

## WATER

### THE WATER ACT

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SCHEDULE

## THE WATER ACT

Cap. 410.

[31st July, 1922.]

1. This Act may be cited as the Water Act.

Short title.

2. In this Act unless the context otherwise requires the following expressions shall have the following meanings—

Interpretation.

“arbitration”—arbitration in accordance with the terms and provisions of the Arbitration Act, or any enactment hereafter passed in amendment thereof;

“irrigation works”—a canal, channel, reservoir, embankment, weir, dam, borehole or other work constructed for or in connection with the impounding, storage, passage, drainage or abstraction of water, or the development of water power, or the use of water, or the conservation of rainfall; any land occupied for or in connection with the impounding, storage, passage, drainage or any other use of water, and shall include any area occupied or acquired or held for the purpose of being irrigated; and any gauge posts, measuring weirs and other appliances erected or used for undertakings authorized by this Act;

“public stream”—a natural stream of water—

(a) which in ordinary seasons flows in a known and defined channel (whether or not such channel is dry during any period of the year); and

(b) which is capable of being applied to the common use of riparian proprietors.

A stream of water which fulfils these conditions as to part of its course only shall

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be deemed to be a public stream only as regards such part;

“riparian land”—land through which, or along the boundary of any portion of which, a public stream flows;

“riparian proprietor”—the proprietor of riparian land;

“normal flow”—the average flow of a public stream other than so much of such flow as may be occasioned or caused by floods due to rainfall;

“private water”—all water, not being water of a public stream, which rises naturally on any land or which falls or naturally drains on to any land, so long as it remains on such land and does not join a public stream;

“storm water”—any water flowing in a public stream in excess of the normal flow;

“surplus water”—any portion of the normal flow of a public stream which, after satisfying the requirements of those persons entitled to use it, would ordinarily run to waste;

“public water”—all water, other than storm water, flowing in a public stream;

“proprietor” shall, in relation to land, include the person registered in the Registrar of Titles Office or in the Record Office as the owner of the land or in whom the land is vested by law, or the legal representative of any registered owner who has died, become insolvent, is a minor, is of unsound mind, or is otherwise under disability, and the liquidator of a company owning the land;

“Water Court”—a Court as constituted under the provisions of Part III.

PART I. *Use of Water*

3. The sole and exclusive use of private water shall belong to the proprietor of the land on which it is found.

Use of private water.

4. All water, other than private water, is vested for ever in the Crown in the right of the Island of Jamaica, and the Minister may authorize its use, diversion and apportionment, subject to the terms of this Act and in conformity with any regulations framed thereunder.

All water other than private water vested in the Crown.

5. Any person shall have the right to use for domestic and drinking purposes, and for watering stock, public waters which are found in their natural channels or beds, at such places as access to the same may be lawfully had.

Use of water for domestic purposes, etc.

6. Every riparian proprietor shall have the right of impounding, diverting, and taking any public water for primary use, that is, for domestic use and the watering of stock necessary for ordinary farm and pen-keeping requirements.

Right of riparian proprietors.

The Minister shall further authorize in terms of this Act, such proprietor to divert, impound, and take public water—

(a) for secondary use; that is—

- (i) for the irrigation by such proprietor of his riparian land;
- (ii) for the watering of stock other than that necessary for ordinary farm and pen-keeping purposes by the use of an amount of water equivalent to that which he would as hereinbefore provided for be entitled wholly to consume by irrigation;

(b) for tertiary use, that is, mechanical and industrial purposes.

upper and  
lower  
proprietors.

7. An upper proprietor shall not be granted the secondary use of public water if by so using it he deprives any lower proprietor of the primary use thereof.

proportion-  
of  
water for  
secondary  
use.

8. In apportioning water for secondary use, regard shall be had to the extent of all land irrigable by such water, and the proposed method or possible methods of user of such water.

proportion-  
of  
water for  
tertiary  
use.

9. In apportioning water for tertiary use, regard shall be had to the actual and potential rights of primary or secondary users.

conditions  
of use  
of water  
for  
irrigation,  
mechanical  
or industrial  
purposes.

10. Water which has been used for irrigation or mechanical or industrial purposes in terms of section 6 shall, if used in the same watershed, be returned at the nearest convenient point to the bed of the public stream from which it was taken, without diminution in quantity save such as is caused by such use; provided that a lower proprietor may be allowed to take water from the land of the upper proprietor after such use.

in  
which  
the  
Minister  
may  
take  
water  
from  
non-  
riparian  
land.

11. The Minister may allow any water of a public stream, which cannot be used by riparian proprietors, to be taken on to non-riparian land within the catchment area of such stream or across the watershed of such stream on to another catchment area where it may be of beneficial use; provided that in the exercise of this right preference shall be given to non-riparian land within the first mentioned catchment area.

riparian  
proprietor  
may  
use  
water  
for  
mechanical  
or industrial  
purposes.

12. A riparian proprietor may use water flowing over or by his land for mechanical or industrial purposes, or may grant to another the right to such use, provided that such use does not diminish nor interfere with the primary or secondary use of the water by other proprietors.

13. The Minister may authorize and allow the use of any water in a public stream for the generation of power or the working of mechanical appliances:

Use of public water may be allowed on certain conditions.

Provided that the water so used is returned to the stream undiminished in quantity and unaltered in quality except in so far as caused by such use.

14.—(1) Before proceeding to the exercise of the powers conferred by sections 11 and 13, the matter shall be referred to a qualified engineer for report, and also, if any riparian owner whose rights are likely to be affected by any such scheme so request, to a Water Court for their investigation and report.

Matters to be referred to engineer and to a Water Court.

(2) Should it be found that the exercise of such powers would result in the carrying out of an undertaking whose advantages would outweigh its disadvantages, then the Minister may authorize the same, subject to the payment of compensation to any persons prejudiced thereby of such amount as may be agreed upon or determined by a Water Court.

(3) Any land required for the purposes of such an undertaking and all the necessary works appurtenant thereto may be appropriated by the Minister for and on behalf of the person to whom the right of use is granted, on payment by the said person of such compensation as may be agreed upon with the owner whose land is expropriated, and, failing agreement, as may be determined by a Water Court.

15.—(1) On application being made, the Minister shall in terms of this Act, authorize any riparian proprietor to store or divert surplus or storm water on his own land for such purpose as he may think fit.

Applications with respect to storing, etc., of surplus or storm water.

(2) Should the applicant desire to obtain protection for any use of water proposed to be made or for any

work proposed to be constructed, the matter shall be referred to a Water Court for enquiry and decision.

(3) The Water Court shall be satisfied that all persons interested in the grant of the use of any such water have had due notice of the enquiry, and shall hear any such person who desires to appear before them and shall not grant the application if such grant would interfere with any right already acquired.

(4) Should the Water Court decide that the application should be granted, either in such terms as the applicant may desire or with such modifications as the Water Court may deem necessary, the Minister may grant the application, and upon publication in the *Gazette* of the terms and conditions under which the application is granted the applicant shall be secured in such grant.

(5) Nothing in this section contained shall relieve the applicant from the necessity of obtaining any servitude necessary to render the grant effective.

## PART II. *Combined Irrigation Schemes Irrigation Boards and Loans*

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16. A petition may be transmitted to the Minister signed by any two or more proprietors of land, stating that in their opinion it is expedient that there should be a combined scheme of irrigation for the area specified in the petition and comprising all such land, and that recourse should be had to artificial means of storing or supplying water in that area, and praying that a combined irrigation scheme be authorized for the said area. Such petition shall set out the boundaries and approximate extent of the area, and the nature of the proposed scheme.

17. The Minister if satisfied that the persons signing the petition are proprietors of not less than one-fourth part of the land proposed to be irrigated within that area, and if the petition be supported by such evidence as the Minister may require, shall cause such enquiry to be made into the subject matter of the petition as he may deem necessary. The engineer or other officer appointed shall, in the course of the enquiry, determine the approximate extent of land in the said area irrigable by the proposed irrigation works on the said area and on any other piece of land which, in his opinion, should be included therein. As soon as practicable a report of the result of the enquiry shall be communicated to the Minister, who may, if the proprietors owning three-quarters of the land affected by the proposed scheme consent thereto, grant the petition.

Enquiry to be made if necessary into subject matter of petition.

18. Any proprietor whose land is affected by any general irrigation scheme and for whose land the water from such system may be available, shall be liable to repay a proportion of the money which may have been expended on such system, and such liability shall, if not at once repaid, be a first charge or mortgage upon the land of the proprietor, unless such land be already mortgaged and the mortgagee does not assent to the scheme, in which case the liability shall rank as a preferential charge next after the said mortgage. The proportion to be paid by each proprietor shall be determined in accordance with the extent and quality of the land of such proprietor which is capable of being brought under irrigation by the said scheme. Any proprietor who considers that the amount for which he is held liable is excessive may ask to have such proportion settled and determined by a Water Court.

Liability of proprietor

19. The Minister may, by notice in the *Gazette*, appoint an Irrigation Board in respect of any combined irrigation scheme, or in respect of an area in which a number of

Minister may appoint Irrigation Board.

irrigation schemes exist. Such Board shall be selected from proprietors of land affected by such irrigation schemes.

Making of regulations as to election of members of Irrigation Board.

20. The Minister may make regulations providing for the election of members of Irrigation Boards, fixing their qualifications, the manner of their election and the term for which they are elected, and determining their powers and duties. In any election of an Irrigation Board the number of votes which each proprietor shall be entitled to record shall be proportionate to the extent of irrigable land held by him.

Minister may make loans.

21. The Minister may make loans for the purpose of irrigation works from moneys which may be voted on that behalf by the House of Representatives. Repayment of loans may be made by equal instalments spread over a period of years sufficient to redeem the loan and cover the interest charges not exceeding six *per centum* per annum. The number of instalments may not exceed twenty, but the period of redemption may be fixed to begin from a date not later than two years from the time at which the works shall have been completed.

hypothecation of land.

22. If a proprietor shall fail to provide suitable security for a liability imposed in terms of section 18, or for a loan made in terms of section 21, the Minister may cause a notice in writing to be sent to the Registrar of Titles or the Deputy Keeper of the Records of the amount due by such proprietor, and the Registrar of Titles or the Deputy Keeper of the Records shall make an entry thereof in respect of the land affected. Such entry shall constitute a hypothecation of the land, ranking from the date on which the entry was made and for the amount therein stated:

Provided that the Registrar of Titles or the Deputy Keeper of the Records may pass a transfer of land so

hypothecated if the transferee agrees in writing that any sums due and unpaid shall remain and be registered as a charge against the said land.

23. When any land, in respect of which a proprietor is under a liability in terms of section 18, is held under lease or permit of occupation during the term of such lease or permit the lessee or permit holder shall pay to the proprietor of such land yearly, during the continuance of the lease or permit of occupation, interest at the rate of twelve dollars per centum upon such sum as the owner is liable for, and such payment shall be made with the rent of the land, and shall be deemed in law to be part of such rent.

Payment of interest to proprietor.

24. The Minister may make regulations prescribing—

- (a) the form to be used in applying for irrigation loans;
- (b) the form and nature of the plans, estimates and other documents to accompany such applications;
- (c) the nature of the security to be given;
- (d) such other matters as may be expedient, relative to the making of loans.

Making of regulations as to application forms, etc.

### PART III. *Water Courts*

25. The Minister may appoint one or more Water Courts, which shall have jurisdiction to hear and determine disputes in connection with the use, diversion and appropriation of water, and such other jurisdiction, powers and authority as are assigned to such Courts by this Act.

Appoint-ment of Water Courts.

26. A Water Court shall consist of a barrister of not less than ten years' standing, or a solicitor of the Supreme Court of not less than ten years' standing, or of a Resident Magistrate, who shall be president, and of two assessors,

Composi-tion of Water Courts.

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one of whom shall be a qualified engineer and the other a person selected from a list of persons nominated by the Minister as Water Court assessors, and be styled the unofficial member. All members of each Water Court shall be selected and appointed by the Minister.

Unofficial members of Water Courts.

27. Unofficial members of Water Courts shall be persons resident in Jamaica of not less than twenty-one years of age and being landed proprietors, holders of leases of land, or in responsible positions and not being members of the Public Service of Jamaica.

Decision by majority.

28. All questions or matters requiring to be decided by a Water Court shall be decided by a majority.

Unofficial members to take oath or make affirmation.

29. Every unofficial member of a Water Court shall, before entering upon his duties, take an oath or make a solemn affirmation before the president that he will well and faithfully perform his duties as a member of such Court. Every such Court shall keep minutes of its proceedings which shall be signed by the president.

Minutes.

Prohibition with respect to relationship between member of Water Court and any party to a dispute, etc.

30. No member of a Water Court shall be related within the third degree of consanguinity or affinity to any party to a dispute to be determined by such Court or shall have an interest in any question or matter dealt with by such Court, and any member may be required by any party, before beginning or continuing his duties, to make a sworn declaration that he is not so related and that he has no interest in the question or matter before such Court:

Provided that any party may expressly waive any right to object to any member on the grounds of his being so related or having such interest:

Provided, further, that no decision or award which is just and reasonable shall be invalid only on the ground that a member of the Court was so related or was interested

in the question or matter in regard to which such decision or award was given.

31. In respect of questions or matters referred to it under this Act, a Water Court shall have the powers of a Resident Magistrate's Court in the way of summoning parties, witnesses, and the like, but without limit of jurisdiction. Such powers may, pending the constitution or sitting of a Water Court, be exercised in the name of such Court by a Resident Magistrate authorized thereto by the Minister.

Powers of Water Court in respect of matters referred to it under this Act.

32. Any barrister or solicitor appointed as president and the unofficial member of a Water Court shall be paid a travelling allowance for each and every day necessarily spent in travelling to and from the place where such Court may be sitting, and shall further be paid a subsistence allowance for such days as may be necessarily occupied in hearing and determining any matter in dispute.

Payment of travelling allowance.

33. The Water Court may make all such inspections as may be necessary, and may, and shall if so directed by the Minister, call and take expert advice in any matter. The cost of such inspections and such advice, as well as the allowances to be paid to unofficial members, shall be costs in the proceedings, and shall be subject to any order which the Court may in its discretion make in regard to costs.

Water Court may make inspections.

34. A Water Court may make such order as it deems fit in regard to the payment of the cost of any proceedings before it by any of the parties to such proceedings. Unless and until otherwise provided by regulation, the costs between party and party shall be according to the tariff for the time being in force in respect of proceedings in the Resident Magistrates' Courts.

Cost of proceedings.

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No action shall be maintainable in court of law which may be referred to Water Court with certain exceptions.

35.—(1) No action shall be maintainable before any court of law in respect of the questions or matters which may be referred under this Act to a Water Court otherwise than under paragraph (c) of section 36, save such action as is mentioned in subsection (2), unless the parties thereto have agreed in writing that such question or matter shall be submitted to a court of law:

Provided, however, that in respect of any question or matter which cannot be referred to a Water Court otherwise than under paragraph (b) of section 36, an action shall be maintainable, unless such question or matter has been referred by the Minister to a Water Court and notice to that effect has been published in the *Gazette* before the date at which the action is commenced.

(2) An action may be brought in any competent court by any person who is aggrieved by failure to carry out any award, order or decision of a Water Court which has the force of a judgment of a Resident Magistrate's Court, and in such case the Court may enforce such award, order or decision, and may award damages, and may further impose such penalty for wilful disobedience to such award, order or decision as it may consider just and reasonable.

General powers and duties of Water Courts.

36. The general powers and duties of a Water Court shall be—

- (a) to investigate any question or matter referred to it under the provisions of this Act by the Minister on the application of any party interested, and to make an order or to give an award or decision thereon;
- (b) if required to do so by the Minister—
  - (i) to investigate, define and record the rights to the use of the water of any stream, channel, reservoir, or other source of supply,

and to apportion the water for irrigation or other purposes where such rights have not been defined or such apportionment made by a competent court, or by arbitration, or in any other legal manner;

- (ii) to determine and fix the place or places, either upon his area or upon the area of another, at which any proprietor shall be deemed to have a right to the use of the water, and to determine the nature and extent of such use at such place or places with due regard to the rights of other proprietors;
- (c) if required to do so by the Minister, to report for his information—
- (i) on the use or waste of water diverted or abstracted from any stream, or on any matter arising out of the provisions of this Act;
  - (ii) on the removal of or interference with any dam, weir or other construction, in the course of a public stream, including, if the removal or interference is recommended, the compensation (if any) to be paid to any person affected thereby;
  - (iii) upon the merits of any objection under section 10 of the Irrigation Act, to any provisional irrigation scheme prepared under that Act;
  - (iv) to investigate, define and record, in the case of any stream whose character has not already been defined by a competent court, whether such stream is a public stream or not.

Notice of proceedings.

37. Before proceeding to the determination of any question submitted to them, the Water Court shall be satisfied that all persons having an interest in the matter to be submitted to them have had due notice of the proceedings.

Force of order and decision of Water Court.

38. An order of a Water Court and any decision of such Court other than a decision contained in a report made under paragraph (c) of section 36 shall have the force of a judgment of a Resident Magistrate's Court in matters within the Court's jurisdiction.

Appeal to Court of Appeal.

39. Any party feeling himself to be aggrieved by any decision of a Water Court may appeal against such decision to the Court of Appeal, and that Court may make such order as may seem meet in the premises.

Rules of Resident Magistrates' Courts regarding appeals to apply.

40. Until rules of procedure shall be made governing and controlling the procedure in such appeals, the rules of the Resident Magistrates' Courts regarding appeals from those Courts to the Court of Appeal shall apply and be followed.

Making of regulations as to proceedings of Water Courts.

41. The Minister may from time to time make regulations controlling and regulating the proceedings of Water Courts, and for ensuring the recording and carrying out of any decision of such Court, and for the proper service of all necessary notices and process.

Officers of Resident Magistrates' Courts to be officers of Water Courts.

42. All officers of the Resident Magistrates' Courts and all constables shall be officers of the Water Courts for the purposes of carrying out the instructions and enforcing the decisions of such Courts.

PART IV. *Servitudes*

43. For the purposes of this Part, any person to whom the use of water of a public stream at any point on its course has been or might be granted, may be granted the right to divert it for the said use at any other point on the course of such stream, but before exercising such right, he must acquire or be granted the servitude necessary for such use.

Persons granted use of public water may divert same on acquiring necessary servitude.

44. Any person having a right to the use of water or being entitled to supervise or control the use of water may, subject to his willingness to pay compensation as hereinafter provided, claim temporarily or in perpetuity a servitude of storage of water, a servitude of passage or a servitude of abutment or all such servitudes; provided that—

Persons having a right to use of water may, subject to certain conditions, claim servitudes.

- (a) the period of temporary servitude shall be a definite number of years or for so long as it is used for the purposes for which it is granted, with or without further specifications of the period;
- (b) no proceedings shall be taken for the acquisition of any such servitude while legal proceedings or proceedings before a Water Court are pending as to the right to the use of the water in respect of which the servitude is claimed;
- (c) no such servitude shall give the person acquiring it a proprietary interest in respect of the area on, over or through which it is exercised, and no encumbrance attaching to such area shall be affected thereby;

45.—(1) "Servitude of storage" shall mean the right to occupy land belonging to another by submerging it with water by means of a dam or weir or by other works, and

Definition of "servitude of storage."

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shall include a right of passage over the land and along the boundary of and through the particular area subject to the servitude for the purpose of maintaining and cleansing such works, or for any other purpose necessary for the effective enjoyment of the servitude.

(2) A servitude of storage shall not, subject to the terms of any award or agreement establishing it, deprive any proprietor of the area subject to the servitude of the use of that part of the area which is not submerged; provided such use is not detrimental to the enjoyment of the servitude.

(3) When a permanent servitude of storage has been acquired, the proprietor of the area over which the servitude has been acquired may, before the commencement of the storage work, and on payment of his proportion of the cost thereof (to be determined in the case of dispute by reference to a Water Court), demand and thereafter shall be entitled to receive the benefit of the storage work in proportion to the share he has contributed to the cost of the work.

Definition  
of  
"servitude  
of passage  
of water".

46.—(1) "Servitude of passage of water" shall mean the right to occupy so much land belonging to another as may be necessary for or incidental to the passage of water and shall include a right to construct irrigation works necessary for such passage on such land and over, under, or alongside another irrigation work or to enlarge and extend an existing irrigation work.

(2) The servitude shall include the right of access to any area (after notice to the proprietor thereof) for the purpose of constructing, inspecting or maintaining such works.

(3) The proprietor of any area over which the servitude exists may pass along such works any water

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to the use of which he is entitled on payment of such proportion of the cost of constructing, enlarging and maintaining such works and on such other terms as may be agreed upon or failing agreement as may be decided by a Water Court.

(4) In exercising such a servitude across a public road the holder thereof shall construct such works as will prevent danger or inconvenience to the public, and shall keep the same in repair, the manner of construction and repair being prescribed by the Minister or other officer authorized by him.

**47.—**(1) “Servitude of abutment” shall mean the right to occupy by means of a dam or weir the bed or banks of a public stream or land adjacent thereto belonging to another.

Servitude  
of  
abutment.

(2) The proprietor on whose ground a servitude of abutment exists may, before the construction of the dam or weir is commenced, or after the construction of a weir, demand the right to lead therefrom such water as he may be entitled to take from the public stream and may obtain such right on paying to the holder of the servitude such proportionate cost of the dam or weir as may be agreed upon, or failing agreement as may be determined by a Water Court.

(3) For the purposes of this section “weir” shall mean an obstruction placed across the bed of a public stream in order to raise the water level in it, for diverting (without storing) such water on to the land.

**48.** Any person who by paying a proportion of the cost of constructing any irrigation work, as provided in sections 45, 46 and 47, has acquired the right to use the same, shall be liable to pay a like proportion of the cost of its maintenance and repair, unless or until exempted therefrom by agreement or order of Court.

Liability  
of persons  
with  
respect to  
construc-  
tion of  
irrigation  
works.

Obligations  
of persons  
construct-  
ing work  
for passage  
of water.

49. Every person who, under this Part, constructs works for the passage of water, which—

- (a) prevent any proprietor passing freely over or on to any area of which he is the proprietor; or
- (b) check the circulation of water in the irrigation or drainage of any area or interfere with the mining thereof,

shall construct and maintain in repair—

- (i) such bridges and other works as will make communication safe and convenient; and
- (ii) such culverts, aqueducts and other works as are necessary to secure the free circulation of such water or prevent interference with such mining, unless he shall be exempt from such duty by agreement or other lawful cause.

How a  
servitude  
may be  
claimed.

50.—(1) A servitude may be claimed by serving written notice upon every proprietor of the area on or over which the servitude is desired, demanding the servitude and specifying the following particulars, namely—

- (a) the line of passage along which the water is to be conducted or diverted;
- (b) the locality on which the water is to be stored;
- (c) the compensation offered;
- (d) the period of the servitude;
- (e) the quantity and nature of the material required from the said land for the purpose of constructing irrigation works.

(2) If such proprietors shall not, within one month after service of such notice, agree to the claim and the particulars specified in the notice, the claimant may apply to have his claim referred to the decision of a Water Court, and shall serve a copy of the application upon such proprietors.

(3) If the area over which the servitude is claimed is subject to registered mortgage or lease, the claimant shall further serve upon the mortgagee or lessee (as the case may be) the notice and copy of application required to be served on the proprietors.

51. Every such mortgagee or lessee shall have the right to appear as a party before a Water Court on the hearing of the claim and shall, if he so appears, have all the privileges belonging to and be subject to all the obligations imposed, or which may be imposed, on a party to proceedings before a Water Court under this Act or regulations made thereunder.

Rights of mortgagees and lessees on hearing of claim.

52.—(1) A Water Court upon the hearing of such claim may—

What Water Court may do upon hearing of claim.

- (a) award the same with or without modifications and subject to such conditions as they deem just;
- (b) award or refuse to award compensation for the right of servitude granted;
- (c) if the area over which the servitude is claimed is subject to a lease, award compensation to the lessee for any loss or damage he is likely to sustain by the exercise of the right of servitude;
- (d) if the area over which the servitude is claimed is subject to a mortgage and the mortgagee claims a share of any compensation awarded, determine the claim of the mortgagee and the amount (if any) of his share of the compensation;
- (e) dismiss the claim, but on the following grounds only, namely—
  - (i) that the servitude claimed does not fall within the provisions of this Act; or

- (ii) that the object for which the servitude is claimed could be better obtained in another manner; or
- (iii) that the claim is not made in good faith; or
- (iv) that the objects for which the servitude is claimed are not of sufficient agricultural or other utility to justify the acquisition of the servitude; or
- (v) that the works appertaining to the servitude will interfere with the development of irrigation in the locality; or
- (vi) that the damage likely to be caused by the proposed works would be greater than the benefits that would be derived therefrom.

(2) Compensation awarded by a Water Court for a temporary servitude shall not exceed an annuity equal to the rental value (as nearly as can be ascertained) of any of the land or portion of the area to be actually occupied by the work contemplated, together with an actual sum for actual inconvenience or loss likely to be suffered by the exercise of the right of servitude.

(3) Compensation awarded by a Water Court for a permanent servitude shall not exceed an amount equal to the average market value (as nearly as can be ascertained) of the land or portion of the area to be actually occupied by the work, together with an annuity for actual inconvenience or loss that may be suffered by the exercise of the right of servitude, or in lieu of such annuity an amount not exceeding twenty times such annuity.

Conversion  
of  
temporary  
servitude  
into  
permanent  
servitude.

53. A person who under this Part holds a temporary servitude may claim an award of a Water Court converting it into a permanent servitude, subject to the payment of such compensation to the proprietor of such area on or

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over which the temporary servitude exists as may be determined by a Water Court. The provisions of sections 50, 51 and 52 shall so far as applicable apply to a claim for conversion under this section.

54. Any servitude acquired under this Part shall lapse if the work specified in the particulars of the claim be not completed within three years from the date of acquisition by agreement or of the award of a Water Court, or within any extended period that may be agreed or that a Water Court may have fixed for the hearing of the claim.

Servitude shall lapse if work is not completed within certain time.

55. Any servitude which has been duly constituted and established shall lapse and be extinguished by non-use for a continuous period of two years, if such non-use is due to the default or neglect of the holder of the servitude.

Servitude shall lapse by non-use.

56. No servitude acquired or awarded under this Part shall be binding upon others than the original parties thereto until registered against the title of the land on or over which it has been so acquired or awarded, and, if the regulations so require, in such other manner as may be prescribed thereby.

Servitude acquired under this Part binding only on original parties until registered, etc.

57.—(1) The Registrar of Titles or the Deputy Keeper of the Records, upon the production of the agreement between the parties, or of the award of a Water Court, or of certified copies of such agreement or award, in either case accompanied by a diagram of a Government Surveyor showing the situation of the servitude, shall register such servitude and diagram upon the titles of the areas in favour of and over which it has been so acquired and awarded:

Registration of Servitude.

Provided, however, that the Registrar of Titles or the Deputy Keeper of the Records shall not be required under this section to register any agreement unless such agree-

ment is in his opinion reasonably free from ambiguity; and, provided further, that the Registrar of Titles or the Deputy Keeper of the Records shall not register any servitude awarded by a Water Court until after the expiration of the period within which notice of appeal to the Court of Appeal from such award is required to be given under section 40 or under any rules referred to in the said section, or, where such notice has been given, until the award of such servitude has been confirmed on appeal.

(2) The proprietors of the areas over which such servitudes have been acquired or awarded shall, on being required so to do by the Registrar of Titles or the Deputy Keeper of the Records, produce their title deeds for the purpose of such registration, and failure to produce such title deeds shall be deemed to be an offence against this Act.

(3) A certified copy of an agreement or award shall mean a copy certified as correct by a president of a Water Court, a notary, or attorney.

#### PART V. *General*

Boundary shall not be changed by reason of change of course of public stream.

58.—(1) Whenever a public stream which formed the boundary between the land of two or more proprietors changes, or has changed its course, the boundaries of such land shall not be thereby changed, nor shall a change in the course of such stream constitute a riparian proprietor a non-riparian proprietor.

(2) A riparian proprietor may apply to the Minister to fix a point or points on the changed course of the stream to which he shall have access and at which he may take the water thereof, and further to fix the line along which such water may be so diverted and taken. The Minister may grant the application on such terms as to him may seem just.

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(3) Whenever a riparian proprietor has been injuriously affected by any such change in the course of a public stream he may make written application to the Minister for permission to construct works necessary to restore the stream to its former course.

(4) The Minister shall, if satisfied that the riparian proprietor has been so injuriously affected, and subject to any rights lawfully acquired in respect of the changed course, grant the permission, but may attach thereto conditions as to the nature of the work to be constructed and the time within which it shall be completed.

(5) Any of the matters referred to in this section may, instead of being decided by the Minister, be referred by him to a Water Court for investigation and decision.

59.—(1) Nothing in this Act shall interfere with or derogate from rights already acquired, in so far as actual use has been made of such rights. All such rights, and such other rights to the use of water as may be acquired under this Act, shall lapse and be void if not used for a consecutive period of three years, unless the holder of such right shall satisfy a Water Court that he has made reasonable efforts to make use of such right.

Rights already acquired and exercised not to be interfered with.

(2) Should the holder of any such right desire to have such right determined and recorded, he shall submit the matter to a Water Court for its decision.

### PART VI. *Powers of the Minister in regard to Public Streams and Water*

60. The Governor-General may from time to time appoint such officers as may be necessary for the better carrying out of the provisions of this Act, and such officers shall be subject to the direction and control of the Minister. Such officers shall be paid such remuneration as shall be voted by the House of Representatives. The Minister may

Governor-General may appoint officers for better carrying out of provisions of Act.

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cause inspection of any irrigation work or the course of any public stream to be made and may order any person to do such acts and execute such repairs with respect to his irrigation works as may be deemed necessary in the public interest, and in default of compliance within the time specified in such order, execute the same and recover the cost of such execution from the person making such default.

Minister  
may  
acquire  
any  
irrigation  
work,  
supervise  
public  
streams,  
etc.

61.—(1) The Minister may, where such a course appears to him to be desirable in the public interest—

- (a) with the consent of the House of Representatives construct or acquire any irrigation work which he may think necessary or desirable for the purpose of draining into or conserving or utilizing in any manner whatsoever any public stream or for abstracting, storing or preventing the waste of subterranean water, and may supply or distribute water or power from such work in such manner as may be prescribed by regulation; assess, levy, and recover rates from the proprietors or occupiers of areas irrigated or irrigable or benefiting directly or indirectly by water from works constructed or acquired under this section or from persons using power from such works; enter into agreements with proprietors or persons for the transfer or exchange of any right to land or the use thereof in commutation of the rates payable by such proprietors or persons under this section;
- (b) exercise general supervision over all public streams in the Island, protect the source of supply of any public stream, and, if he deems it necessary or expedient, cause the channels of such streams to be cleansed, deepened, widened, or otherwise

improved; prevent the leakage or flow of any public water from the surface into subterranean channels; prevent any waste or any unlawful diversion, abstraction, storage or use of public water; cause to be removed any obstruction unlawfully placed in the public stream, and prevent any unlawful act calculated to diminish the quantity of water in any part of a public stream;

- (c) supervise and regulate the diversion, storage, distribution and use of water of any public stream, and prescribe a standard showing the area of land which can be effectively irrigated in respect of any particular kind of crop in any particular district or situation by a constant flow of water of one hundred cubic yards per hour, and, in such manner as may be prescribed by legislation, assess, levy and recover rates from the proprietors or occupiers of areas benefiting from any action taken under this subsection up to an amount sufficient to meet the expenditure incurred.

(2) The Minister may with the consent of the House of Representatives authorize any corporation, person, company or partnership to exercise the powers set out in paragraph (a) subsection (1).

(3) Full compensation shall be paid from the Treasury to the proprietors of land and any other persons who may suffer loss or deprivation of rights by any action taken by the Minister under the provisions of paragraph (a) of subsection (1). The amount of such compensation, if not settled by mutual agreement, shall be submitted to arbitration.

(4) The Minister may, where such a course appears to him to be desired in the public interest, sink boreholes

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and wells, and obtain from underground sources supplies of water and conserve the same when required.

Minister  
or his  
agents may  
enter upon  
any area  
with men,  
animals,  
etc.

62.—(1) The Minister or any person or persons acting under his authority may, after notice to the proprietors, enter upon any area with such men, animals, vehicles, appliances and instruments, and do all such acts thereon as are necessary for or incidental to the exercise of the powers conferred or the performance of the duties imposed by this Act upon the Minister or any other officer:

Provided that—

- (a) no such person shall enter any building or any enclosed yard attached to a dwelling except with the consent of the occupant thereof;
- (b) as little damage as possible shall be caused to any area by the exercise of the powers of this section, and compensation shall be paid by the Minister for all damage so caused, the amount thereof, if not mutually agreed upon, being determined by arbitration.

(2) The Minister, an Irrigation Board, a Water Court or persons authorized in writing by them shall, to the extent necessary for exercising the jurisdiction of the Minister or Board or Court under this Act have the right of entry upon any area with the power, incidental thereto mentioned in subsection (1), subject to the restrictions and obligations in the said subsection provided.

(3) Any person who prevents such entry on any area as is authorized by this section, or who wilfully obstructs or hinders any person so authorized in lawfully carrying out his powers or duties under this Act or the regulations, shall be guilty of an offence.

63. Any notice, order or other document required by this Act, or a regulation to be given to or served upon any person, shall be deemed to be effectually served if delivered personally to such person or left at his abode or place of business, or sent by registered letter to his address, or if such person is absent from the Island and has left no known representative, by publication in the *Gazette* and in some newspaper published in the Island. Service upon a person authorized to represent another shall be deemed to be service upon the person whom he represents, and, in the case of a company or corporation having no domicile or office in Jamaica, any person in charge of its property shall be deemed to be its representative:

Service upon person of notices, orders, etc.

Provided that nothing in this section shall prevent any person who has not been personally served with a notice, document or other order from proving that through no fault of his own or his representative such notice, document or order never came to his knowledge.

64. Any notice, order or document issued by any official under this Act shall be valid from the date of issue thereof, notwithstanding any defect of form in the same or want of authority on the part of the official issuing or authenticating the same:

Validity of notices, orders, etc.

Provided that the requisite authority is subsequently conferred upon such official.

65. The Minister may from time to time make, alter or revoke regulations—

Minister may make regulations.

- (a) for dealing with any matter which may by this Act be dealt with by regulation;
- (b) for prescribing any forms of procedure to be used or followed for the purposes of this Act;
- (c) generally for the better carrying out of the objects and purposes of this Act.

PART VII. *Offences and Penalties*

Penalty on persons guilty of offences under this Act.

66. Any person who, without lawful right or authority (the proof whereof shall lie upon him)—

- (a) alters, enlarges or obstructs an irrigation work, or destroys, defaces or moves any level mark, beacon, or other structure or appliance erected or made in connection with such work;
- (b) interferes with or alters the flow of or pollutes or fouls the water of an irrigation work or of a public stream, or interferes with the distribution of such water, or, after notice to refrain from doing so, takes more water than he is entitled to, or uses it in a manner contrary to this Act or the regulations;
- (c) while using or being liable for the maintenance of an irrigation work, to the prejudice of others wastes or does not take due precaution to prevent the waste of water from such work, or fails properly to maintain the work and keep it in repair;
- (d) wastes the water of a public stream;
- (e) being the proprietor of an area, after notice from the Minister or other official authorized by him, fails to put an end to waste of water resulting from the act of a tenant or other person deriving rights from such proprietor and no longer present on such area;
- (f) aids or abets or knowingly permits any such act or default,

shall be guilty of an offence, and liable—

- (i) in the case of a first conviction to a fine not exceeding fifty dollars, or in default of payment to imprisonment with or without hard labour for

a period not exceeding six months, or to both such fine and imprisonment;

- (ii) in the case of a second or subsequent conviction to a fine not exceeding two hundred dollars, or in default of payment to imprisonment with or without hard labour for a period not exceeding one year, or to both such fine and imprisonment.

67. Any person who wilfully or maliciously commits any of the acts mentioned in paragraph (a) or (b) of section 66 shall be liable to a fine not exceeding one thousand dollars, or to imprisonment with or without hard labour for a period not exceeding two years.

Punishment for offences under this Act.

68. Any person who commits an offence against this Act, or any regulation made thereunder, for which no penalty is expressly provided, shall be liable on conviction to a fine not exceeding fifty dollars, or in default of payment to imprisonment with or without hard labour for a period not exceeding six months.

Fine where no penalty is expressly provided.

69.—(1) Whenever any person is convicted by a Resident Magistrate's Court of an offence against this Act or the regulations, and it shall appear that such person has by that offence caused damage to any proprietor, such Court may, at the written request of such proprietor and upon notice before trial to the accused, but in the presence of the convicted person, enquire summarily and without pleadings into the amount of damage so caused.

When Resident Magistrate's Court may conduct enquiry as to damage to proprietor.

(2) Upon proof of such amount, such Court shall give judgment therefor in favour of the proprietor and against the convicted person, and such judgment shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted before such Court:

Provided that judgment shall not be given under this section for a sum exceeding the civil jurisdiction of such Court.

Proceed-  
ings as to  
fines, etc.,  
to be taken  
in Resident  
Magis-  
trate's  
Court  
having  
jurisdic-  
tion.

70. All proceedings for an offence against the provisions of this Act or any regulations thereunder and for the recovery of any fines or penalties imposed thereby shall be taken in the Resident Magistrate's Court having jurisdiction over the place in which the offence was committed.

#### PART VIII. *Miscellaneous*

Enact-  
ments  
repealed.

71. So much of any enactment as is repugnant to or inconsistent with the provisions of this Act is hereby repealed provided that nothing herein contained shall affect or derogate from the terms and provisions of the enactments mentioned in the Schedule.

Schedule.

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SCHEDULE

(Section 71)

1. The Kingston and Liguanea Water Works Law. Omitted.
2. The Rio Cobre Canal Law. Omitted.
3. The Parishes Water Supply Act.
4. The provisions of the following Acts relating to rates regulation:
  - The Parochial Fire Brigade Act.
  - The Electric Lighting Act.