

*Irrigation.*

No. 18—1942.

AN ORDINANCE to provide for the construction maintenance and management of irrigation works by Government.

Commencement.

[27th August, 1942.]

Short title.

1. This Ordinance may be cited as the Irrigation Ordinance, 1942.

Interpretation.

2. In this Ordinance—

“abstracting” includes impounding and diverting;

“County” includes the Ward of Tobago;

“Director” means the Director of Works and Transport;

“irrigation” means the irrigation or inundation of agricultural lands;

“irrigation works” means the works constructed or maintained in accordance with an approved scheme (as hereinafter defined) for abstracting, distributing or using water for irrigation purposes;

Ch. 26. No. 6. “Oil and Water Board” means the Board established under the provisions of the Oil and Water Board Ordinance;

“owner” includes the lessee, or occupier, of any land, and the receiver, attorney, agent, manager, guardian, or committee of the owner, lessee, or occupier of any land, and also includes any other person in charge or having the control or possession of any land in right of the owner, or having the possession of any land in his own right or in that of his wife or as guardian of any other person;

“watercourse” has the meaning assigned to it in the Oil and Water Board Ordinance.

3. (1) It shall be lawful for the Governor in Council Irrigation schemes. from time to time—

- (a) to approve of irrigation schemes for the purposes hereinafter set forth (which schemes are in this Ordinance referred to as "irrigation schemes");
- (b) to vary or amend any scheme previously approved as to the manner in which it is to be carried into effect or by extending or restricting its scope or otherwise;
- (c) to amalgamate any two or more schemes previously approved with or without varying or amending all or any of them;
- (d) to terminate any scheme previously approved.

(2) A resolution of the Governor in Council under subsection (1) shall not have effect until confirmed by resolution of the Legislative Council.

(3) The purposes of such irrigation schemes shall be to provide for the distributing and using of water for irrigation purposes in specified areas, and (as may be expedient) to provide for abstracting water to be distributed or used as aforesaid, and to provide generally for matters ancillary to those objects.

(4) Every such scheme for the time being in force is referred to in this Ordinance as an "approved scheme".

(5) The Colonial Secretary shall from time to time cause to be notified in the *Royal Gazette*—

- (a) descriptions of the areas in which water is to be distributed or used in pursuance of approved schemes;
- (b) variations of such areas;
- (c) cancellations of such areas.

An area in which, in accordance with such notifications in the *Royal Gazette*, water is for the time being to be distributed or used in pursuance of an approved scheme, is referred to in this Ordinance as an "irrigation area".

4. (1) It shall be lawful for the Director, with the approval of the Governor, to apply under Part III of the Oil and Water Board Ordinance, for a licence for abstracting water from any watercourse for the purposes of any Applications by Director to the Oil and Water Board. Ch. 26. No. 6.

irrigation scheme contemplated by Government or for the purposes of any approved scheme and for constructing and maintaining the necessary irrigation works for abstracting water as aforesaid and for taking the same to any irrigation area ; and the Board may grant such licence accordingly : Provided that—

(a) a licence granted by the Board for the purposes of a contemplated scheme shall not confer any right, power or authority on the Director until the contemplated scheme becomes an approved scheme ;

(b) no licence granted by the Board to the Director shall confer any right, power or authority on the Director except in so far as such right, power or authority may be appropriate to the carrying out of an approved scheme.

(2) For the purposes of the said Ordinance, the purpose for which the water is to be abstracted shall be deemed to be an industry and the Director shall be deemed to be a person carrying on an industry.

(3) Subject to the provisions of this section, the provisions of the said Ordinance shall apply, with the exclusions and modifications set forth in the Schedule hereto, to any application by the Director under this section and to all matters consequent thereon or arising directly or indirectly therefrom.

(4) A licence granted to the Director shall, so long as it is in force, imply a right on the part of the Director to carry into effect any approved scheme by distributing the water abstracted by virtue of the licence to all or any lands in any irrigation area concerned and by constructing and maintaining any necessary irrigation works in any such irrigation area : Provided that the power implied by this subsection to construct and maintain irrigation works shall, save as hereinafter provided, be exercised subject to any private rights of property in any such irrigation area.

Schedule.

Carrying into effect approved schemes.

5. (1) For the purpose of enabling the Director to carry an approved scheme into effect in any irrigation area, it shall be lawful for the Oil and Water Board, after giving

all persons interested an opportunity of being heard, to make an order authorising the Director, his workmen, servants, and agents to enter and pass into, over and through the land of any person in the area with or without any necessary vehicles and animals of any description and do all or any of the following things, namely—

- (a) to do any act necessary to ascertain the practicability or expediency of laying or sinking pipes or other things in, on or over the land ;
- (b) to lay or sink pipes and other things in, on or over the land and to maintain and repair the same ;
- (c) to dig and break up the soil of the land for any such purpose.

(2) The Board may give such authority either without imposing any conditions or subject to such conditions as the Board shall, in each case, think proper, and in particular the Board may, if it thinks just, order the Director to pay a way-leave, either by a single payment or by periodical payment (the amount to be settled by the Board), for the privilege of laying or sinking, and maintaining and repairing such pipes or things.

(3) The Director before entering on any land under an authority given by the Board shall give at least seven days' notice in writing to the occupier of the land of his intention to enter, specifying the locality in which work will be done and the nature of the work. If any difficulty arises as to giving notice to the occupier, or if there is no occupier of the land, the Board may give directions as to how and to whom notice of intention to enter is to be given.

(4) The Director shall pay full compensation (to be assessed by the Board) for any damage which the owner of the land may sustain by reason of anything done in pursuance of the powers conferred by this section.

(5) If any person wilfully obstructs the Director, or any workman, servant, or agent of the Director, in the lawful exercise of any power conferred by an order of the Board made under this section, he shall be liable, on summary conviction, for each offence to a fine of one hundred and twenty dollars.

Ch 26. No. 6. (6) Subject to the provisions of this section, the provisions of the Oil and Water Board Ordinance (with the modifications and exclusions set forth in the Schedule hereto) shall apply in relation to any application by the Director under this section and to all matters consequent thereon or arising directly or indirectly therefrom as if the application was an application by a licensee under section 39 of that Ordinance.

Imposition of irrigation rate.

6. It shall be lawful for the Governor in Council, with the approval of the Legislative Council, by notification in the *Royal Gazette*—

- (a) to classify all or any lands within an irrigation area ;
- (b) to impose annual irrigation rates upon such lands in accordance with their classification ;
- (c) to specify the date on which the first payment of the rates imposed shall fall due, or to specify different dates on which such first payment shall fall due in relation to lands of different classifications ;
- (d) to provide that the amount of the first payment of the rate, either in relation to lands generally on which the rate is imposed or in relation to lands of any specified classification, shall be a part only of the amount payable for a full year and to specify the manner in which such part is to be determined ;
- (e) from time to time to vary or cancel any such notification :

Provided that no lands shall be liable to any increased rate within a period of three years from the date of the last classification unless they shall in the meantime be used for some cultivation other than that for which they were used at the time of such last classification and involving the use of a greater supply of water.

Payment of irrigation rates

7. (1) Irrigation rates shall be paid to the Wardens of the Counties in which the lands in respect of which they are imposed are situated.

(2) The first payment shall be made on the date fixed by notification under section 6. The second payment shall be made on the following 2nd of January and subsequent payments shall be made on each succeeding 2nd of January.

8. Notwithstanding the previous provisions of this Ordinance, the Governor may remit in whole or in part any sums payable by way of irrigation rate in respect of all or any lands in an irrigation area for any period in which no irrigation water or only a diminished or insufficient supply of irrigation water was available during the whole or any part of the period.

Power of  
Governor  
to remit.

9. Any rate not paid at the expiration of three months after the same shall have become due shall be increased at the rate of ten per centum: Provided that it shall be lawful for the Governor, if there shall appear to him to be just cause in any case for so doing, to remit such percentage increase in whole or in part.

Increase  
on arrears.

10. (1) Any rates not paid at the expiration of three months after the same shall have become due and any percentage increase payable by virtue of section 9 shall until paid, be a charge on the lands (including any buildings whatsoever standing thereon) in respect of which they have been imposed; and shall be recoverable by the Warden under the provisions of the Rates and Charges Recovery Ordinance. The Warden is hereby declared to be a Public Authority within the meaning and for the purpose of the said Ordinance.

Recovery of  
rates and  
percentage  
increase.

(2) Without prejudice to subsection (1), any rates not paid as aforesaid and any such percentage increase shall be recoverable by the Warden by action in the Petty Civil Court of the district in which the lands are situate (without limit of amount) from the owner for the time being of the lands in respect of which the rates have been imposed.

Ch. 33. No. 8.

11. (1) The Wardens shall keep assessment rolls setting forth in relation to lands within their County in respect of which irrigation rates have been imposed—

Assessment  
rolls.

- (a) a description of the land;
- (b) the amounts of all sums payable by way of irrigation rates in respect of the land and the dates on which they are due and paid;

- (c) the amount of any percentage increase payable under section 9 and the date on which it is paid ;  
 (d) any other particulars which the Governor may from time to time prescribe.

(2) Such assessment rolls shall be open to public inspection during office hours and members of the public shall be entitled during office hours to take copies of any entries therein.

Irrigation  
Officer.

**12.** (1) Every irrigation area and the irrigation works therein shall be in the charge of an Irrigation Officer appointed by the Governor.

(2) With the approval of the Colonial Secretary and subject to such limitations as the Colonial Secretary may impose, any Irrigation Officer may, by writing under his hand, from time to time authorise any person to exercise any of the powers and perform any of the duties conferred and imposed by this Ordinance on an Irrigation Officer and may in like manner and with the like approval withdraw any such authority. Everything done in pursuance of authority granted under this section shall have the same effect as if it were done by the Irrigation Officer.

Distribution  
of water.

**13.** (1) The Irrigation Officer in charge of an irrigation area shall fix the time and mode of distribution of water from the irrigation works, and different times and different modes may be fixed in respect of different portions of an irrigation area.

(2) The Irrigation Officer may, in his discretion, vary the times and modes fixed by him.

(3) The Irrigation Officer shall give not less than one week's notice, in such manner as the Governor may generally or specially direct, of the times and modes of distribution of water fixed by him and of any variations thereof.

(4) Nothing in the preceding provisions of this section shall be construed as preventing the Irrigation Officer from taking any steps for regulating or shutting off the distribution of water in any case in which, and to the extent that, it shall appear to him to be advisable to take such steps without complying with such provisions.

14. An Irrigation Officer may refuse to allow water to be supplied or taken for the irrigation of lands in respect of which payment of irrigation rate is in arrears, or for the irrigation of lands which are not provided with proper banks for the retention of water ; but the irrigation rate due in respect of such lands shall be payable notwithstanding such refusal.

Power to withhold water.

15. In any case in which damage is done to any irrigation works the cost of repairing such damage may be recovered by Government from the person answerable for such damage by suit in any competent civil court. In any case in which the damage is caused by fire originating on adjoining or adjacent lands, the onus shall be on the owner of such lands to prove that he is not answerable for the damage.

Damage to irrigation works.

16. Any person who shall wilfully or maliciously block up or obstruct or cause to be in any way blocked up or obstructed, or who shall encroach on or damage, any irrigation tank, basin, dam, channel or water course, or who shall breach or cut through the banks of the same, shall be liable on summary conviction to imprisonment for three months or to a fine of one hundred and twenty dollars or to both such imprisonment and fine.

Obstruction or damage.

17. Any person who shall wilfully cause waste of water conserved by any irrigation works, or who not being entitled to the use of such water, shall wrongfully draw off or convert to his own use any such water, shall be liable on summary conviction to imprisonment for three months or to a fine of one hundred and twenty dollars or to both such imprisonment and fine.

Waste or abstraction of water.

Where such water is found to be used on the land of a person not entitled to the use thereof the onus shall be on such person of proving that he did not draw off or convert to his own use, or cause to be drawn off or converted to his own use, such water.

Further provision as to wasting water.

18. If the owner of any land irrigated by any irrigation works shall suffer or permit water obtained from such works or from any watercourse or channel connected therewith to run to waste on his land, or shall obtain water for such land from such works, watercourse, or channel in a manner or at a time not authorised by the Irrigation Officer, such owner shall be liable on summary conviction to a fine of one hundred and twenty dollars.

Tampering with irrigation works.

19. (1) Any person who shall, without authority from the Irrigation Officer in charge of an area, open or close or otherwise tamper with any sluices, water gates, regulators, pipes, bench marks, water gauges or other works forming part of any of the irrigation works within such area shall be liable on summary conviction to imprisonment for three months or to a fine of one hundred and twenty dollars or to both such fine and imprisonment.

(2) Where by reason of any irrigation works having been so tampered with, the land of any person is benefited, the onus shall be on such person of proving that he did not tamper therewith or cause them to be so tampered with.

Obstruction of Officers.

20. Any person who shall obstruct, molest, or hinder any Irrigation Officer, or any workman, servant, or agent of an Irrigation Officer, acting in the lawful exercise of any power conferred upon him by this Ordinance, shall be liable on summary conviction to a fine of one hundred and twenty dollars.

Power to arrest.

21. Any Irrigation Officer may arrest without warrant any person found committing an offence against any of the sections 16, 17, 19 and 20 of this Ordinance and shall as soon as possible take or cause such person to be taken before a Magistrate or Justice.

Bar of actions.

22. No action shall lie against the Government of the Colony or any officer of the Government in respect of any damage or loss due to failure of the supply of irrigation water.

23. All amounts which may become payable by the Director under or by virtue of this Ordinance and all expenses incurred by him in exercising any power or performing any duty conferred or imposed by this Ordinance shall be defrayed from the public monies of the Colony.

Payment from public funds of amounts and expenses of Director.

## SCHEDULE.

Section 4 (3).

Oil and Water Board Ordinance, Ch. 26. No. 6.	How modified.
Section 33 (3) ...	... Not to apply.
Section 36 ...	... Not to apply.
Section 38 ...	... Not to apply.
Section 40 ...	... Not to apply.
Section 44 ...	... Not to apply.
Section 45 ...	... To apply with the modification that any land acquired under the section shall be conveyed to the Crown.
Section 46 ...	... Not to apply.
Section 49 ...	... Not to apply.
Section 55 (1) ...	... Not to apply.
Section 55 (2) ...	... To be modified to read— (2) Every award by the Board (otherwise than against the Director) of compensation or costs, and every order by the Board for the payment of money (otherwise than by the Director), may be entered in the Supreme Court in the same manner as judgments of the Supreme Court are entered, and thereupon may be enforced in the same manner in all respects as a judgment of the Supreme Court for payment of money may be enforced.