

43 USC 661: Appropriation of waters on public lands; rights of way for canals and ditches
Text contains those laws in effect on January 28, 2019

From Title 43-PUBLIC LANDS

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.)

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.

AMENDMENT OF SECTION; SAVINGS PROVISION

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."

Such amendment 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.

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.

for the placer-claim shall convey all valuable mineral and other deposits within the boundaries thereof.

SEC. 2334. The surveyor-general of the United States may appoint in each land-district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining-claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer-claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land-Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land-district where mines are situated for the publication of mining-notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land-office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land-Office.

SEC. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land-district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land-office. In cases of contest as to the mineral or agricultural character of land, the testimony and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land-office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

SEC. 2336. Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

SEC. 2337. Where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface-ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz-mill or reduction-works, not owning a mine in connection therewith, may also receive a patent for his mill-site, as provided in this section.

SEC. 2338. As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

SEC. 2339. Whenever, by priority of possession, rights to the use of

Surveyor-general to appoint surveyors of mining-claims, &c.

10 May, 1872, c. 152, s. 12, v. 17, p. 95.

5 May, 1876, c. 91, v. 19, p. 52.

Verification of affidavits, &c.

10 May, 1872, c. 152, s. 13, v. 17, p. 95.

5 May, 1876, c. 91, v. 19, p. 52.

Where veins intersect, &c.

10 May, 1872, c. 152, s. 14, v. 17, p. 96.

5 May, 1876, c. 91, v. 19, p. 52.

Patents for non-mineral lands, &c.

10 May, 1872, c. 152, s. 15, v. 17, p. 96.

5 May, 1876, c. 91, v. 19, p. 52.

What conditions of sale may be made by local legislature.

26 July, 1868, c. 262, s. 5, v. 14, p. 252.

5 May, 1876, c. 91, v. 19, p. 52.

Vested rights to

26 July, 1866, c. 262, s. 9, v. 14, p. 253.—*Basey v. Gallagher*, 20 Wall., 670; *Union M. & M. Co. v. Ferris*, 2 Saw., 176.

Patents, pre-emption, and homesteads subject to vested and accrued water-rights.

9 July, 1870, c. 235, s. 17, v. 16, p. 218.

Mineral lands in which no valuable mines are discovered open to homesteads.

26 July, 1866, c. 262, s. 10, v. 14, p. 253.

Heydenfeldt v. Daney Gold, &c., Co., 93 U. S., 634.

Mineral lands how set apart as agricultural lands.

26 July, 1866, c. 262, s. 11, v. 14, p. 253.

Additional land-districts and officers, power of the President to provide.

26 July, 1866, c. 262, s. 7, v. 14, p. 252.

Provisions of this chapter not to affect certain rights.

9 July, 1870, c. 235, s. 17, v. 16, p. 218.

10 May, 1872, c. 152, s. 16, v. 17, p. 96.

5 May, 1876, c. 91, v. 19, p. 52.

Mineral lands in certain States excepted.

18 Feb., 1873, c. 159, v. 17, p. 465.

Grants of lands to States or corporations not to include mineral lands.

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.

SEC. 2340. All patents granted, or pre-emption 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 the preceding section.

SEC. 2341. Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or they may avail themselves of the provisions of chapter five of this Title, relating to "HOMESTEADS."

SEC. 2342. Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.

SEC. 2343. The President is authorized to establish additional land-districts, and to appoint the necessary officers under existing laws, wherever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

SEC. 2344. Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the act entitled "An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July twenty-five, eighteen hundred and sixty-six.

SEC. 2345. The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the States of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase, according to legal subdivisions, in like manner as before the tenth day of May, eighteen hundred and seventy-two. And any bona-fide entries of such lands within the States named since the tenth day of May, eighteen hundred and seventy-two, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered for public sale in the same manner, at the same minimum price, and under the same rights of pre-emption as other public lands.

SEC. 2346. No act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations to aid in the construction of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands which in all cases are

43 USC 932: Repealed. Pub. L. 94-579, title VII, §706(a), Oct. 21, 1976, 90 Stat. 2793
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From Title 43-PUBLIC LANDS

CHAPTER 22-RIGHTS-OF-WAY AND OTHER EASEMENTS IN PUBLIC LANDS

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§932. Repealed. Pub. L. 94-579, title VII, §706(a), Oct. 21, 1976, 90 Stat. 2793

Section, R.S. §2477, authorized rights of way for construction of highways over public lands not reserved for public uses.

EFFECTIVE DATE OF REPEAL

Pub. L. 94-579, title VII, §706(a), Oct. 21, 1976, 90 Stat. 2793 , provided that the repeal made by section 706(a) is effective on and after Oct. 21, 1976.

SAVINGS PROVISION

Repeal 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.

REGULATIONS AFFECTING RIGHTS-OF-WAY

Pub. L. 104-208, div. A, title I, §101(d) [title I, §108], Sept. 30, 1996, 110 Stat. 3009-181 , 3009-200, provided that: "No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 ([former] 43 U.S.C. 932) shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act [Sept. 30, 1996]."

of right, title, or claim, which has been forged, altered, counterfeited, or falsely dated, knowing the same to be forged, altered, counterfeited, or falsely dated, shall be punishable as prescribed in section twenty-four hundred and seventy-one. [See §§ 5411, 5412.]

SEC. 2474. The tract of land in the Territories of Montana and Wyoming, lying near the head-waters of the Yellowstone River and described as follows, to wit, commencing at the junction of Gardiner's River, with the Yellowstone River, and running east to the meridian passing ten miles to the eastward of the most eastern point of Yellowstone Lake; thence south along said meridian to the parallel of latitude passing ten miles south of the most southern point of Yellowstone Lake; thence west along said parallel to the meridian passing fifteen miles west of the most western point of Madison Lake; thence north along said meridian to the latitude of the junction of the Yellowstone and Gardiner's Rivers; thence east to the place of beginning, is reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park or pleasuring ground for the benefit and enjoyment of the people; and all persons who locate, or settle upon, or occupy any part of the land thus set apart as a public park, except as provided in the following section, shall be considered trespassers and removed therefrom.

SEC. 2475. Such public park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as practicable, to make and publish such regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders, within the park, and their retention in their natural condition. The Secretary may, in his discretion, grant leases for building purposes for terms not exceeding ten years, of small parcels of ground, at such places in the park as may require the erection of buildings for the accommodation of visitors; all of the proceeds of such leases, and all other revenues that may be derived from any source connected with the park, to be expended under his direction in the management of the same, and the construction of roads and bridle-paths therein. He shall provide against the wanton destruction of the fish and game found within the park, and against their capture or destruction for the purposes of merchandise or profit. He shall also cause all persons trespassing upon the same to be removed therefrom, and generally is authorized to take all such measures as may be necessary or proper to fully carry out the objects and purposes of this section.

SEC. 2476. All navigable rivers, within the territory occupied by the public lands, shall remain and be deemed public highways; and, in all cases where the opposite banks of any streams not navigable belong to different persons, the stream and the bed thereof shall become common to both.

SEC. 2477. The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

SEC. 2478. The Commissioner of the General Land-Office, under the direction of the Secretary of the Interior, is authorized to enforce and carry into execution, by appropriate regulations, every part of the provisions of this Title not otherwise specially provided for.

SEC. 2479. To enable the several States (but not including the States of Kansas, Nebraska, and Nevada) to construct the necessary levees and drains, to reclaim the swamp and overflowed lands therein—the whole of the swamp and overflowed lands, made unfit thereby for cultivation, and remaining unsold on or after the twenty-eighth day of September,

Public park established near the head-waters of the Yellowstone River.

1 Mar., 1872, c. 24, s. 1, v. 17, p. 32.

Secretary of the Interior to have exclusive control of the park; removal of trespassers.

Ibid., s. 2, p. 33.

Navigable rivers within public lands to be public highways.

18 May, 1796, c. 29, s. 9, v. 1, p. 468.

3 Mar., 1803, c. 27, s. 17, v. 2, p. 235.

Right of way for highways over public lands.

26 July, 1866, c. 262, s. 8, v. 14, p. 253.

Power of Commissioner of Land-Office to enforce this Title.

Grant of swamp and overflowed lands to certain States to aid in construction of levees, &c.

26 Sept. 1850, c. 84