

Irrigation Schemes Act 1990 052

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An Act to empower the Crown to dispose of irrigation schemes

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title---This Act may be cited as the Irrigation Schemes Act 1990.

PART I

DISPOSAL OF IRRIGATION SCHEMES

2. Interpretation---In this Part of this Act, unless the context otherwise requires,---

``Chief Surveyor" means the Chief Surveyor for the land district in which is situated any land to be dealt with or affected under this Part of this Act:

``District Land Registrar" means the District Land Registrar of the land registration district in which is situated any land to be dealt with or affected under this Part of this Act; and includes the Registrar of Deeds for that district:

``Irrigation scheme" or ``scheme" means any water supply works constructed by or on behalf of the Minister of Works and Development or the Minister of Agriculture under Part XIX of the Public Works Act 1981 or the corresponding provisions of any former Public Works Act or any other enactment; and includes-

(a) Pipelines, canals, water races, dams, weirs, and other facilities used or intended to be used for or in connection with any such works:

(b) Any right to enter, use, occupy, carry out work on, or store water on, any land, or to the support of any land for any dam, pursuant to section 223 of the Public Works Act 1981 or the corresponding provisions of any former Public Works Act, for the purposes of any such works:

(c) Any mining privilege, or right to dam any river or stream or to divert, take, use, or discharge water, for the purposes of any such works:

(d) Any use of land permitted under a district scheme under the Town and Country Planning Act 1977, or under any provision of that Act, for the purposes of any such works:

(e) Any agreement for the supply of water for the purposes of any such works:

“Mining privilege” means a current mining privilege as defined in section 2 of the Water and Soil Conservation Amendment Act 1971:

“Minister” means the Minister of Agriculture.

3. Disposal of irrigation schemes---(1) Notwithstanding the provisions of any other Act, the Minister of Agriculture and the Minister of Finance acting jointly, on behalf of the Crown, may sell or otherwise dispose of any irrigation scheme owned by the Crown to any person, including any local authority or other public or statutory body.

(2) As soon as practicable after the Minister of Agriculture and the Minister of Finance have agreed to sell or otherwise dispose of any irrigation scheme pursuant to subsection (1) of this section, the Minister of Agriculture shall publish in the Gazette and lay before the House of Representatives a statement containing such details relating to that agreement as the Minister considers appropriate.

4. Certain rights to continue---(1) Where an irrigation scheme is sold or otherwise disposed of by the Crown pursuant to this Part of this Act, and the Minister had the right, immediately before the date of sale or other disposal, to enter, use, occupy, carry out work on, or store water on or convey water over, any land, or to the support of any land for any dam, pursuant to section 223 of the Public Works Act 1981 or the corresponding provisions of any former enactment relating to irrigation, for the purposes of that scheme, that right shall continue in favour of the person to whom the scheme is sold or otherwise disposed of.

(2) Where---

(a) Any land (including any land owned by the Crown) has been entered upon, used, or occupied, or had work carried out on it, or is being used to store water or convey water over, or support any dam, for the purposes of an irrigation scheme; and

(b) There is not in existence any easement, agreement, or right relating thereto or there is insufficient documentary evidence to establish whether or not such an easement, agreement, or right exists---

it shall be presumed, for the purposes of this section, that the powers conferred by section 223 of the Public Works Act 1981 or the corresponding provisions of any former enactment relating to irrigation have been exercised in relation thereto.

(3) Every person in whose favour a right continues pursuant to subsection (1) or subsection (2) of this section shall make every reasonable endeavour to negotiate in good faith with the owner of the land to which the right relates to reach an agreement for the acquisition, without payment of compensation, of a registrable similar right.

(4) Where any person to whom an irrigation scheme has been sold or otherwise disposed of is unable to obtain by negotiation any right to which subsection (1) or subsection (2) of this section applies within 2 years after the date of such sale or other disposition, the Minister shall, by notice registered or lodged in accordance with this section, indicate the existence of the right.

(5) Every instrument or document evidencing an agreement made pursuant to subsection (3) of this section shall be signed by the parties to the agreement, and every notice under subsection (4) of this section shall be signed by the Minister.

(6) Every such instrument, document, or notice shall---

(a) Specify the parcel of land affected; and

(b) Have endorsed on it, or refer to, a diagram or plan showing the position or course of those parts of the irrigation scheme to which the right relates:

Provided that where it is not practicable to show the true position or course, the position or course shall be indicated as nearly as possible, and, until the contrary is proved, the position or course so indicated shall be deemed to be the true position or course; and

(c) Subject to subsection (7) of this section, be lodged by the person in whose favour the right continues or the Minister, as the case may require, in the office of the District Land Registrar who shall---

(i) If the land affected or any part of it is not subject to the Land Transfer Act 1952, cause an entry of the instrument, document, or notice to be made under the proper heading or title in the index book of the Deeds Register Office; or

(ii) If the land affected or any part of it is subject to the Land Transfer Act 1952, register the instrument, document, or notice against the title to the land or part so subject.

(7) If the land affected by any instrument, document, or notice to which this section applies or any part of it is not subject to the Land Transfer Act 1952, and dealings with the land or part not so subject are not registrable under the Deeds Registration Act 1908, the person in whose favour the right continues or the Minister, as the case may require, shall lodge a true copy of the instrument, document, or notice in the office of the Chief Surveyor; and the Chief Surveyor shall note the existence of the instrument, document, or notice on the proper plans and records of the land district.

(8) Where any instrument, document, or notice to which this section applies has endorsed on it or refers to a diagram or plan to which the proviso to subsection (6) (b) of this section applies and it is subsequently shown by a plan deposited by the District Land Registrar or approved by the Chief Surveyor that the true position or course of those parts of the irrigation scheme to which the right relates differs from the position or course shown on the first-mentioned diagram or plan, the District Land Registrar or the Chief Surveyor, as the case may require, shall endorse on the instrument, document, or notice lodged in his or her office and on any other appropriate titles, plans, or records a reference to the deposited or approved plan; and the instrument, document, or notice shall thereupon be deemed to have referred to the deposited or approved plan from the date on which it was executed or signed.

(9) Every right continued in force pursuant to subsection (1) or subsection (2) of this section shall expire on the expiry of a period of 5 years commencing on the date of commencement of this Act unless, before the expiry of that period, an instrument, document, or notice relating to the right has been lodged in the office of the District Land Registrar or Chief Surveyor in accordance with this section.

(10) No action shall lie against the Crown or any other person under Part XI of the Land Transfer Act 1952 by reason of any instrument, document, or notice registered under this section not indicating the true position or course of those parts of the irrigation scheme to which the right relates.

(11) Notwithstanding any enactment or rule of law to the contrary, any instrument, document, or notice registered under this section shall be deemed to be binding on any registered proprietor of an estate in fee simple or leasehold of, or on any registered licensee of, and on every person with a prior or subsequent interest registered against, the land or any interest in the land affected by the instrument, document, or notice.

(12) Without limiting the provisions of this section, any right referred to in any instrument, document, or notice registered by the District Land Registrar under this section may be transferred, by a memorandum of transfer to be registered under the provisions of the Land Transfer Act 1952, to any person to whom any irrigation scheme has been sold or otherwise disposed of.

(13) On and after the commencement of this section, nothing in Part V of the Public Works Act 1981 shall apply to or in respect of any right to which subsection (1) or subsection (2) of this section applies:

Provided that nothing in this section shall prejudice or affect any claim for compensation under the said Part V made before the commencement of this section.

5. Transfer of easements, etc.--(1) Where an irrigation scheme is sold or otherwise disposed of by the Crown pursuant to this Part of this Act, the benefit of any existing easement, agreement, or right over or in respect of land relating to head works, structures, pumps, pipelines, canals, water races, or other facilities or relating to the support of any dam and the storage of water, and relating to access associated with such uses, for the purposes of the scheme, shall be deemed to be transferred to the person to whom the scheme is sold or otherwise disposed of, notwithstanding that the easement, agreement, or right may not have been registered.

(2) In respect of any land to which subsection (1) of this section applies, the Minister shall, at the request of the purchaser of the irrigation scheme, by notice registered in accordance with this section against the title of the land, indicate the existence of the relevant easement, agreement, or right and the fact that it has been transferred to a specified purchaser pursuant to subsection (1) of this section.

(3) Every such notice shall---

(a) Be signed by the Minister; and

(b) Specify the parcel of land affected; and

(c) Have endorsed on the notice, or refer to, a diagram or plan showing the position or course of the head works, structure, pump, pipeline, canal, water race, other facility, or dam to which the easement, agreement, or right relates:

Provided that where it is not practicable to show the true position or course, the position or course shall be indicated as nearly as possible, and, until the contrary is proved, the position or course so indicated shall be deemed to be the true position or course; and

(d) Be lodged by the Minister in the office of the District Land Registrar, who shall register the notice against the title to the land affected.

(4) Where any such notice has endorsed on it or refers to a diagram or plan to which the proviso to subsection (3) (b) of this section applies and it is subsequently shown by a plan deposited by the District Land Registrar that the true position or course of the head works, structure, pump, pipeline, canal, water race, other facility, or dam differs from the position or course shown on the first-mentioned diagram or plan, the District Land Registrar shall endorse on the notice lodged in his or her office and on any other appropriate titles, plans, or records a reference to the deposited plan; and the notice shall thereupon be deemed to have referred to the deposited plan from the date on which it was signed.

(5) No action shall lie against the Crown under Part XI of the Land Transfer Act 1952 by reason of any notice registered under this section not indicating the true position or course of any head works, structure, pump, pipeline, canal, water race, facility, or dam.

(6) Notwithstanding any enactment or rule of law to the contrary, any notice registered under this section shall be deemed to be binding on any registered proprietor of an estate in fee simple or leasehold of, or on any registered licensee of, and on every person with a prior or subsequent interest registered against, the land or any interest in the land affected by the notice.

(7) Any easement, agreement, or right referred to in any notice registered under this section may be transferred, by a memorandum of transfer registered under the Land Transfer Act 1952, to any person to whom any irrigation scheme is subsequently sold or otherwise disposed of.

6. Transfer of mining privileges--(1) Where an irrigation scheme is sold or otherwise disposed of by the Crown pursuant to this Part of this Act, any mining privilege held by the Crown in relation to the scheme shall be deemed to be transferred to the person to whom the scheme is sold or otherwise disposed of.

(2) Any such mining privilege deemed to be transferred pursuant to subsection (1) of this section shall continue in force for a period of 30 years commencing on the date of transfer and shall then expire.

(3) Every mining privilege to which this section applies shall be subject to the provisions of any other enactment relating to it.

7. Transfer of water rights---(1) Where an irrigation scheme is sold or otherwise disposed of by the Crown pursuant to this Part of this Act, any existing right held by the Crown to dam any river or stream or to divert, take, use, or discharge water for the purposes of the scheme shall be deemed to be transferred to the person to whom the scheme is sold or otherwise disposed of.

(2) Every right so transferred shall continue to be subject to the same terms and conditions to which it was subject immediately before the date of transfer.

(3) A right transferred pursuant to subsection (1) of this section shall expire on the date on which it would have expired had it not been transferred or on the expiry of a period of 30 years after the date of transfer, whichever is earlier.

(4) Nothing in subsection (3) of this section shall prevent any such transferred right from being renewed.

(5) Every right to which this section applies shall be subject to the provisions of any other enactment relating to it.

8. Transfer of Crown assets and liabilities---(1) Notwithstanding any Act, rule of law, or agreement, where an irrigation scheme is sold or otherwise disposed of by the Crown pursuant to this Part of this Act, the Minister may, on behalf of the Crown,---

(a) Transfer to the person to whom the scheme is sold or otherwise disposed of assets and liabilities of the Crown relating to the scheme:

(b) Vest in that person any rights conferred by designations under operative district schemes applying to any land transferred to that person for the purposes of the scheme:

(c) Grant to that person leases, licences, easements, permits, or rights of any kind in respect of any assets or liabilities of the Crown relating to the scheme---

for such consideration, and on such terms and conditions, as the Minister may agree with that person.

(2) Assets that are fixed to, or are under or over, any land may be transferred to a person pursuant to this Part of this Act, whether or not any interest in the land is also transferred. Where any such asset is so transferred, the asset and the land shall be regarded as separate assets each capable of separate ownership.

(3) Any asset or liability of the Crown may be transferred to a person pursuant to this Part of this Act whether or not any Act or agreement relating to the asset or liability permits such transfer or requires any consent to such a transfer.

(4) Where a transfer takes place pursuant to this section and the transfer is registrable, the person responsible for keeping the register shall register the transfer forthwith after written notice of the transfer is received by him or her from any person authorised for that purpose by the Minister.

(5) In this section---

``Assets" has the same meaning as in section 29 (1) of the State-Owned Enterprises Act 1986:

``Liabilities" has the same meaning as in section 29 (1) of the State-Owned Enterprises Act 1986.

9. Provisions relating to transfer of land---(1) Notwithstanding any Act or rule of law, where an irrigation scheme is sold or otherwise disposed of by the Crown pursuant to this Part of this Act, the Minister may, subject to Part IVA of the Conservation Act 1987, enter into an agreement to transfer any land or interest in land owned by the Crown, required for the purposes of the scheme, to the person to whom the scheme is sold or otherwise disposed of.

(2) Crown land within the meaning of the Land Act 1948, and any land of the Crown not registered under the Land Transfer Act 1952, that is to be transferred by the Crown to any person pursuant to this Part of this Act shall---

(a) Be identified by an adequate legal description, or on plans lodged in the office of the Chief Surveyor for the land district in which the land is situated (being plans certified as correct for the purposes of this section by that Chief Surveyor); and

(b) Be approved by the Governor-General in Council and vest in the transferee pursuant to and on a date specified in an Order in Council made for the purposes of this section.

(3) All land that is subject to the Land Act 1948 or the Conservation Act 1987 and that is transferred to a person pursuant to this Part of this Act shall cease to be subject to the Land Act 1948 or the Conservation Act 1987, as the case may be, from the date of that transfer.

(4) Nothing in sections 40 to 42 of the Public Works Act 1981 shall apply to the transfer by the Crown of any land or interest in land pursuant to this Part of this Act so long as the land or interest in land continues to be used for the purposes of an irrigation scheme, but, if all or any part of the land or interest in land is no longer required for such purposes, sections 40 and 41 of that Act shall apply to the land or interest no longer so required as if the owner of the land or interest were the Crown and the land or interest had not been transferred pursuant to this section.

(5) Nothing in this Part of this Act or in any transfer of land to a person pursuant to this Part of this Act shall derogate from the provisions of---

(a) Section 3 of the Petroleum Act 1937:

(b) Section 8 of the Atomic Energy Act 1945:

(c) Section 3 of the Geothermal Energy Act 1953:

(d) Sections 6 and 8 of the Mining Act 1971:

(e) Sections 5 and 261 of the Coal Mines Act 1979.

10. Title to land---(1) A District Land Registrar shall, on written application by any person authorised by the Minister and on payment of the prescribed fee,---

(a) Register the transferee as the proprietor, in substitution for the Crown, of the estate or the interest of the Crown in any land that is incorporated in the register or otherwise registered in the Land Registry Office of the land registration district concerned and that is transferred to the transferee pursuant to this Part of this Act; and

(b) Make such entries in the register and on any outstanding documents of title and generally do all such things as may be necessary to give effect to this section.

(2) A District Land Registrar, on written application by any person authorised by the Minister and on payment of the prescribed fee, shall issue a certificate of title for land vested in the transferee pursuant to section 9 (2) of this Act in form No. 1 in the First Schedule to the Land Transfer Act 1952, amended as appropriate. The District Land Registrar shall endorse on every such certificate of title the effect of section 9 (4) of this Act.

(3) As soon as registration is accomplished in accordance with subsection (1) of this section, the transferee shall, except where the interest acquired is either an easement in gross or an estate as lessee, be deemed to be seised of an estate in fee simple in possession in respect of that land.

(4) Applications in accordance with subsections (1) and (2) of this section shall specify the name of the transferee and the date specified in the relevant Order in Council made under section 9 (2) (b) of this Act, together with a description of the land sufficient to identify it.

11. Land certification---(1) Before a District Land Registrar issues a certificate of title in respect of any land vested in any person pursuant to section 9 (2) of this Act, the District Land Registrar shall either receive under the hand of, or request from, any Chief Surveyor a certificate in the form set out in the Second Schedule to the Land Act 1948 as to the legal description of the land, any trusts, reservations, and restrictions affecting the land, and any other matters that the District Land Registrar considers appropriate.

(2) A certificate in accordance with subsection (1) of this section shall be filed by the District Land Registrar in the Land Registry Office and shall be conclusive evidence to the District Land Registrar of the matters required to be stated therein.

12. Parts XX and XXI of Local Government Act 1974 not to apply---Parts XX and XXI of the Local Government Act 1974 shall not apply to or in respect of the transfer of any land or interest in land pursuant to this Part of this Act nor to any subdivision required in respect of any such transfer.

13. Use permitted as of right---Where any irrigation scheme is sold or otherwise disposed of under this Part of this Act, any use for irrigation purposes of the land upon which the irrigation scheme is situated shall, so far as the use is not permitted as of right pursuant to section 64 (1) (g) of the Town and Country Planning Act 1977, be deemed to be a use permitted as of right until the next review of the relevant district planning scheme under that Act.

14. Ownership of irrigation scheme by local authority---(1) Where a local authority, whether solely or jointly, acquires a 50 percent or greater share in an irrigation scheme pursuant to this Part of this Act, the scheme shall be operated on a commercial basis and, notwithstanding anything in the Rating Powers Act 1988, the local authority shall have no power to rate in respect of that scheme.

(2) The accounts relating to any irrigation scheme to which subsection (1) of this section applies shall be kept separate from the other accounts of the local authority.

15. Provisions relating to Rangitata Diversion Race---(1) Where, before the commencement of this section, water was being taken from the Rangitata Diversion Race for the purposes of---

- (a) The Mayfield Hinds Irrigation Scheme; or
- (b) The Valetta Irrigation Scheme; or
- (c) The Ashburton Lyndhurst Irrigation Scheme---

such taking of water shall be deemed to be authorised as if section 21 (2) of the Water and Soil Conservation Act 1967 applied thereto.

(2) The maximum amounts and rates of flow of water that, under the authority of subsection (1) of this section, may be taken from the Rangitata Diversion Race during any season beginning on the 10th day of September in any year and ending with the 9th day of May in the following year, for the purposes of each scheme referred to in that subsection, shall be as follows:

- (a) The Mayfield Hinds Irrigation Scheme---320 million cubic metres (16.5 cubic metres per second);
- (b) The Valetta Irrigation Scheme---85 million cubic metres (4.4 cubic metres per second);
- (c) The Ashburton Lyndhurst Irrigation Scheme---250 million cubic metres (13 cubic metres per second).

(3) Every right to which subsection (1) of this section applies shall be subject to the provisions of any other enactment relating to it.

16. Validation of licences, etc.---Every---

- (a) Agreement entered into by the Crown and any person who has agreed to purchase an irrigation scheme whereby the Crown has granted a licence to that person to use and operate the scheme on behalf of the Crown pending the transfer of the scheme pursuant to this Part of this Act; and
- (b) Payment made by the Crown to that person as licensee; and
- (c) Payment made and collection of a sum of money on behalf of the Crown pursuant to that agreement---

is hereby validated and declared to have been lawful.

17. No claim against Crown where scheme transferred back to Crown---If, under the terms of any agreement to sell or otherwise dispose of any irrigation scheme under this Part of this Act, the scheme or any dam

forming part of the scheme is transferred back to the Crown, the previous owners and users of the scheme or dam (including existing and past members of any body corporate which was the owner and any other purchaser of water from the previous owner of the scheme or dam) shall not have any claim against the Crown for compensation for any loss of supply of water.

18. Revocation of Orders in Council constituting irrigation districts, etc.---On the sale or disposal of any irrigation scheme under this Part of this Act, every Order in Council in force and made under section 208 or section 208A of the Public Works Act 1981, or the corresponding provisions of any former enactment relating to irrigation, which relates to the scheme shall be deemed to have been revoked.

PART II AMENDING PUBLIC WORKS ACT 1981

19. Application of Part XIX of Public Works Act 1981---The Public Works Act 1981 is hereby amended by inserting in Part XIX, before section 196, the following section:

``195A. This Part shall apply only to irrigation schemes owned by the Crown, irrigation schemes under construction by the Crown, and to irrigation schemes that the Crown has agreed to construct, and not to irrigation schemes sold or otherwise disposed of by the Crown under Part I of the Irrigation Schemes Act 1990."

20. Basic charge---(1) The Public Works Act 1981 is hereby amended by repealing sections 209 and 210, and substituting the following section:

``209. Notwithstanding that a basic charge may have been notified under section 202 of this Act or adjusted under section 210 of this Act (before its repeal), the Governor-General may from time to time, by Order in Council, determine the basic charge for each hectare of irrigable land in any irrigation district."

- (2) The following enactments are hereby consequentially repealed:
 - (a) Section 6 of the Public Works Amendment Act 1982;
 - (b) Sections 11 and 12 of the Public Works Amendment Act 1983;
 - (c) Section 2 of the Public Works Amendment Act (No. 4) 1987;
 - (d) Section 60 of the Public Works Amendment Act 1988.

21. Water availability charge---(1) The Public Works Act 1981 is hereby amended by repealing sections 211 and 212, and substituting the following section:

``211. Notwithstanding that a water availability charge may have been notified under section 202 of this Act or adjusted under section 212 of this Act (before its repeal), the Governor-General may from time to time, by Order in Council, determine the annual water availability charge for each unit quantity or unit rate of supply of water in any irrigation district."

- (2) The following enactments are hereby consequentially repealed:
 - (a) Sections 13 and 14 of the Public Works Amendment Act 1983;
 - (b) Section 3 of the Public Works Amendment Act (No. 4) 1987;
 - (c) Section 61 of the Public Works Amendment Act 1988.