

**43 USC Ch. 15: APPROPRIATION OF WATERS; RESERVOIR SITES****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.

**§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 949 <sup>1</sup> 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.)

## **REFERENCES IN TEXT**

Sections 946 to 949 of this title, referred to in text, were repealed by Pub. L. 94–579, title VII, §706(a), Oct. 21, 1976, 90 Stat. 2793, 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.

## **REPEAL; SAVINGS PROVISION**

Section repealed by Pub. L. 94–579, title VII, §706(a), Oct. 21, 1976, 90 Stat. 2793, 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. Such repeal 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.

<sup>1</sup> See References in Text note below.

### **§665. Rights of way over reservoir sites for wagon road, railroad, or other highway**

In the form provided by existing law, the Secretary of the Interior may file and approve surveys and plats of any right of way for a wagon road, railroad, or other highway over and across any reservoir site when in his judgment the public interests will not be injuriously affected thereby.

(Mar. 3, 1899, ch. 427, §1, 30 Stat. 1233.)

## REPEAL; SAVINGS PROVISION

Section repealed by Pub. L. 94–579, title VII, §706(a), Oct. 21, 1976, 90 Stat. 2793, effective on and after Oct. 21, 1976, insofar as applicable to the issuance of rights-of-way over, under, and through the public lands and lands in the National Forest Systems. Such repeal 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.

### §666. Suits for adjudication of water rights

#### (a) Joinder of United States as defendant; costs

Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit. The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances: *Provided*, That no judgment for costs shall be entered against the United States in any such suit.

#### (b) Service of summons

Summons or other process in any such suit shall be served upon the Attorney General or his designated representative.

#### (c) Joinder in suits involving use of interstate streams by State

Nothing in this section shall be construed as authorizing the joinder of the United States in any suit or controversy in the Supreme Court of the United States involving the right of States to the use of the water of any interstate stream. (July 10, 1952, ch. 651, title II, §208(a)–(c), 66 Stat. 560.)

## CODIFICATION

Section is comprised of subsections (a) to (c) of section 208 of act July 10, 1952. Subsection (d) of section 208 is omitted as it referred to the limitation on the use of any appropriation in act July 10, 1952 to prepare or prosecute the suit in the U.S. District Court for the Southern Division of California, by the *United States v. Fallbrook Public Utility Corporation*.