

New Zealand.



ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"> 1. Short Title. 2. Amendment of section 8 of the principal Act. 3. Reduction of time to elapse between adoption and confirmation of resolution making special order. 4. Water-race districts when constituted, &c., may be subdivided by the same special order. 5. Boundaries of water-race districts and subdivisions may be altered before adoption of special order. 6. Owner or occupier may object to inclusion of his land within any water-race district or subdivision. Appellant and respondent may agree to arbitration. 7. Amendments of section 31 of the principal Act. 8. Hypothecation of debentures. 9. Special loan under Act of 1894 to be secured by special rate. | <ol style="list-style-type: none"> 10. Section 2 of Act of 1897 amended. 11. Disputes about right of user of waters of streams or rivers to be submitted to arbitration. 12. Control and management of water-races. 13. Section 13 of principal Act amended. 14. Recovery of moneys. 15. Prevention of injury to low-lying lands. 16. Section 6 of Act of 1897 amended. 17. Managing ratepayers may be appointed. 18. Water-channel may be declared water-race. 19. Water-supply districts in County of Eden may be extended. Mode of taking poll. Extension of district to be gazetted. Loan may be raised. 20. Powers of Council of Borough of Greytown North extended. 21. Penalty for continuing breach of by-law. 22. Definition of "water-race" extended. |
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1898, No. 12.

AN ACT to further amend "The Water-supply Act, 1891." Title.
[28th October, 1898.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. The Short Title of this Act is "The Water-supply Act Amendment Act, 1898," and it shall be read with "The Water-supply Act, 1891" (hereinafter called "the principal Act"). Short Title.
2. Subsection two of section eight of the principal Act is hereby amended by substituting the word "fourteen" for the word "thirty" therein. Amendment of section 8 of the principal Act.
3. When a special order is made by a County Council for any of the purposes mentioned in sections eight, nine, and ten of the principal Act, the period to elapse between the adoption of the resolution making the special order and its confirmation shall not be less than fourteen days, instead of not less than four weeks, as required by the one-hundred-and-twenty-fourth section of "The Counties Act, 1886," and the provisions of the said one-hundred-and-twenty-fourth section of "The Counties Act, 1886," are hereby modified accordingly. Reduction of time to elapse between adoption and confirmation of resolution making special order.

Water-race districts when constituted, &c., may be subdivided by the same special order.

4. Any County Council or Water-supply Board constituting, enlarging, altering, or curtailing the boundaries of any water-race district under the principal Act may, if it think fit, by the same special order as that whereby such district is constituted, enlarged, altered, or curtailed, also divide the district so constituted, enlarged, altered, or curtailed into subdivisions, or abolish or alter existing subdivisions, and may prescribe the boundaries of such subdivisions, and assign names thereto.

Boundaries of water-race districts and subdivisions may be altered before adoption of special order.

5. The boundaries of any water-race district, or subdivision thereof, as set forth in any special order made by any County Council or Water-supply Board under sections eight, nine, and ten of the principal Act, may be altered, and the description thereof amended, before the adoption of the resolution making such special order.

Owner or occupier may object to inclusion of his land within any water-race district or subdivision.

6. Any owner or occupier (such occupier being liable to be rated) of land included within any area constituted a district under the provisions of the principal Act for the purpose of the construction of water-races therein, or within any enlargement or alteration of such a district, or within any subdivision of such a district, may, within ten days after the passing of the special order constituting such district or enlargement or alteration thereof, or such subdivision, object to his land being included therein; and with respect to every such objection the following provisions shall apply:—

(1.) The objection shall be in writing under the hand of such owner or occupier, or of his authorised agent, and shall specify with reasonable particularity the grounds upon which it is based, and shall, within the aforesaid period of ten days, be lodged at the principal office of the County Council or Water-supply Board by which such special order was made.

Appellant and respondent may agree to arbitration

(2.) Unless within the period of fourteen days after the objection is lodged as aforesaid the matters in difference are settled by agreement between the objector and the County Council or Water-supply Board for the inclusion or exclusion of his land in whole or in part, they shall be referred to arbitration under "The Arbitration Act, 1890"; and in such case the objection shall be deemed to be a submission under that Act by the objector and the County Council or Water-supply Board; and the reference shall be deemed to be to two arbitrators.

(3.) The award made under the arbitration may amend the description of the boundaries of the water-race district or subdivision of a district set forth in the special order, and such special order shall thenceforth be read as if the amended description had originally been inserted therein.

(4.) If the matters in difference are settled by agreement between the parties as aforesaid, the County Council or Water-supply Board shall amend the aforesaid special order in so far as is necessary for the purpose of giving effect to the terms of the agreement.

Amendments of section 31 of the principal Act.

7. The second paragraph of subsection one of section thirty-one of the principal Act is hereby repealed, and the following substituted therefor:—

- (1.) The aggregate amount of all loans to be raised for such purposes respectively shall not exceed in any district or subdivision a sum equal to one-half the value of the fee-simple of all the land in the district or subdivision as appearing in the valuation-roll for the time being in force, but the Council may raise loans for the said purposes to the foregoing amount, notwithstanding that by so doing it shall exceed the limit placed upon its power to borrow by way of special loan by section one hundred and ninety-two of "The Counties Act, 1886."
- (2.) The following shall be read as an additional paragraph to the said subsection :—

In giving notice of its intention to raise any special loan hereunder it shall be sufficient for the Council to publish the notice mentioned in the one-hundred-and-ninety-third section of "The Counties Act, 1886," once in each week for four successive weeks, instead of once in each week for six successive weeks as required by that section; and the poll of ratepayers to be taken in respect of such loan may be taken at any time within three weeks after the meeting of ratepayers to be held in pursuance of the provisions of the said Act, provided that public notice of the intention to take such poll is given at least one week before it is taken.

8. In the case of any County Council or Water-supply Board raising any special loan for the purpose of exercising any of the powers conferred on it by the principal Act or any Act amending the same, such Council or Board, or, if agents shall have been appointed by such Council or Board for raising and managing such loan, such agents, may borrow any sum or sums of money not exceeding the whole amount proposed to be borrowed by the hypothecation or mortgage of any debentures authorised to be issued; but all moneys so borrowed shall be a first charge upon and shall be repaid out of the loan when raised.

Hypothecation of debentures.

9. The special loan which under section two of "The Water-supply Act Amendment Act, 1894," may be raised in order to defray all preliminary expenses or liabilities as therein mentioned shall be secured by a special rate which the County Council or Water-supply Board may impose and levy on all lands in the district or sub-district under the provisions of section thirty-one of the principal Act relating to special loans, all which provisions shall, *mutatis mutandis*, apply:

Special loan under Act of 1894 to be secured by special rate.

Provided that the consent of the ratepayers of the district or sub-district shall not be necessary in any case where such preliminary expenses or liabilities have been incurred pursuant to a petition signed by not less than two-thirds of such ratepayers; and a certificate under the seal of the County Council or Water-supply Board that such petition has been duly made and signed shall be conclusive evidence of the fact.

10. The aforesaid section two of "The Water-supply Act Amendment Act, 1894," is hereby amended by inserting next after the words "in the proposal for which such consent was or may be given," the words "or that such consent is not given to such proposal."

Section 2 of Act of 1897 amended.

Disputes about right of user of waters of streams or rivers to be submitted to arbitration.

11. In the case of any dispute arising between a County Council or Water-supply Board and any other local authority respecting the user of the waters of any stream or river, such dispute shall be decided by arbitration, which shall be conducted in accordance with the provisions of "The Arbitration Act, 1890." The reference shall be to as many arbitrators as there are parties to the dispute, one to be appointed by each party, unless the parties shall agree to refer the matters in difference to a single arbitrator. Where more than one arbitrator is appointed, the arbitrators shall be at liberty to appoint an umpire.

Provided always that if any party to a dispute shall refuse to appoint an arbitrator, or concur in the appointment of a single arbitrator where it has been previously agreed to refer the matters in difference to a single arbitrator, or shall neglect to make or concur in making such appointment after notice in writing requiring it so to do has been served upon it by any other party to the dispute, such other party may appeal to the Minister for Public Works to appoint an arbitrator, or concur in the appointment of a single arbitrator, in place of the party so refusing or neglecting as aforesaid; and the said Minister shall thereupon appoint an arbitrator, or concur in appointing a single arbitrator, in place of the party so refusing or neglecting as aforesaid, and the arbitrator so appointed shall have the like powers to act in the reference and make an award and otherwise as if the party so refusing or neglecting as aforesaid had appointed or concurred in appointing him.

Provided always that nothing herein contained shall be deemed to affect or lessen the powers conferred upon any County Council or Water-supply Board by the seventh section of "The Water-supply Act Amendment Act, 1894," or by any other Act, with respect to any river or stream within or bounding the district of such County Council or Water-supply Board.

Control and management of water-races.

12. Notwithstanding anything contained in the said Act, it shall be lawful for the Council of any county, from time to time, at its discretion,—

- (1.) To enter upon any lands and roads in any water-race district through, over, or along which any water-race is constructed (including water-races constructed upon roads as mentioned in section thirty-seven of the said Act), and to cleanse, repair, and maintain such water-races and all reservoirs for water upon such lands, and all works connected therewith respectively;
- (2.) To stop the flow of water in any water-race for the purpose of cleansing, repairing, altering, enlarging, or extending any such water-race or reservoir for water as aforesaid, or for any other purpose which the Council shall deem necessary or proper;
- (3.) To stop, reduce, or alternate the flow of water in any water-race, and to control and manage all water-races in the county in such manner as they shall deem best adapted for the purpose of providing a supply of water; and
- (4.) To allocate to, between, and among the occupiers and owners of such lands as aforesaid the cost incurred by the Council

in and about the execution of the works mentioned in this section, and of any other works which the Council may undertake, construct, and carry out for all or any of the purposes aforesaid.

13. Subsection two of section thirteen of the principal Act is hereby amended by substituting the word "fourteen" in lieu of the word "thirty."

Section 13 of principal Act amended.

14. In case any such occupier or owner shall, upon demand in writing made upon him by the Council, or within such time after the making of such demand as the Council shall by resolution appoint, fail to pay at the office of the Council, or at such other place as shall be appointed by the Council for that purpose, the amount so allocated to be paid by him as aforesaid, the amount so allocated may be recovered by the Corporation of the county, as a debt due by such occupier or owner to such Corporation, in any Court of competent jurisdiction.

Recovery of moneys.

15. In every case where any County Council or Water-supply Board constructs or maintains any water-race, it shall be the duty of such Council or Board to prevent low-lying lands being thereby flooded, water-logged, or otherwise injuriously affected. And any person owning or occupying land, whether within the boundaries of a water-supply district or not, which he has reason to believe will be injuriously affected by the construction of any water-race, may apply to the District Court, if there shall be such a Court exercising jurisdiction in the district, or, if not, to the Supreme Court, for an injunction to prevent such water-race being proceeded with unless adequate provision is made to prevent such land being flooded, water-logged, or otherwise injuriously affected; and the Court may thereupon grant such injunction or make such order as shall best meet the circumstances of the case.

Prevention of injury to low-lying lands.

16. Section six of "The Water-supply Amendment Act, 1897," is hereby amended by striking out the words "and five" in the first line.

Section 6 of Act of 1897 amended.

17. (1.) A County Council or Water-supply Board may by special order appoint not less than five nor more than seven ratepayers, who shall have the management on behalf of the Council or Board of any water-race vested in the Corporation of such Council or Board, and for that purpose may confer upon such managing ratepayers all or any of the powers of management possessed by the Council or Board.

Managing ratepayers may be appointed.

(2.) A notification in the *Gazette*, signed by the Chairman of the Council or Board, shall be sufficient evidence of the appointment of such managing ratepayers, and of the powers conferred upon them.

(3.) Any such special order may from time to time be varied or rescinded by special order:

Provided that no such special order for the management by managing ratepayers of any water-race, as herein defined, shall be made unless a requisition signed by a majority of ratepayers supplied by such water-race shall have been received by such Council or Board requesting that the management be given to such managing ratepayers.

Water-channel may be declared water-race.

18. In any case where a natural water-channel exists within the district of a County Council or Water-supply Board the following provisions shall apply, anything in this Act or any other Act to the contrary notwithstanding :—

- (1.) On the written application of not less than two-thirds of the occupiers and owners of such of the land through which the water-channel runs as is within the district, the County Council or Water-supply Board may, with the written consent of all the owners of such land, by special order declare the water-channel to be a water-race.
- (2.) So long as such special order continues in operation, every owner or occupier of land through which such water-race runs shall be entitled to use the water, in so much of the water-race as is within the boundaries of his land, for domestic purposes, or for the purpose of watering stock, or for any other purpose not involving the diversion of the water, but shall not be entitled to divert the water except at such times, to such extent, and subject to such conditions as are prescribed by by-laws, which the Council or Board is hereby empowered to make.
- (3.) The water-race shall be under the control of the Council or Board, who may from time to time increase, diminish, or stop the supply of water therein as it thinks fit :

Provided that in every case where the Council or Board increases the supply of water section fifteen hereof shall apply in like manner as if the water-race were constructed or maintained by the Council or Board.

Water-supply districts in County of Eden may be extended.

19. Any Water-supply Board within the County of Eden shall have power to extend the boundaries of the water-supply district under its control so as to take in the whole or a portion of any road district adjoining such water-supply district, upon and subject to the conditions following :—

Upon a resolution favouring the taking of a poll, as herein-after mentioned, being passed by the Water-supply Board and by the Road Board of the district wherein the area of such proposed extension is situated, a poll of the ratepayers within the area of such proposed extension shall be taken as provided under "The Regulation of Local Elections Act, 1876."

Mode of taking poll.

Such poll shall be taken upon the proposals following :—

- (a.) Agreeing or otherwise to such proposed extension ;
- (b.) Agreeing or otherwise to a loan of such specified amount as may be deemed necessary for the purpose of constructing water-races within the area of such proposed extension ;
- (c.) Agreeing or otherwise to the levying of a special rate on the rateable value of the land within the area of such proposed extension equal to any special rate or special rates levied by the Water-supply Board of the water-supply district whose boundaries are proposed to be extended as aforesaid :

Provided that the provisions of "The Local Bodies' Loans Act, 1886," shall, so far as applicable, apply in respect of the taking of the poll upon the proposals for

such loan and special rate, and generally in respect of the raising of such loan and the making and levying of such special rate, and otherwise as by such Act provided; and the Water-supply Board of the water-supply district whose boundaries are proposed to be extended shall in respect of the area of such proposed extension be deemed to be the local authority thereof within the meaning and for the purposes of "The Local Bodies' Loans Act, 1886"; and the area of such proposed extension shall be deemed to be a district within the meaning and for the purposes of such Act:

Provided further that the said proposals shall be deemed to be carried if a majority in number of the valid votes recorded at such poll, representing not less than three-fifths of the rateable value of the rateable property (situated within the area of such proposed extension) of all the ratepayers whose votes are so recorded, shall vote for the proposals.

If such proposals shall be carried, upon receipt of such resolutions as aforesaid, and upon proof by affidavit of the Chairman of the Water-supply Board of such proposals having been carried, the Governor by Proclamation gazetted shall declare the boundaries of the water-supply district to be extended so as to include the area of such proposed extension, and thereafter the water-supply district and the area of such proposed extension shall form one water-supply district; and the Water-supply Board may raise upon the security of such rate or otherwise any amount not exceeding the sum sanctioned by any such proposals as aforesaid for the purpose of constructing water-races in the area of such extension, and such sum so raised shall become portion of the funds of the Water-supply Board, and the Water-supply Board shall have full power to levy and collect the said special rate in respect of such extended area.

Extension of district to be gazetted.

Loan may be raised.

20. The Council of the Borough of Greytown North shall have all the powers, duties, and authorities conferred upon a County Council by the principal Act or any amendment thereof; and for the purpose of this section the following provisions shall apply:—

Powers of Council of Borough of Greytown North extended.

- (1.) All references in the principal Act or any amendment thereof to a County Council, or the Corporation, Chairman, or district of a county, or to any of the provisions of "The Counties Act, 1886," shall be construed to apply to the Council, Corporation, Mayor, or district of the aforesaid borough, or to the corresponding provisions of "The Municipal Corporations Act, 1886," as the case may require.
- (2.) The powers and authorities by this section conferred upon the Council of the aforesaid borough shall be exercisable in addition to and irrespective of any powers or authorities conferred upon such Council by "The Municipal Corporations Act, 1886," or any other general, local, or special Act.
- (3.) Nothing in this section contained shall operate or be construed to empower the Council of the Borough of Grey-

town North to divert water from any river or stream within the County of Wairarapa South except with the consent of the County Council and upon such terms and conditions as are agreed upon between the respective Councils of the said borough and the County of Wairarapa South.

Penalty for continuing breach of by-law.

21. Where any by-law made under this Act provides a penalty for the breach thereof, such penalty may, in all cases where the breach is a continuing one, be any sum not exceeding five pounds for every day or part of a day during which such breach shall continue. After conviction for any continuing breach, the Council may apply to any Court of competent jurisdiction for an order restraining the further continuance of such breach by the person convicted.

Definition of "water-race" extended.

22. The term "water-race," as defined in section four of the principal Act, shall extend to and include any natural or artificial water-race or channel purchased or acquired by the Council, or any such race or channel constructed in or upon or through any private lands with the permission of the owner thereof, or any such race or channel constructed by the Council in, upon, or through land vested in the Council.