Appendix B2:
Assembly Bill No. 642 (1913) (as amended in Senate May 10, 1913)

Joseph L. Sax
January 19, 2002
(SWRCB Contract No. 0-076-300-0)
ASSEMBLY BILL

No. 642

INTRODUCED BY MR. W. A. JOHNSTONE,

JANUARY 23, 1913.

REFERRED TO COMMITTEE ON CONSERVATION.

AN ACT

To Regulate the Use of Water which is Subject to Such Control by the State of California, and in That Behalf Creating a State Water Commission; Specifying and Providing for the Appointment of the Members of Said Commission; Fixing the Terms of Office and Compensation of the Members of Said Commission; Fixing the Powers, Duties and Authority of Said Commission and Its Members; Providing for the Filling of Vacancies in the Membership of Said Commission; Providing for the Removal from Office of the Appointed Members of Said Commission; Providing for the Cooperation of 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 or Any of Its Members; 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 What Water is Unappropriated; Providing for the Utilization of Water and
the works necessary to such utilization to the full capacity of streams or of such portion or portions of such capacity as the public good may require; declaring what water may be appropriated; declaring that the non-application for ten consecutive years of any portion of the waters of any stream to lands riparian to such stream shall be conclusive presumption that the use of such non-applied water is not needed on said riparian lands for a useful or beneficial purpose; declaring that such non-applied water shall be deemed to be in the use of the state and subject to appropriation; declaring the duties of those who desire to appropriate water; declaring the periods for which water may be appropriated and the conditions under which water may be appropriated; 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 rights; specifying certain duties of the claimants, possessors or users of water or water rights; declaring water rights forfeited under certain conditions; regulating the appropriation of water; excepting cities, cities and counties, municipal water districts, irrigation districts and lighting districts from certain provisions of this act; 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; making legislative declaration concerning those parts of this act which may not be declared unconstitutional.

The people of the State of California do enact as follows:

1 Section 1. For the purpose of carrying out the provisions of this act a state water commission consisting of five persons
is hereby created and established. Two members of said com-
mission shall be, ex officio, the governor of the state and the
state engineer, respectively. Three members of said com-
mission shall be appointed by the governor for the term of four
years; provided, however, that of the members first appointed
one shall be appointed to hold office until the first day in
January, nineteen hundred and fourteen; one until the first
day in January, nineteen hundred and fifteen, and one until
the first day in January, nineteen hundred and sixteen.
[Such appointive commissioners shall be men of practical
knowledge or experience in the application and use of water
for irrigation, mining and municipal purposes, and shall be
so appointed that at least one thereof shall have had practical
knowledge and experience in the use of water for agricultural
purposes; and one thereof shall have had practical knowledge
and experience in the use of water for mining purposes; and
one thereof shall have had practical knowledge and experience
in the use of water for municipal purposes.] The commis-
sioners shall elect one of their number president of the
commission. The appointed members of said commission shall
each receive as compensation for his services the sum of
five thousand dollars per annum. No commissioner who is
directly or indirectly interested in any matter before the com-
mission shall sit with the commission during the hearing of such
matter; nor shall he be detailed by the commission to investigate
or report on any such matter; nor shall he take part in any
determination of any such matter. But the governor shall
have the power and authority, upon request of the commission,
to appoint pro tempore some disinterested person to sit and
act in the place and stead of such interested commissioner.
[Such pro tempore commissioner shall have compensation for
the time of service equal to the compensation of a commissioner
during such service and shall have the power and authority of
the same,] only in the matter for the investigation and deter-
mination of which he shall have been appointed and his con-
nection with the commission shall cease and determine upon
the completion of the investigation and determination for
which he was appointed. But the commissioner in whose place
and stead he sits shall have power, compensation and authority
in all other cases.

Sec. 2. Whenever a vacancy in the state water commission
shall occur, the governor shall forthwith appoint a qualified
person to fill the same for the unexpired term. The legislative,
by a two-thirds vote of all members elected to each house, or the
governor, may remove any one or more of the appointed com-
missioners from office[.] [ ] The commission shall have a seal
bearing the following inscription: State water commission of
California. The seal shall be affixed to all authentications of
copies of records and to such other instruments as the com-
mission may direct. All courts shall take judicial notice of
said seal.

Sec. 3. A majority of the appointed commissioners shall
constitute a quorum for the transaction of any business, for the
performance of any duty, or for the exercise of any power of
the commission. No vacancy in the commission shall impair
the right of the remaining commissioners to exercise all the
powers of the commission. The act of a majority of the com-
missioners present, when in session as a board, shall be deemed
to be the act of the commission; but any investigations, inquiry
or hearing which the commission has power to undertake
or hold may be undertaken or held by or before any commis-
sioners or commissioner designated for the purpose by the com-
mission; and every finding, order, ascertainment or decision
made by the commissioners or the commissioner so designated
pursuant to such investigation, inquiry or hearing, when
approved by the commission and ordered filed in its office, shall
be and be deemed to be the finding, order, ascertainment or
decision of the commission.

Sec. 4. (a) Each commissioner shall have power to admin-
ister oaths, certify to all official acts, and to issue subpoenas
for the attendance of witnesses and the production of papers,
books, maps, accounts, documents and testimony in any
inquiry, investigation, hearing, ascertainment or proceeding
ordered or undertaken by the commission in any part of the
Each witness who shall appear by order of the commission or any commissioners or a commissioner shall receive for his attendance the same fees and mileage allowed by law to witnesses in civil cases, which amount shall be paid by the party at whose request such witness is subpoenaed. When any witness who has not been required to attend at the request of any party shall be subpoenaed by the commission, his fees and mileage shall be paid from the funds appropriated for the use of the commission in the same manner as other expenses of the commission are paid. Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the commission, may, at the time of service, demand the fee to which he is entitled for travel to and from the place at which he is required to appear and one day's attendance. If such witness demands such fees at the time of service, and they are not at that time paid or tendered, he shall not be required to attend before the commission or commissioners as directed in the subpoena. All fees and mileage to which any witness is entitled under the provisions of this section may be collected by action therefore instituted by the person to whom such fees are payable. But no witness shall be compelled to attend as a witness before the water commission or any water commissioner or water commissioners out of the county in which he resides, unless the distance be less than thirty miles from his place of residence to the place of hearing.

(b) The superior court of the county or city and county in which any inquiry, investigation, hearing or proceedings may be held by the commission or any commissioner or commissioners shall have the power to compel the attendance of witnesses and the production of papers, maps, books, accounts, documents and testimony as required by any subpoena issued by the commission or any commissioner or commissioners. The commission, commissioners or commissioner before whom the testimony is to be given or produced may, in case of the refusal of any witness to attend or testify or produce any papers, maps, books, accounts or documents required by such subpoena, report to the superior court in and for the county or
city and county in which the proceeding is pending by petition, setting forth that due notice has been given of the time and place of attendance of said witness, or for the production of said papers, maps, books, accounts or documents and that the witness has been summoned in the manner prescribed in this act, and that the witness has failed and refused to attend or produce the papers, maps, books, accounts or documents required by the subpoena before the commission, commissioner or commissioner in the cause or proceeding named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such cause or proceeding, and ask an order of said court, compelling the witness to attend, testify and produce said papers, maps, books, accounts or documents before the commission, or commissioners, or commissioner.

The court, upon the petition of the commission or commissioners, or commissioner, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in such order, the time to be not more than ten days from the date of the order, and then and there show cause, if any he have, why he refused to obey said subpoena, refused to answer questions propounded to him by said commission, or any commissioners or any commissioner, or failed, failed or refused to produce before said commission, or any commissioners or any commissioner, the books, papers, maps, accounts or documents called for in said subpoena. A copy of said order and the petition therefor shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission or any commissioners or a commissioner, the court shall thereupon enter an order that said witness appear before the commission or commissioners or commissioner at the time and place fixed in said order, and testify or produce the required papers, maps, books, accounts or documents; or both testify and produce and upon failure to obey said order said witness shall be dealt with as for contempt of court.

(c) The state water commission or any commissioners or commissioner, or any party to a proceeding before the com-
mission or any commissioners or any commissioner, may in
any investigation or hearing before the commission or any
commissioners or any commissioner cause the deposition of wit-
nesses residing within or without the state to be taken in the
manner prescribed by law for depositions in civil actions in the
superior courts of this state.

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

Sect. 5. A full and accurate record of business or acts per-
formed or of testimony taken by the commission or any mem-
ber or members thereof in pursuance of the provisions of this
act shall be kept and be placed on file in the office of said water
commission.

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

Sec. 7. For the purpose of carrying out the provisions of this act the state water commission is authorized to pass such necessary rules and regulations as it may from time to time deem advisable, and to appoint and remove at its pleasure a secretary who shall have charge of its books and records and perform such other duties as from time to time may be prescribed and whose salary shall be fixed by the water commission; and the state water commission may also employ such expert, technical and clerical assistance, and upon such terms, as it may deem proper.

Sec. 8. For the purpose of carrying out the provisions of this act the sum of [ ] fifty thousand dollars is hereby appropriated for the fiscal years 1913-1914 and 1914-1915 out of any money in the state treasury not otherwise appropriated and the state controller is hereby authorized and directed to draw warrants upon such sum from time to time upon the requisition of the state water commission approved by the state board of control; and the state treasurer is hereby authorized and directed to pay such warrants.

Sec. 9. All indebtedness incurred for salaries, and all necessary costs in traveling and other expenses of said commission and each of its members and persons employed by it, while actually engaged in the business of said commission, shall be paid by the state out of the funds hereby appropriated, upon the sworn statement of the person or persons incurring such indebtedness, and upon the requisition of the state water commission, approved by the state board of control, and the state controller is hereby authorized to draw warrants upon the state treasurer for said indebtedness, salaries, costs and expenses, as provided by law for the payment of similar costs and expenses and the drawing of similar warrants.

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

Sec. 11. All water or the use of water which has never
been appropriated, or which has been heretofore appropriated
and which has not been in process, from the date of the initial
act of appropriation, of being put, with due diligence in pro-
portion to the magnitude of the work necessary properly to
utilize for the purpose of such appropriation such water or the
use of water, or which has not been put, or which has ceased
to be put [to some useful or beneficial purpose,] or which may
hereafter be appropriated and cease to be put, to the useful,
or beneficial purpose for which it was appropriated, [1] or
which in the future may be appropriated and not be, in the
process of being put, from the date of the [initial] act of
appropriation, to the useful or beneficial purpose for which it
was appropriated, with due diligence in proportion to the mag-
nitude of the work necessary properly to utilize for the purpose
of such appropriation such water or the use of water, is hereby
declared to be unappropriated. And all waters flowing in
any river, stream, canyon, ravine or other natural channel,
excepting so far as such waters have been or are being applied
to useful and beneficial purpose upon, or in so far as such
waters are or may be reasonably needed for useful, and bene-
ficial purposes upon lands riparian there to, [or otherwise
appropriated,] is and are hereby declared to be public waters
of the State of California and subject to appropriation in
accordance with the provisions of this act. If any portion of
the waters of any stream shall not be put to a useful or bene-
ficial purpose to or upon lands riparian to such stream for
any continuous period of ten consecutive years after the pas-
sage of this act, such non-application shall be deemed to be
conclusive presumption that the use of such portions of the
waters of such stream is not needed upon said riparian lands
for any useful or beneficial purpose; and such portion of the
waters of any stream so non-applied, unless otherwise appro-
priated for a useful and beneficial purpose [ ] is hereby
declared to be in the use of the state and subject to appro-
priation in accordance with the provisions of this act. [In any
case where a reservoir or reservoirs have been or shall here-
after under the provisions of this act be constructed or sur-
veyed, laid out and proposed to be constructed for the storage
of water for a system, which water is to be used at one or
more points under appropriations of water heretofore or here-
after made, which appropriations and rights thereunder
are now, or shall hereafter be held and owned by the person
or corporation owning such reservoir site or sites and construct-
ing such reservoir or reservoirs, such reservoir or reservoirs,
and appropriations and rights shall, in the discretion of the
state water commission, constitute a single enterprise and unit
and work of constructing such reservoir or reservoirs, or any
of them, or work on any one of such appropriations shall, in
the discretion of said commission, be sufficient to maintain and
preserve all such applications for appropriations and rights
thereunder.]  

Sec. 12. The state water commission shall have authority
to, and may, for good cause shown, upon the application of
any appropriator or user of water under an appropriation
made [and maintained] according to law prior to the passage
of this act, prescribe the time within which the full amount of
the water appropriated shall be applied to a useful or ben-
ficial purpose; provided, that said appropriator or user shall
have proceeded, with due diligence in proportion to the mag-
itude of the project, to carry on the work necessary to put the
water to a beneficial use; and in determining said time said
commission shall grant a reasonable time after the construc-
tion of the [works or canal or ditch or conduits or storage system
used for the diversion, conveyance or storage of water;] and in
doing so said commission shall also take into consideration the
cost of the application of such water to the useful or beneficial
purpose, the good faith of the appropriator, the market for
water or power to be supplied, the present demand therefor,
and the income or use that may be required to provide fair
and reasonable returns upon the investment [and any other
facts or matters pertinent to the inquiry.] Upon prescribing
such time the state water commission shall issue a certificate
showing its determination of the matter. For good cause
shown, the state water commission may extend the time by
granting further certificates. And, for the time so prescribed
or extended, the said appropriator or user shall be deemed
to be putting said water to a beneficial use.

And if at any time it shall appear to the state water commis-
sion, after a hearing of the parties interested and an investiga-
tion, that the full capacity of the works built or constructed, or
being built or constructed, under an appropriation of water or
the use thereof made under the provisions of this act has not
developed or cannot develop, the full capacity of the stream at
the point where said works have been or are being built or con-
structed, and that the holder of the said appropriation will
not or cannot, within a period deemed to be reasonable by the
commission, develop the said stream at said point to such a
capacity as the commission deems to be required by the public
good, then and in that case the said commission, in its discre-
tion, may permit the joint occupancy and use, with the holder
of the appropriation, to the extent necessary to develop the
stream to its full capacity or to such portion of said capacity
as may appear to the state water commission to be advisable,
by any and all persons, firms, associations, or corporations
applying therefor, of any dam, tunnel, diversion works, ditch,
or other works or constructions already built or constructed or
in process of being built or constructed under this act; pro-
vided, that said commission shall take into consideration the
reasonable cost of the original and new work, the good faith
of the applicant, the market for water or power to be supplied
by the original and the new work, and the income or use that
may be required to provide fair and reasonable returns upon
such cost; provided, further, that the applicant or appli-
cants shall be required to pay to the party or parties own-
ing said dam, tunnel, diversion works, ditch, or other
works or constructions a pro rata portion of the total
cost of the old and the new works, said pro rata por-
tion to be based upon the proportion of the water used by
the original and the subsequent users of said dam, tunnel,
diversion works, ditch, or other works or constructions, if the
water is used or to be used for irrigation or domestic purposes,
or, if the water is used or to be used for the generation of
electricity, or electrical or other power, the said pro rata por-
tion shall be based upon the relative amount of electricity or
electrical or other power capable of being developed by the
original and the new works; or, if a portion of the water util-
ized under a joint occupancy of any dam, tunnel, diversion
works, ditch, or other works or construction, shall be used for
the purpose of irrigation and another portion of said water
shall be used for the generation of electricity or electrical or
other power, then and in that case the applicant or applicants
for joint occupancy shall be required to pay to the party or
parties owning said dam, tunnel, diversion works, ditch, or
other works or constructions a pro rata portion of the total
cost of the old and new works, said pro rata portion to be
based upon the proportion of the relative amount of water
used by each joint occupant and the income derived by each
said joint occupant from said joint occupancy; or, if any of
the waters used under such joint occupancy shall be utilized
for purposes other than those specified above, then and in the
case the applicant or applicants for such joint occupancy shall
be required to pay to the party or parties owning said dam,
tunnel, diversion works, ditch, or other works or constructions
such a pro rata portion of the total cost of the old and new
works as shall appear to the state water commission to be just
and equitable. Said applicant or applicants shall also be
required to pay a proper pro rata share, based as above, of the
cost of maintaining said dam, tunnel, diversion works, ditch or
other works or constructions, on and after beginning the occu-
pancy and use thereof. Furthermore, the state water commis-
sion if it appears to the said commission that the ful
capacity of the works built or constructed, or being built or
constructed, under an appropriation of water or the use thereof
under this act, will not develop the full capacity of the
stream at that point, and it appears to the commission that
the public good requires it, and the commission specifically
so finds after investigation and hearing of the parties
interested, may permit any person, firm, association or
corporation to repair, improve, add to, supplement, or
enlarge, at his or its proper cost, charge and expense,
any dam, tunnel, diversion works, ditch, or other works or
constructions already built or constructed or in process of being
built or constructed under the provisions of this act, and to
use the same jointly with the owners thereof, provided, that
the said repairing, improving, adding to, supplementing, or
enlarging, shall not materially interfere with the proper use
thereof by the owner of said dam, tunnel, diversion works,
ditch, or other works or constructions or shall not materially
injure said dam, tunnel, diversion works, ditch or other works
or constructions. And the state water commission shall deter-
mine the pro rata and other costs provided for in this section.

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

Ssc. 14. This act shall not be held to bestow, except as
expressly provided in this act, upon any person, firm, associa-
tion or corporation, any right where no such right existed prior
to the time this act takes effect.

Ssc. 15. The state water commission shall allow, under
the provisions of this act, the appropriation of unappropri-
ated water or of the use thereof, or of water or of
the use thereof which may hereafter cease to be appropriated,
or which may hereafter be declared to be unappropriated, or
which, having been used under claim of riparian proprietor-
ship or appropriation finds its way back into a stream, lake or
other body of water and also such water as is declared under
section eleven of this act to be subject to appropriation.

Ssc. 16. Every [application] for a permit to appropriate
water shall set forth the name and postoffice address of the applicant, the source of water supply, the nature and amount of the proposed use, the location and description of the proposed headworks, ditch, canal and other works; the proposed place of diversion and the place where it is intended to use the water; the time within which it is proposed to begin construction, the time required for completion of the construction, and the time for the complete application of the water to the proposed use. If for agricultural purposes, the application shall, besides the above general requirements, give the legal subdivisions of the land and the acreage to be irrigated, as near as may be; if for power purposes, it shall give, besides the general requirements prescribed above, the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the use to which the power is to be applied; if for storage in a reservoir, it shall give, in addition to the general requirements prescribed above, the height of dam, the capacity of the reservoir, and the use to be made of the impounded waters; if for municipal water supply, it shall give in addition to the general requirements specified above, the present population to be served, and, as near as may be, the future requirements of the city; if for mining purposes, it shall give in addition to the general requirements prescribed above, the nature and location of the mines to be served and the methods of supplying and utilizing the water. All applications shall be accompanied by as many copies of such maps, drawings and other data as may be prescribed or required by the state water commission, and such maps, drawings, and other data shall be considered as part of the application. If any permittee or licensee, or the heirs, successors, or assigns of any permittee or licensee, desire to change the point of diversion from the point of diversion specified in the original application; or after the granting of any permit or license, such change or changes may be made only upon the permission of the state water commission; provided, that, before granting such permission, such applicant must establish, to the satisfaction of the state water commission, and such commission must so
find, that such change in the place of diversion will not operate to the injury of any other appropriator or legal user of such waters before permitting such change in the place of (the) diversion. Upon receipt of application for permission to make such change (in the place of) diversion, the commission shall, by order, fix a time within which any person interested may appear in opposition to such application, and such applicant shall [if the commission so require] cause to be published at least once a week for four consecutive weeks, in a newspaper or newspapers of general circulation in the county in which is situated both the old and new points of diversion, a copy of said order. Proof of such publication shall be by affidavit of the publisher of such newspaper. Should any objection be made to the change in point of diversion so applied for, the state water commission shall fix a time for the hearing of said application and of the objections thereto, which time shall be not less than thirty days nor more than sixty days after the period of said publication, and upon such hearing the said commission shall grant or refuse, as the facts shall warrant, such permission to change place of diversion.

Sect. 17. Any person, firm, association or corporation may apply for and secure from the state water commission, in conformity with this act and in conformity with reasonable rules and regulations adopted from time to time by the state water commission, a permit for any unappropriated water or for water which having been appropriated or used flows back into a stream, lake or other body of water within this state. And any application so made shall give to the applicant a priority of right as of the date of said application to such water or the use thereof until such application shall have been approved or rejected by said commission; provided, that such priority shall continue only so long as the provisions of law and the rules and regulations of the water commission shall be followed by the applicant. Upon the approval of any application by the commission, said approval shall give priority of right as of the date of said application, and shall give the right to take and
use the amount of water specified in said approval until the
issuance by the state water commission of a license for the use
of said amount of water, or until the said commission refuse
to issue said license. But the approval of any application shall
give the right to take and use water only to the extent and for
the purpose allowed in said approval; provided, that any
defective application made in a bona fide attempt to conform
to the rules and regulations of the state water commission and
to the law shall secure to the applicant a priority of right as of
the date of said application until he shall have been notified by
said commission in what respect his application is defective.
And said applicant shall be allowed sixty days after notice of
said defect in which to file an amended and perfected applica-
tion. If, within said sixty days, said applicant shall not file an
amended and perfected application, said priority of right shall
cease and determine[, unless] for good cause shown the state
water commission [shall] allow said applicant to file a
further amended and perfected application; provided, etc.
that any priority of right secured under this section shall not
be effective for more than thirty days after service of notice
of such approval, personally or by registered mail, on the
applicant, unless within said period of thirty days a true copy
of said approval upon which such priority is based shall have
been filed in the office of the recorder of the county or city and
county in which the water is to be diverted, and, within five
days thereafter, a certificate of such filing by the county
recorder is also filed with the state water commission.

Sec. 18. Actual construction work upon any project shall
begin within such time after the date of the approval of the
application as shall be specified in said approval [which time
shall not be less than sixty days from date of said approval]
and the construction of the work thereafter shall be prosecuted
with due diligence in accordance with this act, the terms of the
approved application, and the rules and regulations of said
commission; and said work shall be completed in accordance
with law, the rules and regulations of the state water com-
misson, and the terms of the approved application and within
a period specified in the permit; but the period of completion
specified in the permit may, for good cause shown, be extended
by the state water commission. And if such work be not so
commenced, prosecuted and completed, the water commission
shall, after notice in writing and mailed in a sealed, postage-
prepaid and registered letter addressed to the applicant at
the address given in his application for a permit to appropri-
ate water, and a hearing before the commission, revoke its
approval of the application. But any applicant, the approval
of whose application shall have been thus revoked, shall have
the right to bring an action in the superior court of the county
in which is situated the point of proposed diversion of the
water for a review of the [order of the commission revoking
said approval of the application]. And thirty days after the
revocation of said permit all rights of the said permittee under
said permit shall cease and lapse, unless said permittee shall
within said thirty days after said revocation bring an action
in the superior court for a review of the [order of] revocation.
The priority of right of any permittee so bringing an action
shall continue under said permit until a final [judgment] is
rendered as to the reasonableness of the revocation of said
permit. But until and unless the revocation of the permit
shall be finally [decided by such] court[ ], the permittee shall
not take or use any of the water the right to take and use
which is granted by said permit.

Sec. 19. Immediately upon completion, in accordance with
law, the rules and regulations of the state water commission,
and the terms of the permit, of the project under such appli-
cation, the holder of a permit for the right to appropriate
water shall report said completion to the state water commis-
sion. The said commission shall immediately thereafter cause
to be made a full inspection and examination of the works
constructed and shall determine whether the construction of
said works is in conformity with law, the terms of the approved
application, the rules and regulations of the state water com-
mission, and the permit. The said water commission shall, if
said determination is favorable to the applicant, issue a license
which shall give the right to the diversion of such an amount of water and to the use thereof as may be necessary to fulfill the purpose of the approved application. Said license shall be in such form as may be prescribed by the state water commission under the provisions of this act. But if the said commission shall find, upon inspection and examination of the work constructed, that the construction and condition of said works are not in conformity with the law, the rules and regulations of the state water commission, the terms of the approved application and the terms of the permit, then and in that case the said commission may, after due notice in writing and in the manner provided in sections one thousand and eleven, one thousand and twelve, and one thousand and thirteen of this Code of Civil Procedure to the applicant or the holder of the permit, and a public hearing thereon, refuse to issue said license. And thirty days after the refusal of said commission to issue said license all rights of the applicant and the holder of the permit under said application and permit shall lapse and cease. But the holder of any permit to whom the said water commission may have refused to issue said license, shall have the right to bring an action within thirty days after the said refusal, in the superior court (to review said order and to obtain a decree requiring the issuance of such license.) And the rights of the holder of any permit so bringing an action shall continue under said permit until [the decree in such action has been entered and become final. But until the refusal of the commission to issue said license shall be finally determined] by the courts, the permittee shall not take or use any of the water, the taking and using of which is granted to him by said permit. And if the holder of any permit which has been revoked by the state water commission shall not bring an action within said thirty days in the superior court [to determine the validity] of said revocation, then and in that case all rights of the applicant and of the holder of said permit shall lapse and cease.

Sec. 20. All permits and licenses for the appropriation of water shall be under the terms and conditions of this act.
and shall be effective for such time as the water actually
appropriated under such permits and licenses shall actually be
used for the useful and beneficial purpose for which said water
was appropriated, but no longer; and every such permit or
license shall include the enumeration of conditions therein
which in substance shall include all of the provisions of this
section and likewise the statement that any appropriator of
water, to whom said permit or license may be issued, shall take
the same subject to such conditions as therein expressed;
provided, that if, at any time after the expiration of twenty
years after the granting of a license, the state, or any city, city
and county, municipal water district, irrigation district, fight-
ing district, or any political subdivision of the state shall
[have the right to purchase] the works and property occupied
and used under said license and the works built or constructed
for the enjoyment of the rights granted under said license [1];
and in the event that the said state, city, city and county,
municipal water districts, irrigation districts, fighting districts,
or political subdivisions of the state so desiring to purchase and
the said owner of said works and property cannot agree upon
said purchase price, said price shall be determined in such
manner as is now or may hereafter be determined in eminent
domain proceedings [1]. If it shall appear to the state water
commission at any time after a permit or license is issued as in
this act provided, that the permittee or licensee, or the
heirs, successors, or assigns of said permittee or licensee, has
not put the water granted under said permit or license to
the useful or beneficial purpose for which the permit or
license was granted, or that the permittee or licensee, or
the heirs, successors, or assigns of said permittee or licensee,
have ceased to put said water to such useful or beneficial pur-
pose, or that the permittee or licensee, or the heirs, succes-
sors or assigns of said permittee or licensee, has failed to
observe any of the terms and conditions in the permit or
license as issued, then and in that case the said commission,
after due notice to the permittee, licensee, or the heirs, suc-
cessors or assigns of such permittee or licensee, and a hearing
thereon, may revoke said permit or license and declare the
water to be unappropriated and open to further appropriation
in accordance with the terms of this act. And the findings
and declaration of said commission shall be deemed to be prima
facie correct until modified or set aside by a court of compe-
tent jurisdiction; provided, that any action brought so to
modify or set aside such finding or declaration must be com-
menced within thirty days [after the service] of notice of said
revocation on said permittee or licensee, his heirs, successors,
or assigns. [ ] And every licensee or permittee [ ] under
the provisions of this act if he accept such permit or license
shall accept the same under the conditions precedent that no
value whatsoever in excess of the actual amount paid to the
state therefor shall at any time be assigned to or claimed for
any permit or license granted or issued under the provisions
of this act, or for any rights granted or acquired under the
provisions of this act, in respect to the regulation by any
competent public authority of the services or the price of the
services to be rendered by any permittee or licensee, his heirs,
successors or assigns or by the holder of any rights granted or
acquired under the provisions of this act, or in respect to any
valuation for purposes of sale to or purchase [whether through
condemnation proceedings or otherwise] by the state or
any city, city and county, municipal water district, irriga-
tion district, lighting district or any political subdivision of
the state, of the rights and property of any permittee or
licensee, or the possessor of any rights granted, issued, or
acquired under the provisions of this act. The application
for a permit by municipalities for the use of water for said
municipalities or the inhabitants thereof for domestic pur-
poses shall be considered first in right, irrespective of whether
they are first in time; [provided, however, that such applica-
tion for a permit or the granting thereafter of permission
to any municipality to appropriate waters, shall not authorize
the appropriation of any water for other than municipal pur-
poses, and providing further that where permission to appro-
priate is granted by the State Water Commission to any
municipality for any quantity of water in excess of the exist-
ing municipal needs therefor, that pending the application of
the entire appropriation permitted, the state water commission
shall have the power to issue permits for the temporary appro-
priation of the excess of such permitted appropriation over and
above the quantity being applied from time to time by such
municipality; and providing further, that in lieu of the grant-
ing of such temporary permits for appropriation, the state
water commission may authorize such municipality to become as
to such surplus a public utility, subject to the jurisdiction and
control of the railroad commission of the State of California
for such period or periods from and after the date of the
issuance of such permission to appropriate, as may be allowed
for the application to municipal uses of the entire approipa-
tion permitted; and provided, further, that when such munici-
ality shall desire to use the additional water granted in its
said application it may so do upon making just compensation
for the facilities for taking, conveying and storing such addi-
tional water rendered valueless for said purposes, to the
person, firm or corporation which constructed said facilities
for the temporary use of said excess waters, and which com-
penation, if not agreed upon between the municipality and
said person, firm or corporation, may be determined in the
manner provided by law for determining the value of property
taken by and through eminent domain proceedings.]

Sec. 21. Nothing herein contained shall be construed to
deprive the state or any city, city and county, municipal
water district, irrigation district, lighting district or political
subdivision of the state, or any person, company or corpora-
tion of any rights which, under the law of this state they may
have, to acquire property [by or through] eminent domain
proceedings.

Sec. 22. Licenses hereafter granted for water or use of
water shall be subject to the right of the state to impose the
fees and charges provided in this act.

Sec. 23. Every person, firm, association or corporation
making application for a permit to appropriate water or the
use of water under this act shall pay to the state water commission, at the time of filing said application, if the purpose or use is for the generation of electricity, or electrical or other power, a fee of two dollars and fifty cents for each theoretical horsepower capable of being developed by the works up to one hundred theoretical horsepower, with a minimum fee of twenty-five dollars, and above said one hundred theoretical horsepower the fee shall be five hundred dollars up to and including ten thousand theoretical horsepower, and one thousand dollars above ten thousand theoretical horsepower capable of being so developed or a fee of ten dollars if the purpose be other than for the generation of electricity, or electrical or other power. Every person, firm, association or corporation at the time of receiving a license to appropriate water or the use of water, if the purpose be for the generation of electricity, or electrical or other power, shall pay to said commission when the said license is issued, and annually thereafter, a charge of twenty-five cents for each theoretical horsepower capable of being developed by the proposed works. If the purpose of use is for other than the generation of electricity, or electrical or other power, every person, firm, association or corporation receiving a license to appropriate water shall pay to the said commission when said license is issued, and annually thereafter, a charge of ten cents per miner’s inch for each miner’s inch specified in the license, and for the purpose of this act forty miner’s inches shall be equivalent to one cubic foot per second. Provided, however, that no annual charge shall be made when the appropriation is made for use for irrigation purposes upon lands, not exceeding one hundred and sixty acres in area, to be actually occupied by such appropriator and cultivated in whole or in part by him, or when said water is used for mining purposes, and the amount of water so used for such mining purposes does not exceed five hundred miner’s inches[, or when the water is used for the generation of power when the same does not exceed fifty horsepower and is for the private use of the appropriator.] And all such fees and charges shall forthwith be
paid into the state treasury by the state water commission, and
the fee and annual charges provided in this section shall be
subject to change by law at not less than ten year intervals
beginning with the date of the license issued by the state water
commission.
Sec. 24. Upon its own initiative or upon petition signed
by one or more claimants to water or the use of water upon any
stream, stream system, lake, or other body of water, requesting
the ascertainment of the relative rights of the various claim-
ants to the water or the use of water of that stream, stream
system, lake or other body of water, it shall be the duty of
the state water commission, if, upon investigation it finds
the facts and conditions are such as to justify, to make an
ascertainment of the said rights, fixing a time for the begin-
ing of the taking of testimony and the making of such inves-
tigation as will enable it to ascertain the rights of the various
claimants. In case suit is brought in the superior court for
determination of rights to water or the use of water, the case
may, in the discretion of the court, be transferred to the state
water commission for investigation, as referee. In any case
wherein the water commission shall proceed to investigate or
ascertain water rights the said commission shall notify in
writing in the manner provided in sections one thousand and
eleven, one thousand and twelve and one thousand and thir-
teen of the Code of Civil Procedure all persons, firms, asso-
ciations or corporations claiming or possessing any water
rights which are to be the subject of ascertainment by the said
commission.
Sec. 25. Upon the completion of the taking of testimony
and evidence by the state water commission, the said commis-
sion shall immediately give notice by registered mail to the
various claimants or possessors of water rights that, at a date
and place named in the said notices, which date shall not be
less than fifteen days nor more than thirty days later than
the date of said notice, all of said testimony and evidence will
be open to public inspection. And said testimony and evi-
dence shall be held open to public inspection at said places
for a specified period of not less than thirty days nor more than ninety days[, and thereafter the said·commission shall cause its findings and ascertainment of the rights of the respective claimants to said water to be made and filed in the superior court in each of the counties where said water is appropriated.]

Sec. 26. If any person, firm, association or corporation claiming or possessing any interest in or right to the waters of any stream, stream system, lake or other body of water involved in any investigation or ascertainment by the state water commission of the rights to the water of said stream, stream system, lake or other body of water, desires to contest any of the interests in or rights to any of the said waters of any other person, firm, association or corporation [:] such person, firm, association or corporation desiring so to contest shall, within ten days after the expiration of the period for public inspection prescribed in section twenty-five of this act, notify, in writing, the state water commission of said desire so to contest. Said notice shall state the ground of contest, which shall be verified by the oath of the contestant, his agent or attorney. Within ten days of the receipt of the notice of contest the state water commission shall notify the contestant and the person, firm, association or corporation whose rights are contested to appear before it at a time and place specified in said notice, and that at said time and place said contest will be heard; provided, that said time shall not be less than thirty days nor more than sixty days from the date [of the service] of the notice of the commission; provided, further, that if any person, firm, association or corporation desires to contest any such ascertainment by the state water commission as hereinbefore provided, such contest may be brought as provided in sections 31 and 32 hereof.

Sec. 27. Said notice by said water commission shall be served and return made thereon in the same manner in which summons and return thereon are made in civil actions in the superior courts of this state. The water commission shall have power to adjourn hearings of contest from time to time upon reasonable notice to all parties in interest, and to issue sub-
penas for and compel[,] the attendance of witnesses to testify
before it and produce papers, books, maps and other docu-
ments.

Sec. 28. The state water commission shall require from
the party bringing the contest before it under section twenty-
six of this act a deposit of five dollars for each day it shall be
engaged in taking testimony in such contest. Upon the final
ascertainment by the state water commission in any contest,
the said commission shall enter an order directing the return
of the deposit to the depositor if the contest shall be determined
in his favor, but, if the contest shall be determined against
the person bringing it, the said deposit shall be immediately
paid into the state treasury.

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

Sec. 30. The water commission may, in its discretion and
in addition to the testimony and evidence submitted to it by the
parties claimant to or possessors of water rights on any stream,
stream system, lake or other body of water cause to be made
an examination of said stream, stream system, lake or other
body of water and the works diverting or utilizing water
therefrom. Said examination may include the gathering of
whatever data covering said stream, stream system, lake or other
body of water and the various ditches and canals taking water
therefrom [as] the said commission may require, as well as such
other data and information as may, in the discretion of the said
commission, be necessary to enable it properly to ascertain the
relative rights of the parties claiming rights to use the waters of
said stream, stream system, lake, or other body of water. The
results of said examination shall be filed in the office of said
commission and be open to public inspection as provided in
this act for the filing and public inspection of other evidence of a like nature.

Sec. 31. As soon as practicable after the hearing of testimony and evidence, the hearing [ ] of contest, and the gathering and filing of such data and information as the water commission shall, of its own motion, direct to be gathered, the said water commission shall record in its office its ascertainment of and specific findings upon the rights of the several claimants to the use of the waters of any stream, stream system, lake or other body of water. Immediately thereafter, the said water commission shall file a certified copy of said ascertainment and specific findings together with the original evidence and testimony taken before it and all data and information gathered by its order with the clerk of the superior court in and for the county in which such stream, stream system, lake or other body of water or any part thereof is situated.

Sec. 32. After the filing with the clerk of the superior court of the evidence, data, information, specific findings and ascertainment as required by section 31 of this act, the same shall be received in the superior court as prima facie evidence of the facts, specific findings and ascertainment therein set forth. And at any time within one year after such filing an action [may] be brought, upon the direction of the state water commission, by the attorney general in said superior court in which said evidence, data, information, specific findings and ascertainment shall have been so filed. Or an action may be brought in said court by any one or more of the possessors or claimants concerning whose rights to any of the waters of the stream, stream system, lake or other body of water the state water commission shall have made the specific findings and ascertainment filed in said court. Said action if brought by the attorney general shall be brought in the name and behalf of the people of the State of California to quiet the title of the State of California or the people thereof to any and all water or water rights which it may have in or on said stream, stream
system, lake or other body of water, and, to cause all parties
whose rights have been so ascertained to appear and interplead
in said action in defense and determination of each and all of
their respective rights, which rights, as against the state and
with regard to the different rights and priorities of said rights
among themselves, shall be determined by the court in said
action. And if an action be brought by any one or more of
said claimants or possessors, said action may be brought in the
name of the said possessor or claimant and to cause all parties,
whose rights have been ascertained, to appear and interplead in
said action in defense and determination of each and all of their
respective rights, which rights, as against the state or the
people thereof, and with regard to the different rights and
priorities of said rights among themselves shall be determined
by the court in said action. And from and after the filing of
the complaint in such action, the proceedings therein shall be as
in other cases heard and determined in said court, and in
accordance with the provisions of the Code of Civil Procedure
of this state; provided that the evidence, data, information,
specific findings and ascertainment so filed with the superior
court as provided in section 31 of this act must be considered
by said court in its determination of both or either of said
actions, and the court may affirm, modify or reject such spe-
cific findings and ascertainment [and may make other or dif-
f erent findings as in its judgment the evidence justifies.]

Sec. 33. All existing lawful appropriations of water or
the use thereof, shall be and hereby are respected and upheld
to extent of the amount of water appropriated and actually
put or in process of being put, from the initial date of the act
of appropriation, with due diligence in proportion to the mag-
nitude of the work necessary properly to utilize the water for
the useful or beneficial purpose for which it was appropriated,
[or for which it is being used.]

Sec. 34. Whenever proceedings shall be instituted for
the ascertainment by the state water commission of rights to
water or the use of water, it shall be the duty of all claimants
interested therein and having notice thereof as in this act
provided to appear and submit proof of their respective claims at the time and in the manner required by law; and any such claimant who shall fail to appear in such proceedings and submit proof of his claim shall be barred and estopped from subsequently asserting any rights theretofore acquired upon the stream, stream system, lake or other body of water, or portion of such stream, stream system, lake or other body of water, embraced in such proceedings, and shall be held to have forfeited all rights to said water or the use of water theretofore claimed by him on such stream, stream system, lake or other body of water, unless entitled to relief under the laws of this state; provided, that such proceedings shall result in an ascertainment by the state water commission and a decree by the superior court based upon such ascertainment and specific findings or a modification of said ascertainment and specific findings.

Sec. 35. In any suit wherein the state is or the people of the state are a party for the determination of a right to the use of the water of any stream, stream system, lake or other body of water, or of any portion of any stream, stream system, lake or other body of water, all who claim the right to use such water shall be made parties. When any such suit has been filed the court may call upon the state water commission to make or furnish a complete hydrographic survey of such stream, stream system, lake or other body of water, in order to obtain all the data necessary to the determination of the rights involved. The disbursements made in litigating the rights involved in such suit may be taxed by the court as in other equity suits[, exclusive of the cost of such hydrographic survey.]

Sec. 36. Upon the adjudication of the rights to the use of the water of a stream, or stream system, lake or other body of water, or any portion of a stream, stream system, lake or other body of water, a certified copy of the decree shall be prepared by the clerk of the court, without charge, and filed in the office of the state water commission, and said commission shall deliver to every party in such decree a certified copy.
thereof upon demand and the payment of the fees provided in
this act. And the said commission shall file, for record, in the
office of the recorder of each county in which any portion of
said stream, stream system, lake or other body of water is
situated, a certified copy of said decree. Said decree shall in
every case declare as to the water right adjudged to each
party, whether riparian or by appropriation, the extent, the
priority, amount, purpose of use, point of diversion, and place
of use of said water; and, as to water used for irrigation, such
decree shall also declare the specific tracts of land to which it
shall be appurtenant together with such other conditions as
may be necessary to define the right and its priority. But the
failure of any party entitled thereto to demand or receive a
copy of said decree shall not be considered to have prejudiced
him or his rights in any way.

SEC. 37. The power to supervise the distribution of water
in accordance with the priorities established under this act,
when such supervision does not controvert the authority vested
in the judiciary of the state, is hereby vested in the state water
commission.

SEC. 38. The diversion or use of water subject to the pro-
visions of this act other than as it is in this act authorized is
hereby declared to be a trespass, and the state water commis-
sion is hereby authorized to institute in the superior court in
and for any county wherein such diversion or use is attempted
appropriate action to have such trespass enjoined.

SEC. 39. Water or the use of water which has heretofore
been appropriated or acquired, or which shall hereafter be ap-
propriated or acquired for one specific purpose shall not be
deemed to be appropriated or acquired for any other or differ-
et purpose. And any person, firm, association or corporation
applying to the state water commission for a license to approp-
riate 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. Water heretofore or here-
after 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 appro-
riated for one purpose under the provisions of this act may be
subsequently appropriated for other purposes under the provi-
sions of this act; provided, that such subsequent appropriation
shall not injure any previous appropriation.

Sec. 40. The state water commission is also authorized
and empowered to investigate any natural situation available
for reservoirs or reservoir systems for gathering and distribut-
ing flood or other waters not under beneficial use in any
stream, stream system or lake or other body of water, and to
ascertain the feasibility of such projects, including the supply
of water that may thereby be made available, the extent and
character of the areas that may be thereby irrigated, and make
estimate of the cost of such project.

Sec. 41. Nothing in this act shall be construed as depriv-
ing any city, city and county, municipal water district, irri-
gation district or lighting district of the benefit of any law
heretofore or hereafter passed for their benefit in regard to
the appropriation or acquisition of water or the use of water
(and nothing in this act shall affect or limit in any manner
whatsoever the right or power of any municipality which has
heretofore appropriated or acquired water or the use of water
for municipal purposes, to use or to sell or otherwise dispo-
se of such water or the use thereof, either within or without
limits for domestic, irrigation or other purposes, in accord-
ance with laws in effect at the time of the passage of this act.)

Sec. 42. The word "water" in this act shall be construed to
embracing the term "or use of water"; and the term "or use
of water" in this act shall be construed as embracing the word
"water." Whenever the terms stream, stream system, lake or
other body of water or water occurs in this act, such term
shall be interpreted to refer only to surface water, and to sub-
terranean streams flowing through known and definite chan-
nels. But nothing in this act shall be construed as giving or
confirming any right, or title, or interest to or in the corpus
of any water; provided, that the term "useful or beneficial
purposes" as [used] in this act shall not be construed to mean
the [use in any one year of more than two and one half acre
feet of water per acre in the] irrigation of uncultivated areas
of land not devoted to cultivated crops.
Sec. 43. Nothing in this act shall be construed as depriv-
ing any person, firm, association or corporation of the right of
appeal conferred under the laws of this state.
Sec. 44. All acts or parts of acts in conflict herewith are
hereby repealed.
Sec. 45. This act shall be known as the “water commis-
sion act.”
Sec. 46. If any section, subsection, sentence, clause or
phrase of this act is for any reason held to be unconstitutional,
such decision shall not affect the validity of the remaining por-
tions of this act. The legislature hereby declares that it would
have passed this act, and each section, subsection, sentence,
clause and phrase thereof, irrespective of the fact that any one
or more other sections, subsections, sentences, clauses or phrases
be declared unconstitutional.