

## CHAPTER 168.

## WATER CONTROL.

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## SECTION.

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## CHAPTER 168.

## WATER CONTROL.

19 of 1942.  
24 of 1945.

**An Ordinance relating to the Control and use of Natural Water Supplies.**

[1ST JANUARY, 1943.]

Short title.

1. This Ordinance may be cited as the Water Control Ordinance and shall apply to the Protectorate.

Interpretation.

2. In this Ordinance, unless the context otherwise requires—  
“approved scheme” means a scheme approved by the Governor in Council;

“a scheme” means a scheme prepared in accordance with the provisions of section 9;

“domestic purposes” means any purposes other than public, industrial or commercial purposes;

“natural water supply” includes all still, percolating and flowing water;

“water controlled area” means an area declared to be a water controlled area under section 3.

Power to declare a water controlled area.

3. Whenever the Governor in Council shall deem it expedient for the conservation or the better utilisation, distribution or disposal of any natural water supply existing or believed to exist in any area he may by order declare such area to be a water controlled area:

Provided that no order under this section shall be made in respect of any area covered by water habitually used by natives for sacred purposes except with the prior consent of the Tribal Authority having jurisdiction therein.

Extinguishment of rights in water controlled area.

4. With effect from the date of publication of an order declaring a specified area to be a water controlled area, all natural water supplies within such area shall become the property of the Government and the control thereof shall vest in the Governor subject to the provisions of this Ordinance:

Provided that, subject to the provisions of this Ordinance, every person shall have the right to use for domestic purposes any water flowing from or contained in any natural water supply at any place to which access may lawfully be had.

5. (1) Except in exercise of the right to use water for domestic purposes as provided in section 4, no person shall within any water controlled area do any act which shall have the effect of increasing, diminishing, diverting or interfering with any natural water supply in such area or shall utilise such natural water supply in any manner contrary to the provisions of this Ordinance except under and in accordance with a licence granted by the Governor, or if a Water Board has been established for such area, by such Water Board:

Works in  
controlled  
area  
prohibited  
without  
licence.

Provided that, pending the coming into operation of an approved scheme in the area concerned nothing in this section shall be deemed to require any person to obtain a licence for the use of any natural water supply in the same manner and to the same extent as such water supply was being used by such person at the date the area was declared a water controlled area.

(2) The Governor or, where a Water Board has been established for the area, the Water Board may grant such licence subject to such conditions as he or it may specify thereon.

(3) Any person who by himself, his agent or servant wilfully or negligently contravenes the provisions of this section or fails to comply with the terms of any licence issued thereunder shall on summary conviction be liable to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months.

6. (1) Where an area has been declared to be a water controlled area the Governor may from time to time by notice in the *Gazette* appoint such persons as he shall think fit, not being less than three in number, to be the Water Board for that area and shall appoint one of such persons to be Chairman of the Board. Every Water Board shall have jurisdiction for the purposes of this Ordinance within the area for which it was appointed.

Power to  
appoint  
Water  
Boards.

(2) A Water Board shall be deemed to be properly constituted for the exercise of its powers and performance of its duties under this Ordinance whenever not less than three members are present at any meeting thereof.

(3) The decision of the majority of the members of the Water Board present at a meeting shall be the decision of the Board and the Chairman shall have both an original and a casting vote.

Water Board  
may be  
appointed for  
one or more  
areas.

7. Any Water Board established under this Ordinance may be appointed to be the Water Board for any water controlled area or areas in addition to the area for which it was established.

Appointment  
of Irrigation  
and  
Drainage  
Officers.

8. (1) The Governor may appoint such persons as he thinks fit to be Irrigation and Drainage Officers for the purposes of this Ordinance.

(2) An Irrigation and Drainage Officer may be appointed to be in charge of one or more water controlled areas and when so appointed shall give effect to any instructions issued to him in connection with such area or areas by the Water Board established therefor.

Preparation  
of scheme.

9. (1) Where an area has been declared to be a water controlled area, the Governor may direct the Water Board established for that area to prepare a scheme for the conservation, utilisation, distribution or disposal of all or any of the natural water supplies therein.

(2) Any such scheme shall contain—

(i) a description of the natural water supplies which it is proposed to safeguard or control;

(ii) a statement of the nature and extent of the control which it is proposed should be exercised over such natural water supplies and the purpose of such control;

(iii) a description, together with such plans as may be necessary, of the principal works and apparatus it is proposed to construct and erect for the purposes of such control and the probable effects of such works and apparatus;

(iv) adequate provision for sufficient supplies of water for all lawful purposes which are not in conflict with the scheme, to all persons affected by the scheme;

(v) estimates of the total capital cost and cost of maintenance of all such works and apparatus together with recommendations as to the sources from which such capital cost and cost of maintenance should be provided, namely, whether wholly or partly from public funds or from the funds of some private body or individual or from the proceeds of any rates or charges which it is proposed should be levied in connection with the scheme;

(vi) where it is recommended that any part of the capital cost or cost of maintenance of any works or apparatus should be provided from the funds of any private body or individual, a statement of any benefits that are expected to accrue under

the scheme to such body or individual and any other reasons for the recommendation; and

(vii) where it is recommended that the whole or any part of the capital cost or cost of maintenance of any works or apparatus should be provided from the proceeds of rates or charges levied in connection with the scheme, a statement of the amount of the rates or charges proposed, upon what basis they shall be levied and the amount of revenue expected to be derived therefrom.

(3) Any person authorised in writing by the Chairman of a Water Board for any water controlled area may at any time after giving reasonable notice in writing where practicable to the owner or person in possession thereof and after producing to such owner or person his written authority enter upon any land within such area for the purpose of making surveys and obtaining any information required in connection with the preparation of a scheme. Such person after having given reasonable notice in writing to all persons who appear to be likely to be affected thereby may do such work and erect such apparatus within the area as may be necessary to achieve such purposes:

Provided that when the achievement of the aforesaid purposes causes damage to any standing crops, or to any fence, wall or structure or interference with any agricultural operation, the Water Board shall award reasonable compensation for such damage.

10. (1) When a scheme has been prepared for any water controlled area copies certified by the Chairman of the Water Board which prepared the scheme shall be deposited at the office of the Minister, the office of the Commissioner of the Province in which such area is situated and at such other places as may be named by the Governor.

Copies of  
scheme to  
be deposited.

(2) Notice that copies of the scheme have been so deposited at such offices and places and are open for inspection shall be published in the *Gazette* and in such other manner as the Governor may direct.

(3) Each copy of the scheme so deposited shall remain open for the inspection of every person desiring to examine it on every day not being a Sunday or public holiday during office hours for such period, not being less than one month, after the date of the first publication of the notice as may be fixed by the Governor.

(4) Where any scheme is in respect of an area occupied by natives, the scheme shall be explained by the Chairman of the Board or such person as may be authorised by him to the Chiefs or Tribal Authority having jurisdiction in such area at the first convenient opportunity.

(5) Any person whose lands are situated within the water controlled area affected by the scheme or who considers that his property or interest in or other rights in respect of any land or water, whether such land or water is situated within or outside of such area, would be injured by the carrying out of the scheme, may, within the period fixed by the Governor as aforesaid, lodge with the Chairman of the Water Board appointed for such area his objections in writing to the scheme and may state in writing the nature and extent of the damage he considers he would suffer if the scheme were carried out, furnishing full particulars of the estimated amount of such damage.

(6) After the expiration of the period fixed by the Governor as aforesaid the Water Board appointed for the area for which the scheme has been prepared shall examine any objections to the scheme which have been submitted and if it considers that any modification of the scheme is desirable it shall cause notification of the proposed modification to be given to all persons who appear to the Board to be affected or likely to be affected thereby requiring each such person if he wishes to object to the proposed modification, to lodge an objection with the Chairman within a period to be stated in the notice, not being less than seven days. Should further objections be received and the Board consider that further modification is desirable it shall in like manner give notice of such proposed further modification to the persons who appear to the Board to be affected thereby and after considering all objections by any person to the scheme and to any proposed modification thereof and any evidence such person may wish to produce in support of such objections the Board shall settle the scheme in such form as it may deem just and necessary for the purposes of this Ordinance.

Scheme when settled to be submitted to Governor in Council.

11. Where a scheme has been settled by a Water Board as hereinbefore provided the Chairman shall submit the scheme together with all objections thereto, all statements of estimated damage and any evidence taken by the Board in respect of such objections or damage to the Governor in Council.

Governor in Council may approve or reject scheme.

12. (1) The Governor in Council may approve a scheme submitted under section 11 or reject it or approve it with such conditions and modifications as he may think fit.

(2) The approval or rejection of any scheme or its approval subject to conditions or modifications shall be notified in the *Gazette* and if approved it shall be laid before the House of Representatives at the next meeting thereof.

(3) Notification under sub-section (2) of the approval or rejection of any scheme shall be conclusive evidence that such scheme has been duly prepared and approved or rejected as the case may be.

13. A scheme may be varied amended or revoked by a subsequent scheme prepared and approved in accordance with the provisions of this Ordinance and the Governor in Council on the application of a Water Board may by order revoke a scheme in whole or in part if he deems it is expedient so to do.

Variation or revocation of a scheme.

14. Immediately a scheme has been approved by the Governor in Council for any area any person authorised in writing by the Chairman of a Water Board or expressly or impliedly authorised by an order of the Water Board may after giving reasonable notice in writing to the owner or person in possession enter upon any lands in such area and construct any works and erect such apparatus as the Board may consider necessary or expedient for carrying out any of the purposes of the scheme.

Power to enter on lands.

15. (1) A Water Board, as respects the area within its jurisdiction may for the purpose of giving effect to any approved scheme, make orders—

Powers of Water Boards.

(a) prohibiting, restricting, or regulating the diversion, taking, storage, pollution, distribution, and use of water from any natural water supply, whether on public land or private land, and the distribution of any available water among persons, whether legally entitled thereto or not, according to their requirements and in such manner as the Board in each case thinks just;

(b) prohibiting, restricting, or regulating the construction, maintenance, and use of irrigation and drainage works of every description or works of any description in connection with the diversion, storage, pollution, use, or distribution of water, whether on public or private land;

(c) empowering any person to construct, maintain, and use irrigation and drainage works or any such works as aforesaid on his own land or on public land, or on the land of another person subject to the payment of compensation for any damage done thereby and on such conditions as to payment of rent or otherwise as the Board thinks just;

(d) empowering any person to use irrigation and drainage works or any such works as aforesaid in common with the owner subject to payment of such contribution towards the cost of construction and maintenance and on such terms and conditions as the Board may think just;

(e) requiring any person subject to such conditions as may be specified, to construct any works or erect any apparatus or maintain any works or apparatus or do any acts which are required to be constructed, erected, maintained or done to give effect to an approved scheme;

(f) requiring any person to pay to the Board any costs incurred by the Board by reason of his default in carrying out any obligations imposed on him under an approved scheme;

(g) as to any other matter or thing, whether similar to those before enumerated or not, in connection with the supply, conservation, utilisation, distribution or disposal of water:

Provided that nothing in this section shall be deemed to empower a Water Board to impose any general charge or rate in connection with a scheme notwithstanding that the imposition of such charge or rate is recommended in such scheme as approved.

(2) Unless otherwise expressly provided in any scheme the purposes of every scheme shall be deemed to include the renewal and maintenance of all works and apparatus constructed or erected in accordance with the provisions of the scheme, the alteration of any such works or apparatus within the terms of the scheme and the control and distribution of all water affected by the scheme notwithstanding that the scheme has been otherwise completed.

(3) As far as practicable, the Board shall, by public notice or otherwise, give all persons who appear to the Board to be likely to be concerned notice of a proposed order and an opportunity of being heard before an order is made.

(4) If, in the opinion of the Chairman of a Water Board, any order of the Board will cause an injustice to any person or be prejudicial to the public interest, he may suspend the operation of the order with a view to obtaining the directions of the Governor who may, if he thinks fit, disallow the order.

(5) Any person who by himself, his agent or servant wilfully or negligently commits a breach of or fails to comply with the terms of any order made under this section and binding on him



shall on summary conviction be liable to a fine not exceeding fifty pounds.

16. An order under section 15 shall be binding on all persons on whom it is served or in the case of natives, to whom the substance is communicated verbally or in writing:

When order binding.

Provided that any order under section 15 which is published in the *Gazette* shall be binding on all persons concerned other than natives whether notice of the order is served on them or not:

And provided further that any person who is affected by any order made under section 15 may within twenty eight days after the date of the order appeal to the Supreme Court and the Court—

(a) if it is of opinion that the order is in any respect one which the Board was not competent to make shall quash the order, and

(b) if it is of opinion that the Board was competent to make the order, but the order directs the payment of a sum of money by any person by way of costs, contribution towards costs, or rent, may quash, vary or confirm any such direction, but in any other case shall confirm the order.

17. Where any approved scheme provides that any person shall construct any works, erect any apparatus, maintain any works or apparatus or do any act and such person fails to give effect to such provisions of the scheme within such period and in such manner as may be ordered by the Board, the Board may itself carry out such provisions and recover from the person in default the cost thereof not exceeding the estimated cost as set out in the approved scheme.

Board to carry out construction under scheme and may recover from person in default.

18. (1) Any person who is of opinion that his property or interests will be injuriously affected by the carrying out of a scheme, may within one month after the date of publication in the *Gazette* of notification that such scheme has been approved or at any time before the date on which the carrying out of the scheme is commenced, whichever is the later, apply to the Water Board for the area covered by the scheme for payment of compensation for such apprehended injury.

Application for compensation for apprehended injury.

(2) Where any person whose property or interests appear to the Board to be likely to be affected by the carrying out of any scheme does not within the prescribed period apply to the Board for payment of compensation the Board may call upon such person to submit, within a specified period not being less

Power to call for statement of apprehended injury.

than one month, a statement of the manner in which he apprehends the carrying out of the scheme will affect his property or interests. Every such statement in which damage is shown to be apprehended shall be deemed to be an application for payment of compensation under sub-section (1) of this section.

(3) Any person who, when called upon to submit a statement in accordance with the preceding sub-section, without reasonable excuse omits or refuses to do so within the period specified by the Board shall forfeit all rights to compensation for any injury suffered by him in consequence of the carrying out of such scheme.

Application  
for compensa-  
tion for  
actual injury.

19. (1) Any person who is of opinion that his property or interests have been injuriously affected by the carrying out of a scheme may apply to the Water Board appointed for the area covered by the scheme for payment of compensation therefor.

(2) No person shall bring any action in any court for compensation for any damage suffered in consequence of any act committed for the purpose of carrying out an approved scheme.

Manner of  
submitting  
applications  
for com-  
pensation.

20. (1) Every application to a Water Board for compensation shall be submitted either personally or in writing to the District Commissioner of the district in which the property the subject of the application is situated and shall give particulars of the amount of compensation claimed and the grounds upon which the claim is based. The District Commissioner shall forward the application or a statement of the particulars furnished personally, as the case may be, to the Water Board.

(2) Every Water Board shall forward particulars of all applications for compensation to the Minister who may intimate to the Board that Government wishes to be heard on matters relating to the application before any award is made.

(3) The Board shall consider any application made to it and if the Minister has intimated that Government wishes to be heard or if the applicant desires to be heard in support of his claim the Board shall fix a day for hearing the application and shall give notice thereof to the Minister and to the applicant. If the Minister does not, within twenty-eight days of receipt of particulars of the application, intimate that Government wishes to be heard the Board may if it considers the amount claimed to be fair and reasonable make an award of such amount without hearing the applicant.

(4) At the hearing of an application for compensation the Board shall hear all parties thereto who appear before it and any representations made on behalf of Government and take such evidence as may be produced and shall make an award of such amount, if any, as it considers equitable as compensation for any injury which has been or is likely to be caused by the carrying out of the scheme:

Provided that where the application is in respect of an apprehended injury the Board may if it considers such a course necessary adjourn the proceedings until the nature and extent of the injury can be determined.

(5) Any award of compensation made by a Water Board under this Ordinance shall be paid out of the public revenue or such other funds as may be set aside for the purpose by direction of the Governor.

**21.** A Water Board when determining the amount of compensation payable to any person under this Ordinance—

Matters which may and may not be considered in assessing compensation.

(i) shall not award any compensation for any works or apparatus which have been constructed or erected or other act done in contravention of section 5, and

(ii) may take into consideration for the purpose of reducing the award the value of any benefits which in the Board's opinion have accrued or are likely to accrue under the scheme to the person entitled to compensation.

**22.** Any person aggrieved by an award of compensation made by a Board under this Ordinance or a refusal to make an award may within twenty-eight days of the date of the award or refusal, as the case may be, appeal to the Supreme Court.

Right of appeal to Supreme Court.

**23.** Any person who—

Offences.

(i) wilfully obstructs any duly authorised person in carrying out any order of a Water Board or in entering upon any lands, or

(ii) wilfully blocks up or obstructs or causes to be in any way blocked up or obstructed any channel, water course, works or apparatus used constructed or erected for the purposes of any scheme, or

(iii) wilfully cuts, damages or otherwise interferes with any bank or side or other part of any works constructed or in course of construction for use in connection with any scheme, or

(iv) wilfully causes waste of water conserved for the purposes of any scheme, or

(v) wilfully and wrongfully draws off or converts to his own use any such water, or

(vi) negligently allows any animal to stray upon the banks or sides of any irrigation or drainage works used or constructed for the purposes of any scheme, or

(vii) without previous permission in writing given by the Water Board or its authorised officer shall drive, draw, or push, or cause to be driven drawn or pushed any vehicle along the banks or sides of or shall use or cause to be used any boat, vessel, raft or float or cause to be floated any wood or other material on any canal or drain used or constructed for the purposes of any scheme,

shall, on summary conviction, be liable to a fine not exceeding twenty pounds or to imprisonment with or without hard labour for a period not exceeding three months, or on conviction on information by the Supreme Court in the Protectorate to a fine not exceeding five hundred pounds or to imprisonment with or without hard labour for a period not exceeding three years.

Institution of proceedings.

**24.** Any proceedings under this Ordinance may be instituted and conducted by any person authorised in writing by the Chairman of the Board for the area concerned.

Courts before which charges may be brought.

**25.** (1) Proceedings in respect of offences against the provisions of this Ordinance may at the instance of any person authorised by a Water Board be taken either before the Magistrate's Court established in the area in which the offence was committed, or before the Native Court having jurisdiction as hereinafter provided.

Native Courts jurisdiction. Cap. 8.

(2) Notwithstanding anything contained in section 7 of the Native Courts Ordinance, a Native Court established under that Ordinance shall have jurisdiction within the area for which it is established to hear and determine any charge which is made by any person authorised by a Water Board and relates to any offence committed against the provisions of this Ordinance by any person subject to its jurisdiction.

Delegation of powers to Irrigation and Drainage Officer.

**26.** (1) A Water Board may, if it thinks fit, by instrument in writing, delegate to an Irrigation and Drainage Officer all or any of the powers conferred upon a Board by paragraphs (e) and (f) of section 15 (1).

(2) All orders issued by an Irrigation and Drainage Officer under powers delegated to him by a Water Board shall be reported to the delegating Water Board and be subject to disallowance by the Board, but unless disallowed, such orders shall be valid and effectual and deemed for all purposes to be the orders of such Board.

(3) Where any order by an Irrigation and Drainage Officer is disallowed by a Water Board, the Board shall award reasonable compensation to any person whose property or interests appear to have suffered damage in consequence of such order.

27. (1) A Water Board may, if it thinks fit, from time to time, by instrument in writing delegate to any Tribal Authority as defined by the Tribal Authorities Ordinance, all or any of the powers conferred on a Board by section 15 (1) and section 17 as respects any water supply exclusively or chiefly used by natives:

Delegation  
of powers to  
native  
authority.  
Cap. 61.

Provided that such delegated power shall only be exercisable as regards natives and the property of natives, and an order or decision of a Tribal Authority under such delegated power shall not be binding on or in any manner affect any non-native.

(2) An instrument of delegation under this section may impose any limitations and conditions on the exercise of any delegated power, and may be revoked or varied at any time.

(3) Every Tribal Authority in exercising any such delegated power shall obey any directions, whether general or special, which may from time to time be given to them by the delegating Board.

(4) Subject to the provisions of the instrument of delegation, an order by a Tribal Authority shall be binding on any native to whom it is communicated verbally or in writing, and an order which is approved by the delegating Board and is published in such manner as is customary for the publication of notices affecting native communities shall be binding on all natives within the jurisdiction of the Tribal Authority issuing the order.

(5) Every order which has not been approved by the delegating Board and every decision of a Tribal Authority under such delegated power shall be subject to appeal to the delegating Board which may on such an appeal or of its own motion without an appeal revoke or vary such order or decision.

(6) Any person aggrieved by an order of the delegating Board approving, confirming, rescinding, or varying an order or decision of a Tribal Authority under this section may within

twenty-eight days of the date of the order of the delegating Board appeal to the Supreme Court. Any such appeal shall be deemed to be an appeal under section 16.

(7) Any native who without reasonable excuse fails to comply with any lawful order of a Tribal Authority given under such a delegated power shall be liable to a fine not exceeding ten pounds.

(8) Nothing in this section or in any instrument of delegation shall prevent any Board from itself exercising any power conferred on it by this Ordinance.

Power to Board to call and examine persons.

**28.** (1) A Water Board may for the purposes of this Ordinance call such persons as it may consider necessary before the Board and examine them in connection with any matters related to a scheme. The Chairman of a Water Board shall have the powers of a Magistrate in regard to the administration of oaths, the issue of process and enforcing the attendance of persons before the Board.

(2) Any order of a Water Board requiring a person to pay a sum of money in connection with a scheme shall be enforceable in the same manner as an order of a Magistrate's Court for payment of money.

Procedure on appeals to Supreme Court.

**29.** (1) Every appeal to the Supreme Court under this Ordinance shall be by petition stating the facts and grounds of appeal, and a copy of the petition shall be served on the Board concerned.

(2) Except as otherwise provided by section 16 the Supreme Court may affirm, reverse, or vary the order or decision appealed against in such manner as it thinks just.

(3) The Supreme Court may extend the time for appealing under this Ordinance notwithstanding that the time for appealing has already elapsed.

Power to make rules.

**30.** (1) The Governor in Council may make rules for the following purposes—

(a) regulating the procedure of Boards, and requiring returns and reports;

(b) prescribing the principles to be followed by Boards in the exercise of their powers;

(c) placing restrictions or limitations on the exercise of the powers of Boards;



(d) imposing fees to be collected by the Board, in respect of licences or any other matter or thing, and providing for the disposal of such fees;

(e) imposing rates and charges on the owners of lands within any water controlled area or on any persons using water within such an area in accordance with or irrespective of any recommendation contained in any approved scheme;

(f) prescribing the manner in which such rates and charges shall be collected and providing penalties for non-payment thereof;

(g) constituting a central Board for the purpose of advising and assisting Boards in the performance of their duties, of settling disputes between Boards, and of regulating the amount of water which may be taken by any Board from any source of water supply; and

(h) generally for carrying out the purposes of this Ordinance.

(2) No rules made under this section for the purpose of imposing rates on the owners of land or for the use of water shall come into force before they have been approved by the House of Representatives. The House of Representatives may amend any such rules or may substitute other rules therefor. Rules so amended or substituted shall be deemed to be made by the Governor in Council, and to have been approved by the House of Representatives.

(3) Subject to any rules made under this section, each Water Board may regulate its own procedure.

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