# CONTROL OF WATERS ACT, 1919-1925.

BEING

CONTROL OF WATERS ACT, 1919, No. 1359 OF 1919 [ASSENTED TO 4TH SEPTEMBER, 1919.]

AS AMENDED BY

CONTROL OF WATERS ACT AMENDMENT ACT, 1925, No. 1693 OF 1925 [ASSENTED TO 17TH DECEMBER, 1925.]

**An Act to provide for the control by the Crown of the waters of the River Murray and other natural waters, and for other purposes.**

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

Short title.

**1.** This Act may be cited as the "Control of Waters Act, 1919-1925."

Interpretation.

**2.** In this Act, except where some other meaning is clearly intended—

Cf. Canada, 61 Vict., c. 35, ss. 2, 8.

"domestic purposes" means household and sanitary purposes, and all purposes connected with the watering of stock, and the irrigation of a garden not exceeding one acre in extent used in connection with a dwelling, but does not include the sale or barter of water for any of such purposes:

"licence" means a licence to take water issued under the provisions of this Act:

"person" includes every person whether in his private capacity or as a public officer, and also every local, statutory or other authority, corporate or unincorporate:

"River Murray" includes any channel, creek, affluent, effluent, ana-branch, or extension of, and any watercourse connected with, the River Murray:

"the Minister" means the Commissioner of Public Works:

"this Act" includes regulations and proclamations made under this Act:

"watercourse" means river, creek, stream, watercourse, spring, lake, lagoon, swamp, or marsh:

In the expression "lake, lagoon, swamp, or marsh" each term means a natural collection of water into and out of which passes, either continuously or intermittently, a current forming the whole or part of the flow of a watercourse: Vic. 2747, 1915, s. 3.

The terms "beds" and "banks," with reference to any watercourse, together include the land over which the water of such watercourse normally flows or which is normally covered by the water thereof; but do not include land from time to time temporarily covered by the flood waters of such watercourse and abutting on or adjacent to the bed or banks (as herein defined) thereof. "Bed" means the relatively flat, and "banks" means the relatively steep portions of the first-mentioned land. Ibid.

*Application of Act.*

**3.** (1) This Act shall apply to— Application of Act.

(*a*) that portion of the River Murray which is situated between Mannum and the eastern boundary of this State,

(*b*) such other watercourses as are specified in that behalf in proclamations under this section, and

(*c*) all watercourses within such portions of the State as are specified in that behalf in proclamations under this section.

(2) The application of this Act may be extended by proclamation to any watercourse specified in the proclamation, or to all watercourses within any portion of the State specified in the proclamation.

(3) Any proclamation made under this section may be amended or revoked by proclamation.

(4) A proclamation shall not be made under this section until a resolution has been passed by both Houses of Parliament approving of the making of the proclamation.

*Rights of the Crown and others, and Control of Waters.*

**4.** (1) The property in, and the right to the use and flow and to the control of, the water at any time in any watercourse to which this Act applies shall, until appropriated by other persons under this Act or some other Act, vest wholly in the Crown, subject only— Natural waters vest in the Crown. Canada, 61 Vict., c. 35, s. 6. Vic. 2747, 1915, s. 4.

(*a*) to the rights by or under this Act reserved or granted to other persons, and

(*b*) to any right therein, or to the use thereof, inconsistent with the right of the Crown which may be established by or under any Act.

(2) This section shall not operate so as to prevent any person from draining any land, or making any dam or tank upon land, of which he is the owner: Provided that the flow of any portion of the waters in any watercourse to which this Act applies is not thereby sensibly diminished.

The alveus of watercourses and lakes not alienated.
Cf. Vic. 2747, 1915, s. 5.

**5.** Where any watercourse to which this Act applies forms the boundary, or part of the boundary, of any land which after the date of the passing of this Act is alienated by the Crown, the bed and banks of such watercourse shall, notwithstanding such alienation, remain the property of the Crown and shall not pass with the land so alienated, unless the alienation is made in pursuance of some agreement existing at the date of such passing and inconsistent with this section.

Owner of land adjacent to watercourse to have access to bed or bank for grazing, and to have remedy for trespass.
Ibid., s. 7.

**6.** (1) Notwithstanding anything in this Act contained, the owner or occupier for the time being of any land adjacent to any watercourse the bed and banks whereof remain the property of the Crown shall have the like access, for himself, his family, and servants, and his cattle and other stock, to the portion of such bed or bank to which such land is adjacent, and the like use of such portion for cultivation, the grazing of cattle and other stock, as if this Act had not been passed: Provided that such portion has not been actually appropriated by or under the sanction of the Crown for any purpose.

(2) Such owner or occupier may have and pursue against any person trespassing upon such portion any remedy for such trespass which such owner or occupier might have had and pursued if this Act had not been passed, and as if such person were a trespasser upon land in the possession of such owner or occupier.

(3) Save for the access and use provided for by subsection (1) hereof, this section shall not be deemed to restrict the right of the Crown to pursue any remedy against any person trespassing upon such bed or bank, nor shall this section entitle such owner or occupier to have or pursue any remedy for trespass against the Crown or the Minister, or any person acting under the sanction of the Crown or the Minister.

Riparian owners may take water for domestic purposes.
Cf. ibid., s. 14.

**7.** All owners or occupiers of any land through or contiguous to which passes any watercourse to which this Act applies, or contiguous to which is wholly or partly situate any such watercourse, shall, by virtue of their ownership or

occupation of such land, have the right to take, without charge, water from such watercourse for the use of themselves and their respective families and servants for domestic purposes.

Diversions from watercourse, &c., prohibited except under legal sanction.

Cf. Vic. 2747, 1915, s. 6.

**8.** (1) Except as provided by or under this Act or some other Act, no person shall divert or take or use any water at any time in any watercourse to which this Act applies, save in the exercise of the general right of all persons to take water for domestic purposes, or for watering cattle or other stock, from any watercourse vested in the Crown at any place to which there is access by a public road or reserve.

(2) If any person diverts or takes or uses any water contrary to this section, he shall be guilty of an offence against this Act.

Inserted by 1693, 1925, s. 2.

(3) In any proceedings for an offence against this section proof of the existence on any land of any irrigation channel or any other means whereby water is capable of being diverted, taken, or used for irrigation purposes from any watercourse to which this Act applies, shall be conclusive evidence that water was diverted, taken, or used contrary to this section by the occupier of the said land, unless the said occupier gives proof—

(*a*) that he had a licence under this Act in force at the time of the alleged offence in respect of the land aforesaid; or

(*b*) that the land aforesaid does not exceed one acre in extent and is used as a garden in connection with a dwelling; or

(*c*) to the satisfaction of the court that water was not diverted, taken, or used contrary to this section.

No right to take water except in pursuance of this Act or some other Act.

Vic. 2747, 1915, s. 8.

**9.** (*a*) No right to take or divert any water at any time in any watercourse to which this Act applies, for use on any land adjacent to the banks thereof, shall be acquired by any owner or occupier of such land, and

(*b*) no right to the permanent diversion or to the exclusive use of such water shall be acquired by any person whomsoever,

by length of use, or otherwise than as the same is permitted by this Act, or has been or may be acquired or conferred under the provisions of this Act or of some other Act.

Watercourse or race on alienated land not to be obstructed.
Vic. 2747, 1915, s. 9.

**10.** (1) When at the time of the granting or leasing of any land heretofore or hereafter made by the Crown under the sanction of any Act providing for the alienation or leasing of Crown lands, any watercourse to which this Act applies passes through or over the land so granted or leased, or the bed and banks (or part thereof) of such watercourse are upon such land, then, although no reservation or exception of such watercourse or bed and banks (or part) is contained in the land grant or lease of such land, no person shall obstruct or destroy or interfere with such watercourse or bed or banks (or part) except under the sanction of this Act or of some other Act.

Obstruction an offence.

(2) Any person who so obstructs, destroys, or interferes, except as aforesaid, shall be guilty of an offence against this Act; and any person who, being the occupier of any land granted or leased as aforesaid, continues, or fails to remove, any such obstruction or interference, shall be guilty of a fresh offence against this Act on every day during which such obstruction or interference is continued, or is not removed, after notice in writing to discontinue, or to remove, the same has been given by the Minister or any Crown lands ranger or any person authorised by the Minister in that behalf.

Levees and embankments to be approved before construction.

**11.** (1) Any person who proposes to build or make any levee or embankment not authorised by or under any Act for the purpose of reclaiming any overflow or swamp lands contiguous to any watercourse shall apply to the Minister for permission so to do, and in his application shall state—

(*a*) a description of such lands;

(*b*) the name and description of such watercourse;

(*c*) the use to which it is intended to apply such lands when reclaimed; and

(*d*) the mode in which it is proposed to divert the flood or other waters from such lands, and where engines or other machinery is to be used for drainage purposes a description thereof;

and with his application shall forward a plan showing all details as to the size, height, and location of the proposed levee or embankment.

(2) The Minister may, if he is satisfied as to the *bona fides* of the applicant and the details of construction of the proposed levee or embankment, grant such permission.

(3) Any person who builds or makes any such levee or embankment as mentioned in subsection (1) hereof without

the permission of the Minister shall be guilty of an offence against this Act.

**12.** If any person—

(*a*) throws or conveys, or causes or permits to be thrown or conveyed, any rubbish, dirt, filth, or other noisome thing, into any watercourse to which this Act applies; or

(*b*) causes the water of any sink, sewer, or drain, or any other filthy water belonging to him or under his control, to run or be brought into any watercourse to which this Act applies; or

(*c*) conveys or discharges, or causes or permits to be conveyed or discharged, into any such watercourse any sludge, mud, earth, gravel, or other matter likely to obstruct such watercourse or any other watercourse to which this Act applies,

he shall be guilty of an offence against this Act.

Pollution of water in watercourses or lakes made an offence.

Vic. 2747, 1915, s. 10. Cf. U.K., 39 & 40, Vict., c. 75.

**13.** (1) Any person thereto empowered by the Minister may, in the exercise of the right of the Crown to the control of the water in any watercourse to which this Act applies, enter upon any land and inspect the same and take such measures as the person so entering thinks fit for—

(*a*) the conservation and regulation of such water and its preservation from pollution:

(*b*) the protection of the bed and banks over or within which such water flows or is contained:

(*c*) removing any obstruction from such bed or banks: or

(*d*) clearing and deepening the channel of such watercourse,

and may interfere summarily to prevent the undue, excessive, or illegal diversion or pollution of such water or interference with such bed or banks.

Right of entry to the Crown to prevent interference with watercourse.

Vic., 2747, 1915, s. 11.

(2) Any person who obstructs, impedes, or interferes with any person so empowered by the Minister in entering upon any land, or in taking any measures for any of the purposes aforesaid, shall be guilty of an offence against this Act.

Obstructing officer an offence.

**14.** The Minister may grant to the owner or occupier of any land adjacent to any watercourse, the bed and banks whereof are the property of the Crown, permission, subject to such conditions as the Minister thinks fit, to carry out works, at the expense of such owner or occupier, for the protection of such land from damage by erosion or flooding:

Owner of land adjacent to any water course may have permission to protect land from damage by erosion or flooding.

Ibid., s. 12.

Provided that, in the opinion of the Minister, such works will not injuriously affect such bed or banks or unduly obstruct such watercourse.

*Licences to Divert and Use Water.*

Riparian owners and others may apply for licences to divert and use water.

**15.** (1) The owner or occupier of any land through or contiguous to which passes any watercourse to which this Act applies, and any other person desiring to divert or take and use water from any such watercourse for any purpose, may at any time in the prescribed manner apply to the Minister for a licence to divert or take and use water from such watercourse.

(2) Such application shall be signed by the applicant, or by his solicitor or other agent, and shall contain such particulars as are prescribed.

(3) The application shall, in such cases as are prescribed, be accompanied by a statutory declaration verifying the several statements therein made.

Minister may grant application.

**16.** (1) The Minister may, if he is satisfied that the water sought to be diverted, or to be taken and used, is not required for the purposes of navigation, grant the application, either wholly or in part; and may direct that a licence in the prescribed form be issued to the applicant in respect of the land (if any) and user of the water specified in the application, or of so much of such land and water as the Minister thinks fit.

(2) Such licence shall be subject to such special conditions and provisions as the Minister determines, and to the provisions of this Act so far as the same are applicable thereto, and to the further condition that, notwithstanding that such licence is expressed to be for a term, it may be revoked or suspended or modified at any time in the circumstances and in the manner prescribed by section 18.

Privileges and duty of licensee.

**17.** (1) It shall be lawful for the licensee under any licence to divert, take, and use water, to the extent, and in respect of the land, and in the manner, specified in such licence.

(2) If any licensee diverts, takes or uses any quantity of water in excess of the quantity expressly authorised by his licence, he shall be guilty of an offence against this Act.

Licence determinable in certain events.

**18.** (1) If at any time during the currency of any licence it is proved to the satisfaction of the Minister—

(*a*) that the licensee has failed to observe and perform any of the conditions or provisions subject to which the licence was issued and is held, or

(*b*) that any water diverted, taken, or used by any licensee is being wasted, or

(*c*) that, by reason of an actual or threatened shortage in the supply of water owing to the existence or the expectation of a period of drought or through any other cause, it is necessary or expedient that the licence should be revoked or suspended or modified,

the Minister may give the licensee notice in writing by registered letter post that, after the expiration of one month from the date of such notice, it is his intention to revoke such licence or to suspend the licence for such period as is specified in the notice or to reduce by such amount as is specified in the notice the quantity of water authorised by the licence to be taken thereunder, or otherwise to modify such licence in such manner as is specified in the notice.

(2) The Minister may at any time after the expiration of one month from the date of such notice, by order published in the *Government Gazette,* revoke the licence, or suspend the licence for such period, or modify the licence in such manner, as he thinks fit, and upon such publication the licence shall be deemed to be revoked, or to be suspended or modified, according to the tenor of the order.

(3) Whenever in the opinion of the Minister, by reason of an actual or threatened shortage in the supply of water owing to the existence of a period of drought or through any other cause, it is necessary or expedient to substantially reduce the quantity of water which may be diverted, or taken and used, under this Act, the Minister shall so report to the Governor, and the Governor may thereupon, by proclamation, direct—

(*a*) that for the period or periods specified in the proclamation no water shall be diverted, or taken and used, under the authority of any licence, except for such purposes (if any) as are specified in the proclamation; or

(*b*) that the quantity of water which may be diverted, or taken and used, under the authority of any licence, shall for the period or periods specified in the proclamation be such proportion of the quantity authorised by the licence to be diverted, or taken and used, as the Minister thinks proper; or

(*c*) that licences and the rights of licensees thereunder shall be otherwise modified in such manner and for such period as the Minister thinks proper.

(4) Any such proclamation may apply to licences generally, or to all licences in force within a specified locality or area.

(5) Every such proclamation shall have effect according to the tenor thereof, and every licence to which any such proclamation applies shall be read and construed as amended by the proclamation.

*Power to Control Diversions under other Acts.*

Minister may control diversion of water under other Acts.

**19.** (1) Whenever in the opinion of the Minister, by reason of an actual or threatened shortage in the supply of water owing to the existence of a period of drought or through any other cause, it is necessary or expedient to substantially reduce the quantity of water which may be diverted, or taken and used, under the authority of any Act other than this Act from any watercourse to which this Act applies, the Minister shall so report to the Governor and the Governor may thereupon, by proclamation, direct—

(*a*) that for the period or periods specified in the proclamation no water shall be diverted, or taken and used, under the authority of such Act, except for such purposes (if any) as are specified in the proclamation; or

(*b*) that the quantity of water which may be diverted, or taken and used, under the authority of any Act, shall for the period or periods specified in the proclamation be such proportion of the quantity being diverted, or taken and used, at the time of the making of the proclamation, as the Minister thinks proper.

(2) If any person diverts, or takes or uses, during the period or periods specified in the proclamation, any water for any purpose not authorised by the proclamation, or any quantity of water in excess of the quantity so authorised, he shall be guilty of an offence against this Act.

*Regulations.*

Governor may make regulations.

**20.** The Governor may from time to time make regulations—

I. as to applications for licences, the departmental dealings therewith, and the issue of licences;

II. prescribing the fees to be paid in respect of such applications and the issue of licences;

III. prescribing the privileges and obligations of licences thereunder; and

IV. prescribing scales of charges to be levied and paid for the diversion, taking, and using of water thereunder;

and such other regulations as are contemplated or required by this Act, or as the Governor deems necessary or advisable for giving effect to the provisions of this Act, or more effectually carrying out its objects.

*Offences and Legal Proceedings.*

Minister entitled to institute proceedings.

**21.** (1) The Minister or any person authorised by him in that behalf shall be entitled, in the name and on behalf of the Crown, to institute and maintain any legal proceeding, whether such proceeding is for any civil remedy, or for any punishment for any offence or the recovery or enforcement of any penalty, against any person for anything done or suffered or omitted contrary to any provision of this Act.

Evidence therein.

(2) In such proceeding it shall not be necessary to show—

(*a*) that either the Crown or the Minister or any person has sustained damage by the alleged contravention of this Act, nor

(*b*) that the Crown or the Minister is a riparian owner, or is otherwise entitled to the use or to the protection of the watercourse in connection with which the contravention is alleged to have taken place.

Penalties.

**22.** Every person who is guilty of an offence against this Act shall be liable—

(*a*) for the first offence to a penalty of not less than one pound nor more than twenty pounds:

(*b*) for a subsequent offence to a penalty of not less than ten pounds nor more than one hundred pounds.

Proceedings for offences.

**23.** All proceedings in respect of offences against this Act shall be disposed of summarily.

Appeals.

**24.** There shall be an appeal in respect of proceedings in respect of offences against this Act.

Special case.

**25.** In the event of an appeal in respect of proceedings in respect of offences against this Act, a special case may be stated.

*Expenses.*

How expenses to be met.

**26.** Any money required for the purposes of this Act shall be paid out of moneys provided by Parliament for such purposes.

*River Murray Waters Act Not Affected.*

Nothing in this Act to affect River Murray Waters Act, 1915.

**27.** Nothing contained in this Act shall be construed to authorise any act or omission contrary to any provisions of the River Murray Waters Act, 1915, or the agreement thereby ratified.

## Regulations.

The following regulations were in force under this Act on 22nd March, 1937:—

*Gazette*—25th October, 1934, p. 847.

s. 27. The River Murray Waters Act, 1915, has been repealed and superseded by the River Murray Waters Act, 1935.

## CONVERSION OF PUBLIC SECURITIES

see Commonwealth Legislative Power.

## CONVEYANCING

see Law of Property : Real Property : Registration of Deeds : Settled Estates : Trustee : Wills.