A
4 copy of said order and the petition therefor shall be served
5 upon said witness. If it shall appear to the court that said
6 subpoena was regularly issued by the commission or a commis-
7 sioner, the court shall thereupon enter an order that said wit-
8 ness appear before the commission or commissioners or com-
9 missioner at the time and place fixed in said order, and testify
10 or produce the required papers, maps, books, accounts or doc-
11 uments, or both testify and produce; and upon failure to obey
12 said order said witness shall be dealt with as for contempt of
13 court.

14 (c) The state water commission or any commissioners or
15 commissioner, or any party to a proceeding before the com-
16 mission or any commissioners or commissioner, may in any
17 investigation or hearing before the commission or any com-
18 missioner cause the deposition of witnesses residing within or
19 without the state to be taken in the manner prescribed by law
20 for depositions in civil actions in the superior courts of this
21 state.

22 (d) No person shall be excused from testifying or from pro-
23 ducing any book, map, document, paper or account in any in-
24 vestigation or inquiry by or hearing before the commission or
25 any commissioners or commissioner upon the ground that the
26 testimony or evidence, book, map, document, paper or account
27 required of him may tend to incriminate him or subject him
28 to penalty or forfeiture. But no person shall be prose-
29 cuted, punished or subjected to any penalty or forfeiture for
30 or on account of any act, transaction, matter or thing material
31 to the matter under investigation concerning which he shall
32 have been compelled to testify or to produce documentary evi-
33 dence; *provided*, that no person so testifying or producing shall
34 be exempt from prosecution or punishment for any perjury
35 committed by him in his testimony.

36 SEC. 5. A full and accurate record of business or acts per-
37 formed or of testimony taken by the commission or any mem-

1 ber or members thereof in pursuance of the provisions of this
2 act shall be kept and be placed on file in the office of said water
3 commission.

4 Sec. 6. The state water commission shall take, charge and
5 collect the following fees: for copies and records not required
6 to be certified or otherwise authenticated by the commission,
7 ten cents for each folio; for certified copies of official docu-
8 ments and orders filed in its office, fifteen cents for each folio,
9 and one dollar for every certificate under seal affixed thereto;
10 for certified copies of evidence and proceedings before the
11 commission, fifteen cents for each folio. The commission may
12 fix reasonable charges for publications issued under its author-
13 ity. All fees charged and collected under this section shall be
14 paid, at least once each week, accompanied by a detailed state-
15 ment thereof, into the treasury of the state.

16 Sec. 7. For the purpose of carrying out the provisions of
17 this act the state water commission is authorized to pass such
18 necessary rules and regulations as it may from time to time
19 deem advisable, and to appoint and remove at its pleasure a
20 secretary who shall have charge of its books and records and
21 perform such other duties as from time to time may be pre-
22 scribed and whose salary shall be fixed by the water com-
23 mission; and the state water commission may also employ such
24 expert, technical, professional and clerical assistance, and upon
25 such terms, as it may deem proper.

26 Sec. 8. For the purpose of carrying out the provisions of
27 this act the sum of one hundred and fifty thousand dollars
28 (\$150,000) is hereby appropriated for the fiscal years 1913-
29 1914 and 1914-1915 out of any money in the state treasury
30 not otherwise appropriated; and the state controller is hereby
31 authorized and directed to draw warrants upon such sum from
32 time to time upon the requisition of the state water commission
33 approved by the state board of control, and the state treasurer
34 is hereby authorized and directed to pay such warrants.

35 Sec. 9. All indebtedness incurred for salaries, and all neces-
36 sary costs in traveling and other expenses of said commission,
37 and each of its members and persons employed by it, while

1 actually engaged in the business of said commission, shall be
2 paid by the state out of the funds hereby appropriated, upon
3 the sworn statement of the person or persons incurring such
4 indebtedness, and upon the requisition of the state water com-
5 mission, approved by the state board of control, and the state
6 controller is hereby authorized to draw warrants upon the state
7 treasurer for said indebtedness, salaries, costs and expenses,
8 as provided by law for the payment of similar costs and
9 expenses and the drawing of similar warrants.

10 SEC. 10. The state water commission is hereby authorized
11 and empowered to investigate for the purpose of this act all
12 streams, stream systems, portions of stream systems, lakes, or
13 other bodies of water, and to take testimony in regard to the
14 rights to water or the use of water thereon or therein, and to
15 ascertain whether or not such water, or any portion thereof,
16 or the use of said water or any portion thereof, heretofore
17 filed upon or attempted to be appropriated by any person,
18 firm, association, or corporation, is appropriated under the
19 laws of this state.

20 SEC. 11. [For the guidance of the said water commission] all
21 water or the use of water which has never been appropriated,
22 or which has been heretofore appropriated, and which has not
23 been put, or which has ceased to be put, or which may here-
24 after cease to be put, or which may hereafter be appropriated
25 and cease to be put, to some useful or beneficial purpose, or
26 which having been appropriated is not now, or which in the
27 future may be appropriated and not be in process of being
28 put to useful or beneficial purpose with due diligence in pro-
29 portion to the magnitude of the work necessary properly to
30 utilize for the purpose of such appropriation such water or
31 such use of water, is hereby declared to be unappropriated.
32 The non-application of any portion of the waters of any stream
33 to a useful or beneficial purpose to or upon lands riparian to
34 such streams, for any continuous period of five consecutive
35 years at any time after the date when this act goes into effect,
36 shall be deemed to be *prima facie* evidence that the use of such
37 waters is not needed upon said riparian lands for any useful

1 for beneficial purpose; and such waters so non-applied, unless
2 appropriated and otherwise put to a useful or beneficial use
3 on lands other than said riparian lands, are hereby declared
4 to be public waters of the state and subject to appropriation
5 in accordance with the provisions of this act.

6 SEC. 12. The state water commission shall have authority
7 to, and may, for good cause shown, upon the application of
8 any appropriator or user of water under an appropriation
9 made according to law prior to the passage of this act, pre-
10 scribe the time within which the full amount of the water
11 appropriated shall be applied to a useful or beneficial purpose;
12 *provided*, that said appropriator or user shall have proceeded,
13 with due diligence in proportion to the magnitude of the
14 project, to carry on the work necessary to put the water to a
15 beneficial use; and in determining said time said commission
16 shall grant a reasonable time after the construction of the
17 works or canal or ditch used for the diversion of the water;
18 and in doing so said commission shall also take into considera-
19 tion the cost of the application of such water to the useful or
20 beneficial purpose, the good faith of the appropriator, the
21 market for water or power to be supplied, the present demand
22 therefor, and the income or use that may be required to pro-
23 vide fair and reasonable returns upon the investment. Upon
24 prescribing such time the state water commission shall issue
25 a certificate showing its determination of the matter. For good
26 cause shown, the state water commission may extend the time
27 by granting further certificates. And, for the time so pre-
28 scribed or extended, the said appropriator or user shall be
29 deemed to be putting said water to a beneficial use.

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

33 SEC. 14. This act shall not be held to bestow upon any
34 person, firm, association or corporation, any right where no
35 such right existed prior to the time this act takes effect.

36 SEC. 15. The state water commission may in its discretion
37 allow, under the provisions of this act, the appropriation of

1 unappropriated water or of the use thereof, or of water or of
2 the use thereof which may hereafter be declared to be unap-
3 propriated, or which, having been used under riparian pro-
4 prietorship or appropriation finds its way back into a stream,
5 lake or other body of water.

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

1 from the point of diversion specified in the original applica-
2 tion, or after the granting of any permit or license, such change
3 or changes may be made only upon the permission of the state
4 water commission.

5 SEC. 17. Any person, firm, association or corporation may
6 apply for and secure from the state water commission, in con-
7 formity with this act and in conformity with reasonable rules
8 and regulations adopted from time to time by the state water
9 commission, a permit for any unappropriated water or for
10 water which having been appropriated or used flows back into
11 a stream, lake or other body of water within this state. And
12 any application so made shall give to the applicant a priority
13 of right as of the date of said application to such water or the
14 use thereof until such application shall have been approved or
15 rejected by said commission; *provided*, that such priority shall
16 continue only so long as the provisions of law and the rules
17 and regulations of the water commission shall be followed by
18 the applicant. Upon the approval of any application by the
19 commission, said approval shall give priority of right as of the
20 date of said application, and shall give the right to take and
21 use the amount of water specified in said approval until the
22 issuance by the state water commission of a license for the use
23 of said amount of water, or until the said commission refuses
24 to issue said license. But the approval of any application shall
25 give the right to take and use water only to the extent and for
26 the purpose allowed in said approval; *provided*, that any
27 defective application made in a bona fide attempt to conform
28 to the rules and regulations of the state water commission and
29 to the law shall secure to the applicant a priority of right as of
30 the date of said application until he shall have been notified by
31 said commission in what respect his application is defective.
32 And said applicant shall be allowed sixty days after notice of
33 said defect in which to file an amended and perfected applica-
34 tion. If, within said sixty days, said applicant shall not file an
35 amended and perfected application, said priority of right shall
36 cease and determine; *provided*, that for good cause shown the
37 state water commission may allow said applicant to file a

1 further amended and perfected application; *provided, also,*
2 that any priority of right secured under this section shall not
3 be effective for more than thirty days after service of notice
4 of such approval, personally or by registered mail, on the
5 applicant, unless within said period of thirty days a true copy
6 of said approval upon which such priority is based shall have
7 been filed in the office of the recorder of the county or city and
8 county in which the water is to be diverted, and, within ten
9 days thereafter, a certificate of such filing by the county
10 recorder is also filed with the state water commission.

11 Sec. 18. Actual construction work upon the project for
12 which the water or the use thereof is applied shall begin within
13 such time after the date of the approval of the application as
14 shall be specified in said approval, and the construction of the
15 work thereafter shall be prosecuted with due diligence in
16 accordance with this act, the terms of the approved application,
17 and the rules and regulations of said commission; and said
18 work shall be completed in accordance with law, the rules and
19 regulations of the state water commission, and the terms of the
20 approved application and within a period specified in the per-
21 mit; but the period of completion specified in the permit may
22 for good cause shown, be extended by the state water commis-
23 sion. And if such work be not so commenced, prosecuted and
24 completed, the water commission shall, after due notice to the
25 applicant and a hearing before the commission, revoke its
26 approval of the application, and immediately upon such revoca-
27 tion any priority of right under said application shall lapse
28 and cease. But any applicant, the approval of whose applica-
29 tion shall have been thus revoked, shall have the right to
30 appeal to the superior court of the county in which is situated
31 the point of proposed diversion of the water for a review of
32 the reasonableness of the commission's act of revocation. And
33 thirty days after the revocation of said permit all rights of the
34 said permittee under said permit shall cease and lapse, unless
35 said permittee shall within said thirty days after said revoca-
36 tion appeal to the superior court for a review of the reasonable-
37 ness of the revocation. The priority of right of any permittee

1 so appealing shall continue under said permit until a final
2 court decision is rendered as to the reasonableness of the revo-
3 cation of said permit. But until and unless the revocation of
4 the permit shall be finally declared to be unreasonable by the
5 courts, the permittee shall not take or use any of the water
6 the right to take and use which is granted by said permit.

7 SEC. 19. Immediately upon completion, in accordance with
8 law, the rules and regulations of the state water commission,
9 and the terms of the permit, of the project under such appli-
10 cation, the holder of a permit for the right to appropriate
11 water shall report said completion to the state water commis-
12 sion. The said commission shall immediately thereafter cause
13 to be made a full inspection and examination of the works
14 constructed and shall determine whether the construction of
15 said works is in conformity with law, the terms of the approved
16 application, the rules and regulations of the state water com-
17 mission, and the permit. The said water commission shall, if
18 said determination is favorable to the applicant, issue a license
19 which shall give the right to the diversion of such an amount
20 of water and to the use thereof as may be necessary to fulfill
21 the purpose of the approved application. Said license shall be
22 in such form as may be prescribed by the state water commis-
23 sion under the provisions of this act. But if the said commis-
24 sion shall find, upon inspection and examination of the works
25 constructed, that the construction and condition of said works
26 are not in conformity with the law, the rules and regulations
27 of the state water commission, the terms of the approved
28 application and the terms of the permit, then and in that case
29 the said commission may, after due notice to the applicant or
30 the holder of the permit and a public hearing thereon, refuse
31 to issue said license. And thirty days after the refusal of said
32 commission to issue said license all rights of the applicant and
33 the holder of the permit under said application and permit
34 shall lapse and cease. But the holder of any permit to whom
35 the said water commission may have refused to issue said
36 license, shall have the right to appeal, within thirty days after
37 the said revocation, to the superior court as to the reasonable-

1 ness of the refusal of the said commission to issue said license.
2 And the rights of the holder of any permit so appealing shall
3 continue under said permit until a final court decision is ren-
4 dered on the reasonableness of the refusal of the commission
5 to issue said license. But until and unless the refusal of the
6 commission to issue said license shall be finally declared to be
7 unreasonable by the courts, the permittee shall not take or use
8 any of the water the taking and using of which is granted to
9 him by said permit. And if the holder of any permit which has
10 been revoked by the state water commission shall not appeal
11 within said thirty days to the superior court as to the reason-
12 ableness of said revocation, then and in that case all rights of
13 the applicant and of the holder of said permit shall lapse and
14 cease.

15 SEC. 20. All permits and licenses for the appropriation
16 of water shall be under the terms and conditions of this act,
17 and shall be effective for such time as the water actually
18 appropriated under such permits and licenses shall actually be
19 used for the useful and beneficial purpose for which said water
20 was appropriated, but no longer; *provided*, that if, at any
21 time after the expiration of twenty years after the granting of a
22 license, the state, or any city, city and county, municipal water
23 district, lighting district, or any political subdivision of the
24 state shall determine to purchase, as is or may be provided by
25 law, the works and property occupied and used under said
26 license and the works built or constructed for the enjoyment
27 of the rights granted under said license, excepting works and
28 property occupied and used, built or constructed solely for the
29 irrigation of land by mutual water companies or individuals,
30 then and in that case the said rights, property and works shall
31 become the property of the state, city, city and county, munic-
32 ipal water district, lighting district or political subdivision of
33 the state purchasing them; *provided, also*, that the purchase
34 price of said rights, property and works so purchased shall
35 not be less than the total actual cost, in lawful money of the
36 United States of America plus ten per cent of said cost, of
37 the said rights, property and works. And the holder of any

1 permit or license shall file with the state water commission, in
2 each calendar month an itemized account of all moneys paid
3 out during the calendar month next preceding, for the pur-
4 chase, and construction, and repair, and reconstruction, and
5 any way spent for or upon, for maintenance, operation or in
6 other ways upon, on account of or for said rights, property or
7 works. And each said account shall be sworn to by the presi-
8 dent and secretary of the corporation, if the holder of the
9 said permit or license is a corporation or an association; or
10 by all the members of the firm, if the said holder be a firm;
11 or by the person holding said permit or license if the holder
12 be a person. And all the books, vouchers, papers and
13 accounts of all kinds, natures and descriptions, showing the
14 expenditures made for the purchase, and construction, and
15 repair, and reconstruction, and maintenance, and operation
16 and in all other ways for or upon said rights, property, or
17 works, shall be open at all times to the inspection of the state
18 water commission or its duly authorized agents or employees.
19 If it shall appear to the state water commission at any time
20 after a permit or license is issued as in this act provided, that
21 the permittee or licensee, or the heirs, successors, or assigns of
22 said permittee or licensee, has not put the water granted under
23 said permit or license to the useful or beneficial purpose for
24 which the permit or license was granted, or that the permittee
25 or licensee, or the heirs, successors, or assigns of said per-
26 mittee or licensee, has ceased to put said water to such useful
27 or beneficial purpose, or that the permittee or licensee, or the
28 heirs, successors or assigns of said permittee or licensee, has
29 failed to observe any of the terms and conditions in the permit
30 or license as issued, then and in that case the said commission,
31 after due notice to the permittee, licensee, or the heirs, suc-
32 cessors or assigns of such permittee or licensee, and a hearing
33 thereon, may revoke said permit or license and declare the
34 water to be unappropriated and open to further appropriation
35 in accordance with the terms of this act. And the findings
36 and declaration of said commission shall be deemed to be *prima*
37 *facie* correct until modified or set aside by a court of compe-

1 tent jurisdiction; *provided*, that any action brought so to
2 modify or set aside such finding or declaration must be com-
3 menced within thirty days of the serving of notice of said
4 revocation on said permittee or licensee, his heirs, successors
5 or assigns. But no sale, gift or assignment of any permit or
6 any of the rights granted by any permit shall be valid with-
7 out written permission of the state water commission. And
8 every licensee or permittee granted a license or permit under
9 the provisions of this act if he accept such permit or license
10 shall accept the same under the conditions precedent that no
11 value whatsoever in excess of the actual amount paid to the
12 state therefor shall at any time be assigned to or claimed for
13 any permit or license granted or issued under the provisions
14 of this act, or for any rights granted or acquired under the
15 provisions of this act, in respect to the regulation by any
16 competent public authority of the services or the price of the
17 services to be rendered by any permittee or licensee, his heirs,
18 successors or assigns or by the holder of any rights granted or
19 acquired under the provisions of this act, or in respect to any
20 valuation for purposes of sale to or purchase by the state, or
21 any city, city and county, municipal water district, lighting
22 district or any political subdivision of the state, of the rights
23 and property of any permittee or licensee, or the possessor of
24 any rights granted, issued, or acquired under the provisions
25 of this act.

26 SEC. 21. Licenses hereafter granted for water or use of
27 water shall be subject to the right of the state to impose the
28 fees and charges provided in this act; but cities, cities and
29 counties, municipal water districts or lighting districts shall
30 be exempted from the provisions of this section.

31 SEC. 22. Every person, firm, association or corporation
32 making application for a permit to appropriate water or the
33 use of water under this act shall pay to the state water com-
34 mission, at the time of filing said application, a fee of two
35 hundred and fifty dollars (\$250) if the purpose or use is for
36 the generation of electricity, or electrical or other power, or
37 a fee of ten dollars (\$10) if the purpose be other than for

1 the generation of electricity, or electrical or other power.
2 Every person, firm, association or corporation at the time of
3 receiving a license to appropriate water or the use of water,
4 if the purpose be for the generation of electricity, or electri-
5 cal or other power, shall pay to said commission when the
6 said license is issued, and annually thereafter, a charge of
7 twenty (20) cents for each theoretical horsepower capable
8 of being developed by the proposed works. If the purpose
9 of use is for other than the generation of electricity, or elec-
10 trical or other power, every person, firm, association or cor-
11 poration receiving a license to appropriate water shall pay to
12 the said commission when said license is issued, and annually
13 thereafter, a charge of twenty-five (25) cents per miner's inch
14 for each miner's inch specified in the license, and for the
15 purpose of this act forty miner's inches shall be equivalent
16 to one cubic foot per second. And all such fees and charges
17 shall forthwith be paid into the state treasury by the state
18 water commission.

19 Sec. 23. Upon its own initiative or upon petition signed
20 by one or more claimants to water or the use of water upon any
21 stream, stream system, lake, or other body of water, requesting
22 the ascertainment of the relative rights of the various claim-
23 ants to the water or the use of water of that stream, stream
24 system, lake or other body of water, it shall be the duty of
25 the state water commission, if, upon investigation it finds
26 the facts and conditions are such as to justify, to make an
27 ascertainment of the said rights, fixing a time for the begin-
28 ning of the taking of testimony and the making of such inves-
29 tigation as will enable it to ascertain the rights of the various
30 claimants. In case suit is brought in the superior court for
31 determination of rights to water or the use of water, the case
32 may, in the discretion of the court, be transferred to the state
33 water commission for investigation, as referee. In any case
34 wherein the water commission shall proceed to investigate
35 water rights the said commission shall notify in writing in
36 the manner provided in section 1011, 1012 and 1013 of the
37 Code of Civil Procedure all persons, firms, associations or

1 corporations claiming or possessing any water rights which
2 are to be the subject of ascertainment by the said commission.

3 SEC. 24. Upon the completion of the taking of testimony
4 and evidence by the state water commission, the said commis-
5 sion shall immediately give notice by registered mail to the
6 various claimants or possessors of water rights that, at a date
7 and place named in the said notices, which date shall not be
8 less than fifteen days nor more than thirty days later than
9 the date of said notice, all of said testimony and evidence will
10 be open to public inspection. And said testimony and evi-
11 dence shall be held open to public inspection at said places
12 for a specified period of not less than thirty days nor more
13 than ninety days. Said notice shall also state the county in
14 which the order or ascertainment of the state water commis-
15 sion will be heard and considered by the superior court; *pro-*
16 *vided*, that said order shall be heard in the superior court of
17 the county in which is situated the stream, stream system,
18 lake or other body of water or the greater part of said stream,
19 stream system, lake or other body of water the rights to the
20 water of which are the subject of investigation and ascertain-
21 ment by the state water commission.

22 SEC. 25. If any person, firm, association or corporation
23 claiming or possessing any interest in or right to the waters
24 of any stream, stream system, lake or other body of water
25 involved in any investigation or ascertainment by the state
26 water commission of the rights to the water of said stream,
27 stream system, lake or other body of water, desires to contest
28 any of the interests in or rights to any of the said waters of
29 any other person, firm, association or corporation who has
30 submitted evidence to the state water commission, such per-
31 son, firm, association or corporation desiring so to contest
32 shall, within ten days after the expiration of the period for
33 public inspection prescribed in section 24 of this act, notify,
34 in writing, the state water commission of said desire so to
35 contest. Said notice shall state the ground of contest, which
36 shall be verified by the oath of the contestant, his agent or
37 attorney. Within ten days, of the receipt of the notice of

1 contest the state water commission shall notify the contest-
2 ant and the person, firm, association or corporation whose
3 rights are contested to appear before it at a time and place
4 specified in said notice, and that at said time and place said
5 contest will be heard; *provided*, that said time shall not be
6 less than thirty days nor more than sixty days from the date
7 of the notice of the commission.

8 SEC. 26. Said notice by said water commission shall be
9 served and return made thereon in the same manner in which
10 summons and return thereon are made in civil actions in the
11 superior courts of this state. The water commission shall have
12 power to adjourn hearings of contest from time to time upon
13 reasonable notice to all parties in interest, and to issue sub-
14 poenas for and compel, as provided in this act, the attendance
15 of witnesses to testify before it and produce papers, books
16 maps and other documents.

17 SEC. 27. The state water commission shall require from each
18 party to any contest before it under section 25, a deposit of
19 five dollars for each day it shall be engaged in taking testimony
20 in such contest. Upon the final ascertainment by the state
21 water commission in any contest, the said commission shall
22 enter an order directing the return of the deposit made by the
23 person, firm, association or corporation in whose favor such
24 contest shall be found, and that all money deposited by other
25 parties to the contest shall be immediately deposited into the
26 treasury of the State of California.

27 SEC. 28. Not less than fifteen days nor more than thirty
28 days after the expiration of the period during which the testi-
29 mony and evidence is to be kept open for public inspection, or
30 if any contest shall be made, not less than fifteen days nor more
31 than thirty days after the settlement of said contest by the
32 water commission, the testimony and evidence in the original
33 hearing and the testimony and evidence taken in said contest
34 shall be filed in the office of the water commission.

35 SEC. 29. The water commission may, in its discretion and in
36 addition to the testimony and evidence submitted to it by the
37 parties claimant to or possessors of water rights on any stream,

1 stream system, lake or other body of water cause to be made
2 an examination of said stream, stream system, lake or other
3 body of water and the works diverting water therefrom. Said
4 examination may include the gathering of whatever data cov-
5 ering said stream, stream system, lake or other body of water
6 and the various ditches and canals taking water therefrom the
7 said commission may require, as well as such other data and
8 information as may, in the discretion of the said commission,
9 be necessary to enable it properly to ascertain the relative
10 rights of the parties claiming rights to use the waters of said
11 stream, stream system, lake, or other body of water. The
12 results of said examination shall be filed in the office of said
13 commission and be open to public inspection as provided in
14 this act for the filing and public inspection of other evidence
15 of a like nature.

16 SEC. 30. As soon as practicable after the hearing of testi-
17 mony and evidence, the hearing and settlement of contest, and
18 the gathering and filing of such data and information as the
19 water commission shall, of its own motion, direct to be gathered,
20 the said water commission shall record in its office its ascer-
21 tainment of the rights of the several claimants to the use of
22 the waters of any stream, stream system, lake or other body of
23 water. Immediately thereafter, the said water commission
24 shall file a certified copy of said ascertainment together with
25 the original evidence and testimony taken before it and all data
26 and information gathered by its order, with the clerk of the
27 superior court in and for the county in which such stream,
28 stream system, lake or other body of water or the greater part
29 thereof is situated.

30 SEC. 31. Immediately upon the entering in its records by
31 the state water commission of its ascertainment of the rights
32 to water or the use of water upon any stream, stream system,
33 lake, or other body of water, and until a judgment, order or
34 decree of a court of competent jurisdiction finally dividing
35 and distributing the said water shall be made in accordance
36 with the ascertainment of the said water commission.

37 SEC. 32. At any time after the ascertainment of the water

1 commission of the rights to water or the use of water upon any
2 stream, stream system, lake, or other body of water, has been
3 declared and entered of record by the water commission the
4 operation of said ascertainment may be stayed in whole or in
5 part by any party affected by said ascertainment filing a bond
6 in the superior court in which the said ascertainment of said
7 commission has been filed. Said bond shall be in such amount
8 as the judge of said court may prescribe, conditioned that the
9 party filing said bond will pay all damages that may accrue
10 by reason of the ascertainment not being enforced. Immedi-
11 ately upon the filing of said bond and the approval thereof by
12 the judge of said superior court, the clerk of said court shall
13 transmit, without cost, to the state water commission a certi-
14 fied copy of said bond and the approval thereof; and upon the
15 receipt of said copies by the said commission the said commis-
16 sion shall order them recorded in the records of said commis-
17 sion. And the said commission shall thereupon serve by
18 registered letter to their last known post office address or by
19 personal service, notice upon all claimants whose rights have
20 been ascertained by the said commission of the staying of the
21 operation of said ascertainment. But said staying of the said
22 operation shall continue only until the entering of a court
23 decree finally affirming, modifying or rejecting said ascer-
24 tainment.

25 SEC. 33. After the filing with the clerk of the superior
26 court of the evidence, data, information, and ascertainment
27 required by section 30 of this act, the same shall be received
28 in the superior court as *prima facie* evidence of the facts and
29 ascertainment therein set forth. And at any time within one
30 year after such filing an action shall be brought, upon the
31 direction of the state water commission, by the attorney general
32 in said superior court in which said evidence, data, informa-
33 tion, and ascertainment shall have been so filed. Or an action
34 may be brought in said court by any one or more of the pos-
35 sessors or claimants concerning whose rights to any of the
36 waters of the stream, stream system, lake or other body of
37 water the state water commission shall have made the ascer-

1 tainment filed in said court. Said action if brought by the
2 attorney general shall be brought in the name and behalf of
3 the people of the State of California to quiet the title of the
4 State of California or the people thereof to any and all water
5 or water rights which it may have in or on said stream, stream
6 system, lake or other body of water, and, to cause all parties
7 whose rights have been so ascertained to appear and interplead
8 in said action in defense and determination of each and all of
9 their respective rights, which rights, as against the state and
10 with regard to the different rights and priorities of said rights
11 among themselves, shall be determined by the court in said
12 action. And if an action be brought by any one or more of
13 said claimants or possessors, said action may be brought in the
14 name of the said possessor or claimant and for the purposes set
15 forth in that portion of this section authorizing the attorney
16 general to bring an action. And from and after the filing of the
17 complaint in such action, the proceedings therein shall be as in
18 other cases heard and determined in said court, and in accord-
19 ance with the provisions of the Code of Civil Procedure of this
20 state; *provided*, that the evidence, data, information and ascer-
21 tainment so filed with the superior court as provided in section
22 30 of this act must be considered by said court in its deter-
23 mination of both or either of said actions, and the court may
24 affirm, modify or reject such ascertainment.

25 SEC. 34. All existing lawful appropriations of water or the
26 use thereof, shall be and hereby are respected and upheld to
27 the extent of the amount of water appropriated and actually
28 put to useful and beneficial purposes.

29 SEC. 35. Whenever proceedings shall be instituted for the
30 ascertainment by the state water commission of rights to
31 water or the use of water, it shall be the duty of all claimants
32 interested therein and having notice thereof as in this act
33 provided to appear and submit proof of their respective claims
34 at the time and in the manner required by law; and any such
35 claimant who shall fail to appear in such proceedings and
36 submit proof of his claim shall be barred and estopped from
37 subsequently asserting any rights theretofore acquired upon

1 the stream, stream system, lake or other body of water, or
2 portion of such stream, stream system, lake or other body of
3 water, embraced in such proceedings, and shall be held to have
4 forfeited all rights to said water or the use of water thereto-
5 fore claimed by him on such stream, stream system, lake or
6 other body of water, unless entitled to relief under the laws
7 of this state; *provided*, that such proceedings shall result in
8 an ascertainment by the state water commission and a decree
9 by the superior court based upon such ascertainment or a
10 modification of said ascertainment.

11 SEC. 36. In any suit wherein the state is or the people of
12 the state are a party for the determination of a right to the
13 use of the water of any stream, stream system, lake or other
14 body of water, or of any portion of any stream, stream system,
15 lake or other body of water, all who claim the right to use such
16 water shall be made parties. When any such suit has been
17 filed the court may call upon the state water commission to
18 make or furnish a complete hydrographic survey of such
19 stream, stream system, lake or other body of water, in order to
20 obtain all the data necessary to the determination of the rights
21 involved. The disbursements made in litigating the rights
22 involved in such suit shall be taxed by the court as in other
23 equity suits.

24 SEC. 37. Upon the adjudication of the rights to the use
25 of the water of a stream, or stream system, lake or other body
26 of water, or any portion of a stream, stream system, lake or
27 other body of water, a certified copy of the decree shall be
28 prepared by the clerk of the court, without charge, and filed
29 in the office of the state water commission, and said commission
30 shall deliver to every party in such decree a certified copy
31 thereof upon demand and the payment of the fees provided in
32 this act. And the said commission shall file, for record, in the
33 office of the recorder of each county in which any portion of
34 said stream, stream system, lake or other body of water is
35 situated, a certified copy of said decree. Said decree shall in
36 every case declare as to the water right adjudged to each
37 party, whether riparian or by appropriation, the extent, the

1 priority, amount, purpose of use, point of diversion, and place
2 of use of said water; and, as to water used for irrigation, such
3 decree shall also declare the specific tracts of land to which it
4 shall be appurtenant together with such other conditions as
5 may be necessary to define the right and its priority. But the
6 failure of any party entitled thereto to demand or receive a
7 copy of said decree shall not be considered to have prejudiced
8 him or his rights in any way.

9 SEC. 38. All water the right to which or to the use of which
10 has been acquired by appropriation in this state for irriga-
11 tion purposes shall be appurtenant to the land upon which it
12 is used; *provided*, that said water may be severed from said
13 land, and simultaneously transferred and become appurtenant
14 to other land, without losing priority of right theretofore
15 established, if such change can be made without detriment to
16 existing rights.

17 SEC. 39. The use of water except under the provisions of
18 this act, or the use of water except under a lawful appropri-
19 ation made prior to the passage of this act, except by individuals
20 for their own domestic purposes, shall be a misdemeanor. And
21 the diversion, possession or use of water except under a lawful
22 appropriation or by the said individuals shall be prima facie
23 evidence of the guilt of the person diverting, possessing or
24 using it. It shall be a misdemeanor to use, store or divert any
25 water, except by individuals for domestic purposes, except
26 under a permit or license issued therefor under the provisions
27 of this act by the state water commission to appropriate such
28 waters, except under existing and vested rights acquired prior
29 to the passage of this act. And any unlawful use, storage,
30 diversion or appropriation of water shall not confer any right
31 to such water upon any person, firm, association or corporation
32 so storing, diverting or using it.

33 SEC. 40. Water or the use of water which has heretofore been
34 appropriated or acquired, or which shall hereafter be appro-
35 priated or acquired for one specific purpose shall not be deemed
36 to be appropriated or acquired for any other or different pur-
37 pose. 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. But no permit or license shall be granted or issued for the appropriation of water for more than one beneficial purpose except in the case of a city, city and county, municipal water district or lighting district; *provided, however*, that 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.

SEC. 41. None of the provisions of this act, except as in this act specifically provided, shall apply to any city, city and county, municipal water district, or lighting district, nor to the appropriation or use of the waters of the state by any city, city and county, municipal water district, or lighting district; *provided, however*, that every city, city and county, municipal water district and lighting district shall, within thirty days from the time that it posts and records notices of appropriation as required by law, file with the state water commission a notice of said appropriation, together with the post office address of the mayor or other chief executive officer of such city, city and county, municipal water district or lighting district, the source of the water to be appropriated or used, the nature and amount of the proposed use, the point of diversion, the place of intended use, the head and amount of the water to be utilized, the use to which the waters are to be applied, the nature, location, character and estimated capacity of the works, and whether the water is to be and will be returned to the stream or source from which it is to be taken, and if so, at what point on such stream or source. In the construction contemplates a reservoir for the purpose of storing water for the use of any city, city and county, municipal water district, or lighting district, the notice filed with the commission shall also give the estimated height of the dam and estimated capacity of the reservoir in addition to the other require-

1 ments above set forth; *and, provided, also*, that any city, city
2 and county, municipal water district, or lighting district may
3 participate in any of the investigations herein provided for,
4 involving a right to appropriate or use any of the waters of
5 the state when such investigation affects the rights or claims of
6 any such city, city and county, municipal water district, or
7 lighting district; and in any case where the rights of any city,
8 city and county, municipal water district, or lighting district
9 are affected, the said city, city and county, municipal water dis-
10 trict or lighting district shall be served with notice in the same
11 manner as herein provided for the serving of notice upon per-
12 sons, associations or corporations. And any city, city and
13 county, municipal water district or lighting district is hereby
14 authorized, upon the adoption of a suitable resolution by its city
15 council, board of supervisors, board of trustees, board of direc-
16 tors, or other legislative body, thereof, to come under and sub-
17 mit to the provisions of this act and the authority of the state
18 water commission and the courts as set forth in this act. But
19 nothing in this act shall be construed as depriving any city,
20 city and county, municipal water district or lighting district of
21 the benefit of any law heretofore or hereafter passed for their
22 benefit in regard to the appropriation or acquisition of water or
23 the use of water.

24 SEC. 42. The word "water" in this act shall be construed as
25 embracing the term "or use of water"; and the term "or use
26 of water" in this act shall be construed as embracing the word
27 "water." But nothing in this act shall be construed as giving
28 or confining any right, or title, or interest to or in the corpus
29 of any water.

30 SEC. 43. All acts or parts of acts in conflict herewith are
31 hereby repealed.

32 SEC. 44. This act shall be known as the "water commission
33 act."

34 SEC. 45. If any section, subsection, sentence, clause or
35 phrase of this act is for any reason held to be unconstitutional,
36 such decision shall not affect the validity of the remaining por-
37 tions of this act. The legislature hereby declares that it would

- 1 have passed this act, and each section, subsection, sentence,
- 2 clause and phrase thereof, irrespective of the fact that any one
- 3 or more other sections, subsections, sentences, clauses or phrases
- 4 be declared unconstitutional.