



CHAPTER xxxiv.

An Act to confirm the construction of certain works to confer further powers upon the Helston and Porthleven Water Company and for other purposes.

[31st July 1947.]

WHEREAS the Helston and Porthleven Water Company (hereinafter referred to as "the Company") are by the Helston and Porthleven Water Act 1888 and the Helston and Porthleven Water Order 1936 (confirmed by the Ministry of Health Provisional Order Confirmation (Helston and Porthleven Water) Act 1936) authorised to construct and maintain waterworks and to supply water within the limits in the county of Cornwall thereby prescribed:

51 & 52 Vict.
c. lviii.
26 Geo. 5. &
1 Edw. 8.
c. xciii.

And whereas in order to enable the Company to meet an urgent need for a water supply to the Royal Naval air station at Culdrose during the war of 1939-1945 the Admiralty on behalf of the Company constructed certain works on land now belonging to the Company and laid lines of pipes in lands in respect of which the Company have since negotiated way-leave agreements which works and lines of pipes were and are operated and maintained by the Company on behalf of the Admiralty and it is expedient that the Company be empowered to enter into agreements with the Admiralty with respect to the said works and lines of pipes and the supply of water by means thereof and that the construction of such works and lines of pipes should be sanctioned and confirmed and that they should form part of the authorised undertaking of the Company:

And whereas it is expedient that such further powers should be conferred upon the Company and that such other provisions should be enacted as are in this Act contained:

And whereas the objects of this Act cannot be attained without the authority of Parliament:

May it therefore please your Majesty that it may be enacted and be it enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same as follows:—

Short and
collective
titles.

1.—(1) This Act may be cited as the Helston and Porthleven Water Act 1947.

(2) The Helston and Porthleven Water Act 1888 the Helston and Porthleven Water Order 1936 and this Act may be cited together as the Helston and Porthleven Water Acts and Order 1888 to 1947.

Incorporation
of Acts.

2. The following Acts and parts of Acts (so far as applicable for the purposes of this Act and not inconsistent with the provisions of the Act of 1888 the Order of 1936 and this Act) are hereby incorporated with this Act:—

23 & 24 Vict.
c. 106.

The Lands Clauses Acts except the provisions thereof with respect to the purchase and taking of lands otherwise than by agreement and except section 5 of the Lands Clauses Consolidation Act Amendment Act 1860;

8 & 9 Geo. 6.
c. 42.

The following provisions of the Third Schedule to the Water Act 1945:—

Part V (Power to lay mains &c.);

Part VI (Breaking open streets &c.) except section 25;

Part X (Laying and maintenance of supply pipes and communication pipes);

Part XV (Financial provisions applicable to water companies);

In Part XVI (General and miscellaneous) section 94;

8 & 9 Vict.
c. 16.

The Companies Clauses Consolidation Act 1845 except the provisions thereof with respect to the conversion of borrowed money;

26 & 27 Vict.
c. 118.

Part II (Relating to additional capital) of the Companies Clauses Act 1863 as amended by subsequent Acts.

Interpretation.

3. In this Act the several words and expressions to which meanings are assigned by the Acts wholly or partly incorporated herewith have the same respective meanings unless there be something in the subject or context repugnant to such construction and unless the context otherwise requires And—

“The Company” means the Helston and Porthleven Water Company;

“ The Act of 1888 ” means the Helston and Porthleven Water Act 1888;

“ The Order of 1936 ” means the Helston and Porthleven Water Order 1936;

“ The undertaking ” means the undertaking of the Company as from time to time authorised;

“ The scheduled agreement ” means the agreement dated the third day of July nineteen hundred and forty-seven made between the Company of the one part and the Commissioners for Executing the Office of the Lord High Admiral of the United Kingdom of Great Britain and Ireland of the other part and set forth in the schedule to this Act;

“ The existing limits ” means the limits within which the Company are authorised by the Act of 1888 to supply water.

4.—(1) The construction of—

(a) the storage reservoir and purification plant at Three Cross in the parish of Wendron in the rural district of Kerrier in the county of Cornwall situate in the the enclosure numbered 4632 in the said parish on the 1/2500 Ordnance map of Cornwall sheet LXXVI.2 (edition of 1908);

(b) a pumping station intake and collecting chamber together with the line of pipes commencing at a sump situate in the enclosure numbered 639 in the parish of Sithney in the same rural district on the said Ordnance map sheet LXX.14 (edition of 1907) and terminating at the purification plant above referred to;

(c) the line of pipes commencing at the purification plant above referred to and terminating in the river Cober in the enclosure numbered 4128 in the parish of Wendron on the said Ordnance map and sheet LXX.14; and

(d) the line of pipes commencing at the purification plant above referred to and terminating in the borough of Helston by a junction with an existing pipe line of the Company in the road from Helston to the Lizard at a point near Ordnance bench mark No. BM 221.7;

Confirmation and use of storage reservoir purification plant pumping station &c. and lines of pipes.

is hereby sanctioned and confirmed.

(2) (a) The works hereinbefore described shall for all purposes whatsoever form part of and be comprised in the undertaking and the Company may from time to time alter improve

enlarge extend renew reconstruct or discontinue the same and may construct and maintain all such shafts adits headings machinery works and apparatus as may be necessary or convenient in connection with or subsidiary thereto and may retain hold and use for the purposes of the undertaking all or any of the lands or any interest in any lands or any water rights already acquired by them for the purposes of or in connection with the said works:

Provided that any electrical works and apparatus constructed or maintained under the provisions of this section shall be so constructed maintained and used as to prevent interference with any telegraphic line (as defined by the Telegraph Act 1878) belonging to or used by the Postmaster-General or with telegraphic communication by means of any such line.

(b) Nothing in this subsection shall exonerate the Company from any action indictment or other proceeding for nuisance in the event of any nuisance being caused or permitted by them in the execution of the powers thereof with respect to subsidiary works.

5. The Company may for the purposes of the undertaking and of this Act abstract collect impound take use divert and appropriate all springs and waters which will or may be taken or intercepted by means of the works sanctioned and confirmed by this Act.

6. The scheduled agreement is hereby confirmed and made binding on the parties thereto subject to any variations therein which may from time to time be agreed between the parties thereto and shall (subject as aforesaid) be carried into effect accordingly.

7. As from the passing of this Act—

(1) The limits of the Company for the supply of water shall extend to and include in addition to the existing limits the parish of Germoe in the rural district of Kerrier;

(2) Subject to the provisions of this Act the Company within the said parish shall have and may exercise all and the like powers rights privileges and authorities and be subject to all and the like duties and obligations as they have and are subject to within the existing limits.

8. As from the passing of this Act so much of the parish of Wendron in the rural district of Kerrier as lies to the north and east of a line commencing at a point on the western boundary of the said parish near Vellenewson Farm 73 yards

41 & 42 Vict.
c. 76.

Power to
take waters.

Confirmation
of scheduled
agreement.

Extension of
limits of
supply.

Modification
of limits of
supply.

measured in an easterly direction from the Ordnance bench mark 413.4 thence proceeding in a south-easterly direction along the footpath leading to Bodilly Vean farm to that farm and thence in the same general direction along the same footpath to the point where it crosses the 400 feet Ordnance datum contour thence proceeding in a straight line in an easterly direction for a distance of 88 yards to the same Ordnance datum contour and thence along the line of the said contour in a generally easterly direction on the north side of Trenear village to Trenear dairy thence proceeding in a straight line in a south-easterly direction for a distance of 1731 yards to a point on the west side of the road from Helston to Falmouth at Manhay 146 yards measured in a northerly direction along the said west side of the said road from the Ordnance bench mark 409.4 thence proceeding in a straight line in an easterly direction for a distance of 1466 yards across the said road and terminating at a point on the eastern boundary of the said parish near the disused tin mine known as Wheal Lovel shall cease to be within the limits of the Company for the supply of water and all the powers rights privileges authorities duties and obligations of the Company with respect to the supply of water in so much of that parish as aforesaid shall cease and determine.

9. In addition to the capital already authorised to be raised by the Company the Company may from time to time raise additional capital (in this Act referred to as "the additional capital") not exceeding in the whole sixty thousand pounds by the creation and issue of new ordinary shares or stock or new preference shares or stock or wholly or partially by one or more of those modes respectively:

Power to
Company to
raise
additional
capital.

Provided that the Company shall not under the powers of this Act—

(a) issue any share of less nominal value than ten pounds;

or

(b) create and issue any greater nominal amount of capital than shall after taking into account the premiums or discounts (if any) which may be obtained or allowed respectively on the issue thereof be sufficient to produce the said sum of sixty thousand pounds.

10. The additional capital shall form part of the general capital of the Company and the holders thereof respectively in proportion to the amount of their shares or stock shall be subject and entitled to the same powers provisions liabilities rights privileges and incidents in all respects as holders of other shares or stock of the Company of the same class or description.

Additional
capital to
form part
of general
capital.

Power to
borrow.

11.—(1) (a) The Company may from time to time borrow on mortgage of the undertaking in respect of the additional capital authorised by this Act any sum or sums not exceeding in the whole fifty per centum of the amount (including premiums and allowing for discounts) which at the time of borrowing has been raised by the issue of such capital. But no sum shall be borrowed in respect of the additional capital until the Company have proved to a justice before he gives his certificate under section 40 of the Companies Clauses Consolidation Act 1845 that the whole of the amounts payable in respect of such capital at the time issued together with the premium (if any) realised on the sale thereof has been fully paid up.

(b) The Company may from time to time borrow on mortgage of the undertaking in respect of the capital authorised by the Act of 1888 any sum or sums not exceeding in the whole fifty per centum of the amount (including premiums and allowing for discounts) which at the time of borrowing has been raised by the issue of such capital.

(2) The Company may without being required to obtain the certificate of a justice under section 40 of the Companies Clauses Consolidation Act 1845 from time to time borrow on mortgage of the undertaking in respect of their ordinary or preference shares or stock issued at the date of the passing of this Act any sum or sums not exceeding in the whole six thousand four hundred and ninety-five pound.

Priority of
mortgages
over other
debts.

12. All monies raised or to be raised by the Company on mortgage or by debenture stock under the provisions of the *Helston and Porthleven Water Acts and Order 1888 to 1947* shall have priority against the Company and the property from time to time of the Company over all other claims on account of any debts incurred or engagements entered into by them after the passing of this Act:

Provided that this priority shall not affect any claim against the Company or their property in respect of—

- (a) any rentcharge granted or to be granted by them in pursuance of the *Lands Clauses Acts*;
- (b) any rent or sum reserved by or payable under any lease granted or made to or vested in the Company which is entitled to rank in priority to or *pari passu* with the interest on their mortgages or debenture stock; or
- (c) land taken used or occupied by the Company for the purposes of the undertaking or injuriously affected by the exercise of any powers conferred on the Company.

Provided also that nothing in this section shall affect the provisions of section 264 (Preferential payments) of the Companies Act 1929. 19 & 20. Geo. 5. c. 28.

13. The principal moneys secured by all mortgages or debentures granted by the Company before the passing of this Act and subsisting at the passing thereof shall during the continuance of such mortgages and debentures respectively and subject to the provisions of the Act or Order under which such mortgages and debentures were respectively granted have priority over the principal moneys secured by all mortgages granted by virtue of this Act. Priority of existing mortgages.

14.—(1) The Company may borrow or raise moneys for the purposes of meeting their obligations and carrying out their duties under the Helston and Porthleven Water Acts and Order 1888 to 1947 on temporary loans by means of overdrafts from bankers or otherwise. Provided that the aggregate amount outstanding at any time of the moneys so borrowed or raised shall not exceed twenty thousand pounds. Company may incur temporary loans.

(2) The power conferred by this section shall be in addition to any power for the time being of the Company to borrow on mortgage or to raise moneys by the creation and issue of debenture stock.

15. The following sections of the Order of 1936 are hereby repealed (namely):— Repeal.

Section 10 (New capital to be sold by auction or tender);

Section 13 (Reserve funds);

Section 14 (Limit on reserve and contingency fund);

Section 15 (Limitation on carry forward);

Section 29 (As to streets forming boundary of limits of supply);

Section 34 (Undertakers to connect communication and service pipes with mains);

Section 35 (Separate communication pipes may be required).

16. It shall not be lawful to exercise the powers of borrowing or raising capital conferred by this Act otherwise than in compliance with the provisions of any order for the time being in force made under section 1 of the Borrowing (Control and Guarantees) Act 1946. Saving for powers of Treasury. 9 & 10 Geo. 6. c. 58.

Saving for
town and
country
planning:

17.—(1) The provisions of the Town and Country Planning Acts and of any order scheme or regulation made under those Acts or under any enactment repealed by those Acts so far as those provisions are from time to time in force in respect of the land on which any development within the meaning of those Acts is carried out under this Act shall apply to that development.

(2) In this section the expression "Town and Country Planning Acts" means—

7 & 8 Geo. 6.
c. 47.
9 & 10 Geo. 6.
c. 68.

(a) the Town and Country Planning Acts 1932 and 1943 the Town and Country Planning Act 1944 and the New Towns Act 1946; and

(b) any public general Act passed or to be passed in the present session repealing amending or extending the provisions of those Acts.

Costs of Act.

18. All costs charges and expenses of and incidental to the preparing for obtaining and passing of this Act or otherwise in relation thereto shall be paid by the Company and may in whole or in part be charged against revenue.

The SCHEDULE hereinbefore referred to.

SCHEDULED AGREEMENT.

This agreement is made the third day of July nineteen hundred and forty-seven between THE HELSTON AND PORTHLEVEN WATER COMPANY (hereinafter called "the Company") of the one part and THE COMMISSIONERS FOR EXECUTING THE OFFICE OF LORD HIGH ADMIRAL OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND (hereinafter called "the Admiralty") acting by Frederick Robert Maude, O.B.E. F.S.I. their chief surveyor of lands of the other part.

WHEREAS—

(i) The Company by the Helston and Porthleven Water Act 1888 and the Helston and Porthleven Water Order 1936 confirmed by the Ministry of Health Provisional Order Confirmation (Helston and Porthleven Water) Act 1936 (which Act and Order are together hereinafter referred to as "the Company's Act and Order") is authorised to supply water within limits of supply comprising the borough of Helston and the parishes of Breage Sithney and Wendron in the rural district of Kerrier (together hereinafter referred to as "the Company's present limits of supply") and to exercise other powers conferred by the Company's Act and Order:

(ii) During the war of 1939 to 1945 the Admiralty for the purpose of enabling the Company to meet an urgent need for a supply of water to the Royal Naval air station at Culdrose (which is within the Company's present limits of supply but for which the Company was unable to provide a sufficient supply from its then existing resources) constructed certain waterworks hereinafter described upon land which has since been acquired by and now belongs to the Company in fee simple (subject to the reservation of the right to mines and minerals and certain other rights in respect of part of such land) and laid certain lines of pipes and other works (also hereinafter described) in under or upon certain lands with respect to which the Company has since acquired and now owns in fee simple (subject to the rights of the Duchy of Cornwall and all other owners in respect of the mines and minerals thereunder) easements or rights to lay use maintain repair renew inspect and deal with such mains and works:

(iii) The works hereinbefore referred to (hereinafter called "the said works") include an intake pumping station collecting chamber and pumping plant for taking water from certain streams situate near Trannack Mill and Boscadjack Hill in the said parish of Sithney a storage reservoir and purification plant situate at Three Cross in the said parish of Wendron and lines of pipes being an 8-inch main from the pumping station to the purification plant from the purification plant to the river Cober and from the purification plant to a point situate in the borough of Helston to the south or the south-east of Helston Hospital:

(iv) The Admiralty are desirous that they should be relieved from the responsibility and expense of maintaining and carrying on in future the said works (which have heretofore been maintained and carried on by the Company on behalf of the Admiralty) and that the Company should maintain and carry on the said works on the responsibility and at the expense of the Company and should use the same for the purposes of the supply under their statutory powers of the water obtainable by means thereof and the Admiralty in consideration of the Company so doing and entering into such agreement as is hereinafter contained for a supply of water in perpetuity by the Company to them and in consideration of a payment already made by the Company to the Admiralty of a sum of £174. 7s. od. to reimburse the Admiralty for certain sums paid to landowners for compensation under defence Acts or regulations have renounced in favour of the Company all right title or interest (if any) of the Admiralty to or in the said works.

Now it is hereby agreed between the parties hereto as follows:—

1. Subject as hereinafter provided the Company shall supply to the Admiralty or any other government department as may for the time being be in occupation or control of the said Royal Naval air station and who shall be bound to fulfil the covenants and conditions herein contained and the Admiralty shall take in perpetuity in accordance with the terms of this agreement unless prevented by frost drought unavoidable accident or other unavoidable cause or the execution of necessary works such quantity of water from the said works or from any works for the time being substituted therefor as the Admiralty may from time to time require for use at the Royal Naval air station at Culdrose and for the supply to any dwelling-houses the Admiralty may hereafter erect in the immediate vicinity of the aerodrome for personnel employed or posted there so long only as such houses shall remain the property of the Admiralty and are used by personnel employed at or posted to the said aerodrome. Provided that the Company shall not be under obligation so to supply within any period of twenty-four hours any quantity of water in excess of one hundred and thirty thousand gallons.

2. The water to be supplied by the Company hereunder shall be wholesome water suitable for domestic purposes and shall be delivered by the Company and taken by the Admiralty in priority to all or any other users who may hereafter take a supply from the said main at a point hereinafter called "the point of delivery" within the said Royal Naval air station at or about the junction of the road from Gay's Hill with the main road from Helston to the Lizard marked G.P.228 on the 1/2500 Ordnance map of Cornwall. Provided that if the Admiralty shall desire to take water for the supply to any dwelling-house mentioned in paragraph 1 hereof at any point on the Company's main lying on the supply side of the point of delivery mentioned in this clause the same shall also be metered at that point and the meter readings aggregated with the meter hereinbefore mentioned at the point of delivery and payment made as hereinafter provided on the basis of the total readings of the said two meters.

3. At the point of delivery the Company shall provide and keep at all times duly maintained and repaired and in working order and when necessary renewed a proper and suitable meter for measuring the water to be supplied to the Admiralty hereunder and the Admiralty shall provide and maintain a suitable meter house or a suitable meter pit and covers for protecting the meter and shall pay to the Company from time to time the appropriate rent for the use of the meter.

4. The meter shall be read at weekly intervals jointly by duly appointed representatives of the parties hereto and the record of each reading shall be signed by such representatives. The Company shall retain such records and furnish copies thereof to the Admiralty.

5. The records so obtained shall be prima facie evidence of the supply of water taken by the Admiralty through the said meter and such meter if thought to be registering incorrectly shall be removed and tested by the Company under the supervision of duly appointed persons on behalf of the parties hereto (but not oftener than once in every quarter unless specially required) and all costs in connection therewith including if necessary the substitution of another meter shall in the event of the rate of supply recorded by such meter during any period of twenty-four hours after being removed being found to be less than the actual be borne by the Admiralty. Should such meter be found to record more than two and a half per centum above or below the actual rate of supply the record of the supply taken since the commencement of the week immediately preceding the last reading of the meter before the removal thereof shall be deemed to be correspondingly inaccurate and shall be adjusted accordingly. Should the meter be found in a similar manner to record within two and a half per centum of the actual rate of supply the meter shall be deemed to have recorded accurately. Either party if dissatisfied with the result of any such test or computation of the supply as aforesaid may require the matter in dispute to be referred to an engineer to be jointly chosen by the parties hereto or if they shall be unable to agree then by an engineer appointed by the President for the time being of the Institution of Civil Engineers and the decision of such engineer shall be final and binding on both parties and the expenses of such enquiry and all tests shall be in the entire discretion of the engineer so appointed.

6. The supply of water hereunder shall commence on the 12th day of November 1945.

7. Subject as hereinafter provided the price to be paid by the Admiralty to the Company for all water supplied to the Admiralty hereunder shall be a combination of—

- (a) a fixed sum of seven hundred and twenty pounds in respect of each quarter of a year ending on the 31st March the 30th June the 30th September or the 31st December; and
- (b) a sum at the rate of fourpence for every one thousand gallons of water taken.

8. All amounts payable by the Admiralty to the Company for water supplied hereunder shall be calculated by the Company for each of the said quarters and the Company shall cause to be sent

or delivered to the Admiralty as soon as practicable after the expiration of each such quarter an account showing the amount payable for such quarter. Any sum due to the Company shall be paid by the Admiralty forthwith on receipt of such account and if not paid within twenty-eight days after receipt of a correct account shall thereafter carry interest at the rate of five per cent. per annum.

9. At any time after the expiration of three years from the date of this agreement if either of the parties hereto shall consider that the cost of labour or materials or any other circumstance affecting the cost of providing the water to be supplied hereunder has substantially altered that party may give to the other party a notice in writing requiring a variation by way of either decrease or increase in the price payable hereunder for the water so to be supplied and if the parties shall agree upon any such variation the price shall be varied accordingly and in default of agreement the question whether any and if so what variation shall be made in the price so payable and from what date any such variation shall have effect shall be determined by arbitration in pursuance of the provisions of this agreement in that behalf:

Provided that after any such notice has been given by either party hereto and not withdrawn no similar notice shall be given by either party hereto before the expiration of a further period of three years.

10. This agreement shall be scheduled to and confirmed by the Bill which the Company are promoting in the present session of Parliament and is made subject to the approval of Parliament and to such alterations (if any) as Parliament may think fit to make therein but in the event of either House of Parliament making any material alteration therein or in any provision of the Bill affecting the purposes or the carrying out of this agreement or in the event of the Bill not obtaining the Royal Assent in a form which confirms this agreement either party may withdraw from this agreement and upon such withdrawal this agreement shall become void.

11. Concurrently with the scheduling of this agreement to the Bill and the insertion of a provision in the Bill for confirming this agreement the proviso to clause 5 (Power to take waters) of the Bill as deposited shall be withdrawn from the Bill.

12. On any conveyance or transfer of the said Royal Naval air station or the transfer of the control or possession thereof to any other government department that department shall at all times thereafter fulfil and comply in all respects with all the terms covenants and conditions herein contained and take and pay for the water in perpetuity as hereinbefore provided.

13. Any matter which under this agreement is to be referred to arbitration and any dispute or difference between the parties hereto as to anything contained or provided for in or arising out of this agreement shall be referred to and determined by a single arbitrator to be agreed upon by the parties hereto or failing such agreement to be appointed by the President of the Institution of Civil Engineers

on the application of either party after notice in writing to the other party and subject as aforesaid the provisions of the Arbitration Acts 1889 to 1934 shall apply to any such reference and determination.

In witness whereof the said parties to these presents have hereunto set their hands the day and year first above written.

Signed by the said FREDERICK ROBERT MAUDE
in the presence of

F. R. MAUDE.

W. J. HERSEY
Surveyor
Admiralty.

The common seal of the HELSTON AND PORTH-
LEVEN WATER COMPANY was hereunto
affixed in the presence of }



J. LIONEL ROGERS
JOCELYN V. RATCLIFFE } Directors.

F. J. SEAR Secretary.

Ch. xxxiv.

Helston and Porthleven Water 10 & 11 GEO. 6.
Act, 1947.

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