

New Zealand.



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1922, No. 23.—*Local and Personal.*

Title. AN ACT to validate a certain Agreement for the Supply of Water to the Paeroa Borough, and made between the Chairman, Councillors, and Inhabitants of the County of Ohinemuri and the Mayor, Councillors, and Burgesses of the Borough of Paeroa.

[31st October, 1922.]

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

Short Title. 1. This Act may be cited as the Paeroa Water-supply Transfer Validation Act, 1922.

Interpretation. 2. In this Act, if not inconsistent with the context,—
“County” means and includes the Chairman, Councillors, and Inhabitants of the County of Ohinemuri:
“Borough” means the Mayor, Councillors, and Burgesses of the Borough of Paeroa.

Validating certain agreement. 3. Notwithstanding anything to the contrary contained in the Mining Act, 1908, the agreement set forth in the Schedule to this Act shall be deemed to be valid and binding on the said county and on the said borough.

Schedule.

SCHEDULE.

THIS DEED made the 2nd day of September, 1920, between the Corporation sole known as the Chairman, Councillors, and Inhabitants of the County of Ohinemuri, having its registered offices in Belmont Road in the Borough of Paeroa (hereinafter called the Council), of the one part, and the Paeroa Borough Council, having its registered offices in Wharf Street in the said borough (hereinafter called the borough), of the other part. Whereas the Council is the registered licensee of various mining privileges in respect of water-races, dams, and special sites granted under the provisions of the Mining Act, 1908, and other Acts prior thereto for the following purposes: (1) Domestic; (2) industrial

pursuits; (3) feeding and driving machinery; (4) supplying Natives; (5) supplying tanks, reservoirs, railways, and houses, and other works in connection therewith: And whereas the Council has for these purposes erected water-races, reservoirs, dams, and installed water-mains, and has provided a reticulation service for the conveyance of water for domestic and other purposes for the benefit and use of the inhabitants of the Borough of Paeroa and surrounding districts, and for all other purposes above set out: And whereas the borough has applied to the Council to be supplied with sufficient water to satisfy the domestic and other requirements of the inhabitants situated within the boundaries of the Paeroa Borough, and for that purpose to be granted the sole right, and has agreed to purchase all water-mains, pipes, the reticulation-pipes, and other appliances for the conveyance of water as are now existing in the various streets and roads in the said borough (except those pipes in the said borough which are now and have been used as part of the Native water-supply and are defined on plan marked "A" attached hereto), which the Council has agreed to grant on the terms, stipulations, and conditions hereinafter appearing:

Now, this deed witnesseth that in consideration of the premises and of the covenants hereinafter contained it is mutually agreed as follows:—

1. The Council shall sell, and the borough shall purchase, all and singular the water-mains, pipes, reticulation-pipes, and other appliances for the conveyance of water, and the sole right thereto, as are now existing in the various streets and roads in the said borough (except those pipes in the said borough which are now or have been used as part of the Native water-supply and are defined on the plan marked "A" attached hereto).

2. The Council will supply to the borough at the present boundary between the county and the borough on the main Paeroa to Karangahake Road a supply of water in bulk in a regular continuous and constant flow from the existing reservoirs in Tarariki Creek based on the present consumption as at present used by the inhabitants of the said borough and surrounding districts, less 25 per cent. of the said supply which is now used by the inhabitants outside the limits of the said borough, it being expressly agreed between the parties hereto that if after the deduction of the 25 per cent. of water to be allowed for the use of the inhabitants outside the borough boundaries and the Native supply, and when the quantity of water available at the dam or reservoir will so allow, an increase of 20 per cent. above the aforementioned quantity may be taken by the said borough; but if by reason of drought, accidents, or other unforeseen circumstances the Council shall at any time hereafter be unable to supply the borough with the quantity of water which the Council has undertaken under this deed, then, so long as such inability shall continue, the obligation hereunder of the Council shall in ratio diminish, but the borough shall nevertheless during such inability be liable to pay the annual sum hereunder stipulated.

3. For the purpose of ascertaining the present supply of water used by the Borough of Paeroa and surrounding districts served by the present reticulation service, and no meter being at present available, it is mutually agreed that the Council shall at the first opportunity when meter or meters is or are available place, cause, or cause to be placed, and thereafter permanently maintain, at or near their main pipe on the boundary between the county and the borough on the Karangahake Road, a good and sufficient meter or meters for the purpose of measuring and ascertaining the quantity of water passing through such meter or meters into the main pipe or any other main or pipe under the control of the borough; and such meter or meters shall during a period, the dates of which shall be mutually agreed upon by the Council and the borough, be read by officials to be appointed by the Council and the borough day by day, and for a period of thirty consecutive days thereafter; the daily record to be put in writing and signed by each of the officials, one signed copy of which to be delivered to the Council and one signed copy to be delivered to the borough; and the mean average of the supply of water passing through such meter or meters, less 25 per cent., being the amount of water now used by the inhabitants outside of the borough and the Native supply, shall be taken as the present consumption of water used by the inhabitants of the borough, and shall be the basis upon which the computation of the water which can be claimed by the borough shall be hereinafter fixed.

4. For the purposes thereafter of measuring the amount of water supplied by the Council it shall at its own expense construct and maintain, and keep in good repair and working-order, and renew when necessary, at or near the boundary between the county and the borough on the Karangahake Road, suitable meter or meters, which

shall at all reasonable times be open to inspection and examination of the duly authorized officers of the Council and the borough respectively, and will make weekly returns of the reading of such meter or meters. Such meter or meters to be tested by an expert when considered necessary by either party at its own expense.

5. If at any time the said meter or meters shall cease to register correctly, or shall at any time be removed for the purpose of repair, renewal, or for any other reason, then, until the said meter or meters shall be repaired or replaced so as to register correctly the quantity of water passing through it, the Council shall be entitled to charge, and no deductions shall be made by the borough in, the annual sum payable hereunder. It is expressly stipulated that during this period the borough will not allow any water used for industrial pursuits or for feeding and driving machinery to be allowed to run to waste through exhaust-pipes or other means, but any such water must between the 1st day of November and the 31st day of March in each year be most strictly economized and conserved.

6. The borough will pay to the Council in respect of the water supplied as herein agreed, and in respect of the sale of the pipes, plugs, and appliances, and the reticulation service as at present constituted (except those pipes in the said borough which are now and had been used exclusively as part of the Native water-supply as shown on plan marked "A" hereto attached), the sum of £1,500 by five annual instalments of £300 each, to be paid as follows: £300 on the 1st July, 1920; £300 on the 1st July, 1921; £300 on the 1st July, 1922; £300 on the 1st July, 1923; and £300 on the 1st July, 1924; it being the intention of the Council that the above-mentioned payments, amounting to £1,500, is to constitute a reserve fund for dam maintenance, development, &c., in the discretion of the Council, but no express undertaking is hereby given to so spend such money, and nothing herein contained is to be construed as imposing on the Council the obligation to create a reserve fund. In addition to the aforementioned sum of £1,500 the borough will pay an annual sum of £300 as water charges by half-yearly payments of £150 each, payable in advance on the 1st days of January and July in each and every year, the first of such half-yearly payments to be made on the 1st day of July, 1920; the said annual payment of £300 to be subject to reconsideration upon either party hereto giving six months' notice in writing.

7. In the event of the headworks of the supply being altered so as to give a greater supply of water than at the present time, and of such greater supply or a part thereof being required by the borough, the excess so taken by the borough above the quantity herein agreed to be supplied to the borough shall be paid for by the borough proportionately to the charge then being made for the present supply as herein agreed. And it is further expressly agreed that the requirements of the borough in respect of any future increase in the quantum of water required shall have priority over any further supply which may in the future be granted by the Council:

Provided further that this proviso shall in no way affect the right of the Council at all times to reserve at least 25 per cent. of the full capacity of the dams and reservoirs for the use of consumers outside the area of the borough.

8. The borough shall at their own expense and costs in all things maintain, repair, and keep in good order and condition and renew when necessary all connections, mains, pipes, meters, and other works and appliances for receiving, conveying, and taking water through the Borough of Paeroa, and will as soon as possible restore and replace all or any of such of the above connections, mains, pipes, meters, and other works and appliances whenever the same may become damaged or broken, so that the surplus water may be allowed to flow into the reticulation-pipes outside of the borough boundaries for the benefit of the inhabitants of the surrounding districts; and in the event of any such connections, mains, pipes, meters, and other works and appliances not being kept in a sufficient state of maintenance and reparation by the borough within a reasonable time the Council, by its workmen and servants, to have the right to make such repairs and restoration in any part within the boundaries of the said borough, and for that purpose to dig, take up, repair, and restore any of the aforesaid connections, mains, pipes, meters, and other works and appliances, and charge the costs of so doing to the borough; and the same may be recovered in any Court of competent jurisdiction as ascertained and liquidated damages, provided, nevertheless, that before the Council shall exercise the right herein set out it shall give twenty-four hours' notice in writing of such its intention, such notice to be signed by the Chairman, Engineer, or Clerk of the said Council, and left or served at the offices of the borough in Paeroa.

9. The Council will at all times during the existence of this deed maintain and keep their headworks, dams, reservoirs, and pipe-line to the borough boundary in good and proper repair, and will do all such things as may be necessary to ensure to the borough a full and constant supply of water of the quantity and quality which the same is received by it into its said dams, reservoirs, and with that object will from time to time enforce any statutory or other provisions for the time being in force for guarding against the fouling of water in the said dams or reservoirs.

10. The borough covenants that it will during the period this deed shall be in existence supply free of water charges or rates for domestic purposes—

- (a.) All Native houses or whares within the borough which are entitled to such supply under the agreement existing between the Council and the Government:
- (b.) The Council offices in Belmont Road with sufficient water for ordinary working purposes.

11. The borough will uphold and maintain the present existing mining licenses, rights, and privileges of the Council in respect of the said water-supply, and will do nothing to derogate or take away therefrom.

12. The Council retains to itself the right from time to time, as it becomes necessary, to shut off the main supply of water for the purpose of cleaning out the dams, reservoirs, and pipes, but will do so with as little inconvenience as is necessary for the purpose, and will during the period such main supply is cut off, if it can do so, turn on the available temporary supply for the use of domestic purposes for the inhabitants of the borough free of any charge for so doing, provided that where the circumstances so permit before the said main supply of water shall be so cut off the Council shall give to the borough forty-eight hours' notice of such its intention.

13. The Council shall have the right at all times during the term hereby created, and so long as this deed shall be in existence, to put such extra water in addition to that which it is bound hereunder to supply to the borough through the mains and pipes which are the property of the borough so as it may be enabled to supply the inhabitants of the county with water who are outside the borough limits, and the right hereby created shall be deemed to be an easement, and no charge or rate shall at any time be levied against the Council in respect thereof.

14. The Council shall be entitled to charge for and collect all water charges in that portion of the special-rating district which is within the boundaries of the borough to the 30th day of June, 1920, but after that date will not charge any future rate or water charges within the said boundaries, and in the event of so doing will indemnify the borough, and will apportion and refund all amounts overpaid from the 1st day of July, 1920: Provided that nothing herein contained shall be construed against the Council subsequently collecting and recovering all charges justly payable and which are outstanding on the said 30th day of June.

15. The borough will not transfer, assign, or lease any of its rights herein set out without the consent in writing under the seal of the Council being first had and obtained, it being expressly stipulated that should such be done this deed is to be void and of no effect.

16. This deed shall come into force on the 1st day of July, 1920, and shall continue in force for a period of ten years from the date thereof, during which period it cannot be revoked, except under the provisions contained in clause 14, and thereafter shall remain in force for such further period as may be mutually agreed on: Provided always that it shall be lawful for the parties hereto by mutual consent to rescind, alter, or modify the whole or any part of this deed by a deed duly executed under their respective seals.

17. Subject to the provisions of clauses 7, 14, and 17 hereof, all questions or differences which may at any time arise between the parties hereto, or those claiming under them, touching these presents or the subject-matter thereof, or arising out of or in relation thereto respectively (whether as to construction or otherwise), shall be referred to a single arbitrator in case the parties can agree upon one, and in default of agreement to two arbitrators, one to be appointed by each party to the difference (whether consisting of more than one person or not), and in either case in accordance with and subject to the provisions of the Arbitration Act, 1908, or any subsisting amendment or re-enactment thereof.

18. In case any payment which the borough is liable to make to the Council shall not be made within sixty days after the day herein provided therefor, the borough shall pay interest upon such amount after the rate of £6 per centum per annum from the date

when the same became due until payment; and in case any such payment shall not be made within ninety days next after the day herein appointed therefor the Council may discontinue the supply of water to the borough until the same, together with the cost of cutting off and reconnecting the water, shall have been paid to the Council by the borough.

19. The costs of and incidental to the drawing-up of this deed and of any matters incidental thereto shall be borne equally by the Council and the borough.

20. It is hereby agreed between the parties hereto that should validation of the within-written agreement be found necessary and a private Bill be necessary for that purpose both parties will consent to and facilitate such course.

21. The several covenants, stipulations, engagements, and provisions herein contained shall affect and apply to the successors and assigns of the contracting parties hereto.

The common seal of the Ohinemuri County Council was hereunto
affixed at a meeting held on the 2nd day of September, 1920, } (L.S.)
in the presence of—

P. GRACE, Chairman.
R. D. MCGUIRE, Councillor.
R. W. EVANS, County Clerk.

The common seal of the Paeroa Borough Council was hereunto
affixed at a meeting held on the 16th day of September, 1920, } (L.S.)
in the presence of—

P. E. BRENAN, Mayor.
FDK. E. FLATT, Councillor.
WM. MARSHALL, Councillor.
P. C. FURLEY, Town Clerk.