

STATE OF NEW MEXICO
COUNTY OF DOÑA ANA
THIRD JUDICIAL DISTRICT

STATE OF NEW MEXICO <i>ex rel</i> ,)	
OFFICE OF STATE ENGINEER,)	
)	No. D-307-CV-96-888
Plaintiff,)	
)	
vs.)	
)	
ELEPHANT BUTTE IRRIGATION)	
DISTRICT, <i>et al.</i> ,)	
)	
Defendant.)	

AMICUS CURIAE BRIEF

LGW’S BRIEF IN RESPONSE TO STATEMENT OF DEFENDANT ELEPHANT BUTTE IRRIGATION DISTRICT REGARDING ITS CLAIMS TO THE USE OF LOWER RIO GRANDE STREAM SYSTEM AND IN SUPPORT OF THE BOYD MOTION TO SET STREAM SYSTEM ISSUE CONCERNING THE RIGHTS OF THE UNITED STATES

COMES NOW, Lion’s Gate Water (“LGW”), by and through its attorneys, who respectfully submits this, its *Amicus Curiae* Brief and states as follows:

INTRODUCTION

LGW submits to the Court that the most important and fundamental question of this adjudication is now before the Court to be considered as stream system issue by the Boyd Motion to Set Stream System Issue Concerning the Rights of the United States. It is also basis for Elephant Butte Irrigation District’s (“EBID”) claims. In addition, the Boyd Motion affects many if not all of the sub-file offers and proceedings pursued by the Office of the State Engineer (“OSE”) up to this point. It most certainly affects the validity and the outcome of any of the settlement agreements that have been or may be negotiated by the parties over water rights they may not have the power or authority to negotiate. This matter has commanding and pervasive

implications and is framed by one simple question: *What water rights did the United States legally appropriate for its Rio Grande Project?*

OVERVIEW

Certainly all of the water rights, diversion rights, and storage rights that existed prior to the Rio Grande Project (“RGP”) are of the utmost importance because, where they exist, they are the most certain to be considered pre-1907 water rights protected by NM Const. Art. XVI, Sec. 1. And for the United States as late as 1910, Morris Bien, Acting Director for the Bureau of Reclamation, admitted that it had no title to those pre-Rio Grande Project water right. (See Exhibit “A”). But, crucial to all claims to water that are tied to the RGP is the question of what water rights exist for the RGP. It is this question that most assuredly must be answered by this Court in order to legitimately adjudicate the water rights in the RGP. It makes the most sense for the matter to be heard now as a stream-system issue as it is the basis for all of the claims/sub-file proceedings/settlement agreements associated with the RGP. LGW seeks by this *amicus* brief to stress this issue’s importance and to assist the Court in framing this question. Appropriation of water under the 1907 Water Code required a complete application, approval by the Territorial/State Engineer, the issuance of a permit, diversion of the water, and the beneficial use of the water.

The core issue of what water rights were legally appropriated by the United States for it Rio Grande Project can be broken down into the questions of:

- (1) *What laws, rules, and regulations governed the actions of the United States Reclamation Service (“US”) in the period from 1905 to 1911, in the appropriation of the waters of the State of New Mexico;*
- (2) *Did the US sufficiently comply with those laws, rules, and regulations in such a manner to effectuate a valid permit to appropriate and beneficially use water for the Rio Grande Project; and*

- (3) *In the alternative, was the notice of intent to utilize filed by the United States sufficient to effectuate appropriation?*

ARGUMENT

I. *What laws, rules, and regulations governed the actions of the United States Reclamation Service in the period from 1905 to 1911?*

Section 8 of the Reclamation Act of June 17, 1902 (32 Stat. 338), states that the United State is required to follow all of the laws of the Territory or State in which the US wishes to appropriate water for Reclamation Projects authorized under that Act. (See Exhibit "B") This was reaffirmed by United States Supreme Court when it repeated that under the Reclamation Act of 1902 that:

§ 8, it merely **requires** the United States to comply with state law when, in the construction and operation of a reclamation project, it becomes necessary for it to acquire water rights or vested interests therein. Arizona v. California et.al. 373 U.S. 546, 586, 83 S. Ct. 1468 (1963)(*emphasis added*)

This was always the clear intention and understanding of Congress in considering Reclamation legislation as evidence by the Hearing Committee on Irrigation Of Arid Lands in 1921¹ in which the following colloquy occurred:

Mr. Nicholas J. Sinnott, Oregon
Gov Mabey, Governor of Utah

Colloquy between Mr. Sinnott of Oregon and Gov. Mabey of Utah.

Mr. Sinnott: "Isn't it also true that the Government can not obtain any water rights without securing those rights under the laws of the particular States?"

Gov. Mabey. "That is my understanding; yes sir."

¹ Hearing Before The Committee on Irrigation Of Arid Lands on H.R. 2913, May 20, 23, 25, and June 2, 1921, p. 14, Washington, Government Printing Office, 1921 <http://www.archive.org/details/toencouragedevel00unitiala>

The 1907 Laws of New Mexico, Chapter 49 (Exhibit “C”), Section 24 states:

Any person, association or corporation, public or private, hereafter intending to acquire the right to the beneficial use of any waters, **shall before commencing any construction for such purposes, make an application to the territorial engineer for a permit to appropriate,** in the form required by the rules and regulations established by him. (*emphasis added*)

The mandatory appropriation process, then and now, for appropriation of water for beneficial use by any individual, association, or corporation, public or private, requires first the filing of a complete application. The process in place for more than a 100 years is that after acceptance of a **complete** application and approval by the Territorial/State Engineer thereof the OSE grants a permit to the applicant to implement the actions requested in the application. At the time of the Rio Grande Project the United States had to appropriate water for beneficial use for its projects in the same manner as an individual. This is evidenced by the Opinion of the Territorial Attorney General in 1905-1906 to David M. White, Territorial Engineer. New Mexico Territorial Attorney General Opinions 1905-1906, No. 326. (*See* Exhibit “D”) This was also true in 1915 when Frank W. Clancy, Attorney General, wrote in Opinion Letter No. 1506 to James A. French, State Engineer that:

I am unable to see why any distinction should be made between the government reclamation service and other persons in the practice as to passing upon application to appropriate waters. Attorney General Opinion No. 1506, Letter from Frank W. Clancy, New Mexico Attorney General to James A. French, State Engineer dated April 23, 1915, Reports of the Attorney General 1915. (*See* Exhibit “E”)

In addition to the statutory requirements, the US was required to follow the rules and regulations of the Territorial Engineer² which were printed on May 16, 1907. That is evident from the Attorney General Opinion No. 209 of 1952 that states:

² The powers of the State Engineer today to make rules and regulations virtually mirror the powers of the Territorial Engineer in 1907.

[U]nder the power that you have to make rules and regulations necessary to administer the duties devolved upon your office, it is my opinion that you have the power to make rules and regulations which may affect the Bureau of Reclamation, a department of the United States, **when it has reserved unappropriated waters and that you may require it to file proofs of completion of works and meet any other requirements provided by your rules and regulations.** *I can see no reason why the Bureau of Reclamation should not be subject to reasonable rules and regulations promulgated by the State Engineer.* Attorney General Opinion No. 209, No. 5559, Letter from Joe L. Martinez, Attorney General to John H. Bliss, State Engineer dated July 2, 1952, Reports of the Attorney General 1951 (emphasis added) (See Exhibit "F")

In its letter of April 4, 1908 (See Exhibit "F") the United States admits that it is following the 1907 Water Code. In addition the United States had to follow the Territorial Engineer's Rules and Regulations of 1907 which required that a complete application be filed containing an absolute set of criteria that included plans, maps and specifications. (See Exhibit "H") These rules and regulations of the Territorial Engineer were **mandatory** for anybody who wished to divert and appropriate water.

LGW submits to the Court that for the United States to have appropriated any water for its Rio Grande Project as a first step and a bare minimum a complete application to divert and appropriate the waters of the Rio Grande would have to be submitted and a permit issued approving such an application.

II. *Did the US sufficiently comply with those laws, rules, and regulations in such a manner to effectuate a valid vested water right for the Rio Grande Project?*

The US never filed any application to place waters of the Rio Grande to beneficial use that would fulfill the requirements of Section 24 of Chapter 49, Laws of New Mexico 1907. In fact, as previously recognized by this Court the United States Bureau of Reclamation is not considered a beneficial user of water in projects such as the RGP. The Bureau of Reclamation only filed Application No. 8, which was only for storage of water and not appropriation. Application No. 8

was grossly incomplete and never approved, as is evidenced by State Engineer Herbert Yeo letters (*See* Exhibits “H”) and was never taken up for approval. In spite of that fact, it is now evident that OSE acknowledges that an application was needed to appropriate the waters of the Rio Grande by virtue of the fact that it is using the date of January 25, 1906, the date that Application No. 8, was filed as a priority date for water rights in its hydrographic survey and sub-file proceedings for the adjudication. However, as further incontrovertible evidence that no complete and sufficient application to appropriate was ever filed by the United States for water for the RGP is the fact that **no permit** was ever issued. This is a crucial element of appropriation and is especially important because we know that:

... words “permit” and “license” are clearly used in a restricted technical sense adopted in the statute. The permit contemplated by the statute is defined in section 27 of the same act and consists of the endorsement of the engineer’s approval on an application to appropriate water; Opinions of Attorney General 1909-1910, Letter from Frank W. Clancy, Attorney General to Vernon L. Sullivan, Territorial Irrigation Engineer, November 17, 1909. (*See* Exhibit “I”)

On January 23, 1906 the United State gave notice of its intent to utilize 730,000 acre feet of water from the Rio Grande pursuant to Section 22 of Chapter 102 of the laws enacted in 1905 by the 36th Legislative Assembly of the Territory of New Mexico. On January 25, 1908 the United States filed Application No. 8, which was solely for the storage of 2,000,000 miners inches. On April 4, 1908 the United States gave notice of its intent to utilize all the remaining unappropriated waters of the Rio Grande for its Rio Grande Project without filing an application or receiving a permit. To date neither the United States, EBID, any user of Rio Grande Project surface water, nor successor in interest has ever filed an application to appropriate surface water for the Rio Grande Project or received a permit as required by the 1902 Reclamation Act and the 1907 Laws of New Mexico. Further, no notice was ever published in a newspaper of general circulation offering the public

the opportunity to protest.

III. *In the alternative, was notice of intent to utilize by the United States sufficient to effectuate appropriation?*

The 1905 Laws of New Mexico, Chapter 102, § 22 and 1907 Laws of New Mexico, Chapter 49, § 40 granted the United States the right to reserve water not previously appropriated and have it withheld from further appropriation; but, there is no mention that the United States thereby actually initiated the appropriation of that water for beneficial use by filing a mandatory application. The fatal flaw to any argument that the notice by the United States constituted actual legal appropriation of water is that pursuant to Section 8 of the Reclamation Act of June 17 (32 Stat. 338), that the United States was and is now required to follow **all** of the laws of the Territory or State in which the U.S. was attempting to appropriate water for its projects. (*See* Reclamation Act of 1902 attached hereto as Exhibit “A”) This is fatal to that argument because between the 1905 Laws of New Mexico (attached as Exhibit “J”), and the 1907 Laws of New Mexico (attached as Exhibit “C”), the New Mexico Legislature added Section 24 that states:

Any person, association or corporation, public or private, hereafter intending to acquire the right to the beneficial use of any waters, shall before commencing any construction for such purposes, make an application to the territorial engineer for a permit to appropriate, in the form required by the rules and regulations established by him.

Section 24 goes on to discuss what is to be included in those applications and how they shall be treated. The simple fact remains, however, that while the United States could reserve water it intended utilize for its projects under Sec. 40 of the 1907 Water Code that notice of intent did not constitute appropriation (**Application, Publication, Permit, Beneficial Use**). Any person, association, or corporation, public or private could only acquire the right to diversion and the beneficial use of water (appropriation) if it first made a complete application to the Territorial

Engineer. The United States never filed a complete application that described all the unappropriated water of the Rio Grande Stream System as was required for anybody seeking to appropriate water. And, while the US did file incomplete Application No. 8, that application was never approved and no permit for diversion and beneficial use was ever granted by the State Engineer. Compounding that fact, is that no plans and specifications were filed within in the requisite three (3) years following the date of reservation. The requisite plans to be filed in that three (3) year period would have most certainly included the filing of an application to divert and beneficially use the waters of the project, but the United States never complied with the 1907 Laws of New Mexico other than the initial filing of the notice of intent to utilize.

Herbert W. Yeo who worked for the Bureau of Reclamation during the Rio Grande Project and later served as New Mexico State Engineer knew this to be true. He stated as much in his letter of March 23, 1927. *See Exhibit "H"*. Also following the attempted reservation by the United States in 1908, the New Mexico Territorial and State Engineers continued to issue numerous permits and licenses for new appropriations on the Rio Grande Stream and its tributaries as evidenced by the 1928 Yeo Tabulation of Appropriations on the Rio Grande attached hereto as Exhibit "K". If the river had been fully appropriated by the United States in 1908 how could there have been other new appropriations permitted and licensed by the Territorial and State Engineers? For example, under Application No. 1380 a permit was issued, a dam and diversion works completed in 1914, and a license issued in 1921 for the waters of the Arroyo Hondo, a tributary to the Rio Grande.

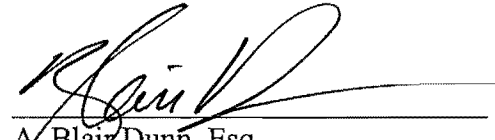
The "notice of intent equals appropriation" argument is a crucial issue before the Court because both the OSE and EBID now base their arguments and claims on those dates January 23, 1906 and April 8, 1908 when the notices of intent were filed as the actions that "appropriated" all

the remaining water in the Rio Grande for the Rio Grande Project; but, without any application or permit. However, even today a Notice of Intent to appropriate does not constitute an Application to appropriate and only serves as a priority date holder for a period of one year so that a person may file their actual application. It is a basic concept of water law that a notice of intent in 1908 only served to withhold the waters from appropriation for the United States until application was made and the water diverted and beneficially used by the actual users. (*See State of New Mexico ex rel. State Engineer v. Lewis*, Opinion RE Threshold Legal Issue No. 3 filed on November 4, 1997 with the District Court Clerk in Nos. 20294 & 22600 Consolidated) (Water is appropriated by those who put it actual beneficial use, not the Bureau of Reclamation.) No application for appropriation of surface water was ever made for the Rio Grande Project.

CONCLUSION

For more than 100 years there has been no determination of this issue and parties have piled contract upon contract upon a premise that ignores the very bedrock requirements of appropriation under our New Mexico water law in an attempt to remedy the deficiency through legal fictions. The simple fact remains that if United States never legally followed the mandatory process to obtain water for its Rio Grande Project then neither, the United States, the EBID, nor any other claimant of RGP water has any right to any surface waters of the Rio Grande. Water rights can simply not be obtained unless the legal process is followed. Further there is no ability to acquire water rights in New Mexico by adverse possession. *Turner v. Bassett*, 137 N.M. 381, 111 P.3d 701 (2005.) The issue of what water rights the United States legally obtained through application, permit and beneficial use is paramount and is 100-years ripe for determination by this Court.

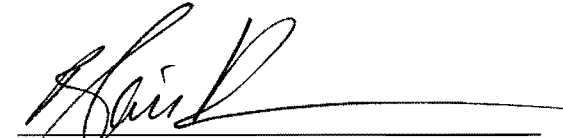
Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. Blair Dunn", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed or emailed to all parties identified on the attached service list, this the 14th day of August 2009.

A handwritten signature in black ink, appearing to read "A. Blair Dunn", is written over a horizontal line.

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JRA-TEB

August 18, 1910.

Mr. Eli Newson,

Earlham, New Mexico.

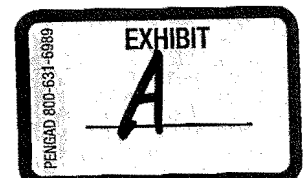
Sir:

Reference is again made to your letter of July 5, 1910, addressed to the Secretary of the Interior, regarding the water supply from the Leasburg diversion canal, Rio Grande project, New Mexico.

At this time it is not possible for the United States to take any steps which will relieve the conditions complained of, as the United States is not making any contracts with individuals or companies for the delivery of water under the provisions of the Reclamation Act and will not do so until storage facilities have been constructed.

The present situation, in this connection, is that the United States has built a diversion dam and six miles of canal, through which, under a water rental contract, it carries water, already owned by various ditches, and delivers the same to those ditches. The water so carried does not belong to the United States and the distribution is left to the representatives of the people who have vested rights therein.

1358103



This condition is due to the fact that all of the normal flow of the river which is now the only available water supply is and has been for many years appropriated, and until storage of the flood waters is provided for there will be no other supply available.

The Reclamation Act, under the provisions of which the project is being carried on, provides that -

" No right to the use of water for lands in private ownership shall be sold for a tract exceeding 160 acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bonafide resident on such land or occupant thereof residing in the neighborhood of said land."

Furthermore, the maximum distance to be regarded as residence in the neighborhood has been fixed at fifty miles.

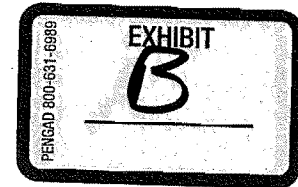
The above provisions, as well as others contained in said act, show that the object of the law is not merely to reclaim the land, but to encourage the establishment of homes by the greatest number of persons and to bring about and intensify cultivation of soil, and fully provide for the conditions you have outlined.

I am enclosing herewith a booklet of questions and answers relating to the Reclamation Act, which may be of some assistance to you in arriving at a proper understanding of its scope and the procedure under the same.

Very respectfully,

Wm. H. Hall

AS581411g Director.



June 17, 1902.
[Public, No. 101.]

CHAP. 1093.—An Act Appropriating the receipts from the sale and disposal of public lands in certain States and Territories to the construction of irrigation works for the reclamation of arid lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all moneys received from the sale and disposal of public lands in Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming, beginning with the fiscal year ending June thirtieth, nineteen hundred and one, including the surplus of fees and commissions in excess of allowances to registers and receivers, and excepting the five per centum of the proceeds of the sales of public lands in the above States set aside by law for educational and other purposes, shall be, and the same are hereby, reserved, set aside, and appropriated as a special fund in the Treasury to be known as the "reclamation fund," to be used in the examination and survey for and the construction and maintenance of irrigation works for the storage, diversion, and development of waters for the reclamation of arid and semiarid lands in the said States and Territories, and for the payment of all other expenditures provided for in this Act: *Provided*, That in case the receipts from the sale and disposal of public lands other than those realized from the sale and disposal of lands referred to in this section are insufficient to meet the requirements for the support of agricultural colleges in the several States and Territories, under the Act of August thirtieth, eighteen hundred and ninety, entitled "An Act to apply a portion of the proceeds of the public lands to the more complete endowment and support of the colleges for the benefit of agriculture and the mechanic arts, established under the provisions of an Act of Congress approved July second, eighteen hundred and sixty-two," the deficiency, if any, in the sum necessary for the support of the said colleges shall be provided for from any moneys in the Treasury not otherwise appropriated.

SEC. 2. That the Secretary of the Interior is hereby authorized and directed to make examinations and surveys for, and to locate and construct, as herein provided, irrigation works for the storage, diversion, and development of waters, including artesian wells, and to report to Congress at the beginning of each regular session as to the results of such examinations and surveys, giving estimates of cost of all contemplated works, the quantity and location of the lands which can be irrigated therefrom, and all facts relative to the practicability of each irrigation project; also the cost of works in process of construction as well as of those which have been completed.

SEC. 3. That the Secretary of the Interior shall, before giving the public notice provided for in section four of this Act, withdraw from public entry the lands required for any irrigation works contemplated under the provisions of this Act, and shall restore to public entry any of the lands so withdrawn when, in his judgment, such lands are not required for the purposes of this Act; and the Secretary of the Interior is hereby authorized, at or immediately prior to the time of beginning the surveys for any contemplated irrigation works, to withdraw from entry, except under the homestead laws, any public lands believed to be susceptible of irrigation from said works: *Provided*, That all lands entered and entries made under the homestead laws within areas so withdrawn during such withdrawal shall be subject to all the provisions, limitations, charges, terms, and conditions of this Act; that said surveys shall be prosecuted diligently to completion, and upon the completion thereof, and of the necessary maps, plans, and estimates of cost, the Secretary of the Interior shall determine whether or not said project is practicable and advisable, and if determined to be impracticable or unadvisable he shall thereupon

Irrigation.
"Reclamation fund" established from certain public land receipts.
Act, p. 1119.
Exception.
Proviso.
Support of agricultural, etc., colleges.
Vol. 25, p. 417.
Vol. 12, p. 503.
Deficiency.
Location and construction of irrigation works.
Estimates of cost.
Lands withdrawn from public entry.
Restoration.
Entry of irrigable lands.
Proviso.
Homestead entries.
Surveys, etc.

restore said lands to entry; that public lands which it is proposed to irrigate by means of any contemplated works shall be subject to entry only under the provisions of the homestead laws in tracts of not less than forty nor more than one hundred and sixty acres, and shall be subject to the limitations, charges, terms, and conditions herein provided: *Provided*, That the commutation provisions of the homestead laws shall not apply to entries made under this Act.

SEC. 4. That upon the determination by the Secretary of the Interior that any irrigation project is practicable, he may cause to be let contracts for the construction of the same, in such portions or sections as it may be practicable to construct and complete as parts of the whole project, providing the necessary funds for such portions or sections are available in the reclamation fund, and thereupon he shall give public notice of the lands irrigable under such project, and limit of area per entry, which limit shall represent the acreage which, in the opinion of the Secretary, may be reasonably required for the support of a family upon the lands in question; also of the charges which shall be made per acre upon the said entries, and upon lands in private ownership which may be irrigated by the waters of the said irrigation project, and the number of annual installments, not exceeding ten, in which such charges shall be paid and the time when such payments shall commence. The said charges shall be determined with a view of returning to the reclamation fund the estimated cost of construction of the project, and shall be apportioned equitably: *Provided*, That in all construction work eight hours shall constitute a day's work, and no Mongolian labor shall be employed thereon.

SEC. 5. That the entryman upon lands to be irrigated by such works shall, in addition to compliance with the homestead laws, reclaim at least one-half of the total irrigable area of his entry for agricultural purposes, and before receiving patent for the lands covered by his entry shall pay to the Government the charges apportioned against such tract, as provided in section four. No right to the use of water for land in private ownership shall be sold for a tract exceeding one hundred and sixty acres to any one landowner, and no such sale shall be made to any landowner unless he be an actual bona fide resident on such land, or occupant thereof residing in the neighborhood of said land, and no such right shall permanently attach until all payments therefor are made. The annual installments shall be paid to the receiver of the local land office of the district in which the land is situated, and a failure to make any two payments when due shall render the entry subject to cancellation, with the forfeiture of all rights under this Act, as well as of any moneys already paid thereon. All moneys received from the above sources shall be paid into the reclamation fund. Registers and receivers shall be allowed the usual commissions on all moneys paid for lands entered under this Act.

SEC. 6. That the Secretary of the Interior is hereby authorized and directed to use the reclamation fund for the operation and maintenance of all reservoirs and irrigation works constructed under the provisions of this Act: *Provided*, That when the payments required by this Act are made for the major portion of the lands irrigated from the waters of any of the works herein provided for, then the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby, to be maintained at their expense under such form of organization and under such rules and regulations as may be acceptable to the Secretary of the Interior: *Provided*, That the title to and the management and operation of the reservoirs and the works necessary for their protection and operation shall remain in the Government until otherwise provided by Congress.

SEC. 7. That where in carrying out the provisions of this Act it becomes necessary to acquire any rights or property, the Secretary of

Commutation not allowed.

Contracts.

Public notice of irrigable lands, charges, etc.

Proviso. Limit of work hours. Mongolian labor.

Requirement of entryman.

Limit.

Payments.

Disposal of receipts.

Commissions.

Use of reclamation fund.

Proviso. Ownership of works.

Title.

Condemnation for rights, etc.

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the Interior is hereby authorized to acquire the same for the United States by purchase or by condemnation under judicial process, and to pay from the reclamation fund the sums which may be needed for that purpose, and it shall be the duty of the Attorney-General of the United States upon every application of the Secretary of the Interior, under this Act, to cause proceedings to be commenced for condemnation within thirty days from the receipt of the application at the Department of Justice.

Irrigation laws of States and Territories not affected.

Interstate stream.

Prior basis of use.

Expenditure of funds.

Prior Temporary use.

Equalization of benefits.

Regulations, etc.

SEC. 8. That nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: *Provided*, That the right to the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right.

SEC. 9. That it is hereby declared to be the duty of the Secretary of the Interior in carrying out the provisions of this Act, so far as the same may be practicable and subject to the existence of feasible irrigation projects, to expend the major portion of the funds arising from the sale of public lands within each State and Territory hereinafter named for the benefit of arid and semiarid lands within the limits of such State or Territory: *Provided*, That the Secretary may temporarily use such portion of said funds for the benefit of arid or semiarid lands in any particular State or Territory hereinbefore named as he may deem advisable, but when so used the excess shall be restored to the fund as soon as practicable, to the end that ultimately, and in any event, within each ten-year period after the passage of this Act, the expenditures for the benefit of the said States and Territories shall be equalized according to the proportions and subject to the conditions as to practicability and feasibility aforesaid.

SEC. 10. That the Secretary of the Interior is hereby authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect.

Approved, June 17, 1902.

June 18, 1902.
[Public, No. 162]

CHAP. 1121.—An Act To authorize the Nashville Terminal Company to construct a bridge across the Cumberland River in Davidson County, Tennessee.

Cumberland River.
Nashville Terminal
Company may bridge
at Nashville.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Nashville Terminal Company, a corporation created and organized under the laws of the State of Tennessee, be, and is hereby, authorized to construct and maintain, for the passage of railway trains, a bridge, and approaches thereto, over the Cumberland River at any point in the county of Davidson in said State within five miles above or within five miles below the corporate limits of the city of Nashville, in said county, which said company may deem most advantageous, and which may be approved by the Secretary of War.

Secretary of War to
approve plans, etc.

SEC. 2. That said bridge shall be located and built under such regulations for the security of navigation as the Secretary of War shall prescribe; and to secure that object the said company shall submit to the Secretary of War for his examination and approval a design and drawing of the bridge, and a map of the location, giving for such

the device adopted by the owner or floater thereof by the use of steel die or stamp, placed in such place on the log, timber, lumber, tie or pole that it may be ineffaceable and legible. Such brand shall be recorded by the owner of the brand in the office of the Secretary of the Territory of New Mexico, and it shall not be lawful for any other person or corporation to use such brand after the same has been so recorded. Such brand shall consist of a device or the initials of the person or corporation, to be made by indentation on the logs, timber, lumber, pole or tie so floated.

Sec. 6. Any person who shall, without authority, use the brand of any person or corporation recorded as aforesaid, shall upon conviction thereof, be punished by a fine of not less than one hundred (\$100.00) nor more than five hundred (\$500.00) dollars, or by imprisonment for not to exceed one year, or by both such fine and imprisonment, in the discretion of the court trying the case.

Sec. 7. Any person who shall steal or convert to his own use any of the products hereby authorized to be transported or floated in the manner aforesaid, upon conviction thereof, shall be punished in the manner provided by the statutes of New Mexico for the larceny of other property; and the certificate of the recorded brand and the proof of the brand upon any such product shall be *prima facie* evidence of the ownership thereof: *Provided*, That nothing in this act shall be construed to effect or impair the right of any person, firm or corporation, the Territory or the United States to construct, maintain and operate dams, reservoirs and head gates in any of the public streams in this Territory, for the purpose of storing or diverting the waters of such streams for beneficial use.

Sec. 8. All laws and parts of laws in conflict herewith are hereby repealed, this act shall take effect and be in force from and after its passage.

CHAPTER 48.

AN ACT TO AMEND SECTION 9, OF CHAPTER 2 OF THE ACTS OF THE 35TH LEGISLATIVE ASSEMBLY. H. B. No. 200; Approved March 18, 1907.

CONTENTS.

Sec. 1. Amending Section 9, Chapter 2, of Laws of 35th Legislative Assembly, by addition of proviso.

Be it enacted by the Legislative Assembly of the Territory of New Mexico:

Section 1. That Section 9 of Chapter 2, of the acts of the 35th Legislative Assembly of the Territory of New Mexico, be, and the same is hereby amended by adding at the end of said section, after the word, "incurred", the following words: "Provided however, The said trustees, may take in other patients for treatment and care, upon the payment of all expenses therefore, by said patients, when the same may be so received and treated without excluding any miners from said hospital."

Sec. 2. All acts and parts of acts in conflict herewith are hereby repealed, and his act shall take effect from and after its passage.

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Amdd sec
08, p 149.
15 N. M.
673.
See sec
123, L 09, 1

CHAPTER 49.

AN ACT TO CONSERVE AND REGULATE THE USE AND DISTRIBUTION OF THE WATERS OF NEW MEXICO; TO CREATE THE OFFICE OF TERRITORIAL ENGINEER; TO CREATE A BOARD OF WATER COMMISSIONERS, AND FOR OTHER PURPOSES. H. B. No. 120; Approved March 19, 1907.

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- Sec. 1. All natural waters in New Mexico belong to public.
- Sec. 2. Beneficial use basis of measurement of right to use water. Rights to be governed by priority. When to date.
- Sec. 3. Who may exercise right of eminent domain to acquire rights-of-way for ditches, etc. Engineers of U. S. Territory and others may enter upon public and private lands, when. Liability for damage.
- Sec. 4. Creating office of territorial engineer. How appointed. Term of office. Subject to removal for cause. Duties. Salary etc. Office, where. Not to engage in private practice, except.
- Sec. 5. May employ assistants. Salaries and expenses how paid.

- Sec. 6. To give bond and take oath.
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 Sec. 73. Repeal section.

Be it enacted by the Legislative Assembly of the Territory of New Mexico:

Section 1. All natural waters flowing in streams and water courses, whether such be perennial, or torrential, within the limits of the Territory of New Mexico, belong to the public and are subject to appropriation for beneficial use.

Sec. 2. Beneficial use shall be the basis, the measure and the limit of the right to the use of water, and all waters appropriated for irrigation purposes, except as otherwise provided by written contract between the owner of the land and the owner of any ditch, reservoir or other works for the storage or conveyance of water, shall be appurtenant to specified lands owned by the person, firm or corporation having the right to use the water, so long as the water can be beneficially used thereon, or until the severance of such right from the land in the manner hereinafter provided. Priority in time shall give the better right. In all cases of claims to the use of water initiated prior to the passage of this act, the right shall relate back to the initiation of the claim, upon the diligent prosecution to completion of the necessary surveys and construction for the application of the water to a beneficial use. All claims to the use of water initiated after the passage of this act shall relate back to the date of the receipt of an application therefor in the office of the territorial en-

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gineer, subject to compliance with the provisions of this act, and the rules and regulations established thereunder.

Sec. 3. The United States, the Territory of New Mexico, or any person firm, association or corporation, may exercise the right of eminent domain, to take and acquire land right-of-way for the construction, maintenance and operation of reservoirs, canals, ditches, flumes, aqueducts, pipe lines or other works for the storage or conveyance of water for beneficial uses, including the right to enlarge existing structures, and to use the same in common with the former owner; any such right-of-way for canal, ditch, pipe line, or other means for the conveyance of water shall in all cases be so located as to do the least damage to private or public property consistent with proper use and economical construction. Such land and right-of-way shall be acquired in the manner provided by law for the condemnation and taking of private property in the Territory of New Mexico for railroad, telegraph, telephone and other public uses and purposes. The engineers and surveyors of the United States, the Territory and of any person, firm or corporation shall have the right to enter upon the lands and waters of the Territory and of private persons and of private and public corporations, for the purpose of making hydrographic surveys and examinations and surveys necessary for selecting and locating suitable sites and routes for reservoirs, canals, pipe lines and other water works, subject to responsibility for any damage done to such property, in making such surveys.

Sec. 4. There shall be a territorial engineer, who shall be a technically qualified and experienced hydraulic engineer, and who shall be appointed by the governor and such appointment confirmed by the council. He shall hold office for the term of four years from and after his appointment, or until his successor shall have been appointed, and shall have qualified. He shall be subject to removal only for cause. He shall have general supervision of the waters of the Territory and of the measurement, appropriation, and distribution thereof, and such other duties as are required by this act. He shall receive a salary of two thousand dollars per annum and actual necessary traveling expenses while away from his office in the discharge of official duties. The office of the territorial engineer shall be located at the seat of government. He shall not engage in any private practice except as consulting engineer: *Provided, however,* That he may establish a schedule of fees for drawing plans, preparing specifications and giving expert advice and other services as consulting engineer, and charge such fees for services, making a report to the auditor of Territory of all fees and compensation paid

to him for such services: *Provided, further,* That when the total amount collected for such services as consulting engineer as hereinabove defined shall have amounted to the sum of two thousand dollars, that any fees collected thereafter, during any one year, shall be turned into the treasury of the Territory.

Sec. 5. The territorial engineer may employ assistants and purchase materials and supplies for the proper conduct and maintenance of his office and department, in pursuance of appropriations as made from time to time for such purposes. The salaries and expenses of the office of the territorial engineer shall be paid at the same time and in the same manner as those of other officers of the Territory.

Sec. 6. Before entering upon the duties of his office the territorial engineer shall take the oath as prescribed by law for territorial officials. He shall file with the Secretary of the Territory, a bond, in the penal sum of ten thousand (\$10,000) dollars, to be approved by the attorney general, and conditioned upon the faithful discharge of his duties and for delivery to his successor of all property belonging to the public then in his possession or control.

Sec. 7. All claims for services rendered, expenses incurred, or materials or supplies furnished under the direction of the territorial engineer and which are payable from the funds appropriated for the prosecution of the work under his direction and supervision, shall be approved by the territorial engineer and properly vouchered and filed in the office of the territorial auditor, who shall, if he finds the same to have been incurred in accordance with law, audit and allow such claims and issue his warrant on the treasurer in payment thereof.

Sec. 8. The territorial engineer shall prepare and deliver to the governor, on or before November 30th of the year preceding the regular session of the legislature, and at other times when required by the governor, a full report of the work of his office, including a detailed statement of the expenditures thereof to and including October 31st, with such recommendations for legislation and appropriation as he deem advisable.

Sec. 9. The territorial engineer shall receive the following fees, to be collected in advance and to be paid by him into the hydrographic survey fund of the territorial treasury herein provided for upon the last day of March, June, September and December of each year.

(a) For filing and examining an application for permit to appropriate water, map, and field notes of the same, which shall include the filing of proofs of publication and all other

papers relating to the application up to the recording of the permit to appropriate water, five dollars.

(b) For recording any permit, certificate of construction or license issued or any other water right instrument, one dollar for the first hundred words, and fifteen cents for each additional hundred words or fraction thereof.

(c) For filing any other paper necessarily forming a part of the permanent record of the water right application, permit, or license, fifty cents.

(d) For issuing certificates of construction, or license to appropriate water, one dollar each.

(e) For making copy of any document recorded or filed in his office, fifteen cents for each hundred words or fraction thereof.

(f) For blue print copy of any map or drawing, ten cents per square foot or fraction thereof. For other copies of drawings, actual cost of the work.

(g) For certifying to such copies, one dollar for each certificate.

(h) For examining, in connection with water right applications, plans and specifications for any dam, not exceeding ten feet in extreme height from the foundation, ten dollars; for a dam higher than ten feet and not exceeding thirty feet, twenty dollars; for a dam higher than thirty feet and not exceeding fifty feet, thirty dollars; for a dam higher than fifty feet, fifty dollars; or for a canal or other water conduit of an estimated capacity exceeding fifty and not more than one hundred cubic feet per second, twenty dollars; for an estimated capacity exceeding one hundred cubic feet per second, thirty dollars.

(i) For inspecting dam sites and construction work when required by law, ten dollars per day and actual and necessary traveling expenses. The fees for any inspection deemed necessary by the territorial engineer and not paid on demand shall be a lien on any land or other property of the owner of the works, and may be recovered by the territorial engineer in any court of competent jurisdiction.

(j) For rating ditches or inspecting plans and specifications of works for the diversion, storage and carriage of water, at the request of private parties, not in connection with an application for right to appropriate water, actual cost and expenses; and the territorial engineer shall attach his approval to such plans and specifications if found satisfactory.

(k) For such other work as may be required of his office, such reasonable fees as the extent and character of the work shall justify.

(l) In ascertaining actual cost of any work, as the term is used in this section, the salary of any salaried officer for the time employed shall be included.

Sec. 10. The records of the office of the territorial engineer are public records, shall remain on file in his office, and shall be open to the inspection of the public at all times during business hours. Such records shall show all applications filed, with date of filing, and shall show in full all permits, certificates of completion of construction, and licenses issued, together with all action thereon, and all action or decisions of the territorial engineer affecting any rights or claims to appropriate water. Certified copies of any records or papers on file in the office of the territorial engineer shall be evidence equally with the originals thereof; and when introduced as evidence shall be held as of the same validity as the originals.

Sec. 11. The territorial engineer, subject to the approval of the board of water commissioners created by this act, shall make all necessary rules and regulations to carry into effect the duties devolved upon his office.

Sec. 12. The territorial engineer shall have the supervision of the apportionment of water in this Territory according to the licenses issued by him and his predecessors and the adjudications of the courts.

Sec. 13. The territorial engineer shall, from time to time, as may be necessary for the economical and satisfactory apportionment of the water, divide the Territory in conformity with drainage areas, into water districts to be designated by names, and to comprise as far as possible one or more distinct streams systems in each district. The districts may be changed from time to time as may, in his opinion, be necessary for the economical and satisfactory apportionment of water.

Sec. 14. The territorial engineer shall upon the written application of a majority of the water users of any district in this Territory, appoint a water master for such district in the Territory, who may, for cause, be removed by the territorial engineer, and shall be removed upon a petition of a majority of the water users of said district. The water master shall have immediate charge of the apportionment of waters in his district under the general supervision of the territorial engineer, and he shall so appropriate, regulate and control the waters of the district as will prevent waste. The territorial engineer may, if in his opinion the public safety or interests of water users in any district in the Territory require it, appoint such water master for temporary or per-

manent service in such district, in the absence of the application above provided for.

Sec. 15. Any person may appeal from the acts or decisions of the water master, to the territorial engineer, who shall promptly and at a stated time and place, to be fixed by him, upon due notice to the parties, hear and determine the matter in dispute, and his decision shall be final, unless an appeal is taken to the board of water commissioners as provided in this act.

Sec. 16. The water master shall be allowed pay at a rate fixed by the territorial engineer, not exceeding four dollars per day and actual and necessary expenses in the performance of his duties. He may employ assistants in case of emergency, upon the specific authority of and at rates of pay as authorized by the territorial engineer, such employment to continue only during the existency of the emergency. The water master and the assistants employed by him shall be paid by the county, upon accounts approved by the territorial engineer. If the district is in more than one county, each county shall pay its proportionate part of each account rendered. The accounts of the water master shall in all cases specify the distribution of the amounts charged based upon the quantity of water received by each water user by each ditch owner in proportion to the total quantities delivered to all and shall show the charges to be allotted to each water user and ditch owner. The amounts paid by the counties shall be a lien upon the property of the water users and ditch owners, in accordance with the distribution thereof, as shown by the accounts of the water master, and shall be collected in the manner provided by law for the collection of taxes.

Sec. 17. Each water master shall report to the territorial engineer, as often as may be deemed necessary by the engineer as to the amount of water needed to supply the requirements of his districts the amount available, the works which are without their proper supply, the supply required during the period preceding his next regular report, and such other information as the engineer may require. These reports shall, at the end of each irrigation season, be filed in the office of the territorial engineer. The territorial engineer shall give directions for correcting any errors of apportionments that may be shown by such reports.

Sec. 18. Whenever requested so to do by any of the boards of commissioners of any of the counties of the Territory, it is hereby made the duty of the territorial engineer, either himself, or by any authorized assistant engineer, to co-operate with the said county commissioners in the en-

gineering work required to lay out, establish and construct any drain to be used by any county or counties, or portions of the same, for the purpose of diverting flood waters, lakes, water courses, and in general to aid and assist the counties of this Territory or other authorized officers, in making preliminary surveys and establishing systems of drainage, or any other engineering work.

Sec. 19. The territorial engineer shall make hydrographic surveys and investigations of each stream system and source of water supply in the Territory, beginning with those most used for irrigation, and obtaining and recording all available data for the determination, development and adjudication, of water supply of the Territory, including the location and survey of suitable sites for dams and reservoirs and the determination of the approximate water supply, capacity and cost of each. He shall be authorized to co-operate with the agencies of the United States engaged in similar surveys and investigations, and in the construction, of works for the development and use of the water supply of the Territory, expending for such purposes any money available for the work of his office, and may accept and use in connection with the operations of his department the results of the agencies of the United States.

Sec. 20. Upon the completion of such hydrographic survey of any stream system, the territorial engineer shall deliver a copy of so much thereof as may be necessary for the determination of all rights to the use of the waters of such system together with all other data in his possession necessary for such determination, to the attorney general of the Territory who shall, at the request of the territorial engineer, enter suit on behalf of the Territory for the determination of all rights to the use of such water, in order that the amount of unappropriated water subject to disposition by the Territory under the terms of this act may become known, and shall diligently prosecute the same to a final adjudication: *Provided*, That if suit for the adjudication of such rights shall have been begun by private parties, the attorney general shall not be required to bring suit: *Provided, however*, That the attorney general shall intervene in any suit for the adjudication of rights to the use of water, on behalf of the Territory, if notified by the territorial engineer that in his opinion the public interest requires such action.

Sec. 21. In any suit for the determination of a right to the use of the waters of any stream system, all those whose claim to the use of such waters are of record and all other claimants, so far as they can be ascertained, with reasonable diligence, shall be made parties. When any such suit has

been filed the court shall, by its order duly entered, direct the territorial engineer to make or furnish a complete hydrographic survey of such stream system as hereinbefore provided, in order to obtain all data necessary to the determination of the rights involved. The costs of such suit, shall include the fees of witnesses, the taking of depositions and the fees of the officers for serving process and together with the costs on behalf of the Territory, shall be charged against each of the private parties thereto in proportion to the amount of water right allotted. The court in which any suit involving the adjudication of water rights may be properly brought shall have exclusive jurisdiction to hear and determine all questions necessary for the adjudication of all water rights within the stream system involved; and may submit any question of fact arising therein to a jury or to one or more referees, at its discretion; and the attorney general may bring suit as provided in Section 21 in any court having jurisdiction over any part of the stream system, which shall likewise have exclusive jurisdiction for such purposes.

Sec. 22. For the purpose of providing the money required for any surveys so ordered by the court, there is hereby appropriated and set apart from any moneys in the territorial treasury, except the fund for the payment of interest on the bonded debt, the sum of three thousand dollars, to be known as the "Hydrographic Survey Fund," which shall be a permanent fund and which shall be used only for the payment of the expenses of such surveys; and all claims for services rendered, expenses incurred or materials or supplies furnished under the direction of the territorial engineer in the prosecution of said work shall be approved by the territorial engineer and properly vouchered and filed in the office of the territorial auditor, who shall, if he finds the same to have been incurred in accordance with law, audit and allow such claims and issue his warrants against the Hydrographic Survey Fund on the territorial treasurer in payment thereof.

Sec. 23. Upon the adjudication of the rights to the use of the waters of a stream system, a certified copy of the decree shall be prepared and filed in the office of the territorial engineer by the clerk of the court, at the cost of the parties. Such decree shall in every case declare, as to the water right adjudged to each party, the priority, amount, purpose, periods and place of use, and as to water used for irrigation, except as otherwise provided in this act, 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.

Sec. 24. Any person, association or corporation, public

or private, hereafter intending to acquire the right to the beneficial use of any waters, shall, before commencing any construction for such purposes, make an application to the territorial engineer for a permit to appropriate, in the form required by the rules and regulations established by him. Such rules and regulations shall, in addition to providing the form and manner of preparing and presenting the application, require the applicant to state the amount of water and period or periods of annual use, and all other data necessary for the proper description and limitation of the right applied for, together with such information, maps, field notes, plans and specifications as may be necessary to show the method and practicability of the construction and the ability of the applicant to complete the same. All such maps, field notes, plans and specifications shall be made from actual surveys and measurements, and shall be duly filed in the office of the territorial engineer after the approval of the application. The territorial engineer may require additional information not provided for in the general rules and regulations, in any case involving the diversion of five hundred cubic feet of water per second, or more, or in the construction of a dam more than thirty feet high from the foundation. The owners of works proposing to store or carry water in excess of their needs for beneficial use, may make application for such excess, and shall be held as trustees of such right for the parties applying the water to a beneficial use; and shall be required to sell water rights for a reasonable price and to furnish the water for such parties at reasonable rates for storage, or carriage, or both, as the case may be.

Sec. 25. The date of receipt of such application in the territorial engineer's office shall be endorsed thereon and noted in his record. If the application is defective as to form, or unsatisfactory as to feasibility or safety of plan, or as to the showing of ability of the applicant to carry the construction to completion, it shall be returned with a statement of the corrections, amendments or changes required, within thirty days after its receipt, and sixty days shall be allowed for the refileing thereof. If refiled, corrected as required within such time, the application shall, upon being accepted, take priority as of date of its original filing, subject to compliance with the further provisions of the law and the regulations thereunder. Any corrected application filed after the time allowed shall be treated in all respects as an original application received on the date of its refileing: *Provided*, That the plans of the construction may be amended, with the approval of the territorial engineer, at any time; but no such change shall authorize any extension of time for construction

beyond five years from the date of the permit, except as provided in Section 35: *Provided, further,* That a change in the proposed point of diversion of water from a stream shall be subject to the approval of the territorial engineer, under the provisions of Section 45 hereof, and shall not be allowed to the detriment of the rights of others having valid claims to the use of water from said stream.

Sec. 26. Upon the filing of an application which complies with the provisions of this act and the rules and regulations established thereunder, accompanied by the proper fees, the territorial engineer shall instruct the applicant to publish notice thereof, in a form prescribed by him, in some newspaper of general circulation in the stream system, once a week for two consecutive weeks. Such notice shall give all essential facts as to the proposed appropriation; among them, the places of appropriation and of use, amount of water, the purpose for which it is to be used, name and address of applicant and the time when the application shall be taken up by the territorial engineer for consideration. Proof of publication, as required, shall be filed with the territorial engineer within sixty days of his instructions to make publication. In case of failure to file satisfactory proof of publication in accordance with the rules and regulations applicable thereto, within the time required, the application shall thereafter be treated as an original application filed on the date of receipt of proofs of publication in proper form.

Sec. 27. Upon the receipt of the proofs of publication, accompanied by the proper fees, the territorial engineer shall determine from the evidence presented by the parties interested, from such surveys of the water supply as may be available, and from the records, whether there is unappropriated water available for the benefit of the applicant. If so, he shall endorse his approval on the application, which shall thereupon become a permit to appropriate water, and shall state in such approval the time within which the construction shall be completed, not exceeding five years from the date of approval, and the time within which the water shall be applied to a beneficial use, not exceeding four years in addition thereto: *Provided,* That the territorial engineer may, in his discretion, approve any application for a less amount of water, or may vary the periods of annual use, and the permit to appropriate water shall be regarded as limited accordingly.

Sec. 28. If, in the opinion of the territorial engineer, there is no unappropriated water available, he shall reject such application. He shall decline to order the publication of notice of any application which does not comply with the requirements of the law and the rules and regulations thereunder.

He may also refuse to consider or approve an application or to order the publication of notice thereof, if, in his opinion, the approval thereof would be contrary to the public interest.

Sec. 29. The construction of the works shall be diligently prosecuted to completion, and if one-fifth of the work shall not be completed within one-half the time allowed, as determined by the territorial engineer, he may accept and approve, as herein provided, an application for the use of all or any of the waters included in the permit issued to the prior applicant and the right to use such waters under the former permit shall thereupon be forfeited: *Provided,* That the territorial engineer shall allow an extension of time on request of the prior applicant, equal to the time during which work was prevented by the operation of law or other causes, beyond the power of the said applicant to control.

Sec. 30. On the date set for the completion of the work, or prior thereto, upon notice from the owner that the work has been completed, the territorial engineer shall cause the work to be inspected, after due notice to the owner of the permit. Such inspection shall be thorough and complete, in order to determine the actual capacity of the works, their safety and efficiency. If not properly and safely constructed, the territorial engineer may require the necessary changes to be made within a reasonable time, to be fixed by him, and shall not issue his certificate of completion until such changes are made. If at or before the expiration of said time, good cause is shown why said change could not be made within said time, then additional time may be allowed in which to make said change. Failure to make such changes shall cause the postponement of the priority under the permit for such time as may elapse from the date for completing such changes until made to the satisfaction of the territorial engineer, and applications subsequent in time shall have the benefit of such postponement of priority; *Provided,* That for works involving the diversion of not exceeding twenty cubic feet of water per second or a dam not exceeding ten feet in the extreme height from the foundation, the territorial engineer may, in his discretion, accept the report of the inspection by a reputable hydraulic engineer.

Sec. 31. When the works are found in satisfactory condition, after inspection, the territorial engineer shall issue his certificate of construction, setting forth the actual capacity of the works and such limitations on the water right as shall be warranted by the condition of the works, but in no manner extending the rights described in the permit.

Sec. 32. If the territorial engineer, shall, in the course of his duties, find that any works used for the storage, diver-

sion or carriage of water are unsafe and a menace to life or property, he shall at once notify the owner or agent, specifying the changes necessary and allowing a reasonable time for putting the works in safe condition. Upon the request of any party, accompanied by the estimated cost of inspection, the territorial engineer shall cause any alleged unsafe works to be inspected. If they shall be found unsafe by the territorial engineer, the money deposited by such party shall be refunded, and the fees for inspection shall be paid by the owner of such works; and, if not paid by him within thirty days after the decision of the territorial engineer, shall be a lien against the property of such owner, to be recovered by suit instituted by the district attorney of the county at the request of the territorial engineer. The territorial engineer, may, when in his opinion necessary, inspect any works under construction for the storage, diversion, or carriage of water, and require any changes necessary to secure their safety; and the fees for such inspection shall be a lien on any property of the owner and shall be subject to collection as provided herein: *Provided*, That any works constructed by the United States, or by its duly authorized agencies, shall not be subject to such inspection while under the supervision of the officers of the United States.

Sec. 33. The use of works for the storage, diversion, or carriage of water, contrary to the instructions of the territorial engineer, at any time after an inspection thereof by him, and receipt of notice from him that the same are unsafe for the purpose for which they are used, until the receipt of notice from him that in his opinion they have been made safe, shall be a misdemeanor, and it shall be the duty of the territorial engineer to give prompt notice to the district attorney of the county in which works are located in case of such violation. The district attorney shall at once proceed against the owner, and all parties responsible therefor.

Sec. 34. On or before the date set for the application of the water to a beneficial use, the territorial engineer shall cause the works to be inspected, after due notice to the owner of the permit. Upon the completion of such inspection, the territorial engineer shall issue a license to appropriate water to the extent and under the condition of the actual application thereof to beneficial use, but in no manner extending the rights described in the permit: *Provided*, That the inspection to determine the amount of water applied to beneficial use shall be made at the same time as that of the constructed work, if requested by the owner, and if such action is deemed proper by the territorial engineer.

Sec. 35. The territorial engineer shall have power to

extend the time for the completion of construction, or for application to beneficial use, for three and two years, respectively, but only on account of delays due to physical and engineering difficulties which could not have been reasonably anticipated, or by operation of law, or other causes, beyond the power of the applicant to avoid.

Sec. 36. Any permit or license to appropriate water may be assigned, but no such assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the territorial engineer. The evidence of the right to use water from any works constructed by the United States, or its duly authorized agencies, shall in like manner be filed in the office of the territorial engineer, upon assignment; *Provided*, That no right to appropriate water, except water for storage reservoirs, for irrigation purposes shall be assigned, or the ownership thereof in any wise transformed, apart from the land to which it is appurtenant, except in the manner specially provided by law: *Provided, further*, That the transfer of title of land in any manner whatsoever shall carry with it all rights to the use of water appurtenant thereto for irrigation purposes, unless previously alienated in the manner provided by law.

Sec. 37. In any suit concerning water rights, or in any suit or appeal provided for in this act, the court may in its discretion submit any question of fact arising therein to a jury, or may appoint a referee or referees to take testimony and report upon the rights of the parties.

Sec. 38. The attorney general and the district attorney of the county in which legal questions arise, shall be the legal advisers of the territorial engineer, and shall perform any and all legal duties necessary in connection with his work, without other compensation than their salaries as fixed by law, except when otherwise provided.

Sec. 39. The owner or owners of any works for the storage, diversion, or carriage of water, which contain water in excess of their needs for irrigation or other beneficial use for which it has been appropriated, shall be required to deliver such surplus at uniform rates to parties entitled to use the same under like conditions and circumstances.

Sec. 40. Whenever the proper officers of the United States, authorized by law to construct works for the utilization of waters within the Territory, shall notify the territorial engineer that the United States intends to utilize certain specified waters, the waters so described, and unappropriated, and not covered by applications or affidavits duly filed or permits as required by law, at the date of such notice, shall not be subject to a further appropriation under the laws of the

Territory for a period three years from the date of said notice, within which time the proper officers of the United States shall file plans for the proposed work in the office of the territorial engineer for his information, and no adverse claim to the use of water required in connection with such plans, initiated subsequent to the date of such notice, shall be recognized under the laws of the Territory, except as to such amount of the water described in such notice as may be formally released in writing by an officer of the United States, thereunto duly authorized; *Provided*, That in case of failure to file plans of the proposed work within three years, as herein required, the waters specified in the notice given by the United States to the territorial engineer shall become public waters, subject to general appropriations.

Sec. 41. The standard of measurement of the flow of water shall be the cubic foot per second of time; the standard of measurement of the volume of water shall be the acre-foot, being the amount of water upon an acre covered one foot deep, equivalent to forty-three thousand five hundred and sixty cubic feet. The miner's inch shall be regarded as one-fiftieth of a cubic foot per second in all cases, except when some other equivalent of the cubic foot per second has been specifically stated by contract, or has been established by actual measurement or use.

Sec. 42. When the party entitled to the use of water fails to beneficially use all or any part of the water claimed by him, for which a right of use has vested, for the purpose for which it was appropriated or adjudicated, except the water for storage reservoirs, for a period of four years, such unused water shall revert to the public and shall be regarded as unappropriated public water.

Sec. 43. In the issuance of permits to appropriate water for irrigation or in the adjudication of the rights to the use of water for such purpose, the amount allowed shall not be in excess of the rate of one cubic foot of water per second for each seventy acres, or the equivalent thereof, delivered on the land.

Sec. 44. All water used in this Territory for irrigation purposes, except as otherwise provided in this act, shall be considered appurtenant to the land upon which it is used, and the right to use the same upon said land shall never be severed from the land without the consent of the owner of the land; but by and with the consent of the owner of the land, all or any part of said right may be severed from said land, and simultaneously transferred, and become appurtenant to other land, or may be transferred for other purposes, without losing priority of right theretofore established, if

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112 Pac. 822.

such changes can be made without detriment to existing rights, on the approval of an application of the owner to the territorial engineer. Before the approval of such application, the applicant must give notice thereof by publication, in the form required by the territorial engineer, once a week for four consecutive weeks in a newspaper of general circulation in the stream system in which the tract or tracts of land may be situated.

Sec. 45. An appropriator of water may use the same for other than the purpose for which it was appropriated, or may change the place of diversion, storage, or use, in the manner, and under the conditions, prescribed in Sections 25 and 44 of this act.

Sec. 46. Every ditch owner shall when requested so to do by the territorial engineer, construct and maintain a substantial headgate at the point where the water is diverted, and shall construct a measuring device, of a design approved by the territorial engineer, at the most practicable point or points for measuring, and apportioning the water as determined by the territorial engineer. The territorial engineer may order the construction of such device by the ditch owner, and if not completed within twenty days thereafter, refuse to deliver water to such owner. The taking of the water by such ditch owner, after refusal by the territorial engineer to deliver water to him, until the construction of such device and the approval thereof by the territorial engineer, shall be a misdemeanor. Such devices shall be so arranged that they can be locked in place, and when locked by the territorial engineer or his authorized agent, for the measurement or apportionment of water, it shall be a misdemeanor for any authorized person to interfere with, disturb or change the same.

Sec. 47. Any person, association or corporation interfering with or injuring or destroying any dam, head-gate, weir, benchmark or other appliance for the diversion, carriage, storage, apportionment, or measurement of water, or for any hydrographic surveys, or who shall interfere with any person or persons engaged in the discharge of duties connected therewith, shall be guilty of a misdemeanor, and shall also be liable for the injury or damage resulting from such unlawful act. The territorial engineer or any authorized assistant shall have power to arrest any person offending against the provisions of this Section, and deliver him to the nearest peace officer of the county. It shall be the duty of the person making the arrest to make complaint at once before the court having jurisdiction thereof. The territorial engineer, the water masters, and their authorized assistants, and agents

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may enter upon private property for the performance of their respective duties, doing no unnecessary injury thereto.

Sec. 48. The unauthorized use of water to which another person is entitled, or the wilful waste of water to the detriment of another, or the public shall be a misdemeanor. It shall also be misdemeanor to begin to carry on any construction of works for storing or carrying water until after the issuance of permit to appropriate such waters, except in the case of construction carried on under authority of the United States.

Sec. 49. The owner or owners of any ditch, canal, or other structure for carrying or storing water, shall construct a substantial bridge where the same crosses any public road, with a passageway not less than fourteen feet wide; or reconstruct the road in a substantial manner and in a convenient location for public travel. Any violation of the provisions of this Section shall be a misdemeanor. The county commissioners shall be authorized to construct such bridge or road, if not built by the owner of the work within three days after the obstruction of the road, and may recover the expense thereof and costs in a civil suit, unless the same shall be paid by the owner of the works within ten days after demand therefor. The county commissioners may make reasonable requirements as to the size and character of such bridges along public highways, or for the necessary reconstruction of roads, and upon failure to comply therewith, may do the necessary work and collect the expense thereof and costs as hereinbefore provided. After the construction of such bridge or road as part of a public highway, the same shall be maintained by the county commissioners. The owner or owners of any ditch, canal or other structure for carrying or storing water shall keep the same in good repair at the crossing of any highway or publicly traveled road or at other places where the water therefrom may flow over or in any wise injure any road or highway; and the commissioners shall require necessary repairs for the protection of the roads to be made or shall make them at the expense of the owners of such works and collect the expense thereof and costs as herein provided.

Sec. 50. Whenever any appropriator of water has the right-of-way for the storage, diversion, or carriage of water, it shall be unlawful to place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto. Any violations of this section shall be a misdemeanor.

Sec. 51. All violations of the provisions of this act, declared herein to be misdemeanors, shall be punished by a fine not

exceeding one hundred dollars (\$100.00) nor less than ten dollars (\$10.00), or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, and any justice court of the county in which such misdemeanor has been committed shall have jurisdiction thereof.

Sec. 52. All liens on land, provided for in this act shall be superior in right to all mortgages or other incumbrances placed upon the land and the water appurtenant thereto or used in connection therewith, after the passage of this act.

Sec. 53. In the case of the seepage of water from any constructed works, the owner of such works shall have the first right to the use thereof upon filing an application with the territorial engineer as in the case of an original appropriation, but if such owner shall not file said application within one year after the completion of such works, or the appearance upon the surface of such seepage water, any party desiring to use the same shall make application to the territorial engineer, as in the case of unappropriated water, and such party shall pay to the owner of such works reasonable charge for the storage or carriage of such water in such works; *Provided*, That the appearance of such seepage water can be traced beyond reasonable doubt to the storage or carriage of water in such works.

Sec. 54. There is hereby granted, over all the lands now or hereafter belonging to the Territory, a right-of-way for ditches or canals and for tunnels, tramways, and telephone and electrical transmission lines, constructed by authority of the United States. All conveyances of territorial lands hereafter made shall contain a reservation of such right-of-way for such ditches, canals and other works constructed, commenced, or for which applications are on file at the date of such conveyance.

Sec. 55. No lands belonging to the Territory, within the areas to be irrigated from works constructed or controlled by the United States, or its duly authorized agencies, shall hereafter be sold except in conformity with the classification of farm units by the United States, and the title to such lands shall not pass from the Territory until the applicant therefor shall have fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of territorial lands within the limits of such withdrawal shall be accepted, except upon the conditions prescribed in this section. Any territorial

lands needed by the United States for irrigation works shall be conveyed to the United States without charge.

Sec. 56. There is hereby appropriated out of any moneys in the territorial treasury, except the fund for the payment of interest on the bonded debt, and exclusive of the Hydrographic Survey Fund hereinbefore provided, the sum of \$3,500.00 annually, or so much thereof as may be necessary, for the payment of the salaries and expenses of the territorial engineer, and the services of assistants and expenses of the office and department of the territorial engineer, as provided by this act. All claims for services rendered and expenses incurred and materials and supplies furnished under the provisions of this act shall be audited by the territorial auditor for payment and be paid by the territorial treasurer in accordance with the provisions of the general statutes as to the auditing of claims against the Territory.

Sec. 57. In all cases where local or community customs, rules and regulations have been adopted and are now in force and in all cases where such rules and regulations may be adopted from time to time by the majority of the users from a common canal, lateral, of irrigation system, and have for their object the economical use of water and are not detrimental to the public welfare, such rules and regulations shall govern the distribution of water from such ditches, laterals and irrigation systems to the persons entitled to water therefrom, and such customs, rules and regulations shall not be molested or changed, unless so desired by the persons interested and using said custom or customs, but nothing in this section shall be taken to impair the authority of the territorial engineer and water master to regulate the distribution of water from the various stream systems of the Territory to the ditches and irrigation systems entitled to water therefrom under the provisions of this act.

Sec. 58. No water master shall be appointed under this act, until the prior rights to the use of water have been determined in one or more stream systems in this Territory under the provisions of this act.

Sec. 59. Nothing contained in this act shall be construed to impair existing, vested rights or the rights and priorities of any person, firm, corporation or association, who may have commenced the construction of reservoirs, canals, pipe lines or other works, or who have filed affidavits, applications or notices thereof for the purpose of appropriating for beneficial use, any waters as defined in Section 1 of this act, in accordance with the laws of the Territory of New Mexico, prior to the passage of this act; *Provided, however,* That all such

reservoirs, canals, pipe lines or other works and the rights of the owners thereof shall be subject to regulation, adjudication and forfeiture for abandonment, as provided in this act.

Sec. 60. Whenever the owner of a ditch, canal, pipe line, reservoir, or other works shall turn or deliver water from one stream or drainage into another stream or drainage, such owner may take and use the same quantity of water, less a reasonable deduction for evaporation and seepage to be determined by the territorial engineer, and such owner may be required by the territorial engineer to construct and maintain suitable measuring flumes or devices at the point or points where said water leaves its natural stream or water shed, or is turned into another stream or water shed. Where the rights of others are not injured thereby, it shall be lawful for the owner of any reservoir, canal, or other work, to deliver water into any ditch, stream, or water course, to supply, appropriations therefrom and to take in exchange therefor, either above or below such point of delivery, a quantity of water equivalent to that so delivered, less a proper deduction for evaporation and seepage to be determined by the territorial engineer; *Provided,* Such owner shall, under the direction of the territorial engineer, construct and maintain suitable measuring devices at the points of delivery and diversion.

Sec. 61. Whenever in accordance with the provisions of this act, any person, firm, association or corporation shall enlarge an existing canal, acequia, reservoir, or other works, in order to use the same in common with the former owner, such person, firm, association or corporation, shall have and enjoy the right to the use and benefit of the quantity of water added to the capacity of such structure or work by such enlargement. Where two or more owners are using or have the right to use the same canal, acequia, reservoir or other water works, and one or more of such owners shall fail or neglect to do his or their proper share of the work or to furnish and pay for his or their proper share of the materials necessary for the maintenance, repair and operation thereof, anyone or more of such owners may, after ten days, notice, proceed to perform such work, and furnish such materials, and may recover from each delinquent owner his proportionate share of the cost of such work and materials by a suit in any court of competent jurisdiction, and shall have a lien therefor upon such delinquent owner's share in said canal, acequia, reservoir or other works enforceable in the same manner as provided by law for the enforcement of mechanic's liens.

Sec. 62. There is hereby created a board of water commissioners to consist of three members who shall be appoint-

ed by the Governor of the Territory of New Mexico, by and with the the advice and consent of the Legislative Council, from different sections of the Territory, and who shall hold office for four years, or until their successors shall be appointed and qualified. Each member of such board before assuming the duties of his office shall take the oath as prescribed by law for territorial officials, conditioned upon the faithful discharge of his duties. Such board shall, if there be pending before it business so requiring, meet at the office of the territorial engineer on the first Monday of May, August, November and February of each year, and shall hold special meetings whenever called by a majority of the board, either at the Territorial Capital or elsewhere as the business of the board may require.

Sec. 63. It shall be the duty of said board to hear and determine appeals from the actions and decisions of the territorial engineer in all matters affecting the rights, priorities and interests of water users and owners of, or parties desiring to construct canals, reservoirs, or other works for the conveyance, storage or appropriation of waters in this Territory. Any applicant or other party dissatisfied with any decision, act or refusal to act of the territorial engineer may take an appeal to said board; *Provided*, Notice of such appeal shall be served upon the territorial engineer and all parties interested within thirty days after notice of such decision, act or refusal to act, and unless such appeal is taken within said time, the action of the territorial engineer shall be final and conclusive. Notice of such appeal may be served in the same manner as summons in actions brought before the district courts of the Territory, or by publication in some newspaper printed in the county or water district wherein the work or point of desired appropriation in question is situated, once a week for four consecutive weeks, the last publication to be at least twenty days prior to the date when such appeal may be heard.

Sec. 64. It shall be the duty of the territorial engineer, upon notice being filed in his office of such appeal to forthwith transmit or produce before said board the papers, maps, plats, field notes and other data in his possession affecting the matter in controversy, or certified copies thereof, which copies shall be admitted in evidence by said board or by any court in this Territory as of equal validity with the originals.

Sec. 65. The decision of said board, upon any such appeal, shall be filed in the office of the territorial engineer, who shall thereafter act in accordance with such decision. The decision of said board shall be final, subject to appeal

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to the district court of the district wherein such work, or point of desired appropriation, is situated, to be taken within sixty days from the date of such decision, upon notice served in the manner and within the time in this act provided for service of notice of appeal from decisions or acts of the territorial engineer, and upon filing a cost bond in such sum as the board may fix, with two or more sureties to be approved by the clerk of said board. If for any good reason said board should fail to meet and act upon any such appeal within ninety days after the filing of notice thereof with the clerk of said board, the case may be taken before the district court of the district wherein the work done or point of desired appropriation in controversy is situated upon petition and by writ of certiorari directed to said board and served upon the clerk thereof; *Provided*, That notice of the filing of such petition and the application for said writ shall be served upon all parties interested in the manner herein provided for service of notice of appeals to said board.

Sec. 66. In case of such appeal to the district court it shall be the duty of said board to certify to said court the record of all proceedings with reference to the matter in controversy together with all papers, maps, plats, field notes, and other documents and exhibits filed with said board. The costs in such cases to be taxed the same as costs in cases in the district court and at the same rates and that the same shall be paid in accordance with the judgement of the board or court in each case. All cases removed into the district court in pursuance of this section shall be tried *de novo*, except that evidence which may have been taken in the hearing before the territorial engineer and said board and transcribed, may be considered as original evidence in the district court, and the court shall allow all amendments which may be necessary in furtherance of justice in all cases, appealed by petition or certiorari, or otherwise, and may submit any question of fact arising therein to a jury, or to one or more referees at its discretion.

Sec. 67. Said board may adopt and use a seal and make rules for the hearing and determination of appeals not inconsistent with law and the provisions of this act. Any member of said board or the clerk thereof, or any referee appointed by said board to take testimony may administer oaths to witnesses; and the board or any such referee shall have the power to order or summon witnesses to appear and testify before it or such referee, and to produce books, papers and documents. Any person, or the officer or agent of any corporation who shall fail or refuse to appear and testify or to produce the papers and documents as required

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133 Pac. 106.

by any summons or order of said board or referee appointed by said board to take testimony, shall be guilty of a misdemeanor and upon conviction thereof before any district court of this Territory, shall be fined in a sum not less than fifty nor exceeding one hundred dollars, or by imprisonment in the county jail not to exceed three months, or by both such fine and imprisonment, in the discretion of the court.

Sec. 68. Each member of said board shall receive five dollars per day while in attendance at meetings thereof, and actual traveling expenses while in the discharge of his duties; *Provided*, That no member shall receive pay for more than sixty days' service in any one year.

Sec. 69. The board shall appoint a clerk, who may be also a clerk or assistant to any other territorial officer, and who shall receive a salary not to exceed fifty dollars per month for his services as clerk to said board. The board may purchase necessary stationery and office supplies to an amount not to exceed one hundred dollars in any one year. The salary of the clerk, the per diem of the members of the board and the expenses of the members and office as herein provided, shall be paid at the time and in the same manner as those of other officers of the Territory.

Sec. 70. There is hereby granted upon and over all the lands now or hereafter belonging to the Territory of New Mexico, a right-of-way for canals, acequias, storage reservoirs or other water works, to any person, firm, association or corporation, desiring to construct and use the same, and who shall comply with the provisions of this act. Any person, firm, association, or corporation, desiring to construct and use a canal, acequia, reservoir, or other water works, upon or over lands belonging to the Territory of New Mexico, shall file with the territorial engineer an application as in the case of other appropriations, together with a map or plat describing such lands and if, upon investigation, the territorial engineer shall determine that such application is made in good faith, and that the party making the same is able to construct, maintain, and beneficially use the canal, acequia, reservoir, or other water works described in the application, he shall grant a permit in such form as he may adopt, giving to the applicant the right to use the lands described for such purposes; such permit may be assigned, and shall be subject to forfeiture for abandonment as in the case of other appropriations mentioned in this act.

Sec. 71. All permits, decrees and documents granting, defining or limiting water rights and rights of owners of canals, reservoirs and works for conducting, storing or appropriating water in this Territory shall be recorded in the

office of the probate clerk and ex-officio recorder of the county in which the property, canal, reservoir or work is situated. When so recorded, copies of such permits, decrees and documents certified by the county recorder shall be admitted in evidence in any court of the Territory as of equal validity with the original.

Sec. 72. It shall hereafter be unlawful for any person, company or corporation to divert the waters of any public stream in New Mexico for use for reservoirs or other purposes in a valley other than that of any such stream, to the impairment of valid and subsisting prior appropriations of such waters.

Any violator of this section, shall upon conviction be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisonment in the county jail for not less than one month nor more than three months, or both, in the discretion of the court.

Sec. 73. An act of the 36th Legislative Assembly of the Territory of New Mexico, entitled "An Act creating the office of Territorial Irrigation Engineer, to promote irrigation development and conserve the waters of New Mexico for the irrigation of lands and for other purposes," approved March 16, 1905, and all others acts and parts of acts in conflict with this act, are hereby repealed, and this act shall be in full force and effect from and after its passage.

CHAPTER 50.

AN ACT PROVIDING FOR THE PRINTING OF THE RULES OF THE SUPREME COURT AND MAKING AN APPROPRIATION THEREFOR. H. B. No. 27; Approved March 19, 1907.

CONTENTS.

- Sec. 1. Appropriation for printing rules of supreme court.
Sec. 2. Authorization of payment of costs of printing.

Be it enacted by the Legislative Assembly of the Territory of New Mexico:

Section 1. That the sum of one hundred dollars (\$100.00), or so much thereof as may be necessary, is hereby appropriated out of any funds in the hands of the territorial treasurer, not needed for the payment of interest on the bonded debt, for the purpose of printing the rules of the supreme and district courts of the Territory of New Mexico.

No. 322. GOVERNOR—POWERS OF, TO GRANT PARDON, ETC.

OPINION to Hon. H. J. Hagerman, Governor, on powers of Governor to grant conditional pardons and to commute sentences imposed by the courts of New Mexico.

HELD: Governor has power to grant conditional pardon; also power to commute or mitigate sentence.

No. 323. SCHOOL WARRANT—PAYMENT OF, OUT OF GENERAL SCHOOL FUND.

OPINION to Hon. Hiran Hadley, Supt. Pub. Instruction, on construction of Sec. 99, C. L. '97, and on questions pertaining to the payment of school warrant out of general school fund, etc.

HELD: 1. Funds of one fiscal year cannot be used for payment of indebtedness of another fiscal year. The same rule applies to teachers' salaries. 2. Clerk of school district is compelled to collect poll tax for his district and deliberate failure to so do subjects him to mandamus proceedings to compel him to do his duty. 3. School board not liable for default of county treasurer. If school board issued warrant on treasurer for indebtedness that should have been paid out of fund of another year both school board and treasurer liable to fine and imprisonment, under Sec. 299, C. L. '97, and as accounting by treasurer for moneys paid him with warrant which he paid, but should not have paid would not be proper accounting, he is liable for amount on his bond. 4. Teacher cannot legally quit teaching school during term of contract to attend Institute. Contract to teach being teacher's excuse for non-attendance at Institute County Superintendent and Territorial Board of Education must decide whether such excuse is sufficient. 5. Where school directors accept services of teacher, rendered in good faith, although not provided with certificate of attendance from normal school, district liable for the pay for such services.

No. 324. TERRITORY—INSURANCE LAWS—MONEYS DUE FIRE DEPARTMENTS FROM TERRITORY.

OPINION to Hon. J. H. Sloan, Supt. Insurance, on construction of Sec. 2132, C. L. '97, and Sec. 12, of Insurance Laws with relation to moneys due fire departments from Territory.

HELD: Territorial Treasurer having sufficient funds to pay various fire departments amount received by such fire departments under Sec. 2132, during year 1904, and also to pay amounts due for current year, then he is not only permitted, but required under the law, to pay same.

No. 325. CO. SUPT. OF SCHOOLS—APPROVAL OF WARRANTS ISSUED BY SCHOOL DIRECTORS.

OPINION to Supt. Pub. Instruction on authority of county superintendent of school to approve warrants issued by school directors of Dist. No. 11 of San Juan County.

HELD: Where warrants are issued for indebtedness contracted in one year, and there are not sufficient funds in hands of treasurer for that year to pay same, they cannot be paid out of funds belonging to another year. If enough money should afterwards be collected for the current year in which debt was contracted, then the moneys so collected should be distributed pro rata among such creditors having such indebtedness. If there never is collected sufficient moneys to pay said indebtedness, then the same shall be void.

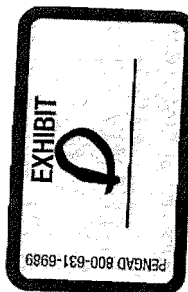
No. 326. PECOS RIVER—APPROPRIATION OF WATERS FROM TRIBUTARY TO.

OPINION to Hon. D. M. White, Territorial Irrigation Engineer, on questions relative to appropriation of waters from a tributary to the Pecos River, etc.

HELD: U. S. Government appropriates water in same manner as an individual.

No. 327. CERTIFICATES AND AFFIDAVITS—EXECUTION OF.

OPINION to J. W. Reynolds, Secretary of New Mexico, on construction of Sec. 30, Chap. 79, Session Laws 1905, with relation to execution of certificates and affidavits. **HELD:** Signature of President should be personal; in absence of President, Vice President is authorized to sign as such officer; if company has no vice president at meeting of stockholders to take action on extension of corporate existence by-laws could be amended to provide for a vice president and that officer could be elected. He would then have authority to execute certificates and affidavits mentioned in said action.



ment of Education, and he says that if the local authorities considered music, about which you specially ask, a proper part of the regular course, they appear to have power to make it so.

Another point about which your write is as to the approval of warrants when there are no funds with which to pay the same. The course which you have heretofore adopted of advising superintendents not to approve warrants unless there were funds in the treasury to pay them, is perhaps a prudent one, but on the other hand, it is provided in Section 1535 of the Compiled Laws of 1897, and this provision is retained by Section 29 of Chapter 97 of the Laws of 1907, that school orders shall draw 6% interest per annum after having been presented to the county treasurer and not paid for want of funds, and this is coupled with the provision that no board shall issue warrants of a school district in excess of the amount of the levy for one year. This may be considered as the last expression of the legislative will on this subject. The Bate-man act, as you will see by reference to Section 299 of the Compiled Laws, merely forbids any school district to become indebted or to contract any debts during any current year which, at the end of such current year, cannot then be paid out of the money collected and belonging to that current year. It does not forbid the issuance of warrants when there are no funds on hand with which to pay them, but limits the amount of warrants to be drawn or debts to be contracted to such sum as can be paid from the funds of the current year. I agree with you that the current year as related to school matters is fixed by the definition given in Section 304 of the Compiled Laws, which makes it run from the first day of September to the last day of August of the next year. Taking these statutes altogether, I think it is permissible to approve warrants even though the funds may not be on hand to meet them, provided that the warrants so drawn will not run beyond what can be paid from the funds of the current year.

Very truly yours,

FRANK W. CLANCY,
Attorney General.

(1506)

As to approval of application for water from the Rio Grande or its tributaries by the state engineer.

April 23, 1915.

Hon. James A. French,
State Engineer,
Santa Fe, New Mex.

Dear Sir:

I have before me your letter of even date herewith in which you inform me that the Arlington Land Company on March 2, 1915, filed applications numbers 919, 920, 921, 923, 928 and 929 to appropriate water from the Chama and Brazos Rivers, Rock Lake and Chaves creeks and tributaries, upon which publication notice was ordered and date set for consideration was April 21, 1915. You fur-

ther say that on March 19, 1915, the District Engineer of the United States Reclamation Service was advised of these filings by letter from your office and on March 22, 1915, Mr. P. W. Dent, district counsel for the Reclamation Service, replied in substance, that the question of action to be taken by the United States would be given consideration and your office advised, and on April 21, 1915, Mr. Dent advised you by long distance telephone that a notice was being mailed in this connection which was received and filed yesterday, being a copy of a letter written the Arlington Land Company by Mr. F. M. Lawson, Project Manager.

Upon this you ask whether, in the absence of any protest as required by the regulations of your office, you should approve the applications of the Arlington Land Company with the general proviso that they be subject to prior valid rights, and if you have such a right, on what grounds?

I am unable to see why any distinction should be made between the government reclamation service and other persons in the practice as to passing upon applications to appropriate waters. In the present case the Reclamation Service has been fully advised, in effect refuses to make any protest as required by your regulations, and notifies the Arlington Land Company, in substance, that if it takes any water to which the Rio Grande project is entitled and which is required for said project, resistance will be made by the United States and anything necessary will be done to protect the rights and interests of the government and of the water users under the Rio Grande project. In other words, instead of making any resistance before your office, a threat is made to the Arlington Land Company of possible serious litigation at some time in the future. If the Arlington Land Company is willing to assume the risk of any such threatened trouble, I can see no good reason why you should not approve its applications. It is true that the statute in Section 40 of Chapter 49 of the Laws of 1907 declares that waters as to which notice has been given to the engineer that the United States intends to utilize them, shall not be subject to a further appropriation, but when the representatives of the United States decline to make any resistance to action in your office, I do not see that this section can, of its own force, take the place of the protest required by your regulations.

Very truly yours,

FRANK W. CLANCY,
Attorney General.

(1507)

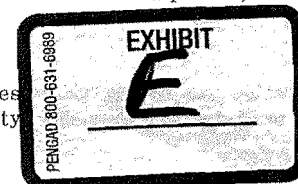
Eligibility of state and county officers to re-election in 1916.

April 27, 1915.

Mrs. Edgar Hepp and Grace G. Goebel,
Deming, N. Mex.

Dear Mesdames:

I have just received your letter of yesterday as to the re-election of state and county



offer has been made and will be accepted and for a valuable consideration, since the option may become a contract after its acceptance. The only statute I find which might have some bearing on whether or not it is legal or illegal for the Purchasing Agent to exercise such an option is Sec. 6-405, N.M. S.A., 1941 Compilation, which reads as follows:

"Conformity with budgets - Invoices - Records. - All Contracts and purchases made by purchasers shall conform to the duly approved budget of the purchaser where a budget and the approval thereof is required by law, but nothing herein contained shall prevent the transfer of items within any school budget when such transfer is duly approved as provided by law.

"Before any warrant, check or voucher is issued or delivered in payment of any purchase, an itemized invoice or bill, and the bill of lading, if any, of the goods purchased and all of the goods shown on the invoice or bill shall be in the possession of the purchaser. All such invoices, bills, bills of lading and the written bids or proposals, and copy of the printed notice, where written proposals and advertisement is required, shall be filed as a part of the permanent records of the purchaser subject to audit as other records and shall not be changed, altered or destroyed for a period of at least five (5) years from the dates of the respective purchases."

Since the option, if accepted by you, conforms to the duly approved budget of any state department, I see nothing in the law which would make it unlawful for you to exercise an option beneficial to the State of New Mexico or to a department thereof.

It is, therefore, my opinion that if said option conforms to the duly

approved budget of the purchaser, where a budget and approval thereof is required by law, that it is not unlawful for the purchasing agent to exercise an option from one fiscal year to another.

Trusting that this fully answers your inquiry, I remain

Very truly yours,

JOE L. MARTINEZ
Attorney General

No. 209

Attorney General Opinion

No. 5559

July 2, 1952

Mr. John H. Bliss
State Engineer
State of New Mexico
Santa Fe, New Mexico

Dear Mr. Bliss:

On June 13, 1952, you requested an opinion from this office as to whether or not the State Engineer can properly require the filing of proofs and the making of a formal, final engineering report, from the Bureau of Reclamation after reservation by it of water for reclamation projects, as in the case of other water rights.

Section 77-531 of the 1941 Compilation provides the method by which the Federal Government, through the Bureau of Reclamation may reserve the water for reclamation projects. The Section provides that when, after due notice of reservation, plans and information are filed in the Office of the State Engineer within a three year period of time, the water so reserved shall be retained in the name of the United States for the purposes of the project unless and until such reservation is formally released in writing by the Secretary of the Interior. The Section is silent as to whether or not, following such res-

No. 210

Attorney General Opinion

No. 5560

July 1,

ervation of unappropriated water right, the Bureau shall follow any of the other sections of the water code pertaining to the filing of proofs of completion of works, application of water to beneficial use or obtaining of an eventual license to appropriate such retained waters.

You state in your letter that the difficulty with a number of projects is that after the reservation of water is made the Bureau of Reclamation may find that the project, for one reason or another, cannot be or will not be carried through to completion and the project is dropped.

I find that under Section 77-501 New Mexico Statutes, Annotated, 1941 Compilation, the State Engineer has the power to make rules and regulations necessary to administer the duties devolved upon his office. Reading your revised rules and regulations as of January 1, 1951, you have provided by rules and regulations as to the procedure to be followed by any of the owners of a water right when they first obtain this right as to the filing of proof, etc. Under the power that you have to make rules and regulations necessary to administer the duties devolved upon your office, it is my opinion that you have the power to make rules and regulations which may affect the Bureau of Reclamation, a department of the United States, when it has reserved unappropriated waters and that you may require it to file proofs of completion of works and meet any other requirements provided by your rules and regulations. I can see no reason why the Bureau of Reclamation should not be subject to reasonable rules and regulations promulgated by the State Engineer.

Trusting that this fully answers your inquiry, I remain,

Very truly yours,

JOE L. MARTINEZ
Attorney General

Mr. Ingram B. Pickett
Chairman
State Corporation Commission
Santa Fe, New Mexico

Dear Mr. Pickett:

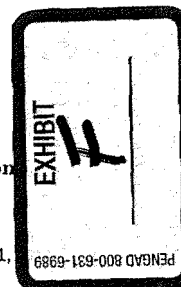
This is in reply to the request for an opinion which you forwarded concerning insurance requirements for interstate carriers which you received from the firm of Seth & Montgomery, attorneys for the Greyhound Corporation.

The question is whether, insofar as exclusive interstate commerce operations are concerned compliance with the federal law and Interstate Commerce Commission regulations should exempt the carriers from compliance with the State law and regulations insofar as they require the posting of bonds or filing copies of insurance policies covering injury to persons or damage to property.

The New Mexico Motor Carriers Act Sec. 68-1309 N.M.S.A. provides for registration of interstate carriers and Sec. 68-1344 N.M.S.A. also requires that said carriers shall file with the Commission surety bond or policy of insurance to cover public liability and property damage (68-1344 N.M.S.A.).

The Federal Motor Carrier Act of 1935 provides that the Interstate Commerce Commission may prescribe rules and regulations governing the filing and approval of surety bonds policies of insurance or other security covering damages for bodily injury or death or loss or damage to property. All purely interstate carriers are required to file such bond or policy of insurance.

Since 1935 when the Federal Motor Carriers Act was enacted the



Supplemental notice of the intention of the United States to use the waters of the Rio Grande for irrigation purposes on the Rio Grande Project.

Phoenix, Arizona, April , 1908. .

Mr. Vernon L. Sullivan,
Territorial Engineer,
Santa Fe, New Mexico.

Dear Sir:-

Claiming and reserving all rights under our former notice of January 23, 1906, addressed to David L. White, Territorial Irrigation Engineer of New Mexico, which said notice advised him of the intention of the United States to use the waters of the Rio Grande for the purpose of irrigation, and is now filed in your office, I do now hereby give you the following notice in addition to said former notice and supplemental thereto.

The United States acting under authority of an Act of Congress, known as the Reclamation Act, approved June 17, 1902, (32 Stat. 388), proposes to construct within the Territory of New Mexico certain irrigation works in connection with the so-called Rio Grande Project. The operation of the works in question contemplates the diversion of the water of the Rio Grande River.

Section 40 of Chapter 49 of the laws enacted in 1907 by the 37th Legislative Assembly of the Territory of New Mexico, an Act entitled, "An Act to conserve and regulate the use and distribution of the waters of New Mexico; to create the office of Territorial Engineer; to create a Board of Water Commissioners, and for other purposes", approved March 19, 1907, reads as follows:

Whenever the proper officers of the United States authorized by law to construct works for the utilization of waters within the Territory, shall notify the Territorial Engineer that the Uni

States intends to utilize certain specified waters, the waters so described, and unappropriated, and not covered by applications or affidavits duly filed or permits as required by law, at the date of such notice, shall not be subject to a further appropriation under the laws of the Territory for a period of three years from the date of said notice, within which time the proper officers of the United States shall file plans for the proposed work in the office of the Territorial Engineer for his information, and no adverse claim to the use of the water required in connection with such plans, initiated subsequent to the date of such notice, shall be recognized under the laws of the Territory, except as to such amount of water described in such notice as may be formally released in writing by an officer of the United States thereunto duly authorized; Provided, that in case of failure to file plans of the proposed work within three years, as herein required, the waters specified in the notice given by the United States to the Territorial Engineer shall become public water, subject to general appropriations.

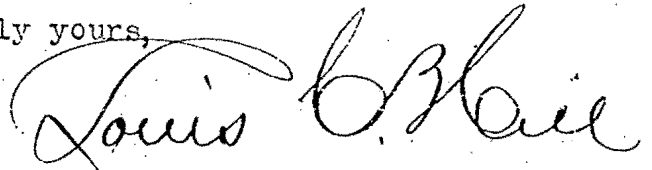
In pursuance of the above statute of the Territory you are hereby notified that the United States intends to utilize the following described waters, to-wit:

All the unappropriated water of the Rio Grande and its tributaries, said water to be diverted or stored from the Rio Grande River at a point described as follows:

Storage dam about nine miles west of Engle, New Mexico, with capacity for two million (2,000,000) acre feet, and diversion dams below in Palomas, Rincon, Mesilla and El Paso Valleys in New Mexico and Texas.

It is therefore requested that the waters above described be withheld from further appropriation and that the rights and interests of the United States in the premises be otherwise protected as contemplated by the statute above cited.

Very truly yours,

A handwritten signature in cursive script, reading "Louis B. Hall". The signature is written in dark ink and is positioned above the printed name.

Supervising Engineer.

STATE OF NEW MEXICO
OFFICE OF STATE ENGINEER
Santa Fe

MANUAL

OF

Revised Rules, Regulations and
Requirements

FOR

FILING CLAIMS

TO

WATER RIGHTS

UNDER

Laws of 1907 as Amended

JAMES A. FRENCH
State Engineer

In Force After June 14th, 1913

NEW MEXICAN PRINTING COMPANY SANTA FE, N. M.

PERMAD 800-651-6589

EXHIBIT

H

FILED WITH
STATE RECORDS CENTER

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1 cubic inch=.004329 U. S. gallon=.000767 cubic foot.

1 U. S. gallon=231 cubic inches=.13368 cubic foot
=.0000307 acre-foot.

1 cubic foot=1728 cubic inches=7.48 U. S. gallons
=.037037 cubic-yard=.000022057 acre-foot.

1 cubic yard=46656 cubic inches=27 cubic feet=.00061983 acre-foot.

1 acre-foot=325851 U. S. gallons= 3560 cubic feet
=16131 cubic-yards.

1 second-foot=448.8 U. S. gallon per minute=
26929.9 U. S. gallons per hour=64631 U. S. gallons
per day.

=60 cubic feet per minute=3600 cubic feet per
hour=86400 cubic feet per day =31536000 cubic
feet per year.

=1.9835 acre-feet per day.

=723.9669 acre feet per year.

=50 miner's inches.

1 million U. S. gallons per day =3.53 second-feet
=3.07 acre feet per day.

1 million cubic feet=22.95 acre-feet.

1 acre-foot=325,850 gallons.

1 second-foot falling 8.81 feet=1 horsepower.

1 second-foot falling 10 feet=1.13 horsepower.

1 second-foot falling 11 feet=1 horsepower, 50%
efficiency.

1 horsepower=550 foot-pounds per second=33000
foot pounds a minute.

=1,960,000 foot-pounds an hour=1 second-foot
falling 8.80 feet=746 watts.

1 horsepower=about 1 kilowatt.

To calculate water power

quickly — sec. ft. x fall in ft.

————— =net

horsepower on water wheel realizing 80% of theore-
tical power.

1 second-foot for 1 year will cover 1 square mile
1.131 feet or 13.572 inches and equals 31,536,000 cubic
feet.

1 acre=43,560 square feet, or .0871 feet square=
4840 square yard= .0015625 square mile.

1 second-foot for one day=1.98 acre feet,

for one 28-day month=55.54 acre feet,

for one 29-day month=57.52 acre-feet,

for one 30-day month=59.50 acre feet,

for one 31-day month=61.48 acre feet.

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BLANKS WILL BE FURNISHED UPON REQUEST.

Read Carefully.

The State Engineer will furnish upon request blank forms for applications for a permit to appropriate water, which are to be made out in duplicate, and any person, corporation or association desiring to obtain a right to the beneficial use of public water shall fill out the blanks relative to his proposed application which shall be finally accepted for filing in the State Engineer's Office before commencing any construction work, together with fee as a deposit for filing such application, maps, field notes, plans and specifications as may be necessary to show the method and practicability of the construction and the ability of applicant to complete the same. All such maps and field notes to be taken from actual surveys and measurements, and certified to by the engineer in charge of making the survey.

GENERAL PROCEDURE IN OBTAINING WATER RIGHTS.

1. Filing of Notice of Intention to make Formal Application for Permit to appropriate Public Waters of New Mexico, accompanied by required fee.
2. Survey and preparation of maps by qualified engineer or surveyor.
3. Filing of formal application, maps, plans and specifications in detail with State Engineer, on or before six months from date of receipt of Notice.
4. Publishing notice of publication and filing publisher's affidavit within sixty days of date of order.
5. Depositing of required recording and examining fees, before final action by State Engineer.
6. Commencement and completion of one-fifth construction work within time allowed in permit.
7. Completion of construction within time allowed in permit, and notification to State Engineer on proper blanks.
8. Completion of application of water to the beneficial use described in permit, within time allowed therein, and notification to State Engineer on proper blanks.
9. Issuance by State Engineer of Certificate of Construction and License to appropriate after proper inspection and report, and deposit of required recording fee.
10. The License to appropriate defines and constitutes the full appropriation of usual water right.

PROCEDURE IN OBTAINING WATER RIGHTS.

Upon receipt of a Notice in duplicate and in proper form of Intention to make Formal Application for Permit to appropriate the public waters of the State of New Mexico, with the required filing fee attached,

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the State Engineer shall endorse upon said notice the date of its receipt and in case applicant files such formal application and maps, plans and specifications and other necessary data on or before six months from date of receipt of such notice, the date of priority of application shall be from the time of filing the said notice.

FORMAL APPLICATION.

If it is found, upon receipt of the formal application, that it is defective as to form, or unsatisfactory as to feasibility or safety of plan, or as to showing of ability of the applicant to carry the construction to completion, it shall be returned with a statement of the corrections and amendments to be made, and in case it is received in the office of the State Engineer with the proper changes within sixty days from the date of its return to applicant the application will still hold its date of priority. When application and maps are returned for correction, it should be understood that the corrections are required as much for the protection of the interests of the applicant as for the interests of the public and the betterment of the records of this office.

After filing the formal application together with maps, plans and specifications in detail and the proper fees having been paid, the State Engineer will instruct the applicant to publish notice, in a form to be prescribed by him, of said application in some newspaper of general circulation in the stream system once a week for two consecutive weeks. No proof of publication in any other paper than that specified by the State Engineer will be accepted. Publisher's affidavit of proof of such publication shall be filed within sixty days from date of order and thirty days prior to the date that the State Engineer will take up the application for consideration.

Any person, association or corporation deeming that the granting of an application for a permit to appropriate public water by the State Engineer would be truly detrimental to rights that said parties may have upon the water claimed by applicant, may file their objections against the granting of said application for a permit to appropriate water with the State Engineer on or before the dates set in said notice for taking the application up for consideration. Copy of said protest must be served upon applicant. Said protest shall set out all the reasons why said application should not be approved. Application for permit to appropriate should not be approved as set forth in the objection or protest, shall also be filed. Applicant shall file answer to any protests that are filed within the time allowed against the granting of his application. Any answer, brief or form of reply filed in the application before the State Engineer shall be brought to the attention of the other parties of the case by furnishing them with a copy.

On or after the date set out in the notice of publication, the State Engineer shall determine as

correctly as possible the merits of the case from any evidence presented or records available and the law by which he is governed, before finally passing upon the application. In the event the evidence is not sufficient from which to act intelligently, then the State Engineer is to set a date for a hearing at his office in order that the evidence of witnesses be presented; or appoint a referee or referees to take testimony and report upon the rights of the parties, should it be advisable, so that a final decision can be arrived at.

Any expense of a referee is to be taxed by said referee or referees against the parties interested.

Evidence of any witnesses shall be taken down and transcribed to file of record in the case, if so desired by any one of the parties of a hearing or deemed necessary by the State Engineer.

An application is not a permit to appropriate water until after its approval by the State Engineer, and the approval of an application only becomes a permit to construct and apply the water to a beneficial use towards completing an appropriation. A full appropriation of the water asked for and granted in an application is not established until construction has been properly completed and the water applied beneficially to the total acreage within the time given to do so in the permit. Such time may be extended, if not sufficient, upon proper showing.

No legal rights can be obtained by diverting water from a natural water course since March 19th, 1907, without a permit from the State Engineer.

The point of diversion is one of vital importance in the application and should be located exact, as upon the location of the point of diversion depends the question of interference with prior rights and a possible conflict with subsequent appropriators.

On the date set in the permit for completion of the work or as soon as possible or even prior thereto, if the owner has notified the Engineer that the work has been completed, the Engineer or assistant shall inspect the works, and if not properly constructed he shall require the necessary changes.

After the works shall have been completed to the satisfaction of the State Engineer he shall issue his certificate of construction, setting forth the capacity of the works and such limitation on the water rights as shall be warranted by the condition of the same.

On or before the date set in the permit for application of the water to a beneficial use, the Engineer shall cause the works to be inspected after due notice to the owner thereof, and upon the completion of the actual application thereof to beneficial use, but in no manner extending the rights described in the permit.

In the case of small diversion or small storage projects, the Engineer may, in his discretion, wait until such time as the water has been applied to a beneficial use to report on the project, towards issuing a Certificate of Construction and License to appropriate.

All permits, decrees and documents, granting, de-

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filing or limiting water rights of owners of canals, reservoirs and works for constructing, storing or appropriating water in the State of New Mexico shall be recorded in the office of the County Clerk in the county where the property, canal, reservoir or other work is situated.

MAPS.

All maps must be in duplicate, original maps marked "ORIGINAL" and duplicate maps marked "DUPLICATE," and on good quality of tracing cloth 23½ inches by 35 inches, with a two-inch margin on the left end, making the available space for map 23½ inches by 33 inches. **MAPS MUST BE TRIMMED TO THE REQUIRED SIZE.** The scale must correspondingly vary but should be of sufficient size to clearly show course and distance. All distances to be shown in feet.

Maps must be platted to the true meridian, and bearings shown must be true bearings.

In case one sheet is insufficient for the purpose, then the map must consist of two or more sheets marked Sheet No. 1, Sheet No. 2, Sheet No. 3, etc.

Good Waterproof India Ink must be used.

Field notes to be placed upon the map, either in tabulated form or along the indicated line.

Number of stations to be along the indicated line.

The impressions of the Notarial Seal shall be placed upon the tracing cloth. Signatures and dates shall be in Waterproof India Ink.

The direction of North shall be indicated.

No maps will be received which have been folded or creased in any way, but should be rolled on a stick or placed in a heavy pasteboard roll.

Show section in full with subdivisions when any part of the section is crossed by the canal or ditch line.

The location and acreage of irrigable area in each subdivision shall be shown. Irrigable land may be indicated by permanent coloring or cross hatching. (Coloring may be done with a coloring pencil on the dull side of the tracing linen, rubbing to an even tint with a medium hard eraser or with cloth or cork.)

Lands under different permits shall be shown by different colors or methods of cross hatching, and the map shall contain a legend showing the color or kind of cross hatching corresponding to each permit.

THE MAP OF THE DITCH OR DIVERSION CONDUIT SHOULD SHOW THE FOLLOWING:

(a) The location of the headgate by course and distance to a corner of the public surveys, if the corner can be found within six miles. (When a long tie can not be shown fully on plat it shall be indicated by a disconnected one.) In case of a filing for power the point of return must be located in the same manner as the location of the point of diversion. (See note following.)

(b) The general course of the stream and its

name, arrows being used to indicate the direction of flow.

(c) The route of the ditch or conduit by course and distance and all intersections with the lines of the public surveys.

(d) The ownership as far as can be ascertained of all lands on which the water may be applied and the total number of acres stated with reasonable accuracy. Where the lands are unsurveyed they shall be shown by traverse and the initial station tied to the point of diversion. Care must be taken to eliminate all non-irrigable land.

(e) The ownership of the land where the dam and headgate are to be located.

(f) When ditches other than described in the application are shown on the map they shall be in ink of a different color.

THE MAP OF THE RESERVOIR SHOULD SHOW THE FOLLOWING:

(a) The location of the initial point of survey by course and distance to a corner of the public surveys, if the corner can be found within six miles, or to a natural object when upon unsurveyed land; in that case to be fully described. (See note following.)

(b) The high water line of the reservoir by course and distance and intersections with the lines of the public surveys.

(c) The stream and name thereof from which the supply of water is to be obtained, arrows being used to indicate the direction of flow.

(d) Ditches or conduits to and from reservoirs, name, course, distance and capacity.

(e) The ownership of the land upon which the reservoir is located, and through which the inlet and outlet ditches or conduits pass.

(f) The area of the reservoir at high water line in acres.

(g) Areas and capacities according to table on page 11 following, and the elevation of each contour.

(h) When ditches other than described in the application are shown on the map they shall be shown in ink of a different color.

NOTE:—On all unsurveyed land the surveys and maps must be tied to some permanent natural object, provided a public survey corner cannot be found within six miles.

FORM OF TITLE.

Map of the

..... Ditch or Reservoir
 Applicant
 County, New Mexico
 True courses Variation East
 Scale of Map one inch feet

STATE RECORDS CENTER

1991 JUN 27 PM 3:35

(General statement to be used for a ditch, reservoir or other filing and to be upon and a part of the map.)

The undersigned.....Claimant,
whose postoffice address is.....
County of..... State of.....
..... has caused
to be located The.....
Ditch or Reservoir, as herein described, hereby
makes these several statements relative thereto,
and offers this map and statement for filing in compliance with the laws of the State of New Mexico.

(Below is the form used with the general statement for a ditch):

(a) The headgate is located at a point on the bank of.....river, from which it derives its supply of water, whence the..... corner of Section..... Township..... Range..... of the N. M. P. M. bears..... feet distant.

(b) The land to be irrigated consists of..... acres located as follows:

Sec.....; Twp.....; Range.....
N. M. P. M.

NOTE:—If for other purposes, state for what and how used.

(c) The depth of said ditch is..... feet
The width of said ditch is..... feet on top
The width of said ditch is..... feet on bottom
The grade of said ditch is..... ft. per 1000 ft.
The slopes of said ditch are..... to.....

(d) The maximum carrying capacity of said ditch or conduit is..... cubic feet per second of time, for which claim is hereby made for..... purposes.

NOTE:—When this statement is for a ditch or conduit supplied by storage instead of direct diversion, leave out the phrase "for which claim is hereby made for..... purposes."

(e) The estimated cost is \$.....

(f) Work was commenced by survey on the..... day of.....

(Below is the form used with the general statement for a reservoir):

(a) Maximum height of dam..... feet
Length of dam..... feet on top
Maximum width of dam..... feet on top
Maximum width of dam..... ft. on bottom
Character and composition of dam.....
Estimated cost of dam \$.....

(The following table should give the areas and capacities of each five foot depth from the bottom of the outlet tube up to and including the high water line.)

Depth in feet from bottom of outlet.	Area, sq. ft.	Capacity, cu. ft.
0 ft.
5 ft.
10 ft.

(Up to and including high water line.)

(b) Character and size of outlet and discharging capacity of same under full head

(c) Maximum capacity of reservoir..... acre feet, for which claim is hereby made for..... purposes.

NOTE:—The above statements are to be placed on and become a part of the map.

Hereafter no map will be received lacking the following certificate:

ENGINEER'S CERTIFICATE.

State of New Mexico,
County of..... ss.

I,..... upon my oath state that I am the engineer who made the maps of..... reservoir or ditch. That such maps were made from field notes taken from actual bona fide surveys made under my direction in the field, and that the same are true to the best of my knowledge and belief.

Engineer.

Subscribed and sworn to before me this..... day of..... 19.....

Notary Public.

My commission expires.....

(Below is the form of affidavit to be made out by the claimant to be upon and a part of the map):

State of New Mexico,
County of..... ss.

I,..... being first duly sworn upon my oath state that I have read and examined the foregoing map and the statements thereon, and know the contents thereof and representations thereon, and that the same are true to the best of my knowledge and belief.

Claimant.

Subscribed and sworn to before me this..... day of..... 19.....

Notary Public.

My commission expires.....

STATE RECORDS CENTER

1991 JUN 27 PM 3:35

(Below is the form of affidavit when claimant is a corporation):

State of New Mexico,

County of.....ss.

I,, being first duly sworn, upon my oath state that I am the..... of the....., a corporation organized under the laws of the..... of..... that the foregoing map was made under the authority of the Board of Directors of said corporation, and that I have read and examined the statements and representations thereon, and that the same are true to the best of my knowledge and belief.

Claimant.

Subscribed and sworn to before me this..... day of....., 19....

Notary Public.

My commission expires.....

(The following certificate is placed on the "Original" map that is to be filed in the office of the State Engineer):

State Engineer's Office,
Santa Fe, New Mexico

State of New Mexico,
ss.

County of Santa Fe.

I hereby certify that this map and statement has been examined by me, and was accepted for filing on the..... day of....., A. D. 19....

State Engineer.

(The following is the form of certificate to be placed on the "Duplicate" to be returned to the claimant):

State Engineer's Office,
Santa Fe, New Mexico.

State of New Mexico,
ss.

County of Santa Fe.

I hereby certify that this map and statement has been examined by me, and a duplicate of the one filed in my office on the..... day of....., A. D. 19....

State Engineer.

PLANS AND SPECIFICATIONS.

All formal applications, hereafter, are to be accompanied by the proper plans and specifications.

All Plans to be in duplicate and on separate sheets from the map. The duplicate, which is returned after acceptance, may be a blue print; other re-

quirements as to tracing cloth, size, etc., same as for "Maps."

Specifications to be typewritten on good weight paper, size of sheet 8 1/2 x 13.

Plans and specifications of dams shall include the plan, elevation, and cross-section of dam and spillways and the general construction of both in detail including the outlets or headgates together with character or foundation, material used in construction and such other data as will be necessary for the State Engineer to determine the safety and feasibility of the works.

Plans and specifications for a canal or water conduit shall have the plans and specifications of the canal, headgates, flumes, siphons, aqueducts or pipe lines in detail. It shall also include the size and section of the canal and general material the canal is to be constructed through. Where siphons are used, maximum pressure or head of water shall be stated. All plans to be plain and distinct and of sufficient size so that all angles, lines and dimensions can be easily read.

The title on both plans and specifications must give the name of Reservoir or Ditch, name of Applicant and the County.

The State Engineer's certificate shall be placed on both the plans and specifications with duplicate certificate on the duplicate sheet. Certificate shall be the same as that for maps except that it shall state "Plans" or "Specifications," as the case might be, instead of "Map and Statement."

FEEs.

(Sec. 9, Chap. 49, Laws of 1907, as amended.)

The State Engineer shall receive the following fees, to be paid by him into the Hydrographic Survey Fund to the State Treasury as provided by law.

Filing and Examining in connection with Permit to appropriate.

(a) Direct diversion and use, \$10.00, if the quantity claimed does not exceed five cu. ft. of water per second.

Additional \$1.00 for each cu. ft. per second in excess of five.

1. Storage of flood waters, \$10.00 for each one thousand acre feet or fraction thereof of storage capacity.

(b) Power purposes only, when water is returned to river bed undiminished in quantity and made available for irrigation purposes, \$10.00, if the quantity claimed does not exceed five cu. ft. of water per second.

Additional 25c for each cu. ft. per second in excess of five.

(c) For recording and issuing any permit, certificate of construction, or license to appropriate, \$5.00.

For issuing any miscellaneous water right instrument or copy of any document recorded in his office, \$1.00 for the first one hundred words or fraction thereof, and 15c for each additional one hundred words or fraction thereof.

STATE RECORDS CENTER

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(d) For filing any other paper necessarily forming a part of the permanent record of the water right application, permit or license, \$1.00.

(e) For examining plans and specifications for a dam, \$1.00, for each \$1000.00 or fraction thereof of the estimated cost of such dam.

For a canal or other water conduit \$10.00 where the capacity does not exceed fifty cu. ft. of water per second.

For each additional fifty cu. ft. or fraction thereof per second of time, \$10.00.

(f) For a blueprint copy of any map accompanying an application for a permit to appropriate water, \$2.00 for each sheet thereof.

(g) For issuing of a permit for an extension of time, \$10.00.

(h) For inspecting dam sites, or construction work as required by law, \$10.00 per day and actual and necessary traveling expenses.

Fees for any inspection deemed necessary by the State Engineer and not paid on demand shall be a lien on any land or other property of the owner of the works and may be recovered by the State Engineer in any court of competent jurisdiction.

(i) For rating ditches, \$10.00 per day and actual and necessary traveling expenses.

(j) For such other work as may be required of his office such reasonable fees as the character and extent of the work shall justify.

The filing fees provided for in this section shall be deposited with the State Engineer at the time of filing the application and upon approval of said application the fees shall be paid into the State Treasury by the State Engineer for credit of the Hydrographic Survey Fund. In the event that the application is rejected the fees so deposited less the sum of \$5.00 shall be returned to applicant. If the application be approved for a portion of the amount of water claimed the State Engineer shall retain the proper amount of fees based upon the amount of water for which permit is granted and return the balance to applicant.

APPLICATION FOR ENLARGEMENT.

An application for permit providing for the appropriation of more water, or for the additional use of water, through the point of diversion or a portion of an existing ditch or storage works shall be filed on the regular application for permit blanks and fully described.

CHANGE OF POINT OF DIVERSION.

When a change of point of diversion is desired from one previously approved or previously acquired under other laws, applicant should write for application blank for this purpose. Maps should be prepared as in the original application, giving the line of the old ditch as in original application, and

also the new character of diversion with the new line. The statements on the maps for change of point of diversion shall be the same as given in original filing maps, but the statements shall be modified so as to clearly show the intention of application to change the point of diversion from one place to another.

If a change of point of diversion is desired upon an old ditch which has been approved prior to the creation of this office, ample evidence showing the right to appropriate such water shall be filed with application. The change of point of diversion will be advertised as for original application except that it is for four instead of two weeks. A fee of \$5.00 is required with each application.

CHANGE OF PLACE OR METHOD OF USE.

When holders of water rights desire to change the place of use of water from certain described land to other land, application on the proper blank is required by law to be made to this office for such a change, except as otherwise provided by law. No maps are needed with this application. The applicant should file a statement and affidavits in support or a certified copy of the County Clerk's record that he has a right to the use of this water in case the ditch is an old one and the land has been irrigated from it prior to the 1907 law, before the change of the use from specified land to other land can be made. The changing of water from one land to another severs the water right which has become appurtenant to one piece of land, and the land so irrigated loses its water right and the new land acquires it after its application. Publication of this change is also made as in original application, except that it is for four instead of two weeks. A fee of \$5.00 is required with each application.

EXTENSION OF TIME.

An Application for an extension of time in which to complete an appropriation of water shall be made out on the proper blank with statements, affidavits and other proofs attached in the form of marked exhibits showing sufficient reason why such extension should be granted. The original permit as approved, or a certified copy thereof, shall also accompany such an application properly filled out under "Extensions" with a filing fee of \$10.00 attached before the Engineer can take up the application for final consideration.

Following is the general form of proviso attached to applications when approved:

"This application is approved provided it is not exercised to the detriment of any others having prior valid rights to the use of the water of this stream system."



March 23, 1927

Mr. Herbert Devries
Bureau of Reclamation,
Department of the Interior,
El Paso, Texas

Re: Applications Nos. 8 & 9
United States of America,
Applicant.

Dear Sir:

Application No. 8 appears as being filed in this office on or about January 25, 1906. This application is to appropriate waters of the Rio Grande and includes the Elephant Butte Project.

It appears that this application was never taken up for approval by the State Engineer, although what purports to be a proof of completion of works was filed under said application on September 7, 1917. The filing of this proof of completion of works appears as being the only step taken by this applicant toward complying with the laws of the State of New Mexico and the rules of this office toward the completion of applications to appropriate the waters of this State.

The only exception under the laws of this State to the regulations and requirements to appropriate the waters of this State are contained in Section 5699 ~~from~~ the Codification of 1915 of the laws of New Mexico. As I view this section, after the United States has filed its application with plans and specifications as provided therein they are required to follow the laws of this State and the rules of this office relative to the completion of said application, and their application is treated the same as one filed by any private individual. I am unable to find any other provisions in the laws of this State or in the rules of this office, giving this office the right to take any other position relative to applications filed by the United States.

Application No. 9 to appropriate waters of the Hondo River also stands in the same status in this office, there having been no further steps taken under said application other than the filing of the same.

As I understand the position of the United States relative to applications filed in the State of New Mexico to appropriate the waters of this State, they do not recognize any right of this State or of this office to require them to follow the laws of said State and the rules of this office after their application to appropriate water has

March 23, 1927

been filed, but I would appreciate a letter from you explaining your position in this matter so this office can be fully advised in the premises.

Very truly yours,

HERBERT W. YEO
STATE ENGINEER

K/M

"I hereby certify that this instrument is a true and correct copy of the original which is on file in the office of the State Engineer of New Mexico."

Witness my hand and official seal
this 12th day of July

A.D. ~~19~~ 2005"

John R. D'Antonio, Jr., P.E.
State Engineer

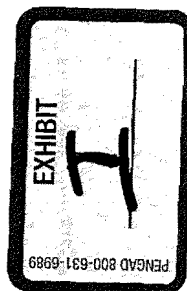
By Joseph J. Montoya
Water Rights Division

Section 2 of the territorial act provides that the selection, management and disposal of the land granted in accordance with the Carey Act, are vested in the Carey Act Land Board consisting of the Governor, Commissioner of Public Lands and Territorial Engineer, it being further provided in the next section that the Governor shall be chairman and the Commissioner of Public Lands secretary of the board. I am unable to see any objection to holding that the selection and management of the lands necessarily includes the making of the contract with the secretary of the interior by which alone under the departmental regulations the selection can be made effectual or the lands brought under the management of the board. I recommend to you however that you submit this question to the general land office before preparing and forwarding any new contract relative to the lands in said list No. 1, because it would be highly undesirable to send forward a contract which would not meet with the approval of the Commissioner at Washington. It would be well also to ask the Commissioner as to the exact form in which he would desire the contract to be executed by the board. I submit that it would be proper that the contract should be signed "Territory of New Mexico, by Carey Act Land Board, George Curry Governor of New Mexico and Chairman of said Board. Countersigned Robert P. Ervien, Commissioner of Public Lands and Secretary of said Board."

In response to another suggestion in the letter from the General Land Office, I will say that there is no provision of law investing the Governor, or any other officer, with general authority to contract on behalf of the Territory but I am compelled to suggest that in the absence of such a provision it would hardly be proper for an agreement executed by the Governor to be attested by the Attorney General. If attested by any one it should be by the Secretary of the Territory and the territorial seal of which he is custodian. All that an Attorney General could properly do would be to approve the form and execution of the agreement. In view of the provision already cited contained in section 2 of Chapter 102 of the Laws of 1909, there is serious question as to whether the Governor as Governor has any lawful authority to execute the agreement. However that may be it will be well for the board to conform to the requirements of the Commissioner of the General Land Office and to execute the agreement exactly as he desires it.

Yours respectfully,

FRANK W. CLANCY,
Attorney General.



IRRIGATION.

Discussion of conflicting claims of Andrieus A. Jones, the United States and the town of Las Vegas to waters from the Pecos and tributaries.

Santa Fe, N. M., November 17, 1909.

Hon. Vernon L. Sullivan,
Territorial Irrigation Engineer,
Santa Fe, N. M.

Dear Sir:

I have given considerable time and attention to the investigation of the questions involved in your consideration of the applications of Mr. Andrieus A. Jones of Las Vegas, for permits to appropriate waters from the Rio Pecos and some of its tributaries, and while there are some matters upon which I cannot at this time express a definite opinion, as will hereafter appear, yet, I have been unable to reach some conclusions which I will now state.

In view of the fact that these applications of Mr. Jones conflict with what is known as the Urton Lake Project and the Las Vegas Project, I invited the presentation of views on behalf of these two projects by counsel who represented them and by Mr. Jones. On behalf of a recently formed company which proposes to take up the construction of the Urton Lake project, Mr. I. B. Melville of Denver has submitted to me a brief which I think it will be well for you to examine, and Messrs. Veeder and Veeder of Las Vegas have submitted a statement of the position and claims of the board of trustees of the grant of Las Vegas. Mr. Jones spent two days in Santa Fe and orally discussed with me a considerable portion of the matters which may arise in consequence of the conflicts but has not put on paper a statement of his claims.

It may be well here briefly to state the condition of our statutes and the various proceedings thereunder in order to have a clear understanding of what is under discussion.

In 1905 the legislature enacted a statute on the subject of irrigation which appears as Chapter 102 of the printed laws of that year. Section 22 of that statute is as follows:

"Whenever the proper officers of the United States, authorized by law to construct irrigation works, shall notify the territorial irrigation engineer that the United States intends to utilize certain specified waters, the waters so described, and unappropriated at the date of such notice, shall not be subject to further appropriations under the Laws of New Mexico, and no adverse claims to the use of such waters, initiated subsequent to the date of such notice, shall be recognized under the Laws of the Territory, except as to such amount of the water described in such notice as may be formally released in writing by an officer of the United States thereunto duly authorized."

In accordance with the provisions of the foregoing section the supervising engineer of the United States Reclamation Service on January 23, 1906, filed in the office of the territorial engineer three notices of intention to utilize specified waters. One of these was

for what is known as the Carlsbad project and gave notice of an intention to utilize a volume of water equivalent to 300,000 acre-feet per year requiring a maximum diversion or storage of 2,000,000 miner's inches, diverted or stored from the Pecos River and tributaries at a point above Carlsbad. Another was for what is called the Urton Lake project and gave notice of intention to utilize 300,000 acre-feet per year requiring a maximum diversion or storage of 2,000,000 miner's inches, to be diverted and stored from the Pecos River and tributaries at a diversion dam about twelve miles above Ft. Sumner, and in storage dams above that point which might be necessary. Another for the Las Vegas project gave notice of like intention to utilize a volume of water equivalent to 80,000 acre-feet per year requiring a maximum diversion or storage of 100,000 miner's inches from the Sapello River, 100,000 miner's inches from Gallinas River, 25,000 miner's inches from Sanguijuela creek and 25,000 miner's inches from Arroyo Pecos, to be diverted or stored at a storage dam on a branch of Sanguijuela Creek near Las Vegas and diversion nearby on the other streams mentioned.

As I understand these three notices still remain in your office without any change and without release of any of the waters described as provided by the section of the statute hereinbefore quoted.

In 1907 the legislature passed another act which appears as Chapter 49 of the Laws of that Year, in which your office was created and a new system of administration of irrigation matters was established. By this new act, in section 73, it was specifically provided that the act of 1905 already referred to should be repealed. Section 40 of this new law providing for the matters covered by section 22 of the law of 1905 reads as follows:

"Whenever the proper officers of the United States, authorized by law to construct works for the utilization of waters within the Territory, shall notify the territorial engineer that the United States intends to utilize certain specified waters, the waters so described, and unappropriated, and not covered by applications or affidavits duly filed or permits as required by law, at the date of such notice, shall not be subject to a further appropriation under the laws of the Territory for a period of three years from the date of said notice, within which time the proper officers of the United States shall file plans for the proposed work in the office of the territorial engineer for his information, and no adverse claim to the use of water required in connection with such plans, initiated subsequent to the date of such notice, shall be recognized under the laws of the territory, except as to such amount of water described in such notice as may be formally released in writing by an officer of the United States, thereunto duly authorized; Provided, That in case of failure to file plans of the proposed work within three years, as herein required, the waters specified in the notice given by the United States to the territorial engineer shall become public waters, subject to general appropriations."

While no official action has ever been taken with regard to the notice filed by the Reclamation Service in January, 1906, yet, as I am informed, it has been rumored that the government did not intend to proceed with the construction on either the Urton Lake Project

or the Las Vegas Project but was willing to relinquish the prosecution of these enterprises to the Territory of New Mexico or the board of trustees which has charge of the affairs of the grant of Las Vegas. Undoubtedly in consequence of these rumors Mr. Jones has submitted to you several applications for permits to appropriate water. The first of these is dated July 6, 1909, and is for 1430 second-feet, the sources of supply being Tecolotito Canon and Gallinas River, which are tributaries of Pecos River, the number of acres to be irrigated being 100,000. The next application is dated September 29, 1909, and is for all the normal flow and flood waters to the extent of 1,400,000 acre-feet, or 2,000 second-feet of continuous flow, to be taken out of Gallinas River, the equivalent of 300,000 acre-feet, out of Tecolotito and Bernal Rivers, the equivalent of 300,000 acre-feet out of Pecos River 1,000,000 acre-feet, the amount of land to be irrigated being 200,000 acres. The third application is dated October 22, 1909, and appears to be in all material points the same as the application dated September 29, 1909, with the addition of statements that the applicant does not waive any right which he has acquired under the two previous applications and that the new one is made for the purpose of obtaining the permit in the event that the applicant should for any reason fail to obtain a permit under one or both of the previous applications.

On October 1, 1909, Mr. W. M. Reed, District Engineer of the Reclamation Service, sent to the territorial engineer a formal protest against the Jones application of July 6, 1909, upon the ground that its allowance would interfere with the water supply for the Carlsbad project, and the Urton Lake project, and urged that the application should be rejected for the reason that there was no unappropriated water available which made it your duty under section 28 of the laws of 1907 to reject the application.

I understand that you have ordered publication of notice as to one or more of the Jones applications, and that pursuant to that notice the matter will come up before you for hearing in January next.

On October 7, 1909, the board of trustees of the town of Las Vegas filed an application in your office for the appropriation of water from the Gallinas, Sapello, Arroyo Pecos and Sanguijuela and their tributaries, claiming the entire flow of 115 sec.-ft. and storage of flood waters 80,000 acre-feet. This application sets up a claim to all the waters in said stream under the original grant of lands to the town of Las Vegas by the Mexican Government about the year 1835. As to this claim I do not see how you can consider it except so far as there may be presented to you evidence of the amount of water heretofore actually appropriated and used in connection with the lands of said grant. The application, however, makes further claim to the waters under and by virtue and in continuation of the notice filed by the Reclamation Service on January 23, 1906, setting up that said board of trustees is the beneficiary and owner of the lands for which the waters were reserved and the real party in the interest for whom the said notice was given.

As I understand the position of Mr. Jones, he claims that the giving of notice by the United States under section 22 of the law

of 1905 did not constitute the acquisition of any title to the specified waters but only a right on the part of the government thereafter to appropriate and become the owner of the water for the uses indicated in the notice, and that with the repeal of the act of 1905 all such imperfect and inchoate rights under such notices from the United States cease to exist. He further contends that if the repeal of the act of 1905 did not have the effect above indicated, then the provisions of section 40 of the law of 1907, hereinbefore quoted, operated to establish a three years limitation from the date of the notice within which the United States must file plans for the proposed work and to make a failure so to file plans a forfeiture of all rights acquired under such notices.

I am unable to agree with Mr. Jones in either of these contentions. As to the first one attention should be called to the provisions of section 59 of the laws of 1907, which reads as follows:

"Nothing contained in this Act shall be construed to impair existing, vested rights or the rights and priorities of any person, firm, corporation or association, who may have commenced the construction of reservoirs, canals, pipe lines or other works, or who have filed affidavits, applications or notices thereof for the purpose of appropriating for beneficial use, any waters as defined in section 1 of this act, in accordance with the laws of the Territory of New Mexico, prior to the passage of this act; Provided, however, That all such reservoirs, canals, pipe lines or other works and the rights of the owners thereof shall be subject to regulation, adjudication and forfeiture for abandonment, as provided in this act."

It seems hardly necessary to say that the United States acquired something by virtue of the notices filed in January, 1906. The law of 1905 distinctly declares that the waters specified in such notices shall not be subject to further appropriation under the laws of New Mexico and no claims to the use of such waters initiated subsequent to the date of such notices shall be recognized except as to such waters as may be formally released in writing by some officer of the United States thereunto authorized. The government had the right to exclude all other would-be appropriators of the same water as long as the notices remained in force and no release given. That right is protected by section 59 of the Law of 1907 as will appear from an examination of its language; and the proviso in that section that reservoirs, canals, pipe lines and other works and the rights of owners thereof shall be subject to regulation, adjudication and forfeiture for abandonment as provided in the statute does not seem applicable to the rights acquired by the United States, especially as we find no distinct provision in the statute for any regulation, adjudication or forfeiture of these rights.

As to the contention that Section 40 of the laws of 1907, creates a three year period of limitation from the date of the notice in January, 1906, it will be seen from the language of that section that it is entirely prospective in its operation and contains no word which would make it applicable to notices which had been filed under the law of 1905. It is a well established rule of statutory construction that statutes are not to be construed as to affect past transactions unless

the intention is clearly and unequivocally expressed. This is not unlike statutes of limitation of actions as to which it is well settled that they are not to be construed as applying to any causes of action except those arising subsequent to their enactment, unless the language of the statute clearly indicates a legislative intent to make the new statute applicable to existing causes of action.

My conclusion therefore as to this branch of the matter is that in the present state of the record in your office, with the notices of January 1906, unchanged, with no release filed by any duly authorized officer of the United States, and with no limitation of time under section 22 of the law of 1905, there is nothing upon which the application of Mr. Jones can operate unless you shall find that there is water in the Rio Pecos and its tributaries named in those applications, above the amount called for in the government notices. Of course, if there is any surplus, unappropriated water, the Jones application should be allowed to the extent of such unappropriated water, and that is a question, of course, as to which I cannot undertake to advise you.

In view of the rumored willingness on the part of the government to relinquish its rights to the water under the Urton Lake project to the Territory and under the Las Vegas project to the board of trustees of the town of Las Vegas, I understand that you desire some expression of opinion as to whether, under existing statutes, this can be done. Section 36 of the law of 1907 provides that any permit or license to appropriate water may be assigned. I cannot find that this provision is sufficient to cover the rights which the government has under the notices of 1906. The words "permit" and "license" are clearly used in a restricted technical sense adopted in the statute. The permit contemplated by the statute is defined in section 27 of the same act and consists of the endorsement of the engineer's approval on an application to appropriate water; and the statutory license is provided for in section 34 and is to be issued by the territorial engineer upon the completion of an inspection of irrigation works and is limited by the rights described in the permit.

In the same section, however, reference is made to irrigation works "constructed by the United States, or its duly authorized agencies," by which language it is clearly intended to include any works constructed by the Federal Government, or any agency which it might employ. I do not, however, in the Act of Congress of June 17, 1902, 32 Statutes at Large 388, commonly known as the Reclamation Act, find any authority for the Secretary of the Interior to do anything in the way of transferring rights to water or to construct irrigation works, or, indeed, anything more than to proceed with such construction when the necessary funds are available in the Reclamation fund. This is a matter to be submitted to, and decided by, the Secretary of the Interior.

If he can lawfully designate the Carey Act Land Board or the Board of Trustees of the town of Las Vegas as an agency of the United States to proceed with the construction of the two projects, referred to, construction can go forward without any disturbance or relinquishment of the rights to water acquired under the notices of January 23, 1906.

In this connection, I ought to say that my attention has been called to the fact that certain persons, proposing to form a corporation for the purpose of constructing the Urton Lake Project, have made application to the Carey Act Land Board, in accordance with the provisions of the territorial statute creating the board, except that they did not and could not state that application had been made to you for a permit to appropriate the water. Such application for a permit is clearly essential to the validity of any proposition made to the Carey Act Land Board, but if these gentlemen had made such application for a permit, it would be in no better position than the applications of Mr. Jones, and perhaps the same statement is true as to the application of the Board of Trustees of the town of Las Vegas, which has been made to you.

There is another subject to which I ought to make at least some reference, which may hereafter arise in connection with these matters. If the United States should relinquish or release its rights to water under either or all of the notices of January 23, 1906, conflicting applications for the appropriation of the water might be presented to you. It is to be expected that Mr. Jones would insist upon the consideration of his applications already made, or he might make new ones. It is difficult to see how he could get any priority by the making of the applications already on file at a time when there was no unappropriated water to which they would be applicable, nor can it be conceded that the subsequent release of the waters by the United States would give to these applications any vitality which they did not possess at the time that they were made.

In case of conflicting applications covering the same water there would undoubtedly arise controversies under the language in the latter part of section 28 of Chapter 49 of the Laws of 1907, which authorize you to refuse to approve an application if in your opinion the approval would be contrary to the public interest. I feel impelled to speak of this because a portion of the brief submitted by Mr. Melville is devoted to a discussion of what this language means, his views and those of Mr. Jones, as expressed to me orally, being widely divergent. This question is, however, as I am informed, now pending before the district court of San Juan County, upon an appeal from a decision of the Board of Water Commissioners, which reversed an earlier decision by you, the board holding, in substance, that the public interest referred to in the statute must be limited to questions of public health or public safety. I feel that it would border upon impropriety for me, at this time, in advance of the decision by the court, to express an opinion on this matter, especially as it is not now before you for direct consideration, and may possibly not arise hereafter. That decision of the court, when made, will be binding upon you, as long as it stands unreversed and in force, and we must await the action of the court for a definition of your discretionary powers under the section of the statute referred to.

Yours respectfully,

FRANK W. CLANCY,
Attorney General.

ARMORIES.

Armory Board of Control not subject to license or tax for entertainments where proceeds are used for the armory.

Albuquerque, November 24, 1909.

Major S. A. Milliken,
Secretary Silver City Armory Board of Control,
Silver City, New Mexico.

Dear Sir:

I have to acknowledge receipt of your letter of the 20th inst. which you inform me that in order to meet the expenses of nishing, heating, lighting, etc., the Board of Control of the Silver City Armory decided to rent the hall for various purposes to which it is suited, and to give, occasionally, a ball or other form of popular amusement for which an admission fee can be charged, but that it has been notified that it will not be allowed to do so except upon obtaining out a license and paying a special tax as for a place of amusement. I note also the fact that you further say, in the letter, that the funds obtained for the use of the Armory building are applied to the expense of its equipment and maintenance.

I assume that the license and special tax required must be under the requirement of section 4146 of the Compiled Laws of 1897. I am of opinion that the Board of Control and the property under its charge, are not subject to any such tax under the circumstances and conditions stated in your letter. As a general rule, property owned by the Government is not subject to taxation, even when there is a statute exempting it, but there is a specific statute in this Territory so much of which as needs to be considered in this connection follows:

The following property, and no other, shall be exempt from taxation: Property of the United States and of this territory, counties, cities, towns and other municipal corporations, and property devoted entirely to public use and not held for pecuniary profit. Where all funds obtained from the use of the Armory are applied to public purposes connected therewith, I believe that it cannot be said, in any proper sense of the term, that the armory is held for pecuniary profit. I have known of cases in New Mexico where county commissioners have rented the court-house for such purposes, the proceeds going into the county treasury, and I have never heard it suggested that, therefore, the county ought to pay a tax. The Territory is the owner of large quantities of land donated by Congress, a part of which is leased, and the money paid for rentals is devoted to the public uses for which the donations of land were made. The lands are held for pecuniary profit quite as much as your Armory if used as stated in your letter, and yet the suggestion that the lands should be taxed would not find any support from any statute. The Board of Control of the Armory is a mere agency of the territorial government and cannot be subjected to taxation any more than the Territory itself.

Sec. 88.—Custom and Usage of the United States Army.

All matters relating to the organization, discipline and government of the national guard, not otherwise provided for in this act or in the general regulations, shall be decided by the custom and usage of the United States army.

Sec. 89.—Repealer.

All laws and parts of laws in conflict with this act are hereby repealed.

Whereas owing to the necessities of the service an emergency exists, therefore this act shall take effect upon the approval of the same by the governor.

CHAPTER 102.

AN ACT CREATING THE OFFICE OF TERRITORIAL IRRIGATION ENGINEER, TO PROMOTE IRRIGATION DEVELOPMENT AND CONSERVE THE WATERS OF NEW MEXICO FOR THE IRRIGATION OF LANDS AND FOR OTHER PURPOSES. A. H. B. No. 98; Approved March 16, 1905.

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Be it enacted by the Legislative Assembly of the Territory of New Mexico:

Section 1. All natural waters within the limits of New Mexico are hereby declared to belong to the public, and no person shall be denied the right to appropriate said waters for beneficial use.

Sec. 2. Beneficial use shall be the basis, the measure, and the limit of the right to use water. Priority in time of use shall give the better right, and in all cases the claims to the use of water the right shall relate back to the initiation of the claim, upon the diligent prosecution to completion of the necessary preliminaries, and the construction of the works and means of diversion and appropriation; and all dams, ditches, canals, conduits, acequias, reservoirs, and other works heretofore made or constructed, by means of which any waters have been applied to any beneficial use, must be taken to have secured the right to use waters claimed, to the extent of the quantity, which said works are capable of conducting or utilizing: *Provided*, Nothing in this act must be so construed as to in any manner interfere with the vested rights of individuals, companies, or corporations, or the appropriation of waters, which said individual, association or corporation may be applying to a beneficial use.

Sec. 3. The standard of measurement of the flow of water shall be the cubic foot per second of time, flowing unobstructed, to be known as the second foot, "the miner's inch,"

EXHIBIT

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or "inch," shall be the one-fiftieth part of the second foot. The standard of measurement of the volume of water shall be the "acre foot," being the amount of water upon an acre covered one foot deep, which is (43,560) forty-three five hundred and sixty cubic feet.

Sec. 4. In the appropriation of water for irrigation, or in the adjudication of rights to the use of water for such purposes, the amount of water allowed shall not be in excess of the rate of one second foot of water for each seventy (70) acres of land.

Sec. 5. After the passage of this act, when a party entitled to the use of water fails to beneficially use, all or any part of said water, claimed, for a period of four years, such water shall revert to the public, and shall be regarded as unappropriated public water. All water, which after irrigation, runs off of the land, of the party who has used such water, or reappears on the surface, shall be taken to be subject to the control of the person, association or corporation who own or control the works which shall divert the said water from the stream or reservoir; whenever such person, association or corporation are not prepared to conduct such surplus water, to another place of use, any one may apply such water to any beneficial use, without any charge whatever, until such time as the party owning or controlling such irrigation works, shall be prepared to beneficially use such water.

Sec. 6. The place or means of diversion of water may be changed if others are not injured by such change; and the conduits by which such diversion is made, may be extended, to places beyond that where the first was made.

Sec. 7. The owners or constructors of canals, reservoirs, ditches, acequias, or other water works, whether the same be upon lands owned or claimed by them, or upon other lands, must carefully keep and maintain, all of said works, embankments, flumes or other conduits, by which such waters are, or may be held or conducted, in good repair, and condition, so as not to damage, or in any manner injure the property of others, obstruct public highways, by flooding or washing, or by not keeping good and sufficient bridges, or allowing needless waste of said waters by over-flow, evaporation, or by any other means. Any violation of the provisions of this section shall be a misdemeanor, and upon information filed by the district attorney, in the district court, and upon conviction thereof, the party so offending shall pay a fine of not less than ten, nor more than one hundred dollars, and be liable for the damage done: *Provided*, That if after notice by any interested party the governing body of said reservoirs, ditches or other water

works shall within ten days fully repair or replace such damage done, then they shall not be liable to prosecution under this section.

Sec. 8. All canals, ditches, reservoirs, acequias, artesian wells, or other water works, and the water rights appertaining thereto, when the owner or owners of said irrigation works use the waters thereof exclusively upon land or lands owned by him, her, or them, shall be exempt from taxation: *Provided*, In case any water be sold or rented from such irrigation works, then, and in that event, such irrigation works shall be taxed to the extent of such sales or rental: *Provided*, *Further*, That community ditches shall not be subject to taxation.

Sec. 9. Any person, association, or corporation may exercise the right of eminent domain, to acquire a right-of-way, for the storage or conveyance of water for beneficial use, including the right to enlarge existing structures, and to use the same in common, with the former owner. Such right-of-way shall in all cases be so located, as to do the least damage, to private or public property, consistent with proper use and economic engineering construction. Such rights-of-way shall be acquired, subject to review by the courts, in the manner provided by law for the taking of private property for public use; and such right-of-way shall extend only to a ditch, dyke, cutting, or other work sufficient for the purposes required. There is hereby granted, over all the lands, now or hereafter belonging to New Mexico, a right-of-way for canals, acequias, or other water works, and all transfers of territorial lands, hereafter made, shall contain a reservation of such rights-of-way.

Sec. 10. All rights to the use of waters recognized and confirmed by and under the provisions of this act, or by a decree of court, or hereafter otherwise required, shall be and become appurtenant to specified lands owned or controlled by the person or persons claiming the right to use the water, so long as the water can be beneficially used thereon, and shall pass with conveyance of the lands, for which the rights of such use is granted or applied. Such right shall always be held, subject to the local or community customs rules, and regulations, which may be adopted from time to time by a majority of the users from a common source of supply, canals or lateral from which such waters may be taken, when such rules or regulations have for their object the economical use of water. Any harmonious local custom or customs, in the matter of water diversion and distribution which are not detrimental to the public welfare, shall not be molested or changed, unless so desired by the per-

sons interested, and using said harmonious custom or custom already established by them.

Sec. 11. There is hereby created the office of territorial irrigation engineer. The administration of the public water subject to such regulations as may be prescribed by law, shall be under the general supervision of a territorial irrigation engineer, and the commission of irrigation as now organized by law, to be increased to six members, who together with the territorial irrigation engineer, shall be known as the board of control.

Sec. 12. The territorial irrigation engineer shall be appointed by the governor of New Mexico, as soon as may be after the passage of this act, and confirmed by the council. He shall hold his office for a term of two years, or until his successor is appointed and shall have qualified. No person shall be appointed to the position of territorial irrigation engineer who has not had such theoretical knowledge and such practical experience and skill as shall fit him for the position. He shall keep his office in the capitol with fixtures, to be provided by the capitol custodian committee.

Sec. 13. Before entering upon the duties of his office the territorial irrigation engineer shall take the oath, as prescribed by law, for territorial officials. He shall file with the secretary of the territory, a bond in the penal sum of ten thousand (\$10,000.00) dollars, to be approved by the solicitor general, and conditioned upon the faithful discharge of his duties and for delivery to his successor of all property belonging to the public then in his possession or control.

Sec. 14. The territorial irrigation engineer shall receive a salary of two thousand dollars (\$2,000.00) per year, which shall be payment in full for all services rendered by him under this act, to be paid in like manner as other territorial officials are paid. He may employ office assistants and purchase supplies at a total additional expense not to exceed three hundred (\$300.00) dollars per year, or such amounts in addition as may from time to time be appropriated for his office. The territorial irrigation engineer shall be allowed railroad fare if actually paid, team hire and not to exceed three dollars per day for hotel bills and incidentals as traveling expenses while away from the office on official business: *Provided*, That he shall be allowed no expenses further than herein prescribed except for necessary help when actually engaged in field service to be paid upon sworn itemized vouchers, and in no case shall exceed five hundred dollars in any one year.

Sec. 15. The territorial irrigation engineer shall prepare for

the governor, at least thirty days preceding the regular session of the legislature, and at other times when so required by the governor, a full and complete report of the work of his office, with such recommendations for legislation as he may deem advisable.

Sec. 16. The territorial irrigation engineer shall make, all necessary general rules and regulations to carry into effect the duties devolved upon his office subject to the approval of the irrigation commission. All such rules and regulations, relating to applications, for permits to appropriate water, for inspection of works, for issuance of license, for the determination of rights to the use of water, and for charges for same, shall be made by the capitol board of control, also all rules for practice before said board.

Sec. 17. The territorial irrigation engineer shall make, or cause to be made, careful measurement of the flow of the various streams of New Mexico, whose waters are, or are likely to be used for beneficial purposes, commencing such work upon such streams as the board of control shall decide is in most need of such measurements and surveys. He shall collect facts and make surveys to ascertain suitable locations for reservoirs, where such reservoirs may be possible and beneficial, and shall as far as possible determine the cost of construction of such irrigation system, and all other facts obtainable in regard to quantity of water possible to be stored, the character and extent of lands that may be reclaimed from such reservoirs, together with all other information obtainable that may bear upon the subject and be beneficial to the public. He shall become conversant with the water-ways and the irrigable lands of New Mexico, and her needs as to irrigation matters; and shall furnish reasonable information, in regard to such matters, to the newspapers for the territory upon proper request; he shall keep full and complete record of all measurements taken, surveys, examinations or other valuable information, that may come into his possession concerning any of the duties of his office and of all acts wherein the public is interested, and all such records shall be public property and open to the inspection of the public at all times during business hours. The territorial irrigation engineer shall furnish any data that may be in his office, and he shall work in conjunction with the official of the national government, in the reclamation of the arid lands of New Mexico; he shall prepare or cause to be prepared all maps, and plats required for the use of the commissioner of public lands and shall be the locating agent, and expert engineering advisor of the land commission subject to the action of that body, but he shall receive no additional compensation

for such services except as is provided in this act. He shall give advice on any matters of a professional nature, wherein the public is interested, when called upon to do so, by any interested person, and he shall, free of charge, give information desired by any person as to the proper method of measuring water, or of constructing apparatus for such measurement, upon proper application being made and shall give special instructions to all mayordomos, or water masters, as to measurement of water so as to secure a just and uniform distribution of said water, upon application.

Sec. 18. The solicitor general shall be the legal advisor of the board of control, or any member thereof, and shall perform any and all legal duties necessary in connection with their official acts.

Sec. 19. All persons, associations, or corporations, who shall desire to construct, any dam or dyke, for the purpose of storing, appropriating or diverting any public waters, except as otherwise provided in this act, shall, in writing, immediately notify the territorial irrigation engineer of such intended appropriation or diversion, and for what purpose, and shall with due diligence complete the preliminaries and surveys and shall within a reasonable time submit duplicate plans, drawings and specifications of the proposed work to the territorial irrigation engineer, who shall as speedily as possible, and within sixty days, examine such plans, drawings and specifications, and if he approves them he shall affix his approval thereto and return one copy of each such plan, drawing or specification with his approval to the party or parties proposing to construct the works. If the territorial irrigation engineer shall disapprove such plans, drawings or specifications, he shall return the same with his written objections thereto and suggestions of change to the party or parties filing the same: *Provided*, When such dams or dyke is in the opinion of said engineer not of sufficient importance to have the provisions of this section applied to it, the said engineer shall have power, upon written application, to suspend the provisions of this section in regard to such dams or dyke. In case of works of great importance, especially where life or property would be endangered by the failure of such works, the territorial irrigation engineer may require excavations to be made to determine the character of the foundations, and require a statement of the facts in the case to be filed in his office before approving said plans, drawings or specifications, or he may, if the public interests demands, visit the localities of such works before giving his approval, and no rights of any kind under the laws of New Mexico shall be obtained where the proposed works, as in the

section provided, have not been approved by the territorial irrigation engineer: *Provided*, This section shall not apply where less than two thousand dollars are to be expended in the construction of any such work.

Sec. 20. The territorial irrigation engineer shall inspect or cause to be inspected, as often as advisable, every dam, or embankment used for holding water in New Mexico, where the same holds water to the depth of ten feet or more, and if such dam or embankment is found to be unsafe, and life or property liable to be endangered by reason thereof, he shall order the owner or owners to repair the same so as to make it safe; and if such owner or owners shall neglect or refuse to repair the same after notice to that effect has been given in writing by the territorial irrigation engineer, he shall report the facts in the case to the judge of the district court, of the district in which said dam or embankment is situated, and said judge may summon such owner or owners, to appear before him, and if upon a hearing of the facts the judge is of the opinion that such dams or embankments are unsafe, he shall order the sheriff of the county to draw so much of said water as may be necessary from behind such dam or embankment, and to keep said water drawn off until such time as the orders of the territorial irrigation engineer shall be complied with.

Sec. 21. It shall be the duty of the clerk and recorder of each county in New Mexico within 90 days after this act becomes a law, to prepare and forward by registered mail at the expense of the county to the office of the territorial irrigation engineer a transcript of all records, duly certified relating to all water rights: *Provided*, He may forward any original records in his office, which have been duly recorded.

Sec. 22. Whenever the proper officers of the United States, authorized by law to construct irrigation works, shall notify the territorial irrigation engineer that the United States intends to utilize certain specified waters, the waters so described, and unappropriated at the date of such notice, shall not be subject to further appropriations under the laws of New Mexico, and no adverse claims to the use of such waters, initiated subsequent to the date of such notice, shall be recognized under the laws of the territory, except as to such amount of the water described in such notice as may be formally released in writing by an officer of the United States thereunto duly authorized.

Sec. 23. New Mexico shall be divided into six water divisions as follows: Division I, shall be and include, that portion

of New Mexico within the water-shed of the Rio Grande down to the third standard parallel north, and the first guide meridian west.

Division II, shall be and include all that portion of New Mexico east of the water-shed of the Rio Grande and north of the principal base line.

Division III, shall be and include all that portion of New Mexico within the water-shed of the Pecos river south of the principal base line.

Division IV, shall be and include all that portion of New Mexico west of the water-shed of the Pecos river east of the Oscura and San Andreas mountains, and south of the principal base line to, and all south of, the line between townships 8 and 9 south, east of the Rio Grande; and all of the water-shed of the Rio Grande, which empties into said river, on the south of Cowles' peak and the San Mateo mountains, and all west of the continental divide south of the Datil range.

Division V, shall be and include all that portion of New Mexico within the water-shed of the Rio Grande south of the third standard parallel north and west of the first guide meridian west; west of the Oscura and San Andreas mountains to, and north of the line between townships 8 and 9 south, east of said Rio Grande, and all the water-shed of the Rio Grande which empties into said river north of Cowles' peak and the San Mateo mountains, and all west of the continental divide, between Datil range and water-shed of the San Juan river.

Division VI, shall be and include all that portion of New Mexico within the water-shed of the San Juan river.

When found advisable the board of control may change boundaries of the several water divisions.

Sec. 24. There shall be an irrigation commissioner appointed by the governor, with the advice and consent of the council, from each of these six water divisions resident of the division where appointed, to serve for two years and until their successors are appointed, who together with the territorial irrigation engineer shall constitute the board of control as provided in this act. The board of control shall organize within sixty days after the appointment of its members as herein provided by the election of one of its members as president and one of its members as secretary.

Sec. 25. Each irrigation commissioner before entering upon the duties of his office shall take oath, and give a good and sufficient bond, in the penal sum of two thousand dollars for the faithful performance of the duties of his office, in like man-

ner as provided by this act for the territorial irrigation engineer. Whenever any moneys shall have reached the hands of the secretary, the board of control shall fix a sufficient bond for the security of such moneys and such bond shall be in a surety company approved by the board. Each irrigation commissioner shall be paid eight dollars per day, for every day actually consumed in the performance of his official duties, not exceeding one hundred days in each year, which shall be compensation in full for all services rendered under this act, and he shall be allowed all the actual and necessary expenses while attending to his official duties, which said expenses shall not exceed five dollars per day in addition to the cost of railroad fare, team hire or other means of travel. All expense accounts shall be subscribed and sworn to before an officer duly authorized to administer oaths before they shall be allowed or paid.

Sec. 26. The board of control shall meet on the first Monday in March of each year, at the office of the territorial irrigation engineer, and at such other times and places as may be agreed upon by a quorum of said board. A majority of the members of the board of control shall constitute a quorum for the transaction of business. Said board shall adopt all general rules and regulations to govern the operations in the various divisions, to carry into effect the duties devolved upon them and the purposes and intent of this act. The territorial irrigation engineer shall have a vote on all matters coming before the board, except appeals authorized by law, from his acts as territorial irrigation engineer.

Sec. 27. Each irrigation commissioner shall work in conjunction with the territorial irrigation engineer, and shall have general supervision of the administration of irrigation matters in his division; and he shall keep a full and complete record of all his official acts, and of any information in which the public may be interested which may come to his knowledge. All records relating to the office of his division shall be public records, open to public inspection, during business hours, and shall be transmitted to his successor in office.

Sec. 28. Any aggrieved person may appeal from the acts or decisions of a commissioner of irrigation, to the territorial irrigation engineer who shall promptly and at a stated time and place to be fixed by him, upon due notice to the parties, hear and determine the matter in dispute, and his decision shall be final, unless an appeal is taken within thirty days; all appeals from the acts or decisions of the territorial irrigation engineer shall be taken to the board of control; any member of the board, from whom appeal is taken, shall be disqualified to vote

on such appeal. All acts or decisions of the board of control shall be subject to review by the district court in which such cases arise, if taken within sixty days after said decision by the board, and if not so taken such action by said board shall be conclusive and final.

Sec. 29. The board of control shall make all adjudications of water within New Mexico, subject to review by the district and supreme courts of the territory. Whenever it shall be decided by said board of control to adjudicate the waters of any stream and decide the prior rights, public notice shall be given, setting forth the date when the engineer will begin the measurements of the stream and works of diversion therefrom, and a day when a commissioner from the division in which this stream to be adjudicated is situated, shall begin the taking of testimony as to the rights of the parties claiming water therefrom. Said notice shall be published in at least two issues of a newspaper having general circulation in the locality of said stream, the publication of said notice to begin at least thirty days prior to the beginning of taking testimony. The commissioner taking such testimony shall have power to adjourn the taking of evidence from time to time, and from place to place, for the sake of convenience to the public or persons interested in such testimony.

Sec. 30. Each claimant shall be required to certify to his statements under oath, and the members of the board of control are hereby authorized to administer all oaths necessary in the performance of their official duties. All oaths so administered shall be done without charge, as also shall the furnishing of all blanks.

Sec. 31. Upon the date named in the aforesaid notice the commissioner shall begin the taking of said testimony and shall continue as speedily as possible until said testimony shall be completed: *Provided:* In case said commissioner is directly or indirectly interested in the waters of said stream, the taking of evidence as related to said stream shall be under the direction of another member of the board of control, as shall be deemed most expedient.

Sec. 32. Upon the completion of the taking of said evidence the commissioner shall at once give notice, in at least one issue of a newspaper, of general circulation, in that locality and by registered mail to each of the claimants, that upon a certain day, and in a place named in that notice, all of said evidence shall be open to inspection by the various claimants, and said commissioner shall keep said evidence open to inspection at said places not less than one nor more than five days.

Sec. 33. Should any claimant or claimants desire to contest

the evidence or rights of any other claimant they shall, within fifteen days after the testimony has been opened to public inspection, in writing notify the commissioner to that effect stating with reasonable certainty the grounds of their contest which statement shall be verified by the affidavit of the contestant, his agent or attorney, and said commissioner shall notify said contestants and the person, association or corporation whose rights are contested to appear before him, at such convenient place as the commissioner shall designate in such notice, at which time and place he shall conduct said hearing, subpoena witnesses, and take evidence, as is now provided by law for civil cases; all fees to witnesses to be paid by the party or parties against whom the contest shall be finally determined; the evidence in such proceedings shall be confined to the subjects enumerated in the notice of contest.

Sec. 34. Upon the completion of the evidence in the original hearing before said commissioner and the evidence taken in all contests, it shall be his duty to transmit all the evidence and testimony, in said adjudication to the office of the territorial irrigation engineer in person or by registered mail.

Sec. 35. It shall be the duty of the territorial irrigation engineer, or some qualified assistant, to proceed at the time specified in the notice to the parties on said streams to be adjudicated, to make a full and complete examination and measurement of said stream and the diversion works therefrom, the lands irrigated and those suitable of irrigation. Such observation and measurement shall be reduced to writing and recorded in his office and he shall make or cause to be made a map or plat on a scale of not less than one inch to the mile showing with substantial accuracy the course of said stream, the location of all the works of diversion and lands irrigated, for filing in his office.

Sec. 36. At the first regular meeting of the board of control, after the completion of such measurements by the territorial irrigation engineer, and the return of said evidence by the commissioner of irrigation, it shall be the duty of the said board to make and cause to be entered of record in the office of the territorial irrigation engineer an order determining and establishing the several priorities of right to the use and the amounts of appropriations of water of said stream: and as soon as practicable thereafter it shall be the duty of said board to transmit by registered mail a certificate, duly signed by the president of the board of control, and attested under seal of said board by the secretary thereof, setting forth the findings of the board in each case, with the claimants priority number,

for each of the said claimants. Such certificate shall be first transmitted to the clerk of the county in which the claim is situated and by him recorded, in a book kept for that special purpose, the fee for making such record shall be one dollar, which sum shall be collected from the claimant, by the commissioner at the time of taking the testimony, and by the board of control paid to the county recorder taking a receipt therefor, and such receipt shall be kept on file in the office of the territorial irrigation engineer after such record said certificate shall be sent to the claimant to whom it belongs.

Sec. 37. Any party or parties feeling themselves aggrieved by the determination of the board of control may take an appeal to the district court in which such case arises, within sixty days after the recording of the determination of said board in the office of the territorial irrigation engineer. Appeals shall be allowed and may be taken by any person aggrieved to the supreme court of New Mexico within sixty days, from any final order of any district court. The procedure shall be as provided by law for civil suits on appeal: *Provided*, That the final order of the board of control or of any member thereof in adjudicating water rights where no appeal is taken as provided herein under, the provisions of this law or the final decree of any court upon appeal, shall determine the priority of such water right, quantity and the use thereof, and thereafter such rights shall be administered by the territorial irrigation engineer or the board of control in accordance with said order or decree: *Provided, Further*, That the board of control or any member thereof, shall have no power to hear, determine or adjudicate any rights affecting community ditches or acequias, except by consent of all parties interested, using water from said community ditches or acequias.

Sec. 38. The board of control shall fix fees for all matters coming before said board; all moneys collected by the board of control or by any member thereof under the provisions of this act, shall be paid into the fund for the maintenance of said board of control.

Sec. 39. Any ditch or irrigation company may levy assessments against the stock of said company, held by those using water from such works and others to maintain said works, or for improvements.

Sec. 40. Nothing in this act shall be construed to amend or change in any way the duties and powers of the commission of irrigation, as now existing under the laws of New Mexico, but hereafter said duties shall be performed by the board of control herein provided.

Sec. 41. Until otherwise provided by law all of the ex-

penses of the administration of this law, including the salary of the territorial irrigation engineer, and the expenses of this office, the per diem and necessary expenses of the six members of the board of control and any other expenses necessary in the administration of the provisions of this law shall be paid out of moneys derived from the sale of lands pasturage permits given, or other revenues derived from lands granted to the Territory of New Mexico under the act of congress, June 21, 1898, for the purpose of establishing permanent reservoirs for the storage of water, and the improvement of the Rio Grande, and the increase of the surface flow of water of the bed of that river: *Provided*, That the territorial irrigation engineer shall not receive per diem, as herein provided for the other members of the board of control. The compensation and expenses provided to be paid shall be paid upon vouchers and warrants drawn and paid as other territorial officials are paid, as now provided by law.

Sec. 42. All acts and parts of acts in conflict with this act, are hereby repealed, and this act shall be in full force and effect upon and after its passage.

CHAPTER 103.

AN ACT AUTHORIZING BOARDS OF COUNTY COMMISSIONERS TO PROCURE CERTIFIED COPIES OF TOWNSHIP PLATS OF THEIR RESPECTIVE COUNTIES FOR USES OF COUNTY ASSESSORS AND FOR OTHER PURPOSES. *C. A. to H. B. No. 94; Approved March 16, 1905.*

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- Sec. 1. County commissioners to procure certified copies of township plats for use of county assessors.
- Sec. 2. Certified copies to be filed in office of probate clerk.

Be it enacted by the Legislative Assembly of the Territory of New Mexico:

Section 1. That in order to facilitate the accurate description of lands and real estate in the territory, for the purpose of the better assessment and collection of taxes, the county commissioners of the various counties except the County of Taos, are hereby authorized to procure from the office of the surveyor general for the district of New Mexico, certified copies of the field notes and plats of township surveys in their respective counties; showing all entries to which title or right to title has been acquired from the government; and to pay for same

TABLETION OF APPLICATIONS TO APPROPRIATE THE WATERS OF THE RIO GRANDE AND ITS TRIBUTARIES, FILED IN THE OFFICE OF THE STATE ENGINEER OF THE STATE OF NEW MEXICO, WHICH WERE IN GOOD STANDING JULY 1, 1928.

The applications listed in the tabulation on the following pages applied for water for the irrigation of 1,089,746.00 acres of land, exclusive of the following listed applications in which the number of acres to be irrigated is not stated, or which are for the purposes as shown.

Appl. No.	Purpose	Appl. No.	Purpose
1	Irrigation	1722	Domestic
10	Irrigation	1737	Domestic
18	Irrigation	1738	Domestic
23	Irrigation	1739	Domestic
1182	Irrigation	1740	Domestic
1187	Irrigation	1741	Domestic
1431	Irrigation	1742	Domestic
1438	Irrigation	1743	Domestic
1653	Irrigation	1744	Domestic
1657	Irrigation	1745	Domestic
1709	Irrigation	1746	Domestic
1709	Irrigation	1747	Domestic
1711	Irrigation	1748	Domestic
1715	Irrigation	1749	Domestic
1725	Irrigation	1750	Domestic

The applications listed in the above tabulation apply for 2,025,000.00 acre-feet and 3,621.95 second-feet of water, with the exception of the following listed applications which are for all the unappropriated waters, or which do not state the amount of water to be appropriated.

Appl. No.	Purpose	Appl. No.	Purpose
18	Irrigation	1721	Irrigation & Mining
23	Irrigation	1722	Irrigation & Mining
23	Irrigation	1723	Irrigation & Mining
23	Irrigation	1724	Irrigation & Mining
23	Irrigation	1725	Irrigation & Mining
23	Irrigation	1726	Irrigation & Mining
23	Irrigation	1727	Irrigation & Mining
23	Irrigation	1728	Irrigation & Mining
23	Irrigation	1729	Irrigation & Mining
23	Irrigation	1730	Irrigation & Mining
23	Irrigation	1731	Irrigation & Mining
23	Irrigation	1732	Irrigation & Mining
23	Irrigation	1733	Irrigation & Mining
23	Irrigation	1734	Irrigation & Mining
23	Irrigation	1735	Irrigation & Mining
23	Irrigation	1736	Irrigation & Mining
23	Irrigation	1737	Irrigation & Mining
23	Irrigation	1738	Irrigation & Mining
23	Irrigation	1739	Irrigation & Mining
23	Irrigation	1740	Irrigation & Mining
23	Irrigation	1741	Irrigation & Mining
23	Irrigation	1742	Irrigation & Mining
23	Irrigation	1743	Irrigation & Mining
23	Irrigation	1744	Irrigation & Mining
23	Irrigation	1745	Irrigation & Mining
23	Irrigation	1746	Irrigation & Mining
23	Irrigation	1747	Irrigation & Mining
23	Irrigation	1748	Irrigation & Mining
23	Irrigation	1749	Irrigation & Mining
23	Irrigation	1750	Irrigation & Mining

W. D. HENNINGER, Clerk

No.	NAME OF APPLICANT	ADDRESS	STATE	AMOUNT OF WATER TO BE APPLIED FOR	DATE OF APPLICATION	CONSTRUCTION	REMARKS
1	J. Fred Schoolcraft	C. W. K. Schellier Atty. at Law, Alamo, N. M.	Nio Grande Glees.	97 sec. 21	Approved 1/4/06 Priority 1/4/06		Proof not filed.
2	J. Fred Schoolcraft	C. W. K. Schellier Atty. at Law, Alamo, N. M.	Nio Grande Glees.	206 sec. 21	Approved 1/12/06 Priority 1/12/06		Proof not filed.
3	C. S. of America, By S. M. Hall	San Carlos, N. M.	Nio Grande	All unap- propriated water.	Notice filed 8/5/06 Priority 8/5/06	Yes.	Not given.
10	Mr. S. Jackson	Yuma, N. M.	Arroyo Seco	Not given.	Approved 12/28/06 Priority 12/28/06		Proof due.
19	D. A. Watson	Thom, N. M.	Arroyo Seco	20 to 100 sec. 21.	Approved 12/28/06 Priority 12/28/06		Proof due.

NO.	NAME OF HOLDER OF APPLICATION.	ADDRESS.	AMOUNT OF WATER TO BE APPLIED.	STATUS OF APPLICATION.	APPLICATION REJECTED	CONSTRUCTION	ORDER CONSTRUCTION	CONSTRUCTION NOT STARTED	ACRES TO BE IRRIG.	APPROX. COST.	POINT OF DIVERSION	REMARKS.
318	Hettler Ditch & Res. Co.	Santa Fe, N. M.	2.6 sec. ft.	Approved 9/13/09 Priority 9/30/09			Yes.		1,500	\$18,700	Kind of dam bears 1.85 ft. from peak on Cerro Tocco.	(See No. 951)
400	Anade Gonzales et al.	Cuchillo, N. M.	1681.9 ac. ft.	Cert. 10/11/17 License 12/30/05 Priority 2/04/10		Yes.			324.36	1,000	SW Cor. Sec. 24 T. 13 S. R. 18 E.	
487	Joe. W. Norment, assigned to Security Dev. Co.	Santa Fe, N. M.	12 sec. ft.	Approved 10/21/13 License River 3/16/15 Priority 8/1/10		Yes.			2,000	100	From NW Cor. Merques on Santa Fe Hydrographic Survey	This application has not been acted on since Santa Fe Hydrographic Survey
548	Federal Tie & Lumber Co.	Santa Fe, N. M.	150 sec. ft.	Cert. and License 12/1/04 Priority 1/13/11		Yes.			150	1,000	8.82 ft. from NW cor. Sec. 29 T. 13 S. R. 18 E.	Also 1.5 cu. ft. for saw mill purposes.
551	Harold Otter et al.	Hillside, N. M.	1.54 sec. ft.	Cert. and License 10/30/10 Priority 11/4/11		Yes.			105.10	850	8.21 ft. from NW cor. Sec. 29 T. 13 S. R. 18 E.	
563	Silvestre Arceles & Marcello Talles.	Hillside, N. M.	240 ac. ft.	Cert. and License 6/11/15 Priority 5/4/11		Yes.			80	600	SW Cor. Sec. 24 T. 14 S. R. 18 E.	
591	E. J. & J. S. Schofield and E. W. Smith	Tree Pineda, N. M.	480 ac. ft. 520 ac. ft.	Cert. and License 12/8/11 License of diversion 1/10/11 Priority 1/10/11		Yes. Yes.			240 220	Not given Not given	Not given Not given	In good standing.

NO.	NAME OF HOLDER OF APPLICATION.	ADDRESS.	STRAIN	AMOUNT OF WATER TO BE APPLIED.	STATUS OF APPLICATION.	APPLICATION REJECTED	CONSTRUCTION	ORDER CONSTRUCTION	CONSTRUCTION NOT STARTED	ACRES TO BE IRRIG.	APPROX. COST.	POINT OF DIVERSION	REMARKS.
591	Lozano Gallardo.	Vallecito, N. M.	Valle de los Caballeros Creek.	27 ac. ft.	Cert. and License 11/6/04 Priority 10/21/11		Yes.			200	\$200	Where Sec. 24 T. 13 S. R. 18 E. bears 1.00 ft. being in approx. NW. 1/4 Sec. 24 T. 13 S. R. 18 E.	
599	San Luis Power and Water Works.	Cochilla, N. M.	Cochilla River	30 ac. ft.	Approved 6/2/12 Priority 1/29/11		Yes.			17,430	280,000	Cochilla Canal NW 1/4 Sec. 14 T. 13 S. R. 18 E. Cochilla Survey.	In good standing.
601	F. L. Pearce.	Albuquerque, N. M.	Pierson Canyon	14 ac. ft.	Cert. and License 4/1/10 Priority 3/8/12		Yes.			440.66	10,000	Sec. 4 T. 13 S. R. 18 E.	
606	John J. Hyatt	Cooks, N. M.	Wale Canyon	24 ac. ft.	Cert. and License 3/19/10 Priority 9/16/11		Yes.			1,860	1,000	Point 12 Sec. 2 T. 13 S. R. 18 E. Where Sec. 24 T. 13 S. R. 18 E. bears NW 1/4 Sec. 24 T. 13 S. R. 18 E.	
611	J. F. Quintana	Vireyria, N. M.	Rio del Matto	1 ac. ft.	Cert. and License 11/1/10 Priority 9/26/12		Yes.			46	300	NW 1/4 Sec. 24 T. 13 S. R. 18 E.	
618	Walter D. Purley	Santa Fe, N. M.	Rio Grande	.99 sec. ft.	Cert. and License 8/25/13 Priority 12/1/11		Yes.			80	1,800	N. 1/2 Sec. 14 T. 13 S. R. 18 E. From 1 Sec. 24 T. 13 S. R. 18 E.	

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NO.	NAME OF HOLDER OF APPLICATION.	ADDRESS	CITY	AMOUNT OF WATER TO BE APPLIED FOR.	STATUS OF APPLICATION.	APPLICATION RECEIVED.	CONSTRUCTION UNDER CONSTRUCTION.	CONSTRUCTION COST TO BE PAID.	APPROX. POINT OF COST. IN FEET.	REMARKS.
663	E. A. Clemons	Magdalena, S. M.	Peterson and Hop Canyon and Scott Arroyo.	1426 ac. ft.	Cert. and license 5/25/14 Priority 8/7/14	Yes.		120 \$500.	Ditch No. 1 From Hop C Arroyo 125' 23.5' Sec. 11 T. 33. N. 49. at a point from which 18 Cor. Sec. 1 T. 33. N. 49. 48. bears S 0° 41' 45.51' East. Ditch No. 2 From Peterson C. Arroyo 251' 18.5' Sec. 12 T. 33. N. 49. at a point which bears S. 0° 46' 12. 1622 feet from 18 Cor. Sec. 2 T. 33. N. 49. Ditch No. 3 From Hop C. Arroyo and Scott Arroyo 185' 30.5' Sec. 2 T. 33. N. 49. at point which bears S. 50° 41' 12.77' East.	

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NO.	NAME OF HOLDER OF APPLICATION.	ADDRESS	CITY	AMOUNT OF WATER TO BE APPLIED FOR.	STATUS OF APPLICATION.	APPLICATION RECEIVED.	CONSTRUCTION UNDER CONSTRUCTION.	CONSTRUCTION COST TO BE PAID.	APPROX. POINT OF COST. IN FEET.	REMARKS.
670	William Coulson	Hillabro, N. M.	Peroba Creek	26 ac. ft.	Cert. and license 10/18/11 Priority 10/15/14	Yes.		4.6 \$300	W. Cor. Sec. 10 T. 16. N. 4. S. 6. W. 6' 30" E. 5' 10 feet.	
677	E. J. Marney	Tree Pineda, N. M.	Cow Creek	280.12 ac. ft.	Cert. and license 4/13/13 Priority 11/4/13	Yes.		75 \$200	W. Cor. Sec. 21 T. 28. N. 2. S. 2. E. 1/4 Sec. 2. 11950' E. 3385.4 ft.	
680	Battlers Ditch & Res. Co.	Carmen, N. M.	Arroyo de la Piedad	Not given.	Approved 9/10/14 Priority 9/15/14	Yes.		320 5,000	W. Cor. Sec. 10 T. 25. N. 2. S. 10 E. 64 Y. 6749 feet.	See No. 951.
679	Joe. L. & Joe. J. Hatch	Magisa, S. M.	San Jose	651 ac. ft.	Approved 1/15/14 Priority 4/6/14	Yes.		250 1,500	W. Cor. Sec. 3. 1. this Permit Oct. 26 P. E. L. Sec. 1785. 1. bears 431 ac. ft. storage. 3' 74' 30" P. 3500 ft.	
680	Geo. A. Arizaga	Lake Valley, N. M.	Jaramala Creek	37.5 ac. ft.	Cert. and license 5/1/13 Priority 5/25/14	Yes.		124 126	S. 61. 4. 2090 ft. AINMANI From SW Cor. Sec. 2 S. 1. 173. 2. S. 1.	
642	E. N. Jensen	Tree Pineda, N. M.	Spring in Dry Arroyo	24 ac. ft.	Cert. and license 7/28/20 Priority 7/6/13	Yes.		1 250	Q. Cor. Sec. 17 T. 20. N. 2. S. 10 E. 2. 25' E. 2. 25' E. 2340 ft.	

NO.	NAME OF HOLDER OF APPLICATION	ADDRESS	CITY	AMOUNT OF WATER TO BE APPROVED	STATUS OF APPLICATION	APPLICATION RECEIVED	CONSTRUCTION UNDER CONSTRUCTION	CONSTRUCTION NOT STARTED	APPROXIMATE POINT OF DIVERSION	REMARKS
1051	W. M. Morris	Callup, W. M.	Blackwater Creek	187 ac.ft.	Cert. and License 8/25/22 Priority 1/7/23		Yes.		298 Not given.	24 Cor. Sec. 15 T. 22 N. R. 11 E. bears S. 45° E. 995 feet.
1052	George Lyman Kile	Cyants, E. M.	Blackwater Creek	400 ac.ft.	Cert. and License 1/7/24 Priority 12/8/22		Yes.		150 21,500	24 Cor. Sec. 15 T. 22 N. R. 11 E. bears S. 45° E. 995 feet.
1053	Robert Crouch	Los Palomares, S. M. Los Angeles	Creek	50 ac.ft.	Cert. and License 10/18/21 Priority 1/24/22		Yes.		20 100	24 Cor. Sec. 15 T. 22 N. R. 11 E. bears S. 45° E. 995 feet.
1054	D. E. Dept. of Agriculture	Santa Fe, N. M.	Veracruz Creek	450 ac.ft.	Cert. and License 11/9/21 Priority 5/24/22		Yes.		150 200	24 Cor. Sec. 15 T. 22 N. R. 11 E. bears S. 45° E. 995 feet.
1055	American Ser. & Trust Bank	El Paso, Texas	Red River	100 ac.ft.	Approved 4/24/22 Priority 4/21/22 Change of point of diversion 11/23/22		Yes. "not not filed."		10,400 60,000	24 Cor. Sec. 15 T. 22 N. R. 11 E. bears S. 45° E. 995 feet.

NO.	NAME OF HOLDER OF APPLICATION	ADDRESS	CITY	AMOUNT OF WATER TO BE APPROVED	STATUS OF APPLICATION	APPLICATION RECEIVED	CONSTRUCTION UNDER CONSTRUCTION	CONSTRUCTION NOT STARTED	APPROXIMATE POINT OF DIVERSION	REMARKS
1101	Gregorio Mejias and Alberto Chavez	Killbuck, E. M.	San Antonio Creek	61.2 ac. ft.	Cert. and License 4/28/22 Priority 10/10/22		Yes.		174 2175	24 Cor. Sec. 15 T. 22 N. R. 11 E. bears S. 45° E. 995 feet.
1102	Alfonso Bookbinder, L. A. Hughes, Arthur Holliman	Santa Fe, N. M.	Rio Galisteo	2,745 ac. ft.	Approved 11/8/21 Sec. 18 ac. Priority 12/5/21		Yes. Proof of completion of works filed.		815 7,000	24 Cor. Sec. 15 T. 22 N. R. 11 E. bears S. 45° E. 995 feet.
1103	J. A. Meester & A. M. Salazar	Chamita, N. M.	Rio del Oro	110 ac. ft.	Cert. and License 8/25/22 Priority 11/8/22		Yes.		44 2,000	24 Cor. Sec. 15 T. 22 N. R. 11 E. bears S. 45° E. 995 feet.
1104	E. W. Rice	Albuquerque, N. M.	Cieneguilla Creek	400 ac. ft.	Cert. and License 4/4/22 Priority 7/19/22		Yes.		100 1,000	24 Cor. Sec. 15 T. 22 N. R. 11 E. bears S. 45° E. 995 feet.
1105	C. C. Graw, Antonio River and Millado Mills	Killbuck, E. M.	San Antonio Creek	204 ac. ft.	Cert. and License 10/15/20 Priority 7/12/21		Yes.		24 214	24 Cor. Sec. 15 T. 22 N. R. 11 E. bears S. 45° E. 995 feet.
1106	Graham, Bryant and Brubaker	Waldo, N. M.	Galisteo River	1 ac. ft.	Cert. and License 8/12/20 Priority 10/12/21		Yes.		24 214	24 Cor. Sec. 15 T. 22 N. R. 11 E. bears S. 45° E. 995 feet.

No.	NAME OF HOLDER OF APPLICATION	ADDRESS	STREAM	STATUS OF APPLICATION	STATUS OF APPLICATION	APPLICATION REFUSED	CONSTRUCTED	UNDER CONSTRUCTION	ACRES TO BE IRRIGATED	ACRES TO BE IRRIGATED	POINT OF DIVERSION	REMARKS
1318	Isidoro Mena	Orba, N. M.	La Parra Creek	Included in 1506.	Cert. and 1/24/21 Priority 8/2/20		Yes.			1,000	23,800	Combined with 1506 and included in License No. 1506.
1319	Florencio Gilman	"	"	"	"		"	"	"	"	"	"
1320	Julian Jaques	"	"	"	"		"	"	"	"	"	"
1321	Concepcion Aguero	"	"	"	"		"	"	"	"	"	"
1322	Ramona M. Lovato	"	"	"	"		"	"	"	"	"	"
1323	Francisco Mena	"	"	"	"		"	"	"	"	"	"
1324	Aracelis Garcia	"	"	"	"		"	"	"	"	"	"
1325	Juan C. Gutierrez	"	"	"	"		"	"	"	"	"	"
1326	Francisco Aragon y Masero	"	"	"	"		"	"	"	"	"	"
1327	David Trujillo	"	"	"	"		"	"	"	"	"	"
1328	Juan Andres Gonzalez	"	"	"	"		"	"	"	"	"	"
1329	Lorena Gutierrez y Gutierrez	"	"	"	"		"	"	"	"	"	"
1330	Elgin Water Users Association	Salpex, N. M.	Rio Chiquito	Storage 1000 ac. 1/24/21 Priority 9/5/20 Proved due 11/25/20	Approved 1/24/21 Priority 9/5/20 Proved due 11/25/20		Yes. Proof of completion of work due 11/25/20		1,000	23,800	5.14' 50"	The proof of completion of work and location of water and application of meter from the 1st to beneficial use of the license No. 1506.
1331	T. B. Burns, Jr.	Tierra Amarilla, N. M.	Chaves Creek	60 ac. ft.	Approved 1/24/21 Priority 11/24/20 Proved due 11/25/20		Yes. Proof of completion of work due 11/25/20		60	300	5.14' 50"	The proof of completion of work and location of water and application of meter from the 1st to beneficial use of the license No. 1506.

No.	NAME OF HOLDER OF APPLICATION	ADDRESS	STREAM	STATUS OF APPLICATION	STATUS OF APPLICATION	APPLICATION REFUSED	CONSTRUCTED	UNDER CONSTRUCTION	ACRES TO BE IRRIGATED	ACRES TO BE IRRIGATED	POINT OF DIVERSION	REMARKS
1332	Francisco G. de Leon	Blasillas, N. M.	Arroyo de las Placitas	60 ac. ft.	Cert. and 1/24/21 Priority 10/24/20 Priority 1/6/20		Yes.		60	300	5.14' 50"	The proof of completion of work and location of water and application of meter from the 1st to beneficial use of the license No. 1506.
1333	John James Boyd	Elizabethe, N. M.	S. Rarcho Creek	48.2 ac. ft.	Cert. and 1/24/21 Priority 9/12/20 Priority 1/19/20		Yes.		15.34	650	5.14' 50"	The proof of completion of work and location of water and application of meter from the 1st to beneficial use of the license No. 1506.
1334	Francisco & Juan Antonio Villarreal	Tierra Amarilla, N. M.	Barrios Creek	26.7 ac. ft. storage	Cert. and 1/24/21 Priority 10/24/20 Priority 1/12/20		Yes.		138	8,000	5.14' 50"	The proof of completion of work and location of water and application of meter from the 1st to beneficial use of the license No. 1506.
1335	San Luis Power and Water Co.	San Antonio, Colo.	Comilla Creek	87.9 ac. ft.	Approved 1/24/21 Priority 1/20/20 Proved due 1/24/20		Yes. Proof filed.		87.9	1,000	5.14' 50"	The proof of completion of work and location of water and application of meter from the 1st to beneficial use of the license No. 1506.

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NO.	NAME OF HOLDER OF APPLICATION	ADDRESS	STREAM	AMOUNT OF WATER TO BE APPLIED TO IRRIGATION	STATUS OF APPLICATION	APPLICATION SELECTED	CONSTRUCTED	UNDER CONSTRUCTION	CONSTRUCTION NOT STARTED	ACRES TO BE IRRIGATED	APPROX. COST	STATUS OF DIVISION	REMARKS
1449	The Government Co.	Santa Fe, N. M.	Arroyo Chagres	80,000 gallons a day.	Cert. and license 9/12/22 Priority 2/2/21		Yes.			also \$4,000. domestic use.	\$4,000.	8,700' 2.8445.6 ft. from monument E.P.N.C.C. on various Public Grant.	
1450	H. B. Apodaca.	Villahermosa, S. M.	Crucillo Creek	9.5 ac-ft.	Cert. and license 10/17/21 Priority 6/7/21		Yes.			3.5		1.03 10' W. 1254 ft. from T & Cor. Sec. 21 T. 10 S. 9. 6 N. E.	
1451	M. W. Morris	Gallop, N. M.	Mitchell Draw & Bluewater Creek	1,050 ac-ft.	Cert. and license 9/1/22 Priority 10/26/21		Yes.			284	1,000	18 Cor. 2nd 10 ft. 11 N. 11 E. 11 S. 11 E. 11 S. 11 E. 11 S.	
1452	M. W. Morris	Gallop, N. M.	Bluewater Creek	300 ac-ft.	Approved 8/19/22 Priority 1/10/22 Cert. and license 8/5/22		Yes.			120	100	See Application 1356 Sec. 36. Three applications 1. 12 S. 12 E. 12 S. 12 E. applied in same license	
1453	E. J. Harvick	Groves, N. M.	Bluewater Creek	300 ac-ft.	Approved 8/19/22 Priority 3/20/22 Cert. and license 8/5/22		Yes.			120		See Application 1356 Sec. 36. Three applications 1. 12 S. 12 E. 12 S. 12 E. applied in same license	
1454	M. W. Morris	Gallop, N. M.	Bluewater Creek	70 ac-ft.	Cert. and license 8/1/22 Priority 8/21/22		Yes.			35		18 Cor. 2nd 10 ft. 11 N. 11 E. 11 S. 11 E. 11 S. 11 E. 11 S.	

NO.	NAME OF HOLDER OF APPLICATION	ADDRESS	STREAM	AMOUNT OF WATER TO BE APPLIED TO IRRIGATION	STATUS OF APPLICATION	APPLICATION SELECTED	CONSTRUCTED	UNDER CONSTRUCTION	CONSTRUCTION NOT STARTED	ACRES TO BE IRRIGATED	APPROX. COST	STATUS OF DIVISION	REMARKS
1455	The Government Co.	Santa Fe, N. M.	Arroyo Chagres	80,000 gallons a day.	Cert. and license 9/12/22 Priority 2/2/21		Yes.			also \$4,000. domestic use.	\$4,000.	8,700' 2.8445.6 ft. from monument E.P.N.C.C. on various Public Grant.	
1456	H. B. Apodaca.	Villahermosa, S. M.	Crucillo Creek	9.5 ac-ft.	Cert. and license 10/17/21 Priority 6/7/21		Yes.			3.5		1.03 10' W. 1254 ft. from T & Cor. Sec. 21 T. 10 S. 9. 6 N. E.	
1457	M. W. Morris	Gallop, N. M.	Mitchell Draw & Bluewater Creek	1,050 ac-ft.	Cert. and license 9/1/22 Priority 10/26/21		Yes.			284	1,000	18 Cor. 2nd 10 ft. 11 N. 11 E. 11 S. 11 E. 11 S. 11 E. 11 S.	
1458	M. W. Morris	Gallop, N. M.	Bluewater Creek	300 ac-ft.	Approved 8/19/22 Priority 1/10/22 Cert. and license 8/5/22		Yes.			120	100	See Application 1356 Sec. 36. Three applications 1. 12 S. 12 E. 12 S. 12 E. applied in same license	
1459	E. J. Harvick	Groves, N. M.	Bluewater Creek	300 ac-ft.	Approved 8/19/22 Priority 3/20/22 Cert. and license 8/5/22		Yes.			120		See Application 1356 Sec. 36. Three applications 1. 12 S. 12 E. 12 S. 12 E. applied in same license	
1460	M. W. Morris	Gallop, N. M.	Bluewater Creek	70 ac-ft.	Cert. and license 8/1/22 Priority 8/21/22		Yes.			35		18 Cor. 2nd 10 ft. 11 N. 11 E. 11 S. 11 E. 11 S. 11 E. 11 S.	

No.	NAME OF HOLDER OF APPLICATION.	ADDRESS.	CITY.	AMOUNT OF WATER TO BE APPLIED.	STATUS OF APPLICATION.	APPLICATION RECEIVED.	CONSTRUCTED.	UNDER CONSTRUCTION.	ACRES TO BE IRRIGATED.	APPROX. COST.	POINT OF DIVERSION.	REMARKS.
1706	Van Hartman	Sevilla, N.M.	Rio del Medio	50 ac.	Priority 4/21/56			No.	50	Not given.	See No. 1705	This application was returned for correction.
1707	Charlotte A. Palmer and Sarah Ashton	Tron, N.M.	Reginald Creek	500 ac.	St. Cor. 1/20/56		Yes.	No.	500	\$350	See No. 1706	
1708	Francis E. Ford and Charlie F. Ford	Tron Victor, N.M.	Aguaje de la Piedad	1350 ac.	Priority 5/9/56			No.	440	\$150	See No. 1707	Protected. No action taken.
1709	J.M. Mc Donald	Algodones, N.M.	San Miguel Springs	350 ac.	Priority 5/12/56			No.	Public and Private water works, 30 ft. 12 ft. 12 ft.	\$100	See No. 1708	Protected. No action taken.
1710	J.M. Mc Donald	Algodones, N.M.	San Miguel Springs	all unapp. water	Priority 5/12/56			No.	1500 ft.	\$1000	See No. 1709	Protected. No action taken.
1711	J.M. Mc Donald	Algodones, N.M.	San Miguel Springs	all unapp. water	Priority 5/12/56			No.	1500 ft.	\$1000	See No. 1710	Protected. No action taken.

No.	NAME OF HOLDER OF APPLICATION.	ADDRESS.	CITY.	AMOUNT OF WATER TO BE APPLIED.	STATUS OF APPLICATION.	APPLICATION RECEIVED.	CONSTRUCTED.	UNDER CONSTRUCTION.	ACRES TO BE IRRIGATED.	APPROX. COST.	POINT OF DIVERSION.	REMARKS.
1712	J.M. Mc Donald	Algodones, N.M.	San Pablo Creek	5 ac.	Priority 1/1/56			No.	Public and Private water works, 30 ft. 12 ft. 12 ft.	\$1000	See No. 1711	Protected. No action taken.
1713	Fred Ford and Louis A. Vally	Algodones, N.M.	Montejo Arroyo	500 ac.	Priority 12/1/56			No.	Irrigation	200	See No. 1712	Protected. No action taken.
1714	Pump Building Co.	Chama, N.M.	Tronco River	Storage 18,000 ac.	Priority 12/1/56			No.	20,000	118,000	See No. 1713	Proof of completion of works due 7/27/56.
1715	E.S. Spencer	Chicago, Ill.	Galisteo Creek	5000 ac.	Priority 12/1/56			No.	900	Not given.	See No. 1714	Action is being taken on this claim.
1716	Galisteo Comp. Co.	Santa Fe, N.M.	Galisteo River	Storage 10,000 ac.	Priority 12/1/56			No.	100	Not given.	See No. 1715	Cancelled 7/19/56.