

**GENERAL AND SPECIAL
IRRIGATION LAWS
OF THE STATE OF
TEXAS, DECEMBER 1, 1920**

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General and Special Irrigation Laws of the State of Texas, December 1, 1920 by Board of Water Engineers

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BOARD OF WATER ENGINEERS

**GENERAL AND SPECIAL
IRRIGATION LAWS
OF THE STATE OF
TEXAS, DECEMBER 1, 1920**

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GENERAL AND SPECIAL *24*

IRRIGATION LAWS

OF THE

STATE OF TEXAS

DECEMBER 1, 1920

Texas Laws, statutes, etc.



COMPILED BY BOARD OF WATER ENGINEERS
AUSTIN, TEXAS

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GENERAL AND SPECIAL IRRIGATION LAWS

REVISION OF IRRIGATION LAWS.

H. B. No. 237.]

CHAPTER 88.

"An Act to provide a more adequate system of laws relating to irrigation and declaring the unappropriated waters of the State the property of the State; authorizing their appropriation, storage and diversion for beneficial uses; perpetuating the Board of Water Engineers and prescribing its powers, duties and compensation; defining water rights and prescribing the method of acquiring, perfecting and preserving same; requiring application to be made to the Board of Water Engineers for permits to construct storage, diversion and distribution works, and prescribing the method thereof; limiting the right to the waters of the State to beneficial uses, and declaring forfeiture for abandonment of use; prescribing standards for the measurement of water; providing a method for the determination of water rights by the Board of Water Engineers; authorizing appeals from the decisions of the State Board of Water Engineers, and regulating the manner thereof; prescribing the method of serving notices on claimants and appropriators of water, and declaring the effects of failure to observe the same; authorizing the issuance of certificates of water rights and the recording thereof; fixing certain fees; creating the office of Water Commissioner and prescribing the duties and compensation thereof; authorizing the appointment of special assistants and prescribing their duties and compensation; dividing the State into water divisions and providing for water districts; prescribing the method for determining and recording titles to irrigation works, and establishing the period of limitation to quiet titles thereto; regulating partnership ditches; conferring the right of eminent domain in aid of construction of irrigation works; prohibiting the seeding of Johnson grass or Russian thistle on irrigation canals; prescribing penalties for violation of the provisions of this act; requiring the making of annual report to the Board of Water Engineers; requiring the control of flowing artesian wells; authorizing the chartering of corporations to construct and operate irrigation and other works; authorizing contracts for the supply and delivery of water, and creating liens to secure payment thereof; authorizing the acquisition of lands by irrigation companies, and requiring the alienation thereof; repealing all laws in conflict herewith and declaring an emergency."

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The unowned and unappropriated waters of the ordinary flow and underflow and tides of every flowing river or natural stream, of all lakes, bays or arms of the Gulf of Mexico, collections of still water, and of the storm, flood or rain waters of every river or natural stream, canyon, ravine, depression or watershed, within the State of Texas, are hereby declared to be the property of the State, and the right to the use thereof may be acquired by appropriation in the manner and for the uses and purposes hereinafter provided.

SEC. 2. The storm, flood or rain waters described in the preceding section may be held or stored by dams, in lakes or reservoirs, or diverted by means of canals, ditches, intakes, pumping plants, or other works, constructed by any person, corporation, association of persons, or irrigation district created under the Statutes, for the purpose of irrigation, mining, milling, manufacturing, the development of power, the construction and operation of waterworks for cities and towns, or for stock raising.

SEC. 3. The ordinary flow and underflow of the flowing water and tides of every natural river, or stream, with the State of Texas, may be taken or diverted from its natural channel by any of the persons named in the preceding section for any of the purposes stated therein; provided, that such ordinary flow and underflow shall not be diverted to the prejudice of the vested rights of any riparian owner without his consent except condemnation thereof in the manner hereinafter provided. The waters of any arm or inlet of the Gulf of Mexico, or of any salt water bay, may be changed from salt to sweet or fresh water, and held or stored by dams, dikes or other structure, and taken or diverted by any of the persons named in this section for any of the purposes stated herein.

SEC. 4. The appropriation of water must be for irrigation, mining, milling, manufacturing, the development of power, the construction and operation of waterworks for cities and towns, or for stock raising. Provided, that so far as practicable and within the limits of the public welfare, the water engineering board hereafter created shall subordinate the appropriation of water power to the appropriation of water for irrigation.

SEC. 5. As between appropriators, the first in time is the first in right.

SEC. 6. For the purpose of this Act, an appropriator is any person, association of persons, corporation or irrigation district, who has heretofore made beneficial use of any water, in a lawful manner, under the provisions of any act of the Legislature of the State of Texas, prior to the passage of Chapter 171 of the General Laws of the Thirty-third Legislature of Texas, and who has filed with the State Board of Water Engineers a record of his appropriation, as required by said Act of the Thirty-third Legislature, or who has heretofore or may hereafter make beneficial use of any water within the limitations of a permit lawfully issued by the Board of Water Engineers, and no appropriation of any water shall be considered as having been beneficially used for one or more of the purposes named in this act, and for the purpose or purposes stated in the original declaration of intention to appropriate such water, or stated in the permit issued by the Board of Water Engineers.

SEC. 7. Neither the foregoing section nor any other provision of this act shall be construed as intended to impair or to work or authorize the forfeiture of, or shall impair or work or authorize the forfeiture of, any rights heretofore or hereafter acquired by any declaration of appropriation or by permit when the appropriator has begun, or begins, the work and development contemplated by his declaration of appropriation, within the time provided in the law under which the same was or is made and has prosecuted, and continues to prosecute, the same with all reasonable diligence toward completion; but if any appropriator under this act, or other law of this State, has failed or fails to begin the work and development contemplated by his declaration of appropriation within the time provided in the law under which the same was or is made, or has failed or fails, to prosecute the same with all reasonable diligence toward completion, his right to such water as has not been applied, or is not applied, to beneficial use, as defined in

section nine of this act shall be considered as, and shall be, forfeited, and such water shall be subject to new appropriation under this act; provided, that no such rights shall be declared forfeited until the person or persons who are the owners of the land and whose rights are claimed to have been forfeited, shall first be given due notice and hearing as required in Section 33 of this act, and provided further, that if a permit for the use of such water has been issued, or is issued under this act, or under the act approved April the 9th, 1913, such water shall not be subject to new appropriation until the permit is cancelled by the board in whole, or in part, in accordance with the provisions of Section 33 of this act.

SEC. 8. The State shall be and is hereby divided into three water divisions, as follows:

All that portion of the State of Texas lying north of the thirtieth parallel, north latitude, and west of the one hundredth meridian west longitude, shall constitute Water Division No. 1.

All that portion of the State of Texas lying east of the ninety-seventh meridian west longitude, and south of the thirtieth parallel north latitude, together with all that portion lying north of the thirtieth parallel north latitude and east of the one hundredth meridian west longitude, shall constitute Water Division No. 2.

All that portion of the State of Texas not embraced in Water Division No. 1 or Water Division No. 2, as hereinbefore defined, shall constitute Water Division No. 3.

SEC. 9. For the purposes of this act, beneficial use shall be held to mean the use of such a quantity of water, when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose, as is economically necessary for that purpose.

SEC. 10. The Board of Water Engineers, created and constituted by the Act of the Thirty-third Legislature, Chapter 171, General Laws, approved April 9, 1913, is hereby continued, and the members constituting such board shall continue in office for the respective terms for which they were appointed, and until their successors are appointed and qualified, unless sooner removed in the manner provided by law. Said board shall be composed of three members, one of whom shall be appointed from each of the respective water divisions described in Section 8. The members of such board shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall each hold office for a term of six years, and until his successor is appointed and qualified. No person shall be appointed a member of the board who has not such technical knowledge and such practical experience and skill as shall fit him for the duties of the office. Each member of such board shall enter into bond, to be approved by the Governor, in the penal sum of ten thousand dollars, with not less than two personal sureties, or with one surety or guaranty company authorized to do business in this State conditioned for the faithful discharge of the duties of his office, and for the delivery to his successor or other officer appointed by the Governor to receive same, all moneys, books and other property belonging to the State then in his hands or under his control, or with which he may be legally chargeable as a member of said board. The Governor shall have power to remove, at any time, for

cause, any member of the State Board of Water Engineers, after such member shall have been given a full, free and public hearing by the Governor. The Governor shall fill all vacancies by appointment, with the advice and consent of the Senate.

SEC. 11. Each member of such board shall receive a salary of thirty-six hundred dollars per annum, payable in monthly installments, upon the presentation of salary vouchers, approved by the board.

SEC. 12. The members appointed shall meet at Austin and organize and elect one of their number chairman of said board. A majority of said board shall constitute a quorum to transact business. Said board shall appoint a secretary who shall be thoroughly conversant with irrigation law, at a salary of not more than two thousand dollars per annum, and who shall execute a bond in the sum of twenty-five hundred dollars, to be approved by the board, payable to the Board of Water Engineers, and the board may appoint such experts and employees as may be necessary to perform any duty that may be required of them by this act, and fix their compensation. The secretary shall keep full and accurate minutes of all transactions and proceedings of said board and perform such duties as may be required by the board. The board shall have power to make all needful rules for its government and proceedings; and shall have a seal, the form of which it shall prescribe. The board shall be furnished with an office at Austin, with necessary furniture, stationery, supplies, etc., at the expense of the State, to be paid for on the order of the board.

SEC. 13. The members, secretary, experts and employees of the board shall be entitled to receive from the State their necessary traveling expenses while traveling on the business of the board, upon an itemized statement, sworn to by the party who incurred the expense and approved by the board.

SEC. 14. The board may hold sessions at any place in this State, when deemed necessary to facilitate the discharge of its duties.

SEC. 15. Every person, association of persons, corporation, water improvement or irrigation district, who shall, after this act shall take effect, desire to acquire the right to appropriate, for the purposes stated in this act, unappropriated water of the State, shall, before commencing the construction, enlargement or extension of any dam, lake, reservoir or other storage work, or of any ditch, canal, headgate, intake, pumping plant or other distributing work, or performing any work in connection with the storage, taking or diversion of water, make an application in writing to the board for a permit to make such appropriation, storage, or diversion.

Such application shall be in writing and sworn to; shall set forth the name and postoffice address of the applicant; the source of water supply; the nature and purposes of the proposed use; the location and description of the proposed dam, lake, reservoir, headgate, intake, pumping plant, ditch, canal or other work; the time within which it is proposed to begin construction; and the time required for the application of the water to the proposed use; and if such proposed use is for irrigation, a description of the lands proposed to be irrigated, and, as near as may be, the total acreage thereof.

Such application shall be accompanied by a map or plat drawn on tracing linen, on a scale not less than one inch equals two thousand

feet, showing substantially the location and extent of the proposed works; the location of the headgate, intake, pumping plant or point of diversion by course and distance from permanent natural objects or land marks; the location of the main ditch or canal and of the laterals or branches thereof; the course of the river, stream or other source of water supply; the position and area of all lakes, reservoirs or basins intended to be used or created, and the water line thereof, the intersection with all other ditches, canals, laterals, lakes or reservoirs the proposed work will touch or intersect, or with which connection will be made; and shall represent in ink of different color from that used to represent the proposed works, the location of all ditches, canals, laterals, reservoirs, lakes, dams, or other work of like character then existing on the ground, with a designation of the name of the owner thereof. Such map or plat shall contain the name of the proposed work or enterprise; the name or names of the applicants, and a certificate of the surveyor, giving the date of his survey, his name and postoffice address, and also the date of the application which it accompanies.

Nothing in this act shall be held or construed to require the filing of an application or procuring of any permit for the alteration, enlargement, extension or addition to any canal, ditch or other work that does not contemplate, or will not result in an increased appropriation, or the use of a larger volume of water, but before making any such alteration, enlargement, extension or addition, the person, association of persons, corporation or irrigation district desiring to make same, shall file with Board of Water Engineers a detailed statement and plan, for the information of the board, of the work proposed to be done.

SEC. 16. Any person or association of persons, corporation, water improvement or irrigation district who desires to investigate the feasibility of any project having for its object the creation of a reservoir for the impounding of flood waters in quantities greater than five thousand acre-feet, and which if constructed will probably result in the use of five thousand acre-feet per annum, or more, and who has an organized engineering force adequate to expeditiously proceed with such investigation, shall, upon the presentation of such facts, duly verified, to the Board of Water Engineers, describing the locality of such proposed reservoir, have priority date from the time of filing of such presentation, should a permit be granted thereafter, for the purposes described in such presentation; provided, however, that nothing in this section or in this act shall affect or restrict the right of any person or persons, owning lands in this State to construct on his own property any dam or reservoir which would impound or contain less than five thousand acre-feet of water.

SEC. 17. Upon the filing of such presentation, a fee of two hundred and fifty dollars shall be paid to the board for the use of the State, as provided for other fees collected under this act; no part of which shall be returned, except as hereinafter provided. This fee shall be held by the board for a period of twelve months from the date of its receipt, unless disposed of as hereinafter provided.

SEC. 18. Any person or association of persons, corporations, water improvement or irrigation district who have complied with the pro-