

BAROOGA DISTRICT WATER SUPPLY ACT.

Act No. 28, 1937.

George VI,
No. 28, 1937. An Act to provide for the transfer to the Water Conservation and Irrigation Commission of the works which, immediately before the dissolution of the Barooga Water Trust were controlled by that Trust; to confer and impose upon that Commission and on the Rural Bank of New South Wales certain powers, authorities, duties and functions; to validate certain matters; and for purposes connected therewith. [Assented to, 20th December, 1937.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.

PRELIMINARY.

Short title. 1. (1) This Act may be cited as the "Barooga District Water Supply Act, 1937."

**Division
into Parts.**

(2) This Act is divided into Parts as follows:—

PART I.—PRELIMINARY—ss. 1-4.

PART II.—TRANSFER OF WORKS—ss. 5, 6.

PART III.—MANAGEMENT, ADMINISTRATION, AND CONTROL OF THE WORKS—ss. 7-12.

PART IV.—RATES AND CHARGES—ss. 13-22.

PART V.—VALIDATION—ss. 23-25.

PART VI.—MISCELLANEOUS—ss. 26-30.

2.

2. (1) This Act, with the exception of Parts II and III, shall commence on the day upon which the assent of His Majesty to this Act is signified.

(2) Parts II and III of this Act shall be deemed to have commenced on the twenty-sixth day of July, one thousand nine hundred and thirty-five.

3. In this Act, unless the context or subject-matter **Definitions.** otherwise indicates or requires—

“Barooga district” means the area over which immediately before the commencement of Part II of this Act, the trust had jurisdiction under Part III of the Water Act, 1912, as amended by subsequent Acts.

“Berriquin Provisional District” means the Berriquin Provisional Domestic and Stock Water Supply and Irrigation District constituted under the Water Act, 1912, as amended by subsequent Acts.

“Occupier” means person in actual possession.

“Ratable land” means land within the Barooga district which is benefited by the works transferred from the trust.

“Rating year” means the period from the first day of July in one year to the thirtieth day of June in the next following year.

“Rural Bank” means the Rural Bank of New South Wales.

“The Commission” means the Water Conservation and Irrigation Commission constituted under the Irrigation Act, 1912, as amended by subsequent Acts.

“The trust” means the Barooga Water Trust constituted under the Water and Drainage Act, 1902, as amended by subsequent Acts, by proclamation published in the Gazette number six of the eleventh day of January, one thousand nine hundred and eleven, and dissolved by proclamation published in Gazette number one hundred and thirty-six of the twenty-sixth day of July, one thousand nine hundred and thirty-five.

“Works”

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“Works” includes any natural or artificial conduit, well, appliance, machinery or structure pertaining to or used in connection with the operations of the Commission under this Act.

“Works transferred from the trust” means the works which, immediately before the commencement of Part II of this Act, were the works of the trust, and includes any works constructed or acquired by the Commission under the authority of this Act.

Savings.

4. Nothing in this Act shall be construed as affecting in any way the Berriquin Provisional District or the operations of the Commission in relation to that provisional district carried out under Part VI of the Water Act, 1912, as amended by subsequent Acts.

PART II.**TRANSFER OF WORKS.****Transfer of works, etc.**

5. On and from the commencement of this Part the following provisions shall have effect:—

- (a) The management, administration and control of the works which, immediately before such commencement, were the works of the trust shall vest in the Commission.
- (b) All moneys, liquidated and unliquidated claims which, immediately before such commencement, were payable to or recoverable by the trust shall be moneys, liquidated and unliquidated claims payable to or recoverable by the Commission.
- (c) The Commission may pursue the same remedies for the recovery of such moneys and claims as the trust might have done if this Act had not been enacted, and as if the proclamation dissolving the trust had not been published.
- (d) The Commission may enforce and realise any security or charge existing immediately before such commencement in favour of the trust in respect of any such moneys and claims as if such security or charge were existing in favour of the Commission.

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- (e) All debts due and all moneys payable by, and all claims liquidated and unliquidated, recoverable against the trust (other than the indebtedness of the trust to the Crown) shall be debts due and moneys payable by, and claims recoverable against, the Commission.
- (f) All by-laws made by the trust under the Water Act, 1912, as amended by subsequent Acts, which were in force immediately before such commencement, shall, to the extent to which they are not inconsistent with this Act, continue in force, but may be repealed or amended by regulations made under this Act.

A reference in any such by-law to the trust shall be construed as a reference to the Commission.

6. (1) Overdue rates and charges payable to or recoverable by the Commission under or by operation of this Part of this Act shall be increased in accordance with this section.

(2) If the rates or charges are unpaid at the expiration of three months after the due date of payment the amount due shall be increased by a sum calculated at the rate of seven per centum per annum in respect of any period prior to the first day of July, one thousand nine hundred and thirty-five, and at the rate of five per centum per annum in respect of any period after the thirtieth day of June, one thousand nine hundred and thirty-five. The increase shall be deemed to be part of the rates or charges as the case may be.

(3) The calculation under subsection two of this section shall be made in respect only of as many complete months as have expired between the date on which the payment became due and the date of payment, excluding any remaining portion of a month.

(4) If in any case the percentage is less than three-pence the increase shall be threepence.

(5) The increase in the rates or charges under this section shall continue to apply to all unpaid rates or charges notwithstanding that judgment for the same may have been obtained in any court including the district court.

PART III.

MANAGEMENT, ADMINISTRATION AND CONTROL OF THE WORKS.

Powers of
the Com-
mission.

7. (1) In the management, administration and control of the works transferred from the trust the Commission may—

- (a) supply water for domestic and stock purposes to any occupier of ratable land in such quantities (not exceeding in the aggregate the quantity to which the occupier is entitled by payment of rates) and at such times as the Commission may think fit;
- (b) supply water to the Berrigan Shire Council under and in accordance with the agreements copies of which are set out in the first and second parts respectively of the Schedule to this Act;
- (c) utilise water for the purposes of the Commission in connection with the construction of works for the Berriquin Provisional District;
- (d) sell water by measure to any occupier of ratable land in addition to the quantity to which the occupier is entitled by payment of rates;
- (e) sell any surplus water which is not required for domestic and stock purposes, by measure or otherwise, to any occupier of ratable land for any other purpose, or, if such water is not required for any occupier of ratable land, sell such water to any person.

(2) For the purposes of this section the quantity of water to which an occupier is entitled by payment of rates shall be a quantity per annum which bears the same proportion to thirteen thousand five hundred cubic feet as the area of the ratable land of such occupier bears to one hundred acres.

Further
powers of
Commission.

8. The Commission may, if in its opinion the circumstances so warrant or render it desirable, use any of the works transferred from the trust for the purposes of the

Berriquin

Berriquin Provisional District, and may, in respect of ^{No. 28, 1937.} such parts of the said works as are not required for such purposes, or required for or in connection with the exercise or performance by the Commission of its powers, authorities, duties or functions under this Act—

- (a) abandon from time to time any of the said works; or
- (b) remove or sell any of the said works; or
- (c) terminate the use of the said works and the supply of water therefrom.

9. (1) Each occupier of ratable land shall provide ^{Occupier to provide drains, etc.} effective drains for the supply of water to his land from the channels controlled by the Commission, and he shall maintain such drains in a condition such that water may be delivered expeditiously through the drains without overflow of the drains and without other waste of water.

(2) The Commission may suspend or withhold the supply of water to any occupier of ratable land who fails to comply with the provisions of this section. The suspension or withholding of the supply of water under the authority of this section shall not relieve the occupier from any liability for payment of rates.

10. In the exercise and performance of its powers, ^{Power to enter, inspect and make repairs.} authorities, duties and functions under this Act the Commission, by its officers or servants, may enter any land within the Barooga district and make any inspection or survey it may deem necessary, and may take levels and may place marks and fix pegs or stakes, and may effect repairs or alterations to any works or may deviate the course of any drain or channel, but in so doing shall avoid, so far as practicable, causing any loss, injury, or damage.

The Commission shall not be responsible for any loss, injury, or damage caused by it, unless claim in writing be made within three months thereafter.

11. The Commission may construct, maintain and ^{Power to construct drains, etc.} repair any conduit, drain, channel, or other work through any land, street or road.

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**Powers
incidental to
power to
construct,
etc.**

**cf. Act No.
44, 1912,
s. 63.**

12. (1) For the purpose of the construction, or the maintenance or the repair of any channel or embankment or any works incidental thereto under this Act the Commission shall have and shall be deemed to have had power at any time—

(a) to enter—

(i) any land of a width of sixteen and a half feet on either side of the centre line of a distributing channel or proposed distributing channel; and

(ii) any land—

(a) being the site of an embankment or proposed embankment; and

(b) of a width of sixty-six feet measured outwards from such site; and

(b) to use such lands or sites for the said purpose of construction, or maintenance or repair,

notwithstanding an easement or right so to enter or use such lands or sites may not have been granted or acquired.

**cf. *Ibid.*
s. 64.**

(2) No compensation shall be payable or shall be deemed to have been payable for the exercise of any power conferred by this section:

Provided that where any such power is exercised with respect to land which is at the time under cultivation or having buildings thereon, or being within population boundaries, compensation shall be payable, the amount of which shall be determined by two arbitrators, appointed respectively by the Commission and by the person owning the land or buildings, and by an umpire appointed by such arbitrators unless otherwise agreed by and between the Commission and the said person.

PART IV.

RATES AND CHARGES.

13. (1) The Commission shall fix a rate not exceeding five pence per acre on all ratable land for the rating year which commenced on the first day of July, one thousand nine hundred and thirty-seven, and for each rating year thereafter.

(2) The rate for the rating year which commenced on the first day of July, one thousand nine hundred and thirty-seven, shall be fixed as soon as practicable after the commencement of this Act.

(3) The rate for any subsequent rating year shall be fixed not later than the thirtieth day of September in that rating year.

14. Every rate fixed by the Commission under this Part of this Act shall be payable to the Rural Bank by the occupier of the ratable land in respect of which the rate is fixed.

15. Every occupier of ratable land shall become liable to the payment of rates fixed under this Part of this Act on the expiration of thirty days after the service upon him by the Rural Bank of a rate notice in the prescribed form.

16. Every person to whom water is supplied shall become liable to the payment of the price or charge for such water on the expiration of thirty days after the service upon him by the Rural Bank of an account therefor and a notice to pay in the prescribed form unless by the regulations the price or charge is made payable in advance, or unless some other date for payment is fixed by agreement between the Commission and the person to whom the water is supplied.

17. A rate notice or an account and notice to pay may be served upon the occupier—

- (a) personally; or
- (b) by delivering the same at or on the premises at which the occupier lives or carries on business or by leaving the same with any person apparently above the age of fourteen years resident or employed thereat; or

(c)

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(c) by posting the same to the occupier by prepaid letter addressed to the last known place of abode or business of the occupier.

Certain outstanding rates payable to Rural Bank.

18. As from the date upon which the assent of His Majesty to this Act is signified—

- (a) Any moneys, liquidated and unliquidated claims, which, immediately before the commencement of Part II of this Act, were payable to and recoverable by the trust in respect of any rate or for the price or charge for water supplied, and which have not been paid to or recovered by the Commission, and any increase in the rates and charges under section six of this Act, whether accrued before or accruing after such date, shall be moneys, liquidated and unliquidated claims payable to and recoverable by the Rural Bank.
- (b) The Rural Bank may pursue the same remedies for the recovery of such moneys and claims as the Commission might have done under paragraph (c) of section five of this Act.
- (c) The Rural Bank may enforce and realise any security or charge in respect of such moneys and claims which the Commission might have enforced and realised under paragraph (d) of section five of this Act, as if the security or charge were existing in favour of the Rural Bank.
- (d) So much of the rates the fixing and levying of which are validated by this Act as has not been paid to the Commission shall be payable to the Rural Bank.

Overdue rates—extra charge.
cf. Act No. 41, 1919,
s. 158.

19. (1) Overdue rates (including the rates referred to in paragraph (d) of section eighteen of this Act) and charges shall be increased in accordance with this section.

(2) If the rates or charges are unpaid at the expiration of three months after the date upon which the occupier becomes liable to pay the same, the amount due shall be increased by a sum calculated at the rate of five per centum per annum and the increase shall be deemed to be part of the rates or charges as the case may be.

(3)

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(3) The calculation under subsection two of this section shall be made in respect only of as many complete months as have expired between the date upon which the occupier became liable to pay the rates or charges as the case may be and the date of payment, excluding any remaining portion of a month.

(4) If in any case the percentage is less than threepence the increase shall be threepence.

(5) The increase in the rates or charges under this section shall continue to apply to all unpaid rates or charges, notwithstanding that judgment may have been obtained in any court, including the district court.

20. Any rate under this Act (including the rates referred to in paragraph (d) of section eighteen of this Act), or the price or charge for water supplied pursuant to this Act, may be recovered by the Rural Bank as a debt in any court of competent jurisdiction.

21. Where any occupier disposes of his estate or interest in ratable land, he shall nevertheless remain liable for the rate (including the rates referred to in paragraph (d) of section eighteen of this Act) to the same extent as if he had not disposed of his estate or interest, provided the rate notice is served, either—

- (a) before he disposes of his estate or interest; or
- (b) before the prescribed notice of transfer is given to the Rural Bank.

22. The Commission shall, from time to time, punctually and properly furnish to the Rural Bank all information required and necessary to enable the Rural Bank through its Irrigation Agency to exercise and perform the powers, authorities, duties and functions conferred or imposed upon it by this Act.

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PART V.

VALIDATION.

Validation
of fixing and
levying of
rates for
year 1935-
1936.

23. (1) The action of the Commission in fixing and levying a rate of fivepence per acre on all ratable land for the rating year which commenced on the first day of July, one thousand nine hundred and thirty-five, and for the rating year which commenced on the first day of July, one thousand nine hundred and thirty-six, is hereby validated.

(2) The action of the Commission in enforcing and collecting the whole or any part of such rates is hereby validated.

Validation
of agree-
ments, etc.

24. (1) The agreements made between the Berrigan Shire Council of the one part and the Water Conservation and Irrigation Commission of the other part on the seventh day of October, one thousand nine hundred and thirty-five, and the fourteenth day of September, one thousand nine hundred and thirty-six respectively, copies of which are set out in the first and second parts respectively of the Schedule to this Act, are hereby validated.

cf. Act No.
62, 1931,
s. 5.

(2) Notwithstanding anything in any other Act all the provisions of such agreements may be carried into effect and the Berrigan Shire Council, the Commission and the Rural Bank are hereby authorised to make, do, and execute any acts, instruments, matters and things that may be necessary or desirable to give full effect to the provisions of such agreements, and the Governor may, for the purposes of enabling full effect to be given to the provisions of such agreements, by proclamation published in the Gazette, amend, modify, supplement, repeal or suspend the provisions of any Act, or any rule, ordinance, regulation or by-law.

(3) The validation of such agreements by subsection one of this section shall be deemed to have taken effect as from the respective dates of execution of the said agreements, and any act, instrument, matter or thing made, done or executed under or in pursuance of such agreements or either of them is hereby validated.

Validation
of certain
actions.

25. The action of the trustees in paying to the Commission the balance of moneys held by the trust immediately before the commencement of Part II of this Act, and

and in transferring to the Commission any of its assets, the books of account and records of the trust, and the action of the Commission in accepting any liability of the trust unsatisfied at such commencement, and in applying any moneys in satisfaction of any such liability, are hereby validated. No. 28, 1937.

PART VI.

MISCELLANEOUS.

26. (1) Any person who— Offences.

- (a) obstructs the Commission or its officers or servants acting under this Act; or
- (b) interferes with the works transferred from the trust; or
- (c) destroys, injures, or obliterates any pegs, stakes, mark or level fixed by the Commission or an officer or servant of the Commission; or
- (d) uses water from the said works otherwise than in the manner and at the times permitted by the Commission; or
- (e) obstructs the flow of, or pollutes, any water provided by the said works,

shall be guilty of an offence and shall be liable to a penalty not exceeding twenty pounds, and in the case of a continuing offence to a penalty not exceeding five pounds per day whilst the offence continues, and shall also be liable to be sued by the Commission or by any person for compensation on account of loss or damage caused by his offence.

(2) In any prosecution for an offence against subsection one of this section, proof that the flow of water in any channel has been obstructed on the land of any occupier shall be *prima facie* evidence that such obstruction has been caused by the occupier of the land where such obstruction occurs.

27. (1) The powers, authorities, duties and functions conferred or imposed upon the Rural Bank by this Act shall be exercised and performed by such bank through its Irrigation Agency. Provisions relating to the Rural Bank.

(2)

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(2) Moneys which by virtue of this Act become payable to or recoverable by or which may be received by the Rural Bank shall be treated in account by such bank and disposed of by it when received in the same manner as if such moneys were payable to or recoverable by or had been received by such bank in pursuance of Part VI of the Water Act, 1912, as amended by subsequent Acts.

(3) To the extent that the same are applicable and are not inconsistent with this Act, the provisions of Division 1 of Part VIb of the Government Savings Bank Act, 1906, as amended by subsequent Acts, shall apply to all moneys which become payable to or recoverable by or which are received by the Rural Bank in pursuance of this Act.

(4) As soon as practicable after the commencement of this Act the Auditor-General shall certify to a statement to be prepared by the Commission or by the Rural Bank of—

- (a) the amounts which, immediately before the commencement of Part II of this Act, were due to the trust by each ratepayer in the district of the trust for the price or charge or rate for water supplied, and which have not been paid to the Commission before the date upon which the assent of His Majesty to this Act is signified; and
- (b) the amounts which are due to the Commission by each ratepayer in the Barooga district in respect of the rates the fixing and levying of which are validated by this Act, and which have not been paid to the Commission before such date.

Regulations. **28.** (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations;
- (c)

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(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days after the regulations have been laid before such House disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.

29. (1) Where a supply of water from the works of the Berriquin Provisional District is made available to any area of ratable land within the Barooga district, this Act shall expire in so far as its provisions apply to and in respect of such area.

(2) Except as provided in this Act, upon the expiration of this Act in so far as its provisions apply to and in respect of any such area—

(a) the powers, authorities, duties and functions conferred and imposed by this Act on the Commission shall cease and determine in so far as the same are required or authorised to be exercised or performed in relation to such area;

(b) the rights and privileges conferred by this Act on occupiers of ratable land within such area shall cease and determine;

(c) the obligation or liability of any such occupier to pay rates under this Act in respect of any period after such expiration shall cease and determine, but without prejudice to the obligation or liability of such occupier to pay rates in respect of any earlier period.

(3) The expiration of this Act, in so far as its provisions apply to and in respect of any such area, shall not affect—

(a) the previous operation of this Act in so far as its provisions apply to and in respect of such area or anything duly done or suffered or commenced to be done thereunder;

(b) the powers and authorities conferred on the Commission by section eight of this Act;

(e)

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- (c) any power, authority, duty or function conferred or imposed by this Act on the Rural Bank;
- (d) any right, privilege, obligation or liability acquired, accrued or incurred under this Act in the application of its provisions to and in respect of such area;
- (e) any penalty, forfeiture or punishment incurred in respect of any offence against this Act in the application of its provisions to and in respect of such area;
- (f) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted continued or enforced, and any such penalty, forfeiture or punishment may be imposed and enforced as if this Act had not expired in its application to and in respect of such area.

(4) For the purpose of ascertaining the amount of any rate for the payment of which an occupier of ratable land remains liable rates shall be deemed to accrue from day to day and shall be apportionable in respect of time accordingly.

Duration
of Act—
generally.

30. (1) Where a supply of water from the works of the Berriquin Provisional District is made available to so much of the ratable land of the Barooga district as is within the Berriquin Provisional District this Act shall expire.

(2) Except as provided in this Act, upon the expiration of this Act—

- (a) the powers, authorities, duties and functions conferred and imposed by this Act on the Commission shall cease and determine;
- (b) the rights and privileges conferred by this Act on occupiers of ratable land within the whole of the Barooga district shall cease and determine;
- (c) the obligation or liability of any such occupier to pay rates in respect of any period after such termination shall, unless the same has already ceased

ceased and determined by the operation of section twenty-nine of this Act, cease and determine, but without prejudice to the obligation of or liability of such occupier to pay rates in respect of any earlier period.

(3) The expiration of this Act shall not affect—
(a) the previous operation of this Act or anything duly done or suffered or commenced to be done thereunder;
(b) the powers and authorities conferred on the Commission by section eight of this Act;
(c) any power, authority, duty or function conferred or imposed by this Act on the Rural Bank;
(d) any right, privilege, obligation or liability acquired, accrued or incurred under this Act;
(e) any penalty, forfeiture or punishment incurred in respect of any offence against this Act;
(f) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed and enforced as if this Act had not expired.

(4) For the purpose of ascertaining the amount of any rate for the payment of which an occupier of ratable land remains liable, rates shall be deemed to accrue from day to day and shall be apportionable in respect of time accordingly.

SCHEDULE.

Sec. 7, 24.

FIRST PART.

AGREEMENT made the seventh day of October, one thousand nine hundred and thirty-five, between the Berrigan Shire Council (hereinafter called "the Council") of the one part and the Water Conservation and Irrigation Commission in and for the State of

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of New South Wales constituted under the Irrigation Act, 1912, as amended by subsequent Acts (hereinafter called "the Commission") of the other part. Whereas the Council has hitherto been supplied with water for the town of Berrigan by the Barooga Water Trust, a Trust constituted under Part III of the Water Act, 1912, and whereas the said Barooga Water Trust has been dissolved by proclamation published in the Government Gazette of the twenty-sixth day of July, one thousand nine hundred and thirty-five, and the Commission has from the lastmentioned date taken over the control and use of the works of water supply of the said Trust (hereinafter referred to as "the said works"), and whereas the Council has requested the Commission to provide it with a supply of water for the town of Berrigan by means of the said works which the Commission has consented and agreed to do on the terms and conditions hereinafter appearing, now it is hereby agreed by and between the parties hereto as follows:—

1. Subject to the provisions in this agreement contained the Commission will supply and the Council will take a supply of water to be provided by means of the said works at and for the rates or prices hereinafter mentioned and subject to the terms and conditions as hereinafter provided.

2. This agreement shall continue in force for a period of ten (10) years from the date of the execution of these presents provided always and subject nevertheless that should the Commission at any time hereinafter make available to the Council a supply of water by means of the works now under construction under the provisions of Part VI of the Water Act, 1912, as amended by subsequent Acts for a district under the designation of Berrquin Domestic and Stock Water Supply and Irrigation District the Commission shall be at liberty to give notice in writing to the Council and terminate this agreement.

3. (a) The water to be supplied by the Commission pursuant to this agreement shall be delivered by the Commission into the excavated tank of the Council at Berrigan.

(b) The Council shall give notice in writing to the Commission at least four weeks previous to each date upon which the Council requires the Commission to commence the delivery of water into the excavated tank of the quantity of water the Council requires to be delivered in such delivery and in the said notice the Council shall specify the date of commencement of the delivery whereupon subject to clause four hereof the Commission shall give delivery of the required quantity of water and commence the delivery on the date so specified.

(c) The Council shall not be entitled or have power to require the Commission to make delivery of water into the said excavated tank until and unless the depth of water in the said excavated tank has fallen to ten (10) feet or less and notwithstanding anything herein contained the Commission may whenever the water is flowing in the main channels through which the supply is given to the Council and if there is not more than a depth of seventeen (17) feet of water in

in the said excavated tank deliver water into the said excavated tank after notifying the Council on each such occasion in writing of its intention to make delivery.

(d) The Council shall forward to the Commission once in every fortnight in each year of the currency of this agreement after the first delivery of water in the year a statement showing the water level in the said excavated tank together with an estimate of the date when a further delivery of water will be required by the Council.

4. If by reason of drought, breakdown of, or damage to any machinery or plant or other property used by the Commission to provide the water supply under this agreement or by reason of the operation of the River Murray Waters Act, 1915, as amended by subsequent Acts or by reason of any other circumstances beyond the control of the Commission the Commission shall at any time be unable to supply the Council with water then so long as such inability shall continue the obligation of the Commission hereunder shall cease provided always that in the event of such inability the Commission shall so soon as practicable give notice in writing thereof to the Council: Provided also that upon the happening of any breakdown or damage to any machinery plant or property the Commission shall forthwith take steps to repair the same and shall continuously proceed with such repair until the inability through such cause to supply water to the Council shall be removed.

5. (a) The Council shall pay to the Rural Bank of New South Wales on or before the thirtieth day of June in each year during the continuance of this agreement a charge for the water supplied by the Commission pursuant to the agreement during the previous twelve months calculated at the rate of tenpence (10d.) for each and every thousand gallons of water supplied up to and including five million gallons plus the sum of ninepence (9d.) for each and every thousand gallons exceeding five million gallons up to and including ten million gallons and plus the sum of eightpence (8d.) for each and every thousand gallons exceeding ten million gallons up to and including fifteen million gallons: Provided always that the Council shall pay to the Rural Bank of New South Wales the minimum annual charge of two hundred pounds (£200) irrespective of whether water equivalent to that value has been supplied or not in the year.

(b) For purposes of the payment under this clause each year shall end on the thirtieth day of June.

(c) For the purposes of ascertaining the charge payable by the Council under subclause (a) of this clause the total quantity of water supplied in each year shall be determined by taking cross-sections of the water impounded in the said excavated tank immediately before each delivery of water by the Commission into the tank and immediately after the completion of the delivery. The quantity of any water extracted by the Council's pumps during the period of delivery shall be taken into consideration and added to the quantity of water determined from the taking of the cross-sections before-mentioned. The said measurements and the necessary calculations shall be carried out by officers of the Council appointed for the purpose. This basis of calculation of the quantities of water is on the understanding that the said excavated tank remains water-tight.

(d)

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(d) The Commission by its officers and servants shall have the right at all reasonable times in company with the Council's representatives to inspect and check the amount of water supplied from time to time pursuant to this agreement.

6. Any notice or communication to be given by the Council to the Commission under this agreement shall be delivered by the Council to the Supervising Engineer of the Commission in charge of the construction of the works of water supply for the Berriquin Domestic and Stock Water Supply and Irrigation District at the office of the said Engineer at Mulwala, in the said State, or such other office as the Commission may notify the Council.

In witness whereof the parties hereto have executed these presents the day and year first hereinbefore written.

The Common Seal of the Berrigan Shire Council was affixed in pursuance of a resolution passed at a meeting on the seventh day of October, 1935.

(L.S.)

E. H. WAY,
Deputy President.
R. J. BARRETT,
Shire Clerk.

The Common Seal of the Water Conservation and Irrigation Commission was hereunto affixed by GEORGE JOSEPH EVATT, a Commissioner appointed under the Irrigation Act, 1912, as amended by subsequent Acts, in the presence of—

(L.S.)

GEO. J. EVATT,
Commissioner.

H. BEVAN, Secretary.

SECOND PART.

AGREEMENT [supplemental to and to be read as if endorsed upon or annexed to a certain Agreement (hereinafter referred to as "the within Agreement") made the seventh day of October, one thousand nine hundred and thirty-five, between the Berrigan Shire Council (therein and hereinafter called "the Council") of the one part and the Water Conservation and Irrigation Commission in and for the State of New South Wales constituted under the Irrigation Act, 1912, as amended by subsequent Acts (therein and hereinafter called "the Commission") of the other part] made the fourteenth day of September, one thousand nine hundred and thirty-six, between the Council of the one part and the Commission of the other part whereas prior to the dissolution of the Barooga Water Trust the annual instalments payable by the said Trust to the Crown of interest and payments to a sinking fund for the repayment of the debt of the Trust to the Crown had been reduced by the amount of one hundred and sixty-three pounds ten shillings (£163 10s. 0d.) And whereas the said Trust reduced its charge to the Council for water supplied by the Trust to the Council by reason of the said reduction of the annual instalments payable by the Trust to the Crown And whereas the Commission has agreed with the Council to make a similar reduction in the charge for water payable by the Council under the provisions of the within Agreement

Now

No. 28, 1937.

Now it is hereby mutually agreed by and between the parties hereto that the charge as ascertained and payable pursuant to the provisions of the clause numbered 5 in the within Agreement shall be reduced and be deemed to have been reduced from the commencement of the within Agreement by such proportion of the amount of one hundred and sixty-three pounds ten shillings (£163 10s. 0d.) as the amount of the charge ascertained as aforesaid bears to the total charges payable from all sources annually for water supplied by the Commission by means of the works of water supply of the said Trust taken over by the Commission Provided always that nothing hereinbefore contained shall affect the obligation or liability of the Council to pay the minimum annual charge of two hundred pounds (£200) mentioned in the said clause numbered 5 in the within Agreement. It is further agreed by and between the parties hereto that pending this Agreement and the within Agreement being validated by Parliament any charge payable by the Council under the said Agreements shall be paid to the Commission and not to the Rural Bank of New South Wales as provided in the within Agreement.

In witness whereof the parties hereto have executed these presents the day and year first hereinbefore written.

The Common Seal of the Berrigan Shire Council was affixed in pursuance of a resolution passed at a meeting on the fourteenth day of September, 1936.

(L.S.)
E. H. WAY,
President.
R. J. BARRETT,
Shire Clerk.

The Common Seal of the Water Conservation and Irrigation Commission was hereunto affixed by GEORGE JOSEPH EVATT, a Commissioner appointed under the Irrigation Act, 1912, as amended by subsequent Acts, in the presence of—

(L.S.)
GEO. J. EVATT,
Commissioner

L. J. HAGARTY,
Assistant Secretary.