

**CHAPTER 15—APPROPRIATION OF WATERS;
RESERVOIR SITES**

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§ 661. Appropriation of waters on public lands; rights of way for canals and ditches

Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by this section.

(R.S. §§ 2339, 2340.)

AMENDMENT OF SECTION

Pub. L. 94-579, title VII, §706(a), Oct. 21, 1976, 90 Stat. 2793, provided that effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System this section is amended to read as follows:

Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same.

All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights as may have been acquired under or recognized by this section.

CODIFICATION

R.S. § 2339 derived from act July 26, 1866, ch. 262, § 9, 14 Stat. 253.

R.S. § 2340 derived from act July 9, 1870, ch. 235, § 17, 16 Stat. 218.

This section is also classified to sections 51 and 52 of Title 30, Mineral Lands and Mining.

SAVINGS PROVISION

Amendment by Pub. L. 94-579, insofar as applicable to the issuance of rights-of-way, not to be construed as terminating any valid lease, permit, patent, etc., exist-

ing on Oct. 21, 1976, see section 701 of Pub. L. 94-579, set out as a note under section 1701 of this title.

SECTION AS UNAFFECTED BY SUBMERGED LANDS ACT

Provisions of this section as not amended, modified or repealed by the Submerged Lands Act, see section 1303 of this title.

§ 662. Reservation of reservoir sites generally

Sites for reservoirs and other hydraulic works necessary for the storage and utilization of water for irrigation and the prevention of floods and overflows, located or selected prior to August 30, 1890, shall remain segregated and reserved from entry, or settlement, until otherwise provided by law, and reservoir sites thereafter located or selected on public lands shall in like manner be reserved from the date of the location or selection thereof.

(Oct. 2, 1888, ch. 1069, 25 Stat. 526, 527; Aug. 30, 1890, ch. 837, §1, 26 Stat. 391; Pub. L. 94-579, title VII, §704(a), Oct. 21, 1976, 90 Stat. 2792.)

CODIFICATION

Section is based on provisions contained in acts Oct. 2, 1888, and Aug. 30, 1890, affected by act Oct. 21, 1976.

AMENDMENTS

1976—Pub. L. 94-579 struck out provision authorizing the President, in his discretion, to open by proclamation any portion or all of the lands reserved by this section to settlement under the homestead laws.

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-579, title VII, §704(a), Oct. 21, 1976, 90 Stat. 2792, provided that the amendment made by section 704(a) is effective on and after Oct. 21, 1976.

SAVINGS PROVISION

Amendment by Pub. L. 94-579 not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub. L. 94-579, set out as a note under section 1701 of this title.

§ 663. Restriction of sites to inclusion of necessary lands

Reservoir sites located or selected and to be located and selected shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs; excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs.

(Mar. 3, 1891, ch. 561, § 17, 26 Stat. 1101.)

§ 664. Rights of way over reservoir sites generally

All reservoir sites reserved or to be reserved shall be open to use and occupation under sections 946 to 949¹ of this title, and any State is authorized to improve and occupy such reservoir sites to the same extent as an individual or private corporation, under such rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That the charges for water coming in whole or part from reservoir sites used or occupied under the provisions of this section shall always be subject to the control and regulation of the respective States and Territories in which such reservoirs are in whole or part situate.

(Feb. 26, 1897, ch. 335, 29 Stat. 599.)

¹ See References in Text note below.