

WATER (AMENDMENT) ACT.

Act No. 57, 1940.

An Act to make provision for the constitution of flood control districts and flood control and irrigation districts; to make certain provisions in relation to the liability of the Crown and the Water Conservation and Irrigation Commission in respect of flooding caused by the operation of certain weirs constructed under the authority of the River Murray Waters Act, 1915, as amended by subsequent Acts; for these and other purposes to amend the Water Act, 1912-1936, and certain other Acts in certain respects; and for purposes connected therewith. [Assented to, 11th December, 1940.]

George VI.
No. 57, 1940.

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:—

1. (1) This Act may be cited as the "Water Short title. (Amendment) Act, 1940."

(2) The Water Act, 1912-1936, as amended by subsequent Acts and by this Act, may be cited as the Water Act, 1912-1940.

2.

506 **Water (Amendment) Act.**

No. 57, 1940.

Amendment
of Act No.
44, 1912.

New Part
VII.

2. (1) The Water Act, 1912-1936, as amended by subsequent Acts, is amended by inserting next after Part VI the following new Part:—

PART VII.

FLOOD CONTROL DISTRICTS AND FLOOD CONTROL AND
IRRIGATION DISTRICTS.

Definitions.

150. In this Part—

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

“Board” means the Board constituted under the provisions of subsection two of section thirty of this Act.

“District” and “provisional district” mean district and provisional district respectively constituted under this Part.

“Flood irrigation” means the irrigation of lands by flooding with water diverted by gravitation or overflowing from a river or lake.

“Lake” includes a lagoon, swamp, or other collection of still water, whether permanent or temporary, not being water contained in an artificial work.

“Owner” means an occupier of Crown land and an owner whether jointly or severally and whether at law or in equity of any estate of freehold in land and includes a mortgagee in possession.

“River” includes any stream of water, whether perennial or intermittent, flowing in a natural channel or in a natural channel artificially improved or in an artificial channel which has changed the course of the stream of water, and any affluent, confluent, branch or other stream into or from which the river flows.

“Work” includes any dam, levee, bank, lock, reservoir, weir, flume, race, channel (whether an artificial channel or natural channel artificially improved), cutting, drain,

drain, well, excavation, tunnel, pipe, pumping plant, machinery and any appliance.

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151. (1) In respect of any existing or proposed works of flood control the Commission may notify in the Gazette a proposal for the constitution of any lands—

Proposal for constitution of districts.

- (a) as a flood control district for the purpose of controlling or partly controlling floods; or
- (b) as a flood control and irrigation district for the purpose of controlling or partly controlling floods and for enabling lands to be irrigated by flooding.

(2) Any such proposal shall embody—

- (a) a plan and description of the lands proposed to be included in the district;
- (b) the purposes in connection with which it is proposed to constitute the district;
- (c) the maximum annual rate per acre to be paid during the period from the date of the constitution of the provisional district to the thirtieth day of June next following the fifth anniversary of the constitution of the district;
- (d) the nature or class of works; and
- (e) any further particulars the Commission may deem fit.

The Commission shall also publish in a newspaper circulating in the proposed district a brief reference to the notification in the Gazette.

(3) If within eight weeks of such notification a petition objecting to the proposal upon the grounds stated in the petition and signed by at least one-third in number of the owners of the land within the proposed district is presented to the Commission, it shall refer the proposal to the Board for inquiry and report.

152. (1) Before the constitution of a provisional flood control and irrigation district (and whether or not a notification of the proposal for the constitution of such provisional district has been published)

Flooding of public roads.

the

the Commission may notify any municipal or shire council in whom is vested any public road which is liable to be flooded by means of the works of the provisional district of the fact that a proposal for the constitution of such provisional district is contemplated or has been notified, as the case may be.

(2) If the council consents to waive all claims to compensation for damage to any such public road arising out of the flooding thereof at any time after the date of such consent (which consent the council is hereby authorised to give) the Commission shall not be under any liability to the council for damage arising out of the flooding of any such public road by means of the works of the provisional district or district.

(3) Where the council does not consent to waive any claim to compensation for damage to any such public road arising out of the flooding thereof the Commission shall be liable to pay to the council a sum of money in full satisfaction of all claims for compensation which the council may have on account of or arising out of the flooding of any such public road by means of the works of the provisional district or district.

The said sum of money shall be such amount as may be agreed upon between the council and the Commission, or failing such agreement within a period of three months after the date of the notification to the council under subsection one of this section, then as may be determined by the Land and Valuation Court on reference to it by the council or the Commission.

The Land and Valuation Court shall have jurisdiction to hear and determine any matter so referred to it. The determination of that court shall be final and shall be carried into effect by the council and the Commission.

The Land and Valuation Court may, in its discretion, award such costs as it thinks fit in relation to any reference under this subsection.

153. (1) If within the said period no such petition is received or the Board reports in favour of the proposal (with or without amendment) the Governor,
by

by proclamation in the Gazette, may constitute as a provisional flood control district or a provisional flood control and irrigation district, as the case may be, the lands or any of them described in the proposal with such amendments (if any) of the proposal as the Commission may recommend.

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(2) Upon such proclamation the Commission may in respect of the provisional district construct, acquire, or utilise, or partly construct, acquire, or utilise, the works.

(3) In the event of it being found at any time that an error has been made in the description of any lands included in a provisional district, the Governor may by proclamation in the Gazette correct such error.

154. (1) Upon the completion of the works in connection with a provisional flood control district or a provisional flood control and irrigation district, the Commission shall notify in the Gazette—

Constitution
of
districts.

- (a) the completion of the works;
- (b) a plan and description of the lands benefited and proposed to be included within the district;
- (c) the maximum annual rate per acre to be paid in respect of all lands included in the district for the period from the date of the constitution of the district to the thirtieth day of June next following the fifth anniversary of such constitution. Such maximum annual rate shall not exceed but may be less than the maximum annual rate notified in the Gazette under the provisions of subsection two of section one hundred and fifty-one of this Act.

The Commission shall also publish in a newspaper circulating in the district a brief reference to the notification in the Gazette.

(2) If within eight weeks after such notification in the Gazette a petition is presented to the Commission signed by any owner of land within the proposed district objecting, upon the grounds stated **in**

in the petition, to the inclusion of his land or any part of it within the district the Commission shall refer the petition to the Board for inquiry and report.

(3) If within the said period no such petition is received or when the Board has reported upon the petitions referred to it, the Governor, by proclamation in the Gazette, may constitute as a district the lands described in the notification by the Commission pursuant to subsection one of this section, or such of them as the Commission may recommend.

(4) Any land included in the provisional district and for which upon survey and investigation by the Commission it is found to be impracticable to provide for flood control in the case of a flood control district, or for flood control and irrigation in the case of a flood control and irrigation district, and for which no such provision or no sufficient provision is made by the works shall not be included within the district.

Alteration
of
boundaries.

155. (1) The Governor may by proclamation in the Gazette alter a district or provisional district by—

- (a) including additional lands, or
- (b) excising lands, or
- (c) transferring lands from one district or provisional district to another.

(2) In connection with any proposal for any such alteration of a district or provisional district unless the owners of the lands have notified in writing their willingness to have such lands included in the district or provisional district or excised therefrom or transferred to another district or provisional district, as the case may be, the Commission shall notify in the Gazette—

- (a) a plan and description of the lands proposed to be added, excised, or transferred as the case may be;
- (b) the purposes for which the districts or provisional districts concerned have been constituted;

(c)

- (c) the maximum annual rate within the district or provisional district within which it is proposed to include the additional or transferred lands and which will apply for a period of which the extent shall be stated. No. 57, 1940.

The Commission shall also publish in a newspaper circulating in the district a brief reference to the notification in the Gazette.

(3) If within eight weeks of such notification in the Gazette a petition objecting to the proposal, upon the grounds stated in the petition, signed by at least one-third in number of the owners of the lands proposed to be added to the district or provisional district or to be transferred from one district or provisional district to another, or any owner of lands proposed to be excised from the district or provisional district, as the case may be, is presented to the Commission it shall refer the proposal to the Board for inquiry and report.

(4) If within the said period no such petition is received, or the Board has reported upon the petition referred to it, the Governor, by proclamation in the Gazette, may alter the district or provisional district or districts, as the Commission may recommend.

(5) Any lands which following the alteration of a district or provisional district have been excised therefrom shall as from the date of such proclamation in the Gazette be exempt from rates under this Part in respect of such district or provisional district. All rates due in respect of such lands to the date of the proclamation shall be paid.

(6) Any lands transferred from one district or provisional district to another shall, as from the date of the proclamation in the Gazette, be exempt from rates within the district or provisional district from which such lands were transferred, and shall thereafter be subject to such rates as apply within the district or provisional district to which they have been transferred. All rates due in respect of such lands within the district or provisional district from which they have been transferred, to the date of such proclamation shall be paid.

(7)

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(7) For the purposes of subsections five and six of this section rates shall be considered as accruing from day to day and shall be apportionable in respect of time accordingly.

Additional
lands.

156. Upon the alteration of any district or provisional district to include additional lands the Commission may in respect of such additional lands construct, acquire, or utilise works for purposes in connection with the district or provisional district.

Lands
within
trust
districts.

157. (1) If any land which it is proposed to include in a provisional district or district or to add to or excise from a provisional district or district is within the district of a trust constituted under the provisions of Part III of this Act, or if it is proposed to excise any land from the district of a trust so constituted and include such land within a provisional district or district the Commission shall notify the trustees of the proposal.

If within eight weeks after such notification the trustees by majority object to the proposal, the Commission shall refer it to the Board for inquiry and report.

If within the said period no such objection is made or when the Board has reported on the proposal with or without amendments the Governor may, subject to the provisions of this Part, include the land within or add it to the provisional district or district or excise it from the provisional district or district or excise it from the district of the trust as the case may be.

(2) Any land which is within the district of a trust constituted under the provisions of Part III of this Act and which is included in a provisional district or district may be—

- (a) subject to subsection one of this section excised at any time from the district of the trust; or
- (b) retained within the said district of the trust if the benefit to such land from the trust work continues, and in such case and subject to the provisions of this Act, rates and charges may be fixed and levied under the provisions

provisions of Part III of this Act in respect of such lands in addition to rates under the provisions of this Part. No. 57, 1940.

(3) If any moneys are owing to the Crown by the trust in respect of the works of the district of the trust from which any lands are excised and included in a provisional district or district the Commission shall reduce the indebtedness of the trust to the Crown by such amount as may be agreed upon between the Commission and the trustees, or failing such agreement, by an amount in the proportion to the then total indebtedness to the Crown as the amount of the rates last fixed and levied by the trust on the excised lands bears to the total of the rates last fixed and levied by the trust on the lands within the trust district.

The amount by which the indebtedness of the trust to the Crown is reduced shall be paid by the Commission to the Treasury and the amounts from time to time payable by the trust to the Treasury in respect of the works shall be adjusted having regard to the reduction of the indebtedness.

(4) Nothing in this section shall relieve any person from any payment due by him to the trust in respect of the excised lands at the date such lands were so excised.

(5) Any of the trust works within the district of a trust constituted under the provisions of Part III of this Act and within or used exclusively for the said excised lands may without payment of compensation be utilised by the Commission for the purposes of the provisional district or district to which the excised lands are added.

(6) Where the whole of the lands within the district of a trust constituted under the provisions of Part III of this Act are included in a provisional district or a district and such lands are not retained within the district of the trust, the trust shall as from the date of the notification in the Gazette of such inclusion be deemed to be dissolved. The Commission may, where a trust is so dissolved, without payment of compensation, acquire and utilise the trust works. All rates and other moneys due,
owing

No. 57, 1940.

owing to, or held by the trust at the date of its dissolution shall be paid to the Bank, and be applied to the liquidation or part liquidation of the liabilities of the trust, and the Bank shall have all the powers which the trustees of such trust had to sue for and recover any rates and other moneys due and owing to the trust; and the Bank shall, from the rates and charges collected within the provisional district or district, discharge upon such terms and conditions as may be determined by the Minister for the time being charged with the administration of this Part, the balance, if any, or such part of the balance as may be determined by the said Minister, of the liabilities of the trust.

Fixing of rates.

158. (1) The Commission shall fix in respect of the lands within a provisional district and a district the rates as hereinafter provided.

(2) The Commission, after the first day of July but not later than the thirtieth day of September in each year, shall, in respect of each year commencing the first day of July fix the rate per acre to be paid in respect of the lands within a district or provisional district for which provision for flood control or flood control and irrigation, as the case may be, is made by the works, and shall in respect of each holding assess the total amount of such rate. The rate so fixed and assessed shall be levied and paid as prescribed.

Rates.

159. (1) The rates shall—

- (a) be levied as prescribed;
- (b) in the case of any particular holding commence to be payable from the first day of July next following the date upon which provision for flood control or flood control and irrigation, as the case may be, in respect of that holding is made by the works;
- (c) for the period from the date of the constitution of the provisional district to the thirtieth day of June next following the fifth anniversary of the constitution of the district

district be not greater but may be less than the maximum rate set out in the notification made in pursuance of subsection one of section one hundred and fifty-one of this Act;

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(d) after the thirtieth day of June next following the fifth anniversary of the constitution of a district be each year as fixed by the Commission.

(2) (a) Overdue rates assessed and levied under this Part shall be increased in accordance with this subsection. Overdue rates.

(b) If the rates so assessed and levied 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 five per centum per annum. Any increase under this paragraph shall be deemed to be part of the rates.

(c) The calculation under paragraph (b) of this subsection 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.

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

(e) The increase in the rates under this subsection shall continue to apply to all unpaid rates notwithstanding that judgment for same may have been obtained in any court including the District Court.

(3) Any person liable to pay rates under this Part who transfers his estate or interest in or abandons any land ratable under this Part shall within thirty days of such transfer or abandonment give notice thereof to the Commission, and until such notice is given he shall remain liable for all rates which become payable in respect of such land prior to the giving of such notice.

(4) In any case where more than one person is an owner within the meaning of this Part of land any rate assessed in respect of that land may be levied upon any one or more of such persons and the
Bank

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Bank may recover the rate as against any person upon whom the rate is so levied: Provided that nothing in this subsection shall entitle the Bank to recover more than the full amount of the rate.

(5) Where an owner acquires land from the Crown during any year within which rates are payable under this Part rates proportionate to the portion of the year during which the land is held by such owner shall be payable by him to the Bank as and when prescribed and notwithstanding the provisions of subsection two of section one hundred and fifty-eight the Commission may assess the said owner accordingly at a date subsequent to that on which he acquired the land.

(6) Where any land being the whole or part of a holding within a district or provisional district reverts to the Crown during any year within which rates are payable under this Part the owner shall as regards such land be liable for payment of only that part of the rates proportionate to the portion of the year for which the land was held by him and any excess payment by him in that behalf shall be refunded to him.

(7) In the event of the Commission at any time finding it has made an error in the assessment of a rate in respect of any holding or owner through lack of knowledge of the name of the owner, or the area or extent of the holding, or miscalculation, the Commission, upon such error being brought under its notice, may at any time re-assess the rate in respect of any holding or owner affected.

Benefit to
be taken
into
account.

160. Notwithstanding anything in this Part contained the rates in a district, or a provisional district, may be determined or varied, having regard to the benefit which, in the opinion of the Commission, is derived by the owner of the land in respect of which works for flood control, or flood control and irrigation, as the case may be, have been provided, and, although included in the district or provisional district, the Commission may exempt from rating the lands which, without the provision of works for flood control or flood control and irrigation, as the case

case may be, would not be flooded at times of maximum floods. The determination of the Commission as to whether lands would be so flooded or not flooded and the extent of same shall be final.

161. (1) All rates due and payable or to become due and payable under this Part shall be payable to the Bank. Liability
for rates.

(2) Rates under this Part shall be—

- (a) a charge upon the land, and
- (b) payable by the owner thereof.

162. (1) Nothing in this Part shall render it obligatory upon the Commission to provide flood irrigation to any land or person in any flood control and irrigation district. Supply of
water.

(2) The control of works within a provisional district or district, the arrangements for distribution of water for flood irrigation, and the order of supply or diversion of water for flood irrigation shall be entirely under the control of the Commission, and in the exercise of its authority in those respects the Commission shall not be under any restraint nor shall compensation be payable to any person by reason of or for any cause arising out of the flooding of his land.

(3) Nothing in this Part shall affect any license granted under the provisions of Part II of this Act.

163. (1) For the purposes of this Part the Commission or any person authorised by it may enter any lands and take levels and make surveys and marks and fix pegs and stakes and inspect any works. Surveys
and works.

(2) Any person hindering the Commission or any such authorised person in the exercise of such power shall be liable to a penalty not exceeding twenty pounds.

(3) Any person who removes, injures or interferes with any marks, pegs or stakes fixed as aforesaid shall be liable to a penalty not exceeding fifty pounds.

(4) The Commission, for the purposes of this Part, may construct, maintain, and repair any work on any land, street, road or reserve.

(5)

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(5) Every work which the Commission is authorised by this Part to construct or acquire shall be respectively constructed or acquired under the Public Works Act, 1912, and all the powers and provisions of the said Act relating to authorised works shall be applicable to such work and for all purposes of the said Act such work shall be deemed an "authorised work" and the Commission a "constructing authority" within the meaning of the said Act and the provisions of sections thirty-four, thirty-five, thirty-six and thirty-seven of that Act shall not apply to any such work.

(6) Without prejudice to the generality of subsection five of this section the provisions of section thirty-eight of the Public Works Act, 1912, shall, mutatis mutandis, apply to any contracts for carrying out any such work.

(7) For the purpose of the construction, operation, maintenance or repair of any work proposed to be constructed or constructed, utilised or acquired, under the authority of this Part, or to which this Part applies, the Commission shall have power at any time—

(a) to enter any lands being—

(i) the site of a work constructed or the proposed site of a work to be constructed under this Part; and

(ii) within a distance of not more than sixty-six feet from the nearest boundary of such site or proposed 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.

(8) Where any claim is made for compensation by reason of the exercise by the Commission of any of the powers conferred upon it by subsection one, subsection four, or subsection seven of this section there shall be taken into consideration and given

given effect to by way of set-off or abatement the enhanced value of the land of the claimant on account of the benefit conferred on such land by the construction of works under this Part, but in no case shall this subsection operate so as to require any payment to be made by the claimant to the Commission in consideration of such enhancement of value:

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Provided that—

- (a) where the land entered upon or used by the Commission is the site of a work or the proposed site of a work and is of a width in excess of one and one-half chains; or
- (b) where in the opinion of the Commission—
 - (i) the area of the land of the claimant entered upon or used as compared with the total area of his holding is such as to place an undue burden upon him if the said set-off or abatement were applied either wholly or partially; or
 - (ii) the location of the land of the claimant entered upon or used is such as to cause undue loss or expense to him on account of severance,

the set-off or abatement may be waived by the Commission either wholly or in part.

164. (1) The Commission may, with the approval of the Governor, make regulations not inconsistent with this Part prescribing all matters which by this Part are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying this Part into effect.

Regulations.

(2) Without prejudice to the generality of the power conferred by subsection one of this section the Commission, with the approval of the Governor, may make regulations—

- (a) for the prevention of pollution of water conserved or distributed in works constructed or used under this Part, or flowing in rivers or within lakes affected by works constructed or used under this Part;

(b)

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- (b) for the prevention of injury to such works or any works used in connection therewith;
- (c) in respect of the diversion of water from rivers and lakes for flood irrigation and for the control of works provided for regulating flood irrigation;
- (d) relating to the fixing, assessing, levying and collection of rates;
- (e) for the prevention of the waste of water;
- (f) prescribing the forms of notices required under this Part and the manner of and periods for giving same;
- (g) generally for carrying out the provisions of this Part.

(3) The regulations may prescribe a penalty not exceeding twenty pounds for any breach thereof or where the breach continues not exceeding five pounds for every day during which such breach continues.

(4) The regulations shall—

- (a) be submitted to the Governor for his approval;
- (b) after approval by the Governor be published in the Gazette;
- (c) take effect from the date of publication thereof, or from a later date to be specified in the regulations; and
- (d) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is then in session, and, if not, then within fourteen sitting days after the commencement of the next session.

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

(6) The production of a copy of the Gazette containing any regulation purporting to have been made under this Act shall be evidence, until

until the contrary is proved, of the due making of such regulations, and that all preliminary steps have been duly taken necessary to give full force and effect to the same.

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(7) Whenever by any section of this Part or any regulations made thereunder any person is liable to a penalty or to pay any sum of money, whether as compensation or in any other way, such penalty or sum may be recovered before any stipendiary magistrate or police magistrate or two or more justices of the peace in petty sessions, in accordance with the Acts in force for the time being regulating summary proceedings before justices.

(2) The Water Act, 1912-1936, as amended by subsequent Acts, is further amended by inserting in section one next after the matter relating to Part VI, the following words:—

Further amendment of Act No. 44, 1912. Sec. 1. (Division into Parts.)

PART VII.—FLOOD CONTROL DISTRICTS AND FLOOD CONTROL AND IRRIGATION DISTRICTS—SS. 150-164.

3. The Water Act, 1912-1936, as amended by subsequent Acts, is further amended by inserting next after paragraph (e) of subsection one of section twenty-seven the following new paragraphs:—

Further amendment of Act No. 44, 1912. Sec. 27. (Regulations.)

- (e1) the prohibition or regulation of the mooring of any ship, boat, barge, punt, craft, houseboat or any other vessel whatsoever within prescribed areas in any river or lake which is a source of public water supply or of water supply for any town or village within the State of New South Wales or the State of Victoria;
- (e2) the empowering of the Commission or any person authorised by the Commission to remove or cause to be removed any ship, boat, barge, punt, craft, houseboat or other vessel moored in contravention of the regulations.

4. (1) The Water Conservation and Irrigation Commission may at the request of the owners or occupiers of land in the vicinity of the two weirs, known respectively as Weir No. 5 and Weir No. 7, constructed across the Murrumbidgee River under the provisions of the

Operation of certain weirs.

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the River Murray Waters Act, 1915, as amended by subsequent Acts, arrange with the authority of the Crown controlling the said weirs to operate the said weirs or either of them to cause the flooding of the said land by the overflow of the waters of the said Murrumbidgee River and effluents therefrom.

(2) If any public road is liable to be flooded by reason of the operation of the said weirs or either of them the authority of the Crown controlling the said weirs and the said Commission shall have full power to flood any such public road in operating the said weirs or either of them pursuant to subsection one of this section.

(3) If the municipal or shire council in whom is vested any public road which is liable to be flooded by reason of the operation of the said weirs or either of them consents to waive all claims to compensation for damage to any such public road arising out of the flooding thereof at any time after the date of such consent (which consent the council is hereby authorised to give), then the authority of the Crown and the said Commission shall not be under any liability to pay compensation to the council for damage arising out of the flooding of the public road in operating the said weirs or either of them pursuant to subsection one of this section.

(4) Where the council does not consent to waive any claim to compensation for damage to any such public road arising out of the flooding thereof the Commission shall be liable to pay to the council a sum of money in full satisfaction of all claims for compensation which the council may have on account of or arising out of the flooding of the said public road in operating the said weirs or either of them pursuant to subsection one of this section.

The said sum of money shall be such amount as may be agreed upon between the council and the Commission, or failing such agreement then as may be determined by the Land and Valuation Court on reference to it by the council or the Commission.

The Land and Valuation Court shall have jurisdiction to hear and determine any matter so referred to it.

The

Horse-breeding Act.

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The determination of that court shall be final and shall be carried into effect by the council and the said Commission. ^{No. 57, 1940.}

The Land and Valuation Court may in its discretion award such costs as it thinks fit in relation to any reference under this subsection.
