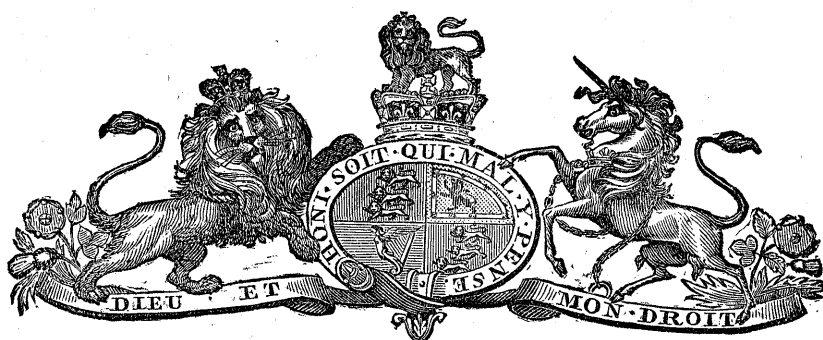


NEW ZEALAND.



QUADRAGESIMO SECUNDO

VICTORIÆ REGINÆ.

No. 44.

ANALYSIS.

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Public Works Act 1876 Amendment.

Title.

AN ACT to amend "The Public Works Act, 1876."
[2nd November, 1878.]

Preamble.

WHEREAS it is expedient to repeal certain provisions of "The Public Works Act, 1876," and to make other provisions in lieu thereof, and otherwise to amend the said Act :

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

Short Title.

1. The Short Title of this Act shall be "The Public Works Act 1876 Amendment Act, 1878."

Interpretation.

2. The several expressions following have in this Act the several meanings herein assigned to each respectively, unless anything in the subject or context is repugnant to such meaning, that is to say,—

"The said Act" means "The Public Works Act, 1876."

"Private railway" means any railway the property of any corporation, company, or person, and not vested in Her Majesty, and includes the land upon which such private railway is constructed, and all premises, works, buildings, and the land on which the same are constructed, and all wharves and jetties used in connection with such private railway.

"Borough Council" means any Municipal Council constituted under any Act or Ordinance of the General Assembly or of any Provincial Legislature, and includes any Board of Commissioners or Trustees having the control and management of a city, town, or borough.

"Borough" means any city or borough constituted under "The Municipal Corporations Act, 1876," "The Otago Municipal Corporations Act, 1865," or any Act for the time being in force constituting Municipal Corporations.

Repeal and amendment of certain sections of "The Public Works Act, 1876."

3. The section one hundred and twenty-eight of the said Act is hereby repealed: Provided always that such repeal shall not affect anything done or commenced under the said repealed section, and such thing may be continued, enforced, and completed under the provisions of the said Act and this Act.

Land may be taken for any public work after such public work has been completed.

4. If any public work shall have been or shall be executed, and after the execution thereof it shall be found that any person has any estate or interest in any land occupied by such work, or that any land required therefor has not been taken in the manner required by law, or that the provisions relating to the taking of such land have not been fulfilled, or if it shall be found desirable for the use, convenience, or enjoyment of any public work executed or in course of execution, to take, purchase, or acquire other land, such land, or the estate or interest of any person therein, may be taken, purchased, or acquired in the manner provided by the said Act and this Act; and all the provisions of the said Act and this Act relating to the taking, purchasing, or acquiring of land, and to payment of compensation or purchase-money therefor, shall apply, except that in such cases section twenty-one of the said Act shall be read as if the words "generally the nature of the works proposed to be executed and" were omitted therefrom. Section twenty-two of the said Act shall be read as if the words "of the works proposed to be executed and," and the words "to the execution of such works or," were omitted therefrom: Provided that if any person shall have received payment or been awarded compensation for such land, or by reason of his being injuriously

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affected by such public works, such person, and all persons claiming by, through, under, or in trust for him, shall not be entitled to any further payment or compensation.

5. The provisions of sections twenty-one to twenty-five, both inclusive, of the said Act shall not apply to Government railways made or to be made under the authority of the said Act, or of a special Act, and of a Proclamation issued under Part VI. of the said Act.

Certain provisions not to apply to Government railways.

6. At any time and from time to time after the deposit of maps and plans pursuant to section one hundred and twenty-five of the said Act, the Governor may, by Proclamation, take any land required for the railway. The Proclamation, when gazetted, shall be conclusive evidence that the land therein referred to is vested in Her Majesty in fee-simple, freed and discharged from all mortgages, charges, claims, estates, and interests of what kind soever, for the use of the railway. After the issue of such Proclamation it shall not be necessary to give the notice mentioned in section one hundred and twenty-six before exercising the powers given by that section.

Governor may, by Proclamation, take land for railway.

No Proclamation taking land shall be impeached or defeasible on any ground whatsoever. This provision shall be deemed to have been in force as on and from the day the said Act came into operation: Provided always that nothing herein shall affect any claim or matter for or concerning which any action or proceeding has been brought or taken in any Court.

Every such Proclamation, together with a map of the land taken, certified as prescribed by subsection two of section twenty-five of the said Act, shall be deposited as provided by section twenty-six of the said Act, and all things shall be done and happen thereupon as in cases provided for by that section.

If any person in possession of any land taken, purchased, held, or acquired for a railway refuses to give up possession, or hinders the Minister or any person appointed by him from taking or entering into possession, the Minister for Public Works may issue his warrant to the Sheriff of the Sheriff's district within which the land is, to deliver possession of the same to the person appointed in the warrant to receive the same; and upon the receipt of the warrant the Sheriff shall deliver possession of any such lands accordingly.

7. The costs accruing by reason of the issuing and execution of such warrant, to be settled by the Sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained from the compensation, if any, then payable to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress: And upon application by any person appointed in that behalf by the Minister for Public Works to any Justice for that purpose, he shall issue his warrant accordingly, and such costs shall be paid into the Public Works Account.

Costs.

8. At any time either before or after issuing any Proclamation taking land for a Government railway, the Minister shall cause notice to be given to every owner or occupier of such land, so far as they can be ascertained, and in such notice shall state that the land therein described is taken or intended to be taken for a railway, and that claims for compensation in respect thereof must be sent to the Minister pursuant to the provisions of the said Act. With such notice a plan of the land taken or intended to be taken shall be sent. The omission to send any such notice or plan shall not invalidate any Proclamation taking the same.

Before or after the time of taking land for Government railways, notice to be given to person whose land is taken.

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Land taken for public works, and not wanted, may be sold, &c.

Oamaru Harbour Board branch line.

9. If it is found that any land held, taken, purchased, or acquired under the said Act, or "The Immigration and Public Works Act, 1870," and Acts amending the same, or otherwise howsoever, for Government works, is not required for such works, the Governor may cause the same to be sold, in the manner and subject to the provisions of subsection two of section twenty-nine of the said Act.

10. The provisions of sections one hundred and forty-two and one hundred and forty-three, and of sections one hundred and forty-five to one hundred and fifty, both inclusive, and sections one hundred and fifty-three to one hundred and sixty-two, both inclusive, of the said Act shall apply to the branch line of railway lately constructed by the Oamaru Harbour Board constituted by the Ordinance of the Province of Otago, intituled "The Oamaru Harbour Board Ordinance, 1874," between the Macandrew Wharf and the Railway Station, Oamaru.

All moneys received by way of rent, tolls, fares, freights, carriage, fines, or penalties, or otherwise accruing from such railway, shall form part of the revenue of the said Oamaru Harbour Board, and may be applied accordingly.

In applying the said provisions, there shall be substituted in those sections, for "Governor" and "Governor in Council," "Oamaru Harbour Board;" for "Minister," "Chairman of the Oamaru Harbour Board."

How and when limits of land for water-race and streams taken therefor shall be determined.

11. In any case where the course and limits of any water-race or any portion thereof heretofore or hereafter to be constructed, under the powers given by Part III. of "The Immigration and Public Works Act, 1870," or any amendment thereof, or by Part VIII. of the said Act, or any amendment thereof, and the streams taken for supplying the same, shall have been or shall be described in general terms, and it shall be found expedient to describe the exact limits of such water-race or of any portion, and the streams taken for supplying the same, the Governor may, by Proclamation, at any time and from time to time, define the exact limits of such water-race, or any portion, and the streams for supplying the same. The effect of such a Proclamation shall be to vest the land within such exact limits, and all buildings, machinery, dams, sluices, reservoirs, streams, and other waterworks on such land, in Her Majesty in fee-simple at law and in equity, freed and discharged from all mortgages, charges, claims, estates, and interests whatsoever theretofore affecting the same.

The Governor may also from time to time, by Proclamation, release any land outside of the exact limits so to be defined from any previous Proclamation affecting the same, whether made under the powers conferred by Part III. of "The Immigration and Public Works Act, 1870," or under Part VIII. of the said Act. If the land released was, at the time it was affected by the Proclamation from which it is released, Crown land, the effect of the release shall cause it to again become Crown land, and if within a proclaimed gold field or mining district to be portion of such gold field or district. A duplicate of such Proclamation, together with a map showing such limits, shall be deposited in the Warden's Court of the district.

Powers given to Governor.

12. The Governor may from time to time, on behalf of Her Majesty, do any of the following things:—

- (1.) May from time to time for a period not exceeding twelve months agree with any corporation, company, or person, on such terms and conditions as he and they may agree upon, providing that any corporation, company, or person may use any works, buildings, wharves, and jetties constructed and used in connection with a Government railway, and

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that Her Majesty or the General Government may use any works, buildings, wharves, and jetties constructed and used in connection with a branch railway :

- (2.) May agree with any Harbour Board, or other body having the control of wharves, quays, or docks, for the laying down any tramway or line of rails in or upon any wharf, quay, or dock, or upon any land vested in such Harbour Board or body, for the conveyance of goods, animals, and passengers, or one or other of such purposes, to and from a private railway :
- (3.) May agree with any corporation, company, person, or Harbour Board, or other body as aforesaid, for the use of cranes, hoists, weighing and other machines, weights and measures, conveniences or appliances belonging to such corporation, company, person, Board, or body :
- (4.) May agree with any Harbour Board to collect the dues, tolls, and charges payable to such Harbour Board :
- (5.) May make special arrangements with any corporation, company, or person for the conveying wholly or partly, or booking through to their destination on a railway, the passengers or luggage carried or conveyed by the steamers, coaches, and other conveyances of such corporation, company, or person as may be agreed upon :
- (6.) May agree with any corporation, company, or person to collect the fares and charges payable to such corporation, company, or person :
- (7.) May repay to any Harbour Board, corporation, company, or person with whom any agreement shall have been made, the dues, tolls, charges, and fares, or any part thereof, collected on behalf of such Harbour Board, corporation, company, or person as aforesaid :
- (8.) In any such agreement as aforesaid provision may be made as to the payment to be made the one to the other of such rates and charges as may be fixed in that behalf, and as to the time and mode of payment of such charges, and the keeping of accounts between the Governor, the corporation, company, person, or Harbour Board in respect thereto :
- (9.) Generally may enter into any other agreement in any manner incidental to any of the above matters, and agree upon such terms and conditions as may be necessary to give effect to the foregoing provisions.

13. The Minister may cause to be delivered at places outside the limits of a railway goods, luggage, or parcels carried on a railway, and for such purpose may do, execute, enter into, and perform all acts, deeds, matters, contracts, and things necessary thereto: Provided that no such contract shall be entered into for a longer term than three years; and may from time to time, by notice gazetted, fix and define the limits within which such delivery will be made, and also the rates and charges to be paid therefor; and such rates and charges shall be payable notwithstanding that the person to whom such goods are deliverable shall himself take delivery of the goods at any place within the limits of a railway. Such rates and charges shall be recoverable in the same manner as is provided by section one hundred and forty-six of the said Act in the case of fares and charges under any by-law or regulation: Provided also that this section shall apply only to the delivery of goods, luggage, or parcels from stations within or not more than one mile from any municipality.

Delivery outside the limits of a railway of goods carried thereon.

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Works authorized or anything commenced under Acts or Ordinances repealed by "The Public Works Act, 1876," may be completed under those Acts or Ordinances, or with consent of Minister may be completed under that Act.

Water-races not to be vested in county without its consent.

Sections 19, 20, 21, and 22 of "Immigration and Public Works Act, 1875," relating to the Kawakawa Railway, to continue in operation.

Validating Orders in Council and Proclamations.

By-laws and regulations to be made fixing rates and charges.

Commissioners of Railways and Engineers in Charge to be appointed.

14. Any public work authorized, and any land required to be taken, purchased, or acquired for such work, or anything commenced under the authority of any of the Acts or Ordinances repealed by the said Act, may, notwithstanding such repeal, be continued, taken, purchased or acquired, executed, carried out, enforced and completed under the authority of the Acts or Ordinances repealed, and for such purposes the said repealed Acts and Ordinances shall be deemed to be in full force and operation: Provided nevertheless that such public work, land, or thing may be continued, taken, purchased, acquired, executed, carried out, enforced, and completed under the provisions of the said Act. This section shall be deemed to have been contained in the said Act as on and from the date the said Act came into operation.

15. No water-race shall be vested as provided by section two hundred and seventeen of the said Act, unless with the consent of the Councils of the Corporation in whom the same is intended to be vested.

16. The provisions of sections nineteen, twenty, twenty-one, and twenty-two of "The Immigration and Public Works Act, 1875," and the preamble to those sections, shall continue in operation, and shall be deemed to have continued in operation, notwithstanding anything contained in "The Public Works Act, 1876."

17. All Orders in Council and Proclamations made and issued, or purporting to be made and issued, under the authority of the said Act, or "The Immigration and Public Works Act, 1870," or Acts amending the same, are hereby declared to be and to have been as from the respective times of making and issuing thereof good, valid, and effectual to all intents and purposes whatsoever, and shall be final and conclusive with respect to the existence of all requisites thereto, and shall not be impeached or disturbed at law or in equity or otherwise on any ground whatsoever: Provided always that nothing herein shall affect any claim or matter for or concerning which any action or proceeding has been brought or taken in any Court.

18. Section one hundred and forty-five of the said Act shall be construed as having given and as giving to the Governor in Council the power to make, alter, and revoke by-laws and regulations, empowering the Minister from time to time, by notice published in the *New Zealand Gazette*, to fix or alter scales of fares and charges for any of the purposes mentioned in subsection one of that section. All Orders in Council, by-laws, and regulations heretofore made giving to the Minister such power, and all notices by the Minister fixing or altering scales of fares and charges, are hereby declared, as on and from the making of such Orders in Council, by-laws, regulations, and notices, to have been and be good, valid, and effectual to all intents and purposes. All fares and charges fixed by the Minister under the authority of such Orders in Council, by-laws, and regulations, and outstanding and payable at the time this Act comes into operation, may be sued for and recovered in any Court of competent jurisdiction as fully and effectually to all intents and purposes as if the same had been fixed by and were payable under an order made by the Governor in Council under the aforesaid section. Nothing herein contained shall prejudice any action or suit in which judgment has been given before this Act comes into operation, nor validate any claim which has been previously brought in any Court.

19. The Governor may appoint a Commissioner of Railways for the North Island and an Engineer in Charge of the North Island Railways, and similar officers for the Middle Island, who shall hold office during the Governor's pleasure, and shall receive such salaries as the General Assembly determines.

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All powers, duties, and functions (except as hereinafter provided) vested in or to be exercised or performed by the Engineer-in-Chief, relating to or affecting any public work situate in or thing to be done relating thereto in the North Island, shall vest in and be exercised and performed by the Engineer in Charge for the North Island, and if such powers, duties, and functions relate to or affect any public work situate in or thing to be done relating thereto in the Middle or South Island, shall vest in and be exercised and performed by the Engineer in Charge for the Middle Island.

The powers, duties, and functions vested in the Engineer-in-Chief by any by-laws or regulations made under the authority of the said Act shall, if such powers, duties, and functions relate to or affect the working of any railway open for traffic situate in or thing to be done relating thereto in the North Island, vest in and be exercised and performed by the Commissioner of Railways for the North Island; or if such powers, duties, and functions relate to or affect the working of any railway open for traffic situate in or thing to be done relating thereto in the Middle or South Island, vest in and be exercised and performed by the Commissioner of Railways for the Middle Island.

20. All drains now or hereafter existing or made upon, above, or under any land on which any railway the property of Her Majesty and open for traffic is constructed, or upon, above, or under any land within the limits of such railway, shall be Government drains. The Governor may from time to time by Order in Council declare that any such drain shall cease to be a Government drain.

All drains upon railway land to be Government drains.

21. Notwithstanding anything contained in the said Act, the Minister, County Council, Borough Council, or Road Board may enter into agreements to purchase the estate and interest of any person in any land required for public works, upon such terms and conditions as he, it, or they shall think fit. The purchase-money shall be paid,—

Contracts to purchase land required for public works may be made, and conveyances taken.

(1.) If payable by the Minister, out of moneys appropriated by Parliament for the works in respect of which the land is purchased;

(2.) If payable by the County Council, out of the County Fund;

(3.) If payable by the Borough Council, out of the Borough Fund;

(4.) If payable by a Road Board, out of the District Fund:

But neither the Minister nor any member of a County Council, Borough Council, or of a Road Board shall be personally liable for any purchase-money which may become payable under this Act.

The estate and interest so purchased shall be conveyed or surrendered to Her Majesty, or the body corporate of the county, borough, or road district, as the case may be. The land so acquired shall be deemed land taken under the authority of the said Act and this Act except as to compensation.

22. For the purposes of the said Act and this Act, any land taken, purchased, or acquired for a railway, and all Government works on such land, and any land on which Government works are constructed for the use of a railway, shall be deemed and taken to be part of the railway, notwithstanding that such land is situate at a distance of more than five chains from the middle line of the railway.

Land purchased for a railway, and land on which works constructed for the use of a railway, to be deemed part of the railway.

23. In the Fourth Schedule to the said Act there shall be substituted for "Awamoko" the words "the main line," and for "Charlesville" the word "Clarksessville." In the said Schedule, in the eleventh line, after the word "Masterton," there shall be added the words "with branches." These alterations shall be deemed to take effect as on and from the date the said Act came into operation.

Alteration in Fourth Schedule of "The Public Works Act, 1876."

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Governor may sell to public bodies without complying with section 29 of said Act.

24. Notwithstanding anything contained in the twenty-ninth section of the said Act, the Governor may, without complying with any of the provisions contained in that section, sell by private contract to any Education Board any land taken, purchased, acquired, or held under the said Act, or this Act, or "The Immigration and Public Works Act, 1870," or Acts amending the same, or otherwise howsoever, for Government works, and not required for such works; and may execute such grants, conveyances, and assurances as may be necessary to give effect to such sale. The sale moneys shall be paid to the Public Account.

Mines and minerals not to be taken.

25. When any land shall be taken under the provisions of "The Public Works Act, 1876," or this Act, for any railway, the Governor shall not thereby acquire any right to any mines of coal, ironstone, or other mineral under any land so taken, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of such railway; and all such mines (excepting as aforesaid) shall be deemed to have been excepted out of the Proclamation or other instrument under the authority whereof the land is taken.

Where land formerly a road, and afterwards stopped, and sold or exchanged, Governor may perfect same.

26. Whenever it shall be made to appear to the satisfaction of the Governor that any road has been stopped under the authority of an Act of the General Assembly or Ordinance of a Provincial Council, and the same or any part thereof has heretofore been sold or exchanged, or agreed to be sold or exchanged, whether the contract for such sale or exchange be in writing or not, then it shall be lawful, for the purpose of completing and perfecting such agreement, sale, or exchange, for the Governor to issue such grants or execute such conveyances, transfers, and other assurances as he may deem advisable. Any road stopped under the authority of any Act or Ordinance may be sold or exchanged by the Governor, if the land occupied by the stopped road is not required for public use. The Governor may execute all necessary grants and assurances, and do all things requisite to carry into effect any sale or exchange.

Sections 173, 174, and 175 of "The Public Works Act, 1876," not in force until Governor declares same by Order in Council.

27. The provisions of sections one hundred and seventy-three, one hundred and seventy-four, and one hundred and seventy-five of the said Act shall only be deemed to be in force in such counties as the Governor may from time to time by Order in Council direct.

Declaration by Chairman, Mayor, or Clerk of County Council, Borough Council, or Road Board, to be accepted by Governor as sufficient that public work is authorized.

28. A statutory declaration by the Chairman, Mayor, or Clerk of the County Council, Borough Council, or Road Board, that the County Council, Borough Council, or Road Board, as the case may be, are authorized by law to undertake the work for which the land described in the memorial laid before the Governor under section twenty-five of the said Act is required, that all the provisions of the said Act as to taking such land have been complied with, and that the County Council, Borough Council, or Road Board, are of opinion that the proposed works should be executed, and that no private injury will be done for which due compensation is not provided by the said Act, may be accepted by the Governor as sufficient without making further inquiry, and the Proclamation taking the land may be issued accordingly. Every memorial laid before the Governor by a County Council, Borough Council, or Road Board shall be signed by two Councillors or members of the Board, and need not be under seal.

Amendment of section 26 of "The Public Works Act, 1876."

The word "memorial" in section twenty-six of the said Act is struck out. The Proclamation taking land shall contain or have annexed a correct description of the land taken.

Tramways may be constructed.

29. The County Council may, by special order, authorize any corporation, company, or person (herein termed "the promoters"), to construct a tramway along or across a county or district road for the purpose of affording convenient access to lands lying on either

Public Works Act 1876 Amendment.

side of any such road, and for such purpose to do the following things:—

- (1.) Dig up, alter the surface of, and temporarily stop the traffic on such road;
- (2.) Alter any drain or culvert upon or under such road, but so that the flow of water shall not be impeded thereby;
- (3.) Use horse, steam, or other power for propelling carriages on such tramway—

on such terms and conditions as the Council and the promoters agree:

Provided that nothing herein contained shall take away or abridge the right of the public to pass along or across every or any part of any road along or across which any tramway is laid, whether on or off the tramway, on foot, or on horseback, or with carriages not having flange wheels or wheels suitable only to run on the rail of the tramway.

30. All the powers, duties, and functions vested in a County Council by sections eighty-two to eighty-four (both inclusive) of the said Act shall, in cases where the whole of "The Counties Act, 1876," is not in operation in any county, vest in and be exercised and performed by the Governor.

When Counties Act not in operation, Governor to exercise powers vested in a County Council.

31. Where any Road Board and the owner or occupier of land do not agree as to the compensation provided for in subsection ten, section eighty-seven, of the said Act, the same shall be determined as provided for in Part III. of the said Act.

In case of disagreement between Road Board and occupier of land, how compensation determined.

32. The following words shall be added to section ninety-seven of the said Act: "or the Chairman thereof."

Words added to section 97.

33. If any person shall knowingly or wilfully allow any water, tailings, or sludge to flow from any building or land in his occupation on to a road or into any ditch or drain declared to be a public drain, he shall be liable to the penalties imposed by section ninety-seven of the said Act.

Penalty for allowing tailings, &c., to flow into road or public drain.

34. If a bridge, ferry, or ford crosses a river where one bank thereof is situate in a borough and the other bank thereof is situate in a county, the Minister may direct which local governing body shall have the control thereof; but the cost of constructing or maintaining any such bridge, ferry, or ford shall be contributed to *pro rata*, in proportion to the rateable values of property in such borough and county respectively; and such contribution may be recovered in any Court of competent jurisdiction by the borough or county having the control of such bridge, ferry, or ford, from the other local governing body, as the case may be.

Maintenance of bridge, ferry, or ford where one bank situate in county and other in borough.

35. The Board of Conservators for any river district constituted under any Act relating to the management of rivers shall, within their district, and in respect of protective or other works about such rivers, have, for the taking of lands necessary for such protective or other works, all the powers conferred by "The Public Works Act, 1876," or this Act, upon Road Boards for taking lands for roads and public works within road districts.

Board of Conservators to have powers conferred on Road Boards for taking of lands for protective or other works.

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