WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1970

ENROLLED

HOUSE BILL No. 622

(By Mr. Speaker, Mr. Bojarzky and Mr. Edgar)

PASSED February 12, 1970

In Effect ninety days from Passage

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE
THIS DATE 2-18-70
ENROLLED

House Bill No. 622
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AN ACT to repeal section one-a, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said chapter twenty of said code by adding thereto a new article, designated article five-c, relating to the dedication of the water resources of the state to the use of the people of the state but recognizing vested rights to such water resources; the control and regulation of rights to use such water resources; the establishing of criteria to determine rights to use such water resources; the powers and duties of the chief of the division of water resources and the water resources board with respect to such control and regula-
tion; the issuance of permits authorizing the construction, installation or use of works or facilities for appropriating such water resources and of certificates authorizing the use or appropriation of such water resources and certificates authorizing the enlargement or modification of an appropriation; the forfeiture, abandonment, transfer, changes, recording and reversion of rights to use such water resources; and the procedure for recognition and protection of both vested and new rights to use such water resources, including administrative regulation and action, with judicial review thereof; and civil and criminal actions to enforce the provisions of said article and the orders, rules and regulations promulgated under the provisions of said article.

Be it enacted by the Legislature of West Virginia:

That section one-a, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter twenty of said code be amended by adding thereto a new article, designated article five-c, to read as follows:
ARTICLE 5C. WATER USE ACT.

§20-5C-1. Declaration of policy.

1 In view of the increased utilization of the water re-
2 sources of the state of West Virginia by agriculture, 
3 industry and other economic activities, those resources 
4 must be protected, conserved and controlled to assure 
5 their highest beneficial use in the interest of the people 
6 of the state. Therefore, it is declared to be the public 
7 policy of the state of West Virginia that the public wel-
8 fare requires that the development, utilization and con-
9 trol of water resources of the state be directed in order 
10 to make the maximum contribution to the public benefit; 
11 that the state should control the development and use 
12 of water for all beneficial purposes; and that public in-
13 terest and public welfare require the state, in the exer-
14 cise of its police powers, to take such measures as shall 
15 effectuate the best utilization of the water resources 
16 of the state with recognition that the public welfare 
17 requires special protection of the water resources of 
18 the state for preservation of an adequate supply of water 
19 for human and animal consumption.
§20-5C-2. Determination of water rights.

1 The state water resources board, with guidance and advice from the director and in accordance with the provisions of this article, shall promulgate rules and regulations which shall govern and control the chief of the division of water resources of the department of natural resources in determining rights in the water of the state and in its appropriation and distribution, all in accordance with the provisions of this article.

§20-5C-3. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

3 (a) "A lawful common law use" shall mean a use recognized as legal under common law doctrines and legal principles, which does not include adverse use or possession until such use or possession establishes prescriptive rights;

5 (b) "Appropriate" shall mean to divert, impound or withdraw a quantity of water from a source of water;

7 (c) "Appropriation" shall mean a right to appropriate;
(d) "Appropriator" shall mean a person having an appropriation;

(e) "Beneficial use" shall mean a use of water for the benefit of the appropriator, other persons or the public, that is consistent with the public interest, including, but not limited to, domestic, agricultural, irrigation, industrial, manufacturing, mining, water power, public, sanitary, fish and wildlife, municipal, navigation, recreational, aesthetic and scenic use;

(f) "Board" shall mean the state water resources board;

(g) "Chief" shall mean the chief of the division of water resources of the department of natural resources;

(h) "Code" shall mean the code of West Virginia, one thousand nine hundred thirty-one, as amended;

(i) "Director" shall mean the director of the department of natural resources;

(j) "Modification" or "modification of an appropriation" shall mean either a change in any works or fa-
cities to appropriate or a change in the purpose or
beneficial use for which there is an appropriation;

(k) "Person," "persons" or "applicant" shall mean
any public or private corporation, institution, associa-
tion, firm or company organized or existing under the
laws of this or any other state or country; the United
States or the state of West Virginia; any federal or
state governmental agency; political subdivision; county
court; municipal corporation; industry; sanitary dis-

t; public service district; drainage district; soil con-
servation district; watershed improvement district;
partnership; trust; estate; person or individual; group
of persons or individuals acting individually or as a
group; or any other legal entity whatever;

(l) "Public water supply" shall mean water which
may be taken by the applicant under the exercise of
the right of eminent domain and with a permit issued
under this article;

(m) "Source of water" shall mean an appreciable
quantity of water capable of being put to beneficial use;

and

(n) "Water resources," "water" or "waters" shall
mean any and all water on or beneath the surface of the ground, whether percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this state and within its jurisdiction, and shall include, without limiting the generality of the foregoing, natural or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except industrial settling basins and ponds and waste treatment facilities), impounding reservoirs, springs, wells and watercourses except that “water resources,” “water” or “waters” shall not include water from wells used for human or animal consumption as long as the water is not used for irrigation or commercial purposes nor shall “water resources,” “water” or “waters” include ponds not impounding streams to the extent that the water therein is consumed for domestic use or irrigation on the land on which the pond is located nor shall “water resources,” “water” or “waters” include waters beneath the surface of the ground which are harmlessly diverted incident to a lawful business pursuit.

§20-5C-4. Powers and duties of chief and of board with respect to water use.

1 (a) In addition to all other powers and duties of the chief of the division of water resources, as pre-
scribed in this article or elsewhere by law, the chief,
under the supervision of the director and in accordance
with the rules and regulations promulgated by the board,
shall have and may exercise all those powers and the
authority necessary to administer and enforce the pro-
visions and objectives of this article and all orders issued
pursuant to the provisions thereof or pursuant to the
rules and regulations of the board and shall perform
the following duties:

(1) Keep a public record of all applications for per-
mits and certificates and other documents filed in his
office and of the date and hour each was filed in his
office;

(2) Keep a public record of all permits, certificates
and orders affecting permits and certificates and of
any amendment of any permit, certificate or order affect-
ing permits or certificates, and keep all of these indexed
in accordance with the source of water and the name
of the applicant or appropriator;

(3) Cooperate with, assist, advise and coordinate
plans with the federal, state and local officers and agen-
cies, officers and agencies of other states, interstate
agencies and other interested persons, in any matter
relating to the appropriation, use, conservation, quality,
disposal and control of waters and activities related
thereto; and

(4) Apply for, accept, administer and expend grants,
gifts and loans from the federal government and any
other public or private sources on behalf of the state
for the purposes of this article, and adopt procedures
and do acts not otherwise restricted by law which are
necessary to qualify the state to receive such grants,
gifts and loans. The chief shall pay all moneys so re-
ceived into a special fund hereby created in the state
treasury, which fund shall be expended under the di-
rection of the chief solely for the purpose or purposes
for which the grant, gift or loan shall have been
made.

(b) In addition to all other powers and duties of the
water resources board, as prescribed in this article or
elsewhere by law, the board shall have and may exer-
cise the power and authority to promulgate rules and
regulations, in accordance with the provisions of chapter
twenty-nine-a of this code, to implement and make effective the powers, duties and responsibilities vested in the board and in the chief by the provisions of this article, including the hiring of one or more individuals to serve as hearing examiners on a full or part-time basis. Such hearing examiners may be attorneys at law admitted to practice before any circuit court of this state. All such hearing examiners shall be individuals authorized to take depositions under the laws of this state. The board shall also:

(1) Prescribe reasonable fees or service charges for any services rendered except that no fee or service charge shall be imposed in relation to the filing of a declaration of appropriation with the chief pursuant to the provisions of section nine of this article; and

(2) Enter into contractual agreements necessary to carry out the provisions of this article, including agreements with federal, state and local officers and agencies, officers and agencies of other states, interstate agencies and other interested persons.
§20-SC-5. Water reserved to the people.

1 The waters of the state belong to the public and are
2 hereby reserved and dedicated to the use of the people
3 of the state and are subject to appropriation and bene-
4 ficial use only as provided in this article.

§20-SC-6. Right to appropriate; permit; limitation on eminent
domain.

1 (a) An appropriation can be acquired only as pro-
2 vided in this article. No right to the use of water, either
3 appropriated or unappropriated, shall be acquired here-
4 after by adverse use or possession.

5 (b) Except for existing rights, as provided in sections

6 seven and nine of this article, a right to appropriate
7 water or to construct, install or use works or facilities
8 for appropriating water, or any substantial enlargement
9 or modification of an appropriation, shall be obtained by
10 first making application to the chief for a permit to appro-
11 priate, and not otherwise. The board shall prescribe
12 the form and contents of the application and the pro-
13 cedure for filing the application. If a permit is granted
14 and the works or facilities for such appropriation, en-
largement or modification are constructed or installed, a certificate of appropriation therefor may be obtained as provided in section seventeen of this article.

(c) No person having the right of eminent domain may exercise such right hereafter as to water rights except to the extent that he has an appropriation or a permit under the provisions of this article which authorizes or will authorize the right to appropriate which may be sought under the eminent domain proceedings.

§20-5C-7. Existing rights; initial protection of existing rights.

(a) A lawful common-law use of water actually being made on the first day of July, one thousand nine hundred seventy-one, or actually made within five years before such date, or made in conjunction with works being constructed in good faith on such date, if such works shall be completed and water actually applied for such use within a reasonable time thereafter, is a vested right and a lawful appropriation under this article.

Nothing in this article shall take away or impair such vested right and lawful appropriation of any person to use the waters of the state: Provided, That such vested
right and lawful appropriation is subject to the applicable provisions of this article and the rules and regulations adopted under this article. The extent of a vested right or lawful appropriation under this section shall not exceed the quantity of water which was actually used or applied for the common-law use, or be a right which may be exercised in a manner or for a purpose different from that on which the right is based.

(b) Prior to the time the chief has followed the procedure in section nine of this article and has determined the vested rights within a particular area of the state, a common-law claimant with a vested right to appropriate in that area of the state shall have the right, without having a certificate of appropriation or permit under the provisions of this article, to injunctive relief and damages to protect his vested right to appropriate.

§20-5C-8. Priority of appropriation; injunctive relief and damages.

(a) Priority of appropriation gives prior right, but
prevent changes in the condition of water occurrence, such as, the increase or decrease of stream flow, or the lowering of a water table, artesian pressure or water level by later appropriators, if the prior appropriator can reason-
ably acquire his water under the changed conditions.

(b) Priority of appropriation perfected under this article other than under sections seven and nine shall be determined from the time of the filing of an applica-
tion for a permit in the office of the chief.

(c) Priority of appropriation perfected under section seven of this article shall be determined as provided in section nine of this article.

(d) Any person with a certificate of appropriation under the provisions of either section nine or section seventeen of this article or with a permit under any section of this article shall have the right to injunctive relief and damages to protect his rights thereunder.

(e) An appropriator shall have the rights to injunctive relief and damages to protect his prior appropriation against an appropriator with a later priority.
§20-5C-9. Determination of existing rights; filing declaration of appropriation.

(a) A claimant of an existing right under section seven of this article shall file a declaration of appropriation with the chief as set out in this section and on the form prescribed by the board for this purpose. The declaration shall be considered correct and authorizes that use until a certificate of appropriation is issued or denied. Priority of such right dates from the day work was begun in order to appropriate water if due diligence was used in completing the work; otherwise, it dates from the day water was used or applied for the lawful common-law use.

(b) The chief shall, as soon as practicable, determine the rights of persons who may have vested rights in each river basin of the state, or in any portion thereof. To accomplish this, the board shall (1) by order set a definite time period for filing declarations of appropriation within a particular area; and (2) complete publication of the order, as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, at least fifteen days prior to the beginning
of the period in a newspaper of general circulation in
that area of the state and give notice of the order by
registered or certified mail to any person who may have
existing appropriations within the area who has filed a
request for notice from the chief of the period, when
fixed, for filing such declarations. Notices served shall
be served at least fifteen days prior to the beginning of
the period.

(c) The chief, or his duly authorized representative,
shall make such investigations, inspections and inquiries
as he considers necessary and proper of rights asserted
by declarations filed under this section and, within a
reasonable time, shall determine such existing appro-
priations and prepare a summary thereof. The chief
shall serve a copy of the summary of such determinations
by registered or certified mail on each person who filed
a declaration with respect to the area. Any person claim-
ing to be adversely affected or aggrieved by a determi-
nation, or a denial thereof, as to his own or another's
right may file with the chief a request for an informal
hearing within thirty days after the date on which he
received a copy of the summary. The chief shall cause notice of such right to a hearing to be served with the copy of the summary of determinations. If a hearing is requested, the chief shall give reasonable notice of the time and place of the hearing to each person who filed a declaration with respect to the area. The testimony at this hearing need not be recorded. (d) If a hearing request is not timely made with respect to a determination, or if, after the hearing, the chief finds the determination to have been correctly made, he shall immediately issue a certificate of appropriation. If the chief finds the determination to be incorrect, he shall correct it and either issue a certificate of appropriation or deny the certificate according to his findings, and send a notice of his action to each person who filed a declaration with respect to the area. The chief shall also cause to be served, with the notice of his action, a notice which shall advise that any person claiming to be aggrieved or adversely affected by the final action of the chief as to his own or another's right may appeal to the board by filing a notice of appeal, on the form prescribed by the
board for such purpose, with the board, in accordance with the provisions of section twenty-two of this article, within thirty days after the date upon which such person received notice of the final action of the chief. Certificates of appropriation issued under the provisions of this section shall have the same form and contents as those issued under the provisions of section seventeen of this article.

§20-5C-10. Forfeiture and abandonment of existing rights.

1 After the chief has followed the procedure in section nine of this article and determined the existing water rights within any particular area of the state, the water rights in such area shall be deemed established by the certificates of appropriation recognizing such rights as issued by the chief under the provisions of that section; any rights to any additional water within such area will be subject to appropriation in accordance with the other provisions of this article; and any rights to such additional water which may have existed under the provisions of section seven of this article will have been forfeited and
abandoned by not having been asserted in proceedings instituted in accordance with section nine of this article.

§20-5C-11. Application for permit; notices; objections.

(a) Any person, not having an appropriation under the provisions of this article, who desires to appropriate water or to use, construct or install works or facilities to appropriate water, or who having an appropriation under the provisions of this article desires an enlargement or a modification thereof, shall apply to the chief for a permit therefor. Upon receipt of any such application, the chief shall prepare a notice containing the location and extent of the proposed appropriation or the proposed enlargement or modification, the name and address of the applicant and any other information he considers pertinent. The notice shall state that, within fifteen days after publication of notice is completed, persons may file with the chief written objections, stating the name and address of the objector and any facts tending to show that rights of the objector or the public interest would be adversely affected by the proposal.

(b) The chief shall publish the notice, at the appli-
cant's expense, as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper of general circulation in the river basin area of the state in which the water is to be appropriated. The chief shall also have notice served by registered or certified mail upon appropriators of water and applicants for and holders of permits who, according to the records in his office, may be affected by the proposed appropriation or proposed enlargement or modification and may serve notice upon any governmental agency, political subdivision or person. Such notice shall also be delivered to the director of sanitary engineering of the state department of health. Notices served shall provide at least fifteen days for the filing of objections.

(c) Within fifteen days after publication of the notice is completed, any interested person may file an objection. Any person upon whom notice is served may file an objection within the time period provided in the notice. If no objection is filed, the chief, or his duly authorized representative, shall make such investigations,
inspections and inquiries as he considers necessary and proper and proceed to make his determination upon the application within a reasonable time. In addition, if an objection is filed within the time prescribed, the chief shall hold an informal hearing after giving reasonable notice to the applicant and to all timely objectors and shall enter an order granting, denying or conditioning the application, in whole or in part, within thirty days after the conclusion of the hearing. Notice of the order shall be served by registered or certified mail upon the applicant and upon all timely objectors. The testimony at such hearing need not be recorded.


1 The board may, by rules and regulations, designate types of appropriations which are exempt from the provisions of section eleven and provide simplified procedures for ruling on the applications therefor. Any procedure for ruling on such applications shall comply with the provisions of chapter twenty-nine-a of this code.


1 (a) The chief shall issue a permit if he finds that:
(1) Rights of prior appropriators will not be unduly affected;

(2) The proposed means of diversion or construction are efficient and adequate;

(3) The proposed use is a beneficial use; and

(4) The proposed appropriation or proposed enlargement or modification is in the public interest.

(b) In determining the public interest, the chief shall consider:

(1) The benefit to the applicant resulting from the proposal;

(2) The economic effect of the activity resulting from the proposal;

(3) The effect on fish and game resources and on public recreational opportunities;

(4) The effect on public health;

(5) The effect of loss of alternate uses of water that might be made within a reasonable time if not precluded or hindered by the proposal;

(6) Harm to other persons resulting from the proposal;
(7) The intent and ability of the applicant to perfect
the appropriation; and
(8) The effect upon access to navigable or public
waters.

§20-5C-14. Competing applications; preference.
1 When there are competing applications for water from
2 the same area or source, and the water available is ins-
3 sufficient to supply all applications, the chief shall give
4 preference first to public water supply and then to the
5 use which alone or in combination with other present and
6 foreseeable uses will constitute the most beneficial use
7 in the interest of the public welfare.

§20-5C-15. Terms of permit.
1 The chief may issue a permit for less than the amount
2 of water requested, but in no case may he issue a permit
3 for more water than can be beneficially used for the
4 purposes stated in the application. He may require alter-
5 ation of plans and specifications for the proposed appro-
6 priation of proposed enlargement or modification. He may
7 issue a permit subject to terms, conditions, restrictions
8 and limitations he considers necessary and proper to pro-
tect the rights of others and the public interest, but no
such terms, conditions, restrictions or limitations shall
make the appropriation to be acquired thereunder subject
to termination or transfer in any manner other than as
provided by this article.

§20-5C-16. Time for construction and completion.

A permit may place a time limit for beginning construc-
tion or installation and perfecting an appropriation.
Reasonable extensions of time shall be permitted for
good cause shown. The chief may require progress re-
ports, at such time intervals as he deems necessary, set-
ting forth the steps taken to perfect the appropriation and
the progress made toward perfection of the appropriation.

§20-5C-17. Certificates.

When construction or installation of the works or
facilities is completed and before commencement of the
use of water, the permit holder shall notify the chief
that he has perfected his appropriation and apply for
certificate of appropriation. If the chief determines that
the appropriation has been perfected in substantial com-
pliance with the permit, he shall issue the permit holder
a certificate of appropriation. The certificate shall set out such pertinent information as the board may pre- scribe by rule or regulation, but shall set forth clearly the source of water to which it is applicable, the quan- tity of water use permitted thereby and for what uses, and any terms, conditions, restrictions and limitations applicable to the appropriation, but no such terms, condi- tions, restrictions or limitations shall make the appro- priation subject to termination or transfer in any manner other than as provided in this article: Provided, That no permit or certificate of appropriation shall be necessary when the business activity engaged in by a person entails the use of portable equipment which is moved from site to site and the consumption of water used in said business activity is for a temporary period only.

§20-5C-18. Transfer and change of appropriations; recording.

(a) The right to use water under an appropriation shall be appurtenant to the land or place where it has been beneficially used. An appurtenant water right shall pass with a conveyance or transfer of the land, including
a transfer by operation of law, unless specifically excepted therefrom.

(b) With the permission of the chief, all or any part of an appropriation may be severed from the land or place to which it is appurtenant, may be sold, leased or transferred for other purposes or to other land or place and be made appurtenant to other land or place.

c) A deed, lease, contract or other instrument transferring all or any part of an appropriation may be filed for record in the office of the chief and a copy thereof may be filed for record in the office of the clerk of the county court of each county in which the appropriation or any part thereof is or may be used.


(a) A deed, lease, contract or other instrument transferring all or any part of an appropriation shall be void as against a subsequent purchaser who in good faith paid a valuable consideration without notice for the appropriation or any portion of it.

(b) A deed, lease, contract or other instrument transferring all or any part of an appropriation which is re-
corded in all the offices as permitted by section eighteen
of this article is constructive notice of its contents to
subsequent purchasers of the appropriation or any por-
tion of it. An unrecorded instrument is valid between
the parties to it and as against one who has notice of it.

§20-5C-20. Abandonment, forfeiture and reversion of appro-
priations.

(a) The chief may declare an appropriation to be
wholly or partially abandoned and to that extent revoke
the certificate of appropriation if an appropriator, with
intention to abandon, does not make beneficial use of
all or a part of his appropriated water.

(b) The chief may declare an appropriation to be
wholly or partially forfeited and shall to that extent
revoke the certificate of appropriation if an appropriator
voluntarily fails or neglects, without good cause, to make
use of all or a part of his appropriated water for a
period of five successive years.

(c) The chief may declare an appropriation to be
wholly or partially forfeited and shall to that extent re-
voke the certificate of appropriation if an appropriator
ceases to use all or a part of his appropriated water in
substantial compliance with the provisions of the cer-
tificate.

(d) An appropriation or a part thereof so forfeited
or abandoned reverts to the state and the water becomes
unappropriated water.

§20-5C-21. Public water supply; preferred use permit.

(a) An applicant who asserts and proves a preferred
use shall be granted a permit and shall be granted prefer-
ence over other appropriators. A preferred use of water
must be for a public water supply.

(b) To be entitled to a preference an applicant must
show that:

(1) His use will be prevented or substantially inter-
fered with by a prior appropriation or prior permit for
a proposed appropriation;

(2) The use is a preferred use;

(3) The applicant will compensate the prior appro-
priator or permit holder for a prior appropriations for
any damages which will be sustained by the granting
of the preference; and

(4) Such other facts as the board requires by rule
or regulation.
§20-5C-22. Appeal to water resources board.

1 (a) Any person who claims to be aggrieved or adversely affected by any action or nonaction of the chief under the provisions of this article or under applicable rules and regulations of the board may appeal to the water resources board. The person so appealing shall be known as the appellant and the chief shall be known as the appellee.

2 (b) Such appeal shall be perfected by filing a notice of appeal, on the form prescribed by the board for such purpose, with the board within thirty days after the date upon which the appellant received notice of such action by the chief or after such refusal of the chief to act, as the case may be. The filing of the notice of appeal shall not stay or suspend the execution of the action appealed from; but, if it appears to the director or the board that an unjust hardship to the appellant will result from the execution of the action pending determination of the appeal, the director or the board may grant a suspension of such action and fix its terms.

3 The notice of appeal shall set forth details of the action
or nonaction complained of and the ground upon which
the appeal is based. A copy of the notice of appeal
shall be filed by the board with the chief within three
days after the notice of appeal is filed with the board.
(c) With the consent of the board and upon such
terms and conditions as the board may prescribe, any
person affected by such action or nonaction by the chief
may by petition intervene as a party appellant or ap-
pellee. The board shall hear the appeal de novo, and
evidence may be offered on behalf of the appellant and
appellee, and, with the consent of the board, by any in-
tervenors.
(d) All of the pertinent provisions of article five,
chapter twenty-nine-a of this code shall apply to and
govern the hearing on an appeal authorized by this sec-
tion and the administrative procedures in connection
with and following such hearing, with like effect as if the
provisions of said article five were set forth in extenso
in this section, with the following changes or excep-
tions:
(1) The appeal hearing shall be held in the city of
Charleston, Kanawha county, West Virginia: Provided, however, That if there are numerous appeals pending at the same time which relate to water rights in the same source in another area of the state, the board may select a centrally located place in such area for the appeal hearings and timely notify the persons involved in the appeals of such change in the place for the hearings; and

(2) In accordance with the provisions of section one, article five of said chapter twenty-nine-a, all of the testimony at any such hearing shall be recorded by stenographic notes and characters or by mechanical, magnetic or electrical means. Such reported testimony shall in every appeal hearing under this article be transcribed.

(e) Any such appeal hearing shall be conducted by a quorum of the board, but the parties may by stipulation agree to take evidence before a hearing examiner employed by the board. Upon request of any party to the appeal, the evidence taken before a hearing examiner shall be taken in a county in which the appropriation in issue, or any part thereof, is, may be or would
be used. For the purpose of conducting such appeal hearing, any member of the board and the secretary thereof shall have the power and authority to issue subpoenas and subpoenas duces tecum in the name of the board, in accordance with the provisions of section one, article five, chapter twenty-nine-a of this code. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced as specified in section one, article five of said chapter twenty-nine-a, and all of the said section one provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoenas and subpoenas duces tecum issued for the purpose of an appeal hearing hereunder.

(f) Any such hearing shall be held within twenty days after the date upon which the board received the timely notice of appeal, unless there is a postponement or continuance. The board may postpone or continue any hearing upon its own motion, or upon application of the appellant, the appellee or any intervenor for good cause shown. The chief shall be represented at any such hearing by the attorney general or his assistants. At
any such hearing the appellant and any intervenor may represent himself or be represented by an attorney at law admitted to practice before any circuit court of this state.

(g) After such hearing and consideration of all of the testimony, evidence and record in the case, the board shall make and enter such order as the chief should have entered, or take such action as the chief should have taken. In determining its course of action, the board shall take into consideration all of the factors which the chief was required to consider.

(h) Any such order made and entered by the board shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and a copy of such order and accompanying findings and conclusions shall be served in person or by registered or certified mail, upon the appellant and any intervenor, and their attorneys of record, if any, and upon the appellee.

(i) The board shall also cause a notice to be served with a copy of such order, which notice shall advise the
appellant, the appellee and any intervenor of their right to judicial review in accordance with the provisions of section twenty-three of this article. The order of the board shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of section twenty-three of this article.


(a) Any person or the chief claiming to be aggrieved or adversely affected by the action or the nonaction of the board or by a final order made and entered by the board after such appeal hearing, held in accordance with the provisions of section twenty-two of this article, is entitled to judicial review thereof. All of the pertinent provisions of section four, article five, chapter twenty-nine-a of this code shall apply to and govern such review with like effect as if the provisions of said section four were set forth in extenso in this section, except that, as to cases involving an order granting or denying an application for a permit or certificate of appropriation, or approving or modifying the terms and conditions of
a permit or a certificate of appropriation, or revoking a certificate of appropriation or any part thereof, the peti-
tion shall be filed, within the time specified in said sec-
tion four, in the circuit court of a county in which the appropriation in issue, or any part thereof, was, may be or would be used.

(b) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals, in accordance with the pro-
visions of section one, article six, chapter twenty-nine-a of this code, except that notwithstanding the provisions of said section one the petition seeking such review must be filed with the supreme court of appeals within ninety days from the date of entry of the judgment of the circuit court.

(c) Legal counsel and services for the chief in all appeal proceedings in the circuit courts and in the su-
preme court of appeals shall be provided by the attorney general or his assistants and in appeal proceedings in the circuit courts by the prosecuting attorneys of the
several counties as well, all without additional compen-
sation, or the board or chief, with the written approval
of the attorney general, may employ special counsel to
represent the chief in a particular proceeding.

§20-5C-24. Actions to abate nuisances; injunctive relief.

(a) Whether any violation of the provisions of this
article, or the applicable rules and regulations of the
board, or any order of the chief or the board shall result
in prosecution or conviction or not, any such violation
is declared to be against the public interest and shall
be deemed a nuisance which may be abated upon appli-
cation by the chief to the circuit court of the county
in which such nuisance, or any part thereof, shall exist,
or to the judge thereof in vacation. Upon application
by the chief, the circuit courts of this state may by
mandatory or prohibitive injunction compel compliance
with the provisions of this article, the applicable rules
and regulations of the board and all orders of the chief
or of the board. The circuit courts may issue temporary
injunctions in any case pending a decision on the merits
of the case.
(b) The judgment of the circuit court upon any application permitted by the provisions of this section shall be final unless reversed, vacated or modified on appeal to the supreme court of appeals. Any such appeal shall be sought in the manner provided by law for appeals from circuit courts in other civil cases, except that the petition seeking such review must be filed with the supreme court of appeals within ninety days from the date of entry of the judgment of the circuit court.

The chief shall be represented in all such proceedings by the attorney general or his assistants and in such proceedings in the circuit courts by the prosecuting attorneys of the several counties as well, all without additional compensation, or the board or chief, with the written approval of the attorney general, may employ special counsel to represent the chief in a particular proceeding.

§20-5C-25. Violations; criminal penalties.

Any person who fails or refuses to discharge any duty imposed upon him by this article, or by any applicable rules and regulations of the board, or by any order of
the chief or of the board, or who appropriates any water
or uses or constructs works therefor without the right
or authority to do so at that time under the provisions
of this article and applicable rules and regulations of the
board, or who knowingly makes a false or misleading
statement in a declaration of an existing right, shall be
guilty of a misdemeanor, and, upon conviction thereof,
shall be punished for a first offense by a fine of not less
than twenty-five dollars nor more than one hundred
dollars, and for a second offense by a fine of not less than
two hundred dollars nor more than five hundred dollars,
and for a third and each subsequent offense by a fine
of not less than five hundred dollars nor more than one
thousand dollars or by imprisonment for a period not to
exceed six months, or in the discretion of the court by
both such fine and imprisonment. Each day upon which
such violation continues shall constitute a separate
offense.


This article may be known and cited as the “Water

1. In the event of any inconsistency or conflict between
2. any provision of this article and any provision in any
3. other article of this code, the provisions of this article
4. shall control.


1. If any of the provisions of this article or the application
2. thereof to any person or circumstance is held invalid,
3. such invalidity shall not affect other provisions or appli-
4. cations of the article, and to this end the provisions of
5. this article are declared to be severable.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Sonpor
Chairman Senate Committee

Clayton L. Davidson
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Howard McCarthy
Clerk of the Senate

Cam Blankenship
Clerk of the House of Delegates

Hannah Jackson
President of the Senate

J. F. Bevill
Speaker House of Delegates

The within bill was approved this the 18th day of February 1970.

Archie Shane Jr.
Governor
PRESENTED TO THE
GOVERNOR

Date 2/16/70
Time 2:40 p.m.