

Gujarat Irrigation and Drainage Act, 2013

GUJARAT

India

Gujarat Irrigation and Drainage Act, 2013

Act 6 of 2013

- Published on 22 March 2013
- Commenced on 22 March 2013
- [This is the version of this document from 22 March 2013.]
- [Note: The original publication document is not available and this content could not be verified.]

Gujarat Irrigation and Drainage Act, 2013(Gujarat Act No. 6 of 2013)(First published, after having received the assent of the Governor, in the "Gujarat Government Gazette", on the 22nd March, 2013)An Act to provide for irrigation and drainage in the State of Gujarat.Whereas it is necessary to make provisions for the construction relating to irrigation in the State of Gujarat and for the matters connected therewith and incidental thereto.It is hereby enacted in the Sixty-fourth Year of the Republic of India as follows:-

Chapter I Preliminary

1. Short title, extent commencement and application.

(1)This Act may be called the Gujarat Irrigation and Drainage Act, 2013.(2)It extends to the whole of the State of Gujarat.(3)It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.(4)It shall apply to all the works constructed or maintained relating to irrigation by the State Government, State Government Institutions and Grant-in-Aid Institutions of the State and includes all services rendered thereof.

2. Definitions.

- In this Act, unless the context otherwise requires, -(1)"Appellate Authority" means Canal-Officer of the rank of the Executive Engineer of the concerned project or part of the project;(2)"canal" includes -(a)all canals, channels, water-courses, pipes and reservoirs constructed, maintained or controlled by the Government for the supply or storage of water;(b)all works, embankments, structures and supply and escape-channels connected with such canals, channels, pipes or reservoirs; and all roads constructed for the purpose of facilitating the construction or maintenance of such canals, channels, pipes or reservoirs;(c)all field channels, drainage-works and flood embankments;(d)river, stream,

lake, natural collection of water or natural drainage-channels or any part thereof, to which the State Government may apply the provisions of section 4, or the water of which has been applied or used before the passing of this Act for the purpose of any existing canal;(e)all lands belonging to the Government which are situated on a bank of any canal, and which have been appropriated under the orders of the Government for the purposes of such canal;(f)all tubewells, artesian wells, borewells and dugwells, constructed by the Government and maintained or controlled by the Government;(g)percolation tank or pond used for recharge of ground water;(3)"Canal-officer" means any person or an officer appointed as a canal-officer under section 3 for the purposes of the Act;(4)"drainage work" means any work in connection with a system of irrigation or reclamation made or improved by the Government for the purpose of the drainage, whether under the provisions of section 14 or otherwise, and includes escape-channels from a canal, dams, weirs, embankments, sluices, groins and other works-connected therewith, but does not include works for the removal of sewage from towns;(5)"Federation" means a federation of recognised associations;(6)"field channel" means any channel or pipe, constructed and maintained by the holder of a land either by himself or jointly with other holders of lands or constructed by the Government and maintained by such holder or holders beyond a water-course and includes all subsidiary works connected with any such channel or pipe;(7)"flood-embankment" means any embankment constructed or maintained by the Government in connection with any system of irrigation or reclamation works for the protection of lands from inundation or which may be declared by the Government to be maintained in connection with any such system, and includes all groins, spurs, dams and other protective works connected with such embankments;(8)"Government" means the State Government;(9)"land under irrigable command of a canal" means such lands as are irrigated or capable of being irrigated from the canal, being under its command and shall include such lands as are or shall be deemed to be irrigated within the meaning of section 34;(10)"Lift Irrigation Scheme" means the scheme in which the water is pumped from water body such as river, stream, drain, nalla, kotar, lake, pond, reservoir, bandhara, canal, tube-well, natural collection of water, etc. and supplied to the area situated at higher elevation for the purpose of irrigation or other purpose;(11)"outlet" means an opening in a canal through which water is delivered into a water-course, field-channel, pipeline or directly to any land;(12)"owner" includes every person having a joint interest in the ownership in land, building or such other things; and all rights and obligations which attach to an owner under the provisions of this Act shall attach jointly and severally to every person having such joint interest in the ownership;(13)"prescribed" means prescribed by rules made under section 47;(14)"Water Conservation Structure" means any structure permanent or otherwise constructed or maintained for the purpose of impounding or diverting water of any river, stream, lake or any natural collection of water and includes any dam, weirs, bandhara, tidal regulator, checkdam, sluices, head walls, groins, spreading channels or any other works constructed for water conservation;(15)"water-course" means a channel constructed and maintained at the cost of the Government to supply water from an outlet;(16)"Water Users' Association (WUA)" means an Association as defined by clause (1) of section 2 of the Gujarat Water Users Participatory Irrigation Management Act, 2007(in short "PIM Act,2007, (Gujarat 18 of 2007)");

3. Appointment of Canal-Officer.

- For carrying out the purposes of this Act, the State Government may by notification in the Official Gazette -(a)appoint such officers not below the rank of Overseer or Additional Assistant Engineer as the canal-officer and assign to them such powers and such duties under this Act, as the State Government may deem fit and also specify the area of jurisdiction;(b)authorise or empower the water users' association to appoint the office bearer of the Association to exercise such powers and perform such duties of the canal-officer,as the State Government may deem fit and also specify the area of jurisdiction.

Chapter II

Construction and Maintenance of Canal Systems

(A)Application of Water for Purposes of Canals.

4. When water-supply to be applied to canal.

- Whenever it appears expedient or necessary to the Government that the water of any river or stream flowing in a natural channel, or of any lake or any other natural collection of still water, should be applied or used by the State Government for the purposes of any existing or projected canal, the State Government may, by notification in the Official Gazette, declare that the said water shall be so applied or used after such date as may be specified in the said notification, not being earlier than three months from the date thereof.(B)Power of Entry on Land, etc.

5. Power of canal officer for applying water-supply.

- At any time after the date specified under section 4, any canal-officer duly empowered in this behalf may enter on any land, remove any obstruction, close any channel and do any other thing necessary for such application or use of the said water and for such purposes may take with him, or depute or employ, such employees and other persons as he deems fit.

6. Entry for inquiry.

- Whenever it is expedient or considered necessary to make any inquiry or examination in connection with a projected canal, or with the maintenance of an existing canal, any canal-officer duly empowered, in this behalf, and any person acting under the general or special order of any such canal-officer may,-(a)enter upon such land as he may think necessary for the purpose, and(b)exercise all powers and do all things in respect of such land as if the State Government had issued a notification under the provisions of section 4 of the Land Acquisition Act, 1894, (1 of 1894) to the effect that such land in that locality is likely to be needed for the public purpose, and(c)set up and maintain water-gauges and do all other things necessary for the prosecution of such inquiry and examination.

7. Power to inspect and regulate water-supply.

- Any canal-officer or any person acting under the general or special order of any such canal-officer, may enter upon any land, building or water course, in respect of which any water-rate is chargeable, for the purpose of inspecting or regulating the use of the water supplied, or of measuring the land irrigated thereby or chargeable with a water-rate, and of doing all things necessary for the proper regulation and management of the canal from which such water is supplied.

8. Power to enter for repairs and to prevent accidents.

- In case of any accident being apprehended or happening to a canal, any canal-officer and person acting under the general or special order of any such canal-officer, may enter upon any land adjacent to such canal, and may take away trees and other materials, and execute all works, which may be necessary for the purpose of preventing such accident or repairing any damage done.

9. Notice to occupied of building, etc.

- When a canal-officer or other person proposes, under section 6, 7 or 8, to enter into any building or enclosed court or garden attached to a dwelling-house, not supplied with water from a canal, and not adjacent to a flood-embankment, he shall give prior notice to the occupier of such building, court or garden, as the urgency of the case may allow.(C)Canal Crossings.

10. Means of crossing canals to be provided and obstruction to drainage to be avoided.

- Means of crossing canals to be provided and obstruction to drainage to be avoided. - (1) The crossing canals shall be provided at such places as the Government thinks necessary for the reasonable convenience of the inhabitants of the adjacent land, and suitable bridges, culverts or other works shall be constructed to prevent the drainage of the adjacent land being obstructed by any canal.(2)The Government may approve the crossing of canal systems by all types of utility lines, if it deems fit, after obtaining necessary deposits, rent, maintenance and repair charges and other applicable charges.(3)The Government may approve the crossing of natural drain, diversion of natural drain by earthen bund or by any means if it deems fit.(D)Removal of Obstructions to Drainage.

11. State Government may prohibit formation of obstructions of rivers, etc., within certain limits.

(1)Whenever it appears to the State Government that injury to the public health', or public convenience, or to any canal or to any such land for which irrigation from a canal is available, has arisen or may arise from the obstruction of any river, stream or natural drainage-course, it may, by notification in the Official Gazette, prohibit, within the limits to be defined in such notification, the formation of any such obstruction, or may, within such limits, order the removal or other

modification of such obstruction.(2)On publication of the notification under sub-section (1), the said river, stream or natural drainage channel, as is comprised within such limits, shall be held to be a drainage work as defined by clause (4) of section 2.

12. Canal-officer may direct any person to remove obstruction.

- Any canal-officer may, after publication of the notification under sub-section (1) of section 11, by an order, direct to any person causing or having control over any such obstruction to remove or modify the same within such time as may be specified in such order.

13. Canal-officer may cause obstruction to be remove.

- If within the time specified under section 12 such person does not comply with the order, the canal-officer may cause the obstruction to be removed or modified at the cost of such person; and if the person to whom the order was issued does not, when called upon, pay the expenses of such removal or modification, such expenses shall be recoverable by the Collector as an arrear of land-revenue.(E)Construction of Drainage Works.

14. When drainage works are necessary, State Government may order scheme to be carried out.

(1)Whenever it appears to the State Government that any drainage work is necessary for the public health or for the improvement of the proper cultivation or irrigation of any land, or that protection from floods or other accumulations of water, or from erosion by a river, is required for any land, the State Government may cause a scheme for such work to be drawn up and carried into execution.(2)The person authorised by the State Government may authorise any person to draw up and execute the scheme referred to under sub-section (1) and thereupon such person may exercise in connection therewith the powers conferred on canal-officer under sections 6, 7 and 8 and shall be liable to the obligations imposed upon canal-officer under sections 9 and 22.

Chapter III

Construction and Maintenance of Field Channels

15. Construction and maintenance Field Channels.

(1)Where there does not exist field channel in any service area in which lands are capable of being irrigated from a canal, the State Government may construct the field channel in the public interest at the cost of the State Government, which is likely to be needed for construction of proposed field channel.(2)The field channel constructed by the State Government under subsection (1) shall be maintained in accordance with the rules as may be prescribed.

Chapter IV

Supply of Water

16. Application for supply of water.

(1)Every person desiring to have a supply of water from a canal shall submit a written application to that effect to the canal-officer, in such form alongwith such fees as may be prescribed.(2)The provisions of sub-section (1) shall not apply to the projects or part of the project where the minor canal service area is declared and implemented under section 3 of the PIM Act, 2007, (Gujarat 18 of 2007).(3)On receipt of an application made under sub-section (1), the canal-officer may grant permission for water to be taken subject to such conditions and restrictions, as to the limitation, control and measurement of the supply to impose in relation to the use of water for any particular purpose as may be prescribed.

17. Power to stop water-supply.

- The supply of water to any field-channel or to any person who is entitled to such supply shall not be stopped except -(a)whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by canal-officer;(b)whenever and so long as may field-channel by which such supply is received is not maintained in such repair as to prevent the wasteful escape of water therefrom;(c)whenever and so long as it is necessary to do so in order to supply in rotation, the legitimate demands of other persons entitled to water;(d)whenever and so long as it may be necessary to do so in order to prevent the wastage or misuse of water;(e)within the periods fixed from time to time by a canal-officer of which due notice shall be given;(j)whenever and so long as it is necessary to stop such supply pending a change in the source thereof by a canal-officer;(g)in accordance with the condition, if any, providing for stoppage of water supply, subject to which permission for water supply to be taken may have been given.

18. Duration of water supply.

- When canal-water is supplied for the irrigation of one or more crops only, the permission to use such water shall continue until such crop or crops come to maturity, and shall be valid only for such crop or crops.

19. Agreement for supply of water transferable with property in respect of which water supply given.

(1)Every agreement for the supply of canal-water to any land, building or other immovable property shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such land, building or other immovable property takes place.(2)No person entitled to use of any work or land appertaining to any canal and except in the case of any such agreement as aforesaid, no person entitled to use the water of any canal, shall sell or sub-let or otherwise transfer,

his right to such use without the permission of a canal-officer.

Chapter V

Award of Compensation

(A) Compensation when claimable.

20. Compensation in cases of ascertainable substantial damage.

- Compensation may be awarded in respect of any substantial damage caused by the exercise of any of the powers conferred by or under this Act, which is capable of being ascertained and estimated at the time of awarding such compensation: Provided that no compensation shall be awarded in respect of any damage arising from -(a) deterioration of climate, or (b) stoppage of navigation, or the means of rafting timber or of watering cattle, or (c) stoppage or diminution of any supply of water in consequence of the exercise of the power conferred by section 4, if no use has been made of such supply within the five years prior to the date of issue of the notification under section 4, or (d) failure or stoppage of the water in a canal, when such failure or stoppage is due to -(i) any cause beyond the control of the State Government, (ii) the execution of any repairs, alterations or additions to the canal, or (iii) any measures considered necessary by any canal-officer for regulating the proper flow of water in the canal, or for maintaining the established course of irrigation; but any person who suffers loss from any stoppage or diminution of his water-supply due to any of the causes specified in clause (d) shall be entitled to such remission of the water-rate payable by him as may be authorised by the Government.

21. Limitation of claims.

- No claim for compensation under this Act shall be entertained after the expiration of twelve months from the time when the damage complained has commenced, unless the Appellate Authority is satisfied that the claimant had sufficient cause for not making the claim within such period. (B) Summary Decision.

22. Compensation for damage caused by entry on land, etc.

- In every case of entry upon any land or building under section 5, 6, 7 or 8, the canal-officer or person making the entry shall ascertain and record the extent of the damage, if any, caused by the entry, or in the execution of any work, to any crop, tree, building or other property. The canal officer shall within one month from the date of such entry tender the compensation to the land holder or owner of the property damaged. If such tender is not accepted, the canal-officer shall forthwith refer the matter to the Appellate Authority for the purpose of ascertaining the amount of compensation and deciding the same.

23. Compensation on account of interruption of water-supply.

- If the supply of water to any. land irrigated from a canal is interrupted otherwise than in the manner described in clause (d) of section 20, the holder of such land may prefer an appeal for compensation to the Appellate Authority for any loss arising from such interruption, and the Appellate Authority, after consulting the canal-officer shall award to the applicant reasonable compensation for such loss.

24. Decision as to amount of compensation conclusive.

- The decision of the Appellate Authority under section 22 or 23 as to the amount of compensation to be awarded, or, if any rule framed under section 47, the decision of the appellate authority in the matter prescribed under section 47 shall be conclusive and final.(C)Formal Adjudication.

25. Notice as to claim for compensation in certain cases.

- As soon as practicable after the issue of a notification under section 4, the Collector shall cause a public notice to be given at convenient places, stating that the Government intends to apply or use the water as aforesaid, and that claims for compensation may be made before him. A copy of sections 20 and 21 shall be annexed to every such notice.

26. Claim to be referred to Collector.

- All claims for compensation under this Act, other than the claims provided for in sections 22 and 23, shall be made to the Collector of the district in which such claim arises.

27. Provisions of Land Acquisition Act, 1894 to apply in inquiry and award.

(1)The Collector shall inquire into every such claim and determine the amount of compensation, if any, which may, in his opinion be given to the claimant, and shall make an award.(2)Every award made under sub-section (1) shall be in the form of award declared under section 26 of the Land Acquisition Act, 1894, (1 of 1894) and the provisions of the said Act shall so far as may be, apply to the inquiry and the making of an award under sub-section (1).

28. Diminution in market value to be considered in fixing compensation.

- In determining the amount of compensation under section 27, regard shall be had to the diminution in the market-value, at the time of awarding compensation, of the property in respect of which compensation is claimed. Where such market-value is not ascertainable, the amount shall be reckoned at twelve times the amount of the diminution of the annual net profits of such property.

29. Compensation when due and interest thereon.

(1) All sums of money payable for compensation awarded under section 27 shall be due three months after the claim for such compensation was made. (2) Simple interest at the rate of six per cent, per annum shall be allowed on any such sum remaining unpaid after the said three months, except when the non-payment of such sum is caused by the neglect or refusal of the claimant to apply for or receive the same.

Chapter VI Water Rates

(A) Supply Rates.

30. Rates for supply of canal-water.

(1) The State Government may determine the rates leviable for canal-water supplied for purposes of irrigation, or for other purposes. (2) In case the construction of a new canal or to the improvement or extension of an existing canal, the amount or duration of any water-supply, in respect of which either no revenue or a fixed amount of revenue has hitherto been paid to the State Government, is increased, rates shall be leviable under this section in respect of the increased water-supply only. (3) The rates shall be payable by the person on whose application the water supply was granted, or by any person who uses the water so supplied. (B) Water rates for unauthorised use and waste of water.

31. Liability when person using water unauthorisedly cannot be identified.

- If water supplied through a field-channel be used in an unauthorised manner, and if the person by whose act or neglect such use has occurred cannot be identified - (i) the person or all the persons on whose land such water has flowed, if such land has derived benefit therefrom, or (ii) if no land has derived benefit therefrom, the person, or all the persons chargeable in respect of the water supplied through such field-channel, shall be liable, or jointly liable, as the case may be, for the charges which shall be payable for such use as may be prescribed.

32. Liability when water runs to waste.

(1) If water supplied through a field-channel be suffered to run to waste, and if, after inquiry, the person through whose act or neglect such cannot be discovered, the person or the persons in-charge of the water supplied through a field-channel shall be liable, or jointly liable, as the case may be, for payment of such charges as may be prescribed which shall be made in respect of the water so wasted. (2) All questions arising under sections 31 and 32 shall, subject to the provisions of section 43, be decided by the respective canal-officer.

33. Charges recoverable in addition to penalties.

- All charges for the unauthorised use or for waste of water may be recovered, as water-rates, in addition to any penalty as decided by the Government on account of such use or waste.(C)Water rates for percolation and leakage.

34. Land deriving benefit from percolation liable to payment of water rate.

- If it appears to a canal-officer-(i)that any cultivated land within two hundred meters of any canal receives, by percolation or leakage from such canal, an advantage equivalent to that which would be given by a direct supply of canal-water for irrigation, or(ii)that any cultivated land, wherever situate, derives by a surface-flow or by means of a well-sunk within two hundred meters of any canal after the admission of water into such canal, a supply of water which has percolated or leaked from such canal,he may charge on such land a water-rate not exceeding that which would ordinarily have been charged for a similar direct supply to land similarly cultivated.Explanation. - For the purposes of this Act, land charged under this section shall be deemed to be land irrigated from a canal.

35. Levy of water rate for use of percolation water for non-irrigation purpose.

- If it appears to a canal-officer to enforce the provisions of this section that any natural stream, artificial drain or well sunk within two hundred meters of any canal is deriving percolation water from such canal, and the water from such stream, drain or well is used for the purposes other than those of irrigation, he may charge for use of such water, a water rate not exceeding that as would ordinarily have been charged if the supply had been made from the canal for such purposes.(D)Recovery of water rates and other rates in arrears.

36. Payment and recovery of water rate and other dues.

(1)Every water-rate leviable or charged under this Act shall be payable in such installments and on such dates and to such officers and in such manner as may be prescribed; and if the person who is liable to pay such installments, makes default in such payment on the date when it becomes due, he shall be liable to pay interest at such rate and within such period as may be prescribed.(2)Any such rate of the installment specified in sub-section (1) or the interest which is not paid on the date when it becomes due shall be deemed to be an arrear of land revenue due on account of the land for the use of which canal-water was supplied or which was benefited by percolation or leakage from any canal and shall be recoverable as such arrear by any of the methods specified in section 150 of the Gujarat Land Revenue Code, 1879, (Bombay V of 1879) including the forfeiture of the said land.(3)Any rent payable to the owner of a field-channel by a person authorised to use such field-channel may be paid in such installments and on such dates as the canal-officer shall direct and no more of such rent shall at any time be payable to the owner thereof than it is actually recovered from the person liable to pay.(4)(a)Any other sum due to the State Government or to a canal-officer under the provisions of this Act whether on behalf of the State Government or any other person under this Act which is not paid when demanded shall, and(b)any rent or installment

thereof payable to the owner of a field-channel, which is not paid when it becomes due may, on behalf of the owner, be recoverable as an arrear of land revenue in accordance with the provisions of the Gujarat Land Revenue Code, 1879, (Bombay V of 1879).

Chapter VII

Offences and Penalties

37. Penalty for damaging canal, etc.

- Whoever voluntarily and without proper authority-(i)damages, alters, enlarges or obstructs any canal;(ii)interferes with, or increases or diminishes the supply of water in, or the flow of water from, through, over or under any canal, or by any means raises or lowers the level of the water in any canal;(iii)corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used;(iv)destroys, defaces or moves any land or level mark or water gauge fixed by the authority of a public servant;(v)destroys, tampers with, or removes any apparatus or part of any apparatus, for controlling, regulating or measuring the flow of water in any canal;(vi)passes or causes animals or vehicles to pass, in or across any of the works, banks or channels of a canal contrary to the rules made under this Act, after he has been desired to desist therefrom;(vii)causes or knowingly and wilfully permits cattle to' graze upon any canal or flood-embankment, or tethers or causes or knowingly and wilfully permits cattle to be tethered, upon any such canal or embankment, or roots up any grass or other vegetation growing on any such canal or embankment, or removes, cuts or in any way injures, or causes to be removed, cut or otherwise injures any tree, bush, grass or hedge intended for the protection of such canal or embankment;(viii)neglects, without reasonable cause to assist or to continue to assist in the execution of any repair, clearance or work, when lawfully bound so to do;(ix)violates any rule made under this Act for breach thereof;shall, when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code, 1860, (XLV of 1860) on conviction before a Magistrate, be punished for each of such offences with imprisonment for a term which may extend to three months or with fine which may extend to five thousand rupees or with both.

38. Penalty for endangering stability of canal, etc.

- Whoever without proper authority-(i)pierces or cuts through or attempts to pierce or cut through or otherwise damage, destroy or endanger the stability of any canal;(ii)opens, shuts or obstructs or attempts to open, shuts or obstructs any sluice in any canal;(iii)makes any dam or obstruction for the purpose of diverting or opposing the current of a river or canal on the bank whereof there is a flood embankment or refuses or neglects to remove any such dam or obstruction when lawfully required so to do,shall, when such act shall not amount to the offence of committing mischief within the meaning of the Indian Penal Code, 1860, (XLV of 1860) on conviction before a Magistrate of the First Class, be punished for each of such offences with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.

39. Obstruction to be removed and damage repaired.

- Whenever any person is convicted under section 37 or 38, the Magistrate may order that he shall remove the obstruction or repair the damage in respect of which the conviction is held, within a period to be fixed in such order. If such person neglects or refuses to obey such order within the period so fixed, the canal-officer duly empowered in this behalf may remove such obstruction or repair such damage and the cost of such removal or repair, as certified by the said officer, shall be leviable from such person by the Collector, as an arrear of land revenue.

40. Person employed on canal may take offenders into custody.

- Any person in-charge of or employed upon any canal may remove from the lands or buildings belonging thereto, or may take into custody without a warrant and take forth with before a magistrate or to the nearest police-station, to be dealt with according to law, any person who within his view, (i) wilfully damages, obstructs or fouls any canal, or (ii) without proper authority interferes with the supply or flow of water in or from any canal or in any river or stream so as to endanger, damage, make dangerous or render less useful any canal.

41. Saving of prosecutions under other laws.

- Nothing herein contained shall prevent any person from being prosecuted under any other law for any act or omission made punishable by this Act: Provided that no person shall be punished twice in respect of one and the same act or omission.

42. Payment of fine as award to informant.

(1) Whenever any person is fined for an offence under this Act, the Court which imposes such fine, or which confirms in appeal or revision a penalty of such fine, or a sentence of which such fine forms part, may direct that the whole or any part of such fine may be paid by way of award to any person who furnished information leading to the detection of such offence or to the conviction of the offender. (2) If such fine is awarded by a Court whose decision is subject to appeal or revision, the amount awarded shall not be paid until the period prescribed for presentation of the appeal has lapsed, or if an appeal be presented till the appeal is decided.

Chapter VIII

Appeal

43. Appeal against order of canal-office.

(1) Any person aggrieved by the order of the canal-officer may make an appeal to the Appellate Authority to whom the canal-officer passing the order is subordinate. (2) No appeal shall be maintainable after the expiry of thirty days from the date on which the order appealed against was

communicated to the appellant: Provided that such appeal may be entertained by the Appellate Authority after the said stipulated period if it is satisfied that there are sufficient reasons for condoning such delay in preferring the appeal. (3) An appeal shall be made in such manner, to such authority and shall be accompanied with such fees as may be prescribed.

44. Power to civil court for certain purposes.

(1) The Appellate Authority under this Act shall have the same powers for the purposes of making inquiries under this Act as are vested in the Court under the Code of Civil Procedure, 1908, (V of 1908) in respect of the following matters, namely:—(a) enforcing the attendance of any person as a witness and examining him on an oath; (b) compelling the production of documents and material objects; (c) issuing commissions for the examination of witnesses; and (d) proof of facts by affidavits. (2) All inquiries and appeals under this Act shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code, 1860, (XLV of 1860).

45. Service of notice.

- Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed by the officer therein mentioned. Whenever it may be practicable, the service of the notice shall be made on the person therein named. When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business; and, if such person has no ordinary place of residence within the district, service of any notice may be made by sending copy of such notice by post in a registered cover addressed to such person at his usual place of residence.

Chapter IX

Miscellaneous

46. Protection of action taken in good faith.

- No suit, prosecution or other legal proceedings shall lie against the State Government or any officer or employee of the Government for anything which is in good faith done or intended to be done in pursuance of the provisions of this Act or any rule, notification made or issued thereunder.

47. Power to make rules.

(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act. (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—(a) the proceedings of any officer who under any provision of this Act, is required or empowered to take action in any matter; (b) the matters in which, the officers to whom and the conditions subject to which, the orders

and decisions given under any provision of this Act and not expressly provided for as regards appeal, shall be appealable;(c)the manner of construction and maintenance of a field-channel under section 15;(d)the amount of any charge to be made under this Act;(e)form of application, fees to be paid with application, conditions for grant of permission for supply of water under section 16;(f)matters under section 24, in which the decision of Appellate Authority shall be final;(g)charges payable for unauthorised use of water under section 31;(h)charges payable for wastage of water under section 32;(i)manner and timelimit of payment of instalments,the authority to whom payment made; rates of interest payable and the period within which interest shall be paid under section 36;(j)the maimer of appeal, fees and the authority to whom appeal shall lie under section 43;(k)any other matter which is or may be provided by rules under this Act.(3)All rules made under this section shall be laid for not less than thirty days before the State Legislature, as soon as possible after they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.(4)Any rescission or modification made by the State Legislature shall be published in the Official Gazette, and shall thereupon take effect.

Chapter X

Special Provisions Regulating Construction and Maintenance of Tubewells, Artesian Wells and Bore Wells

48. Definitions.

- In this Chapter, unless the context otherwise requires,-(a)"artesian well" means a well which taps artesian or piestic water having piezometric level above the ground;(b)"borewell" means a well drilled in hard rock areas where the bore can stand on its own and where lining by pipes is not necessary; and includes a dug-cum-bore well;(c)"ground water" means water under the surface of the earth regardless of the geological structure in which it is stationary or moving and includes all ground water reservoirs;(d)"prescribed" means prescribed by rules made under section 57;(e)"tubewell" means a deep bore drilled into the ground for the purpose of drawing water through one or series of permeable layers of water bearing strata.

49. Areas to which this Chapter applies.

(1)The State Government may, by notification in the Official Gazette, apply the provisions of this Chapter to such area as may be specified in the notification.(2)The State Government may, by a like notification, direct that the provisions of this Chapter shall cease to apply to such area on and from such date as may be specified in the notification; and with effect on and from that date, the said provisions shall cease to apply to such area, except as respects things done or omitted to be done before such cesser.

50. Regulation of construction and maintenance of tubewells, etc.

- Notwithstanding anything contained in the Gujarat Land Revenue Code, 1879 or in any other law for the time being in force, no holder of any land assessed or held for the purpose of agriculture within the meaning of the said Code (hereinafter in this Chapter referred to as "the agricultural land") shall construct, or cause or permit to be constructed, any tubewell, artesian well or borewell, exceeding the depth, as may be prescribed for extracting ground water except under and in accordance with the terms and conditions (including conditions relating to the maintenance of such well) of a licence issued under section 5 and the rules made under section 57.

51. Grant of licence.

(1) Where a holder of any agricultural land desires to construct therein any tubewell, artesian well or borewell, exceeding the depth as prescribed for extracting ground water, he shall make an application to the canal-officer having jurisdiction for the grant of a licence. (2) The application under sub-section (1) shall be in such form, shall contain such particulars and shall be accompanied with such fees as may be prescribed. (3) On receipt of an application made under sub-section (1), the canal-officer may, after making such inquiry as he thinks fit and having regard to the availability and quality of ground water and the density of wells in the area in which the tubewell, artesian well or borewell, as the case may be, is proposed to be constructed and such other relevant factors as the circumstances of the case may require, by order, grant or refuse to grant the licence applied for: Provided that before refusing to grant the licence, the applicant shall be given a reasonable opportunity of being heard in the matter: Provided further that where the canal-officer to whom an application has been made under sub-section (1) fails to inform the applicant of his decision on the application within a period of three months from the date of receipt of the application, the licence shall be deemed to have been granted to the applicant. (4) The licence granted or deemed to have been granted under subsection (3) shall be in such form as may be prescribed and shall be subject to such terms and conditions as may be specified therein, including conditions relating to the maintenance of the well.

52. Regulation of existing tube well, etc.

- Where any tubewell, artesian well or borewell is in existence in an agricultural land at the commencement of this Act and the depth of such well is in excess of depth as prescribed, then the holder of the agricultural land shall, within three months from such commencement, furnish information in respect of the well to the canal-officer having jurisdiction, in such form as may be prescribed and on receipt of the information, the canal-officer shall if he is satisfied that the well was in existence at such commencement, grant to the holder of land a certificate in the prescribed form to the effect that the said well was in existence at such commencement.

53. Cancellation of licence.

- If the canal-officer is satisfied either on a reference made to him in this behalf or otherwise

that-(a)any licence granted under section 51 has been obtained by fraud or misrepresentation as to an essential fact, or(b)the holder of a licence has, without reasonable cause, failed to comply with the terms and conditions subject to which the licence has been granted, or has contravened any of the provisions of this Chapter or the rules made under section 57,then, without prejudice to any other penalty to which the holder of the licence may be liable under this Chapter, the canal-officer may after giving the holder of the licence an opportunity of showing cause, by order, cancel the licence.

54. Appeal.

(1)Any person aggrieved by an order of the canal-officer made under section 51, 53 or 55, may prefer an appeal to the Appellate Authority against such order within thirty days from the date on which the order was communicated and the decision of the Appellate Authority on such appeal shall be final:Provided that such appeal may be entertained by the Appellate Authority after the said stipulated period if it is satisfied that there are sufficient reasons for condoning such delay in preferring the appeal.(2)Every appeal preferred under sub-section (1) shall be made in such manner, to such authority and shall accompanied with such fees as may be prescribed.

55. Regulation of use of water.

(1)No holder of agricultural land in which there is a tubewell, artesian well or borewell, exceeding the depth as prescribed shall allow any water from such well to be used for a purpose other than for the purpose of agricultural or of drinking or to be wasted either through leaky casing, pipe fittings, valves or pumps either above or below the surface or on account of any other reason whatsoever:Provided that the canal-officer may, subject to any general or special order of the State Government, by order allow such holder to use the water from such well for any purpose other than for the purpose of agriculture or of drinking.(2)If in the opinion of the canal-officer water from any tubewell, artesian well or borewell exceeding the depth, as prescribed, is used for a purpose other than for the purpose of agriculture or of drinking, without the order of the canal-officer, or is wasted, he may after giving the holder of the agricultural land in which such well is situated, a notice of not less than thirty days, by order required him to close or seal off the well at his expense and in such manner as the canal-officer may specify in such order and the holder of agricultural land shall comply with such order.(3)Where any holder of agricultural land fails to comply with any order made under sub-section (2), the canal-officer may after giving the holder of the agricultural land due notice in that behalf, enter upon the land and close or seal off the well and the cost incurred therefore shall recoverable from the holder of the land as an arrear of land revenue.

56. Penalty.

- If any person contravenes the provisions of section 50 or 52, or the rules made under section 57 in respect of the construction or maintenance of tubewells or any of the terms and conditions specified in a licence granted under section 51 he shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine which may extent to ten thousand rupees or with both.

57. Power to make rules.

(1)The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Chapter.(2)In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or' any of the following matters, namely(a)the form of application for grant of licence under subsection (2) of section 51, the particulars to be contained in such application and the fees to be accompanied with such application;(b)the form of licence and terms and conditions for grant of licence under section 51;(c)the form for furnishing information by the holder of an agricultural land and the form of certificate under section 52;(d)the manner of preferring appeal and the fees payable with such appeal under section 54;(e)the depth of the tubewells, artesian wells or borewells which shall not exceed for extracking ground water, and the rules for construction thereof under section 50; and also the terms and conditions for issuance of licence therefore;(f)any other matters which is required to be, or may be, prescribed under this chapter.(3)The power to make rules conferred by this section shall be subject to the condition of the rules being made after previous publication:Provided that if the State Government is satisfied that circumstances exist which render it necessary to take immediate action, it may dispense with the previous publication of any rules to be made under this section.(4)All rules made under this section shall be laid for not less than thirty days before the State Legislature, as soon as possible after they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following.(5)Any rescission or modification so made by the State Legislature shall be published in the Official Gazette, and shall thereupon take effect.

58. Power to remove difficulties.

(1)If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by general or special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for the removal of the difficulty:Provided that no such order shall be made after the expiration of two years from the commencement of this Act.(2)Every order made under sub-section (/) shall be laid as soon as may be alter it is made, before the State Legislature.

59. Power of State Government to give directions.

- The State Government may from time to time, issue such directions not inconsistent with the provisions of this Act, to any canal-officer or other officers, as it may deem fit, for the purpose of carrying out the provisions of this Act, or the rules or orders made thereunder and the officers shall bound by such directions.

60. Repeal and savings.

(1)The Gujarat Irrigation Act, 1879, in its application to the State of Gujarat is hereby repealed:Provided that such repeal shall not affect-(a)the previous operation of the said Acts so

repealed, or anything duly done or suffered thereunder;(b)any right, privilege, obligation or liability acquired, accrued or incurred under the said Acts so repealed;(c)any penalty, forfeiture or punishment incurred in respect of any offence committed against the Act so repealed; or(d)any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability, penalty, forfeiture or punishment as aforesaid;and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if this Act has not been passed:Provided further that, subject to the preceding proviso, anything done or any action taken (including any notification, order, notice, summon, warrant and proclamation issued, declarations and rules made, water for purposes of canals applied, permissions to take water given, agreement for supply of water made, compensations awarded references to the Collector made, summary decisions taken, water rates and betterment charges levied, list of persons liable to be required to work prepared, irrigation record of rights revised) under the Act so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken by or under the corresponding provisions of this Act and shall continue to be in force until superseded by anything done or any action taken under the provisions of this Act.