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A BILL TO MAKE BETTER PROVISION FOR THE CONSERVATION, CONTROL AND USE OF THE WATER RESOURCES IN THE COLONY AND FOR PURPOSES INCIDENTAL THERETO

BE IT ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

PART I

PRELIMINARY AND INTERPRETATION

Short title.

1. This Ordinance may be cited as the Water Ordinance, 1949.

Definitions and interpretation of terms.

2. In this Ordinance, unless inconsistent with the context—

“applicant” means any person who has applied for a water right or sanction under the provisions of this Ordinance;

“aquifer” means a geological formation or structure which transmits water and which may supply water to wells, boreholes or springs;

“artesian well” means a well in which the water rises, by natural pressure, above the base of the first impermeable stratum immediately overlying the aquifer in which the water was encountered;

“authorization” means an authorization to construct works under this Ordinance;

“authorized” means authorized under the provisions of this Ordinance;

5 “body of water” means water contained in, or flowing in, a spring, stream, natural lake, or swamp, or in or beneath a watercourse, or in a zone of saturation, and includes the water diverted or abstracted therefrom, or stored therein, by means of works carried out under a licence or sanction, but
10 does not include—

(a) the water in a spring which is situated wholly within the boundaries of the land owned by any one landholder and which does not naturally discharge water into a watercourse extending beyond the boundaries of such land or abutting on the boundaries of such land;

15 (b) ground water which is not situated within an area covered by an order made under the provisions of section 60 of this Ordinance, or which is of the nature specified in paragraph (b) of section 32 of this Ordinance:

Provided that this definition shall be subject to the provisions of section 137 of this Ordinance;

20 “body of surface water” means any body of water visible on the surface of the ground, but shall not include water as defined in paragraph (a) of the definition of “body of water”;

“Chairman” means the Chairman of the Water Apportionment Board, and includes his deputy or any person acting on his behalf;

25 “company” means any incorporated or limited company, the objects and powers of which extend to or include the construction or operation of works for the exercise of a water right or sanction;

“defective well” means any well drilled, dug or excavated, 30 which encounters salt water injurious to vegetation, agriculture, or other uses, and which is not securely cased, plugged or sealed off so that the salt water is not confined to the strata in which it is found but may escape into other water-bearing strata or on to the surface of the ground;

35 “Department” means the Public Works Department;

“develop” means make available for reasonable beneficial use;

“driller” means a person who, with any tools, machinery, or equipment whatsoever constructs a well for the purpose of 40 abstracting ground water;

“easement” means the right to occupy so much of the lands of another as may be necessary for, or incidental to, the construction or maintenance of authorized works or the exercise of a water right or sanction;

45 “filed” means filed on the effective date of filing, which shall be the date upon which an application, map or plan is accepted by the Chairman, or other person deputed by him, as being complete in form and substance:

Provided that in cases of applications submitted prior to 50 the coming into operation of this Ordinance the date on which an application shall be deemed to have been filed shall be decided by the Water Apportionment Board;

“flood water” means any water flowing in a stream in excess of the normal flow;

55 “ground water” means the water of underground streams, channels, artesian basins, reservoirs, lakes and other bodies of water in the ground including the water in the zone of saturation;

“irrigation” means the practice of causing water to flow upon or spread over or under the surface of land, by any means, for agricultural purposes;

“landholder” in relation to land means the Crown, or the registered owner of the land, or the person in whom the land is vested by law, or any person to whom a mining lease or mining location has been granted under the provisions of the Mining Ordinance, 1940, or any Ordinance amending or replacing the same and includes—

(a) any person lawfully holding or occupying land in accordance with the provisions of any law empowering the Governor to allot land upon the promise of title, subject to the fulfilment by the allottee of prescribed conditions;

(b) any person who by any established right, custom or estate whatsoever, is, or is entitled to be, the holder or possessor of land;

“land surveyor” means a surveyor licensed under Rules made under the Land Surveyors Ordinance or any Ordinance amending or replacing the same;

“licence” means the document conveying a water right;

“licensee” means the holder of a licence under this Ordinance;

“limits of supply” in relation to any water undertaking means the limits within which the water undertakers are for the time being authorized to supply water;

“local authority” means the Council or Board of any Municipality established under the provisions of the Municipalities Ordinance, 1928, or any Ordinance substituted therefor, and includes such authority, committee or person as the Governor may, by notice in the Gazette, appoint, to be a local authority for the purposes of this Ordinance;

“Member” means the Member of the Executive Council of the Colony for the time being responsible for Agriculture and Natural Resources;

“native area” means native lands, native leasehold areas, native reserves and temporary native reserves, as defined in the Native Lands Trust Ordinance, 1938, the Native Settlement Areas the boundaries of which are set out in the Ninth Schedule to the Crown Lands Ordinance and Communal Reserves, as defined in the Crown Lands Ordinance;

“normal flow” means the ordinary flow at any particular point of a stream as certified by the Water Apportionment Board from time to time to be the normal flow at that point;

“operator” means any person authorized to construct works under the provisions of this Ordinance by authorization, or to divert, abstract, or use water by licence, or sanction;

“permit” means any permit which has been issued under the provisions of section 145 of the Crown Lands Ordinance, or section 100 of the Water Ordinance, 1929, and includes a water permit to divert, abstract, obstruct or use water or construct works, which has been signed by the Director of Public Works or by any of his predecessors in office or on his, or any of their, behalf;

“person” means any person or body of persons or body corporate, and the heirs, executors, administrators, assigns or other legal representatives of such person, and the successors of such body corporate to whom the context may lawfully apply, and includes a water undertaker;

“priority” means the prior right of a licensee to the use of water from a body or bodies of water according to the priority number on his licence, but does not include the right to means of abstraction or diversion;

No. 29 of 1940.

Cap. 147.

No. 18 of 1928.

No. 28 of 1938.

Cap. 140.

Cap. 140.

No. 35 of 1929.

"public authority" means the Government or any department or branch of the Government of the Colony;

"qualified engineer" means a person registered under the provisions of this Ordinance as a qualified engineer;

5 "Regional Water Board" means the Regional Water Board appointed pursuant to the provisions of section 26 of this Ordinance;

"Registrar of Titles" means the person appointed under any Ordinance for the purpose of the registration of title to land or of documents relating to land;

"salt water" means water containing salt or other minerals or substances injurious, in the opinion of the Water Apportionment Board, to vegetation, agriculture or other uses;

"sanction" means a document, not including a licence, authorizing the abstraction, diversion, obstruction, storage or use of water or the drainage of lands, under the provisions of this Ordinance;

"sanction holder" means the holder of a valid sanction which has not lapsed or been determined;

20 "spring" means water emerging from beneath the surface of the ground;

"stream" means the water contained in a watercourse, and includes a river;

"supply of water in bulk" means a supply of water for distribution by the water undertakers taking the supply and "supplying water in bulk" has a corresponding meaning;

"swamp" means any shallow depression on which water collects either ephemerally or permanently and where there is a small depth of surface water or a shallow depth of ground

30 water and a slight range of fluctuation either in the surface level of the water or of the ground water level so as to permit the growth of aquatic vegetation:

Provided that this definition shall be subject to the provisions of section 137 of this Ordinance;

35 "Water Appeal Board" means the Water Appeal Board established by section 143 of this Ordinance.

"Water Apportionment Board" means the Water Apportionment Board appointed under section 28 of this Ordinance;

40 "Water Resources Authority" means the Water Resources Authority established by section 5 of this Ordinance.

"watercourse" means a natural channel or depression in which water flows, either continuously or intermittently:

Provided that this definition shall be subject to the provisions of section 137 of this Ordinance;

"water right" means the right to divert, abstract, obstruct, store or use water, or to drain lands by licence under the provisions of this Ordinance, and including the right to construct and maintain works authorized under the provisions of this Ordinance, for the purposes of such licence.

"water table" means—

(a) in pervious granular or detrital material, the upper surface of the body of free water which fills all openings in material that is sufficiently pervious to permit percolation;

55 (b) in fractured impervious rocks and in solution openings, the surface at the contact between the water body in the openings and the overlying ground air;

"water undertaker" means any company, public or local authority, board, committee or other person supplying water to other persons, but such expression does not include any body or person supplying water in bulk only;

"well" means any orifice made in the ground by any means, for the purpose of abstracting ground water therefrom and includes a borehole, tunnel and adit;

"well contractor" means any person who contracts to construct a well;

"works" means any structure, apparatus, contrivance, device, or thing, for carrying, conducting, providing or utilizing water, excepting hand utensils or such other contrivances as may be specified by the Water Apportionment Board, by order in the Gazette; ⁵

"zone of saturation" means the zone below the water table, in which the interstices are filled with ground water.

Application and commencement.

3. This Ordinance shall apply throughout the Colony ¹⁰ and shall come into operation on such day as the Governor shall, by notice in the Gazette, appoint.

PART II CENTRAL PLANNING

Duty of Member in relation to water.

4. It shall be the duty of the Member to promote the ¹⁵ investigation, conservation, and proper use of water resources and the provision of water supplies in the Colony, and to secure effective execution by any authority or person under his control and direction of a Colony policy relating to water.

Water Resources Authority.

5. (1) There shall be established by the Member, an authority to be known as the Water Resources Authority which shall exercise such powers and perform such duties as may be conferred and imposed upon it by this Ordinance. ²⁰

(2) Any of the powers conferred or duties imposed by this Ordinance on the Water Resources Authority may, by resolution of the Water Resources Authority, be delegated to any authority, board, committee, body or person. ²⁵

Composition of authorities.

(3) The Water Resources Authority shall consist of the Member for Health and Local Government, a representative of the Department of the Member for Agriculture and Natural ³⁰ Resources, the Chief Native Commissioner and such other members as the Member may appoint.

Expenses of authority, board, etc.

6. Subject to the provisions of sub-section (3) of section 5 and section 143 of this Ordinance, the Member shall determine the composition, constitution, and procedure of any ³⁵ authority, board, committee or body established under this Ordinance, and may give directions for the alteration of such composition, constitution and procedure, and for the dissolution of such authority, board, committee or body.

Water vested in the Crown.

7. The Member may, from funds provided by Legislative ⁴⁰ Council for that purpose, pay such expenses as he may determine, of any authority, board, committee or body.

Right to use water vested in the Member.

8. The water of every body of water is hereby vested in the Crown, and its control is hereby vested in the Member on behalf of the Crown, subject to the provisions of this ⁴⁵ Ordinance:

Provided that this section shall not apply to any part of the Protectorate of Kenya which is now or may hereafter be held on lease from His Highness the Sultan of Zanzibar.

Duty of Water Resources Authority.

9. The right to the use of every body of water is hereby ⁵⁰ declared to be vested in the Member, and no person shall divert, abstract, obstruct or use water from a body of water, otherwise than under the provisions of this Ordinance.

10. (1) It shall be the duty of the Water Resources ⁵⁵ Authority—

(a) to investigate the water resources of the Colony and to advise, and make recommendations to, the Member in regard to the improvement, preservation, conservation, utilization, and apportionment of such resources, and as to the provision of additional water ⁶⁰ supplies;

- (b) to carry out a survey of the existing consumption of, and demand for, water supplies, and of the water resources of the Colony;
- 5 (c) to prepare estimates of the future water supply requirements of any area of the Colony;
- (d) to formulate proposals for meeting the existing and future water supply requirements of any area, by water undertakers, bodies or persons;
- 10 (e) to furnish the Member and water undertakers, bodies, or other persons, with such information relating to water supplies or resources as is available.
- (2) Where any of the duties referred to in sub-section (1) of this section have been delegated to any board, committee, authority, or person, the Water Resources Authority may, from time to time, require such board, committee, authority or person to submit reports thereon to it within such time as it may specify.

11. (1) The Water Resources Authority may require any person to furnish information relating to their existing or proposed waterworks, the use of and demand for water supplies and the water resources available in the area of supply or area from which the supply is abstracted.

Water under-takers and others to furnish information.

(2) The Water Resources Authority may require any person to keep such records and furnish such returns as to the quantity and quality of water abstracted by him from any source and to such matters relating to such source as may be required by the Water Resources Authority:

Provided that if, upon representation by any such person so required to furnish information under this section, the Member is satisfied that, in all the circumstances, compliance with such requirements is impracticable or unnecessary or that undue expense would thereby be incurred, he may direct that there need not be any such compliance.

(3) The Water Resources Authority or any board, committee, authority, or person authorized by it, shall have the right at all reasonable hours to enter any premises and inspect any records required to be kept under the provisions of this section, and to take copies of or extracts from such records.

12. (1) If the Member, on the recommendation of the Water Resources Authority, is of the opinion that it is in the public interest so to do, he may apply for the setting aside of unalienated Crown land or, apply for the setting apart of any land in a native area with the approval of the Chief Native Commissioner and subject to the provisions of the Native Lands 45 Trust Ordinance, 1938, or, with the approval of the Governor, purchase or acquire land by other means, for the conservation, improvement or use of water.

Acquiring land.

No. 28 of 1938.

(2) The acquisition of land for any of the purposes of this Ordinance shall be deemed to be an acquisition for a public purpose within the meaning of the Indian Land Acquisition Act, 1894.

13. (1) The Member may, on the recommendation of the Water Resources Authority, when it appears to him to be in the public interest, construct and maintain upon any land such works as he may deem necessary or desirable for any of the following purposes:—

Member may construct works and apportion costs.

- (a) the protection of the source or course of any body of water;
- 60 (b) the disposal or control of flood water;
- (c) the conservation of water;
- (d) the distribution, apportionment or measurement of water.

To solve problems.

(2) The cost of construction of such works may, in the first instance, be paid from public moneys.

(3) When the cost of construction of such works has been paid from public moneys and the Member is of the opinion that, having regard to all the circumstances, it is just and equitable that the owner of any land which, in his opinion, has benefited by such works, should pay or contribute towards the cost, maintenance, operation, or renewal thereof, he shall notify such owner accordingly, and shall in such notification specify the amount of payment or contribution to be made by such owner.¹⁰

(4) The amount of payment or contribution determined by the Member under the provisions of sub-section (3) of this section shall be a debt due by such owner to the Government, and, until discharged, interest shall be paid thereon at a rate ¹⁵ to be fixed by the Member, with the consent of the Member for Finance, and the Member shall also decide the date upon which the interest shall begin to accrue.

Creation of charge on land for cost of works.

14. (1) If any owner of any alienated land who has, under the provisions of section 13 of this Ordinance, become indebted ²⁰ to the Government, fails to pay such debt on demand, the Member shall send a notification of such debt to the Registrar of Titles who shall forthwith, without charge, register such notification against the title affected.

(2) The amount set out in such notification shall be the ²⁵ amount of the debt referred to in section 13 of this Ordinance with any interest due thereon.

(3) The registration of such notification shall create a charge upon the land affected, subject to any prior registered encumbrance, and shall bind every successive owner thereof.³⁰

(4) When the sum secured by a charge created under the provisions of this section has been paid, the Member shall send to the Registrar of Titles a notification of cancellation which shall be registered, without charge, against the title affected.³⁵

Creation of charges on native land for cost, etc., of works.

15. (1) Where any works, constructed under the provisions of sub-section (1) of section 13 of this Ordinance are situated in a native area, and it is the opinion of the Member that it is just and equitable that the local authority in such native area should pay or contribute towards the cost, maintenance, operation or renewal of such works, the Member shall notify such local authority and the Chief Native Commissioner accordingly, and shall, in such notification, specify the amount of payment or contribution to be made by such local authority.⁴⁰

(2) The local authority from which payment or contribution is required shall raise the money for such payment or contribution in such a manner as it thinks fit, and if the method of raising such money cannot be decided by such local authority, the method shall be decided by the Chief Native ⁵⁰ Commissioner, and the time and method of any such payment or contribution shall be determined by the Chief Native Commissioner and shall then be binding on such local authority.

Water Resources Authority may summon witnesses.

16. For the determination of any subject under its consideration, the Water Resources Authority may summon witnesses, examine them on oath or affirmation and require them to produce any relevant book, plan or document.⁵⁵

Service of summons.

17. A summons for the attendance of a witness or for the production of any book, plan or document before the Water Resources Authority, shall be signed by the Chairman ⁶⁰ thereof and shall be served in the same manner as a summons for the attendance of a witness at a criminal trial in a magistrate's court.

18. Any person, summoned to give evidence or to produce any book, plan or document or giving evidence before the Water Resources Authority, shall be entitled to the same privileges and immunities as if he were summoned to attend, or were giving evidence at, a trial.

Privileges of person summoned.

19. Any person who fails, without reasonable excuse, to attend in obedience to any such summons, or, subject to the provisions of section 18 of this Ordinance, fails to answer fully, to the best of his knowledge, any question relevant to the matter under investigation, or, when required so to do, fails to produce any book, plan or document required to be produced under the provisions of section 16 of this Ordinance, shall be guilty of an offence.

Offence to fail to obey summons, etc.

20. Any person, who wilfully gives false evidence, by affidavit or otherwise, before the Water Resources Authority or Water Apportionment Board or any committee or member thereof knowing such evidence to be false or not knowing or believing it to be true, shall be deemed to be guilty of perjury.

Person wilfully giving false evidence guilty of perjury.

21. Any person who has been summoned to give evidence or to produce any book, plan or document before or to the Water Resources Authority, Water Apportionment Board or any committee or member thereof, and who refuses, without sufficient cause (the onus of proof whereof shall be upon him), to be sworn or affirmed as a witness, or to answer any question lawfully put to him, or to produce any such book, plan or document, shall be guilty of an offence.

Offence to refuse to produce books, to be sworn or to give evidence.

22. (1) Should the Member be satisfied that, by reason of an exceptional shortage of rain or by reason of accident or other unforeseen circumstances, a serious deficiency of water for essential domestic purposes exists, or is threatened, in any area, he may, by order, direct that any person who has a supply of water in excess of his domestic needs, shall supply to such area or to any other person for such period as the Member may state in such order, such water, as the Member shall specify, from such excess quantity of water.

Emergency powers.

(2) Any order given under the provisions of sub-section (1) of this section may order the laying of pipes and the construction of works on any land, and the entry on to any land, and any other matters necessary for the giving and taking of any such water, and no other authority to do any of the things mentioned in this order, except the authority of this section, shall be required.

(3) If the person upon whom an order under the provisions of this section is made, fails to comply with such order, the Member, or any person deputed by him for that purpose, may take possession of the water supply and operate the water works of any such person, and have all of the powers of such person in connexion therewith during the period of such order and subject to any conditions which may be imposed thereby.

(4) Any compensation payable to such person, for any acts done under an order made under the provisions of this section, and the liability for such compensation shall be determined by the Member and, if his decision is not acceptable to the persons concerned, the matter shall be referred to arbitration under the provisions of the Arbitration Ordinance.

Cap. 18.

(5) Any person who, without lawful authority, interferes with any work constructed under the provisions of this section shall be guilty of an offence against this Ordinance.

23. (1) Should any person apply to the courts for an injunction or restraining order to prevent any water bailiff, officer of the Water Apportionment Board or other

Injunctions.

authorized person from enforcing priorities or carrying out any other duties imposed by this Ordinance upon such water bailiff, officer of the Water Apportionment Board or other authorized person, no such injunction or order shall be granted unless—

- (a) the petitioner presents, in his petition for such injunction or order, proof that the water bailiff, officer of the Water Apportionment Board or other authorized person has failed to distribute water in accordance with established priorities or that such water bailiff, officer of the Water Apportionment Board, or other authorized person is not acting lawfully; and
 - (b) a bond is deposited by the petitioner, with the court, for the sum of five hundred pounds plus ten pounds for every one hundredth of a cusec or part thereof which the petitioner has been authorized to divert under any licence or sanction which may have been granted to him.
- (2) If upon an application for any such injunction or order, the judgment be against the plaintiff, the judge may order that the bond referred to in paragraph (b) of sub-section (1) of this section or such part thereof as he may deem fit, shall be forfeited to His Majesty.

PART III

LOCAL PLANNING

25

Drainage areas.

24. (1) The Colony shall be divided by the Member into drainage areas.

(2) Where any drainage area is referred to by means of a number or letter, such drainage area means the drainage area delineated on Drawing P.W.D. No. 7784 or any amendment thereof or any Department Drawing made in substitution therefor:

Provided that—

- (a) such drainage areas may be subject from time to time to subdivision or amendment by the Water Resources Authority; and
- (b) for all of the purposes of this Ordinance, upon any question as to the boundaries of any drainage area, and to any other matters relating to drainage areas, the decision of the Water Resources Authority shall be final.

Appointment of boards, etc., for particular areas.

25. (1) If, with respect to any area of the Colony, the Member is satisfied that the carrying out of any of the provisions of this Ordinance may be thereby more effectively secured, he may constitute for that area a board, committee or authority which shall be advisory to the Water Resources Authority.

(2) Such board, committee or authority shall carry out such duties and exercise such advisory powers as the Member directs.

50

Appointment of Regional Water Boards.

26. The Member may appoint, for each drainage area, or part thereof, a Regional Water Board which shall be advisory to the Water Resources Authority and to the Water Apportionment Board as to the conservation, use, apportionment and any other matter affecting the water resources in the area within the jurisdiction of such Regional Water Board.

Duties of Regional Water Boards.

27. (1) The Water Resources Authority may require a Regional Water Board to advise the Water Resources Authority as to—

- (a) the water resources in its area;
- (b) the existing demand, consumption and use of water in its area;

60

- (c) the future water supply requirements in its area;
- (d) how such future requirements shall be met;
- (e) the apportionment of existing and potential supplies;
- (f) any other matter affecting the water resources and water supplies in its area.

(2) The Water Resources Authority may, from time to time, require a Regional Water Board to submit written reports on matters referred to in sub-section (1) of this section:

Provided that if upon the representation of a Regional Water Board required to furnish such information, the Member is satisfied that the compliance with any such requirements is impracticable or unnecessary or that undue expense would thereby be incurred, he may direct that there need not be such compliance.

15

PART IV

WATER APPORTIONMENT

28. For the purpose of carrying out the provisions of this Part there shall be appointed, by the Member, a Board, to be known as the Water Apportionment Board, which shall exercise such powers and perform such duties as are prescribed in this Part.

Appointment of
Water
Apportionment
Board.

29. After the coming into operation of this Ordinance, no conveyance, or lease, of land, or any other instrument of whatsoever description dealing with land, including a mining lease, or mining location, shall convey to or vest in any landholder any property or right, or interest or privilege, exclusive or otherwise, with respect to any body of water, and any provision in any document purporting to convey or vest in any landholder any such property, right, interest or privilege shall be void and of no effect, and, except for any right specifically granted before the 1st day of July, 1935, by, or on behalf of, the Government in any title under the Crown Lands Ordinance, or in any written agreement, no right shall exist or be acquired, or be deemed to have been acquired, other than by a revocable authority conveyed by permit, by any person by length of usage, or otherwise, in any manner other than as it may be acquired or conferred under this Ordinance, or may have been acquired or conferred under the Water Ordinance, 1929.

Right to use
water may be
acquired only
under this
Ordinance.

40. 30. The purposes for which a water right or sanction may be acquired are as follows:—

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- (a) a domestic purpose, which shall mean the provision and employment of water for household and sanitary purposes and the watering and dipping of stock;
- (b) a public purpose, which shall mean the provision and employment of water for municipalities, townships, villages and communities, and for all reasonable demands for steam raising on railways or for other purposes connected with public undertakings, not involving the use of water for the generation of power;
- (c) a minor irrigation purpose, which shall mean the provision and employment of water for the irrigation of land, not exceeding two acres, used for orchards, gardens, nurseries, or land for other requirements in connexion with farming operations;
- (d) an industrial purpose, which shall mean the washing and treating of coffee, vegetable fibre, or other agricultural or mineral products, or the essential requirements of other industries and mining;
- (e) a power purpose, which shall mean the provision and employment of water for the development of power;
- (f) a general irrigation purpose;
- (g) any other purpose approved by the Water Apportionment Board.

Purposes for
which a water
right or
sanction may
be acquired.

Consideration
of applications.

31. (1) Applications for water rights or sanctions for the same purpose or for different purposes shall receive consideration in accordance with the circumstances of each case and regard shall be had to the extent to which the grant of a water right or sanction would be likely to interfere with the domestic requirements of other users.⁵

(2) Where the Water Apportionment Board refuses to grant an application wholly or in part, the applicant shall be notified of such refusal and the reasons therefor, and may, if he is aggrieved by such decision, within thirty days after the date of such notification, lodge with the Chairman of the Water Apportionment Board a notice of appeal to the Member against such decision. Such notice shall be accompanied by a fee of ten pounds which shall be returned to the applicant if such appeal is successful. The decision of the Member, on any such appeal, shall be final and binding on all parties concerned.¹⁰

(3) The Water Apportionment Board may reserve such part of the flow of a body of water as in its opinion is required for domestic purposes on lands served by such body of water, and where apportionment of such part amongst users is required to be made, the Water Apportionment Board shall determine such apportionment after having taken into consideration the circumstances of all users.²⁰

(4) Any determination by the Water Apportionment Board under sub-section (3) of this section shall be final and not subject to appeal.²⁵

When licence
or sanction
not required.

32. A licence or sanction shall not be required—

(a) for the abstraction or use of water from any body of water for domestic purposes by any person having lawful access thereto, if such abstraction is made without the employment of works;³⁰

(b) when the works for the development of ground water are not situated within one hundred yards of any watercourse, or the purpose for which ground water is used is not for any purpose other than a domestic purpose upon the land of the landholder on which the works are situated, or the total quantity of water abstracted in any one day does not exceed five thousand gallons or such other greater quantity as may be approved by the Water Apportionment Board.³⁵

Action during
drought.

33. In the case of small watercourses, or during a period of drought, the Water Apportionment Board may, in its absolute discretion by order, require any person, notwithstanding the fact that he may be using water under a licence or sanction, to allow to pass such proportion of the water in the watercourse as appears to the Water Apportionment Board to be equitable, and may prohibit any practice which, in the opinion of the Water Apportionment Board, causes undue reduction of the water in any watercourse, and any person who fails to obey an order of the Water Apportionment Board given under the provisions of this section shall be guilty of an offence against this Ordinance.⁴⁵

When licence
or sanction is
required.

34. (1) In all cases of proposed diversion, abstraction, obstruction, storage or use of water from a body of water, other than those referred to in section 32 of this Ordinance, application must be made, in the manner prescribed by this Ordinance for a licence or sanction for such diversion, abstraction, obstruction, or storage of water from or in such body of water.⁵⁵

(2) The execution, construction, erection, or employment of works, or the diversion, obstruction, abstraction or storage of water from or in a body of water, except as provided in this Ordinance, without, or before, the receipt of an authorization, licence, or sanction under the provisions of this Ordinance, shall be an offence against this Ordinance.

35. No person shall drain, obstruct, or otherwise interfere with any swamp, unless such swamp has been declared, under the provisions of section 137 of this Ordinance, not to be a body of water, without first having obtained the licence or sanction of the Water Apportionment Board.

Drainage of swamps.

36. (1) A scheme shall be deemed to be a State scheme whenever the Member may have decided upon a scheme to use, or may consider it desirable in the public interest to reserve the right to use, the water, or portion of the water, of any body of water, or upon a scheme for draining land, and such State scheme or reservation shall take precedence over all other schemes for the use of such water or drainage of such land.

State schemes.

(2) Licences or sanctions may be issued, on such terms as the Water Apportionment Board may in each case specify, for use of water in an area treated or to be treated, in whole or in part, as a State scheme, or for use in connexion with a body of water affected by a State scheme, until such time as such water is required for such State scheme, or when, and for as long as, water is available in excess of the requirements of such State scheme.

(3) The Member may, from time to time, publish in the Gazette a notice setting forth the land required for the development of any State scheme, and unalienated Crown land required for such State scheme may, by notice in the Gazette, be reserved by the Member from sale or other disposal.

(4) When any of the land required for a State scheme has been sold, leased, allotted or otherwise disposed of by the Crown prior to publication of such notice in the Gazette, the procedure for the acquisition of the land so disposed of shall be in accordance with the law, for the time being in force, relating to the acquisition of land for public purposes.

(5) The Member may reserve unalienated Crown land under the provisions of sub-section (3) of this section, notwithstanding that it is proposed that the construction of any works projected for any State scheme shall not be carried out, wholly or in part, by the Government or paid for out of the funds of the Government.

37. Projects for the use of water, or for the drainage of land are of four classes, namely—

Classification of projects.

- private projects;
- community projects;
- public projects;
- urban projects.

38. (1) Private projects are those which concern the use of water or the drainage of swamps within the limits of the land of the operator, whether works are constructed entirely on the land of the operator, or partly on the land of the operator and partly on the land of other persons.

Private projects conducted by an association of operators.

(2) Two or more operators, who have a common interest in the employment of water or in the drainage of swamps, may unite in an association for the exercise of a water right or sanction for a private project. Any application for a water right or sanction in such a case shall be accompanied by a statement of the terms and objects of the association, and the rules under which such association proposes to exercise the water right or sanction shall be specified and submitted to the Water Apportionment Board for approval.

(3) The proportion of participation shall be presumed to be equal between members, unless the contrary is specified by rules made and agreed by the association and approved as provided in sub-section (2) of this section.

(4) The grant of a water right or sanction to an association of operators under the provisions of this section shall be subject to such terms governing action to be taken during operation, upon withdrawal of members of the association, or upon dissolution of the association, as the Water Apportionment Board may specify or as may be prescribed. 5 10

Community projects.

39. Community projects are such projects other than public or urban projects as are conducted in accordance with rules made and agreed under the provisions of this Ordinance, by a community of landholders operating under a water right or sanction for one or more of a series of authorized purposes 15 connected with the use of water, or with the drainage or reclamation of land, situate entirely, or for the greater part, within their own holdings.

Public projects.

40. Public projects include projects which involve the supply of water, or of electrical energy derived from the 20 energy of moving water, to persons other than the operator, in consideration of payment therefor, or the drainage or reclamation of lands in consideration of payment therefor.

Urban projects.

41. Urban projects mean projects undertaken, operated 25 or maintained by a municipal authority, corporation, or other body, for the supply of water to municipalities or townships, and include projects, however originated and constructed, which are acquired and operated by a municipal authority, corporation, water undertaker or other water works authority, for the supply of water to a municipality or township, trading 30 centre or other community.

Water Apportionment Board to determine class of project.

Powers of Water Apportionment Board may be delegated.

Notice of intention to construct well.

42. The Water Apportionment Board may determine to which class any proposed project shall be deemed to belong.

43. Any of the powers, duties, or obligations vested in the Water Apportionment Board under the provisions of this 35 Ordinance, except the power to grant, alter, or cancel licences, sanctions or easements, may, by resolution of the Water Apportionment Board, be delegated by it to any person. The Chairman may, in writing, authorize any person employed 40 in the public service, or any servant, agent or contractor of such person, to perform any of the powers, duties, or obligations so delegated to him.

44. (1) Any person who proposes to construct a well for the purpose of abstracting ground water shall, before he commences such construction, give to the Water Apportionment Board notice of his intention to do so, and shall keep a record of the progress of the work which shall include measurements of the strata passed through, specimens of such strata, the levels at which water was struck, the quantity of water obtained at each level and the quantity finally obtained, and the rest level thereof, and shall allow any person authorized by the Water Apportionment Board, at all times—

- (a) to have free access to any such well;
- (b) to inspect such well and the material excavated therefrom;
- (c) to take specimens of such material and of water abstracted from the well; and
- (d) to inspect and take copies of or extracts from the record required to be kept under this section.

(2) Where the person constructing a well on any land is 60 not the occupier of such land, the obligation to allow any

person authorized by the Water Apportionment Board to exercise his rights under the provisions of this section shall be the obligation of the occupier of the land as well as of the person constructing the well.

5 **45.** The person constructing such well shall, on completion or abandonment of the construction, send a complete copy of the record to be kept under the provisions of section 44 of this Ordinance, together with the specimens referred to in such record to the Water Apportionment Board, and shall also send to the Water Apportionment Board particulars of any test made, before such completion or abandonment, of the yield of water, and shall specify the rate of flow throughout the test and the duration of the test and also, where practicable, the water levels during the test and thereafter until the water has returned to its natural level. The person constructing the well shall further state on the record his opinion as to whether the water, as determined by tasting, is suitable for drinking or is highly mineralized, as the case may be.

20 **46.** Where any well is constructed in connexion with or adjacent to an existing well, the particulars of any test to be supplied to the Water Apportionment Board shall also include the rate of pumping at the existing well during the test.

25 **47.** Where any well contractor constructs a well on land belonging to or occupied by any other person, such well contractor shall be deemed for the purposes of this Ordinance, to be the person constructing the well.

30 **48.** The person constructing such well or, if a different person, the owner or occupier of the land on which such construction takes place may give notice to the Water Apportionment Board requiring any copy of, or extract from, the record required to be kept under the provisions of section 44 of this Ordinance, or any specimen taken, or any other particulars connected with the well, to be treated confidentially, and the Water Apportionment Board shall thereupon not allow such copy, extract, specimen, or other particulars, except in so far as it contains or affords information as to water resources and supplies, to be published or shown to any person not being an officer of the Water Resources Authority or the Water Apportionment Board, unless the person giving such notice consents thereto:

35 Provided that if at any time the Water Apportionment Board gives notice to such person that, in its opinion, his consent is unreasonably withheld, then that person may, within 45 three months after the notice given by the Water Apportionment Board, appeal to the Member; and, if at the expiration of that period no such appeal has been made, or if, after hearing the appeal, the Member does not make an order restraining it from so doing, the Water Apportionment Board may proceed 50 as if such consent had been given.

40 **49.** Any person who fails to comply with any obligation imposed upon him by the provisions of section 44, 45 or 46 of this Ordinance, shall be guilty of an offence against this Ordinance.

45 **50.** (1) No person shall, except with the written authority of the Water Apportionment Board—

- 60 (a) cause any ground water to run to waste from any well except for the purpose of testing the extent or quality of the supply or cleaning, sterilizing, examining or repairing such well;
- 65 (b) abstract from any well, water in excess of his reasonable requirements and which he cannot use in a reasonable and beneficial manner;

Submission of records of well.

Existing wells.

Contractor deemed to be constructor.

Records may be treated as confidential.

Non-compliance with section 44, 45 or 46 to be an offence.

Waste of ground water.

(c) conduct the water from any well through any channel or conduit so that more than twenty per cent of the water is lost between the point of appropriation and the point of beneficial use:

Provided that where the water from any well is conducted through channels or conduits together with water from other sources, no person shall permit the waste of more than twenty per cent thereof in conducting the water from the point of appropriation of the well water to the point of beneficial use; 10

(d) use any water from any well for the purpose of domestic use or the watering of stock, except where such water is carried through pipes fitted with float valves or other satisfactory means of control, to prevent waste therefrom: 15

Provided that where ground water interferes or threatens to interfere with the execution or operation of any underground works, whether water works or not, the Water Apportionment Board may, in any particular case, agree that such water may be allowed to waste upon such conditions regarding quantity 20 and method of disposal as it may specify.

(2) Any person who contravenes any provision of this section shall, in respect of each such contravention, be guilty of an offence and, on conviction therefor, be liable to a fine not exceeding five hundred shillings, or in the case of a continuing offence, a fine of one hundred shillings for each day on which the offence continues and the Water Apportionment Board may, on the conviction of any such person, order that the well concerned be effectively sealed, or may make such other order as appears to it to be necessary to prevent waste of 30 water.

(3) Should any person fail to comply with any order given under the provisions of this section, the Water Apportionment Board may take such steps as it may consider necessary to execute the order and any expenses incurred in taking such 35 steps shall be recoverable as a civil debt from the person upon whom such order is made.

Defective wells.

51. (1) Any well which encounters salt water, hereinafter referred to as a defective well, shall be securely cased, plugged, or sealed off by the owner of such well, so that the salt water 40 shall be confined to the strata in which it was found, and such casing, plugging or sealing shall be done in such a manner as to effectively prevent the salt water from escaping from the strata in which it was found into any other water-bearing strata or on to the surface of the ground. 45

(2) The provisions of sub-section (1) of this section shall also apply to all wells constructed before the coming into operation of this Ordinance.

Improper methods of casing, etc.

52. It shall be an offence against this Ordinance for any person to case, recase, plug, seal or fill a defective well so as 50 to deposit, or cause or knowingly permit the deposit of, any dirt, rubbish or other material in such well, except with the written authority of the Water Apportionment Board.

Application to seal off well.

53. (1) Before any defective well is recased, plugged, or sealed off, the owner of the well, or his duly authorized representative, shall file with the Water Apportionment Board an application for permission to carry out such recasing, plugging or sealing. 55

(2) Such application shall contain as complete information as possible in regard to the name and address of the owner of the well, its location, depth and size and the amount and location of casing or sealing in the well, the distance below the 60

surface of the ground to the water level in the well, the strata penetrated, the distance from the surface of the ground to the top of the salt water stratum and the thickness of the salt water stratum, and shall give all other available information regarding the condition of such well, and shall also state the methods proposed for recasing, plugging or sealing off such well.

54. The Water Apportionment Board, after consideration of any application under the provisions of section 53 of this Ordinance, may call for additional data, and may make such investigation as it considers necessary, and if the well is found to contain salt water, shall issue instructions to the applicant specifying the work which shall be done by the owner to place it in a satisfactory condition and designating the time that shall be allowed to complete the work, and may inspect such work while it is in progress.

Instructions to deal with defective well.

55. The Water Apportionment Board may on its own initiative, or upon information or complaint from any source, make an examination of any well suspected of containing salt water and may issue instructions for curing any defects in such well and such instructions shall have the same force and effect as instructions issued under the provisions of section 54 of this Ordinance.

Board may inspect well.

56. Upon completion of the works in pursuance of any instruction issued under the provisions of section 54 of this Ordinance the contractor who carries out the work, or, if the work is done without a contractor, the owner of the well shall file with the Water Apportionment Board a sworn statement specifying in detail the manner in which such work was done; and failure to file such a statement within thirty days after the completion of such work shall be an offence against this Ordinance.

Sworn statement to be submitted.

57. Upon receipt of such statement, the Water Apportionment Board shall determine, either from the statement or from inspection or test, whether the work has been satisfactorily carried out and, if it determines that the work has not been satisfactorily performed, it shall issue additional instructions specifying the additional work required to place the well in a satisfactory condition, and specifying the time for the completion of such additional work. Upon the completion of such additional work, a sworn statement shall be filed with the Water Apportionment Board as provided for in section 56 of this Ordinance; and failure to file such a statement shall be an offence against this Ordinance.

Additional work on defective well.

58. (1) The owner of any defective well shall be guilty of an offence against this Ordinance if he fails to carry out any order of the Water Apportionment Board and shall, on conviction therefor, be liable to a fine of not less than one hundred shillings or not more than five hundred shillings for every day that the offence continues after the expiry of the period of time given for completion by the Water Apportionment Board in such order.

Offence and penalty for failure to carry out order.

(2) If such owner fails to comply with an order of the Water Apportionment Board, the Board may itself take such steps as may be necessary to execute such order, and any expenses incurred in so doing shall be recoverable at the suit of the Board as a civil debt from such owner.

59. (1) Where the Member, after consultation with the Water Resources Authority, is satisfied that, in any area, special measures for the conservation of ground water are necessary

Power to declare areas for conservation.

in the public interest, whether for the protection of public water supplies or for the protection of water supplies used for industrial or other purposes, he may make an order (in this Ordinance called an Area Application Order) applying the provisions of sections 61 to 73, inclusive, of this Ordinance to such area either until further order or for such period as may be specified in the order. 5

(2) The provisions of sections 61 to 73, inclusive, of this Ordinance, shall have effect only in areas to which they are so applied. 10

Users of ground water prior to operation of this Ordinance to apply for licence or sanction.

60. Subject to the provisions of section 32 of this Ordinance, every person who has been, prior to the making of an Area Application Order under section 59 of this Ordinance, diverting or abstracting water or allowing water to be diverted or abstracted from ground water, within any area to which the Area Application Order applies shall, within six months from the date of the Area Application Order, or within such further period as may be determined by the Member by notice in the Gazette, apply to the Water Apportionment Board for a licence or sanction under this Ordinance. 15 20

Authority required to construct well.

61. (1) No person shall begin to—
 (a) construct any well for the purpose of abstracting ground water therefrom; or
 (b) extend any existing well for the purpose of abstracting additional ground water therefrom; 25

unless he has obtained the necessary authority under the provisions of this Ordinance so to do.

(2) The provisions of this section shall not apply to—
 (a) any well which does not reach a depth of 100 feet below the surface of the ground; or 30
 (b) the construction or extension of a well for the purpose of extracting ground water solely and to the extent necessary for a supply of water for domestic use or the watering of stock on the land of any one landholder, and, where such land is subsequently divided, 35 only on the subdivision of land on which the well is situated.

(3) No person shall abstract ground water from—
 (a) any well constructed in contravention of the provisions of sub-section (1) of this section; or 40
 (b) any well, the construction or extension of which is lawful under the provisions of paragraph (b) of sub-section (2) of this section, except for the purpose for which it was constructed or extended,

unless he has obtained the necessary licence or sanction under 45 the provisions of this Ordinance.

Licence or sanction for abstraction of ground water.

62. Where, under the provisions of this Ordinance, a licence or sanction is required for the abstraction of ground water, the Water Apportionment Board may, on the application of any person, grant such licence or sanction with or 50 without conditions, or may refuse to grant such licence or sanction.

Extraction of minerals.

63. Where any person constructs any new work, not being works as defined in section 2 of this Ordinance, for the purpose of searching for or extracting minerals and an aquifer 55 is struck, he shall give notice to the Water Apportionment Board and shall take such measures and comply with such conditions as the Water Apportionment Board may from time to time require for the conservation of water which may be encountered during any construction:

Provided that if such person is aggrieved by any such requirement he may, within thirty days of the date of notification thereof, appeal to the Member whose decision shall be final.

5 64. Any person who contravenes any of the provisions of sections 61 and 63 of this Ordinance or any requirement imposed thereunder, or any condition attached to a licence or sanction granted under the provisions of section 62 of this Ordinance, shall be guilty of an offence against this Ordinance.

10 65. (1) Every person licensed or sanctioned for the purpose of abstracting ground water by means of a well shall, in order to prevent contamination or pollution of the water—

(a) effectively seal off to a sufficient depth, any contaminated or polluted surface or shallow water in rock openings or soft broken ground;

(b) effectively seal the top of the well between the surface casing and the internal pump column, and the suction or discharge pipe;

(c) dispose of all return or waste water by means other than by return to the well;

(d) extend the well casing to a point not less than eight inches above the elevation of the finished pump house or pump pit floor;

(e) use either welded or screw type well joints on the casing, if made of metal;

(f) provide the well casing top with a screw connexion to permit tight flange connexion being screwed or welded around the annular opening around the casing and the drop pipe;

(g) dispose of effluents or drainage from any household, stable, factory, trade premises or other premises in such a manner as will prevent any such effluent or drainage from reaching such well or ground water; and

(h) carry out such other work as the Water Apportionment Board may direct, from time to time, for the prevention of contamination or pollution.

(2) The provisions of paragraphs (g) and (h) of sub-section (1) of this section shall also apply to persons other than the licensee or sanction holder, but where any such work is carried out, the Water Apportionment Board may order that it shall be carried out by the licensee or sanction holder and may apportion the expense. Where an order is made under the provisions of this sub-section for the carrying out of any work, such order shall specify the work which is to be carried out, and no departure from such order shall be made without the prior authority of the Water Apportionment Board.

(3) If any person fails to comply with an order of the Water Apportionment Board given under the provisions of this section, the Water Apportionment Board may take such steps as may be necessary to execute such order, and any expenses incurred in taking such steps shall be recoverable at the suit of the Board as a debt from the person upon whom such order was made.

55 (4) For the purposes of this section, the Water Apportionment Board, or any person deputed by it, may enter any land or premises for the purposes of ascertaining any information required.

(5) Any person who fails to comply with, or who fails to obey, any order given under the provisions of this section, shall be guilty of an offence against this Ordinance.

Offence.

Contamination
and pollution.

Casing and
non-return
valves to be
fitted.

66. Except where otherwise authorized by the Water Apportionment Board, if, during the construction of a well, water is encountered in an aquifer and water from a water table or higher artesian aquifer tends to flow from the upper aquifer to the lower aquifer, the well shall be securely cased and fitted with non-return valves or other satisfactory devices, so that the water from the higher aquifer cannot flow to the lower aquifer. 5

Distance within
which wells may
be constructed.

67. No well shall be constructed within one mile of any other well without the prior consent, in writing, of the Water 10 Apportionment Board.

Artesian wells
to be cased, etc.

68. Every artesian well shall be efficiently cased, capped or furnished with such appliances as will readily and effectively arrest and prevent the flow therefrom over the surface of the ground or wasting from the well through the strata through 15 which it passes.

Licensing of well
contractors.

69. (1) No well contractor shall carry out any contract to construct a well until he has been licensed by the Water Apportionment Board.

(2) Every application for a well contractor's licence shall 20 be made on the prescribed form and shall be accompanied by the prescribed fee.

(3) If, on receipt of an application, the Water Apportionment Board is satisfied that the applicant is a fit person to be licensed, it shall issue a well contractor's licence for such 25 period and subject to such conditions as shall be specified therein and shall keep a register containing the particulars of all such licences.

Drillers to be
licensed.

70. (1) No person shall carry out the work of a driller or be in charge of any drilling operation unless he is licensed in 30 that behalf under the provisions of this Ordinance.

(2) Every application for a driller's licence shall be made to the Water Apportionment Board on the prescribed form, and shall be accompanied by the prescribed fee.

(3) If, upon receipt of such application, the Water 35 Apportionment Board is satisfied that the applicant is a fit person to be licensed as a driller, it shall issue a driller's licence subject to such conditions as it may impose, and subject to the provisions of sub-section (4) of this section such licence shall remain in force for a period therein specified not 40 exceeding five years, and the Water Apportionment Board shall keep a register containing the particulars of all such licences.

(4) The Water Apportionment Board may at any time cancel any driller's licence if the driller has—

(a) conducted any drilling operation improperly; 45

(b) intentionally made a material misstatement of fact in an application for a driller's licence;

(c) intentionally made a misstatement of fact in any report required from him under the provisions of this Ordinance; 50

(d) failed to submit any report required from him under the provisions of this Ordinance; or

(e) failed to comply with any provision of this Ordinance.

Offence to
construct wells
without being
licensed.

71. Any person, not licensed as a well contractor or a driller who carries out any contract to construct a well, or 55 any drilling operation, shall be guilty of an offence against this Ordinance.

72. (1) The following shall be conditions of any licence or sanction, issued under the provisions of this Ordinance, for the abstraction of ground water—

- 5 (a) that the right of the licensee or sanction holder shall relate to a specific quantity of water, which may be obtained with a maximum pumping lift found by the Water Apportionment Board to be reasonable or feasible at the time of granting the licence or sanction:
- 10 Provided that the Water Apportionment Board may, from time to time, for reasons of reduced pumping costs in any area or increased value of water, increase such maximum pumping lift; and
- 15 (b) that such licence or sanction does not include the right to have the water level in the well of the licensee or sanction holder maintained at any level higher than the level necessary to make effective such reasonable or feasible pumping lift.
- 20 (2) Nothing in paragraph (b) of sub-section (1) of this section shall be so construed as to prevent the granting of licences or sanctions to other applicants later in time, on the grounds that abstractions under such later appropriations may cause the water level at the point of abstraction of a prior appropriator to be lowered, so long as the rights of existing holders 25 of licences can be satisfied.

73. Priorities of rights to the use of ground water shall be established separately in each declared area or sub-area which constitutes, in the opinion of the Water Apportionment Board, a separate source of supply:

- 30 Provided that where the ground water of different declared areas or sub-areas is, in the opinion of the Water Apportionment Board, so inter-connected as to constitute one common water supply or body of water, or where ground waters and the waters of a body of surface waters are so 35 inter-connected as to form one common source of supply or body of water, priorities of rights to the use of all such inter-connected waters shall be correlated and a single schedule of priorities shall relate to the whole common water supply or body of water.

- 40 **74.** (1) Any person proposing to apply for a water right or sanction, or any operator wishing to enter upon the land of another person, if his proposals are opposed by such other person, may upon submitting in the manner prescribed, a general description of his proposals and a schedule of lands 45 which may be affected by the construction and operation of the proposed works, together with the names and addresses of the holders of such lands, and upon payment of the prescribed fee, obtain from the Water Apportionment Board, authority to enter upon such land and do any necessary preliminary 50 investigation in connexion with the location of such proposed works.

(2) The Water Apportionment Board may prescribe a time limit within which such investigation shall be completed.

(3) Such applicant or operator or any person authorized 55 by him may, with such assistance as is necessary, enter into and upon any such land to take levels, make surveys, and do other necessary work in connexion with such location.

(4) The Water Apportionment Board shall not issue any such authority until it has served a notice on each landholder 60 concerned, that application to enter his lands has been made by such applicant or operator.

(5) The grant of any such authority shall not authorize or be deemed to authorize the doing of any damage upon any

Conditions of
licence or
sanction to
abstract ground
water.

Priorities of
rights to the
use of ground
water.

Authority to
enter upon
lands for
survey and
preliminary
investigation.

Cap. 18.

Application for
a water right or
sanction.

lands entered upon, and if any damage is done, compensation shall, failing agreement between the parties as to the amount of such compensation, be determined by arbitration under the provisions of the Arbitration Ordinance.

75. Except where otherwise expressly provided in this Ordinance, every applicant for a water right or sanction shall complete and file with the Water Apportionment Board the following documents in duplicate, accompanied by the prescribed fee:—

- (a) an application in the prescribed form; 10
- (b) if any road or road reserve will be affected, a request for the right to construct any works, referred to in the application, across such road, or road reserve;
- (c) a general map, drawn in Indian ink, or by means of other indelible process acceptable to the Water ¹⁵ Apportionment Board, on tracing linen or other substantial material, to such a scale as will allow all requisite details to be legibly recorded, signed by the applicant, showing the body of water, the position of the intake, forebay, flume, dam, power house, ²⁰ reservoir, pipes, canals, spillways, or other works and lands, if any, which may be affected, the names of the landholders, and the Land Reference numbers and boundaries of the lands which may be affected by the proposed works, such map to be ²⁵ accompanied by verification of the ownership of such lands; and
- (d) such plans as may be required under the provisions of this Ordinance or by the Water Apportionment ³⁰ Board.

Application for
right involving
drainage or
reclamation.

76. The provisions of paragraph (c) of section 75 of this Ordinance shall not apply to applications for water rights or sanctions involving reclamation or drainage of land, but in any such case, the applicant shall furnish such particulars as the Water Apportionment Board shall specify. 35

Amendment of
application.

77. (1) Upon receipt of any application, map, or plan (if any), by the Water Apportionment Board, or at any time after such receipt, and whether objections have been received or not, the Water Apportionment Board may amend or vary the application, map or plan in any respect. 40

(2) Such application, map or plan (if any) or true copies thereof, shall be open for inspection by the public at all times during office hours at the office of the Chairman, and at any other place deemed desirable by the Water Apportionment Board or the Chairman. 45

Approval of
application.

78. (1) After receipt by the Water Apportionment Board of the application together with all particulars, map, and plan (if any), which it may have required the applicant to furnish, so as to enable a full understanding to be obtained of the applicant's proposals, either as originally submitted or as varied, the Water Apportionment Board, if in its opinion the water right or sanction specified would be likely to be in the public interest, or not adverse to it, it shall endorse its conditional approval on both copies of the application, map and plan (if any) connected therewith: 50 55

Provided that where an application for a water right has been made and the Water Apportionment Board is of the opinion that the granting of a water right, either wholly or in part, would not be in the public interest, it may conditionally approve the application for a sanction only or partly for a ⁶⁰ water right and partly for a sanction.

(2) Where an application for a water right has been made, if, in the opinion of the Water Apportionment Board a licence should not be issued until a hydrographic survey or other investigation has been made, or if for any other reason the Water Apportionment Board deems it desirable to delay the issue of a licence, the Water Apportionment Board may issue a sanction under the provisions of this Ordinance.

79. (1) Applications for water rights shall have precedence according to the date of the filing of each application at 10 the office of the Water Apportionment Board or at any other place as may be decided by the Water Apportionment Board.

(2) Where two or more applications are filed, on the same date, for the use of water from the same body of water, the Water Apportionment Board shall take into consideration the 16 various purposes for which the water is to be used under the respective applications and may decide the precedence which each application shall take.

80. If an applicant fails to complete his application to the satisfaction of the Chairman within a period of one year, 20 or such other period as the Water Apportionment Board may in any particular case specify, from the date of its first receipt at the office of the Water Apportionment Board, the application shall be deemed to be abandoned and shall be cancelled.

81. (1) If the application, map or plan (if any), have been 25 conditionally approved as provided in section 78 of this Ordinance, or if before such conditional approval the Chairman shall consider it desirable so to do, the Chairman shall prepare a notice setting forth—

- (a) the name and address of the applicant;
- 30 (b) the body of water from which it is proposed to abstract, or divert water or on which it is proposed to impound water;
- (c) the place at which the water is proposed to be used;
- (d) the purpose for which the water is proposed to be used;
- (e) a statement that any objection must be filed with the Water Apportionment Board within thirty days from the date of the first publication of such notice and that a copy of any objection shall be served on the applicant; and
- (f) any further information considered by the Water Apportionment Board to be necessary.

(2) Such notice shall be transmitted to the applicant who shall, if still he desires to acquire a water right or sanction, within twenty-one days from the date of the receipt of such 45 notice, unless such time is extended by the Water Apportionment Board, cause it to be published in some newspaper, which may be specified by the Water Apportionment Board, published in the Colony, and having circulation in the locality in which the proposed works would be situated, and in 50 addition, in one issue of the Gazette.

(3) If it appear to the Water Apportionment Board to be in the public interest so to do, it may require the applicant to publish such notice in such newspaper and in a second newspaper having circulation in the locality of the proposed works, 55 on not more than four occasions within thirty days, or may require such notice to be published in a modified or altered form.

(4) The Water Apportionment Board may, in any particular case, exempt any applicant from compliance with the requirements of this section.

Precedence of applications for water rights.

Cancellation of applications.

Advertising application.

Procedure if
objection
received.

82. (1) Any objection to an application shall be filed with the Water Apportionment Board in duplicate within thirty days from the date of the first publication of such notice or of such altered or modified notice, and shall contain the name and address of the objector and the specific grounds of objection, and a copy of such objection shall forthwith be served, by the objector, on the applicant. 5

(2) The Water Apportionment Board shall consider such objection, and if, in its opinion, the grounds of objection are not, *prima facie*, sufficient to warrant an inquiry, it shall so 10 decide and shall notify the objector of such decision, but if it considers the alleged grounds sufficient to warrant public inquiry, it shall fix a day for the holding of such inquiry.

(3) The Water Apportionment Board may, for the purpose of such inquiry, summon and examine witnesses upon oath or 15 affirmation, adjourn the hearing to obtain further evidence or until the applicant has submitted plans, or altered plans, or other documents, dismiss the objection, direct the applicant to amend his application, or dismiss the application.

(4) If the powers of the Water Apportionment Board under sub-section (3) of this section, are delegated to any person, such person shall report in writing to the Water Apportionment Board and the Board may decide the application upon such report.

(5) The Water Apportionment Board may, in any particular case, exempt any applicant from compliance with the requirements of this section. 25

Final approval
or refusal of
application.

83. After consideration of any objection to any application, or upon the advice of a Regional Water Board, the Water Apportionment Board may— 30

- (a) finally approve the application;
- (b) refuse the application;
- (c) finally approve the application in part only;
- (d) where an application is for a water right, finally approve the application partly for a water right and 35 partly for a sanction; or
- (e) finally approve the application for a sanction only either wholly or in part.

Procedure if
application for
water right or
sanction is not
approved.

84. If after receipt by the Water Apportionment Board of such application, and any map and plan, together with 40 such particulars of the applicant's proposals as it may have required, the Water Apportionment Board considers that the proposed water right or sanction would not be in the public interest, or would unduly interfere either with the undertakings of other operators or with other users, it shall endorse its 45 disapproval upon both copies of the application and any other necessary documents relating thereto, and shall state its reasons for such disapproval, and shall return one copy of each such document to the applicant.

Authorization
of works.

85. (1) If the application, as filed or as amended by the 50 Water Apportionment Board, is finally approved by the Water Apportionment Board, the Board shall authorize the construction of the works by an authorization, and may specify in such authorization the time within which the construction of such works is to be commenced and to be completed. 55

(2) The authorization for the construction of any such works, shall be in the form prescribed by the Water Apportionment Board, or by rules made under this Ordinance and shall be numbered.

(3) The licence or sanction issued on completion of the works, in accordance with the authorization and any modification thereof to the satisfaction of the Water Apportionment Board, shall bear the same number as was endorsed upon the 5 authorization.

(4) A copy of the application, map or plan (if any) as approved shall be returned to the applicant with the authorization.

(5) No material deviation from the application, map or 10 plan as filed, or amended by the Water Apportionment Board, shall be made without the consent of such Board, and any question arising as to whether any deviation is material shall be determined by the Water Apportionment Board.

86. (1) Any works authorized under the provisions of this 15 Ordinance may, if the Water Apportionment Board so determines, be inspected during construction, by officers of the Department or of the Water Resources Authority and the cost of such inspection, or of such portion thereof as the Chairman declares to be necessary in the interest of the safety of life and 20 property, may be required by the Water Apportionment Board to be borne by the operator.

Inspection of
works during
construction.

(2) No such inspection shall be deemed to imply a Government guarantee of the works constructed, or to support or justify any claim whatsoever against Government in connexion with such works.

87. Upon any inspection made under the provisions of section 86 of this Ordinance, the Water Apportionment Board may order the operator to make any addition or alteration which it considers necessary for the security of any works, 30 whether completed or in course of construction, and if such order is not complied with to the satisfaction of the Water Apportionment Board, within such period as may be specified by such Board, the authorization for such works may be cancelled or modified by the Water Apportionment Board.

Works to be
made secure.

88. When any works for carrying, storing or using water 35 are not of sufficient capacity to carry, store or use the quantity or discharge to which a water right or sanction has been acquired by an operator in connexion with such works, his water right or sanction shall be limited to the quantity or discharge 40 which such works are capable of carrying, storing or using, and, in case of dispute as to such quantity or discharge, the Water Apportionment Board may order an inspection of the works, and the licence or sanction may be varied by the Water Apportionment Board so as to authorize only the 45 quantity or discharge of water which the works are capable of carrying, storing or using in a reasonable and beneficial manner.

Water right
or sanction
limited by
capacity of
works.

89. (1) Upon the expiration of the time mentioned in an authorization for the construction of works, or at any time 50 before such date, if such construction is sooner completed, the operator shall submit a completion certificate upon the prescribed form.

Completion
certificate and
inspection.

(2) Thereupon an inspection may be made, by an officer appointed for the purpose by the Water Apportionment Board, 55 to ascertain that the works have been completed in accordance with the authorization, that the easements, if any, for the works

have been obtained, that agreements, if any are necessary, have been entered into for the supply of water for utilization on lands which are not the property of the operator or for the drainage of lands, and that the works as constructed are of the required capacity.

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(3) If the work is not completed within the time mentioned in the authorization, a progress report shall be submitted in lieu of completion report, and the operator may apply for an extension of the time limit of the authorization.

(4) Such extension may be refused or may be sanctioned 10 upon such terms as the Water Apportionment Board may specify.

Issue of
licence or
sanction.

90. (1) Upon completion of works, to the satisfaction of the Chairman and in accordance with the terms of the authorization or amended authorization, the Water Apportionment 15 Board shall—

(a) where an application, or part thereof, has been finally approved for a water right, issue to the operator, under such terms and conditions and for a fixed period or otherwise as the Water Apportionment 20 Board shall decide, a licence to divert, abstract, use, or store, the quantity of water for which the application for a water right was finally approved, and such licence shall bear the number accorded to the authorization, with priority from the 25 date on which the application containing full details of the applicant's proposal together with such particulars, map or plan as may have been required, was filed, subject to the provisions of section 78 of this Ordinance; 30

(b) where an application, or part thereof, for a water right, has been finally approved for a sanction only or where an application for a sanction has been finally approved, issue a sanction under such terms and conditions and for such a period, not exceeding 35 ten years, as the Water Apportionment Board may determine.

(2) (a) A sanction shall be inferior in standing to a licence, shall not be appurtenant to any piece of land and shall not be transferable. 40

(b) No sanction shall have any priority.

(c) A sanction may be renewed at the discretion of the Water Apportionment Board for such a period, not exceeding ten years, and upon such conditions, as the Water Apportionment Board may think fit. 45

(d) Any sanction holder who desires the renewal of his sanction, shall make application to the Water Apportionment Board, on the prescribed form, at least ninety days before the date on which such sanction will terminate.

(e) If a renewal of a sanction is not granted by the Water 50 Apportionment Board, the sanction holder, on being notified by the Water Apportionment Board, shall cease to abstract, divert, obstruct or store water, as the case may be, on or before the day on which such sanction terminates.

(f) If a sanction is to be converted into a water right, 55 the Water Apportionment Board shall inform the sanction holder.

(g) The sanction holder shall obtain any requisite easement within a period not exceeding two years from the date when he was so informed, or such other time as the Water 60 Apportionment Board may determine, otherwise such proposal to issue a water right shall automatically lapse and any subse-

quent application, by the sanction holder for a water right in lieu of such sanction, shall be considered as a new application and the date of priority shall be the date upon which such subsequent application was filed.

5 **91.** (1) Notwithstanding anything contained in this Ordinance, other than the provisions of sub-section (2) of section 78 and section 171 thereof, the Water Apportionment Board may, when an emergency exists, or, if in the opinion of the Water Apportionment Board exceptional circumstances warrant such action, authorize by sanction, for a period not exceeding one year, the diversion, abstraction, obstruction or use of water and the works required therefor according to such terms and conditions as the Water Apportionment Board may specify in such sanction, regard being had to the extent to 15 which the authorization of such sanction would be likely to interfere with the domestic requirements of other users.

(2) In the event of any works not being in conformity with a sanction issued under the provisions of this section, or in the event of such sanction having been terminated, the Water 20 Apportionment Board may forthwith demolish any such works and recover the cost of such demolition, from the person concerned, in any competent court, the sanction holder shall surrender his sanction to the Water Apportionment Board which shall be endorsed by such Board accordingly.

25 **92.** (1) The use of water shall be reasonable as well as beneficial in relation to others who use the same sources of supply or bodies of water.

(2) All questions as to full, efficient, reasonable and beneficial utilization, as to adverse effect of works, or as to limitation of supply owing to abnormal conditions shall, from time to time, be decided by the Water Apportionment Board, whose written decision shall be final and binding.

(3) In deciding any such question the Water Apportionment Board shall have regard to the particular circumstances of 35 the area concerned, the time at and the period during which the water is used, and any other circumstances relevant to the question.

(4) The right of a licensee or the privilege of a sanction holder to divert, abstract, use or store water shall be limited to 40 the quantity or proportion of the discharge of the body of water concerned, whether it be normal flow or flood discharge, granted by licence or sanction, and in accordance with the terms of the licence or sanction, or in accordance with other rights lawfully exercised under the provisions of this Ordinance:

Provided that every licence or sanction shall be subject to cancellation or variation by the Water Apportionment Board for waste of water, or non-use, non-continuance of reasonable beneficial use, misuse or only partial use of the 50 water right or sanction granted, or non-compliance with the conditions of the licence, or sanction, and, if so cancelled or varied, such licence or sanction shall be returned to such Board for endorsement thereon of such cancellation or variation:

55 Provided further that no licence for a public project or urban project shall be cancelled or varied, either in whole or part except, by the Member, but, in so far as an urban project licence is temporarily not required, in whole or in part, for the purpose for which it was issued, a licence or sanction for a 60 definite period in respect of the same supply may be issued to any person upon application for a water right or sanction under the provisions of this Ordinance.

Issue of
sanctions
without usual
procedure in
exceptional
cases.

Questions as
to efficient
utilization and
procedure
owing to
abnormal
conditions to
be determined
by Water
Apportionment
Board.

Water
Apportionment
Board may
prescribe
measuring and
controlling
devices.

93. (1) The Water Apportionment Board may prescribe in a licence or sanction that the operator shall construct, fix, and maintain, in a sound and efficient manner, weirs, flumes, sluice gates, valves or other controlling or measuring devices, ensuring that only the quantity of water, or proportion of the flow of the stream, which the operator is authorized to abstract, divert, use or store, shall be abstracted, diverted, used or stored by the operator in exercise of such water right or sanction, or it may, at any time subsequent to the issue of such licence or sanction, require the licensee or sanction holder 10 to construct, fix and maintain such weir, flume, sluice gates, valve or other controlling or measuring device. 5

(2) The Water Apportionment Board may prescribe the design, materials and method of construction of any such controlling or measuring devices. 15

(3) Every licensee or sanction holder storing water in a reservoir shall, at the discretion of the Water Apportionment Board, and according to plans approved by it, construct, fix, and maintain in a sound and efficient manner flumes, weirs, sluice gates, or other controlling or measuring devices at 20 points on the stream to be determined by such Board and, if required so to do, on each and every stream, or body of water, discharging into or from such reservoir, for the purpose of determining the amount of water flowing into or stored in such reservoir or the flow below such reservoir, or both. 25

(4) If any licensee or sanction holder neglects or refuses to commence the construction or fixation of such flumes, weirs, sluice gates, valves or other controlling or measuring devices, within three months after notice to do so by the Water Apportionment Board, or to prosecute the said construction 30 diligently, or to maintain the same satisfactorily, the Water Apportionment Board may—

(a) construct, fix, maintain or cause to be constructed, fixed and maintained the said flumes, weirs, sluice gates, valves or other controlling or measuring devices; 35

(b) open or cause to be opened the sluice gates, valve or outlet of any reservoir, or, failing such outlet, demolish or cause to be demolished any works in order to provide an outlet, or close or cause to be 40 closed any canal or pipe or other work for diverting or abstracting water, to permit such quantity of water to flow down the stream for the use of other persons, as the Water Apportionment Board may deem proper, until the said licensee or sanction holder 45 shall construct, fix or maintain the said flumes, weirs, sluice gates, valves or other controlling or measuring devices.

(5) All costs and charges in connexion with any such operation shall be paid by the licensee or sanction holder 50 and, if not so paid, shall, in addition to any other penalty provided under this Ordinance, be recoverable as a debt due to the Crown, and, if the licensee or sanction holder further refuses or fails to comply with the said requirements, the Water Apportionment Board may cancel his licence or 55 sanction.

Road crossings.

94. (1) Any operator constructing any works under the provisions of this Ordinance, shall, during such construction, keep open, for safe and convenient travel, all public roads and rights of way therefor, publicly used as such, when they are 60 crossed, or interfered with, by such works, and shall, before water is admitted to such works, construct to the satisfaction of the authority concerned, or, at the option of such authority, refund to it the costs of construction by it of a substantial

bridge with proper and sufficient approaches thereto over such works, and of such railings, fences, guard posts, culverts, face-walls, and other structures and appurtenances as such authority, with the approval of the Water Apportionment 5 Board, may declare to be necessary in the public interest and all such bridges, approaches and appurtenances shall thereafter be maintained by the operator, while his water right or sanction is valid, or, alternatively, at the option of the authority, at the expense of the operator.

10 (2) The authority concerned may at any time at its own cost, renew or alter such bridge or any structure or works in connexion therewith.

95. (1) Whenever it is shown to the satisfaction of the Water Apportionment Board that, owing to drought, 15 natural changes, increased demands on a body of water, or other causes, the diversion, abstraction, storage or use of the water authorized to be diverted, abstracted, stored or used by a licensee or sanction holder causes inequity or causes a shortage of water for domestic purposes or any other purpose 20 which, in the opinion of the Water Apportionment Board, should have priority, it may revise and alter the discharge or quantity of water which any licensee or sanction holder is authorized to divert, abstract, store or use:

Provided that before any such revision or alteration is 25 made, notice of the intention in that behalf shall be given by the Water Apportionment Board to any licensee or sanction holder who may be adversely affected thereby, and any such licensee or sanction holder may, within thirty days thereafter, appeal to the Member whose decision shall be final.

30 (2) The Water Apportionment Board may decide what compensation (if any) shall be paid to a licensee or sanction holder and by whom it shall be paid in respect of any loss incurred by action being taken under the provisions of sub-section (1) of this section and, if such licensee or sanction 35 holder is not satisfied with the amount of such compensation he may lodge an objection with the Water Apportionment Board within thirty days of the date of notification of the decision of the Water Apportionment Board and the matter shall then be referred to arbitration as provided in section 174 40 of this Ordinance :

Provided that if it is decided that any compensation is payable to the licensee or sanction holder such compensation shall be recoverable as a civil debt.

96. (1) When issuing a licence, the Water Apportionment 45 Board shall specify, as far as practicable, the particular portion of any land, or the particular undertaking, to which the water right is to be appurtenant and such water right shall thereupon, save as herein provided, be appurtenant to such portion of land or such undertaking, and such water right shall pass with 50 any demise, devise, alienation, transfer or other disposition thereof, whether by operation of law or otherwise:

Provided that if, in the opinion of the Water Apportionment Board, circumstances, not under the control of the licensee, have changed since the issue of the licence and the water 55 concerned cannot under such circumstances be reasonably beneficially used by such licensee on the particular portion of land to which such licence is appurtenant, the Water Apportionment Board may, on application by such licensee and provided it is in the public interest and the rights of others 60 are not adversely affected thereby, transfer such licence to another portion of the land owned by such licensee and such transfer shall not affect the priority of such licence.

Alteration of quantity of water authorized to be diverted by licensees or sanction holders.

Water right to be appurtenant to the land for which issued.

(2) When the land or undertaking, to which the water right is appurtenant, passes to another landholder or owner such licence shall be surrendered to the Water Apportionment Board for endorsement thereon of the name of the new landholder or owner.

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(3) Notwithstanding anything contained in sub-section (1) of this section, if the land to which the water right is appurtenant, has been, or is about to be, divided in ownership, the licence shall be surrendered to the Water Apportionment Board, and such new licence, as may be issued by the Water ¹⁰ Apportionment Board, shall be dependent upon the acquisition of such easements, if any, as may be required and may be issued with such modifications of the original licence as, in the opinion of the Water Apportionment Board, may be rendered necessary or desirable by the circumstances. ¹⁵

Licensee or
sanction
holder may
abandon.

97. When any licensee or sanction holder ceases to utilize the water in accordance with the terms of his licence or sanction he shall, by notice to the Water Apportionment Board, abandon the whole, or any part capable of separation, of the water right or sanction acquired, and, upon ²⁰ such abandonment, the Water Apportionment Board may direct such licensee or sanction holder to remove all or any works erected in connexion with such water right or sanction, within such time as it shall specify and, in the event of the refusal or failure of such licensee or sanction holder to remove ²⁵ such works, the Water Apportionment Board may remove all or any portion of such works, and may recover the cost of such removal from such licensee or sanction holder:

Provided that where any land or undertaking to which a water right or sanction is appurtenant is mortgaged or ³⁰ charged, no abandonment of such water right or sanction shall be effective without the consent in writing of the mortgagee or chargee.

Readjustment
of licence
or sanction.

98. Every licence and sanction shall be subject to subsequent readjustment by the Water Apportionment Board after ³⁵ a hydrographic survey of the body of water has been made, and after reasonable notice has been given to all parties affected, but no such readjustment shall affect the priority of the licence.

Change of
point of
diversion.

99. An operator, who desires to change the point of ⁴⁰ diversion or abstraction of the water used or to be used by him, shall apply to the Water Apportionment Board for permission so to do and the Water Apportionment Board may grant such application if it is of the opinion that it is in the public interest so to do and that the rights of others will not be ⁴⁵ affected thereby and any question regarding the alteration in the priority of a licence granted to such operator, shall be determined by the Water Apportionment Board.

Change of use
of water.

100. (1) The water granted under licence or sanction may be used only for the specific purpose stated in the licence or ⁵⁰ sanction relating thereto and, if the licensee or sanction holder desires to use such water for any other purpose, he shall make application to the Water Apportionment Board and supply such particulars as the Water Apportionment Board may require: ⁵⁵

(2) If such application is granted by the Water Apportionment Board such licensee or sanction holder shall surrender his licence or sanction to the Water Apportionment Board, and the Water Apportionment Board shall issue a new licence or sanction with such modifications as it considers ⁶⁰ necessary and any question regarding the alteration of priority of such new licence shall be determined by the Water Apportionment Board.

101. Whenever the holder of land, to whom a water right or sanction has been granted, desires to have the water concerned apportioned between two or more parts of the land in respect whereof the water right or sanction was originally obtained, he shall apply to the Water Apportionment Board for an apportionment, and the Water Apportionment Board, on being satisfied that the rights of others will not be prejudiced thereby, may, after notice to all persons believed by it to be concerned, amend the licence or sanction originally granted, or may issue two or more new licences or sanctions to conform with the apportionment authorized. Such new licences or sanctions shall, after providing for the authorized uses of the water and the periods of use provided for in the original licence or sanction, not authorize in the aggregate, the diversion, or storage, of more water than the discharge or quantity authorized to be diverted, abstracted, stored or used by the original licence or sanction.

102. Any two or more licensees or sanction holders may mingle the waters authorized by their licences or sanctions, and may construct works to carry and use such mingled water:

Provided that the plans of any such works shall be subject to the approval of the Water Apportionment Board in all respects as new works and, except as to the mingling of such waters and the construction and maintenance of such works, the licence or sanction of such licensee or sanction holder shall in no way be enlarged or varied.

103. The production of a licence, sanction or authorization, or any copy thereof purporting to be certified by the Chairman of the Water Apportionment Board shall, without further proof, be prima facie evidence in all courts of the matters and things specified therein.

104. Every operator shall maintain and retain his works in a good, proper and workmanlike manner to the satisfaction of the Water Apportionment Board, so that the same shall, at all times, be of sufficient strength and capacity for the fulfilment of the purpose for which they were constructed, and so that no damage shall occur to any road, property, or work in the vicinity thereof, and any person aggrieved by the failure or neglect of such operator so to do, may within a reasonable time after such failure or neglect has been discovered, serve such operator with notice thereof, and if such operator declines or fails to remedy any such defect, inefficiency or neglect, such person may recover damages in respect of any loss sustained by him in consequence thereof.

105. (1) In the case of all water rights or sanctions involving the irrigation of lands, provision shall be made by the operator for the efficient drainage of such lands and the delivery of the residue of used or unused water to a watercourse or a body of water by drainage or other works.

(2) Whenever, in the opinion of the Water Apportionment Board, no provision, or insufficient provision, has been made by the operator for the delivery of used or unused water to a watercourse or body of water, or for the drainage of irrigated lands or swamps created by any diversion or abstraction of water, it may order the operator to construct and maintain such works as will, in its opinion, cause such water to be so delivered or as will drain such irrigated lands or swamps.

(3) If any operator fail within a reasonable time to obey any order of the Water Apportionment Board given under the provisions of this section, his licence or sanction may be cancelled by the Water Apportionment Board, and the water right or sanction shall thereupon become null and void, and he shall be guilty of an offence against this Ordinance.

Apportionment.

Mingling waters.

Licence,
sanction or
authorization as
evidence.Works to be
kept in repair.Drainage of
irrigated lands.

Water not to
be released
without notice.

106. No water, stored or penned back by any operator, shall be released without reasonable notice being given to all persons whose property may be liable to injury thereby, and the operator shall not, by reason of anything in this Ordinance contained, be relieved from liability for any loss, damage or injury sustained by anyone arising from the release of such water.

Damage to
public works
to be made
good.

107. Every operator shall be liable for and shall make good, in such manner as the Water Apportionment Board or any officer delegated by it may determine, all damage to any public works which may be occasioned by reason of the works of the operator breaking, or being defective in construction, or out of repair, or of insufficient capacity, and in the event of such works not being made good after notice so to do has been served on such operator by the Water Apportionment Board, the Water Apportionment Board may cause such works to be made good and recover the cost thereof in any competent court.

Authority to
interfere with
road or
public works.

108. Any person engaged in the construction of any road or public works may, with the approval of the Water Apportionment Board and upon giving reasonable notice to the operator concerned, cross, divert or otherwise interfere with the work of such operator for such reasonable period as may be necessary, provided that such person shall do as little damage as possible, and shall, as speedily as possible, restore such work to a condition in which it will fulfil its required purpose.

Operator must
produce
documents on
order of
Water
Apportionment
Board.

109. Every operator, upon the order of the Water Apportionment Board, or any person authorized by the Water Apportionment Board for that purpose, shall produce for inspection any licence, sanction, authorization, map, plan, specification, drawing or other document relating to the works or to the water right or sanction of such operator or to the flow of water in such works or in the body of water affected by such works.

Correction of
errors in
licence,
sanction, etc.

110. Any licence, sanction, authorization or other document issued under the provisions of this Part of this Ordinance which has been issued imperfectly or without compliance with all or any of the terms governing the issue thereof, or which contains some inaccuracy, which can be corrected without affecting the rights of other parties, or which is incomplete or indefinite in its terms and conditions, shall be returned to the Water Apportionment Board upon an order of the Chairman to the person to whom it is issued, and such licence, sanction, authorization or other document may be re-issued with such amendments as may be considered by the Chairman to be necessary.

Operator may
acquire
easement.

111. (1) Any operator who has received an authorization, under the provisions of this Ordinance, to construct works for the purpose of a licence or sanction, where the works authorized, or a portion of them, would, when constructed, be situated upon lands not held by the operator, shall acquire an easement on, over, or through the land on which the works would be situated, and, unless the works have previously been constructed under any lawful authority not amounting to an easement, and under the authority of a sanction, shall not exercise the authorization unless and until he has acquired such easement.

(2) Where the works, referred to in sub-section (1) of this section, are to be constructed for the purpose of a sanction, the written permission of the owner of the lands for such works to be constructed thereon shall be sufficient for so long as the person giving the permission is the owner of such lands:

Provided that anything done under the provisions of this sub-section shall not prevent an application for an easement being made in accordance with any other provision of this Ordinance.

5 **112.** The acquisition of an easement under the last preceding section shall not affect the burden or benefit of any encumbrance on the land existing at the date of such acquisition or the liability or right of any person in respect thereof.

Encumbrances.

10 **113.** An easement shall include the right of access to any piece of land contiguous to the water of the operator in so far as may be necessary for the purpose of constructing, inspecting, maintaining or repairing the works of the operator and for any purpose necessary for the effective enjoyment of the easement.

Easement includes right of access.

15 **114.** An easement shall include the right to take such materials existing naturally on the land, as may be approved by the Water Apportionment Board, from the land on, over or through which such easement has been granted, for the purpose of constructing, maintaining or repairing any work thereon.

Easement includes right to take materials.

20 **115.** When works have been executed by an operator on another person's land, any land occupied solely for the deposit of excavated material from the works executed shall, notwithstanding the payment of compensation and except in 25 the case of an easement for drainage or reclamation, remain available to such person for his own purposes, and such person may remove such excavated material, provided that no damage shall be done to the works of the operator, neither shall the works be obstructed or interfered with by such removal.

Landholder may use land occupied by excavated material for own purposes.

25 **116.** Any operator who has acquired an easement which includes the construction of a canal, shall take and maintain adequate measures for preventing the introduction into the canal of a greater quantity of water than that which the canal is capable of carrying, and shall not cause damage to any land 30 in respect of which the easement is held by permitting the accumulation of weeds, silt, or any other obstruction or nuisance which might cause flooding, or any other damage whatsoever, and compensation for any damage so caused may be recovered from the operator in any competent court.

Operator must avoid flooding lands and maintain canal satisfactorily.

30 **117.** If damage shall be caused to the land over which the easement is held, by the works of an operator, the holder of the land over which the easement is held may require such operator to construct such additional works as are necessary, in the opinion of the Water Apportionment Board to prevent 45 such damage or any recurrence thereof, and the Water Apportionment Board may, by order, require the operator to construct such additional works at his sole expense, or partly at the expense of the landholder and partly at the expense of the operator. If the operator fails to comply with an order of the 50 Water Apportionment Board, given under the provisions of this section, the Water Apportionment Board may cancel his licence or sanction, and thereupon such licence or sanction shall be returned to the Board.

Damage caused by works of operator.

118. An operator who has acquired an easement for the 55 construction of works on another landholder's land which—

- (a) prevents the landholder passing freely over or on his land as theretofore; or
- (b) interferes with his existing works, structures or devices, upon his land,

Operator to construct works to enable landholder to enjoy his existing works if interfered with.

60 shall, at his own expense, construct and maintain in repair, to the satisfaction of the Water Apportionment Board and under such conditions as it may prescribe—

- (i) such bridges and other structures and devices, as will make communication safe and convenient; or

Operator
desiring
easement to
serve notice on
landholder.

(ii) such works, structures or devices as such Board considers necessary to enable the landholder effectually to enjoy the use of any works, structures or devices interfered with.

119. An operator claiming an easement under the provisions of this Ordinance shall serve a notice in writing on the holder of the land on, over or through which he desires to acquire the easement, and shall in such notice state the following particulars, and such further particulars as may be required by rules made under this Ordinance—⁵

10

- (a) a description of the proposed works and a statement of their use;
- (b) a statement of the quantity or discharge of water, if any, to be diverted or dealt with;
- (c) a map showing clearly the nature and locality of any ¹⁵ works or area of swamp or lands to be reclaimed, if the easement is for reclamation of a swamp or lands;
- (d) a statement of the area of the land (if any) which is or will be occupied by the works, flooded as a result ²⁰ of the works, or required for purposes of inspection and maintenance of the works, or required for the excavation or collection of material for the works, for the deposit of soil or material derived from the works, or for a road or roads to obtain access to the ²⁵ works;
- (e) a statement of the compensation which is offered and the period of time during which the operator wishes to enjoy the easement,

and a copy of such notice shall be sent by the operator to ³⁰ the Water Apportionment Board.

If the landholder
agrees,
particulars to
be embodied in
deed.

120. If the landholder agrees to the claim for an easement, either as originally proposed or as modified by agreement, the operator shall embody the particulars and other matters pertaining thereto in a deed and, after its execution by ³⁵ the parties concerned, shall send two copies of such deed, certified by the Registrar of Titles, to the Water Apportionment Board.

If the landholder
does not agree
to the claim,
application
for easement
may be made.

121. If the landholder does not, within two months after the service of a notice under the provisions of section ⁴⁰ 119 of this Ordinance, agree to the claim for an easement or to any other matter necessary for an easement, the operator may apply to the Water Apportionment Board for an easement in the manner prescribed, and shall serve notice of such application upon the landholder. ⁴⁵

Claim for
easement may
be dismissed
or granted.

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122. The Water Apportionment Board may either dismiss the claim for an easement, or, with the approval of the Member, grant the easement with or without modification and subject to such conditions as it deems just, but if the amount of compensation to be paid is the subject of disagreement ⁵⁰ between the operator and the landholder, and if the claim is awarded by the Water Apportionment Board and the amount of compensation recommended by it is not agreed to by the parties, the decision on the question of the amount of compensation to be paid by the operator shall be referred to ⁵⁵ arbitration under the provisions of the Arbitration Ordinance.

Easement to
lapse if works
not completed
within a
definite period.

123. An easement, acquired under the provisions of this Ordinance, shall lapse if the works authorized are not completed and the water is not utilized within one year from the date of acquiring such easement or within such further ⁶⁰ period as the Water Apportionment Board may determine,

or if, at any time, substantial use is not made of the water right or sanction in accordance with the terms of the licence or sanction for a continuous period of two years.

124. (1) If any work, constructed on the land of a person other than the operator, be out of repair or require cleaning, the operator, or his agent, shall if, required in writing by the landholder to repair or clean such work, carry out such requirements within a reasonable time, and if, he fail so to do, the landholder may cause to be done all things necessary for carrying out such repairs or cleaning, and may recover the cost thereof from the operator in any competent court.

(2) Such repairs or cleaning shall not be unreasonably demanded, and, in the event of a dispute between the parties, the Water Apportionment Board shall decide what are reasonable repairs or cleaning.

(3) An operator who allows or suffers any such works to fall into disrepair, or, in the opinion of the Water Apportionment Board to be in such a state as to require cleaning, shall be liable for all damage which may arise in consequence thereof.

125. (1) Any landholder on, over or through whose lands an easement has been applied for or been granted may, by application to the Water Apportionment Board either before or after the construction of any proposed works, apply for a water right or sanction to make use of such works or the proposed works for the diversion, abstraction, storage or use of whatever water he may become entitled to divert, abstract, store or use under the provisions of this Ordinance:

Provided that, before such licence, sanction or authorization is issued by the Water Apportionment Board the landholder shall prove, to the satisfaction of the Water Apportionment Board, that the works of the operator can be satisfactorily used for the purpose of the landholder and without material detriment to the operator and such proportionate cost of such works shall be paid by the landholder to the operator who constructed or is constructing the works as may be agreed on between the parties, or, failing agreement, as may be determined by the Water Apportionment Board, and such agreement or decision shall be final and binding on all parties.

(2) Such operator may require the landholder to enter into an agreement to continue to pay the proportionate cost of maintaining the portion of such works made use of, until he has, in writing, surrendered such right of user and, in the event of disagreement, the decision of the Water Apportionment Board shall be final.

(3) If such works require modification to enable the landholder to enjoy their use, he shall, unless the matter is otherwise agreed, pay to the operator—

(a) the entire cost of modifying them in the manner approved by the Water Apportionment Board;

(b) the cost of constructing and maintaining such devices for apportioning the quantities of water as the Water Apportionment Board may prescribe or approve.

(4) The Water Apportionment Board may modify any rate of payment, upon application by either party, when it is proved to its satisfaction that altered conditions have rendered a revision of such rate of payment just and equitable, and any such alteration of such rate of payment shall have effect from a date to be specified in a notice to be posted to both parties by the Water Apportionment Board, but shall not have retrospective effect.

Operator to
keep his works
in a state of
repair.

Landholder
may demand
and obtain use
of the works
of an operator.

Easements to
be registered.

Determination
of easement.

Member may
order drainage
of swamp.

A minority of
holders of land
in or abutting
on a swamp
may be
required to
contribute to
cost of
drainage.

Forfeiture of
rights if works
are not
completed
within the time
allowed.

126. An easement acquired under the provisions of this Ordinance shall be registered against the title affected and a plan, which shall be signed by, or by the authority of, the Director of Surveys, shall be attached to each document granting such easement. 5

127. (1) An easement, acquired under the provisions of this Ordinance, shall determine if and when the licence, sanction, or authorization, for the exercise of which such easement has been acquired, is cancelled as provided for in this Ordinance, and on the date of such cancellation. 10

(2) On the determination of any licence, sanction or authorization, any works constructed by the operator on the lands of another person shall, where such operator is the sole licensee or sanction holder, if not removed by such operator within one year from the date of such determination, become 15 the property of such other person, unless otherwise ordered by the Water Apportionment Board.

(3) On the determination or alteration of an easement the Water Apportionment Board shall notify the landholder over whose land the easement was granted and the Registrar of 20 Titles, and the landholder concerned may take such action as shall be necessary to cause his title to be freed from such easement.

128. (1) If there shall exist, wholly or partly, upon any land, any swamp or any natural or unauthorized obstruction to the natural flow of water as determined by the Water Apportionment Board, which tends to cause a diminution of the flow by evaporation, absorption or otherwise, the Member, upon application by the Water Apportionment Board, and on the advice of the Water Resources Authority, may order 25 30 that such swamp be drained, or that such obstruction be removed. In this sub-section the term "drained" includes the by-passing of the flow around any such swamp.

(2) The Member may, for the purpose of such drainage or removal, order such work and such method of execution 35 40 of work as the public interest may appear to justify or require, and may make such order as to the allocation and collection of the cost of such works and as to their subsequent maintenance as may appear to be equitable having regard to the benefits which might accrue to other parties from the execution of such works and the increased provision of water expected therefrom, and such order may provide that such work shall be aided by public moneys, to such extent as may be authorized by the Legislative Council of the Colony:

Provided that, except by agreement or on payment of 45 compensation, no works involving the drainage of a swamp shall deprive of reasonable access to water any landholder with a licence or sanction to divert or abstract water from such swamp.

129. When swamps encroach upon the holdings of 50 various landholders and some of them desire to effect their reclamation in common, the Member may compel a dissenting minority to pay all expenses collectively with the majority. In this section "majority" means the landholders who represent the major part of the area of land considered, by the Water 55 Apportionment Board, to be reclaimable.

130. Upon the expiration of the time allowed in an authorization, or of any extension of such time, for the completion of works under the provisions of this Ordinance, the rights therein granted to the operator shall cease and 60 determine, and any works, at the date of such determination,

constructed, erected, fixed or acquired, may be taken over and operated, or disposed of, as ordered by the Member, if not completed within the time allowed.

131. (1) Subject to the payment of compensation therefor, the Member may, if at any time he shall deem it advisable in the public interest so to do, take over and operate, or otherwise dispose of, the works of any operator authorized under the provisions of this Ordinance, and, in such event, every licence or sanction, granted in connexion with such works, shall be returned to the Water Apportionment Board which may reissue the licence or sanction to such operator as it may approve.

(2) In the event of disagreement regarding the compensation to be paid for expropriated works, such compensation shall be determined by arbitration under the Arbitration Ordinance.

Expropriation
of works.

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132. Every licensee or sanction holder shall, whenever called upon by the Water Apportionment Board so to do, within thirty days submit to the Water Apportionment Board a certificate to the effect that he is utilizing his works in accordance with his licence or sanction.

Annual certificate
of utilization.

133. Where the Water Apportionment Board is satisfied, after due inquiry, that any licensee or sanction holder has abandoned the use of any water, or has wasted any water, to which his licence or sanction entitled him, the Water Apportionment Board, if it deems just and proper, may thereupon, by order, declare a cancellation of his licence or sanction and the licence or sanction shall thereupon cease and determine:

Cancellation of
water right or
sanction for
waste and
non-usage.

30 Provided that if waste, and not entire cessation of use, is found to prevail or to have prevailed, the Water Apportionment Board may issue a new licence or sanction entitling such licensee or sanction holder to such reduced quantity of water as to it appears just.

35 **134.** (1) It shall be lawful for the Member, on behalf of the Crown, to enter upon, use, order the use of, maintain, vary, destroy, or remove abandoned works, wherever situated, without payment of compensation.

Abandoned
works.

(2) Works shall be deemed to be abandoned when it is proved to the satisfaction of the Water Apportionment Board that they have remained substantially unused, for any of the purposes of this Ordinance, by any licensee or sanction holder lawfully entitled to make use of them under the provisions of this Ordinance, for a period of one year, or such longer period as the Water Apportionment Board may in any particular case determine.

(3) No action shall be taken by the Water Apportionment Board, under the provisions of this section, except after publication of a notice in the Gazette to the effect that works have been proved to the satisfaction of the Water Apportionment Board to be abandoned and that, failing lawful use thereof within the period of one month from the date of such publication, the right to use, vary, or dispose of such works will be assumed by the Crown.

55 (4) The onus of proving that such works have been lawfully used within such period of one month shall be on the licensee or sanction holder who shall, in such case, notify the Water Apportionment Board, within such period, that the works are being lawfully used in accordance with the terms of his licence or sanction.

Offences and
penalties in
certain cases.

135. (1) Any person who performs any of the following acts shall be guilty of an offence against this Ordinance, that is to say, any person who—

- (a) wilfully obstructs, molests or hinders an inspecting officer, engineer or surveyor of the Department, a qualified engineer, a Government surveyor or a land surveyor, water bailiff or other person duly authorized by the Water Apportionment Board, in the exercise of his duties under the provisions of this Ordinance; 5 10
- (b) without the written authority of the Water Apportionment Board, knowingly or wilfully defaces, alters or removes or causes to be defaced, altered or removed, any survey mark, water gauge, weir or measuring device, or other work, structure or appliance installed for the purpose of water control or investigation. 15
- (c) witnesses any such act as is mentioned in paragraph (b) of this sub-section and who does not attempt to prevent such act or who does not report such act to the nearest police officer or administrative officer as soon as possible, or who deliberately conceals knowledge of such act or who refuses to divulge such knowledge when called upon to do so by a police officer or administrative officer; 20 25
- (d) without the written authority of the Water Apportionment Board, throws or conveys, or causes or permits to be thrown or conveyed, any rubbish, dirt, refuse, or other offensive or unwholesome matter or thing into or near to any body of water or water contained in any work, or into or near the zone of saturation, in such manner as to cause, or be likely to cause, pollution thereof; 30
- (e) wilfully hinders or interrupts, or causes or procures to be hindered or interrupted, any operator, or his manager, contractor, servant, or workman in the lawful exercise of any of the powers and authorities conferred by this Ordinance; 35
- (f) wilfully lets off or discharges water from the works of any operator so that such operator loses the use of such water; 40
- (g) without lawful authority lays, erects or constructs or causes to be laid, erected, or constructed, any work to connect with the work of any operator, and which is capable of drawing water from such work; or 45 45
- (h) unlawfully interferes with the works or water supply of any operator,

and such person shall be liable on conviction, to a fine not exceeding two thousand shillings and, in default of payment, to imprisonment for a term not exceeding three months. 50

(2) Any person who, without authority given under the provisions of this Ordinance, obstructs, interferes with, diverts, or abstracts water from any watercourse or any body of water, or who negligently allows any such obstruction, interference, diversion or abstraction, shall be guilty of an offence against this Ordinance, and shall be liable on conviction to a fine not exceeding five hundred shillings a day or part of a day for every day during which the offence is continued, or, in default of payment, to imprisonment for a term not exceeding three months, and, in addition to any other penalty, any works executed may be destroyed and any plant 55 60

or machinery used in connexion therewith may be confiscated, and the cost of destruction of such works may be recovered by the Chairman from such person in any competent court.

5 (3) Any person, who, being entitled to construct, erect or maintain works or to divert, abstract or obstruct water under the provisions of this Ordinance—

- 10** (a) constructs, erects, or maintains works without authority or in any manner contrary to any authority obtained under the provisions of this Ordinance;
- (b) diverts or abstracts water in excess of the quantity authorized to be diverted or abstracted;
- 15** (c) fails to erect, construct or maintain a measuring device, if so required under the provisions of this Ordinance; or
- (d) fails to obey any order of the Water Apportionment Board or other authority, lawfully given under the provisions of this Ordinance;

shall be guilty of an offence and shall be liable on conviction, **20** to a fine not exceeding five hundred shillings for each day or part of a day during which such offence is continued, or, in default of payment, to imprisonment for a term not exceeding three months.

(4) Any person, who has committed, or has been accused **25** of committing, an offence under the provisions of this Ordinance, who refuses, on demand of any water bailiff, to give his name and residence and other particulars which such water bailiff may reasonably require, or gives a name and residence or other particulars which the waiter bailiff has good reason **30** to believe to be false, may be arrested by such water bailiff without a warrant, and handed over to the nearest police officer.

When his true name and residence or other particulars have been ascertained, such person shall be released on his **35** executing a bond, if so required, with or without sureties, to appear before a magistrate. Should the true name and residence or other particulars of such person not be ascertained within twenty-four hours from the time of his arrest or should he fail to execute such bond or, if so required, to furnish **40** sufficient securities, he shall forthwith be brought before a magistrate having jurisdiction in the area:

Provided that, if there be no magistrate then in the area before whom such person can conveniently be brought, such person may be detained in custody until any such magistrate **45** is available.

136. (1) The conviction of any person under the provisions of the last preceding section shall not relieve him from any legal liability to any other person.

Liabilities of offender.

(2) Any operator who wilfully contravenes any of the **50** provisions of this Ordinance, or of the terms or conditions of his licence, sanction or authorization, shall, in addition to all other penalties, be liable to have such licence, sanction or authorization cancelled.

137. The Water Apportionment Board may declare **55** whether particular channels or depressions are watercourses and whether or not, particular bodies of water are streams, swamps, natural lakes or springs and whether any particular ground water is tributary to any such stream, swamp, natural lake or spring and may also declare, define or delineate the **60** boundaries thereof and all matters pertaining thereto, and may vary any such declaration, and any such declaration, until varied, shall be conclusive of any fact stated therein.

Power of Water Apportionment Board to declare matters pertaining to bodies of water.

Qualified
engineer.

138. (1) Where, under the provisions of this Ordinance, it is required that any act shall be done or requirements be provided by a qualified engineer, the provisions relating to such engineer, shall be as prescribed.

(2) The onus of proof that any project, plan, document or application, required, under the provisions of this Ordinance to be supplied, prepared, or provided by a qualified engineer, have been so supplied, prepared or provided, shall be on the party presenting or using them. ⁵

State schemes
and other works.

139. The Member may direct that State schemes may be ¹⁰ executed in augmentation, modification or improvement and, subject to provisions in this Ordinance contained, in supersession of any other works for, or comprising the employment of, waters, and he may, at any time, order that any works contemplated or under execution or completed, shall be aided ¹⁵ from public moneys to such extent as may be authorized by the Legislative Council.

Information to
be afforded to
inspecting
officer.

140. (1) Every operator, which expression shall include his managers, servants and workmen, shall afford to any inspecting officer such information as is within his knowledge ²⁰ in all matters relating to any inquiry held by such inspecting officer under the provisions of this Ordinance, and shall submit to such inspecting officer all plans, specifications, drawings and documents relating to the construction, maintenance, repair or state of repair of the works, or any portion thereof, of such ²⁵ operator.

(2) The production of instructions in writing, signed by the Chairman or his deputy, shall be sufficient evidence of the authority of such inspecting officer.

Right of entry
of the Crown.

141. (1) The Water Apportionment Board, or any person ³⁰ deputed by it, may, in the exercise of the right of the Crown to the control of bodies of water, enter upon any land and inspect such bodies of water and take such measures as may be thought fit for the purposes of the conservation and regulation of such water, for its preservation from pollution, for the ³⁵ protection of the bed over which it flows, and for removing any obstruction from, or for clearing and deepening, the bed, and may interfere summarily to prevent the excessive or illegal diversion, waste or pollution of such water or interference with such bed, and it shall not be necessary for the Water ⁴⁰ Apportionment Board or any person deputed by it to obtain any injunction or other order of a court to entitle it or him to make such entry or to take such measures.

(2) Compensation shall be paid to the holder of any such land for any actual injury caused by measures taken ⁴⁵ under the powers conferred by this section, other than measures for the avoidance of waste or removal of unauthorized works or stopping unauthorized diversion, abstraction, or obstruction of water or the prevention of pollution and, failing agreement, the amount of such compensation shall be determined by arbitration under the provisions of the Arbitration Ordinance. ⁵⁰

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Statement
under oath.

142. The Water Apportionment Board may require any application or statement called for under the provisions of this Part of this Ordinance or under any rules made thereunder, to ⁵⁵ be verified by oath, affirmation or declaration.

Water Appeal
Board.

143. (1) There is hereby established a Water Appeal Board, which shall consist of—

(a) a Chairman to be appointed by the Governor on the advice of the Chief Justice; and ⁶⁰

(b) two other persons, who shall be appointed by the Governor.

(2) In every case in which a licence has been cancelled by the Water Apportionment Board under the powers conferred by this Part of this Ordinance, the person whose licence has been cancelled may appeal, on a matter of law only or law and fact, to the Water Appeal Board within thirty days of the date of the cancellation of such licence, which cancellation shall be notified to him by registered post:

Provided that the Water Appeal Board may, for good cause, admit an appeal though the period of limitation prescribed in this sub-section, has elapsed.

10 (3) On the hearing of the appeal the Water Appeal Board may confirm the order of the Water Apportionment Board cancelling the licence, or may revoke such order.

15 (4) For the purpose of every appeal under the provisions of this section, the Water Appeal Board shall have all the powers vested in commissioners under the provisions of sections 10, 11 and 12 of the Commissions of Inquiry Ordinance.

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(5) The Water Appeal Board may make such rules in connexion with the hearing of appeals under the provisions of this section, as to it may seem fit.

20 (6) All appeals heard by the Water Appeal Board shall be decided by a majority of votes.

(7) Every decision of the Water Appeal Board shall be final and binding.

PART V

25

WATER UNDERTAKERS

144. (1) For the purpose of the distribution of water supplies in municipalities, townships or communities, the Member, after consultation with the Water Resources Authority, may appoint water undertakers who shall be responsible for the provision of an adequate and wholesome supply of water for the area within their limits of supply.

Appointment of water undertakers.

(2) The Member shall decide who shall or shall not be a water undertaker under the provisions of this section and when he has so decided, the water undertaker so appointed shall comply with the provisions of this Ordinance.

(3) The area of the limits of supply of a water undertaker shall be determined by the Member and water shall not be supplied by the water undertaker to any person outside such limits of supply without the prior consent of the Member.

40 **145.** (1) The Member may, on the application of the water undertakers concerned—

Combination of undertakings and transfer of undertakings.

(a) permit the joint furnishing by two or more water undertakers of a supply of water;

(b) permit the transfer of the undertaking, or part thereof, of one water undertaker to another water undertaker.

(2) Where it appears to the Member to be expedient for the purpose of securing a more efficient supply of water he may order such joint furnishing or such transfer.

(3) Any order made under the provisions of this section may contain such incidental, consequential and supplementary provisions as the Member deems necessary or expedient for the purpose of carrying out such order.

146. The Member may—

55 (a) on the application of any water undertaker, by order, vary his limits of supply, but not so as to include any area which is within the limits of supply of any other water undertaker unless such other water undertaker is unable to meet the demands for water in his area;

Limits of supply may be varied.

Compulsory variation of limits of supply.

(b) on the application of two or more water undertakers, by order, vary by agreement any common boundary between their limits of supply.

147. (1) Where it appears to the Member that it is expedient to vary the limits of supply of any water undertaker and he is satisfied that such variation cannot be secured under the provisions of section 146 of this Ordinance, he may make an order providing compulsorily for such variation. 5

(2) Any order made under the provisions of this section may contain such incidental, consequential and supplementary provisions as the Member may deem necessary or expedient. 10

Power of Member to authorize water undertakers to supply premises outside their limits of supply.

148. If the Member is satisfied that the owner or occupier of premises in an area outside the limits of supply of any water undertaker desires to obtain a supply of water from such water undertaker and that the giving of such supply is not likely to interfere with the supply of water for any purpose within such limits of supply, he may, on the application of such water undertaker and with the consent of any water undertaker within whose limits of supply the area is situated, by order, authorize the applicants, hereinafter referred to as the "supplying water undertaker", to supply water in such area or such part thereof as may be determined by the Member, on such conditions as may be specified: 15

Provided that a consent required for the purposes of this section shall not be unreasonably withheld, and any question whether or not consent is unreasonably withheld shall be decided by the Governor whose decision shall be final. 20

Water undertaker may notify ability to supply.

149. Where a supplying water undertaker is by virtue of an order made under the provisions of section 148 of this Ordinance, supplying water to premises outside his limits of supply, any water undertaker within whose limits of supply such premises are situated may, in the absence of any agreement to the contrary, at any time, give not less than three months' notice to such supplying water undertaker that he is able and intends to give a supply of water to such premises: 35

Provided that a notice given under the provisions of this section shall not be valid unless it includes all the premises to which water is being supplied by virtue of such order.

Cessation of rights of supplying water undertaker.

150. When, after the expiration of a notice given under the provisions of section 149 of this Ordinance, the water undertaker giving the notice, commences to supply water to the premises covered by such notice, the supplying water undertaker shall, except for the purpose of recovering water rates or other charges or expenses lawfully recoverable by him, and of removing any pipes, plant or apparatus belonging to him, cease to have any rights or duties in respect of a supply to such premises: 45

Provided that such supplying water undertaker shall not remove any pipes, plant or apparatus which he is required, by the water undertaker giving notice, to leave in position and any such pipes, plant or apparatus shall vest in the water undertaker giving such notice. 50

Reimbursement of expenses.

151. The water undertaker giving notice shall pay to the supplying water undertaker such portion of any expenses reasonably incurred by him for the purpose of giving a supply to the premises referred to in such notice, and such sum in respect of any pipes, plant or apparatus vested in the water undertaker giving the notice under the provisions of section 149 of this Ordinance, as may be agreed, or, in default of agreement, determined by the Member or by arbitration under the provisions of the Arbitration Ordinance. 55

152. While a supplying water undertaker is by virtue of an order made under the provisions of section 148 of this Ordinance, authorized to supply water outside his limits of supply, any regulations relating to his undertaking shall have effect as if the area specified in such order were within those limits.

Effect of regulations on supplying water undertaker.

153. Any water undertaker may enter into an agreement with any other person, whether a water undertaker or not, for the giving by that person, and the taking by the water undertaker, of a supply of water in bulk for any period and on any terms and conditions, and, where the supply is to be given by a person who is himself a water undertaker, either within or outside the limits of supply of that water undertaker:

Supply of water in bulk by agreement.

Provided that—

- 15 (i) subject to the provisions of Part IV of this Ordinance an agreement made under the provisions of this section shall require the approval of the Member and, where a supply is to be given by a water undertaker, he shall withhold his approval if it appears to him that the giving of such supply would be likely to interfere with the supply of water for any purpose within the limits of supply of the water undertaker giving the water; and
- 20 (ii) where the water proposed to be given under this section is to be obtained from outside the catchment area of the water undertaker taking the water, or where the giving of such water would be likely to interfere with other interests in the catchment area from which it is given, the Member may refuse to give his approval.
- 25
- 30

154. Where it appears to the Member that it is expedient that any water undertaker should give to another water undertaker, and that the other water undertaker should take, a supply of water in bulk, either within or outside the limits of supply of the water undertaker by whom the supply is to be given, and the Member is satisfied that the giving and taking of such a supply cannot be secured by agreement, he may, by order, require the respective water undertakers to give and to take such a supply for such period and on such terms as he may specify.

Compulsory supply of water in bulk.

155. (1) If any complaint is made to the Member that any water undertaker—

Default powers of Member.

- (a) has failed to discharge any duty imposed upon him under the provisions of this Ordinance;
- 45 (b) has failed to give an adequate supply of water either as respects quantity or quality, to any area which such water undertaker is supplying, or has failed to give any supply which he is lawfully required to give;
- (c) has failed to take such steps as are reasonably practicable, in order to remedy such failure as is mentioned in paragraphs (a) and (b) of this sub-section; or
- 50 (d) has failed to do anything which he is required to do under the provisions of this Ordinance; or

the Member is of the opinion that an investigation should be made as to whether any water undertaker has failed in any of such matters, he may, except where the water undertaker is the Council or Board of a Municipality, cause such matter to be inquired into in such manner as he shall determine.

(2) If, after an inquiry has been held under the provisions of sub-section (1) of this section, and, after taking natural conditions into consideration, the Member is satisfied that there

has been any such failure on the part of the water undertaker in question, he may, by order, declare him to be in default and direct him, for the purpose of remedying such default, to take such steps as the Member may, in such order, specify.

Member may transfer water undertaking.

156. If the water undertaker declared to be in default, by an order made under the provisions of sub-section (2) of section 155 of this Ordinance, fails to comply with any requirement thereof within the time specified for compliance with such requirement, the Member, in lieu of proceeding by way of a writ of mandamus or otherwise, may make an order transferring to himself, or to any local or other authority, such functions of the water undertaker in default as he may think fit. 5

Member may grant new authority.

157. Where any functions transferred to the Member under the provisions of section 156 of this Ordinance include the function of applying to the Member for any new authority or an extension of any existing authority, the Member may grant such authority as if application had been made therefor, and shall give all such notices and do all such things as would have been required to be given or done in connexion with such application, and the grant of such authority shall have effect with such necessary adaptations and modifications as the Member may determine. 15 20

Expenses incurred by Member in discharging functions.

158. Where the Member has transferred any function to himself under the provisions of section 156 of this Ordinance, any expenses incurred by him in discharging such function shall, in the first instance, be paid by him out of public funds but the amount of such expenses as certified by the Member shall be paid to him by the water undertaker in default, and shall be recoverable by the Member from the water undertaker in default as a debt. 25 30

Expenses incurred by authority in discharging functions.

159. Where any function is transferred under the provisions of section 156 of this Ordinance, to a local or other authority, the expenses incurred by such authority in discharging such function shall be a debt due from the water undertaker to such authority and shall be defrayed as part of the expenses of the undertaking of the water undertaker in default. 35

Transfer of property and liabilities of water undertaker.

160. An order made under the provisions of section 156 of this Ordinance, may provide for the transfer to the Member, or local or other authority, of such property and liabilities of the water undertaker in default, as, in the opinion of the Member, may be necessary or expedient, and when any such order is revoked the Member may, either by the revoking order or a subsequent order, make such provision as appears to him to be desirable with respect to any property or liabilities held by him or by the water undertaker for the purposes of the function transferred. 40 45

Agreements as to drainage, etc., of lands.

161. (1) The Member, either directly or through a water undertaker, may, subject to the provisions of Part IV of this Ordinance, enter into an agreement with any person with respect to the execution and maintenance by any party to the agreement of such works as the Member considers necessary for the purpose of draining land or for more effectively collecting, conveying, or preserving the purity and quantity of, water which the water undertaker is for the time being authorized to take. 50 55

(2) Any agreement made, under the provisions of sub-section (1) of this section, may be registered against any land of the person with whom such agreement is made and shall be binding upon and enforceable against such land or such person or his successor in title. 60

162. (1) If a water undertaker is of the opinion that a serious deficiency of water available for distribution exists or is threatened, such water undertaker may, for such period as he thinks necessary, prohibit or restrict, as respects the whole or any part of his limits of supply, the use of water supplied by him for any purpose which such water undertaker may, from time to time, deem necessary.

Power to prohibit or restrict use of water.

(2) Before any such prohibition or restriction comes into force, public notice in that behalf shall be given by such water undertaker in one or more newspapers, or by such other means as may be approved by the Chairman, within the area affected by such prohibition or restriction, and of the date when it will come into force.

(3) Any person who, while such prohibition or restriction is in force, contravenes its provisions, shall in respect of each contravention be guilty of an offence, and liable on conviction to a fine not exceeding two hundred shillings for every day or part of a day during which such offence is continued.

163. (1) A water undertaker may, with the approval of the Member, by notice in the Gazette, make regulations for preventing waste, undue consumption, misuse, contamination of water and other matters affecting his supply.

Power to make regulations.

(2) Regulations made under the provisions of this section may include provisions for—

(a) prescribing the size, nature, materials, strength and workmanship and the mode of arrangement, connexion, disconnection, alteration and repair of the water fittings to be used; and

(b) forbidding the use of any water fittings which are of such a nature or are so arranged or connected as to cause or permit waste, undue consumption, misuse, erroneous measurement, or contamination of water or reverberation in pipes.

(3) If any person contravenes the provisions of any such regulations, the water undertaker may, without prejudice to his right to take any proceedings in respect of such contravention, cause any water fittings belonging to or used by such person which are not in accordance with the requirements of such regulations, to be altered, repaired or replaced, and may recover the expenses reasonably incurred by him in so doing from the person in default as a debt:

Provided that nothing contained in this section or in section 164 of this Ordinance, shall be construed so as to authorize the Council or Board of any municipality to make regulations in addition to any regulations which it is empowered to make under the provisions of the Municipalities Ordinance, 1928.

No. 19 of 1928.

164. (1) If it appears to a water undertaker to be necessary for the purpose of protecting, against pollution, any water, whether on the surface or underground, which belongs to him or which he is for the time being authorized to take, he may, with the approval of the Member, make regulations—

Regulations for preventing pollution of water of undertakers.

(a) defining the area within which he deems it necessary to exercise control; and

(b) prohibiting or regulating the doing within that area of any act specified in such regulations.

(2) Where an area has been defined by regulations under the provisions of sub-section (1) of this section, the water undertaker may, by notice, require either the owner or the occupier of any land or premises within that area, to execute

and keep in good repair such works as the water undertaker considers necessary for preventing pollution of such water and, if such owner or occupier fails to comply with any such requirements, he shall be guilty of an offence and liable on conviction to the same penalties as if he had committed an offence against such regulations:

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Provided that any owner or occupier who considers that any such requirement is unreasonable may, within thirty days after service on him of notice of such requirement, appeal to the Member who may determine such appeal or, if he thinks fit, may refer it to arbitration under the provisions of the Arbitration Ordinance.

(3) Such water undertaker shall pay compensation to the owner or occupier, as the case may be, of any premises within the area defined by regulations made under this section in respect of—

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- (a) any curtailment of, or injury to his legal rights by restrictions imposed by such regulations; and
- (b) expenses incurred by him in complying with a requirement to construct and maintain any works which would not, but for the provisions of this section, lawfully have been required, otherwise than upon payment of compensation, by the local authority, and any question as to the amount of such compensation, if not mutually agreed upon, shall be decided by arbitration under the provisions of the Arbitration Ordinance.

In this sub-section the expression "legal rights" includes a user of land in respect of which the Water Apportionment Board might have taken proceedings under the provisions of this Ordinance, or a local authority might have taken proceedings under any law relating to public health or under the by-laws of such local authority, but have refrained from so doing.

(4) Where any person has failed to comply with a requirement notified to him under the provisions of sub-section (2) of this section and either—

- (a) he has not appealed to the Member against such requirement and the time for appeal has expired; or
- (b) his appeal has been dismissed or the requirement has been modified in consequence of his appeal and he has failed to comply with the requirement as so modified,

the water undertaker may, without prejudice to his right to take proceedings in respect of such failure, execute and keep in good repair the works specified in the requirement as originally made or as modified on appeal, and may recover expenses reasonably incurred by him in so doing from the person in default, as a debt, except expenses incurred in respect of works, the construction of which could not, but for the provisions of this section, lawfully have been required, otherwise than upon payment of compensation, by the local authority.

(5) Two or more water undertakers may combine for the purpose of making and enforcing regulations under the provisions of sub-section (1) of this section, and this section and sub-section (2) of section 166 of this Ordinance shall in any case have effect as if the references to a water undertaker were construed as references to those two or more water undertakers acting jointly.

165. (1) It shall be the duty of any water undertaker by whom any regulations are made, under the provisions of sections 163 or 164 of this Ordinance, to enforce such regulations and any water undertaker who fails so to do may be ordered by the Member to take such action to enforce such regulations as shall be specified in such order.

(2) Any such regulations may contain provisions for imposing on any person contravening such regulations, a fine not exceeding five hundred shillings in respect of each offence and, in the case of a continuing offence, a further fine not exceeding two hundred shillings for each day during which the offence continues after the first conviction of the offender therefor.

(3) Where any water undertaker considers that the operation of any such regulation would be unreasonable in relation to any particular case he may in such case and with the consent of the Member, relax the requirements of such regulation, or dispense with compliance therewith:

Provided that the water undertaker shall give notice of any such proposed relaxation or dispensation in such manner and to such person, if any, as the Member may direct, and the Member shall, before giving his consent, take into consideration any objection which may have been received by him.

(4) Where any such regulations are made by a water undertaker, any person employed by such water undertaker and authorized by him for the purpose shall, on producing, if required, his authority, have a right at all reasonable hours, to enter any land or premises in the area to which such by-laws apply, for the purpose of—

(a) ascertaining whether there is or has been any contravention of any regulation;

(b) in the case of any by-laws made under the provisions of section 163 of this Ordinance, exercising any right conferred on the water undertaker by sub-section (3) of that section; or

(c) in the case of any regulation made under the provisions of section 164 of this Ordinance—

(i) ascertaining whether or not circumstances exist which would justify the water undertaker making a requirement under the provisions of sub-section (2) of such section;

(ii) exercising any right, conferred on the water undertaker by sub-section (4) of such section, to execute and maintain works,

and the provisions of section 172 of this Ordinance shall apply to any such right of entry.

166. (1) The Member may, by order, require any water undertaker to make regulations under the provisions of sections 163 or 164 of this Ordinance in relation to such matters as he may specify and, in the case of regulations made under section 164 he shall specify the area for which such regulations are to be made and if the water undertaker does not, within three months after such order, make, in relation to the matters specified, regulations satisfactory to the Member, he may himself make regulations with respect to such matters.

(2) (a) If the Member considers that, due to changing circumstances, any regulation made by a water undertaker under the provisions of sections 163 or 164 of this Ordinance has become unsatisfactory, he may, from time to time, order the water undertaker to revoke such regulation, and to make any such new regulation, as the Member considers necessary,

Enforcement
of regulations.

Power of
Member to
require the
making of
regulations, to
make regula-
tions in case
of default and
to revoke
regulations.

and if the water undertaker does not, within three months after such order, comply therewith, the Member may himself revoke such regulation, and make any such new regulation, as he considers necessary.

(b) Within twelve months, or such longer period as the Member may in any particular case specify, after the coming into operation of this Ordinance every water undertaker shall submit to the Member for approval under the provisions of this Ordinance, any regulation made by him, and if the Member considers that any such regulation is unsatisfactory, he may 5 order that such regulation be revoked, and that such new regulation, as considered desirable by him, be made, and if the water undertaker does not, within three months after such order, comply therewith, the Member may himself revoke such regulation and make such new regulation, as he considers 10 necessary. 15

(3) Regulations made by the Member under the provisions of this section shall have effect as if they had been made by the water undertaker concerned and approved by the Member. 20

Polluting water used for human consumption an offence.

167. (1) Any person who, by any act or neglect, causes any source of water supply, the water from which is used, or is likely to be used for human consumption or domestic purposes, or for manufacturing food or drink for human consumption, to become polluted, or to be likely to be polluted, 25 shall be guilty of an offence against this Ordinance:

Provided that nothing in this section shall be construed as prohibiting or restricting—

(a) any lawful method of cultivation of land which, in the opinion of the Member, is in accordance with the 30 principles of good husbandry;

(b) the reasonable use of oil, tar or other substances on any highway maintainable at public expense, so long as the authority concerned takes all reasonable steps for preventing such oil, tar or other substance, 35 or any liquid or matter resulting from the use thereof, from polluting any source of water supply. Any question as to what is reasonable use under the provisions of this paragraph shall be determined by the Member; or 40

(c) the disposal of effluents of household waste in any area which the Member may, by order, from time to time specify.

(2) Any person duly authorized under the provisions of this Ordinance for the purpose may, on producing his authority, if so requested by the owner or occupier thereof, at all reasonable hours enter any land or premises for the purpose of ascertaining whether there is or has been any contravention of the provisions of this section in relation to such source of water supply, and the provisions of section 173 of this Ordin- 45 ance shall apply to such right of entry. 50

Compulsory acquisition of land by water undertakers.

168. (1) The Member may, upon receipt of an application in that behalf, and on the advice of the Water Resources Authority, by order, authorize any water undertaker or proposed water undertaker to acquire compulsorily, or to use, for 55 any of the purposes of a water undertaking, any land specified in such order.

(2) When a water undertaker, or proposed water undertaker, proposes to apply for authority for the compulsory acquisition of land, under the provisions of this Ordinance, he

shall give notice by advertisement of such intention, not more than ninety days and not less than sixty days before the date of the intended application to obtain such powers.

(3) Every such advertisement shall be published in each of two successive issues of the Gazette and in two issues of some newspaper, specified by the Member, circulating in the area of the undertaking or proposed undertaking, and shall contain—

- (a) a short title descriptive of such application;
- 10 (b) the date of the intended application;
- (c) the name and address of the applicant;
- (d) a description of the land proposed to be acquired; and
- (e) a statement of the reasons why the land so described should be acquired by the intending applicant.

15 (4) In addition to such notice by public advertisement and within the time specified for its publication, the intending applicant shall serve a notice in writing upon the owners or occupiers of all lands proposed to be acquired. Such notice shall be accompanied by a plan or plans on which shall be 20 shown the approximate boundaries and a correct description of such land:

Provided that every such notice shall state that any of the owners or occupiers of any of such land who is desirous of making any representation on, or objection to, the application 25 or to the grant of the powers applied for, must do so by letter, addressed to the Member, on or before the expiration of sixty days from the date of the application as stated in the notice, and that a copy of the representation or objection shall be forwarded to the applicant.

30 (5) The application must be signed by or on behalf of the applicant and delivered to the Member together with a copy of the plan or plans attached to such notice and with proofs of the publication of the notices by advertisement and of the service of the notices, on or before the date stated in 35 the notices as being, and which shall be deemed to be, the date of the application.

(6) Where the Member authorizes the compulsory acquisition of such land the further proceedings with reference to such compulsory acquisition shall be in accordance 40 with the laws of the Colony for the time being in force.

169. (1) For the purposes of acquiring land under the provisions of section 168 of this Ordinance, there shall be deemed to be included amongst the purposes of a water undertaking, the purpose of protecting against pollution any water, 45 whether on the surface or underground, which belongs to the water undertaker or which he is for the time being authorized to take.

Execution of works for protection of water.

(2) A water undertaker may, on any land belonging to him, or over or in which he has acquired any necessary easement or right, construct and maintain drains, sewers and other works for intercepting, treating or disposing of any foul water arising or flowing upon such land, or for otherwise preventing water, which belongs to such water undertaker or which he is for the time being authorized to take, from being polluted:

55 Provided that, before constructing any such works, such water undertaker shall, if the proposed works will affect or be likely to affect any body of water in the catchment area in which such works are situated, obtain the consent of the Regional Water Board concerned.

(3) Any water undertaker proposing to construct any drain, sewer or other works for any purpose mentioned in sub-section (2) of this section, may, with the consent of the authority concerned, which may be given subject to such conditions as such authority thinks fit, carry the drain, sewer or other work under, across or along any road or road reserve, or public place, whether within or outside the limits of supply of such water undertaker.

(4) Any consent required under the provisions of sub-section (3) of this section, shall not be unreasonably withheld nor shall any unreasonable condition be attached to such consent, and any question whether or not such consent is unreasonably withheld or whether any condition which such authority seeks to impose is unreasonable, shall be decided by the Member whose decision thereon shall be final.

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PART VI

GENERAL AND MISCELLANEOUS

Financial powers.

170. The Member may expend, for the purposes of this Ordinance, in such manner as he shall think fit, all moneys granted to him for those purposes, by the Legislative Council ²⁰ of the Colony.

Application of this Ordinance to native areas.
No. 28 of 1938.

171. The powers conferred, and the duties and obligations imposed by this Ordinance, shall, in any native area, be exercised subject to the provisions of the Native Lands Trust Ordinance.

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Consent of Chief Native Commissioner required before exercising rights in native area.

172. Where the Member proposes to exercise any rights, powers or duties in a native area or in any watershed which drains into such native area, and which, in his opinion, is likely to affect adversely the interests of the Africans in such native area, no action shall be taken except with either the general or specific consent of the Chief Native Commissioner, and in the event of disagreement between the Member and the Chief Native Commissioner the matter shall be decided by the Governor in Council.

Right of entry.

173. (1) For the purpose and to the extent necessary for exercising the powers conferred or performing the duties imposed by this Ordinance, the Member, the Water Resources Authority, the Water Apportionment Board, the Regional Water Boards or other bodies or persons appointed for the purpose of this Ordinance may by themselves, or by persons authorized in writing by them, enter upon any land or premises, at all reasonable times, with such men, animals, vehicles, appliances and instruments, and do all such acts thereon, as are necessary for or incidental to the exercise of the powers or the performance of such duties:

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Provided that the rights conferred by this sub-section shall be subject to the following restrictions:—

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(a) no such person shall enter any dwelling or enclosed yard attached to a dwelling except with the consent of the occupant thereof, or, if the occupant does not consent, until after giving twenty-four hours notice in writing of an intention so to enter; and

(b) as little damage as possible shall be caused to any land or premises by the exercise of such rights, and compensation shall be paid, for all damage so caused, by the authority exercising such rights. The amount of such compensation, if not mutually agreed upon, shall be determined by arbitration under the provisions of the Arbitration Ordinance.

(2) Any person who prevents any such entry on any land or premises, or who wilfully obstructs or hinders any person lawfully carrying out his powers or duties under the provisions of this Ordinance, shall be guilty of an offence against this Ordinance.

174. If any parties cannot agree as to the amount of the compensation to be paid under the provisions of this Ordinance, the amount of such compensation shall be determined by arbitration in accordance with the provisions of the Arbitration Ordinance.

Compensation
to be decided
by arbitration.

175. Every person guilty of an offence against this Ordinance shall, for every offence, be liable to the penalty expressly imposed by this Ordinance or by rules made thereunder, and, where no penalty is expressly provided, shall be liable on conviction to a fine not exceeding one thousand shillings, or, in default of payment, to imprisonment for a term not exceeding three months.

176. (1) Except where otherwise in this Ordinance provided, all penalties imposed by this Ordinance, or by any rules made thereunder, may be recovered, in any court of competent jurisdiction, by any person authorized in that behalf by the Member.

(2) Such penalties may be recovered from the person actually committing the offence or from the person in whose employment he is or on whose behalf he is acting, or partly from both.

For the purposes of this sub-section any person under contract with an occupier under the provisions of section 4 of the Resident Labourers Ordinance, 1937, and the members of the family of such person included in such contract, shall be deemed to be persons in the employment of the occupier with whom such contract has been made.

No. 30 of 1937.

177. (1) Every penalty imposed upon any person by this Ordinance, or by any rule made thereunder, shall be without prejudice to the right to recover from such person—

(a) any sum for any damage sustained through his act or default; and
(b) the cost and expenses incurred in remedying such damage.

(2) The payment of any such penalty shall not affect the right of any other person to bring any action or to take any proceeding against such person.

178. No action at law shall lie against, or be maintained against, the Crown, the Government, the Water Resources Authority, a Regional Water Board, the Water Apportionment Board, or any officer of the Government for any act done on account of an authorization, licence, or sanction or for any damage caused by such act.

Government, A
etc., not
liable at law.

179. The Member, the Water Resources Authority or the Water Apportionment Board may institute and maintain proceedings in any court against any person accused of an offence against this Ordinance, and may, in his or its own name, take any civil proceedings against any person.

Member, etc.,
may institute
proceedings.

180. Any notice required to be served in pursuance of this Ordinance shall be served—

Notices, how
given.

(a) by delivery of the same personally to the person required to be served, or, if such person is absent or cannot be found;

(b) by leaving the same at the usual or last known place of abode, in the Colony, of such person;

- (c) by post addressed to the usual or last known place of abode, in the Colony, of such person; or
- (d) in the case of a notice required to be served on a local authority, or corporate body or company, by delivering the same to its clerk or secretary or by leaving the same at his office with some person employed there, or by post addressed to such clerk or secretary at his office:

Provided that—

- (i) if any landholder is not known and, after diligent inquiry, cannot be found, such notice may be served on him by leaving it, addressed to such landholder, with some occupier of the land, or, if there is not an occupier, then by causing it to be put in a conspicuous position on the property in the Colony last known to have been occupied by him;
- (ii) any notice, required to be given to a landholder, may be addressed to the "owner" of the land or premises described in the address in respect of which notice is given, without further name or description;
- (iii) where, under the provisions of this Ordinance, notices or other documents are required to be served on an African in a native area, such notices or documents shall have the same force and effect if served on the Chief Native Commissioner or such officer as he may appoint for that purpose.

Proof of orders.

181. All documents purporting to be orders made by the Member, the Water Resources Authority, the Water Apportionment Board, the Chairman or by the officer deputed by the Water Apportionment Board or Chairman, as the case may be, shall be prima facie evidence of the due making thereof without further proof, unless the contrary is shown.

Power to exempt from provisions of Ordinance.

182. The Member may, with the approval of the Water Resources Authority, by order, exempt from any of the provisions of this Ordinance, any area of land or any person or class of persons.

Orders, etc., to be in writing.

183. All orders, notices, consents, approvals, demands or other documents authorized or required by this Ordinance to be given, made or issued by the Member or by any board, authority, or water undertaker, and all notices, applications or other documents authorized or required by this Ordinance to be given or made to the Member or to any board, authority or water undertaker, shall be in writing.

Authentication of documents.

184. (1) Any notice, consent, approval, demand or other document which any authority, board or water undertaker is authorized or required by, or under, this Ordinance to give, make or issue, may be signed—

- (a) on behalf of a board or local or other authority—
 - (i) by the clerk of such board, authority or local authority; or
 - (ii) by any officer of such board, authority or local authority, authorized by it in writing to sign documents of the particular kind or the particular document;
- (b) on behalf of a water undertaker not being a local authority—
 - (i) by the clerk or secretary of the water undertaker; or
 - (ii) by any other officer of the water undertaker authorized by him in writing to sign documents of the particular kind or the particular document.

(2) Any document purporting to bear the signature of any person expressed to hold an office by virtue of which he is, under the provisions of this section, empowered to sign such a document, or expressed to be duly authorized by the authority, board or water undertaker concerned to sign such a document or the particular document shall, for the purposes of this Ordinance, be deemed, until the contrary is proved, to be duly given, made or issued by authority of such authority, board or water undertaker.

10 185. Any person who fails to comply with an order given by the Member under the provisions of this Ordinance shall be guilty of an offence against this Ordinance.

Offence to fail to comply with order of Member.

186. (1) The Member may, on the advice or with the approval of the Water Resources Authority, make rules providing for all or any purposes whether general or to meet particular cases that he may consider necessary for the administration of this Ordinance, or for carrying out the objects or purposes of this Ordinance, or for giving full effect to the provisions of this Ordinance, and without prejudice to the foregoing powers, providing for all or any of the matters following:—

- (a) examinations, fees, registration and other matters pertaining to qualified engineers;
- (b) units of water;
- (c) charges for diversion, abstraction, storage and use of water and fees for services in connexion with water rights and sanctions;
- (d) drainage of lands;
- (e) associations of operators;
- (f) community, public and urban projects;
- (g) controlling and measuring devices;
- (h) action during drought;
- (i) sanctions;
- (j) sanctions in native areas;
- (k) temporary works and diversions of water;
- (l) documents and plans to be submitted by applicants under the provisions of this Ordinance;
- (m) forms to be used under the provisions of this Ordinance;
- (n) inspection of works;
- (o) priorities and relations between operators and municipal and other local authorities;
- (p) easements;
- (q) drainage and reclamation of swamps;
- (r) water power rights;
- (s) abandoned works;
- (t) appointments, powers and duties of water bailiffs;
- (u) investigation of water resources and establishment of water gauges and marks;
- (v) duties and matters pertaining to Regional Water Boards;
- (w) prescribing anything required to be prescribed under the provisions of this Ordinance; and
- (x) generally for the better carrying out of the objects of this Ordinance.

Rules.

Such rules may provide for the imposition of a penalty for any contravention of any such rule, not exceeding one thousand shillings and, in default of payment thereof, a term of imprisonment not exceeding three months.

(2) All rules made under the provisions of this section shall be laid before the Legislative Council, and if a resolution of such Legislative Council is passed within forty days of their being so laid, that such rules shall be revoked or amended in accordance with such resolution, such rules shall thenceforth be deemed to be revoked or amended accordingly, but without prejudice to anything previously done thereunder. 5

Repeal.
No. 35 of 1929.

187. The Water Ordinance, 1929, is hereby repealed:

Provided that any application made under such Ordinance prior to the coming into operation of this Ordinance, shall be deemed to be an application under the provisions of this Ordin- 15 ance.

MEMORANDUM OF OBJECTS AND REASONS

This Bill will make better provision for the control and use of the water resources in the Colony. In it are incorporated the main provisions of the Water Ordinance, 1929, which have been adapted for the purposes of this measure.

Clause 2 of the Bill contains definitions.

Clause 3 of the Bill provides that the Ordinance shall apply throughout the Colony and shall come into operation by proclamation.

PART II—CENTRAL PLANNING

Clause 4 of the Bill defines the duty of the Member for Agriculture and Natural Resources, in relation to the water resources of the Colony.

Clause 5 provides for the establishment of a Water Resources Authority.

Clause 6 provides for the composition, constitution and procedure of any authority or other body established under the provisions of the measure and *clause 7* provides for the payment of expenses of any such authority or body.

Clauses 8 and 9 deal with the vesting and control of bodies of water and are taken from the Water Ordinance, 1929.

Clause 10 defines the duty of the Water Resources Authority.

Clause 11 enables the Water Resources Authority to obtain from persons or bodies concerned information relating to water resources and matters connected with water resources.

Clause 12 authorizes the Member to acquire land for the purpose of conserving water.

Clause 13 enables the Member to construct and maintain, on any land, works for the conservation of water and, if necessary, to obtain contributions towards the cost thereof from landholders benefiting by such works.

Clauses 14 and 15 provide for the creation of a charge for any moneys due to Government in connexion with works carried out and enable such moneys to be collected from a local authority in a native area or from the owner of alienated land, as the case may be.

Clauses 16 to 21 inclusive give the Water Resources Authority power to summon witnesses and to examine them on oath or affirmation and to call for the production of documents in connexion with any subject which it is considering, and also provide that failure to obey any summons and giving false evidence shall be offences.

Clause 22 enables the Member, in case of emergency, to order the distribution of available water supplies and the construction of any works which may be necessary for that purpose.

Clause 23 provides that, in cases where an injunction is applied for to prevent any officer or other authorized person from carrying out his duties, the person seeking the injunction shall be required to deposit a bond and to produce evidence of the wrongful distribution of water; it also provides that the Judge hearing the application for the injunction may order the forfeiture of the bond or any part thereof.

PART III—LOCAL PLANNING

Clause 24 deals with division of the Colony into drainage areas and has been adapted from a similar provision in the Water Ordinance (General) Rules, 1935.

Clause 25 makes provision for the appointment of a board, committee or authority, for any area of the Colony, to be advisory to the Water Resources Authority.

Clause 26 provides for the appointment of a Regional Water Board for each drainage area or part of a drainage area.

Clause 27 sets out the duties which are to be carried out by Regional Water Boards.

PART IV—WATER APPORTIONMENT

Clause 28 provides for the appointment of a Water Apportionment Board which will exercise the powers and perform the duties set out in this Part of the Bill.

Clauses 29 to 43 inclusive are taken from the Water Ordinance, 1929.

Clause 29 provides that the right to use water may be acquired only under the Ordinance.

Clause 30 sets out the purposes for which a water right or sanction may be acquired, that is to say a domestic purpose, a public purpose, a minor irrigation purpose, an industrial purpose, a power purpose, a general irrigation purpose, and any other purpose approved by the Water Apportionment Board.

Clause 31 deals with consideration of applications by the Water Apportionment Board and appeals from decisions of the Board.

Clause 32 sets out the cases in which a licence or sanction is not required for the abstraction or use of water or for the development of ground water.

Clause 33 deals with action during drought, and *clause 34* provides that a licence or sanction is required if diversion, abstraction, obstruction, storage or use of water from a body of water, except as provided in section 32.

Clause 35 deals with the drainage of swamps.

Clause 36 deals with special schemes for the use or reservation of water.

Clause 37 classifies various projects for the use of water or for the drainage of land as private projects, community projects, public projects and urban projects.

Clauses 38 and 39 respectively define and make provision for private projects and community projects.

Clauses 40 and 41 respectively define public projects and urban projects.

Clause 42 permits the Water Apportionment Board to determine to which class any proposed project is to be deemed to belong.

Clause 43 permits the Water Apportionment Board to delegate powers.

Clauses 44 to 46 inclusive provide that notice must be given of an intention to construct a well, for the submission of the records of the well and of any adjacent existing well. These provisions are considered necessary to prevent wastage or diversion of water.

Clause 47 provides that a well contractor who is constructing a well on land belonging to another person shall be deemed to be the person constructing the well for the purposes of the Ordinance. The contractor will thus be held responsible for the correct carrying out of the work of construction.

Clause 48 provides that the records regarding any well may be treated as confidential.

Clause 49 makes non-compliance with section 44, 45 or 46 of the Ordinance an offence.

Clause 50 makes it an offence to waste ground water, to abstract from a well, water in excess of requirements, to conduct water from a well by a channel so that more than twenty per cent of the water is wasted, or to use water from a well for domestic purposes or watering stock unless such water is conveyed through pipes.

Clauses 51 to 58 inclusive provide for the sealing off of water in defective wells which contains salt or other substances injurious to agriculture, for instructions to be given for remedying defects, for improper methods of such sealing to be an offence, and for the Water Apportionment Board to issue instructions in order to prevent the injurious use of such water.

Clause 59 gives the Member power to make orders applying the provisions of sections 61 to 73 of the Ordinance to any area where he considers that special measures are necessary for the conservation of ground water.

Clause 60 provides that persons who used ground water prior to the operation of the Ordinance shall be required to apply for a licence or sanction for the use of such water in order that satisfactory control of such water may be maintained.

Clause 61 provides that authority must be obtained for the construction of a well except in certain cases.

Clause 62 enables the Water Apportionment Board to grant or refuse applications for the abstraction of ground water. This provision is considered necessary in the interests of conservation.

Clause 63 provides for the taking of measures for the conservation of water encountered in works constructed for the purpose of the extraction of minerals.

Clause 64 provides that it shall be an offence to contravene the provisions of sections 61 and 63 or any condition attached to a licence or sanction.

Clause 65 provides that every licensee or sanction holder shall take action to prevent the contamination or pollution of ground water.

Clause 66 makes it necessary to fit casing and non-return valves to a well in order to ensure that water cannot flow from a higher aquifer to a lower aquifer.

Clause 67 provides that wells must be constructed at least a mile apart unless the Water Apportionment Board has given its consent to the contrary.

Clause 68 provides for the casing and control of artesian wells to prevent waste of water.

Clause 69 provides for the licensing of well contractors.

Clause 70 provides for the licensing of well drillers and for the cancelling of a driller's licence in any of the cases specified.

Clause 71 makes it an offence for any unlicensed person to construct a well or to carry out any drilling operations.

Clause 72 lays down conditions regarding the abstraction of ground water under the authority of a licence or sanction.

Clause 73 makes provision regarding priority of rights to the use of ground water.

Clauses 74 to 78 inclusive are taken from the Water Ordinance, 1929, and deal with authority to enter upon land for preliminary investigations and applications for water rights or sanctions, and amendment and approval, of applications.

Clause 79 makes provision as to the precedence of applications for water rights.

Clause 80 provides for the cancellation of such applications if not completed within the required time.

Clauses 81 and 82 are taken from the Water Ordinance, 1929, and deal with the advertising of applications and the consideration of objections thereto.

Clause 83 provides for the final approval or refusal of an application for a water right or sanction.

Clauses 84 to 143 inclusive have been adapted from the provisions of the Water Ordinance, 1929, and rules made thereunder,

Clauses 84 to 102 and rules made thereunder, deal with procedure if an application is not approved, authorization of work after approval of an application, inspection during construction, security of works, completion and certificate of inspection issued after completion of a licence or sanction, issue of sanctions without usual procedure in exceptional cases, prescription of measuring and controlling devices by the Water Apportionment Board, road crossings, alteration of the quantity of water authorized to be diverted, water rights to become appurtenant to land, abandonment by a licensee or sanction holder, readjustment of a licence and change of point of diversion, change of use of water, apportionment, and mingling of waters.

Clauses 103 to 143, and rules thereunder, deal with such subjects as the keeping of works in repair, drainage of irrigated lands, the release of stored or penned back water, damage to public works, authority to interfere with road or public works by agreed water operation, corrections of errors in licence and sanctions, acquisition of easements for water, encumbrances, use of land occupied by excavated materials, flooding of canals, damage caused by works, registration and determination of easement, drainage of swamps, expropriation and abandonment of works, offences, right of entry and the establishment and functions of a Water Appeal Board. These provisions are not noticed in detail as they are already familiar law.

PART V—WATER UNDERTAKERS

Clause 144 makes provision for the appointment of water undertakers for the distribution of water supplies, for the Member to decide who shall or shall not be water undertakers, and for the area of the limits of supply of a water undertaker to be determined.

Clause 145 provides for the combination of water undertakings where it is considered advisable and the transfer of undertakings.

Clauses 146 and 147 enable the Member to vary the limits of supply of a water undertaker.

Clauses 148 to 152 inclusive enable the Member to authorize a water undertaker to supply water outside his limits of supply when desirable, and provide for the cessation of the rights of the water undertaker who formerly supplied the area affected.

Clauses 153 and 154 provide for the giving and taking of a supply of water in bulk, within or outside the limits of supply of a water undertaker.

Clause 155 provides that, if a water undertaker fails to discharge any duty imposed upon him or fails to give an adequate supply of water or to do anything which he is required to do under the provisions of the measure, the Member may cause an inquiry to be made and if he is satisfied that the water undertaker is in default, may order him to take steps to remedy the default. This clause does not apply where the water undertaker is a Municipal Council or Board.

Clause 156 provides that where a water undertaker is in default under the provisions of clause 155 and he fails to comply with an order of the Member to remedy his default, the Member may transfer to himself or to another authority such functions of the water undertaker as he may think fit.

Clause 157 provides that, where the functions of a water undertaker, transferred to the Member under the provisions of section 156 of the measure, include the function of applying for a new authority or the extension of an existing authority, the Member may grant such authority as though it had been applied for.

Clause 158 provides that where the Member has transferred any functions to himself under the provisions of section 156 of the measure, any expenses incurred by him in discharging such functions shall, in the first instance, be paid from public funds but shall be recoverable from the water undertaker in default.

Clause 159 provides that where functions are transferred under the provisions of section 156 to another authority, the expenses incurred by such authority in discharging the functions shall be a debt due from the water undertaker in default.

Clause 160 provides that an order made under the provisions of section 156 may provide for the transfer of such property and liabilities of the water undertaker in default, as the Member may consider necessary or expedient, and that when such order is revoked the Member may make such provision as appears to him desirable with respect to such property and liabilities.

Clause 161 makes provisions for the Member, either directly or through a water undertaker, to enter into an agreement with any person with respect to the execution and maintenance, by any party to the agreement, of such works as are necessary for the purpose of draining land or for the collecting and conveying, of water which a water undertaker is authorized to take.

Clause 162 gives power to a water undertaker to prohibit or restrict the use of water within his limits of supply when a serious deficiency of water available for distribution exists or is threatened, and to make it an offence for any person to contravene these provisions.

Clause 163 provides for the making of regulations by a water undertaker, with the approval of the Member, for preventing waste, undue consumption of water and for other matters affecting the undertaker's supply.

Clause 164 provides for the making of regulations by a water undertaker, with the approval of the Member, for the prevention of pollution of the water under his control.

An area, within which it is deemed necessary to exercise control or within which it is necessary to prohibit or regulate the doing of any act, may be defined by such regulations and the owner or occupier of any land within such area may be required by the water undertaker to execute and keep in repair such works as the water undertaker considers necessary for preventing pollution of his supply. Provision is made for an appeal to the Member against any such requirement, and for the payment of compensation where any person is injuriously affected.

These two last mentioned clauses do not empower the Council or Board of a Municipality to make regulations in addition to those which they are empowered to make under the provisions of the Municipalities Ordinance, 1928.

Clause 165 provides that it is the duty of a water undertaker to enforce regulations made by him; for such regulations to contain provisions for imposing penalties for their contravention, for the relaxing

of the requirements of, or the dispensing with the compliance with, such regulations; and for the power of entry into land or premises for the purpose of ascertaining if there has been any contravention of regulations and for exercising any rights of the water undertaker.

Clause 166 gives the Member power to order a water undertaker to make regulations or to make regulations himself if a water undertaker fails to do so.

Clause 167 seeks to make it an offence for polluting water used for human consumption, domestic purposes or for manufacturing food or drink for human consumption, except in certain specified cases. It also gives power to authorized persons to enter land or premises for the purpose of ascertaining whether there is or has been any contravention of these provisions.

Clause 168 enables the Member to order the compulsory acquisition of land by water undertakers, and determines the procedure to be followed by a water undertaker in submitting an application for such an order.

Clause 169 provides that, for the purpose of acquiring land under section 168 there shall be deemed to be included amongst the purposes of a water undertaking the protection against pollution of any surface or ground water under the control of the water undertaker who may construct works for the protection of such water.

PART VI—GENERAL AND MISCELLANEOUS

Clause 170 enables the Member to expend, in such manner as he shall think fit, all moneys granted to him by the Legislative Council for the purposes of the Ordinance.

Clause 171 provides that the application of this Ordinance to native areas shall be subject to the provisions of any law in force in the Colony relating to native areas.

Clause 172 requires that the consent of the Chief Native Commissioner shall be obtained before the Member exercises any rights, powers or duties in a native area or in any watershed which drains into a native area. In the event of any disagreement between the

Chief Native Commissioner and the Member provision is made that the question shall be decided by the Governor in Council.

Clause 173 provides for the right of entry, upon any land or premises, by persons exercising the powers conferred or performing the duties imposed by the measure.

Clause 174 makes provision that, where agreement cannot be reached between the parties as to the amount of any compensation to be paid under the provisions of the Ordinance, the question shall be decided by arbitration under the provisions of the Arbitration Ordinance.

Clauses 175 to 181 inclusive are adapted from the Water Ordinance, 1929.

Clause 175 prescribes the penalty for an offence against the Ordinance where no penalty is expressly provided.

Clause 176 provides that penalties may be recovered in any court of competent jurisdiction from the person actually committing the offence or from his employer.

Clause 177 provides that every penalty imposed does not prejudice the right to bring an action for recovery of damages or costs and expenses.

Clause 178 relieves the Crown and its Boards and officers from liability at law.

Clause 179 enables the Member and the authorities under the Ordinance to institute proceedings.

Clause 180 deals with the method of service of notices.

Clause 181 provides that all documents issued under the Ordinance should be prima facie evidence.

Clause 182 authorizes the Member to exempt from the provisions of the Ordinance, or from the provisions of any section of the Ordinance, any person, class of persons, or area of land. The power under this clause might well be exercised with regard to a native area where compliance with some of the provisions of the Ordinance may be considered unnecessary.

Clause 183 provides that all orders required to be given under the Ordinance, and all notices, or applications to be submitted to the Member or to any authority shall be in writing.

Clause 184 provides for the method of authentication of any documents authorized or required under the provisions of the measure.

Clause 185 makes it an offence to fail to comply with any order given by the Member under the authority of the measure.

Clause 186 enables the Member to make rules on the advice and with the approval of the Water Resources Authority.

It is not known what additional public expenditure will be incurred if the provisions of this Bill become law.

Nairobi,
14th April, 1949.

K. K. O'CONNOR,
Attorney General.