

CHAPTER FOURTEEN.

WATER RIGHTS.

Sec.	Sec.
422. Vested rights to use water for mining, &c.; right of way for canals.	424. Conditions for use of water on public lands for reclamation.
423. Patents, pre-emptions, and homesteads, subject to vested and accrued water rights.	425. Navigable rivers within public lands to be public highways.

SEC. 422. 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.**

Vested rights to use of water for mining, &c.; right of way for canals.

14 Stat. 253; R. S. 2339. *Atchison v. Peterson*, 20 Wall. 507; *Basey v. Gallagher*, 20 *id.* 670; *Jennison v. Kirk*, 8 Otto, 453; *Broder v. Water and Mining Co.*, S. C., Oct. T. 1879, in manuscript. *Union Mill and Mining Co. v. Ferris*, 2 Saw. C. C. 176. *Lobdell v. Simpson*, 2 Nev. 274; *Lobdell v. Hall*, 3 *id.* 507; *Mining Co. v. Carpenter*, 4 *id.* 534; *Robinson v. Imperial Silver &c.*, 5 *id.* 44; *Covington v. Becker*, 5 *id.* 281; *Hobart v. Ford*, 6 *id.* 77; *Proctor v. Jennings*, 6 *id.* 83; *Vansickle v. Haines*, 7 *id.* 249; *Dalton v. Bowker*, 8 *id.* 201; *Barnes v. Sabron*, 10 *id.* 217; *Shoemaker v. Hatch*, 13 *id.* 261; *Rivers v. Burbank*, 13 *id.* 398; *Caruthers v. Pemberton*, 1 Montana, 111; *Wilson v. O'Neil*, 1 *id.* 284; *Mining Co. v. Halter*, 1 *id.* 296; *Noteware v. Sterns*, 1 *id.* 311; *Parks v. Barkley*, 1 *id.* 514; *Woolman v. Garringer*, 1 *id.* 535; *Atchison v. Peterson*, 1 *id.* 561; *Barkley v. Fileke*, 2 *id.* 59; *Fabian v. Collins*, 2 *id.* 510; *Schilling v. Rominger*, 4 Colo. 100; *Eddy v. Simpson*, 3 Cal. 249; *Irwin v. Phillips*, 5 *id.* 140; *Hill v. Newman*, 5 *id.* 445; *Kelly v. Water Co.*, 6 *id.* 105; *Hoffman v. Stone*, 7 *id.* 47; *Sims v. Smith*, 7 *id.* 149; *Maeris v. Bricknell*, 7 *id.* 262; *Tenney v. Miners' Ditch Co.*, 7 *id.* 335; *Coker v. Simpson*, 7 *id.* 341; *Park v. Kilham*, 8 *id.* 78; *Crandall v. Woods*, 8 *id.* 136; *Thompson v. Lee*, 8 *id.* 275; *Leigh Co. v. Independent Ditch Co.*, 8 *id.* 323; *Bear River &c. Co. v. N. Y. Mining Co.*, 8 *id.* 327; *Hill v. King*, 8 *id.* 337; *White v. Todd*, 8 *id.* 443; *O'Keiffer v. Cunningham*, 9 *id.* 589; *Weaver v. Conger*, 10 *id.* 233; *Wolf v. St. Louis Ind. Water Co.*, 10 *id.* 413; *Hoffman v. Tuol*, 10 *id.* 417; *Weimer v. Lowrey*, 11 *id.* 104; *Butte Canal Co. v. Vaughn*, 11 *id.* 143; *Kimball v. Gearhart*, 12 *id.* 27; *McGarrity v. Byington*, 12 *id.* 426; *Ortman v. Dixon*, 13 *id.* 33; *McDonald v. Bear River, &c.*, 13 *id.* 220; *Burnett v. Whitesides*, 15 *id.* 35; *Clark v. Duvall*, 15 *id.* 85; *Edmond v. Chew*, 15 *id.* 137; *McDonald v. Bear River &c.*, 15 *id.* 145; *Kidd v. Laird*, 15 *id.* 161; *Weaver v. Eureka Lake Co.*, 15 *id.* 271; *Butte T. M. Co. v. Morgan*, 19 *id.* 609; *McKinney v. Smith*, 21 *id.* 374; *Coleman v. Clements*, 23 *id.* 245; *Rupley v. Welch*, 23 *id.* 452; *Everett v. Hydraulic Co.*, 23 *id.* 225; *Phoenix Water Co. v. Fletcher*, 23 *id.* 481; *Netoma Water and Mining Co. v. McCoy*, 23 *id.* 490; *Bear River &c. v. Boles*, 24 *id.* 359; *Wixon v. Bear River Co.*, 24 *id.* 367; *Crary v. Campbell*, 24 *id.* 634; *Wiseman v. McNulty*, 25 *id.* 230;

Union Water Co. v. Crary, 25 *id.* 504; St. John v. Kidd, 26 *id.* 264; Bradley v. Harkness, 26 *id.* 69; American v. Bradford, 27 *id.* 360; Hill v. Smith, 27 *id.* 476; Ferrea v. Knipe, 28 *id.* 340; McDonald v. Askew, 29 *id.* 200; Henderson v. McNaughton, 31 *id.* 26; Davis v. Gale, 32 *id.* 26; Gibson v. Puchta, 33 *id.* 310; Richardson v. Kier, 34 *id.* 63; Nevada Water Co. v. Powell, 34 *id.* 109; Clark v. Willett, 35 *id.* 535; Campbell v. B. R. and W. M. Co., 35 *id.* 679; Richardson v. Kier, 37 *id.* 267; Gregor v. Nelson, 41 *id.* 279; Hanson v. McCune, 42 *id.* 303; Correa v. Frietas, 42 *id.* 339; Smith v. O'Hara, 43 *id.* 371; Stone v. Bumpus, 46 *id.* 218; Ogburn v. Connor, 46 *id.* 347; Quirk v. Tralk, 47 *id.* 453; Broder v. N. W. and M. Co., 50 *id.* 621; Reynolds v. Hosmer, 51 *id.* 205; Titcomb v. Kirk, 51 *id.* 288; Cave v. Crafts, 53 *id.* 135. Decisions Com. G. L. O., Nov. 23, 1869 (Copp's Mg. Dec. 24); April 16, 1871 (*id.* 42); March 21, 1872 (*id.* 82).

Patents, pre-emption, and homesteads subject to vested and accrued water-rights. SEC. 423. 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.

16 Stat. 218; R. S. 2340. Union Mill. and Mg. Co. v. Ferris, 2 Saw. C. C. 176; Union Mill and Mining Co., v. Dangberg, 2 *id.* 451. Vansickle v. Harris, 7 Nev. 249; Barnes v. Sabron, 10 *id.* 217; Thorp v. Freed, 1 Montana, 652; Ogburn v. Connor, 46 Cal. 347; Broder v. N. W. and M. Co., 50 *id.* 621. Decisions Com. G. L. O., April 16, 1871 (Copp's Mg. Dec. 42); March 21, 1872 (*id.* 82).

Conditions for use of water on public lands for reclamation. SEC. 424. The right to the use of water for the reclamation of desert lands, in accordance with the provisions of an act approved March third, eighteen hundred and seventy-seven, shall depend upon bona-fide prior appropriation: and such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation: and all surplus water over and above such actual appropriation and use, together with the water of lakes, rivers and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes subject to existing rights.

19 Stat. 377.

Navigable rivers within public lands to be public highways. SEC. 425. 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.

1 Stat. 468; 2 *id.* 235; R. S. 2476. New Orleans v. U. S., 10 Pet. 662; Pollard v. Hagen, 3 How. 212; Pollard v. Kibble, 9 *id.* 471; Hullett v. Beebe, 13 *id.* 25; Withers v. Buckley, 20 *id.* 84; Railway Co. v. Schurmeir, 7 Wall. 272; Yates v. Milwaukee, 10 *id.* 497; The Daniel Ball, 10 *id.* 557; The Montello, 11 *id.* 411, 20 *id.* 430; Barney v. Keokuk, 4 Otto, 324. Woodman v. Kilburn, 1 Abbott, C. C. 158; Avery v. Fox, 1 *id.* 246; Northern Union Packet Co. v. Atles, 2 Dillon, C. C. 479; Forsyth v. Small, 7 Bissell, C. C. 201; Grange v. Snart, 1 Woolw. C. C. 88. Vansickle v. Harris, 7 Nev. 249; Leake v. Tolls, 8 *id.* 286; Gavit v. Chambers, 3 Ohio, 496; Blanchard v. Porter, 11 *id.* 138; Walker v. Board of Public Works, 16 *id.* 540; Gilman v. Riassell, 18 Mich. 144; Watson v. Peters, 26 *id.* 508; Treat v. Bates, 27 *id.* 390; Bay City Gas Light Co. v. Industrial Works, 28 *id.* 181; Att'y-Gen. v. Evart Booming Co., 34 *id.* 462; Jones v. Pettibone, 2 Wis. 308; Walker v. Stephenson, 4 *id.* 486; Mariner v. Schulte, 13 *id.* 692; Timm v. Bear, 29 *id.* 254; Wright v. Day, 33 *id.* 260; Oleson v. Merrill, 42 *id.* 203; Delaplane v. Railway Co., 42 *id.* 214; Borman v. Sun-

nuches, 42 *id.* 233; *Diedrich v. Railway Co.*, 42 *id.* 248; *Stevens Point Boom Co. v. Reilly*, 44 *id.* 295; same case, 46 *id.* 237; *Hazeltine v. Core*, 46 *id.* 391; *Rippe v. Railway Co.*, 23 *Minn.* 18; *Bresbine v. Railway Co.*, 23 *id.* 114; *McManus v. Carmichael*, 3 *Iowa*, 1; *Haight v. Keokuk*, 4 *id.* 405; *Tomlin v. Railway Co.*, 32 *id.* 106; *Masser v. Hershey*, 42 *id.* 356; *Houghton v. Railway Co.*, 47 *id.* 370; *Bainbridge v. Sherlock*, 29 *Ind.* 364; *Martin v. Evansville*, 32 *id.* 65; *Sherlock v. Bainbridge*, 41 *id.* 35; *Ridgeway v. Ludlow*, 58 *id.* 248; *Taylor v. Fickas*, 64 *id.* 168; *Middleton v. Pritchard*, 4 *Ills.* 510; *People v. St. Louis*, 10 *id.* 351; *Trustees v. Haven*, 10 *id.* 548; *Stolp v. Hoyt*, 44 *id.* 219; *Chicago v. Laffin*, 49 *id.* 172; *Chicago v. McGinn*, 50 *id.* 266; *Hubbard v. Bell*, 54 *id.* 110; *Lovington v. County of St. Claire*, 64 *id.* 56; *Braxton v. Bressler*, 64 *id.* 488; *Houck v. Yates*, 82 *id.* 179; *Lamers v. Nissen*, 4 *Neb.* 245; *Weise v. Smith*, 3 *Oreg.* 445; *Brown v. Kentfield*, 50 *Cal.* 129; *O'Fallen v. Doggett*, 4 *Mo.* 209; *Benson v. Morrow*, 61 *id.* 345; *Duvoige v. Salter*, 6 *La. Ann.* 450; *Boykin v. Shaffer*, 13 *id.* 129. Decision Com. G. L. O. Feb. 20, 1874 (*Copp's L. L.* 783). *Manual of Surveying Instructions* (1 *Lester's L. L.* 714).

CHAPTER FIFTEEN.

DONATIONS.

For all laws granting donation rights to citizens of the several States, see "Local and Temporary Laws," under the caption of each State. Laws granting donation rights.

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