

draw warrants on the state treasurer for the payment of money directed by law to be paid out of the treasury; which warrants shall be numbered consecutively in the order in which they are drawn; but no warrant shall be drawn unless authorized by law, nor unless there are funds in the treasury applicable to the payment thereof to meet the same; provided, that in case of emergency, and in anticipation of taxes already levied and in process of collection, the auditor, with the advice and consent of the governor and treasurer, may issue warrants in payment of duly authorized vouchers. Every warrant must be drawn upon the fund out of which it is payable and specify for what it is drawn and when the liability accrued.

§ 2. EMERGENCY.] Whereas, an emergency exists in that there is no adequate provision for providing for temporary deficiencies in the state treasury, therefore this act shall be in force and take effect upon its passage and approval.

Approved February 15, 1901.

WATER RIGHTS.

CHAPTER 213.

[H. B. 125.]

WATER RIGHTS.

AN ACT Regulating Water Rights for Irrigation Purposes.

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

§ 1. WATER RIGHTS ACQUIRED. HOW.] The right to the use of running water, flowing in the rivers, streams, canyons and ravines of this state, may be acquired by appropriation.

§ 2. MUST BE FOR USEFUL PURPOSES. RIGHT LEASES.] The appropriation must be for some useful or beneficial purpose, and when the appropriator, or his successor in interest, abandons and ceases to use the water for such purpose the right ceases; but questions of abandonment shall be questions of fact, and shall be determined as other questions of fact.

§ 3. MAY CHANGE PLACE OF DIVERSION AND USE.] The person entitled to the use of water may change the place of diversion, if others are not thereby injured, and may extend the ditch, flume, pipe or aqueduct, by which the diversion is made, to any place other than where the first use was made, and may use the water for other purposes than that for which it was originally appropriated.

§ 4. MAY TURN INTO ANOTHER CHANNEL.] The water appropriated may be turned into the channel of another stream and mingled with its waters, and then be reclaimed; but, in reclaiming it, water already appropriated by another must not be diminished in quantity or deteriorated in quality.

§ 5. MUST TURN BACK SURPLUS WATER.] In all cases where, by virtue of prior appropriation, any person may have diverted all the water of any stream, or to such an extent that there shall not be an amount sufficient left therein for those having a subsequent right to the waters of such stream, and there shall at any time be a surplus of water so diverted, over and above what is actually used by the prior appropriator, such person shall be required to turn and to cause to flow back into the stream such surplus water, and upon failure so to do within five days, after demand being made upon him in writing by any person having a right to the use of such surplus water, the person so diverting the same shall be liable to the person aggrieved thereby in the sum of twenty-five dollars for each and every day such water shall be withheld after such notice; to be recovered by a civil action by any person having a right to the use of such surplus water.

§ 6. FIRST APPROPRIATION FIRST RIGHT.] As between appropriators the one first in time is first in right.

§ 7. MUST POST NOTICE.] Any person hereafter desiring to appropriate water must post a notice in writing in a conspicuous place at the point of intended diversion, stating therein:

First. The number of inches claimed measured as hereinafter provided.

Second. The purpose for which it is claimed and place of intended use.

Third. The means of diversion, with size of flume, ditch, pipe, or aqueduct by which he intends to divert it.

Fourth. The date of appropriation.

Fifth. The name of the appropriator. Within twenty days after the date of appropriation the appropriator shall file with the register of deeds of the county in which such appropriation is made, a notice of appropriation, which in addition to the fact, required to be stated in the posted notice, as hereinbefore prescribed, shall contain the name of the stream from which the diversion is made, if such stream have a name, and if it have not, such a description of the stream as will identify it, and an accurate description of the point of diversion on such stream, with reference to some natural object or permanent monument. The notice shall be verified by the affidavit of the appropriator, or some one in his behalf, which affidavit must state that the matters and facts contained in the notice are true.

§ 8. WITHIN FORTY DAYS MUST MAKE IMPROVEMENTS.] Within forty days after posting such notice the appropriator must proceed to prosecute the excavation or construction of the work by which the water appropriated is to be diverted, and must prosecute the same with reasonable diligence to completion. If the ditch or flume, when con-

structed, is inadequate to convey the amount of water claimed in the notice aforesaid, the excess claimed above the capacity of the ditch or flume shall be subject to appropriation by any other person, in accordance with the provisions of this title.

§ 9. FAILURE TO COMPLY FORFEITS RIGHTS.] A failure to comply with the provisions of this title deprives the appropriator of the right to the use of water, as against a subsequent claimant, who complies therewith, but by complying with the provisions of this title, the right to the use of the water shall relate back to the date of posting the notice.

§ 10. FILE DECLARATION IN SIX MONTHS.] Persons who have heretofore acquired rights to the use of water shall, within six months after the publication of this title, file in the office of the register of deeds of the county in which the water right is situated, a declaration in writing, except notice be already given of record as acquired by this title, or a declaration in writing be already filed, as required by this section, containing the same facts as required in the notice provided for record in section 7 of this title and verified as required in said last mentioned section, in cases of notice of appropriation of water;

Provided, that a failure to comply with the requirements of this section shall in no wise work a forfeiture of such heretofore acquired rights, or prevent any such claimant from establishing such rights in the courts.

§ 11. RECORD SUFFICIENT EVIDENCE.] The record provided for in sections 7 and 10 of this act when duly made, shall be taken and received in all courts of this state as prima facie evidence of the statements therein contained.

§ 12. ALL PARTIES INTERESTED PARTY TO ACTION SEVERALLY AND JOINTLY.] In any action hereafter commenced for the protection of rights acquired to water under the laws of this state, the plaintiff may make any or all persons who have diverted water from the same stream, or source, parties to such action; and the court may in one judgment settle the relative priorities and rights of all the parties to such action. Where damages are claimed for the wrongful diversion of water in any such action, the same may be assessed and apportioned by the jury in their verdict, and judgment thereon may be entered for or against one or more of several plaintiffs, or for or against one of more of several defendants, and may determine the ultimate rights of the parties between themselves.

In any action concerning joint water rights, or joint rights in water ditches, unless partition of the same is asked by parties to the action, the court shall hear and determine such controversy as if the same were several as well as joint.

§ 13. REGISTER OF DEEDS KEEP RECORDS.] The register of deeds must keep a well-bound book, in which he must record the notices and declarations provided for in this act, and he shall be entitled to have and receive the same fees as are now or hereafter may be allowed by law for recording instruments entitled to be recorded.

§ 14. MANNER OF MEASURING WATER.] The measurement of water appropriated under this act shall be conducted in the following manner: A box or flume shall be constructed with a headgate placed so as to leave an opening of six inches between the bottom of the box, or flume, and lower edge of headgate, with a slide to enter at one side of, and of sufficient width to close the opening left by the headgate, by means of which the dimensions of the opening are to be adjusted. The box or flume shall be placed level, and so arranged that the stream in passing through the aperture is not obstructed by back water, or an eddy below the gate; but before entering the opening to be measured, the stream shall be brought to an eddy, and shall stand three inches on the headgate and above the top of the opening. The number of square inches contained in the opening shall be the measure of inches of water.

§ 15. RIGHT TO CONDUCT WATER. WHAT IT INCLUDES.] The right to conduct water from or over the land of another, for any beneficial use, includes the right to raise any water by means of dams, reservoirs or embankments, to a sufficient height to make the same available for the use intended, and the right to any and all land necessary therefor, may be acquired upon payment of just compensation, in the manner provided by law for the taking of private property for public use; provided, further, that if it is necessary to conduct the water across the right of way of any railroad, it shall be the duty of the owners of the ditch, or flume, to give thirty days' notice in writing to the owner or owners of such railway of their intention to construct a ditch or flume across the right of way of such railroad, and the point at which the said ditch or flume will cross the railroad; also the time when the construction of said ditch or flume will be made. If the owner or owners of such railroad, or their agents, fail to appear and attend at the time and place fixed in said notice, it shall be lawful for the owner or owners of the said ditch or flume, to construct the same across the right of way of such railroad, without further notice to said owner or owners of the railroad.

§ 16. MUST REPAIR ALL DAMAGES.] Any person who digs and constructs ditches, dykes, flumes or canals, over or across any public roads or highways, or who uses the waters of such ditches, dykes, flumes or canals, is required to keep the same in good repair at such crossings or other places where the water from any such ditches, dykes, flumes or canals may flow over, or in anywise injure any roads or highways either by bridging or otherwise.

§ 17. PENALTY FOR OFFENDING.] Any person offending against the preceding section, on conviction thereof, shall pay, for every offense, a fine of not less than twenty-five dollars, nor more than one hundred dollars, with costs of prosecution. One-half of the fine 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 informing the nearest magistrate that such offense has been committed, who shall issue a warrant upon the proper complaint being made.

§ 18. REGULATING SALE OF WATER.] Any person having the right to use, sell, or dispose of water, and engaged in using, selling or disposing of the same, who has a surplus of water not used, or sold, or any person having a surplus of water, and the right to sell and dispose of the same, is required, upon the payment or tender to the person entitled thereto, an amount equal to the usual and customary rates per inch, to convey and deliver to the person such surplus of unsold water, or so much thereof for which said payment or tender shall have been made, and shall continue so to convey and deliver the same weekly so long as said surplus of unused or unsold water exists, and said payment or tender be made as aforesaid.

§ 19. RIGHT TO USE WATER. HOW ACQUIRED.] Any person desiring to avail himself of the provisions of the preceding section must, at his own cost and expense, construct or dig the necessary flumes or ditches to receive and convey the surplus water so desired by him, and pay or tender to the person having the right to the use, sale or disposal thereof, an amount equal to the necessary cost and expense of tapping any gulch, stream, reservoir, ditch, flume or aqueduct, and putting in gates, guages or other proper and necessary appliances useful and customary in such cases, and until the same shall be so done, the delivery of said surplus water shall not be required as provided in the preceding section.

§ 20. RIGHTS OF CONSUMERS.] Any person constructing the necessary ditches, aqueducts or flumes, and making the payments or tenders hereinbefore provided, is entitled to the use of so much of the said surplus water as said ditches, flumes or aqueducts have the capacity to carry, and for which payment or tender is made, and may institute and maintain any appropriate action at law or in equity for the enforcement of such rights or recovery of damages arising from a failure to deliver or wrongful diversion of the same.

§ 21. NO RIGHT TO SELL AFTER USING.] Nothing in the three preceding sections shall be so construed as to give the person acquiring the right to the use of water as therein provided, the right to sell or dispose of the same after being so used by him, or prevent the original owner or proprietor from retaking, selling and disposing of the same in the usual and customary manner, after it is so used as aforesaid.

§ 22. DAMS AND RESERVOIRS. HOW CONSTRUCTED.] No person shall hereafter fill, or procure to be filled, with water, any dam or reservoir which is not so thoroughly and substantially constructed as that it will safely and securely hold the water to be turned therein.

§ 23. No person shall hereafter construct, or cause to be constructed, on a stream, any dam or reservoir to accumulate the waters thereof, except in a thorough, secure and substantial manner.

§ 24. REPEAL.] All acts and parts of acts in conflict with the provisions of this act are hereby repealed.

§ 25. EMERGENCY.] Whereas, an emergency exists in this, there is no complete law in force in this state regulating water rights for the purpose of irrigation, now, therefore, this act shall take effect from and after its passage and approval.

Approved March 8, 1901.