§ 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.


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., 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.