

[Act No. 2152, February 06, 1912]

AN ACT TO PROVIDE A SYSTEM FOR THE APPROPRIATION OF PUBLIC WATERS, AND FOR THE DETERMINING OF EXISTING RIGHTS THERETO; FOR THE PUBLIC REGISTRATION OF ALL WATER RIGHTS; FOR THE CREATION AND USE OF WATER POWER; FOR INVESTIGATIONS FOR AND THE CONSTRUCTION, MAINTENANCE, AND OPERATION OF IRRIGATION SYSTEMS BY THE GOVERNMENT OF THE PHILIPPINE ISLANDS; FOR THE REPAYMENT OF MONEY EXPENDED THEREFOR; FOR THE CONSTRUCTION, MAINTENANCE, AND OPERATION OF IRRIGATION SYSTEMS BY PRIVATE PERSONS; FOR THE INSPECTION AND REGULATION OF ALL WORKS PERTAINING TO THE USE OF WATER; AND PROVIDING PENALTIES FOR ITS VIOLATION; AND FOR OTHER PURPOSES.

By authority of the United States, he it enacted by the Philippine Legislature, that:

SECTION 1. Subject to existing rights, the public waters of the public Philippine Islands may be appropriated for beneficial use, in the manner provided in this Act.

SEC. 2. The power to grant appropriations of public waters is hereby vested in the Secretary of Commerce and Police in accordance with the provisions of this law, upon the recommendation and approval of the irrigation council hereinafter created.

There is hereby created an Irrigation Council which shall consist irrigation Council, of five members as follows: The Secretary of Commerce and Police, who shall be ex officio chairman thereof; the chairman of the Committee on Agriculture of the Philippine Assembly; the Director of Public Works; the chairman of the Committee on Public Works of the Philippine Assembly; and one agriculturist to be appointed by the Governor-General, who shall receive a per diem of fifteen pesos for each session of the council which he actually attends: *Provided*, That the officers already receiving a salary or per diem from the Government shall serve without additional remuneration: *And provided, further*, That when the Philippine Assembly is not organized, or is without officers, the persons who held the offices of chairman of the Committee on Agriculture and chairman of the Committee on Public Works at the close of the preceding session shall continue in office as members of the Irrigation Council until their successors are appointed and qualified. The Director of Public Works shall have direction and supervision of the investigation for and construction of irrigation systems by the Government of the Philippine Islands and shall perform such duties as are prescribed herein.

The Chief Irrigation Engineer shall, in addition to the duties and responsibilities stated in his appointment, be charged with those of the superintendent of irrigation as provided in Act Numbered Eighteen hundred and fifty-four.

SEC. 3. Priority of appropriation shall give the better right as between two or more persons using the public waters. In determining the priority, the nonuser of the water for a period of five years shall extinguish any claim of priority unless such nonuser shall have been caused by force majeure. When the waters of any source of supply are not sufficient for the service of all those desiring the use of the same,

and when priority of appropriation can not be established the order of preference shall be as follows:

- (a) Domestic purposes.
- (b) Agricultural purposes or power development for agricultural purposes.
- (c) Industrial purposes.
- (d) Ponds for fisheries.
- (e) Mining purposes or milling connected with mining purposes.

SEC. 4. Any controversy between the persons claiming right to use of water of any stream shall be submitted to the Secretary of Commerce and Police through the Director of Public Works, and his decision thereon shall be final unless appeal therefrom be taken to the proper court within thirty days after the date of the notification of the parties of said decision. In case of such appeal the court having jurisdiction shall try the controversy *de novo*.

SEC. 5. The Director of Public Works shall as soon as practicable prepare for such streams in the Philippine islands as may be designated by the Secretary of Commerce and Police a list of the appropriations of water according to priority, and in order to make such list he shall cause a public notice to all claimants of water rights upon such streams to be posted at the usual places for posting public notices in each municipality affected and at such other places as he may deem advisable. Such notice shall contain a statement of the information that it is desired to obtain from the claimants, the date before which all claims must be received, which date shall be at least six months after such notice, the conditions under which such claims must be presented, and any further facts that may be deemed necessary. The said Director of Public Works shall send to each person known to have a claim to the waters of such streams a blank form, on which said claimant shall set forth in writing all the particulars, showing the amounts and dates of appropriations to the use of water of said stream to which he lays claim, the said statement to include the following data, if possible:

- (a) The name and address of the claimant.
- (b) The nature of the use or title on which the claim for an appropriation is based.
- (c) The date of the commencement of such use: Also if used for irrigation, the following:
- (d) The date of beginning of survey.
- (e) The date of beginning of construction.
- (f) The date when completed.
- (g) The date of beginning and completion of enlargements.
- (h) The dimensions of the ditch as originally constructed and as enlarged.
- (i) The amount of land irrigated in the first year.
- (j) The amount in subsequent years, with the date of irrigation and the amount of land such ditch is capable of irrigating.
- (k) The character of the soil and the kind of crops cultivated. Also:
- (l) Such other facts as will show compliance with the law in acquiring the appropriation, and the rank of the priority claimed.

Each of said claimants shall be required to certify to his statements under oath, and any officer authorized to administer oaths is hereby authorized to administer such oaths: *Provided, however,* That there shall be no charge for such oaths when

administered by an officer of the Insular, provincial, or municipal government authorized to administer oaths.

SEC. 6. The blank form required by section five to be forwarded to each known claimant shall be accompanied by a notice that the statement therein called for must be presented within thirty days from the receipt of said notice. The failure of any claimant to make such sworn statement within six months after notice shall, upon the complaint of the Director of Public Works, work a forfeiture of the claim: *Provided, however,* That the Secretary of Commerce and Police may, for sufficient cause in his discretion, extend the time limit within which the statement may be filed for a period not exceeding six months.

SEC. 7. It shall be the duty of the Director of Public Works, as soon as practicable, to make an examination of such stream and the works diverting therefrom, said examination to include the measurements of the discharge of said stream, and of the carrying capacity of the various ditches and canals diverting water therefrom, an examination of the irrigated lands, and an approximate measurement of the lands irrigated and susceptible of irrigation from the various ditches and canals, which said observations and measurements shall be reduced to writing and made a matter of official record in his office; and it shall be the duty of the Director Maps, of Public Works to make a map or plat showing, with substantial accuracy, the course of said stream, the location of each dam, ditch, or canal diverting water therefrom, and the divisions and subdivisions of lands which have been irrigated or which are susceptible of irrigation from the works already constructed.

SEC. 8. The Director of Public Works or any official by him thereunto specifically authorized, in the investigations made to determine the priority of appropriation, may examine witnesses under oath, and for this purpose is hereby authorized to administer oaths to witnesses and take affidavits, and shall not be obliged to follow strictly the ordinary rules of evidence, but may, on the contrary, proceed to hear them fully and equitably.

SEC. 9. Upon approval of the list of priorities the Secretary of Commerce and Police shall publish the said approved list in the manner provided in section five. This notice shall show for each appropriation:

- (a) The name and post-office address of the appropriator.
- (b) The priority number of such appropriation.
- (c) The amount of prior appropriations.
- (d) The amount of water to which the appropriator is entitled,
- (e) And if such appropriations be for irrigation, a description of the legal subdivisions of the lands to which said water is to be diverted.

It shall thereupon be the duty of the Director of Public Works to issue to each appropriator represented in such list a certificate signed by the Secretary of Commerce and Police, setting forth the information shown in items (a), (b), (c), (d), and (e) of this section relating to his appropriation. Such certificate shall be transmitted by the Director of Public of Works, by registered mail, to the register of deeds of the province in which such appropriation shall have been made, and on the same date a notice of such transmittal shall be forwarded by the Director of Public Works to the appropriator and it shall be the duty of the register of deeds to record the same in a book specially prepared and kept for that purpose and thereupon

immediately transmit the same to the appropriator. If the water is to be wholly or partially used in another province than that in which the point of diversion is located, the Director of Public Works shall instruct the register of deeds of the latter to transmit in the same manner, after the proper procedure, the certified copy to the register of deeds of the province where the water is to be used and this officer shall be entitled to the fees and charged with the duties above mentioned: *Provided, however,* That if such recording fee shall not be paid within one year after receipt of such notice from the Director of Public Works, the claimant shall lose all right to the priority of appropriation as established in this section.

SEC. 10. In case any person shall desire to appeal from the decision of the Director of Public Works as approved by the Secretary of Commerce and Police, such appeal shall lie to the Court of First Instance of the province in which his property is situated to have his right determined. Such action must be brought within ninety days after the termination of the publication of the approved list of priorities provided for in section nine hereof. Such action shall be tried as speedily as possible, and the court is hereby authorized to employ a hydraulic engineer or other expert to examine and make report under oath upon any subject matter in controversy, the cost of such employment to be equitably apportioned by the court and charged against the parties to the suit as costs.

Provided, however, That the final decision of the courts in these cases shall be recorded in accordance with the provisions of section nine hereof.

SEC. 11. The Director of Public Works shall apportion the waters of any stream to the appropriators thereof according to their respective rights, and shall give notice of such apportionment to all the persons interested, by registered mail, according to the list of priorities approved and finally recorded, or, as the case may be, as corrected by the judgment of some court having jurisdiction of the subject-matter.

SEC. 12. Upon the final approval of the list of appropriations, according to priority, provided for in the preceding sections, there may be formed, at the desire of the majority of all the appropriators in any system, an irrigators' association, for the purpose of maintaining and operating the said system. The presidente or presidentes of the municipality or municipalities in which the land under a given system is located shall, at the request of three or more of the appropriators in such system, call a meeting of all the acknowledged appropriators in said system, for the purpose of perfecting the said association.

Such association when duly organized shall have the following powers.

(a) To appoint a caretaker, who shall be charged with the preservation and administration of the general system, the equitable apportionment of the waters of the stream according to the recorded list of appropriations, and the adjustment of controversies between the irrigators, in accordance with the said list, from whose decision appeal may lie to the Secretary of Commerce and Police, within the time and in the manner prescribed by the regulations, and who shall perform all other duties imposed, and have the powers conferred upon him by said regulations.

(b) To issue the regulations necessary for the proper preservation and administration of the general system and for the adequate operation of

the association, which regulations shall be previously approved by the Secretary of Commerce and Police to whom they shall be submitted through the Director of Public Works for this purpose as soon as possible: *Provided, however,* That in the event pf no objection having been made by the Secretary of Commerce and Police within sixty days after the receipt by him of the said regulations for their approval, the said regulations shall then enter into force and effect as if they had been approved by the said Secretary.

(c) To compel the members of the association to contribute in proportion to the benefits derived, to the cost of preservation, improvement, and operation of the general system, the association being authorized to exercise this power in the manner established in the regulations.

(d) To elect annually, on the date fixed by the regulations, a president, who shall represent the interests of the association and carry into execution the resolutions of the same.

The said president shall be the ex officio treasurer of the association and shall collect from each member the assessment or assessments previously fixed for the preservation, improvement, and operation of the system, and prior to entering upon the discharge of his duties, he shall furnish bond in the sum fixed by the regulations ; and

(e) To incorporate in accordance with Act Numbered Fourteen hundred and fifty-nine, entitled "The Corporation Act."

The caretaker shall receive the emoluments fixed by the regulations, and the president shall not be entitled to any compensation, unless expressly provided for by the regulations.

SEC. 13. In the event of the appropriates not organizing in accordance with the provisions of the next preceding section, the organization. system shall be temporarily administered under this Act as follows:

(a) By the municipal council, when the system affects one municipality alone;

(b) By the provincial board, when it affects two or more municipalities of a province;

(c) By the Director of Public Works, when it affects two or more provinces.

The regulations issued for the administration, use, and distribution of waters shall be previously approved by the Irrigation Council and in the preparation of these regulations all the persons interested shall be given a hearing.

The cost of this service shall be a lien upon the crops, in the service; first place, and in the second place upon the land of the water users and ditch owners, in accordance with the distribution thereof, as shown by the accounts of the municipal council, the provincial board, or the Director of Public Works, which distribution shall be based upon the quantity of water consumed by each appropriator or ditch owner,