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THE WATER ACT

Section 310

IN THE MATTER of the complaint of V. R. McDonagh, E. C. Maile, E. C. Shanks, W. H. Prowse, T. A. Gray, J. H. Aberdeen, F. H. Keane, W. J. Arnold and G. R. Venables to the effect among other things that the tolls chargeable under the water agreements entered into with the Okanagan Centre Irrigation and Power Company Limited and the tolls demanded by that Company exceed what is just and reasonable and that the quantities of water to be delivered by virtue of the said water agreements are unreasonably restricted.

BEFORE THE BOARD OF INVESTIGATION UNDER THE WATER ACT by way of rehearing of the matters dealt with in Board Order No. 11,021 dated the 9th day of June, 1926. Upon hearing Mr. A. O. Cochrane of counsel for the Okanagan Centre Irrigation and Power Company Limited and Mr. T. G. Norris of counsel for the above named complainants and by consent

IT IS ORDERED that Board Order No. 11,021 made on June 9th, 1926 be revoked and the following substituted therefor:

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THE WATER ACT

Section 310

IN THE MATTER of the complaint of V. R. McDonagh, E. C. Maile, E. C. Shanks, W. H. Prowse, T. A. Gray, J. H. Aberdeen, F. H. Keane, W. J. Arnold and G. R. Venables to the effect among other things that the tolls chargeable under the water agreements entered into with the Okanagan Centre Irrigation and Power Company Limited and the tolls demanded by that Company exceed what is just and reasonable and that the quantities of water to be delivered by virtue of the said water agreements are unreasonably restricted.

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BEFORE THE MINISTER OF LANDS for the Province of British Columbia on appeal from the Board of Investigation,

Upon hearing Mr. A. O. Cochrane of counsel for the appellant, The Okanagan Centre Irrigation and Power Company Limited and Mr. T. G. Norris of counsel for the respondents, the above-named complainants, and by consent

IT IS ORDERED that the appeal of The Okanagan Centre Irrigation and Power Company Limited be allowed, Board Order No. 11,021 dated June 9th, 1926 set aside and the following substituted therefor:

1. That in lieu of the tolls payable to the Okanagan Centre Irrigation and Power Company Limited under the water agreements entered into by it and the tolls demanded by the said Company, it shall for the years 1926, 1927, 1928 and 1929 be entitled to charge for the carriage of all water carried by it in compliance with the application of the Water User (which expression

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wherever used in this order means the person who, in respect of any land under the irrigation system operated by the Company, is legally entitled to the exclusive possession of the land) at the rate of six dollars an acre-foot.

2.(a) For the year 1926 the tolls shall be due and payable on the 31st day of December, 1926 and every water user who prior to the date of this order has paid any sum on account of tolls for the carriage of water in the year 1926 shall be credited with the sum so paid and with an additional sum equal to interest on the sum so paid from the date of payment to the 31st day of December, 1926 at the rate of eight per cent per annum.

(b) On the first day of January, 1927 the Company shall be entitled to add to all 1926 tolls then remaining unpaid, an amount equal to ten per centum of the unpaid tolls.

3. In the years 1927, 1928 and 1929 the tolls chargeable under Clause 1 (one) shall be payable as follows:

(a) A sum representing three dollars for each acre-foot of the total quantity of water the carriage of which is applied for by the Water User shall be paid at the time application is made, namely; on or before the 15th day of Marcg in the year in which the water applied for is to be delivered.

(b) The amount of tolls owing by each Water User for the carriage of the water delivered to him in any year less the sum (if any) paid by him pursuant to subclause (a) shall be paid to the Company on the fifteenth day of September of the year in which the water is carried.

4. In the years 1927, 1928 and 1929 the Company shall be entitled to add to the tolls chargeable as aforesaid and remaining unpaid on the 16th day of September in the year

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for which they are payable an amount equal to ten per centum of the tolls so remaining unpaid.

5. The Company shall also be entitled to refuse to carry water to any Water User who at any time is in default in the payment of any tolls or instalment of tolls payable under this order.

6. The Company shall not accept from any Water User payment for the carriage of water at a rate lower than six dollars an acre-foot and the Company shall use all reasonable efforts to enforce payment of all tolls owing to it and it shall not without the consent of the Water Users Committee, chosen pursuant to Clause 14 of this order carry any water for or deliver any water to any Water User who fails to pay any tolls or instalment of tolls payable by him.

7. Each Water User shall on or before the fifteenth day of March in each year make application in writing to the Company for the quantity of water the Water User wishes carried to his land in the next irrigation season. No Water User shall apply for less than one acre-foot nor more than two and one-half acre-feet of water per acre of the area of the land he proposed to irrigate. The Water User shall, when filing his application for water, pay to the Company a sum of money representing $ 3.00 an acre-foot of the quanity of water applied for by him.

8. Provided sufficient water is available the Company shall during the spring freshet deliver water to the various Water Users at rates of flow which would in ninety days supply each Water User with the quantity of water applied for by him. When the spring freshet appears to be nearly

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over the Company shall advise the Water Rights Engineer at Kelowna of the total areas of land for which one acre-foot, one and one-half acre-feet, two acre-feet and two and one-half acre-feet respectively of water per acre are applied for and also of the quanity of water then in the storage reservoirs operated by the Company and the said Engineer shall thereupon and from time to time thereafter as circumstances appear to him to warrant such action fix the rates of flow at which water is to be delivered to the Water Users having applied for one, one and one-half, two and two and one-half acre-feet per acre respectively so that as nearly as possible every Water User applying for one acre-foot per acre or one and one-half acre-feet per acre shall receive the quantity per acre applied for and that every Water User who applies for more than one and one-half acre-feet per acre shall receive one and one-half acre-feet for each acre of land being irrigated by him and an additional quantity representing as nearly as possible that fraction of the quantity of water available for distribution by the Company after provision is made to supply all Water Users applying for one and one-half acre-feet per acre or less of which the numerator is the quantity in acre-feet applied for by the Water User in excess of one and one-half acre-feet per acre and the denominator is the aggregate in acre-feet of the quantities applied for by all the Water Users in excess of one and one-half acre-feet per acre. The Company shall comply with all orders or directions of the said Engineer made in pursuance of the foregoing and both the Company and the Water Users shall have the same right of appeal to the Comptroller from any order or direction of

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the Engineer made as aforesaid as is provided in respect of orders of the Engineer made under the Water Act.

9. (a) All monies received at any time by the Company on account of tolls due for the years 1925, 1926 ~~and~~ 1927, 1928 and 1929 less such of the same as have been expended prior to the date of this order shall so far as they are needed, be used to operate the irrigation system effaciently, to keep it in good repair and to replace with new structures all works or parts of works which are or become deteriorated to such extent that they can not be satisfactorily repaired.

(b) If between the first day of January and the 16th day of September in any year the Company receives on account of tolls (including tolls due for previous years and domestic water tolls) more than enough money to provide during such year for the operation, repairs and replacements referred to in Subclause (a) of this Clause the Company may use one thousand and eighty dollars of any such surplus or any smaller sum thereof to pay interest on the sum of Thirteen thousand five hundred dollars advanced to the Company by Mr. J. J. Warren and his associates for the construction of the Beaver Lake Dam.

(c) All sums received in any calendar year by the Company on account of tolls (including tolls due for previous years and domestic water tolls) and not expended pursuant to Subclauses (a) and (b) of this Clause shall on the 31st day of December of that year be deposited in a chartered bank to the credit of two persons; one named by the Company and the other by the Water Users Committee provided for in Clause 14 and the sums so deposited shall not be paid out by the two said persons except for the purpose of renewing the various works comprising the irrigation system operated

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by the Company and then only with the approval of the Company, the Water Users Committee above referred to and the Board of Investigation.

10. Except as provided in Subclause (b) of Clasue 9 no monies received by the Company on account of tolls (including domestic water tolls and tolls due for previous years) after the first day of January, 1926 shall be expended by the Company in the payment of any indebtedness incurred by the Company prior to the said first day of January 1926 or in the payment of any interest upon any such indebtedness, nor shall any such indebtedness or interest be accepted by the Company as a setoff against any tolls accruing due after January 1st, 1926.

11. Except with the approval of the Comptroller of Water Rights and the Water Users Committee no extension of the irrigation system operated by the Company shall be made or paid for out of monies received by the Company on account of any tolls payable under this order.

12. The Company shall keep proper records time books, accounts, vouchers and receipts respecting all its operations and shall allow the Water User's Committee to examine the same at any time provided one week's notice of the Committee's intention to make any such examination is given to the Company.

13. The Company shall appoint a person approved by the Water User's Committee to have charge of the distribution of the water carried in the system operated by the Company. Such person shall be paid by the Company.

14. The Water Users to whose lands water is carried by

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means of the irrigation system operated by the Company shall in the month of March in each year at a meeting called for the purpose choose a committee of five persons to act for the Water Users in respect of matters referred to in this order. Every Water User against whom tolls are chargeable under this order shall be entitled to attend the said annual meetings and to take part in choosing the said committee. Each Water User shall be entitled to one vote for each of five candidates. The first of such meetings shall be held on the day of January, 1927 at 2 o'clock in the afternoon at the Community Hall at Winfield, B. C. All subsequent meetings shall be called by notices posted up in the vicinity of Winfield; such notices to be signed by a majority of the committee last chosen.

15. Nothing contained herein shall prevent the Company or any Water User, Water Users or Association of Water Users from applying to the undersigned for further directions in respect of any matter dealt with in this order or any matter relevant thereto.