

## House Bill 602, Committee on Irrigation, Kansas Legislature

### Section 4, Pages 91 - 120

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

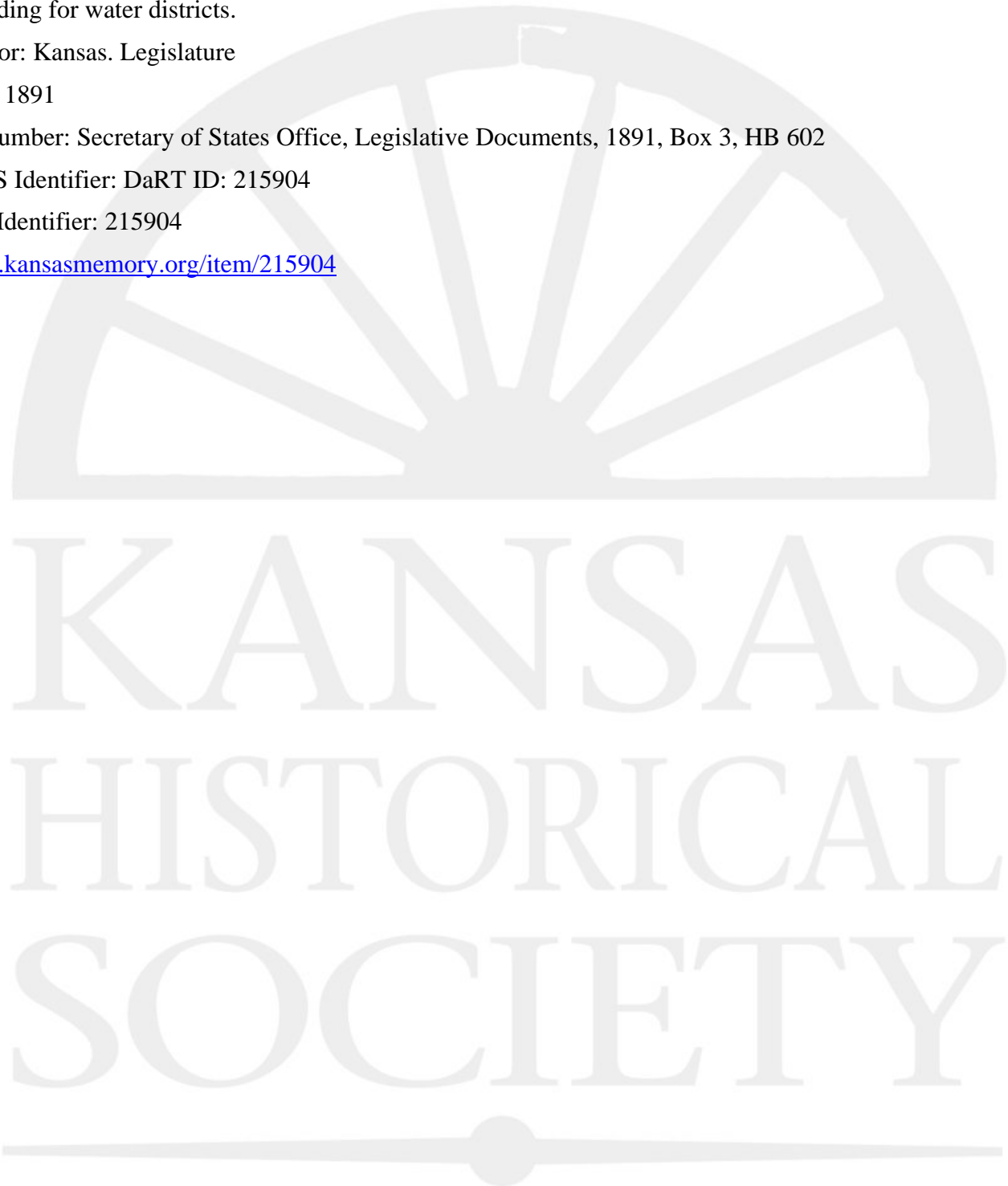
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willful or negligent failure to comply with the provisions of this section.

Section 3. Every person, association or corporation hereafter constructing any canal, ditch, conduit, or other ~~works~~ <sup>for</sup> diverting water from any source wherein any other person, association, or corporation shall have a prior right of appropriation of water shall, 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 <sup>such headgate,</sup> construct and place therein, 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 <sup>each</sup> 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

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*Mr. Council*  
*on*





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gate, valve or device at any point at which, as herein provided, ~~the~~  
the same may be set, and shall, upon demand made by any officer  
authorized by law to demand and have the same, deliver to such of-  
ficer the key thereof. and

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Section 4. If the proprietors of any such works shall construct  
therein, next below the headgate, <sup>or head thereof,</sup> a waste gate, or other opening, ~~so~~  
so that the whole of the waters of such works may be discharged  
and returned to the source of supply thereof,  
therefrom, and shall place therein a gate which may be set and  
locked in like manner as herein prescribed in respect of the head-  
gate, and shall provide and deliver the key thereof in like manner  
as is hereinbefore 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 ~~whenever required~~  
~~hereto by order in writing from the State Engineer,~~  
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

(Endover)



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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.

### 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 of priority in respect of such waters; *Provided, however,* That thereby the waters supplied to any consumer be not diminished; *And*

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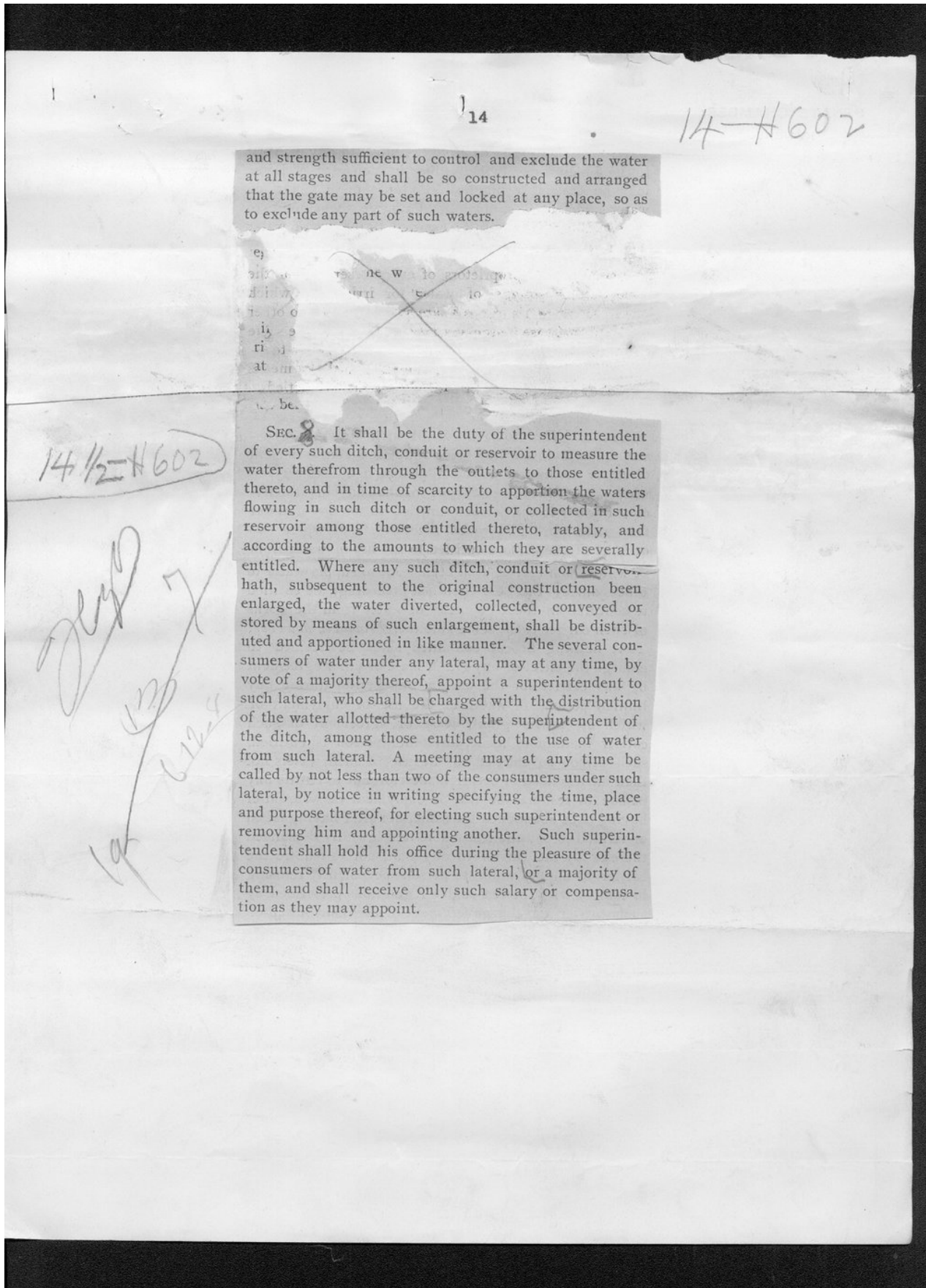
Section 7. The proprietors of every canal, reservoir, ditch or conduit, or other works for the appropriation, diversion, storage or carrying of water for beneficial uses shall construct, and maintain necessary outlets and gates for the convenient delivery of water to the persons entitled to the use of water from such works;

*Provided,* That where 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 outlets 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 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



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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 ~~xxx~~ 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 severally entitled; and 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 ~~ex~~ amount of the 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 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 wastegate 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. *PP*





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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 proprietor 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 same is situated; if in any city or town, the particular lot or block or other subdivision upon which, 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 in sinking or boring of placing machinery therefor) all suspensions of the work, and

the duration and cause of such suspension, the time of completion of the work or final cessation thereof; the different 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 such 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 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 cause 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

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amount of water so claimed to be appropriated, in cubic feet per ~~second, or decimal fraction thereof,~~  
day of twenty-four hours, if such well be a flowing well, (other-  
wise the distance from the surface at which the water customarily  
stands) what part or parts of such well is or are cased, and the in-  
terior diameter or diameters of such casing or casings.

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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 cause to be  
filed in said office a like statement setting 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 artesian 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 where-  
in 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 appropri-  
ator 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, cause to be placed in such well a proper and sufficient casing of strength sufficient 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 stop the flow of water from such well.





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### Section 14.

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

*M. J. Donnell  
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Section 15. Every dam or embankment, constructed for the purpose of holding, impounding, storing, collecting, or conveying ~~xxx~~ water for the purposes recited in this act, shall, if constructed wholly, or in part, of timber or stone and having capacity to store water to a depth of more than ten feet, or to a total quantity of exceeding three thousand cubic feet, in measure of said water, be constructed ~~xxxx~~ according to ~~the~~ plans and specifications of some reputable engineer who shall make and file with the county clerk of the county wherein such works 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 at the bottom thereof; and throughout the construction of any such dam or embankment, the earth used shall be spread evenly and in ~~thin~~ layers not



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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.

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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 ~~xxxxxx~~ at the base thereof shall be in measure not less than five times the measure of the height or embankment thereof; and the width thereof, at the top of such dam, 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 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 <sup>other durable material</sup> stone, which shall be well and carefully constructed and imbedded therein with all necessary pre-





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cautions 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 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 <sup>the bottom of such waste way;</sup> ~~still water~~ mark; 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.



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*Robert*

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 roadway 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; Provided, That, 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 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





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expiration of the time therein mentioned the rights of all the parties shall be the same as previous to the making of such agreement.

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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 severally 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.

Section 24. The proprietors of two or more canals, ditches, reservoirs or other works, taking water from the same source of supply, may, by 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 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

~~Sec. 4.~~ 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 part of such water, among those entitled to the use 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 be 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.

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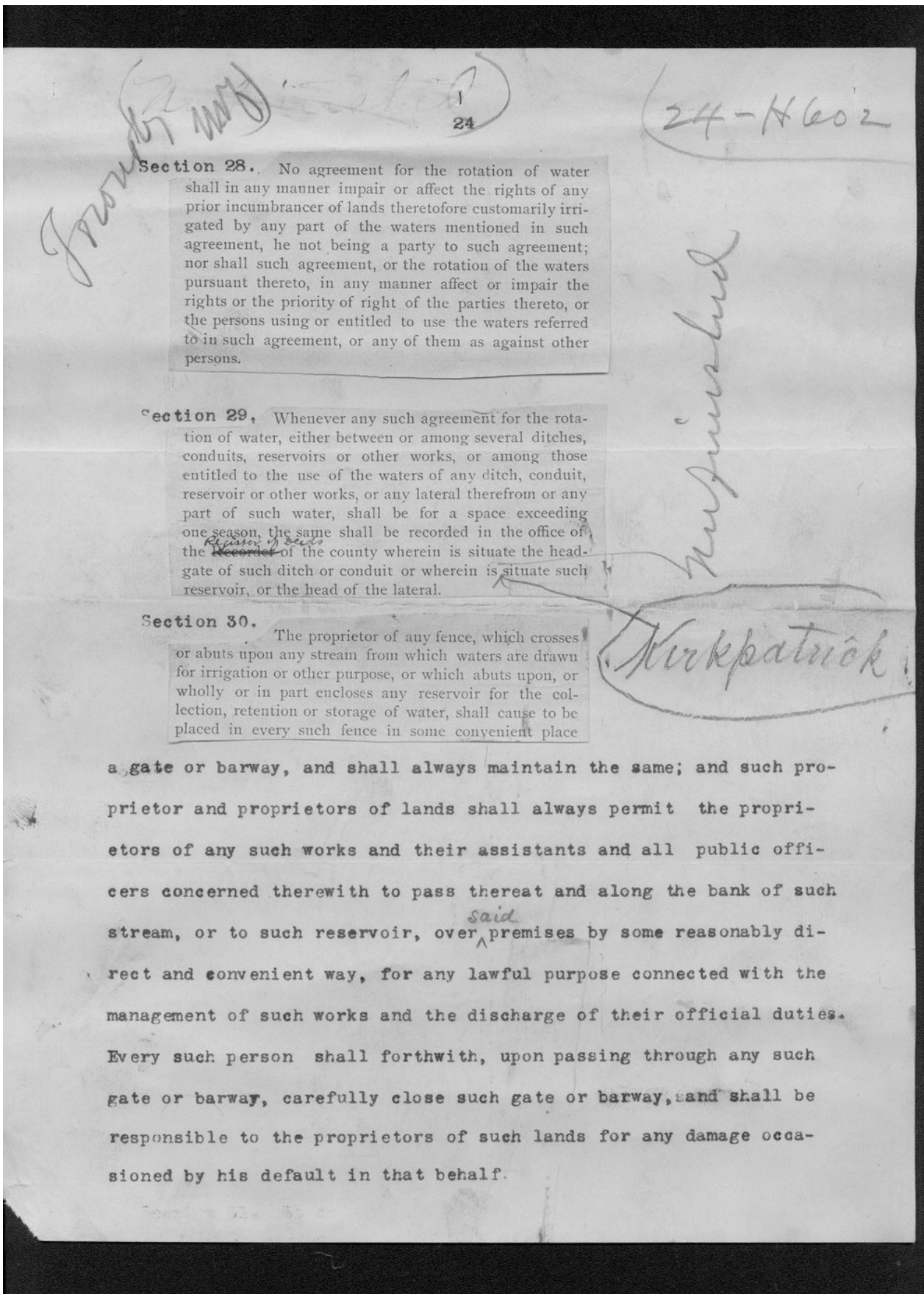
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Section 26. No agreement entered into between the proprietors of any two or more canals, ditches, conduits, reservoirs or other works, for the rotation of the water thereof, in manner as hereinbefore provided, shall be permitted to go into effect if 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 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.



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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 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 become a part of the public highway 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 no wise interfere with such rights, unnecessarily nor remove nor obstruct any such bridge or approach thereto, nor willfully or negligently damage the same. Such proprietors may, when necessary, temporarily remove any such bridge for the purpose of cleansing, repairing or enlarging such works and shall, upon the completion of such cleansing, repairing or enlargement, forthwith replace 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, Provided, further, That no such bridge shall be so constructed as to break down, injure or *waken any part of such works, nor so as to, in anywise, obstruct the flow of water therein, or the operation thereof.*



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### ARTICLE V.

#### OF THE DISPOSAL OF SEEPAGE WATERS.

*Robert*

Section 1. The proprietor of any lands which have become saturated by seepage waters flowing out of any ditch, canal, reservoir, or conduit shall be entitled to cut and open drains and trenches or lay pipes or conduits for draining such lands and withdrawing the water therefrom and conveying the same into any natural stream, arroya or watercourse; or may, at his election, convey such waters to other lands or places whatsoever and apply the same to domestic agricultural, manufacturing or other purposes, in his pleasure.

Section 2. In order to cut such drains and trenches, or to lay such pipes and conduits, such proprietor shall be entitled to pass with the same over the intervening lands of others, if necessary; and, in case of being unable to agree with the proprietors of such intervening lands touching the compensation, in that behalf payable, or, in case of the nonage or other disability, or absence of such proprietors, or any of them can not be found, may cause such damages and compensation to be ~~ascertained~~ ascertained in the manner prescribed by the laws regulating the exercise of the power of eminent domain.



## House Bill 602, Committee on Irrigation, Kansas Legislature

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ARTICLE VI.  
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### OF THE REGULATION OF RATES OF COMPENSATION FOR THE USE OF WATER.

SECTION 1. Whenever the proprietor or proprietors of any ditch, conduit, reservoir or other works constructed for the diversion, conveyance or storage of water for distribution among such proprietors or the members or shareholders in the corporation holding or owning such works, or others, or any person entitled or claiming to be entitled to the use of water from such works, shall present to the Board of Commissioners of such county, wherein such persons are using or enjoying, or entitled to use or enjoy water from such works, at any session thereof, regular or special, a petition praying the Board to proceed to fix reasonable maximum rates of compensation to be charged for the use of water from such ditch, conduit or reservoir within such county, showing reasonable cause for such application and verified by the affidavit of the petitioner, such Board of Commissioners shall examine the same, and if from such petition, or from affidavits or testimony produced in support thereof, they shall be of the opinion that such application is made in good faith, and that

there is reasonable ground to believe that the rates charged or proposed to be charged by the proprietors of such works are excessive, or that for any reason the rates of compensation to be charged for the use of water from such works ought to be fixed, they shall enter an order appointing a day, not less than twenty days thereafter, nor later than the third day of the next regular session of such Board, when they will hear all parties interested in such works, or in procuring water therefrom, for any uses whatsoever, touching the rates to be charged for the use of water therefrom:

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Section 2. Said petitioner shall, immediately after the entry of such order, cause notice thereof to be published in some newspaper of general circulation in said county, for three consecutive weeks and proof of publication thereof shall be made by affidavit of the publisher of the newspaper wherein publication shall have been had.



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Section 3. When it shall appear to the Board that the foregoing requirements touching the publication of such order have been complied with, the Board shall proceed to hear and determine such petition without unnecessary delay. All persons interested in the said works, or entitled, or claiming to be entitled, to the use or enjoyment of water therefrom at the said county wherein the proceedings are pending, shall be entitled to attend and be heard either in person or by counsel touching the original cost of such works, and of all additions thereto or enlargements thereof, and all repairs and replacements

thereof, or of any part or appurtenances thereof, and of the reasonable value at the time of such hearing, and of the reasonable annual cost and expense of the maintenance and operation thereof, and of the distribution of water therefrom, and the capacity thereof, and the amount of water consumed or furnished therefrom as originally constructed, and subsequent to any enlargement thereof, either for the use of the proprietors or others, and the amount of loss or waste therefrom by evaporation or seepage, and touching any other matter or thing which may affect the reasonable maximum rates which ought to be charged to the several classes of persons using water therefrom, for the use of water to be furnished or delivered from such works.

Section 4

Section 4. Upon hearing and consideration of the evidence which may be produced before them, as well as the arguments of counsel attending, if any, the said Board of Commissioners shall enter an order naming the ditch, conduit, reservoir or other works in question, or otherwise describing the same with reasonable certainty and fixing reasonable maximum rates of compensation to be charged for water to be delivered out of such works for use within such county for any purpose whatsoever.

Section 5

Section 5. Every such order shall adjust such rate according to the distance of carriage, and so that for each mile or fraction thereof, not less than one-half mile, through which the water is carried, a reasonable increase be made in the maximum rate to be charged in that behalf; and whenever it shall appear that there hath been an enlargement or enlargements of the ditch, conduit or reservoir, and that those using the waters diverted, collected or stored by means of such enlargement are customarily or frequently in times of scarcity deprived of water, when those using the waters diverted conveyed, collected or stored by means of such works as originally constructed are receiving water, or wherever

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the proprietors of any works for the diversion and conveyance of water have agreed for delivery thereof in excess of the amount customarily carried in such works, and the persons with whom such agreements have been made, or any of them, or their successors in interest, shall collect and store water and deliver the same to such carrier to an amount not exceeding the capacity of such works, a reasonable diminution shall be made in the maximum rate to be charged to those using the waters diverted, collected, retained or stored by means of such enlargement, or those collecting and storing water to be carried in such ditch or conduit; and the maximum rate prescribed to be charged to those using the water during the whole of the year, may be varied from that prescribed to be exacted of those using the same during only the irrigating season, or some part of the year; and a greater maximum rate may be prescribed to be exacted from those using the water only occasionally, or during short spaces of time, than that prescribed to be exacted from those customarily using the same; and the rate to be exacted for waters stored in reservoirs may be varied from the rate prescribed to be charged for water delivered without storage, according as right and justice may seem to require. Every such order shall be in force for the term of two years next thence ensuing, unless reversed or modified upon appeal or writ of error as herein provided, or upon like notice as herein required upon the original petition, and due cause shown therefor, the same shall be changed by the Board of County Commissioners, and until other order made in the premises, after the lapse of such period.





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Section 6. If it shall appear to the Board that the rates ~~xxx~~ theretofore charged, or proposed to be charged, by the proprietors of such works, for the use of water therefrom, have not been nor are unreasonable, or excessive, and that to prescribe or fix the maximum rate is unnecessary or inexpedient, the Board may dismiss the petition, or in their discretion, adjourn the

matter to another day; and continuances of the hearing may be granted from day to day or for any time, in the discretion of the Board.

Section 7

SEC. 10. Depositions may be taken to be read before the Board of Commissioners upon the hearing of the said petition in like case and manner, and upon like notice given, as required in causes pending in the District Court.

Section 8

SEC. 11. Any member of the Board may, under his hand and seal, issue subpoenas, or subpoenas *duces tecum*, requiring the attendance of witnesses to testify in such matter before the Board at any day and hour which may be named therein; all which subpoenas may be served by the Sheriff or any Constable of the county, or other person whomsoever; and the Board may, by subpoena or otherwise, require the proprietor of the works, or any officer, agent, clerk, servant or employé of the corporation or association, proprietor of the said works to attend and produce at the said hearing any book, paper or writing containing, or supposed to contain evidence pertinent to the matter in question.

Section 9

SEC. 12. Any member of the Board may administer an oath or affirmation to any witness produced before it upon any such hearing; and any person who shall testify falsely, after being duly sworn or affirmed as a witness, shall be deemed guilty of perjury and upon conviction be punished accordingly.

Section 10

SEC. 13. The Sheriff or any Constable of said county serving any subpoena, order or other process in such proceeding, shall be entitled to the same compensation as in case of like process out of the District Court.

Section 11

SEC. 14. Witnesses shall be entitled to the same *per diem* and mileage as witnesses attending in the District Court of the same county.

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Section 12. Any person failing to obey the subpoena of the Board or any member thereof, in any such proceeding, upon payment or tender of his lawful compensation in that behalf, shall, on proof of such service, and payment or tender, and the non-attendance of the witness, before the district court, or before the Judge thereof in vacation, be attached for his contempt in that behalf, and punished by such District Court or Judge thereof, if no reasonable excuse for his default be shown, as in case of like contempts of such District Court.

Section 13. If it shall appear to the Board upon such hearing that the rates theretofore customarily charged by the proprietors of such works, or proposed to be charged for the use of water therefrom, are excessive and extortionate, the cost of such proceedings shall be taxed against the proprietors of such works. If it shall appear to the Board that such petition was presented without any good cause therefor, the costs shall be taxed against the petitioner. In other cases the costs shall be divided as to the Board shall seem equitable. No party shall be permitted to examine more than four witnesses to establish the same matter of fact.

Section 14. If either member of the Board of County Commissioners wherein such petition is presented, be interested in the works named in such petition, as proprietor or incumbrancer thereof, or be a consumer of water therefrom for any purpose whatever, he shall cause the fact of such interest to be suggested and entered of record, and thereupon an order shall be made changing the venue in such proceedings to some other county where no part of the ditch, conduit or other works named in such petition is situate, and



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where no water from such works is furnished to the inhabitants of such county.

Section 15. If the proprietors of such works or any consumer of water therefrom, shall file with the Board of County Commissioners before which such petition is

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pending, a petition showing such interest as above prescribed, or that by reason that either of the said County Commissioners is prejudiced for or against the proprietor or proprietors of said works, or any of them, or is related to them or any of them, or hath been of counsel for the proprietors of such works, or any of them, touching the matter of controversy in said petition mentioned, or that the proprietors of such works have an undue influence over the minds of the inhabitants of said county wherein the petition is pending, or that the inhabitants of such county are prejudiced for or against the proprietors of such works, so that a fair determination of the matter cannot be expected, and shall verify such petition by affidavit, such Board of County Commissioners shall consider the same and all counter petitions and affidavits, touching the matter, which may be presented, and if of the opinion that the matters and things in such petition alleged as cause for change of the venue of such petition are true, shall order such petition to be sent to the Board of Commissioners of some other proper county where such cause of objection doth not exist; *Provided, however,* That no change of venue shall be allowed in such case until due publication, posting and service of the order for hearing, as herein above prescribed, has been had.

Section 16

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Sec. 16. At the time of the entry of any such order for the change of venue of such petition, such Board of County Commissioners shall also by order fix a time not less than ten days thereafter when, at some convenient place in their county, to be named in such order, depositions may be taken before some Justice of the Peace, Notary Public or Clerk of the District Court, or County Court, in behalf of every person interested in the question of the reasonable maximum rates which ought to be charged for the use of water supplied from such works, or any matter of fact bearing upon the question; and at the time and place named in such order



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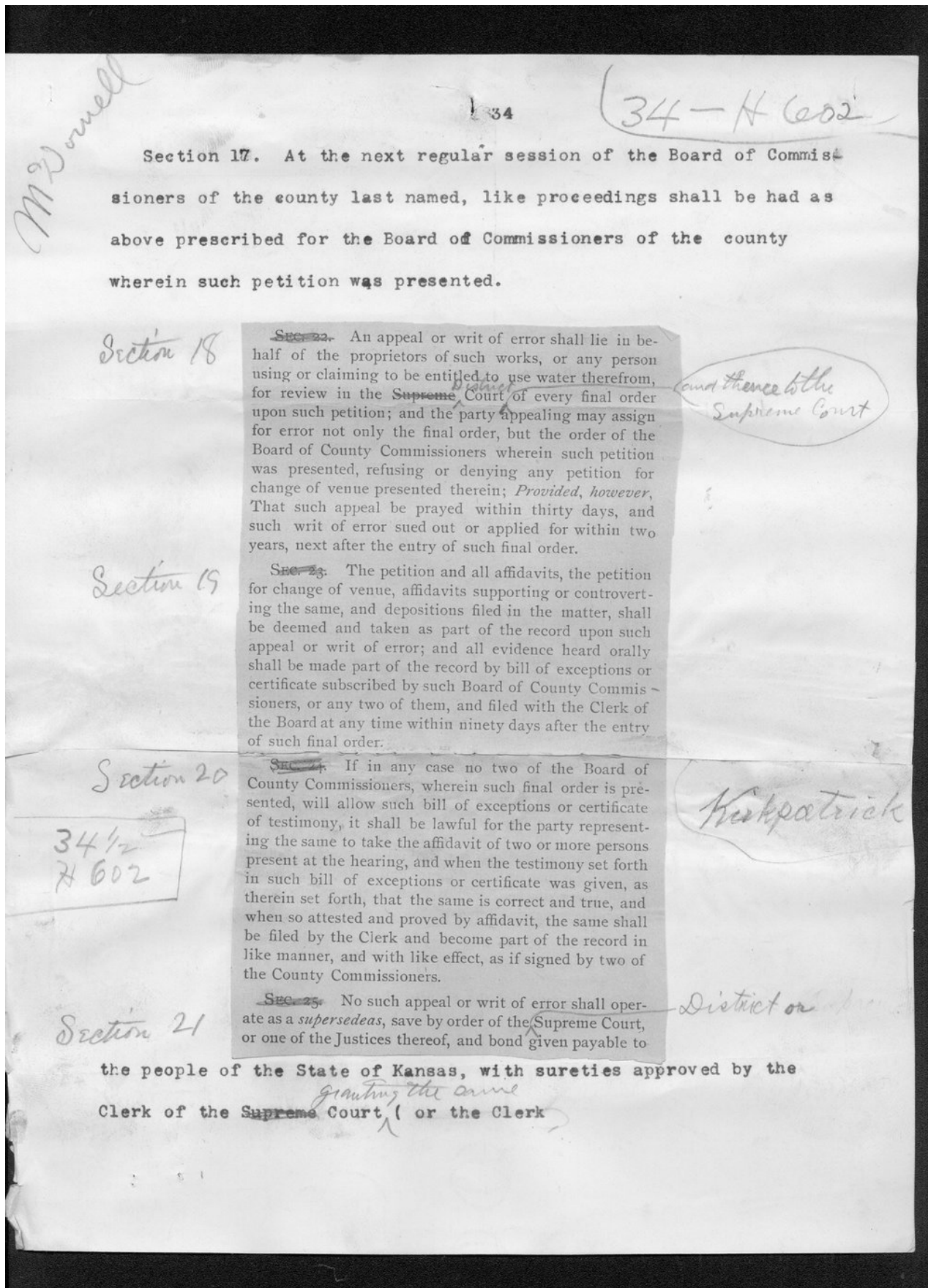
and from thence from day to day, or as the convenience of the parties may require, the Justice of the Peace, Notary Public or other officer named, shall attend at the place in such order mentioned and take the depositions of all witnesses produced before him by any party, for examination; and any party claiming to be interested in the controversy may attend and examine or cross examine every such witness. Such depositions shall be reduced to writing by or under the direction of such officer, in the narrative form, (save where as to any particular matter any party may request that the interrogatory and answer may be set down,) and upon the completion of the examination of all witnesses produced, the same shall be certified to by the officer taking the same, and transmitted to the Clerk of the Board of County Commissioners of the county to which the venue is changed. Every such deposition shall show and set forth in whose behalf the witnesses are severally produced; and the officer shall affix a memorandum subscribed by him, showing by whom the fees for the taking of such depositions are paid, and the amount of such fees.

Section 16. Forthwith after the entry of any such order for the change of venue of such petition, the Clerk of the Board of County Commissioners shall certify a copy of such order and all other orders and proceedings had by the Board in the matter of such petition and attach thereto the original petition, and all affidavits and other proceedings had or filed therein, and transmit the same to the Clerk of the Board of County Commissioners to which the venue is changed.

Section 17.



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of some District Court when the order so directs) and conditioned for the due prosecution of such appeal or writ of error and to make good all damages which may be sustained by any person by reason of such *superse-  
deas*. Such bond shall be in such sum as may be fixed and prescribed in the order allowing the *superse-  
deas*.

SEC. 26. In every such appeal or writ of error, where presented in behalf of the proprietors of such works, the appellees or defendants in error shall be designated as "The Consumers of Water in-----  
County," from such ditch, canal or other works, naming the same. The *seire facias* to hear errors shall be served upon the petitioner in such petition, if he can be found, and shall be published in at least one public newspaper of the county wherein the petition was originally presented, for at least thirty days prior to the hearing, and such publication shall be deemed to confer jurisdiction upon the ~~Supreme~~ Court in respect to all persons. Whenever any individual, consumer or any person claiming to be entitled to water from such works, shall be appellant or plaintiff in error, the proprietors of such works shall be designated as the appellees or defendants in error. In either case all persons whomsoever claiming to be interested in the question shall be heard by counsel in the Supreme Court.

SEC. 27. Save as herein provided, the proceedings upon such appeal or writ of error, shall be as in other cases, as near as may be.

SEC. 28. The costs of such appeal or writ of error shall be adjudged in the discretion of the Court.

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opposing party

appellee

appellee

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petition in error



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Section ~~29~~<sup>25</sup>. The water delivered to any  
user thereof by any carrier shall be<sup>so</sup> measured  
to such user, <sup>so that the full amount contracted for shall be delivered to him</sup> at the margin of the prem-  
ises upon which such water shall be  
used.



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### ARTICLE VII.

#### OF THE CREATION OF IRRIGATION DISTRICTS HAVING CERTAIN POWERS.

Section 1. The Board of County Commissioners, of any county in the State of Kansas where irrigation is now or may hereafter be used in aid of agriculture, is hereby authorized and empowered to cause to be erected into convenient districts, to be called Irrigation Districts, such tracts of contiguous territory as may be conveniently irrigated from any given source of supply.

Section 2. Whenever the inhabitants of any proposed irrigation district, who shall be resident land owners therein, desire the ~~er~~ erection of such district, as provided for in section 1. of this Article, they shall cause to be presented to the Board of County Commissioners of such county a petition signed by not less than three-fifths of the resident land owners of such proposed district, which said petition shall set forth the public utility and benefit of such proposed district and ask that an election of the qualified ~~proposed~~ electors of such district shall be called to vote upon the proposition to erect such irrigation district. Said petition shall be accompanied by an outline map, or plat, showing the tracts of territory to be erected into such district, together with the numbers of the sections and parts of sections of land to compose such irrigation district; and said map, or plat, shall <sup>contain</sup> a drawing and profile of the proposed main ditch, to the source of supply, and <sup>of</sup> all other ditches and laterals proposed to be constructed for the purpose of irrigating said described lands in said proposed district, and said petition shall be accompanied by an estimate, to be made





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by the County Surveyor of such county, of the probable cost of the building of said main ditch, ditches and laterals, and all other works necessary to be built in order to furnish a sufficient supply of water to irrigate the lands in said proposed district, and the County Commissioners may order the County Surveyor, on application of any ten of said petitioners in writing, to make the necessary estimates as herein provided for, and he shall receive for his work and labor the same fees as now allowed by law for similar services, to be paid by the Board of County Commissioners of such county.

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Section 3. It shall be the duty of such Board of County Commissioners, within thirty days after the first regular meeting of said Board subsequent to the filing of said petition, to meet at the usual place of meeting and if they find, upon due examination, that said petition is signed by three-fifths of the resident landowners of such proposed irrigation district and is in due form, it shall be their duty to make an order calling an election of the qualified voters of such proposed district, to vote upon the proposition to erect such irrigation district; said election to be held within sixty days from and after the date of such order.

Section 4. Notice of such election shall be given by posting notices of the time and place of holding said election in at least five public places within such proposed district at least ten days before the date set for holding such election, and such further notice of the time and place of holding such election shall be given as said Board of County Commissioners may require; and said Board shall designate the public place or places in said proposed



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district where such election shall be held, and shall designate three judges and two clerks for each election precinct, who shall each be a qualified elector of such proposed district.

Section 5. Such election shall be conducted in all respects as general elections in the State of Kansas. Those voting for the creation of the district shall deposit a printed or written ballot containing the words, "For the District", and those voting against the creation of the district shall deposit a printed or written ballot containing the words, "Against the District".

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Section 6. The returns of said election shall be made to the Board of County Commissioners of the County, and such Board shall meet on the next Friday thereafter and canvass the returns of said election and declare the result; and if, upon the canvass, the Board shall find that a three-fifths majority of the qualified voters of such proposed district have voted in favor of creating the same, such Board of County Commissioners shall make an order creating such district and designate it "Irrigation District No.-----, of-----County, Kansas," (inserting in the blank spaces therein the number of the district in consecutive numbers, according to the order of formation <sup>of</sup> the same in said county, and the name of said county) and from thenceforth such district shall be a body corporate, having all the powers and responsibilities belonging to other corporations created under and by virtue of the statutes of the State of Kansas.

Section 7. The Officers of such district shall be a Board of Irrigation Commissioners, consisting of a President, Secretary and





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Treasurer, and shall hold their offices for a period of one year. They shall be elected at an annual election, to be held on the second Monday of December of each year, and shall hold their respective offices until their successors are elected and qualified. The Board of County Commissioners shall have power to appoint the first officers of such district and such appointed officers shall hold their offices until the next ensuing annual election and until their successors are elected and qualified.

Section 8. After the creation of said district, as hereinbefore provided, the Board of Irrigation Commissioners shall provide in such irrigation district one or more convenient election precincts for all the purposes of this act and shall designate the voting places in said precincts, and shall make report in writing, to the Board of County Commissioners of said county, of such election precincts and voting places, which said report shall be filed with the County Clerk and a minute thereof made upon the journal of the Board of County Commissioners; and if any change shall be made in such voting precincts or voting places, by said Board of Irrigation Commissioners, the same shall, in like manner, be reported to the Board of County Commissioners, filed and minuted as aforesaid, and the returns of all elections held in such irrigation district shall be made to the Board of County Commissioners of such county and canvassed in the same manner and at the same time as provided herein for the creation of such district.

Section 9. Any irrigation district, created under the provisions of this Article, shall have power, and it is hereby authorized, to issue the bonds of said district for the purpose of building or

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