

House Bill 602, Committee on Irrigation, Kansas Legislature

Section 1, Pages 1 - 30

An act providing for and regulating the diversion appropriation, storage and distribution of waters in Kansas for industrial purposes within prescribed limits and the construction, maintenance, and operation of creating and providing for water districts.

Creator: Kansas. Legislature

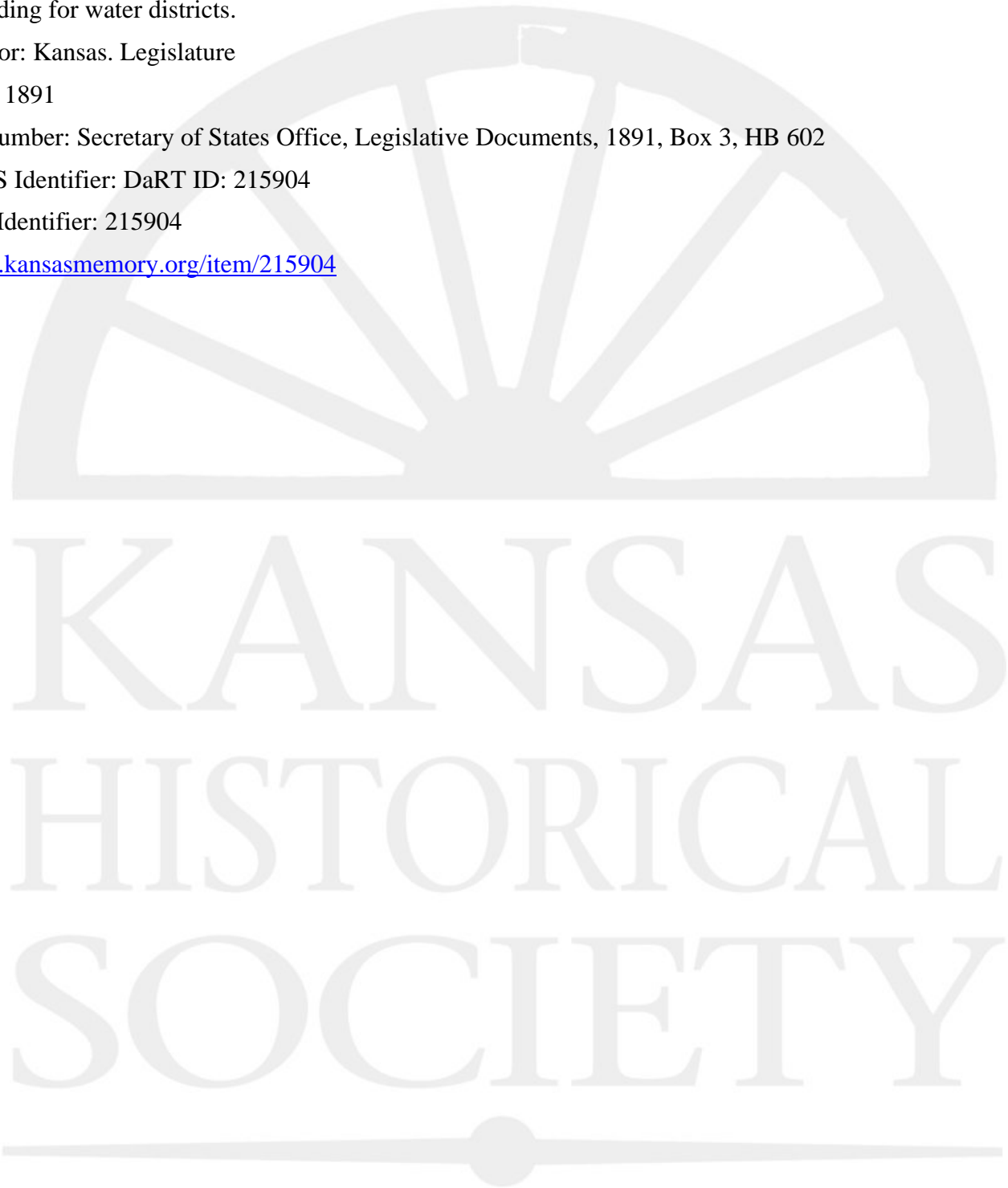
Date: 1891

Callnumber: Secretary of States Office, Legislative Documents, 1891, Box 3, HB 602

KSHS Identifier: DaRT ID: 215904

Item Identifier: 215904

www.kansasmemory.org/item/215904





House Bill 602, Committee on Irrigation, Kansas Legislature

(MAKE OUT IN DUPLICATE AND INSERT FULL TITLE OF BILL.)

MR. PRESIDENT: Your Committee on Irrigation
to whom was referred House Bill No. 602, An Act providing for
and regulating the diversion, appropriation, storage and
distribution of waters for industrial purposes within pre-
scribed limits, and the construction, maintenance
and operation of works therefor, providing for the
creation of irrigation districts, having certain powers;
fixing penalties for and assigning jurisdiction
of offenses hereunder; defining the power and
duties of certain public officers; and for other
purposes,
have had the same under consideration, and instruct me to report the bill back to the
Senate with the recommendation that it be referred to Com. of the Whole
Senate

R. H. McRae

Chairman.

1.

Committee on Irrigation.

~~- A BILL -~~

may be situated and only the proprietors of such lands shall be entitled to draw off or appropriate the same.

House Bill 602, Committee on Irrigation, Kansas Legislature

1.

House Bill No. 602.

Committee on Irrigation.

--A BILL--

AN ACT Providing for and regulating the diversion, appropriation, storage and distribution of water for industrial purposes within prescribed limits and of the construction, maintenance and of operation of works therefor; prohibiting unlawful use thereof or interference therewith; providing for the creation of irrigation Districts having certain powers; fixing penalties for and assigning jurisdiction of offenses hereunder; defining the powers and duties of certain public officers; and for other purposes:

Be it Enacted by the Legislature of the State of Kansas:-

In the manner following; that is to say:-

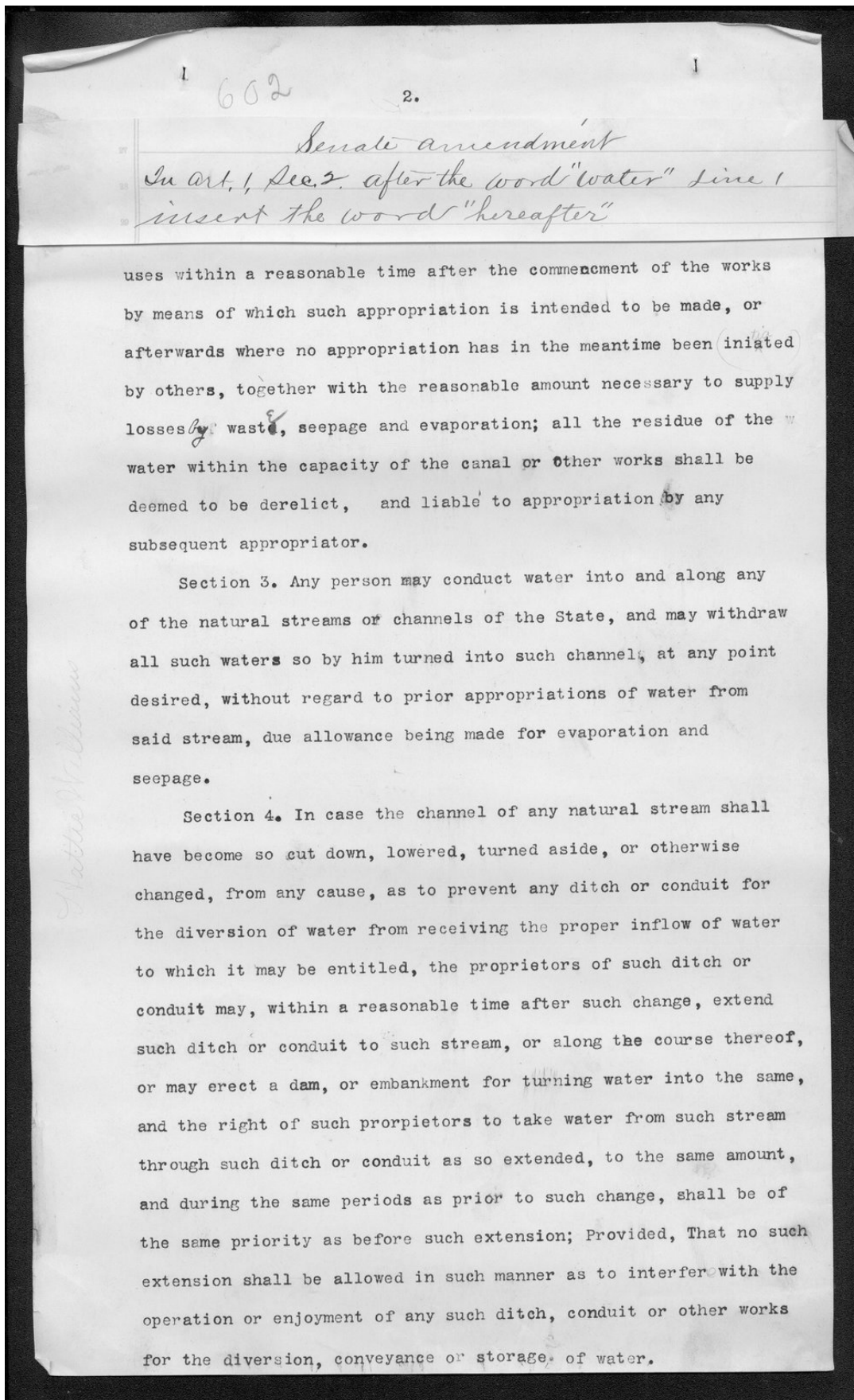
ARTICLE 1.

OF THE DIVERSION AND APPROPRIATION OF WATER FOR INDUSTRIAL USES.

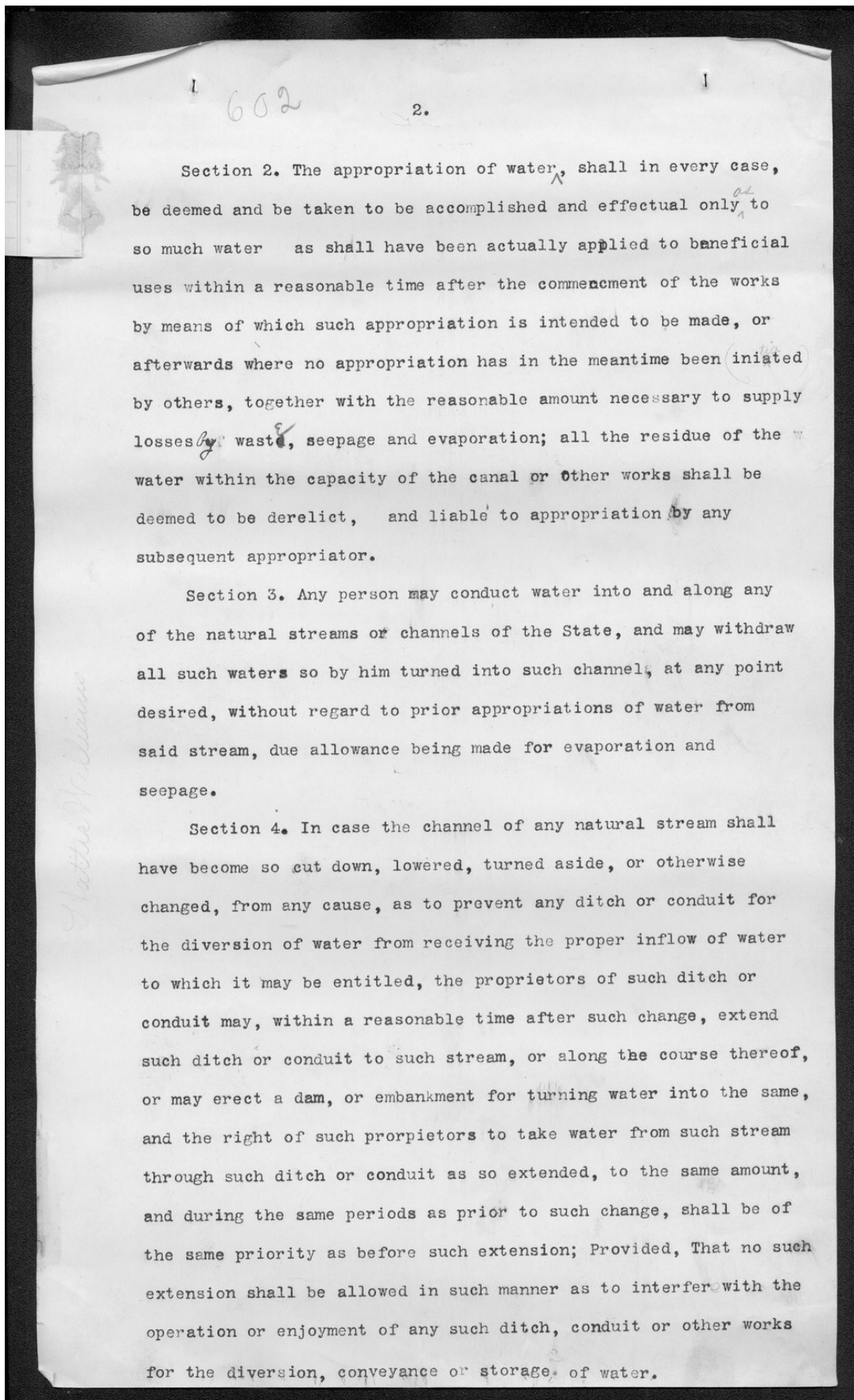
1. Section 1. In all that portion of the State of Kansas situated
2. west of the ninth~~y~~-ninth meridian, all natural waters, whether
3. standing or running and whether surface or subterranean, shall be
4. devoted first to purposes of irrigation in aid of agriculture,
5. subject to ordinary domestic uses, and secondly, to other
6. industrial purposes, and may be diverted from natural beds,
7. basins or channels for such purposes and uses; Provided, That no
8. such diversion shall interfere with, diminish or divest any prior
9. vested right of appropriation for manufacturing or irrigating purposes,
10. without due legal condemnation of, and compensation for the
11. same; and natural lakes and ponds of surface water, having no
12. outlet, shall be deemed parcel of the lands whereon the same
13. may be situated and only the proprietors of such lands shall be
14. entitled to draw off or appropriate the same.



House Bill 602, Committee on Irrigation, Kansas Legislature



House Bill 602, Committee on Irrigation, Kansas Legislature



House Bill 602, Committee on Irrigation, Kansas Legislature

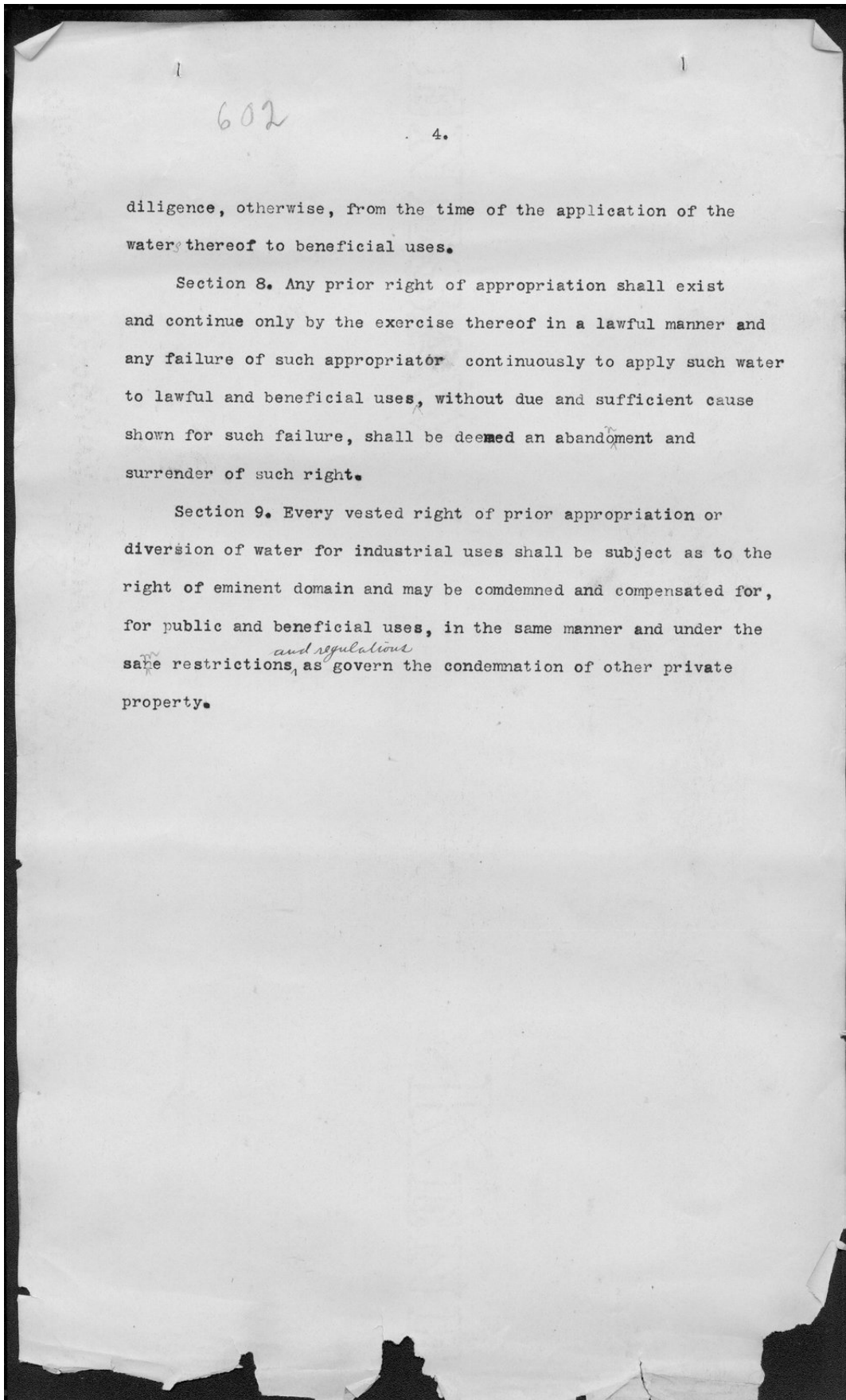
3.

Section 5. Waters flowing in well defined subterranean channels and courses, or flowing or standing in subterranean sheets or lakes, shall be subject to appropriation with the same effect as the water of superficial channels, and no person shall be allowed by drains, ditches, fountains, subterranean galleries, or other works, to collect and divert percolating waters manifestly supplying such subterranean supplies, to the prejudice of any prior appropriator thereof; Provided, That nothing in this section contained shall be so construed as to render any person liable in damages for the diversion or obstruction of the flow of subterranean waters by lawfully excavating for cellars, or for mining, quarrying, or carrying on like works on his own lands, nor for excavating drains for draining and improving his own lands, nor as to prohibit the proprietor of any lands from sinking wells therein, and thereby collecting the waters percolating through lands and by means of pumps, buckets and other appliances, withdrawing the same for beneficial uses on his own land; and, Provided, further, That any appropriation and diversion of subterranean waters which simply lower a water level without, in fact, exhausting or seriously diminishing the actual and needful ^{supply} of any prior appropriator for ~~as~~ domestic or other beneficial uses, shall not be considered an unlawful appropriation or diversion thereof.

Section 6. No person shall be permitted to take or appropriate the waters of any subterranean supply which naturally discharge into any superficial stream, to the prejudice of any prior appropriator of the water of such superficial channel.

Section 7. Every person complying with the provisions of this Act and applying the waters obtained by means of any artesian well to beneficial uses, shall be deemed to have appropriated such waters to the extent to which the same shall be so applied within a reasonable time after the commencement of the works, and such appropriation shall have effect as of the day of the commencement of such works, provided the same is prosecuted with reasonable

House Bill 602, Committee on Irrigation, Kansas Legislature



House Bill 602, Committee on Irrigation, Kansas Legislature

602

5.

ARTICLE II.

OF THE RIGHT OF USE OF WATER.

Section 1. Any person having by lease, purchase or agreement, written or oral, procured from any carrier water for the irrigation of lands, or for other use whatsoever, and having actually supplied such water to beneficial uses, shall thereafter in every year, upon payment of the reasonable rate therefor prescribed by the County Commissioners (or if no such rate hath been prescribed, then at a reasonable rate and price not exceeding that at which such carrier hath been wont to supply to others) be entitled to continue in the enjoyment of water from the works of such carrier to the same amount; Provided, That nothing herein contained shall be deemed to enlarge the effect of any grant, lease or other agreement by any carrier for the use by one person during any limited period of water to the use and enjoyment of which by lawful grant, lease or agreement of such carrier theretofore made, any other person is entitled, such person so entitled to the use of such waters not then having need or occasion therefor, nor to entitled any person to resume the use or enjoyment of water after having failed or refused to pay the reasonable rate lawfully demanded therefor by the carrier in any year, nor to require the carrier to supply water to persons persistently refusing to comply with the reasonable regulations prescribed by such carrier for the government of the distribution of water from its works.

Section 2. Any person may at any time take water from any natural stream or open ditch, conduit or reservoir at any public road-crossing or at any place upon his own lands, or upon lands of others, by license of the proprietors thereof, or without such license where such lands are uninclosed and uncultivated, for

House Bill 602, Committee on Irrigation, Kansas Legislature

602

6.

filling barrels or other vessels for his domestic uses.

Section 3. Every person resorting for the purposes aforesaid to any ditch, conduit or reservoir, shall be responsible that no injury be done to the embankment thereof or the fence enclosing the same, or other parts or appurtenances thereof, and that the waters thereof be not fouled or polluted by any animal by him driven thereto or watered thereat.

3/4-91
Stop

Section 4. Any person entitled to the use of water for the irrigation of lands or other purposes whatsoever ~~may~~, may at any time while so entitled to the use thereof, collect and store the same up for use presently thereafter, and the failure to apply or use such waters during the period of such collection and storage shall not be deemed or taken to impair his right in that behalf.

Section 5. Any person transferring, selling, leasing, assigning or bargaining with reference to the transfer, sale, lease or assignment of any water or any right he may have acquired to the use thereof, and any person receiving any money or other valuable thing whatsoever in consideration of the prorating or rotating of water, or in consideration of his agreement to prorate or rotate water, shall be deemed and taken to have abandoned all right to the use and enjoyment of such water; ^{document} Provided, however, Such abandonment shall not operate to the prejudice of the rights of any encumbrances or equitable owner of the lands, mill, manufactory or other works to which such water is appurtenant.

Section 6. Every right of use of water, under this act, shall be subject as to the right of eminent domain and, as public interest and economy may require, may be condemned and compensated for as any other private ^{right} or property.

House Bill 602, Committee on Irrigation, Kansas Legislature

602

7.

ARTICLE III.

OF RIGHT OF WAY AND SITE FOR WORKS FOR APPROPRIATION AND DEVOTING WATERS TO BENEFICIAL USES.

Section 1. All necessary right of way and site for any works for diverting, storing, or conveying water to be applied to industrial uses shall be allowed on, over and through any land and on, over and across and under any ditch, canal, conduit, railroad, street, or highway by the nearest and most practicable route and method, commensurate with the least damage to the property condemned; Provided, That no owner of real estate shall be compelled to grant right of way on over or through his property for any irrigating canal, ditch, flume or conduit, if there shall be already in operation on over, or across the said property, irrigating works sufficient and capable to furnish water to properly irrigate the same land intended to be irrigated by the canal, ditch, flume or conduit, for which such condemnation is or shall be sought.

Section 2. Any person, association or corporation desiring to construct a canal, fountain, ditch, conduit, dam, reservoir, or other works for diverting, storing or conveying water to be applied to domestic or industrial uses, or for collecting, cleansing, or filtering the same, or to enlarge any such works, or to change the course thereof in any place, or to re-locate any part thereof, or to enlarge any part thereof, or to set, place or construct any wheel, pump or other machine or apparatus for raising water from any source so that the same may flow or be conveyed to the place of using the same, and who, being lawfully entitled to construct, maintain or operate such works, shall be unable to agree with the proprietor of any lands necessary to be taken for the site or way of such works, or any thereof, touching the compensation and damages which ought to be paid in respect of any lands taken or damaged by the construction and operation of such works, or any such enlargement thereof, either by reason of refusal

House Bill 602, Committee on Irrigation, Kansas Legislature

602

8.

of such proprietor, or by reason that such proprietor is an infant, non compos mentis, absent from the State, or can not be found, shall be entitled to condemn and take for the purpose only such width or quantity of lands as may suffice for the location and construction of such works, or such enlargement thereof, and the subsequent maintaining, cleansing, repairing and improving thereof, as may be necessary from time to time; and may cause the damages and

Senate amendment

In line 24 Section 3 of Art. 3 strike out the word "be"

Section 3. Where any person or corporation shall have constructed a ditch, conduit or other works for diverting or conveying water, and the fall of such water therein is at any place sufficient to afford power for the operation of machinery, such persons or corporations shall be entitled to ^{condemn} and take for the erection of a public mill or manufactory at the place of such fall, or convenient thereto, for the service of all who shall resort thereto, such amount of land as may be necessary for the location and construction of such mill or manufactory and the necessary appurtenances thereof; and the ^{proprietor} ~~priority~~ of such mill or manufactory may at any time afterwards, if for the utilization of such power for like public purpose, the enlargement of such mill or manufactory, or the appurtenances thereof, be required, in like manner condemn and take other lands necessary for such enlargement; and lands may be condemned and taken in like manner for the tail-race for turning such water into such ditch or conduit next below the said mill or manufactory, and the roads and ways necessary for passing between such mill or manufactory and the nearest convenient highways. Such road, shall, however, be located, so far as practicable, upon the lines of public land subdivisions, and in all cases so as not to occasion unnecessary injury or inconvenience to the proprietors of such lands.

House Bill 602, Committee on Irrigation, Kansas Legislature

1

1

602

8.

of such proprietor, or by reason that such proprietor is an infant, non compos mentis, absent from the State, or can not be found, shall be entitled to condemn and take for the purpose only such width or quantity of lands as may suffice for the location and construction of such works, or such enlargement thereof, and the subsequent maintaining, cleansing, repairing and improving thereof, as may be necessary from time to time; and may cause the damages and compensation to be paid in that behalf to be ascertained in the manner prescribed by the laws regulating the exercise of the right of eminent domain, which are or may be hereafter be in force, and shall be entitled to all rules, orders and other proceedings what soever prescribed by such laws.

Section 3. Where any person or corporation shall have constructed a ditch, conduit or other works for diverting ~~of~~ conveying water, and the fall of such water therein is at any place sufficient to afford power for the operation of machinery, such persons or corporations shall be entitled to ^{condemn} and take for the erection of a public mill or manufactory at the place of such fall, or convenient thereto, for the service of all who shall resort thereto, such amount of land as may be necessary for the location and construction of such mill or manufactory and the necessary appurtenances thereof; and the ^{proprietor} ~~priority~~ of such mill or manufactory may at any time afterwards, if for the utilization of such power for like public purpose, the enlargement of such mill or manufactory, or the appurtenances thereof, be required, in like manner condemn and take other lands necessary for such enlargement; and lands may be condemned and taken in like manner for the tail-race for turning such water into such ditch or conduit next below the said mill or manufactory, and the roads and ways necessary for passing between such mill or manufactory and the nearest convenient highways. Such road, shall, however, be located, so far as practicable, upon the lines of public land subdivisions, and in all cases so as not to occasion unnecessary injury or inconvenience to the proprietors of such lands.

House Bill 602, Committee on Irrigation, Kansas Legislature

602

9

Section 4. Where any ditch, conduit or other works for the diversion or conveyance of water, shall be proposed to be constructed through, along or across any street, avenue or alley in any city or town, damages and compensation in that behalf shall be awarded not only to the proprietors of lots taken or damaged by the construction or maintenance of such works; but the person constructing such ditch, conduit or other works, or afterwards maintaining or operating the same, shall be subject to such regulations as the authorities of such town may reasonably prescribe for enclosing the excavation during the period of construction, or otherwise protecting the inhabitants of such town from injury by reason thereof, or for bridging such ditch or conduit at the crossing of streets or alleys publically used and traveled as such at the time of the construction of such ditch, conduit or other works.

Section 5. If any person, association, or corporation, having acquired right of way or site, for any canal, ditch, conduit, reservoir, or other works for diverting, collecting, conveying, storing or supplying water for industrial uses, shall abandon such works, or cease for a period of two years, to occupy, utilize and operate the same for the purposes for which such right of way or site was obtained, without due and sufficient cause and reason for such cessation of use, such right of way or site shall cease and such person, association or corporation shall be deemed to have wholly abandoned the same, and all right, title and interest in and to the lands theretofore so occupied and used shall revert to and vest in the owners, at the same time of such reversion of the several tracts and parcels of land of which the lands embraced in such right of way or site formerly constituted a part.

House Bill 602, Committee on Irrigation, Kansas Legislature

682

10.

ARTICLE IV.

OF THE CONSTRUCTION, MAINTENANCE AND OPERATION OF WORKS FOR APPROPRIATING AND DEVOTING WATERS TO BENEFICIAL USES.

Section 1. The proprietors of every canal, fountain, ditch, conduit or other works for conveying, collecting, retaining, or storing waters shall construct and always maintain in good order and repair the dams, locks and gates, embankments and all other appurtenances thereof so that the water conveyed, collected, retained or stored thereby may not flood or damage the premises of others, or any highway, or unnecessarily run to waste, and shall be liable for all damages resulting from their willful or negligent failure to comply with any of the provisions of this Act, or from their negligence in the construction, maintenance or operation of any such works.

Section 2. The proprietors of any canal, ditch, conduit or other works for collecting, diverting or carrying water to be used in whole or in part for the irrigation of the lands of others, shall, by the fifteenth day of April in each year, cause such works to be properly and suitably cleaned and repaired, so that the same may conveniently carry the water to which the consumers of water therefrom are entitled, and shall, from said fifteenth day of April to the first day of October in each year so far as may be reasonably practicable, keep therein a flow of water sufficient to supply and discharge the amount to which all of those lawfully entitled to the use of water therefrom may be entitled, and such proprietors shall be liable for all damages occasioned such consumers by their willful or negligent failure to comply with the provisions of this section.

Section 3. Every person, association or corporation hereafter constructing any canal, ditch, conduit or other work for diverting from any source wherein any other person, association or



House Bill 602, Committee on Irrigation, Kansas Legislature

11

602

at the time of the construction thereof, construct and place therein a headgate, which shall be placed at or near the head of such works and so constructed and arranged and so placed with reference to such works that the same may be set to exclude the waters or any part thereof, which are wont to flow therein, at all stages thereof; and every person, association, or corporation owning or controlling any such works, heretofore constructed, wherein there shall, upon the passage of this act, be no such headgate, shall construct and place therein such headgate within ninety days after the passage of this act; and such proprietors shall, as may be necessary from time to time, repair, replace, reconstruct and renew such headgates so that the same shall, at all times, be efficient for the purposes herein set forth; and every person, association or corporation owning or controlling such works shall, at the time of the construction of said headgates, construct and provide, at or near each such headgate, a rating flume or measuring device for rating or measuring the flow of water in such works and shall ^{always} maintain the same in good order and condition and shall put on such headgate a keyed device or lock which shall be of such strength and so designed, constructed and placed as to permit the locking or fastening of such gate, valve or device at any point at which, as herein provided, the same may be set, and shall, upon demand ^{made by} of any officer authorized by law to demand and have the same delivered to such officer the key thereof.

Section 4. If the proprietors of any such works shall construct therein, next below the headgate or head thereof a waste gate, or other opening, so that the whole of the waters of such works may be discharged ^{therefrom} and returned to the source of supply thereof and shall place therein a gate which may be set and locked in like manner as herein prescribed in respect of the headgate,

House Bill 602, Committee on Irrigation, Kansas Legislature

602

12

and shall provide and deliver the key thereof in like manner as herein before provided in respect of a headgate, then and in such case, in lieu of closing the headgate of such works, such waste gate, sand gate, or other place of discharge may be opened and locked so as to discharge the whole or any necessary part of the waters diverted by such works and return the same to the source of supply thereof and such waste gate shall be held to comply with all the requirements herein respecting the providing of a headgate for such works.

Section 5. Every person, association or corporation owning or controlling any ditch, conduit or other works for the conveyance of waters, the water discharged wherefrom hath been wont to, or probably may flood or damage any road, highway or public grounds, or the lands of other proprietors, shall construct a waste-gate and tail-race for discharging the waters of such ditch, conduit or other works into some other works for the conveyance of water, or into the stream wherefrom the same were diverted, or some other stream, ravine or water course, with as little waste or damage to other proprietors as may be; Provided, That such tailrace shall not be so constructed, or placed, as to convey water into any other such works, save by the consent of the proprietors thereof; and in every case the appropriator next in priority taking water from the same stream or source of supply, and whose ditch, conduit or other works lie below the place of discharge, shall be entitled to have such waste water; Provided, further, That nothing in this section contained shall be ^{so} construed, nor shall this section be so administered, as to disturb the order of priorities among the ^{appropriators} or so as to effect the diversion into the works of one appropriator of water, to the use whereof another is entitled.

House Bill 602, Committee on Irrigation, Kansas Legislature

Ray Cox

602

13

Section 6. The proprietors of any ditch, conduit, reservoir or other works for the diversion, carriage, retention or storage of waters, may procure the waters to which they are entitled, to be carried, stored and distributed from and through like works of any other proprietor upon such terms as may be agreed upon between them without in any manner impairing or affecting their right or priority in respect of such waters; Provided, however, That thereby the waters supplied to any consumers be not diminished.

Section 7. The proprietors of every canal, reservoir, ditch or conduit, or other works for the appropriation, diversion, storage or carrying of water for beneficial uses shall construct and maintain necessary outlets and gates for the convenient delivery of water to the persons entitled to the use of water from such works; Provided, That ^{where} ~~there are~~ two or more of the persons entitled to the use of water from such works can be conveniently supplied from one outlet, a second or other outlet shall not be required; and a multiplicity of outlets in any ditch or conduit shall at all times be avoided so far as practicable. The location of such outlets shall ^{be} ~~by~~ under the control of the manager or superintendent of such ditch, conduit or reservoir, and the same shall be located at the places most convenient and practicable, having reference to the protection and safety of the works and the convenient distribution of water therefrom among those entitled to the use thereof; And provided, further, That nothing herein contained shall be construed to prohibit the proprietors of any such works from agreeing with those entitled to the use of such waters, to construct or maintain such outlets and the gates thereof. Every such gate shall be constructed with embankments of height and strength sufficient to control and exclude the water at all stages and shall be so constructed and

House Bill 602, Committee on Irrigation, Kansas Legislature

1

1

602

14

arranged that the gate may be set and locked at any place, so as to exclude any part of such waters.

Section 8. It shall be the duty of the superintendent of every such ditch, conduit or reservoir to measure the water therefrom through the outlets to those entitled thereto, and in time of scarcity to apportion the waters flowing in such ditch or conduit, or collected in such reservoir among those entitled thereto, ratably, and according to the amounts to which they are severly entitled. Where any such ditch, conduit or reservoir hath, subsequent to the original construction been enlarged, the water diverted, collected, conveyed or stored by means of such enlargement, shall be distributed and apportioned in like manner. The several consumers of water under any lateral, may at any time, by vote of a majority thereof, appoint a superintendent to such lateral, who shall be charged with the distribution of the water allotted thereto by the superintendent of the ditch, among those entitled to the use of water from such lateral. A meeting may at any time be called by not less than two of the consumers under such lateral, by notice in writing specifying the time, place and purpose thereof, for electing such superintendent or removing him and appointing another. Such superintendent shall hold his office during the pleasure of the consumers of water from such lateral, or a majority of them, and shall receive only such salary or compensation as they may appoint.

Section 9. The waters of the several streams and sources of supply shall be distributed among the several canals, ditches, conduits and other works so that the proprietors of each of said works, and those entitled to water therefrom, shall, as nearly as may be, and to the extent of their needs, at all times receive and enjoy the waters to which they are severly entitled; and

House Bill 602, Committee on Irrigation, Kansas Legislature

15

whenever it shall appear that there is flowing into any such works water to which the proprietor of any other such works, having a prior right, is entitled, and that such other works, having priority of right, is not receiving the water necessary for the consumers of water therefrom, and which ought to flow to the same, the headgate of such works, having the excess, and being subsequent in right, shall be closed, or partly closed, so that a sufficient amount of water of such stream or source of supply may pass and flow to the said works having the priority of right, to the amount to which the same shall be entitled; and if the proprietors of any such works, having such excess and being subsequent in the right, shall fail or refuse to turn out such supply of water, when requested by the party entitled to receive the same so to do, the headgate or waste gate of the works receiving such excess shall be so set and locked by the officer authorized by law to perform such duty as to permit a sufficient amount of said water to pass and flow to the party having the right to receive the same.

Section 10. Any person sinking or boring for an artesian well shall cause to be kept thereat a record of the work, setting forth the name and postoffice address of the proprietors of such well, or of the person causing such well to be sunk or bored, the name of the contractor therefor, and the name of the person actually in charge of the work; the particular location thereof, specifying the particular forty acres and the part thereof whereon the particular lot or block or other sub-division upon which the same is situated; if in any city or town, or nearest to which the same is situate; the date of commencement of work in sinking or boring such well (which may be the commencement of the work of placing machinery therefor) all suspensions of the work, and duration and cause of such suspension, the time of the completion of the work or final cessation thereof, the different

House Bill 602, Committee on Irrigation, Kansas Legislature

Bill Menzies

602

16

strata passed through and the depth at which ^{each} thereof shall be reached, and passed, as near as may be, showing also each flow of water obtained, and each vein of water, or water bearing stratum passed through, and the depth thereof from the surface, numbering each flow or vein of water consecutively from the surface, and the height to which, or the distance from the surface, the water rises in such well after penetrating each separate flow ^{or} of vein of water; and at the completion of the well or at the cessation of work thereon, he shall, without first closing or shutting off the flow therefrom, cause to be ascertained the flow thereof, if a flowing well, in cubic feet per second, or decimal fractions thereof; and within a period of thirty days next after completion of such well or the cessation of work thereon, the proprietor thereof shall make or caused to ^{be} made and filed in the office of the Register of Deeds of the County wherein the said well is situate, a statement or certificate verified by his affidavit or the affidavit of the person in charge of the work, setting forth all the matters aforesaid, the particular vein or flow of water claimed to be appropriated by means of said well, and the total amount of water so claimed to be appropriated, in cubic feet per second or decimal fractions thereof, if such well be a flowing well (otherwise the distance from the surface at which the water ~~is~~ customarily stands) what part or parts of such well is or are cased, and the interior diameter or diameters of such casing or casings.

Section 11. Every person who is the proprietor of, or entitled to the waters of any artesian well heretofore sunk or bored, shall, within ninety days after this act takes effect, make and caused to be filed in said office a like statement setting

House Bill 602, Committee on Irrigation, Kansas Legislature

602

17

forth all the foregoing matters so far as within his knowledge, and according to the best of his knowledge, information and belief.

Section 12. Any person owning or controlling an aretsian well may record such certificate (provided for in Sections 10 and 11 of this article) in any county or counties in addition to the county wherein such well is situate and such record shall be, to all parties boring or sinking any artesian well in any such county, notice of the priority of the appropriation of water claimed by the party recording such certificate, and the prior right of such appropriat~~on~~ may be enforced as against any and all parties, in such county or counties, having acquired or seeking to acquire any subsequent right of appropriation of such waters.

Section 13. Every person sinking or boring for an artesian well, shall, before filing the statement required hereby, caused to be placed in such well a proper and sufficient casing of strength and so arranged and placed as to prevent the caving in of strata of clay, sand or other unconsolidated matter carrying water, not appropriated or claimed by the proprietor of such well, and shall so case such well as to prevent the escape of the waters thereof into such strata, and shall cause the same to be furnished with such appliances at or near to the surface, as will readily and effectively arrest and prevent the flow of water from such well.

Section 14. No person controlling an artesian well shall suffer or permit the waters thereof to flow to waste, unless, and so far as reasonable necessary, to prevent the obstruction thereof, or to flow or to be taken therefrom save the beneficial uses; Provided, This shall not be construed as to prevent the reasonable use of such water for the necessary irrigation of trees

House Bill 602, Committee on Irrigation, Kansas Legislature

602

18

standing along or upon any street, road or highway, or for ornamental ponds or fountains or the propagation of fish.

Section 15. Every dam or embankment, constructed for the purpose of holding, ^uimponding, storing, collecting, or conveying water for the purposes recited in this act, shall, if constructed wholly, or in part, of timber or ^ustone and having capacity to store water to the depth of more than ten feet, or to a total quantity of exceeding three ^{million}~~thousand~~ cubic feet in measure of ^usaid water, be constructed according to ~~(the)~~ plans and specifications of some reputable engineer who shall make and file with the county clerk of the county wherein such work shall be situated a good and sufficient bond in such sum as shall be fixed by the board of county commissioners of such county, conditioned that such dam or embankment shall be safe, adequate and sufficient for the service required thereof.

Section 16. Every such dam or embankment, if constructed of earth and of a perpendicular height of more than ten feet, shall be constructed in the following manner; that is to say; The place whereon such dam or embankment is to be constructed shall be carefully cleared of all vegetable matter and debris of every kind and thoroughly prepared by plowing or trenching, or both, so that the earth composing said dam or embankment shall be firmly and closely blended and united therewith, as well at the ends as the bottom thereof; and throughout the construction of any such dam or embankment, the earth used shall be spread evenly and in layers not exceeding a foot in depth of any layer and so dampened and tamped, packed, rolled or trodden down as to form a thoroughly compact and homogenous mass.



House Bill 602, Committee on Irrigation, Kansas Legislature

602

19

Section 17. Every such dam or embankment shall be of such dimensions that a cross section thereof shall be in the proportions following, namely: The width at the base thereof shall be in measure not less than five times the measure of the height thereof; and the width thereof, at the top of such dam or embankment, shall be in measure not less than half the measure of the height thereof; and the slope of the outer face thereof, shall be in the proportion of not more than one foot of rise to one and a-half feet of spread; and the slope of the inner face thereof, being the side of said dam next to the water to be held back or impounded, shall be in the proportion of not more than one foot of rise to three feet of spread. (Provided, That nothing in this act shall prohibit the widening of the top of ~~any~~ dam or embankment by adding thereto material in addition to the proportions herein required.)

Section 18. Wherever necessary, the inner face of any such dam or embankment shall be faced with stone or timber to a sufficient extent above and below the surface line of still-water capacity so as to successfully resist the effects of wave action.

Section 19. No water shall, in any event, be allowed to flow over the top of any such earthen dam or embankment, but every such dam or embankment, if outlet be required, shall be provided with safe, ~~and~~ strong and durable outlet, of timber, metal or stone, (and if such dam or embankment shall be of a height exceeding twenty feet, such outlet shall be of metal or other ^{durable} ~~durable~~ material,) which shall be well and carefully constructed and imbedded therein with all necessary precautions to prevent the creeping ~~or~~ escape of water along the outside thereof; and a sufficient wasteway, always kept open and unobstructed, shall be constructed in connection with every such



House Bill 602, Committee on Irrigation, Kansas Legislature

602

20.

dam or embankment so as to allow the safe overflow of all surplus water which may collect or be impounded or carried behind or by the same (without, however, allowing said water to come in contact with the earth composing the outer face thereof or to undermine the same) so that, of all such dams or embankments, not less than one-fifth of the total height thereof shall be above the bottom of such wasteway; and, in any such dam or embankment which shall be more than twenty feet in height, neither the outlet nor the wasteway shall be laid or constructed in any part of the artificial embankment, but must, in all such cases, be laid and safely constructed in some part of the solid natural earth or bank adjacent thereto.

Section 20. In the construction of any such dam or embankment within the limits prescribed by this act, no act, proceeding, requirement or condition heretofore provided for or

Senate amends as follows

*Add to section 20 Art 4. the following proviso.
Provided, That nothing herein shall be so construed
as to ~~not~~ authorize or permit the occupation
use or injury of any private property without
due legal condemnation and compensation for
the same.*

public road way and afford to public travel a means of crossing the valley, ravine, or draw wherein such dam may be located, the township wherein the same is situate may aid in the construction and maintenance thereof and shall have the right to constitute such dam or embankment a public highway and to lay out and construct approaches thereto: ^{That,} Provided, in every such case, the authorities having charge of such highway shall keep that part used for the benefit and convenience of public travel in thorough repair at all times so that such embankment shall be in nowise

House Bill 602, Committee on Irrigation, Kansas Legislature

602

20.

dam or embankment so as to allow the safe overflow of all surplus water which may collect or be impounded or carried behind or by the same (without, however, allowing said water to come in contact with the earth composing the outer face thereof or to undermine the same) so that, of all such dams or embankments, not less than one-fifth of the total height thereof shall be above the bottom of such wasteway; and, in any such dam or embankment which shall be more than twenty feet in height, neither the outlet nor the wasteway shall be laid or constructed in any part of the artificial embankment, but must, in all such cases, be laid and safely constructed in some part of the solid natural earth or bank adjacent thereto.

~~Section 20.~~ In the construction of any such dam or embankment within the limits prescribed by this act, no act, proceeding, requirement, or condition, heretofore provided for or required by the statutes of the State of Kansas, respecting the construction, maintenance, use or operation of dams, shall apply or be required; but every such dam or embankment shall be constructed in accordance with and under the authority of this act and shall be regulated ^{wholly} by the provisions hereof.

Section 21. Whenever any such earthen dam or embankment shall be so placed and situated as that it may be made a part of some public road way and afford to public travel a means of crossing the valley, ravine, or draw wherein such dam may be located, the township wherein the same is situate may aid in the construction and maintenance thereof and shall have the right to constitute such dam or embankment a public highway and to lay out and construct approaches thereto. ^{that,} Provided, in every such case, the authorities having charge of such highway shall keep that part used for the benefit and convenience of public travel in thorough repair at all times so that such embankment shall be in nowise

House Bill 602, Committee on Irrigation, Kansas Legislature

602

L. Sweney

21.

injured by such use and shall properly and safely bridge the wasteway, to such dam or embankment belonging, and provide such railings, or other safeguards, as may be necessary for the protection and safety of public travel.

Section 22. The several persons entitled to the use of water diverted, carried, collected or stored by means of any canal, ditch, conduit, reservoir, or other works, or the waters lawfully allotted to or carried by any lateral, sub-lateral or distributing conduit, of any canal, ditch, conduit or other works, supplying water to two or more consumers, may in writing agree among themselves that the waters of such works may and shall be rotated, distributed and delivered upon particular days or parts of days to particular consumers, and on other days to other consumers, as may be in such agreement specified; and any such agreement may provide for such rotation during any one season, or part of season; and at the expiration of the time therein mentioned the rights of all the parties shall be the same as previous to the making of such agreement.

Section 23. Any number of the consumers of water from any canal, ditch, conduit or reservoir, or any lateral or distributing conduit receiving water from any such works, may in writing agree among themselves for the rotation of the water to which they are severly entitled, and the delivery thereof upon particular days to particular consumers during such seasons, season or part of season, as in such agreement may be specified; Provided, That the rotation of the water to which the several consumers, parties to such agreement, may be entitled, shall not be conducted in such manner as to diminish the supply of water to which any other consumer under such canal, ditch, conduit or lateral may be entitled.

House Bill 602, Committee on Irrigation, Kansas Legislature

602

22.

Section 24. The proprietors of two or more canals, ditches, reservoirs or other works, taking water from the same source of supply, may, by ~~the~~ consent in writing of those entitled to the use of water therefrom, agree in like manner ~~for~~ the rotation of the whole or any part of the water lawfully allotted from such stream or source of supply to such ditches, conduits or other works in such way and manner, and for such time as may be in such agreement specified; Provided, however, That the rotation of the water to which the several consumers, parties to such agreement, are entitled shall ~~not~~ ^{not} be conducted in such manner as to diminish the supply of water to which any consumer of water from any other ditch, conduit or other works may be entitled.

Section 25. Whenever any agreement shall be entered into for the rotation of the water of any ditch, conduit, reservoir or other works, or any lateral of such ditch, or conduit or any ^{among those entitled to the use of such water} part of such water, such agreement or one part or copy thereof shall be delivered to the superintendent of the ditch, conduit, reservoir or lateral, and ^{he} ~~by~~ him carefully preserved, and he shall cause the water to which the parties thereto may be entitled to be rotated and distributed conformably to the said agreement, during the time mentioned therein for the continuance in force of such agreement.

Section 26. No agreement entered into between the proprietors of any two or more canals, ditches, conduits, reservoirs or other works, for the rotation of ^{the} ~~the~~ waters thereof, in ~~the~~ manner as herein before provided shall be permitted to go into effect if it shall be manifestly injurious to the proprietors of other canals or other works, or the consumers of water therefrom, and, if after experiment the execution of such agreement be found injurious to other persons, the further rotation of the waters, pursuant to

House Bill 602, Committee on Irrigation, Kansas Legislature

602

23.

such agreement, must be discontinued.

Section 27. The proprietors of any canal or other works not party to such agreement, or any consumer of water therefrom, shall be entitled to make application to the Judge of the District Court in and for the county wherein said applicant shall reside, asking that such agreement be annulled. Reasonable notice of every such application shall be given to the proprietors of the canals and other works, parties to such agreement, and the District Judge may require like notice to be given to all others in interest by publication as may by him be prescribed. The proprietors of any such canal or other works, or any consumer of water or person entitled to the use of water from any such works, shall be heard, and the District Judge shall make such order in the premises as right and justice may require; Provided, however, — That during the pendency of any such application, the waters allotted to the canals, ditches or other works, the proprietors whereof are parties to such agreement, shall be distributed and rotated conformably to such agreement.

Section 28. No agreement for the rotation of water shall in any manner impair or effect the rights of any prior incumbrancer of lands ~~therefore~~^{to} customarily irrigated by any part of the waters mentioned in such agreement, he not being a party to such agreement; nor shall such agreement, or the rotation of ^{the} waters pursuant thereto, in any manner effect or impair the rights or the priority of right of the parties thereto, or the persons using or entitled to the use of the waters referred to in such agreement, or any of them as against other persons.

Section 29. Whenever any such agreement for the rotation of water, either between or among several ditches, conduits,

House Bill 602, Committee on Irrigation, Kansas Legislature

602

24.

reservoirs or other works, or among those entitled to the use of the water of any ditch, conduit, reservoir or other works, or any lateral therefrom or any part of such water, shall be for a space exceeding one season, the same shall be recorded in the office of the Register of Deeds of the county wherein is situated the headgate of such ditch or conduit or wherein is situated such reservoir, or the head of the lateral.

Section 30. The proprietor of any fence, which crosses or abuts upon any stream from which waters are drawn for irrigation or other purpose, or which abuts upon, or wholly or in part encloses any reservoir for the collection, retention or storage of water, shall be caused to be placed in every such fence in some convenient place a gate or barway, and shall always maintain the same; and such proprietor and proprietors of lands shall always permit the proprietors of any such works and their assistants and all public officers concerned therewith to pass thereat and along the bank of such stream, or to such reservoir, over said premises by some reasonable direct and convenient way, for any lawful purpose connected with the management of such works and the discharge of their official duties. Every such person shall forthwith, upon passing through any such gate or barway, carefully close such gate or barway, and shall be responsible to the proprietors of such lands for any damage occasioned by his default in that behalf.

Section 31. It shall be the duty of the proprietors of any canal, ditch or other conduit, constructed for the conveyance of water for beneficial uses, to provide and construct all necessary bridges and viaducts for the use of the public in crossing the same. Every such bridge or viaduct shall be so

House Bill 602, Committee on Irrigation, Kansas Legislature

602

25.

constructed as to be safe and adequate for the purposes for which constructed, and the construction thereof, shall in all cases, be completed by the time when water shall be caused or permitted to flow in such ditch or other conduit at the place where any such bridge or viaduct shall be required. All such bridges and viaducts when constructed shall be and become a part of the pulichighway and shall be maintained and kept in repair by the authorities having charge of such highways.

Section 32. Every person owning, leasing or controlling any land whereon and over, through or across which, shall be located and constructed any canal, ditch or other such works, shall have the right to construct any necessary bridge or bridges over or across the same on said land for his own use and convenience and to construct approaches thereto and to use the same; and the proprietors of such works shall in nowise interfere with such rights, nor unnecessarily remove nor obstruct any such bridge or approach thereto, nor wilfully or negligently damage the same. Such proprietors may, when necessary, temporarily remove any such bridge for the purpose of ^aclensing, repairing or enlarging such works and shall, upon the completion of such ^aclensing, repairing or enlarg^{ment} forthwith ^{or} place such bridge; Provided, That such bridge shall have been so constructed as to admit of its removal and replacement without damage by the exercise of ordinary care; and, ^fProvided, further, That no such bridge shall be so constructed as to break down, injure, ^{or} weaken any part of such works, nor so as to in anywise obstruct the flow of water therein, or the operation thereof.