

THE UNDERGROUND WATER CONTROL ACT

ARRANGEMENT OF SECTIONS

1. Short title.
2. Interpretation.
3. Establishment and incorporation of Underground Water Authority.
4. Duties of the Authority.
5. Powers of inspection.
6. Power of Authority to require records and information.
7. Delegation.
8. Facilities for obtaining information as to underground water.
9. Declaration of critical area.
10. This Act to prevail in critical area.
11. Control of well digging in critical area.
12. Control of abstraction in critical area.
13. Regulations with respect to licences.
14. Publication of licences.
15. Appeal to Minister from decision of Authority.
16. Accounts and audit and estimates.
17. Annual report.
18. Power of Minister to require returns.
19. Power of Minister to issue general directions in matters of policy.
20. Offences.
21. Application of Act to Crown.

SCHEDULE

THE UNDERGROUND WATER CONTROL ACT

Law
57 of 1959.
Act
42 of 1969
3rd Sch.

[3rd April, 1962.]

1. This Act may be cited as the Underground Water Control Act. Short title.

2.—(1) In this Act—

Interpreta-
tion.

“the Authority” means the Underground Water Authority established pursuant to section 3;

“critical area” means any area defined and declared to be a critical area pursuant to section 9;

“enactment” means any law and any regulations or schemes made thereunder;

“house” means a dwelling-house, whether a private dwelling-house or not, and includes any part of a building if that part is occupied as a separate dwelling-house;

“supply of water for domestic purposes” means a sufficient supply for drinking, washing, cooking and sanitary purposes; and includes—

(a) a supply for the purposes of a profession carried on in any premises the greater part whereof is used as a house; and

(b) where the water is drawn from a tap inside a house and no hosepipe or similar apparatus is used, a supply for watering a garden, for horses kept for private use and for washing vehicles so kept:

UNDERGROUND WATER CONTROL

Provided that it does not include a supply of water for the business of a laundry or a business of preparing food or beverages for consumption otherwise than on the premises;

“underground water” means any water under the surface of the ground whatever may be the geological structure in which it is standing or moving.

(2) References in this Act to the construction or extension of any well, borehole or other work, for the purpose of abstracting underground water shall be deemed to include references to the installation or modification of machinery or other apparatus for the purpose of abstracting additional quantities of such water.

Establishment and incorporation of Underground Water Authority.

3.—(1) There is hereby established a body to be called the Underground Water Authority which shall be a body corporate with perpetual succession and a common seal and with power to acquire, hold and dispose of property, to enter into contracts, to sue and be sued in its said name and to do all things necessary for the purposes of this Act.

Schedule.

(2) The provisions of the Schedule shall have effect as to the constitution, operations and expenses of the Authority and otherwise in relation thereto.

(3) The seal of the Authority shall be authenticated in the manner prescribed in the Schedule and shall be judicially and officially noticed.

Duties of the Authority.

4. It shall be the duty of the Authority to promote the conservation and proper use of underground water resources and to control the exploitation of such water resources, and without prejudice to the generality of the foregoing provisions, the Authority shall obtain and compile data on hydrological information in relation to all wells, boreholes or other works whether constructed for the purposes of abstracting underground water or not.

5. For the purpose of carrying out its duties under section 4 the Authority may undertake the inspection of all wells, boreholes or other works in which the Authority believes that water has been or is likely to be struck.

Powers of inspection.

6.—(1) The Authority with the approval of the Minister may make regulations requiring any class of persons to keep such records and furnish such returns as to the quantity and quality of water abstracted by them from any source or struck in the course of sinking any well, borehole or other work whether for the purpose of abstracting water or not, and as to such other matters relating to the source as may be described by the regulations:

Power of Authority to require records and information.

Provided that—

- (a) the regulations shall not apply in a case where a supply of water is abstracted by an individual for the domestic purposes of his household only;
- (b) in a case where the Authority is satisfied that in all the circumstances compliance with any requirement of the regulations is impracticable or undue expense would be thereby incurred, it may direct that that requirement need not be complied with.

(2) Where pursuant to such regulations the Authority requires records to be kept or returns to be made, any person authorized in that behalf in writing by the Authority may, for the purpose of making any enquiries or inspections necessary to ensure compliance with such regulations, at all reasonable times enter any premises to which such regulations apply.

(3) A person entering any premises pursuant to subsection (2) shall produce to any person on the premises reasonably requiring him so to do the written authority of the Authority for him so to enter.

(4) Notwithstanding the provisions of section 29 of the Interpretation Act, regulations made under this section may prescribe greater penalties than those specified in the said section 29, so, however, that the maximum penalty that may be imposed by any such regulations shall be a fine of two hundred dollars or imprisonment with or without hard labour for a term of twelve months.

42/1969
3rd Sch.

(5) All regulations made under this section shall be subject to negative resolution.

Delegation.

7. Where powers are conferred or duties imposed by or under this Act on the Authority, such powers (other than a power to make regulations) may be exercised or such duties discharged by or through any servant or agent of the Authority authorized in that behalf by the Authority, but the Authority shall not thereby be divested of the responsibility for exercising such powers or discharging such duties.

Facilities
for
obtaining
informa-
tion as to
under-
ground
water.

8.—(1) Any person who proposes to sink, for the purpose of searching for or abstracting water, a well or borehole intended to reach a depth of more than fifty feet below the surface shall, before he begins to do so, give to the Authority notice in writing of his intention to do so, and shall upon the commencement of such work keep a journal of the progress of the work, which shall include measurements of the strata passed through and of the levels at which water is struck and subsequently rests, and shall when so required by the Authority keep specimens of the material excavated from the well or borehole, and shall allow any person authorized in writing by the Authority for the purpose at all reasonable times—

- (a) to have free access to any such well or borehole;
- (b) to inspect the well or borehole and the material excavated therefrom;

- (c) to take specimens of such material and of water abstracted from the well or borehole; and
- (d) to inspect and take copies of or extracts from the journal required to be kept under this subsection.

(2) The person sinking any such well or borehole shall, within thirty days after completion or abandonment of the work, send a complete copy of the journal kept under subsection (1) to the Authority and shall also send to the Authority particulars of any test made, before such completion or abandonment, of the flow of water, specifying the rate of flow throughout the test and the duration of the test and also where practicable specifying the water levels during the test and thereafter until the water has returned to its natural level.

(3) Where any such well or borehole is sunk in connection with an existing pumping station, the particulars of any test to be supplied to the said Authority shall also include the rate of pumping at the existing works during the test.

(4) Where the person sinking a well or borehole on any land is not the occupier of the land, the obligation to allow a person authorized by the said Authority to exercise the rights specified in paragraphs (a) to (d) of subsection (1) shall be the obligation of the occupier as well as of the person sinking the well or borehole.

(5) Where any person contracts to sink any well or borehole on land belonging to or occupied by any other person, and the execution of the work is under the control of the contractor, the contractor and no other person shall be deemed for the purposes of this section to be the person sinking the well or borehole.

(6) Any person who fails to comply with any obligation imposed on him by the foregoing provisions of this section shall be guilty of an offence against this Act.

Declaration
of critical
area.

9.—(1) Where the Minister is satisfied that special measures for the conservation of underground water in any area are necessary in the public interest, whether for the protection of public water supplies or for the protection of water supplies used for industrial or other purposes, he may make an order defining the area in question, and declaring the area to be a critical area.

(2) Every order made by the Minister under subsection (1) shall be laid upon the respective Tables of both Houses of Parliament and shall come into operation on being approved by resolution of the Houses, respectively.

This Act to
prevail in
critical
area.

10. During the continuance in force of an order made under section 9, in the critical area to which that order relates—

- (a) the controls and restrictions imposed by or under this Act shall have effect notwithstanding the provisions of any other enactment; and
- (b) an order made under section 3 of the Irrigation Act shall for the purposes of Part V of that Act cease to have effect.

Control of
well digging
in critical
area.

11.—(1) Subject to the provisions of this section no person shall in a critical area begin to—

- (a) construct any well, borehole or other work for the purpose of abstracting underground water; or
- (b) extend any existing well, borehole or other work for the purpose of abstracting additional quantities of underground water,

unless he has obtained, in accordance with regulations made under this Act, a licence from the Authority.

(2) No licence shall be required under subsection (1) in respect of the carrying out of any experimental boring or other work for the purpose of ascertaining the presence of underground water or the quality or quantity of such

water, if the work is carried out with the consent of the Authority and in accordance with any conditions subject to which that consent is given, by a person who has applied for a licence under that subsection.

(3) Subsection (1) shall not apply to—

- (a) the construction or extension of any well, borehole or other work by any individual for the purpose of abstracting underground water solely and to the extent necessary for a supply of water for the domestic purposes of his household;
- (b) any experimental boring required in connection with any such construction or extension as is referred to in paragraph (a).

(4) Before any person begins to construct in a critical area any new boring for the purpose of searching for or extracting minerals, he shall give notice of his intention in the prescribed form to the Authority, and shall take such measures as may be required by the Authority for conserving water, being measures which in the opinion of the Authority will not interfere with the winning of minerals.

(5) Any person who contravenes any of the foregoing provisions of this section or any requirement imposed thereunder or any condition attached to a licence granted for the purposes of subsection (1) shall be guilty of an offence against this Act.

12.—(1) No person shall in a critical area abstract underground water from—

- (a) any well, borehole or other work constructed or extended in contravention of subsection (1) of section 11;
- (b) any well, borehole or other work the construction or extension of which was made lawful by para-

Control of
abstraction
in critical
area.

UNDERGROUND WATER CONTROL

graph (a) or paragraph (b) of subsection (3) of section 11, except for the purpose for which it was constructed or extended; or

(c) any boring or other work constructed or extended while the order is in force for any purpose other than the abstraction of underground water, unless he has obtained, in accordance with regulations made under this Act, a licence from the Authority.

(2) The Authority may from time to time by notice published in the *Gazette* and in a daily newspaper circulating in Jamaica prohibit or restrict the abstraction of water from any well, borehole or other work in a critical area for such period as may be specified in the notice.

(3) A notice under subsection (2) shall be deemed to be served on the date of its publication in the *Gazette* or in the daily newspaper, whichever is later.

(4) No person shall in a critical area—

(a) cause or allow any underground water to run to waste from any well, borehole or other work except for the purpose of testing the extent or quality of the supply or cleaning, sterilizing, examining or repairing the well, borehole or other work; or

(b) abstract from any well, borehole or other work water in excess of his reasonable requirements:

Provided that, where underground water interferes or threatens to interfere with the execution or operation of any underground works (whether waterworks or not), it shall not be an offence under this subsection to cause or allow the water to run to waste so far as may be necessary to enable the works to be executed or operated, if no other method of disposing of the water is reasonably practicable.

(5) Any person who contravenes any of the foregoing provisions of this section or any requirement, pro-

hibition or restriction imposed thereunder or any condition attached to a licence granted for the purposes of subsection (1) shall be guilty of an offence against this Act.

13.—(1) The Authority with the approval of the Minister may make regulations— Regulations with respect to licences.

- (a) with respect to the procedure for making applications for licences under this Act;
- (b) with respect to the giving of notices of any such application and the making of objections thereto; and
- (c) prescribing the fees to be paid in respect of licences under this Act.

(2) The provisions of subsections (4) and (5) of section 6 shall apply to regulations made under this section.

14. Every grant or refusal of a licence by the Authority shall be published in the *Gazette*. Publication of licences.

15.—(1) Any person aggrieved by any decision of the Authority to grant or refuse a licence under this Act may appeal to the Minister by notice in writing addressed to the Minister within six weeks next after the publication in the *Gazette* of the grant or refusal of the licence. Appeal to Minister from decision of Authority.

(2) Any person aggrieved by a requirement prohibition or restriction by the Authority imposed by a notice given under subsection (2) of section 12 may within fourteen days next after the service of such notice appeal to the Minister by notice in writing addressed to the Minister.

(3) The decision of the Minister on an appeal under this section shall be final and shall not be questioned in any legal proceedings.

Accounts
and audit
and
estimates.

16.—(1) The Authority shall keep proper accounts of its receipts, payments, credits and liabilities and shall submit the same from time to time with vouchers to the Auditor-General to be audited.

(2) The Authority shall, on or before the thirty-first day of October in each year, submit to the Minister, its estimates of revenue and expenditure in respect of the period commencing on the first day of April next following and ending on the thirty-first day of March of the subsequent year.

Annual
report.

17.—(1) The Authority shall, as soon as practicable after the end of each financial year, cause to be made and transmit to the Minister a report dealing generally with the activities of the Authority during the preceding financial year, and containing such information relating to the proceedings and policy of the Authority as can be made public without detriment to the interests of the Authority.

(2) The Minister shall cause a copy of the report together with the annual statement of accounts and the auditors' report thereon to be laid on the Table of the House of Representatives and the Senate.

(3) Copies of the Authority's report together with the annual statement of accounts and the auditors' report on that statement or on the accounts of the Authority shall be published in such manner as the Minister may direct and shall be made available to the public by the Authority at a reasonable price.

Power of
Minister
to require
returns.

18. The Authority shall furnish the Minister with such returns, accounts and other information, including information obtained by the Authority pursuant to sections 6 and 8, as he may require with respect to the activities

of the Authority, and shall afford to him facilities for verifying such information in such manner and at such times as he may reasonably require.

19. The Minister may, after consultation with the chairman, give to the Authority such directions of a general character as to the policy to be followed by the Authority in the exercise and performance of its functions as appear to the Minister to be necessary in the interests of the Island.

Power of Minister to issue general directions in matters of policy.

20.—(1) Any person guilty of an offence against this Act shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding twelve months, and in the case of a continuing offence to a further fine not exceeding forty dollars for each day during which the offence is continued after conviction.

Offences.

(2) The Court before which a person is convicted of an offence involving a contravention of subsection (4) of section 12 may, on the conviction of that person, order that the well, borehole or other work shall be effectively sealed or may make such other order as appears to the Court to be necessary to prevent waste of water. If any person fails to comply with any such order of the Court, the Court may (without prejudice to the imposition of any penalty for contempt of court) on the application of the Authority authorize the Authority to take such steps as may be necessary to execute the order, and any expenses incurred in taking any such steps shall be recoverable as a civil debt from the person convicted.

21. This Act shall bind the Crown.

Application of Act to Crown.

SCHEDULE

(Section 3)

- Appointment of members.**
Temporary appointments.
1. The Authority shall consist of not less than five persons to be appointed by the Minister.
2. The Minister may appoint any person to act temporarily in the place of any member of the Authority in the case of the absence or inability to act of such member.
- Chairman.**
3. (1) The Minister shall appoint one of the members of the Authority to be the chairman thereof.
- (2) In the case of the absence or inability to act, at any meeting, of the chairman the remaining members of the Authority shall elect one of their number to act as chairman at that meeting.
- Tenure of office.**
4. (1) The appointment of every member of the Authority shall be evidenced by an instrument in writing, and such instrument shall state the period of office of the member which shall not exceed three years.
- (2) Every member of the Authority shall be eligible for re-appointment.
- Resignation.**
5. (1) Any member of the Authority, other than the chairman, may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the chairman, and from the date of the receipt by the Minister of such instrument such member shall cease to be a member of the Authority.
- (2) The chairman may at any time resign his office by instrument in writing addressed to the Minister and such resignation shall take effect as from the date of the receipt of such instrument by the Minister.
- Publication of membership.**
6. The names of all members of the Authority as first constituted and every change in the membership thereof shall be published in the *Gazette*.
- Authentication of seal and documents.**
7. (1) The seal of the Authority shall be authenticated by the signatures of the chairman or one member of the Authority authorized to act in that behalf and the secretary of the Authority.
- (2) All documents, other than those required by law to be under seal, made by, and all decisions of, the Authority may be signified under the hand of the chairman or any member authorized to act in that behalf or the secretary of the Authority.
- Procedure and meetings.**
8. (1) The Authority shall meet at such times as may be necessary or expedient for the transaction of business, and such meetings shall be held at such places and times and on such days as the Authority shall determine.
- (2) The chairman may at any time call a special meeting of the Authority and shall call a special meeting to be held within seven days of a written request for that purpose addressed to him by any two members of the Authority.

(3) The chairman or, in the case of the absence or inability to act of the chairman, the person elected to act as chairman in accordance with the provisions of sub-paragraph (2) of paragraph 3 shall preside at the meetings of the Authority, and when so presiding the chairman or the person elected as aforesaid to act as chairman, as the case may be, shall have an original and a casting vote.

(4) The quorum of the Authority shall be three members of the Authority including the chairman or the person elected to act as chairman as aforesaid.

(5) Subject to the provisions of this Schedule the Authority may regulate its own proceedings.

(6) The validity of any proceeding of the Authority shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of a member thereof.

9. There shall be paid to the chairman and other members of the Authority such remuneration, if any (whether by way of salaries or travelling or other allowances) as the Minister may determine. Remuneration of members.

10. The funds of the Authority shall consist of such moneys as may from time to time be placed at its disposition for the purposes of this Act by the Legislature and such other moneys as may lawfully be paid to the Authority. Funds of the Authority.

11. The Authority may appoint and employ at such remuneration and on such terms and conditions as it thinks fit, a secretary, and such officers, agents and servants as it thinks necessary for the proper carrying out of its functions: Power to appoint officers, agents and servants.

Provided that—

- (a) no salary in excess of the rate of three thousand dollars per annum shall be assigned to any post without the prior approval of the Minister;
- (b) no appointment shall be made to any post to which a salary in excess of the rate of three thousand dollars per annum is assigned without the prior approval of the Minister.

12. (1) No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Authority in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act. Protection of members of Authority.

(2) Where any member of the Authority is exempt from liability by reason only of the provisions of this paragraph the Authority shall be liable to the extent that it would be if the said member was a servant or agent of the Authority.