

42-389. Discrimination in rates unlawful; recovery of illegal payments; costs and attorney fees. It shall not be lawful for any person, association or corporation owning or controlling or claiming to own or control, any ditch, canal or reservoir carrying or storing or designed for the carrying or storing of water taken from any natural stream, or other source of supply within this state, to be carried or stored and delivered for compensation, for irrigation, milling, sanitary or domestic purposes, to persons not interested in such ownership or control, to demand, bargain for, accept or receive from any person who may apply for water for any of the aforesaid purposes, any money or other valuable thing whatsoever, or any promise or agreement therefor, directly or indirectly, as royalty, bonus, or premium, prerequisite or condition precedent to the right or privilege of applying or bargaining for or procuring such water; but such water shall be carried or stored and delivered according to the right of the person entitled to the enjoyment thereof, upon the payment or tender of the charges fixed by the county commissioners of the proper county, as is or may be provided by law.

Any and all moneys and every valuable thing or consideration of whatsoever kind which shall be so as aforesaid demanded, charged, bargained for, accepted, received or retained contrary to the provisions of this section, shall be deemed and held an additional and corrupt rate, charge or consideration for the water intended to be furnished and delivered therefor, or because thereof, and wholly extortionate and illegal, and when paid, or delivered, or surrendered, may be recovered back by the party or parties paying, delivering or surrendering the same, from the party to whom or for whose use the same shall have been paid, delivered, or surrendered, together with all costs of suit, including reasonable fees of attorneys of plaintiff, by proper action in any court having jurisdiction.

History: L. 1891, ch. 133, art. 8, § 1; May 20; R.S. 1923, 42-389.