

## WATER RIGHTS OF WAY.

### CHAPTER 173.

[H. B. 211.]

#### RIGHT TO WATER RIGHT OF WAY.

AN ACT to Provide for Persons Holding Lands, the Right to Water Right of Way for Conducting the Same by Dams, Dykes, Ditches, Flumes or Canals and Other Purposes.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. RIGHTS OF HOLDERS OF LANDS.] Any person or persons, corporation or company, who may have or hold a title or possessory right or title of any mineral or agricultural lands within the boundaries of this state, shall be entitled to the usual enjoyment of the waters of the streams or creeks in said state, for mining, milling, agricultural or domestic purposes; provided, that the right to such use shall not interfere with any prior right or claim to such waters, when the law has been complied with in doing the necessary work.

§ 2. MAY HAVE RIGHT OF WAY.] When any person or persons, corporation or company, owning or holding lands as provided in section 1, shall have no available water facilities upon the same, or whenever such lands are too far removed from any stream or creek to use the waters thereof as aforesaid, such person or persons, corporation or company shall have the right of way through and over any tract or piece of land for the purpose of conducting and conveying said water by means of dams, ditches, dykes, flumes or canals for the purpose aforesaid.

§ 3. LIMITATION OF RIGHT TO DIG.] Such right to dig and construct such dams, ditches, dykes, flumes and canals, over and across the lands of another, shall only extend to such digging, cutting, building or excavating as may be necessary for the purposes required.

§ 4. IN CASE OF CONTROVERSIES.] In all controversies respecting rights of water under the provisions of this act, the same shall be determined by the date of appropriation as respectively made by the parties, whether for mining, milling, agricultural or domestic purposes.

§ 5. RIGHTS OF PRIOR APPROPRIATOR.] The waters of the streams or creeks of this state may be made available to the full extent of the capacity thereof, for mining, milling, agricultural or domestic purposes without regard to deterioration in quality or dim-

inution in quantity so that the same do not materially effect or impair the rights of the prior appropriator.

§ 6. LIABILITY FOR DAMAGES.] Any person or persons, corporation or company, damaging or injuring the lands, or possessions of another by reason of cutting, building, digging ditches, or erecting dams, flumes, dykes or canals, as provided by the second section of this act, shall be liable to the party so injured for actual damage occasioned thereby.

§ 7. CONSTRUCTION OF THIS ACT.] This act shall not be so construed as to impair or in any way or manner interfere with the rights of parties to the use of the waters of such streams or creeks acquired before the passage of this act; provided, that all water rights or ditches that have not been used or worked upon for one year next prior to the passage of this act shall be deemed abandoned, and forfeited and subject to appropriation anew. Any person or persons, corporation or company who may dig any ditch, canal, dyke or flume, or erect any dam over and across any public road, trail or highway, or who use the waters of such dam, ditch, dyke or canal, shall be required to bridge the same and keep the same in good repair at such crossing or other places where the water from any such ditch, dyke, dam, flume or canal may flow over or in any way injure any road, trail or highway either by bridge or otherwise.

§ 8. PENALTY.] Any person or persons, corporation or company offending against section 7 of this act, on conviction thereof shall forfeit and pay for every such offense a penalty of not less than ten, nor more than one hundred dollars, to be recovered with costs of suit in civil action in the name of the State of North Dakota, before any court having jurisdiction, and the fine so collected shall be paid to the county treasurer and by him be credited to the county general funds, and it is hereby made the duty of all road overseers to make complaint, and any taxpayer of the county may make complaint to the nearest magistrate that such offense has been committed. All such fines and costs shall be collected without stay of execution and such defendant or defendants may by order of the court be confined in the common county jail until such fines and costs have been paid.

§ 9. SHALL FILE LOCATION CERTIFICATE.] That any person or persons, corporation or company appropriating the waters of any stream or creek in this state shall turn the water from the channel at least twenty feet of ditch or flume within sixty days from the date of appropriation, and turn the water therein and construct at least twenty rods of said ditch, flume or dyke if needed within six months from the date of such appropriation, and turn the water therein, and within thirty days from the date of location, the locator or locators of such water right, shall file a location certificate together with a map showing the proposed dam, or dams, ditches or dykes, flumes or canals, giving the description of the location by legal subdivision or by metes and bounds thereof, with the

register of deeds in the proper county within which such water right is located and situated. A copy of such certificate shall be posted at or near the head of such ditch, flume or canal and shall contain the name of the locators, the date of location, number of inches of water claimed or appropriated, and the purpose of the appropriation, and in no case shall the number of inches of water claimed exceed the conveying capacity of the first twenty feet of the flume, ditch or canal. Nor shall said ditch, flume or canal be enlarged to the prejudice or injury of a subsequent appropriator before such enlargement.

§ 10. WHEN APPROPRIATION DEEMED ABANDONED.] On failure to commence construction of any such dam, ditch, flume, dyke or canal or any of them, within 60 days from date of filing of location, and prosecute such dam, ditch, flume or dyke to a final completion without unnecessary delay, such appropriation shall be deemed abandoned.

Approved March 8, 1899.

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## WITNESSES.

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### CHAPTER 174.

[H. B. 209.]

#### WITNESSES IN CRIMINAL ACTIONS.

AN ACT to Amend Section 7960 of the Revised Codes of North Dakota, Relating to Examination of Witnesses in Criminal Actions.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That section 7960 of the Revised Codes of the State of North Dakota be amended to read as follows:

§ 7960. The witnesses must be examined in the presence of the defendant, and may be cross-examined in his behalf. And on demand of the state or the defendant all the testimony in the case must be reduced to writing in the form of depositions, or the testimony may be taken by stenographer if the state and the defendant consent thereto.

§ 2. EMERGENCY.] Whereas, there is now no law adequately providing for the taking of testimony in criminal actions, an emergency exists; therefore, this act shall take effect and be in force from and after its passage and approval.

Approved March 7, 1899.