

for what purpose, and at the first session of the legislature, after the holding of said International Exhibition, they shall make a final and complete report of all their proceedings had under the provisions of this act.

§ 10. This act shall take effect and be in force from and after its passage and approval.

Approved, March 2, 1881.

Water Rights.

CHAPTER 142.

AN ACT Relating to Water Rights.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

§ 1. PARTY HOLDING LAND SHALL HAVE RIGHT TO WATER.] That any person or persons, corporation or company, who may have or hold a title or possessory right or title to any mineral or agricultural lands within the limits of this Territory, shall be entitled to the usual enjoyment of the waters of the streams or creeks in said Territory 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 CONDUCT WATER FROM REMOTE STREAM.] That when any person or persons, corporation or company, owning or holding land as provided in section 1 of this act, shall have no available water facilities upon the same, or whenever such lands are too far removed from any stream or creek to so 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 ditches, dykes, flumes or canals, for the purpose aforesaid.

§ 3. RIGHT OF WAY LIMITED.] That such right to dig and construct such ditches, dykes, flumes and canals over and across the lands of another, shall only extend to so much digging, cutting or excavation as may be necessary for the purposes required.

§ 4. CONTROVERSIES—HOW DETERMINED.] That in all controversies respecting rights to 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. DETERIORATION OR DIMINUTION NOT TO BE CONSIDERED.] That the waters of the streams or creeks of the Territory 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 diminution in quantity, so that the same do not materially affect or impair the rights of the prior appropriator.

§ 6. PENALTY FOR DAMAGING LANDS.] That any person or persons, corporation or company, damaging or injuring the lands or possessions of another by reason of cutting or digging ditches or canals, or erecting flumes, as provided by section 2 of this act, the party so committing such injury or damage shall be liable to the party so injured for the actual damage occasioned thereby.

§ 7. ABANDONED WATER RIGHT. BRIDGING DITCHES, ETC.] That 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. That any person or persons, corporation or company, who may dig any ditch or canal, dyke or flume, over or across any public road, trail or highway, or who use the waters of such ditch, dyke, flume 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, dykes, flumes or canals may flow over or in anywise injure any road, trail or highway, either by bridges or otherwise.

§ 8. PENALTY FOR FAILURE TO COMPLY WITH PROVISIONS OF SECTION 7.] That 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 twenty-five dollars, nor more than one hundred dollars, to be recovered with costs of suit in civil action in the name of the Territory of Dakota, before any court having jurisdiction. One half of the fine so collected shall be paid into the county treasury for the benefit of the common schools of the county in which the offense was committed and the other half shall be paid to the person or persons informing 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 county jail until such fine and costs have been paid.

§ 9. MANNER OF LOCATING WATER RIGHTS.] That any person or persons, corporation or company appropriating the waters of any streams or creeks in this Territory, shall turn the water from the channel of such creek or stream, and construct at least twenty feet of ditch or flume, within thirty days from the date of appropriation and turn the water therein, and construct at least twenty rods of said ditch or flume if needed within six months from the date of such appropriation and turn the water therein; and within twenty days from the date of location, the locator or locators of such water right, shall file a location certificate thereof with the register of deeds, in the proper county within which such water right is 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 or names 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 or ditch, nor shall said ditch or flume be enlarged to the prejudice or injury of a subsequent appropriator, before such enlargement.

§ 10. WHEN ABANDONED.] A failure to commence the construction of such ditch or flume for sixty days after location, and prosecute such ditch, canal or flume to a final completion

without unnecessary delay, such appropriation shall be deemed abandoned.

§ 11. This act shall take effect and be in force from and after its passage and approval.

ENDORSED.—Received at Executive Office, February 28, at 5:30 P. M.

Note by the Secretary of the Territory.

The foregoing act having been presented to the Governor of the Territory for his approval, and not having been returned by him to the Council of the Legislative Assembly in which it originated, within the time prescribed by the Organic Act, has become a law without his approval.

GEO. H. HAND,
Secretary of the Territory.