

See Suppl: R. G. II. 7.46 P.417
for order re Controlled Channels.



TRINIDAD AND TOBAGO.

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No. 5—1944.

[L.S.]

I ASSENT,

B. E. H. CLIFFORD,

Governor.

12th April, 1944.

AN ORDINANCE to provide for the establishment of
a Department of Hydraulics and for various matters
relating to the control and use of water in the Colony.

[On Proclamation]

Commencement

E NACTED by the Governor of Trinidad and Tobago
with the advice and consent of the Legislative Council
thereof.

PART I.

INTRODUCTORY.

1. (1) This Ordinance may be cited as the Waterworks Short title &c.
and Water Conservation Ordinance, 1944, and shall come
into force on such date as the Governor may by proclama-
tion appoint.

Ch. 27. No. 8. (2) On the coming into force of this Ordinance, the
 Ch. 40. No. 5. Reclaimed Lands Ordinance, the Land Improvement
 No. 18 of 1942. (Drainage) Ordinance and the Irrigation Ordinance, 1942,
 Repeal. shall be deemed to have been repealed.

Interpretation.

2. In this Ordinance—

“abstracting” includes impounding and diverting ;

“animal” includes birds, reptiles and fish ;

“aquifers” means waterbearing sand or gravel formations ;

“average flow” of a watercourse at a specified point means the average daily flow thereof at that point ascertained in the manner provided in Part X of this Ordinance ;

“Board of Appeal” means the Board established under section 15 ;

“Central Authority” means the Central Water Distribution Authority established under the provisions of the Central Water Distribution Authority Ordinance, 1944 ;

No. 6 of 1944

“Central Water Board” means the Central Water Board established under the Central Waterworks Ordinance ;

Ch. 37.No. 1.

“contamination” includes contamination by sea water ;

“contravention” includes failure to comply ;

“Director” means the Director of Hydraulics, and includes the Deputy Director of Hydraulics whenever that officer is entitled to exercise the powers or perform the duties of the Director of Hydraulics ;

“drainage” means the complete or partial drainage of lands wholly or partly covered by water or the lowering of the water table of the whole or any part of any lands ;

“enter” means to enter with such workmen, transport, equipment and materials as may be necessary ;

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

“land” has the meaning assigned to it by the Land Acquisition Ordinance, 1941, but does not include any land comprised in a street ; ^{No. 14 of 1941.}

“Local Distribution Authority” means any of the Corporations of Port-of-Spain, San Fernando and Arima, the Central Authority, and any person declared by order of the Governor in Council to be a Local Distribution Authority for the purposes of this Ordinance ;

“Oil and Water Board” means the Board established under the Oil and Water Board Ordinance ; ^{Ch. 26. No. 6.}

“outcrop” means the emergence of aquifers at the surface of the ground ;

“owner”, in relation to land means the person who is receiving the rackrent of the land, whether on his own account or as agent or trustee for any other person, or who would so receive the rackrent of the land if it were let at a rackrent: Provided that for the purposes of this definition the expression “rackrent”, in relation to land held on Crown Lease means the rackrent at which the land is or could be sublet ;

“prior Water Authority” means an authority constituted by a Provisional Order made in accordance with the District Waterworks Ordinance (*Cap. 114 of the 1925 Revised Laws*) ;

“reclamation” means the reclamation or filling of swampy lands or lands wholly or partly covered by water ;

“shallow dug well” means a well the maximum depth of which does not exceed five feet ;

“ street ” includes any highway, including a highway over any bridge, and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not and whether the public have a right of way thereover or not ; and the pavement of a street and all channels, drains and ditches at the side of a street shall be deemed to be part of the street ;

“ Water Advisory Board ” means the Board established under section 14 ;

“ watercourse ” includes any river, stream, creek or other permanent and defined course for water, whether natural or artificial or partly natural and partly artificial and whether containing water continuously or not ;

“ waterworks ” means all works, constructions and developments which—

- (a) are contemplated by section 30, or
- (b) are otherwise authorised by this Ordinance to be constructed or carried out by or on behalf of the Director, or
- (c) are declared by order of the Governor in Council to be waterworks for the purposes of this Ordinance ;

and includes any such works, constructions and developments which are under construction or in the course of being carried out ;

“ way-leave ” means a right, on the part of the Director and persons acting by his authority, to the user of land for the laying of tunnels, conduits, aqueducts, channels, drains, outfalls for water, mains, pipes or other structures and appliances, and accessories thereto, together with the right of access to and of opening up such land from time to time for the inspection, renewal, repair, replacement or removal of any such works and of restoring any such land, without in any such case affecting the ownership of such land.

PART II.

TRANSFER TO GOVERNMENT OF PART OF THE UNDERTAKING
OF THE CENTRAL WATER BOARD.

3. In this Part, the expression "waterworks" has the meaning assigned to it in section 2 of the Central Waterworks Ordinance, and also includes any office buildings and quarters owned by the Central Water Board immediately prior to the coming into force of this Ordinance.

Meaning of
"water-
works."

Ch. 37, No. 1

4. All lands (but not any waterworks standing thereon or fixed thereto) which, immediately prior to the coming into force of this Ordinance, were owned in fee simple by the Central Water Board shall be deemed, on such coming into force, to have been surrendered to and to have vested absolutely in the Crown.

Disposal of
lands of
Central
Water Board.

5. The waterworks described in the First Schedule hereto, and all movable property of the Central Water Board to which the Governor in Council may direct that this section shall apply, shall be deemed, on the coming into force of this Ordinance, to have been transferred to, and to have become the property of, the Government.

Waterworks
and movable
property.
First Schedule.

6. On the coming into force of this Ordinance, the benefit and the burden of all way-leaves held by the Central Water Board, and of all leases and tenancy agreements in which the Central Water Board was tenant, immediately prior to such coming into force shall, if the way-leave, lease or tenancy agreement relates to any waterworks described in the First Schedule hereto, be deemed to have been transferred from the Central Water Board to the Government.

Way-leaves,
leases and
tenancy
agreements.

First Schedule.

7. The benefit and the burden of any contract made by the Central Water Board and in force immediately prior to the coming into force of this Ordinance, being a contract to which the Governor in Council may direct that this section shall be applicable, shall, on such coming into force, be deemed to have been transferred from the Central Water Board to the Government.

Contracts.

8. The Governor in Council may direct that any liability of the Central Water Board shall be deemed to have been transferred to, and to have become the liability of, the Government.

Liabilities.

General power as to undertaking of Central Water Board.

9. Subject to the provisions of this Ordinance, the Governor in Council, with the approval of the Legislative Council, may by order make such provision as may appear to him to be expedient for securing the transfer to the Government of any part of the undertaking of the Central Water Board, and for matters consequential thereon.

PART III.

ESTABLISHMENT OF A DEPARTMENT OF HYDRAULICS.

The Department of Hydraulics.

10. (1) There shall be established in the Colony a department of Government to be known as the Department of Hydraulics, consisting of a Director of Hydraulics, one or more Deputy Directors of Hydraulics and such officers (including clerks, foremen, workmen and other servants) as the Governor may deem appropriate.

(2) The Director of Hydraulics shall be the head of the department.

(3) In the absence, or inability to act from illness or other cause, of the Director of Hydraulics, a Deputy Director of Hydraulics may exercise all or any of his powers and perform all or any of his duties.

(4) In the exercise of their powers and the performance of their duties, the Director of Hydraulics and his Deputies shall conform with any general or special directions given to them by the Governor in Council.

Transfer to the department of officers of the Central Water Board.

11. The Governor may direct that any officers or class of officers in the service of the Central Water Board immediately prior to the coming into force of this Ordinance shall be deemed, on such coming into force, to be transferred to the service of the Government in the Department of Hydraulics and to hold offices under the Government on the like terms of employment, subject to the provisions of this Ordinance and to Colonial Regulations and Civil Service Regulations, as if they had been originally appointed to the service of the Government.

Application of the Pension Laws to officers transferred under section 11.

12. (1) In this section, the expression "the Pension Laws" means the Pensions Ordinance and the regulations thereunder, and any Ordinances or regulations from time to time amending or replacing the same, and any prior Ordinances or regulations which may be applicable in any particular case.

(2) Any office which, immediately prior to the coming into force of this Ordinance, was a pensionable office for the purposes of section 11 of the Central Waterworks Ordinance, Ch. 37. No. 1. and the holder of which is deemed to be transferred to the service of the Government in accordance with section 11, shall be deemed, on such coming into force, to be a pensionable office for the purposes of the Pension Laws.

(3) As regards officers who are deemed to be transferred to the service of the Government in accordance with section 11, the Pension Laws shall have effect subject to the following modifications and directions, namely—

(a) past service under a prior Water Authority may, at the discretion of the Governor in Council, and for such period and in such manner as the Governor in Council may deem fit, be taken into account as though it had been service under the Government ;

(b) past service under the Central Water Board in an office to which subsection (2) of this section relates shall count in full as though it had been service in a pensionable office within the meaning of the Pension Laws ;

(c) past service in any other office under the Central Water Board, being an office the holder of which is deemed to be transferred to the service of the Government in accordance with section 11 shall count as though it had been service in a non-pensionable office within the meaning of the Pension Laws ;

(d) whenever any pension, gratuity or other allowance is granted under the Pension Laws in the case of an officer with past service as aforesaid, the Central Authority shall pay from its funds to the Government such contribution as may be provided for by rules made by the Governor in Council, and any such rules may make different provisions in different classes of cases.

13. The duties of the Director shall be such duties as are set forth in this Ordinance and such other duties as are assigned to him by the Governor in Council. Duties of the Director.

PART IV.

THE WATER ADVISORY BOARD AND THE BOARD OF APPEAL

The Water
Advisory
Board.

14. (1) There shall be established for the purposes of this Ordinance a Board to be known as the Water Advisory Board which shall consist of three members who shall be appointed by the Governor and who shall hold office during his pleasure :

Provided that—

- (a) any member of the Board may at any time resign his office by giving notice in writing to the Colonial Secretary ;
 - (b) every member of the Board shall automatically vacate his office after he has held it for one year, but he shall be eligible for re-appointment.
- (2) In the case of the absence or inability to act of any member of the Board, the Governor may appoint another person to act temporarily in his place.
- (3) The duties of the Board shall be consultative only and the Director shall be required to consult the Board with regard to such matters only as are specified in this Ordinance.
- (4) The Director may consult the Board verbally or by the circulation of papers and the Board shall be deemed to have been consulted if the opinions of all the members have been obtained.

Establish-
ment of Board
of Appeal.

15. (1) There shall be established for the purposes of this Ordinance a Board of Appeal consisting of a Chairman, a Vice Chairman and three other members who shall be appointed by the Governor and shall hold office during his pleasure :

Provided that—

- (a) no member of the Water Advisory Board and no Government officer, other than a judicial or magisterial officer, shall be a member of the Board ;
- (b) any member of the Board may at any time resign his office by giving notice in writing to the Colonial Secretary ;
- (c) every member of the Board shall automatically vacate his office after he has held it for one year, but he shall be eligible for re-appointment.

(2) In the case of the absence or inability to act of any member of the Board, the Governor may appoint another person to act temporarily in his place.

(3) The Board shall be deemed to be legally constituted notwithstanding any vacancy in its membership.

(4) In the absence or inability to act of the Chairman, the Vice Chairman shall act in his place, and all references hereinafter made to the Chairman refer to the Vice Chairman when so acting.

16. (1) Appeals to the Board of Appeal shall lie in such cases as are provided for in this Ordinance. Appeals to the Board of Appeal.

(2) In any case in which an appeal lies, the Director shall give notice in writing to the party concerned of his decision and the grounds thereof.

(3) Within seven days of the giving of such notice, or within such further period as the Board may in any case for special reasons allow, the party concerned shall have the right to appeal to the Board by delivering to the Director in duplicate written notice of appeal and of the grounds thereof. The notice of appeal shall contain the address of the appellant. The Director shall forward one copy of the notice of appeal and grounds of appeal to the Chairman.

17. (1) The quorum of the Board of Appeal shall be three and the Chairman shall preside at every meeting. Procedure of the Board of Appeal.

(2) The appellant and the Director shall be given the opportunity of being heard and of adducing evidence, and evidence shall be given on oath save in so far as the Board, in its discretion, may permit any evidence to be given on affidavit.

(3) The Chairman shall have the powers of a Judge of a Petty Civil Court to enforce the attendance and examination of witnesses and the production of documents.

(4) At meetings of the Board, the decision of the majority of members present and voting shall prevail: Provided that in case of an equality of votes, the Chairman shall have a second or casting vote.

(5) The Board may take into consideration any relevant facts within the personal knowledge of any member of the Board notwithstanding the absence of formal proof of such facts; provided that before any such facts are taken into consideration the appellant and the Director shall be informed of the substance thereof and given the opportunity of adducing evidence in regard thereto.

(6) The proceedings of the Board shall be open to the public, and minutes thereof, including a summary of the evidence given and a statement of all facts taken into consideration pursuant to the provisions of subsection (5), shall be kept by the Chairman or under his direction.

(7) The appellant and the Director may each be represented before the Board by counsel or by a solicitor of the Supreme Court.

(8) An appeal may be heard in the absence of the appellant or of the Director or of both provided that the absent parties have been given notice of the time and place of hearing.

(9) The Board may confirm, reverse, or vary the order or decision of the Director which is appealed against and shall have power to award costs to the successful party. Such costs shall, subject to any rules made under subsection (10), be in the discretion of the Board.

(10) The Governor in Council may make rules relating to appeals to the Board, the fees to be paid, the scale of costs applicable, the procedure of the Board, the form of decisions of the Board and the manner in which they are to be authenticated. All fees shall be paid into the general revenue of the Colony. With regard to any matter on which rules under this subsection have not been made, the Board may, subject to the provisions of this Ordinance, give such directions and regulate its procedure in such a manner as may seem just: Provided that no fees shall be taken except in accordance with rules made under this subsection.

(11) An appeal shall lie to the Full Court from any decision of the Board and the Full Court shall have all the powers of a Full Court on an appeal from a Judge of the Supreme Court and may confirm, reverse or vary the decision of the Board, or may remit the proceedings to be dealt with by the Board in accordance with the directions of the Full Court. The power of making rules conferred by section 42 of the Judicature Ordinance shall apply to appeals under this subsection, and is hereby extended so as to authorise the making of rules as to the information and documents to be supplied by the Board or by the

appellant, and as to the time within which and the manner in which appeals may be made. In default of or subject to any such rules, the rules for the time being in force regulating appeals in an action from an order of a Judge of the Supreme Court to the Full Court (including rules as to time) shall apply *mutatis mutandis* to appeals under this subsection.

PART V.

WELLS AND BORE-HOLES.

18. (1) After the coming into force of this Ordinance, it shall not be lawful for any person—

(a) to sink any well or bore-hole or to deepen an existing well or bore-hole with the object of abstracting underground water therefrom or of using it for the disposal of sewage water or other waste, or to convert a well or bore-hole originally sunk for the abstraction of oil into a well or bore-hole for the abstraction of water or for the disposal of sewage water or other waste, or to carry out any part of any such operations or to cause or suffer any of such operations to be carried out in whole or in part, unless there is in force a permit in writing so to do granted by the Director and unless the conditions and restrictions contained or implied in such permit are complied with ;

(b) to abstract underground water from any well or bore-hole (whether in existence when this Ordinance comes into force or sunk thereafter) or to use it for the disposal of sewage water or other waste, or to cause or suffer any such operation to be carried out, unless there is in force a licence in writing to do so granted by the Director and unless the conditions and restrictions contained or implied in such licence are complied with : Provided that, in the case of any well or bore-hole which is in existence when this Ordinance comes into force and which is then used for the abstraction of underground water or the disposal of sewage water or other

Sinking of wells and bore-holes and abstraction of underground water.

waste a licence to continue the particular user shall not be required until the expiration of one month after such coming into force or, if application is meanwhile made for a licence, until the application is disposed of by the Director.

(2) For the avoidance of doubt, it is hereby declared that nothing in any law to the contrary shall absolve any Local Distribution Authority from any obligation to obtain a permit or licence under this section which would be necessary but for that law, or shall absolve any other person from any obligation to obtain a permit or licence under this section which would be necessary but for that law for the doing of any thing within the water district of a Local Distribution Authority.

(3) Applications for any permit or licence mentioned in subsection (1) shall be made in writing to the Director and shall be in such form and shall contain such particulars verified in such manner as the Director may generally or specially require. Without prejudice to the generality of this provision, particulars may be required to be given and verified as to the water bearing capacity of any aquifers, when such capacity is in question, and of all relevant geological data as to the outcrop area near the site of the well or bore-hole or proposed well or bore-hole.

(4) Every such application which has been duly made and in respect of which the prescribed fee (if any) has been paid to the Accountant General and in respect of which the Director has been given any opportunity reasonably demanded by him of testing the accuracy of any particulars given with the application and of ascertaining any other relevant facts shall be considered by the Director who shall, before arriving at a decision, consult the Water Advisory Board.

(5) A licence to abstract underground water shall not be refused by the Director in the case of a well or bore-hole which is in existence when this Ordinance comes into force and which is then used for the abstraction of underground water but any such licensee may be subject to conditions and restrictions.

(6) Subject to the provisions of subsection (5), the Director may refuse a permit or licence :—

(a) in the case of a permit—

- (i) if the purpose for which the well or bore-hole is to be sunk, deepened or converted is one which, if carried into effect, may, notwithstanding any conditions or restrictions which could properly be imposed, be a source of danger to health or lead to contamination of any source of water (including the well or bore-hole in question) or prejudice the reasonable conservation, control or exploitation of underground sources of water ; or
- (ii) if the purpose for which the well or bore-hole is to be sunk, deepened or converted is the abstraction of water, a suitable water supply from a Local Distribution Authority is already available or will be available within a reasonably short period ;

(b) in the case of a licence, if the purpose for which the licence is sought is open to any of the objections mentioned in paragraph (a) of this subsection or, where the licence is for the abstraction of water, a suitable water supply from a Local Distribution Authority is or will be available as mentioned in the said paragraph.

(7) Any conditions or restrictions may be attached to a permit or licence which are appropriate to prevent any danger to health or any danger of contamination of any source of water (including the well or bore-hole in question) or any prejudice to the reasonable conservation, control or exploitation of underground sources of water ; and, without prejudice to the generality of this power, all or any of the following conditions or restrictions may be attached to any licence to abstract underground water from any well or bore-hole, namely—

(a) that the pumping of water out of such well or bore-hole shall be carried out at such times

and at such rate as the Director may from time to time fix ;

- (b) that the water from such well or bore-hole shall not be sold to any person, or used or permitted to be used by any person except the holder of the licence and members of his household or establishment ;
- (c) that the water shall not be used or permitted to be used or distributed for drinking purposes (whether as it stands or as an ingredient in any food or drink) unless the permission in writing of the Chairman of the Central Board of Health established under the Public Health Ordinance has been obtained, and shall cease to be so used or permitted to be used whenever the said Chairman certifies that the water is no longer fit for human consumption ; provided that nothing in this paragraph shall be deemed to prohibit the use of water for drinking purposes as aforesaid if such water is purified in accordance with the directions of the said Chairman and to his satisfaction ; provided further that the said Chairman may delegate his functions under this paragraph to a duly qualified Medical Officer of Health employed by any local authority constituted under the Public Health Ordinance ;
- (d) that samples of the water obtained shall be submitted to the Director at such times as he may require.

Ch. 12. No. 4.

Ch. 12. No. 4.

(8) The following shall be implied conditions of any permit or licence granted under this section, namely—

- (a) that the Director or any person deputed by him shall have the right to have access to and to inspect the well, bore-hole or pumping apparatus used in connection therewith, and to call for and obtain such data (including geological data) in connection with the well or bore-hole as it is reasonably practicable to obtain ;

(b) that the Director shall have the right, after consultation with the Water Advisory Board, to cancel the permit or licence, or to vary or add to the conditions or restrictions of the permit or licence, where its continuance in force or, as the case may be, its continuance in force without variation of or addition to its conditions or restrictions, would be open to any of the objections mentioned in subsection (6) ;

(c) that the permit or licence may be cancelled by the Director if there is a conviction under section 21 for a contravention of any restriction or condition contained or implied in the permit or licence.

(9) Every permit issued under this section shall be valid, unless previously cancelled, for such period as may be specified therein or for such further period as the Director, may allow in special circumstances.

(10) Every licence issued under this section shall expire, unless previously cancelled, on the 31st day of December, following the date of issue : Provided that, if application has meanwhile been made for a new licence, the former licence shall remain in force until such application is disposed of by the Director. When a licence is applied for in place of a licence which has expired or is about to expire, the Director shall not be bound to consult the Water Advisory Board unless he contemplates refusing the application or imposing some new condition or restriction.

(11) Permits and licences shall be in such form as the Director, subject to the provisions of this section, may generally or specially approve.

19. Whenever the Director refuses an application for a permit or licence, or is prepared to grant a permit or licence subject to conditions or restrictions, or cancels a permit or licence, or varies or adds to the conditions or restrictions of a permit or licence, the applicant or the holder of the permit or the licensee, as the case may be, shall have a right of appeal to the Board of Appeal against such refusal, conditions, restrictions, cancellation, variation, addition or requirement, as the case may be, and sections 15 to 17 shall apply accordingly. Appeals.

Permits or licences to be personal unless endorsed.

20. (1) Subject to such endorsements as may be made from time to time by the Director, a permit or licence under this Part shall be personal to the grantee.

(2) Every person who shall from time to time become entitled by endorsement as aforesaid to the benefits of a permit or licence shall be bound also by the conditions and restrictions thereof.

Offences.

21. Any person who contravenes any of the provisions of section 18 shall be guilty of an offence against this Ordinance and shall be liable on summary conviction at the option of the convicting court to a fine of five hundred dollars or to a fine of fifty dollars for each day during which the offence continues.

Powers of Director to cause wells or bore-holes to be rendered safe in certain circumstances.

22. (1) If a well or bore-hole which has been constructed or used, whether before or after the coming into force of this Ordinance, for the abstraction of underground water or the disposal of sewage water or other waste, is not used or ceases to be used for those purposes, the Director may, by notice in writing served on the owner of the land on which the well or bore-hole is situate, require such owner to plug or fill such well or bore hole, or otherwise to render it safe, to the satisfaction of the Director within such time as may be specified in the notice or such further time as the Director may allow. If the owner of the land fails to comply with such requirement, the Director and persons acting by his written authority may enter on the land and plug or fill the well or bore-hole, or otherwise render it safe, to the satisfaction of the Director: Provided that when an appeal against any such requirement has been made to the Board of Appeal under the provisions of subsection (2) of this section against any such requirement, the time within which such requirement would but for this proviso have to be complied with shall be deemed to be extended until the appeal is disposed of by the Board: Provided further that if in any such case the Board confirms the requirement, with or without any variation thereof, the Board shall extend the time within which the required action is to be taken for such period (not being less than the period within which an appeal to the Full Court could be lodged) as it may think reasonable: Provided lastly that, if an appeal to the Full Court is lodged, the time for taking the required action shall be deemed to be extended until the appeal is disposed of.

(2) Any owner aggrieved by any requirement contained in a notice served on him under subsection (1) shall have a right of appeal against such requirement to the Board of Appeal as though the notice was a notice under subsection (2) of section 16, and sections 15 to 17 shall apply accordingly.

(3) The Director's expenses, reasonably incurred in the exercise of the powers conferred by this section, shall be a debt due by the owner of the land in question to the Government and shall also be a charge on the land.

23. (1) If any well or bore-hole has been sunk, deepened or converted, or if any part of any such operation has been carried out, in contravention of the provisions of section 18, or if a well or bore-hole is used in contravention of that section, and there has been a conviction under section 21 in respect of any such contravention, the Director and persons acting by his written authority may, after giving three days notice in writing of his intention so to do to the owner of the land on which the well or bore-hole is situate, enter on the land and plug or fill the well or bore-hole or otherwise render it safe, to the satisfaction of the Director.

Powers of Director in case of contravention of section 18.

(2) The provisions of subsections (2) and (3) of section 22 shall *mutatis mutandis* apply to this section.

24. Notwithstanding the preceding provisions of this Part —

(a) a permit shall not be required to sink a well which will be a shallow dug well, or to deepen or convert a shallow dug well unless, after the well has been deepened or converted, it will cease to be a shallow dug well ;

Exemption as to shallow dug wells etc.

(b) a licence shall not be required to abstract water from a shallow dug well unless such well is used or intended to be used to provide water for drinking purposes ;

(c) a permit or a licence shall not be required in relation to any well or bore-hole used or intended to be used for the disposal of sewage water or other waste when such well or bore-hole is not more than twelve feet deep : Provided

that the Governor in Council may by order declare an area to be one within which permits and licences must be obtained even when the depth of any well or bore-hole as aforesaid is not more than twelve feet.

PART VI.

SALE AND DISPOSAL OF GOVERNMENT WATER.

Director may enter into agreements.

25. It shall be lawful for the Director, with the approval of the Governor in Council, to enter into agreements on behalf of the Government for the sale or disposal of water in bulk or otherwise to any persons, including Local Distribution Authorities: Provided that an agreement as aforesaid shall not be entered into for the supply of water within the water district of a Local Distribution Authority to a person other than that Authority unless—

- (a) the Local Distribution Authority consents, or
- (b) the Governor in Council is satisfied that the Local Distribution Authority cannot or will not provide a reasonable supply in the particular case on reasonable terms, or
- (c) the water is to be supplied for shipping.

Presumptions as to contracts

26. A recital in any such agreement, which is shown to have been signed or executed by the Director, to the effect—

- (a) that the agreement is made on behalf of the Government, or
 - (b) that it has been approved by the Governor in Council, or
 - (c) that a Local Distribution Authority has consented to the making of the agreement, or
 - (d) that the Governor in Council is satisfied that a Local Distribution Authority cannot or will not itself provide a reasonable supply of water in the particular case on reasonable terms,
- shall be *prima facie* proof of the facts recited.

27. For the avoidance of doubt, it is hereby declared that an agreement as aforesaid for the supply of water to a Local Distribution Authority may, notwithstanding anything in any law to the contrary, contain any such terms and conditions as may be thought appropriate to secure, as far as may be practicable, that the Local Distribution Authority does not make a profit out of the distribution or sale of water while the agreement is in force.

Agreement
with Local
Distribution
Authorities.

28. The Government is hereby authorised, notwithstanding anything in any law to the contrary, to supply water to any Government property or institution within the water district of any Local Distribution Authority.

Supply to
Government
property or
institutions.

29. The Director is hereby authorised to carry out all such works as may be appropriate to implement, on behalf of Government, any such agreement as is contemplated by section 25, and all such works as may be appropriate for the supply of water to Government property or institutions in the circumstances contemplated by section 28.

Powers of
Director.

PART VII.

GENERAL PROVISIONS AS TO WATERWORKS.

30. (1) Subject to the provisions hereinafter contained and to any general or special directions of the Governor in Council, the Director shall have power—

General
powers of
Director.

- (a) to construct and carry out any waterworks for any of the purposes specified in section 31 or any combination of such purposes ;
 - (b) to complete the construction and carrying out of any waterworks commenced before the coming into force of this Ordinance for any of the purposes aforesaid or any combination thereof ;
 - (c) to use any such waterworks (whensoever constructed) for any of the purposes aforesaid or any combination thereof and to repair, maintain, alter or extend any such waterworks.
- (2) The powers conferred by this section may be exercised—
- (a) in relation to any Crown land or Government property ; and
 - (b) to the extent hereinafter provided in this Ordinance or by consent (but not otherwise), in relation to streets, private land or private property.

(3) This section shall be without prejudice to any powers conferred by any other provision of this Ordinance.

(4) The waterworks referred to in this section include reservoirs, dams, wells, weirs, tanks, basins, purification plants, sewers and sewage disposal plants, sluices, mains, tunnels, filter beds, conduits, aqueducts, canals, pumps, channels, drains, ditches, water gates, meters, regulators, gauges, bench and other marks, machinery, buildings, structures and appliances, and all other works, constructions and developments, whether of the same nature or otherwise, which are appropriate to the purposes specified in section 31 or any combination thereof.

Purposes
referred to in
section 30.

31. The purposes referred to in section 30 are—

- (a) the abstracting, impounding, collecting or otherwise making available, of water ;
- (b) the storage of water ;
- (c) the purifying or otherwise treating of water ;
- (d) the conveying, measuring, regulating, or disposal of water ;
- (e) irrigation, drainage or reclamation ;
- (f) sewerage outside the limits of any municipality or other local authority empowered to carry out sewerage schemes ;
- (g) the control of water in the interests of health ;
- (h) the protection of lands against water ;
- (i) the widening, deepening, straightening, improving, diversion, stopping up or joining up of watercourses ;
- (j) any other purposes of a similar nature.

Abstracting or
impeding the
flow of
water &c.

32. Any person who, without authority—

- (a) abstracts, or causes to be abstracted, water from the waterworks ; or
- (b) is guilty of any act or omission which, by itself or with other acts or omissions, impedes or interrupts, or is calculated to impede or interrupt, the flow of water in any waterworks,

shall be guilty of an offence.

33. Any person who, without authority, removes or tampers with any gauge, meter, measuring instrument, level, mark or other appliance of a similar nature forming part of the waterworks shall be guilty of an offence. Removing or tampering with gauges, &c.

34. Any person who commits any offence described in sections 32 and 33 shall be liable on summary conviction to a fine of two hundred dollars or to imprisonment for six months or to both such fine and imprisonment. Punishment of offenders against sections 32 and 33.

35. Any person who without authority shall remove, or encroach on, or wilfully damage, any part of the waterworks or shall tamper with any part of the waterworks, other than those mentioned in section 33, shall be guilty of an offence and shall be liable on summary conviction to a fine of five hundred dollars or to imprisonment for one year or to both such fine and imprisonment, and shall be liable on conviction on indictment to such fine as the Court may think fit or to imprisonment for three years or to both such fine and imprisonment. Injury to the waterworks, &c.

36. (1) In any civil proceedings brought by Government against the occupier of any land, in which— Civil proceedings by Government.

(a) it is alleged that the occupier has abstracted, or caused to be abstracted, water from the waterworks, and

(b) it is proved that the land was directly benefited by the abstraction,

the onus shall be on the occupier to rebut the allegation.

(2) In any civil proceedings brought by Government against any person in which damages are claimed by Government by reason of any alleged act constituting an offence under sections 32, 33 or 35, the sum to be awarded as damages may include, in addition to any sum which could otherwise have been awarded, a sum equal to three times the value of any benefit which the defendant is shown to have derived from the act.

37. (1) This section shall apply only in relation to waterworks used or intended to be used wholly or partly in connection with the making available, storing, purifying or otherwise treating, conveying, measuring, controlling, or disposing of drinking water. Offences relating to waterworks connected with the supply of drinking water.

- (2) Any person who, without authority—
- (a) bathes or fishes in any part of such waterworks, or
 - (b) drives or throws any animal into any part of such waterworks, or washes an animal in any part of such waterworks, or (being in charge of any animal) suffers that animal to be in any part of such waterworks, or
 - (c) washes in or throws into any part of such waterworks any dead animal or any part of any dead animal, or
 - (d) puts or throws into any part of such waterworks any rubbish, dirt or filth, or any foul, offensive or noisome matter, whether solid or liquid, or
 - (e) washes or cleanses in any part of such waterworks any cloth, wool or leather, or the skin of any animal, or any clothes, or
 - (f) causes or suffers the water from any sink, privy, sewer, drain, engine, or boiler, or any foul or filthy water being and lying upon any land or premises of which he is the owner or which is under his management and control or under the management and control of his servants or agents; to run, flow, seep or find its way into any part of such waterworks, or
 - (g) otherwise is guilty of any act or omission which, by itself or with other acts or omissions, pollutes or is calculated to pollute the water in such waterworks,

shall be guilty of an offence and shall be liable on summary conviction to a fine of one hundred dollars, or on a second or subsequent conviction to a fine of two hundred and fifty dollars or to imprisonment for three months or to both such fine and imprisonment.

PART VIII.

WATER IMPROVEMENT AREAS.

Declarations
of Water
Improvement
Areas.

38. (1) It shall be lawful for the Governor in Council, with the approval of the Legislative Council, by order—
- (a) to declare any area in the Colony to be a Water Improvement Area ;

- (b) from time to time to vary any such order ;
- (c) to cancel any such order.

(2) An area shall not be declared to be a Water Improvement Area unless the Governor in Council is satisfied that the area generally has been, or may be expected to be, materially benefited by means of waterworks carried out in the area or serving the area and unless such waterworks are for any of the purposes mentioned in paragraphs (e), (f), (h) or (i) of section 31 or any other purpose of a similar nature.

39. It shall further be lawful for the Governor in Council with the approval of the Legislative Council, by order— Water Improvement Rates.

- (a) to classify lands within a Water Improvement Area ;
- (b) to impose Water Improvement Rates in respect of all or any classes of such lands and to provide for the methods of calculation and the times and manner of payment of such Rates ;
- (c) to vary from time to time or cancel any Water Improvement Rates imposed as regards all or any classes of lands ;
- (d) to provide generally for matters relating to Water Improvement Rates.

40. The Governor in Council may direct generally or specially the remission or repayment of any Water Improvement Rates in whole or in part in any circumstances in which the benefits of the waterworks have not materialised or fully materialised, or have ceased to be available or to be fully available. Remissions and repayment of Rates

41. (1) Water Improvement Rates shall be paid by the owners of the lands in respect of which they are imposed. Payment and recovery of Rates.

(2) Any Rates not paid at the expiration of three months after the same have become due and payable shall be increased at the rate of ten per centum : Provided that the Governor in Council may remit such percentage increase in whole or in part in any case in which it shall appear to him just so to do.

(3) Any Rates not paid at the expiration of three months after the same shall have become due and payable and any percentage increase payable by virtue of this section 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

Ch. 33. No. 8. 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 purposes of the said Ordinance.

(4) Without prejudice to the provisions of subsection (3), 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.

(5) Neither the liability of the owner of any land for any Water Improvement Rate nor the charge of any Water Improvement Rate on any land shall be affected by the question of whether the land receives any actual benefit by means of the waterworks, or by the question of the extent of any such benefit, or by the stoppage of any such benefit.

Registers of
Water
Improvement
Rates.

42. (1) The Wardens shall keep registers setting forth as far as may be practicable in relation to lands within their Counties (including the Island Ward of Tobago) in respect of which Water Improvement Rates have been imposed—

- (a) descriptions of the lands and of the names of the known owners thereof ;
- (b) all sums payable by way of Water Improvement Rates in respect of the lands and the dates on which they are due and paid ;
- (c) the amounts of any percentage increases and the dates on which they are paid ;
- (d) any other particulars which the Governor in Council may from time to time direct.

(2) Such registers 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.

Power to
make
regulations.

43. (1) The Governor in Council may make regulations for the governance of Water Improvement Areas and, without prejudice to the generality of this power, any such regulations may make provision for—

- (a) the appointment of officers to carry out the regulations, and their powers and duties, including powers of arrest ;

- (b) specifying the crops which may be raised, or may not be raised, in the Areas or in any part thereof ;
- (c) regulating and controlling the supply and use of water in the Areas ;
- (d) the stopping of the supply of water in specified circumstances ;
- (e) preventing or prohibiting waste or misuse of water in the Areas ;
- (f) regulating and controlling the use of any water works in the Areas ;
- (g) the maintenance, preservation, and safeguarding of the water works in the Areas ;
- (h) requiring owners or occupiers of lands within the Areas to do or omit such things as may be considered expedient for any of the above purposes ;
- (i) declaring what acts or omissions shall be offences against the regulations, and specifying the punishments, not exceeding a fine of two hundred dollars or imprisonment for six months, to be awarded on conviction for any such offences ;
- (j) matters ancillary to, or consequential on, any of the above matters.

(2) All offences against regulations made under this section may be tried summarily.

(3) Regulations under this section may be made to apply to Water Improvement Areas generally or to specified Areas or to specified cases or classes of cases.

(4) Regulations under this section shall not have any force or effect unless they have been approved by resolution of the Legislative Council.

PART IX.

PROVISIONS AS TO WATERCOURSES, CHANNELS, DRAINS, OUTFALLS FOR WATER, &C.

44. (1) In this section—

“controlled channel” means a watercourse, channel, drain or outfall for water declared by order of the Governor in Council to be a watercourse, channel, drain or outfall for water to which this

Operations in relation to controlled channels.

section applies; and any such order may identify the watercourses, channels, drains or outfalls for water to which it applies either specifically or by classes or by the areas in which they are situate or by any combination of such methods;

“controlled operation” means any of the following operations, whether completed or carried out in part only, namely—

- (a) the constructing, re-building or altering (including the making of additions) of any controlled structure over, in or under (as the case may be) any controlled channel;
- (b) the making of any material alteration to the banks or bed of a controlled channel, including the digging, moving or taking away of mud, stone, sand or gravel from the banks or bed of the channel;
- (c) the doing of any act likely to lead (whether at the point of the channel where the act is done or elsewhere) to any material alteration of the banks or bed of a controlled channel, including the removal of scrub, vegetation or undergrowth from the banks of the channel or from lands adjoining such banks in cases in which the preservation of such scrub, vegetation or undergrowth is desirable for the prevention of erosion;

“controlled structure” means a bridge, culvert, dam, weir or other like structure.

(2) No person shall carry out, or cause or suffer to be carried out, any controlled operation unless there is in force a permit in writing from the Director so to do and the conditions and restrictions contained in such permit are complied with: Provided that a permit under this section shall not be required in any case in which the controlled

operation is sanctioned by a valid licence issued under Part III of the Oil and Water Board Ordinance : Provided Ch. 26, No. 6. further that a permit under this section shall not sanction the abstracting of water from a watercourse.

(3) Applications for permits under this section shall be made in writing to the Director and shall be in such form and shall contain such particulars as the Director may generally or specially require.

(4) The Director shall not be bound to consider any such application until the applicant has paid the prescribed fee (if any) to the Accountant General and has given any facilities reasonably demanded by the Director for inspection and examination of the site of the proposed operation.

(5) The Director may refuse a permit if, in his opinion, the proposed operation is likely, either at the point of the controlled channel where the operation is carried out or elsewhere, materially to divert, obstruct or impede or to cause the diverting, obstructing or impeding of the natural flow of water (whether flood water or otherwise) in the channel or to cause erosion of the banks of the channel or to cause flooding; or the Director may grant a permit but impose such conditions and restrictions as are in his opinion desirable with a view to avoiding any such likelihood. Whenever the Director refuses a permit, or is prepared to grant a permit subject to restrictions and conditions, the applicant shall have a right of appeal to the Board of Appeal against such refusal or against such conditions and restrictions, and sections 15 to 17 shall apply accordingly.

(6) Permits under this section shall be in such form as the Director may generally or specially approve, and shall be valid, unless previously cancelled, for such period as may be specified therein and for such further period as the Director may allow in special circumstances. Subject to such endorsements as may be made from time to time by the Director, a permit shall be personal to the grantee. Every person who shall from time to time become entitled by endorsement as aforesaid to the benefits of a permit shall be bound also by the conditions and restrictions thereof.

(7) The Director may cancel a permit, or vary or add to the conditions or restrictions of a permit, where its continuance in force or, as the case may be, its continuance in force without variation of or addition to its conditions or restrictions, would be open to any of the objections mentioned in subsection (5): Provided that when any permit is cancelled or varied as aforesaid, compensation shall be payable in accordance with the provisions of Part XIII in respect of any loss, damage or injury caused to the holder of the permit by the cancellation or variation unless the circumstances justifying the cancellation or variation have arisen since the permit was granted or last varied, as the case may be.

(8) Any person who contravenes the provisions of subsection (2) or any conditions or restrictions contained in any permit granted under that subsection, and the owner of the land on which the contravention takes place, shall be guilty of an offence and shall be liable to a fine of five hundred dollars on summary conviction and to a fine of one thousand five hundred dollars on conviction on indictment or at the option of the court in either case to a fine of fifty dollars for each day during which the offence continues: Provided that the owner of the land shall not be guilty of an offence as aforesaid if he establishes to the satisfaction of the court that the contravention was without his knowledge or privity and that he had reported the contravention to the police forthwith on becoming aware of it. On the conviction of any person under this subsection, the Director may cancel the permit.

(9) If any controlled operation has been carried out without a permit in contravention of subsection (2) or if any condition or restriction contained in a permit granted under that subsection has been contravened, and there has been a conviction under subsection (8), the Director and persons acting by his authority may, after giving three days notice in writing of the intention to exercise the powers conferred by this subsection has been given to the owner of the land on which the controlled operation has been carried out, enter upon the land and cause such action (including demolition) to be taken

as he may think desirable for avoiding any consequences mentioned in subsection (5); and the cost of carrying out such action shall be recoverable by the Government from the owner of the land and shall also be a charge on the land.

45. (1) Whenever the Director shall be of opinion that any of the circumstances hereinafter set forth exist in relation to any watercourse, channel, drain or outfall for water, and that by reason of such circumstances the natural flow of water (whether flood water or otherwise) is being or is likely to be materially diverted, obstructed or impeded at any point, or erosion or flooding at any point is being or is likely to be caused, the Director may by notice in writing served on the owner of the land in relation to which the circumstances exist give such directions (including the directions prohibiting any act or requiring action to be taken within such reasonable time, not being less than seven days, as may be specified in the notice or such further time as the Director may allow in special circumstances) as he may deem expedient for avoiding the continuance or likelihood of the consequences aforesaid: Provided that where an appeal against any direction has been made to the Board of Appeal under the powers conferred by subsection (3) against a direction requiring any action to be taken, the time within which the action would but for this proviso be required to be taken shall be deemed to be extended until the appeal is disposed of by the Board: Provided further that if in any such case the Board confirms the direction, with or without any variation thereof, the Board shall extend the time within which the required action is to be taken for such period (not being less than the period within which an appeal to the Full Court could be lodged) as it may think reasonable: Provided lastly that, if an appeal to the Full Court is lodged, the time for taking the required action shall be deemed to be extended until the appeal is disposed of.

Operations in
channels
generally.

(2) The circumstances contemplated by subsection (1) are that—

(a) a bridge, culvert, dam, weir or other like structure, over, in or under (as the case may

- be) the watercourse, channel, drain or outfall for water has been constructed, re-built, altered or added to or is in course of being, or is intended to be constructed, re-built, altered or added to ;
- (b) the banks or bed have been, or are in the course of being, or are likely to be, materially altered by any means, including the digging, moving or taking away of mud, stone, sand or gravel therefrom ;
- (c) any action (including the removal of scrub, vegetation or undergrowth from the banks or from lands adjoining the banks) has been, or is in the course of being, or is intended to be, taken at any point of the watercourse, channel, drain or outfall for water, which is likely to lead (whether at that point or elsewhere) to any material alteration of the banks or bed ;
- (d) some action ought to be taken or prohibited to prevent any such likelihood as is contemplated by paragraph (c).

(3) Any owner aggrieved by any direction contained in a notice served on him under subsection (1) shall have a right of appeal against such direction to the Board of Appeal as though the notice was a notice under subsection (2) of section 16, and sections 15 to 17 shall apply accordingly.

(4) If any directions under this section are contravened, the Director and persons acting by his authority may enter upon the land and carry out the work specified in the directions or, in the event of a direction containing a prohibition, carry out such work as may be appropriate to enforce the prohibition or to restore the watercourse, channel, drain or outfall for water or its banks or the adjoining lands, as the case may be. Except in cases in which compensation is payable under subsection (5), the cost of carrying out the work shall be recoverable by the Government from the owner of the land and shall also be a charge on the land,

(5) Compensation shall be payable in accordance with the provisions of Part XIII in respect of any loss damage or injury caused by compliance with any direction contained in a notice under this section or by the exercise by the Director and persons acting by his authority of the powers conferred by subsection (4)—

- (a) whenever the direction requires the demolition, removal or alteration of any structure in existence at the time this Ordinance comes into force, being a structure which had since been maintained without material alteration or addition and in good repair and the existence of which at the time the notice was served was not a nuisance or otherwise actionable; or
- (b) whenever the direction was given to avoid the continuance or likelihood of consequences due solely to anything done in accordance with a permit issued under section 44 of this Ordinance or a licence issued under Part III of the Oil and Water Board Ordinance or to the erection of a dam or reservoir in accordance with section 44 of the Oil and Water Board Ordinance and, in any such case, the works constructed or carried out have since been maintained without material alteration or addition and in good repair and no new circumstance has arisen to justify the giving of the direction.

(6) Directions contained in a notice under this section may be varied or cancelled by directions contained in a subsequent notice served on the owner in question.

46. (1) Any person who throws or deposits in any water-course, or in any channel, drain or outfall for water constructed or maintained by or on behalf of the Government any tree, log, branches, brushwood, stone, gravel, soil or other refuse, shall be guilty of an offence and shall be liable on summary conviction to a fine of one hundred and fifty dollars in the case of a first offence and to a fine of two hundred and fifty dollars or to imprisonment for three months or to both such fine and imprisonment in the case of a second or subsequent offence.

(2) Any riparian owner who allows any person to commit on his land any offence described in subsection (1) shall also be guilty of an offence and shall be liable on summary conviction to the punishment specified in subsection (1).

PART X.

AVERAGE FLOW.

Meaning of
"interested
party."

47. In this Part the expression "interested party", in relation to the average flow at any point of a watercourse, means any person who has a direct interest in the amount of such average flow or who has such an interest by reason of some action which he has under consideration.

Principle on
which average
flow to be
determined.

48. (1) In this section the expression "relevant period" means the period from the 1st of April to the 31st of May (inclusive of both dates) of any year.

(2) For the purpose of determining the average flow of water at any point of a watercourse, there shall first be ascertained the average flow of water at that point during each of the ten relevant periods immediately preceding the determination. The three smallest of the ten amounts so calculated shall then be selected and the average flow at that point shall be the average of such three amounts. It shall be sufficient to estimate the flow at any point from such facts as may be available notwithstanding that records of the actual flow at that point during the relevant periods are not available or are not fully available.

(3) Notwithstanding the provisions of subsection (2), it shall be lawful for the Governor in Council, in any case or class of case in which he is satisfied that adequate evidence is not available on which the average flow can be computed or estimated on the principle of subsection (1), to direct that the average flow shall be computed or estimated over some shorter period than ten years or on some other principle which, in the opinion of the Governor in Council, will give as nearly as possible the same result.

49. (1) The average flow at any point of a watercourse may be determined by a Commissioner appointed by the Governor generally or specially to hold inquiries under this section; and an inquiry under this section shall be held—

- (a) on the application to the Colonial Secretary of an interested party who has paid the prescribed fee to the Accountant General;
- (b) in any other case in which the Colonial Secretary so directs.

Commissioners appointed under this section shall receive such remuneration (if any) as may be approved by the Governor and shall be persons with legal training and experience.

(2) The Commissioner shall give notice of the time and place of his inquiry to the Director and to the interested party (if any) who has applied for the inquiry and also in not less than three issues of a daily newspaper circulating in the Colony. The Director and any interested party shall have the right to take part in the inquiry and may be represented by counsel or by a solicitor of the Supreme Court. The Director may also be represented by any officer whose designation appears in the Schedule to the Law Officers Ordinance.

Ch. 7. No. 2.

(3) The Commissioner shall have the powers of a Judge of the Petty Civil Court to enforce the attendance and examination of witnesses and the production of documents and to administer oaths to witnesses.

(4) In any inquiry under this section, and in any proceedings by way of appeal against the decision at any such inquiry (as hereinafter provided), a certificate purporting to be signed by the Director as to any facts having been ascertained or any plans or drawings prepared by or on behalf of the Government (whether before or after the coming into force of this Ordinance) which may be relevant to the determination of the average flow, or as to any facts necessary to explain or identify any such plans or drawings, shall be sufficient evidence of such facts or of the accuracy of such plans or drawings, as the case may be: Provided that if any witness who, but for

this subsection, would be required to be called to prove any such facts, plans or drawings is in the Colony and able to give evidence, any interested party may require such witness to be called to give evidence accordingly.

(5) Subject to the provisions of subsection (4), evidence in an inquiry under this section shall be given on oath except in cases in which the Commissioner permits the evidence to be given by affidavit.

(6) Minutes of the proceedings at an inquiry, including a summary of the facts given and of the decision and grounds thereof, shall be kept by the Commissioner. The decision of the Commissioner shall be communicated personally or by notice to the Director and to every interested party who has taken part in the inquiry.

(7) The Director or an interested party who has taken part in the inquiry shall have the right to appeal to the Full Court against the decision of the Commissioner. The Full Court shall have all the powers of a Full Court on an appeal from a Judge of the Supreme Court, and may vary the decision of the Commissioner, or may remit the proceedings to be dealt with by the Commissioner in accordance with the directions of the Full Court. The power of making rules conferred by section 42 of the Judicature Ordinance shall apply to appeals under this section, and is hereby extended so as to authorise the making of rules as to the information and documents to be supplied by the Commissioner or by the appellant, and as to the time within which and the manner in which appeals may be made. In default of or subject to any such rules, the rules for the time being in force regulating appeals from an order of a Judge of the Supreme Court to the Full Court (including rules as to time) shall apply *mutatis mutandis* to appeals under this section.

Ch. 3. No. 1.

(8) A determination of the average flow at any point of a watercourse under the preceding provisions of this section shall, save as provided in subsection (9), be conclusive against all persons whether they have taken part in the inquiry or not and shall not be called in question in any court.

(9) The average flow at any point of a watercourse may be re-determined—

(a) on the application to the Colonial Secretary of an interested party (whether or not he took part in the previous inquiry) who has paid the prescribed fee to the Accountant General;

(b) in any other case in which the Colonial Secretary so directs ;

and the preceding provisions of this section shall apply in relation to any such re-determination as they do to original determinations of average flow: Provided that the Commissioner shall not vary the previous decision unless he is satisfied that owing to climatic or other conditions which have arisen since the previous determination the average flow has in fact changed since that decision.

(10) If it shall appear to the Commissioner, that the evidence available is not sufficient to enable the average flow to be computed or estimated in the case in question, in accordance with the principle applicable under subsection (2) of section 48, the Commissioner shall report such fact in writing to the Colonial Secretary with a view to consideration thereof by the Governor in Council under subsection (3) of that section and shall adjourn the proceedings meanwhile. If the Commissioner has reached a decision which is appealed against and the Full Court decides that the evidence available is not sufficient to enable the average flow to be computed or estimated, the Full Court shall remit the case to the Commissioner who shall then report such fact to the Colonial Secretary as above provided in this subsection.

(11) The Director shall cause all final decisions as to average flow under this section to be recorded in a special register to be known as the "Register of Average Flow Decisions" and such register may be inspected by any person during office hours at the office of the Director on payment of the prescribed fee.

50. (1) Whenever it shall be shown to the satisfaction of the Governor in Council that such course is necessary for the purpose of ascertaining the average flow of any point of a watercourse, the Governor in Council may issue

Power of Interested Party to set up gauges, &c.

to any interested party a permit in writing under the hand of the Clerk of the Council authorising such person to set up and maintain gauges and structures and appliances for measuring the flow of water, in or across the watercourse, at such points as may be specified in the permit.

(2) A person authorised by a permit as aforesaid may enter on any lands in or adjoining the water course in so far as may be necessary for the purposes aforesaid after giving at least twenty-four hours notice in writing to the occupiers of such lands and may set up or maintain, repair or remove such gauges, structures or appliances at the specified points whether or not he is the owner of the whole or any part of the lands: Provided that he shall pay compensation for any loss, damage or injury caused by reason of the exercise of the powers conferred by this section, and, in default of agreement or arbitration, any such compensation may be sued for in an action in the appropriate court as though the claim for compensation was a claim for damages.

(3) Before granting a permit under subsection (1), the Governor in Council may require the applicant for the permit to give security in such amount and in such form as he may think necessary for the payment of any compensation which may subsequently be awarded in accordance with the provisions of subsection (2).

PART XI.

ABSTRACTION OF WATER BY THE DIRECTOR.

Abstraction
without a
licence.

Ch. 26, No. 6.

51. (1) It shall be lawful for the Director, with the approval of the Governor in Council, to abstract water from a watercourse at any point at which the average flow has been determined under Part X and any such right may be exercised notwithstanding any right, title or interest of any other person, whensoever and by whatsoever means created: Provided that, whenever the holder of a water licence under Part III of the Oil and Water Board Ordinance is or may be prejudiced by the abstraction of the water, the Director shall give at least one month's notice in writing to such holder of the extent of the proposed abstraction of water before the abstraction of water actually

commences: Provided further that, without prejudice to any powers elsewhere conferred by this Ordinance or by any other law, this subsection shall not be deemed to authorise the doing of anything in relation to streets, land or private property.

(2) Compensation shall be payable in accordance with Part XIII in respect of any loss, damage or injury caused by the exercise of the powers conferred by this section.

(3) Whenever water is abstracted from a watercourse under subsection (1), the Director shall cause gauges or other appliances to be suitably installed and to be kept in good order so as to enable any interested party to ascertain at any time the amount of water abstracted and the amount of compensation water, if any, returned to the watercourse.

52. Instead of exercising the powers conferred by section 51, the Director, with the approval of the Governor in Council, may apply under Part III of the Oil and Water Board Ordinance for a licence to abstract water from any watercourse; and the Oil and Water Board may grant such licence as if the water to be abstracted was for an industry within the meaning of the said Ordinance and as if the Director was a person carrying on an industry. Subject to the modifications set forth in the Second Schedule hereto, the said Ordinance shall apply to any application by the Director under this section and to matters consequent thereon or arising directly or indirectly therefrom.

Power of Director to apply for licence under the Oil and Water Board Ordinance. Ch. 28. No. 8

Second Schedule.

PART XII.

FURTHER POWERS OF DIRECTOR.

53. For the purpose of ascertaining the practicability or expediency of performing any duty or exercising any power under this Ordinance, it shall be lawful for the Director and persons acting by his written authority—

Powers of the Director to enter on land for purposes of survey, &c.

- (a) to enter upon and survey any land and take levels thereon;
- (b) to dig and bore under the subsoil of such land;
- (c) to do all such other things as may be incidental to or necessary for the purpose aforesaid:

Provided that—

- (i) except in cases in which the Governor in Council has directed by notification in the *Royal Gazette* that the powers conferred by this subsection may, subject to the next succeeding proviso, be exercised without notice, the Director and persons acting by his authority shall not enter upon any land without giving at least twenty-four hours notice in writing to the occupier thereof ; and
- (ii) the Director and persons acting by his authority shall not in any event enter into any building without the consent of the occupier thereof without giving at least twenty-four hours notice in writing to such occupier ; and
- (iii) compensation shall be paid in accordance with Part XIII for any loss, damage or injury caused by reason of the exercise of the powers conferred by this section.

Temporary
user of lands.

54. (1) For the purpose of performing any duty or exercising any power under this Ordinance, it shall be lawful for the Director and persons acting by his written authority—

- (a) to enter upon any land (but not into buildings thereon) ;
- (b) to take therefrom stones and earth ;
- (c) to erect provisionally on such land, within six hundred feet of the works which are being or are to be executed, labourers' camps, workshops, forges and places for mixing and preparing materials for the works ;
- (d) to provide a passage for materials and for all persons connected with the works ;

Provided that at least twenty-four hours notice in writing shall be given to the occupier of the land entered upon.

(2) Compensation shall be paid in accordance with Part XIII for the value of stones and earth taken as aforesaid, and for any loss, damage or injury caused by the exercise of the powers conferred by this section, and for any prejudice caused by the temporary user authorised by this section.

(3) This section shall not have effect, except with the owner's consent, in relation to land forming the whole or any part of a garden or orchard or the curtilage of a dwelling house or factory, or to ornamental land.

55. (1) Subject to the provisions of this section, the Director and persons acting by his written authority may cause tunnels, conduits, aqueducts, mains, pipes, services and other structures and appliances; and accessories thereto, to be laid down on, over or under any street, or any place laid out as or intended for a street, and shall at all times have the right of access to, and of opening up any such street or place for the purpose of inspecting, renewing, repairing, replacing or removing any such works, and shall at all times have the right of access to any such street or place which has been opened up for the purpose of restoring the same.

Power to
place water
works on,
over or under
streets

(2) Except in cases of emergency or of streets on Crown land or of streets repairable by the Government or by the Director of Public Works, the power conferred by subsection (1) shall not be exercised unless the Director shall have caused notice in writing describing the particular work intended to be done to be served on the person interested (as hereinafter defined) at least fourteen days before the commencement of the work and, if written notice of objection to the work is served on the Director within the said fourteen days by or on behalf of the person interested, until such objection has been upheld or overruled by the Governor in Council. The decision of the Governor in Council shall be final and shall not be questioned in any court.

(3) A notice required by subsection (2) to be served on any person to whom paragraph (b) of the definition of "person interested" in subsection (6) relates may, without prejudice to any method of service sanctioned by this Ordinance, be served by affixing the same to a notice board

in the street or place concerned and the Director is hereby authorised to erect any such notice board as may be necessary for such purpose.

(4) Where the Director shall have opened up any street or place in pursuance of the powers conferred by subsection (1) the following provisions shall have effect, namely—

- (a) the Director shall, with all convenient speed, complete the work on account of which the street or place was opened up and fill in the ground and make good the surface and generally restore such street or place to as good a condition as that in which it was before being opened up ;
- (b) the Director shall cause the place where any street or place is opened up to be protected and properly lighted by night.

(5) In the exercise of the powers conferred by subsection (1), the Director and persons acting by his authority shall not stop or impede traffic in any street or place, or into or out of any street or place, further than is necessary for the proper execution of the work.

(6) In this section —

“ person interested ” means—

- (a) in the case of any such street or place as is mentioned in subsection (1), being a street or place which is declared by any enactment for the time being in force to be repairable by any statutory corporation or body, such corporation or body ;
- (b) in the case of any other such street or place, the owner of such street or place.

Compulsory
acquisition
of way-leaves
over private
and.

56. (1) Subject to the provisions of this section, any way-leave, which the Governor in Council deems necessary or desirable to enable the Director to perform any duty or exercise any power under this Ordinance, may be acquired over any land.

(2) Whenever the acquisition of a way-leave over any land has been provisionally approved by the Governor in Council, the Director shall cause to be prepared—

(a) a detailed description (hereinafter referred to as "the description") of the proposed way-leave and of the period for which it is sought (if it is sought for a fixed period) and of its location and of the works contemplated; and

(b) a survey plan (hereinafter referred to as "the plan") indicating the location of the way-leave.

(3) The Director shall give notice of the intention to acquire the way-leave—

(a) by publishing in not less than three issues of a daily newspaper a notice setting forth the description, and naming a place where the plan may be inspected, and specifying the time (which shall not be less than fourteen days from the date of the last of the publications) and manner in which objections may be made; and

(b) by causing a like notice to be exhibited conspicuously in a convenient place or places in or near the area affected by the proposed way-leave not later than the date of the last of the publications contemplated by paragraph (a) of this subsection.

(4) Within the time specified in the notice mentioned in subsection (3), any person claiming that the granting of the way-leave will cause him loss, damage or injury may give notice in writing to the Clerk of the Executive Council of his objection to the way-leave and of the grounds thereof, and thereupon the Governor in Council shall consider the description and the plan and the notice of objection and either uphold or overrule the objection. When the Governor in Council overrules an objection, he may nevertheless direct that the description and plan shall be modified in such manner as he may think fit. The decision of the Governor in Council shall be final and shall not be called in question in any court.

Third
Schedule

(5) After the expiration of the period allowed for objections (if no notice of objection has been given during that period), or after all objections have been overruled (if no objection of which notice has been given is upheld), the Director may cause a certificate in the form in the Third Schedule, signed by him and by the Clerk of the Executive Council setting out the description (or the modified description) and having the plan (or the modified plan) annexed, to be lodged with the Registrar General. Certificates so lodged shall be countersigned by the Registrar General and shall be registered and indexed by the Registrar General in such manner as he may deem convenient and all persons shall be at liberty to inspect and search any such register and index on payment of the sum of sixty cents.

(6) When a certificate has been duly issued and lodged in accordance with this section, the way-leave described in the certificate shall be deemed to have been duly granted to the Colonial Secretary, Trinidad and Tobago, and shall be binding as against all persons.

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(7) When any land to which a certificate relates is held under the Real Property Ordinance, the Registrar General shall, on the certificate being lodged with him, endorse a reference to the certificate on the appropriate Crown grant or certificate of title.

(8) On production to the Registrar General of a certificate signed by the Colonial Secretary discharging any land from any way-leave acquired under this section, the Registrar General shall endorse a reference to such discharge on the relevant certificate lodged under subsection (5) of this section, and thereupon the land shall be discharged from the way-leave. The Registrar General shall also endorse a reference to such discharge on the appropriate Crown grant or certificate of title.

(9) Compensation shall be paid in accordance with Part XIII in respect of any loss, damage or injury which, at the time a way-leave is acquired under this section, may be expected to be caused by the way-leave. Such compensation may take the form of a sum of money payable forthwith, or a fixed periodical payment so long as the way-leave continues, or both: Provided that the

period (if any) of the way-leave and any agreement which may have been made, or undertaking which may be given, by the Director as to the future restoration in whole or in part of the land to which the way-leave relates shall be taken into account in determining the compensation payable.

57. In addition to the powers hereinbefore conferred on the Director in this Part of this Ordinance, the Director and persons acting by his written authority may set up, maintain, repair and examine gauges and structures or appliances for measuring the flow or level of the water in any watercourse and may replace or remove any such gauges, structures or appliances; and, for any of the purposes aforesaid, may enter on any lands in or adjoining the watercourse: Provided that compensation shall be payable in accordance with Part XIII in respect of any loss, damage or injury caused by the exercise of the powers conferred by this section. General power to set up gauges, &c.

58. Whenever flooding has resulted or is likely to result by reason of the structural failure of, or damage to, any waterworks, or by reason of the obstruction of the water in any waterworks, and, in the opinion of the Director, an emergency has thus arisen necessitating the exercise of the powers conferred by this section, the Director and persons acting by his authority may enter on any lands and take all such action as the Director or persons acting by his authority shall deem necessary to prevent, check or minimise the flooding or to prevent further flooding or to remove the flood water, as the case may be. Emergency powers.

PART XIII.

COMPENSATION.

59. Whenever compensation is payable under this Ordinance in accordance with the provisions of this Part, the following provisions shall have effect, that is to say— General provisions.

- (a) the right to compensation shall be subject to the restriction that compensation shall not in any event be payable in respect of any loss, damage or injury which, if caused by a private person, would not render such person liable to an action;

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- (b) the amount of the compensation payable shall be determined, in default of agreement and arbitration, in accordance with the provisions of this Part ;
- (c) the proceedings in which the compensation is determined shall in no case be deemed an arbitration within the meaning of the Arbitration Ordinance ;
- (d) the court or authority awarding the compensation may include in the award interest on the amount awarded for such period, and at such rate not exceeding six per centum per annum, as it may deem just in all the circumstances of the case ;
- (e) any compensation awarded shall bear interest at the rate of six per centum per annum ;
- (f) the compensation and any interest payable thereon and any costs awarded against the Director shall be payable out of the public moneys of the Colony.

Determination
of com-
pensation.

60. (1) Compensation payable under subsection (7) of section 44, subsection (5) of section 45, subsection (2) of section 51, paragraph (iii) of the proviso to section 53, subsection (2) of section 54, and the proviso to section 57 may be recovered by action against the Director in the appropriate court as though the claim for compensation was a claim for damages against a private person ; and all provisions of law relating to actions for damages against private persons (including provisions as to limitation of action) shall apply *mutatis mutandis* in relation to such actions for compensation against the Director notwithstanding the provisions of the Public Authorities Protection Ordinance.

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(2) Claims to compensation payable under section 56 may be heard and determined by a Judge of the Supreme Court on the application of the Director or the claimant. There shall be a right of appeal to the Full Court against any decision of a Judge as aforesaid. Rules of Court may be made under the Judicature Ordinance for implementing this subsection, and in particular and without prejudice to the generality of this power, such Rules may be made as to the practice and procedure to be followed in relation to applications and appeals under this subsection, as to the costs

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and fees thereon, as to the payment of compensation into Court in appropriate cases and the investment and disposal of moneys in Court, and as to any ancillary or consequential matters.

61. Whenever—

- (a) any land is required for the purposes of this Ordinance under the Land Acquisition Ordinance 1941; or
- (b) any compensation is payable in accordance with this Part of this Ordinance;

Betterment.

No. 14 of 1941.

the court, Judge or tribunal determining the compensation shall, in addition to any other matters which would be required to be taken into consideration if this section had not been passed—

- (i) have regard to the extent to which any land of the claimant (apart from any land acquired) will be benefited by the purpose for which, or in relation to which, the land is acquired or by the purpose for which, or in relation to which the work, operation, or direction which is alleged to give rise to the claim for compensation is carried out or given;
- (ii) take into account and embody in the award any undertaking given by the Director as to any such relevant purpose as is contemplated by sub-paragraph (i):

Provided that the court, Judge or tribunal shall not have regard to, or take into account, any such matters aforesaid except on the written request of the Director: Provided further that if any benefit to any land by reason of any such purpose is set off against any compensation which would otherwise be payable, a Water Improvement Rate shall not be levied under Part VIII in respect of that land by reason only of such purpose.

62. (1) Whenever compensation is, or would but for steps taken under this subsection be, payable under the Land Acquisition Ordinance in respect of land acquired for the purposes of this Ordinance, and such compensation is based on any loss of or interference with riparian rights or any other right to take water from a watercourse, the Director may take steps to provide the claimant with a compensatory supply of water.

Power of Director to take steps to reduce compensation payable.
No. 14 of 1941.

(2) The Director may also take any steps, including the provision of a compensatory supply of water in appropriate cases, which he may deem desirable with the view to preventing, mitigating or remedying any loss, damage or injury which is or might otherwise be subject to compensation in accordance with the provisions of this Part.

(3) The court, Judge or tribunal determining the compensation shall, in addition to any other matters which would be required to be taken into consideration if this section had not been passed, have regard to any such steps taken by the Director and take into account and embody in the award any undertaking given by the Director to take any such steps.

(4) Nothing in this section shall be construed as authorising the entry on, or the doing of things in relation to streets, land or private property except to the extent authorised by Part XII.

Compensation
for interfer-
ence with or
loss of ripa-
rian rights.

No. 14 of 1941.

63. Notwithstanding any right, title or interest of any person whensoever and by whatsoever means created, compensation in respect of loss of, or interference with, riparian rights or any other rights to take water from a watercourse, caused by the acquisition of land for the purposes of this Ordinance under the Land Acquisition Ordinance, 1941, or by the abstraction of water from a watercourse by or on behalf of the Director under section 51 or by any other action whatsoever taken by or on behalf of the Director under this Ordinance, shall be subject to the following restrictions, namely—

- (a) it shall not in any event be payable except to the extent that the claimant is deprived of some part of the average flow of the watercourse as from time to time determined; and
- (b) in cases in which the claimant has lost his riparian rights, or other right to take water, without being given or offered a compensatory supply of water by the Director, it shall be payable only in respect of actual loss, damage or injury from time to time caused by reason of loss of, or interference with, some lawful user of water which the claimant is making or would make but for the circumstances giving rise to the claim.

PART XIV.

MISCELLANEOUS.

64. All sums received by the Government or the Director or the Accountant General under this Ordinance shall form part of the public moneys of the Colony and all expenses of the Director under this Ordinance shall be paid from the public moneys of the Colony. Receipts and payments.

65. Every charge on land under sections 22, 23, 44 and 45, shall be a charge also on all buildings whatsoever standing thereon, and shall be recoverable by the Director under the provisions of the Rates and Charges Recovery Ordinance ; and the Director is hereby declared to be a Public Authority within the meaning and for the purposes of the said Ordinance. Recovery of charges. Ch. 33. No. 8.

66. (1) A notice required or permitted by this Ordinance to be given to or served on any person may be given to or served on such person personally, or by leaving the same at his usual or last known place of abode or business with some adult person therein, or may be posted in a prepaid letter addressed to such person at his usual or last known place of abode or business. Service of notices.

(2) Any notice which is to be given to any person as the owner or occupier of any land or other premises may be addressed to him as the " owner " or " occupier ", as the case may be, of the land or other premises (naming them) and may be posted in some conspicuous place on the land or other premises, or, where the premises are a building, may be left with some adult person in the building : Provided that service shall not be effected in any manner provided in this subsection if it would be practicable after reasonable inquiry to effect service in any manner provided in subsection (1).

(3) Service on one co-owner or co-occupier shall be deemed to be service on all co-owners or co-occupiers, as the case may be.

Civil liability
of owners of
land.

67. When any civil liability is imposed by this Ordinance on the owner of any land and there are in fact two or more co-owners of the land, all such co-owners shall be jointly and severally liable.

Obstruction
of officers.

68. If any person obstructs, molests or hinders the Director, or any officer of the Department of Hydraulics, or any person acting by the written authority of the Director or of any such officer, while the said Director, officer or other person is in the performance of any duty or the exercise of any power under this Ordinance or any regulation thereunder, such first mentioned person shall be liable on summary conviction to a fine of two hundred dollars or to imprisonment for three months or to both such fine and imprisonment.

General
regulations.

69. (1) The Governor in Council may make regulations—
(a) to prescribe all such matters as are required or permitted by this Ordinance to be prescribed;
(b) generally to implement or carry into effect any of the provisions of this Ordinance.

(2) Regulations under this section shall not have any force or effect unless they have been approved by resolution of the Legislative Council.

(3) Regulations under this section may make different provisions in different classes of cases.

THE FIRST SCHEDULE. (Sections 5 and 6.)

1. The dam, spillway, filtration plant, chlorination plant, intakes, pipes and all appurtenances thereto, situated in the Quare Valley.
2. The trunk-main leading from the dam in the Quare Valley to Fort Picton reservoir including branches to Arcuca tank, Tunapuna reservoir, St. Joseph reservoir, and all appurtenances thereto.
3. The trunk-main from Tunapuna to San Fernando reservoir of the Central Water Board and all appurtenances thereto, including branches to Caroni tank, Freeport reservoir, California reservoir and San Fernando Borough Council reservoir.
4. The trunk-main from San Fernando reservoir of the Central Water Board to Siparia reservoir, including the pumping station near Penal, and all appurtenances thereto.

5. The trunk-main from the San Fernando reservoir of the Central Water Board to Centre Mountain reservoir, including Kelly Junction pumping station and reservoir, and all appurtenances thereto.
6. The Cedros pumping station, engines and all appurtenances thereto.
7. The trunk-main from Cedros pumping station to Cedros reservoir and then for a distance of 2.42 miles beyond the reservoir in the direction of Bonasse Village and all appurtenances thereto.
8. The trunk-main from intake in Quare Valley to Sangre Grande reservoir and all appurtenances thereto.
9. The intake and headworks for the Princes Town Waterworks and all appurtenances thereto.
10. The headworks and filtration plant in Tobago and all appurtenances thereto.
11. The intake and headworks in Diego Martin and all appurtenances thereto.
12. The intake and pumping plant situated on the Maracas River north of Saint Joseph together with the mains leading to the St. Joseph reservoir and all appurtenances thereto.
13. The pumping station and wells at Plaisance, the wells at Union Springs, and all appurtenances thereto.

THE SECOND SCHEDULE.

(Section 52).

*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.” |

THE THIRD SCHEDULE.

(Section 56).

CERTIFICATE OF COMPULSORY ACQUISITION OF A WAY-LEAVE.

I hereby certify that, in accordance with the provisions of the Waterworks and Water Conservation Ordinance, 1944, the Government has duly acquired the way-leave described below and in the plan annexed.

Notice of intention to acquire the way-leave was duly given in accordance with the provisions of the said Ordinance.

DESCRIPTION OF THE WAY-LEAVE.

(set out description).

(Sgd.)
Director of Hydraulics.

I hereby certify that no objection to this way-leave was upheld by the Governor in Council.

(Sgd.)
Clerk of the Council.

Lodged with me this day of

(Sgd.)
Registrar General.

Passed in Council this twelfth day of April, in the year of Our Lord one thousand nine hundred and forty-four.

W. J. BOOS,
Clerk of the Council.