



ANALYSIS

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1973, No. 24

An Act to amend the Water and Soil Conservation Act 1967
 [2 October 1973]

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

1. Short Title—This Act may be cited as the Water and Soil Conservation Amendment Act 1973, and shall be read together with and deemed part of the Water and Soil Conservation Act 1967 (hereinafter referred to as the principal Act).

PART I

UNDERGROUND WATER

2. Application of this Part—Nothing in this Part of this Act shall apply in respect of the Wellington Water Region or the Wellington Regional Water Board.

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

“Bore” means every device for, or means of, tapping underground water; but does not include a natural spring or natural watercourse unless something has been done to it by any person which increases the amount of underground water tapped by it:

“Underground water” means natural water which is below the surface of the ground, the bed of the sea, or the bed of any lake or river or stream, whether the water is flowing or not and, if it is flowing, whether it is in a defined channel or not; and includes all natural water which has been, by means of a bore, brought above the surface from below the surface of the ground, the bed of the sea, or the bed of any lake or river or stream.

4. Bylaws—(1) Any Regional Water Board may from time to time make bylaws for all or any of the following purposes:

- (a) Controlling, regulating, or limiting the locations, dimensions, and depths of bores; or prohibiting the making of bores within the whole or any specified part or parts of the region:
- (b) Requiring the lining, sealing, capping, filling, restriction, or control of bores:
- (c) Controlling, regulating, limiting, or prohibiting in the whole or any specified part or parts of the region any boring, drilling, pile driving, dredging, or digging which would or might affect underground water which is within the region:
- (d) Providing for the inspection, cleaning, and repairing of bores:
- (e) Prescribing circumstances in which a permit is required before any bore may be made or altered:
- (f) Prescribing the form of any permit or dispensation which may be issued or granted and all or any of the terms and conditions thereof:

- (g) Requiring any person claiming to hold a permit or dispensation to produce it for inspection:
- (h) Prohibiting or preventing uneconomic, inefficient, or wasteful methods of extraction and of utilisation of underground water which is within the region:
- (i) Requiring persons who make or maintain bores to keep records and provide information in relation to those bores that would or might be of value to the Board in the proper performance of its functions:
- (j) Requiring persons to permit free access to any records kept in accordance with any such requirement, or to any bore, by a person duly authorised by the Board for the purpose of—
 - (i) Inspecting and taking copies of or extracts from the records:
 - (ii) Inspecting the bore and the material excavated therefrom:
 - (iii) Taking any specimen of any such material or of the water from the bore:
- (k) Specifying in respect of any purpose for which underground water is required the source of supply and limits of depth from which the water may be taken:
- (l) Protecting the purity of underground water within the region for domestic, farming, and industrial use:
- (m) Providing for any dispensation from observance of any bylaw to be granted by the Board or by the holder for the time being of any specified office or by any specified person:
- (n) Controlling, regulating, limiting, or prohibiting, on land anywhere within the region or within any specified part or parts thereof, the placing or discharge on, onto, or into the ground of anything which is liable to affect detrimentally the purity of underground water in the region either directly or indirectly.
 - (2) Any such bylaw may apply within the whole of the region or within such part or parts thereof as may be specified in the bylaw.
 - (3) Unless the Governor-General, by Order in Council, in any case otherwise provides, and subject to such conditions as he may impose, no bylaw made under this section shall affect—
 - (a) Any mining privilege under the Mining Act 1971:
 - (b) Any coal mining right under the Coal Mines Act 1925:
 - (c) Any licence under the Petroleum Act 1937:

- (d) Any coal mine within the meaning of the Coal Mines Act 1925 or any quarry within the meaning of the Quarries Act 1944:
- (e) Any bore sunk in the mining of or search for coal within the meaning of the Coal Mines Act 1925:
- (f) Any bore sunk in the mining of or search for minerals within the meaning of the Mining Act 1971 or iron-sands within the meaning of the Iron and Steel Industry Act 1959:
- (g) Any bore sunk in the search for or recovery of petroleum products:
- (h) Any bore sunk under the Geothermal Energy Act 1953:
- (i) Any bore sunk by the Mines Department or the New Zealand Geological Survey or any other bore which is for the time being in use and which has been sunk only for the purpose of obtaining geological, geophysical, or geochemical information:
- (j) Any right which any person may have under any other Act or any rule of law to restrict or prevent, or obtain damages in respect of, the taking, use, or pollution of underground water.

(4) Notwithstanding the provisions of subsection (1) of section 21 of the principal Act, any bylaw made under this section may apply to any bore used for tapping underground water for domestic needs or the needs of animals or for or in connection with fire-fighting purposes.

5. Appeal against refusal to grant permit or dispensation—The provisions of section 25 of the principal Act shall apply to every decision of a Board to refuse to grant a permit or a dispensation from observance of any bylaw, under this Part of this Act, as if it were a decision of the Board under section 24 of the principal Act.

6. Making of bylaws—The provisions of sections 391, 392, 395, and 396 of the Municipal Corporations Act 1954 shall, with the necessary modifications, apply in respect of bylaws made or to be made by the Board under section 4 of this Act.

7. Disallowance of bylaws—(1) The Minister may at any time, by notice in the *Gazette*, disallow, in whole or in part, any bylaw made under section 4 of this Act if in his opinion the bylaw is unreasonable or undesirable.

(2) On any such disallowance the bylaw shall, to the extent to which it is so disallowed, become wholly void as if it had been revoked.

(3) Any such disallowance shall take effect as aforesaid either on the day of the publication of the notice of disallowance in the *Gazette* or on such later date as may be specified in that behalf in the notice.

(4) Any such disallowance shall not affect the validity of anything done, before the disallowance took effect, under the bylaw or part of the bylaw disallowed.

8. Breach of bylaws—(1) Every person who acts in contravention of or fails to comply with any provision of any bylaw made under section 4 of this Act commits an offence and shall be liable on summary conviction—

(a) If the bylaw was made under paragraph (1) or paragraph (n) of subsection (1) of the said section 4, to a fine not exceeding \$2,000 and, if the offence is a continuing one, to a further fine not exceeding \$100 for every day or part of a day during which the offence has continued:

(b) In any other case, to a fine not exceeding \$100 and, if the offence is a continuing one, to a further fine not exceeding \$10 for every day or part of a day during which the offence has continued.

(2) For the purposes of this section, the continued existence of anything in a state contrary to any provision of any such bylaw shall be deemed to be a continuing offence.

(3) Without limiting the liability of any person to be convicted of an offence under subsection (1) of this section, the Supreme Court shall have jurisdiction to restrain any breach or threatened breach of any bylaw made under section 4 of this Act by injunction at the instance of the Board, and to make such order in the matter as to costs and otherwise as it thinks fit.

9. Charges for water—Nothing in any bylaw made under section 4 of this Act shall authorise any Board to make a charge against or levy upon the owner or occupier of any land in respect of any natural water taken on the land or from any bore on the land.

10. Abolition of Underground Water Authorities—Every Underground Water Authority constituted under the Underground Water Act 1953 is hereby abolished.

11. Vesting of property—(1) All land, interests in land, and personal property, rights, or privileges vested in or held on behalf of every Underground Water Authority specified

in the first column of the First Schedule to this Act are hereby vested in the local authority specified, opposite the name of the Authority, in the second column of the said First Schedule.

(2) The District Land Registrar within whose district any land so vested is situated, on written request by the local authority, under the seal of the local authority, shall without fee make such entries in his registers and on any outstanding documents of title and generally do all such things as may be necessary to give effect to the provisions of subsection (1) of this section, in respect of land and interests in land specified in the request. The receipt by the District Land Registrar of a written request under this subsection shall be sufficient evidence that the land described in it is land to which subsection (1) of this section applies, in the absence of proof to the contrary.

12. Exemption from stamp duty—Notwithstanding anything in section 10 of the Stamp and Cheque Duties Act 1971, no stamp duty shall be payable in respect of the vesting of any property in a local authority under section 11 of this Act.

13. Provisions in respect of transfer of property—(1) On the commencement of this Part of this Act, the following provisions shall apply:

- (a) All debts, loan charges, liabilities, and obligations, whether present or contingent, incurred in the name of or on behalf of any Underground Water Authority in respect of any land or property vested in a local authority under subsection (1) of section 11 of this Act shall become debts, liabilities, and obligations of the local authority:
- (b) All money payable to any such Underground Water Authority in respect of any such land or property shall become payable to the local authority:
- (c) The benefit of any contract entered into by or on behalf of any such Underground Water Authority in respect of any such land or property shall be deemed to be assigned to the local authority:
- (d) All proceedings pending by or against any such Underground Water Authority in respect of any such land or property shall be carried on by or against the local authority.

(2) Every reference to any Underground Water Authority specified in the first column of the First Schedule to this Act in any Act, agreement, deed, instrument, notice, or other document whatsoever shall hereafter be read as a reference to the local authority specified, opposite the name of the Authority, in the second column of the said First Schedule.

14. Saving of existing bylaws—Every bylaw made by any Underground Water Authority specified in the first column of the First Schedule to this Act that is in force immediately before the commencement of this Part of this Act shall, so far as it is not inconsistent with this Act, for all purposes be deemed to have been made by the local authority specified, opposite the name of the Authority, in the second column of the said First Schedule, acting in the capacity of a Regional Water Board, and shall continue in force within those parts of the Regional Water Board's region to which it related when made until it is superseded by a bylaw made by the Regional Water Board.

15. Repeals, amendments, revocations, and savings—

(1) The enactments specified in the Second Schedule to this Act are hereby repealed.

(2) Section 4 of the principal Act is hereby amended by omitting from paragraph (f) of subsection (4) the words "Underground Water Authorities,".

(3) The Underground Water Committee Regulations 1957 are hereby revoked.

(4) The Orders in Council specified in the Third Schedule to this Act are hereby revoked.

(5) Notwithstanding the repeal of the Underground Water Act 1953, every permit issued by an Underground Water Authority pursuant to bylaws made under that Act shall continue in force as if it had been issued pursuant to bylaws made under section 4 of this Act.

PART II

AMENDMENTS TO PRINCIPAL ACT

16. Chairman of Authority—Section 5 of the principal Act is hereby amended by inserting, after subsection (1), the following subsections:

"(1A) The Chairman may from time to time delegate to the Associate Minister of Works and Development all the powers conferred on him by this Act to act as Chairman of the Authority.

“(1B) The Associate Minister to whom such powers have been delegated under subsection (1A) of this section may exercise them in the same manner and with the same effect as if they had been conferred on him directly by this Act and not by delegation.

“(1C) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the Minister from acting as Chairman of the Authority.

“(1D) Until any such delegation is revoked it shall continue in force according to its tenor. If the Minister by whom any such delegation has been made ceases to hold office, it shall continue to have effect as if made by the person for the time being holding office as Minister and, if the Associate Minister to whom any such delegation has been made ceases to hold office, it shall continue to have effect as if made to the person for the time being holding office as that Associate Minister.”

17. Functions, powers, etc., of Authority—Section 14 of the principal Act is hereby amended by adding the following subsection:

“(5) The Authority may make grants of money to any person or body, in accordance with a scale from time to time approved by the Minister, for the purpose of supplying water to rural areas for irrigation (including preparation in accordance with normal irrigation practice of the surface of land to be irrigated), fire-fighting, stock, and domestic purposes, or for any 1 or more of such purposes:

“Provided that no such grant shall be made unless the consent of the Authority to the work or operation in respect of which the grant is sought has been obtained before the work or operation is commenced.”

18. Functions, powers, etc., of Regional Water Boards—Section 20 of the principal Act is hereby amended by repealing paragraph (j) of subsection (5).

19. Rights in respect of natural water—(1) Subsection (3) of section 21 of the principal Act is hereby amended—

(a) By omitting the words “Any Regional”, and substituting the words “Subject to subsections (3D) and (3E) of this section, any Regional”:

(b) By omitting from the third proviso (as added by section 12 (1) of the Water and Soil Conservation Amendment Act (No. 2) 1971) the words “1st day of June

1974”, and substituting the words “expiry of a period of 2 years after the date on which the water has been so classified”.

(2) The said section 21 is hereby further amended by adding to subsection (3A) (as inserted by section 12 (2) of the Water and Soil Conservation Amendment Act (No. 2) 1971) the following paragraphs:

“(c) Any discharge into water that is classified other than Class SE is substantially free from suspended solids, grease, and oil:

“(d) No discharge of any undisintegrated waste is made into water that is classified Class SE.”

(3) Subsection (3B) of the said section 21 (as so inserted) is hereby amended—

(a) By omitting the word “circumstances”, and substituting the words “temporary situation”:

(b) By inserting, after the word “Council,”, the words “and, if such consent is given, subject to such conditions as the Council may specify,”.

(4) The said section 21 is hereby further amended by inserting, after subsection (3B) (as so inserted), the following subsections:

“(3c) If the Water Resources Council refuses to give its consent under subsection (3B) of this section, or gives its consent and specifies conditions with which the applicant for the right is dissatisfied, the applicant shall have a right of appeal in accordance with section 25 of this Act as if the decision of the Council were a decision of a Board under section 24 of this Act.

“(3d) If any natural water has been declared to be of national importance under subsection (7) of section 23 of this Act, a Regional Water Board shall not grant any right to—

“(a) Dam any river or stream which forms all or part of such natural water or which flows into such natural water; or

“(b) Divert, take, or use such natural water or divert, take, or use natural water from any river or stream flowing into such natural water; or

“(c) Discharge natural water or waste into such natural water or into any river or stream flowing into such natural water—

without the prior consent of the Authority and, if such consent is given, without making the right subject to such conditions as the Authority may specify.

“(3E) If the Authority refuses to give its consent under subsection (3D) of this section or gives its consent and specifies conditions with which the applicant for the right is dissatisfied, the applicant shall have a right of appeal in accordance with section 25 of this Act as if the decision of the Authority were a decision of a Board under section 24 of this Act.”

20. Removal of works on expiry of right—Section 24F of the principal Act (as inserted by section 39 of the Water and Soil Conservation Amendment Act 1971) is hereby amended by omitting from the proviso to subsection (4) the words “section 24G”, and substituting the words “section 24H”.

21. Extension of effect of temporary permits—Section 24J of the principal Act (as inserted by section 15 of the Water and Soil Conservation Amendment Act (No. 2) 1971) is hereby amended by adding the following subsection:

“(2) The holder of any such temporary permit whose application for such a continuation has been refused by a Regional Water Board, or who is dissatisfied with the period of continuation or the conditions to which it is subject, shall have a right of appeal in accordance with section 25 of this Act as if the decision of the Board in respect of those matters were a decision of the Board under section 24 of this Act.”

22. Classification of natural waters—Section 26c of the principal Act (as inserted by section 17 of the Water and Soil Conservation Amendment Act (No. 2) 1971) is hereby amended by repealing subsection (5), and substituting the following subsection:

“(5) In classifying any area of natural water the Council may, by adding the symbol X to the classification, indicate that the area of water in respect of which the symbol is added is sensitive to enrichment.”

23. Appeals—(1) Section 26G of the principal Act (as inserted by section 17 of the Water and Soil Conservation Amendment Act (No. 2) 1971) is hereby amended by inserting in subsection (2), after the words “section shall be”, the words “made and”.

(2) This section shall be deemed to have come into force on the 1st day of April 1972.

24. Cancellation of classification of natural water—The principal Act is hereby further amended by inserting, after section 26r (as inserted by section 17 of the Water and Soil Conservation Amendment Act (No. 2) 1971), the following section:

“26rA. Any preliminary classification, final classification, or reclassification of natural water, or any part of any such classification or reclassification, made under this Act may from time to time be cancelled by the Water Resources Council by public notification.”

25. Classification to terminate rights—(1) Section 26k of the principal Act (as inserted by section 17 of the Water and Soil Conservation Amendment Act (No. 2) 1971) is hereby amended by omitting from subsection (1) the words “and authorisations under this Act to discharge natural water or”, and substituting the words “authorised under this Act to discharge”.

(2) The said section 26k is hereby further amended by omitting from subsection (2) the words “natural water or” in both places where they occur.

26. Revocation and variation, on classification, of rights granted—The principal Act is hereby further amended by inserting, after section 26k (as inserted by section 17 of the Water and Soil Conservation Amendment Act (No. 2) 1971), the following section:

“26kA. Notwithstanding anything to the contrary in any right granted under this Act to discharge waste into natural water, but subject to subsections (2) and (3) of section 24r of this Act, a Regional Water Board or the Authority, as the case may be, may, on the classification or reclassification of any water, for the purpose of maintaining the minimum standards of quality of the receiving water, exercise the powers conferred by the said section 24r as if the right were a permit issued under the Waters Pollution Regulations 1963.”

27. Offences—Section 34 of the principal Act is hereby amended by inserting in subsection (2), after the word “Act”, the words “for which no penalty is provided elsewhere than in this section”.

28. Consequential amendment—Section 39 of the principal Act is hereby amended by repealing paragraph (b).

29. Metric conversions—Subsection (1) of section 15 of the Water and Soil Conservation Amendment Act 1971 is hereby amended—

- (a) By omitting from paragraph (a) the words “three chains”, and substituting the words “60 metres”;
- (b) By omitting from paragraph (a) the words “one cubic foot”, and substituting the words “30 litres”.

30. Amending Schedules—The principal Act is hereby further amended—

- (a) By repealing paragraph (h) of the Second Schedule (as added by section 21 of the Water and Soil Conservation Amendment Act (No. 2) 1971):
- (b) By repealing paragraph (h) of the Third Schedule (as so added):
- (c) By repealing paragraph (g) of the Fourth Schedule (as so added):
- (d) By repealing paragraph (g) of the Fifth Schedule (as so added):
- (e) By repealing paragraph (g) of the Sixth Schedule (as so added):
- (f) By repealing paragraph (f) of the Seventh Schedule (as so added):
- (g) By repealing paragraph (d) of the Eighth Schedule (as so added):
- (h) By repealing paragraph (b) of the Ninth Schedule (as so added):
- (i) By repealing the Tenth Schedule (as so added).

31. Validating rights in respect of water for Tongariro power scheme—WHEREAS by Order in Council dated the 29th day of October 1958 and published in *Gazette*, 1958, Volume III, at page 1463, and issued under section 311 of the Public Works Act 1928, the Minister of Electricity was authorised, *inter alia*, to erect, construct, provide, and use works in connection with the utilisation of water power from the Wanganui, Tokaanu, Tongariro, Rangitikei, and Whangaehu Rivers and all their tributary lakes, rivers, and streams in the land districts of South Auckland, Taranaki, and Wellington for the generation and storage of electrical energy and to raise or lower the level of all or any of such rivers and their tributary lakes, rivers, and streams, and to impound or divert the waters thereof: And whereas under subsection (2A) of section 21 of the principal Act every

damming of a river or stream, and every diversion or taking of natural water, and every discharge of natural water or waste into any natural water, and every use of natural water, which is authorised by any Order in Council issued under the Public Works Act 1928 before the 1st day of April 1968 and of which notice in writing is given to the Regional Water Board before the 1st day of April 1970 is authorised under the principal Act: And whereas notice in accordance with the said subsection (2A) was duly given to the Waikato Valley Authority and the Rangitikei Regional Water Board but by inadvertence no such notice was given to the Water Allocation Council which before the 1st day of April 1970 acted as the Regional Water Board for the area through which flow some of the rivers and streams referred to in the said Order in Council: And whereas the Minister of Electricity, pursuant to the powers conferred by the said Order in Council had commenced before the 1st day of April 1970 to construct works to utilise the water power from the said rivers and to raise and lower their level and to impound and divert the waters thereof, such works being now close to completion:

BE IT THEREFORE ENACTED that every damming of a river or stream, and every diversion or taking of natural water, and every discharge of natural water into any natural water, and every use of natural water, which is authorised by the said Order in Council is hereby authorised under the principal Act in accordance with that Order in Council, but shall cease to be so authorised after the 31st day of March 1975 unless the rights or powers conferred by that Order in Council are being substantially exercised by that date.

SCHEDULES

Sections 11 (1), 13 (2), 14 FIRST SCHEDULE

UNDERGROUND WATER AUTHORITIES ABOLISHED AND LOCAL AUTHORITIES TO WHICH PROPERTY TRANSFERRED

Underground Water Authorities Abolished	Local Authorities to Which Property Transferred
Franklin Underground Water Authority	Waikato Valley Authority
Heretaunga Plains Underground Water Authority	Hawke's Bay Catchment Board
Rotorua Borough Underground Water Authority	Bay of Plenty Catchment Com- mission
Onehunga Underground Water Authority	Auckland Regional Authority

Section 15 (1)

SECOND SCHEDULE

ENACTMENTS REPEALED

- 1953, No. 56—The Underground Water Act 1953. (1957 Reprint, Vol. 16, p. 295.)
- 1959, No. 98—The Public Bodies Contracts Act 1959: So much of Part I of the First Schedule as relates to Underground Water Authorities.
- 1962, No. 113—The Public Bodies Meetings Act 1962: So much of Part I of the Schedule as relates to Underground Water Authorities.
- 1963, No. 65—The Local Authorities (Employment Protection) Act 1963: So much of Part I of the First Schedule as relates to Underground Water Authorities.
- 1967, No. 134—The Local Government Commission Act 1967: So much of Part I of the First Schedule as relates to Underground Water Authorities.
- 1968, No. 147—The Local Authorities (Members' Interests) Act 1968: So much of Part I of the First Schedule as relates to Underground Water Authorities.
- 1971, No. 25—The Mining Act 1971: So much of the First Schedule as relates to the Underground Water Act 1953.

THIRD SCHEDULE Section 15 (4)
ORDERS IN COUNCIL REVOKED

Title	Reference
Constituting an Underground Water Area and an Underground Water Authority in the Borough of Onehunga	<i>Gazette</i> , 1955, Vol. II, p. 805
Constituting an Underground Water Area and an Underground Water Authority in Franklin County	<i>Gazette</i> , 1957, Vol. II, p. 1375
Constituting an Underground Water Area and an Underground Water Authority in Part of the Provincial District of Hawke's Bay	<i>Gazette</i> , 1957, Vol. II, p. 1375
Constituting an Underground Water Area and an Underground Water Authority in the Borough of Rotorua	<i>Gazette</i> , 1962, Vol. I, p. 4

This Act is administered in the Ministry of Works.
