ACT 31 OF 2003

THE KERALA IRRIGATION AND WATER CONSERVATION ACT, 2003 [1]

An Act to consolidate and amend the laws relating to construction of irrigation works, conservation and distribution of water for the purpose of irrigation and levy of betterment contribution and water cess on lands benefited by irrigation works in the State of Kerala and to provide for involvement of farmers in water utilisation system and for matters connected therewith or incidental thereto.

Preamble.-Whereas it is expedient to consolidate and amend the laws relating to construction of irrigation works, conservation and distribution of water for the purpose of irrigation and levy of betterment contribution and water cess on lands benefited by irrigation works in the State of Kerala and to provide for involvement of farmers in water utilisation system and for matters connected there with or incidental thereto;

BE it enacted in the Fifty- fourth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.- (1) This Act may be called the Kerala Irrigation and Water Conservation Act, 2003.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint [1]

Provided that different dates may be appointed for different provisions of this Act, and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. Definitions.- In this Act, unless the context otherwise requires,-

(a) "area of operation" in relation to farmers organisation means a continuous block of land in the command area of an irrigation system as may be notified;

(b) " Authority" means the Kerala Dam Safety Authority constituted under section 57;

(c) "back water" means lagoons receiving water of the streams and rivers running parallel to the sea coast;

(d) "Board" means the Water Management and Utilisation Board constituted under sub-section (1) of section 90;

(e) "canal" means an artificial open channel carrying water including situations passing through tunnels enroute;

(f) "Certificate" means a certificate issued under section 21;

(g) "Collector" means the Collector of a district and includes any officer appointed by the Government to exercise all or any of the powers or to perform all or any of the functions of a Collector under this Act;

(h) "command area" means the area irrigated or capable of being irrigated either by gravitational flow or by lift irrigation or by any other method and includes every such area whether it is called ayacut or any other name;

(i) "competent authority" means the competent authority appointed under sub-section (1) of section 53;

(j) "construction" with reference to an irrigation work include improvement, extension, repair and maintenance of that irrigation work;

(k) "distributory system" means and includes,-

(i) all main canals, branch canals, distributory canals or minor canals constructed, maintained and operated for the supply and distribution of water for irrigation;

(ii) all works, structures and appliances connected with the distribution of water for irrigation; and

(iii) all field channels, farm channels and other related channels and structures under a sluice or pipe outlet;

(l) "drainage system" means channels either natural or artificial for the discharge of waste or surplus water and all works connected there with or ancillary there to and includes,-

(i) escape channels from an irrigation or distribution system and other works connected there with but does not include works for removal of sewage;

(ii) all connecting drains and main drains to drain off surplus water from field drains; and

(iii) all field drains and related structure under pipe outlet;

(m) "Farmers Association" means the water users association formed in accordance with the provisions of section 49 and the Water Management and the Utilisation Board constituted under section 90;

(n) "field channel" means a channel which runs from an outlet in a Government channel or canal and which conveys or distributes water to blocks of land exceeding five hectares in extent but not exceeding one hundred hectares in extent;

(o) "field drain" means a channel excavated and maintained by the land holder or by any other agency to discharge waste or surplus water from the land holding under a pipe outlet including drains, escape channels and other similar works existing or to be constructed and includes a channel either existing under construction or proposed to be constructed by the Government or Water Users Association or any other agency for the purpose of discharging waste or surplus water from the command area or a sluice or pipe outlet or from the total ayacut of more than one outlet, as the case may be, including drains, escape channels and such other similar works;

(p) "financial year" means a period of one year commencing from the first day of April of the year under concern and ending on the 31st day of March of the ensuing year;

(q) " financing agency" means any commercial bank or any co-operative bank or credit society or any other financial institution or other organisation established or incorporated as per any statutory provision which is instrumental for lending or financing necessary resources either by way of cash, goods or other services for the operational development and sustenance of the benefited area ;

(r) "Government" means the Government of Kerala;

(s) "hydraulic basis" means the basis for identifying a viable irrigated area served by one or more hydraulic structures such as head works, distributories, minors and pipe outlets;

(t) "irrigation" with its grammatical variations includes "drainage" with its corresponding variations;

(u) "Irrigation Officer" means an officer appointed by the Government to perform all or any of the functions of an Irrigation Officer under this Act;

(v) "irrigation system" means a major irrigation scheme or a medium irrigation scheme or a minor irrigation scheme;

(w) "irrigation work" includes,-

(i) all canals, field channels, reservoirs and tanks, tube wells and filter point wells which are intended or which may be used for the supply, collection, storage or retention of water for agricultural purposes;

(ii) all works, embankments, structures, supply and escape channels connected with such canals, channels, reservoirs or tanks and spouts installed to supply water;

(iii) all water courses which are supplied with water from such canals, channels, reservoirs, tanks or spouts;

(iv) all drainage works, that is to say, canals, channels, escape channels from a canal or channel, reservoirs or tanks, dams, weirs, embankments, sluices, groynes, field channels, and other works for the protection or benefit of agricultural lands or for the reclamation or dewatering of kole lands, kayal lands, kari lands or such other lands;

(v) all works intended for preventing or regulating the entry of salt water into agricultural lands;

(vi) all lands and works in all lands occupied by the Government or a local authority for the purpose of such canals, channels, reservoirs or tanks and all buildings, machinery, fences, gates and other erections on such lands; and

(vii) any other work which the Government may, by notification, declare to be an irrigation work.

Explanation.- For the purposes of this clause, "irrigation work" does not include embankments other than for irrigation purposes and tanks not constructed by the Government, a local authority or any other authority.

(x) "land holder" means the owner or any other person in lawful possession of any land in the irrigable command area of any irrigation system recorded as such in the records of Government;

(y) "lift irrigation work" means an irrigation work by which water is supplied or drained for agricultural purposes with the aid of pump sets or other mechanical devices;

(z) "local authority" means a municipality constituted under the Kerala Municipalities Act, 1994 (20 of 1994) or a Panchayat constituted under the Kerala Panchayat Raj Act, 1994 (13 of 1994);

(aa) "maintenance" means execution of such works on the irrigation system as are necessary to ensure that the physical system designed to the standards operate for proper distribution of water to the land holders in the command area;

(ab) "major irrigation scheme" means a scheme benefiting an irrigable command area of more than 10,000 hectares;

(ac) "major irrigation work" includes any irrigation work irrigating or useful for the drainage or protection of a cultivable area of over ten thousand hectares of land and any other irrigation work declared by the Government to be a major irrigation work, but shall not include a lift irrigation work;

(ad) "medium irrigation scheme" means a scheme benefiting an irrigable command area of more than fifteen hectares but less than 10,000 hectares;

(ae) "medium irrigation work" includes any irrigation work irrigating or useful for the drainage or protection of cultivable area of fifteen hectares or more and not more than ten thousand hectares of land and any lift irrigation work;

(af) "minor irrigation scheme" means all small schemes benefiting an irrigable command area of not more than fifteen hectares;

(ag) "minor irrigation work" includes any irrigation work irrigating or useful for the drainage or protection of a cultivable area of not more than fifteen hectares but shall not include a lift irrigation work;

(ah) "notification" means a notification published in the Gazette;

(ai) "notified area" means the area notified by Government for any particular purpose;

(aj) "prescribed" means prescribed by rules made under this Act;

(ak) "Punja Special Officer" means an officer appointed by the Government under section 31 ;

(al) "sea mouth" means that part of the river where the river joins the sea;

(am) "State" means the State of Kerala;

(an) "stream" means a stream that flows in a temporary channel but not in a valley;

(ao) "Tahsildar" in relation to any land means the Tahsildar of the Taluk in which that land is situated and includes a Special Tahsildar;

(ap) "water allocation" in relation to an irrigation system means distribution of water determined from time to time by a competent authority as notified by the Government;

(aq) "water course" means a river, stream, springs, channel, lake or any natural collection of water other than in a private land and includes any tributary or branch of any river, stream, springs or channel;

(ar) "water user" means and includes any individual or body corporate or a society or an institution or an association using water for any purpose from a Government source of irrigation.

CHAPTER II

CONSERVATION OF WATER IN WATER COURSES

3. Water courses and water in water courses to be Government property.-- Notwithstanding anything to the contrary contained in any other law for the time being in force, or in any custom or usage or in any contract or other instrument but subject to the provisions of section 218 of the Kerala Panchayat Raj Act, 1994 (13 of 1994) and section 208 of the Kerala Municipality Act, 1994 (20 of 1994), all water courses and all water in such water courses in the State shall be the property of the Government, and the Government shall be entitled to conserve and regulate the use of such watercourses and the water in all those water courses for the purposes of irrigation and the generation of Electricity and for matters connected therewith or for both.

4. Regulation on abstraction of water from water course.- (1) Save as provided in this Act, no person or agency shall abstract water from a water course by installation of any mechanical or electrical device, the capacity of which, in the aggregate, is more than five horse power, or any hose, pipe or other similar device or by any other means except with the previous permission of the officer authorised by the Government in this behalf within whose jurisdiction such device for abstraction of water is installed and subject to such terms and conditions and on payment of such fees, as may be prescribed:

Provided that the Kerala Water Authority or any local authority shall not be liable to obtain a permit under this sub-section.

(2) Any person or agency aggrieved by an order refusing to grant permission under sub-section (1), may within such time and in such manner as may be prescribed, appeal to the Collector and the Collector shall, after hearing the appellant and the authorised officer, pass such orders on the appeal as he deems fit within one month from the date of receipt of the appeal.

(3) If any person abstracts water from a water course in violation of the provisions of sub-section (1) or an order of the Collector under sub-section (2), the officer authorised under sub-section (1) or any person authorised by him in that behalf shall, without prejudice to any other action that may be taken for such violation, have power to enter any property, place or premises in which any device is installed for abstraction of water and to remove or cause such device to be removed or also to confiscate such device if he is satisfied that such confiscation is necessary for the prevention of abstraction of water.

(4) Any lapse in supervision of the provisions contained in sub-section (3) by the officers authorised under sub-section (1) or any person authorised by him on that behalf will also be liable for disciplinary action.

5. Regulation on construction of reservoirs , anicut etc.- (1) No person or agency or local authority shall construct any reservoir or anicut or weir or any other permanent structure in or across any water course for the purpose of diverting water therefrom except with the previous sanction of the Government or such authority as may be authorised by the

Government in that behalf and subject to such terms and conditions as the Government or such authority may impose.

(2) Where any structure is constructed in violation of the provisions of sub-section (1), the Government or the authority authorised by the Government under that sub-section shall, without prejudice to any other action that may be taken for such violation, have power to remove such structure or cause it to be removed and to recover the cost of such removal from the person or persons responsible for such construction.

6. Regulation on diversion of rivers, inter-basin transfer of water, etc.- (1) No person or agency or a local authority or any other authority shall divert any river or interlink two or more rivers or effect inter-basin transfer of water from such rivers without obtaining prior permission from the Government.

(2) Where any structure is constructed in or across a river for the purpose of diversion or linking of such river the Government or such officer or authority as the Government may authorise in this behalf shall have the right to remove such structure and to recover the cost of such removal from the person or authority responsible for such construction.

7. Prohibition of quarrying of sand in water courses.- No person shall quarry sand in any area in a water course within a distance of five hundred metres from any dam, check dam, reservoir or any other structure or construction on or across such watercourse, owned or controlled or maintained by Government for the purpose of irrigation :

Provided that nothing in this section shall apply to collection and removal of silt and sand from the reservoir or the water spread area of a dam or check dam by the Water Resources Department for the maintenance of such dam or check dam.

CHAPTER III
CONSTRUCTION OF IRRIGATION WORKS AND THEIR CLASSIFICATION

8. Construction and commissioning of irrigation works by Government.- (1) Where the Government consider that it is necessary, in the interest of the general public, to construct an irrigation work of any kind on any land, the Government may, by notification, declare their intention specifying the land which is proposed to be covered by such irrigation work.

(2) Where the Government consider that an irrigation work constructed by them should be commissioned partly or fully, the Government shall publish in the Gazette a notification to that effect containing such particulars as may be prescribed.

9. Consequences of construction of irrigation works.-(1) Where the Government construct an irrigation work for utilising the water in a water course,-

(a) the Government shall be entitled to regulate, utilise, protect and distribute all water in such water course and all the tributaries and branches thereof upwards such irrigation work in such manner as may suit the public purpose ;

(b) no person or agency shall, without the sanction of the Government or such authority as may be authorised by the Government in that behalf, do anything which obstructs, interferes with, diminishes or is likely to obstruct, interfere with or diminish, the flow of water in such water course;

(c) No person or agency shall use water from any irrigation work owned or controlled or maintained by the Government for any purpose other than domestic purpose except under, and in accordance with the terms and conditions of a licence issued by such authority as may be prescribed.

(2) Where the prescribed authority is satisfied that a licence issued under clause (c) of sub-section (1) may affect adversely the effective functioning of the irrigation work, he may, after giving the person affected thereby an opportunity of being heard, revise or cancel such licence.

10. Payment of amount for damage etc.- (1) Any person who, by reason of the construction of an irrigation work by the Government, or the exercise of the powers conferred on the Government by or under this Act, suffers material damage on account of the deprivation or infringement of his riparian right to use watercourse for the purpose of irrigating his land or for any other purpose, shall be paid an amount of money for such damage:

Provided that no amount shall be payable under this sub-section to a person who has not exercised his riparian right for a period of two years immediately preceding the commencement of this Act:

Provided further that no payment under this sub-section shall be denied to a person if the non-exercise of the right was for no fault of his own:

Provided also that no payment under the sub-section shall be denied to a person without giving him a reasonable opportunity of being heard.

(2) The amount payable under sub-section (1) shall be assessed in cases where water was being used,-

(a) for the purpose of irrigating land, at ten times the annual loss suffered or likely to be suffered by such deprivation or infringement;

(b) for any other purpose, at five times the annual loss suffered or likely to be suffered by such deprivation or infringement.

(3) Every claim under this section shall be preferred to the Collector within whose jurisdiction the land , the riparian right over which is deprived of, or infringed, is situated.

(4) The Collector shall, after such enquiry as he deems fit and after giving the claimant an opportunity of being heard, by order, determine the amount, if any, payable to the claimant in consultation with the concerned Irrigation Officer and Agricultural Officer.

11. Bar to claims.- No claim under section 10 shall be entertained after the expiry of one year from the date of the notification under sub-section (1) of section 8:

Provided that the Collector may, if he is satisfied that the claimant was prevented by sufficient cause from preferring the claim within the said period of one year, condone delay up to ninety days after the expiry of that period.

12. Appeal.-Any person aggrieved by an order of the Collector under sub-section (4) of section 10 may, within ninety days from the date of receipt of the order, prefer an appeal to a committee constituted by Government in this behalf, in such form and in such manner, as may be prescribed, and the committee shall decide the appeal with in a period of six months from the date of receipt of the appeal and its decision there on shall be final:

Provided that the committee may admit an appeal preferred after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within that period, but in no case such appeal shall be admitted after the expiry of six months from the date of the receipt of the order appealed against.

13. Entrustment of irrigation works.- (1) Where the Government consider it necessary so to do, they may, subject to such terms and conditions as may be specified by them, entrust the construction or maintenance or both of any irrigation work, to any local authority or to any co-operative society or other society of farmers or to any other body corporate benefited by that irrigation work, and may, at any time, resume such work:

Provided that no work entrusted to a local authority or a co-operative society or a society of farmers or to a body corporate shall be resumed without giving such local authority or co-operative society or other society or body corporate an opportunity of being heard.

(2) The local authority or co-operative society or other society of farmers or any other body corporate to which any work is entrusted under sub-section (1) shall undertake the maintenance and upkeep of such work after completion on proper agreement and if the local authority or co-operative society or other society of farmers or the other body as the case may be, fails to comply with such agreement, the persons who have executed the agreement shall be responsible for the loss, if any, or the cost of maintaining the same by the department subsequently and such loss or cost of maintenance shall be realised from them.

Explanation.- For the purpose of this section, the expression "co-operative society" means a society registered or deemed to be registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969) and the expression "other society" means a society registered under the Societies Registration Act, 1860 (Central Act 21 of 1860)or, as the case may be, under the Travancore Cochin Literary Scientific and Charitable Societies Registration Act, 1955 (12 of 1955).

14. Construction of minor and petty irrigation works.- (1) The construction and maintenance of all minor and petty irrigation works within the limit of a local authority shall subject to the provisions of the Kerala Panchayat Raj Act, 1994 and the Kerala Municipality Act, 1994 devolve upon that authority.

(2) Where a local authority is unable to carry out the construction and maintenance of any minor or petty irrigation work devolved on it under sub-section(1), the Government may on written request from such local authority, carry out such work or entrust such work,

subject to such terms and conditions as they may specify, to any of the societies referred to in section 13.

CHAPTER IV

CONSTRUCTION AND MAINTENANCE OF FIELD CHANNELS

15. Alignment of field channels.- The alignment of any field channel and technical specification thereof shall be the responsibility of the Government.

16. Land owners to maintain field channel.-The maintenance of field channels and the conveyance of water through them shall be the responsibility of the owners of the lands benefited by such channels:

17. Maintenance of field channels by Water users Association.-Subject to section 16, every water users association formed under section 49 shall be bound to maintain field channels, within their respective area of operation, fit for the conveyance of water.

18. Maintenance of field channels.-Where the land owners fail to maintain field channels and the Irrigation Officer is satisfied that maintenance of field channels is necessary for proper irrigation of lands of such owners, he shall by notice, require the land owners concerned to maintain field channels within such time and in such manner as may be specified in the notice.

19. Procedure for speedy construction of field channels by Government.-(1) The Irrigation Officer shall, in consultation with the beneficiaries or local authority, determine suitable alignment of field channels, mark out the land which, in his opinion, is necessary for the construction thereof and shall forthwith publish in such manner a notice in such form and containing such particulars as may be prescribed.

(2) The Irrigation Officer shall arrange for the publication of the notice in the village or villages and in the office of the local authority in which, such land is situated and serve the notice on the owners of the land mentioned therein .

(3) After the service of the notice by the Irrigation Officer as required by sub-section (2), he may require the land owners to intimate within one month from the date of service of the notice whether they desire to carry out the work by themselves and; if so, he may obtain an undertaking from each land owner specifying the date within which the work is to be completed and such other particulars as may be prescribed.

(4) Where the land owners do not desire to carry out the work or fail to carry out the work or the remaining work within the time specified in the undertaking as the case may be, the work shall be carried out or caused to be carried out by the Irrigation Officers.

(5) The work or the remaining part of the work, as the case may be, carried out or caused to be carried out by the Irrigation Officer under sub-section (4) shall be deemed to have been carried out by him with the consent of the land owners.

CHAPTER V

ISSUE OF CERTIFICATES AND LEVY OF WATER CESS

20. Publication of statement showing lands benefited .- (1) As soon as may be after the publication of this notification under sub-section (2) of section 8 in respect of an irrigation work, the Irrigation Officer shall prepare a statement in the prescribed form showing the lands benefited or capable of being benefited by such irrigation work, the nature of the crops cultivated or proposed to be cultivated by the owners in such lands and the general pattern of cropping adopted or proposed to be adopted in those lands.

(2) In the case of an irrigation work commissioned partly or fully before the commencement of this Act or acquired partly or fully by the Government before such commencement, the Irrigation Officer shall, as soon as may be after such commencement, prepare in the prescribed form a statement of the lands benefited or capable of being benefited by such irrigation work, containing the particulars mentioned in sub-section (1).

(3) The Irrigation Officer shall send sufficient copies of the statements prepared under sub-section (1) or sub-section (2) to the Tahsildar, and thereupon the Tahsildar shall cause the statements to be published in the Taluk Office and the concerned village offices and also serve notice on the owners of the lands included in the statement requiring them to file objections, if any, in respect of the inclusion of such lands and the particulars of such lands in the statement, to the Tahsildar within a period of one month from the date of receipt of the notice:

Provided that where the lands benefited or capable of being benefited by an irrigation work are situated in more than one taluk, the statement shall be sent to the Tahsildar of the taluk in which the major portion of such land is situated:

Provided further that if any dispute arises regarding the taluk in which the major portion of such lands is situated, such dispute shall be referred to the Government and the decision of the Government thereon shall be final.

(4) The objection in pursuance of a notice under sub-section (3) shall be confined to any one or more of the following grounds, namely:-

(a) that the land or any portion thereof is not benefited or capable of being benefited by the irrigation work;

(b) that the person shown as owner of a land is not the owner thereof;

(c) that the area or any other particulars therein including the nature of crop or crops cultivated or proposed to be cultivated therein is wrong;

(d) that there exist any other fact materially affecting the lands included in the statement.

(5) The Tahsildar shall consider the objections and , after holding such enquiry as he deems necessary and giving the objector an opportunity of being heard , make an order

within three months from the date of receipt of the objections, either rejecting the objections or excluding the land or portion thereof from the statement or making other necessary modifications therein.

(6) An order passed under sub-section (5) shall be communicated to the objector in such manner as may be prescribed.

(7) Any person aggrieved by an order under sub-section (5) may appeal in such manner as may be prescribed to the Collector within sixty days from the date of receipt of the order and such appeal shall be decided by the Collector within two months from the date of receipt of the appeal and the decision of the Collector thereof shall be final.

Explanation.- A land shall be deemed to be capable of being benefited irrespective of the non- enjoyment of the benefit, if such non- enjoyment is solely due to any act or omission on the part of the owner of that land.

21. Issue of certificate.- (1) Subject to such modifications as may be made under sub-section (5) or sub-section (7) of section 20 in the statement prepared under sub-section (1) or sub-section (2) of that section, a certificate showing the area of land and the crop cultivated therein shall be issued by the Tahsildar, in such form and in such manner and subject to such conditions as may be prescribed , to the owners of the lands included in the said statement and copies thereof shall be sent by him to the officers of the local authority within the local area of jurisdiction of which the lands included in the certificate situate.

(2) A certificate issued under sub-section (1) shall be valid for a period of ten years from the date of issue, unless cancelled in accordance with the provisions of this Act or modified as and when the crops or cropping pattern is changed.

(3) The owner of land to whom a certificate has been issued under sub-section (1) may, within forty five days from the date of receipt of the same apply to the prescribed authority for the cancellation or modification, as the case may be, of the certificate if he is aggrieved by the issue of, or by any of the conditions in, the certificate.

(4) On receipt of an application under sub-section (3) the prescribed authority may, after such enquiry as it thinks fit and after giving the owner of the land an opportunity of being heard, for reasons to be recorded in writing, by order, cancel or modify, or refuse to cancel or modify, the certificate.

(5) Any person aggrieved by an order of the prescribed authority under sub-section (4) may, within forty five days from the date of receipt of the order by him, appeal to the Collector in such manner as may be prescribed and the Collector shall, after giving him an opportunity of being heard, pass within sixty days from the date of receipt of the appeal, such order thereon as he thinks fit.

(6) The order of the Collector under sub-section (5) shall be final.

(7) Where a certificate has not been issued to the owner of a land included in the statement prepared under sub-section (1) or sub-section (2) of section 20 or if such statement has been modified under sub-section (5) or sub-section (7) of that section, in such modified statement, such owner may apply to the Tahsildar, within such time as may be prescribed, for

the issue of the certificate and the Tahsildar may, within thirty days from the date of receipt of the application, issue, or refuse to issue the certificate after such enquiry as he deems fit.

22. Cancellation or modification of certificate.- Notwithstanding anything contained in section 21, the Secretary to Government, Water Resources Department or an officer authorised by Government in that behalf may, at any time, for reason to be recorded in writing by order, cancel or modify a certificate issued under that section:

Provided that no such order shall be made without giving the person affected by the order an opportunity of being heard.

23. Levy of irrigation cess by Government.- (1) The Government shall be entitled to levy an annual irrigation cess on all lands in respect of which certificates have been issued under section 21, so long as such certificates are in force.

(2) The levy of irrigation cess under sub- section (1) shall be at such rate as may be notified by Government from time to time and shall be paid within such time and in such manner as may be prescribed.

(3) Arrears of irrigation cess levied under sub-section (1) shall bear interest at the rate of 6% per annum.

(4) Every owner to whom, certificate has been issued under section 21 shall, so long as such certificate is in force, be liable to pay the water cess levied under sub-section (1) on or before the due date as shown in the certificate without any separate demand for payment.

24. Exemption from payment of irrigation cess.- Where there has been failure of crops in any area, the Government may notwithstanding anything contained in this Act, by notification, for reasons to be specified in the notification, make an exemption or reduction in rate in respect of the irrigation cess leviable under this Act on any land included in the notification for such period as may be specified therein.

25. Levy of irrigation cess by local authority.- (1) A local authority may, with the previous sanction of the Government, levy an annual irrigation cess on lands benefited by minor irrigation works executed by it.

(2) The rate of irrigation cess levied under sub-section (1) shall be fixed by the Government from time to time:

Provided that the rate of irrigation cess fixed under sub-section (2) shall in the case of minor irrigation works, not more than the rate at which irrigation cess is levied by the Government on lands benefited by medium irrigation works executed by the Government.

(3) Where there has been failure of crops in any area, the local authority concerned may by resolution make an exemption or reduction in rate in respect of the irrigation cess leviable under this section on any land within their jurisdiction.

CHAPTER VI

OBTAINING MATERIALS IN EMERGENCIES

26. Impressment of materials for urgent works, repairs, etc.-(1)Whenever it appears to the Irrigation Officer that unless some work or repair is immediately executed, an irrigation work would sustain such serious damage as to cause sudden and extensive public injury, such officer or any other person authorised by him in that behalf may, under intimation to the owner or occupier of any land in the neighbourhood of any such irrigation work, enter upon and take possession of such land and appropriate or remove any trees, timber, bamboos, mats, ropes, straws, earth, stones, or other materials found therein, and use the same for the purpose of such work or repair.

(2). The Irrigation Officer or any other person authorised by him, who appropriates or removes any materials under sub-section (1), shall prepare an inventory thereof and keep it as a record duly signed by himself, the owner or occupier of the land and two witnesses of the locality.

27. Payment for materials taken.-(1) The Irrigation Officer shall, as early as possible, but in no case later than thirty days from the date on which the work or repair under section 26 was completed, pay to the person whose materials were taken for the said purpose, the cost of such materials calculated at a rate of 25% in excess of the prevailing market rate.

(2) If any dispute arises as to the prevailing market rate of any materials, such disputes shall be referred by the Irrigation Officer to the Collector, whose decision thereon shall be final.

(3) Where the cost of materials is not paid within the period specified in sub-section (1), it shall bear interest at the rate of 12% per annum.

28. Payment for damage in taking materials.- Whenever as a result of the removal of any tree, timber, bamboos, earth, stone or other materials under section 26,causes any damage directly to the property of any person, the Irrigation Officer shall compensate that person for such damage, and in case of dispute as to the sufficiency of the amount so paid, he shall refer the dispute to the Collector whose decision thereon shall be final .

CHAPTER VII

REGULATION OF WATER SUPPLY FOR IRRIGATION

29. Distribution of Water from Irrigation Works.- (1) Distribution of water from all irrigation works constructed or maintained wholly or partly at the cost of Government shall be regulated by such rules or orders as may be made or issued by the Government from time to time.

(2) Distribution of water from irrigation works constructed or maintained at the cost of a local authority shall be subject to such regulations as may be made by that authority.

(3) An irrigation calender shall be published one month before the date of water distribution by the Water Resourses Department every year, and the same shall be formed or modified in accordance with the need and cropping pattern every year, in consultation with the beneficiaries and with the scientific assessment of the water available and demand.

30. Distribution of Water to another State or Union Territory.- No water from a watercourse in the State shall be distributed to any other State or Union Territory, except in accordance with an agreement between the State Government and the Government of such other State or the Union Territory in terms of a resolution to that effect passed by the Legislative Assembly of the State.

CHAPTER VIII

EXECUTION OF WORKS BY JOINT LABOUR

31. Procedure on failure to contribute cost or labour for work to be done by joint labour.- (1) Where, by local custom or for any other good reason, any work connected with irrigation or flood control or drainage of water for the purpose of agriculture is to be done by the joint labour or at the cost of owners of all the lands likely to be benefited by such work, and where any of such owners fails or neglects to do his share of the work or contribute his share of the cost of labour, it shall be lawful for the Collector, or the Punja Special Officer, appointed by government in this behalf or any other officer authorised by the Government, on the application of one or more of the owners interested in such work or injured or likely to be injured by such failure or neglect, to investigate the matter and pass such order as he deems fit, and he may, by such order, also direct the defaulting owner to execute any portion of such work or pay any portion of the cost of the work.

(2) An order directing that the defaulting owner shall execute the portion of the work shall also specify the portion of the work to be executed, the time within which it should be done, and the estimate of the cost of such work prepared in such manner as may be prescribed.

(3) Where the defaulting owner refuses or fails to execute such work within the time specified in the order under sub-section (1), the Collector, the Punja Special Officer or such other officer authorised by the Government under that sub-section may entrust the work to be executed by some other person, and the cost thereof may be recovered from the defaulting owner in such manner as may be prescribed.

32. Dewatering etc. of Padesekharam:- (1) Where the committee of a padasekharam applies to the Collector, the Punja Special Officer or any other officer authorised by the Government in that behalf, to arrange for the dewatering of that Padasekharam for the purpose of paddy cultivation, it shall be lawful for the Collector, the Punja Special Officer or such other officer to arrange for the dewatering of such padasekharam and to recover the cost of such dewatering from all the owners of such padasekharam:

Provided that arrangement for dewatering shall not be made unless the Irrigation Officer has certified, after due investigation, the safety of the land in a padasekharam.

(2) The Collector, the Punja Special Officer or the officer authorised under sub-section (1), arranging dewatering of any padasekharam under the said sub-section or any person or persons authorised by him to undertake such dewatering work shall, notwithstanding anything contained in any other law for the time being in force, have the

power to enter upon any field in that padasekharam and to install any machiney for the purpose of such dewatering and to execute any temporary work incidental thereto.

(3) Where cultivation in any padasekharam or in any portion thereof is likely to be affected for want of proper irrigation or drainage facilities, the Collector, the Punja Special Officer or the officer authorised by the Government under sub-section (1) shall have the power to arrange for the execution of any temporary work as is necessary to irrigate or drain the padasekharam or any portion thereof, as the case may be, and the cost thereof shall be realised from all the owners of the padasekharam.

Explanation.- In this section and in section 33 and 34,-

(i) "committee of padasekharam" means the committee of the owners of padasekharam constituted in such manner as may be prescribed; and

(ii) "padasekharam" means collection of paddy fields contiguously situated, whether owned by one or more than one person.

33. Construction or Repair of Bund.-Where a bund or a portion of a bund to be constructed or repaired by joint labour, or at the cost, of all the owners of a padasekharam has not been constructed or repaired properly by such owners, it shall be lawful for the Collector, the Punja Special Officer or the Officer authorised by the Government under sub-section (1) of section 32 to carry out the construction or repair of such bund or portion, as the case may be, and to recover the cost thereof from all the owners of that padasekharam, after giving notice to the effect..

34. Powers and duties of Collector, Punja Special Officer and the Officer authorised.- The Collector, the Punja Special Officer or the officer authorised by the Government under sub-section (1) of section 31 may exercise such powers and perform such duties as may be prescribed, for the collective benefit of the majority of the owners of a padasekharam.

35. Appeal.- Any person aggrieved by any order under this Chapter, of the Collector, the Punja Special Officer or any officer authorised by the Government under section 31 or section 32 may, as early as possible and in any case not later than ten days from the date of receipt of such order, file an appeal against such order before such officer or authority as the Government may, by notification, specially empower in this behalf, and such officer or authority may, after giving the person affected an opportunity of being heard, pass such order thereon as is deemed just and reasonable within a period of twenty days from the date of receipt of the appeal.

36. Revision.-The Government may, on their own motion or on an application by a person aggrieved by any order under this Chapter, revise any order of the Collector or the Punja Special Officer or the officer authorised by the Government under section 32 or any order of the officer or authority specially empowered under section 35 and pass such orders thereon as are, in their opinion, just and reasonable, after giving the person affected thereby an opportunity of being heard.

CHAPTER IX

SAFEGUARDS FOR IRRIGATION WORKS

37. No encroachment shall be allowed in the irrigation land.-(1) No person shall occupy any irrigation land for cultivation or for any other purpose and the irrigation officer shall take all necessary steps to remove encroachment on such lands.

Explanation :-For the purposes of this sub-section 'irrigation land' means any land owned, controlled or maintained by Government for the purposes of an irrigation work but shall not include a poramboke.

(2) The Government may declare any project area or any irrigation land or part thereof as protected area and entry to such area shall be restricted by the concerned officers.

(3) No person shall let out any industrial effluent or domestic effluent to any water course without proper treatment.

38. Interference with functioning of cross drainage works.-No person shall, except with the written permission of the Irrigation Officer, obstruct the proper functioning of the various cross drainage works, such as culverts, aqueducts, super passages, siphons, weirs and allied works constructed by or with the aid of Government for the safety of canals or channels.

39. Obligation of owners in respect of works affecting safety of canals.-(1) Every owner of land whose tank, well, pond or other reservoir is situated above the level of any irrigation work, shall maintain the bunds and surplussing arrangements of such tank, well, pond or other reservoir in the safe and efficient condition.

(2) Where the Irrigation officer is of opinion that the bunds or surplussing arrangements referred to in sub-section (1) are not in a fit condition and are likely to endanger the irrigation work below, the owner concerned shall be served with a notice requiring him to maintain such bunds or surplussing arrangements in a reasonably fit condition in such manner and within such time as may be specified in the notice.

(3) Where the owner fails to comply with the notice under sub-section (2) or the repairs done by him are in the opinion of the Irrigation Officer unsatisfactory, the Irrigation Officer may carry out necessary repairs to keep such bunds and surplussing arrangements in a fit condition, and the cost thereof shall be realised from such owner in such manner as may be prescribed.

(4) An appeal shall lie against any order of Irrigation Officer under sub-section (3) before the Collector within thirty days from the date of receipt of the order by the owner and the Collector shall decide the appeal within thirty days from the date of receipt of that appeal and his decision thereon shall be final.

40. Mining or quarrying near certain works etc.- (1) The Collector shall, in consultation with the Irrigation Officer, by notification, specify the boundaries of an irrigation work.

(2) Notwithstanding anything contained in any other law for the time being in force, no person shall, without the written permission of the Irrigation Officer, conduct mining or quarrying operation using explosives within a radius of one kilometre of any

bridge, dam, check dam or any other work, structure or construction, owned, controlled or maintained by the Government, a local authority or any other authority.

(3) Any person aggrieved by the refusal of permission under sub-section (2) may, within thirty days from the date of receipt by him of the communication of such refusal, file an appeal to the Collector and the Collector shall decide the appeal within sixty days from the date of receipt of the appeal and his decision thereon shall be final.

Provided that an appeal filed after the expiry of thirty days may be admitted by the Collector if he is satisfied that the appellant had sufficient cause for not filing the appeal in time.

41. Operation of sluice gates, etc.-No person other than the Irrigation Officer or a person duly empowered by him in this behalf shall operate a sluice gate, regulator or flood gate of a reservoir, canal, or water course of an irrigation work owned, controlled or maintained by the Government.

42. Fishing in reservoirs.-(1) No person shall, without the previous permission in writing of the Irrigation Officer and except in accordance with such terms and conditions and subject to the payment of such fees, as may be prescribed, fish in any reservoir owned, maintained or controlled by the Government.

(2) Notwithstanding anything contained in sub-section (1) or in any other law for the time being in force no person shall use any explosive or any poisonous substance for the purpose of fishing in a reservoir.

43. Control of Navigation.- The Government may, by notification, prohibit or regulate by licence or otherwise navigation for commercial purpose in an irrigation work.

Explanation:- For the purpose of this section, navigation for commercial purpose shall include carriage of persons or goods in connection with any business, trade or commerce.

44. Prohibition of letting out water from irrigation work.- No person, other than an Irrigation Officer or an Officer duly empowered by him in that behalf shall let out water from an irrigation work owned, controlled or maintained by the Government by cutting any bund or constructing a sluice or outlet or by any other similar contrivance.

CHAPTER X

BETTERMENT CONTRIBUTION

45. Levy of betterment contribution.- Where the Government are of opinion that it is necessary to levy a betterment contribution, they may levy betterment contribution in accordance with the provisions of this Chapter from the owner of any land which, in their opinion, is benefited by any major irrigation work constructed or completed after the commencement of this Act and of any land benefited by an irrigation work declared to be a major irrigation work under the provisions of this Act, whether constructed before or after such commencement.

Explanation:- A land shall be deemed to be benefited notwithstanding that the benefit is not enjoyed, provided such non-enjoyment is not due to any fault on the part of the Government.

46. Amount of betterment contribution.- (1) An officer authorised by the Government in that behalf may, after previous publication of the proposals in the Gazette or in such other manner as may be prescribed, divide the lands benefited by any major irrigation work into suitable classes and estimate the annual increase in the gross produce of each class of such land:

Provided that all lands which are of the same class and which, judged by their commandability, are so situated as to derive the same amount of benefit from the work shall be placed in the same classes.

(2) The annual increase in the gross produce shall be estimated with reference to the average of the prices prevailing during the five years immediately preceding the date of making such estimate.

(3) Twenty times the annual increase in the gross produce estimated under sub-section (1) shall be deemed to be the increase in the capital value of each class of land, and one fourth of the sum by which the said increase in the capital value exceeds the cost estimated in the manner prescribed for making such class of land fit for advantageous irrigation under the major irrigation work shall be the betterment contribution payable in respect of that class of land.

Explanation.- The cost of making each class of land fit for advantageous irrigation shall include the cost of converting dry land into wet land.

(4) The Government may, by order published in the Gazette, specify the rate of betterment contribution payable per hectare in respect of each class of land determined under sub-section (3).

(5) The Government may, on their own motion or on application by an owner of land aggrieved by an order under sub-section (4), revise the rate of betterment contribution in respect of any land specified in the said order:

Provided that no order increasing the rate of betterment contribution shall be made without giving the person affected thereby an opportunity of being heard.

47. Payment of betterment contribution.-(1) The betterment contribution payable under section 46 in respect of any land shall be paid by the owner of that land in twenty equal annual instalments to such authority, within such time and in such manner as may be prescribed, on a notice of demand issued by that authority:

Provided that no such notice shall be served until the expiry of two years from the date of which the land is provided with irrigation facilities.

(2) The owner of any land in respect of which betterment contribution is payable shall be entitled to a rebate of 40%, provided the entire amount of the betterment contribution is

paid by him within a period of one year from the date on which he becomes liable to pay the same.

48. Postponement of payment of betterment contribution.-Where there has been a failure of crops in any area, the Government may, notwithstanding anything contained in this Chapter or the rules made thereunder, by order, postpone or cancel the payment of all instalments of the betterment contribution for such period as may be specified in the order.

CHAPTERXI

PARTICIPATORY IRRIGATION MANAGEMENT

49. Farmer's Association.-(1) Government may authorise any officer or organisation or local authority to form water users' association by farmers (hereinafter referred to as association) with in an area of every forty hectares.

(2) All the farmers having agricultural lands, fields etc. with in the area shall be members of the association.

(3) Every association shall have an executive committee consisting of eleven members elected from among the members of the association, which shall be responsible for the management and implementation of the programmes of the association.

(4) The members of the executive committee shall be elected once in three years by the members of the association at a meeting where at least fifty percent of the total number of members are present and voting in accordance with the bye- laws of the association.

(5) The Executive committee shall elect from among themselves a president, a vice president, a secretary and a treasurer.

(6) The Government may nominate any of the member of the local authority or any other person, to be a member of the executive committee.

(7) The Government may, from time to time, designate an Assistant Executive Engineer of the Water Resources Department or of the Agriculture Department to assist or supervise the activities of water users' association and the executive committee.

(8) The executive committee may constitute sub- committees to carry out all or any of the functions vested with each association.

(9) Every association shall be registered in such manner as may be prescribed.

(10) Water users' association by the name under which it is registered shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and enter into contract and shall by the said name sue and be sued.

(11) The Government may, from time to time, give directions or suggest modifications as and when required for the functioning of the association or committee or authorise any officer or body of officers for forming and monitoring the activities of such association.

(12) The Government may authorise an association to make water distribution maintenance of such part of water distribution system entrusted with it.

50. Objects of the Farmers Association.- (1) The objects of the association shall be to promote and to secure distribution of water among its users to incite an awareness for water conservation, adequate maintenance of the irrigation system, efficient and economical utilisation of water to optimise agricultural production, to protect the environment and to ensure ecological balance by involving the farmers, inculcating a sense of ownership of the irrigation system in accordance with the water budget and the operation plan.

51. Functions of the Association.- The association shall perform the following functions, namely:-

(i) to prepare and implement water schedule for each irrigation season, consistent with the operational plan, based upon the entitlement, area, soil and cropping pattern as approved by Government or competent authority;

(ii) to prepare a plan for the maintenance of irrigation system in the area of its operation at the end of each crop season and carry out the maintenance works of the distribution system under its control with the funds of the association from time to time ;

(iii) to regulate the use of water among the various pipe outlets under its area of operation according to the water schedule;

(iv) to promote economy in the use of water allocated;

(v) to assist the Revenue Department in the preparation of demand and collection of irrigation cess and betterment levy;

(vi) to maintain a register of land holders as published by the Revenue Department;

(vii) to prepare and maintain a register of co-opted members ;

(viii) to prepare and maintain an inventory of the irrigation system within the area of operation;

(ix) to monitor flow of water for irrigation;

(x) to resolve the disputes, if any, between the members and water users in its area of operation;

(xi) to raise resources;

(xii) to maintain accounts;

(xiii) to cause annual audit of its accounts;

(xiv) to assist in the conduct of elections of office bearers;

(xv) to maintain other records as may be prescribed;

(xvi) to conduct general body meeting; and

(xvii) to conduct regular water budgeting and also to conduct periodical social audit as may be prescribed.

52. Power to levy and collect fees.-An association may for carrying out the functions under this Act, levy and collect such fees as may be prescribed from time to time.

53. Appointment of competent authority and his functions.- (1) The Government shall, by notification, appoint such officer from the Water Resources and Agriculture Departments as they consider necessary, to be competent authority for the association for the purposes of this Act.

(2) The competent authority appointed under sub-section (1) shall be responsible to the respective association in the implementation and execution of all decisions taken by the association.

54. Resources.- (1)The Government may authorise the association to have their own resources for the formation and maintenance of the respective association.

(2) The funds of the association shall comprise the following, namely:-

(a) Grants received from the Government as a share of the water tax collected in the area of operation of the association.

(b) Any membership fee collected.

(c) The fees collected under section 52.

(d) Such other funds as may be granted by the State and the Central Government for the development in its area of operation.

(e) Resources raised from any financial agency for undertaking any economic development activity in its area of operation.

(f) Income from the properties and assets attached to the irrigation system within its area of operation.

(g) Amount received from any other source.

55. Procedure for taking up works.-Government shall authorise the association to take up and execute all the works for rehabilitation of this system prior to taking possession of the same and all maintenance work of the system under the area of operation.

56. . Social audit and monitoring.- (1) At the end of each crop season, Government shall authorise the committee to conduct social audit.

(2) Social audit shall be for both water utilisation against water budgeting and expenditure incurred for maintenance of the system with reference to the fund available to the association.

(3) The social audit shall cover.-

(a) equity in water distribution;

(b) increase in production;

(c) increase in productivity;

(d) crop diversification;

(e) multiple cropping;

(f) water use efficiency;

(g) utilisation of resources for execution of works;

(h) improvement in the cultivated areas of the association compared to previous season;

(i) utilisation of research facilities in adopting high yield varieties of seeds, pesticides etc.;

(j) quality of works undertaken.

(4) The social audit so conducted shall be made known to all the beneficiaries of the association by displaying a list containing the benefits accrued with reference to fund spent on the notice board of the association.

(5) Wherever a work is taken up by the association, the estimated cost of the work, item of work proposed to be executed, details of the executed work are to be exhibited on a board at the place of work.

(6) The competent authority shall render all assistance in the conduct of the social audit.

(7) The social audit so conducted shall be sent to all concerned as stipulated by Government from time to time.

(8) The auditor shall incorporate the social audit report together with the specific observation on rectification of defects, if any, noticed in the social audit.

(9) A copy of the audit report referred to in sub-section (8) shall be exhibited on the notice board of the association.

CHAPTER XII

CONSTITUTION OF DAM SAFETY AUTHORITY

57.Constituition of Dam Safety Authority.- (1) With effect from such date as the Government may, by notification in the gazette, appoint, there shall be constituted for the purpose of surveillance, inspection and advice on maintenance of dams situated within the territory of the State an authority to be called the Kerala Dam Safety Authority.

(2) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, and shall, by the said name, sue and be sued.

Explanation:- For the purpose of this Chapter,-

" dam" means any artificial barrier including appurtenant work constructed across a river or tributaries thereof with a view to impound or divert water for irrigation, drinking water supply or for any other purpose.

58. Composition of the authority.- (1) The Authority shall consist of the following members, namely:-

(a) a retired judge of the High Court who shall be the Chairman of the authority ;

(b) the Secretary to Government, Water Resources Department; ex-officio;

(c) the Chief Engineer, Investigation and Design and two other Chief Engineers of the Water Resources Department to be nominated by the Government; ex-officio;

(d) the Chief Engineer, Central Water Commission, nominated by the Government ;

(e) the Chief Engineer (Civil), The Kerala State Electricity Board ;

(f) the Chairman, Kerala State Pollution Control Board ; ex-officio ;

(g) two experts in the field of conservation of water resources and dams to be nominated by the Government ;

(h) an eminent geologist, nominated by the Government ;

(i) the Director of Centre for Earth Science Studies (CESS); ex-officio ;

(j) the Principal Chief Conservator of Forests ; ex-officio.

(2) The Chief Engineer, Investigation and Design shall be the Member Secretary of the Authority.

(3) The term of office and other conditions of service of the members shall be such as may be prescribed.

59. Meetings.-The Authority shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings, including the quorum there at, as may be provided by regulations.

60. Vacancy in the Authority not to invalidate proceedings.-No act or proceeding of the Authority shall be invalidated merely by reason of,-

(a) any vacancy in, or any defect in the constitution of the Authority; or

(b) any defect in the appointment of a person acting as a member of the Authority; or

(c) any irregularity in the procedure adopted by the Authority not affecting the merits of the case.

61. Appointment of officers and other employees.-The Government shall appoint such number of officers and other employees in such manner, as may be prescribed to assist the Authority in the exercise of its powers and the performance of its functions under this Act.

62. Functions of the Authority .-(1) Notwithstanding anything contained in any treaty, agreement or instrument, the Authority shall have the following functions, namely:-

(a) to arrange for the safety evaluation of all dams in the State;

(b) to conduct periodical inspection of the dam;

(c) to advise any alteration, improvement or replacement of all or any part of the dam found to be in a hazardous condition;

(d) to advise Government or other agencies about policies and procedures to be followed in site investigation, design, construction, operation and maintenance of dams;

(e) to advise Government to suspend the functioning of any dam if the public safety so demands;

(f) to examine the precariousness of any dam, in public interest and to submit its recommendations to the Government;

(g) to inspect and advise Government on advisability of raising or lowering of the reservoir level of any dam taking into account the safety of the dam concerned and the environmental aspects involved;

(h) to inspect and advise the Government on the sustainability of any dam to hold the water in the reservoir thereof;

(i) such other functions as may be assigned by the Government.

(2) As soon as may be after the receipt of any advice or recommendation of the Authority under sub- section (1), the Government shall act thereon and take steps in accordance with such advice or recommendations.

(3) Where the advice or recommendations of the Authority relate to a dam owned or controlled by person other than the Government, it shall be lawful for the Government to issue orders or directions as it deems fit , requiring any person having possession or control of such dam to take such measures or to do such things within such time as may be specified therein to give effect to the advice or recommendations, and such person shall be bound to comply with the orders and directions issued by the Government .

(4) Where any order or direction issued under sub- section (3) is not complied with within the time specified therein, the Government may, if considered necessary for ensuring the safety of the dam or of the public, take possession and control of the dam for such period and take such measures or do such things as may be necessary to give effect to the advice or recommendations of the Authority and the cost incurred by the Government in that behalf shall be recovered in such manner as may be prescribed, from the person to whom the order or direction was issued under sub- section (3).

(5) The disbanding, construction or reconstruction of any dam shall be made only after obtaining a report in that regard from the Authority.

63. Grants by the Government.-The Government may, after due appropriation made by the Legislative Assembly by law in this behalf, provide to the authority grants of such sums of money as the Government may consider necessary

64. Budget.- The Authority shall prepare, in such form and at such time in each financial year as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the authority and forward the same to the Government.

65. Annual Report.- The authority shall prepare, in such form and at such time in each financial year as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and submit a copy thereof to the Government.

66. Accounts and audit.- The accounts of the authority shall be maintained and audited in such manner as may be prescribed and the authority shall furnish, to the Government, before such date as may be prescribed, its audited copy of account together with the auditor's report thereon.

67. Annual report and auditors report to be laid before the Assembly.- The Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before the Legislative Assembly.

68. Members of the Authority to be public servants.- All members, officers, and employees of the Authority shall, when acting or purporting to act in pursuance of the provisions of this Act or of any rule or regulation made there under, be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

69. Power of the Authority to make regulations.-The Authority may, by notification, make regulations not in consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

CHAPTER XIII

PENALTIES

70. Penalties.-(1) Whoever contravenes the provisions of sub-section (1) of section 4 or sub-section (1) of section 5 shall, on conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both;

(2) Whoever contravenes the provisions of section 6 shall, on conviction, be punished with imprisonment for a term which may extend to three years or with fine which may extend to one lakh rupees or with both.

(3) Whoever contravenes the provisions of section 7 shall, on conviction, be punished with imprisonment for a term which may extend to two years or with fine which may extend to twenty-five thousand rupees or with both.

(4) Whoever contravenes the provisions of clause (b) or clause (c) of section 9, section 38, sub-section (2) of section 40, section 41, sub- section (1) of section 42 or section 44 or any regulation or prohibition under section 43 shall on conviction, be punished with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees, or with both.

(5) Whoever contravenes the provisions of sub-section (2) of section 42 shall, on conviction be punished with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees or with both.

(6) Whoever, without proper authority,-

(a) injures, alters, enlarges or obstructs any irrigation work; or

(b) interferes with, increases or diminishes supply of water from any irrigation work ; or

(c) interferes with or alters the flow of water in any irrigation work so as to endanger, injure or render less useful , any such work; or

(d) being entitled to the use of water from an irrigation work, causes or occasions waste of water in such irrigation work or interferes with the authorised distribution of water therefrom or uses water in any unauthorised manner ; or

(e) intentionally corrupts or fouls water of any irrigation work so as to render it less fit for the purpose for which it is ordinarily used; or

(f) destroys, defaces, removes or alters any level marked or water gauge or any other mark or sign fixed in an irrigation work shall, on conviction, be punished with imprisonment

for a term which may extent to one year or with fine which may extend to five thousand rupees, or with both.

71. Punishment for continuing offences.- Where any offence under this Act is a continuing offence, the offender shall, on conviction, be punished with fine not exceeding one hundred rupees for every day during which the offence continues.

72. Enhanced punishment for second or subsequent offences.-Whoever, having been convicted by a Court, of an offence punishable under this Act, again commits the same offence, shall be punishable for every such subsequent offence,-

(a) in respect of any offence referred to in sub-section (1) or sub-section (4) of section 70 with imprisonment for a term which may extend to two years, but which shall not be less than six months, and with fine which may extend to ten thousand rupees;

(b) in respect of any offence referred to in sub- section (2) of section 70 with imprisonment for a term which may extend to three years, but it shall not be less than one year with fine which may extend to one lakh and fifty thousand rupees;

(c) in respect of any offence referred to in sub-section (3) of section 70 with imprisonment for a term which may extend to two years, but it shall not be less than six months, and with fine which may extends to thirty five thousand rupees;

(d) in respect of any offence referred to in sub-section (4) of section 70 with imprisonment for a term which may extend to two years, but which shall not be less than six months, and with fine which may extend to ten thousand rupees ;

(e) in respect of any offence referred to in sub-section (5) of section 70 with imprisonment for a term, which may extend to one year, but it shall not be less than six months with fine which may extend to fifteen thousand rupees.

73. Cost of carrying out work to be recovered from convicted persons.-Where any person is convicted of an offence under section 70 or section 71 or section 72, the cost of removing the obstruction or interference, or repairing the damage, alteration or injury to irrigation work or of replacing or repairing the level mark or any other mark of sign, if any, incurred by the irrigation officer shall be recoverable from such person in such manner as may be prescribed.

74. Cognizance of offences.- (1) All offences punishable under this Act, except the offences under section 4 and sub-section (1) of section 42, shall be cognizable.

(2) No court shall take cognizance of any offence under section 4 or sub-section (1) of section 42 except on a complaint in writing of the facts constituting such offence filed by the Irrigation Officer.

(3) For the purpose of sub-section (2) Irrigation Officer shall be deemed to be an officer-in-charge of a police station.

75. Confiscation in certain cases.- Where any person quarries sand in violation of the provisions of section 7, the Irrigation Officer may, notwithstanding anything contained in this Act, cause to initiate action under the Kerala Protection of River Banks and Regulation of

Removal of Sand Act, 2001 (18 of 2001), for confiscation of the vehicle used for transport of such land.

76. Power to remove persons causing obstructions or damage to irrigation work.- Any officer not below the rank of an Assistant Engineer who is in charge of any irrigation work may,-

(a) remove from the lands or buildings comprised therein; or

(b) take into custody without a warrant, and without unnecessary delay, make over to a police officer, or in the absence of a police officer, take or cause to be taken in custody to the nearest police station:

any person who, in his view-

(i) wilfully damages, alters, enlarges or obstructs any irrigation work; or

(ii) without proper authority interferes with the supply of flow of water, from or in any irrigation work.

77. Offences by companies.- (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in-charge of, and was responsible to the company for the conduct of business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1) where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary, or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- For the purposes of this section,-

(a) "company" means any body corporate and includes a firm or other association of persons or a co-operative society;

(b) "director" in relation to a firm, means a partner in the firm.

CHAPTER XIV

MISCELLANEOUS

78. Application of the provisions of the Act to minor and petty irrigation works.- The Government may at the request of a local authority or otherwise, by notification, declare

that any of the provisions of this Act or of the rules made thereunder, shall be extended to and be in force in respect of any minor or petty irrigation work constructed or maintained by the local authority, subject to such alteration or modifications not affecting the substance, as may be necessary or proper for the purpose of adopting them to the work concerned.

79. Certain private irrigation works to vest in Government.-(1) A private irrigation work in a river other than one vested with a local authority which is not maintained to the satisfaction of the Government or the owner of which is not known, shall vest in the Government and shall be deemed to be an irrigation work constructed by them under section 8.

(2) For the removal of doubt, it is hereby clarified that no compensation shall be payable for the vesting of any irrigation work in the Government under this sub-section.

80. Acquisition of private irrigation works.- (1) The Government may acquire any private irrigation work, whether completed or not, if in their opinion such an acquisition is necessary for the proper irrigation of land or for any other purpose incidental or ancillary thereto.

(2) The provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894), shall apply in respect of an acquisition under sub-section (1).

(3) A private irrigation work acquired by the Government shall, for the purpose of this Act, be deemed to be an irrigation work constructed by the Government at their cost.

81. Power of entry, inspection etc.- (1) Any officer of the Revenue Department, not below the rank of Deputy Tahsildar, or any officer not below the rank of Assistant Engineer of the Water Resources Department may, after giving notice in such form as may be prescribed, enter upon any land, with or without assistance of workmen to make any investigation, inspection, test, examination, survey or measurement of any land for the purpose of executing an irrigation work.

(2) Any officer of a local authority authorised by such local authority in this behalf may, with or without assistance of workmen, enter upon any land to make any investigation, inspection, test, examination, survey or measurement for the purpose of executing any minor or petty irrigation work or an irrigation work entrusted to such local authority under section 13.

(3) Where any officer referred to in sub-section (1) or sub-section (2) proposes to enter any enclosed premises, he shall give the occupier of such enclosed premise at least one day's notice in writing of his intention to do so, if the occupier denies entry on request.

(4) Where any damage has been caused to any irrigation work due to accident or otherwise, or where any danger is apprehended to any such irrigation work, any officer referred to in sub-section (1) or sub-section (2), as the case may be, may, with or without assistance of workmen, enter upon any land adjacent to such work and executive the work necessary for the purpose of repairing such damage or preventing danger to the irrigation work.

(5) In every case in which action is taken under this section, the officer taking such action shall fix and pay in the prescribed manner compensation to the owner of the land concerned for all damage or loss caused to such owner.

(6) Where there is any dispute with respect to the amount of compensation fixed under sub-section (5), the officer shall refer the dispute to the Collector whose decision thereon shall be final.

82. Power to summon and examine witness etc.- (1) Any officer empowered under this Act to conduct an enquiry shall, while holding such enquiry have all the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavit; and

(d) any other matter which may be prescribed.

(2) Every enquiry under this Act shall be deemed to be a judicial proceeding for the purposes of section 193 and 228 of the Indian Penal Code,1860 (Central Act 45 of 1860).

83. Protection of action taken in good faith.- (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is done in good faith or intended to be done in pursuance of the provisions of this Act or any rule or order made or issued thereunder.

(2) No suit, prosecution or other legal proceedings shall lie against the

Government or any local authority or any officer or servant of the Government or of a local authority for anything which is done in good faith or intended to be done in pursuance of the provisions of this Act or any rule or order made or issued thereunder.

84. Certain persons to be public servants.- Any person authorised under sub-section (3) of section 4 or under sub-section (1) of section 26 shall be deemed to be public servant within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

85. Water charges for unauthorised or wasteful use of water.- (1) Where any person unauthorisedly uses or takes water from any irrigation work or any person authorised to use water from any irrigation work causes or occasions waste of water, such person shall be liable to pay in addition to the penalties that may be imposed on him by or under this Act, such water charges as the Collector may, on a report of the Irrigation Officer, determine, for the water used or taken unauthorisedly or wasted, as the case may be.

(2) Whoever abstracts or diverts water from a watercourse in violation of the provisions of section 4 or section 5 shall be liable to pay, in addition to the penalties that may

be imposed on him, by or under this Act, such amount of water charges as the Collector may on a report of the Irrigation Officer determine, for the water so abstracted or diverted:

Provided that no water charges under sub-section (1) or sub-section (2) shall be determined without giving the person affected thereby a written notice specifying the proposed amount of water charges and giving him an opportunity of being heard.

(3) Any person aggrieved by an order of the Collector under sub-section (1) or sub-section (2), may appeal to the Government in the prescribed manner and the Government shall decide the appeal within three months from the date of receipt of the appeal and the decision of the Government thereon shall be final.

86. Recovery of cost of repairing of damage where offender is unascertainable.- Where the person causing any damage, alteration, enlargement or obstruction to any irrigation work without proper authority cannot, after such inquiry as the Collector may deem sufficient, be ascertained or identified, the Collector may on a requisition from the Irrigation Officer and after giving not less than one month's notice to the owners of all the lands benefited by the damage, alteration, enlargement or obstruction, as the case may be, and after hearing their representations, if any, recover from them, in such proportion as he thinks fit, the cost of repairing such damage, or of removing such alteration, enlargement or obstruction.

87. Closure or Restriction of Natural Water Collection.-No person shall be permitted to close or reduce the size of any natural water collection area such as pond, thodu etc. without prior sanction accorded by Government in consultation with Soil Conservation Department.

88. Mode of recovery of money.- Any amount due from any person in pursuance of the provisions of this Act or the rules made thereunder may, if the amount is in arrear, be recovered, without prejudice to any other mode of recovery, in the same manner as an arrear of public revenue due on land.

89. Decision on disputes.- If any dispute arises as to whether any work is an irrigation work for the purposes of this Act, the dispute shall be referred to the Government for decision, and the decision of the Government thereon shall be final.

90. Constitution of Water Management and Utilisation Board .- (1) The Government may, by notification, constitute a Water Management and Utilisation Board with respect to any basin or cluster of river basins or project or irrigation work or any major irrigation work, for advising the Government on matters relating to the regulation of the distribution of water from the irrigation work in that area or the major irrigation work, as the case may be, and on such other matters as may be referred to it.

(2) The Board constituted under sub-section (1) shall consist of not more than twenty members appointed by the Government representing agriculturists in the area, non- officials of such interests as may be prescribed, officials and representatives of local bodies:

Provided that the agriculturists and non-official members taken together shall have majority in the Board.

(3) The term of office of a member, other than an official member, of the Board shall be three years from the date of constitution of the Board, unless his term is terminated earlier by the Government by notification.

91. Directions by Government.- (1) The Government may from time to time, give directions of a general nature, not inconsistent with the provisions of this Act, in respect of matters connected with irrigation, to be followed by any person, a local authority or a co-operative society or other society or body corporate.

(2) In the performance of the functions under this Act, a person, a local authority, a co-operative society or other society or body corporate shall not depart from any direction given under sub-section (1), except with the previous permission of the Government.

92. Removal of difficulties.- (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may by order published in the Gazette, make such provisions not inconsistent with the provisions of this Act or the rules made thereunder as appear to them to be necessary or expedient for the purpose of removing such difficulty:

Provided that no such order shall be issued under this sub-section after the expiry of two years from the date of commencement of this Act.

(2) Every order issued under sub-section (1) shall, as soon as may be, after it is issued, be laid before the Legislative Assembly.

93. Act to override other laws.- (1) Subject to the provisions in sub-section (2), the provisions of this Act shall have effect notwithstanding anything in any other law for the time being in force or in any custom or usage, or in any contract, express or implied, inconsistent with the provisions of this Act.

(2) The provisions of this Act shall be in addition to, and not in derogation of the provisions of the Kerala Command Areas Development Act, 1986 (37 of 1986) and Kerala Water Supply and Sewerage Act ,1986 (14 of 1986).

94. Power to make rules.-(1) The Government may, by notification, make rules either prospectively or retrospectively to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-

(a) all matters expressly required or allowed by this Act to be prescribed; and

(b) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following ,the Legislative Assembly makes any modification in the rule or decide that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may

be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

95. Repeal and saving.-The Acts included in Part A of the schedule shall cease to be in force in the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 (Central Act 37 of 1956), and the Acts included in Part B of the said schedule are hereby repealed:

Provided that such cessation or repeal shall not affect,-

(a) the previous operation of the said enactment or anything duly done or suffered thereunder;

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the said enactment;

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against the said enactment; or

(d) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act has not been passed.

THE SCHEDULE

PART A

1. The Madras Irrigation Cess Act, 1865 (VII of 1865)

2.The Madras Irrigation (Voluntary Cess) Act, 1942 (XIII of 1942)

3. The Madras Irrigation Works (Repairs, Improvement and Construction) Act, 1943 (XVIII of 1943).

4. The Malabar Irrigation Works (Construction and Levy of Cess) Act, 1947(VII of 1947).

5. The Madras Irrigation Tanks (Improvement) Act, 1949 (XIX of 1949)

6. The Madras Irrigation (Levy of Betterment Contribution) Act, 1955 (3 of 1955).

PART B

1. Travancore-Cochin Irrigation Tanks (Preservation and Improvement) Act, 1952 (23 of 1952).

2. The Travancore- Cochin Irrigation Act, 1956 (VII of 1956)

3. The Kerala Irrigation Works (Execution by Joint Labour) Act, 1967 (20 of 1967).