

[AS REPORTED FROM THE LANDS AND AGRICULTURE
COMMITTEE]

House of Representatives, 10 June 1971.

Words struck out by the Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

[AS REPORTED FROM THE COMMITTEE OF THE WHOLE]

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Hon. Mr Allen

WATER AND SOIL CONSERVATION AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Water and Soil Conservation Act 1967

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

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1. **Short Title and commencement**—(1) This Act may be cited as the Water and Soil Conservation Amendment Act (1970) 1971, and shall be read together with and deemed part of the Water and Soil Conservation Act 1967* (hereinafter referred to as the principal Act).

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(2) Part I of this Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Order in Council, and Part II of this Act shall come into force on the passing of this Act.

PART I

15

MINING PRIVILEGES IN RESPECT OF WATER

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

“Current mining privilege” means—

(a) Any mining privilege in respect of water which was subsisting or in force immediately before the commencement of this Part of this Act and which was granted under the Mining Act 1926 after the 9th day of September 1966; and

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(b) Any mining privilege in respect of water which was so subsisting or in force and which was granted under the Mining Act 1926 or any former Mining Act on or before the said 9th day of September 1966 to the extent that it has been authorised pursuant to subsection (2) of section 21 of the principal Act (as substituted by section 2 of the Water and Soil Conservation Amendment Act 1969):

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“District Land Registrar”, in relation to any land or water to be dealt with under this Part of this Act, means the District Land Registrar for the land registration district within which the land or water is situated; and, if the land or water is situated within more than one such district, means the District Land Registrar for each of the districts:

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*1967, No. 135

Amendments: 1968, No. 117; 1969, No. 114

“Former Mining Act” means any Mining Act in force at any time before the Mining Act 1926:

5 “Mining privilege” means any licence, right, title, easement, or privilege lawfully granted or acquired under the Mining Act 1926 or any former Mining Act; and includes the land in respect of which the licence, right, title, easement, or privilege is so granted or acquired:

10 “Race” means any artificial channel or ditch for the conveyance of water, or of water and refuse or waste, or into or in which water, or water and refuse or waste, may be diverted or conveyed, for any purpose authorised by a current mining privilege:

15 “Watercourse” means any river, stream, pool, lake, or other natural channel or depository of water, whether containing water or not; and includes the water therein and the tributaries thereof.

Cf. 1926, No. 15, s. 4

20 **3. Current mining privileges to enure**—Every current mining privilege, and every special site licence required for the exercise of any such privilege, that was in force immediately before the commencement of this Part of this Act shall continue in force after the commencement of this Part of this Act, subject to the provisions of this Part of this Act,
25 until the date on which it would have expired under the Mining Act 1926, and every such privilege granted under the Mining Act 1926 after the 9th day of September 1966 shall be deemed to have been authorised under the principal Act.

30 **4. Water-race licence**—Every current mining privilege that is a water-race licence shall, during its currency, entitle the holder of the privilege to cut, construct, and maintain a water race, or to use as a water race any natural channel, on the land specified in, and in accordance with the conditions
35 of, the licence; and also, by means of the race, to divert and use the quantity of water specified in the licence from any water-course on or running through or adjoining the land in order to continue to supply, sell, or dispose of the water for any of the purposes specified in the licence:

Provided that, where any such licence was granted before the 10th day of September 1966, the diversion and use of water shall be restricted to the extent that it has been authorised under subsection (2) of section 21 of the principal Act (as substituted by section 2 of the Water and Soil Conservation Amendment Act 1969). 5

Cf. 1926, No. 15, s. 109

5. Dam licence—Every current mining privilege that is a dam licence shall, during its currency, entitle the holder of the privilege to excavate, construct, maintain, and use a dam in accordance with the conditions of the licence for the storage of water for any of the purposes specified in the licence: 10

Provided that, where any such licence was granted before the 10th day of September 1966, the volume of water stored shall not exceed that authorised under subsection (2) of section 21 of the principal Act (as substituted by section 2 of the Water and Soil Conservation Amendment Act 1969). 15

Cf. 1926, No. 15, s. 113

6. Drainage-area licence—Every current mining privilege that is a drainage-area licence shall, during its currency, entitle the holder of the privilege to the exclusive right to collect and store the water that naturally lies within, or falls upon, or percolates through, the area of land specified in the licence: 20 25

Provided that, where any such licence was granted before the 10th day of September 1966, the collection and storage of water shall be restricted to the extent that it has been authorised under subsection (2) of section 21 of the principal Act (as substituted by section 2 of the Water and Soil Conservation Amendment Act 1969). 30

Cf. 1926, No. 15, s. 114

7. Tail-race licence—Every current mining privilege that is a tail-race licence shall, during its currency, entitle the holder of the privilege to cut, construct, maintain, and use a race in order to carry off water, tailings, sludge, and other refuse or waste from mining operations within the meaning of the Mining Act (1970) 1971, or to serve as a ground sluice or race for saving gold: 35

5 Provided that the holder of the privilege shall not be entitled to treat any portion of the tail race as a ground sluice or race for saving gold except such portion as is distinguished for that purpose with reasonable particularity in the licence:

10 Provided also that, where any such licence was granted before the 10th day of September 1966, the carrying off of the water, tailings, sludge, and other refuse or waste shall be restricted to the extent that it has been authorised under subsection (2) of section 21 of the principal Act (as substituted by section 2 of the Water and Soil Conservation Amendment Act 1969).

Cf. 1926, No. 15, s. 111

15 **8. Main tail-race licence**—Every current mining privilege that is a main tail-race licence shall, during its currency, entitle the holder of the privilege to cut, construct, and maintain a race in order to carry off from such claims or tail races as are specified in the licence any water, tailings, sludge, and other refuse or waste from mining operations within the
20 meaning of the Mining Act (1970) 1971:

25 Provided that, where any such licence was granted before the 10th day of September 1966, the carrying off of the water, tailings, sludge, and other refuse or waste shall be restricted to the extent that it has been authorised under subsection (2) of section 21 of the principal Act (as substituted by section 2 of the Water and Soil Conservation Amendment Act 1969).

Cf. 1926, No. 15, s. 112

30 **9. (Water supply of borough or town not to be polluted by mining operations) Mining debris, etc., not to enter public water supply**—Notwithstanding anything in this Part of this Act,—

35 (a) It shall not be lawful to allow the water in any water race, or any watercourse with which any such race is connected or by which it is fed, to be used for the carrying off of any tailings, mining debris, or waste water from mining operations within the meaning of the Mining Act (1970) 1971, if the race is held and used by a local authority for the purpose of
40 supplying water to the (*inhabitants of any borough or town*) public:

(b) Paragraph (a) of this section shall not apply in the case of any watercourse duly proclaimed under the Mining Act 1926 or any former Mining Act as a watercourse into which tailings, mining debris, or waste water may be discharged, nor in the case of any tail race lawfully discharging into any watercourse below the point at which any water race is connected with or fed by the watercourse and the discharge of the tail race does not, except in unforeseeable circumstances, back up and enter any water race with which it is connected.

Cf. 1926, No. 15, s. 126

10. Occupation of land for construction, etc. of race or dam—For the purposes of the construction, maintenance, and improvement of any race or dam for which a current mining privilege has been granted, and for the deposit of soil and other matter removed from the race or dam, the privilege shall, during the currency thereof, entitle the holder of the privilege to occupy the land forming the course of the race or, as the case may be, the site of the dam, and also such other land as is specified in that behalf in the privilege.

Cf. 1926, No. 15, s. 115

11. Retention of right of priority—Every holder of a current mining privilege who holds a right that was conferred by the Mining Act 1926 or any former Mining Act, and was in force at the commencement of this Part of this Act entitling him to exercise the privilege with priority over any other user of water shall retain that right of priority during the currency of the privilege and of any right granted to him under the principal Act in substitution for the privilege on its expiry, until he agrees in writing to a lower order of priority in respect of the privilege and the agreement is notified in writing to the Board.

12. Certificate of priority—(1) On the application in writing of a holder of a current mining privilege, the Board shall supply the holder with a certificate in writing as to the order of priority, as disclosed by its records, of the privilege in relation to any other current mining privilege or right granted under the principal Act.

(2) Every certificate given under this section shall be admitted by all Courts as sufficient evidence of the order of priority specified therein in the absence of proof to the contrary.

5 13. Exercise of priority to water—In any case where the water flowing in any watercourse is insufficient to supply fully all the races lawfully connected therewith, the holder of any right granted or authorised under the principal Act or the holder of any current mining privilege in respect of the
10 watercourse shall, on receipt of a notice in writing from the holder of a superior current mining privilege stating that the supply of water in respect of the superior privilege is less than he is entitled to, forthwith cease to use the water or so much thereof as is required to make up the full supply in respect of
15 the superior privilege; and, if he fails or neglects so to do, he shall be deemed to be wrongfully using the water, in which case the holder of the superior privilege shall be entitled, in any Court of competent jurisdiction, to recover damages for loss of water, and also to restrain by injunction the holder
20 from wrongfully using the same.

Cf. 1926, No. 15, s. 121 (c)

14. Obligations of holders of current mining privileges—

(1) Except as otherwise provided in (*this Part of this Act*) the principal Act or as authorised by a current mining
25 privilege, the holder of any such privilege shall, as such holder,—

- (a) Not alter the intake of the water, or use for diverting the water any race other than the race authorised by the privilege:
- 30 (b) Not exercise the privilege except for the purposes authorised thereby:
- (c) Not exercise the privilege in such manner as to injure directly any structure, building, bridge, or public work:

35 *Struck Out*

(d) Not allow water which he may lawfully divert to run to waste:

New

40 (d) Take such action as the Board may direct to prevent any water that he may lawfully divert from running to waste:

- (e) Not have any right or remedy whatsoever against any person in respect of the discharge of tailings, debris, refuse, or waste water into any watercourse by *(the person in the lawful carrying-on of his mining operations)* that person in the lawful carrying on of mining operations within the meaning of the Mining Act 1971: 5
- (f) Comply fully with all conditions and restrictions attaching to the privilege, except to the extent that any may be dispensed with in writing by the Board for such period as the Board may specify: 10
- (g) Maintain in good repair, order, and condition, to the satisfaction of the Board, all bridges and culverts permitting public or private access over water races which have been constructed to enable the privilege to be exercised: 15
- (h) Record in such manner, and furnish to the Board, such information in respect of the exercise of the privilege as the Board may from time to time require. 20
- (2) On the application of any person or local authority likely to suffer damage or injury from the unfitness, disrepair, or weakness of any dam (other than a dam owned by the Crown), the Board may order the dam to be inspected by any duly qualified engineer, and, after hearing the holder of the licence in respect of the dam and all interested parties, and after consultation with an Inspector of Mines, the Board may give such directions for the repair or strengthening of the dam or otherwise, and upon such terms as to costs and otherwise (including the expenses of the *(inspector) engineer*), as it thinks fit. 25 30

New

(3) In this section, "dam" means a natural or artificial barrier that retains water.

15. Quantity of water to flow in natural bed for public use—(1) In any case where any race or dam authorised by a current mining privilege is fed by a watercourse, the following provisions shall apply: 35

- (a) On the application of any person, being the owner or lawful occupier of any land (below the point of intake for the race or dam) on, through, adjoining, or within three chains of which the watercourse exists or runs, the Board may direct that any 40

5 specified quantity of water, not exceeding one cubic foot per second, shall be allowed to flow for public use in the natural channel or bed of the watercourse below the said point of intake until the expiry of the privilege or for such period as the Board may specify:

10 (b) The holder of the privilege for the dam or race shall comply with the direction forthwith upon being served with notice thereof, but may, within 28 days after the date of the service of the notice, appeal to the Town and Country Planning Appeal Board against the direction of the Board; and every such appeal shall be made and determined in the same manner as an appeal under section 25 of the principal Act against a decision under section 24 of that Act.

15 (2) Where an order made under section 122 of the Mining Act 1926 or under the corresponding provisions of any former Mining Act was in force immediately before the commencement of this Part of this Act, it shall enure until the expiration of the term of the order or until it sooner expires in accordance with its terms.

Cf. 1926, No. 15, s. 122

16. Current mining privileges not to confer rights as against domestic users—(1) No current mining privilege shall confer
25 any right to the use of natural water as against any person requiring a reasonable quantity for his own domestic needs or for the needs of animals for which he has any responsibility or for or in connection with fire-fighting purposes.

New

30 (2) In the event of any dispute arising as to what constitutes a reasonable quantity of water for the purposes of subsection (1) of this section, the Board, after hearing the parties to the dispute, shall determine the matter; and the Board's decision shall be final and conclusive.

35 Cf. 1926, No. 15, s. 121 (d)

17. Records of Wardens' Courts to be forwarded to Board for the region—(1) Notwithstanding anything in the Archives Act 1957, all registers, documents, and papers evidencing or relating to current mining privileges and held in any Warden's

Court shall, as soon as practicable after the commencement of this Part of this Act, be forwarded to and held by the Board concerned, which shall enter particulars of them in a register and retain possession thereof subject to the provisions of sections 26 and 27 of this Act.

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(2) The Board shall notify the Chief Archivist appointed under the Archives Act 1957 of the expiry or surrender of any current mining privilege held by it, and shall not destroy or otherwise dispose of any such privilege or any papers relating to that privilege except with the consent of the Chief Archivist.

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(3) If the Chief Archivist, on receiving any such notification from the Board, so requires, the privilege and any papers relating to that privilege shall be transferred to the custody of the Chief Archivist and deposited in the National Archives.

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18. Compensation for non-renewal of current mining privilege—

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(1) Where the holder of a current mining privilege has any right to a renewal thereof which could have been validly exercised under the Mining Act 1926 if that Act had not been repealed and the Board fails to grant to that holder on application by him in that behalf a right under the principal Act conferring on him substantially the same powers, privileges, and authorities in respect of natural water (but limited in the case of a privilege authorised under section 21 (2) of the principal Act to the extent of that authorisation) as he would have been able to exercise on the renewal of the mining privilege, there shall be payable to that holder by the Board compensation for all loss in value to the holder's land due to the failure of the Board to grant an equivalent right, limited as aforesaid, as to natural water in respect of that land.

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New

(1) Where the holder of a current mining privilege would, if the Mining Act 1926 had not been repealed, have been entitled to a renewal of the privilege, or to the grant of a new water race licence in respect of the same area of land in priority over every other person, and the Board fails or refuses to grant to that holder, on application by him in that behalf, a right under the principal Act conferring on him substantially

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New

the same rights, benefits, privileges, and priorities in respect of natural water (but limited, in the case of a privilege authorised under subsection (2) or subsection (2A) of section 5 21 of the principal Act, to the extent of that authorisation) as he would have been able to exercise had the Mining Act 1926 not been repealed, there shall be payable to him by the Board compensation equivalent to—

- 10 (a) The reduction in value of his land, owing to such failure or refusal, where the natural water was used for purposes other than mining; or
- 15 (b) The reduction in value, owing to such failure or refusal, of any mining privilege within the meaning of the Mining Act 1971 held by him and under which he is carrying out mining operations within the meaning of that Act—

as the case may require.

(2) Claims for compensation under this section shall be made and determined within the time and in the manner 20 provided by the Public Works Act 1928 for claims for damage to land; and the provisions of that Act shall, so far as they are applicable and with the necessary modifications, apply with respect to claims under this section.

25 (3) Compensation payable under this section shall be assessed on the basis that the holder of the current mining privilege would have been entitled under the Mining Act 1926 if that Act had not been repealed to exercise not more than once, after the date of coming into force of **(Part I) this** Part of this Act, any right of renewal held by him.

30 **19. Acquisition of current mining privileges by Crown—**

(1) The Governor-General may take, purchase, or acquire any current mining privilege as for a public work under the Public Works Act 1928 or otherwise, and hold, sell, or lease or otherwise dispose of the privilege to any person in the 35 same manner in all respects as if he were a private person.

(2) Any such privilege taken, purchased, or acquired by or on behalf of the Crown, whether before or after the passing of this Act, shall confer on the Crown the same rights, benefits, privileges, and priorities as those to which the former holder 40 of the privilege was entitled immediately before the taking or acquisition of the privilege.

(3) Any transfer or mortgage of a current mining privilege of any kind to the Crown or to any person on the Crown's behalf shall not operate as a merger of the term and interest created by the privilege.

(4) A current mining privilege held by or on behalf of the Crown shall not be determinable by effluxion of time, but shall, notwithstanding anything in this Act, continue in force notwithstanding the expiry of the term for which it was granted until surrendered by the Crown by notice in writing to the Board.

(5) The Crown or any duly authorised person on the Crown's behalf may use or authorise the use of any current mining privilege held by the Crown for any purpose in connection with a public work or for any purpose for which it was being used at the commencement of this Part of this Act.

Cf. 1926, No. 15, s. 97

20. Compensation for current mining privilege taken by Crown—Where a current mining privilege is taken, purchased, or otherwise acquired by the Crown under the Public Works Act 1928, the following provisions shall apply:

- (a) For the purpose of the Public Works Act 1928 and this Act, it shall be a sufficient identification of the interest in land created by the privilege to describe it as the whole of the interest created by the privilege or to use the description set out in the privilege:
- (b) The person from whom the privilege is taken or acquired shall be entitled to compensation in accordance with Part III of the Public Works Act 1928, and the provisions of that Act, as far as they are applicable and with the necessary modifications, shall apply accordingly.

Cf. 1926, No. 15, s. 177

21. Proceedings commenced may be completed and enforced—All matters and proceedings in respect of any current mining privilege commenced under the Mining Act 1926 or in progress on the coming into force of this Part of this Act may be continued, completed, and enforced in a Magistrate's Court, which for these purposes may exercise all the powers and functions conferred on a Warden's Court by the Mining Act 1926 immediately before either the Mining Act (1970) 1971 or this Part of this Act came into force.

22. Revocation of Proclamation setting apart watercourses for discharge of tailings—(1) The Governor-General, on the advice of the Minister of Mines, may by Proclamation from time to time alter, revoke, or cancel any Proclamation made
5 under section 132 of the Mining Act 1926 or under the corresponding provisions of any former Mining Act and any conditions or restrictions set out in any such Proclamation.

(2) Subject to subsection (1) of this section, every Proclamation made under section 132 of the Mining Act 1926 or
10 under the corresponding provisions of any former Mining Act, so far as it was subsisting or in force immediately before the repeal of that section, shall continue in force after the commencement of this Part of this Act.

Cf. 1926, No. 15, s. 135 (2)

15 **23. Incidents attaching to a current mining privilege held by a local authority—**(1) A current mining privilege held by a local authority—

(a) Shall confer on the local authority the same rights, powers, and remedies, and impose upon it the same
20 liabilities, as in the case of a private person; and

(b) Shall not be determinable by the effluxion of time, but shall continue in force notwithstanding the expiry of the term for which it was granted, until it is surrendered by the local authority by notice in writing
25 to the Board.

(2) A local authority shall have authority and control over the entire length of any water race held by it under a current mining privilege, notwithstanding that the race may extend beyond the limits of the district within which the local
30 authority has jurisdiction.

(3) A local authority shall not transfer any current mining privilege to any person except the Crown.

Cf. 1926, No. 15, s. 129

24. Continued use of water races, dams, and special sites—
35 (1) On the application of the holder of a right granted or authorised under the principal Act following the expiration of a current mining privilege, the Board may, subject to such conditions as it thinks fit, grant to the holder the right to continue to use and maintain, for the purpose of the exercise of
40 the right so granted or authorised, any water race, dam, or special site which he was authorised to use under the expired privilege.

(2) The provisions of sections 24, 25, and 26 of the principal Act shall apply to every application and grant made under this section.

(3) Every person having any estate or interest in any land injuriously affected by any grant made under this section shall be entitled to full compensation for the same from the holder of the right. 5

(4) Claims for compensation under this section shall be made and determined in accordance with Part III of the Public Works Act 1928, and the provisions of that Act shall, so far as they are applicable and with the necessary modifications, apply with respect to claims under this section. The holder of the right shall be liable for compensation (if any) that becomes payable, and he shall be the respondent for the purposes of the Public Works Act 1928. 10

(5) Every grant by the Board under this section shall be— 15

(a) Endorsed on the right in respect of natural water to which it relates; and

(b) Notified by the Board in writing to *(every person having any estate or interest in the land affected)* the owner and occupier of the land affected, so far as they can be ascertained. 20

Cf. 1926, No. 15, s. 118

25. Current mining privileges deemed to be chattel interests—(1) Every current mining privilege shall be deemed to be a chattel interest in land and, subject to the provisions of this Part of this Act, may be sold, encumbered, transmitted, seized under writ of execution or warrant, or otherwise disposed of, as fully as a chattel interest in land. 25

(2) Notice in writing of any such dealing or disposition shall be given to the Board, and the dealing or disposition shall have no effect until notice has been so given. 30

Cf. 1926, No. 15, s. 178

26. Current mining privileges over land other than that of holders to be sent to the Chief Surveyor—(1) Upon the receipt from a Warden's Court pursuant to section 17 of this Act of any current mining privilege which confers on the holder thereof any right over land of which the holder is not the owner, the Board shall forward to the Chief Surveyor of the appropriate land district that privilege together with two copies thereof. 35 40

(2) On receipt of any such privilege the Chief Surveyor of the land district in which the privilege is situated shall, when he is satisfied that the description shown on or attached to the privilege is reasonably sufficient to identify the land, 5 endorse his approval of the description on the privilege and the said copies thereof and return them to the Board.

Struck Out

(3) Where he is not satisfied as to the sufficiency of the description of the parcel of land over which the privilege 10 exists, the Chief Surveyor shall, by notice in writing served on the holder of the privilege, require him to produce sufficient evidence to identify that parcel of land. On receipt of that evidence the Chief Surveyor shall attach to the privilege 15 and to each copy thereof a description of that parcel of land approved by the Chief Surveyor and return the privilege and copies with the descriptions attached thereto to the Board.

New

(3) If the Chief Surveyor is not satisfied as to the sufficiency 20 of the description of the parcel or parcels of land over which the privilege exists, he shall prepare and endorse on, or attach to, the privilege and the copies thereof a description of the land or a diagram thereof, or both, which in his opinion is reasonably sufficient to identify the land, 25 endorse his approval of the description of the land or of the diagram, or both, and return the privilege and copies with the descriptions and diagrams (if any) attached thereto to the Board.

(3A) For the purposes of this section, the Chief Surveyor 30 may by notice in writing served on the holder of the privilege, require the holder to produce for inspection by the Chief Surveyor any plan, search notes, or other document in his possession or under his control evidencing or tending to evidence in any manner the description, boundaries, extent, 35 or position of any land comprised in the privilege.

(4) The description of the land affected by the privilege, as approved by the Chief Surveyor under this section, shall, for the purposes of this Act and the Land Transfer Act 1952, be deemed to be a correct description of the land affected 40 by the privilege.

27. Current mining privileges over land other than that of holders to be produced in Land Transfer Office or Maori Land Court—(1) Where any current mining privilege which has been returned by the Chief Surveyor to the Board under section 26 of this Act affects land for which there is a certificate of title, lease, licence to occupy, or provisional register registered under the Land Transfer Act 1952, that privilege together with two copies thereof with the approved description attached thereto shall be produced by the Board to the District Land Registrar. 5 10

(2) On receipt of the privilege and the said two copies, the District Land Registrar shall, without fee,—

- (a) Endorse thereon a statement of the time and date of receipt; and
- (b) File in his office one copy of the privilege (with a copy of the approved description shown thereon or attached thereto); and 15
- (c) Return the privilege and the remaining copy thereof (with an approved description shown thereon or attached thereto) to the Board. 20

(3) Where the privilege returned by the Chief Surveyor as aforesaid affects any Maori land, the Board shall forward to the Registrar of the Maori Land Court the approved description and (if the privilege affects any land referred to in subsection (1) of this section) one copy of the privilege as endorsed by the District Land Registrar. The Registrar of the Maori Land Court shall enter in his records the particulars of the privilege, including the record reference (if any) endorsed on the privilege by the District Land Registrar. 25

(4) For the purposes of this section and of section 28 of this Act the expression “current mining privilege” includes any right granted under subsection (1) of section 24 of this Act. 30 40

28. Current mining privileges to be noted on certificates of title, etc.—(1) Where any current mining privilege is produced to the District Land Registrar under section 27 of this Act the District Land Registrar shall, without fee, enter on every certificate of title, lease, licence to occupy, provisional register, or other instrument of title registered or filed in his office, relating to that land, the particulars of the privilege, including the file reference. 35 40

(2) The entry by the District Land Registrar on a certificate of title, lease, licence to occupy, provisional register, or other instrument of title registered or filed in his office, of

the particulars of a current mining privilege shall operate only as a notice of the existence of the privilege, and shall not create a registered interest under the Land Transfer Act 1952.

5 **29. Land Transfer Act 1952 not to limit or affect rights**
under a current mining privilege—Nothing in the Land
Transfer Act 1952 shall be construed to in any way limit or
affect any right, title, or interest held under a current mining
privilege over land of which the holder is not the owner until
10 *(the privilege has been produced to the District Land*
Registrar under section 27 of this Act) particulars of the
privilege have been entered by the District Land Registrar
on the instrument of title affected in accordance with sub-
section (1) of section 28 of this Act:

15 Provided that nothing in this section shall restrict the provisions of section 28 of this Act.

30. Certified copies of current mining privileges to be evidence—(1) The Board shall, on payment of the prescribed fee, furnish, to any person applying for it, a certified copy of
20 any current mining privilege held by the Board under this Part of this Act.

(2) Every such certified copy shall be received in evidence for all purposes for which the original privilege might be put in evidence.

25 **31. Produced privileges to be open for search**—Any person may, for the purpose of inspection, without fee, have access to any current mining privilege filed with the District Land Registrar under this Part of this Act, during the hours and on the days appointed by any regulations for the time being in
30 force under the Land Transfer Act 1952.

32. Recording of surrender or cancellation of records—
(1) On the receipt by the District Land Registrar of—
(a) A surrender under the principal Act of all or part of
a current mining privilege; or
35 (b) A copy of an order of the Court cancelling the current mining privilege,—
he shall note the particulars on his record copy of the privilege affected.

(2) If a current mining privilege has been wholly surrendered, or has been cancelled by the Court, and notice of the existence of the privilege appears on a certificate of title, lease, licence to occupy, provisional register, or other instrument of title under the Land Transfer Act 1952, the District Land Registrar shall, on receipt of notice of the surrender or cancellation from the Board, note the certificate of title, lease, licence to occupy, provisional register, or other instrument, to the effect that the privilege has been surrendered or cancelled, as the case may be.

33. Power of Court to cancel privilege—Where any holder of a current mining privilege is convicted under section 34 of the principal Act of an offence, the Court in its discretion, in addition to or instead of imposing any fine in respect of the offence, may cancel the privilege, and thereupon the privilege shall be void and of no effect.

New

33A. Consequential amendment to Counties Amendment Act 1961—Section 46 of the Counties Amendment Act 1961 is hereby amended by repealing subsection (4), and substituting the following subsection:

“(4) Nothing in this Part of this Act shall restrict or interfere with the operation of Part X of the Public Works Act 1928 or of the Water and Soil Conservation Act 1967; nor apply to any water race or portion of a water race that has been constructed or used or is to be constructed or used under the authority of any right granted or authorised under the Water and Soil Conservation Act 1967 or under the authority of any current mining privilege within the meaning of Part I of the Water and Soil Conservation Amendment Act 1971.”

34. Repeals—The enactments specified in the Schedule to this Act are hereby repealed.

PART II

GENERAL PROVISIONS

35. Interpretation—Subsection (1) of section 2 of the principal Act is hereby amended by inserting, after the definition of the term “recreational”, the following definition:

“‘Right’, in relation to natural water, includes a current mining privilege within the meaning of section 2 of the Water and Soil Conservation Amendment Act (1970) 1971:”.

New

35A. General authority for use, etc., of natural water—
Struck Out

(1) Section 22 of the principal Act is hereby amended by
5 omitting the words "or any tributary thereof".

New

(1) Section 22 of the principal Act is hereby amended
by omitting the words "as far as practicable any interested
10 National Parks Authority where either may be interested
in the authorisation), in respect of any river or stream or
any tributary thereof," and substituting the words "the
Minister of Lands, where he may be interested in the
15 authorisation, and after consulting as far as practicable any
public authority (including the National Parks Authority)
which may be interested in the authorisation, in respect of
any river or stream,".

(2) The said section 22 is hereby further amended by
adding the following subsection:
20 "(2) The Board may from time to time, after consulting
*((as far as practicable any interested public authority
(including the Minister of Lands and the National Parks
Authority where either may be interested in the authorisa-
tion))*) the Minister of Lands, where he may be interested
25 in the authorisation, and after consulting as far as practicable
any public authority (including the National Parks Authority)
which may be interested in the authorisation, by public
notice authorise (with or without conditions) the damming
of any river or stream or of the rivers and streams within any
30 specified area, either permanently or for any specified time
and subject to cancellation at any time if and whenever in the
opinion of the Board the public interest so requires."

New

35 Provided that no person shall exercise the rights con-
ferred by any such authorisation so as to adversely affect
any land owned or occupied by another person, without that
other person's consent.

36. Applications in respect of natural water, and objections thereto—(1) Section 24 of the principal Act is hereby amended—

(a) By omitting from subsection (6) the words “any hearing is delegated under this Act”, and substituting the words “any matter is referred under this section for report and recommendation”:

(b) By omitting from subsection (6) the words “the Board or Tribunal may determine the matter”, and substituting the words “the Board may determine the matter, or the Tribunal may make a report and recommendation to the Board on the matter”.

(2) Section 24 of the principal Act is hereby amended by repealing subsections (7) and (8), and substituting the following subsections:

“(7) The Board may at any time constitute, reconstitute, or abolish a standing Tribunal to which matters of predetermined natures or of minor importance may be referred by the Chairman of the Board without awaiting preliminary consideration by the Board, or the Board may constitute a special Tribunal to which a specific matter or two or more specific matters may be so referred.

“(8) A Tribunal constituted under this section may consist of not more than five members, whether members of the Board or not, chosen by the Board for their knowledge and experience in matters of the nature under examination, of which members one shall be appointed by the Board as Chairman of the Tribunal. The appointment of any person to a standing or special Tribunal shall be no bar to his appointment to any other such Tribunal, and the appointment of any person to a Tribunal by one Board shall be no bar to his appointment to any Tribunal by any other Board or Boards.

New

“(8A) On receiving an objection to an application the Board shall forthwith serve a copy thereof on the applicant who may, within 14 days after receiving it or within such longer period as the Board may allow, serve on the Board a written notice stating that he desires the application and objection to be referred to a special Tribunal.

“(8B) On receiving any notice under subsection (8A) of this section, the Board shall, after giving the applicant and the objector 14 days to make representations as to the proposed membership, constitute a special Tribunal under subsection 7 of this section and shall refer the application and the objection to that Tribunal.”

(3) Section 24 of the principal Act is hereby further amended by adding the following subsection:

“(11) For the purpose of inquiring into any matter, (*a Tribunal shall be deemed to be*) the Board and any Tribunal shall have all the powers of a Commission of Inquiry under the Commissions of Inquiry Act 1908, and, subject to the provisions of this Act, all the provisions of that Act except sections 11 and 12 (which relate to costs) shall apply accordingly.”

10 **37. New sections inserted**—The principal Act is hereby amended by inserting, after section 24A (as inserted by section 3 of the Water and Soil Conservation Amendment Act 1969), the following sections:

15 **“24B. Variation of rights**—(1) The holder of any right granted or authorised under this Act may from time to time apply to the Board for any variation of the right, or of any provision, restriction, or condition of the right.

20 “(2) The Board shall publicly notify the receipt and nature of every application made to it under this section, including the natural water resources affected or proposed to be affected, and shall state in the notice the time and last day when, and the place where, written objections or submissions concerning the matter, supported in appropriate cases by statutory declaration, will be received:

25 “Provided that, where the Board is of opinion that by reason of the minor nature, duration, limited effect, or special circumstance of the proposed variation no person is likely to be injuriously affected by the grant of the application, the Board may dispense with the need for the public notification of the application.

30 “(3) The provisions of sections 24, 25, and 26 of this Act shall apply to every application made under this section which is publicly notified as if the application were an application for a right under subsection (3) of section 21 of this Act.

35 “(4) The Board shall endorse the particulars of any variation made by it on any document evidencing the right and enter those particulars in its records of rights.

“(5) No extension of the term of the right shall be granted under this section.

40 “(6) Nothing in this section shall restrict the provisions of section 23 of this Act.

“24c. Surrender of rights—(1) The holder of any right within the meaning of this Act may, by notice in writing to the Board signed by the holder thereof and accompanied by the appropriate documents evidencing the right (where any such documents exist), surrender the right wholly or in part. 5

“(2) The surrender of the right shall take effect on the receipt by the holder of the notice of acceptance by the Board of the surrender.

“24d. Imposition of restrictions on exercise of rights— 10
 (1) Where any right has been granted or authorised under this Act, notice in writing may (except as expressly provided in the right) be given to the holder for the time being of the right, by the Authority where the Crown is the holder, and by the Board where any other person is the holder, requiring 15
 the holder to restrict or suspend the exercise of all or any of the powers conferred by the right after such date as may be specified in the notice, being not less than (7) 14 days after the day on which the notice is given.

“(2) The powers conferred on the Authority and every 20
 Board by this section shall be exercised so as to maintain minimum levels, minimum flows, and minimum standards of quality of natural water as determined (*by any body that is a member of the Organisation or by the Board*) in accordance with this Act: 25

“Provided that nothing in this subsection shall restrict the exercise by the Authority or the Board of any power expressly conferred by any right.

“(3) The provisions of section 25 of this Act shall apply to every requirement of the Board under this section as if it 30
 were a decision of the Board under section 24 of this Act.

New

“(4) If the holder of a right has been given a notice under subsection (1) of this section and appeals under section 25 of this Act against the requirement specified in the notice 35
 within 14 days after the date on which the notice was given, he shall not be obliged to comply with the requirement unless and until the Town and Country Planning Appeal Board dismisses the appeal.

New

“24DD. Control of taking and use of water during water shortage—(1) If, in the opinion of the Board, there is at any time a serious temporary shortage of water, the Board may issue or cause to be issued, by such means of communication as it thinks appropriate, an order that the taking or use of any specified natural water or of the natural water in any specified area or in any specified lake, river, stream, drain, or underground source, shall be apportioned, restricted, or prohibited for such period not exceeding 14 days and to such extent and in such manner as may be specified in the order.

“Provided that no such order shall apply in respect of the taking or use of natural water by the Crown unless the order is consented to by the Chairman or Deputy Chairman of the Authority.

“(2) Any order issued under this section may from time to time be amended, revoked, or renewed by the Board by a subsequent order.

“(3) Notice of the particulars of any order issued under this section shall, as soon as practicable after its issue, be given to all persons required by the order to apportion, restrict, or stop the taking or use of any natural water, so far as they can be ascertained.

“(4) Every order issued under this section shall come into force on its issue and shall continue in force until it expires or is sooner revoked.

“24E. Removal of works on expiry of right—(1) Subject to subsection (3) of this section, the holder of any right granted or authorised under this Act may, at any time during the currency of the right and for a period of 3 months after the date of the expiry of the right or such longer period as the Board may in any case allow, remove or otherwise dispose of all buildings, pipes, machinery, equipment, and other property lawfully erected on or brought on to the land affected by the right for the purpose of facilitating the exercise of the right, whether the buildings, pipes, machinery, equipment, and other property are affixed to the land or not. All such property that is not so removed from the land shall be deemed to have been abandoned, and shall, subject to subsection (2) of this section, vest in the owner of the land freed

from every right, title, and interest held by any other person in respect of it.

“(2) Subject to subsection (3) of this section, the owner of any land may decline to accept ownership of any property under subsection (1) of this section by serving, within 21 days after the expiry of 3 months following the expiry of the right, on the person who held the relevant right, a notice in writing requiring that person to remove from the land such of the abandoned property as is specified in the notice; and, if any person on whom the notice is properly served fails to remove the property within 21 days after the date of service of the notice, the owner of the land may remove and dispose of it and recover the expenses incurred in doing so from that person as a debt due to the owner of the land. 5 10

“(3) Subsections (1) and (2) of this section shall be subject to and shall not affect the provisions of any valid agreement made by the holder of a right with the owner or occupier of any land affected by the right. Notwithstanding the provisions of this section, the Board may, by not less than 14 days’ notice in writing given to the holder of the right, require the holder to comply with such conditions as the Board may specify for the purpose of conducting the removal operations in a safe manner and leaving the land and natural water in such condition of safety as may be practicable. 15 20

“(4) Where the exercise of any right has been abandoned, or any right has expired or determined, and any works used therefor would in the opinion of the Board interfere with the flow of natural water or would allow the entry of pollutants into natural water, the Board may, by not less than 14 days’ notice in writing to the holder, or if, after reasonable enquiry, he cannot be found to the owner of the land, require the holder or the owner, as the case may require, to remove any such works and make good any damage resulting from the removal, or to seal the works so as to prevent the pollution to the satisfaction of the Board: 25 30 35

New

“Provided that nothing in this subsection shall oblige the owner of any land to remove any works that have been used for the purposes of an easement over the land taken under section 24G of this Act or of a mining privilege. 40

“24F. Board may require cessation of exercise of rights—

(1) If in the opinion of the Board the holder of a right granted or authorised under this Act has failed to perform or observe any provision, obligation, condition, or direction prescribed, 5 authorised, or provided for in this Act or by the right, the Board may, by notice in writing, require the holder of the right to cease at the end of 14 days from the date of which he receives notice from the Board or at the end of such longer 10 period as the Board may specify the exercise of the right in whole or in part as determined by the Board until the matter is remedied to the satisfaction of the Board.

“(2) The provisions of section 25 of this Act shall apply to every requirement of the Board under this section as if it were a decision of the Board under section 24 of this Act.

15 **“24G. Easement over land may be taken—**(1) If the holder of any right granted or authorised under this Act is unable to acquire any easement over any land that is necessary for the implementation of that right, he may apply to the Minister to have that easement taken under the Public Works Act 1928 20 and vested in him.

“(2) If after obtaining such reports as he considers warranted the Minister is of opinion that the taking as applied for is necessary for the implementation of the right, and that the cost of any practicable alternative proposal would be 25 significantly in excess of the cost of the proposal of the applicant, the Minister may cause to be served on the owner and occupier of the land over which the easement is proposed to be taken a notice in writing stating that, unless within a period of 3 months after the date on which the notice was 30 served the owner and occupier make arrangements satisfactory to the Minister with the person who has made the application under subsection (1) of this section, the easement may be taken under the Public Works Act 1928:

35 Provided that the power conferred by this section shall not be exercised unless the taking is in the Minister's opinion in the national interest by reason of it enabling the better utilisation of the land of the applicant and the increase of the productivity of that land or of any industry or activity for which that land is used or to be used.

40 “(3) At any time after the provisions of subsection (2) of this section have been complied with the Governor-General may, on the advice of the Minister, if satisfactory arrangements have not been made between the owner and the

occupier and the applicant, at the expense of the applicant in all things, take under the Public Works Act 1928 as if for a public work within the meaning of that Act the easement (whether for the time being subsisting separately or not) as applied for: 5

“Provided that an easement over any part of a National Park under the National Parks Act 1952 or of a public reserve or public domain under the Reserves and Domains Act 1953 or over any land vested in any local authority or trustees for any such purpose shall not be taken as aforesaid without the consent of the Minister of Lands: (*who may give his consent unconditionally or subject to such terms and conditions, whether as to preventing or reducing injury to or providing for the restoration of the surface of the land, or payment of a sum of money, or otherwise, as he thinks fit.*) 10 15

“Provided also that an easement over any part of a wildlife sanctuary or wildlife refuge constituted under the Wildlife Act 1953 shall not be taken under this section without the consent of the Minister of Internal Affairs.

New

“(3A) Any consent by the Minister of Lands or the Minister of Internal Affairs under subsection (3) of this section may be given unconditionally or subject to such terms and conditions, whether as to preventing or reducing injury to or providing for the restoration of the surface of the land, or payment of a sum of money, or otherwise, as the Minister of Lands or the Minister of Internal Affairs, as the case may be, thinks fit. 20 25

“(4) Notwithstanding anything to the contrary in the Public Works Act 1928, the effect of a Proclamation issued for the purposes of this section shall be to vest the easement which is taken in the person named and described in the Proclamation instead of in the Crown, and all proceedings subsequent to the issue of the Proclamation in respect of compensation or otherwise for the purpose of complying with the said Act shall be taken in accordance with that Act by or against that person, who shall be deemed to be the respondent and shall be liable in respect of the taking to the same extent as the Minister would have been liable if the taking had been for the purpose of a Government work. 30 35 40

“(5) Before any Proclamation taking any easement over land is issued, the person or persons in whom the easement will

vest shall deposit with the Minister such sum of money as the Minister may consider sufficient for payment of all compensation, damages, costs, and expenses that may be payable in respect of the transaction or that may be incurred by the

5 Minister, or shall otherwise give security to the Minister's satisfaction for those liabilities. The Minister shall apply the amount so deposited in meeting any liabilities as aforesaid, and shall refund the balance (if any) after all those liabilities have been satisfied. Notwithstanding any such deposit or the giving

10 of any such security, and regardless of the amount thereof, the person in whom the easement over the land vests shall at all times be and remain liable for the full amount of any compensation, costs, damages, and expenses that may be agreed upon or determined by the Court.

15 "(6) A copy of the Proclamation taking the easement over the land shall be forwarded by the Minister to every person having any estate or interest in the land so affected at his last known place of abode or business. Every such copy shall be accompanied by information as to the full name and last

20 known address of the person for whom the easement has been taken. Any claim for compensation shall be served by the claimant on the respondent, and a certified copy thereof shall be sent to the Minister."

38. Offences—

25 *Struck Out*

(1) Section 34 of the principal Act is hereby amended by adding to subsection (1) the following paragraph:

30 "(d) Fails to comply with or acts in contravention of any provision of this Act or of any direction, notice, or requirement given or made pursuant to this Act."

New

(1) Section 34 of the principal Act is hereby amended by inserting, after subsection (1), the following

35 subsection:

"(1A) Every person commits an offence against this Act who acts in contravention of or fails to comply with any provision of this Act or of any direction, notice, order, or requirement given or made pursuant to this Act."

40 (2) Section 34 of the principal Act is hereby further amended by adding to paragraph (c) of subsection (1) the word "or".

New

38A. Bylaws regulating construction of dams—The principal Act is hereby further amended by inserting, after section 34, the following section:

“34A. (1) A Board may from time to time make bylaws 5
regulating or controlling the design, construction, alteration,
removal, and repair of structures (other than structures
owned by the Crown or a local authority) used or to be used
for the damming of any natural water, river, or stream.

“(2) Any bylaw made under this section may be made to 10
apply—

“(a) Within the region generally or within any specified
part or parts of the region:

“(b) To any specified natural water, river, or stream, or
to any specified part or parts thereof: 15

“(c) To any specified structure or class or classes of
structure.

“(3) Subject to subsection (4) of this section, the provi-
sions of sections 151 and 152 of the Soil Conservation and
Rivers Control Act 1941 shall, with the necessary modifica- 20
tions, apply in respect of every bylaw made or to be made
under this section.

“(4) No bylaw made under this section shall come into
force unless and until it has been approved by the Authority.”

39. Regulations—Section 37 of the principal Act is hereby 25
amended by omitting from paragraph (d) the words “appli-
cations for”, and substituting the words “certificates or copies
of documents supplied by Boards or applications for the right
or for variation of”.

40. Amendments—(1) The Public Bodies Meetings Act 30
1962 is hereby amended by inserting in Part I of the Schedule,
in its appropriate alphabetical order, the following item:

| | | |
|------------------------|--|----|
| “Regional Water Boards | 1967, No. 135—The Water and Soil Conservation Act 1967.” | 35 |
|------------------------|--|----|

(2) The Local Authorities (Employment Protection) Act
1963 is hereby amended by inserting in Part I of the First
Schedule, in its appropriate alphabetical order, the follow-
ing item:

| | | |
|------------------------|--|----|
| “Regional Water Boards | 1967, No. 135—The Water and Soil Conservation Act 1967.” | 40 |
|------------------------|--|----|

SCHEDULE

Section 34

ENACTMENTS REPEALED

- 1926, No. 15—The Mining Act 1926: Sections 108 to 142; and the other provisions of the Act in their application to mining privileges in respect of water. (1957 Reprint, Vol. 10, p. 1.)
- 1927, No. 40—The Mining Amendment Act 1927: Sections 5 and 6. (1957 Reprint, Vol. 10, p. 292.)
- 1928, No. 21—The Public Works Act 1928: Part XII. (1957 Reprint, Vol. 12, p. 703.)
- 1931, No. 35—The Mining Amendment Act 1931. (1957 Reprint, Vol. 10, p. 294.)
- 1934, No. 26—The Mining Amendment Act 1934: Paragraphs (f) and (g) of subsection (2) of section 2 and section 14. (1957 Reprint, Vol. 10, p. 295.)
- 1937, No. 19—The Mining Amendment Act 1937: Sections 10 to 12. (1957 Reprint, Vol. 10, p. 300.)
- 1948, No. 39—The Public Works Amendment Act 1948: Subsection (3) of section 34. (1957 Reprint, Vol. 12, p. 800.)
- 1953, No. 89—The Mining Amendment Act 1953: Sections 4 and 5. (1957 Reprint, Vol. 10, p. 310.)
- 1967, No. 135—The Water and Soil Conservation Act 1953: Paragraph (e) of subsection (4) of section 4.