

Bill No. 100 of 1941.

A BILL TO AMEND THE WATER RESOURCES ACT

NOTE.

This Bill amends sections 6, 7 and subsection (1) of section 10, and adds two new subsections to section 31.

Section 6 as it now stands prohibits the diversion of water and the construction of works for the diversion of water otherwise than under the Act and Regulations. The amendment extends the prohibition to the construction of works which interfere with the flow of water in any river, stream, water course, lake, spring, ravine, canyon, lagoon, swamp, marsh, or other body of water in the Province, and authorizes the Director of Water Resources to breach or destroy works constructed in contravention of the Act.

Section 7, and subsection (1) of section 10 have been re-written incorporating previous amendments without changing the meaning.

The amendment to section 31 introduces a new provision which is similar to those found in the enactments of other Provinces. Under the Prairie Farm Rehabilitation Programme a large number of projects such as stock watering-dams have been built with Dominion Government assistance, many of which have had the effect of backing water on to neighbouring properties. These projects are ready for final license under *The Water Resources Act*. Before such license can be issued it is necessary for the Chief Engineer to certify that a right-of-way for the encroachment of the water has been obtained from the servient tenement. No right-of-way in a form which can be registered at the Land Titles Office can be obtained in most of these cases because the farmers concerned cannot afford a survey. This amendment is designed to enable the Registrar of Land Titles to register a certificate against the land affected by these projects without the necessity of a survey. All that is required is the consent of the owner of the servient land, agreeing to the encroachment of the water on his land. The Chief Engineer informs the Minister of the facts, and the Minister may issue a license. Forthwith after the issue of the license the Chief Engineer sends a certificate to the Registrar stating that the license has been issued and describing the lands flooded, and the Registrar of the Land Titles Office is thereupon required to register an easement against the part of the servient tenement flooded.

W. S. GRAY,
Acting Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 100 of 1941.

An Act to amend The Water Resources Act.

(Assented to _____, 1941.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Water Resources Act Amendment Act, 1941.*"

2. *The Water Resources Act*, being chapter 71 of the Statutes of Alberta, 1931, is hereby amended by striking out section 6 thereof and by substituting therefor the following:

"**6.**—(1) No person shall divert any water in the Province, and no person shall construct or cause to be constructed any works for the diversion of any water or any works which interfere with the flow of water in any river, stream, water course, lake, spring, ravine, canyon, lagoon, swamp, marsh, or other body of water in the Province otherwise than under the provisions of this Act and the Regulations, except in the exercise of a legal right existing at the time of such diversion or construction.

"(2) The Director of Water Resources shall have power, without incurring any legal liability therefor, to breach or destroy or to order the breaching or destruction of any dam or works which divert or interfere with the flow of any water in the Province otherwise than under the provisions of this Act and the Regulations."

3. The said Act is further amended as to section 7 by striking out the same and by substituting therefor the following:

"**7.** Except in pursuance of a valid agreement or undertaking existing at the time of the coming into force of this Act, no grant shall be made by the Crown of lands or of any estate therein, in such terms as to vest in the grantee any exclusive right or privilege with respect to any water, or any exclusive or perpetual property, interest, or privilege in the land forming the bed or shore thereof:

"Provided that this section shall not affect the right of the Crown under any other Act of this Legislature to dispose of minerals in, on or under lands forming the bed or shore of the said waters."

4. The said Act is further amended as to section 10 by striking out subsection (1) thereof and by substituting therefor the following:

"10.—(1) The right to divert any water for domestic, municipal, industrial, irrigation, water power and other purposes may be acquired, and permission may be granted to erect fishways, dams, piers, booms and other necessary works in any non-navigable stream to facilitate the passage of logs, timber and other products of the forest or stream along such stream, upon application therefor as provided in this Act and in the Regulations made hereunder."

5. The said Act is further amended as to section 31 by adding at the end thereof the following new subsections:

"(4) In any case where it appears from the application filed or the engineer's inspection that land other than that on which the works are located is or will be flooded, and the registered owner of such other land and any purchaser thereof who has filed a caveat have by writing consented to the construction of the works and the flooding of the said land, the Chief Engineer in cases where a right-of-way has not been obtained as required by subsection (2) hereof, may issue a certificate setting forth the facts and forward it to the Minister. Upon receipt of such certificate the Minister may issue a license, and when any such license is issued, the Chief Engineer shall forthwith issue and forward to the Registrar of Land Titles for the land registration district in which the lands are situated, a certificate stating that the license has been issued and setting forth the date of the license, the name and address of the licensee, a description of the land on which the works are located and a description of the portion of the land which will be affected by the works. In any certificate issued hereunder, the lands shall be described by reference to the legal description of the lands affected or by reference to a plan or plans registered in the Land Titles Office. The certificate shall be signed by the Chief Engineer in the presence of a witness who shall duly attest the same, but no other formality shall be required as a condition of the acceptance of the certificate for registration.

"(5) Upon receipt of the duly attested certificate of the Chief Engineer, the Registrar shall without fee register the certificate against the land therein described, and thereupon an easement shall be created whereby the owner of the servient tenement has granted to the owner of the dominant tenement the right to use his land for the purposes and to the extent shown in the said application or plans, such rights to run with the land and be binding upon the owner of the servient tenement, his heirs, executors, administrators and assigns."

6. This Act shall come into force on the day upon which it is assented to.

FIRST SESSION
NINTH LEGISLATURE
5 GEORGE VI
1941

BILL

An Act to amend The Water
Resources Act.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MACMILLAN.

EDMONTON:
A. Shnitka, King's Printer
1941