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The Governor in Council has approved of the following Bill
being introduced into the Legislative Council

T V N FORTESCUE,
Acting Clerk to the Legislative Council

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**A BILL ENTITLED
AN ORDINANCE TO MAKE BETTER PROVISION
FOR THE CONSERVATION, CONTROL AND USE
OF THE WATER RESOURCES OF THE COLONY
AND FOR PURPOSES INCIDENTAL THERETO
AND CONNECTED THEREWITH**

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

PART I

SHORT TITLE, COMMENCEMENT AND INTERPRETATION

Short title and
commencement

1. This Ordinance may be cited as the Water Ordinance, 1950, and shall come into operation on such date as the Governor shall, by notice in the Gazette appoint

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

Definition and
interpretation
of terms

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

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

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

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

“authorized” means authorized under the provisions of
15 this Ordinance,

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

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

(b) ground water which is not situated within a conservation area to which a Conservation Area Order made under section 68 of this Ordinance applies, or which
30 is of the nature specified in paragraph (b) of section 31 of this Ordinance, or a well for the construction of which no licence is required under the provisions of section 42 of this Ordinance,

35 “body of surface water” means water flowing continuously or intermittently in natural surface channels or depressions and water flowing through, or into, lakes, ponds, swamps and marshes, but does not include water as defined in paragraph (a) of the definition of a “body of water”,

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

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

“Community project” means a community project as described in section 38 of this Ordinance

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

“Department” means the Public Works Department,

55 “develop” means make available for reasonable beneficial use,

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

60 “drilling” means drilling for the purpose of abstracting ground water,

“easement” means the right to occupy so much of the lands of another as may be necessary for or incidental to, the

construction or maintenance of authorized works or the exercise of a water right or sanction,

“filed” means filed on the effective date of filing, which shall be the date upon which an application, map or plan is accepted by the Chairman, or other person deputed by him, as being complete in form and substance 5

Provided that in cases of applications submitted prior to the coming into operation of this Ordinance the date on which an application shall be deemed to have been filed shall be decided by the Water Apportionment Board, 10

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

“ground water” means the water of underground streams, channels, artesian basins, reservoirs, lakes and other bodies of water in the ground including the water in the zone of saturation, 15

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

Cap 168 * “landholder” in relation to land means the Crown, or the registered owner of the land, or the person in whom the land is vested by law, or any person to whom a mining lease or mining location has been granted under the provisions of the Mining Ordinance or any Ordinance amending or replacing the same and includes— 20 25

(a) any person lawfully holding or occupying land in accordance with the provisions of any law empowering the Governor to allot land upon the promise of title subject to the fulfilment by the allottee of prescribed conditions, 30

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

Cap 167 “land surveyor” means a surveyor licensed under Rules made under the Land Surveyors Ordinance or any Ordinance amending or replacing the same, 35

“licence” means the document conveying a water right,

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

“limits of supply” in relation to any water undertaking means the limits within which the water undertakers are for the time being authorized to supply water, 40

Cap 136 “local authority” means the Council or Board of any Municipality established under the Municipalities Ordinance, Cap 140 a District Council established under the Local Government (District Councils) Ordinance, an African District Council No 12 of 1950 established under the African District Councils Ordinance, 1950, and such other authority, committee or person as the Governor may, by notice in the Gazette appoint to be a local authority for the purposes of this Ordinance, 50

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

Cap 100 “native area” means native lands, native leasehold areas native reserves and temporary native reserves, as defined in the Native Lands Trust Ordinance the Native Settlement Areas the boundaries of which are set out in the Ninth Schedule to the Crown Lands Ordinance and Communal Reserves, as defined in the Crown Lands Ordinance, 55

Cap 155

“normal flow” means the ordinary flow at any particular point of a stream as certified by the Water Apportionment Board from time to time to be the normal flow at that point, 60

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

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

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

“public authority” means the Government or any department or branch of the Government of the Colony,

“qualified engineer” means a person registered under the provisions of this Ordinance as a qualified engineer,

“Regional Water Board” means a Regional Water Board appointed pursuant to the provisions of section 24 of this Ordinance,

“Registrar of Titles” means the person appointed under any Ordinance for the purpose of the registration of title to land or of documents relating to land,

“salt water” means water containing salt or other minerals or substances injurious, in the opinion of the Water Apportionment Board, to vegetation, agriculture, husbandry or health,

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

“sanction holder” means the holder of a valid sanction which has not lapsed or been determined,

“spring” means water emerging from beneath the surface of the ground otherwise than as a result of drilling operations

“state scheme” means—

- (i) a scheme, whether formulated in detail or not, for the use, for any public purpose of the water or any portion of the water of any body of water, or
- (ii) a reservation by the Member of the water or any portion of the water of a body of water for use for any public purpose, or
- (iii) a scheme for draining land, which has been declared by the Member, after consultation with the Water Resources Authority, to be a State Scheme for purposes of this Ordinance,

“storage” means the collection, impounding and conservation of water for beneficial use for any of the purposes specified in section 29 of this Ordinance,

“stream” means the water contained in a watercourse, and includes a river,

“supply of water in bulk” means a supply of water for distribution by the water undertakers taking the supply and “supplying water in bulk” has a corresponding meaning,

“swamp” means any shallow depression on which water collects either intermittently or permanently and where there is a small depth of surface water or a shallow depth of ground water and a slight range of fluctuation either in the surface level of the water or of the ground water level so as to permit the growth of aquatic vegetation

Provided that this definition shall be subject to the provisions of section 136 of this Ordinance,

“Water Appeal Board” means the Water Appeal Board established by section 142 of this Ordinance,

“Water Apportionment Board” means the Water Apportionment Board appointed under section 26 of this Ordinance, 5

“Water Resources Authority” means the Water Resources Authority established by section 6 of this Ordinance,

“watercourse” means a natural channel or depression in which water flows, either continuously or intermittently

Provided that this definition shall be subject to the 10 provisions of section 136 of this Ordinance,

“water right” means a right to divert abstract, obstruct, store or use water, or to drain lands by licence under the provisions of this Ordinance, including a right to construct and maintain works authorized under the provisions of this 15 Ordinance, for the purposes of such licence,

“water table” means—

(a) in pervious granular or detrital material, the upper surface of the body of free water which fills all openings in material that is sufficiently pervious to 20 permit percolation,

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

“water undertaker” means any company, public or local 25 authority, board committee or other person supplying water to other persons but such expression does not include any body or person supplying water in bulk only,

“well” means any orifice made in the ground by any means for the purpose of abstracting ground water therefrom 30 and includes a borehole, tunnel and adit,

“works” means any structure, apparatus contrivance, device, or thing, for carrying, conducting, providing or utilizing water, excepting hand utensils or such other contrivances as may be specified by the Water Apportionment Board, 35 by order in the Gazette,

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

(2) For the purposes of this Ordinance a drought in any area shall be deemed to exist when the Member upon such 40 information as he deems sufficient, shall have declared by Order to be published in the Gazette, that a drought exists in that area

PART II

WATER VESTED IN THE CROWN—DUTIES OF THE MEMBER —THE WATER RESOURCES AUTHORITY 45

Water vested in
the Crown

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

Provided that this section shall not apply to any part of the Protectorate of Kenya which is now or may hereafter be 50 held on lease from His Highness the Sultan of Zanzibar

Right to use of
water vested in
the Member
Cap 155

4. Except as to rights acquired under the Water Ordinance, 1929, or specifically granted before the 1st day of July 1935, by or on behalf of the Government in any title under the Crown Lands Ordinance or under the Crown Lands 55 Ordinance 1902, or in any written agreement, and existing at the commencement of this Ordinance, the right to the use of every body of water is hereby declared to be vested in

the Member and except in accordance with any such right, no person shall, after the commencement of this Ordinance, divert, abstract, obstruct or use water from a body of water otherwise than under the provisions of this Ordinance

5 5. It shall be the duty of the Member to promote the investigation, conservation, and proper use throughout the Colony of the water resources of the Colony and the provision of water supplies in the Colony, and to secure throughout the Colony effective exercise by any authority or person under
10 the control of the Member of their powers and duties in relation to water

Duty of Member
in relation
to water

6. (1) There shall be established by the Member an Authority to be known as the Water Resources Authority which shall exercise such powers and perform such duties
15 as are conferred and imposed upon it by this Ordinance

Water Resources
Authority

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

20 (3) The Water Resources Authority shall consist of—
a representative of the Member for Agriculture and Natural Resources,
a representative of the Chief Native Commissioner,
a representative of the Member for Health and Local
25 Government,
a representative of the Member for Commerce and Industry,
a representative of the East African Railways and Harbours Administration,
30 the Director of Public Works, or his nominee, and
six unofficial members who shall be appointed by the Member

(4) The Chairman of the Water Resources Authority shall be appointed by the Member from among the members
35 of the Authority

(5) The unofficial members of the Authority shall be appointed for a period of three years but shall be eligible for reappointment

(6) The Director of Public Works shall not vote on any
40 appeal submitted to the Water Resources Authority from the decision of the Water Apportionment Board

(7) The technical adviser of the Water Resources Authority shall be the Hydraulic Engineer of the Public Works Department who shall not be a member of such
45 Authority nor shall he act as the nominee of the Director of Public Works

7. Except where express provision is made by this Ordinance, it shall be lawful for the Member, after consultation with the Water Resources Authority, to determine the
50 composition or constitution and to regulate the procedure of any authority, board, committee or body established under this Ordinance, and from time to time to alter such composition, constitution and procedure

Composition of
authorities etc

8. The Member may, from funds provided by or with
55 the authority of the Legislative Council for that purpose, pay such expenses as he may determine, of any authority, board, committee or body established under this Ordinance

Expenses of
authority
board, etc

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

Duty of Water
Resources
Authority

60 (a) to investigate the water resources of the Colony and to advise, and make recommendations to, the Mem-

ber in regard to the improvement, preservation, conservation, utilization, and apportionment of such resources, and as to the provision of additional water supplies,

- (b) to carry out a survey of the existing consumption of, 5
and demand for, water supplies, and of the water resources of the Colony,
- (c) to prepare estimates of the future water supply requirements of any area of the Colony,
- (d) to formulate proposals for meeting the existing and 10
future water supply requirements of any area, by water undertakers, bodies or persons,
- (e) to furnish to the Member and by his direction to water undertakers, bodies, or other persons, such information relating to water supplies or resources 15
as is available

(2) Where any of the duties referred to in sub-section (1) of this section have been delegated to any board, committee, authority, or person the Water Resources Authority may, from time to time, require such board, committee, 20
authority or person to submit reports thereon to it within such time as it may specify

Water under-
takers and others
to furnish
information

10. (1) The Water Resources Authority may require any person to furnish information relating to any existing or proposed waterworks of, or proposed to be constructed by 25
such person the use of and demand for water supplies and the water resources available in the area of supply or area from which the supply is abstracted

(2) The Water Resources Authority may require any person to keep such records and furnish such returns as to 30
the quantity and quality of water abstracted by him from any source and to such matters relating to such source as may be required by the Water Resources Authority

Provided that if, upon representation by any such person so required to furnish information under this section, the 35
Member is satisfied that in all the circumstances compliance with such requirements is impracticable or unnecessary or that undue expense would thereby be incurred he may excuse such compliance

(3) The Water Resources Authority or any board com- 40
mittee, authority, or person authorized by it, shall have the right at all reasonable hours to enter any premises and inspect any records required to be kept under the provisions of this section, and to take copies of or extracts from such records

Acquiring land

11. (1) If the Member on the recommendation of the 45
Water Resources Authority, is of the opinion that it is in the public interest so to do, he may—

(a) apply for the setting aside of unalienated Crown land,
or

Cap 100

(b) apply for the setting apart subject to the provisions 50
of the Native Lands Trust Ordinance, of any land in a native area, or

(c) with the approval of the Governor, purchase or acquire land by any other means, for the con-
servation, improvement or use of water 55

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

12. (1) The Member may, on the recommendation of the Water Resources Authority, and after reasonable notice to the landholder concerned, if it appears to him to be in the public interest so to do, construct and maintain upon any land such works as he may deem necessary or desirable for any of the following purposes—

Member may
construct works
and apportion
cost

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

(2) Compensation shall be payable to the owner of the land on which such works are constructed but in assessing the amount of such compensation the Member shall take into consideration any benefit or betterment which has accrued or may accrue to such land by the construction of such works or any adverse effect on such land caused by such works, as the case may be

20 (3) The cost of construction of such works, may, in the first instance, be paid from public money,

(4) When the cost of construction of such works has been paid from public moneys and the Member, on the advice of the Water Resources Authority, is of the opinion that, having regard to all the circumstances, it is just and equitable that any landholder whose land has, in the opinion of the Member, benefited by such works, should pay or contribute towards the cost, maintenance, operation or renewal thereof, he shall notify such landholder accordingly, and shall in such notification specify the amount of payment or contribution to be made by such landholder and the area of the land of such landholder which shall be subject to the charge created by section 13 or section 14, as the case may be, of this Ordinance, and such landholder shall thereupon become liable to make such payment or contribution and such area of land shall become charged with such amount under section 13 or section 14 as the case may be

(5) When the cost of construction of such works has been paid from public moneys and such works are required for the purpose of a community project, payment towards the cost, maintenance, operation or renewal thereof shall be made by all persons who, in the opinion of the Member, on the advice of the Water Resources Authority, have benefited or could benefit by such works in such proportions as the Member may determine, but no such works shall be constructed for the purpose of any community project except upon the request of a majority of the persons who could benefit by such works. Such payment shall become due upon such date as the Member shall notify in a notice addressed to the person concerned

(6) The amount of payment or contribution determined under the provisions of sub-section (4) and (5) of this section shall be a debt due by such landholder or person to the Government and, until discharged, interest shall be paid thereon at the rate of interest on advances under the Land and Agricultural Bank Ordinance, from time to time fixed under section 33 of the aforesaid Ordinance and the Member shall decide the date upon which the interest shall begin to accrue

Cap 181

60 (7) An appeal shall lie to the Water Appeal Board against any decision of the Member requiring any payment or contribution from any person under the provisions of sub-section (4) or (5) of this section

Creation of
charge on land
for cost of
works

13. (1) If any owner of any alienated land who has, under the provisions of section 12 of this Ordinance, become indebted to the Government, fails to pay such debt within such reasonable time or by such instalments as may be decided by the Member, the Member shall send a notification 5 of such debt to the Registrar of Titles who shall forthwith, without charge, register such notification against the title affected

(2) The amount set out in such notification shall be the amount of the debt referred to in section 12 of this Ordinance 10 with any interest due thereon

(3) The registration of such notification shall create a charge upon the land affected for the principal sum and any interest for the time being due thereon, subject to any prior registered encumbrance and shall bind every successive 15 owner thereof

(4) When the sum secured by a charge created under the provisions of this section has been paid, the Member shall send to the Registrar of Titles, a notification of cancellation which shall be registered, without charge against the title 20 affected

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

14. (1) Where any works, constructed under the provisions of sub-section (1) of section 12 of this Ordinance, have benefited land in a native area and it is the opinion of the Member, on the advice of the Water Resources Authority, 25 that it is just and equitable that the local authority in such native area should pay or contribute towards the cost, maintenance, operation or renewal of such works, the Member shall notify such local authority and the Native Lands Trust Board accordingly, and shall in such notification specify the 30 amount of payment or contribution to be made by such local authority

(2) When such works are for the purpose of a community project in one or more native areas and the cost of construction of such works has been paid from public moneys, payment towards the cost, maintenance, operation or renewal thereof shall be made by all local authorities in the area or areas, which, in the opinion of the Member, on the advice of the Water Resources Authority, have benefited or could benefit by such works, but no such works shall be constructed 40 for the purpose of such a community project unless at the request of a majority of the local authorities in such area or areas or of the Native Lands Trust Board

(3) A local authority from which payment or contribution is required shall raise the money for such payment or 45 contribution in such a manner as it thinks fit, and if the method of raising such money cannot be decided by such local authority, the method shall be decided by the Chief Native Commissioner, and the time and method of any such payment or contribution shall be determined by the Chief 50 Native Commissioner and shall then be binding on such local authority

Water
Resources
Authority may
summon
witnesses

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

Service of
summons

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

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

Privileges of
person
summoned

18. Any person who fails without reasonable excuse, to attend in obedience to any summons issued by the Water Resources Authority, or subject to the provisions of section 17 of this Ordinance, fails to answer fully to the best of his
10 knowledge any question relevant to the matter under investigation, or when required so to do, fails to produce any book, plan or document required to be produced under the provisions of section 15 of this Ordinance shall be guilty of an offence against this Ordinance

Offence to fail
to obey
summons, etc

15 19. A proceeding before the Water Resources Authority or Water Apportionment Board or any committee or member thereof shall, for purposes of any prosecution under Chapter XI of the Penal Code be deemed to be a judicial proceeding

Proceedings
before Water
Resources
Authority, etc.,
to be judicial
proceeding for
purposes of
prosecution
for perjury
Cap 24

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

Offence to
refuse to be
sworn or to give
evidence

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

Emergencies
Powers of the
Member

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

Provided that where the laying of pipes or the construction of works is likely to interfere with a railway track of the
45 East African Railways and Harbours Administration no such laying of pipes or construction of works shall be commenced without prior notification to such Administration

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

(4) Any compensation payable to such person, for any loss or damage suffered as a result of any act done under an order made under this section, and all matters relating to
60 the liability for such compensation shall be determined by the Member and, if his decision is not acceptable to the persons concerned, the matter shall be referred to arbitration under the provisions of the Arbitration Ordinance

Cap 22

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

Injunctions.

22. No person shall apply for, and no Court shall grant, any injunction or other process or order restraining any water bailiff, official of the Water Apportionment Board, or other authorized person from enforcing any priority relating to the use of water conferred or enjoyed by or under the provisions of this Ordinance or by or under the Water Ordinance, 1929

10

PART III

LOCAL PLANNING

Drainage areas

23. (1) The Colony shall be divided by the Water Apportionment Board into drainage areas

(2) Such drainage areas may from time to time be subdivided or amended by the Water Apportionment Board

(3) Any decision of the Water Apportionment Board made under this section shall be subject to an appeal to the Water Resources Authority whose decision shall be final

Appointment of Regional Water Boards

24. (1) The Member, in consultation with the Water Resources Authority, may appoint, for any region a Regional Water Board which shall be advisory to the Water Resources Authority and to the Water Apportionment Board as to the conservation, use apportionment and any other matter affecting the water resources in that region

25

(2) A region shall consist of one or more drainage areas or part of a drainage area as the Member, in consultation with the Water Resources Authority shall determine

Duties of Regional Water Boards.

25. (1) It shall be the duty of a Regional Water Board to advise the Water Resources Authority with regard to its region as to—

- (a) the water resources,
- (b) the existing demand for, consumption and use of, water,
- (c) the future water supply requirements,
- (d) how such future requirements shall be met,
- (e) the apportionment of existing and potential supplies,
- (f) the adjustment, cancellation or alteration of any licence or sanction,
- (g) any other matter affecting the water supplies in its region

35

(2) The Water Resources Authority may, from time to time, require a Regional Water Board to submit written reports on any matter referred to in sub-section (1) of this section and all such requirements shall be complied with

45

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

(3) A Regional Water Board shall inform the Member when, by reason of an exceptional shortage of rain or by reason of accident or other unforeseen circumstances, a serious deficiency of water for essential domestic purposes exists, or is threatened in its area, and shall also advise as to what steps should be taken to remedy such deficiency

55

PART IV

WATER APPORTIONMENT

26. (1) There shall be appointed, by the Member a Board to be known as the Water Apportionment Board 5 which shall be subordinate to the Water Resources Authority and which shall exercise such powers and perform such duties as are mentioned in this Part

Appointment
of Water
Apportionment
Board

(2) The Water Apportionment Board shall consist of—

(a) the Director of Public Works who shall be chairman,
10 (b) a representative of the Chief Native Commissioner,
and

(c) four unofficial members appointed by the Member
from a panel of names submitted by all the Regional
Water Boards

15 (3) The technical adviser of the Water Apportionment Board shall be the Hydraulic Engineer of the Public Works Department who shall not be a member of the Water Apportionment Board nor shall he deputize as a member for the Director of Public Works

20 (4) Unofficial members of the Water Apportionment Board shall be appointed for three years but shall be eligible for reappointment

(5) Four members of the Water Apportionment Board shall form a quorum

25 27. (1) Any of the powers, duties or obligations vested in the Water Apportionment Board under the provisions of this Ordinance, except the power to grant alter or cancel licences, sanctions or easements, may by resolution of the Water Apportionment Board be delegated by it to any 30 person

Powers of Water
Apportionment
Board and of
Chairman may
be delegated

(2) The Chairman may, in writing authorize any person employed in the public service, or any servant agent or contractor of such person, to perform any of the powers, duties or obligations conferred upon or delegated to him

35 28. After the commencement of this Ordinance no conveyance lease or other instrument shall be effectual to convey, assure, demise, transfer or vest in any person any property or right or any interest or privilege in respect of any body of water and from and after such commencement no 40 such property, right, interest or privilege shall be acquired otherwise than under the provisions of this Ordinance

Right to use
water may be
acquired only
under this
Ordinance

29. The purposes for which a licence or sanction may be acquired are as follows—

Purposes for
which a licence
or sanction may
be acquired

45 (a) a domestic purpose, which expression means the provision of water for household and sanitary purposes and the watering and dipping of stock,

(b) a public purpose, which expression means the provision of water for municipalities townships, villages, and communities and for all reasonable 50 demands for steam raising on railways or for other purposes connected with public undertakings, not involving the use of water for the generation of power,

55 (c) a minor irrigation purpose, which expression means the provision of water for the irrigation of land, not exceeding two acres, used for orchards, gardens, nurseries, or land farming operations,

(d) an industrial purpose, which expression means the essential requirements of any industry including

mining and the washing and treating of coffee, vegetable fibre or other agricultural or mineral produce, or the essential requirements of other industries and mining,

(e) a power purpose, which expression means the provision and employment of water for the development of power, 5

(f) a general irrigation purpose,

(g) any other purpose approved by the Water Apportionment Board 10

Consideration
of applications

30. (1) Application for water rights or sanctions for the same purpose or for different purposes shall receive consideration in accordance with the circumstances of each case and regard shall be had to the extent to which the grant of a water right or sanction would be likely to interfere with the requirements of prior licensees 15

(2) The Water Apportionment Board may reserve such part of the flow of a body of water as in its opinion is required for domestic purposes

(3) Where the Water Apportionment Board refuses to grant an application wholly or in part, the applicant shall be notified of such refusal and the reasons therefor and may, if he is aggrieved by such decision, within thirty days after the date of such notification, lodge with the Chairman of the Water Apportionment Board a notice of appeal to the Water Resources Authority against such decision. Such notice shall be accompanied by a fee of two hundred shillings which shall be returned to the applicant if such appeal is successful. The decision of the Water Resources Authority on any such appeal shall be final and binding on all parties concerned 20 25 30

When licence
or sanction
not required

31. A licence or sanction shall not be required—

(a) for the abstraction or use of water from any body of water for domestic purposes by any person having lawful access thereto, if such abstraction is made without the employment of works, 35

(b) when the works for the development of ground water are not situated within one hundred yards of any body of surface water

Provided that this paragraph shall be subject to the provisions of sections 42 and 68 of this Ordinance, 40

(c) for the storage of water in, or the abstraction of water from a dam constructed in any channel or depression which has been declared not to be a watercourse under the provisions of section 136 of this Ordinance 45

Action during
drought

32 (1) During a drought or at any time, in the case of small watercourses, the Water Apportionment Board may in its absolute discretion by order, require any person, notwithstanding the fact that he may be using water under a licence or sanction, to allow to pass such proportion of the water in the watercourse as appears to the Water Apportionment Board to be equitable, and may prohibit any practice which, in the opinion of the Water Apportionment Board causes undue reduction of the water in any watercourse 50

(2) Any person who fails to obey an order of the Water Apportionment Board given under sub-section (1) of this section shall be guilty of an offence against this Ordinance 55

When licence
or sanction
is required

33. (1) In all cases of proposed diversion, abstraction, obstruction, storage or use of water from a body of water other than those referred to in section 32 of this Ordinance,

application must be made in the manner prescribed by this Ordinance for a licence or sanction for such diversion, abstraction, obstruction, or storage of water from or in such body of water

- 5 (2) Any person who executes, constructs, erects, or employs works, for the diversion, obstruction, abstraction or storage of water or diverts, obstructs, abstracts or stores water from a body of water, except as permitted by this Ordinance, without, or before the receipt of, an authorization, licence or
10 sanction issued under the provisions of this Ordinance, shall be guilty of an offence against this Ordinance

34. No person shall drain, obstruct, or otherwise interfere with any swamp unless such swamp has been declared under the provisions of section 136 of this Ordinance, not to be a watercourse, without first having obtained
15 the licence or sanction of the Water Apportionment Board

Drainage
of swamps

35. (1) The Member may, from time to time, publish in the Gazette a notice setting out the land required for the development of any State Scheme

State schemes

- 20 (2) Unalienated Crown land required for any such State Scheme shall by notice in the Gazette be reserved by the Commissioner of Lands, at the request of the Member, from sale or other disposal

- (3) The Commissioner of Lands shall, at the request of
25 the Member reserve unalienated Crown land under the provisions of sub-section (2) of this section, notwithstanding that it is not proposed that the construction of any works projected for the State Scheme shall be carried out, wholly or in part, by the Government, or be paid for out of the funds of the
30 Government

- (4) When any of the land required for a State Scheme has been alienated by the Crown prior to publication of the notice in the Gazette, such land may be acquired in accordance with the law for the time being in force relating to the
35 acquisition of land for public purposes

- (5) Licences or sanctions may be issued, on such terms as the Water Apportionment Board may in each case specify, for use of water in an area developed or to be developed, in whole or in part in connexion with a State Scheme, or for use
40 in connexion with a body of water affected by a State Scheme, but such licences or sanctions shall be valid only until such time as such water is required for such State Scheme, or when and for as long as, water is available in excess of the requirements of such State Scheme

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

Classification
of projects

- (a) private projects,
(b) community projects,
(c) public projects,
50 (d) urban projects

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

Private projects
conducted by an
association of
operators

- (2) (a) Two or more operators, who have a common interest in the employment of water or in the drainage of swamps, may unite in an association for the exercise of a water right or sanction for a private project

(b) Any application for a water right or sanction in such a case shall be accompanied by a statement of the terms and objects of the association, and the rules under which such an association proposes to exercise the water right or sanction shall be specified and submitted to the Water Apportionment Board for approval, and any variation of such rules subsequently made shall also be submitted for the approval of the Water Apportionment Board 5

(c) The proportion of participation shall be presumed to be equal between members unless the contrary is specified by rules made and agreed by the association and approved as provided in paragraph (b) of this sub-section 10

(d) The grant of a water right or sanction to an association of operators under the provisions of this section shall be subject to such terms governing action to be taken during operation, or upon withdrawal of members of the association, or upon dissolution of the association, as the Water Apportionment Board may specify or as may be prescribed 15

Community projects

38. Community projects are such projects, other than public or urban projects, as are conducted, in accordance with rules made and agreed under the provisions of this Ordinance by a community of landholders operating under a water right or sanction for one or more of a series of authorized purposes connected with the use of water, or the drainage or reclamation of land situate entirely or for the greater part, within their own holdings 20 25

Public projects

39. Public projects include projects which involve the supply of water, or of electrical energy derived from the energy of moving water, to persons other than the operator, in consideration of payment therefor, or the drainage or reclamation of lands in consideration of payment therefor 30

Urban projects

40 Urban projects mean projects undertaken, operated or maintained by a municipal authority, corporation, or other body, for the supply of water to municipalities or townships, and include projects, however originated and constructed, which are acquired and operated by a municipal authority, corporation, water undertaker or other water works authority, for the supply of water to a municipality or township, trading centre or other urban community 35

Water Apportionment Board to determine class of project

41. The Water Apportionment Board may determine to which class any proposed project shall be deemed to belong 40

Construction of well within 100 yards of body of surface water or within one mile of any other well

42 (1) Any person proposing to construct any well or extend any existing well within one hundred yards of any body of surface water or to abstract water from any well, so constructed or extended, shall first obtain the necessary licence or sanction under the provisions of this Ordinance 45

(2) Any person proposing to construct, within one mile of any other well any well or to extend any existing well, or to abstract any water from any well so constructed or extended, shall first obtain the written permission of the Water Apportionment Board 50

Provided that the provisions of this sub-section shall not apply to the construction or extension of any well, or the abstraction of water therefrom— 55

(i) if the well does not reach, or is not extended to, a depth of one hundred feet from the surface of the ground, or

(ii) if the water from the well is to be used solely for a domestic purpose on the land of any one land-

holder and, where such land is subsequently divided, only on the sub-division of land on which the well is situated, and

- 5 (iii) if the total quantity of water extracted from any well in any one day does not exceed five thousand gallons or such other quantity as the Water Apportionment Board may approve

(3) Any person applying for permission under the provisions of sub-section (2) of this section shall give such
10 particulars relative to his application as the Water Apportionment Board may require and such Board may, after consideration of such application grant or refuse such application

(4) Any person who fails to comply with the provisions
15 of sub-section (1) or (2) of this section shall be guilty of an offence against this Ordinance

43. (1) Any person who proposes to construct any well shall, before he commences such construction, give to the Water Apportionment Board notice of his intention to do so,
20 and shall, if required by the Water Apportionment Board, keep a record of the progress of the work which shall include measurements of the strata passed through, specimens of such strata, the levels at which water was struck, the quantity of water obtained at each level, and the quantity finally obtained,
25 and the rest level thereof

Notice of
intention to
construct well

(2) Such person shall allow any person authorized by the Water Apportionment Board, at all times---

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

35 (3) Where the person constructing a well on any land is not the occupier of such land, the obligation to allow any person authorized by the Water Apportionment Board to exercise his rights under the provisions of this section shall be the obligation of the occupier of the land as well as of the
40 person constructing the well

44. The person constructing such well, if required to keep records under the provisions of sub-section (1) of section 43 of this Ordinance, shall on the completion or abandonment of the construction, send a complete copy of the record
45 together with the specimens referred to in such record to the Water Apportionment Board, and shall also send to the Water Apportionment Board particulars of any test made, before such completion or abandonment, of the yield of water, and shall specify the rate of flow throughout the test
50 and the duration of the test, and also, where practicable, the water levels during the test and thereafter until the water has returned to its natural level. The person constructing the well shall further state, on the record, his opinion as to whether the water, as determined by tasting, is suitable for
55 drinking or is highly mineralized, as the case may be

Submission of
records of well

45. Where any well is constructed in connection with or
is within one-half mile of, or such greater distance as the Water Apportionment Board may in any particular case

Existing wells

specify, an existing well, the particulars of any test to be supplied to the Water Apportionment Board shall also include the rate of pumping at the existing well during the test

Contractor
deemed to be
constructor

46. Where any borehole contractor constructs a bore-⁵
hole on land belonging to or occupied by any other person,
such borehole contractor shall be deemed for the purposes
of this Ordinance, to be the person constructing the borehole

Records may
be treated as
confidential

47. The person constructing such well or, if a different
person, the owner or occupier of the land on which such¹⁰
construction takes place may give notice to the Water
Apportionment Board requiring any copy of, or extract from,
the record required to be kept under the provisions of
section 43 of this Ordinance, or any specimen taken, or any
other particulars connected with the well, to be treated¹⁵
confidentially, and the Water Apportionment Board shall
thereupon not allow such copy, extract, specimen, or other
particulars, except in so far as it contains or affords informa-
tion as to water resources or supplies, to be published or
shown to any person not being an officer of the Water²⁰
Resources Authority or the Water Apportionment Board,
unless the person giving such notice consents thereto

Provided that if at any time the Water Apportionment
Board gives notice to such person that, in its opinion, his
consent is unreasonably withheld, then that person may,²⁵
within three months after the notice given by the Water
Apportionment Board, appeal to the Member, and, if at the
expiration of that period no such appeal has been made, or
if, after hearing the appeal, the Member does not make an
order restraining it from so doing, the Water Apportionment³⁰
Board may proceed as if such consent had been given

Non-compliance
with section 43,
44 or 45 to be
an offence

48. Any person who fails to comply with any obligation
imposed upon him by the provisions of section 43, 44 or 45
of this Ordinance shall be guilty of an offence against this³⁵
Ordinance

Waste of
ground water

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

- (a) cause any ground water to run to waste from any well
except for the purpose of testing the extent or
quality of the supply or cleaning sterilizing,⁴⁰
examining or repairing such well,
- (b) abstract from any well, water in excess of his reason-
able requirements and which he cannot use in a
reasonable and beneficial manner,
- (c) conduct the water from any well through any channel⁴⁵
or conduit so that more than 20 per cent of the
water is lost between the point of appropriation and
the point of beneficial use

Provided that where the water from any well is
conducted through channels or conduits together⁵⁰
with water from other sources, no person shall permit
the waste of more than 20 per cent thereof in con-
ducting the water from the point of appropriation
of the well water to the point of beneficial use,

- (d) use any water from any well for the purpose of⁵⁵
domestic use or the watering of stock, except where
such water is carried through pipes fitted with float
valves or other satisfactory means of control, to
prevent waste therefrom

Provided that where ground water interferes or⁶⁰
threatens to interfere with the execution or opera-
tion of underground works, whether water works

or not, the Water Apportionment Board may, in any particular case, agree that such water may be allowed to waste upon such conditions regarding quantity and method of disposal as it may specify

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

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

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

Defective wells

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

51. Any person who recases, plugs or seals a defective well or deposits, or causes or knowingly permits the deposit of any dirt, rubbish or other material in any such well except
35 with the written authority of the Water Apportionment Board shall be guilty of an offence against this Ordinance

Improper methods of casing, etc

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

Application to seal off well

(2) Such application shall contain as complete information as possible in regard to the name and address of the owner of the well, its location, depth and size and the amount
45 and location of casing or sealing in the well, the distance below the surface of the ground to the water level in the well, the strata penetrated, the distance from the surface of the ground to the top of the salt water stratum and the thickness of the salt water stratum, and shall give all other available
50 information regarding the condition of such well and shall also state the methods proposed for recasing, plugging or sealing off such well

53. The Water Apportionment Board after consideration of any application under the provisions of section 52 of
55 this Ordinance, may call for additional data, and may make such investigation as it considers necessary and if the well is found to contain salt water, shall issue instructions to the applicant specifying the work which shall be done by the owner to place it in a satisfactory condition and designating
60 the time that shall be allowed to complete the work, and may inspect such work while it is in progress

Instructions to deal with defective well

Board may
inspect well

54. The Water Apportionment Board may on its own initiative, or upon information or complaint from any source, make an examination of any well suspected of containing salt water and may issue instructions for curing any defects in such well and such instructions shall have the same force and effect ⁵ as instructions issued under the provisions of section 53 of this Ordinance

Sworn statement
to be submitted

55. Upon completion of the works in pursuance of any instructions issued under the provisions of section 53 of this Ordinance the contractor who carries out the work, or, if the ¹⁰ work is done without a contractor, the owner of the well shall file with the Water Apportionment Board a statement sworn or affirmed specifying in detail the manner in which such work was done, and failure to file such a statement within thirty days after the completion of such work shall be an ¹⁵ offence against this Ordinance

Additional work
on defective well

56. Upon receipt of such statement, the Water Apportionment Board shall determine, either from the statement or from inspection or test, whether the work has been satisfactorily performed and, if it determines that the work has ²⁰ not been satisfactorily performed it shall issue additional instructions specifying the additional work required to place the well in a satisfactory condition, and specifying the time for the completion of such additional work Upon the completion of such additional work, a statement sworn or ²⁵ affirmed shall be filed with the Water Apportionment Board as provided for in section 55 of this Ordinance, and failure to file such a statement shall be an offence against this Ordinance

Offence and
penalty for
failure to carry
out order

57. (1) The owner of any defective well shall be guilty ³⁰ of an offence against this Ordinance if he fails to carry out any order of the Water Apportionment Board and shall be liable to a fine of not more than five hundred shillings for every day that the offence continues after the expiry of the period of time given for completion by the Water ³⁵ Apportionment Board in such order

(2) If such owner fails to comply with an order of the Water Apportionment Board, the Board may itself take such steps as may be necessary to execute such order, and any expenses incurred in so doing shall be recoverable at the ⁴⁰ suit of the Board as a civil debt from such owner

Well not to be
constructed
within limits
of supply of
water under-
taker without
consent

58. (1) Notwithstanding anything contained in this Ordinance no well shall be constructed within the limits of supply of a water undertaker without the consent of the ⁴⁵ Member

(2) Any person contravening the provisions of this section shall be guilty of an offence against this Ordinance

Licence or
sanction for
abstraction of
ground water

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

Extraction
of minerals

60. (1) Where any person constructs any new work, not being works as defined in section 2 of this Ordinance, for ⁵⁵ the purpose of searching for or extracting minerals and an aquifer is struck, he shall give notice to the Water Apportionment Board and shall take such measures and comply with such conditions as the Water Apportionment Board may from time to time require for the conservation of water which may ⁶⁰ be encountered during any construction

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

- 5 (2) Any person who fails to comply with the provisions of this section shall be guilty of an offence against this Ordinance

61. (1) Every person abstracting ground water by means of a well shall in order to prevent contamination or pollution
10 of the water—

Contamination
and pollution of
ground water

- (a) effectively seal off to a sufficient depth, any contaminated or polluted surface or shallow water in rock openings or soft broken ground,
- 15 (b) effectively seal the top of the well between the surface casing and the internal pump column, and the suction or discharge pipe,
- (c) dispose of all return or waste water by means other than by return to the well,
- 20 (d) extend the well casing to a point not less than eight inches above the elevation of the finished pump house or pump pit floor,
- (e) use either welded or screw type well joints on the casing, if made of metal,
- 25 (f) provide the well casing top with a screw connexion to permit tight flange connexion being screwed or welded around the annular opening around the casing and the drop pipe,
- 30 (g) dispose of effluents or drainage from any household stable, factory, trade premises or other premises in such a manner as will prevent any such effluent or drainage from reaching such well or ground water, and
- (h) carry out such other work as the Water Apportionment Board may direct, from time to time for the
35 prevention of contamination or pollution

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

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

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

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

Casing and
non-return valves
to be fitted

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

Artesian wells to
be cased etc

63. Every artesian well shall be efficiently cased, capped or furnished with such appliances as will readily and 10 effectively arrest and prevent the flow therefrom over the surface of the ground or wasting from the well through the strata through which it passes

Licensing of
borehole
contractors

64. (1) No borehole contractor shall carry out any contract to construct a borehole until he has been licensed by the 15 Water Apportionment Board

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

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

Drillers to be
licensed

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

(2) Every application for a driller's licence shall be made to the Water Apportionment Board on the prescribed form, 30 and shall be accompanied by the prescribed fee

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

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

- (a) conducted any drilling operation improperly,
- (b) intentionally made a material misstatement of fact in an application for a driller's licence, 45
- (c) intentionally made a misstatement of fact in any report required from him under the provisions of this Ordinance,
- (d) failed to submit any report required from him under the provisions of this Ordinance, or 50
- (e) failed to comply with any provision of this Ordinance

Offence to
construct
boreholes
without being
licensed

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

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

Conditions
of licence
or sanction
to abstract
ground water

5 (a) that the right of the licensee or sanction holder shall relate to a specific quantity of water which may be obtained with a maximum pumping lift found by the Water Apportionment Board to be reasonable or feasible at the time of granting the licence or sanction

10 Provided that the Water Apportionment Board may, from time to time, for reasons of reduced pumping costs in any area or increased value of water, increase such maximum pumping lift, and

15 (b) that such licence or sanction does not include the right to have the water level in the well of the licensee or sanction holder maintained at any level higher than the level necessary to make effective such reasonable or feasible pumping lift

20 (2) Nothing in paragraph (b) of subsection (1) of this section shall be so construed as to prevent the granting of licences or sanctions to other applicants later in time, on the grounds that abstractions under such later appropriations may cause the water level at the point of abstraction of a prior appropriator to be lowered, so long as the rights of existing
25 holders of licences can be satisfied

68. Where the Member, after consultation with the Water Resources Authority, is satisfied that in any area, special measures for the conservation of ground water are necessary in the public interest, whether for the protection of
30 public water supplies or for the protection of water supplies used for industrial or other purposes, he may make an order (in this Ordinance called a Conservation Area Order) declaring that such area is a Conservation Area and thereupon the provisions of section 69 and 70 of this Ordinance shall
35 apply to such area either until further order or for such period as may be specified in the order

Conservation
areas

69. Every person who has been, prior to the making of a Conservation Area Order under section 68 of this Ordinance, diverting or abstracting water or allowing water to be diverted
40 or abstracted from ground water, by mechanical means within any Conservation Area shall, within six months of the date of the Order or within such further period as may be determined by the Member by notice in the Gazette, apply to the Water Apportionment Board for a licence or sanction under this
45 Ordinance

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

70. (1) In any Conservation Area no person shall—

(a) construct or commence to construct any well for the purpose of abstracting ground water therefrom, or

50 (b) extend any existing well for the purpose of abstracting additional ground water therefrom,

unless he has obtained a licence or sanction from the Water Apportionment Board so to do

Authority
required to
construct well

(2) The provisions of this section shall not apply to any well from which the water is abstracted otherwise than by
55 mechanical means

(3) No person shall abstract ground water from any well constructed in contravention of the provisions of sub-section (1) of this section unless he has obtained the necessary licence or sanction under the provisions of this Ordinance

55 (4) Any person who contravenes any of the provisions of sub-sections (1) or (3) of this section shall be guilty of an offence against this Ordinance

Priorities of
rights to the use
of ground water

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

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

Authority to
enter upon
lands for survey
and preliminary
investigation

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

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

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

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

(5) The grant of any such authority shall not authorize or be deemed to authorize the doing of any damage upon any lands, entered upon, and if any damage is done, compensation shall, failing agreement between the parties as to the amount of such compensation, be determined by arbitration

Application for
a water right
or sanction

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

(a) an application in the prescribed form, which shall include a statement whether a proportion of the normal flow or flood flow or both, or ground water, is required,

(b) if any road railway or road reserve or railway reserve will be affected, a request for the right to construct any works, referred to in the application, across such road, railway, road reserve or railway reserve,

(c) a general map, drawn in indian ink, or by means of other indelible process acceptable to the Water Apportionment Board, on tracing linen or other substantial material to such a scale as will allow requisite details to be legibly recorded, signed by the applicant, showing the body of water, the position of the intake, forebay, flume, dam, power house, reservoir, pipes, canals, spillways, or other works and lands if any which may be affected, the names of the

landholders, and the Land Reference numbers and boundaries of the lands which may be affected by the proposed works, such map to be accompanied by verification of the ownership of such lands, and

- 5 (d) such plans as may be required under the provisions of this Ordinance or by the Water Apportionment Board

74. In any application for water rights or sanctions involving reclamation or drainage of land an applicant shall
10 furnish such particulars as the Water Apportionment Board may specify

Application for
right involving
drainage or
reclamation

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

Amendment of
application

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

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

Approval of
application

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

(2) Where an application for a water right has been made, if, in the opinion of the Water Apportionment Board a licence
40 should not be issued until a hydrographic survey or other investigation has been made, or if for any other reason the Water Apportionment Board deems it desirable to delay the issue of a licence, the Water Apportionment Board may issue a sanction for a period of not more than ten years

45 77. (1) Applications for water rights shall have precedence according to the date of the filing of each application at the office of the Water Apportionment Board or at any other place as may be decided by the Water Apportionment Board

Precedence
of applications
for water rights

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

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

Cancellation of
application



Advertising
application

79. (1) If the application and map or plan (if any), have been conditionally approved as provided in section 76 of this Ordinance, or if before such conditional approval the Chairman shall consider it desirable so to do, the Chairman shall prepare a notice setting forth— 5

- (a) the name and address of the applicant,
- (b) the body of water from which it is proposed to abstract, or divert water or on which it is proposed to impound water,
- (c) the place at which the water is proposed to be used, 10
- (d) the purpose for which the water is proposed to be used,
- (e) a statement that any objection must be filed with the Water Apportionment Board within thirty days from the date of the first publication of such notice and that a copy of any objection shall be served on the 15 applicant, and
- (f) any further information considered by the Water Apportionment Board to be necessary

(2) Such notice shall be transmitted to the applicant who shall, if he still desires to acquire a water right or sanction, 20 within twenty-one days from the date of the receipt of such notice, unless such time is extended by the Water Apportionment Board, cause it to be published in some newspaper, which may be specified by the Water Apportionment Board, published in the Colony, and having circulation in the locality in 25 which the proposed works would be situated, and in addition, in one issue of the Gazette

(3) If it appears to the Water Apportionment Board to be in the public interest so to do, it may require the applicant to publish such notice in such newspaper and in a second news- 30 paper having circulation in the locality of the proposed works, on not more than four occasions within thirty days, or may require such notice to be published in a modified or altered form

(4) The Water Apportionment Board may, in any particu- 35 lar case, exempt any applicant from compliance with the requirements of this section

Procedure if
objection
received

80. (1) Any objection to an application shall be filed with the Water Apportionment Board in duplicate within thirty days from the date of the first publication of such notice or of 40 such altered or modified notice, and shall contain the name and address of the objector and the specific grounds of objection, and a copy of such objection shall forthwith be served, by the objector, on the applicant

(2) The Water Apportionment Board shall consider such 45 objection, and if, in its opinion, the grounds of objection are not, prima facie, sufficient to warrant an inquiry, it shall so decide and shall notify the objector of such decision, but if it considers the alleged grounds sufficient to warrant public inquiry, it shall fix a day for the holding of such inquiry 50

(3) The Water Apportionment Board may, for the purpose of such inquiry, summon and examine witnesses upon oath or affirmation, adjourn the hearing to obtain further evidence or until the applicant has submitted plans, or altered plans, or other documents, dismiss the objection, direct the 55 applicant to amend his application, or dismiss the application

(4) If the powers of the Water Apportionment Board under sub-section (3) of this section, are delegated to any person, such person shall report in writing to the Water Apportionment Board and the Board may decide the application 60 upon such report

81. The Water Apportionment Board may, after consideration of any objection which may have been made to an application—

Final approval
or refusal of
application

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

82. If after receipt by the Water Apportionment Board of such application, and any map and plan, together with such particulars of the applicant's proposals as it may have required, 15 the Water Apportionment Board considers that the proposed water right or sanction would not be in the public interest, or would unduly interfere either with the undertakings of other operators or with other users, it shall endorse its disapproval upon both copies of the application and any other necessary 20 documents relating thereto, and shall state its reasons for such disapproval, and shall return one copy of each such document to the applicant

Procedure if
application for
water right
or sanction is
not approved

83. (1) If the application, as filed or as amended by the Water Apportionment Board, is finally approved by the Water 25 Apportionment Board, the Board shall authorize the construction of the works by an authorization, and may specify in such authorization the time within which the construction of such works is to be commenced and to be completed

Authorization
of works

(2) The authorization for the construction of such works, 30 shall be in the form prescribed by the Water Apportionment Board, or by rules made under this Ordinance and shall be numbered

(3) The licence or sanction issued on completion of the works, in accordance with the authorization and any modifica- 35 tion thereof to the satisfaction of the Water Apportionment Board shall bear the same number as was endorsed upon the authorization

(4) A copy of the application, map or plan (if any) as approved shall be returned to the applicant with the authoriza- 40 tion

(5) No material deviation from the application, map or plan as filed, or amended by the Water Apportionment Board, shall be made without the consent of such Board, and any question arising as to whether any deviation is material shall 45 be determined by the Water Apportionment Board

84. (1) Any works authorized under the provisions of this Ordinance may, if the Water Apportionment Board so determines, be inspected during construction, by officers of the Department or of the Water Resources Authority and the cost 50 of such inspection, or of such portion thereof as the Chairman declares to be necessary in the interest of the safety of life and property, may be required by the Water Apportionment Board to be borne by the operator

Inspection of
works during
construction

(2) No such inspection shall be deemed to imply a Gov- 55 ernment guarantee of the works constructed, or to support or justify any claim whatsoever against Government in connexion with such works

85. Upon any inspection made under the provisions of section 84 of this Ordinance, the Water Apportionment Board may order the operator to make any addition or alteration

Works to be
made secure

which it considers necessary for the security of any works, whether completed or in the course of construction, and if such order is not complied with to the satisfaction of the Water Apportionment Board, within such period as may be specified by such Board, the authorization for such works may be cancelled 5 or modified by the Water Apportionment Board

Licence or
sanction limited
by capacity
of works

86. When any works for carrying, storing or using water are not of sufficient capacity to carry, store or use the quantity or discharge to which a licence or sanction has been acquired by an operator in connexion with such works, his licence or 10 sanction may be limited to the quantity or discharge which such works are capable of carrying, storing or using, and, in case of dispute as to such quantity or discharge, the Water Apportionment Board may order an inspection of the works, and the licence or sanction may be varied by the Water Apportionment Board so as to authorize only the quantity or discharge 15 of water which the works are capable of carrying, storing or using in a reasonable and beneficial manner

Completion
certificate and
inspection

87 (1) Upon the expiration of the time mentioned in an authorization for the construction of works, or at any time 20 before such date, if such construction is sooner completed, the operator shall submit a completion certificate upon the prescribed form

(2) Thereupon an inspection may be made, by an officer appointed for the purpose by the Water Apportionment Board, 25 to ascertain that the works have been completed in accordance with the authorization, that the easements, if any, for the works have been obtained, that agreements if any are necessary, have been entered into for the supply of water for utilization on lands which are not the property of the operator or for 30 the drainage of lands, and that the works as constructed are of the required capacity

(3) If the work is not completed within the time mentioned in the authorization, a progress report shall be submitted in lieu of completion report, and the operator may apply 35 for an extension of the time limit of the authorization

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

Issue of licence
or sanction

88. (1) Upon completion of works, to the satisfaction of 40 the Chairman and in accordance with the terms of the authorization or amended authorization, the Water Apportionment Board shall—

(a) where an application, or part thereof, has been finally approved for a water right, issue to the operator, 45 under such terms and conditions and for a fixed period or otherwise as the Water Apportionment Board shall decide, a licence to divert, abstract, use, or store, the quantity of water for which the application for a water right was finally approved, and such 50 licence shall bear the number accorded to the authorization, with priority from the date on which the application containing full details of the applicant's proposal together with such particulars, map or plan as may have been required, was filed, subject to the 55 provisions of section 76 of this Ordinance,

(b) Where an application, or part thereof, for a water right, has been finally approved for a sanction only or where an application for a sanction has been finally approved, issue a sanction under such terms

and conditions and for such a period, not exceeding ten years as the Water Apportionment Board may determine

- 5 (2) (a) A sanction shall be inferior in standing to a licence, shall not be appurtenant to any piece of land and shall not be transferable
- (b) No sanction shall have any priority
- 10 (c) A sanction may be renewed at the discretion of the Water Apportionment Board for such a period, not exceeding ten years, and upon such conditions, as the Water Apportionment Board may think fit
- 15 (d) Any sanction holder who desires the renewal of his sanction, shall make application to the Water Apportionment Board on the prescribed form, at least ninety days before the date on which such sanction will terminate
- 20 (e) If a renewal of a sanction is not granted by the Water Apportionment Board, the sanction holder, on being notified by the Water Apportionment Board, shall cease to abstract, divert, obstruct or store water, as the case may be, on or before the day on which such sanction terminates
- 25 (f) Any person whose sanction has been cancelled or not renewed by the Water Apportionment Board may, within sixty days appeal against such cancellation or non-renewal to the Water Resources Authority whose decision shall be final
- 30 (g) If a sanction is to be converted into a water right, the Water Apportionment Board shall inform the sanction holder
- 35 (h) The sanction holder shall obtain any requisite easement within a period not exceeding two years from the date when he was so informed, or such other time as the Water Apportionment Board may determine, otherwise such proposal to issue a water right shall automatically lapse and any subsequent application, by the sanction holder for a water right in lieu of such sanction, shall be considered as a new application and the date of priority shall be the date upon
- 40 which such subsequent application was filed

89. (1) Except as otherwise provided in sub-sections (2) and (3) of this section, the rights exercisable by separate licensees under licences authorizing the diversion or use of water from a body of water, including the tributaries of any stream
45 forming part of such body of water, shall have precedence according to the respective priorities as set out in each such licence

Precedence
of licences

(2) The rights exercisable under any two licences taking effect from the same date shall have precedence according to
50 the order of importance of the respective purposes for which water is authorized by the licence to be diverted or used. For the purposes of this sub-section the order of importance of the several purposes for which water may be diverted or used under licences is—

- 55 (a) a domestic or a public purpose (which shall rank equally),
- (b) an industrial purpose,
- (c) a minor irrigation purpose,
- (d) a power purpose, and
- (e) a general irrigation purpose

(3) The rights exercisable under any two licences taking effect from the same date and authorizing the diversion or use of water from the same body of water, including its tributaries, for the same purpose, shall have equal precedence

(4) The diversion of the water of a licensee lower in priority shall not be enjoined if, in the opinion of a water bailiff or other authorized person, no water would, by reason of losses in the channel of the body of surface water, reach the point of diversion, abstraction, or use of a prior licensee

Issue of
sanctions
without usual
procedure in
exceptional cases

90. (1) Notwithstanding anything contained in this Ordinance, the Water Apportionment Board may, if in its opinion exceptional circumstances warrant such action, authorize by sanction, for a period not exceeding one year, the diversion, abstraction, obstruction or use of water and the works required therefor according to such terms and conditions as the Water Apportionment Board may specify in such sanction, regard being had to the extent to which the authorization of such sanction would be likely to interfere with the domestic requirements of other users

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

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

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

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

(3) Any person aggrieved by a decision of the Water Apportionment Board given under the provisions of sub-section (2) of this section may appeal to the Water Resources Authority whose decision shall be final

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

(5) The right of a licensee or the privilege of a sanction holder to divert, abstract, use or store water shall be exercised in accordance with the conditions of his licence or sanction and shall be limited to the quantity or proportion of the discharge of the body of water concerned, whether it be normal flow or flood discharge permitted by such licence or sanction

(6) Every licence or sanction may be cancelled or the conditions subject to which it is granted may be varied by the Water Apportionment Board if the licensee or sanction holder—

- (a) commits a breach of or fails to comply with any condition of the licence or sanction, or
- (b) wastes water, or
- (c) fails to use or makes only partial use of the water, or
- (d) discontinues making reasonably beneficial use of the water,

and any such licence or sanction to be so cancelled or varied shall be surrendered to the Water Apportionment Board for cancellation, or variation of the conditions as the case may be

Provided that—

5 (a) no licence or sanction shall be cancelled or varied by the Water Apportionment Board on the ground that the licensee or sanction holder only made partial use of the water, the subject of such licence or sanction, if the Water Apportionment Board is satisfied that
10 such partial use is of temporary duration only,

(b) no licence for a public or urban project shall be cancelled or varied except by the Member, with the consent of the Water Resources Authority, but the Water Apportionment Board may, if any water the subject
15 of a licence for an urban project, is not required, grant a licence or sanction for the use of such water by some other person for such period, not being greater than the period during which the water will not be so required, as may be specified in the licence
20 or sanction

(7) Any sanction holder who is aggrieved by any variation of his sanction made pursuant to sub-section (6) of this section may appeal to the Water Resources Authority whose decision shall be final, any licensee who is so aggrieved may appeal to
25 the Water Appeal Board as provided in section 142 of this Ordinance

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

Water
Apportionment
Board may
prescribe
measuring and
controlling
devices

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

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

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

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

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

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

Road crossings

93. (1) Any operator constructing any works under the provisions of this Ordinance, shall, during such construction, keep open, for safe and convenient travel, all public roads and rights of way therefor, publicly used as such, when they are crossed, or interfered with, by such works, and shall, before water is admitted to such works, construct to the satisfaction of the authority concerned, or, at the option of such authority, refund to it the costs of construction by it of a substantial bridge with proper and sufficient approaches thereto over such works, and of such railings, fences, guard posts, culverts, face-walls and other structures and appurtenances as such authority with the approval of the Water Apportionment Board, may declare to be necessary in the public interest and all such bridges, approaches and appurtenances shall thereafter be maintained by the operator, while his water right or sanction is valid, or alternatively, at the option of the authority, at the expense of the operator

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

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

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

Provided that before any such revision or alteration is made, notice of the intention in that behalf shall be given by the Water Apportionment Board to any licensee or sanction holder who may be adversely affected thereby, and any such sanction holder may, within thirty days thereafter, appeal to the Water Resources Authority whose decision shall be final, and any licensee may appeal to the Water Appeal Board as provided in section 142 of this Ordinance

(2) The Water Apportionment Board may decide what compensation (if any) shall be paid to a licensee or sanction holder and by whom it shall be paid in respect of any loss incurred by action being taken under the provisions of subsection (1) of this section and if such licensee or sanction

holder is not satisfied with the amount of such compensation the matter shall be determined by arbitration as provided in section 174 of this Ordinance

(3) Any compensation payable to the licensee or sanction holder shall be recoverable as a civil debt

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

Water right to be appurtenant to the land for which issued

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

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

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

(4) Any new licence issued under the provisions of sub-section (3) of this section shall bear the same priority number as the original licence if the rights of other licensees will not thereby be adversely affected

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

Licensee or sanction holder may abandon

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

Variation of
licence or
sanction

97. (1) Every licence and sanction shall be subject to subsequent variation by the Water Apportionment Board after a hydrographic survey of the body of water has been made, and after reasonable notice has been given to all parties affected, but no such variation shall affect the priority of the licence 5

(2) Any sanction holder who is aggrieved by the variation of his sanction may appeal to the Water Resources Authority whose decision shall be final, and any licensee so aggrieved may appeal to the Water Appeal Board as provided in section 142 of this Ordinance 10

Change of point
of diversion

98. An operator who desires to change the point of diversion or abstraction of the water used or to be used by him, shall apply to the Water Apportionment Board for permission so to do and the Water Apportionment Board may grant such application if it is of the opinion that it is in the public interest 15 so to do and that the rights of others will not be affected thereby, and any question regarding the alteration in the priority of a licence granted to such operator, shall be determined by the Water Apportionment Board

Change of use
of water

99. (1) The quantity of water granted or specified under a 20 licence or sanction shall be used only for the specific purpose and during or within the time stipulated in the licence or sanction relating thereto and, if the licensee or sanction holder desires to use such water for any other purpose, he shall make application to the Water Apportionment Board and supply 25 such particulars as the Water Apportionment Board may require

(2) If the Water Apportionment Board considers that an application under sub-section (1) of this section is in the public interest and that the rights of others are not adversely affected 30 thereby, it may grant the application, and the licensee or sanction holder shall then surrender his licence or sanction to the Water Apportionment Board, which shall issue a new licence or sanction with such modifications as it considers necessary and any question regarding the alteration of priority of such 35 new licence shall be determined by the Board

Apportionment

100. Whenever the holder of land, to whom a water right or sanction has been granted, desires to have the water concerned apportioned between two or more parts of the land in respect whereof the water right or sanction was originally obtained, he shall apply to the Water Apportionment Board for an apportionment, and the Water Apportionment Board, on being satisfied that the rights of others will not be adversely affected thereby, may, after notice to all persons believed by it to be concerned, amend the licence or sanction originally 45 granted, or may issue two or more new licences or sanctions to conform with the apportionment authorized. Such new licences or sanctions shall, after providing for the authorized uses of the water and the periods of use provided for in the original licence or sanction, not authorized in the aggregate, the diversion, abstraction, storage, or use of more water than the discharge or quantity authorized to be diverted, abstracted, stored or used by the original licence or sanction 50

Mingling waters

101. Any two or more licensees or sanction holders may mingle the waters authorized by their licences or sanctions, and 55 may construct works to carry or use such mingled water

Provided that the plans of any such works shall be subject to the approval of the Water Apportionment Board in all respects as new works and except as to the mingling of such waters and the construction and maintenance of such works, the 60 licence or sanction of such licensee or sanction holder shall in no way be enlarged or varied

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

Licence, sanction or authorization as evidence

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

Works to be kept in repair

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

Drainage of irrigated lands

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

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

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

Water not to be released without notice

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

Damage to public works to be made good

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

Authority to interfere with road or public works

Operator must
produce
documents on
order of Water
Apportionment
Board

108. Every operator, upon the order of the Water Apportionment Board, or any person authorized by the Water Apportionment Board for that purpose, shall produce for inspection any licence, sanction, authorization, map, plan, specification, drawing or other document relating to the works or to the water right or sanction of such operator or to the flow of water in such works or in the body of water affected by such works 5

Correction of
errors in licence,
sanction etc

109. Any licence, sanction, authorization or other document issued under the provisions of this Part of this Ordinance which has been issued imperfectly or without compliance with all or any of the terms governing the issue thereof, or which contains some inaccuracy, which can be corrected without affecting the right of other parties, or which is incomplete or indefinite in its terms and conditions, shall be returned to the Water Apportionment Board upon an order of the Chairman to the person to whom it is issued, and such licence, sanction, authorization or other document may be reissued with such amendments as may be considered by the Chairman to be necessary 15

Operator may
acquire
easement

110. (1) Any operator who has received an authorization under the provisions of this Ordinance, to construct works for the purpose of a licence, where the works authorized, or a portion of them, would, when constructed, be situated upon lands not held by the operator, shall acquire an easement on, over, or through the land on which the works would be situated, and, unless the works have previously been constructed under any lawful authority not amounting to an easement, or under the authority of a sanction, shall not exercise the authorization unless and until he has acquired such easement 20

(2) Where the works, referred to in sub-section (1) of this section, are to be constructed for the purpose of a sanction, the written permission of the owner of the lands for such works to be constructed thereon shall be sufficient for so long as the person giving the permission is the owner of such lands 30

Provided that anything done under the provisions of this sub-section shall not prevent an application for an easement being made in accordance with this Ordinance 35

Encumbrances

111. The acquisition of an easement under the last preceding section shall not affect the burden or benefit of any encumbrance on the land existing at the date of such acquisition or the liability or right of any person in respect thereof 40

Easement
includes right
of access

112. An easement shall include the right of access, along a route to be approved by the Water Apportionment Board, to any piece of land contiguous to the water of the operator in so far as may be necessary for the purpose of constructing, inspecting, maintaining, operating or repairing the works of the operator and for any purpose necessary for the effective enjoyment of the easement 45

Easement
includes right to
take materials

113. (1) An easement shall include the right to take such materials existing naturally on the land, as may be approved by the Water Apportionment Board, from the land on, over or through which such easement has been granted, for the purpose of constructing, maintaining or repairing any work thereon 50

(2) The Water Apportionment Board shall not give its approval under sub-section (1) of this section until it has taken into consideration any objection which it may have received to the taking of such materials 55

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

Landholder may use land occupied by excavated material for own purposes

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

Operator must avoid flooding lands and maintain canal satisfactorily

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

Damage caused by works of operator

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

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

(a) prevents the landholder passing freely over or on his land as theretofore, or

(b) interferes with his existing works, structures, or devices, upon his land, shall, at his own expense, construct and maintain in repair, to the satisfaction of the Water Apportionment Board and under such conditions as it may prescribe—

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

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

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

Operator desiring easement to serve notice on landholder

(a) a description of the proposed works and a statement of their use,

(b) a statement of the quantity or discharge of water, if any, to be diverted or dealt with,

(c) a map showing clearly the nature and locality of any works or area of swamp or lands to be reclaimed, if the easement is for reclamation of a swamp or lands,

(d) a statement of the area of the land (if any) which is or will be occupied by the works, flooded as a result of the works, or required for the purposes of inspection and maintenance of the works, or required for the excavation or collection of material for the works, for the deposit of soil or material derived from the works, or for a road or roads to obtain access to the works, or for the control or prevention of pollution of the water to be used, 5

(e) a statement of the compensation which is offered and the period of time during which the operator wishes to enjoy the easement, 10

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

If the landholder agrees, particulars to be embodied in deed

119 If the landholder agrees to the claim for an easement, either as originally proposed or as modified by agreement, the operator shall embody the particulars and other matters pertaining thereto, in a deed and, after its execution by the parties concerned, shall send two copies of such deed, certified by the Registrar of Titles, to the Water Apportionment Board 15 20

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

120. If the landholder does not, within two months after the service of a notice under the provisions of section 118 of this Ordinance, agree to the claim for an easement or to any other matter necessary for an easement, the operator may apply to the Water Apportionment Board in the manner prescribed, for an easement and shall serve notice of such application upon the landholder 25

Claim for easement may be dismissed or granted

121. (1) The Water Apportionment Board may either dismiss the claim for an easement, or with the approval of the Member, grant the easement with or without modification and subject to such conditions and to the payment of such compensation as to the Board seems just 30

(2) The operator shall embody the particulars and other matters pertaining to an easement granted under sub-section (1) of this section, in a deed or instrument, and shall tender such deed or instrument, together with the amount of any award of compensation made, to the landholder for execution 35

(3) (a) If such landholder fails, within such time as may be specified by the Member, to execute and deliver such deed or instrument to the operator, such operator shall thereupon be constituted the attorney of the landholder for the purpose of executing such deed or instrument on behalf of the landholder 40

(b) The operator shall, when the amount of compensation tendered has been refused by the landholder, pay such compensation to the Chairman and shall then file with the Registrar of Titles the executed deed or instrument together with proof of payment of compensation and proof of failure of the landholder to execute the deed or instrument 45

(4) The Registrar of Titles shall register the deed or instrument against the title affected and two copies, certified by the Registrar of Titles, shall be sent by the operator to the Water Apportionment Board 50

Easement to lapse if works not completed within a specified period

122. An easement, acquired under the provisions of this Ordinance, shall lapse if the works authorized are not completed and the water is not utilized within one year from the date of acquiring such easement or within such further period as the Water Apportionment Board may determine, or if, at any time, substantial use is not made of the water right or sanction in accordance with the terms of the licence or sanction for a continuous period of two years, or such longer period as the Water Apportionment Board may, from time to time, in any particular case, determine 55 60

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

Operator to keep
his works in a
state of repair

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

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

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

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

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

(2) Such operator may require the landholder to enter into an agreement to continue to pay the proportionate cost of maintaining the portion of such works made use of, until either party has, in writing, surrendered such right of user and, in the event of disagreement, the matter shall be decided by arbitration

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

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

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

(4) When it is proved to the satisfaction of the Water Apportionment Board that altered conditions have rendered a revision of such rate of payment just and equitable, the Water Apportionment Board shall inform the parties concerned and failing agreement between such parties on such revision of rate of payment, the matter shall be referred to arbitration

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

Easements to
be registered

Determination
of easement

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

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

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

Member may
order drainage
of swamp

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

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

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

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

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

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Forfeiture of
rights if works
are not com-
pleted within the
time allowed

129. Upon the expiration of the time allowed in an authorization, or of any extension of such time, for the completion of works under the provisions of this Ordinance, the rights therein granted to the operator shall cease and determine, and any works, at the date of such determination, constructed, erected, fixed or acquired, may be taken over and operated, or disposed of, as ordered by the Member, if not completed within the time allowed

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130. Subject to the payment of compensation therefor, the Member may, with the consent of the Water Resources Authority, if at any time he shall deem it advisable in the public interest so to do, take over and operate, or otherwise
 5 dispose of, the works of any operator authorized under the provisions of this Ordinance, and, in such event, every licence or sanction, granted in connexion with such works, shall be returned to the Water Apportionment Board which may re-issue the licence or sanction to such operator as it may
 10 approve

Expropriation
of works

131. Every licensee or sanction holder shall, whenever called upon by the Water Apportionment Board so to do, within 30 days submit to the Water Apportionment Board a certificate to the effect that he is utilizing his works in accordance with his licence or sanction

Certificate of
utilization

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

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

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

(2) If a licensee or sanction holder is aggrieved by the
 30 decision of the Water Apportionment Board to reduce the quantity of water a sanction holder may appeal to the Water Resources Authority whose decision shall be final, and a licensee may appeal to the Water Appeal Board as provided in section 142 of this Ordinance

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

Abandoned
works

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

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

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

Offences and
penalties in
certain cases

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

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

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

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

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

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

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

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

When his true name and residence or other particulars
30 have been ascertained, such person shall be released on his executing a bond, if so required, with or without sureties, to appear before a magistrate. Should the true name and residence or other particulars of such person not be ascertained within 24 hours from the time of his arrest or should he fail
35 to execute such bond or, if so required, to furnish sufficient sureties, he shall forthwith be brought before a magistrate having jurisdiction in the area

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

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

Liabilities
of offender

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

50 **136.** The Water Apportionment Board may declare that a particular channel or depression or swamp is not a water-course and whether a particular body of water or body of surface water is a stream, swamp, natural lake or spring and whether any particular ground water is tributary to any such
55 stream, swamp, natural lake or spring and may also declare, define or delineate the boundaries thereof and all matters pertaining thereto, and may vary any such declaration, and any such declaration, until varied, shall be conclusive of any fact stated therein

Power of Water
Apportionment
Board to declare
matters pertain-
ing to bodies
of water

Qualified
engineer

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

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

State schemes
and other works

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

Information to
be afforded to
inspecting
officer

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

(2) The production of instructions in writing, signed by the Chairman or his deputy, shall be sufficient evidence of the authority of such inspecting officer 30

Right of entry
of the Crown

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

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

Cap 22

Statement
under oath

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

Water Appeal
Board

142. (1) There shall be established a Water Appeal Board which shall consist of—

(a) a chairman to be appointed by the Governor on the advice of the Chief Justice, and

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

(2) In every case in which a licence has been cancelled, revised or varied by the Water Apportionment Board under the powers conferred by section 86, 91 (b), 92, 94, 97, 104, 116, 132 or 135 of this Ordinance the person whose licence has been cancelled, revised or varied may appeal, on a matter of law only or of mixed law and fact, to the Water Appeal Board within thirty days of the date upon which he has been notified by registered post of the cancellation, revision or variation of such licence

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

(3) On the hearing of the appeal the Water Appeal Board may confirm, revoke or vary the order or decision against which the appeal has been made

(4) For the purpose of every appeal under the provisions of this section, the Water Appeal Board shall have all the powers vested in commissioners under the provisions of sections 10, 11 and 12 of the Commissions of Inquiry Ordinance Cap 40

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

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

(7) Every person aggrieved by a decision of the Water Appeal Board may on any question of law appeal to the Supreme Court

PART V

WATER UNDERTAKERS

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

Appointment
of water
undertakers

(2) The area of the limits of supply of a water undertaker shall be determined by the Member, after consultation with the Water Resources Authority, and water shall not be supplied by the water undertaker to any person outside such limits of supply without the prior consent of the Member

144. (1) The Member, after consultation with the Water Resources Authority may on the application of the water undertakers concerned—

Combination of
undertakings
and transfer
of undertakings

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

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

(2) Where it appears to the Member, after consultation with the Water Resources Authority, to be expedient for the purpose of securing a more efficient supply of water he may order such joint furnishing or such transfer

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

Limits of supply
may be varied

145. The Member, after consultation with the Water Resources Authority, may—

- (a) on the application of any water undertaker, by order, vary his limits of supply, but not so as to include any area which is within the limits of supply of any other water undertaker unless such other water undertaker is unable to meet the demands for water in his area,
- (b) on the application of two or more water undertakers, by order, vary by agreement any common boundary between their limits of supply

Compulsory
variation
of limits of
supply

146. (1) Where it appears to the Member, after consultation with the Water Resources Authority, that it is expedient to vary the limits of supply of any water undertaker and he is satisfied that such a variation cannot be secured under the provisions of section 145 of this Ordinance, he may make an order providing compulsorily for such variation

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

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

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

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

Water under-
taker may notify
ability to supply

148. Where a supplying water undertaker is by virtue of an order made under the provisions of section 147 of this Ordinance, supplying water to premises outside his limits of supply, any water undertaker within whose limits of supply such premises are situated may, in the absence of any agreement to the contrary, at any time, give not less than three months’ notice to such supplying water undertaker that he is able and intends to give a supply of water to such premises

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

Cessation of
rights of
supplying water
undertakers

149. When, after the expiration of a notice given under the provisions of section 148 of this Ordinance, the water undertaker giving the notice, commences to supply water to the premises covered by such notice, the supplying water undertaker shall, except for the purpose of recovering water rates or other charges or expenses lawfully recoverable by him, and of removing any pipes, plant or apparatus belonging to him, cease to have any rights or duties in respect of a supply to such premises

Provided that such supplying water undertaker shall not remove any pipes, plant or apparatus which he is required,

by the water undertaker giving notice to leave in position and any such pipes, plant or apparatus shall vest in the water undertaker giving such notice

5 **150.** The water undertaker giving notice shall pay to the supplying water undertaker such portion of any expenses reasonably incurred by him for the purpose of giving a supply to the premises referred to in such notice, and such sum in respect of any pipes plant or apparatus vested in the water undertaker giving the notice under the provisions of
10 section 148 of this Ordinance as may be agreed, or, in default of agreement, determined by the Member or by arbitration under the provisions of the Arbitration Ordinance

Reimbursement
of expenses

Cap 12

151. While a supplying water undertaker is by virtue of an order made under the provisions of section 147 of this
15 Ordinance, authorized to supply water outside his limits of supply, any regulations relating to his undertaking shall have effect as if the area specified in such order were within those limits

Effect of
regulations
on supplying
water under-
taker

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

Supply of water
in bulk by
agreement

Provided that subject to the provisions of Part IV of this Ordinance an agreement made under the provisions of this section shall require the approval of the Member and,
30 where a supply is to be given by a water undertaker, he shall withhold his approval if it appears to him that the giving of such supply would be likely to interfere with the supply of water for any purpose within the limits of supply of the water undertaker giving the water

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

Compulsory
supply of water
in bulk

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

Default powers
of Member

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

60 or the Member is of the opinion that an investigation should be made as to whether any water undertaker has failed in any

of such matters, he may, except where the water undertaker is the Council or Board of a Municipality, cause such matter to be inquired into in such manner as he shall determine

(2) If, after an inquiry has been held under the provisions of sub-section (1) of this section, and, after taking natural conditions into consideration, the Member is satisfied that there has been any such failure on the part of the water undertaker in question, he may, by order, declare him to be in default and direct him, for the purpose of remedying such default, to take such steps as the Member may, in such order, specify

Member may
transfer water
undertaking

155. If the water undertaker declared to be in default, by an order made under the provisions of sub-section (2) of section 154 of this Ordinance, fails to comply with any requirement thereof within the time specified for compliance with such requirement, the Member may make an order transferring to himself, or to any local or other authority, such functions of the water undertaker in default as he may think fit, and such order shall be effectual to transfer such functions accordingly

Member may
grant new
authority

156. Where any functions transferred to the Member under the provisions of section 155 of this Ordinance include the function of applying to the Member for any new authority or an extension of any existing authority, the Member may grant such authority as if application had been made therefor, and shall give all such notices and do all such things as would have been required to be given or done in connexion with such application, and the grant of such authority shall have effect with such necessary adaptations and modifications as the Member may determine

Expenses
incurred by
Member in dis-
charging
functions

157. Where the Member has transferred any function to himself under the provisions of section 155 of this Ordinance, any expenses incurred by him in discharging such function shall, in the first instance, be paid by him out of public funds but the amount of such expenses as certified by the Member shall be paid to him by the water undertaker in default, and shall be recoverable by the Member from the water undertaker in default as a debt

Expenses
incurred by
authority in
discharging
functions

158. Where any function is transferred under the provisions of section 155 of this Ordinance, to a local or other authority, the expenses incurred by such authority in discharging such function shall be a debt due from the water undertaker to such authority and shall be defrayed as part of the expenses of the undertaking of the water undertaker in default

Transfer of
property and
liabilities
of water
undertaker

159. An order made under the provisions of section 155 of this Ordinance, may provide for the transfer to the Member, or local or other authority, of such property and liabilities of the water undertaker in default, as, in the opinion of the Member, may be necessary or expedient, and when any such order is revoked the Member may, either by the revoking order or a subsequent order, make such provision as appears to him to be desirable with respect to any property or liabilities held by him or by the water undertaker for the purposes of the function transferred

Agreements as
to drainage, etc.,
of lands

160. (1) The Member, either directly or through a water undertaker, may, subject to the provisions of Part IV of this Ordinance, enter into an agreement with any person with respect to the execution and maintenance by any party to the agreement of such works as the Member, after consultation with the Water Resources Authority, considers necessary for the purpose of draining land, carrying out soil conservation

measures and for the control of vegetation or for more effectively collecting, conveying or preserving the purity and quantity of, water which the water undertaker is for the time being authorized to take

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

- 10 **161.** (1) If a water undertaker is of the opinion that a serious deficiency of water available for distribution exists or is threatened, such water undertaker may, for such period as he thinks necessary, prohibit or restrict, as respects the whole or any part of his limits of supply, the use of water supplied
15 by him for any purpose which such water undertaker may, from time to time, deem necessary

Power to prohibit or restrict use of water

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

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

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

Power to make regulations

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

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

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

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

- 50 Provided that nothing contained in this section or in section 163 of this Ordinance, shall be construed so as to authorize the Council or Board of any Municipality to make regulations in addition to any regulations which it is empowered to make under the provisions of the Municipalities Ordinance Cap 136

Regulations
for preventing
pollution of
water of water
undertakers

163. (1) If it appears to a water undertaker to be necessary for the purpose of protecting, against pollution any water, whether on the surface or underground, which belongs to him or which he is for the time being authorized to take, he may, with the approval of the Member, make regulations— 5

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

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

(2) Where an area has been defined by regulations under 10 the provisions of sub-section (1) of this section, the water undertaker may, by notice, require either the owner or the occupier of any land or premises within that area, to execute and keep in good repair such works as the water undertaker considers necessary for preventing pollution of such water and, 15 if such owner or occupier fails to comply with any such requirements, he shall be guilty of an offence and liable on conviction to the same penalties as if he had committed an offence against such regulations

Provided that any owner or occupier, who considers that 20 any such requirement is unreasonable may, within 30 days after service on him of notice of such requirement, appeal to the Member who may determine such appeal or, if he thinks fit, may refer it to arbitration under the provisions of the Arbitration Ordinance 25

Cap 22

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

(a) any curtailment of, or injury to his legal rights by 30 restrictions imposed by such regulations, and

(b) expenses incurred by him in complying with a requirement to construct and maintain any works which would not, but for the provisions of this section, lawfully have been required, otherwise than 35 upon payment of compensation, by the local authority, and any questions as to the amount of such compensation, if not mutually agreed upon, shall be decided by arbitration under the provisions of the Arbitration Ordinance 40

Cap 22

In this sub-section the expression "legal rights" includes a user of land in respect of which the Water Apportionment Board might have taken proceedings under the provisions of this Ordinance, or a local authority might have taken proceedings under any law relating to public health or under the by- 41 laws of such local authority, but has refrained from so doing

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

(a) he has not appealed to the Member against such re- 50 quirement and the time for appeal has expired, or

(b) his appeal has been dismissed or the requirement has been modified in consequence of his appeal and he has failed to comply with the requirement as so modified, 55

the water undertaker may, without prejudice to his right to take proceedings in respect of such failure, execute and keep in good repair the works specified in the requirement as originally made or as modified on appeal, and may recover expenses reasonably incurred by him in so doing from the person in 60 default, as a debt, except expenses incurred in respect of

works, the construction of which could not, but for the provisions of this section, lawfully have been required, otherwise than upon payment of compensation, by the local authority

- (5) Two or more water undertakers may combine for the purpose of making and enforcing regulations under the provisions of sub-section (1) of this section, and this section and sub-section (2) of section 165 of this Ordinance shall in any case have effect as if the references to a water undertaker were construed as references to those two or more water undertakers acting jointly

164. (1) It shall be the duty of any water undertaker by whom any regulations are made, under the provisions of section 162 or 163 of this Ordinance, to enforce such regulations and any water undertaker who fails so to do may be ordered by the Member to take such action to enforce such regulations as shall be specified in such order

Enforcement of
regulations

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

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

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

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

- (a) ascertaining whether there is or has been any contravention of any regulations,
- (b) in the case of any regulations made under the provisions of section 162 of this Ordinance, exercising any right conferred on the water undertaker by sub-section (3) of that section, or
- (c) in the case of any regulation made under the provisions of section 163 of this Ordinance—
 - (i) ascertaining whether or not circumstances exist which would justify the water undertaker making a requirement under the provisions of sub-section (2) of such section,
 - (ii) exercising any right, conferred on the water undertaker by sub-section (4) of such section to execute and maintain works,

and the provisions of section 173 of this Ordinance shall apply to any such right of entry

Power of Member to require the making of regulations, to make regulations in case of default and to revoke regulations

165. (1) The Member may, by order, require any water undertaker to make regulations under the provisions of section 162 or 163 of this Ordinance in relation to such matters as he may specify and, in the case of regulations made under section 163 he shall specify the area for which such regulations are to be made and if the water undertaker does not, within three months after such order, make, in relation to the matters specified, regulations satisfactory to the Member, he may himself make regulations with respect to such matters

(2) (a) If the Member considers that, due to changing circumstances, any regulation made by a water undertaker under the provisions of section 162 or 163 of this Ordinance has become unsatisfactory, he may, from time to time, order the water undertaker to revoke such regulation, and to make any such new regulation, as the Member considers necessary, and if the water undertaker does not, within three months after such order, comply therewith, the Member may himself revoke such regulation, and make any such new regulation, as he considers necessary

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

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

Polluting water used for human consumption an offence

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

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

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

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

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

(2) Any person duly authorized under the provisions of this Ordinance for the purpose may, on producing his authority, if so requested by the owner or occupier thereof, at all reasonable hours enter any land or premises for the purpose of ascertaining whether there is or has been any contravention

of the provisions of this section in relation to such source of water supply, and the provisions of section 173 of this Ordinance shall apply to such right of entry

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

Compulsory
acquisition
of land by water
undertakers

(2) When a water undertaker, or proposed water undertaker, proposes to apply for authority for the compulsory acquisition of land, under the provisions of this Ordinance, he shall give notice by advertisement of such intention, not more than ninety days and not less than sixty days before the date of the intended application to obtain such powers

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

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

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

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

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

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

168. (1) For the purposes of acquiring land under the provisions of section 167 of this Ordinance, there shall be deemed to be included amongst the purposes of a water undertaker, the purpose of protecting against pollution any water whether on the surface or underground which belongs to the water undertaker or which he is for the time being authorized to take.

Execution of
works for
protection of
water

(2) A water undertaker may, on any land belonging to him, or over or in which he has acquired any necessary easement or right, construct and maintain drains, sewers and other works for intercepting, treating, or disposing of any foul water arising or flowing upon such land, or for otherwise preventing water, which belongs to such water undertaker, or which he is for the time being authorized to take, from being polluted 5

Provided that, before constructing any such works, such water undertaker shall, if the proposed works will affect or be likely to affect any body of water in the catchment area in which such works are situated, obtain the consent of the Water Apportionment Board 10

(3) Any water undertaker proposing to construct any drain, sewer or other works for any purpose mentioned in sub-section (2) of this section, may, with the consent of the authority concerned, which may be given subject to such conditions as such authority thinks fit, carry the drain, sewer or other work under, across or along any road or road reserve, or public place, whether within or outside the limits of supply of such water undertaker 20

(4) Any consent required under the provisions of sub-section (3) of this section, shall not be unreasonably withheld nor shall any unreasonable condition be attached to such consent, and any question whether or not such consent is unreasonably withheld or whether any condition which such authority seeks to impose is unreasonable, shall be decided by the Member whose decision thereon shall be final 25

Member may
declare
catchment area
a protected area

169. Where the Member, after consultation with the Water Resources Authority, is satisfied that special measures are necessary for the protection of a catchment area from which the water supply of a water undertaker is obtained he may declare such area to be a protected area and may, by order, require, regulate or prohibit the doing within such area of any act, as he deems necessary for the protection of such area or for the protection of the water supply obtained therefrom 30 35

PART VI

GENERAL AND MISCELLANEOUS

Financial powers

170. The Member may expend for the purposes of this Ordinance, in such manner as he shall think fit, all moneys granted to him for those purposes, by the Legislative Council of the Colony 40

Application of
this Ordinance
to native areas

171. Notwithstanding anything contained in this Ordinance the powers conferred, and the duties and obligations imposed by this Ordinance shall, in any native area, be exercised subject to the provisions of the Native Lands Trust Ordinance 45

Cap 100

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

172. Where the Member proposes to exercise any right, power or duty in a native area or in any watershed which drains into such native area, and which, in his opinion, is likely to affect the interests of the Africans in such native area, no action shall be taken except with consent of the Chief Native Commissioner and, in the event of disagreement between the Member and the Chief Native Commissioner the matter shall be decided by the Governor in Council 50 55

Right of entry

173. (1) For the purpose and to the extent necessary for exercising the powers conferred or performing the duties imposed by this Ordinance, the Member, the Water Resources Authority, the Water Apportionment Board, the Regional Water Boards or other bodies or persons appointed for the purpose of this Ordinance may by themselves, or by persons 60

authorized in writing by them, enter upon any land or premises, at all reasonable times, with such persons, animals, vehicles, appliances and instruments, and do all such acts thereon, as are necessary for or incidental to the exercise
5 of the powers or the performance of such duties

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

10 (a) no such person shall enter any dwelling or enclosed yard attached to a dwelling except with the consent of the occupant thereof, or, if the occupant does not consent, until after giving 24 hours' notice in writing of an intention so to enter, and

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

Cap 22

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

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

Compensation to be decided by arbitration

Cap 22

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

Penalty for offence against this Ordinance

40 176. (1) Except where otherwise in this Ordinance provided, all penalties imposed by this Ordinance, or by any rules made thereunder, may be recovered, in any court of competent jurisdiction, by any person authorized in that behalf by the Member

Penalties may be recovered by authorized persons

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

For the purposes of this sub-section any person under contract with an occupier under the provisions of section 5 of the Resident Labourers Ordinance, and the members of the family of such person included in such contract, shall be
50 deemed to be persons in the employment of the occupier with whom such contract has been made

Cap 113

55 177. (1) Every penalty imposed upon any person by this Ordinance, or by any rule made thereunder, shall be without prejudice to the right to recover from such person—

Recovery of penalty does not prejudice right to take other proceedings.

(a) any sum for any damage sustained through his act or default, and

(b) the cost and expenses incurred in remedying such damage

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

No action against
Member, etc

178. No action shall lie against, or be maintained against, the Member, the Water Resources Authority, the Water Apportionment Board or a Regional Water Board for anything done in good faith in the performance or intended performance of any authority conferred or duty imposed under this Ordinance

Member, etc,
may institute
proceedings

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

Notices how
given

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

- (a) by delivery of the same personally to the person required to be served, or, if such person is absent or cannot be found,
- (b) by leaving the same at the usual or last known place of abode, in the Colony, of such person,
- (c) by post, addressed to the usual or last known place of abode, in the Colony, of such person, and
- (d) in the case of a notice required to be served on a local authority, or corporate body or company, by delivering the same to its clerk or secretary or by leaving the same at his office with some person employed there or by post addressed to such clerk or secretary at his office

Provided that—

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

Proof of orders

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

Power to exempt
from provisions
of Ordinance

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

Orders, etc, to
be in writing

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

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

Authentication
of documents

5 (a) on behalf of a board or local or other authority—

(i) by the clerk of such board, authority or local authority, or

10 (ii) by any officer of such board, authority or local authority, authorized by it in writing to sign documents of the particular kind or the particular document,

(b) on behalf of a water undertaker not being a local authority—

15 (i) by the clerk or secretary of the water undertaker, or

(ii) by any other officer of the water undertaker authorized by him in writing to sign documents of the particular kind or the particular document

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

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

Offence to fail
to comply with
order of
Member

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

Rules

40 (a) examinations, fees, registration and other matters pertaining to qualified engineers,

(b) units of water,

(c) charges for diversion, abstraction, storage and use of water and fees for services in connexion with water
45 rights and sanctions,

(d) drainage of lands,

(e) associations of operators,

(f) community, public and urban projects,

(g) controlling and measuring devices,
50 (h) action during drought,

(i) sanctions,

(j) sanctions in native areas,

(k) temporary works and diversions of water,

(l) documents and plans to be submitted by applicants
55 under the provisions of this Ordinance,

(m) forms to be used under the provisions of this Ordinance,

(n) inspection of works,

(o) priorities and relations between operators and municipal and other local authorities,
60

(p) easements,

(q) drainage and reclamation of swamps,

- (r) water power rights,
- (s) abandoned works,
- (t) appointments, powers and duties of water bailiffs,
- (u) investigation of water resources and establishment of water gauges and marks, 5
- (v) duties and matters pertaining to Regional Water Boards,
- (w) prescribing anything required to be prescribed under the provisions of this Ordinance,
- (x) protection of fish and fish food, and 10
- (y) generally for the better carrying out of the objects of this Ordinance

Such rules may provide for the imposition of a penalty for any contravention of any such rule, not exceeding one thousand shillings and in default of payment thereof, a term 15 of imprisonment not exceeding three months

(2) All rules made under the provisions of this section shall be laid before the Legislative Council, and if a resolution of such Legislative Council is passed within forty days of their being so laid, that such rules shall be revoked or amended in 20 accordance with such resolution, such rules shall thenceforth be deemed to be revoked or amended accordingly, but without prejudice to anything previously done thereunder

187. The Water Ordinance, 1929, is repealed.

Provided that any application made under such Ordinance 25 prior to the coming into operation of this Ordinance, shall be deemed to be an application under the provisions of this Ordinance

Repeal and
saving
No 35 of 1929

MEMORANDUM OF OBJECTS AND REASONS

This Bill, which will replace the Water Ordinance, 1929, will enable the water resources of the Colony to be investigated, developed and conserved, and will provide a more adequate control than at present exists over the use of water. Most of the powers conferred by the Bill will be exercisable only by, or on the advice of, or after consultation with, the Water Resources Authority, which will have strong unofficial representation.

It will be recalled that in April, 1949, a Water Bill was published with a view to its introduction into the Legislative Council. As, however, that Bill received considerable criticism, it was withdrawn. In this Bill every effort has been made to profit by the criticisms of the previous Bill and to give effect to such of the proposals for its amendment as, after examination, appear to be practicable and desirable.

The most important respects in which this Bill differs from the previous Bill are as follows —

- (a) The Member for Agriculture and Natural Resources will not have an unrestricted power to appoint the members of the Water Resources Authority, but will be required to appoint six unofficial and six official members.
- (b) In a number of cases the powers of the Member will only be exercisable on the advice of, or after consultation with, the Water Resources Authority.
- (c) The Water Apportionment Board is to be subordinate to the Water Resources Authority, to which Authority an appeal will, in certain cases, lie against decisions of the Water Apportionment Board.
- (d) The members of the Water Apportionment Board will include unofficial members nominated by Regional Water Boards.
- (e) There will be a right of appeal to the Water Appeal Board from any decisions of the Water Apportionment Board to cancel or vary a licence, and, if a question of law is involved a further right of appeal to the Supreme Court.
- (f) The provisions of the previous Bill relating to the giving of a bond before an injunction could be applied for, have been deleted.
- (g) A clause has been inserted providing for payment of compensation to the owner of any land upon which works have been constructed at the instance of the Member.
- (h) The provision whereby no officer of the Government was liable to an action at law for any act done by him or for any damage caused by any such act has been omitted from this Bill, and instead only the Member, the Water Resources Authority, the Water Apportionment Board and a Regional

Water Board are protected against action in respect of an act done in good faith in the performance or the intended performance of any authority conferred or duty imposed under the Bill

The Bill is divided into six Parts

Part I contains provisions relating to the short title, commencement and interpretation

Part II deals with the vesting of bodies of water and the right to the use of water, the duties of the Member, and the establishment and duties of the Water Resources Authority. The most important provisions of this Part are —

Clauses 3 and 4 These clauses vest the water of all bodies of water in the Crown and also vest the right to the use of every body of water in the Member. In vesting the right to the use of bodies of water in the Member *clause 4* expressly saves rights acquired prior to and existing at the commencement of the Ordinance

Clauses 6, 7, 8, 9 and 10 These clauses provide for the establishment and the powers and duties of the Water Resources Authority

Clauses 11 and 12 These clauses provide for the acquisition of land and the construction of works on land by the Member on the advice of the Water Resources Authority. *Clause 12* differs from the corresponding provision of the earlier Bill in that it provides for the payment of compensation to the owner of land upon which any works are constructed under the powers contained in the clause

Clause 21 This clause confers on the Member certain powers exercisable only during an emergency. The Member is enabled to declare that there is an emergency when, by reason of exceptional shortage of rain or of any accident or other unforeseen circumstances, a serious deficiency of water for essential domestic purposes exists.

Clause 22 This clause prohibits any person applying for an injunction to restrain any water bailiff or other authorized person from enforcing priorities conferred by or under the Ordinance or by or under the Water Ordinance, 1929. This clause differs from the corresponding provision in the earlier Bill in that it prohibits the remedy by way of injunction, but only prohibits it in relation to one matter, namely the enforcing of priorities. In relation to any other matter there is no restriction on applications for injunctions

Part III deals with local planning. *Clause 23* provides for the Colony to be divided into drainage areas by the Water Apportionment Board

Clauses 24 and 25 provide for the establishment and duties of Regional Water Boards. These Boards will be advisory to the Water Resources Authority and the Water Apportionment Board

Part IV deals with the apportionment of water and, for this purpose, establishes a Water Apportionment Board and specifies its powers and duties. It is expressly provided in *clause 26* that the Board shall be subordinate to the Water Resources Authority. The Board will have a strong unofficial membership appointed by the Member from a panel of names submitted by all Regional Water Boards

Clause 29 defines the purposes for which a water right or sanction for the use of water may be acquired

Clause 30 provides for the manner in which applications for water rights or sanctions shall be considered by the Water Apportionment Board and provides for an appeal to the Water Resources Authority against a decision of that Board

Clause 31 enables the Water Apportionment Board to exercise certain powers in relation to small watercourses and during a drought

Clause 35 provides for the reservation of unalienated Crown land, and the acquisition of alienated land, for state schemes. A state scheme is defined in *clause 2* of the Bill

Clauses 36, 37, 38, 39 and 40 classify and define projects for the use of water or for the drainage of land. These projects are classified as private, community, public and urban. *Clause 41* empowers the Water Apportionment Board to determine to which classification any particular project belongs

Clauses 42 to 48 contain provisions relating to the construction of wells within a specified distance of surface water and of any other well. *Clause 42* prohibits except under licence or sanction, the construction of a well within one hundred yards of a body of ground water and requires any person wishing to construct a well within one mile of another well to obtain the permission of the Water Apportionment Board. Provision is made, however, that the section will not apply to any well which does not exceed one hundred feet in depth, or where the water from a well is to be used only for any domestic purpose by any one landholder and the total quantity of water abstracted in any one day does not exceed five thousand gallons

Clause 58 prohibits the construction of a well within the limits of the supply of a water undertaker except with the consent of the Member

Except in an area which has been specially declared under *clause 68* to be a Conservation Area, these are the only restrictions in relation to the construction of wells

Clause 68 enables the Member, after consultation with the Water Resources Authority, if he is satisfied that in any area special measures for the conservation of ground water are necessary in the public interest to make a Conservation Area Order declaring that area to be a Conservation Area and thereafter the provisions of *clauses 69 and 70* will become applicable to that area *Clause 69* requires every person in the area who has been diverting or abstracting water to apply to the Water Apportionment Board for a licence or sanction so to do *Clause 70* restricts the construction or extension of wells

Clauses 73 to 82 deal with the manner of making an application to the Water Apportionment Board for a water right or sanction and the manner in which it is to be dealt with by the Board

Clause 89 provides for the precedence of licences conferring water rights

Clause 142 establishes a Water Appeal Board consisting of a Chairman to be appointed by the Governor on the advice of the Chief Justice, and two other persons This clause provides for an appeal to the Water Appeal Board against a decision of the Water Apportionment Board cancelling, revising or varying a licence granting a water right The clause further provides a right of appeal on a matter of law from the decision of the Water Appeal Board to the Supreme Court

Part V contains provisions dealing with water undertakers

Clause 143 provides for the appointment of water undertakers for the purpose of providing an adequate supply of water within any area *Clauses 145 and 146* provide for the variation of the limits of the supply of a water undertaker and *clause 147* enables the Member after consultation with the Water Resources Authority, to require a water undertaker to supply water to premises outside his area of supply

Clause 154 confers power upon the Member to cause inquiry into certain complaints against a water undertaker and if the complaint is found to be justified to require the undertaker to take any steps the Member may direct to remedy his default, and *clause 155* enables the Member, if an undertaker fails to comply with his direction, to transfer the undertaking to himself or to any local or other authority Any expenses incurred by the Member in the exercise of his powers under these clauses may be recovered from the defaulting undertaker (*clauses 157 and 158*)

Clause 162 enables a water undertaker with the approval of the Member to make regulations for preventing waste undue consumption misuse and contamination of water and for other matters affecting his supply

Clause 163 gives a similar power to an undertaker to make regulations to prevent pollution

Clause 165 empowers the Member to require a water undertaker to make regulations under *clauses 162 and 163* and if he does not comply with such a request by the Member, the Member may himself make such regulations

Clause 169 enables the Member, in consultation with the Water Resources Authority, if satisfied that special measures are necessary for the protection of any catchment area, to declare the area to be a protected area and, by order to require, regulate or prohibit the doing within the area of any act

Part VI contains general and miscellaneous provisions

Clause 171 requires that the powers conferred by the Ordinance shall, in the native areas, be exercised subject to the Native Lands Trust Ordinance and *clause 172* provides that when the Member proposes to exercise any rights or powers or to perform any duties in a native area which, in his opinion, are likely adversely to affect the interests of the Africans in that area no action shall be taken except with the consent of the Chief Native Commissioner and, in the event of a disagreement between the Chief Native Commissioner and the Member, the matter shall be decided by the Governor in Council

Clause 174 provides for the amount of any compensation or costs to be paid under the Ordinance to be determined by arbitration under the Arbitration Ordinance if the parties cannot agree

Clause 186 enables the Member, on the advice of the Water Resources Authority to make rules for carrying out the objects and purposes of the Ordinance Sub-clause (2) of the clause requires all rules to be laid before the Legislative Council and enables the Council within forty days of being so laid to pass a resolution that the rules be amended or revoked

It is not possible to estimate the expenditure of public moneys which will be incurred if the provisions of this Bill become law

Nairobi,
28th August, 1950

K K O'CONNOR,
Attorney General