

CHAPTER 144A

IRRIGATION

TABLE OF PROVISIONS

SECTION

1. Short title
2. Interpretation
3. Commissioner
4. Functions of Commissioner
5. Irrigation areas
6. Management of irrigation areas
7. Powers of Commissioner
8. Adjustment of agricultural holdings
9. Irrigation rates
10. Payment of rates
11. Remission of rates
12. Permitted crops in irrigation areas
13. Carrying out works outside irrigation area
14. Compliance with programmes, practices and standards
15. Field channels, field drains and field bunds
16. Removal of trees or refuse
17. Power to withhold water
18. Damage to irrigation works by fire
19. Obstruction or damage
20. Waste or wrongful use of water by any person
21. Waste or wrongful use of water by owner or occupier
22. Refusal to allow passage of water
23. Construction of unauthorised waterways
24. Allowing animals to stray
25. Unauthorised use of vehicles and boats
26. Pollution of water
27. Tampering with irrigation areas
28. Appeals
29. Regulations
30. Protection from deprivation of property
31. Other written law relating to water rights

Act No. 32 of 1973, Legal Notice No. 90 of 1979

AN ACT TO MAKE PROVISION FOR LAND IRRIGATION AND
MATTERS INCIDENTAL THERETO

[28 January 1974]

Short title

1. This Act may be cited as the Irrigation Act.

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

“Commissioner” means the Commissioner for Irrigation appointed under the provisions of section 3;

“field” means a unit portion of land for which the separate provision of irrigation water is made;

“field bund” means a bank constructed for the purpose of retaining water on or excluding water from a field;

“field channel” means a channel constructed or provided for the purpose of supplying irrigation water directly to fields;

“field drain” means a drain constructed or provided for the purpose of removing drainage water from not more than 3 fields;

“irrigation” means the practice of causing water to flow upon or spread over or under the surface of land or of retaining water on or under the surface of land for agricultural purposes, and includes the draining of land for the removal of water which is injurious to or in excess of the requirements of agriculture;

“irrigation area” means an area declared to be an irrigation area under the provisions of section 5;

“irrigation water” means water which is put on to or retained on land by means of irrigation works, and includes water reaching such land as rainfall;

“irrigation works” includes headwork buildings, pumps, canals, channels, banks, bunds, bridges, culverts, regulators, sluices, falls, gauges and other similar works used in connection with irrigation, and includes works in connection with drainage and any works for the prevention or mitigation of flooding or erosion to which the land is subject;

“occupier” includes the lessee during the currency of a registered lease, and any person having a right to, or licence or concession over, or permission to occupy, any land;

“officer in charge” means an officer appointed under the provisions of section 6;

“owner” means the registered proprietor of any land and, in the case of land registered in the Register of Native Lands, means the native owners and, in the case of Crown Land, means the Director of Lands and Surveyor-General*;

“pollute” means, in relation to irrigation works, to render such works capable of causing or to cause any water contained in or flowing in or through such works to become unfit or less fit for the purposes of irrigation or prejudicial to the health of any person or offensive in odour or appearance or toxic to any animal.

Commissioner

3.—(1) The Minister shall, for the purposes of this Act, appoint a Commissioner for Irrigation and may appoint more than one such Commissioner.

(2) If more than one Commissioner is appointed under the provisions of this section, the Minister shall define the area or areas for which each Commissioner has been appointed.

* See Legal Notice No. 60 of 1978.

(3) The Commissioner shall act in accordance with any directions of the Minister.

Functions of Commissioner

4. The Commissioner shall—

- (a) within the area or areas for which he has been appointed, be responsible for the construction, improvement and maintenance of irrigation works and the establishment and administration of irrigated agriculture; and
- (b) carry out such works and issue such orders concerning irrigation works and irrigation of lands as he deems necessary for the performance of his functions.

Irrigation area

5. The Commissioner may by notification in the Gazette, and in such other manner as he considers best calculated to bring to the attention of persons living in the area, declare any lands to be an irrigation area and, by such notification, shall define the boundaries of such area:

Provided that no native land shall be included in any such irrigation area without the prior written consent of the Native Land Trust Board.

Management of irrigation areas

6.—(1) Every irrigation area and the works therein shall be in the charge of an officer appointed for that purpose by the Commissioner.

(2) Such officer shall—

- (a) carry out such duties in connection with the management of the area as the Commissioner may appoint; and
- (b) have power to delegate in writing such duties to his assistants, servants and agents, subject to such limitations as the Commissioner may think fit.

Powers of Commissioner

7. The Commissioner and every officer so authorised by him in writing shall, within his own irrigation area, have power to do all things necessary to carry out his functions under this Act and in particular shall have power—

- (a) to maintain or improve irrigation works;
- (b) to construct new irrigation works;
- (c) to enter contracts in connection with irrigation works;
- (d) to control livestock so as to prevent damage to irrigation works;
- (e) to enter at any time, by means of any member, officer, servant or agent, any lands within his irrigation area for the following purposes:—
 - (i) to do all acts necessary to ascertain whether any irrigation measures are necessary or desirable;
 - (ii) to construct, maintain and improve irrigation works;
 - (iii) to inspect irrigation works;
 - (iv) to ascertain whether maintenance or other measures ordered by him have been or are being carried out;
 - (v) to survey and take levels of any land in an irrigation area;
 - (vi) to dig and bore in and under the ground;

- (vii) to clear, set out and mark the boundaries of any land in connection with irrigation works;
- (viii) to prevent or detect the commission of an act constituting an offence under the provisions of this Act;
- (ix) to secure the proper control of livestock in an irrigation area:
 Provided that no entry shall be made under the provisions of this paragraph to any land within the curtilage of a dwelling house unless reasonable notice has first been given to the occupier.
- (f) to engage in the cultivation of land, either on his own behalf or in conjunction with other persons or bodies, for the purpose of promoting the adoption of improved agricultural and irrigation practices;
- (g) to appoint an Advisory Committee or Committees for the purpose of advising him on such matters as he may specify.

Adjustment of agricultural holdings

8.—(1) The Commissioner shall, within his own irrigation area, and with the approval of the owners and occupiers of such holdings, have power, for the purpose of forming fields of suitable size and shape for irrigation, to combine or subdivide or increase or reduce the size or alter the orientation or boundaries of agricultural holdings:

Provided that such adjustments of holdings shall not, save with the agreement of the owner, have the effect of changing the ownership of any land.

(2) The Commissioner shall submit to the Director of Town and Country Planning a plan showing the proposed adjustment of holdings and, in carrying out the adjustment, shall take into consideration the objections, if any, of the Director in relation to the proposed adjustment.

(3) The cost of carrying out such alterations in the size or shape of holdings shall be borne by the Commissioner.

(4) Where any land affected by the provisions of subsection (1) is held on a contract of tenancy, the landlord of such land, by agreement with his tenant, shall make such changes in the contract as may be necessitated by the alteration in the size or shape of the holding:

Provided that a tenant whose interest in a holding has been adversely affected by such alteration may, on giving the landlord 6 months' notice or such shorter notice as the landlord may accept of his intention so to do, terminate the tenancy on payment of such agreed compensation as the owner and the occupier or, in the absence of such agreement, the Commissioner, shall decide.

(5) The Commissioner shall maintain—

(a) plans showing the boundaries of fields formed under the provisions of subsection (1); and

(b) a register in which shall be entered the areas of such fields.

(6) On receipt of an application for the subdivision of any land within an irrigation area, the authority empowered to approve such subdivision shall—

(a) consult the Commissioner for the irrigation area; and

(b) take into consideration any objection of the Commissioner in disposing of the application.

(7) The provisions of this section shall have effect notwithstanding the provisions of the Town Planning Act.

(Cap. 139)

Irrigation rates

9.—(1) The Commissioner may, with the approval of the Minister, by notification in the Gazette, impose upon all or any land within an irrigation area annual rates to be known as irrigation rates:

Provided that no irrigation rates shall be imposed in excess of \$20 per hectare for a period of 4 years from the gathering of the first irrigated crop. (*Amended by Legal Notice 90 of 1979.*)

(2) Any rates imposed under subsection (1) may, at the discretion of the Commissioner, be reduced or remitted, whether prospectively or retrospectively, if he considers it reasonable having regard to the amount of benefit received in respect of any plot from the irrigation works.

(3) Rates shall be payable by the occupier of the land.

(4) Rates, if not paid by the due date, may be recovered by ordinary civil proceedings.

Payment of rates

10. An irrigation rate shall be payable on such date or dates as shall be notified by the Commissioner in the Gazette.

Remission of rates

11. Where the full supply of water necessary to the purpose to which the lands are applied has not been available or for any other reason approved by the Commissioner, any officer appointed for this purpose by the Commissioner may reduce the amount of rate payable to such amount as may appear to him to be just.

Permitted crops in irrigation areas

12. The Commissioner may, by notification in the Gazette, declare that any land in an irrigation area shall be used only for the cultivation of such crops as may be specified in such notification:

Provided that the Commissioner may, in his discretion, upon the application of any owner or occupier of any land, permit other crops to be cultivated or such land to be used for other purposes.

Carrying out works outside irrigation area

13. If it appears to the Commissioner or to an officer duly authorised by the Commissioner in that behalf that the carrying out of such works outside the boundaries of an irrigation area is necessary for the benefit of the irrigation works, the Commissioner or such officer may, with approval of the owner and occupier, construct, widen, drain or fill up any canal, channel, drain, ditch, pond or swamp.

Compliance with programmes, practices and standards

14.—(1) The Commissioner may, from time to time, specify engineering and agricultural programmes, practices and standards to be adopted by owners and occupiers of land within an irrigation area.

(2) In the case of failure by an owner or occupier to comply with such programmes, practices or standards, the Commissioner or the officer in charge of the area shall cause to be served upon him a notice—

(a) stating the respect in which he has failed to comply with the programmes or practices or standards; and

(b) requiring him to remedy such failure to comply within a period to be stated in the notice.

(3) In the case of failure by an owner or occupier to comply with the requirements of a notice served under subsection (2), the Commissioner may withhold the supply of irrigation water from the lands in respect of which the notice has been served until compliance with the requirements of the notice has been made.

Field channels, field drains and field bunds

15.—(1) The officer in charge of an irrigation area may, by notice in writing, require the owner or occupier of any land within such area to provide to the satisfaction of the officer in charge, either individually or jointly with other owners or occupiers, field channels, field drains and field bunds for the supply, drainage, retention or exclusion of water and, notwithstanding that they may have been provided by the Commissioner, to maintain and repair such field channels, field drains and field bunds to the satisfaction of the officer in charge:

Provided that no person shall be required under this section to provide or maintain channels, drains or bunds which will not benefit land whereof he is owner or occupier.

(2) Such notice shall require the owner or occupier to take the necessary action within a stated time, which shall not be less than 15 days from the date of the service of the notice.

(3) If default is made in complying with the provisions of such notice, the officer in charge may cause such action to be taken as is required by the notice and may thereafter certify the cost thereof, and thereupon the amount so certified shall be recoverable from the person by whom default was made as aforesaid in ordinary civil proceedings.

Removal of trees or refuse

16.—(1) The officer in charge of an irrigation area may, by notice in writing to the owner or occupier of any lands within such area—

(a) require him—

- (i) to clear the banks or sides of any field channel or field drain or such lands of any trees or plants growing thereon; or
- (ii) to remove from any of his lands adjoining any irrigation works any growth or refuse likely to harbour vermin;

(b) prohibit him from—

- (i) planting any trees or plants on the banks or sides of any irrigation works on such lands; or
- (ii) depositing on any lands adjoining any irrigation works any refuse likely to damage such works or to harbour vermin.

(2) Such notice shall require the owner or occupier to take the necessary action within a stated time, which shall not be less than 15 days from the date of the service of the notice.

(3) If default is made in complying with the provisions of such notice, the officer in charge may cause such action to be taken as is required by the notice and may thereafter certify the cost thereof, and thereupon the amount so certified shall be recoverable from the person by whom default was made as aforesaid in ordinary civil proceedings.

(4) Where the officer in charge acting under the provisions of this section requires the destruction of or destroys valuable trees or plants he shall, if such trees or plants were not grown in contravention of any order made under the provisions

of paragraph (b) of subsection (1), pay to the owner or occupier reasonable compensation therefor.

Power to withhold water

17. The Commissioner may withhold the supply of irrigation water from any lands—

- (a) in respect of which the payment of irrigation rate is in arrears; or
- (b) the owner or occupier of which has—

- (i) failed to comply with the requirements of a notice under section 14 or 15; or

- (ii) persisted in the infringement of any of the provisions of this Act,

and the irrigation rate payable upon such lands shall be payable notwithstanding such withholding of supply of water.

Damage to irrigation works by fire

18. In any case in which damage is done to any irrigation works by fire originating on adjoining or neighbouring lands, the cost of repairing such damage may be recovered from the owner or occupier of such lands by the officer in charge of such works by suit in any court of competent jurisdiction.

Obstruction or damage

19. Any person who—

- (a) wilfully or maliciously blocks up or obstructs or causes to be in any way blocked up or obstructed; or

- (b) breaches or cuts through or causes to be breached or cut through,

any irrigation works shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a period not exceeding 6 months or to a fine not exceeding \$200, or to both such imprisonment and fine.

Waste or wrongful use of water by any person

20. Any person who—

- (a) wilfully causes waste of water supplied by an irrigation works; or
- (b) not being entitled to the use of such water, wrongfully draws off or causes to be drawn off or converts to his own use any such water; or
- (c) uses or causes to be used any such water for a purpose other than that for which it is supplied,

shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a period not exceeding 6 months or to a fine not exceeding \$200, or to both such imprisonment and fine.

Waste or wrongful use of water by owner or occupier

21. If the owner or occupier of any land irrigated by any irrigation works—

- (a) suffers or permits water obtained from such works or from any watercourse or channel connected therewith to run to waste on his land; or

- (b) obtains water for such land from such works, watercourse or channel in a manner or for a purpose not authorised by the officer in charge of such works,

he shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a period not exceeding 6 months or to a fine not exceeding \$200, or to both such imprisonment and fine.

Refusal to allow passage of water

22. Any owner or occupier or other person who prevents or obstructs the passage of water in any irrigation works shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a period not exceeding 6 months or to a fine not exceeding \$200, or to both such imprisonment and fine.

Construction of unauthorised waterways

23. Any person who—

- (a) constructs any canal, watercourse, drain, ditch or pond; or
- (b) deepens or enlarges any existing canal, watercourse, drain, ditch or pond,

within any irrigation area without having previously obtained the consent thereto in writing of the officer in charge of such area shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a period not exceeding 6 months or to a fine not exceeding \$200, or to both such imprisonment and fine:

Provided that nothing in this section shall apply to any watercourse, drain or ditch in any land within the curtilage of a dwelling house where such watercourse, drain or ditch is not connected to any irrigation works.

Allowing animals to stray

24 Any person who allows any animal to stray upon the banks or sides of any irrigation works shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a period not exceeding 3 months or to a fine not exceeding \$100, or to both such imprisonment and fine.

Unauthorised use of vehicles and boats

25. Any person who—

- (a) drives, draws or pushes or causes to be driven, drawn or pushed any vehicle along the banks or sides of; or
- (b) uses or causes to be used any boat, vessel or raft or floats or causes to be floated any wood or other material on,

any irrigation channel or other works without having previously obtained the consent thereto in writing of the officer-in-charge shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a period not exceeding 3 months or to a fine not exceeding \$100, or to both such imprisonment and fine.

Pollution of Water

26. Any person who washes articles in or otherwise pollutes or causes to be polluted any irrigation works shall be guilty of an offence and shall be liable, on conviction, to imprisonment for a period not exceeding 6 months or to a fine not exceeding \$200, or to both such imprisonment and fine:

Provided that the Commissioner may, by order published in the Gazette, declare that the provisions of this section shall not apply in any irrigation area to any works specified in such order.

Tampering with irrigation areas

27.—(1) Any person who, without authority from the officer-in-charge, opens or closes or otherwise tampers with any sluice, water gate, regulator, pipe, bench mark, water gauge or irrigation works within an irrigation area shall be guilty of an

offence and shall be liable, on conviction, to imprisonment for a period not exceeding 6 months or to a fine not exceeding \$200, or to both such imprisonment and fine.

(2) Where, by reason of any irrigation works having been so tampered with, the land of any person is benefited, the onus of proving that he did not so tamper therewith or cause them to be tampered with shall lie on such person.

Appeals

28.—(1) Any person aggrieved by any decision of or any requirement made by the officer-in-charge of an irrigation area under this Act may, within one month of his being notified thereof, appeal to the Commissioner.

(2) Any person aggrieved by any decision of or any requirement made by the Commissioner under this Act may, within one month of his being notified thereof, appeal to the Minister.

(3) Every appeal shall state the interest of the appellant the subject and grounds of appeal.

Regulations

29. The Minister may make regulations for the encouragement and extension of cultivation in all or any irrigation area and for any other purpose consistent with the provisions of this Act and, in particular, and without prejudice to the generality of the foregoing, to provide for—

- (a) the constitution of Advisory Committees;
- (b) compliance with engineering and agricultural programmes, practices and standards;
- (c) the fixing of rates and charges for development, operation and maintenance of irrigation works;
- (d) the marketing of produce of crops grown in irrigation areas.

Protection from deprivation of property

30. When the Commissioner exercises any of his powers under this Act involving the taking possession of or compulsory acquisition of any interest in or right over land, the following provisions shall apply:—

- (a) the Commissioner shall give reasonable notice of his intention to exercise such powers to the owner or occupier of the land or any person having any other interest or right therein that would be affected by the exercise of such powers;
- (b) the Commissioner shall apply to the Supreme Court for an order authorising the exercise of such powers or, if such powers have been exercised, he shall apply to the Supreme Court for an order in that behalf within 30 days of the exercise of such powers;
- (c) the Supreme Court shall not grant such an order unless it is satisfied that the exercise of such powers is necessary or expedient in the public interest;
- (d) the Commissioner shall pay damages to any owner or occupier or any person having any other interest or right therein that would be affected by the exercise of such powers where he has exercised such powers prior to his application to the Supreme Court, when such an order is not granted and he shall promptly pay adequate compensation for the exercise of such powers when such an order is granted;

- (e) where no agreement as to amount and manner of payment of compensation has been concluded with any claimant to any compensation within 30 days of the grant of the order referred to in paragraph (b), the Commissioner shall apply to the Supreme Court for the determination of those matters in relation to that claimant (including, where necessary, any question as to his entitlement to compensation);
- (f) the Commissioner shall pay the costs reasonably incurred by any other party in connection with the proceedings before the Supreme Court for any of the aforesaid purposes, including any appeal (not made unreasonably or frivolously) from any decision of that Court.

Other written law relating to water rights

31. The provisions of the Drainage Act and the exercise of rights over water granted by or under any other written law shall, in an irrigation area, be subject to the provisions of this Act.

(Cap. 143.)

Controlled by Ministry of Primary Industries

CHAPTER 144A

IRRIGATION

SECTION 5 - DECLARATION OF IRRIGATION AREAS

The following lands have been declared to be irrigation areas:—

Legal Notice No. 194 of 1977

1. NAUSORI IRRIGATION AREA

All that area of Crown Land situated north of the Town of Nausori in the Tikina of Bau in the province of Tailevu, being parts of lands known as Verata, Naitukulawau and Nausori and bounded generally on the north by part of the northern boundary of the land contained in Crown Grant 356 and known as Verata, on the east by the main Drainage Canal; realigned Waidamu Creek of the Rewa Rice Scheme, on the south by part of the southern boundaries of land contained in Native Grant 108 and known as Naitukulawau and by part of the southern boundary of Crown Grant 506 known as Nausori, and on the west partly by the eastern boundary of Crown Lease No. 1766 and partly by the alignment of old Colonial Sugar Refining Company Limited Railway Track.

The area is more particularly known edged red on the plan PP 153 kept in the office of the Permanent Secretary for Lands and Mineral Resources, Suva and copies are available for viewing in the offices of the Permanent Secretary for Agriculture and Fisheries, the Commissioner for Irrigation for Central and Western Divisions, the Farm Manager, Nausori Irrigation Project and the Commissioner for Central Division.

Legal Notice No. 73 of 1978

2. NAVUA CENTRAL IRRIGATION AREA

All that area of native land situated on the north of Sadro and Vunibau villages in the Tikina of Serua in the Province of Serua and lying on the right bank of the Navua River near its estuary and bounded generally on the north by the part of the southern boundary of Crown Grant 277 known as Tamanoa, on the east by part of right bank of the Navua River, on the south by the part of the Vunibau Feeder Road and on the west by part of Sadro Road.

The area is more particularly shown edged red on the PP 171 kept in the office of the Director of Lands, Suva and copies are available for viewing in the offices of the Permanent Secretary for Agriculture and Fisheries, the Commissioner of Irrigation Central Division, the Commissioner Central Division and the District Officer, Navua, the Farm Manager, Navua Irrigation Project.

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