GROUND WATER STATUTES

OF

SELECTED WESTERN STATES

COLORADO WATER CONSERVATION BOARD
215 State Services Building
1525 Sherman Street
Denver, Colorado 80203

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# GROUND WATER STATUTES OF SELECTED WESTERN STATES

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FOREWORD

It is a strange paradox of our existing law that the surface waters of the state are adjudicated and administered at great expense, while on the other hand the equally important ground water resource is ignored. The two uses are now on a collision course, without having to be so. Millions of dollars have already been expended in the construction of wells without any color of right or title, except for the vacuum which exists in our state water laws. Ground water uses should be entitled to protection consistent with constitutional mandates.

Both the executive and legislative branches of our government have already recognized that the statutory void in the administration and use of the total water supply of this state should be filled. This event, however, is not likely to occur until there is concerted action by the people of the state to insure that suitable water legislation be enacted.

The early western pioneer gave little or no thought to the use of ground water. He had neither the machinery nor the energy sources, other than the primitive hand pump, which could be used for extracting large quantities of water from underground sources. Within a relatively short period of history, a virtual revolution has taken place in the science of extracting underground waters. Reluctantly and slowly people began to realize that both ground and surface waters constituted a common source of supply, and that it must be managed as such.

In response to the mounting demands of its citizens, the legislatures of the various states began to attempt to find solutions. Thus, almost without exception, ground water laws followed surface regulations by a much later date. Alaska and
Hawaii were able to profit from the experiences of other states, and provided for both ground and surface water regulations at the very outset of their statehood. Of the nineteen states whose lands lie partly or entirely west of the 100th meridian, only Colorado has not yet adopted comprehensive laws covering the use of both ground and surface waters. The experiences of other states should be of considerable assistance in drafting suitable laws for Colorado. This publication, containing the ground water laws of fifteen selected western states, is designed for that purpose.

FELIX L. SPARKS
Director

FLS:lk
ARIZONA

REVISED STATUTES
ANNOTATED

ARTICLE 1. PUBLIC NATURE AND USE OF WATER

Sec. 45-101. Public nature of waters of the state; beneficial use; reversion to state

A. The waters of all sources, flowing in streams, canyons, ravines or other natural channels, or in definite underground channels, whether perennial or intermittent, flood, waste or surplus water, and of lakes, ponds and springs on the surface, belong to the public and are subject to appropriation and beneficial use as provided in this chapter.

B. Beneficial use shall be the basis, measure and limit to the use of water.

C. When the owner of a right to the use of water ceases or fails to use the water appropriated for five successive years, the right to the use shall cease, and the water shall revert to the public and shall again be subject to appropriation.

ARTICLE 7. GROUND WATERS

Sec. 45-301. Definitions

In this article, unless the context otherwise requires:

1. "Critical groundwater area" means any groundwater basin as defined in paragraph 5 or any designated subdivision thereof, not having sufficient ground water to provide a reasonably safe supply for irrigation of the cultivated lands in the basin at the then current rates of withdrawal.

2. "Department" means the state land department.

3. "Exempted well" means a well or other works for the withdrawal of ground water used for domestic, stock watering, domestic water utility, industrial or transportation purposes and a well for the irrigation of not to exceed three hundred twenty acres of land actually used by a bona fide established public or private secondary school or
institution of higher learning having at least one hundred full-time students enrolled, which secondary school or institution is engaged in the teaching of or experimentation in the science of agriculture, and where the curriculum of such school or institution includes a course in the study of or experimentation in the science of agriculture, provided the use of water produced from any such well shall be limited to such purposes only and neither the water produced from the well nor such well shall be leased, sold or otherwise disposed of whereby other interests may acquire or use the same for any other purpose. If any such school or institution ceases to teach the science of agriculture, the right to produce water from such well for irrigation purposes shall terminate.

4. "Ground water" means water under the surface of the earth regardless of the geologic structure in which it is standing or moving. It does not include water flowing in underground streams with ascertainable beds and banks.

5. "Groundwater basin" means land overlying, as nearly as may be determined by known facts, a distinct body of ground water, but the exterior limits of a groundwater basin shall not be deemed to extend upstream or downstream beyond a defile, gorge or canyon of a surface stream or wash.

6. "Groundwater subdivision" means an area of land overlying, as nearly as may be determined by known facts, a distinct body of ground water. It may consist of any determinable part of a groundwater basin.

7. "Irrigation district" means a district organized by law for the irrigation of the lands comprising the district, whether designated as an irrigation district, water conservation district, water users' association, mutual irrigation project or otherwise.

8. "Irrigation well" means any well or works for the withdrawal of ground water primarily used for irrigation purposes and having a capacity in excess of one hundred gallons per minute.

9. "Notice of intention to drill" means the notice required to be sent to the state land department by all persons intending to drill new wells.

10. "Owner of land" means any person in whom legal title to real property is vested or any person having an equitable interest in real property.
11. "Permit" means a permit to construct and operate a well or other works for the withdrawal of ground water.

12. "Person" includes an individual, firm, public or private corporation or government agency.

13. "User of ground water" means any person who is putting ground water to a beneficial use primarily for irrigation purposes.

14. "Well" means only those wells used for irrigation or drainage and having a capacity of more than one hundred gallons of water per minute.

Sec. 45-302. Administrative powers and duties of department

A. This article shall be administered by the state land department.

B. The department shall:

1. Adopt, publish and make available to the public reasonable rules and regulations necessary for the administration of this article.

2. Compile and maintain records of the various groundwater basins and subdivisions in the state, together with factual data as to the safe annual yield of ground water and the use thereof in such basins and subdivisions to the end that the public may have an opportunity to understand groundwater resources and the steps necessary to obtain its maximum beneficial use.

3. Appoint deputies and assistants necessary for the efficient administration of this article and prescribe their duties.

4. Cooperate with any agency of the United States, or of this state, or any political subdivision thereof, or with any person in carrying out the purposes of this article.

C. The department may at reasonable times enter upon the lands of any groundwater basin or subdivision where a well or other works for the withdrawal of ground water are located for the purpose of examining such well or works subject to the provisions of this article, and for the purpose of obtaining factual data in a groundwater basin or any subdivision thereof.

Sec. 45-303. Designation of groundwater basins

A. The department shall, from time to time as adequate factual
data become available, designate groundwater basins and subdivisions thereof, and as future conditions require and factual data justify, shall alter the boundaries thereof.

B. The designation or alteration of the boundaries of a groundwater basin or subdivision thereof may be initiated by the department, or by petition to the department signed by not less than twenty-five users or one fourth of the users of ground water in the groundwater basin or subdivision thereof, whichever is the lesser number.

C. Before designating or altering the boundaries of a groundwater basin or subdivision thereof the department shall prepare and file in its office a map thereof clearly showing and describing all lands included therein, together with adequate factual data justifying the designation or alteration of the boundaries of the groundwater basin or subdivision, whereupon the department may make and file an order designating the groundwater basin or subdivision. Such map and factual data, together with a copy of the order of the department designating such basin or subdivision, shall remain a public record in the department and shall at all reasonable times be made available for examination by the public.

D. The designation or alteration of the boundaries of such groundwater basin or subdivision shall give the department reasonable access to the lands included therein, but shall not be construed as giving authority to regulate the drilling or operation of wells in the groundwater basin or subdivision.

Sec. 45-304. Report and registration of wells existing prior to October 3, 1945

A. All persons owning or operating water wells for irrigation or drainage prior to October 3, 1945 shall report to the department the well or wells which the person owns or operates upon the forms provided by the department.

B. The report shall state:

1. The location of the well within the legal subdivision where it is located.

2. The depth of the well and whether or not it is cased.

3. The name of the owner or person in control thereof.

4. The legal description of the land upon which the water is used.
5. The amount of water produced from the well during the year 1944 and up to January 1 of each year thereafter, if available, or the number of hours the pump on the well operated during such period.

6. Such other data as the department may require.

C. The department shall provide a permanent record in which shall be entered the information gathered from the persons owning or controlling such wells as are reported.

Sec. 45-305. Notice of intention to drill

A. No person shall drill or cause to be drilled any well for the development and use of ground water without first filing notice of intention to drill with the department in the form prescribed and furnished by the department.

B. The notice shall state:
1. The name and address of the person sending the notice.
2. The legal description of the land upon which the well is proposed to be drilled, together with the name of the owner thereof.
3. The legal description of the location of the well.
4. The depth and diameter of the proposed well, if it is intended to be cased.
5. The legal description of the land upon which the water is proposed to be used, together with the name of the owner thereof.
6. The time within which it is proposed to begin construction.
7. The proposed use to which the water will be applied.

C. Notice of intention to drill shall be filed with the department in duplicate. Upon filing the notice, the department shall cause a record of the notice to be made and shall stamp or otherwise note the date of receipt of the notice and a filing number thereon. Within fifteen days thereafter the department shall mail the duplicate copy of the notice by prepaid mail to the person giving the notice at the address stated therein. Upon receipt of a copy of the notice showing the record of receipt by the department and the filing of the notice, this section shall be deemed to have been fully complied with in respect to the drilling of the well described in the notice, but the well
must be completed within one year. In case of failure to complete a well within one year, a new application may be filed.

Sec. 45-306. Filing of log by driller; forms for reports

A. When the drilling of a well is completed, a copy of the log thereof shall be filed by the driller with the department, together with a showing of the casing installed in the well and the capping applied, if it is an artesian well.

B. The department shall prescribe forms on which reports of drillers are to be made, which shall be obtainable from the department upon request.

Sec. 45-307. Failure or refusal to file reports or notices; penalty

A person who fails or refuses to make any of the reports, give the notices required, or fails to cooperate with the department under the provisions of §§ 45-304, 45-305 and 45-306, is guilty of a misdemeanor punishable by a fine not exceeding one hundred dollars.

Sec. 45-308. Designation or alteration of critical groundwater areas

A. The department shall from time to time as adequate factual data become available justifying the action, designate critical groundwater areas, and as future conditions require and factual data justify, alter the boundaries thereof.

B. The designation of a critical groundwater area, or the alteration of the boundaries thereof, may be initiated by the department, or by petition to the department signed by not less than twenty-five users, or one fourth of the users of ground water within the exterior boundaries of the groundwater basin or subdivision within which the lands proposed to be included in the critical groundwater area are located, whichever is the lesser number.

Sec. 45-309. Notice and hearing on critical area designation

A. Before designating the proposed critical groundwater area, or altering the exterior boundaries thereof, a public hearing shall be held and conducted by the department.

B. Notice of the hearing shall be given by the department and shall include:

1. The legal description of the lands proposed to be included in the critical groundwater area.
2. The time when and place where the public hearing will be held, which shall be not less than four weeks after the first publication of the notice of hearing.

C. The notice, together with a map clearly showing and describing all lands proposed to be included in the critical ground water area, shall be published once each week for four successive weeks in a newspaper of general circulation in the county or counties in which the lands or any part thereof are located. The publication of notice when completed shall be deemed to be sufficient notice of the hearing to all interested persons.

D. Any interested person may appear at the hearing, either in person or by attorney, and submit evidence, either oral or documentary, for or against the designation of the proposed critical groundwater area or alteration of the exterior boundaries thereof.

Sec. 45-310. Findings of fact upon hearing; publication

A. After conclusion of the hearing the department shall make and file written findings of fact with respect to the designation of the proposed critical groundwater area, or alteration of exterior boundaries of existing critical groundwater area, considered during the hearing. If in the findings of fact the department decides to designate a critical groundwater area, or alter the boundaries of an existing critical groundwater area, it shall make and file an order designating the critical groundwater area, or altering the boundaries pursuant to the findings.

B. The findings of fact and order shall be published in the manner and for the length of time prescribed for the publication of notice of the public hearing, and when so published shall be final and conclusive unless an appeal therefrom is taken within the time and manner prescribed in § 45-321. All factual data compiled by the department to justify a hearing for the designation of a critical groundwater area, together with a copy of the findings of fact and map showing and describing the lands included in the critical groundwater area shall remain a public record of the department and shall at all reasonable times be made available for examination by the public.

C. A true copy of the map shall also be filed in the office of the county recorder of the county or counties in which the critical groundwater area is located.

Sec. 45-311. Modification of orders; dissolution of critical groundwater areas
An order of the department issued pursuant to this article may be altered, modified or dissolved in the manner and at such times as provided in this article for the designation or alteration of a critical groundwater area, but no petition to abolish a critical groundwater area shall be received by the department within one year following a rejection of an identical petition.

Sec. 45-312. **Limitation upon use of water from unlawfully drilled or exempt wells; preservation of rights**

Notwithstanding any provision of this article to the contrary, no ground water shall be used for irrigation purposes from any well which was drilled in violation of the provisions of Laws 1948, Sixth Special Session, Chapter 5, Laws 1953, Chapter 42, or Laws 1954, Chapter 86, nor shall ground water taken from an exempted well be used for irrigation purposes except as provided in the case of schools or institutions of higher learning as defined in § 45-301, but rights established under valid permits issued by the department pursuant to such laws shall not be affected by any provision of this article.

Sec. 45-313. **Application for permit to construct irrigation well within critical groundwater area**

A. No person, except as otherwise provided, shall construct an irrigation well in a critical groundwater area established as provided by this article without a permit therefor.

B. A person proposing to construct an irrigation well within a critical groundwater area shall make application to the department for a permit authorizing such construction which shall contain the following:

1. Name and address of applicant.

2. Name and address of the owner of the land on which the well is to be constructed.

3. Location of the well.

4. Groundwater basin or subdivision thereof, if designated, within the boundaries of which the withdrawal is to be made.

5. Amount of water in acre feet per year to be withdrawn.

6. Depth and type of construction proposed for the well.

7. Legal description of the land on which use of groundwater is proposed to be made.
8. Such other information as the department may require.

C. No permit shall be required for completion of any well located within a critical groundwater area and substantially commenced prior to the designation of the critical groundwater area, but the well or other works for the withdrawal of ground water thus substantially commenced shall be completed within one year from the date of designation or alteration of the critical groundwater area.

Sec. 45-314. Issuance of permit

A. Upon application as provided in § 45-313, the department shall issue a permit for the construction of the proposed well, but no permit shall be issued for the construction of an irrigation well within any critical groundwater area for the irrigation of lands which on the date the area was declared critical, were not irrigated, or had not been cultivated within five years prior thereto.

B. Except as provided in this article, no permit shall be issued to any person other than the owner of the land on which the proposed well is to be located, or to an irrigation or agricultural improvement district or other organized irrigation project for use upon lands within the district or project.

Sec. 45-315. Change of well location after permit issued

The holder of a permit desiring to change the location of the well authorized by § 45-314 shall make application to the department for an amendment of the permit. The application shall contain the same information as required for an original application. If the department determines that the proposed well when constructed at the proposed new location will be used to irrigate the same lands as the original well and will be located within the exterior boundaries of the same critical area, it shall approve the application and issue an amended permit therefor.

Sec. 45-316. Permits for replacing or deepening wells

A. A permit shall be granted by the department for the replacement or deepening of an existing irrigation well upon a satisfactory showing that the well intended to be replaced or deepened will no longer yield sufficient water to irrigate the land normally supplied by it within the five years immediately prior to filing application for the permit.

B. A person proposing to drill a replacement well or deepen an
existing well within the restricted area shall make application to the department for a permit authorizing the action. The application shall contain the following where applicable:

1. Name and address of the applicant.

2. Name and address of the owner of the land on which the well is to be drilled.

3. Location of the well to be replaced or deepened.

4. Location of the replacement well.

5. Amount of water in acre feet to be withdrawn.

6. Legal description of the land irrigated by the irrigation well to be deepened or replaced.

7. Such other information as the department may require.

C. No permit shall be issued until the department has determined that the proposed deepening is necessary, or that the replacement well is a bona fide replacement of an existing well.

Sec. 45-317. Completion report on well drilled under permit

A. Upon completion of construction of a well in compliance with the terms of the permit therefor, the permittee shall file a written statement with the department which shall contain the following:

1. Legal description of the land upon which the well is located and the distance from and the direction of any pre-existing well not more than one-quarter mile distant.

2. Depth, diameter and general specifications of the well.

3. Thickness in feet and physical character of each bed, stratum or formation penetrated by the well.

4. Length and position in feet below the land surface, and commercial specifications of all casing used.

5. Location and specifications of each screen or perforated zone in the casing.

6. Tested capacity of the well in gallons per minute as determined
for a non-flowing well by measuring the discharge of the pump after
continuous operation for at least four hours, or for a flowing well
by measuring the natural flow at the land surface.

7. Depth in feet from the land surface to the static groundwater
level, measured immediately prior to the well-capacity test.

8. Drawdown of the water level measured in feet for a non-flowing
well after not less than four hours of continuous operation and while
still in operation, or for a flowing well, the shut-in pressure
measured in feet above the land surface or in pounds per square inch
at the land surface.

9. Such additional information as may be required by the depart-
ment to establish compliance with the terms of the permit and the
provisions of this article.

B. The well driller or other constructor of works for the with-
drawal of ground water shall furnish the permittee a verified record
of the factual information necessary to show compliance with this
section.

Sec. 45-318. Report of groundwater withdrawals

The department may require any person making a groundwater with-
drawal in a critical groundwater area which does not fall within the
purview of this article to furnish reasonable factual information
regarding the use and quantity of the withdrawals.

Sec. 45-319. Waste prohibited

A. Ground water which has been withdrawn shall not be allowed
to waste. To effectuate the purposes of this section the department
shall:

1. Require all flowing wells to be capped or equipped with valves
so that the flow of water can be completely stopped when not in use.

2. Require both flowing and non-flowing wells to be so constructed
and maintained as to prevent waste of ground water through leaky
casing, lack of casings, pipes, fittings, valves or pumps, either
above or below the surface.

B. The reasonable withdrawal of ground water for drainage purposes
or in connection with the construction, development, testing or repair
of a well, or the inadvertent loss of water due to breakage of a

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pump, valve, pipe or fitting shall not be construed as waste if reasonable diligence is shown by the permittee in effecting the necessary repairs.

Sec. 45-320. Fees

The department shall collect, in advance, the following fees:

1. Filing application for permit to construct a well, three dollars.

2. Making a copy of a document filed in his office, ten cents for each one hundred words or fraction thereof.

3. Certifying copies, documents, records or maps, one dollar for each certification.

4. Furnishing blueprint or photostat copy of any map, drawing or document required by the department, actual cost of the work.

5. Issuing permit to construct a well, five dollars.

Sec. 45-321. Appeals

Any person aggrieved by a determination, order or decision of the department may have the decision reviewed by appeal in the manner prescribed by § 45-154. The appeal to the superior court shall be heard de novo and the party appealing may appeal to the supreme court from an adverse judgment of the superior court.

Sec. 45-322. Wells not affected

Nothing in this article shall be construed to affect the right of any person to construct and operate an exempted well as defined in § 45-301, nor to affect the right of any person to continue the use of water from existing irrigation wells.

Sec. 45-323. Penalties

A. Any person who violates, or refuses or neglects to comply with any provision of this article or of any rule or regulation promulgated by the department pursuant thereto, is guilty of a misdemeanor punishable by a fine of not less than twenty-five nor more than two hundred fifty dollars for each offense.

B. Any person who, after notice that he is in violation of this
article, continues to violate any provision of this article, and fails to comply therewith within a reasonable length of time is guilty of a separate offense for each day the violation continues.

Sec. 45-324. Enforcement

The department shall enjoin or restrain any person irrigating, pumping, or drilling in violation of this article.
Sec. 87B-1. Declaration of policy. To meet the growing need for domestic, municipal, agricultural and industrial uses, it is necessary that the ground-water resources of the State be put to beneficial use to the fullest extent to which they are capable, that the threat of exhaustion, depletion, waste, pollution or deterioration by salt encroachment, and the unreasonable method of diversion, withdrawal or use of ground-water resources be prevented and that the supply and quality of such water resources be protected, conserved and controlled to assure their reasonable and beneficial use in the interest of the people of the State. It is therefore declared to be the policy of the State that (a) the development, utilization and control of all ground-water resources shall be directed to make the maximum contribution to the public benefit, (b) the ground-water resources of all areas must be regulated and protected from the threat of exhaustion, depletion, waste, pollution or deterioration by salt encroachment to assure adequate supplies for beneficial uses in the interest of the people, (c) the ground-water resources of certain areas under threat of exhaustion, depletion, waste, pollution or deterioration by salt encroachment must be protected, conserved and controlled to assure adequate supplies for beneficial uses in the interest of the people, (d) the State in the exercise of its sovereign power, should control the development and use of the ground-water resources of the State in all areas and in areas where the supply is threatened with exhaustion, depletion, waste, pollution or deterioration by salt encroachment.

The legislature hereby makes the following findings concerning the development, utilization and control of the ground-water resources of the State:

(a) The development, utilization and control of the ground-water resources of the State are vital to the people in order to assure adequate supplies for domestic, municipal, agricultural, industrial and other beneficial uses.
(b) The ground-water resources of the State must be regulated and protected for their best utilization, conservation and protection in order to prevent threat of exhaustion, depletion, waste, pollution or deterioration by salt encroachment.

(c) The ground-water resources of the State must be regulated and protected in areas where the supply is under threat of exhaustion, depletion, waste, pollution or deterioration by salt encroachment.

(d) The regulation of ground-water resources is essential to protect beneficial uses and to assure adequate supplies for beneficial users.

(e) The ground-water resources can best be utilized, conserved and protected if utilization thereof is restricted to beneficial uses and controlled by the board of land and natural resources responsible for proper development and utilization of the ground-water resources of the State.

(f) Planning for the development and utilization of ground-water resources is essential in view of population growth and the expanding economic activity with the State.

Sec. 87B-2. Definitions. In this chapter, except where the context otherwise requires:

(a) "Beneficial use" means use of water, including the method of diversion, storage, transportation and application, that is reasonable and consistent with the public interest in the proper utilization of water resources, including, but not limited to, domestic, municipal, military, agricultural and industrial uses.

(b) "Board" means the board of land and natural resources created by chapter 14A.

(c) "Designated ground-water area" means an area in which the board finds that the ground water must be regulated and protected for its best utilization, conservation and protection in order to prevent threat of exhaustion, depletion, waste, pollution or deterioration by salt encroachment or an area in which the board finds that the ground water must be regulated and protected in order to protect the ground-water resources from exhaustion, depletion, waste, pollution or deterioration by salt encroachment.

(d) "Domestic use" means the use of water by an individual, or by a family unit or household for drinking, cooking, laundry, sanitation, and other personal comforts and necessities, for the watering of stock...
used in operating a farm, or as food for the family or household, or for the irrigation of the lawn or family garden not exceeding one-half acre in area.

(e) "Emergency" means a shortage of ground water in any ground-water area, whether established as a designated ground-water area or not, which threatens the public health, safety and welfare.

(f) "Ground water" means any water found beneath the surface of the earth, whether in perched supply, dyke-confined, flowing or percolating in underground channels or streams, under artesian pressure or not, or otherwise.

(g) "Municipal use" means the use of water through public services available to the inhabitants of a community for the promotion and protection of their health, comfort and safety, for the protection of property from fire, and for the purposes listed under the term "domestic use."

(h) "Permit" means a permit issued upon application of a person in accordance with the provisions of this chapter.

(i) "Person" imports the plural as well as the singular and includes governmental entities and agencies, public and private corporations, associations, estates and individuals.

(j) "Preserved use" means a use preserved under section 87B-15 of this chapter.

(k) "Shortage" means the absence of a sufficient quantity and quality of ground water in a designated ground-water area to supply lawful use of water.

(l) "Time of taking" means, in view of the nature, manner, and purposes of a beneficial use of water, the most accurate method of describing the time when the water is taken, including description in terms of hours, days, weeks, months, or physical, operational, or other conditions.

(m) "Well" means an artificial excavation or opening into the ground, or artificial enlargement of a natural opening by which ground water is drawn or is capable of being drawn from the ground; the term includes, but is not limited to, circular, vertical, horizontal or approximately horizontal tunnels, and vertical or inclined shafts.

Sec. 87B-3. Regulations of ground-water resources. The ground
water of designated ground-water areas of the State is subject to regu-
lation under the provisions of this chapter. After June 12, 1959, no
person shall make any use of the water of any designated ground-water
area of the State except in compliance with the provisions of this
chapter. No right, title, or interest in the use of any of the ground-
water resources of this State can be acquired by means of prescription.
Nothing contained in this section or this chapter, however, shall be
construed as an admission or declaration on the part of the State of
any prescriptive rights to ground water in favor of any private party.

Sec. 87B-4. Administration by board of land and natural resources.
The board of land and natural resources created by chapter 14A shall
administer the ground-water program established by this chapter, pro-
vided, that at all meetings held by the board to consider matters
arising hereunder the managing officer or engineer of the board of
water supply or water department of the respective counties shall be
invited to participate as ex-officio members without voting power.

Sec. 87-B-5. General powers. To effectuate the provisions of this
chapter, the board is authorized:

(a) To conduct, authorize, cooperate or contract for the conduct-
ing of scientific investigations, experiments and research and to
collect data concerning the ground-water resources of the State through
the water program of the board;

(b) To enter at all reasonable times upon any and all public and
private lands within the State without doing damage, for the purpose
of conducting investigations and studies and inspecting water resources
and their use;

(c) To establish and consult with advisory boards and/or water
user associations; to advise and make recommendations to the board on
research, policies, administration and other matters; and to encour-
age and promote agreements among users of ground water and to supply
the parties to such agreements with information and advice in order
to carry out the intent of this chapter;

(d) To require reports, on forms furnished by the board, from all
owners or operators of wells, from all persons holding or claiming
rights to withdraw or receive or use water from wells owned by others,
and from all well drillers, whether such wells are located in the
designated ground-water areas or not, providing all information on
ground-water use that the board shall deem necessary to further the
purposes of this chapter; and it shall be the duty of all such persons
to make such reports to the board at the times prescribed in its rules
and regulations; and each such report shall contain a statement, signed by the person making the report, to the effect that the contents thereof are true to the best of his knowledge and belief;

(e) To designate ground-water areas for regulations, protection and control under this chapter on its own initiation or upon petition by any interested person, where the board, after conducting the scientific investigations and research mentioned in (a) and after public hearing and published notice thereof as herein provided, finds that any of the following conditions exist or may exist in the foreseeable future, and that such conditions will endanger the supply or condition of the water in such area: (1) the use of ground water exceeds the rate of recharge; (2) ground-water levels are declining or have declined excessively; (3) chloride content of the water is increasing to a level that materially reduces the value of the use to which water is being put; (4) excessive preventable waste of water is occurring; (5) any proposed water development or developments which if constructed would in the opinion of the board lead to one of the above conditions;

(f) To retain such establishment of a designated ground-water area so long as the factors justifying such designation remain in effect, provided, however, that whenever it may appear that such factors are no longer present, the board, upon its own motion or a motion of any interested person, shall hold a public hearing for the purpose of determining whether or not the designation should be rescinded, and provided, further, that such hearing shall be called and conducted in the manner prescribed in this chapter and no such rescission shall be or become effective until thirty days after the decision with respect thereto;

(g) To hold hearings upon matters pending before it for determination; provided that where a public hearing and published notice thereof are required, notice of the time, place and purpose of the hearing shall be published once each week for three successive weeks in a newspaper of general circulation in the appropriate county, the last publication to be not less than ten days nor more than thirty days before the date set for the hearing;

(h) To subpoena and compel the attendance of witnesses to any investigation, hearing, or proceeding before it, and the production of books, papers, and other evidence pertinent to any such matters; to administer oaths and examine witnesses under oath, and to authorize any of its members or agents to do so. In the event of failure of any person to obey any such subpoena or to testify thereunder before the board or before any member or agent of the board authorized by it to take testimony, such person may be punished as for contempt of the circuit.
court, on application therefor by the board to the court;

(i) To seek enforcement in the courts of the provisions of this chapter or of any rule, regulation, or order of the board;

(j) To intervene on behalf of the public in any suit in any court in which the control or withdrawal of any waters from any designated ground-water area or rights to their use shall be in issue;

(k) To require the cessation of waste of the water of any designated ground-water area, and the cessation of practices that result or are likely to result in the excessive or dangerous deterioration of the quality of any such water; and

(l) To exercise its shortage and emergency authority under this chapter.

Sec. 87B-6. Departmental cooperation. The board may request and receive from any department, division, board, bureau, commission, public body, or agency of the State or of any political subdivision thereof, or government of the United States of America or any of its agencies, or from any organization, incorporated or unincorporated, which has for its object the control or use of any of the water resources of the State, such assistance and data as will enable the board to properly carry out its activities and effectuate its purposes hereunder. The board shall provide for reimbursement of such agencies for special expenses resulting from expenditures not normally a part of the operating expenses of any such agency.

Sec. 87B-7. Rules and regulations. (a) The board may make, amend, and repeal such rules and regulations concerning notices, hearings, and proceedings, under this chapter as it shall deem necessary for the accomplishment of its functions, and all such rules and regulations, when made or amended after a public hearing thereon, of which notice shall have been published as provided in section 7-30 shall have the force and effect of law.

(b) For purposes of rules, regulations, forms and orders, the board may classify uses, sources, methods of development and other related matters within its jurisdiction and prescribe different requirements therefor.

Sec. 87B-8. Action of other government agencies and municipalities. (a) No state or local governmental agency may enforce any ordinance, rule or regulation that affects the use of ground-water

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from a designated ground-water area, whether promulgated before or after June 12, 1959, unless the board has approved the ordinance, rule or regulation.

(b) No state or local governmental agency or other person having the power of eminent domain or condemnation may exercise that power in respect to the taking of any rights to ground water from designated ground-water areas within the State unless written consent is obtained from the board.

Sec. 8713-9. Investigations. The board may in its discretion:
(a) make such investigations as it deems necessary, through the attorney general, (1) to determine if any person has violated or is about to violate any provision of this chapter or any rule, regulation or order of the board, or (2) to aid in enforcing this chapter or in formulating rules, regulations or orders;
(b) Require or permit any person to file a statement as to any facts and circumstances within his knowledge concerning the matter to be investigated; and
(c) Publish information concerning any investigation made pursuant to this chapter.

Sec. 87B-9. Investigations. The board may in its discretion:
(a) make such investigations as it deems necessary, through the attorney general, (1) to determine if any person has violated or is about to violate any provision of this chapter or any rule, regulation or order of the board, or (2) to aid in enforcing this chapter or in formulating rules, regulations or orders;
(b) Require or permit any person to file a statement as to any facts and circumstances within his knowledge concerning the matter to be investigated; and
(c) Publish information concerning any investigation made pursuant to this chapter.

Sec. 87B-10. Injunctions. If it appears to the board that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule, regulation or order of the board, the board may bring an action in the appropriate circuit court to enjoin any such acts or practices and to enforce compliance with this chapter or any rule, regulation or order. Upon a proper showing, the court shall grant a restraining order, temporary or permanent injunction, or other appropriate relief. The board shall not be required to post a bond.

Sec. 87B-11. Hearing procedures. In all hearings required to be conducted under this chapter: (a) the board shall have authority to (1) administer oaths and affirmations, (2) issue subpoenas, (3) rule upon offers of proof and receive relevant evidence, (4) take or cause depositions to be taken, (5) regulate the course of the hearing, (6) hold conferences for the settlement or simplification of the issues by consent of the parties, (7) dispose of procedural requests or similar matters, (8) make findings of fact, determinations of law, conclusions, and the decision as to the subject matter of the hearing, and (9) take any other action authorized by board rule consistent with this chapter.
(b) Any oral or documentary evidence that the board deems helpful
may be received but the board shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. Parties to the hearing shall have the right to present their case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In a hearing on the initial application for a permit, the board may adopt procedures for the submission of all or part of the evidence in written form only.

(c) The board may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge. Parties shall be notified either before or during hearings, or by reference in preliminary reports of otherwise, or the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.

(d) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, shall constitute the exclusive record for decision by the board, and, upon payment of lawfully prescribed costs, shall be made available to the parties. The board shall prepare an official record, which shall include findings of fact, determinations of law and the decision as to the subject matter involved, and the testimony and exhibits, but it shall not be necessary to transcribe shorthand notes unless requested for court review.

Sec. 87B-12. Judicial review. (a) Any person aggrieved by an order or decision of the board may obtain a review of the order or decision in the circuit court of the judicial circuit in which the ground-water area affected by the order or decision is located by filing in the court within sixty days after the entry of the order or decision a written petition praying that the order or decision be modified or set aside in whole or in part.

(b) A copy of the petition shall be served upon the board, and within thirty days after service of the petition, or within such further time as the court may allow, the board shall transmit to the court the original or a certified copy of the entire record upon which the order or decision was based; but, by stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs.
(c) On appeal, the findings of the board as to the facts, if supported by substantial evidence in the record, are conclusive.

(d) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the board's order or decision.

Sec. 87B-13. Continuation and initiation of domestic uses.  
(a) Domestic uses of ground water as defined in this chapter, whether in a designated ground-water area or otherwise, being made on June 12, 1959, may be continued and new domestic uses of ground water may be initiated after June 12, 1959, without the user being required to certify his use or to apply for a permit; provided, such user shall file such reports as are required by the board.

(b) Where access to a suitable supply of ground water is available, new domestic uses may be initiated without regard to whether the taking for domestic use reduces the water supply or any preserved use or use made pursuant to a permit.

(c) No person making a domestic use may initiate an action in the courts to compel the reduction of any preserved use or use made pursuant to a permit granted prior to the initiation of the domestic use in order to make available a sufficient quantity of water for the domestic use.

Sec. 87B-14. Shortage and emergency powers. Domestic uses shall be subject to the shortage and emergency powers of the board under sections 87B-33 and 87B-34 of this chapter.

Sec. 87B-15. Preservation of existing uses.  (a) The withdrawal of water directly from any designated ground-water area, which is a lawful and beneficial use, other than a domestic use, (1) being made at the effective date the board designates a designated ground-water area, (2) to be in conjunction with the facilities under construction at such date, or (3) made within the five years prior to such date, may be continued if the uses remain beneficial and if the user complies with the provisions of section 87B-16. For the purposes of this chapter the effective date shall be the date 90 days prior to the date the board designates a designated ground-water area.

(b) Unless authorized by the board, no use preserved in subsection (a) may be modified by increasing the quantity of water used or by substantially changing the purpose or manner of the use, or the time of taking the water, or the point of diversion of the water from any designated ground-water area; provided that any
municipal corporation or person supplying a municipal corporation may increase its water use from such designated ground-water area up to one hundred thousand gallons, or five per cent, whichever is the greater, per day more than its average per day beneficial use during the year immediately prior to the date of establishment of a designated ground-water area without first receiving prior authorization from the board.

(c) Uses preserved under subsection (a) may be conveyed to the same extent and in the same manner as they could prior to June 12, 1959.

Sec. 87B-16. Certification of existing uses. (a) After the board has designated a ground-water area for protection and/or regulation, the board shall require by rule any person making a use preserved under section 87B-15(a) to file a declaration of his use with the board within three months, or any extension thereof, after the effective date of the rule. In its rules requiring the filing of declarations of existing uses, the board may divide the State into areas and prescribe different dates for filings from the various areas.

(b) Any person making a use preserved under section 87B-15(a) may file a declaration of his use with the board at any time prior to the required date for filing of such declaration.

(c) (1) When the board requires filing of declarations of uses by rule, it shall cause notice of the rule to be given by publication once each week for the three weeks prior to the effective date of the rule in a newspaper of general circulation in the affected county. (2) The board shall also cause notice of the rule to be given by registered or certified mail to any person required to file of whom the board has or could readily obtain knowledge or who has requested mailed notice to be given when the board adopted a rule requiring the filing of declarations.

(d) The declarations shall be in such form and contain such information as the board by rule prescribes, including the quantity of water used, the purpose or manner of the use, the time of taking the water, and the point of diversion of the water.

(e) If no declaration is filed as required by rule of the board, the board, in its discretion, may conclusively determine the extent of the uses preserved under section 87B-15(a).

(f) If the board has not acted upon a declaration within six months
after its filing, the board shall certify those uses described in
the declaration.

(g) When uses preserved have been ascertained in accordance with
the provisions of this section, the board shall issue a certificate
describing such uses and setting forth the maximum daily and annual
drafts from each well. Such certificate shall be deemed to consti-
tute a description of the use preserved pursuant to this chapter,
but shall not be deemed to constitute an adjudication of property
rights, if any, to the water in the designated ground-water area.

(h) The board shall hold a hearing upon the request of any per-
son adversely affected by the certification or the refusal to certi-
fy any water use.

Sec. 87B-17. Exchange of preserved uses. (a) Any person making
a use preserved under section 87B-15(a) may voluntarily exchange
his preserved use for a permit.

(b) Whenever any person shall materially violate the provisions
of section 87B-15, the board in its discretion, after giving notice
by registered mail, and after a hearing may enter an order that the
violation constitutes an offer of exchange under subsection (a).

Sec. 87B-18. Extinguishment of preserved uses. All or any part
of the uses preserved under section 87B-15(a) shall be extinguished
if they are not used for four consecutive years or for any five out
of seven years. In computing the period: (1) years of nonuse in
the three years prior to the effective date of the establishment of
a designated ground-water area shall be conclusively presumed to be
years of nonuse, (2) years of nonuse caused by a shortage of water
due to natural conditions will be considered neither years of use
nor nonuse, and (3) years during which a declaration was required
to have been filed under section 37B-16 but during which none was
filed shall be conclusively presumed to be years of nonuse.

Sec. 87B-19. Permits for ground-water use. After the board has
designated a ground-water area for protection and/or regulation,
except in respect to domestic uses and uses preserved under section
87B-15(a), a withdrawal of water directly from any designated
ground-water area may be made only in accordance with a permit
issued by the board.

Sec. 87B-20. Permits to supply ground water. (a) After June
12, 1959, no state or local government agency shall contract to
obtain ground-water supply within a designated ground-water area
from any person not holding a permit to supply water, unless permission is obtained from the board by such state or local governmental agency.

(b) After June 12, 1959, no person shall contract to supply or sell the rights to ground water from a designated ground-water area to another person unless permission is obtained from the board by the supplier or seller.

(c) Permission required by this section shall not be withheld except for good cause and shall be deemed granted unless the board shall act or commence hearings thereon within ninety days after application therefor.

Sec. 87B-21. Application and notice. (a) Each application for a permit required under this chapter shall be in writing and shall state specifically the information determined by board rule or regulation to be necessary to determine (1) the merits of the water use, (2) the hazards to public health, safety or welfare, (3) the desirability of the permit, and (4) any qualifications of the applicant the board deems appropriate to effectuate the provisions of this chapter.

(b) At least ten days prior to the granting of any permit, the board shall cause notice of the application to be given by publication at the applicant's expense in a newspaper of general circulation in each county in which the water resources will be substantially affected by the granting of the permit. The board by rule, regulation or order, may also require the applicant to mail notices of the application to any state or local governmental agency or other person who may have an interest in the application.

Sec. 87B-22. Granting of permits. (a) In granting permits and determining the duration of permits, the board shall have as its objective the most beneficial use of the ground-water resources of the State.

(b) Permits may be granted if: (1) there is water available for use; (2) the use of the water will be beneficial; (3) the most beneficial use and development of the water resources of the State will not be impaired by granting the permit; and (4) granting the permit will not substantially and materially interfere with preserved uses, or with domestic or permitted uses made previously, except as provided in this chapter.

(c) Permits may be granted without regard to whether, under the
law operative in the State prior to the date of designation of a designated ground-water area, the use made under the permit could have been maintained only in connection with specific lands or otherwise.

(d) The board shall hold a hearing upon the request of any person who is or may be adversely affected by the granting or denial of a permit.

Sec. 87B-23. Classes of permits. The board is authorized: (1) to establish classes of permits, and (2) to exempt for specific periods minimal quantities of water or types of water uses or users in specified areas from the requirement of a permit when the board finds that such exemptions do not constitute an unreasonable impediment to the beneficial use of the ground-water resources of the State.

Sec. 87B-24. Duration of permits. Each permit shall be issued for a specified period, not exceeding fifty years, as determined by rule, regulation or order of the board, depending upon the manner and nature of the water use involved.

Sec. 87B-25. Conditions of permits. Each permit granted by the board shall contain and be subject to the following conditions:

(a) The water must be used for the beneficial purpose described in the permit;

(b) The use authorized by the permit must not interfere substantially and materially with preserved uses or with domestic or permitted uses made previously, except as provided in this chapter;

(c) The use is subject to the shortage and emergency powers of the board;

(d) The permit may be suspended or revoked in accordance with the provisions of this chapter; and

(e) Such other conditions as the board may establish by rule or regulation to effectuate the provisions of this chapter.

Sec. 87B-26. Permits interfering with preserved, domestic or permitted uses. Where application is made for a permit and there is sufficient water available, but the use under the permit would interfere substantially and materially with a domestic use previously initiated, or with the ground-water supply, or water diver-
sion facilities of a preserved use or a use made under a permit previously granted, the board may issue a permit subject to the condition that the permit holder furnish to the person whose use is interfered with water equal in quantity and comparable in quality to that lost by reason of the interference.

Sec. 87B-27. Compulsory relinquishment of permits. Unless a specific exemption is authorized by the board, each permit shall provide, as a condition, that at any time or at a specified time after issuance of the permit the permit holder may be required, upon receipt of reasonable compensation, to relinquish to the board his permit if the board determines that (1) there exist one or more applicants for permits to make water uses which would be more beneficial, or which would be as beneficial and would provide a more complete utilization of the available water, than the permit holder is making; (2) additional permits to make such uses cannot be granted without acquiring the water use permit because there is no reasonably available water; and (3) the applicants are willing and able to furnish reasonable compensation to the permit holder.

Sec. 87B-28. Renewal of permits. (a) A permit holder may file an application for a renewal of the permit after one-half the length of the period of the existing permit has expired. Renewed permits shall take effect immediately upon being granted by the board.

(b) If a permit has been issued for a period exceeding one year, and no application for renewal has been filed six months before the expiration of the permit, the board after thirty days' written notice to the permit holder during which time such permit holder may file an application for renewal may proceed immediately to grant to another person a permit to use the water being used pursuant to the existing permit, and to become effective upon the expiration of the existing permit.

(c) The board shall hold a hearing upon the request of any person adversely affected by the renewal or refusal to renew a permit.

Sec. 87B-29. Revocation of permits. (a) A permit may be revoked in whole or in part: (1) for any material false statement in the application or in any report or statement of fact required pursuant to the provisions of this chapter; (2) for violation of the provisions of this chapter; (3) for violation of the conditions of the permit; or (4) for nonuse.

(b) In any proceeding to revoke a permit in whole or in part,
the board shall give written notice to the permit holder of the facts or conduct which may warrant such action and provide opportunity for a hearing.

Sec. 87B-30. **Injunctions.** Except as provided in this chapter, no court may enjoin the use of water by any person who holds a valid permit for such use.

Sec. 87B-31. **Injury to property rights, damages.** If the use authorized under a permit results in an injury to any property rights, the injured person is entitled to compensation for actual damages in a suitable action at law against the permit holder.

Sec. 87B-32. **Fees for permits.** The board is authorized to establish fees for the issuance of permits under this chapter. In determining the amount of fees the board shall consider the class of the permit, the duration of the permit, the capital investment made or to be made by the permit holder, the quantity or nature of the water use, and other factors the board deems relevant or material in the determination of a reasonable fee. The fee may be waived, in the discretion of the board if the permit holder has agreed to convey any rights having substantial value to the State.

Sec. 87B-33. **Water shortages.** (a) If a shortage of water exists in any designated ground-water area of the State, the board may, after public hearing and published notice thereof as herein provided, in order to obtain the most beneficial use of the water resources of the State and to protect the public health, safety, and welfare and the interests of the water users affected:

(1) establish rules, regulations, or orders affecting the use of ground water, as the conditions warrant, and forbidding the construction of new diversion facilities or wells, the initiation of new water uses, or the modification of any existing uses, diversion facilities, or storage facilities within the affected area;

(2) regulate the use of ground water within the affected area by apportioning, limiting, or rotating uses of water, or by preventing those uses which the board finds have ceased to be reasonable or beneficial, but (i) domestic, municipal and military uses shall always be preferred to other uses; (ii) preserved uses shall always be preferred to uses made pursuant to permits; and (iii) among permitted uses which are substantially similar, the board shall give preference to uses initiated prior in time unless the board determines that such preference would impair or be detrimental to the public interest in the utilization of water resources; and

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(3) make other rules, regulations and orders necessary for the preservation of the public health, safety and welfare and the interest of affected water users.

(b) On the motion of any affected person, the board shall set a time and place of a hearing to determine whether any rules, regulations, or orders established under this section shall be amended, repealed or revoked.

Sec. 87B-34. Emergency powers. (a) If any emergency exists within any ground-water area of the State whether designated or not, and if the board finds that the exercise of its powers under section 87B-33 will not protect the public health, safety and welfare, the board, after public hearing and published notice thereof as herein provided, may:

(1) Establish rules, regulations, or orders limiting, apportioning, rotating, or prohibiting the use of the water resources in the affected ground-water areas of the State;

(2) Authorize any affected state or local governmental agency or public water supplier to enter upon public or private lands in any ground-water area and remove any amount of ground water necessary to protect the public health, safety and welfare, provided that, if such entry or taking interferes with any property right other than any right which may be acquired under this chapter due compensation shall be payable;

(3) Designate the ground-water area for regulation in accordance with section 87B-5(e); and

(4) Make other rules, regulations, and orders necessary with respect to such ground-water areas to protect the public health, safety and welfare during the emergency.

(b) On the motion of any affected person, the board shall set a time and place of a hearing to determine whether the emergency has terminated or whether any rules, regulations or orders entered during the emergency should be amended, repealed or revoked;

(c) The authority granted the board under this section is in addition to the authority granted under other provisions of this chapter.

Sec. 87B-35. Short title. This chapter may be cited as The Ground-Water Use Act.
Sec. 87B-36. **Effect on other statutes.** This chapter is not intended to repeal chapter 101 or sections 152-30 to 152-40, inclusive. In the event of conflict, this chapter, and rules and regulations established hereunder, shall prevail.
42-226. Ground waters are public waters. - It is hereby declared that the traditional policy of the state of Idaho, requiring the water resources of this state to be devoted to beneficial use in reasonable amounts through appropriation, is affirmed with respect to the ground water resources of this state as said term is herein-after defined: and, while the doctrine of "first in time is first in right" is recognized, a reasonable exercise of this right shall not block full economic development of underground water resources, but early appropriations of underground water shall be protected in the maintenance of reasonable ground water pumping levels as may be established by the state reclamation engineer as herein provided. All ground waters in this state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same for beneficial use. All rights to the use of ground water in this state however acquired before the effective date of this act are hereby in all respects validated and confirmed.

42-227. Drilling and use of wells for domestic purposes excepted. - The excavation and opening of wells and the withdrawal of water therefrom for domestic purposes shall not be in any way affected by this act; providing such wells and withdrawal devices are subject to inspection by the department of reclamation and the department of public health. Rights to ground water for such domestic purposes may be acquired by withdrawal and use.

42-228. Drilling and use of wells for drainage purposes excepted. - The excavation and opening of wells and the withdrawal of water therefrom for the sole purpose of improving or preserving the utility of lands by draining them shall not be forbidden or governed by this act, and, likewise, there shall be excepted from the provisions of this act the excavation and opening of wells and withdrawal of water therefrom by canal companies, irrigation districts, and other owners.
of irrigation works for the sole purpose of recovering ground water resulting from irrigation under such irrigation works for further use on or drainage of lands to which the established water rights of the parties constructing the wells are appurtenant.

42-229. Methods of appropriation. - The right to the use of ground water of this state may be acquired only by appropriation. Such appropriation may be perfected by means of the application permit and license procedure as provided in this act; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation. All proceedings commenced prior to the effective date of this act for the acquisition of rights to the use of ground water under the provisions of sections 42-201 - 42-225, Idaho Code, may be completed under the provisions of said sections and rights to the use of ground water may be thereby required. But the administration of all rights to the use of ground water, whenever or however acquired or to be acquired, shall, unless specifically excepted herefrom, be governed by the provisions of this act.

42-230. Definitions. - (a) "Ground water" is all water under the surface of the ground whatever may be the geological structure in which it is standing or moving.

(b) "Well" is an artificial excavation or opening in the ground by which ground water is sought or obtained.

(c) "Well driller" is any person or group of persons who excavate or open a well or wells for compensation or otherwise upon the land of the well driller or upon other land.

(d) "Domestic purposes" is water for household use and livestock, and water used for all other purposes not in excess of 13,000 gallons per day.

(e) "Water right" is the legal right, however acquired, to the use of water for beneficial purposes.

42-231. Duties of the state reclamation engineer. - In addition to other duties prescribed by law, it shall be the duty of the state reclamation engineer to conduct investigations, surveys and studies relative to the extent, nature and location of the ground water resources of this state; and to this end, the state reclamation engineer may, on behalf of the state of Idaho enter into cooperative investigations, researches, and studies with any agency or department
of the government of the United States, or any other state or public authority of this state, or private agencies or individuals. It shall likewise be the duty of the state reclamation engineer to control the appropriation and use of the ground water of this state as in this act provided and to do all things reasonably necessary or appropriate to protect the people of the state from depletion of ground water resources contrary to the public policy expressed in this act.

42-232. Application to appropriate ground water. - For the purpose of establishing by direct means the priority right to withdrawal and use of ground water, any person desiring to acquire the right to the beneficial use of ground water pursuant to this act may make application to the department of reclamation for a permit to make such appropriation. Such application shall set forth:

1. The name and postoffice address of the applicant.

2. The source, location and description of the water supply in so far as the same is known to the applicant.

3. The nature of the proposed use.

4. The location and description of the proposed well and ditch or other work, if any, and the amount or flow of water to be diverted and used.

5. The estimated time within which such well and ditch, or other work, if any, will be completed and the water withdrawn and applied to use.

6. In case the proposed right of use is for agricultural purposes, the application shall give the legal subdivisions of land proposed to be irrigated, with the total acreage to be reclaimed as near as may be ascertained.

When any such application is made, the department of reclamation shall charge and collect from the applicant the fee provided for in section 42-202.

42-233. Examination of application. - On receipt of application for permit to appropriate ground waters, it shall be the duty of the state reclamation engineer to make endorsement thereon of the date and hour of its receipt and to make a record of such receipt in some suitable book in his office. It shall be the duty of the state reclamation engineer to examine said application and ascertain if it is
in due form, as above required. If, upon such examination the application is found defective, it shall be the duty of the state reclamation engineer to return the same for correction within thirty days from receipt of the application, and the date of such return with the reason therefor shall be endorsed on the application and a record made thereof in a book kept for recording the receipt of such applications. A like record shall be kept of the date of the return or corrected applications, but such corrected application shall be returned to the state reclamation engineer within a period of sixty days from the date endorsed thereon by the state reclamation engineer; and if such application be returned after such period of sixty days, such corrected application shall be treated in all respects as an original application. All applications which shall comply with the provisions of this act and with the regulations of the department of reclamation shall be numbered consecutively and shall be recorded in a suitable book kept for that purpose. After an application has been duly filed with the state reclamation engineer, as in this act provided, it shall be the duty of the state reclamation engineer to make such further investigation as he may deem necessary to determine whether ground water subject to appropriation exists in the location or locations described in the application; and the state reclamation engineer may also require from the applicant such additional information as he, the state reclamation engineer, deems reasonably necessary to enable him to act upon the application.

42-233a. "Critical ground water area" defined - Granting or denial of application - Appeal. - "Critical ground water area" is defined as any ground water basin, or designated part thereof, not having sufficient ground water to provide a reasonably safe supply for irrigation of cultivated lands in the basin at the then current rates of withdrawal, as may be determined and designated, from time to time, by the state reclamation engineer. In the event the application for permit is made with respect to an area that has not been designated as a critical ground water area the state reclamation engineer shall forthwith issue a permit in accordance with the provisions of section 42-234. In the event the application for permit is made in an area which has been designated as a critical ground water area, if the state reclamation engineer from the investigation made by him on said application as herein provided, or from the investigation made by him in determining the area to be critical, or from other information that has come officially to his attention, has reason to believe that there is insufficient water available subject to appropriation at the location of the proposed well described in the application,
the state reclamation engineer may forthwith deny said application; provided, however, that if ground water at such location is available in a lesser amount than that applied for the state reclamation engineer may issue a permit for the use of such water to the extent that such water is available for such appropriation.

Any applicant dissatisfied with the decision of the state reclamation engineer may appeal to the district court in the manner provided for in section 42-237e.

42-233b. Repealed.

42-234. Time for completion of work - Permit - Cancellation of permit. - Whenever the state reclamation engineer determines that a permit shall issue pursuant to an application to appropriate ground water as made in this act, he shall determine the time reasonably required to complete the proposed well and other works and apply such water to such proposed use which time, however, shall not be less than two years nor more than five years from the date of the permit; he shall then issue a permit pursuant to such application. The permit so issued by the state reclamation engineer shall be in a form prescribed by him and shall contain (1) the name and postoffice address of the applicant; (2) the location and description of the proposed well; (3) the amount of flow or water to be diverted and used; (4) a description of the premises on which such water shall be used; and (5) the period of time within which such well shall be completed and such water applied to such use; provided that upon application by the permittee the state reclamation engineer may for good cause shown extend the time for such completion and application to use, but no such extension shall be for a period longer than five years.

If the work is not completed or the water applied to beneficial use as contemplated in the permit, the state reclamation engineer shall, thirty (30) days after the time limited therefor in the permit has expired, give notice by registered mail to the permittee at the address shown on his application, that unless the permittee appears within sixty (60) days after the mailing of such notice and shows the state reclamation engineer good cause why such permit shall not be canceled, then such permit will be canceled. Upon default of the permittee after such notice, or upon failure of the permittee to show good cause in accordance with said notice, the state reclamation engineer shall cancel such permit.

42-235. Proof of completion of works and application to beneficial use. - Within thirty days after the expiration of the time
limited in any permit issued under this section or at any time before such expiration, the permittee may give notice to the state reclamation engineer that he is prepared to prove that he has completed construction of his works and applied ground water to beneficial use in the manner contemplated by the permit. Such notice shall also state:

1. The name and postoffice address of the permittee.

2. The description of the well and other works, if any, constructed.

3. The amount of ground water that has been used.

4. The place and nature of such use, and if for irrigation, the description by legal subdivisions of the land so irrigated.

5. The date of priority which the permittee is prepared to establish. Such notice and such written proof as may be required to be submitted by such permittee shall be upon forms furnished by the state reclamation engineer and such statements shall be sworn to by the permittee and be supported by the affidavits of two disinterested witnesses.

Upon receipt of such notice the state reclamation engineer shall order its publication and conduct hearing on the same according to the procedure set forth in section 42-217.

42-236. Form and effect of license. - The form and effect of the license confirming the right to use ground water under this act and the priority of such right shall be governed by the provisions of sections 42-219 and 42-220; provided, however, that no license shall issue pursuant to any permit which has been by the state reclamation engineer canceled in accordance with the provisions of this act.

42-237. Abandonment of water right - Change of point of diversion and place of use. - The provisions relating to loss of water rights by nonuse and abandonment, as set forth in section 42-222, shall apply to ground water rights. The provisions of section 42-222, relating to change of point of diversion and change of place of use of water, shall be applicable to waters accruing from water rights, provided, that the withdrawal of waters from the same ground water supply at another location in lieu of withdrawal at the original location shall be considered a change of point of diversion.
42-237a. **Powers of the state reclamation engineer.** - In the administration and enforcement of this act and in the effectuation of the policy of this state to conserve its ground water resources, the state reclamation engineer is empowered:

a. To require all flowing wells to be so capped or equipped with valves that the flow of water can be completely stopped when the wells are not in use.

b. To require both flowing and non-flowing wells to be so constructed and maintained as to prevent the waste of ground waters through leaky wells, casings, pipes, fittings, valves or pumps either above or below the land surface.

c. To prescribe uniform standard measuring devices for the scientific measurement of water levels in and waters withdrawn from wells.

d. To go upon all lands, both public and private, for the purpose of inspecting wells, pumps, casings, pipes, fittings and measuring devices, including wells used or claimed to be used for domestic purposes.

e. To order the cessation of use of a well pending the correction of any defect that the state reclamation engineer has ordered corrected.

f. To commence actions to enjoin the illegal opening or excavation of wells or withdrawal or use of water therefrom and to appear and become a party to any action or proceeding pending in any court or administrative agency when it appears to the state reclamation engineer that the determination of such action or proceeding might result in depletion of the ground water resources of the state contrary to the public policy expressed in this act.

g. To supervise and control the exercise and administration of all rights hereafter acquired to the use of ground waters and in the exercise of this power he may by summary order, prohibit or limit the withdrawal of water from any well during any period that he determines that water to fill any water right in said well is not there available. To assist the state reclamation engineer in the administration and enforcement of this act, and in making determinations upon which said orders shall be based, he may establish a ground water pumping level or levels in an area or areas having a common ground water supply as determined by him as hereinafter provided. Water in a well shall not be deemed available to fill a
water right therein if withdrawal therefrom of the amount called for by such right would affect, contrary to the declared policy of this act, the present or future use of any prior surface or ground water right or result in the withdrawing the ground water supply at a rate beyond the reasonably anticipated average rate of future natural recharge.

In connection with his supervision and control of the exercise of ground water rights the state reclamation engineer shall also have the power to determine what areas of the state have a common ground water supply and whenever it is determined that any area has a ground water supply which affects the flow of water in any stream or streams in an organized water district, to incorporate such area in said water district; and whenever it is determined that the ground water in an area having a common ground water supply does not affect the flow of water in any stream in an organized water district, to incorporate such area in a separate water district to be created in the same manner provided for in section 42-604 of title 42, Idaho Code. The administration of water rights within water districts created or enlarged pursuant to this act shall be carried out in accordance with the provisions of title 42, Idaho Code, as the same have been or may hereafter be amended, except that in the administration of ground water rights either the state reclamation engineer or the water master in a water district or the state reclamation engineer outside of a water district shall, upon determining that there is not sufficient water in a well to fill a particular ground water right therein by order, limit or prohibit further withdrawals of water under such right as hereinabove provided, and post a copy of said order at the place where such water is withdrawn; provided, that land, not irrigated with underground water, shall not be subject to any allotment, charge, assessment, levy, or budget for, or in connection with, the distribution or delivery of water.

42-237b. Administrative determination of adverse claims. - Whenever any person owning or claiming the right to the use of any surface or ground water right believes that the use of such right is being adversely affected by one or more user of ground water rights of later priority, or whenever any person owning or having the right to use a ground water right believes that the use of such right is being adversely affected by another's use of any other water right which is of later priority, such person, as claimant, may make a written statement under oath of such claim to the state reclamation engineer.

Such statement shall include:
1. The name and post office address of the claimant.

2. A description of the water right claimed by the claimant, with amount of water, date of priority, mode of acquisition, and place of use of said right, if said right is for irrigation, a legal description of the lands to which such right is appurtenant.

3. A similar description of the respondent's water right so far as is known to the claimant.

4. A detailed statement in concise language of the facts upon which the claimant founds his belief that the use of his right is being adversely affected.

Upon receipt of such statement, if the state reclamation engineer deems the statement sufficient and meets the above requirements, the state reclamation engineer shall issue a notice setting the matter for hearing before a local ground water board, constituted and formed as in this act provided. The person or persons against whom such claim is directed and who are asserted to be interfering with the claimant's rights shall in such proceedings be known as respondents. The notice shall be returned to the claimant who shall cause the same to be served upon the respondent together with a copy of the statement. Such service shall be made at least five days before the time fixed for hearing and in the same manner that service of summons is made in a civil action. Proof of service of notice shall be made to the state reclamation engineer by the claimant at least two days before the hearing.

42-237c. Hearing and order. - Hearing on the statement and any answer filed by the respondent shall be had in the county for which such local ground water board was appointed. The hearing shall be conducted before the board under reasonable rules and regulations of procedure prescribed by the state reclamation engineer. All parties to the hearing as well as the board itself shall have the right to subpoena witnesses who shall be sworn by the board and testify under oath at the hearing. All parties to the hearing shall be entitled to be heard in person or by attorney. Upon such hearing the board shall have authority to determine the existence and nature of the respective water rights claimed by the parties and whether the use of the junior right affects, contrary to the declared policy of this act, the use of the senior right. If the board finds that the use of any junior right or rights so affect the use of senior rights, it may order the holders of the junior right or rights to cease using their right during such period or periods as the board may determine and may provide such cessation shall be either in whole or in part or
under such conditions for the repayment of water to senior right holders as the board may determine. Any person violating such an order made hereunder shall be guilty of a misdemeanor.

42-237d. **Local ground water boards.** - Whenever a written statement of claim as provided in section 42-237b hereof is filed with the state reclamation engineer, if the statement of the claimant is deemed sufficient by the state reclamation engineer and meets the requirements of section 42-237b, the said state reclamation engineer shall forthwith proceed to form a local ground water board for the purpose of hearing such claim. The said local ground water board shall consist of the state reclamation engineer, and a person who is a qualified engineer or geologist, appointed by the district judge of the judicial district which includes the county in which the well of respondent, or one of the respondents if there be more than one, is located, and a third member to be appointed by the other two, who shall be a resident irrigation farmer of the county in which the well of respondent, or one of the respondents if there be more than one, is located. None of such members shall be persons owning or claiming water right which may be affected by such claim, nor members of the board of directors of any irrigation district or canal company owning or claiming water rights affected by such claims. No employee of the state of Idaho other than said state reclamation engineer is eligible for appointment to a ground water board. Members of the board shall hold office until the board has finally disposed of the claim which it was appointed to hear. Such members shall serve without pay except that members other than the state reclamation engineer shall receive per diem of $25.00 together with reimbursement of expenses actually incurred during the time actually spent in the performance of official duties, such per diem and expenses to be paid from the ground water administration fund hereinafter created. Whenever such a local ground water board is needed to be formed in any county, the state reclamation engineer shall give notice of that fact to the district judge of the judicial district which includes the county in which the well of respondents, or one of the respondents if there be more than one, is located, and thereupon such judge shall appoint a person to be a member of such board. Upon qualification by such member, the third member shall be selected. The state reclamation engineer shall be the chairman of the board and custodian of all its records. He may be represented at any board meeting by a duly appointed, qualified and acting deputy state reclamation engineer.

42-237e. **Appeals from actions of the state reclamation engineer.** - Any person dissatisfied with any decision, determination, order or action of the state reclamation engineer, water master, or of any local ground water board made pursuant to this act may within sixty
(60) days notice thereof take an appeal therefrom to the District Court for any county in which the ground water concerned therein may be situated. Appeal shall be taken by serving a notice of appeal upon the state reclamation engineer, together with a statement describing the decision, determination, order or action appealed from and setting forth the reasons why the same was erroneous. An appeal as referred to in this section stays the execution of, or any proceeding to enforce, the order, decision, determination, or action of the state reclamation engineer, water master, or local ground water board. Whenever the decision, determination, order or action of the state reclamation engineer appealed from was made pursuant to a hearing before the state reclamation engineer to which the appellant was a party or at which the appellant had a right to be heard, the state reclamation engineer shall, upon receipt of service of notice of appeal, transmit to the District Court a certified transcript of the proceedings and the evidence received at such hearing and the evidence taken at such hearing may be considered by the District Court. The District Court shall try the same anew at the hearing on the appeal. Appeal to the Supreme Court from the final judgment rendered by the District Court pursuant to this section may be taken within the same time and in the same manner as appeals from final judgments in cases commenced in the District Court are taken to the Supreme Court.

42-237f. Adjudication of water right. - The provisions of §§42-1401 - 42-1405, relative to adjudication of water rights shall be applicable to all water rights acquired under this act.

42-237g. Penalties. - Any person violating any provision of this act, or any decision of the state reclamation engineer, or order of a local ground water board, shall be guilty of a misdemeanor and any continuing violation shall constitute a separate offense for each day during which such violation occurs, but nothing in this section or in the pendency or completion of any criminal action for enforcement hereof shall be construed to prevent the institution of any civil action for injunctive or other relief for the enforcement of this act or the protection of rights to the lawful use of water; provided, further, that if in the opinion of the state reclamation engineer there has been a violation of any such decision or order, he shall request the attorney general or the prosecuting attorney of any county in which such violation has occurred to bring and prosecute in the name of the state reclamation engineer or of the state of Idaho an appropriate action for injunctive or other relief to enforce any such decision or order, and, upon such request, the attorney general and any such prosecuting attorney shall forthwith bring and prosecute such action.
42-238. Logs of well drillers. - The business and activity of opening and excavating wells is hereby declared to be a business and activity affecting the public interest in the ground water resources of the state, and in order to enable a survey of the extent thereof every well driller is hereby required to keep a log of each well that may hereafter be excavated or opened by him in Idaho including wells excepted under sections 42-227 and 42-228 Idaho Code, and to furnish a copy of such log, duly signed, to the state reclamation engineer within thirty days following the completion of such well. Said logs shall become a permanent record in the office of the state reclamation engineer for geological analysis and research and be there available for public inspection. Said logs shall be upon forms furnished by the state reclamation engineer and shall show:

(a) The location of the well with reference to legal subdivisions;

(b) The kind and nature of material in each stratum penetrated, and each change of formation with at least one entry for each ten foot vertical interval, and the time required to penetrate such interval;

(c) The name and address of the well driller and date of commencing drilling and date completed;

(d) The size and depth of the well and location of water bearing aquifers;

(e) The size and type of casing and where placed in the well including number and location of perforations;

(f) The flow in cubic feet per second or gallons per minute if flowing well, and the shut in pressure in pounds per square inch;

(g) The static water level with reference to the land surface, and the drawdown with respect to the amount of water pumped per minute, when a pump test is made;

(h) The temperature of waters encountered, and other information as may be requested by the state reclamation engineer;

(i) As a part of said log the well driller upon request of the state reclamation engineer shall furnish samples of each change of formation below the surface, and containers and cartage therefore shall be furnished by said state reclamation engineer.
Every well driller before lawful drilling of a well for development of water, shall, from and after July, 1953, under penalty of misdemeanor for failure to so comply obtain a license from the state reclamation engineer which shall be issued by and in the form prescribed by the said state reclamation engineer upon payment of $10.00 license fee, which license expires each year on June 30th, and is renewable by payment of a $5.00 renewal fee. Said licenses are not transferable and may be revoked or renewal refused by state reclamation engineer if it appears that the requirements of this section have not been complied with. Revocation or refusal to renew a well driller's license shall be determined by said state reclamation engineer only after fifteen days' notice setting forth reasons therefor, has been sent by registered mail to the licensed well driller.

42-238a. Ground Water Administration Fund. - There is hereby created in the state treasury a special fund known as the Ground Water Administration Fund. All fees collected by the state reclamation engineer pursuant to sections 42-232 - 42-238 shall be placed in said special fund. All moneys received by said special fund are hereby appropriated for the purpose of the administration of this act, and no moneys received in said special fund shall be disbursed by the state treasurer unless the voucher for such disbursement contains the certificate of the state reclamation engineer that such voucher is for an expense incurred in the administration of this act.

42-239. Interpretation. - The executive and judicial departments of the state shall construe the provisions of this act, wherever possible in harmony with the provisions of title 42, Idaho Code, as amended; and nothing herein shall be construed contrary to or in conflict with the provisions of article 15 of the Constitution; and except where otherwise provided in this act, the provisions of said title 42, Idaho Code, as amended, shall continue to govern ground water rights in this state.
Sec. 82a-701. DEFINITIONS. When used in this act, unless the context indicates otherwise, the following words shall have the following meanings:

(a) "Person" shall mean and include a natural person, a partnership, an organization, a corporation, a municipality and any agency of the state or federal government.

(b) "Chief engineer" means the chief engineer of the division of water resources of the Kansas state board of agriculture.

(c) "Domestic uses" means the use of water by any person or by a family unit or household for household purposes, or for the watering of livestock, poultry, farm and domestic animals used in operating a farm, and for the irrigation of lands not exceeding a total of one acre in area for the growing of gardens, orchards and lawns.

(d) "Vested right" means the right of a person under a common law or statutory claim to continue the use of water having actually been applied to any beneficial use, including domestic use, on or before June 28, 1945, to the extent of the maximum quantity and rate of diversion for the beneficial use made thereof, and shall include the right to take and use water for beneficial purposes where a person is engaged in the construction of works for the actual application of water to a beneficial use on June 28, 1945, provided such works shall be completed and water is actually applied for such use within a reasonable time thereafter by such person, his heirs, successors or assigns. Such a right does not include, however, those common law claims under which a person has not applied water to any beneficial use within the periods of time set out in this subsection.

(e) "Appropriator" means and includes a person who has an appropriation right that has been perfected in conformity with article 7 of
chapter 82a of the General Statutes of 1949 and acts amendatory there-
of and supplemental thereto.

(f) "Appropriation right" is a right, acquired under the provisions
of article 7 of chapter 82a of the General Statutes of 1949 and acts
amendatory thereof and supplemental thereto, to divert from a definite
water supply a specific quantity of water at a specific rate of diver-
sion, provided such water is available in excess of the requirements
of all vested rights that relate to such supply and all appropriation
rights of earlier date that relate to such supply, and to apply such
water to a specific beneficial use or uses in preference to all ap-
propriation rights of later date.

(g) "Water right" means any vested right or appropriation right
under which a person may lawfully divert and use water. It is a real
property right appurtenant to and severable from the land on or in
connection with which the water is used and such water right passes
as an appurtenance with a conveyance of the land by deed, lease, mort-
gage, will, or other voluntary disposal, or by inheritance.

Sec. 82a-702. Dedication of use of water. All water within the
state of Kansas is hereby dedicated to the use of the people of the
state, subject to the control and regulation of the state in the manner
herein prescribed.

Sec. 82a-703. Water may be appropriated subject to vested rights.
Subject to vested rights, all waters within the state may be appropri-
ated for beneficial use as herein provided. Nothing in this act con-
tained shall impair the vested right of any person except for nonuse.

Sec. 82a-704. Order determining vested rights other than domestic
as of or before June 28, 1945; effect; notice; appeal. The chief engi-
neer or his authorized representatives shall proceed with the necessary
steps to gather data and other information as may be essential to the
proper understanding and determination of the vested rights of all
parties using water for beneficial purposes other than domestic. Such
observations and measurements shall be reduced to writing and made a
matter of record in his office.

The chief engineer shall then make an order determining the rights
of all persons making beneficial use of water for all purposes other
than domestic on or before June 28, 1945, and the then extent of their
uses and shall notify all such water users as to the contents of such
order. Service of such notice shall be deemed complete upon deposit-
ing such notice in the post office as registered or certified mail
addressed to such water user at his last known post-office address.
Any such water user who deems himself aggrieved by the order of determination with respect to his water use may appeal to the district court in the manner prescribed by section 24 hereof (82a-724). The order of determination of the chief engineer shall be in full force and effect from the date of its entry in the records of his office unless and until its operation shall be stayed by an appeal therefrom by such user in accordance with the provisions of section 24 hereof (82a-724): PROVIDED, That no such determination shall be deemed an adjudication of the relation between any vested right holders with respect to the operation or exercise of their vested rights.

Sec. 82a-705. Acquisition of appropriation right to use water other than domestic; approval. No person shall have the power or authority to acquire an appropriation right to the use of water for other than domestic use without first obtaining the approval of the chief engineer, and no water rights of any kind may be acquired hereafter solely by adverse use, adverse possession, or by estoppel.

Sec. 82a-705a. Domestic use after June 28, 1945; information to chief engineer. The use of water for domestic purposes instituted subsequently to June 28, 1945, to the extent that it is beneficial, shall constitute an appropriation right. The chief engineer, however, may require any person using water for any purpose to furnish information with regard to such use thereof.

Sec. 82a-706. Duties of chief engineer as beneficial use and rights of priority of appropriation. The chief engineer shall enforce and administer the laws of this state pertaining to the beneficial use of water and shall control, conserve, regulate, allot and aid in the distribution of the water resources of the state for the benefits and beneficial uses of all of its inhabitants in accordance with the rights of priority of appropriation.

Sec. 82a-706a. Rules, regulations and standards. The chief engineer, subject to the approval of the state board of agriculture, shall adopt, amend, promulgate, and enforce such reasonable rules, regulations, and standards as he shall deem necessary for the discharge of his duties and for the achievement of the purposes of this act pertaining to the control, conservation, regulation, allotment, and distribution of the water resources of the state.

Sec. 82a-706b. Persons injured by diversion or otherwise; duties of chief engineer; notice. If any person knowingly prevents, by diversion or otherwise, any waters of this state from moving to a person having a prior right to use the same, the chief engineer, or his authorized agents, upon the request of the party being injured, shall
open, close, adjust, or regulate the headgates, valves, or other controlling works of any ditch, canal, conduit, pipe, well, or structure as may be necessary to secure such water to the person having the prior right to its use, and the chief engineer, or his authorized agents, may attach to the headgates, valves, or other controlling works a written notice properly dated and signed setting forth the fact that the headgates, valves, or controlling works have been properly regulated and are wholly under his or their control, which notice shall be legal notice to all persons interested in the diversion and distribution of the water of the ditch, canal, conduit, pipe, well, or structure.

Sec. 82a-706c. Meters, gages and other measuring devices; waste and quality checks. The chief engineer shall have full authority to require any water user to install meters, gages, or other measuring devices, which devices he or his agents may read at any time, and to require any water user to report the reading of such meters, gages, or other measuring devices at reasonable intervals. He shall have full authority to make, and to require any water user to make, periodic water waste and water quality checks and to require the user making such checks to report the findings thereof.

Sec. 82a-706d. Duties of attorney general. Upon request of the chief engineer the attorney general shall bring suit in the name of the state of Kansas, in courts of competent jurisdiction to enjoin the unlawful appropriation, diversion, use of the waters of the state, and waste or loss thereof.

Sec. 82a-706e. State field offices and commissioners. The chief engineer, subject to the approval of the state board of agriculture, may establish field offices within this state to secure the best protection to all claimants of water therein and the most economical supervision thereof. Subject to the approval of the state board of agriculture, the chief engineer may appoint a water commissioner for each field office so established, in accordance with the Kansas civil service laws, who shall be his agent in supervising the distribution of waters within the area served by such field office, according to the rights and priorities of all parties concerned, and who shall perform such other duties as the chief engineer may direct.

Sec. 82a-707. Principles governing appropriations; priorities. (a) Surface or ground waters of the state may be appropriated as herein provided. Such appropriation shall not constitute ownership of such water, and appropriation rights shall remain subject to the principle of beneficial use. (b) Where uses of water for different purposes conflict such uses shall conform to the following order of
preference: Domestic, municipal, irrigation, industrial, recreational and water power uses. However, the date of priority of an appropriation right, and not the purpose of use, determines the right to divert and use water at any time when the supply is not sufficient to satisfy all water rights that attach to it. The holder of a water right for an inferior beneficial use of water shall not be deprived of his use of the water either temporarily or permanently as long as he is making proper use of it under the terms and conditions of his water right and the laws of this state, other than through condemnation. (c) As between persons with appropriation rights, the first in time is the first in right. The priority of the appropriation right to use water for any beneficial purpose except domestic purposes shall date from the time of the filing of the application therefor in the office of the chief engineer. The priority of the appropriation right to use water for domestic purposes shall date from the time of the filing of the application therefor in the office of the chief engineer or from the time the user makes actual use of water for domestic purposes, whichever is earlier. (d) Appropriation rights in excess of the reasonable needs of the appropriators shall not be allowed.

Sec. 82a-708. Repealed.

Sec. 82a-708a. Applications for permits to appropriate water regardless of use by another; fee. Any person may apply for a permit to appropriate water to a beneficial use, notwithstanding that the application pertains to the use of water by another, or upon or in connection with the lands of another: PROVIDED, Any rights to the beneficial use of water perfected under such applications shall attach to the lands on or in connection with which the water is used and shall remain subject to the control of the owners of the lands as in other cases provided by law. Each application for a permit to appropriate water, except applications for permits for domestic use, shall be accompanied by an application fee of ten dollars ($10.00). All fees collected by the chief engineer pursuant to the provisions of this section shall be paid into the state treasury, at least monthly, and the state treasurer shall credit the same to the general fund of the state.

Sec. 82a-708b. Same; applications to change place of use; appeal from decision of chief engineer. Any owner of a water right may change the place of use, the point of diversion, or the use made of the water, without losing his priority of right, provided he shall (1) apply in writing to the chief engineer for approval of any proposed change; (2) demonstrate to the chief engineer that any proposed change is reasonable and will not impair existing rights; (3) demonstrate to the chief engineer that any proposed change relates to the same local source of supply as that to which the water right relates; and (4) receive the approval of the chief engineer with respect to any proposed
change. The chief engineer shall approve or reject the application for change in accordance with the provisions and procedures prescribed for processing original applications for permission to appropriate water. If the chief engineer disapproves the application for change, the rights, priorities and duties of the applicant shall remain unchanged. Any person considering himself aggrieved by an order or decision by the chief engineer relating to his application for change may appeal to the district court in the manner prescribed by section 24 hereof (82a-724).

Sec. 82a-709. Application for permits; contents; time of filing. No person may acquire an appropriation right to the use of waters of the state for other than domestic purposes without making an application to the chief engineer for a permit to make such appropriation. However, any person using water for domestic purposes subsequent to June 28, 1945, and any person intending to use water hereafter for domestic purposes may make application to the chief engineer for a permit the same as any other person. The application shall set forth (a) the name and post-office address of the applicant; (b) the source from which said appropriation shall be made; (c) the maximum rate at which water is to be diverted or used and the total annual quantity of water sought; (d) the location of the works or proposed works for the diversion and use of the water; (e) the estimated time for the completion of any proposed works; (f) the time of the first actual application of the water to the beneficial use involved, if there was such, and the estimated time for the first actual application of the water for the beneficial use proposed; (g) if for irrigation use, a description of the land to be irrigated by designating the number of irrigable acres in each forty (40) acre tract or fractional portion thereof; (h) if for municipal water supply, it shall give the present population to be served and estimated future requirements of the city; (i) any additional factors which may be required by the chief engineer.

Such application may be filed before or after the commencement of any work in connection with the construction, enlargement or extension of any works for the diversion, storage, and use of water.

Sec. 82a-710. Same; return for correction or completion; maps, plats, plans, and drawings; default in refiling. Upon receipt of the application it shall be the duty of the chief engineer to endorse thereon the date of its receipt and assign a number to the same. If upon examination the application is found to be defective, inadequate or insufficient to enable such official to determine the nature and amount of the proposed appropriation, it shall be returned for correction or completion or for other required information. No application shall lose its priority of filing on account of such defects, provided
acceptable data, proofs, maps, plats, plans and drawings are filed in the office of the chief engineer within thirty days following the date of the posting of the return of such application or such further time not exceeding one year as may be given by the chief engineer.

All maps, plats, plans and drawings shall conform to prescribed uniform standard as to materials, size, coloring and scale, and shall show: (a) The source from which the proposed appropriation is to be taken, (b) all proposed dams, dikes, reservoirs, canals, pipe lines, power houses and other structures for the purpose of storing, conveying or using water for the purpose approved and their positions or courses in connection with the boundary lines and corners of the lands which they occupy. Land listed for irrigation shall be shown in government subdivisions or fractions thereof. Default in the refiling of any application within the time limit specified shall constitute a forfeiture of priority date and the dismissal of the application.

Sec. 82a-711. Same; duties of chief engineer as to applications. If a proposed use neither will impair a use under an existing water right nor prejudicially and unreasonably affect the public interest, the chief engineer shall approve all applications for such use made in good faith in proper form which contemplate the utilization of water for beneficial purpose, within reasonable limitations. Otherwise the chief engineer shall make an order rejecting such application or requiring its modification to conform to the public interest to the end that the highest public benefit and maximum economical development may result from the use of such water. In ascertaining whether a proposed use will prejudicially and unreasonably affect the public interest, the chief engineer shall take into consideration the area, safe yield and recharge rate of the appropriate water supply, the priority of existing claims of all persons to use the water of the appropriate water supply, the amount of each such claim to use water from the appropriate water supply, and all other matters pertaining to such question. With regard to whether a proposed use will impair a use under an existing water right, impairment shall include the unreasonable raising or lowering of the static water level or the unreasonable increase or decrease of the streamflow or the unreasonable deterioration of the water quality at the water user's point of diversion beyond a reasonable economic limit. Any person considering himself aggrieved by any order or decision by the chief engineer relating to that person's application for a permit to appropriate water may appeal to the district court in the manner prescribed by section 24 hereof (82a-724).

Sec. 82a-711a. Same; express conditions of appropriations. It shall be an express condition of each appropriation of surface or
ground water that the right of the appropriator shall relate to a specific quantity of water and that such right must allow for a reasonable raising or lowering of the static water level and for the reasonable increase or decrease of the streamflow at the appropriator's point of diversion. PROVIDED, That in determining such reasonable raising or lowering of the static water level in a particular area, the chief engineer shall consider the economics of diverting or pumping water for the water uses involved; and nothing herein shall be construed to prevent the granting of permits to applicants later in time on the ground that the diversions under such proposed later appropriations may cause the water level to be raised or lowered at the point of diversion of a prior appropriator, so long as the rights of holders of existing water rights can be satisfied under such express conditions.

Sec. 82a-712. Same; notice of approval or disapproval of application; approval constitutes permit. The chief engineer shall notify the applicant of the approval or disapproval of the application. Upon approving the application the chief engineer shall authorize the applicant to proceed with the construction of the proposed diversion works and to proceed with all steps necessary for the application of the water to the approved and proposed beneficial use and otherwise perfect his proposed appropriation. The chief engineer may approve an application for a smaller amount of water than requested and he may approve an application upon such terms, conditions, and limitations as he shall deem necessary for the protection of the public interest. The approval of the application by the chief engineer, subject to the terms and conditions thereof, upon issuance constitutes a permit to proceed with construction of diversion or other authorized works and with the diversion and use of water in accordance with the terms and conditions of his permit and no common-law claimant without a vested right, or other person without a vested right, a prior appropriation right, or an earlier permit shall prevent, restrain, or enjoin an applicant from proceeding in accordance with the terms and conditions of his permit or from diminishing the water supply.

Sec. 82a-713. Same; limiting time for perfection of appropriation extensions. The chief engineer shall limit the time for the perfecting of an appropriation to a reasonable period within which the proposed works can be completed by expeditious procedure, and he shall for good cause shown by the applicant allow an extension of time.

Sec. 82a-712. Same; notice of completion of works; certificate of appropriation; recordation. Upon the completion of the construction of the works and the actual application of water to the proposed beneficial use within the time allowed, the applicant shall notify the
chief engineer to that effect. The chief engineer or his duly authorized representative shall then examine and inspect the appropriation diversion works and, if it is determined that the appropriation diversion works have been completed and the appropriation right perfected, in conformity with the approved application and plans, the chief engineer shall issue a certificate of appropriation in duplicate. The original of such certificate shall be sent to the applicant and shall be recorded with the register of deeds in the county or counties wherein the point of diversion is located as other instruments affecting real estate and the duplicate shall be made a matter of record in the office of the chief engineer.

Sec. 82a-715. Same; validation of certain applications. All applications for the appropriation of water to beneficial use as filed with the chief engineer, subsequent to May 5, 1941, and all processing, proceedings and certificates pertaining thereto are validated to same extent as if filed after the effective date of this act, but with priorities as of the dates of filing of applications. All subsequent processing of such applications as are still pending and undetermined shall be further considered and processed as provided in this act.

Sec. 82a-716. Common law claimants; action for compensation; injunctions. If any appropriation, or the construction and operation of authorized diversion works results in an injury to any common-law claimant, such person shall be entitled to due compensation in a suitable action at law against the appropriator for damages proved for any property taken. Any person with a valid water right or permit to divert and use water may restrain or enjoin in any court of competent jurisdiction a subsequent diversion by a common-law claimant without vested rights without first condemning those common-law rights. An appropriator shall have the right to injunctive relief to protect his prior right of beneficial use as against use by an appropriator with a later priority of right.

Sec. 82a-717. Repealed.

Sec. 82a-717a. Diversions by common law claimants and others; injunctions. No common-law claimant without a vested right, or other person without a vested right, a prior appropriation right, or an earlier permit shall divert or threaten to divert water if such diversion or threatened diversion impairs or would impair any vested right, appropriation right, or right under a permit to appropriate water. But any common-law claimant with a vested right, or other person with a vested right, a prior appropriation right, or an earlier permit may divert water in accordance with any such right or permit although such diversion or use thereunder conflicts with the diversion, use,
proposed diversion, or proposed use made or proposed by a common-law claimant who does not have a vested right, or other person who does not have a vested right, a prior appropriation right, or an earlier permit. Moreover, any common-law claimant with a vested right, or other person with a vested right, a prior appropriation right, or an earlier permit may restrain or enjoin in any court of competent jurisdiction any diversion or proposed diversion that impairs or would impair such right in the event that any such diversion or proposed diversion is made or is threatened to be made by any common-law claimant, or other person who does not have a vested right, a prior appropriation right, or an earlier permit.

Sec. 82a-718. Abandonment of water rights; procedure; appeals. All appropriations of water must be for some beneficial purpose. Every water right of every kind shall be deemed abandoned and shall terminate when without due and sufficient cause no lawful, beneficial use is henceforth made of water under such right for three (3) successive years. Before any water right shall be declared abandoned and terminated the user shall be notified in writing by the chief engineer and given an opportunity to appear at a designated time and place and show cause why his water right should not be declared abandoned and terminated.

Such notice shall contain the following information in addition to the time and place of hearing: (1) A description of the water right in question; (2) the substantial location of the point of diversion; (3) the general description of the lands or places where such waters were used; (4) a statement that unless due and sufficient cause be shown the water right will be held abandoned and terminated. Such notice may be served by registered or certified mail and shall be posted at least thirty (30) days before the date of the hearing and shall be sent to the last known address of the holder of the water right. The chief engineer shall, within sixty (60) days after such hearing make an order determining whether such water right shall be held abandoned and terminated and shall notify the holder of the water right as to the contents of such order by registered or certified mail sent to the last known address of the holder of the water right.

The verified report of the chief engineer or his authorized representative shall be prima facie evidence of the abandonment and termination of any water right. Any decision or order of the chief engineer declaring the abandonment and termination of any water right shall be in full force and effect from the date of its entry in the records of his office unless and until its operation shall be stayed by an appeal therefrom. Appeals from orders or decisions declaring
abandonment and termination may be taken by the holder of the water right in the manner prescribed by section 24 hereof (82a-724).

Sec. 82a-719. Distribution of water according to decree of court. Whenever the rights for the use of waters of the state shall have been adjudicated by any court, the division of water resources with the aid of its chief engineer and other officers and employees, shall aid in the distribution of such water according to such decree and shall distribute the water among the several ditches or water users pursuant to the decree; and shall have the power to open, close or adjust the headgates and regulate the controlling works of any ditch or structure, or cause the same to be opened, closed, adjusted and regulated so as to make a distribution of the water in conformity with the decree.

Sec. 82a-720. Same; certified copies of decrees. The clerk of any court of this state in which a decree shall be made fixing the rights pertaining to ditches or water users to water, shall within ten days after such decree shall have been entered, forward to the chief engineer of the division of water resources, by registered mail, a certified copy of such decree.

Sec. 82a-721. Construction of act. This act shall be construed liberally to effectuate the purposes hereof, and the enumeration of specific powers in this act shall not operate to restrict the meaning of any general grant of power contained in this act or to exclude other powers comprehended in such general grant.

Sec. 82a-721a. Construction of act; damages to land. Nothing in this act shall be construed as limiting any right of an owner of an estate or interest in or concerning land to recover damage for any injury done to his land or to any water rights appurtenant thereto.

Sec. 82a-722. Invalidity of part. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered, and it shall be presumed that the legislature would have enacted this law with the section, subsection or clause held to be invalid, omitted.

Sec. 82a-723. Repealed.

Sec. 82a-724. Appeals to district courts and supreme court; procedure. Any person authorized by this act to appeal to the district
court from any order or decision of the chief engineer and desiring to exercise such right shall take such an appeal in the manner prescribed by this section. Unless otherwise specifically provided in the section authorizing such appeal, the appeal shall be to the district court of Shawnee county or to the district court of any county in which the point or points of diversion are located. Any such appeal must be filed within sixty (60) days after the date of mailing of the notice of the order or decision or, when publication notice is required, within sixty (60) days after mailing of the notice or within thirty (30) days after the date of the last publication of such notice, whichever is the later. Such an appeal shall be taken by serving upon the chief engineer a written notice of appeal specifying the order or decision appealed from, with a demand for certified copies of all pertinent papers on file in his office relating to the order or decision appealed from. Such an appeal shall be perfected by filing with the clerk of the district court a copy of the notice of appeal together with proof of service. Upon receipt by the chief engineer of the notice of appeal, he shall, within thirty (30) days, file with the clerk of the district court a certified transcript of all pertinent papers, files, and proceedings relating to the order or decision appealed from; and he shall notify, by registered or certified mail, all persons who appeared and took part in the proceedings, or their attorneys of record.

Upon the filing of the transcript the district court, without unnecessary delay, shall proceed to hear and determine the appeal. In doing so, the district court shall have and exercise the same general jurisdiction and power as though a proceeding had been commenced in such court and as though such court would have had original jurisdiction of the matter. The district court shall allow and may require pleadings to be filed or amended. The right to file new pleadings shall not be abridged or restricted by the pleadings filed, or by failure to file pleadings, with the chief engineer; nor shall the trial in, or the issues to be considered by, the district court be abridged or restricted by any failure to appear or by the evidence introduced, or the absence or insufficiency thereof, in the proceedings before the chief engineer.

Whenever any appeal is pending, the order or decision appealed from shall be suspended unless the court shall order otherwise.

All appeals shall be tried by the court without a jury, but the court may call a jury in an advisory capacity or in a proper case may refer the matter or part thereof to a referee.

Appeals may be taken to the supreme court from any final order or
judgment of any district court entered in any action or proceeding brought under any of the provisions of this article, or acts amendatory thereof or supplemental thereto, in the same manner as in other civil cases.

Sec. 82a-725. Same reference to state division or its chief engineer; procedure; cases in federal courts. In any suit to which the state is not a proper party brought in any court of competent jurisdiction in this state for determination of rights to water, the court may order a reference to the division of water resources or its chief engineer, as referee, for investigation of and report upon any or all of the physical facts involved and the division or its chief engineer shall thereupon make such an investigation and report as ordered by the court. The report shall set forth such findings of fact as may be required by the court's order of reference and may contain such opinions upon the facts as it deems proper in view of the issues submitted. Before filing its report, the division or its chief engineer shall mail notice of its report, together with a copy of it, to the parties or their attorneys of record. Within thirty (30) days from the date of the mailing of the copy of the report, any party may file objections to it with the division of water resources or its chief engineer. After the division, or its chief engineer, has considered the objections, it shall file its report, as referee, with the clerk of the court and give notice by registered or certified mail of the filing of its report to the parties or their attorneys. The court shall review the report upon exceptions thereto filed with the clerk of the court within thirty (30) days after date of mailing registered notice of the filing of the report. Except in its discretion or for good cause shown, the court shall not consider any exception to the report unless it appears that the excepting party presented the matter of the exception to the division or its chief engineer in the form of an objection. The report shall be evidence of the physical facts found therein, but the court shall hear such evidence as may be offered by any party to rebut the report or the evidence. If suit is brought in a federal court for determination of rights to water within, or partially within, the state, the division or its chief engineer may accept a reference of such suit as master or referee for the court.
CHAPTER 29 - APPROPRIATION AND REGULATION OF GROUND WATER

89-2901 to 89-2910. Repealed.

89-2911. Definitions. As used in this act or regulations issued hereunder:

(a) "Ground water" means any fresh water under the surface of the land including the water under the bed of any stream, lake, reservoir or other body of surface water. Fresh water shall be deemed to be water fit for domestic, livestock or agricultural use. The administrator, after notice and hearing, is authorized to fix definite standards for determining fresh water in any controlled ground water area or sub-area of the state.

(b) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(c) "Well" means any artificial opening or excavation in the ground, however made, by which ground water can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(d) "Beneficial use" means any economically or socially justifiable withdrawal or utilization of water.

(e) "Person" means any natural person, association, partnership, corporation, municipality, irrigation district, the state of Montana or any political subdivision or agency thereof, and the United States or agency thereof.

(f) "Administrator" means the state engineer of the state of Montana.

(g) "Ground water area" means an area which, as nearly as known facts permit, may be designated so as to enclose a single and distinct body of ground water, which shall be described horizontally by surface...
description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable. For purposes of administration, large ground water area may be divided into convenient administrative units "known as sub-areas."

89-2912. Rights to use. Rights to surface water where the date of appropriation precedes January 1, 1962 shall take priority over all prior or subsequent ground water rights. The application of ground water to a beneficial use prior to January 1, 1962 is hereby recognized as a water right. Beneficial use shall be the extent and limit of the appropriative right. As to appropriations of ground water completed on and after January 1, 1962, any and all rights must be based upon the filing provisions hereinafter set forth, and as between all appropriators of surface or ground water on and after January 1, 1962, the first in time is first in right. The right to use ground water may be obtained without a well, as by sub-irrigation and other natural processes, and appropriations by such means are provided for under section 3 (89-2913) hereof. Appropriative rights shall relate only to quantities of water for beneficial uses and not to water levels, means of use, or ease of withdrawal; and appropriative rights shall not apply to minimal household use as provided in section 5 (89-2915) hereof.

89-2913. Filing - notice of appropriation - notice of completion. (a) The administrator shall prepare and publish forms for the filing by appropriators with the county clerks. They shall be known as a "notice of appropriation" and a "notice of completion," respectively. The notice of appropriation shall require, and provide space for, answers to such questions as: (1) the name and address of the appropriator; (2) the beneficial use for which the appropriation is made, including a description of the lands to be benefited if for irrigation; (3) the rate of use in gallons per minute of ground water claimed; (4) the annual period (inclusive dates) of intended use; (5) the probable or intended date of first beneficial use; (6) the probable or intended date of commencement and completion of the well or wells; (7) the location, type, size and depth of the well or wells contemplated; (8) the probable or estimated depth of the water table or artesian aquifer; (9) the name, address and license number (if any) of the driller engaged; and (10) such other similar information as may be useful in carrying out the policy of this act.

The notice of completion shall require answers to the same sort of questions as required for the notice of appropriation, except that for the most part it shall inquire as to accomplished facts.
concerning the well or means of withdrawal, including information as to the static level of water in the casing or the shut-in pressure if the well flows naturally; the capacity of the well in gallons per minute by pumping or by natural flow; the approximate draw down or pumping level of the well; the approximate surface elevation at the well head; the casing record of the well; the drilling log showing the character and thickness of all formations penetrated; the depth to which the well is drilled; and similar information.

For the benefit of persons obtaining (or desiring to obtain) ground water without a well (as by sub-irrigation and other natural processes) a specially prepared "notice of completion" shall be provided, enabling such persons to describe the means of using ground water and to estimate the amount of water so used, and requiring such other similar information as shall be pertinent to this particular class of user. The administrator shall distribute said forms to the county clerks.

(b) On and after January 1, 1962, any person desiring to appropriate ground water may complete a notice of appropriation and file it with the county clerk of the county in which the appropriation is located.

(c) Upon the filing of a notice of appropriation, the county clerk shall transmit a copy thereof to the administrator, and to the Montana bureau of mines and geology, retaining the original on file locally.

(d) After filing a notice of appropriation, in order to acquire a right based thereon, the person must, within ninety (90) days, commence actual excavation and diligently prosecute construction of a well and, upon its completion, file a notice of completion with the county clerk of the county in which the appropriation is located. The county clerk shall handle and transmit such filed notices as in the case of a filed notice of appropriation.

(e) A failure to file a notice of appropriation deprives the appropriator of his right to relate his date of appropriation back, and results in the dating of his appropriation as of when he files a notice of completion. Until a notice of completion is filed with respect to any use of ground water instituted after January 1, 1962, no right to that use of water shall be recognized. However, in the case of uses instituted prior to January 1, 1962 and diligently prosecuted to completion on or after that date, the date of appropriation shall relate back to the date of commencement of construction,
upon the filing of a notice of completion.

(f) Persons required to file well logs and other information under the laws governing the conservation of oil and gas and who do so in compliance therewith, shall be deemed to have complied with all of the filing requirements of this act insofar as it applies to such particular oil and gas wells, salt water disposal wells, and injection wells. The date of appropriation in such cases shall be the date that written notice of intention to drill is given to the oil and gas conservation commission of the state of Montana.

(g) It shall be the responsibility of the driller of each well to fill out the notice of completion for the appropriator, and the latter shall be responsible for its filing.

(h) Persons who have put ground water to a beneficial use, including sub-irrigation or other natural process, prior to January 1, 1962, shall, within two (2) years after January 1, 1962, file a declaration in the office of the county clerk of the county in which the claimed right is situated. The declaration shall be made on a form known as a "declaration of vested ground water rights" and shall contain the following information: (1) the name and address of the claimant; (2) the beneficial use on which the claim is based; (3) the date or approximate date of the earliest beneficial use, and how continuous the use has been; (4) the amount of ground water claimed; (5) if the beneficial use has been for irrigation, the acreage and description of the lands to which such water has been applied and the name of the owner thereof; (6) the means of withdrawing such water from the ground and the location of each well or other means of withdrawal; (7) the date of commencement and completion of the construction of the well, wells or other works for withdrawal of ground water; (8) the depth of water table; (9) so far as it may be available, the type, size and depth of each well or the general specifications of any other works for the withdrawal of ground water; (10) the estimated amount of ground water withdrawn each year; (11) the log of the formations encountered in the drilling of each well; and (12) such other information of a similar nature as may be useful in carrying out the policy of this act.

The county clerk shall transmit copies to the office of the administrator, and the bureau of mines and geology. The administrator shall attend to filing copies in any other counties affected by the appropriation.
The declaration of vested ground water rights herein provided for shall be taken and received in all courts of this state as prima facie evidence of the statements therein contained.

Failure to comply with this requirement shall in no wise work a forfeiture of such rights, or prevent any such claimant from establishing such rights in the courts, but he must maintain the burden of proving such unrecorded rights. Provided, however, that persons who have filed the water well log form, provided for in sections 1 and 2 of chapter 58, Session Laws of Montana, 1957, shall be deemed to have complied with the requirements of this section. These latter forms may be returned to the county clerks by the administrator for the purpose of correction or for the entry of material facts necessary to fully complete the filing.

89-2914. Designation or modification of controlled ground water areas - notice of hearings. Designation or modification of an area of controlled ground water use may be proposed to the board by the administrator on his own motion or by petition signed by at least twenty (20) or one-fourth (1/4) (whichever is the lesser number) of the users of ground water in a ground water area wherein there is alleged to be factual data showing: (1) that ground water withdrawals are in excess of recharge to the aquifer or aquifers within such ground water area; (2) that excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area; or (3) that significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the ground water area.

When such a proposal is thus made, the administrator shall fix a time and place for a hearing, which time shall not be less than thirty (30) days from the making of the proposal. The administrator, or the petitioners (as the case may be) shall publish a notice of the hearing setting forth therein

(1) the names of the petitioners;

(2) the description by legal subdivisions of all lands included in the ground water area or sub-area;

(3) the purpose of the hearings and

(4) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal and be fully heard. Such
notice of hearing shall be published at least once in each week for three successive weeks before the date of the hearing in a newspaper of general circulation in the county or counties in which the said ground water area or sub-area is located. The administrator or the petitioners (as the case may be) shall also cause a copy of the notice together with a copy of the petition to be served by mail, not less than twenty (20) days before the hearing on all persons, other than the petitioners, who have theretofore filed a declaration of a claim or notice of appropriation to withdraw ground water from the particular ground water area or sub-area involved in the proceedings. A copy of the notice together with a copy of the proposal shall be mailed to each person at his last known address and such service shall be complete upon depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served. Publication and mailing of such notice, as prescribed herein, when completed shall be deemed to be sufficient notice of such hearing to all interested persons.

89-2915. Limiting withdrawals - hearing and order. At the time set for the hearing the administrator, if he is satisfied that the notice of hearing has been duly published and mailed as required by section 4 (89-2914), shall proceed to hear evidence and may consider information which he has duly obtained under this act, and after the conclusion of the hearing shall make written findings and an order. If the administrator finds that the withdrawal of ground water in such area or sub-area exceeds the safe annual yield of ground water as measured by the recharge of the area or sub-area, he shall order the aggregate withdrawal of ground water from such area or sub-area decreased so that it shall not exceed such annual yield. Except for domestic use, such decrease shall conform to the priority of the pertinent rights and shall prevail for the term of shortage in the available supply. The administrator shall have the authority to enforce the order; to require persons to cease such excessive withdrawals in reverse order of their priority of rights; and to bring an action for an injunction in a district court of a district in which all or part of the area affected is located, in addition to all other remedies.

The order of the administrator shall be published and mailed by the administrator in the manner and for the length of time as prescribed by section 4 (89-2914) of this act for the publication and mailing of the notice of hearing except that a copy of the written findings of the administrator shall be mailed instead of a copy of the proposal, and except further, that a copy of the order together with a copy of the written findings shall be mailed to each petitioner at his last known address. Upon publication and mailing of
such order, as prescribed herein, the order shall be final and conclusive unless an appeal therefrom is taken within the time and in the manner prescribed in section 10 (89-2920) of this act.

Once a petition has been filed and an order has been made limiting the withdrawal of ground water from a particular ground water area or sub-area, as provided in this section, the administrator shall have authority after notice and hearing as heretofore provided in this section, to modify or revoke his order upon a showing by any interested party and a finding by the administrator that conditions have materially changed since the prior order. While a matter is pending before the administrator, the administrator shall have discretion and authority to restrict further development of the sub-area.

89-2916. Administrative finding of priorities. Any person claiming a right to withdraw ground water (whether or not from a controlled area) or the administrator at his discretion, may initiate a hearing by the administrator for the ascertainment of all existing rights to the use of the ground water in the ground water area or sub-area involved. The administrator shall produce at the hearing a map showing and describing all the lands included in the ground water area or sub-area, and copies of all data upon which any prior designation or modification order was based. The waiving or assignment of rights by mutual agreement for either temporary or extended periods, shall not modify or cancel the relative priorities of the rights.

Within any designated or modified controlled ground water area or sub-area wherein oil and/or gas wells produce either fresh, brackish, or saline water associated with oil and gas, the volume of production of which is dependent entirely on the oil and/or gas withdrawals, such production of water shall be under the prior jurisdiction of the Montana oil and gas conservation commission. Hearings pertaining to the production, use, or disposal of water from such wells shall be held by the said commission in accordance with the procedures established by that commission. The administrator may petition the Montana oil and gas conservation commission for hearings in regard to such operations and shall be notified by the Montana oil and gas conservation commission of any such hearings instigated by other parties, when such hearings involve operations within a controlled ground water area or sub-area.

Hereafter, in any such hearing for the ascertainment and finding of priorities, involving rights to the use of ground waters, all appropriators of ground water or of surface water in the particular
controlled area, or sub-area shall be included as parties and notified in the manner provided in section 4 (89-2914) hereof.

89-2917. **Scope of administrative hearing.** In any hearing for the ascertainment and finding of priorities to the use of ground water, the administrator in his finding and order shall confirm, modify, alter or amend any prior order designating and modifying the boundaries of the ground water area or sub-area involved, as the evidence justifies, shall determine the priority of rights and the quantity of ground water to which each appropriator, who is a party to the proceedings, shall be entitled in such particular ground water area or sub-area, and shall find and determine any other matter necessary to the ascertainment of priorities of such existing rights to ground water. He may also determine the level below which the ground water shall not be drawn by appropriators. The administrator shall act in administering and enforcing the provisions of the order, as provided in section 5 (89-2915) hereof.

A copy of the order shall be recorded in the office of the clerk and recorder of each county in which the particular ground water area or sub-area is located. If the order is not appealed within the time limit and otherwise as is provided in section 10 (89-2920) of this act, the order of the administrator shall be final and conclusive when it is published and mailed as provided for orders issued under section 5 (89-2915) hereof.

89-2918. **Permit required to appropriate in controlled area.** Persons desiring to appropriate ground water in a controlled area, must file a notice of appropriation stamped "Permit Requested", and shall not commence the drilling or excavation of a well until the administrator has reviewed the notice of appropriation and issued an order either granting or denying the appropriator a permit to proceed with the appropriation, by stamping the notice of appropriation "Permit Granted" or "Permit Denied", and affixing his signature thereon. The administrator shall act promptly upon any such request. The administrator shall not grant a permit if the withdrawal would be beyond the capacity of the aquifer or aquifers in the ground water area to yield ground water within a reasonable or feasible pumping lift (in the case of pumping developments) or within a reasonable or feasible reduction of pressure (in the case of artesian developments). The administrator shall cause a notice of his order to be served by mail on the applicant and on each owner of a decreed right to use ground water in the particular ground water area or sub-area from which the license is sought. Such order shall be mailed to the applicant at the address shown on the application and to each such owner of a decreed right at the address shown on the adminis-
trator's records. Service shall be complete upon depositing such order in the post office, postage prepaid, addressed to the person on whom it is to be served. Upon its mailing, the order shall be final and conclusive unless a hearing is obtained within the time and in the manner prescribed in section 9 (89-2919) of this act.

89-2919. Hearing. Any person aggrieved by any order of the administrator, including any applicant for a license who is dissatisfied with the order of the administrator as made under the provisions of section 8 (89-2918) of this act, and any holder of a ground water right who is dissatisfied with the order of the administrator in granting an applicant a license to appropriate water under section 8 (89-2918) of this act, may obtain a hearing by the administrator to review the decision. Said hearing shall be taken by filing a verified petition with the administrator within thirty (30) days following the date of the making of the order and service of said order on the petitioner. The petition shall contain a copy of the notice of appropriation filed with the administrator, a copy of the order of the administrator, shall state the location of the particular ground water area or sub-area, the amount of ground water sought to be appropriated, and shall contain a brief statement of the reason or reasons why the order of the administrator is believed to be unsound. The petitioner shall publish a notice of the hearing, and serve notice of the hearing and petition by mail, as provided for petitioners for a hearing under section 4 (89-2914) of this act. At the hearing the administrator shall receive evidence, make findings, and issue an order sustaining, reversing, or modifying his prior order.

If this order of the administrator is not appealed within the time limit and otherwise as is provided in section 10 (89-2920) of this act, the order of the administrator shall be final and conclusive when it is issued.

89-2920. Appeals. Within sixty (60) days after notice is given of any order or determination by the administrator any party affected thereby may appeal to the district court of the judicial district of the state of Montana, in and for a county wherein all or any part of the ground water area or sub-area affected is situated, and said appeal shall be for the purpose of having the lawfulness of the order or determination inquired into and determined.

89-2921. How appeal taken - notice - record - trial. Said appeal shall be taken by serving a written notice of said appeal upon the administrator and filing the original with the clerk of the court to which said appeal is taken. A copy of such notice
must also be served upon any adversary parties, if there be any, by mailing the same to said adversary parties at their last known addresses. Immediately upon service upon said administrator of said notice, the administrator shall certify to said district court the entire record and proceedings, including all testimony and evidence taken by said administrator, with the clerk of said district court. Immediately upon the return of such certified record, the district court shall fix a day for the hearing of said cause, and shall cause notice to be served upon the administrator and upon the appellant, and also upon any adversary parties, if there be any. The court may, upon the hearing, for good cause shown, permit additional evidence to be introduced, but, in the absence of such permission from the court, the cause shall be heard on the record of the administrator, as certified to the court. The trial of the matter shall be de novo, and upon such trial the court shall determine whether or not the administrator regularly pursued his authority, and whether or not the findings of the administrator ought to be sustained, and whether or not such findings are reasonable under all the circumstances of the case.

89-2922. Appearance - setting aside conclusions, orders, etc., of administrator - judgment and findings. The administrator and each party to the action or proceeding before the administrator shall have the right to appear in the proceeding and it shall be the duty of the administrator to so appear. If the court shall find from such trial, as aforesaid, that the findings and conclusions of the administrator are not in accordance with either the facts or the law, or that they ought to be other or different than those made by the administrator, or that any finding and conclusion, or any order, or determination of the administrator is unreasonable, the court shall set aside such finding, conclusion, order or determination of said administrator, or shall modify or change the same as law and justice shall require, and the court shall also make and enter any finding, conclusion, order or judgment that shall be required, or shall be legal and proper in the premises.

89-2923. Appeals to supreme court. Either the administrator or the appellant, or any adversary party, if there be any, may appeal to the supreme court of the state of Montana from any final order, judgment, or decree of the said district court, which said appeal shall be taken in like manner as appeals are now taken in other civil actions to the said supreme court, and upon such appeal the said supreme court shall make such orders in reference to a stay of proceedings as it finds to be just in the premises, and may stay the operation of any order, judgment, or decree of said district court, without requiring any bond or undertaking from the applicant for such stay.
89-2924. Change of location. An appropriator of ground water may change the location of his well or other works for obtaining water without loss of priority to a point within the same area or sub-area if others are not thereby injured. He shall notify the administrator of any such change.

89-2925. Appropriation must be for a useful purpose - abandonment. The appropriation must be for some beneficial purpose and when the appropriator or his successor in interest abandons and ceases to use the water for such purpose, the right ceases; but questions of abandonment shall be questions of fact and shall be determined as other questions of fact.

89-2926. Waste and contamination of ground water prohibited - exception - duties of administrator. No ground waters shall be wasted without beneficial use. The administrator shall require all wells producing waters which contaminate other waters to be plugged or capped. He shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be stopped when the water is not being put to beneficial use. Likewise, both flowing and nonflowing wells shall be so constructed and maintained as to prevent the waste, contamination or pollution of ground waters through leaky casings, pipes, fittings, valves, or pumps either above or below the land surface, provided however, in the following cases the withdrawal or use of ground water shall not be construed as waste under this act:

(1) the withdrawal of reasonable quantities of ground water in connection with the construction, development, testing, or repair of a well or other means of withdrawal of ground waters;

(2) the inadvertent loss of ground water owing to breakage of a pump, valve, pipe, or fitting, if reasonable diligence is shown by the person in effecting the necessary repair;

(3) the disposal of ground water without further beneficial use that must be withdrawn for the sole purpose of improving or preserving the utility of land by draining the same, or that removed from a mine to permit mining operations or to preserve the mine in good condition;

(4) the disposal of ground water used in connection with production, for reduction, smelting and milling metallic ores and industrial minerals, or that displaced from an aquifer by the storage of other mineral resources.
The administrator at any time may hold a hearing on his own motion, or upon petition signed by a representative body of users of ground water in any area or sub-area, to determine whether the water supply within such area or sub-area is used in compliance with this act.

89-2927. Inspection - entry on premises. The administrator or any assistant, any representative of the state bureau of mines and geology or the state board of health, shall have the right of entry on the property of any appropriator, where a well is situated, at any reasonable hour of the day, for the purpose of investigating any matters in connection with this act.

89-2928. Information available to public. Such information as is required or secured under the provisions hereof shall constitute public records, and as such shall be available to the public at all reasonable times.

89-2929. Reports to be in addition to other reports required. The forms, reports and information required to be filled by this act shall be in addition to all other reports and information which the drillers of water wells in the state of Montana are required by law to file with agencies of the state of Montana.

89-2930. Duty of county attorneys and attorney general. The county attorneys and the attorney general of the state shall perform such legal services and bring such legal proceedings in carrying out the purpose of this act within their respective counties as the administrator shall request.

89-2931. Rules and regulations. The administrator may prescribe and enforce reasonable rules and regulations concerning and providing for inspection and entry for that purpose by the administrator or his official representative; the circumstances under which the construction of weirs or other measuring devices may be required; and such other similar matters as are required by, and consistent with the administration of this act.

89-2932. Ground water supervisors - duties. The administrator may appoint one or more ground water supervisors for each designated controlled area, and may appoint one or more ground water supervisors at large. Within their respective jurisdictions and under the direction of the administrator, the ground water supervisors and supervisors at large shall supervise the withdrawal of ground water and the carrying out of orders issued by the administrator.
89-2933. **Investigations.** It shall be the duty of the administrator to compile information for the purpose of enabling him to comply with the provisions of this act. In compiling such information, the administrator is directed to make use of investigations, technical personnel, surveys, and information available from the Montana bureau of mines and geology, the United States geological survey, the Montana oil and gas conservation commission, the state board of health, and any other private, state, or governmental agency.

In addition to the foregoing, the administrator may request specific investigations by the preceding public agencies where desired information is not otherwise available.

89-2934. **Power to administer oaths and subpoena witnesses.** The administrator shall have the power to administer oaths and to issue subpoenas for the attendance of witnesses, in any investigation hearing or proceeding held by him.

89-2935. **Fees.** For the filing of any notices, declarations, applications for a license, petition, or other matters with the county clerks, or administrator, a fee of two dollars ($2.00) for each such document shall be paid. Fees paid to the administrator shall be paid by him to the general fund of the state; fees paid to the county clerks shall be paid by them to the general fund of their respective counties.

89-2936. **Penalties.** Any person who violates or refuses or neglects to comply with any provision of this act, or of any order, rule or regulation promulgated by the administrator, or who commits waste, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than twenty-five dollars ($25.00) nor more than two hundred and fifty dollars ($250.00) for each offense.
46-601. Ground water; declaration of policy. The Legislature finds, recognizes and declares that the conservation of ground water and the beneficial use thereof are essential to the future well-being of this state. Complete information as to the occurrence and the use of ground water in the state is essential to the development of a sound ground water policy. The registration of all irrigation wells should be required.

46-602. Ground water; registration of irrigation wells; statement; log of well; exception; abandonment of well; replacement; procedure. (1) The owner of each irrigation well completed in this state shall register such well with the director within fifteen days after the completion of such well. Registration shall be in such form as the director may direct, and shall contain a statement of (a) the location of such well, (b) the date of its completion, (c) the legal description of the land intended to be irrigated, (d) the number of acres to be irrigated, (e) the size of such well, (f) the actual capacity of such well expressed in gallons per minute, and (g) such additional information conformable to the statement of purpose contained in section 46-601 as the director might require.

(2) The registration, referred to in subsection (1) of this section, shall be in triplicate and it shall be accompanied by three copies of the certificate of well driller required by section 46-603, except that this requirement shall not apply to any well the water from which is used solely for domestic or culinary purposes, for stock on a ranch or farm, or for the watering of lawns and gardens for family use or profit where the area to be irrigated does not exceed two acres.
Whenever any owner of a registered irrigation well shall abandon such well, he shall properly plug or cap the same in accordance with the rules and regulations of the Department of Water Resources and within sixty days give written notice to the Department of Water Resources of such abandonment. When any owner of an abandoned irrigation well replaces such well he shall, within fifteen days after the completion of such replacement well, give notice to the department by filing in the office of the department completed irrigation well registration and well driller certificate forms, in triplicate, for the replacement well. No fee shall be collected for filing notice of abandonment or for the registration of the replacement of a registered irrigation well.

46-603. Ground water; log of irrigation well; certificate of well driller; data required. Any person actually drilling any irrigation well, either on his own account or for hire, shall keep an accurate log in triplicate, on certificate of well driller forms to be furnished by the Director of Water Resources, of the depth, thickness, and character of the different strata penetrated and the location of water-bearing strata. The certificate of well driller shall also contain the dates of beginning and completion of work, the length, size, and weight of the casing and the method of its placement, the size of the drilled hole, where the drilled hole is sealed, the type of seal used, the legal description of the land on which the well is drilled, and such other data as the Director of Water Resources may reasonably require. If the well has been drilled for hire, the certificate shall be furnished in triplicate to the owner to accompany the registration required by section 46-602.

46-604. Ground water; certificate of well driller; copies; disposition. The Director of Water Resources shall retain one copy of the certificate of well driller and of the registration, and shall forward one copy of each to the soil and water conservation district office of the county in which the well is located, and one copy of each to the Conservation and Survey Division of the University of Nebraska.

46-605. Ground water; existing irrigation wells; registration; information required. The owner of any irrigation well, except any well the water from which is used solely for domestic, culinary, stock on a ranch or farm, or the watering of lawns and gardens for family use or profit where the area to be irrigated does not exceed two acres, completed prior to September 20, 1957, shall, on or before January 1, 1959, register such well in the manner provided in section 46-602, and furnish, insofar as available, the information
required to be furnished upon the registration of a new well.

46-606. **Ground water; irrigation wells; registration fees; disposition.** The Director of Water Resources shall collect in advance a fee of seven dollars and fifty cents for each well registered under the provisions of sections 46-602 and 46-605. The director shall pay such fees monthly into the state treasury and the State Treasurer shall credit such fees to the General Fund.

46-607. **Ground water; violation of act; penalty.** Any person violating any of the provisions of sections 46-601 to 46-606, or knowingly furnishing false information hereunder, shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than one hundred dollars nor more than five hundred dollars.

46-608. **Ground water; conservation; declaration of policy.** The Legislature finds, recognizes, and declares that the conservation of ground water and the beneficial use thereof are essential to the future well-being of this state; that the drilling of irrigation wells in the state without regard to spacing is detrimental to the public welfare; and that the spacing of irrigation wells should be regulated.

46-609. **Ground water; irrigation wells; spacing; requirements.** After September 20, 1957, no irrigation well shall be drilled upon any land in this state within six hundred feet of any other irrigation well except any well the water from which is used solely for domestic, culinary, stock use on a ranch or farm, or the watering of lawns and gardens for family use or profit where the area to be irrigated does not exceed two acres and except as provided in section 46-610.

46-610. **Ground water; irrigation wells; special permit to drill without regard to spacing; application; fee.** (1) Any person may apply to the Director of Water Resources for a special permit to drill an irrigation well without regard to the spacing requirements of section 46-609, and shall pay a fee to the Department of Water Resources of twelve dollars and fifty cents, which fee shall be paid into the state treasury by the director and by the State Treasurer placed in the General Fund. Such application shall be in such form as the director may direct, and shall contain a statement of the proposed location of such well, the reason for seeking such special permit, the legal description of the land to be irrigated by such well, the number of acres to be irrigated, the proposed size of such well, the estimated capacity of such well, expressed in gallons per minute, to the extent that capacity is susceptible of advance deter-
mination, and the name of the person who is actually going to drill such well.

(2) A separate application, like that provided for in subsection (1) of this section, shall be submitted for each well for which a special permit is sought. When considering the approval or rejection of any application, the director shall consider the size, shape, and irrigation needs of the property for which such special permit is sought, the known ground water supply, and the effect on the ground water supply and the surrounding land of the well for which such special permit is sought. Such application may be approved or disapproved in whole or in part, and the special permit issued or refused accordingly.

46-611. Ground water; irrigation wells; spacing requirements not applicable, when. The prohibitions of section 46-609 shall not apply to the location of more than one irrigation well by a landowner on his own farm, so long as each such irrigation well is at least six hundred feet from any other irrigation well located on a neighboring farm under separate ownership.

46-612. Ground water; conservation; violations; penalty. Any person violating the provisions of sections 46-608 to 46-611 shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not less than one hundred dollars nor more than five hundred dollars and shall be required to plug any well drilled in violation of sections 46-608 to 46-611.

46-613. Underground water; declaration of policy; preference in use; definition of ground water. Preference in the use of underground water shall be given to those using the water for domestic purposes. They shall have preference over those claiming it for any other purpose. Those using the water for agricultural purposes shall have the preference over those using the same for manufacturing or industrial purposes.

As used in this section, domestic use of ground water shall mean all uses of ground water required for human needs as it relates to health, fire control, and sanitation and shall include the use of ground water for domestic livestock as related to normal farm and ranch operations.

(b) GROUND WATER CONSERVATION DISTRICTS

46-614. Conservation districts; formation. Ground water conservation districts may be formed in the manner, and having the power, provided in sections 46-614 to 46-634.
46-615. Conservation districts; proposal; submission; changes; proposed boundaries. A proposal for the formation of a ground water conservation district must first be submitted to the Director of Water Resources and the director of the Conservation and Survey Division of the University of Nebraska who shall make a hydrologic and geographical evaluation of the proposed boundaries and recommend any changes in such boundaries as are indicated by such evaluation. No further steps for the formation of such district shall be taken until such officers have, in writing, given their advice on such boundaries thereof.

46-616. Conservation districts; petition; signatures required; filing. Following receipt of the advice required by section 46-615, a petition calling for formation of the proposed district may be filed with the election commissioner or county clerk of the county in which such proposed district is to be located or of the county having the greatest area within such proposed district when such proposed district includes land lying in two or more counties. The petition shall be signed by not less than the lesser of five resident owners or fifty-one per cent of the resident owners of land in each of a majority of the precincts lying within the proposed district.

46-617. Conservation districts; petition; contents; minor defects, effect; amendment. (1) The petition, referred to in section 46-616, shall set forth:

(a) The name of the proposed district and boundaries thereof;

(b) A proposed division of the district into divisions as nearly equal in size as may be practicable, each of which is to be represented by a director who is a resident owner of land in such division;

(c) The number of directors that the district shall have if formed, together with the name and address of each of the proposed directors, the division to be represented by each of them, and their terms of office, which shall be so designated that one-third of them shall expire on the first Tuesday in March of the second year after the organization of the district is completed, one-third of them on the first Tuesday in March of the fourth year after the organization of the district is completed, and the remaining one-third of them on the first Tuesday in March of the sixth year after the organization of the district is completed;

(d) Where the offices of such proposed district are to be maintained; and
(e) A prayer that the organization of the district be submitted to a vote of the landowners as provided by sections 46-614 to 46-634.

(2) No petition for the organization of a district under sections 46-614 to 46-634 with the requisite signatures shall be declared null and void on account of minor defects, but the election commissioner or county clerk may at any time, prior to final determination of the sufficiency thereof, permit the petition to be amended in form and substance to conform to the facts. Several similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one petition. All petitions, filed prior to the determination of the sufficiency of such petition, shall be considered as though filed with the first petition placed on file.

46-618. Conservation district; petition; certification of signatures; hearing; notice; publication. The election commissioner or county clerk shall examine the petition and, if he finds that it bears the requisite number of signatures and otherwise meets the requirements of sections 46-614 to 46-634, he shall so certify to the county board of the county in which such petition was filed. The county board shall thereupon set a date for hearing upon such petition and shall cause notice of such hearing, together with a copy of such petition, to be printed once each week for three weeks in a newspaper of general circulation throughout the area of the proposed district, the third publication being not less than three nor more than seven days prior to the date set for such hearing. The cost of such publication shall be paid by the petitioners and shall be advanced by them prior to publication. The Director of Water Resources shall also be notified of the time and place of such hearing by regular mail.

46-619. Conservation districts; county board; hearing; objections; change of boundaries. At the time set for such hearing, the county board shall examine the petition and hear objections thereto and may order changes in the boundaries thereof by the inclusion or removal of land therefrom upon finding that such change would be hydrologically and geographically sound. The action of the county board may be reviewed by the district court in error proceedings.

46-620. Conservation districts; submitted to landowners; special election. If no proceedings for review have been instituted within ten days after the county board has announced its action, such action shall be certified to the election commissioner or county clerk who shall order that the question of the organization of such district be submitted to a vote of landowners living within the
proposed district, and shall fix the date of such election, which
may be held either as a special election or at any general election,
and which shall be so scheduled that the notices required by sec-
tions 46-621 and 46-622 can be given. All resident landowners of
legal voting age shall be qualified to vote.

46-621. Conservation districts; election; notice; contents. The
election commissioner or county clerk with whom such petition was
filed shall give notice of the scheduling of such election to the
election commissioner or county clerk of any other county to be
embraced in whole or in part within such district. Such notice
shall contain a statement of the question to be submitted at such
election, the area in which such election is to be held, and the
date thereof.

46-622. Conservation districts; election; notice; publication;
contents. The election commissioner or county clerk of each county
to be embraced in whole or in part within such district shall pub-
lish a notice once each week for three consecutive weeks in a legal
newspaper having general circulation in his county, which notice
shall state: (1) The fact of filing of the petition; (2) in sum-
mary form, the information required by subsection (1) of section
46-617 to be included in the petition; (3) that an election will
be held to decide the question of organization of the proposed dis-
trict; (4) the date of such election; (5) the polling places at
which such election is to be held; (6) the qualifications of those
eligible to vote at such election; and (7) the specific question
to be submitted.

46-623. Conservation districts; elections; ballots; canvassed;
certifications. The ballots cast at such election shall be counted
and canvassed as nearly as practicable in the same manner as for
elections generally. Not later than one week after the holding of
such election, each election commissioner or county clerk shall
certify the results thereof to the election commissioner or county
clerk with whom such petition was filed, who shall tabulate the
results so certified to him, and if he finds that fifty-five per-
cent of those voting in such election voted in favor of the organiza-
tion of the proposed district, he shall so certify to the Director
of Water Resources and the election commissioner or county clerk in
each of the other counties lying in whole or in part within such
district and the district shall thereupon be fully organized. If
the proposition to form such district is defeated at the election,
the proposition may again be submitted to the landowners after the
lapse of one year from the rejection thereof upon the filing of a
new petition therefor.
46-624. Conservation district; body politic; sue and be sued; immunity of directors for debts. A district formed under the provisions of sections 46-614 to 46-634 shall be a body politic, and may sue and be sued in its own name, and no liability shall result to its directors on account of debts or other obligations of the district.

46-625. Conservation district; directors; qualification; oath; bond; vacancies. At least a majority of the members of the board of directors shall be resident owner-operators of irrigation wells subject to registration under the provisions of sections 46-601 to 46-613. Each member of the board shall take an oath of office, and shall give bond in the sum of five thousand dollars conditioned that he shall faithfully perform the duties of director and of such further office to which he may be elected in such district, and shall account for all funds or property coming into his hands as such director or other officer. Such bonds shall run to the district, be signed by a surety or sureties approved by the county clerk of the county in which the offices of such district are located, and shall be filed and recorded in the office of such clerk. When such bond is so filed and approved, such person so elected shall take and hold office until his successor is elected and qualified. When a vacancy occurs on the board, such vacancy shall be filled by the remaining members of the board.

46-626. Conservation district; directors; election; term of office; no filing fee. As the terms of the original members of the board of directors expire, their successors shall be nominated and elected for terms of six years by a majority vote of the resident landowners of legal voting age of the division of the district which they represent. Such elections shall be held on the first Tuesday in February preceding the expiration of such terms and shall be conducted in the manner provided for election of directors of irrigation districts as provided in sections 46-115 to 46-118. No filing fee shall be required of candidates filing for the office of director of a ground water conservation district.

46-627. Conservation district; directors; no compensation; expenses. The members of the board of directors shall receive no compensation, but shall be paid their actual expenses while engaged in the business of such district.

46-628. Conservation district; officers; election. The board of directors shall annually elect a president, vice president, secretary, treasurer, and such other officers as may be necessary.
46-629. **Conservation district; board of directors; general powers.**
The board of directors shall have authority to: (1) Maintain and equip an office, and employ such persons as may be needed; (2) gather information concerning ground water conservation; (3) aid or conduct, alone or in conjunction with other districts, any program of ground water conservation; (4) contract with any private individual, association, or corporation, or with any state agency, engaged in ground water conservation, for performance of the activities mentioned in subdivisions (2) and (3) of this section; (5) disseminate technical information concerning ground water conservation; (6) institute corrective measures to ensure the proper conservation of ground water within the district as provided in section 46-630; and (7) levy a tax as provided in section 46-631.

46-630. **Conservation district; board of directors; corrective measures; hearing; notice; publication; order.** Whenever the board of directors shall determine that corrective measures are necessary in order to ensure the proper conservation of ground water within the district, it shall confer with the Director of Water Resources, the director of the Conservation and Survey Division of the University of Nebraska, and ground water users within the district. No corrective measures shall be instituted until after a public hearing. Notice of such hearing shall be published once, not less than seven days before the hearing, in a newspaper of general circulation throughout the district. Such notice shall state the time and place of the hearing and in general terms the corrective measure or measures proposed. The board shall, within seven days after such hearing, announce the measure or measures ordered to be taken and shall cause notice thereof to be published in a newspaper of general circulation throughout the district. Notice of such measure or measures shall also be sent to all known ground water users throughout such district by either certified or registered mail. The board shall have authority to compel compliance with such measure or measures by an action brought in the district court of the county in which any failure to comply is found to exist.

46-631. **Conservation district; board of directors; taxes; levy; limitation.** The board of directors may levy and collect annually taxes necessary to finance the activities of such district to the amount of not more than one mill on the dollar of the assessed value of all taxable real property within such district. It shall, on or before the first day of August in each year, certify its mill levy to the county clerks of the counties wholly or partially within the district, who shall extend the same on the county tax list, and the same shall be collected by the county treasurer in the same manner as state and county taxes. It shall be the duty of the board
to apply for and to receive from the county treasurers all money to
the credit of the district. The county treasurer shall disburse the
same on the order of the treasurer of the district.

46-632. Conservation district; claims; warrants; interest; pay-
ment; indebtedness; limitation. All claims against ground water con-
servation districts may be paid by warrants or orders, duly drawn
on the treasurer of such district, signed by the president and
countersigned by the secretary. When such warrants or orders have
been issued and delivered, they may be presented to the treasurer of
the district, and if such be the fact, endorsed "not paid for want
of funds." Such warrants or orders shall be registered by the
treasurer in the order of presentation, shall draw interest at the
rate of seven per cent per annum from the date of registration there-
of, and shall be received by the county treasurer in payment of
ground water conservation district taxes levied pursuant to section
46-631. The indebtedness of the district shall never exceed the
amount to be raised within one year by the proposed levy.

46-633. Conservation district; dissolution; procedure; funds;
disposition. If there are no debts outstanding, the board of direc-
tors may, on its own motion, or on the written request of one hundred
electors, request of the election commissioner or county clerk of
the county in which such proposed district is located or of the
county having the greatest area within the district when the district
includes land lying in two or more counties that the question of dis-
solution of such district be submitted to the electors of the dis-
trick, and the election commissioner or county clerk of the county
in which such proposed district is located or of the county having
the greatest area within the district when the district includes
land lying in two or more counties shall fix the date of such elec-
tion, notice of which shall be given and which shall be conducted
in the same manner as elections for the formation of such districts.
If a majority of those voting on such question vote in favor of dis-
solution, the election commissioner or county clerk shall so certify
to the board of directors, which shall thereupon stand dissolved.
The question of dissolution shall not be submitted more often than
once every twelve months. In case a district is dissolved the funds
on hand or to be collected shall be held by the treasurer, and the
directors shall petition the district court of the county in which
the main office is located for an order approving the distribution
of funds to the taxpayers of the district on the same basis as col-
icuted.

46-634. Act, how cited. Sections 46-614 to 46-634 may be cited
as the Ground Water Conservation Act of Nebraska.
46-635. **Ground water, defined.** Ground water is that water which occurs or moves, seeps, filters, or percolates through the ground under the surface of the land.

46-636. **Ground water; pumping for irrigation purposes; Legislature; finding.** The Legislature finds that the pumping of water for irrigation purposes from pits located within fifty feet of the bank of any natural stream may have a direct effect on the surface flow of such stream.

46-637. **Ground water; pumping for irrigation purposes; permit; application; approval by Director of Water Resources.** The use of water described in section 46-636 may only be made after securing a permit from the Department of Water Resources for such use. In approving or disapproving applications for such permits, the Director of Water Resources shall take into account the effect that such pumping may have on the amount of water in the stream and its ability to meet the requirements of appropriators from the stream.

46-638. **Municipal water suppliers; administration of act; powers granted.** The Director of Water Resources of the State of Nebraska is hereby authorized to grant and administer permits to cities, villages or to municipal corporations supplying water to cities and villages: (1) To locate, develop and maintain ground water supplies through wells or other means and to transport water into the area to be served by the city, village or municipal corporation, and (2) to continue existing use of ground water and the transportation of ground water into the area served by the city, village or municipal corporation.

46-639. **Municipal water suppliers, application for permit; contents; fee.** An applicant which desires to avail itself of the provisions of sections 46-638 to 46-650 shall make application in writing to the Director of Water Resources for a permit. The application shall include (1) a statement of the amount of water for which a permit is desired together with an exhibit of maps showing the location of all wells, and (2) such other information as the director may deem necessary or desirable, and shall be accompanied by a fee in the amount of fifty dollars for the first five million gallons per day and an additional twenty dollars for each additional increment of five million gallons per day requested. The fee shall be based on the amounts of water requested on a daily average basis.

46-640. **Municipal water suppliers; notice of hearing; publication.** Upon receipt of an application, the Director of Water Resources
shall prepare a notice of his intent to proceed to make a determin-
ation whether a permit should be granted. The notice shall set forth a place and time, which shall not be less than thirty days after the date of the last publication of notice, when the director or his authorized assistant shall begin the taking of testimony in support of the application to withdraw ground water and transport it into the area to be served and the amount of the water withdrawal applied for. The director shall cause such notice to be published in a legal newspaper in each county in which the well field or any part thereof is or will be located three successive weeks prior to the date of hearing; publication may be proved by affidavit of any person having knowledge of the fact, specifying the time when and the paper in which the publication was made, and that said newspaper is a legal newspaper under the statutes of the State of Nebraska.

46-641. Municipal water suppliers; objections to permit; filing; grounds. Any person who claims that his interest is adversely af-fected may, not less than ten days prior to the hearing date speci-fied in the notice referred to in section 46-640, file in the office of the Director of Water Resources written objections to the granting of the permit and appear before the director in opposition there-to at the time and place specified for the hearing. Every objection filed shall specify particularly the grounds of the objection.

46-642. Municipal water suppliers; hearing; granting of permit; priority date. If the Director of Water Resources, after the hear-ing, finds that a permit should be granted, he is authorized to grant a permit to the applicant to withdraw and transport water in the amount applied for or in a lesser amount. The permit so granted shall have a priority date as of the time when the application is filed with the director.

46-643. Municipal water suppliers; existing suppliers; permit; allowance without hearing prior to April 1, 1965. In the case of cities, villages or municipal corporations engaged in the utiliza-
tion of wells for public water supplies prior to June 27, 1963, the procedure to secure a permit shall be according to the procedures outlined in section 46-639 and all rights which may accrue by virtue of a permit shall relate to the first date of beneficial use, if application therefor is filed with the Director of Water Resources prior to April 1, 1965. The director shall grant a permit to the city, village or municipal corporation for the continued use of facilities existing prior to June 27, 1963, without hearing, if the application is filed prior to April 1, 1965 and if the application meets the requirements of section 46-639.

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46-644. Municipal water suppliers; permit; duration; revocation; procedure. Permits granted by the Director of Water Resources shall be valid for a period of five years after the granting of a permit and as long thereafter as the water for which the permit is granted is used. For the purposes of sections 46-638 to 46-650, the commencement of construction of facilities to provide water for beneficial use shall be deemed the date of the commencement of beneficial use. If it shall appear that the holder of a permit granted under the provisions of sections 46-638 to 46-650 has not used water for a beneficial purpose and in accordance with the terms of the permit for more than three years, such permit may be revoked or modified by the director. The procedure for such revocation or modification shall be the same as that provided for in sections 46-229.02 to 46-229.05.

46-645. Municipal water suppliers; excess unappropriated waters; recharging ground water reservoirs; permits. The Director of Water Resources may grant to any city, village or municipal corporation which supplies water to the inhabitants of any city or village permits to store excess, unused and unappropriated water for recharging ground water reservoirs. The procedure to be followed in granting permits to utilize excess, unused and unappropriated water for recharging ground water reservoirs shall, so far as applicable, be the same as that required for granting permits for the use of ground water as provided in sections 46-638 to 46-650.

46-646. Municipal water suppliers; review by Supreme Court of orders on decisions; procedure. Any person who deems himself aggrieved by any order or decision in connection with the granting or denial, in whole or in part, of an application for a permit or in connection with the revocation or modification of a permit may institute proceedings in the Supreme Court of Nebraska in the manner provided for in section 46-210.

46-647. Municipal water suppliers; right to recover damages not affected; no limitation on power of eminent domain. Nothing in sections 46-638 to 46-650 shall be construed as limiting any right of an owner of an estate or interest in or concerning land to recover damage for any injury done to his land or to any water rights appurtenant thereto; nor shall sections 46-638 to 46-650 limit rights of condemnation which cities, villages and municipal corporations have under the laws of the State of Nebraska.

46-648. Municipal water suppliers; permit; preference in use of waters. The use of ground water pursuant to a permit granted by the Director of Water Resources under the provisions of sections
46-638 to 46-650 shall be subject to and governed by the provisions of section 46-613.

46-649. Municipal water suppliers; Director of Water Resources; rules and regulations; adoption. The Director of Water Resources may adopt all rules and regulations necessary or desirable to secure compliance with the provisions of sections 46-638 to 46-650.

46-650. Act, how cited. Sections 46-638 to 46-650 shall be known and cited as the City, Village and Municipal Corporation Ground Water Permit Act.
CHAPTER 534

UNDERGROUND WATER AND WELLS

CONSERVATION AND DISTRIBUTION OF UNDERGROUND WATERS

534.010 Definitions.

1. As used in NRS 534.010 to 534.190, inclusive:

(a) "Aquifer" means a geological formation or structure that transmits water.

(b) "Artesian well" means a well tapping an aquifer underlying an impervious material in which the static water level in the well stands above where it is first encountered in the aquifer.

(c) "Domestic use" extends to culinary and household purposes, the watering of a family garden, lawn, and the watering of domestic animals.

(d) "Percolating waters" are underground waters, the course and boundaries of which are incapable of determination.

(e) "Person" shall be interpreted to mean any individual, firm, partnership, association, company or corporation, municipal corporation, power district, political subdivision of this or any state, or a United States Government agency.

(f) "Waste" is defined as causing, suffering or permitting any artesian well to discharge water unnecessarily above or below the surface of the ground so that the waters thereof are lost for beneficial use or in any canal or ditch conveying water from a well where the loss of water in transit is more than 20 percent of the amount of the water discharged from the well.

(g) "Well driller" means any person who shall drill a well or wells, for compensation or otherwise.
(h) "Well drilling" or "drilling a well" are synonymous, and constitute drilling or boring new wells, placing casing in wells, cleaning and repairing existing wells, cementing wells and doing all other things normally associated with the construction or rehabilitation of wells.

2. As used in NRS 534.010 to 534.190, inclusive, the terms "underground water" and "ground water" are synonymous.

534.020 Underground waters belong to public; subject to appropriation for beneficial use; declaration of legislative intent.

1. All underground waters within the boundaries of the state belong to the public, and, subject to all existing rights to the use thereof, are subject to appropriation for beneficial use only under the laws of this state relating to the appropriation and use of water and not otherwise.

2. It is the intention of the legislature, by NRS 534.010 to 534.190, inclusive, to prevent the waste of underground waters and pollution and contamination thereof and provide for the administration of the provisions thereof by the state engineer, who is hereby empowered to make such rules and regulations within the terms of NRS 534.010 to 534.190, inclusive, as may be necessary for the proper execution of the provisions of NRS 534.010 to 534.190, inclusive.

534.030 Supervision of ground water basins by state engineer; petition of well owners; review of orders; extent of supervision; advisory services of governing bodies of water districts, water conservation boards.

1. Upon receipt by the state engineer of a petition requesting him to administer the provisions of NRS 534.010 to 534.190, inclusive, as relating to designated areas, signed by not less than 15 percent of the owners of wells, in any particular basin or portion therein, having a legal right to appropriate underground water therefrom, he shall:

(a) Cause to be made the necessary investigations to determine if such administration would be justified.

(b) If his findings are affirmative, designate such area by basin, or portion therein, and shall make an official order describing the boundaries by legal subdivision as nearly as possible.

(c) Proceed with the administration of NRS 534.010 to 534.190, inclusive, as provided for herein.
2. In the absence of such a petition from the owners of wells in a ground water basin which the state engineer has found, after due investigation, to be in need of administration as relating to designated areas, the state engineer may upon his own motion enter an order in the same manner as if a petition, as described in subsection 1, had been received.

3. Such order of the state engineer may be reviewed by the district court of the county pursuant to NRS 533.450.

4. Such supervision shall be exercised on all wells tapping artesian water or water in definable underground aquifers drilled subsequent to March 22, 1913, and on all wells tapping percolating water, the course and boundaries of which are incapable of determination, drilled subsequent to March 25, 1939, except those wells coming under the provisions of NRS 534.180.

5. Within any ground water basin which has been designated or which may hereafter be so designated by the state engineer, except ground water basins subject to the provisions of NRS 534.035, and wherein a water conservation board has been created and established or wherein a water district has been created and established by law to furnish water to an area or areas within the basin or for ground water conservation purposes, the state engineer, in his discretion and in the administration of the ground water law, is hereby authorized and directed to avail himself of the services of the governing body of such water district or the water conservation board, or either or both of them, in an advisory capacity. Upon request of the state engineer, the governing body or water board shall furnish such advice and assistance to the state engineer as he may deem necessary for the purpose of the conservation of ground water within the areas affected. The services of such governing body or water conservation board shall be without compensation from the state, and the services so rendered shall be upon reasonable agreements effected with and by the state engineer.

534.035 Ground water boards in certain counties: Establishment; number, appointment, terms and vacancies of members; officers; meetings and quorum; duties.

1. In each area designated as a ground water basin by the state engineer pursuant to the provisions of NRS 534.030, which area is located entirely within one county and includes three or more incorporated cities, a ground water board shall be established as provided in this section.
2. The governing bodies of all the incorporated cities within the designated area, the board of county commissioners of the county in which the area is located, and the governing body of any water district in which the area is included, or partly included, shall each submit a list of names of residents of the area to the governor, who shall appoint seven members of the board. At least one member shall be appointed from each list.

3. Of the first board appointed, two members shall be appointed for terms of 2 years, two members for terms of 3 years, and three members for terms of 4 years. Thereafter all members shall be recommended in the same manner and appointed for terms of 4 years. Vacancies on the board shall be filled by appointment by the governor for the unexpired terms from the lists submitted. The board shall elect one member as chairman and one member as secretary to serve as such at the pleasure of the board.

4. The board shall maintain its headquarters at the county seat of the county in which the designated area is located, and shall hold meetings at such times and places as it may determine. Special meetings may be called at any time by the secretary at the request of any four members, or by the chairman, upon notice specifying the matters to be acted upon at such meeting. No matters other than those specified in the notice shall be acted upon at such meeting unless all members are present and consent thereto. All meetings of the board shall be open to the public.

5. A majority of the board shall constitute a quorum, and the board shall act only by a majority of those present.

6. The state engineer shall not approve any application or issue any permit to drill a well, appropriate ground water, or change the place or manner of use or the point of diversion of water within the designated area until he has conferred with the board and obtained its written advice and recommendations with respect thereto.

7. It is the intention of the legislature that the state engineer and the board shall be in agreement whenever possible, but, for the purpose of fixing responsibility to the governor, if there is any disagreement between the state engineer and the board, the views of the state engineer shall prevail. A written report of any such disagreement shall be made immediately to the governor by the state engineer and the board.

8. Any ground water board may request from the state engineer or any other state, county, city or district agency such technical
information, data and advice as it may require to perform its functions, and the state engineer and such other agencies shall, within the resources available to them, furnish such assistance as may be requested.

534.040 Employment of well supervisor and assistants; levy and collection of special tax for payment of salaries and expenses.

1. Upon the initiation of the administration of NRS 534.010 to 534.190, inclusive, in any particular basin, and where the investigations of the state engineer have shown the necessity for the supervision over the waters of such basin, the state engineer may employ a well supervisor and other necessary assistants, who shall execute the duties as provided in NRS 534.010 to 534.190, inclusive, under the direction of the state engineer. The salaries of the well supervisor and his assistants shall be fixed by the state engineer.

2. The board of county commissioners shall levy a special tax annually, or at such time as the same is needed, upon all taxable property situated within the confines of the area so designated by the state engineer to come under the provisions of NRS 534.010 to 534.190, inclusive, in such an amount as may be necessary to pay such salaries, together with necessary expenses; but in designated areas within which the use of ground water is predominantly for agricultural purposes such levy shall be charged against each water user who has a permit to appropriate water or a perfected water right, and the charge against each water user shall be based upon the proportion which his water right bears to the aggregate water rights in the designated area. The minimum charge shall be $1.

3. The salaries and expenses may be paid by the state engineer from the water distribution fund provided in NRS 532.210 pending the levy and collection of the tax as provided in this section.

4. The proper officers of the county shall levy and collect such special tax as other special taxes are levied and collected, and such tax shall be a lien upon the property.

5. The tax provided for, when collected, shall be deposited with the state treasurer in a fund in the state treasury which shall be designated as the __________ Basin, __________ County well fund. All claims against such fund in the state treasury shall be certified by the state engineer and approved by the state board of examiners. The state controller is authorized to draw his warrants therefor against such fund and the state treasurer shall pay the same.
534.050 Permit to appropriate water required before sinking well in designated ground water basin; no permit required in undesignated areas prior to water development; penalties.

1. Every person desiring to sink or bore a well in any basin or portion therein in the state designated by the state engineer, as provided for in NRS 534.010 to 534.190, inclusive, shall first make application to and obtain from the state engineer a permit to appropriate such water, in accordance with the provisions of chapter 533 of NRS relating to the appropriation of the public waters, before performing any work in connection with the boring or sinking of such well.

2. In other basins or portions therein which have not been designated by the state engineer no application or permit to appropriate such water is necessary until after the well is sunk or bored and water developed. Before any legal diversion of water can be made from the well, the appropriator must make application to the state engineer, in accordance with the provisions of chapter 533 of NRS, for a permit to appropriate such water.

3. Any person using water after a permit has been withdrawn, denied, canceled, revoked or forfeited is guilty of a misdemeanor. Each day of violation of this subsection shall constitute a separate offense and be separately punishable.

534.060 Conditions for sinking wells; casings and appliances; repair of defective well by owner, state engineer; sealing of wells; liens.

1. During the sinking or boring of a well the permittee shall cause to be placed in such well a proper and sufficient casing approved by the state engineer, so arranged as to prevent the caving in of such well and to prevent the escape of water therefrom through any intervening sand or gravel stratum, which casing must be of sufficient length to reach the deepest aquifer encountered during the sinking or boring of the well.

2. The number, size, type and distribution of perforations is optional with the permittee, except that no perforations shall be made in a pipe tapping confined (artesian) water above the confining impervious materials.

3. The permittee shall provide the necessary valves, plugs or other appliances to prevent or control the flow of water from such well and prevent the loss of underground water above or below the ground surface.
4. If in the judgment of the state engineer a well is in any manner defective he may order the owner to repair the well or, in his discretion, may cause the well to be repaired or sealed. If the state engineer elects to repair or seal the well, the cost of repairing or sealing the well shall be paid from the water distribution fund and shall not be charged to the owner of the well or be a lien on the land upon which the well is located or on other land of the owner to which water from the well is appurtenant.

5. If the state engineer orders the owner to repair the well and if upon 15 days' written notice by registered mail, return receipt requested, the owner fails to repair such well, the state engineer or his assistants or authorized agents may, without further notice, take such steps as may be necessary to effect such repairs. The cost thereof, including the labor and material, may in the first instance be paid by the state engineer from the water distribution fund, as provided in NRS 534.040; but any such cost in any event shall be a lien on the land on which the well is located and, also, any other land possessed by the well owner to which the water from the well is appurtenant.

6. The state engineer, his assistants or authorized agents, as the case may be, shall file an itemized and sworn statement, setting forth the date when such work was done and the nature of the labor so performed, with the board of county commissioners of the county wherein such charge and expense were incurred. The board of county commissioners shall thereupon present a bill for the expense to the person liable therefor under this section, and if such person shall neglect for 30 days thereafter to pay the same, such bill and costs shall be and become a lien upon the lands and property of the person so liable for the payment of the bill, and shall be collected as delinquent taxes against the lands and property are collected.

534.070 Waste of water from artesian well unlawful.

1. No person controlling an artesian well in any basin in Nevada shall suffer the waters therefrom to flow to waste, unless, and as far as reasonably necessary in the judgment of the state engineer, to prevent the obstruction thereof, or to flow or be taken therefrom except for beneficial purposes.

2. The owner of any artesian well from which water is being unnecessarily wasted shall be guilty of a misdemeanor.

534.080 Appropriation of underground water for beneficial use from artesian or definable aquifer: Acquisition of rights under Nevada
chapter 533 of NRS; orders to desist; dates of priority.

1. A legal right to appropriate underground water for beneficial use from an artesian or definable aquifer subsequent to March 22, 1913, or from percolating water, the course and boundaries of which are incapable of determination, subsequent to March 25, 1939, can only be acquired by complying with the provisions of chapter 533 of NRS pertaining to the appropriation of water.

2. The state engineer may, upon written notice sent by registered mail, return receipt requested, advise the owner of a well who is using water therefrom without a permit to appropriate such water to cease using such water until he has complied with the laws pertaining to the appropriation of water. If the owner fails to initiate proceedings to secure such permit within 30 days from the date of such notice he shall be guilty of a misdemeanor.

3. The date of priority of all appropriations of water from an underground source, mentioned in this section, is the date when application is made in proper form and filed in the office of the state engineer pursuant to the provisions of chapter 533 of NRS.

534.090 Forefeiture and abandonment of rights.

1. Failure for 5 successive years on the part of the holder of any right, whether it be an adjudicated right, an unadjudicated right, or permitted right, and further whether such right be initiated after or before March 25, 1939, to use beneficially all or any part of the underground water for the purpose for which such right shall be acquired or claimed, shall work a forefeiture of undetermined rights and an abandonment of determined rights of the right to the use of such water to the extent of such nonuse. Upon the forfeiture of a right to the use of ground water, such water shall revert to the public and shall be available for further appropriation, subject to existing rights. If, upon notice by registered mail to the person of record whose right has been declared forfeited, such person fails to appeal such ruling in the manner provided for in NRS 533.450, and within the time provided for therein, the forfeiture becomes final.

2. A right to use underground water whether it be vested or otherwise may be lost by abandonment. If the state engineer, in investigating a ground water source, upon which there has been a prior right, for the purpose of acting upon an application to appropriate water from the same source, is of the belief from his examination that an abandonment has taken place, he shall so state in his ruling approving the application. If, upon notice by regis-
tered mail to the person of record who had the prior right, such
person fails to appeal such ruling in the manner provided for in
NRS 533.450, and within the time provided for therein, the alleged
abandonment declaration as set forth by the state engineer becomes
final.

534.100 Recognition of existing water rights; classification of
water in definable aquifer or percolating water by state engineer;
adjudication of vested underground water rights.

1. Existing water rights to the use of underground water are
hereby recognized. For the purpose of NRS 534.010 to 534.190, in-
clusive, a vested right is a water right on underground water ac-
quired from an artesian or definable aquifer prior to March 22, 1913,
and an underground water right on percolating water, the course and
boundaries of which are incapable of determination, acquired prior
to March 25, 1939. The distinction as to whether water is in a de-
finable aquifer or whether it is percolating water, the course and
boundaries of which are incapable of determination, is a matter to
be determined by the state engineer.

2. Any claimant of a vested underground water right may petition
the state engineer to adjudicate such rights. If upon investigation
he finds the facts and conditions justify it, he shall enter an order
granting the petition and shall make proper arrangements to proceed
with such determination. In the order the state engineer shall desig-
nate the area within which such determination is to be made, but the
size of such designated area may include other claimed underground
vested water rights. Such designated area shall not extend into
other drainage basins. Following the designation of such area the
state engineer shall proceed with adjudicating such rights as pro-
vided for in chapter 533 of NRS.

534.110 Rules, regulations of state engineer; statements and
pumping tests; conditions of appropriation; restrictions.

1. The state engineer shall administer NRS 534.010 to 534.190,
inclusive, and shall prescribe all necessary rules and regulations
within the terms of NRS 534.010 to 534.190, inclusive, for such
administration.

2. The state engineer may:

(a) Require periodical statements of water elevations, water
used, and acreage on which water was used from all holders of per-
mits and claimants of vested rights.
(b) Upon his own initiation, conduct pumping tests to determine if overpumping is indicated, to determine the specific yield of the aquifers and to determine permeability characteristics.

3. The state engineer shall determine if there is unappropriated water in the area affected and may issue permits only if such determination is affirmative.

4. It shall be an express condition of each appropriation of ground water acquired under NRS 534.010 to 534.190, inclusive, that the right of the appropriator shall relate to a specific quantity of water and that such right must allow for a reasonable lowering of the static water level at the appropriator's point of diversion. In determining such reasonable lowering of the static water level in a particular area, the state engineer shall consider the economics of pumping water for the general type of crops growing and may also consider the effect of water use on the economy of the area in general.

5. Nothing herein shall be so construed as to prevent the granting of permits to applicants later in time on the ground that the diversions under such proposed later appropriations may cause the water level to be lowered at the point of diversion of a prior appropriator; so long as the rights of holders of existing appropriations can be satisfied under such express conditions.

6. The state engineer shall conduct investigations in any basin or portion thereof where it appears that the average annual replenishment to the ground water supply may not be adequate for the needs of all permittees and all vested-right claimants, and if his findings so indicate the state engineer may order that withdrawals be restricted to conform to priority rights.

7. In any basin or portion thereof in the state designated by the state engineer, the state engineer may restrict drilling of wells in any portion thereof if he determines that additional wells would cause an undue interference with existing wells. Any order or decision of the state engineer so restricting drilling of such wells may be reviewed by the district court of the county pursuant to NRS 533.450.

534.120 Rules, regulations and orders of state engineer when ground water being depleted in designated area; preferred uses of water; temporary permits to appropriate water.

1. Within an area that has been designated by the state engineer,
as provided for in NRS 534.010 to 534.190, inclusive, where, in his judgment, the ground water basin is being depleted, the state engineer in his administrative capacity is herewith empowered to make such rules, regulations and orders as are deemed essential for the welfare of the area involved.

2. In the interest of public welfare, the state engineer is authorized and directed to designate preferred uses of water within the respective areas so designated by him and from which the ground water is being depleted, and in acting on applications to appropriate ground water he may designate such preferred uses in different categories with respect to the particular areas involved within the following limits: Domestic, municipal, quasi-municipal, industrial, irrigation, mining and stock-watering uses.

3. The state engineer may:
   (a) Issue temporary permits to appropriate ground water which can be limited as to time and which may be revoked if and when water can be furnished by an entity such as a water district or a municipality presently engaged in furnishing water to the inhabitants thereof.
   (b) Deny applications to appropriate ground water for any purpose in areas served by such an entity.
   (c) Limit depth of domestic wells.
   (d) Prohibit the drilling of wells for domestic use, as defined in NRS 534.010 and 534.180, in areas where water can be furnished by an entity such as a water district or a municipality presently engaged in furnishing water to the inhabitants thereof.

4. For good and sufficient reasons the state engineer may exempt the provisions of this section with respect to public housing authorities.

534.130 State engineer, well supervisor, assistants have right to enter premises to investigate. The state engineer, his assistants or authorized agents, and the artesian well supervisor, or his assistants, shall have the right to enter the premises of any owner or proprietor where any well mentioned in NRS 534.010 to 534.190, inclusive, is situated at any reasonable hour of the day for the purpose of investigating and carrying out his or their duties in the administration of NRS 534.010 to 534.190, inclusive.
534.140 Well drillers: Annual licenses; fees; regulations for well drilling; licensing by state contractors' board.

1. Every well driller, before engaging in the physical drilling of a well in the State of Nevada for development of water, shall annually make application to the state engineer for a license to drill.

2. The applications for such licenses and all licenses issued for the drilling of wells shall be in the form prescribed by the state engineer.

3. All well-drilling licenses shall expire on June 30 following the issuance thereof and shall not be transferable.

4. A fee of $25 shall accompany each application for such license and a fee of $10 shall be paid each year for renewal thereof.

5. All such license fees shall be kept by the state engineer and used to pay costs pertaining to such licensing and other costs associated therewith.

6. The state engineer is authorized and directed to prepare and keep on file in his office rules and regulations for well drilling.

7. Before engaging in the physical drilling of a well in this state for the development of water, every well driller who is the owner of a well-drilling rig, or who has a well-drilling rig under lease or rental, or who has a contract to purchase a well-drilling rig, shall obtain a license as a well driller from the state contractors' board.

534.150 Well drillers' advisory boards: Appointment; terms of members; examination of applicants for licenses.

1. For the purpose of examining applicants for well drillers' licenses, the state engineer is authorized to appoint a well drillers' advisory board or boards, referred to in this section as the "board." Such board or boards may be on a regional or statewide basis.

2. The terms of office of the members of the board shall be at the pleasure of the state engineer but shall not exceed a period of 2 years. The state engineer may reappoint a member upon completion of his term and may fill vacancies on the board.
3. The services of the board shall be without compensation from the state and the services so rendered shall be upon reasonable agreement effected with and by the state engineer.

4. The purpose of the board is to determine the qualifications of an applicant as a well driller and to submit such findings to the state engineer.

5. Rules and regulations of the board in examining applicants for well drillers' licenses shall be developed by the state engineer in cooperation with the board upon its creation.

6. If a hearing is held by the state engineer to determine if a licensed well driller is complying with the law or the rules and regulations pertaining to well drilling, the state engineer may avail himself of the services of the board in an advisory capacity.

534.160 License required to drill well; revocation of license; review of order of revocation, refusal to reissue license.

1. No person shall drill a well for water in this state without having first obtained a well-drilling license as provided in NRS 534.140 to 534.170, inclusive.

2. Well drillers are required to comply with such rules and regulations as may be adopted by the state engineer governing the drilling of water wells.

3. If the state engineer shall determine, upon investigation and after hearing held upon at least 15 days' notice sent by registered mail to the licensed well driller, that the well driller has failed to comply with the law or the required rules and regulations, the state engineer may revoke his license. The state engineer may refuse to reissue a license to a well driller if it appears that he has violated the law or the rules and regulations.

4. The order revoking or refusing to reissue a license shall be final unless an action for review by the district court is filed pursuant to NRS 533.450.

534.170 Well driller's log: Contents; testing information to be furnished state engineer.

1. The well driller shall keep:

   (a) A log of the depth, thickness and character of the different
strata penetrated and the location of water-bearing strata; and

(b) An accurate record of the work, including:

(1) A statement of the date of beginning work;

(2) The date of completion;

(3) The length, size and weight of the casing and how the same is placed;

(4) The size of the drilled hole;

(5) Where sealed off and the type of seal;

(6) The name of the well driller and the type of drilling machine used;

(7) The number of cubic feet per second or gallons per minute of flow from such well when completed; and

(8) The pressure in pounds per square inch if it is a flowing well, and, if nonflowing, the static water level, and the water temperature.

2. If the well is to be tested by pumping by the permittee, immediately following the completion of the test the report shall include the drawdown with respect to the amount of water pumped, and any additional information requested by the state engineer, all of which shall be verified on forms prescribed by the state engineer and shall be returned within 30 days following the completion of the well. Such record and dates shall become a permanent record in the state engineer's office.

534.180 Provisions inapplicable to permits for wells for domestic purposes; information to be furnished state engineer. NRS 534.010 to 534.190, inclusive, shall not apply in the matter of obtaining permits for the developing and use of underground water from a well for domestic purposes where the draught does not exceed a daily maximum of 1,440 gallons, except as to the furnishing of any information required by the state engineer.

534.190 Penalties. Any person violating any of the provisions of NRS 534.010 to 534.180, inclusive, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than $50 nor more than $500, or by imprisonment in the county jail not exceeding 6 months, or by both fine and imprisonment.
NEW MEXICO

WATER LAWS

OF

NEW MEXICO

ARTICLE 11

UNDERGROUND WATERS

75-11-1. Underground waters declared to be public—Applications for use to state engineer—Hearings. — The water of underground streams, channels, artesian basins, reservoirs, or lakes, having reasonably ascertainable boundaries, are hereby declared to be public waters and to belong to the public and to be subject to appropriation for beneficial use. By reason of the varying amounts and time such water is used and the relatively small amounts of water consumed in the watering of livestock, in irrigation of not to exceed one (1) acre of non-commercial trees, lawn or garden; in household or other domestic use, and in prospecting, mining or construction of public works, highways and roads or drilling operations designed to discover or develop the natural resources of the state of New Mexico, application for any such use shall be governed by the following provisions.

Any person, firm or corporation desiring to use any of the waters described in this act for watering livestock, for irrigation of not to exceed one (1) acre of non-commercial trees, lawn, or garden; or for household or other domestic use shall make application or applications from time to time to the state engineer on a form to be prescribed by him. Upon the filing of each such application, describing the use applied for, the state engineer shall issue a permit to the applicant to so use the waters applied for.

From time to time whenever any person, firm or corporation or the state of New Mexico desires to use not to exceed three (3) acre-feet of the water described in this act for a definite period of not to exceed one (1) year in prospecting, mining, or construction of public works, highways, and roads, or drilling operations designed to discover or develop the natural mineral resources of the state of New Mexico, only the application or applications referred to in section 75-11-3 New Mexico Statutes Annotated, 1953 Compilation shall be required. Separate applications must be made for each proposed use, whether in the same or in different basins. Upon the filing of such applications, the state engineer shall make an examination of the facts, and, if he finds that the proposed use will not permanently
impeir any existing rights of others, he shall grant the application. If he shall find that the proposed use sought will permanently impair such rights, then there shall be advertisement and hearing as provided in the case of applications made under section 75-11-3 New Mexico Statutes Annotated, 1953 Compilation.

75-11-2. Right to use waters. - Beneficial use is the basis, the measure and the limit to the right to the use of the waters described in this act (75-11-1 to 75-11-10).

75-11-3. Application for use of underground water—Publication of notice—Permit—Hearing on objections. - Any person, firm or corporation desiring to appropriate for irrigation or industrial uses any of the waters described in this act (75-11-1 to 75-11-10) shall make application to the state engineer in a form to be prescribed by him in which said applicant shall designate the particular underground stream, channel, artesian basin, reservoir or lake from which water is proposed to be appropriated, the beneficial use to which it is proposed to apply such water, the location of the proposed well, the name of the owner of the land on which such well will be located, the amount of water applied for, the use for which it is desired, and if the proposed use is irrigation, the description of the land to be irrigated and the name of the owner thereof.

Upon the filing of such application the state engineer shall cause to be published in a newspaper of general circulation in the county wherein the proposed well will be located, for at least once a week for three (3) consecutive weeks, a notice of the filing of such application, and that objections to the granting thereof may be filed within ten (10) days after the last publication of said notice.

After the expiration of the time for filing objections, if no such objections shall have been filed, the state engineer shall, if he finds that there are in such underground stream, channel, artesian basin, reservoir or lake, unappropriated waters, or that the proposed appropriation would not impair existing water rights from such source, grant the said application and issue a permit to the applicant to appropriate all or a part of the waters applied for subject to the rights of all prior appropriators from said source.

If objection or protest shall have been filed within the time in said notice specified the state engineer shall set a date for a hearing on the application and the objections or protest thereto, and shall notify the applicant and the objectors or protestants thereof. Such hearing shall be held in the court-house of the county in which the proposed well will be located. If after such hearing it shall appear that there are no unappropriated waters in the
designated source, or that the proposed appropriation would impair existing water rights from such source, the application shall be denied.

75-11-4. Existing water rights recognized. - Existing water rights based upon application to beneficial use are hereby recognized. Nothing herein contained is intended to impair the same or to disturb the priorities thereof.

75-11-5. Declaration of beneficial use—Verification—Recording. - Any person, firm or corporation claiming to be the owner of a vested water right from any of the underground sources in this act described, by application of waters therefrom to beneficial use, may make and file in the office of the state engineer a declaration in a form to be prescribed by the state engineer setting forth the beneficial use to which said water has been applied, the date of first application to beneficial use, the continuity thereof, the location of the well and if such water has been used for irrigation purposes, the description of the land upon which such water has been so used and the name of the owner thereof. Such declaration shall be verified but if the declarant cannot verify the same of his own personal knowledge he may do so on information and belief. Such declarations so filed shall be recorded at length in the office of the state engineer and may also be recorded in the office of the county clerk of the county wherein the well therein described is located. Such records or copies thereof officially certified shall be prima facie evidence of the truth of their contents.

75-11-6. Former declarations valid. - Declarations heretofore filed in substantial compliance with section 5 (75-11-5) hereof shall be recognized as of the same force and effect as if filed after the taking effect of this act (75-11-1 to 75-11-10).

75-11-7. Change of location of well—Change in use on application—Temporary change—Hearing. - The owner of a water right may change the location of his well or change the use of the water, but only upon application to the state engineer and upon showing that such change or changes will not impair existing rights and to be granted only after such advertisement and hearing as are prescribed in the case of original applications.

When the owner of a water right makes application or applications for a temporary change of not to exceed one (1) year for not more than three (3) acre-feet of water to a different location, or to a different use, or both, the state engineer shall make an investigation, and, if such change does not permanently impair any vested rights of others, he shall make an order authorizing the change. If
he shall find that the change sought might impair such rights, he
shall order advertisement and hearing as in other cases.

75-11-8. Water right forfeiture. - A. When, for a period of
four (4) years, the owner of a water right in any of the waters
described in sections 75-11-1 through 75-11-10 New Mexico Statutes
Annotated, 1953 Compilation, or the holder of a permit from the
state engineer to appropriate any such waters, has failed to apply
them to the use for which the permit was granted or the right has
vested, was appropriated or has been adjudicated, the water rights
shall be forfeited and the water so unused shall revert to the public
and be subject to further appropriation.

B. Upon application to the state engineer at any time and a proper
showing of reasonable cause for delay or for nonuse, or upon the
state engineer finding that it is in the public interest, the state
engineer may grant extensions of time, not to exceed a term of one
(1) year for each extension, in which to apply to beneficial use the
water for which a permit to appropriate has been issued or a water
right has vested, was appropriated or has been adjudicated.

C. Periods of nonuse when irrigated farm lands are placed under
the acreage reserve program or conservation program provided by the
Soil Bank Act (Public Law 540, 84th Congress) shall not be computed
as part of the four-year forfeiture period.

D. Periods of nonuse when water rights are acquired and placed
in a water conservation program adopted by an artesian conservancy
district shall not be computed as part of the four-year forfeiture
statute.

E. A lawful exemption from the requirements of beneficial use,
either by an extension of time or other statutory exemption, stops
the running of the four-year period for the period of the exemption,
and the period of exemption shall not be included in computing the
four-year period.

75-11-9. Fees and costs. - Upon the taking effect of this act,
the state engineer shall, by regulations, establish the fees to be
paid by applicants and declarants, which fees shall not exceed the
reasonable cost of the service to be performed by the state engineer,
and the applicant shall pay to the publisher the cost of the necessary
advertising, and before ordering any hearing the state engineer shall
require the applicant and protestant, or protestants, to each deposit
with him a sum equal to the estimated cost of the hearing and, after
the decision, the state engineer shall refund to the prevailing party
or parties the sum so deposited by him or them and shall refund to
the losing person or persons any unused portion of the moneys de-
posited by them. All fees collected under the provisions of this
act shall be deposited with the state treasurer and by him covered
into the "underground water fund" to be withdrawn by the state engi-
neer, upon vouchers properly audited, for the purpose of administ-
ering this act.

75-11-10. Appeal to district court. - The decision of the state
engineer shall be final in all cases unless appeal be taken to the
district court within thirty (30) days after his decision as provided
by section 151-173 of the 1929 New Mexico Statutes Annotated
(75-6-1).

75-11-11. Rules and regulations. - The state engineer is hereby
given the power and it is made his duty to formulate rules and regu-
lations for the purpose of carrying out the provisions of act, which
rules and regulations shall be printed and made available for dis-
tribution to all applicants.

75-11-12. Violations declared misdemeanors-Penalty. - Any person
using or appropriating water without a permit, contrary to the pro-
visions of section 1 of chapter 70, of the New Mexico Session Laws
of 1943, designated as section 77-1103 of the New Mexico Statutes,
1941, Annotated (75-11-3); or who changes the location of his well
or use of the water except as provided and permitted by section
77-1107 of said New Mexico Statutes, 1941, Annotated (75-11-7); or
who appropriates to his own use without a permit from the state
engineer forfeited water or water rights under the provisions of
section 77-1108 of said New Mexico Statutes, 1941, Annotated (75-11-8),
shall be guilty of a misdemeanor and, on conviction thereof in any
court of competent jurisdiction, shall be punished by a fine in a sum
of not less than twenty-five dollars ($25.00) nor more than two
hundred and fifty dollars ($250.00), for each offense; and each day
of continued violation shall constitute a separate offense.

75-11-13. License required to drill water well from "underground
source." - It shall be unlawful for any person, firm or corporation
to drill or to begin the drilling of a well for water from an under-
ground stream, channel, artesian basin, reservoir or lake (herein-
after referred to as "underground source") the boundaries of which
have been determined and proclaimed by the state engineer of New
Mexico to be reasonably ascertainable, without a valid, existing
license for the drilling of such wells issued by the state engineer
of New Mexico in accordance with the provisions of this act, and the
rules and regulations promulgated by him in pursuance hereof. Such
licenses shall not be required for the construction of a driven well;
Provided, that the casing for such well shall not exceed two and
three-eighths (2-3/8) inches outside diameter.

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75-11-14. Application—Information required—Underground water fund—Surety bond for drilling operations. - Any person desiring to engage in the drilling of one (1) or more wells for underground water within the boundaries of any such underground source, as hereinafter defined, shall file an application with the state engineer for a driller's license, setting out his qualifications therefor, the equipment proposed to be used in the drilling of such wells and such other information as may be required by the state engineer. A reasonable fee, not to exceed $25.00 shall be imposed by the state engineer. All fees collected under the provisions of this act (75-11-13 to 75-11-18) shall be deposited with the state treasurer, and by him covered into the "Underground Water Fund" to be withdrawn by the state engineer, upon vouchers properly audited, for the purpose of administering this act. A license shall be issued by the state engineer to any applicant, who, in the opinion of the state engineer, having due regard for the interest of the state in the protection of its public waters, is qualified to conduct such drilling operations, but not otherwise. The state engineer shall require a bond in form and with adequate surety to be approved by him in the penal sum of $5,000.00, conditioned that the applicant will comply with the laws of the state of New Mexico in the drilling of all wells to such underground sources, will comply with the rules and regulations of the state engineer and any requirements that may be made by him in connection with the drilling of any individual well for water from such sources.

75-11-15. Suspension or revocation of license—Appeal—Damage suits. - Any license issued under the provisions of this act (75-11-13 to 75-11-18) may be suspended or revoked by the state engineer upon notice and hearing, in the event that the license shall have violated any condition of the bond maintained by him as a prerequisite for such license. Appeals from the decision of the state engineer may be taken to the district courts of the state in the same manner and with like effect as now provided for other appeals from action of the state engineer. In the event of such breach, the state engineer, on behalf of the state of New Mexico, and any other person injured thereby, is authorized to recover in a civil suit in the district court of the county where the well involved is located, judgment for such damages as may have been sustained by reason thereof. In addition, the state engineer is authorized to recover on behalf of the state of New Mexico a civil penalty in an amount to be determined by the district court in which the action is tried not to exceed $1,000.00 and judgment for both damages and penalty shall be against the principal and sureties upon said bond.

75-11-16. Unauthorized drilling—Illegal application of water—Injunction or other relief. - No person owning or controlling lands
shall permit the drilling of a well thereon for water from an underground source, as herein defined, by any person other than a driller licensed under the provisions of this act (75-11-13 to 75-11-18). No person shall produce water from an underground source through any well drilled in violation of this act. No person shall apply water from such underground source to land having no valid water right for the purpose to which applied. The state engineer may apply for and obtain an injunction in the district court of the county in which any well or land affected is situated, against any person, firm or corporation who shall drill or begin the drilling of a well in violation of the provisions of this act, or who shall cause, allows or permit the drilling of a well by a person other than a licensed driller upon land owned or controlled by him, or who shall produce water from any well drilled in violation of this act, or who shall apply water from an underground source, as hereinabove defined, to lands having no valid water right for the purpose to which applied. This provision shall in no wise be construed to affect the existing right of a court of equity in the exercise of its general equity powers to grant relief to the state of New Mexico by injunction or otherwise.

75-11-17. Violation of act or rules and regulations-Penalty. - Any person violating any provision of this act (75-11-13 to 75-11-18) or of the rules and regulations of the state engineer promulgated in pursuance hereof, shall be guilty of a misdemeanor, and upon conviction, shall be fined in a sum of not less than $25.00 nor more than $250.00 for each offense. Each and every day that any such violation shall continue, shall be construed a separate offense for the purpose of this section.

75-11-18. Repealing and saving clause-Bond-Maximum. - Chapter 149 of the 1947 New Mexico Session Laws, and all other acts and parts of acts in conflict herewith are hereby repealed; Provided, however, that nothing, in this act (75-11-13 to 75-11-21) contained, shall be construed as changing or affecting, or intending to change or affect the right of the state engineer to require full compliance with the provisions of section 77-1204, New Mexico Statutes, 1941, Annotated (75-12-4); and Provided further, that in all cases where the application is for the purpose of drilling an artesian well, or to drill a well upon land where an artesian well is situated, the state engineer may elect to require the owner of the land or the driller of such well, as the case may be, to either comply with the provisions of this act, or the provisions of section 77-1204, New Mexico Statutes, 1941, Annotated (75-12-4), as the best interest of the state of New Mexico may require, but in no event shall such owner of the land or the driller of such well, as the case may be, be required to give more than one $5,000.00 bond.

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75-11-19. Underground waters declared to be public. - For the purposes of this act (75-11-19 to 75-11-22) all underground waters of the state of New Mexico are hereby declared to be public waters and to belong to the public of the state of New Mexico and to be subject to appropriation for beneficial use within the state of New Mexico. All existing rights to the beneficial use of such waters are hereby recognized.

75-11-20. Removal of underground waters from state. - No person shall withdraw water from any underground source in New Mexico for use in any other state by drilling a well in New Mexico and transporting the water outside the state or by drilling a well outside the boundaries of New Mexico and pumping water from under lands lying within the boundaries of New Mexico; Provided that nothing in this act prohibits the transportation of water by tank truck from any underground source in New Mexico to any other state where the water is used for exploration and drilling for oil and gas. The owner of the well from which the water is withdrawn shall have a duty to ascertain that the water exported is used only for the above purposes and such owner shall keep and maintain accurate records of the amount of water withdrawn and make such records available to the state engineer of New Mexico upon request. The amount of water withdrawn from any one (1) well for such exploration shall never exceed three (3) acre-feet.

75-11-21. Appropriation without permit—When authorized. - No permit and license to appropriate underground waters shall be required except in basins declared by the state engineer to have reasonably ascertainable boundaries.

75-11-22. Enforcement of provisions of act. - The state engineer and the attorney general or the various district attorneys are authorized and directed to use any and all legal means necessary to enforce the provisions of this act (75-11-19 to 75-11-22).

75-11-23. Replacement well within one hundred feet of original well. - A. The owner of a water right may drill and use a replacement well drilled within one hundred (100) feet of the original well, prior to application to the state engineer, and the publication and hearing set out in section 75-11-3 New Mexico Statutes Annotated, 1953 Compilation, if:

(1) The well is drilled into the same and only the same underground stream, channel, artesian basin, reservoir or lake as the original well, and

(2) The appropriation is of the same amount of water allowed by his water right in the original well, and

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(3) An emergency situation exists in which the delay caused by
application, publication and hearing would result in crop loss or
other serious economic loss, and

(4) He files application, or notifies the state engineer office
of these facts and the location of the proposed replacement well by
registered letter, prior to drilling; provided that he shall file
application for a permit within 30 days after drilling begins.

B. The owners of other water rights who claim to be injured by
the drilling of a replacement well under these circumstances, may
not enjoin the drilling of such a well or the use of the water from
the well, but are limited to an action at law to recover damages, and
to their right to protest the granting of a permit.

75-11-24. Replacement well over one hundred feet from original
well. - A. The owner of a water right may drill and use a replace-
ment well drilled over one hundred (100) feet from his original well
upon making application but without waiting for the completion of the
publication and hearing set out in section 75-11-3 New Mexico Statutes
Annotated, 1953 Compilation if:

(1) The well is drilled into the same and only the same under-
ground stream, channel, artesian basin, reservoir or lake as the
original well, and,

(2) The appropriation is of the same amount of water allowed by
his water right in the original well, and

(3) An emergency situation exists in which the delay caused by
publication and hearing would result in crop loss or other serious
economic loss, and

(4) The state engineer, after a preliminary investigation, finds
the change does not impair existing water rights, and grants him a
permit authorizing the drilling and use of the replacement well prior
to the publication and hearing.

B. When the preliminary investigation by the state engineer causes
him to reasonably believe that the drilling and use of a replacement
well may impair existing rights, then no permit shall be issued until
after publication and hearing.

75-11-25. Supplemental well. - A. The owner of a water right may
drill and use a supplemental well upon making application but prior
to the publication and hearing set out in section 75-11-3 New Mexico
Statutes Annotated, 1953 Compilation, if:

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(1) The supplemental well is drilled into the same and only the same underground stream, channel, artesian basin, reservoir or lake as the well being supplemented, and

(2) The supplemental well does not increase the appropriation of water to an amount above the existing water right, and

(3) An emergency situation exists in which the delay caused by publication and hearing would result in crop loss or other serious economic loss, and

(4) The state engineer, after a preliminary investigation, finds that the supplemental well does not impair existing water rights, and grants him a permit authorizing the drilling and use of the supplemental well prior to publication and hearing.

B. If the preliminary investigation by the state engineer causes him to reasonably believe that the drilling and use of a supplemental well may impair existing rights, then no permit shall be issued until after publication and hearing.

75-11-26. Rights to underground waters prior to inclusion of lands in an underground basin—"Person" defined. - The term "person" when used in this act (75-11-26 to 75-11-36) shall be held to mean and include corporations, cities, towns and villages and other legal entities, as well as individuals.

75-11-27. Rights to underground waters prior to inclusion of lands in an underground basin—Wells drilled for water supply for beneficial use—Declaration of underground basin—Plans for development of water filed with state engineer. - When the state engineer of New Mexico shall declare, or has heretofore declared an underground water basin which shall include an area in which any person as defined in this act (75-11-26 to 75-11-36), by the drilling of a well or wells, either for production purposes or as test wells, has proved the existence of the underground waters of such basin at the site where such well or wells are drilled, with the intent at the time of such drilling to establish or augment a water supply for beneficial use from the waters of such basin, or when the state engineer shall hereafter include or has heretofore included such an area within the boundaries of an existing underground water basin, such person shall have ninety (90) days from the date of first declaration of such basin by the state engineer, or its enlargement as the case may be, or the effective date of this act, in which to file with the state engineer plans for the development of such water for beneficial use in accordance with such intent, if the water from such well or wells had not been put to beneficial use at the time such basin was
declared or extended. Such plans shall state the amount, source and use of the water to be appropriated, the time in which the water will be put to beneficial use, not to exceed four (4) years unless the time is extended by the state engineer, the limit of the intended appropriation, and such other information as may be required by the state engineer.

75-11-28. Extension of time for application of water to beneficial use—Plans for development. - The state engineer, upon application of such person prior to the expiration of the time limitation, may grant extension or extensions of time for the application of the water to beneficial use and for the development of the waters according to the plans so filed.

75-11-29. Development of water for beneficial use after filing of plans. - After the filing of the plans mentioned in section 1 hereof with the state engineer such person shall have the right to proceed to the development of such water for beneficial use in accordance with this act (75-11-26 to 75-11-36) and subject to the limitations imposed by this act.

75-11-30. Application for permit to place well upon production or drill additional well—Form and contents—Notice of filing—Objections—Hearing—Denial—Successive applications. - Before the placing of any such well or wells upon production or the drilling of any additional well or wells in such basin or its extension, such person shall make application to the state engineer for permit so to do and for the appropriation of the waters to be produced therefrom. Such application shall be made in the form as shall be prescribed by the state engineer, in which the applicant shall designate the particular underground basin from which the water is proposed to be appropriated, the beneficial use of which it is proposed to apply such water, the location of the proposed well or wells, the name of the owner of the land on which such well or wells are or will be located, the amount of water applied for and the use for which it is desired, and such other information as the state engineer shall prescribe.

Upon the filing of such application the state engineer shall cause to be published in a newspaper of general circulation in the county in which the proposed well or wells has been or will be located for at least once a week for three (3) consecutive weeks a notice of the filing of such application and that objections to the granting thereof may be filed within ten (10) days after the last publication of said notice.

After the expiration of the time for filing objections, if no such
objections shall have been filed, the state engineer shall, if he finds that there are in such underground basin unappropriated waters and that the proposed appropriation would not impair existing water rights, grant the said application and issue a permit to the applicant to appropriate all or a part of the waters applied for, subject to the rights of all prior appropriators, including persons who prior to the establishment enlargement of such basin have applied waters from said source to beneficial use through the drilling of wells or otherwise.

If objections or protest shall have been filed within the time in said notice provided, the state engineer shall set a date for hearing on the application and the objections and protests thereto and shall notify the applicant and the objectors or protestants thereof. Such hearing shall be held in the courthouse of the county in which the proposed well or wells have been or will be located. If after such hearing it shall appear that there are no unappropriated waters in said underground basin or that the proposed appropriation would impair existing water rights the application shall be denied.

Successive applications, within the limit of the intent of such person at the time of the drilling of the initial well or wells, as such intent shall be determined by the state engineer, may be made and filed with the state engineer and each such application shall be treated separately by the state engineer and notice and hearing thereon shall be given and had and determination with respect to the allowance thereof shall be made as above provided. No right to the use of waters under this act (75-11-26 to 75-11-36) shall vest in any such person until after the granting of permit for the appropriation thereof by the state engineer and application of the water covered by such permit to beneficial use.

75-11-31. Beneficial use as basis of right acquired-Date of priority. - Beneficial use shall be the basis, measure and limit of the right acquired by any such person under the provisions of this act (75-11-26 to 75-11-36) but the date of priority with respect to any well or wells which may be drilled under the provisions of this act by any such person shall be the date on which such person first drilled a well or wells into such underground basin or its extension not, however, exceeding four (4) years prior to the effective date of this act.

75-11-32. Plans for development of beneficial use of water-Consideration in action on other permits. - After the filing of such plans by any such person, as provided in section 2 (75-11-27) of this act, the state engineer shall take into consideration such plans in granting or denying of permits to other applicants in such basin or its extension.
75-11-33. Appeal from action of state engineer—Time for taking—Notice—Costs—Evidence—Trial. — Any person or party dissatisfied with any decision, act or refusal to act of the state engineer under this act (75-11-26 to 75-11-36) may take an appeal to the district court of the county wherein any such well or wells is situated or in which the point of desired appropriation is situated; Provided notice of such appeal shall be served by appellant upon the state engineer and all parties interested within thirty (30) days after notice of such decision, act or refusal to act, and unless such appeal is taken within said time, the action of the state 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 state 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 (4) consecutive weeks, the last publication to be at least twenty (20) days prior to the date when such appeal may be heard. Proof of service of such notice of appeal shall be as in suits brought in district courts, the same to be filed in the district court to which appeal shall be taken within thirty (30) days after service shall be complete. At the time of filing such proof and upon the payment by the appellant of the sum of $12.50, the clerk of the district court shall docket said appeal. Costs shall be taxed as in cases brought in district courts and bonds for costs may be required upon appropriate application. The proceedings upon appeal shall be de novo, except evidence taken in hearing before the state engineer may be considered as original evidence, subject to legal objection, the same as if said evidence was originally offered in such district court and the court shall allow all amendments which may be necessary in furtherance of justice and may submit any question of fact arising therein to a jury or to one (1) or more referees at its discretion.

75-11-34. Appeal from action of state engineer—Papers transmitted to district court—Certified copies of records. — It shall be the duty of the state engineer upon being served with notice of appeal as aforesaid to forthwith transmit to the district court to which appeal may be taken, the papers, maps, plats, field notes and other data in his possession affecting the matter in controversy, or certified copies thereof, which certified copies shall be admitted in evidence as of equal validity with the original.

75-11-35. Decision of district court—Effect—Appeal—Certified copy to state engineer—Return of original papers. — The decision of the district court shall be binding upon the state engineer who shall thereafter act in accordance with such decision unless within sixty (60) days after the entry of such decision or judgment of the district court.
court an appeal shall be taken from the decision of the district court. Appeals so taken shall be governed in all respects as now provided by law relating to appeals taken from final judgments of the district courts. A certified copy of the decision of the court, together with all original papers, maps, plats, field notes and other data transmitted by the state engineer to such court after the final determination of said cause shall be forthwith returned to said state engineer.

75-11-36. Subsequent stock waterings, stock wells and domestic wells unaffected. - This act (75-11-26 to 75-11-36) shall in no matter affect subsequent stock waterings, stock wells and domestic wells.

ARTICLE 12

ARTESIAN WELLS

75-12-1. Definition of artesian well. - An artesian well for the purposes of this act (75-12-1 to 75-12-12) is hereby defined to be an artificial well which derives its water supply from any artesian stratum or basin.

75-12-2. Supervision of artesian waters. - All artesian waters which have been declared to be public waters shall be under the supervision and control of the state engineer, as provided by this act (75-12-1 to 75-12-12), but where artesian conservancy districts have been duly organized pursuant to chapter 97 of the New Mexico Session Laws of 1931 (75-13-1 to 75-13-21) and acts amendatory thereof, such districts shall have concurrent power and authority with the state engineer to enforce the regulatory provisions, as herein provided, insofar as the waters to be conserved and controlled by the respective districts are affected.

This act shall not be construed to affect the provisions of chapter 131 of the New Mexico Session Laws of 1931 (75-11-1 to 75-11-11), being "An act relating to underground waters, declaring certain underground waters to be public waters and relating to the beneficial appropriation thereof and repealing article 2 of chapter 151 of the New Mexico Statutes Annotated, 1929 Compilation," and the state engineer may intervene on behalf of the state in any proceeding brought by or against any artesian conservancy district where it is necessary for the proper protection or adjudication of rights to the public waters of the state.

75-12-3. Artesian well supervisor. - The county commissioners of New Mexico
any county wherein an artesian basin is situated and wherein an artesian conservancy district has not been organized may employ with the consent and approval of the state engineer an artesian well supervisor and any assistants deemed necessary, who shall be under the supervision of the state engineer, and it shall be the duty of such well supervisor, and his assistants, to enforce the regulatory provisions of this act (75-12-1 to 75-12-12) and the rules and regulations promulgated by the state engineer pursuant hereto. The salaries of such well supervisor and his assistants shall be fixed by the board of county commissioners, who shall levy a special tax for such purpose upon all taxable property situated within the county wherein such artesian basin is situated, which levy shall be exclusive of the limit now provided by law; Provided, however, that at no time shall such tax levy produce a revenue in any one year of more than seventy-five hundred ($7,500.00) dollars. All funds derived from such tax levies shall be transmitted by the county treasurer to the state treasurer on or before the last day of March, June, September and December of each year. The state treasurer shall deposit such funds to the credit of the artesian well fund of the county providing the same and shall disburse the same for expenses incurred by said county relative to the administration of the provisions of this section and of this act, upon warrants of the state auditor supported by proper itemized vouchers approved by the state engineer.

75-12-4. Rules and regulations. - The state engineer shall prescribe and enforce reasonable rules and regulations consistent with the terms of this act (75-12-1 to 75-12-12) governing the drilling, casing, repairing, plugging, and abandonment of artesian wells, and, where necessary, may vary such rules and regulations with the varying conditions in the different artesian basins; Provided, however, that the state engineer shall first consult with the board of directors of the artesian conservancy district in any such artesian basin to the end that such rules and regulations shall properly meet the requirements of such artesian basin.

The owner of the lands upon which any artesian well is situated or is to be drilled or his or its agent or attorney shall make application to the state engineer for permit to drill, repair, plug or abandon an artesian well, setting forth the plan of operations to be performed, which shall conform with the provisions of this act and the rules and regulations promulgated pursuant thereto, and said application shall be approved by the state engineer before work thereon can proceed.

Before proceeding with any such work, the state engineer shall
require, either of the owner of the land upon which the work is to be performed or of the contractor who is to perform the same, a bond approved by the state engineer in the sum of not to exceed five thousand ($5,000.00) dollars, conditioned upon the proper compliance with the provisions of this act and all rules and regulations promulgated pursuant thereto. Such bond shall be made payable to the state of New Mexico for the use and benefit of the state engineer. In the event of the breach of the conditions of the bond and upon the failure or refusal of the principal to comply with the provisions thereof, it shall be the duty of the state engineer to condition said artesian well to conform with the provisions of this act and the rules and regulations pursuant thereto and to recover on account of said bond the expense of such work, excepting that in no case shall the sum recovered exceed the amount of the bond. The state engineer and those authorized by him may go upon the land where the well is situated to perform such work as he shall deem necessary and the owner thereof shall be deemed to have consented thereto by his act of filing the application for permit to perform the work as above provided. The well shall be inspected by the state engineer or his representatives as soon as practicable and within ninety (90) days after the receipt of notice that the work has been completed, and upon written acceptance of such work by the state engineer, said bond shall thereupon be of no further force or effect, and the bondsmen shall be relieved from further liability thereunder.

75-12-5. Drilling record. - Any contractor drilling a well within any artesian basin where such well is drilled down to or through any artesian stratum shall keep a complete record and log of the well, recording the depth, thickness and character of the different strata penetrated, together with the dates when the work was begun and completed, and the amount, weight and size of casing set, and number of inches of flow from such well above the casing, all of which he shall verify under oath, and when the well is completed shall file the same with the state engineer or artesian well supervisor, and a duplicate thereof, if the well is situated within any artesian conservancy district, with the officials of such district.

75-12-6. Definition of waste. - For the purposes of this act (75-12-1 to 75-12-12), waste is defined as causing, suffering or permitting any artesian water to reach any pervious stratum above the artesian strata before coming to the surface of the earth, or causing, suffering or permitting any artesian well to discharge unnecessarily upon the surface of the ground, unless said waters are to be placed to a beneficial use under the constant supervision of the person using such water, or his employee, and through a constructed irrigation system; Provided, however, that nothing herein contained shall
be construed to prevent the use of such waters for ornamental ponds or fountains.

75-12-7. Abandoned wells wasting water declared to be a public nuisance. - Any artesian well which has been abandoned for more than four (4) years, from which the right to the use of the waters has reverted to the state, and which is found to be wasting the waters from any artesian basin, is hereby declared to be a public nuisance, and the state engineer, his representatives or the artesian conservancy district in which the well is located, may abate such nuisance in a summary manner, without notice to the owner, by plugging or otherwise controlling the same.

75-12-8. Waste of water on surface. - The owner of any artesian well which is being beneficially used or which under existing water rights may be beneficially used, who causes, suffers or permits the waters therefrom after coming to the surface of the earth to waste as herein defined, shall be guilty of a misdemeanor. Such waste is also hereby declared to be a public nuisance, and in the event of the failure or refusal of the owner of the well to abate the same, within ten (10) days from receipt of notice by registered mail, return receipt requested, from the state engineer, artesian well supervisor, or artesian conservancy district, if the well is situated therein, such officials having jurisdiction may abate such nuisance in a summary manner without further notice by properly fitting the well with necessary valves or other devices or doing whatever shall be necessary to control the flow of water therefrom and prevent such waste, and the cost thereof shall be a lien against the land upon which the well is situated, as well as any land the owner or owners of which have a legal right to the use thereon of all or a part of the water from such well insofar as the interests of the several owners may appear, together with all improvements thereon from the time the work is begun or labor and materials necessary to abate the nuisance are furnished, subject only to regularly assessed taxes and liens of record prior to the time of the commencement of the work; Provided, however, a claim of lien therefor under oath of the state engineer, artesian well supervisor, or an officer of an artesian conservancy district, as the case may be, is filed in the office of the county clerk of the county wherein such well is situated, within five (5) days from the time of the completion of the work, said claim of lien to be addressed to the owner or owners of the land upon which the well is situated, and to whom it may concern, giving a description of the land to be charged with the lien, the nature of the work, the time commenced and the time completed, together with the cost thereof. Said lien may be foreclosed in the same manner as provided by law for the foreclosure of mortgages at any time after one (1)
year but not more than three (3) years from the date of filing the same. The county clerk shall make no charge for filing the claim of lien, and no costs shall be taxed against the plaintiff in any foreclosure proceeding on account thereof.

75-12-9. Conducting water so as to prevent waste. - It shall be unlawful for any owner, person or corporation using the waters from any artesian well to conduct the same through any ditch, channel or conduit such that more than twenty (20) per cent of the waters are lost between the point of appropriation and the point of beneficial use. In no case shall water be conducted from an artesian well drilled after September 6, 1912, a distance greater than one and one-half (1 1/2) miles in an earthen ditch or two (2) miles through a concrete lined ditch or other impervious conduit, excepting for drilling purposes or where such waters shall be conducted in pipes for domestic or industrial purposes; Provided, however, that waters from artesian wells drilled subsequent to September 6, 1912, to replace wells drilled prior to that date, the waters from which were being conducted farther than the above-mentioned distances, shall not be restricted as to the distance which they may be conducted.

Where the waters from artesian wells are conducted through canals together with waters from other sources, it shall be unlawful for any owner, person or corporation using said waters to suffer or permit the waste of more than twenty (20) per cent thereof in conducting the same from the point of appropriation of the artesian waters to the place of beneficial use.

75-12-10. Reservoirs. - When reservoirs are constructed to be used for storage of water from artesian wells the capacity shall not be greater than that sufficient to hold the continuous maximum flow of the water from such wells for a period of more than forty-eight (48) hours, excepting that where the maximum discharge of such wells is less than three hundred (300) gallons per minute such reservoirs may be of sufficient capacity to hold the maximum continuous flow thereof for a period of ninety-six (96) hours. Such reservoirs shall be constructed and used only for irrigation purposes. It shall be the duty of the artesian well supervisor and officials of any artesian conservancy district or agents or employees designated for that purpose to inspect all reservoirs and main ditches and laterals connected therewith as to construction, both as to workmanship and materials used, and to determine the losses therefrom by seepage and evaporation. If any reservoir and distribution system shall show a loss of more than twenty (20) per cent of the water from the artesian well to the place of beneficial use, the investigating official shall notify the owner thereof, or his agent or person using the same, that
such reservoir and distributing system are in defective condition and
that it shall be unlawful to make further use of the same until they
are repaired or reconditioned so as to lose by reason of seepage and
evaporation not more than twenty (20) per cent of the waters appropri-
ated. The use of such reservoir for storage purposes after the owner,
his agent or the person using the same has received such notice,
shall be deemed a misdemeanor, punishable as provided in this act
(75-12-1 to 75-12-12), and also a public nuisance, and the state engi-
neer, artesian well supervisor or artesian conservancy district having
jurisdiction, may abate such nuisance in a summary manner and claim a
lien for the actual costs thereof as provided in section 8 (75-12-8).
After repairs have been made pursuant to such notice, it shall again
be inspected by such official and if found to be so repaired or recon-
structed so as to conserve the waters therein, as herein provided,
the official inspecting the same shall issue to the owner, or his
agent or the person using the same, his written approval thereof.

75-12-11. Using water for stock purposes. - It shall be unlawful
to use water from any artesian well for the purpose of watering
stock, except where such water shall be carried through pipes to
watering troughs fitted with float feeds or other means of control
to prevent waste therefrom.

75-12-12. Violations made misdemeanors. - Any person or corpora-
tion violating any of the provisions of sections 4, 5, 8, 9, 10 and
11 (75-12-4, 75-12-5, 77-12-8 to 77-12-11) of this act or any of the
rules and regulations promulgated by the state engineer in conformity
therewith, and each day such violation shall continue shall constitute
a separate offense, and upon conviction thereof, shall pay a fine of
not less than twenty-five ($25.00) dollars nor more than two hundred
fifty ($250.00) dollars for each offense. The state engineer, arte-
sian well supervisor, or any director of an artesian conservancy
district or other officer charged with the enforcement of this act
(72-12-1 to 75-12-12), may file a complaint with the proper official
against anyone for the violation of any of the provisions hereof.
61-01-01. Waters of the state - Public waters. - All waters within the limits of the state from the following sources of water supply, namely:

1. Waters on the surface of the earth excluding diffused surface waters but including surface waters whether flowing in well defined channels or flowing through lakes, ponds, or marshes which constitute integral parts of a stream system, or waters in lakes; and

2. Waters under the surface of the earth whether such waters flow in defined subterranean channels or are diffused percolating underground waters; and

3. All residual waters resulting from beneficial use, and all waters artificially drained; and

4. All waters, excluding privately owned waters, in areas determined by the state engineer to be noncontributing drainage areas. A noncontributing drainage area is hereby defined to be any area which does not contribute natural flowing surface water to a natural stream or watercourse at an average frequency oftener than once in three years over the latest thirty year period;

belong to the public and are subject to appropriation for beneficial use and the right to the use of these waters for such use, shall be acquired pursuant to the provisions of chapter 61-04.
61-01-01.1. **Priority of water rights - Definitions.** - In all cases where the use of water for different purposes conflict such uses shall conform to the following order of priority:

1. Domestic use.
2. Livestock use.
3. Irrigation and industry.

As between appropriators for the same use, priority in time shall give the better right. For purposes of this section:

(1) "Domestic use" shall mean the use of water by an individual, or by a family unit, or household, for personal needs and for household purposes, including, but not limited to heating, drinking, washing, sanitary and culinary uses; irrigation of land not exceeding one acre in area for noncommercial gardens, orchards, lawns, trees or shrubbery; and for household pets and domestic animals kept for household sustenance whether the water is supplied by the individual, a municipal government or by a privately-owned public utility or other agency.

(2) "Livestock use" shall mean the use of water for drinking purposes by herds, flocks or bands of domestic animals.

A water permit shall not be required of a landowner or his lessee to appropriate water for domestic and livestock uses.

61-01-02. **Right to use water - Basis - Waters appropriated for irrigation purposes - Priority in time.** - Beneficial use shall be the basis, the measure, and the limit of the right to the use of water. All waters appropriated for irrigation purposes shall be appurtenant to specified lands owned by the person claiming the right to use the water, so long as the water is used beneficially thereon unless such rights to use water have been severed for other beneficial uses as provided by section 61-04-15. Priority in time shall give the better right.

61-01-03. **Claims to the use of water initiated prior to and after March 1, 1905.** - In all cases of claims to the use of water initiated prior to March 1, 1905, 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 March 1, 1905 shall relate back to the date of receipt of an application therefor in the office of the state engineer, subject to compliance with the applicable provisions of law, and the rules and regulations established thereunder.

CHAPTER 61-03

STATE ENGINEER

61-03-13. Rules and regulations made by state engineer - Modification. - The state engineer shall make all general rules and regulations necessary to carry into effect the duties devolving upon his office, and may change the same from time to time in his discretion. All such rules and regulations relating to applications for permits to appropriate water, for the inspection of works, for the issuance of licenses, and for the determination of rights to the use of water, shall be modified by the state engineer, if required by a vote of the state water conservation commission.

61-03-14. Modification of rules and regulations of engineer voted upon only upon appeal from engineer. - The modification of the rules and regulations of the state engineer provided for in section 61-03-13 shall be voted upon by the state water conservation commission only on an appeal from a decision of the state engineer.

CHAPTER 61-04

APPROPRIATION OF WATER

61-04-01. Petitions, reports, surveys, and other documents filed in office of state engineer. - Any petitions, applications, surveys, reports, orders, or other documents provided for in this chapter shall be filed in the office of the state engineer, at the principal office of the state water conservation commission in the city of Bismarck, where they shall be kept on file under the control and supervision of the state engineer.

61-04-02. Application for beneficial use of water required. - The United States, any department or agency thereof and any person, association or corporation intending to acquire the right to the beneficial use of any waters, before commencing any construction for such purpose or before taking the same from any constructed works, shall make an application to the state engineer for a permit to appropriate.

61-04-03. Application to acquire right to waters - Contents - Maps and field notes to accompany. - The application to acquire the
right to the beneficial use of any waters shall be in the form required by the rules and regulations established by the state engineer. Such rules and regulations, in addition to providing the form and manner of preparing and presenting the application, shall require the applicant to state all the data necessary for the proper description and limitation of the right applied for, as to the amount of water and periods of annual use, 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 retained in the office of the state engineer after the approval of the application. The state 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 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 furnish the water for such parties at reasonable rates for storage, or carriage, or both, as the case may be.

61-04-04. Filing and correction of application. - The date of the receipt of the application provided for in section 61-04-02 in the state engineer's office shall be endorsed thereon and noted in his records. If the application is defective as to form, or unsatisfactory as to feasibility or safety of plan, or as to the showing of the 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 refiling thereof. If the application is corrected as required and is refiled within such time, it, upon being accepted, shall take priority as of the 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 refiling, except that the plans of the construction may be amended, with the approval of the state engineer, at any time, but no such change shall authorize any extension of time for construction except as provided in section 61-04-14. A change in the proposed point of diversion of water from a stream shall be subject to the approval of the state engineer, and shall not be allowed to the detriment of the rights of others having valid claims to the use of water from said stream.

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61-04-05. Publication of notice of application - Contents -
Proof - Failure to file satisfactory proof. - Upon the filing of an
application which complies with the provisions of this chapter and
the rules and regulations established thereunder, the state 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, the name and address of the
applicant, and the time when the application will be taken up by the
state engineer for consideration. Proof of publication, as required,
shall be filed with the state engineer within sixty days from the
date of his instructions to make publication. In case of failure
within the time required to file satisfactory proof of publication
in accordance with the rules and regulations applicable thereto,
the application thereafter shall be treated as an original applica-
tion filed on the date of receipt of proof of publication in proper
form.

61-04-06. Approval of application - Endorsing approval - Con-
tents. - Upon the receipt of the proof of publication, the state
engineer shall determine from the evidence presented by the parties
interested, from such surveys of the water supply as may be avail-
able, 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 thereupon shall become a per-
mit to appropriate water, and shall state in such approval the time
within which the construction shall be completed.

61-04-07. Rejection of applications - Appeal to district court. -
If, in the opinion of the state engineer, no unappropriated water
is available, he shall reject an application made under the provi-
sions of this chapter. He shall decline to order the publication
of notice of any application which does not comply with the require-
ments of the law and the rules and regulations thereunder. He may
refuse to consider or approve an application or to order the publi-
cation of notice thereof if, in his opinion, the approval thereof
would be contrary to the public interest. Any applicant, within
sixty days from the date of refusal to approve an application, may
appeal to the district court of the county in which the proposed
place of diversion or storage is situated, from any decision of the
state engineer which denies a substantial right. In the absence of
such appeal, the decision of the state engineer shall be final.
61-04-08. Prosecution of work - State engineer may approve another application upon failure of original applicant to complete - Exception. - The construction of the works shall be prosecuted diligently to completion. If one-fifth of the work shall not be completed within one-half the time allowed, the state engineer may accept and approve, as provided in this chapter, 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 thereupon shall be forfeited, except, that the state 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 beyond the power of the said applicant to avoid.

61-04-09. Completion of work - Inspection - Certificate of completion - Inspection by others than state engineer. - On the date set for completion of the work, or prior thereto, upon notice from the owner that the work has been completed, the state 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 work, its safety, and efficiency. If not properly and safely constructed the state engineer may require the necessary changes to be made within such time as he shall deem reasonable and shall not issue his certificate of completion until such changes are made. 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 state engineer, and any application subsequent in time shall have the benefit of such postponement of priority. For works involving the diversion of not exceeding twenty cubic feet of water per second or a dam not exceeding twenty feet in the extreme height from the foundation, the state engineer, in his discretion, may accept the report of an inspection by a reputable hydraulic engineer.

61-04-10. Certificate of construction issued when works found in satisfactory condition - Contents. - When the works are found in satisfactory condition, after inspection, the state engineer shall issue his certificate of construction, setting forth the actual capacity of the works and such limitations upon the water right as shall be warranted by the condition of the works, but in no manner extending the rights described in the permit.

61-04-11. Inspection of works. - If the state engineer, in the course of his duties, shall find that any works used for the storage, diversion, or carriage of water are unsafe and a menace to life or property, he at once shall notify the owner or his 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 state engineer shall cause any alleged unsafe works to be inspected. If they shall be found unsafe by the state engineer, the money deposited by such party shall be refunded, and the fees for inspection shall be paid by the owner of such works. If such fees are not paid by the owner of such works within thirty days after the decision of the state engineer, they shall be a lien against any property of such owner, and shall be recovered by a suit instituted by the state's attorney of the county at the request of the state engineer. The state engineer, when in his opinion necessary, may inspect any works under construction for the storage, diversion, or carriage of water, and may require any changes necessary to secure their safety. The fees for such inspection shall be a lien on any property of the owner and shall be subject to collection as provided in this chapter but neither the United States nor the state of North Dakota nor any agency thereof shall be required to pay such fees.

61-04-12. Use of unsafe works a misdemeanor - Duty of state's attorney. - The use of works for the storage, diversion, or carriage of water, at any time after an inspection thereof by the state engineer 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. In case of any violation of this section, the state engineer shall give prompt notice to the state's attorney of the county in which such works are located. The state's attorney, at once, shall proceed against the owner, and all parties responsible for such violation.

61-04-13. Application of water to beneficial use - Inspection. - On or before the date set for the application of the water to a beneficial use, the state engineer, after due notice to the owner of a permit, shall cause the works to be inspected. Upon the completion of such inspection, the state engineer shall issue a license to appropriate water to the extent and under the conditions of the actual application thereof to a beneficial use, but in no manner extending rights described in the permit. The inspection to determine the amount of water applied to a 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 state engineer.

61-04-14. Extending time for completion of construction or application to beneficial use. - The state engineer may extend the time for the completion of construction, or for application to beneficial
use, at any time, or from time to time, for good cause shown. Where any such time has heretofore expired, the state engineer may renew and extend the same if application for renewal and extension is made prior to January 1, 1962.

61-04-15. Assignment of permit or license to appropriate water - Regulations governing. - 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 state engineer. The evidence of the right to use water from any works constructed by the United States, or its duly authorized agencies, in like manner shall be filed in the office of the state engineer, upon assignment. A right to appropriate water for irrigation purposes shall be assigned only upon approval by the state engineer of an application for such assignment. If such change can be made without detriment to existing rights, the water right shall be simultaneously severed and transferred from such land without losing priority of any right previously established. Before the approval of such application the applicant must give notice thereof by publication once a week for two weeks in a newspaper of general circulation in the county in which the tracts of land are located, in the form required by the state engineer. Upon receipt of the proof of publication, the state engineer shall render his decision thereon in writing, which shall be final unless some party interested in the same source of water supply shall within sixty days bring appropriate action in the district court of the county in which the land is located appealing such decision. The transfer of title to land in any manner whatsoever shall carry with it all rights to the use of water appurtenant thereto for irrigation purposes unless such rights to use water have been severed as provided in this section.

61-04-16. Referee or referees appointed in water suits - Duties. - In any water suit the court may appoint a referee or referees, not exceeding three, to take testimony and report upon the rights of the parties, as in other equity cases.

61-04-17. Surplus water to be delivered to persons entitled to beneficial use - Charges - Compelling delivery. - 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 reasonable rates for storage, or carriage, or both, as the case may be, to the parties entitled to the use of the water for beneficial purposes. In case of the refusal of such owner or owners to deliver any such surplus water at reasonable rates as determined by the state engineer, they may be compelled to do so.
by the district court of the county in which the surplus water is to be used.


61-04-22. Prescriptive water right. - Any person, firm, corporation or municipality which used or attempted to appropriate water from any watercourse, stream, body of water or from an underground source for mining, irrigating, manufacturing or other beneficial use over a period of twenty years prior to July 1, 1963, shall be deemed to have acquired a right to the use of such water without having filed or prosecuted an application to acquire a right to the beneficial use of such waters if such user shall, within two years from July 1, 1963, file with the state engineer an application for an appropriation permit in the form required by the rules and regulations of the state engineer, and substantiated by such affidavits and other supporting information as the state engineer may require. If the state engineer finds that the application and supporting documents substantiate the claim he shall approve such application, which shall thereupon become a permit to appropriate water with a priority date relating back to the date when water in the quantity stated in the application was first appropriated. In the event the prescriptive user shall fail to file with the state engineer an application for an appropriation permit within two years from July 1, 1963 such prescriptive water right shall be declared abandoned and forfeited. The decision of the state engineer in rejecting an application made under the provisions of this section may be appealed to the district court in the manner prescribed by section 61-04-07. Within sixty days after July 1, 1963 the state engineer shall cause to be published in all official county newspapers within the state notice of the deadline of filing for an appropriation permit by prescriptive users. Any such prescriptive water right acquired under this section shall be subject to forfeiture for nonuse as prescribed by sections 61-04-23 through 61-04-25.

61-04-23. Forfeiture of water rights - Inspection of works. - All appropriations of water must be for a beneficial or useful purpose, and when the appropriator or his successor in interest ceases
to use it for such purpose for three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the right ceases. The state engineer shall, as often as necessary, examine the condition of all works constructed or partially constructed within the state and compile information concerning the condition of every water appropriation, and all ditches and other works constructed or partially constructed thereunder.

61-04-24. Forfeiture of water rights – Notice – Contents. – If it shall appear that any water appropriation or portion thereof, whether issued prior or subsequent to July 1, 1963, has not been used for a useful or beneficial purpose, or having been so used at one time has ceased to be used for such purpose for more than three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the state engineer shall set a place and time for a hearing. Any owner of a water permit using water from a common source of supply, any applicant therefor or any interested party may request the state engineer to conduct such a hearing, the purpose of which shall be the cancellation of any unused water rights to such common source of supply. Any decision of the state engineer in denying a request for such a hearing may be appealed to the district court in the manner prescribed by section 61-04-07. Prior to the hearings the state engineer shall serve notice upon the owners of such water appropriation or works and upon the owners of land benefited by such appropriation or works to show cause by such time and at such place why the water appropriation or a portion thereof should not be declared forfeited and canceled.

In addition to the time and place of hearing, such notice shall contain:

1. A description of the water appropriation;

2. The permit number upon the records of the state engineer;

3. The date of priority;

4. The point of diversion;

5. A description of the lands benefited by such appropriation as indicated on the application for a water permit on file in the office of the state engineer; and shall call upon the owners of such appropriation or works, the owners of land
benefited by such appropriation or works, and other interested parties whose right to use water may be affected by a cancellation of the appropriation to show cause why such appropriation, or a portion thereof, should not be canceled.

The notice shall be served personally or sent by registered or certified mail at least thirty days before the date of hearing to those owning or controlling the appropriation or works and to the owners of land benefited by such appropriation as indicated on the application for a water permit on file in the office of the state engineer, or works as they appear from the records of the county treasurer or the register of deeds. In addition, such notice shall be published in a newspaper of general circulation in the county in which the point of diversion is located for two consecutive weeks prior to the date of hearing.

61-04-25. Forfeiture of water rights - Hearing - Appeal. - At such hearing the verified report of the state engineer or engineers of the state water commission shall be prima-facie evidence for the forfeiture and cancellation of such water appropriation or portion thereof. If no one appears at the hearing, such water appropriation or portion thereof shall be declared forfeited and canceled. If interested parties shall appear and contest the cancellation, the state engineer shall hear the evidence and if it appears that such water has not been put to a beneficial use or, having been so used at one time, has ceased to be used for such purpose for more than three successive years, unless such failure or cessation of use shall have been due to the unavailability of water, a justifiable inability to complete the works, or other good and sufficient cause, the same, or a portion thereof, shall be declared forfeited and canceled. An appeal may be taken from the decision of the state engineer in accordance with the provisions of chapter 28-32.

61-04-26. Register of deeds to record order canceling water right. - A copy of any order declaring any water right forfeited, canceled or abandoned shall be filed by the state engineer in the office of the register of deeds in the county or counties where the land to which the affected water right is appurtenant is located and shall be listed in the index of the property affected as provided in section 11-18-07.

61-04-27. Information filed with state engineer - Installation of measuring devices. - On or before the first day of February of each year all water users holding a water permit, including irrigation districts, federal agencies, and political subdivisions, shall file with the state engineer, on forms supplied by the state engineer,
topographic, mapping, foundation test borings, design, water use and such other information as the state engineer shall require. The state engineer may also require any such water users to install measuring devices, which shall conform to the state engineer's specifications, at all points specified by the state engineer.
Sec. 1001. **Short Title**

This Act may be cited as the "Oklahoma Ground Water Law".

Sec. 1002. **Definitions**

In this Act, unless the context clearly indicates otherwise, the term "ground water" shall mean water under the surface of the earth regardless of the geologic structure in which it is standing or moving; it does not include water flowing in underground streams with ascertainable beds and banks.

The term "ground water basin" shall mean land overlying, as nearly as may be determined by known facts, a distinct body of ground water but the exterior limits of a ground water basin shall not be deemed to extend upstream or downstream beyond a defile, gorge or canyon of a surface stream or wash.

"Ground water subdivision" shall mean an area of land overlying, as nearly as may be determined by known facts, a distinct body of ground water; it may consist of any determinable part of a ground water basin.

"Critical ground water area" shall mean any ground water basin as herein defined, or any designated subdivision thereof, not having sufficient ground water to provide a reasonably safe supply for domestic, municipal, industrial, irrigation, recreational, and other beneficial uses in the basin at the then current rates of withdrawal.

The term "waste" shall mean: (a) Taking or using ground water in any manner so that the water is lost for beneficial use. (b) Transporting water from a well to the place of use in such a manner that there is an excessive loss in transit. (c) Permitting any ground water to reach a pervious stratum and be lost into cavernous or
otherwise pervious materials encountered in a well. (d) Permitting or causing the pollution of a sweet water strata or basin through any act which will cause water polluted by minerals or other waste to filter or otherwise intrude into such a basin.

The term "Board" shall mean the Oklahoma Water Resources Board.

The term "person" shall mean individuals, municipalities, corporations and copartnerships.

Sec. 1003. Declaration of policy

It is hereby declared to be the public policy of this State, in the interest of the agricultural stability, domestic, municipal, industrial and other beneficial uses, general economy, health and welfare of the State and its citizens, to conserve and protect the ground water resources of the State and for that purpose to provide reasonable regulations for the taking and use of ground water.

Sec. 1004. Domestic purposes and watering of stock

Nothing in this Act shall be deemed to apply to or prevent the taking and using of ground water for domestic purposes or for the purpose of watering of stock provided that ground water shall not be taken or used for such purposes in a manner which constitutes waste as defined in this Act.

Sec. 1005. Priority

Priority of claims for the appropriation of ground water except as hereinafter provided, shall be determined by priority in time. All claims based on actual taking of ground water for beneficial use prior to the effective date of this Act shall relate back to the date of placing ground water to beneficial use and all claims for the beneficial use of ground water initiated after the effective date of this Act shall relate back to the filing of an application with the Board.

The priority of claim to appropriate ground water based on the actual taking and placing of ground water to beneficial use, prior to the effective date of this Act, as provided in this Section, shall be lost unless ground water is actually taken and placed to beneficial use within five (5) years from the effective date of this Act, providing that:

(a) Within two (2) years after filing an application with the Oklahoma
Board, the applicant has begun construction of the works to put the water applied for to beneficial use.

(b) Within three (3) years after the filing of the application, applicant has put twenty-five percent (25%), or more, of the water applied for to beneficial use.

(c) Within four (4) years after the filing date of the application, applicant has put seventy-five percent (75%), or more, of the water applied for to beneficial use.

(d) Within five (5) years after the filing date of the application, applicant has put one-hundred percent (100%) of the water applied for to beneficial use.

Where the amount of ground water actually taken and placed to beneficial use within five (5) years after the effective date of this Act is less than the amount of ground water claimed by virtue of such prior taking, then such claim shall be effective only for that amount of ground water actually taken and placed to beneficial use within such time.

Provided that for good cause shown, such as engineering difficulty or for any other valid reason over which the applicant has no control, the Oklahoma Water Resources Board may extend the time for construction an additional two (2) years beyond the five (5) year period provided herein, or in the case of National emergency when materials are not available for the construction of works proposed additional time may be granted beyond the two-year extension to cover the period of such emergency.

Sec. 1006. Application to board

In order to establish priority of a claim to appropriate ground water in a ground water basin in which there has been no court adjudication of existing rights to appropriate ground water, application must be presented to the Board on forms provided by the Board setting forth the legal description, the use for which the ground water is to be taken, the amount of water to be taken, together with such other information as may be required by the Board. Upon receipt of such application, the Board, if it finds that such application is in satisfactory form as required by this Act and the rules and regulations of the Board, shall officially file the application and notify the applicant of such filing.

The priority of claim to appropriate ground water, established by
filing an application with the Board, as provided in this Section, shall be lost unless ground water is actually taken and placed to beneficial use within five (5) years from the filing of such application, and when the amount of ground water actually taken and placed to beneficial use within five (5) years, as provided in Section 5 of this Act, from the filing of such application is less than the amount of ground water claimed in such application, then the claim shall be effective only for that amount of ground water actually taken and placed to beneficial use within such time.

Sec. 1007. Designation and alteration of critical ground water areas - Surveys - Cooperation with other Agencies

When the Board has reason to believe it necessary and in the public interest, it may, on its own motion, initiate the designation of critical ground water areas or alter the boundaries thereof, or the Board may take this action upon receipt of a petition signed by not less than twenty-five (25) or one-fourth (1/4th), whichever is the lesser number, of the users of ground water within the exterior boundaries of the ground water basin, or subdivision, wherein the areas proposed to be included in such critical ground water area is situated.

The Board shall make or cause to be made surveys of the ground water of the various basins of the State, using such facts and data as may be available and shall determine the area and the safe annual yield measured by the average annual recharge of such basin. The Board is authorized to cooperate with the agencies of the Federal Government engaged in making such surveys and may accept and use the findings of other agencies of the Federal and State Governments as a basis of its decisions.

Sec. 1008. Suits to adjudicate rights

Upon the completion of a survey of any ground water basin, the Board shall deliver a copy thereof, together with copies of all data necessary for the determination of all existing rights to the use of ground water in such ground water basin, to the Attorney General who shall within sixty (60) days thereafter enter suit on behalf of the State for the determination of all existing rights to the use of such water, in the District Court of the County in which the ground water basin is located, and in cases where a ground water basin is located in two (2) or more counties, in the District Court where the larger part of such basin is located, and shall diligently prosecute the same to a final adjudication; provided, that suits for the adjudication of such rights may be commenced by private parties,
and, in such cases, the Attorney General shall not be required to bring such suits; 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 State if notified by the Board that in its opinion the public interest requires such action.

Sec. 1009. Setting date for hearing - Notice

When a suit for the determination of rights to use ground water shall have been commenced, as provided in Section 8 of this Act, the court shall set a date for hearing and shall direct that at least fifteen (15) days notice thereof shall be given by publication in the county or counties in which the ground water basin is located in a newspaper or newspapers qualified to publish legal notices in such county or counties, and by mailing notices thereof by registered mail to all persons known to be using ground water in such ground water basin for other than domestic or stock-watering purposes, and by mailing notices thereof by registered mail to all persons who have filed applications with the Board under Section 7 of this Act to establish priority of claims to appropriate water from such ground water basin, and by mailing notices thereof by registered mail to all incorporated municipalities within a radius of twenty-five (25) miles of the ground water basin.

Sec. 1010. Hearing and adjudication

At such hearing the court shall hear evidence and make findings thereon, which shall be entered as a decree, as to the area, safe yield and annual recharge of the ground water basin; the priority of existing claims of all persons to appropriate the water of such ground water basin; the amount of each such claim; and as to all other matters necessary to adjudicate the existing rights of all persons in such ground water basin.

Sec. 1011. Filing copy of decree

A copy of the decree of the court shall be filed with the Board and in the office of the County Clerk of each county in which such ground water basin is located.

Sec. 1012. Appeal from decree

The decree of the court may be appealed to the Supreme Court as in other civil proceedings.

Sec. 1013. License or permit to appropriate water - Prevention of waste
After a court adjudication of existing rights in a ground water basin, as provided in Sections 9 to 14, inclusive, of this Act, is completed, the remaining ground water subject to appropriation, if any, may be taken only after securing a license from the Board. Application for a license to appropriate water from such a basin shall be made on forms prescribed by the Board setting forth the description of the basin, the amount of water to be taken, the purpose for which the water is to be used and such other information as the Board may prescribe.

If the Board finds that there is unappropriated ground water, that the applicant can place such unappropriated ground water, or part thereof, to beneficial use and that the applicant has a prior claim to appropriate such ground water, the Board shall issue the applicant a license to place such previously unappropriated water to beneficial use in accordance with the rules and regulations of the Board.

The priority of claim to appropriate ground water, based on a license from the Board, as provided in this Section, shall be lost unless ground water is actually taken and placed to beneficial use within five (5) years, provided that:

(a) Within two (2) years after the issuance of a license or a permit by the Oklahoma Water Resources Board, the applicant has begun construction of the works to put the water specified in such permit or license to beneficial use.

(b) Within three (3) years after the date of issuance of permit or license, the applicant has put twenty-five percent (25%), or more, of the water specified in said permit or license to beneficial use.

(c) Within four (4) years after the issuance of such permit or license, applicant has put seventy-five percent (75%), or more, of the water specified in said permit or license to beneficial use.

(d) Within five (5) years after the issuance date of said permit or license, the applicant has put one-hundred percent (100%) of the water specified in said permit or license to beneficial use.

Provided that the Oklahoma Water Resources Board may extend the time for completion or construction of works for placing the water to beneficial use to two (2) years beyond the time allowed in Section 1 of this Act for good cause shown, such as engineering difficulty or other valid reason over which the applicant has no control, or in the case of National emergency when materials for construction
of works are not available additional time may be granted beyond the
two (2) year extension to cover the period of such emergency.

When the amount of water actually taken and placed to beneficial
use within five (5) years from the issuance of such license is less
than the amount of ground water permitted to be taken under such
license, then the license shall be effective only for that amount
of ground water actually taken and placed to beneficial use within
such time.

In cases where a permit is sought to withdraw ground water from
a basin for air conditioning or cooling purposes the Board may re-
quire that such applicant provide facilities to aerate and re-use
such water to reduce waste. The Board is authorized to require of
all applicants that they will not waste such water, as defined in
this Act, through faulty transportation lines or otherwise and in
cases where the use of such water permits, the Board may require that
after use it be returned to the basin from which it is extracted.

No permit shall be issued by the Board for the extraction of water
from a basin if the findings of the Board indicate that such use
would result in depletion above the average annual ratio of recharge.

No permit shall be issued to an applicant who does not own the
land above such basin or hold a valid lease from the owner of such
land permitting withdrawal of water from such basin.

In cases where an applicant desires to extract large quantities
of water from a basin and before issuing a permit, the Board is
authorized to determine and order a proper spacing of wells which
in its judgment is necessary to an orderly withdrawal of water in
relation to the average annual recharge of the whole basin. The
Board is also authorized to require that water extracted in large
amounts be metered and that such meter be placed under the seal of
the Board subject to reading by the agents of the Board at any time
and to require that the applicant report the reading of such a meter
at reasonable intervals.

In issuing a permit, where field examinations of a basin indicate
that water impregnated with minerals is located above a sweet water
basin, then the Board shall require the applicant to contract that
he will properly case in such impregnated strata and take all other
necessary precautions to protect the sweet water basin from intru-
sion of polluted water.
The Board is hereby authorized to enforce all necessary regulations to stop the waste of ground water, not only as regards new applicants but also as to existing persons whose rights have been confirmed and adjudicated.

Sec. 1014. Appeal from decision of board on application for permit

Any applicant, under Section 13 of this Act, who is dissatisfied with the decision of the Board may appeal to the District Court in which the adjudication of the rights to take ground water was held. Said appeal shall be taken by filing a petition for hearing de novo in the district court where the land is situated within thirty (30) days after the decision of the Board. The notices and proceedings for such hearing and adjudication shall be the same as that required by Section 9, herein, for hearing on the determination of water rights.

Sec. 1015. Cessation of withdrawal when yield insufficient

In any ground water basin in which the withdrawal of ground water exceeds the annual yield as determined by the court under the provisions of this Act, the Board shall have the power to require persons to cease such excessive withdrawals in reverse order of their priority of rights.

If, after reasonable notice and an opportunity for hearing is given a person withdrawing water from such a ground water basin, the Board finds that the safe annual yield of such basin is being withdrawn by other persons having higher priorities, the Board shall issue an order requiring such person, or persons of lesser priority of right, to cease withdrawing ground water from such basin.

Any person who fails or refuses to obey such order shall be guilty of a misdemeanor and shall be punishable by a fine of not less than Twenty-five Dollars ($25.00) and not more than Two Hundred Fifty Dollars ($250.00) and each day shall constitute a separate offense.

Upon the failure or refusal of any person to obey such an order, the Board may obtain an order from the District Court of the county in which the water is withdrawn by such person requiring the Sheriff of such county to stop such withdrawal.

Sec. 1016. Rules and regulations

The Board shall prescribe and enforce reasonable rules and
regulations consistent with this Act governing the drilling, casing, repairing, plugging and abandonment of ground water wells.

Sec. 1017. Partial invalidity

If any provision of this Act, or the application thereof to any person or circumstance, is held unconstitutional, the remainder of the Act, or the application of such provisions to other persons or circumstances, shall not be affected thereby.

Sec. 1018. Violations of act, rule or regulation - Commission of waste

Any person who, after notice from the Board violates or refuses or neglects to comply with any provision of this Act, or of any rule or regulation promulgated by the Board pursuant thereto, or who commits waste as defined in this Act shall be guilty of a misdemeanor, and upon conviction shall be fined not less than Twenty-five Dollars ($25.00) nor more than Two Hundred Fifty Dollars ($250.00) for each offense. Any person who, after notice that he is in violation thereof, continues to violate any provision of this Act, and fails to comply therewith within a reasonable length of time, is guilty of a separate offense for each day the violation continues.

Sec. 1019. Powers or functions of certain state agencies not affected

It is specifically understood that nothing in this Act shall be construed to limit, modify or repeal in any way the powers, duties or functions of the State Department of Health, the State Board of Health, or the Corporation Commission, insofar as the same relate to the subject matter hereof.
537.505 Short title. ORS 537.505 to 537.795 shall be known as the "Ground Water Act of 1955."

537.515 Definitions for ORS 537.505 to 537.795. As used in ORS 537.505 to 537.795, unless the context requires otherwise:

(1) "Altering" a well means the deepening, recasing, perforating, reperforating, the installation of packers or seals and other material changes in the design of the well.

(2) "Constructing" a well includes boring, digging, drilling or excavating and installing casing or well screens.

(3) "Ground water" means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of this state, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.

(4) "Ground water reservoir" means a designated body of standing or moving ground water having exterior boundaries which may be ascertained or reasonably inferred.

(5) "Pollution" of ground water means any impairment of the natural quality of such ground water, however caused, including impairment by salines, minerals, industrial wastes, domestic wastes or sewage, whether indrafted directly or through infiltration into the ground water supply.

(6) "Public agency" means the United States or any agency thereof, the State of Oregon or any agency thereof or any county, city, district organized for public purposes or other public corporation or political subdivision of this state.
(7) "Well" means any artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure or is artificially withdrawn, provided, that this definition shall not include a natural spring, or wells drilled for the purpose of exploration or production of oil or gas.

(8) "Well drilling machine" means any power driven percussion, rotary, boring, digging or augering machine used in the construction of water wells.

537.525 Legislative policy declaration. The Legislative Assembly recognizes, declares and finds that the right to reasonable control of all water within this state from all sources of water supply belongs to the public, and that in order to insure the preservation of the public welfare, safety and health it is necessary that:

(1) Provision be made for the final determination of relative rights to appropriate ground water everywhere within this state and of other matters with regard thereto through a system of registration, permits and adjudication.

(2) Rights to appropriate ground water and priority thereof be acknowledged and protected, except when, under certain conditions, the public welfare, safety and health require otherwise.

(3) Beneficial use without waste, within the capacity of available sources, be the basis, measure and extent of the right to appropriate ground water.

(4) All claims to rights to appropriate ground water be made a matter of public record.

(5) Adequate and safe supplies of ground water for human consumption be assured, while conserving maximum supplies thereof for agricultural, commercial, industrial, recreational and other beneficial uses.

(6) The location, extent, capacity, quality and other characteristics of particular sources of ground water be determined.

(7) Reasonably stable ground water levels be determined and maintained.

(8) Depletion of ground water supplies below economic levels,
impairment of natural quality of ground water by pollution and wasteful practices in connection with ground water be prevented or controlled within practicable limits.

(9) Whenever wasteful use of ground water, impairment of or interference with existing rights to appropriate surface water, declining ground water levels, interference among wells, overdrawling of ground water supplies or pollution of ground water exists or impends, controlled use of the ground water concerned be authorized and imposed under voluntary joint action by the State Engineer and the ground water users concerned whenever possible, but by the State Engineer under the police power of the state when such voluntary joint action is not taken or is ineffective.

(10) Location, construction, depth, capacity, yield and other characteristics of and matters in connection with wells be controlled in accordance with the purposes set forth in this section.

537.535 Unlawful use or appropriation of ground water, including well construction and operation. (1) No person or public agency shall use or attempt to use any ground water, construct or attempt to construct any well or other means of developing and securing ground water or operate or permit the operation of any well owned or controlled by such person or public agency except upon compliance with ORS 537.505 to 537.795 and any applicable order, rule or regulation promulgated by the State Engineer under ORS 537.505 to 537.795.

(2) Except for those uses exempted under ORS 537.545, the use of ground water for any purpose, without a permit issued under ORS 537.625 or registration under ORS 537.605, is an unlawful appropriation of ground water.

537.545 Exempt uses. No registration, certificate of registration, application for a permit, permit, certificate of completion or ground water right certificate under ORS 537.505 to 537.795 is required for the use of ground water for stockwatering purposes, for watering any lawn or noncommercial garden not exceeding one-half acre in area, for single or group domestic purposes in an amount not exceeding 15,000 gallons a day or for any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day. The use of ground water for any such purpose, to the extent that it is beneficial, constitutes a right to appropriate ground water equal to that established by a ground water right certificate issued under ORS 537.700. The State Engineer, however, may require any person or public agency using ground water for any such purpose
to furnish information with regard to such ground water and the use thereof.

537.550 Repealed.

537.560 Repealed.

537.570 Repealed.

537.575 Permits granted, approved or pending under former law. Any permit granted or application for a permit approved under ORS 537.510, 537.520, 537.530, 537.540, 537.550, 537.560, 537.570, 537.580, 537.590 and 537.600 prior to and still valid and in effect on August 3, 1955, is considered to be a permit issued under ORS 537.625. Any application for a permit under ORS 537.510, 537.520, 537.530, 537.540, 537.550, 537.560, 537.570, 537.580, 537.590 and 537.600 prior to, pending and not yet approved on August 3, 1955, shall be governed as an application for a permit under ORS 537.615 to 537.625.

537.585 Beneficial use of ground water prior to August 3, 1955, recognized as right to appropriate water when registered. Except as otherwise provided in ORS 537.545 or 537.575 or 537.595 and subject to determination under ORS 537.670 to 537.695, actual and lawful application of ground water to beneficial use prior to August 3, 1955, by or under the authority of any person or public agency or by or under the authority of a predecessor in interest of such person or public agency, when registered under ORS 537.605 and 537.610, is recognized as a right to appropriate ground water to the extent of the maximum beneficial use thereof at any time within two years prior to August 3, 1955.

537.595 Construction or alteration of well commenced prior to August 3, 1955, recognized as right to appropriate water when registered. Except as otherwise provided in ORS 537.545 or 537.575 or 537.585 and subject to determination under ORS 537.670 to 537.695, when any person or public agency on August 3, 1955, is lawfully engaged in good faith in such construction, alteration or extension of a well for the application of ground water to beneficial use, the right to appropriate such ground water, upon completion of such construction, alteration or extension and application of the ground water to beneficial use within a reasonable time fixed by the State Engineer, when registered under ORS 537.605 and 537.610, is recognized to the extent of the beneficial use of the ground water.
537.605 Registration of right to appropriate ground water claimed under ORS 537.585 or 537.595; registration statement. (1) Any person or public agency claiming any right to appropriate ground water under ORS 537.585 or 537.595, except for any purpose exempt under ORS 537.545, is entitled to receive from the State Engineer within three years after August 3, 1955, a certificate of registration as evidence of a right to appropriate ground water as provided in ORS 537.585 or 537.595. Failure of such person or public agency to file a registration statement within such period creates a presumption that any such claim has been abandoned.

(2) Upon receipt of a request for registration by any person or public agency referred to in subsection (1) of this section within the period specified, the State Engineer shall provide such person or public agency with a separate registration statement for each well, which shall be completed and returned to the State Engineer.

(3) Each registration statement shall be in a form prescribed by the State Engineer, shall be under oath and shall contain:

(a) The name and postoffice address of the registrant.

(b) The nature of the use by the registrant of the ground water upon which the claim of the registrant is based.

(c) The dates when the ground water was or will be first applied to beneficial use and the dates when construction of the well was begun and completed.

(d) The amount of ground water claimed.

(e) If the ground water is used or is to be used for irrigation purposes, a description of the lands irrigated or to be irrigated, giving the number of acres irrigated or to be irrigated in each 40-acre legal subdivision, the dates of reclamation of each such legal subdivision and the date when the ground water was or will be completely applied.

(f) The depth to the water table.

(g) The location of the well with reference to government survey corners or monuments or corners of recorded plats.

(h) The depth, diameter and type of the well, and the kind and amount of the casing.
(i) The capacity of the well and well pump in gallons per minute, and the horsepower of the well pump motor.

(j) If the ground water is artesian or other ground water not requiring pumping, the rate of flow in gallons in such manner as the State Engineer may prescribe.

(k) The amount of ground water pumped or otherwise taken from the well each year.

(l) A copy of the log of the completed well, if such log is available.

(m) If the ground water supply is supplemental to an existing water supply, identification of any application for a permit, permit, certificate or adjudicated right to appropriate water made or held by the registrant.

(n) Such other information as the State Engineer deems necessary.

(4) Each registration statement shall be accompanied by maps and drawings and other data as the State Engineer deems necessary.

(5) The State Engineer may require that any registration statement be supplemented after any well is fully completed by a statement containing such additional information as the State Engineer deems necessary.

(6) Any person or public agency who failed to file a registration statement within the period set forth in subsection (1) of this section may file within one year after May 29, 1961, a petition with the State Engineer requesting that he be given an opportunity to rebut the presumption that he has abandoned his claim. Upon the filing of such a petition the State Engineer may schedule a hearing to take testimony and evidence on the date of well construction and the use of ground water or he may, in his discretion, accept sworn statements in writing in support of such petition. No petition shall be denied without a public hearing. If it appears after hearing or from such sworn statements, that the person or public agency has a use of ground water that would be subject to determination under ORS 537.670 to 537.695 as defined in ORS 537.585 and 537.595, the State Engineer shall issue an order authorizing the petitioner to file a registration statement as described under subsection (3) of this section. Upon receipt of the completed registration statement the State Engineer shall issue to the registrant a certificate of registration, as provided in ORS 537.610.
537.610 Recording registration statement; issuing certificate of registration; effect of certificate. (1) The State Engineer shall accept all registration statements referred to in ORS 537.605 completed and returned to him in proper form, indorse thereon the date of the return and record each statement in a book kept by him for that purpose. Upon such recording the State Engineer shall issue to the registrant a certificate as evidence that the registration is completed.

(2) Upon issuance to him of the certificate of registration the registrant is prima facie entitled to a right to appropriate the ground water and apply it to beneficial use to the extent and in the manner disclosed in the recorded registration statement and the certificate of registration.

(3) No certificate of registration issued under this section shall be construed as a final determination of any matter stated therein. The right of the registrant to appropriate ground water under a certificate of registration is subject to determination under ORS 537.670 to 537.695, and is not final or conclusive until so determined and a ground water right certificate issued. A right to appropriate ground water under a certificate of registration has a tentative priority from the date when the construction of the well was begun.

537.615 Application for permit to acquire new right or enlarge an existing right to appropriate ground water. (1) Any person or public agency intending to acquire a wholly new right to appropriate ground water or to enlarge upon any existing right to appropriate ground water, except for any purpose exempt under ORS 537.545, shall apply to the State Engineer for and be issued a permit before withdrawing or using the ground water.

(2) The application for a permit shall be in a form prescribed by the State Engineer and shall contain:

(a) The name and postoffice address of the applicant.

(b) The nature of the use by the applicant of the ground water for which the application is made.

(c) The dates of the beginning and completion of the construction of any well or other means of developing and securing the ground water.

(d) The date when the ground water will be completely applied to the proposed beneficial use.
(e) The amount of ground water claimed.

(f) If the ground water is to be used for irrigation purposes, a description of the lands to be irrigated, giving the number of acres to be irrigated in each 40-acre legal subdivision.

(g) The depth to the water table, if known.

(h) The location of each well with reference to government survey corners or monuments or corners of recorded plats.

(i) The proposed depth, diameter and type of each well, and the kind and amount of the casing.

(j) The estimated capacity of each well and each well pump in gallons per minute, and the horsepower of each well pump motor.

(k) If the ground water is artesian or other ground water not requiring pumping, the rate of flow in gallons in such manner as the State Engineer may prescribe.

(L) If the ground water supply is supplemental to an existing water supply, identification of any application for a permit, permit, certificate or adjudicated right to appropriate water made or held by the applicant.

(m) Such other information as the State Engineer deems necessary.

(3) Each application for a permit shall be accompanied by such maps and drawings and other data as the State Engineer deems necessary.

537.620 Acceptance, recordation, and approval of applications.

(1) The State Engineer shall accept all applications for permits referred to in ORS 537.615 submitted to him in proper form, indorse thereon the date of receipt and record each application in a book kept by him for that purpose.

(2) If, upon examination by the State Engineer, the application is found to be defective, the application shall be returned to the applicant to remedy the defect. The date of and the reasons for the return shall be indorsed on the application and the indorsement shall be made a record in the office of the State Engineer. No application shall lose its priority of filing on account of any such defect, providing an acceptable application is filed in the office.
of the State Engineer within 30 days from the date of the return of the application to the applicant, or such further time, not exceeding one year, as may be allowed by the State Engineer.

(3) When an application discloses the probability of wasteful use or undue interference with existing wells or that any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water by others, the State Engineer may impose conditions or limitations in the permit to prevent the same or reject the same after hearing, or, in his discretion, initiate a proceeding for the determination of a critical ground water area under ORS 537.730 to 537.740.

(4) An application may be approved for less ground water than applied for or may be approved upon terms, conditions and limitations necessary for the protection of the public welfare, safety and health. In any event the application shall not be approved for more ground water than is applied for or than can be applied to a beneficial use. No application shall be approved when the same will deprive those having prior rights of appropriation for a beneficial use of the amount of water to which they are lawfully entitled.

537.622 Protest against issuance of permit; hearing. (1) Any owner of or claimant to a right to appropriate surface or ground water may file, jointly or severally, with the State Engineer at any time prior to the issuance of a permit to appropriate ground water under ORS 537.625, a protest against the issuance of the permit.

(2) Whenever in the opinion of the State Engineer, a hearing is necessary to determine whether the proposed use or well described in an application under ORS 537.615 will conflict with existing rights to appropriate surface or ground water, he or his authorized assistant may hold a hearing on 10 days' written notice to the applicant and protestants, such hearing to be in the manner provided by ORS 537.430.

537.625 Application with approval indorsed thereon constitutes permit; effect of approval or rejection. (1) The approval or rejection of an application for a permit referred to in ORS 537.615 shall be indorsed thereon and a record of such indorsement shall be made in the office of the State Engineer. The indorsed application shall be returned immediately to the applicant. If the application is approved, the indorsed application constitutes a permit to appropriate the ground water, and the applicant, upon receipt
thereof, may withdraw the ground water and apply it to beneficial use. If the application is rejected, the applicant shall not withdraw or use the ground water so long as the rejection continues in effect.

(2) A right to appropriate ground water under a permit has a priority from the date when the application was filed with the State Engineer.

537.630 Construction work under permit; certificate of completion; ground water right certificate. (1) Actual construction of any well or other means of developing and securing the ground water shall begin not later than one year after the date of approval of the application for a permit under ORS 537.625, and such construction shall thereafter be prosecuted with reasonable diligence and be completed within a reasonable time fixed in the permit, not to exceed two years after the date of approval of the application. The State Engineer, for good cause shown, may order and allow an extension of time, including an extension beyond the two-year period, for the completion of the well or other means of developing and securing the ground water or for complete application of water to beneficial use.

(2) If the construction of any well or other means of developing and securing the ground water is completed after the date of approval of the application for a permit under ORS 537.625, within 30 days after such completion, or if such construction is completed before such date of approval, within 30 days after such date of approval, the permit holder shall file a certificate of such completion with the State Engineer, disclosing the depth to the water table; the depth, diameter and type of each well, and the kind and amount of the casing; the capacity of the well pump in gallons per minute and the drawdown thereof; and such other information as the State Engineer deems necessary.

(3) Upon receipt of proof satisfactory to the State Engineer that an appropriation has been perfected in accordance with the provisions of ORS 537.505 to 537.795, he shall issue a ground water right certificate of the same character as that described in ORS 537.700. The certificate shall be recorded and transmitted to the applicant as provided in said section.

(4) The procedure for cancellation of a permit shall be as provided in ORS 537.260.

537.635 Assignment of certificate of registration or permit. Any
certificate of registration issued under ORS 537.610 or permit issued under ORS 537.625 may be assigned, subject to the conditions of the certificate of registration or permit, but no such assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the State Engineer.

537.665 Investigation of ground water reservoirs; defining characteristics and assigning names and numbers. The State Engineer or his authorized assistant shall proceed as rapidly as possible to identify and define tentatively the location, extent, depth and other characteristics of each ground water reservoir in this state, and shall assign to each a distinctive name or number or both as a means of identification. The State Engineer or his authorized assistant may make such investigation and gather such data and information as may be essential to a proper understanding of the characteristics of each ground water reservoir and the relative rights to appropriate ground water therefrom. Before any final determination of boundaries and depth of any ground water reservoir, the State Engineer shall proceed to make a final determination of the rights to appropriate the ground water of the ground water reservoir under ORS 537.670 to 537.695.

537.670 Determination of rights to appropriate ground water of a ground water reservoir. (1) The State Engineer upon his own motion or, in his discretion, upon receipt of a petition therefor by any one or more appropriators of ground water from such ground water reservoir, may proceed to make a final determination of the rights to appropriate the ground water of the ground water reservoir in this state.

(2) The State Engineer shall prepare a notice of his intent to begin a determination referred to in subsection (1) of this section. The notice shall set forth a place and time when the State Engineer or his authorized assistant shall begin the taking of testimony as to the rights of the various claimants to appropriate the ground water of the ground water reservoir and as to the boundaries and depth thereof. A copy of the notice shall be delivered to each person or public agency known to the State Engineer from an examination of the records in his office to be a claimant to a right to appropriate ground water of the ground water reservoir or any surface water within the area in which the ground water reservoir is located. The notice shall also be published in at least one issue each week for at least two consecutive weeks in a newspaper of general circulation published in each county in which the ground water reservoir or any part thereof is located. If the ground water reservoir is located in whole or in part within the limits of
any city, the notice shall be published in at least one issue each week for at least two consecutive weeks in a newspaper of general circulation published in the city, if any, and copies of the notice shall be delivered to the mayor or chairman of the governing body of the city. Copies of the notice shall be delivered and the last publication date of published notices shall be at least 30 days prior to the taking of any testimony.

(3) The State Engineer shall inclose with each copy of the notice referred to in subsection (2) of this section delivered to each person or public agency known to be a claimant to a right to appropriate ground water of the ground water reservoir a blank form on which such claimant shall present in writing all the particulars necessary for determination of his right as may be prescribed by the State Engineer. The State Engineer may require each claimant to certify to his statements under oath, and the State Engineer or his authorized assistant may administer such oaths.

537.675 Determination of rights in several reservoirs or of a critical ground water area in same proceeding. (1) Whenever the State Engineer has reason to believe that two or more ground water reservoirs overlie one another wholly or in part, he may proceed to a final determination of the rights to appropriate the ground water of each of such ground water reservoirs in the same proceeding under ORS 537.670 to 537.695.

(2) The State Engineer may include in a determination proceeding under ORS 537.670 to 537.695 a determination of a critical ground water area under ORS 537.730 to 537.740.

537.680 Taking testimony; inspecting evidence; contesting claim. Testimony shall be taken, evidence shall be open to inspection and claims shall be subject to contest in a proceeding to determine rights to appropriate the ground water of any ground water reservoir initiated under ORS 537.670 as nearly as possible in the same manner as provided in ORS 539.070, 539.090, 539.100 and 539.110 for the determination of the relative rights of the various claimants to the waters of any surface stream.

537.685 Findings of fact and order of determination. As soon as practicable after compilation of the evidence obtained in proceedings under ORS 537.665 to 537.680, the State Engineer shall make and cause to be entered of record in his office findings of fact and an order of determination, determining and establishing the several rights to appropriate the ground water of the ground water reservoir. The findings of fact and order of determination shall also include:
(1) The boundaries and depth of each ground water reservoir.

(2) The lowest permissible water level in each ground water reservoir.

(3) The location, extent, quality and other pertinent characteristics of the ground water supply.

(4) The serviceable methods of withdrawal of the ground water from each ground water reservoir.

(5) Rules for controlling the use of the ground water from each ground water reservoir.

(6) Such general or special rules or restrictions with respect to the construction, operation and protection of wells and the withdrawal of ground water thereby as in the judgment of the State Engineer the public welfare, health and safety may require.

(7) The name and postoffice address of each claimant.

(8) The nature of the use of the ground water allowed for each well, together with the maximum permissible use of the ground water, the place of use of the ground water and the date of priority of each use.

(9) If the ground water is used or is to be used for irrigation purposes, a description of the lands irrigated or to be irrigated, giving the number of acres irrigated or to be irrigated in each 40-acre legal subdivision.

(10) The location of each well with reference to government survey corners or monuments or corners of recorded plats.

(11) The depth, diameter and type of each well, the kind and amount of the casing, the capacity of each well in gallons per minute and such other information concerning each well as in the opinion of the State Engineer may be pertinent.

537.690 Filing evidence, findings and determinations; court proceedings. The evidence relied upon by the State Engineer in the entry of his findings of fact and order of determination under ORS 537.685, together with a copy of such findings and order, shall be certified to by the State Engineer and filed with the clerk of the circuit court wherein the determination is to be heard, which shall be the circuit court of any county in which the ground water
reservoir or any part thereof is located. A certified copy of the
findings of fact and the order of determination shall also be filed
with the county clerk of every other county in which the ground
reservoir or any part thereof is located. Thereafter, proceedings
shall be had as nearly as possible in the same manner as provided
in subsections (2), (3) and (4) of ORS 539.130, 539.150, 539.160,
539.170, 539.180, 539.190 and 539.210 for the final adjudication
of the relative rights of the various claimants to the waters of
any surface stream.

537.695 Conclusive adjudication. The determination of the
State Engineer under ORS 537.685, as confirmed or modified by the
circuit court or Supreme Court, shall be a conclusive adjudication
as to all claimants of rights to appropriate the ground water of
each ground water reservoir included within the order of determin-
ation.

537.700 Issuing ground water right certificate. Upon the final
determination under ORS 537.670 to 537.695 of the rights to appropri-
ate the ground water of any ground water reservoir, the State Engi-
neer shall issue to each person or public agency represented in the
determination proceedings and who is determined to have such a
right a ground water right certificate, setting forth the name and
postoffice address of the owner of the right; the priority of the
date, extent and purpose of the right; and, if the ground water is
for irrigation purposes, a description of the legal subdivisions of
land to which the ground water is appurtenant. The State Engineer
shall transmit the certificate by certified mail to the county clerk
of the county in which the right is located. The county clerk, upon
receipt of the recording fee of §1 collected as provided in ORS
537.786, shall record the certificate in a book especially prepared
and kept for that purpose, and shall thereupon immediately transmit
the certificate to the owner of the right.

537.705 Ground water appurtenant; change in use, place of use
or point of appropriation. All ground water used in this state for
any purpose shall remain appurtenant to the premises upon which it
is used and no change in use or place of use of any ground water
for any purpose may be made without compliance with a procedure as
nearly as possible like that set forth in ORS 540.520 and 540.530.
However, the owner of any ground water right may, upon compliance
with a procedure as nearly as possible like that set forth in ORS
540.520 and 540.530, change the use and place of use, the point of
appropriation or the use theretofore made of the ground water in
all cases without losing priority of the right theretofore estab-
lished.
537.710 Renumbered 537.800.

537.715 Repealed.

537.720 Violation of terms of law or permit or certificate; action by State Engineer. Whenever, after notice to and opportunity to be heard by such holder, the State Engineer finds that the holder of any permit or certificate of registration issued under ORS 537.505 to 537.795 is wilfully violating any provision of such permit or certificate of registration or any provision of ORS 537.505 to 537.795, the State Engineer may cancel or suspend such permit or certificate of registration or impose conditions on the future use thereof to prevent such violation.

537.730 Initiation of proceeding for determination of critical ground water area; hearing. (1) In addition to initiation under subsection (3) of ORS 537.620 of a proceeding for the determination of a critical ground water area, the State Engineer upon his own motion or, in his discretion, upon receipt of a petition therefor by any ground water claimant or appropriator within the area in question, may also initiate such a proceeding whenever he has reason to believe that:

(a) Ground water levels in the area in question are declining or have declined excessively; or

(b) The wells of two or more ground water claimants or appropriators within the area in question interfere substantially with one another; or

(c) The available ground water supply in the area in question is being or is about to be overdrawn; or

(d) The purity of the ground water in the area in question has been or reasonably may be expected to become polluted to an extent contrary to the public welfare, health and safety.

(2) The State Engineer or his authorized assistant shall hold a public hearing on the question of the determination of a critical ground water area. Written notice of the hearing shall be given to each well driller licensed under ORS 537.770 whose address as shown on his license is within any county in which any part of the area in question is located, and to each person or public agency known to the State Engineer from an examination of the records in his office to be a claimant or appropriator of ground water in the area in question. Notice of the hearing shall also be published in at least
one issue each week for at least two consecutive weeks in at least one newspaper of general circulation in the area in question. If the area in question is located in whole or in part within the limits of any city, notice of the hearing shall be published in at least one issue each week for at least two consecutive weeks in a newspaper of general circulation published in the city, if any, and written notice of the hearing shall be given to the mayor or chairman of the governing body of the city. Written notices shall be given and the last publication date of published notices shall be at least 30 days prior to the hearing.

(3) Oral and documentary evidence may be taken at the public hearing. A full record shall be kept of all evidence taken at the hearing, and the procedure shall be such as to secure a full, fair and orderly proceeding and to permit all relevant evidence to be received.

537.735 Order declaring critical ground water area; contents of order. (1) If, at the conclusion of the public hearing held under ORS 537.730, the State Engineer finds that any of the circumstances set forth in subsection (3) of ORS 537.620 if the proceeding is initiated thereunder, or in subsection (1) of ORS 537.730 if the proceeding is initiated thereunder, are true, and further finds that the public welfare, health and safety require that any one or more corrective controls be adopted, he shall by order declare the area in question to be a critical ground water area.

(2) The order of the State Engineer shall define the boundaries of the critical ground water area and shall indicate which of the ground water reservoirs located within the area in question are included within the critical ground water area. Any number of ground water reservoirs which either wholly or partially overlie one another may be included within the same critical ground water area.

(3) The order of the State Engineer may include any one or more of the following corrective control provisions:

(a) A provision closing the critical ground water area to any further appropriation of ground water, in which event the State Engineer shall thereafter refuse to accept any application for a permit to appropriate ground water located within such critical area.

(b) A provision determining the permissible total withdrawal of ground water in the critical area each day, month or year, and, in so far as may be reasonably done, the State Engineer shall apportion such permissible total withdrawal among the appropriators holding
valid rights to the ground water in the critical area in accordance with the relative dates of priority of such rights.

(c) A provision according preference, without reference to relative priorities, to withdrawals of ground water in the critical area for domestic and livestock purposes first, and thereafter other beneficial purposes, including agricultural, industrial, municipal other than domestic, and recreational purposes, in such order as the State Engineer deems advisable under the circumstances.

(d) A provision reducing the permissible withdrawal of ground water by any one or more appropriators or wells in the critical area.

(e) Where two or more wells in the critical area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by such appropriator, or a provision forbidding the use of one or more of such wells completely.

(f) A provision requiring the abatement, in whole or in part, or the sealing of any well in the critical area responsible for the admission of polluting materials into the ground water supply or responsible for the progressive impairment of the quality of the ground water supply by dispersing polluting materials that have entered the ground water supply previously.

(g) A provision requiring and specifying a system of rotation of use of ground water in the critical area.

(h) Any one or more provisions making such additional requirements as are necessary to protect the public welfare, health and safety in accordance with the intent, purposes and requirements of ORS 537.505 to 537.795.

537.740 Filing findings of fact and order; copy to parties; changing order. (1) The State Engineer shall file in his office his findings of fact based upon the evidence and his order based upon such findings made as provided in ORS 537.735. The State Engineer shall deliver copies of such findings and order to all parties in the proceeding for the determination of a critical ground water area. The State Engineer shall file a copy of the order with the recorder of conveyances, or if none, the county clerk, of each county within which any part of the critical ground water area lies, and such recorder of conveyances or county clerk shall record the order in the deed records of the county.
(2) The State Engineer may suspend, modify or cancel any order made as provided in ORS 537.735 upon such notice and in such manner as he deems proper. A certified copy of each suspension, modification or cancelation shall be filed and recorded as provided for orders in subsection (1) of this section.

537.745 Voluntary agreements among ground water users from same reservoir. (1) In the administration of ORS 537.505 to 537.795, the State Engineer may encourage, promote and recognize voluntary agreements among ground water users from the same ground water reservoir. When the State Engineer finds that any such agreement, executed in writing and filed with the State Engineer, is consistent with the intent, purposes and requirements of ORS 537.505 to 537.795, and in particular ORS 537.525, 537.730 to 537.740 and 537.780, he shall approve the agreement, and thereafter such agreement, until terminated as provided in this subsection, shall control in lieu of a formal order, rule or regulation of the State Engineer under ORS 537.505 to 537.795. Any agreement approved by the State Engineer may be terminated by the lapse of time as provided in the agreement, by consent of the parties to the agreement or by order of the State Engineer when he finds, after investigation and a public hearing upon adequate notice, that the agreement is not being substantially complied with by the parties thereto or that changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary in any particular to the intent, purposes and requirements of ORS 537.505 to 537.795.

(2) When any irrigation district, drainage district, other district organized for public purposes or other public corporation or political subdivision of this state is authorized by law to enter into agreements of the kind referred to in subsection (1) of this section, the State Engineer may approve such agreements as provided in subsection (1) of this section. Any such agreement approved by the State Engineer shall have the same effect and shall be subject to termination in the same manner and for the same reasons set forth in subsection (1) of this section.

537.747 Water well contractor's license. (1) No person shall enter into a contract with another person or public agency to construct or alter a well for such other person or cause any well construction or alteration to be performed under such a contract entered into by him unless he possesses a water well contractor's license in good standing issued by the State Engineer.

(2) A person shall be qualified to receive a water well contractor's license if he:

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(a) Is at least 21 years of age.

(b) Is of good moral character.

(c) Has passed a written examination conducted by the State Engineer to determine his fitness to operate as a water well contractor.

(d) Has executed a bond running to the State of Oregon in the penal sum of $2,000 in accordance with subsection (1) of ORS 537.753.

(e) Has paid a license fee of $25 and an examination fee of $10.

(3) Upon fulfillment of all the requirements set out in subsection (2) of this section, the State Engineer shall issue the applicant a water well contractor's license in a form prescribed by the State Engineer. Water well contractors' licenses shall expire on June 30 of each year. They may be renewed at any time during the following year upon application and payment of a $20 renewal fee. Water well contractors who fail to renew their license during this period will be required to requalify for a license in accordance with subsection (2) of this section in order to obtain a new license. The State Engineer shall pay all license and examination fees into the General Fund of the State Treasury.

(4) The State Engineer may revoke, suspend or refuse to renew any water well contractor's license when it appears to his satisfaction, after notice and opportunity to be heard by the licensee, that the licensee has failed to comply with the provisions of ORS 537.505 to 537.795 applicable to such licensee or any order, rule or regulation promulgated thereunder applicable to such licensee, or has made a material misstatement of fact on his application for a license or well log.

537.750 Examination for contractor's license. (1) The written examination required under paragraph(c) of subsection (2) of ORS 537.747 shall be prepared to test the applicant's knowledge and understanding of the following subjects:

(a) Laws of the state pertaining to the appropriation and use of ground water, the licensing of water well contractors and drilling machine operators, the construction of wells and the preparation and filing of well logs.

(b) Rules and regulations of the State Engineer pertaining to the appropriation and use of ground water, the construction of wells and the preparation and filing of well logs.
(c) Basic information on ground water geology, the occurrence and movement of ground water, and the design, construction and development of wells.

(2) Examinations shall be given during the months of January, April, July and October. The date, time and place of the examination are to be established by the State Engineer. The examination shall be given only to those applicants who have met the requirements set out in paragraphs (a) and (b) of subsection (2) of ORS 537.747 and have paid the $10 examination fee. If an applicant fails to pass the examination by not attaining a grade of 70 or better he may retake the examination after three months and the payment of another $10 examination fee.

537.753 Water well contractor's bond. (1) The bond required under paragraph (d) of subsection (2) of ORS 537.747 shall be filed with the State Engineer in accordance with the following conditions: In the construction or alteration of wells, the principal shall comply with all the provisions of ORS 537.505 to 537.795 that are applicable to such construction or alteration and to the rules and standards of well construction, alteration and well abandonment that have been prescribed by the State Engineer.

(2) Any person injured by a failure of a water well contractor to comply with the provisions of the bond may have a right of action on said bond in his own name; provided such action be commenced within one year after the water well contractor has moved his well drilling machine off the well; and, further provided, that the aggregate liability of the surety to all such persons shall in no event exceed the penal sum of the bond.

(3) Should the bond be canceled or otherwise become ineffective, the license of the water well contractor shall be suspended on the expiration date of the bond. The license shall be reinstated upon the filing of a new bond.

537.756 Well drilling machine operator's license. (1) No well shall be constructed or altered by or for a water well contractor unless the person operating the well drilling machine possesses a well drilling machine operator's license in good standing issued by the State Engineer or unless a licensed well drilling machine operator is present and is supervising the operation of the well drilling machine.

(2) A person shall be qualified to receive a well drilling machine operator's license if he:
(a) Is at least 18 years of age.
(b) Is of good moral character.
(c) Has experience in the operation of well drilling machines and the construction of water wells.
(d) Has passed an examination conducted by the State Engineer to determine his fitness to construct wells.
(e) Has paid a $10 license fee and a $10 examination fee.

3. Upon fulfillment of all the requirements set out in subsection (2) of this section, the State Engineer shall issue the applicant a well drilling machine operator's license in a form prescribed by the State Engineer. Well drilling machine operators' licenses shall expire on June 30 of each year. They may be renewed at any time during the following year upon payment of a $5 renewal fee. Well drilling machine operators who fail to renew their license during this period will be required to requalify for a license in accordance with subsection (2) of this section in order to obtain a new license. The State Engineer shall pay all license and examination fees into the General Fund of the State Treasury.

4. The State Engineer may revoke, suspend or refuse to renew any well drilling machine operator's license when it appears to his satisfaction, after notice and opportunity to be heard by the licensee, that the licensee has failed to comply with the provisions of ORS 537.505 to 537.795 applicable to such licensee, or any order, rule or regulation promulgated thereunder applicable to such licensee, or has made a material misstatement of fact on the application for a license or well log.

537.759 Examination for operator's license. (1) The examination required under paragraph (d) of subsection (2) of ORS 537.756 shall be prepared to test the applicant's knowledge and understanding of the following subjects:

(a) Rules and regulations of the State Engineer pertaining to the construction of wells.
(b) Preparation of well logs.
(c) Types, uses and maintenance of drilling tools and equipment.
(d) Well construction practices.
(e) Drilling problems and corrective procedures.

(f) Repair of faulty wells.

(g) Safety rules and practices.

(h) Sealing of wells.

(2) The examination shall be given during the months of January, April, July and October. The date, time and place of the examination are to be established by the State Engineer. The examination shall be given to those applicants who have met the requirements set forth in paragraphs (a), (b) and (c) of subsection (2) of ORS 537.756, and have paid the $10 examination fee. If an applicant fails to pass the examination by not attaining a grade of 70 or better he may retake the examination after three months and the payment of another $10 examination fee.

537.762 Report of water well contractor before commencing construction. (1) Each person required to possess a water well contractor's license under ORS 537.747 who has entered into a contract to construct or cause to be constructed a well shall, before commencing the construction of the well, make a report to the State Engineer containing:

(a) The name and postoffice address of the owner of the proposed well.

(b) The approximate location of the proposed well.

(c) The proposed depth and diameter of the proposed well.

(d) The proposed purpose or use of the ground water from the proposed well.

(2) The State Engineer shall furnish convenient forms for reports referred to in subsection (1) of this section to each person who possesses a water well contractor's license under ORS 537.747.

(3) Notwithstanding ORS 536.040 or any other provision of law, all reports made to the State Engineer under subsection (1) of this section shall be confidential and not open to the inspection of the public for a period of one year after the date made.

537.765 Log of new or altered wells; furnishing samples to State Engineer. (1) The business or activity of constructing new
wells or altering existing wells is declared to be a business or activity affecting the public welfare, health and safety. In order to enable the state to protect the welfare, health and safety of its citizens, any water well contractor licensed under ORS 537.747, person or public agency constructing or altering a well, shall keep a log of each well constructed or altered after August 3, 1955, and shall furnish a certified copy of such log to the State Engineer within 30 days after the completion of the construction or alteration.

(2) Each log required under subsection (1) of this section shall be in a form prescribed by the State Engineer and shall show:

(a) The name and postoffice address of the owner of the well and the person or public agency performing or causing the performance of the work of constructing or altering the well.

(b) The location of the well by section, township and range or with reference to government survey corners or monuments or corners of recorded plats.

(c) The dates of commencement and completion of the work of constructing or altering the well.

(d) The depth, diameter and type of the well.

(e) The kind and amount of the casing and where placed in the well, including the number and location of perforations or screens.

(f) The flow in cubic feet per second or gallons per minute of a flowing well, and the shut-in pressure in pounds per square inch.

(g) The static water level with reference to the land surface, and the drawdown with respect to the amount of water pumped per minute, when a pump test is made.

(h) The kind and nature of the material in each stratum penetrated, with at least one entry for each change of formation, and the thickness of aquifers.

(i) The temperature of the ground water encountered and other characteristics of such ground water in such detail as may be required by the State Engineer.

(3) If required by the State Engineer, the person, public agency or water well contractor referred to in subsection (1) of this section
shall furnish to the State Engineer samples of the ground water and of each change of formation in containers furnished and transportation expense paid by the State Engineer.

537.770 Repealed.

537.775 Wasteful or defective wells. Whenever the State Engineer finds that any well, including any well exempt under ORS 537.545, is by the nature of its construction, operation or otherwise causing wasteful use of ground water, is unduly interfering with other wells or is polluting ground water or surface water supplies contrary to ORS 537.505 to 537.795, the State Engineer may order discontinuance of or impose conditions upon the use of such well to such extent as may be necessary to remedy the defect.

537.777 Regulation by State Engineer of controlling works of wells and distribution of ground water. Whenever the State Engineer finds that any person or public agency is using or attempting to use any ground water or is operating or permitting the operation of any well owned or controlled by such person or public agency except upon compliance with ORS 537.505 to 537.795 and any applicable order, rule or regulation promulgated by the State Engineer under ORS 537.505 to 537.795, or that it is necessary in order to secure the equal and fair distribution of ground water in accordance with the rights of the various ground water users, the State Engineer shall regulate or cause to be regulated the controlling works of wells and shall distribute ground water in such a manner as to secure such compliance or such equal and fair distribution. Such regulation of controlling works and distribution of ground water shall be as nearly as possible in the same manner as provided in ORS 540.010 to 540.130.

537.780 Powers of State Engineer. In the administration of ORS 537.505 to 537.795, the State Engineer may:

(1) Require that all flowing wells be capped or equipped with valves so that the flow of ground water may be completely stopped when the ground water is not actually being applied to a beneficial use.

(2) Prescribe and enforce general standards for the construction and maintenance of wells and their casings, fittings, valves and pumps, and special standards for the construction and maintenance of particular wells and their casings, fittings, valves and pumps.

(3) Prescribe and enforce uniform standards for the scientific
measurement of water levels and of ground water flowing or withdraw from wells.

(4) Enter upon any lands for the purpose of inspecting wells, including wells exempt under ORS 537.545, casings, fittings, valves, pipes, pumps and measuring devices.

(5) Prosecute actions and suits to enjoin violations of ORS 537.505 to 537.795, and appear and become a party to any action, suit or proceeding in any court or before any administrative body when it appears to his satisfaction that the determination of such action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525.

(6) Call upon and receive advice and assistance from the Sanitary Authority of the State of Oregon or any other public agency or any person, and enter into cooperative agreements with any such public agency or person.

(7) Promulgate and enforce such rules and regulations as he deems necessary to facilitate and assist in carrying out his functions under ORS 537.505 to 537.795, including rules and regulations governing the form and content of registration statements, certificates of registration, applications for permits, permits, certificates of completion, ground water right certificates, notices, proofs, maps, drawings, logs and licenses, and procedure in hearings held by him or an authorized assistant.

537.785 Fees. In the administration of ORS 537.505 to 537.795, the following fees shall be collected by the State Engineer in advance, and paid by him into the General Fund of the State Treasury:

(1) For examining a registration statement or an application for a permit, $10.

(2) For filing and recording a registration statement or a permit:

   (a) For irrigation purposes, $5 for the first 30 acres, or fraction thereof, to be irrigated; 15 cents for each acre in excess of 30 acres up to and including 100 acres; five cents for each acre in excess of 100 up to and including 1,000 acres; and one cent for each acre in excess of 1,000 acres.

   (b) For storage, a minimum fee of $5 for the first 100 acre-feet; one cent for each acre-foot in excess of 100 up to and includ-
ing 1,000 acre-feet; one-half cent for each acre-foot in excess of 1,000 up to and including 20,000 acre-feet; and one-tenth cent per acre-foot for all in excess of 20,000 acre-feet.

(c) For any other purpose, $10 for the first second-foot or fraction thereof, and $2 for each additional second-foot.

(3) For any service similar to any of those referred to in ORS 536.050, the fee set forth in ORS 536.050 for such service.

537.786 Additional fees. (1) At the time of submission of proof of appropriation under ORS 537.630, or at the time of taking testimony for determination of rights to appropriate ground water under ORS 537.680, the State Engineer shall collect from each permit holder or claimant a fee of $1 for recording the ground water right certificate, when issued, in the office of the county clerk as provided in ORS 537.700, together with an additional fee from each claimant, as follows:

(a) For irrigation use, 75 cents for each acre of irrigated lands up to and including 100 acres; 50 cents for each acre in excess of 100 acres up to and including 500 acres; 35 cents for each acre in excess of 500 acres up to and including 1,000 acres; and 25 cents for each acre in excess of 1,000 acres. The minimum irrigation use fee for any permit holder or claimant shall be $15.

(b) For mining or any other use, $10 for the first second-foot or fraction thereof, and $2 for each additional second-foot or fraction thereof.

(2) Where the proof shows that the ground water right was initiated by making application for a permit to the State Engineer under ORS 537.615, or that a registration statement was completed and returned to the State Engineer under ORS 537.605, the permit holder or claimant in such cases shall be given credit in the payment of fees under subsection (1) of this section for the money paid as fees under ORS 537.785.

(3) Except for those fees due or to be paid to the county clerk, all the fees collected by the State Engineer under subsection (1) of this section shall be paid by him into the General Fund of the State Treasury.

537.790 Appeal from order, rule or regulation. Any person who deems himself aggrieved by any order, rule or regulation of the State Engineer under ORS 537.505 to 537.795 may appeal from the.
same to the circuit court of the county in which the property af-
affected by such order, rule or regulation, or any part of such
property, is situated. The appeal may be carried from the circuit
court to the Supreme Court, and shall be governed by the practice
in suits in equity. No order of the State Engineer shall be dis-
turbed when there is substantial evidence to support it. No rule
or regulation of the State Engineer shall be disturbed unless it is
affirmatively made to appear that the same substantially and unjustly
discriminates against the complainant to his prejudice and in favor
of others similarly situated.

537.795 ORS 537.505 to 537.795 supplementary. ORS 537.505 to
537.795 are intended to be supplementary and in addition to and
are not intended to repeal ORS 263.010 to 263.130 or any law relat-
ing to the surface waters of this state.

WASTE, SPRING AND SEEPAGE WATERS

537.800 Waste, spring and seepage waters; laws governing. All
ditches now or hereafter constructed, for the purpose of utilizing
waste, spring, or seepage waters, shall be governed by the same
laws relating to priority of right as those ditches constructed
for the purpose of utilizing the waters of running streams; provid-
ed, that the person upon whose lands the seepage or spring waters
first arise, shall have the right to the use of such waters.

PENALTIES

537.990 Penalties. (1) Violation of subsection (2) of ORS
537.130 is punishable, upon conviction, by a fine of not less than
$10 nor more than $250, or by imprisonment in the county jail for
not more than six months, or both.

(2) Any person who wilfully diverts or uses water to the detri-
ment of others without compliance with law shall be punished as
provided in subsection (1) of this section. The possession or use
of water, except when a right of use is acquired in accordance with
law, shall be prima facie evidence of the guilt of the person using
it.

(3) Violation of subsection (1) of ORS 537.535 is punishable,
upon conviction, by a fine of not less than $10 nor more than $250,
or by imprisonment in the county jail for not more than six months,
or both, except a violation of either ORS 537.747 or 537.756 is
punishable, upon conviction, by a fine of not less than $50 nor more
than $250, or by imprisonment in the county jail for not more than six months, or both.

(4) Justice courts and district courts shall have concurrent jurisdiction with the circuit courts in the trial of all violations under this section.
61.0401 Definitions. Terms used in this title, unless the context otherwise plainly requires, shall mean:

(1) "Person," a natural person, a partnership, an association, a corporation, a municipality, the state of South Dakota and any political subdivision thereof, and agency of the federal government.

(2) "Commission," the Water Resources Commission of the state of South Dakota.

(3) "Ground water," under the surface, whatever may be the geologic reservoir in which it is standing or moving.

(4) "Artesian water," any confined ground water that is under sufficient pressure to rise above its confining bed.

(5) "Well," an artificial excavation or opening in the ground, made by means of digging, boring, drilling, jetting, or by any other artificial method, for the purpose of obtaining ground water. Any series of openings, borings, or drillings developed and pumped collectively by a single pump unit shall be considered as one well.

(6) "Artesian well," any well drilled into artesian waters as defined herein which flows naturally or is pumped by mechanical means.

(7) "Well driller," any person or persons engaged in the commercial drilling or construction, redrilling, and rebuilding of wells in this state.
(8) "Domestic use," the use of water by an individual, or by a family unit or household, for drinking, washing, sanitary, culinary purposes, and other ordinary household purposes; and irrigation of a family garden, trees, shrubbery or orchard not greater in area than one-half acre. Stock-watering shall be considered a domestic use.

(9) "Municipal use," the use of water by a municipality and the inhabitants thereof, whether supplied by the municipal government or by a privately owned public utility or other agency, primarily to promote the life, safety, health, comfort and business pursuits of the inhabitants. It does not include the irrigation of crops on a commercial scale, even within the limits of the municipality. Nor does it include large recreational uses such as lakes.

(10) "Beneficial use," any use of water that is reasonable and useful and beneficial to the appropriator, and at the same time is consistent with the interests of the public in the best utilization of water supplies. Beneficial use is the basis, the measure and the limit of the right to the use of waters described in this chapter.

(11) "Vested rights," beneficial uses of ground water under diversions and applications of water prior to the passage of this chapter. The right to take and use water for beneficial purposes where an owner or lawful agent is engaged in the construction of works for the actual application of water to a beneficial use at the time of the passage of this chapter, provided such works shall be completed and water is actually applied for such use within a reasonable time thereafter.

61.0402 Ownership. The Commission is authorized to adopt rules and regulations controlling the location and capacity of irrigation, industrial, municipal and other large capacity wells for the purpose of insuring or protecting water for domestic use.

61.0403 Vested rights. Any person claiming to be owner of a vested right to water from any of the underground sources in this chapter described, by application of waters therefrom to beneficial use other than for domestic use, shall make and file with the Commission a declaration in a form and manner prescribed by the Commission. This should set forth the beneficial use to which said water has been applied, the date of first application to beneficial use and the continuity thereof, the location of the well, and if such water has been used for irrigation purposes the legal description of the land upon
which such water has been so used and the name of the owner of the
land or his lawful agent. Such declaration shall be verified, but
if the declarant cannot verify the same of his own personal knowledge,
he may do so on information and belief. The Commission shall also be
authorized to require the filing of information setting forth the
water level in the wells used for purposes other than domestic at
such times and in such manner and form as it may require.

61.0404 Appropriation of water. Subject to vested rights as
herein defined, any person desiring to appropriate any ground water
described in this chapter shall give notice to the Commission in a
form to be prescribed, the beneficial use to which it is proposed to
apply such water, the location of the proposed well, the name of the
owner of the land on which such well will be located, the amount of
water applied for, the use for which it is desired and if the proposed
use is irrigation, the description of the land to be irrigated and
the name of the owner thereof. Notice shall be required for wells
on which construction has commenced or has been completed prior to
the effective date of this chapter. If the use to which the water
is to be put is a domestic use, no application need be made. In all
other respects the procedure for appropriating water under chapter
61.01 shall be followed insofar as practicable.

61.0405 Change in location. The owner may change the location of
his well or change the use of the water but only upon notice to the
Commission.

61.0406 Well records. On each well drilled the driller shall
keep accurate records including its location, depth, date of com-
mencement and completion, character of rocks drilled and fluids
encountered, and each driller shall file with the Commission before
the drilling of any well a notice of intent to drill such well. The
above records shall be available to the Commission or its representa-
tives at all times. Such records shall be kept confidential by the
Commission or its representatives when so requested by the owner or
driller. When so requested by the Commission or its representatives
or the State Geologist, access to all wells shall be given by the
owner or driller for the purpose of making electric, or radio-
activity logs, caliper, leakage and other surveys that pertain to
the condition of the well. Such records shall be placed on permanent
file in the office of the State Geologist and in the office of the
Commission.

61.0407 Distribution of wells. In locating artesian wells and
shallow wells in any township wherein public or private wells have
been established, due regard shall be had to their proper distribu-
tion in order that the flow of the wells may be properly equalized
and least likely to interfere with each other. Should any well in such township, public or private, be located so near any well already completed or in process of completion as to be likely to interfere with the same, any person may complain in writing to the Commission, which shall without delay proceed to examine the locality and determine from its topography and the proximity of the wells whether in its judgment the well as located would unduly interfere with the one already completed or in course of completion. If in its judgment there will be no material interference, the location need not be changed, but if in its opinion the well as located will materially interfere with the one completed or in course of completion, it shall change the location of such well to some more suitable location; but when permanent buildings have been located on any farm prior to the sinking of any artesian well on any adjoining farm, this section shall not be construed as prohibiting the sinking of any artesian well at or near such buildings without reference to the proximity of any other artesian well. The Commission shall, within five days after such examination make a written statement of its decision and file the same, or a copy thereof, in the office of the clerk of courts of the county wherein such wells are located. Any person aggrieved by the decision of the Commission may, within ten days after the filing of its decision, appeal from the same to the Circuit Court of the county in which said well is located and upon such appeal the question shall be tried de novo.

61.0408 Commission to determine flow and pressure. The Commission shall measure or cause to be measured the flow and pressure of all artesian wells, public or private, at such times as it may deem proper, for the purpose of determining the increase or diminution of the flow or pressure of such wells, and may enter upon any grounds for such purpose, and the owner of such well or wells shall furnish the necessary material to construct a suitable weir to measure the flow and all reasonable conveniences shall be afforded for such purpose.

61.0409 Construction, finishing and production of wells. The Commission shall require every well to be so constructed and finished as to prevent waste of its waters or underground leakage of these waters into other reservoirs. To this end it may specify methods of construction, kinds, size and number of casings used, valves or other control devices to regulate artesian flow, and any other device or construction which may be necessary to prevent waste through faulty construction or through corrosion.

61.0410 Waste prohibited. No person controlling an artesian well shall suffer or permit the water thereof to flow to waste, except so far as reasonably necessary to prevent the obstruction thereof.
or the water to flow or to be taken therefrom, save for beneficial uses. Nothing in this section shall be so construed as to prevent the reasonable use of water for the necessary irrigation of trees standing along or upon any street, road, or highway or for ornamental ponds or fountains or the propagation of fish.

61.0411 Uncontrolled artesian wells. It shall be the duty of the owner of an uncontrolled artesian well to notify the Commission in writing of the location and size of the well. By uncontrolled artesian well is meant one that cannot be controlled by mechanical means.

61.0412 Plugging abandoned and wild wells. The Commission shall, as soon as feasible, inaugurate a program for plugging abandoned and wild wells throughout the state to prevent further decline in the heads of the several artesian reservoirs, this program to be completed as rapidly as means can be found for carrying it out. The Commission shall make an inventory of abandoned and uncontrolled artesian wells and classify the same for purposes of this section. Any well not put to beneficial use for a period of time to be determined by the Commission is hereby declared to be abandoned and shall be plugged so that there will be no leaking of its waters underground or over the surface, and each water shall be confined to its reservoir. The Commission shall specify the methods and materials to be used in plugging these abandoned wells and its representative shall see that these specifications are carried out. The Commission may also provide regulations and specifications for rehabilitating old wells to prevent underground leakage and other wastes of water due to faulty construction or material. The Oil and Gas Board shall be required to notify the Commission in writing of the location of any uncontrolled artesian well resulting from oil and gas exploration.

61.0413 Well inspection. The Commission, upon information received that the proprietor or person controlling any artesian well within the state allows the waters thereof unreasonably to run to waste, or has violated this chapter, may at any reasonable hour of the day or night enter upon the premises where such well is situated for the purpose of inspecting the same and to institute or cause to be instituted criminal prosecutions for any violation of this chapter and every person sinking or boring for an artesian well upon his own land, or suffering others to do so, shall be deemed in law expressly to license the entry of any such officer for the purpose of such inspection.

61.0414 Commission; powers and duties. The Commission shall have the general oversight of the water of the state, and shall be ready to advise the citizens of the state as to the practicability of
of measures affecting the phreatic or underground waters of the state. It shall select at least three representative artesian wells in each county of the state having that number, and as many more as it may deem advisable, and it shall cause the records of their flows and pressures to be taken from time to time to learn as much as possible of the decline, fluctuations, and permanence of the artesian supplies, and also plan and conduct such other investigations as it may find advisable to ascertain the best method of prolonging the utility of the same. It shall keep as full a record as possible of the location, size, depth, flow, pressure, character of water, construction, and history of all artesian wells of the state, and keep it on file for public reference. It shall secure the enforcement of all laws pertaining to artesian and phreatic waters of the state.

It shall publish from time to time, as it may deem advantageous, bulletins containing information concerning the artesian wells and the phreatic waters of the state. It shall make such additional reasonable rules and regulations governing the construction of such wells and the use thereof as it may deem for the best interest of the public and not inconsistent with the laws of the state; which rules and regulations shall in all cases be complied with and in case the same are violated it shall have the power to cause the construction of such wells, or the use of the water thereof, stopped.

61.0415 Driller's license. Every well driller, before doing any well drilling, and before taking any such work, shall first secure and thereafter maintain a license, which license and current renewal shall always be plainly displayed at a conspicuous place on the premises where the work is being conducted. The fee for such license shall be twenty-five dollars and a like sum must be paid each calendar year for renewal thereof. The fee shall be paid to and the license and renewals issued by the Commission. The Commission shall deposit all funds collected by it with the State Treasurer. Such license may be revoked by the Commission upon refusal of the driller to complete properly any well in accordance with good practices of well construction.

61.0416 Location of waterways; right of entry. Any person may, for the purpose of laying water pipes, constructing ditches and waterways, cause such examination and survey to be made as may be necessary to the location of the most advantageous route, and for such purpose such person may enter upon the lands of any other person and shall only be liable for actual damages sustained by reason of such entrance and examination. No routes for waterways shall be located, however, within fifteen rods of the dwelling house or other buildings on the premises or across any orchard or garden, without the written consent of the owner.
61.0417 Limitation of burden. No tract or parcel of improved or occupied land shall, without the written consent of the owner, be subjected to the burden of two or more irrigating waterways or ditches, constructed for the purpose of conveying water through such property to lands adjoining or beyond the same, when the same object can be feasibly and practically obtained by uniting and conveying all the water necessary to be conveyed through such property in one ditch.

61.0418 Selection of route. Whenever any person shall engage in the business of supplying water to the public for the purpose of irrigation and shall find it necessary to convey water for such purpose through the improved or occupied lands of another, he shall select for the line of such ditch through such property the shortest and most direct route practicable upon which such ditch can be constructed, with uniform or nearly uniform grade, and discharge the water at a point where it can be conveyed to and be used upon the land or lands of the person constructing such ditch or waterway and in locating or constructing such waterway the same may be located along or across any public road or highway and within the lines thereof, under the direction of the board or officer having charge of such highway.

61.0419 Surplus waters. For the purpose of disposing of the surplus water from an artesian well it shall be lawful for such person to construct the necessary waterways from such well on the routes as provided in sections 61.0416 and 61.0418.

61.0420 Damages for property taken. Whenever it is necessary to construct waterways or ditches to convey the water from an artesian well, or from drain ditches after irrigating lands, or after utilizing the power for other purposes, through land owned by any other person, the person so constructing such waterway or ditch shall pay to such person the actual damages, to be determined as provided by law relating to right of eminent domain.

61.0421 Right of way across railway; civil penalty for failure to construct. Whenever it is necessary to construct a waterway from any such artesian well across the right of way of any railroad company, it shall be the duty of such railroad company, when notified by the owner of such well so to do, to make and maintain a suitable culvert. Notice, in writing, to make such opening and to construct such culvert may be served on such company, as provided for the service of summons, at least thirty days before such railroad company shall become liable. In case such railroad company shall refuse or neglect to comply with the provisions of this section, it shall be liable to pay a penalty of ten dollars for each day's refusal or neglect to make such opening and construct such culvert. The state's
attorney of the county in which such railroad company shall have refused or neglected to comply with the provisions of this section, shall, upon complaint being made by the person interested, collect such penalty and it shall be his duty to prosecute the same to a final determination in any court having jurisdiction. Nothing in this section shall be construed to compel any railroad company to maintain or build a culvert across its right of way until such railroad shall have been constructed.

61.0422 Highway obstruction. All waterways which are laid and constructed within the limits of, or across, any public highway shall be under the jurisdiction of the board or officer having charge thereof, and it shall be its or his duty to keep such waterway open and free from all obstruction, and when any highway is subsequently constructed along or across any such waterway, so much of such waterway as shall come within the limits of such highway shall also be kept open and free from obstruction.

61.0423 Overflow not to damage highway. No person being the proprietor of or having the control of an artesian well shall permit the water from such well to run upon, across, or along any public highway so as to damage the same or obstruct travel thereon, or interfere with the construction, repair, or maintenance of a road along such public highway.

61.0424 Overflow on highway; right to remove; damages. After ten days' written notice to any person or persons violating the provisions of section 61.0423, the governing body, board, or officer having charge of such public highway or of the construction, maintenance, or repair of a road along such highway, may ditch, tile, or otherwise care for or remove the water causing such obstruction, damage, or interference, and the city, town, township, county, or state, as the case may be, shall be entitled to recover from such person or persons the amount necessarily expended, such action to be commenced in any court in the county having jurisdiction thereof.

61.0425 Plat of route. As soon as the route for any waterway mentioned in this chapter is located, a correct plat thereof shall be made, indicating by proper description the lands over which the same is located, showing the points of entering such lands and exit therefrom, and the general course of such route across or along the same, and such plat shall be certified to by the surveyor who did the work and acknowledged by the proprietor of such well. Such plat shall be recorded in the office of the register of deeds of the county or counties in which such route is located; and there shall be filed with the register of deeds of each county the minutes of the survey, indicating all monuments and landmarks for ascertaining such
route and the location of the land over which it passes. The right acquired by the location thereof shall be an easement running with the land so long as the waterway thereon constructed shall be used for the water flowing from such well, and such records shall be notice of the rights of such proprietor to such waterway and be binding upon all subsequent purchasers, encumbrancers, or successors in interest to such land, and the right to such waterway shall be appurtenant to and pass with the transfer of such well and of the land whereon it is situated.

61.0426 Repair of waterways. It shall be the duty of the proprietor of wells constructed under the provisions of this chapter to keep all ditches and waterways in good repair, at all seasons of the year, and for the purpose of making the necessary repairs he shall have the right to enter upon the lands where such ditches or waterways are located, along the line thereof, taking care that no unnecessary damage be caused, and whatever actual damage may be caused shall be paid to the owner of such lands. Whenever such ditches or waterways shall become out of repair, it shall be the duty of the proprietor of such well to proceed to repair the same with all reasonable diligence, after due notice thereof.

61.0427 Ditches; repairs by person at fault. Whenever such ditches or waterways have been injured or put out of order by the acts of any person, or by the livestock of such person, it shall be his duty to repair the same at his own expense.

61.0428 Construction of bridge crossing. While any such waterway is in process of construction, or at any time after completion thereof, the owner or occupant of the land over which the same passes shall have the right to designate the places, not to exceed one for every forty rods of such waterway, where a bridge or crossing shall be constructed, which crossing so designated, shall be built and maintained by the proprietor of such well. But the owner or occupant of such land shall have the right to construct and maintain at his own expense as many crossings as he may desire. Nothing in this chapter shall be construed to require the proprietor of any such well to construct any crossing above the level of the ground at the point designated and at the place where the ditch or waterway is located. Such bridge or crossing shall be constructed within thirty days after receiving from the owner or occupant of such land a written notice requiring the same. If the proprietor of any such well shall refuse or neglect to construct such crossing, the owner or occupant of such land may construct the same and recover the value thereof from the proprietor of such well, together with all damages for such failure.
61.0429. **Surplus waters: right to use.** Whenever any waterway shall be located and constructed under the provisions of this chapter across the lands of any person other than the lands owned by the proprietor of the well, such person may apply to the proprietor for the right to use the surplus water flowing in such waterway or ditch to irrigate his own lands and such proprietor shall allow him to use and appropriate such water by paying a just rental therefor. The rates to be paid and terms and conditions under which such surplus water may be used shall, upon proper application by the parties, be fixed and defined in a just and equitable manner by the board of county commissioners at a regular or special meeting thereof, and either party may appeal to the Circuit Court of the county within which such waterway is located, from the decision of such board, in the manner provided by law for appeals from such board and the decision of the Circuit Court shall be final. Nothing in this section shall be construed to prevent the use of all the water which may flow from any such well by the proprietor thereof upon his own lands, but when such proprietor shall own land located beyond the lands across which such ditch is constructed, an equitable adjustment of the rights of all the parties shall be made by such board, subject to appeal as aforesaid.

61.0430. **Across school lands.** When any waterway or ditch must necessarily be constructed across any of the school lands of the state, except in the highway along the same, permission to construct the same may be obtained from the Commissioner of School and Public Lands upon an application in writing, duly verified, showing the location and character of such lands, together with a proper plat showing the location of the proposed route across the same, the permission to be granted under such conditions as shall be prescribed by such Commissioner and approved by the Governor.
73-1-1. Waters Declared Property of Public.

All waters in this state, whether above or under the ground are hereby declared to be the property of the public, subject to all existing rights to the use thereof.

73-1-5. Use of Water a Public Use.

The use of water for beneficial purposes, as provided in this title, is hereby declared to be a public use.


That the state engineer, for and on behalf of the state of Utah, with the written consent of the governor, is authorized and directed to enter into an agreement with the United States geological survey, or any other federal or state agency, for cooperation in making investigations of the ground-water resources of the state of Utah and reporting thereon.


Rights to the use of the unappropriated public waters in this state may be acquired only as provided in this title. No appropriation of water may be made and no rights to the use thereof initiated and no notice of intent to appropriate shall be recognized except application for such appropriation first be made to the state engineer in the manner hereinafter provided, and not otherwise. The appropriation must be for some useful and beneficial purpose, and, as between appropriators, the one first in time shall be first in rights; provided, that when a use designated by an application to appropriate any of the unappropriated waters of the state would materially interfere with a more beneficial use of such water, the application shall be dealt with as provided in section 73-3-8. No right to the use of
water either appropriated or unappropriated can be acquired by adverse use or adverse possession.

73-3-2. Application for Right to Use Unappropriated Public Water - Necessity - Form - Contents - Validation of Prior Applications by State or United States or Officer or Agency Thereof.

Any person who is a citizen of the United States, or who has filed his declaration of intention to become such as required by the naturalization laws, or any association of such citizens or declarants, or any corporation, or the state of Utah by the chairman of the commission of publicity and industrial development, the fish and game commissioner, the executive secretary of the state land board or the chairman of the state road commission for the use and benefit of the public, or the United States of America, in order hereafter to acquire the right to the use of any unappropriated public water in this state shall, before commencing the construction, enlargement, extension or structural alteration of any ditch, canal, well, tunnel or other distributing works, or performing similar work tending to acquire such rights or appropriation, or enlargement of an existing right or appropriation, make an application in writing to the state engineer. Such application shall be upon a blank to be furnished by the state engineer, and shall set forth the name and post-office address of the person, corporation or association making the application; the nature of the proposed use for which the appropriation is intended; the quantity of water in acre-feet or the flow of water in second-feet to be appropriated, and the time during which it is to be used each year; the name of the stream or other source from which the water is to be diverted; the place on such stream or source where the water is to be diverted and the nature of the diverting works; the dimensions, grade, shape and nature of the proposed diverting channel; and such other facts as will clearly define the full purpose of the proposed appropriation. If the proposed use is for irrigation, the application shall show the legal subdivisions of the land proposed to be irrigated, with the total acreage thereof and the character of the soil. If the proposed use is for developing power, the application shall show the number, size and kind of water wheels to be employed and the head under which each wheel is to be operated; the amount of power to be produced and the purposes for which and the places where it is to be used; also the point where the water is to be returned to the natural stream or source. If the proposed use is for milling or mining, the application shall show the name of the mill and its location or the name of the mine and the mining district in which it is situated, its nature, and the place where the water is to be returned to the natural stream or source. The point of diversion and the point of return of the water shall be designated with reference to the United States land survey corners, mineral monuments or
permanent Federal triangulation or traverse monuments, when either the point of diversion or the point of return is situated within six miles of such corners and monuments. If the point of diversion or point of return is located in unsurveyed territory such point may be designated with reference to a permanent, prominent natural object. The storage of water by means of a reservoir shall be regarded as a diversion, and the point of diversion in such cases shall be the point where the longitudinal axis of the dam crosses the center of the stream bed. The point where released storage water is taken from the stream shall be designated as the point of rediversion. The lands to be inundated by any reservoir shall be described as nearly as may be, and by government subdivision, if upon surveyed land, the height of the dam, the capacity of the reservoir, and the area of the surface thereof when the reservoir is filled shall be given. If the water is to be stored in an underground area or basin the applicant shall designate, with reference to the nearest United States land survey corner if situated within six miles thereof, the point of area of intake, the location of such underground area or basin and the points of collection therefrom.

Applications for the appropriation of water filed prior to the enactment hereof, by the United States of America or any officer or agency thereof, or the state of Utah or any officer or agency thereof, are validated, subject to any action thereon by the state engineer.

73-3-5. Action by Engineer on Applications-Amended Applications-Fees for Drilling Culinary Wells.

On receipt of each application containing the information required by section 73-3-2, and payment of the filing fee, it shall be the duty of the state engineer to make an indorsement thereon on the date of its receipt, and to make a record of such receipt in a book kept in his office for that purpose. It shall be his duty to examine the application and determine whether any corrections, amendments, or changes are required for clarity and if so, the application shall be returned to the applicant within thirty days after its receipt with a statement of corrections, amendments, or changes required, and sixty days shall be allowed for the filing thereof. If filed, corrected, amended or changed as required, within said time, the application shall, upon being accepted, take priority as of the date of its original receipt, subject to compliance with the further requirements of the law and the regulations thereunder. If not returned within said time it shall lapse and may be reinstated only upon compliance with the provision of section 73-3-18. The date of the return of the application shall be indorsed on the application, and a record made thereof in a book kept for recording applications. Like entries shall be made of the date when corrected applications
are received by the state engineer. All applications which shall comply with the provisions of this chapter and with the regulations of the state engineer shall be filed and recorded in a suitable book kept for that purpose.

The state engineer may issue a temporary receipt to drill a well at any time after the filing of an application to appropriate water therefrom, as provided by this section if all fees be advanced and if in his judgment there is unappropriated water available in the proposed source and there is no likelihood of impairment of existing rights; provided, however, that the issuance of such temporary permits shall not dispense with the publishing of notice and the final approval or rejection of such application by the state engineer, as provided by this chapter.

The state engineer may send the necessary notices and address all correspondence relating to each application to the owner thereof as shown by the state engineer's records, or to his attorney in fact provided a written power of attorney is filed in the state engineer's office.

73-3-6. Publication of Notice of Application—Expense—Contents—Exception as to Underground Water for Domestic or Livestock Purposes—Corrections or Amendments of Application—Judicial Review.

When an application is filed in compliance with this title the state engineer shall, at the expense of the applicant, to be paid in advance, publish in a newspaper published within the county, if there be one, otherwise in a newspaper having general circulation, near the water source from which the appropriation is to be made a notice of the application showing by whom made, the quantity of water sought to be appropriated; the stream or water source from which the appropriation is to be made and at what point on the stream or water source; the use for which it is to be appropriated and by what means; which notice shall be published at least three times, once a week for a period of three successive weeks; provided the state engineer shall not publish notice of the application for appropriation of underground water when the application is for domestic and for livestock purposes and a flow of 0.015 second feet (6.73 g.p.m.) or less. Clerical errors, ambiguities, and mistakes which do not prejudice the rights of others may be corrected by order of the state engineer either before or after the publication of notice. After publication of notice to water users, the state engineer may authorize amendments or corrections which involve a change of point of diversion, place or purpose of use of water, only upon republication of notice to water users. Any person aggrieved by an order of the state engineer authorizing any alteration of any application may file an action for plenary review thereof as provided by section 73-3-14.
73-3-7. Protests.

Any person interested may, at any time within thirty days after the completion of the publication of such notice, file with the state engineer a duly verified written protest together with a copy thereof against the granting of the application, stating the reasons therefor, which shall be duly considered by the state engineer, and he shall approve or reject the application.

73-3-8. Approval or Rejection-Contract to Pay Royalties-if for Removal of Salt or Minerals.

It shall be the duty of the state engineer, upon the payment of the approval fee, to approve an application if: (1) There is unappropriated water in the proposed source; (2) The proposed use will not impair existing rights, or interfere with the more beneficial use of the water; (3) The proposed plan is physically and economically feasible unless the application is filed by the United States bureau of reclamation and would not prove detrimental to the public welfare; and (4) The applicant has the financial ability to complete the proposed works and the application was filed in good faith and not for purposes of speculation or monopoly; provided, that where the state engineer, because of information in his possession obtained either by his own investigation or otherwise, has reason to believe that an application to appropriate water will interfere with its more beneficial use for irrigation, domestic or culinary, stock watering, power or mining development or manufacturing, or will prove detrimental to the public welfare, it shall be his duty to withhold his approval or rejection of the application until he shall have investigated the matter. The cost of such inquiry shall be paid by the person making the application, as provided by section 73-2-14, if such application is approved. If an application does not meet the requirements of this section, it shall be rejected.

Before the approval of any application for the appropriations of water from navigable lakes or streams of the state which contemplates the recovery of salts and other minerals therefrom by precipitation or otherwise, the applicant shall file with the state engineer a copy of a contract for the payment of royalties to the state of Utah; provided that approval of any such application shall be revoked in the event of failure of the applicant to comply with the terms of his royalty contract.


In any case where a decision of the state engineer is involved any person aggrieved by such decision may within sixty days after
motice thereof bring a civil action in the district court for a plenary review thereof. The state engineer shall give notice of his decision by mailing a copy thereof by regular mail to the applicant and to each protestant and notice shall be deemed to have been given on the date of mailing. The place of trial, subject to the power of the court to change the same as provided by law, shall be in the county in which the stream or water source, or some part thereof, is located. The state engineer must be joined as a defendant in all suits to review his decisions, but no judgment for costs or expenses of the litigation shall be rendered against him. Parties shall be served with process as in other cases and notice of the pendency of such action shall be filed by the clerk of the district court with the state engineer within twenty days after the same is commenced which shall operate to stay all further proceedings pending the decision of the district court.

73-3-15. Trial De Novo-Dismissal of Action.

The pleadings, practice, and procedure in suits to review decisions of the state engineer shall be the same as in other equity cases. The hearing in the district court shall proceed as a trial de novo and shall be tried to the court as other equitable actions. Within ten days after its entry a copy of the judgment shall be transmitted by the clerk of the district court to the office of the state engineer. An action to review a decision of the state engineer shall be dismissed upon application of any party or by the court on its own motion, if the complaint was not filed or the summons was not served within sixty days after notice of the decision. An action to review a decision of the state engineer may be dismissed upon the application of any of the parties upon the grounds provided in Rule 41 of the Utah Rules of Civil Procedure for the dismissal of actions generally and for failure to prosecute such action with diligence. For the purpose of this section failure to prosecute a suit to final judgment within two years after it is filed, or, if an appeal is taken to the Supreme Court within three years after the filing of the suit, shall constitute lack of diligence. All suits heretofore or hereafter commenced must be dismissed after ten days' notice by regular mail to the plaintiff, unless such suits are or were prosecuted to final judgment within the time specified above; provided, as to suits filed before the enactment hereof the court may upon a proper showing extend the time for prosecution to final judgment for a period of not to exceed two years from the date of hearing of any motion to dismiss filed pursuant to this section.


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Sixty days before the date set for the proof of appropriation or proof of permanent change to be made the state engineer shall notify the applicant by registered mail when proof of completion of works and application of the water to a beneficial use will be due. On or before the date set for completing such proof in accordance with his application the applicant shall file proof to the state engineer, on blanks to be furnished by the state engineer, by a statement descriptive of the works constructed, and of the quantity of water in acre-feet or the flow in second feet appropriated, and of the method of applying the water to beneficial use, with detailed measurements of water put to beneficial use, giving the date the measurements were made and the name of the person making the measurements; provided, however, that on applications heretofore or hereafter filed for appropriation or permanent change of use of water to provide a water supply for state projects constructed pursuant to Chapter 10, Title 73, Utah Code annotated 1953, and for federal projects constructed by the United States Bureau of Reclamation for the use and benefit of the state, any of its agencies, its political subdivisions, public and quasi-municipal corporations, or water users' associations of which the state, its agencies, political subdivisions or public and quasi-municipal corporations are stockholders, the proof need show no more than (a) completion of construction of the project works, (b) a description of the major features thereof with appropriate maps, profiles, drawings and reservoir area-capacity curves, (c) a description of the point or points of diversion and rediversion, (d) project operation data, (e) a description by configuration on a map of the place of use of water and a statement of the purpose, and method of use, (f) the project plan for beneficial use of water under such applications and the quantity of water required, and (g) the installation of necessary measuring devices. The chairman of the Utah Water and Power Board shall sign proofs for the state projects and the duly authorized official of the Bureau of Reclamation shall sign proofs for the federal projects specified above.

The proof on all applications shall be sworn to by the applicant or his duly appointed representative and proof engineer, and shall be accompanied by maps, profiles (in case of power use only) and drawings made on tracing linen by a reputable registered land surveyor or engineer, and shall show fully and correctly the location of the completed works with reference to a United States land survey corner if within a distance of six miles. If the point of diversion or the point of return is not situated within six miles of a land survey corner, the tie may be to a mineral monument, or to a permanent federal triangulation or traverse monument. If in unsurveyed territory and not within six miles of a mineral or federal triangulation monument, such point may be designated with reference to a permanent, prominent natural object. The proof shall also show the nature and extent of the completed works, the natural stream or source from
which and the point where the water is diverted and in case of non-
consumptive use the point where the water is returned. The place of
use shall be shown by legal subdivisions consisting of forty-acre
tracts according to United States land surveys on the maps and in the
written proof, together with the acreage in case of use for irrigation,
but when water is used on less than a legal subdivision the descrip-
tion both in the written proof and on the map need not be given by
metes and bounds but the maps shall show the configuration of the
place of use, together with the acreage of irrigated land. The
diverting channel on the map need be shown only from the point of
diversion to the point where distribution of water begins and may be
represented by traverse without metes and bounds. Such other matter
must be furnished as will fully and correctly delineate the work done
and conform to the general rules and regulations of the state engi-
neer's office consistent with this section. The maps, profiles
(where necessary) and drawings shall be verified by oath of the
engineer who made them and by the applicant whose work they represent,
in such form as the state engineer shall by general rule prescribe.

The state engineer shall require no proof of appropriation or
proof of permanent change wherever the application for appropriation
of underground water or permanent change thereof is for domestic and
for livestock purposes and a flow of 0.015 sec. ft. (6.73 g.p.m.) or
less.

The state engineer may waive the filing of maps, profiles and
drawings if in his opinion the written proof adequately describes
the works and the nature and extent of beneficial use.

73-3-17. Certificate of Appropriation—Evidence.

Upon it being made to appear to the satisfaction of the state
engineer that an appropriation or a permanent change of point of
diversion, place or nature of use has been perfected in accordance
with the application therefor, and that the water appropriated or
affected by the change has been put to a beneficial use, as required
by section 73-3-16, he shall issue a certificate, in duplicate, set-
ting forth the name and post-office address of the person by whom the
water is used, the quantity of water in acre-feet or the flow in
second-feet appropriated, the purpose for which the water is used,
the time during which the water is to be used each year, the name of
the stream or source of supply from which the water is diverted, the
date of the appropriation or change, and such other matter as will
fully and completely define the extent and conditions of actual appli-
cation of the water to a beneficial use; provided that certificates
issued on applications for projects constructed pursuant to Chapter
10, Title 73, Utah Code Annotated 1953, and for the federal projects
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constructed by the United States Bureau of Reclamation, referred to
in section 73-3-16 of said Code, need show no more than the facts
shown in the proof. The certificate shall not extend the rights
described in the application. Failure to file proof of appropria-
tion or proof of change of the water on or before the date set there-
for shall cause the application to lapse. One copy of such certifi-
cate shall be filed in the office of the state engineer and the other
shall be delivered to the appropriator or to the person making the
change who shall, within thirty days, cause the same to be recorded
in the office of the country recorder of the county in which the
water is diverted from the natural stream or source. The certificate
so issued and filed shall be prima facie evidence of the owner's
right to the use of the water in the quantity, for the purpose, at
the place, and during the time specified therein, subject to prior
rights.

Failure to Comply—Penalty.

Any person, firm, copartnership, association or corporation bor-
ing or digging wells or tunnels for the purpose of appropriating or
using unappropriated underground waters shall, within thirty days
after the completion or abandonment of such work, report to the state
engineer the data relating to each well or tunnel drilled. The report
shall be made on forms furnished by the state engineer and shall con-
tain such information as he may require, including but not limited
to the following:

The name and postoffice address of the driller and the owner of
well or tunnel; the number of the approved application to appropriate
water under which work was prosecuted; the location of well or tunnel
and the size and kind of casing used therein; the depth and log of
well or tunnel; the date on which well or tunnel came into produc-
tion; temperature and quantity of water issuing, drawn or pumped
therefrom, and the location of water bearing strata.

Failure to comply with the provisions of this section shall con-
stitute a misdemeanor.

73-3-23. Replacement of Water.

In all cases of appropriation of underground water the right of
replacement is hereby granted to any junior appropriator whose
appropriation may diminish the quantity or injuriously affect the
quality of appropriated underground water in which the right to the
use thereof has been established as provided by law. No replacement
may be made until application in writing has been made to and approved
by the state engineer. In all cases replacement shall be at the sole cost and expense of the applicant and subject to such rules and regulations as the state engineer may prescribe. The right of eminent domain is hereby granted to any applicant for the purpose of replacement as provided herein.

73-3-24. Definitions.

The words and phrases of this act shall, unless inconsistent with the context, be defined as follows:

"Well" means an excavation or opening into the ground made by digging, boring, drilling, jetting or driving, or any other artificial method for obtaining underground water.

"Well drilling" means the act of constructing, repairing or deepening a well, which shall include all work incidental thereto.

"Well Driller" means any person, firm, copartnership, association or corporation, who shall drill a well or wells for compensation or otherwise, upon the land of the driller, or upon other land.

73-3-25. Wells—Permit to Drill—Bond for Compliance with Law.

Every person, firm, copartnership, association or corporation drilling a well or wells in the state of Utah shall, before the first day of May, 1937, and thereafter annually, make application to the state engineer for a permit to drill such well or wells. The application shall be in a form to be prescribed by the state engineer. All permits shall expire on the thirty-first day of December following the issuance thereof and shall not be transferable. The state engineer is authorized and directed to prepare and keep on file in his office rules and regulations for well drilling.

No person, firm, copartnership, association or corporation shall drill a well or wells in this state without first having obtained an annual permit therefor as provided in this section and without having first filed with the state engineer a bond in the penal sum of $500, conditioned upon the proper compliance with the provisions of this section and the rules and regulations promulgated pursuant thereto. Such bond shall be made payable to the state of Utah and shall be approved by the state engineer. Well drillers are required to comply with the rules and regulations to be promulgated by the state engineer and if the state engineer determines, after an investigation and after a hearing upon at least 10 days' notice to the permittee, by registered mail, that such permittee has failed to comply with such rules and regulations, the state engineer may revoke the permit.
The state engineer may refuse to issue a permit to a well driller if it appears that there has been a violation of the rules and regulations or a failure to comply with section 73-3-22. The order of the state engineer revoking a permit or refusing to issue a permit shall be final unless an action to review his decision is filed within the time and in the manner provided by section 73-3-14.

73-5-1. Appointment of water commissioners - Procedure - Determine adequacy of underground water supply.

Whenever in the judgment of the state engineer, or the district court, it is necessary to appoint one or more water commissioners for the distribution of water from any river system or water source such commissioner or commissioners shall be appointed annually by the state engineer. The state engineer shall determine whether all or a part of a river system, or other water source shall be served by a commissioner, or commissioners, and if only a part is to be served, shall determine the boundaries of such part. The state engineer may also appoint a single commissioner to act on several separate and distinct water sources. The state engineer shall consult with the water users before appointing a commissioner. The form of such consultation and notice to be given shall be determined by the state engineer as shall best suit local conditions, full expression of majority opinion being, however, provided for. If a majority of the water users, as a result of such consultation, shall agree upon some competent persons to be appointed as water commissioner or commissioners, the duties he or they shall perform and compensation he or they shall receive, and shall make recommendations to the state engineer as to such matters or either of them, the state engineer shall act in accordance with their recommendations; but if a majority of water users do not agree as to such matters, then the state engineer shall make a determination for them. The salary and expenses of such commissioner or commissioners and all other expenses of distribution, including printing, postage, equipment, water users' expenses, and such other expenses as are deemed necessary by the state engineer, shall be borne pro rata by the users of water from such river system or water source, upon a schedule to be fixed by the state engineer, based on the established rights of each water user, and such pro rata share shall be paid by each water user to the state engineer in advance on or before the first day of May each year, and upon failure so to do the state engineer may create a lien upon the water right affected by filing a notice of lien in the office of the county recorder in the county where the water is diverted, may forbid the use of water by any such delinquent his successors or assigns, while such default continues, may bring an action in the district court for such unpaid expense and salary, and may foreclose such lien, or the district court having jurisdiction...
of his person may issue an order to show cause upon any delinquent user why a judgment for such sum should not be entered. Any such commissioner or commissioners may be removed by the state engineer for cause. The users of water from any river system or water source may petition the district court for the removal of any such commissioner or commissioners, and after notice and hearing the court may order the removal of such commissioner or commissioners and direct the state engineer to appoint successors as necessary.

In addition to the power granted the state engineer to appoint water commissioners for the distribution of water as provided herein, the state engineer is hereby authorized upon his own motion at any time to hold hearing, or upon a petition signed by not less than one-third of the users of underground waters in any area as shall be defined by the state engineer, he shall hold such hearing, to determine whether the underground water supply within such area is adequate for the existing claims. Notice of such hearing shall be given in a form and manner which in the judgment of the state engineer will best suit local conditions. Upon such hearing the state engineer is authorized to make full investigation and findings thereon. If it be found the water supply is inadequate for existing claims, he shall divide, or cause to be divided, by the water commissioner or water commissioners as provided in this section, the waters within such area among the several claimants entitled thereto in accordance with the rights of each respectively.

73-5-13. Notice of claim to surface or underground water not otherwise represented—Filing—Time limitation—Form—Information and proof required—Corrections—Fee—Prima facie evidence of right.

All claimants to the right to the use of water, including both surface and underground, whose rights are not represented by certificates of appropriation issued by the state engineer, by applications filed with the state engineer, by court decrees or by notice of claim heretofore filed pursuant to law, shall file notice of such claim or claims with the state engineer on forms furnished by him setting forth such information and accompanied by such proof as the state engineer may require, including but not limited to the following:

The name and postoffice address of the person making the claim; the quantity of water claimed in acre-feet; and/or the rate of flow in second-feet; the source of supply; the priority of the right, the location of the point of diversion with reference to a United States land survey corner, the place, nature, and extent of use; the time during which the water has been used each year and the date when the water was first used. A notice of claim may be
corrected by filing with the state engineer a corrected notice designated as such and bearing the same number as the original claim. No fees shall be charged for filing a corrected notice of claim.

Such notices of claim, or claims, as provided in this section, shall be prima facie evidence of claimed right or rights therein described.

73-5-14. Determination by state engineer of watershed to which particular source is tributary—Publications of notice and result—Hearing—Judicial review.

The state engineer shall have the power to determine for administrative and distribution purposes the watershed to which any particular stream or source of water is tributary. Said determination may be made only after publication of notice to the water users. Said publication of notice shall be made in a newspaper or newspapers having general circulation in every county in this state in which any rights might be affected. The publication is to be made once each week for five consecutive weeks. It shall fix the date and place of hearing and at said hearing any water user shall be given an opportunity to appear and adduce evidence material to the determination of the question involved. The result of said determination by the state engineer shall likewise be published in the manner set forth above and said notice of the decision of the state engineer shall also notify the public that any person aggrieved by said decision may appeal from said decision as provided by section 73-3-14; and notice shall be deemed to have been given so as to start the time for appeal upon completion of the publication of notice.
90.44.020 Purpose of chapter. This chapter regulating and controlling ground waters of the state of Washington shall be supplemental to chapter 90.03, which regulates the surface waters of the state, and is enacted for the purpose of extending the application of such surface water statutes to the appropriation and beneficial use of ground waters within the state.

90.44.030 Chapter not to affect surface water rights. The rights to appropriate the surface waters of the state and the rights acquired by the appropriation and use of surface waters shall not be affected or impaired by any of the provisions of this supplementary chapter and, to the extent that any underground water is part of or tributary to the source of any surface stream or lake, or that the withdrawal of ground water may affect the flow of any spring, water course, lake, or other body of surface water, the right of an appropriator and owner of surface water shall be superior to any subsequent right hereby authorized to be acquired in or to ground water.

90.44.035 "Ground waters," "natural ground water" and "artificially stored ground water" defined. All bodies of water that exist beneath the land surface and that there saturate the interstices of rocks or other materials—that is, the waters of underground streams or channels, artesian basins, underground reservoirs, lakes or basins, whose existence or whose boundaries may be reasonably established or ascertained—are defined for the purposes of this chapter as "ground waters." There is recognized a distinction between: (1) Water that exists in underground storage owing wholly to natural processes; for the purposes of this chapter such water
is designated as "natural ground water." (2) Water that is made available in underground storage artificially, either intentionally or incidentally to irrigation and that otherwise would have been dissipated by natural waste; for the purposes of this chapter such water is designated as "artificially stored ground water."

90.44.040 Public ground waters subject to appropriation. Subject to existing rights, all natural ground waters of the state as defined in RCW 90.44.035, also all artificial ground waters that have been abandoned or forfeited, are hereby declared to be public ground waters and to belong to the public and to be subject to appropriation for beneficial use under the terms of this chapter and not otherwise.

90.44.050 Permit to withdraw. After the effective date of this act no withdrawal of public ground waters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the supervisor of water resources and a permit has been granted by him as herein provided: Except, however, That any withdrawal of public ground waters for stock-watering purposes, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, or for an industrial purpose in an amount not exceeding five thousand gallons a day, is and shall be exempt from the provisions of this section, but, to the extent that it is regularly used beneficially, shall be entitled to a right equal to that established by a permit issued under the provisions of this chapter: Provided, however, That the supervisor from time to time may require the person or agency making any such small withdrawal to furnish information as to the means for and the quantity of that withdrawal: provided, further, That at the option of the party making withdrawals of ground waters of the state not exceeding five thousand gallons per day, applications under this section or declarations under RCW 90.44.090 may be filed and permits and certificates obtained in the same manner and under the same requirements as is in this chapter provided in the case of withdrawals in excess of five thousand gallons a day.

90.44.060 Laws governing withdrawal. Applications for permits for appropriation of underground water shall be made in the same form and manner provided in RCW 90.03.250 through 90.03.340, as amended, the provisions of which sections are hereby extended to govern and to apply to ground water, or ground water right certificates and to all permits that shall be issued pursuant to such
applications, and the rights to the withdrawal of ground water acquired thereby shall be governed by RCW 90.03.250 through 90.03.340, inclusive: 

provided, That each application to withdraw public ground water by means of a well or wells shall set forth the following additional information: (1) the name and post office address of the applicant; (2) the name and post office address of the owner of the land on which such well or wells or works will be located; (3) the location of the proposed well or wells or other works for the proposed withdrawal; (4) the ground water area, sub-area, or zone from which withdrawal is proposed, provided the supervisor of water resources has designated such area, sub-area, or zone in accord with RCW 90.44.130; (5) the amount of water proposed to be withdrawn, in gallons a minute and in acre feet a year, or millions of gallons a year; (6) the depth and type of construction proposed for the well or wells or other works: 

And provided further, That any permit issued pursuant to an application for constructing a well or wells to withdraw public ground water may specify an approved type and manner of construction for the purposes of preventing waste of said public waters and of conserving their head.

90.44.070 Limitations on granting permit. No permit shall be granted for the development or withdrawal of public ground waters beyond the capacity of the underground bed or formation in the given basin, district, or locality to yield such water within a reasonable or feasible pumping lift in case of pumping developments, or within a reasonable or feasible reduction of pressure in the case of artesian developments. The supervisor of water resources shall have the power to determine whether the granting of any such permit will injure or damage any vested or existing right or rights under prior permits and may in addition to the records of his office, require further evidence, proof, and testimony before granting or denying any such permits.

90.44.080 Certificate - Showing required. Upon a showing to the supervisor of water resources that construction has been completed in compliance with the terms of any permit issued under the provisions of this chapter, it shall be the duty of such supervisor to issue to the permittee a certificate of ground water right stating that the appropriation has been perfected under such permit: 

provided, however, That such showing shall include the following information: (1) the location of each well or other means of withdrawal constructed under the permit, both with respect to official land surveys and in terms of distance and direction to any pre-existing well or wells or works constructed under an earlier permit or approved declaration of a vested right, provided the distance to such pre-existing well or works is not more than a quarter of a
mile; (2) the depth and diameter of each well or the depth and
general specifications of any other works constructed under the
terms of the permit; (3) the thickness in feet and the physical
character of each bed, stratum, or formation penetrated by each
well; (4) the length and position, in feet below the land surface,
and the commercial specifications of all casing, also of each screen
or perforated zone in the casing of each well constructed; (5) the
tested capacity of each well in gallons a minute, as determined by
measuring the discharge of the pump or pumps after continuous oper-
ation for at least four hours or, in the case of a flowing well, by
measuring the natural flow at the land surface; (6) for each non-
flowing well, the depth to the static ground water level as measured
in feet below the land surface immediately before the well-capacity
test herein provided, also the draw-down of the water level, in
feet, at the end of said well-capacity test; (7) for each flowing
well, the shut-in pressure measured in feet above the land surface
or in pounds per square inch at the land surface; and (8) such addi-
tional factual information as reasonably may be required by the
supervisor to establish compliance with the terms of the permit and
with the provisions of this chapter.

The well driller or other constructor of works for the with-
drawal of public ground waters shall be obligated to furnish the
permittee a certified record of the factual information necessary
to show compliance with the provisions of this section.

90.44.090 Certificate of vested rights. Any person, firm or
corporation claiming a vested right to withdraw public ground waters
of the state by virtue of prior beneficial use of such water shall,
within three years after the effective date of this act, be entitled
to receive from the supervisor of water resources a certificate of
ground water right to that effect: Provided, That the issuance by
the supervisor of any such certificate of vested right shall be con-
tingent on a declaration by the claimant in a form prescribed by
said supervisor, which declaration shall set forth: (1) the benefi-
cial use for which such withdrawal has been made; (2) the date or
approximate date of the earliest beneficial use of the water so
withdrawn, and the continuity of such beneficial use; (3) the amount
of water claimed; (4) if the beneficial use has been for irrigation,
the description of the land to which such water has been applied and
the name of the owner thereof; and (5) so far as it may be available,
descriptive information concerning each well or other works for the
withdrawal of public ground water, as required of original permit-
tees under the provisions of RCW 90.44.080: Provided, however, That
in case of failure to comply with the provisions of this section
within the three years allotted, the claimant may apply to the
supervisor for a reasonable extension of time, which shall not
exceed two additional years and which shall be granted only upon
a showing of good cause for such failure.

Each such declaration shall be certified, either on the basis of
the personal knowledge of the declarant or on the basis of in-
formation and belief. With respect to each such declaration there
shall be publication, and findings in the same manner as provided in
RCW 90.44.060 in the case of an original application to appropriate
water. If his findings sustain the declaration, the supervisor
shall approve said declaration, which then shall be recorded at
length in his office and may also be recorded in the office of the
county auditor of the county within which the claimed withdrawal
and beneficial use of public ground water have been made. When
duly approved and recorded as herein provided, each such declara-
tion or copies thereof shall have the same force and effect as an
original permit granted under the provisions of RCW 90.44.060, with
a priority as of the date of the earliest beneficial use of the
water.

Declarations heretofore filed with the supervisor in substantial
compliance with the provisions of this section shall have the same
force and effect as if filed after the effective date of this act.

The same fees shall be collected by the supervisor in the case of
applications for the issuance of certificates of vested rights,
as are required to be collected in the case of application for per-
mits for withdrawal of ground waters and for the issuance of certi-
ficates of ground water withdrawal rights under this chapter.

90.44.100 Amendment to permit or certificate. After an applica-
tion to, and upon the issuance by the supervisor of water resources
of an amendment to the appropriate permit or certificate of ground
water right, the holder of a valid right to withdraw public ground
waters may, without losing his priority of right, construct wells
or other means of withdrawal at a new location in substitution for
or in addition to those at the original location, or he may change
the manner or the place of use of the water: provided, however, That
such amendment shall be issued only after publication of notice of
the application and findings as prescribed in the case of an original
application. Such amendment shall be issued by the supervisor only
on the conditions that: (1) The additional or substitute well or
wells shall tap the same body of public ground water as the original
well or wells; (2) use of the original well or wells shall be dis-
continued upon construction of the substitute well or wells; (3)
the construction of an additional well or wells shall not enlarge
the right conveyed by the original permit or certificate; and (4)
other existing rights shall not be impaired. The supervisor may specify an approved manner of construction and shall require a showing of compliance with the terms of the amendment, as provided in RCW 90.44.080 in the case of an original permit.

90.44.110 Waste of water prohibited - Exceptions. No public ground waters that have been withdrawn shall be wasted without economical beneficial use. The supervisor of water resources shall require all wells producing waters which contaminate other waters to be plugged or capped. He shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be completely stopped when the wells are not in use under the terms of their respective permits or approved declarations of vested rights. Likewise, he shall also require both flowing and nonflowing wells to be so constructed and maintained as to prevent the waste of public ground waters through leaky casings, pipes, fittings, valves, or pumps—either above or below the land surface: Provided, however, That the withdrawal of reasonable quantities of public ground water in connection with the construction, development, testing, or repair of a well shall not be construed as waste; also, that the inadvertent loss of such water owing to breakage of a pump, valve, pipe, or fitting shall not be construed as waste if reasonable diligence is shown by the permittee in effecting the necessary repair.

In the issuance of an original permit, or of an amendment to an original permit or certificate of vested right to withdraw and appropriate public ground waters under the provisions of this chapter, the supervisor may, as in his judgment is necessary, specify for the proposed well or wells or other works a manner of construction adequate to accomplish the provisions of this section.

90.44.120 Penalty for waste or unauthorized use of water. The unauthorized use of ground water to which another person is entitled, or the wilful or negligent waste of ground water, or the failure, when required by the supervisor of water resources, to cap flowing wells or equip the same with valves, fittings, or casings to prevent waste of ground waters, or to cap or plug wells producing waters which contaminate other waters, shall be a misdemeanor.

90.44.130 Priorities as between appropriators - Supervisor in charge of ground water - Establishment and modification of ground water areas and depth zones - Declarations by claimant of artificially stored water. As between appropriators of public ground water, the prior appropriator shall as against subsequent appropria-
tors from the same ground water body be entitled to the preferred use of such ground water to the extent of his appropriation and beneficial use, and shall enjoy the right to have any withdrawals by a subsequent appropriator of ground water limited to an amount that will maintain and provide a safe sustaining yield in the amount of the prior appropriation. The supervisor of water resources shall have jurisdiction over the withdrawals of ground water and shall administer the ground water rights under the principle just set forth, and he shall have the jurisdiction to limit withdrawals by appropriators of ground water so as to enforce the maintenance of a safe sustaining yield from the ground water body. For this purpose, the supervisor shall have authority and it shall be his duty from time to time, as adequate factual data become available, to designate ground water areas or sub-areas, to designate separate depth zones within any such area or sub-area, or to modify the boundaries of such existing area, or sub-area, or zones to the end that the withdrawals therefrom may be administratively controlled as prescribed in RCW 90.44.180 in order that overdraft of public ground waters may be prevented so far as is feasible. Each such area or zone shall, as nearly as known facts permit, be so designated as to enclose a single and distinct body of public ground water. Each such sub-area may be so designated as to enclose all or any part of a distinct body of public ground water, as the supervisor deems will most effectively accomplish the purposes of this chapter.

Designation of, or modification of the boundaries of such a ground water area, sub-area, or zone may be proposed by the supervisor on his own motion or by petition to the supervisor signed by at least fifty or one-fourth, whichever is the lesser number, of the users of ground water in a proposed ground water area, sub-area, or zone. Before any proposed ground water area, sub-area, or zone shall be designated, or before the boundaries or any existing ground water area, sub-area, or zone shall be modified the supervisor shall publish a notice setting forth: (1) In terms of the appropriate legal subdivisions a description of all lands enclosed within the proposed area, sub-area, or zone, or within the area, sub-area, or zone whose boundaries are proposed to be modified; (2) the object of the proposed designation or modification of boundaries; and (3) the day and hour, and the place where written objections may be submitted and heard. Such notice shall be published in three consecutive weekly issues of a newspaper of general circulation in the county or counties containing all or the greater portion of the lands involved, and the newspaper of publication shall be selected by the supervisor. Publication as just prescribed shall be construed as sufficient notice to the landowners and water users concerned.
Objections having been heard as herein provided, the supervisor shall make and file in his office written findings of fact with respect to the proposed designation or modification and, if the findings are in the affirmative, shall also enter a written order designating the ground water area, or sub-area, or zone or modifying the boundaries of the existing area, sub-area, or zone. Such findings and order shall also be published substantially in the manner herein prescribed for notice of hearing, and when so published shall be final and conclusive unless an appeal therefrom is taken within the period and in the manner prescribed by RCW 90.44.215. Publication of such findings and order shall give force and effect to the remaining provisions of this section and to the provisions of RCW 90.44.180, with respect to the particular area, sub-area, or zone.

Priorities of right to withdraw public ground water shall be established separately for each ground water area, sub-area, or zone and, as between such rights, the first in time shall be the superior in right. The priority of the right acquired under a certificate of ground water right shall be the date of the filing of the original application for a withdrawal in the office of the supervisor, or the date or approximate date of the earliest beneficial use of water as set forth in a certificate of a vested ground water right, under the provisions of RCW 90.44.090.

Within ninety days after the designation of a ground water area, sub-area or zone as herein provided, any person, firm or corporation then claiming to be the owner of artificially stored ground water within such area, sub-area, or zone shall file a certified declaration to that effect in the office of the supervisor on a form prescribed by said supervisor. Such declaration shall cover: (1) The location and description of the works by whose operation such artificial ground water storage is purported to have been created, and the name or names of the owner or owners thereof; (2) a description of the lands purported to be underlain by such artificially stored ground water, and the name or names of the owner or owners thereof; (3) the amount of such water claimed; (4) the date or approximate date of the earliest artificial storage; (5) evidence competent to show that the water claimed is in fact water that would have been dissipated naturally except for artificial improvements by the claimant; and (6) such additional factual information as reasonably may be required by the supervisor. If any of the purported artificially stored ground water has been or then is being withdrawn, the claimant also shall file (1) the declarations which this chapter requires of claimants to a vested right to withdraw public ground waters, and (2) evidence competent to show that none
of the water withdrawn under those declarations is in fact public ground water from the area, sub-area, or zone concerned: Provided, however, That in case of failure to file a declaration within the ninety-day period herein provided, the claimant may apply to the supervisor for a reasonable extension of time, which shall not exceed two additional years and which shall be granted only upon a showing of good cause for such failure.

Following publication of the declaration and findings--as in the case of an original application, permit, or certificate of right to appropriate public ground waters--the supervisor shall accept or reject such declaration or declarations with respect to ownership or withdrawal of artificially stored ground water. Acceptance of such declaration or declarations by the supervisor shall convey to the declarant no right to withdraw public ground waters from the particular area, sub-area, or zone, nor to impair existing or subsequent rights to such public waters.

Any person, firm or corporation hereafter claiming to be the owner of ground water within a designated ground water area, sub-area, or zone by virtue of its artificial storage subsequent to such designation shall, within three years following the earliest artificial storage file a declaration of claim in the office of the supervisor, as herein prescribed for claims based on artificial storage prior to such designation: Provided, however, That in case of such failure the claimant may apply to the supervisor for a reasonable extension of time, which shall not exceed two additional years and which shall be granted upon a showing of good cause for such failure.

Any person, firm or corporation hereafter withdrawing ground water claimed to be owned by virtue of artificial storage subsequent to designation of the relevant ground water area, sub-area, or zone shall, within ninety days following the earliest such withdrawal, file in the office of the supervisor the declarations required by this chapter with respect to withdrawals of public ground water.

90.44.140 Designating or modifying boundaries of areas - Notice of hearing - Findings - Order. Now codified in RCW 90.44.130.

90.44.150 Priority of rights, how established. Now codified in RCW 90.44.130.

90.44.160 Artificially stored water - Declaration. Now codified in RCW 90.44.130.
90.44.170 Acceptance or rejection. Now codified in RCW 90.44.130.

90.44.180 Hearing to adjust supply to current needs. At any time the supervisor of water resources may hold a hearing on his own motion, and shall hold a hearing upon petition of at least fifty or one-fourth, whichever is the lesser number, of the holders of valid rights to withdraw public ground waters from any designated ground water area, sub-area, or zone, to determine whether the water supply in such area, sub-area, or zone is adequate for the current needs of all such holders. Notice of any such hearing, and the findings and order resulting therefrom shall be published in the manner prescribed in RCW 90.44.130 with respect to the designation or modification of a ground water area, sub-area, or zone.

If such hearing finds that the total available supply is inadequate for the current needs of all holders of valid rights to withdraw public ground waters from the particular ground water area, sub-area, or zone, the supervisor shall order the aggregate withdrawal from such area, sub-area, or zone decreased so that it shall not exceed such available supply. Such decrease shall conform to the priority of the pertinent valid rights and shall prevail for the term of shortage in the available supply. Except that by mutual agreement among the respective holders and with the supervisor, the ordered decrease in aggregate withdrawal may be accomplished by the waiving of all or some specified part of a senior right or rights in favor of a junior right or rights: Provided, That such waiving of a right or rights by agreement shall not modify the relative priorities of such right or rights as recorded in the office of the supervisor.

90.44.190 Abandonment of right - Hearing - Order. In the event that the supervisor of water resources shall find that withdrawal and use of ground water under a claimed or valid ground water right has been discontinued for a period of five years, he may presume such rights to have been abandoned and upon notice to the person owning or claiming such right he may require such owner or claimant to show cause before the supervisor, why such right should not be determined to have been abandoned by nonuse. If upon the hearing, at the time and placed fixed in the notice thereof, the supervisor shall find and determine such use of water to have been abandoned, he shall enter an order determining such right to have been abandoned and shall cancel any water right covered by such appropriation.

90.44.200 Water supervisors - Duties - Compensation. The supervisor of water resources, as in his judgment is deemed necessary and
advisable, may appoint one or more ground water supervisors for
each designated ground water area, sub-area, or zone, or may appoint
one or more ground water supervisors-at-large. Within their respec-
tive jurisdictions and under the direction of the supervisor of
water resources, such supervisor and supervisors-at-large shall
supervise the withdrawal of public ground waters and the carrying
out of orders issued by the supervisor of water resources under
the provisions of this chapter.

The duties, compensation, and authority of such supervisors or
supervisors-at-large shall be those prescribed for water masters
under the terms of RCW 90.03.060 and 90.03.070.

90.44.210 Investigations. Now codified as RCW 90.44.250.

90.44.215 Appeal. Any person, corporation or association feel-
ing aggrieved at any order, decision, or determination of the
supervisor of water resources, or of any assistant or deputy, or
any ground water supervisor or ground water supervisor-at-large,
affecting his interests, may have the same reviewed by a proceeding
for that purpose, in the nature of an appeal, and in the manner
provided by RCW 90.03.080, with respect to surface waters.

90.44.220 Proceedings to determine rights to water. In his dis-
cretion or upon the application of any party claiming right to the
withdrawal and use of public ground water, the supervisor of water
resources may file a petition with the superior court of the county
for the determination of the rights of appropriators of any particu-
lar ground water body and all the provisions of RCW 90.03.110
through 90.03.240 as heretofore amended, shall govern and apply to
the adjudication and determination of such ground water body and to
the ownership thereof. Hereafter, in any proceedings for the adju-
dication and determination of water rights—either rights to the
use of surface water or to the use of ground water, or both—pursu-
ant to chapter 90.03 as heretofore amended, all appropriators of
ground water or of surface water in the particular basin or area
may be included as parties to such adjudication, as pertinent.

90.44.230 Effect of findings and judgment. In any determi-
ation of the right to withdrawal of ground water under RCW 90.44.215
or 90.44.220, the supervisor's findings and the court's findings
and judgment shall determine the priority of right and the quantity
of water to which each appropriator who is a party to the proceed-
ings shall be entitled, shall determine the level below which the
ground water body shall not be drawn down by appropriators, or shall
reserve jurisdiction for the determination of a safe sustaining
water yield as necessary from time to time to preserve the rights
of the several appropriators and to prevent depletion of the ground
water body.

90.44.240 Appeal. Now codified as RCW 90.44.215.

90.44.250 Investigations - Reports of appropriators. The super-
visor of water resources is hereby authorized to make such investiga-
tions, as may be necessary to determine the location, extent,
deepth, volume, and flow of all ground waters within the state and
in making such examination, hereby is authorized and directed to
cooperate with the federal government, with any county or munici-
pal corporation, or any person, firm, association or corporation,
and upon such terms as may seem appropriate to him.

In connection with such investigation, the supervisor from time
to time may require reports from each ground water appropriator as
to the amount of public ground water being withdrawn and as to the
manner and extent of the beneficial use. Such reports shall be in
a form prescribed by said supervisor.
Sec. 41-121. Definitions. - As used in this act (§§ 41-121 to 41-147), unless the context plainly otherwise requires:

(a) "Person" means a natural person, partnership, association, corporation, municipality, irrigation district, the State of Wyoming, any agency or political subdivision thereof, and the United States or any agency thereof.

(b) "Underground water" means any water under the surface of the land or the bed of any stream, lake, reservoir, or other body of surface water.

(c) "Aquifer" means any underground geological structure or formation having boundaries that may be ascertained or reasonably inferred, in which water stands, flows or percolates.

(d) "Well" means any artificial opening or excavation in the ground, however made, by which underground water is sought or through which it flows under natural pressure or is artificially withdrawn, and a series of wells developed as a unit and pumped collectively by a single pumping unit shall be considered as one well.

(e) "Construction" of a well includes boring, drilling, jetting, digging or excavating, and installing casing, pump and other devices for withdrawing or facilitating the withdrawal of underground water, or measuring the depth to the water table or the flow of the well.

(f) "Pollution" of underground water means any impairment of the natural quality of such water, however caused, including impairment
by salines, minerals, industrial wastes, domestic wastes or sewage, whether indrafted directly or through infiltration into the underground water supply.

Sec. 41-122. Application of act-Generally; registration of vested rights. - Nothing herein contained shall be construed so as to interfere with the right of any person to use water from any existing well where such water is economically and beneficially used for irrigation or for municipal, railway, industrial or other beneficial use, to the extent only that such continued right does not injuriously affect existing adjudicated surface rights not heretofore abandoned, and such use is hereby declared to constitute a vested right, provided, that the owner of any such right acquired before April 1, 1947, must have filed with the state engineer the statement required by section 5, chapter 107, Session Laws of Wyoming, 1947, on or before December 31, 1957, and the owner of any right acquired on or after April 1, 1947, must have registered his well with the state engineer as required by section 8, chapter 107, Session Laws of Wyoming, 1947, prior to the effective date of this act (§§ 41-121 to 41-147), and provided further, that the right to take underground water from any well exempted from the provisions of chapter 107, Session Laws of Wyoming, 1947, that is not exempted from the provisions of this act, and that shall be registered with the state engineer prior to the effective date of this act, shall also constitute a vested right in the use of water with priority as of the time of completion of the well.

Sec. 41-123. Same-Rights subject to preferences; rights of municipal corporations. - Rights to underground water shall be subject to the same preferences as provided by law for surface waters, and rights not preferred may be condemned and changed to a preferred use in the manner provided by law for surface waters. Nothing herein contained shall be construed to impair the rights of municipal corporations to acquire any underground water or underground water rights for a necessary public purpose by eminent domain or condemnation proceedings.

Sec. 41-124. Same-Exemptions for domestic and stock use. - Appropriations of underground water developed solely for domestic or stock use shall not be subject to the provisions of sections 8 through 19, inclusive, of this act (§§ 41-131 to 41-133, 41-138 to 41-145, 41-147). Appropriators of underground water for such exempted uses shall have a preferred right over rights for all other uses, regardless of their dates of priority, subject to the provisions of section 20 of this act (§ 41-128). As used in this section, "domestic use" shall include the watering of lawns and gardens for family use where the area to be irrigated does not exceed one acre, but shall not
include municipal use nor use by any person of water appropriated by a municipality or company.

Sec. 41-125. Division advisory committee. - In each of the water divisions of the state, as defined in section 71-101, Wyoming Compiled Statutes, 1945 (§ 41-54), there shall be established a division advisory committee on underground water. Each committee shall consist of three persons, appointed by the governor, who shall in making such appointments, select persons who will, in his opinion, adequately represent the landowners and water uses of the division, the geographical areas of the division and the public interest. The first committee in each division shall consist of one member appointed for a term of two years, one member appointed for a term of four years, and one member appointed for a term of six years. Their successors shall each be appointed for a term of six years.

Sec. 41-126. State engineer-Powers generally. - In the administration and enforcement of this act (§§ 41-121 to 41-147) and in the effectuation of the policy of the state to conserve its underground water resources, the state engineer is authorized and empowered on advice and consent of the board of control:

(a) To prescribe such rules and regulations as may be necessary or desirable to enable him to efficiently administer this act.

(b) To require such reports from well drillers as may be necessary or desirable.

(c) To require such annual reports from underground water users as may be necessary or desirable.

(d) To make such investigations as may be necessary or desirable, and to cooperate in such investigations with agencies of the United States, agencies of this state or any other state, political subdivision of this state, any public or private corporation, or any association or individual.

(e) To make regulations concerning the spacing, distribution and location of wells in critical areas.

(f) To establish standards for the construction of wells, to work with the division advisory board, governmental subdivisions, and water user organizations to encourage the adoption of local standards of beneficial use and methods of conveyance and application of water designed to conserve and prevent waste of supplies.

(g) To require, whenever practical, all flowing wells to be so
capped or equipped that the flow of water can be stopped when the wells are not in use, and to require both flowing and nonflowing wells to be so constructed and maintained as to prevent the waste of underground water either above or below the land surface.

(h) To require the abatement of any condition, or the sealing of any well, responsible for the admission of polluting materials into an underground water supply.

(i) To delegate any of the duties and powers imposed or granted by this act, to the deputy state engineer or to an assistant state engineer.

(j) To bring suit to enjoin the construction of illegal wells or the withdrawal or use of water therefrom, or to enforce any of the provisions of this act or of orders issued thereunder, and to intervene in any action or proceeding when it appears that the determination of such action or proceeding may result in the depletion of underground water resources of the state contrary to the policy expressed in this act.

Sec. 41-127. Same—Power to determine, etc., area and boundaries of districts, etc. — The state engineer is authorized and directed to determine the area and boundaries of districts overlying the various aquifers yielding underground waters in this state and to assign to each district a distinctive name or number. He may establish sub-districts when parts of an aquifer require or may require separate regulations from the rest. He may alter the boundaries of such districts and sub-districts at any time. He may establish different districts for different aquifers that overlie each other in whole or in part.

Sec. 41-128. Same—Authority to order interfering appropriator to cease withdrawals of water, etc.; exception. — Whenever a well withdrawing water for beneficial purposes other than for domestic or stock use exempted from regulation by section 2 of this act (§ 41-124) (or for a water utility company operating under the jurisdiction of the public service commission of Wyoming, not owned and operated by a municipality of the State of Wyoming and which furnishes at least ninety-five percent (95%) of its water for domestic or stock use) shall interfere unreasonably with an adequate well developed solely for such exempted uses, whether in a critical area or not, the state engineer may, on complaint of the operator of the exempted well, order the interfering appropriator to cease or reduce withdrawals of underground water, unless such appropriator shall furnish at his own expense, sufficient water at the former place of use to meet the need for domestic or stock use. In case of inter-
ference between a domestic and stock well as defined in § 41-124, and
a water utility company well meeting the requirements defined above,
the appropriation with the earliest priority shall have the better
right.

Sec. 41-129. Critical areas—Designation; duty of state engineer;
hearings generally. — Any underground water district or sub-district
in which either (a) the use of underground water is approaching a
use equal to the current recharge rate, (b) ground water levels are
decreasing or have declined excessively, (c) conflicts between users
are occurring or foreseeable, (d) the waste of water is occurring
or may occur, (e) or other conditions require regulation in the
public interest, is hereby designated as a "critical area". Whenever
the engineer has information leading him to believe that any
underground water district or sub-district is or may be a critical
area, it shall be his duty to immediately report in writing to the
board of control, all information known by him with reference to
whether there is a critical area existing or if any area is about to
become critical. The board of control shall fix a time and place to
consider the information supplied by the state engineer and hear any
other evidence presented at the time of such hearing. Concluding
such hearing, the board of control shall issue its order for the
purpose of controlling the situation in an area designated as critical.
The order of the board of control shall be subject to appeal to the
district court by anyone feeling himself aggrieved because of the
issuance thereof.

Sec. 41-130. Same—Election of district advisory board. — Whenever
an underground water district or a sub-district thereof is declared
to be a critical area, a district advisory board shall be created in
the manner provided herein. The district advisory board shall con-
sist of five persons who are over the age of twenty-one years and
own land, or underground water rights, or are the officers or
officials of any corporation or any duly constituted board thereof
owning land, or underground water rights, within the district. The
board shall represent the entire district even though only a sub-
district is declared to be critical. The state engineer shall
notify the division advisory committee of the division in which the
district, or the greater part of the district, is located, of the
designation of the critical area. The division advisory committee
shall thereupon call an election of members of the district advisory
board, to be held within sixty days from the date of such notification.
The call of the election shall state the time, the place
within the district, and the purpose of the election, and shall be
published for two consecutive weeks at least twenty days prior to
such election in a newspaper of general circulation in each county
in which a part of the district lies. Every person or corporation

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owning, or entitled by virtue of public land filing to the possession of, land situated in and being a part of the district, shall be entitled to cast for each member to be elected one vote for each acre of such land, as assessed upon the last annual assessment roll of the county in which such land is located, or as shown by such public land filing. A person owning a tract of land of less than one acre shall be entitled to cast one vote for each member to be elected. Provided, however, that the grantee or assignee of the water in or under any described land shall be entitled to vote, as prescribed herein, in the place of the person or corporation owning, or entitled to the possession of, such land. At the hour and place of such election the division advisory board shall call the roll of those entitled to vote, and the number of votes each is entitled to. They shall make a record of the qualified voters present, receive all proxies and prescribe the method of canvassing the votes. All proxies shall be in writing and signed by the person entitled to vote. The five persons receiving the highest number of votes shall be declared to be elected, regardless of whether or not they have received a majority of votes cast, and no election shall be invalid by reason of the fact that a majority of the acreage of the district was not represented at such election. Two of the members so elected shall serve until the third Tuesday in March of the year following the election, two of the members so elected shall serve until one year following such date, and one member shall serve until two years following such date. The division advisory committee shall decide by lot which members shall serve for these terms.

During the first seven days of March next preceding the expiration of the term of any member or members, an election shall be held to elect a member or members of the district advisory board. The board shall call and conduct the election in the same manner prescribed above for the call and conduct of the first election by the division advisory committee. Members elected at any election after the first election shall serve for a term of two years. Whenever the office of any member shall become vacant for any cause, the vacancy shall be filled for the unexpired term by the remaining members. The costs of all elections herein provided for shall be paid by the state engineer's office.

Sec. 41-131. Same-Adjudication of waters within area; notice; hearing; entrance of determining order; issuance of appropriation certificate generally; recordation; fees; priority of appropriation generally. - After the boundaries of any critical area have been determined by the state engineer, he shall give notice of such determination to the state board of control, which board shall then proceed with the adjudication of said waters within the district or sub-
district in the area, as the interest of the appropriators may appear from registration, permits, and proof of beneficial application of water derived therefrom. Notice shall be given by the board of control, in one issue of some newspaper of general circulation in the county where such area is situated, and by registered mail to the various claimants named in the registrations of record, that upon a certain day and at a place named in the notice, which shall be not less than thirty days after the publication and mailing of such notices, the state engineer or a superintendent of a water division will appear and take proof of such appropriations. The State board of control shall then hold said evidence open to inspection of the various claimants at a time and place to be fixed by the board and notice thereof shall be published in the manner and for the time above-specified.

The taking of proof, filing objections or contests, giving notices, conducting of hearings, making adjudications of water rights, determining of priorities as between appropriators, issuing of certificate of appropriation, and taking appeals shall insofar as applicable, and not in conflict with the provisions of this act (§§ 41-121 to 41-147), be governed by the provisions of article 2 of chapter 71, Wyoming Compiled Statutes, 1945 (§§ 41-148 to 41-160, 41-164 to 41-216).

At the first regular meeting of the board of control after completion of such proof and advertisement, the board shall cause to be entered of record in its office an order determining and establishing the priorities of right to the use of water of said district or sub-district, the amount of appropriation of the parties claiming water therefrom and the character and kind of use for which said appropriation shall have been made. As soon as practicable after such determination, the secretary of the board shall issue to each person represented in such determination, a certificate to be signed by the state engineer, as president of the board of control, and attested under seal of the secretary of said board setting forth the name and post office address of the appropriator, the priority date of such appropriation, the amount of water appropriated, the use to which such water has been applied and, if such appropriation is for irrigation, a description of the legal subdivisions of land to which said water is applied. Said certificate shall be transmitted by registered mail to the county clerk of the county in which such appropriation has been made and it shall be the duty of the county clerk upon receipt of the fee of one dollar, to record the same and thereupon immediately transmit said certificate to the appropriator. At the time of the submission of final proof of appropriation before the state engineer or superintendent of a water division, a fee of two dollars ($2.00) shall be collected, one dollar of which shall be
used for recording the said certificate and one dollar of which shall be deposited with the state treasurer to the credit of the fund provided for maintenance of the board of control. The priority of appropriation shall be the determining factor in adjudicating underground water; the person first making such appropriation being first entitled to the use of said underground water.

Sec. 41-132. Same—Hearing to determine adequacy of water for all appropriators; corrective controls generally; agreements in lieu of controls. — (a) The state engineer may, on his own motion, and shall on the petition of twenty appropriators or of one-tenth of the appropriators of water from a critical area, cause a hearing to be held before the state engineer and district advisory board for the area, to determine whether the underground water in such area is adequate for the needs of all appropriators of underground water in such area. Public notice of the time and place of said meeting shall be published once in a newspaper circulated in the area at least thirty days before the time set for the meeting. If the state engineer shall find after the hearing, and after receiving the advice of the district advisory board, that the underground water in that area is insufficient for all of the appropriators, he may by order adopt one or more of the following corrective controls:

(1) He may close the critical area to any further appropriation of underground water, in which event he shall thereafter refuse to grant any applications for a permit to appropriate underground water in that area, provided, that such area may be reopened to appropriations at any time the state engineer shall find on the basis of additional evidence that there is unappropriated water in the area, in which event the state engineer shall reconsider all applications for permits refused on the grounds of the order closing the area.

(2) He may determine the permissible total withdrawal of underground water in the critical area for each day, month or year, and, insofar as may be reasonably done, he shall apportion such permissible total withdrawal among the appropriators holding valid rights to the underground water in the critical area in accordance with the relative dates of priority of such rights.

(3) If he finds that withdrawals by junior appropriators have a material and adverse effect upon the supply available for and needed by senior appropriators, he may order such junior appropriators to cease or reduce withdrawals forthwith.

(4) If he finds that cessation or reduction of withdrawals by junior appropriators will not result in proportionate benefits to senior appropriators, he may require and specify a system of rotation of use of underground water in the critical area.
The state engineer shall cause a copy of any such order to be served upon each person affected thereby in the manner provided for service of process in civil actions.

(b) Appropriators of underground water from a critical area may agree to any method or scheme of control of withdrawals, apportionment, rotation or proration of the common supply of underground water. The state engineer shall encourage and promote such agreements and supply the parties with information and advise. When the state engineer, with the advice of the district advisory board, shall find that any such agreement executed in writing and filed in his office, is consistent with the intent, purposes and requirements of this act (§§ 41-121 to 41-147), and would not be detrimental to the public interest or to the rights of other persons not parties to the agreement, he shall approve the agreement, and thereafter such agreement shall control, until terminated as hereinafter provided, in lieu of any order issued pursuant to subsection (a) of this section.

Any agreement approved by the state engineer may be terminated by the terms of the agreement, by the consent of the parties, or by order of the state engineer if he finds, after investigation and a public hearing before the district advisory board, held at least two weeks after one published notice in a newspaper of general circulation in each county in which a part of the district lies, that the agreement is not being substantially complied with by the parties, or that changed conditions have made the agreement inequitable, or that the continuance of the agreement is no longer consistent with the intent, purpose and requirements of this act, or is a detriment to the public interest or to the rights of other persons not parties to the agreement.

Sec. 41-133. Priority of rights when one source of supply. - Where underground waters in different aquifers are so interconnected as to constitute in fact one source of supply, or where underground waters and the waters of surface streams are so interconnected as to constitute in fact one source of supply, priorities of rights to the use of all such interconnected waters shall be correlated and such single schedule of priorities shall relate to the whole common water supply. The state engineer may by order adopt any of the corrective controls specified in section 17 of this act (§ 41-132).

Sec. 41-134. Change of location of well without loss of priority. - An appropriator of underground water may change the location of his well without loss of priority to a point within the same aquifer by securing approval of the state board of control. The state board of control is hereby authorized to make such regulations as may be necessary to carry out the provisions of this section.
Sec. 41-135. Appeals. - Any person aggrieved by any order of the state engineer entered pursuant to this act (§§ 41-121 to 41-147), or by his failure to act, may appeal in the manner provided by section 71-244, Wyoming Compiled Statutes, 1945 (§ 41-216).

Sec. 41-136. Abandonment. - The use of underground water may be declared abandoned under the same procedures provided by law for the abandonment of surface waters.

Sec. 41-137. Prohibited acts; penalty for violation. - Any person who shall withdraw underground water or who shall fail to stop or reduce the flow of underground water in violation of any order of the state engineer made pursuant to this act (§§ 41-121 to 41-147), or any person who does not have a permit, certificate, or vested right to appropriate underground water who shall withdraw underground water from any well other than for the purposes exempted from regulation by section 2 of this act (§ 41-124), shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in a sum not exceeding one hundred dollars ($100.00), or by imprisonment in the county jail for a term not exceeding three months, or by both such fine and imprisonment, for each day on which such violation occurs.

Division 2. Permits for Construction of Wells, etc.

Sec. 41-138. Application—Who required to file; filing; contents; fee. - Any person who after March 1, 1958, intends to acquire the right to beneficial use of any underground water in the State of Wyoming, except for those purposes specifically exempted by provisions of section 2 (§ 41-124), shall, before commencing construction of any well or performing any work in connection with said construction or proposed appropriation or any manner utilizing said water for beneficial purposes, file with the state engineer an application for a permit to make such appropriation and shall not proceed with any of such construction or work until a permit is granted by the state engineer, provided, that whenever any well constructed for any other purpose shall be found to be suitable for the withdrawal of underground water, such application shall be filed before said water is utilized for beneficial use. Such application shall contain the name and the post office address of applicant or applicants, the nature of the proposed use, the location of the proposed well or other means of obtaining underground water, the depth to the water table, if known, the size, type, description and estimated depth of the proposed well, a description of the proposed pumping equipment if any and of the source of power, the estimated capacity in gallons per minute, the amount of water applied for, and, if said water is to be used for irrigation, the acreage and location by legal
subdivision of the land to be reclaimed or for which supplemental water is to be sought, a description of any water right applicable to said land, and a description of the ditch, pipe or flume, if any, that will be used to transport said water to said land, and such other information as the state engineer may require. Such application shall be accompanied by a fee of two dollars ($2.00).

Sec. 41-139. Same—When granted generally; defects and corrections generally; cancellation. — An application for a permit for a well in any areas not designated as a critical area shall be granted as a matter of course, if the proposed use is beneficial and if the state engineer finds that the proposed means of diversion and construction are adequate. If the state engineer shall find that the proposed means of diversion or construction are inadequate, or if the application is otherwise defective, he may return the application for correction. If such return is not made within ninety days, the state engineer may cancel the application.

Sec. 41-140. Same—Hearings before state engineer and district advisory board. — (a) Publication after filing; filing of objections; place of hearings. — Upon the filing of an application to appropriate underground water from an area designated as a critical area by the state engineer, the state engineer shall cause to be published, at applicant's expense, in a newspaper of general circulation in the county wherein the proposed well or other works will be located, for at least once a week for three consecutive weeks, a notice of the filing of such application and that objections to the granting thereof may be filed within ten days after the last publication of said notice, on the grounds that there is no unappropriated water in the proposed source of supply or that the granting of the application would be detrimental to the public interest. If objections shall have been filed within the time specified in such notice, the state engineer shall set a date for a hearing on the application and the objections thereto and shall notify the applicant and the objectors thereof. The hearing shall be before the state engineer and the district advisory board, and shall be held in the courthouse of the county in which the proposed well is to be located.

(b) Hearing when no objections filed. — If no objections are filed against the application but the state engineer is of the opinion that the application should be denied, or desires to obtain the recommendations of the district advisory board, he shall set a date for a hearing on the application and shall notify the applicant of the time and place thereof. No permit shall be denied without the applicant being given an opportunity to be heard. Such hearing shall be held before the state engineer and the district advisory board at the courthouse of the county in which the proposed well is to be located.
located. In making any determination required by this section, the state engineer may rely upon records and information on file in his office, provided, that in the event a hearing is held he shall make known to the parties the records and information upon which he relies. In the event a hearing is held, the state engineer may require further evidence, proof and testimony prior to granting or denying any such permit and the applicant may introduce such further evidence, proof and testimony as is relevant to the case.

(c) When granted; return of defective application. - The application shall be granted and the permit issued only if the state engineer shall find, after receiving the advice of the district advisory board, that there are unappropriated waters in the proposed source, that the proposed means of diversion or construction are adequate, that the location of the proposed well or other work does not conflict with any well-spacing or well-distribution regulation that may have been established by the state engineer, and that the proposed use would not be detrimental to the public interest. If the state engineer shall find that the proposed means of diversion or construction are inadequate, or that the proposed well or other work will conflict with well-spacing or well-distribution regulations, or if the application is otherwise defective, he may return the application for corrections, which shall be made within ninety days.

Sec. 41-141. Express conditions limiting rights of appropriator; additional conditions. - It shall be an express condition of each permit and of each appropriation of underground water acquired thereunder that the right of the appropriator does not include the right to have the water level or artesian pressure at the appropriator's point of diversion maintained at any level higher than that required for maximum beneficial use of the water in the source of supply. The state engineer may issue any permit subject to such conditions as he may find to be in the public interest.

Sec. 41-142. Time limits to commence and complete construction; extensions; cancellation generally. - (As amended by chapter 22, Session Laws of Wyoming, 1959.) If the permit is granted, the applicant shall commence construction of the works within one year from the date of approval of the permit and shall complete the construction and apply the water to beneficial use before the date specified in the conditions of approval, which date shall be December thirty one (31) of the second year after date of approval. The state engineer may extend these periods or cancel the permit in accordance with the procedures set forth in Section 71-243, Wyoming Compiled Statutes, 1945 (§ 41-206).
Sec. 41-143. Report after completion or abandonment of construction; submission of final proof of appropriation; issuance of certificate of appropriation. - Any person constructing any well under a permit shall, within thirty days after the completion or abandonment of such work, report to the state engineer the data relating to such well, on forms furnished by the state engineer, including the name and post office address of the driller or contractor and of the owner of the permit, the number of the permit under which the work was prosecuted, the location of the work, the size and kind of casing used, the depth and log of well, the date on which the well came into production, the depth of the water table, the location of the water-bearing strata, the quantity of water issuing, drawn or pumped therefrom, type of pump and power, the drawdown of water while pumping, and such other information as the state engineer may require. Upon the filing of such statement the appropriator may submit final proof of appropriation and a certificate of appropriation may be issued by the board of control in accordance with section 71-249, Wyoming Compiled Statutes, 1945 (§ 41-211).

Sec. 41-144. Priority of appropriation. - The priority of appropriation of underground water obtained prior to April 1, 1947, shall date from time of completion of the well. The priority of appropriation of underground water obtained subsequent to April 1, 1947, and prior to March 1, 1958, shall date from the filing of registration in the state engineer's office. The priority of appropriation of underground water obtained on or subsequent to March 1, 1958, shall date from the filing of the application for permit in the state engineer's office.

Sec. 41-145. Construction of other wells when supply is inadequate. - If, after completion of a well in compliance with the terms of a permit, the well does not produce reasonably sufficient water to supply the quantity to which the holder of the permit is entitled, the holder of the permit may construct other wells in the same area to secure such quantity without obtaining another permit, upon first reporting such information as is available, required by section 13 of this act (§ 41-143), notifying the state engineer of the location of the new well and upon complying with such well-spacing and well-distribution regulations as may be then in effect.

Sec. 41-146. Cancellation or suspension of permits or certificates. - Whenever, after notice to and opportunity to be heard by such holder, the state engineer finds that the holder of any permit is wilfully violating or has wilfully violated any provision of such permit or any provision of this act (§§ 41-121 to 41-147) or of any order issued pursuant to this act, the state engineer may cancel or suspend such permit or impose conditions on the future use thereof.
to prevent such violation. Whenever, after notice to and opportunity to be heard by such holder, the board of control finds that the holder of any certificate of registration or certificate of appropriation is wilfully violating or has wilfully violated any provision of such certificate or any provision of this act or of any order issued pursuant to this act, the board of control may cancel or suspend such certificate or impose conditions on the future use thereof to prevent such violation.

Sec. 41-147. Penalty. - Any person who shall drill, dig or construct any works for the securing of underground water other than for the purposes exempted from regulation by section 3 of this act (§ 41-124), without having first obtained a permit therefor shall be punished by a fine in a sum not exceeding one hundred dollars ($100.00) or by imprisonment in the county jail for a term not exceeding three months or by both such fine and imprisonment.