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BOERASIRIE CREEK ACT

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BOERASIRIE CREEK ACT

1929 Ed.
c. 135
1953 Ed.
c. 275

7 of 1889

An Act to consolidate and amend the Laws relating to the Conservation and Distribution of the Waters of the Boerasirie Creek.

[28TH SEPTEMBER, 1889]

Short title.

1. This Act may be cited as the Boerasirie Creek Act.

Interpretation.
[9 of 1949]

2. In this Act—

“the Boerasirie” means the Boerasirie creek and includes any tributaries thereof;

“the Commissioners” means the Boerasirie Commissioners appointed under this Act;

“part proprietor” means a proprietor by virtue of any Act, transport, declaration of title, or letters of decree, of a part of a plantation;

“plantation” means any one of those plantations or estates;

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‘plantations’ means the plantations mentioned in the first column of the Schedule of the acreage set forth in the second column thereof, and includes any other plantations or estates which the Minister may, by order, declare shall be subject to this Act;

Schedule.

‘proprietor’ means a proprietor by virtue of any Act, transport, declaration of title or letters of decree, of a plantation.

APPOINTMENT OF BOERASIRIE COMMISSIONERS

3. (1) Four Commissioners shall be appointed under and for the purposes of this Act, and shall have the powers and perform the duties hereinafter specified.

Establishment of the Commission. [O.11/1960]

(2) The Commissioners shall be styled The Boerasirie Commissioners, and by that name may sue and be sued in all courts of justice.

4. (1) Three of the Commissioners shall be elected in the manner hereinafter provided and one Commissioner shall be appointed by the Minister.

Mode of appointment and tenure of office of the Commissioners.

(2) A Commissioner shall hold office for two years, and shall be eligible to be re-elected:

Provided that in any case where the proprietors of the plantations resolve by a majority of votes that any Commissioner shall cease to hold office, he shall thereupon cease to be a Commissioner.

5. (1) Whenever a Commissioner dies, leaves Guyana, or becomes unable to act, or resigns or otherwise vacates his office, a Commissioner shall be elected at a meeting of the proprietors of the plantations.

Election of the Commissioners.

(2) The person having the majority of votes of proprietors present or voting at a meeting shall be deemed to have been appointed Commissioner.

(3) Notice of the appointment shall be published in the *Gazette*.

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(4) The Minister may grant to any Commissioner one months' leave of absence on his application therefor.

Apportionment
of votes and
mode of
voting.
[9 of 1949]

6. (1) Every proprietor and every part proprietor or the representative of part proprietors appointed as hereinafter provided shall have one vote for each one hundred acres of the area owned by him or them.

(2) When any plantation or portion of a plantation is owned by more than one proprietor or part proprietor in undivided shares and each of such proprietors or part proprietors desires to vote separately, each of them shall have one vote for each hundred acres of the number of acres obtained by multiplying the total number of acres of the plantation or the portion of a plantation by the fraction representing the undivided interest of that proprietor or part proprietor in the whole plantation or portion.

(3) Where the number of acres so obtained is not a multiple of one hundred, there shall only be one vote for each one hundred acres.

(4) Any proprietor or part proprietor may vote at any meeting by his duly constituted attorney.

(5) Any proprietor or part proprietor, or the duly constituted attorney of a proprietor or part proprietor may, without being present, vote at a meeting by intimating in writing what his vote is.

(6) Where portions (being not less than one hundred acres in the aggregate) of any plantation are owned by two or more part proprietors, the part proprietors may appoint in writing one of their number as their representative for the purpose of voting at any meeting.

Nomination of
officer to vote
for Den
Amstel and
Fellowship.

7. The Minister may from time to time nominate an officer to exercise the right of voting for Den Amstel and Fellowship, or either of them, and the officer so nominated shall, for all the purposes of this Act, be deemed the proprietor thereof.

POWERS AND DUTIES OF THE COMMISSIONERS

8. The Commissioners shall have the following powers, that is to say, they may—

(a) apply for and hold any grants of State land authorised to be issued to them by the Minister;

(b) hold lands for the construction of all necessary works for conserving and distributing the waters of the Boerasirie, and for such works as may be approved or directed by the Minister, and generally for the purposes of this Act;

(c) construct and maintain all such weirs, sluices, locks, kokers, dams, canals, waterways, or other works, both in the Boerasirie and otherwise, as may be expedient for the conservation and distribution of the waters of the Boerasirie, and all such works as are approved or directed by the Minister;

(d) regulate the supply and distribution of water from the Boerasirie and the means of taking or receiving the same; and, for that purpose—

(i) may order a proprietor to remove any weir, sluice, lock, koker, or dam, and on refusal, or failure within a reasonable time, to comply, enter upon that plantation for the purpose of removal and performance of any other work hereby authorised; and

(ii) maintain and control, or construct, maintain and control all canals, waterways, or other works, through any plantation expedient for the conveyance of water to any other plantation or plantations; and

(iii) assess upon any plantation so supplied or deriving benefit from those works, or upon any portion or part of such plantation as hereinafter provided, or upon the whole area included in this Act, the expenses of the construction, maintenance and control and any further sum which the Commissioners in any case decide to be a fair compensation to the proprietor or part proprietor of any plantation through which the water is so conveyed;

General powers and duties of the Commissioners. [9 of 1949]

(e) employ such agents and servants as they consider necessary;

(f) enter into all contracts necessary or expedient for the proper carrying out of their duties;

(g) assess upon the plantations and portions of plantations owned by part proprietors and recover from the proprietors and part proprietors all moneys required or expended by them for the purposes of this Act;

(h) raise on loan any moneys required for the purposes of this Act:

Provided that—

(i) no new work other than the works expressly authorised by this Act, shall be commenced, and no moneys shall be raised on loan, without the sanction of the Minister;

(ii) every assessment shall be at an equal rate per acre over the whole district receiving benefit and for the purpose of fixing the rate of any assessment each plantation shall be treated as a whole;

(iii) every assessment shall be made on and recovered against each plantation and portion of a plantation owned by a part proprietor as a whole, including any other plantation or portion of a plantation if worked with it;

(iv) the area of each plantation shall be taken to be the area stated in the second column of the Schedule or as determined by the Minister and the area of a portion of a plantation owned by a part proprietor shall be taken to be the area stated in the book which the Commissioners are required to keep as hereinafter provided, or as determined by the Minister;

(v) the supply of water permitted to be taken or received by the proprietors of the plantations shall be so regulated that the plantations shall receive an equal quantity of water per acre for each acre of the area of the plantations.

9. Notwithstanding anything in the last preceding section contained, the Minister may order that—

Varying of assessments by Minister. [28 of 1935 9 of 1949]

(a) assessments made under this Act shall not be at an equal rate per acre over the whole district receiving benefit from the scheme established by this Act, but shall be made on any plantation or portion of a plantation owned by any part proprietor at such rate per acre as, in the circumstances of the particular case, he thinks just and reasonable;

(b) assessments under this Act shall not be made upon each plantation as a whole, but shall be made upon any part of a plantation, and may be recovered against that part separately from the rest of the plantation; and

(c) the supply of water permitted to be taken or received by a proprietor or part proprietor shall not be the same per acre for each acre of the area owned by him as that permitted to be taken or received by any other proprietor or part proprietor but may be such quantity per acre as aforesaid as in the circumstances of the particular case he thinks just and reasonable;

(d) any two or more plantations in the Schedule or included therein by order under section 19(1)(b) shall be combined for the purposes of this Act and what shall be the acreage of any such combined plantations. Any plantations so combined shall, during the existence of the order, be deemed to be one plantation for all the purposes of this Act;

Power to Minister to combine plantations and vary the acreage of a plantation.

(e) the acreage of any plantation in the Schedule or included therein by order, or of any combined plantation may be varied and shall be the quantity stated in the order.

10. (1) The Commissioners may construct and maintain—

Works to be constructed and maintained by the Commissioners.

(a) a canal from the Boerasirie to Versailles on the west bank of the river Demerara;

(b) a canal from the Boerasirie to Philadelphia;

(c) a dam from Philadelphia to the rising ground aback of the said plantation;

(d) a lock in the Boerasirie; and

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(e) any works which the Minister may direct to be constructed and maintained as necessary works, in addition to or in substitution for any of the foregoing works.

(2) All the foregoing works shall be constructed in accordance with the plans and specifications thereof deposited by the Secretary of the Court of Policy on the 17th October, 1884, in the deeds registry, and according to such directions as may have been or may hereafter be given by the Minister.

(3) All moneys heretofore expended on or about the aforesaid works may be recovered by the Commissioners from the plantations.

Navigation of
and traffic on
the Boerasirie.

11. (1) The Commissioners shall be bound to make provision, to the satisfaction of the Minister, for the navigation of and traffic on the Boerasirie, and on any other creeks or waterways affected by works constructed or maintained by the Commissioners.

(2) In default of the Commissioners so making provision, the Chief Works and Hydraulics Officer is hereby authorised to do any acts or execute any work in that behalf directed by the Minister, and to recover the cost thereof from the Commissioners.

Recovery of
amounts due to
the Commis-
sioners.
[9 of 1949]

12. (1) The Commissioners may recover all assessments and sums due to them in respect of a plantation by parate execution against the proprietor of the plantation, but no parate nor summary execution shall be issued against any State land.

(2) A statement that any amount is due by the proprietor of any plantation, purporting to be signed by a Commissioner, shall, without any proof of the signature or other matter, be deemed *prima facie* proof that the amount stated is so due.

(3) The assessments shall be due on the 1st January in each year but may be paid in moieties payable on or before the 30th June and on or before the 31st December of each year. Interest at the rate of six per cent *per annum* shall be payable on every assessment or part thereof which has not been paid at the prescribed time until payment of the amount due.

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13. The Commissioners shall keep proper books of account, and shall enter therein all expenditure and all receipts.

Accounts by the Commissioners.

14. (1) When the Commissioners disagree as to any matter, the question in dispute shall be laid before the Minister, who may thereupon make such order as he deems right, and his decision shall be without appeal.

Disagreement of the Commissioners.

(2) The Commissioners may make by-laws under the Water Commissioners Act.

By-laws. c. 55:02

MEETINGS OF PROPRIETORS

15. (1) The Commissioners shall keep a book (hereinafter referred to as the register book), in which shall be entered from time to time the names and areas of the plantations and portions of plantations liable to be assessed and the names of the proprietors and part proprietors.

Register book of plantations. [9 of 1949 6 of 1997]

(2) Any proprietor, or the attorney of any proprietor, of a plantation or part of a plantation liable to be assessed under this Act may from time to time require the address (hereinafter referred to as the registered address) of the proprietor to be registered by the Commissioners in the register book.

(3) The Commissioners shall as soon as possible after the commencement of this subsection, by notice published on two successive Saturdays in the *Gazette* and one daily newspaper circulating in Guyana, require all part proprietors to register their names and addresses and to produce their transports or other documents of title to the Commissioners for the purpose of registration.

(4) If subsequent to the publication of such notices, any part proprietor or any person who becomes a part proprietor fails to register his name and address and to produce his transport or other document of title as aforesaid, he shall not for the purposes of this Act be treated as a part proprietor until he does so:

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Provided that if any assessment has already been made or parate execution has already been issued, the Commissioners may proceed with the assessment or parate execution as made or issued.

(5) Any notice required to be sent to, and any legal process required to be served on, any proprietor or part proprietor may be sent through the post office to, or served at, the registered address of the proprietor or part proprietor, and that service shall be deemed valid service for all the purposes of this Act on the proprietor or part proprietor whose address is so registered.

(6) Any part proprietor who fails to comply with any notice published under the provisions of subsection (3) shall be liable to a fine of nine thousand seven hundred and fifty dollars.

Ordinary half-yearly meetings of proprietors.

16. (1) Meetings of the proprietors of the plantations shall be held in the months of January and July in each year.

(2) At each half-yearly meeting, the Commissioners shall produce all books of account and an abstract of all expenditure and receipts during the previous half-year, and also a correct statement of all outstanding liabilities and moneys due to or by them and unpaid.

Extraordinary meeting.

17. (1) A meeting for the consideration or transaction of business, or for the election of a Commissioner, may be called at any time by the Commissioners or one of them, or by the proprietors of any plantations possessing twenty-five votes or upwards.

(2) The person calling a meeting shall give notice of the time and place thereof by notice in the *Gazette* and in one other newspaper circulating in the county of Demerara, at least eight days before the meeting, and by sending through the post office a written or printed notice addressed to the proprietor of each plantation.

(3) Every meeting shall be held at some convenient place to be appointed by the person calling it.

(4) No business shall be transacted at any meeting at which there are not actually present proprietors of plantations, or the attorneys of proprietors of plantations, having at least one hundred votes.

18. A proper record shall be kept, in a book to be provided for that purpose, of all business transacted at any meeting of proprietors. Minutes of proceedings.

MISCELLANEOUS PROVISIONS

19. (1) For the more effectual carrying out of the purposes of this Act, the Minister may, by order, order— Orders of Minister.

(a) that the number of Commissioners be increased, and as to the mode of election or appointment and the powers of the Commissioners or of any Commissioner;

(b) that any plantation shall be deemed to be included in the Schedule, and what the area of that plantation shall be deemed to be for the purposes of this Act;

(c) that the Commissioners do execute or refrain from executing any work, or alter or remove any work previously executed;

(d) that the cost of a work shall be apportioned on any specified area determined by the Minister; and

(e) that compensation shall be made by the Commissioners to anyone prejudicially affected by any work and in that case—

(i) compensation shall be paid out of moneys raised or to be raised by an assessment made by the Commissioners on the plantations or on such plantations as the Minister directs; and

(ii) where any question arises as to the proper amount of the compensation to be paid, the Minister may, if he sees fit, order that the question at issue shall be determined in a summary manner by the High Court, and thereupon that question shall be heard and determined by the High Court, and may be so heard and determined in vacation or during non-session of the Court.

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Enforcement
of order.

(2) On failure by the Commissioners to carry out any order aforesaid of the Minister within the period prescribed by the order or by any subsequent order, the Minister may direct the Chief Works and Hydraulics Officer to carry out the said order who may thereupon enter upon any lands in the possession or control of the Commissioners, or otherwise subject to this Act, for that purpose, and the Minister may direct the Commissioners to pay the expenses of carrying out the order by assessment on the plantations or on such plantations as he directs.

Appeal against
action of the
Com-
missioners.

20. (1) Anyone who considers that any work proposed to be executed by the Commissioners will affect him prejudicially, or who is aggrieved by any action of the Commissioners, may apply by petition to the Minister, and the Minister may make such order therein as may be just.

(2) Any order made by the Minister under this section shall be binding on all parties concerned, and shall not be subject to appeal.

Penalty for
damage.
[6 of 1997]

21. (1) Everyone who without lawful excuse wilfully damages any dam, trench, outfall, koker or sluice in the possession or under the control of the Commissioners shall be liable on summary conviction to a fine of not less than four thousand eight hundred and seventy-five dollars and not more than forty-eight thousand seven hundred and fifty dollars, or to imprisonment for three months, and the Commissioners, or the proprietor of any plantation, may prosecute any charge for the damage.

Assessment of
damage if no
conviction.

(2) Wherever damage has occurred to any dam, trench, outfall, koker, or sluice in the possession or under the control of the Commissioners, the Commissioners may assess upon and recover from any plantation immediately adjoining the property so damaged a sum in compensation for that damage, including the loss of any water occasioned thereby:

Provided that where the proprietor of the plantation satisfies the Commissioners that someone has been prosecuted to conviction for the damage he shall not be liable to be so assessed.

(3) The provisions of the last preceding section, as regards the authority of the Minister, shall apply to the assessment last aforesaid.

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22. (1) The State lands aback of any plantation in cane cultivation mentioned in the first column of the Schedule, which are not held by transport, by letters of decree, or by grant from the State, lying between the prolongations of the side lines of that plantation up to the grant or licence of occupancy by virtue of which the Commissioners now hold or may hereafter hold the State lands on which the canal mentioned in section 10 is to be dug, whether they exceed in area five hundred acres or not, shall be granted for all intents and purposes to the proprietor of that plantation on a licence of occupancy during the President's pleasure issued by the Minister and recorded by the Commissioner of Lands.

Tenure of State lands aback of second depth of plantations. Schedule.

(2) The acre money payable in respect of the second depth of any such plantation shall be at the rate of thirty-two one thousand parts of a dollar per acre, and in respect of all land aback of the second depth at the rate of forty-eight one thousand parts of a dollar per acre.

SCHEDULE

ss. 2, 8 & 22
O. 58 of 1981

Plantation	Acreage
Versailles <i>cum annexis</i>	4,433
North half Klien Pouderoyen	612
Vreed-en-Hoop	1,189
L'Union and Nouvelle Flanders	309.0910
Rotterdam	191.8981
Harlem and Mary	231
Wallers Delight	510.8901
Ruimzigt	649
Windsor Forest	985
La Jalousie	1,239
Hague	1,706
Blankenburg	1,322
Den Amstel	630
Fellowship	304
Leonora <i>cum annexis</i>	7,572
Uitvlugt <i>cum annexis</i>	13,394
Vergenoegen <i>cum annexis</i>	5,288
Good Hope <i>cum annexis</i>	197.26

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Plantation	Acreage
Wales <i>cum annexis</i>	15,750
Canals Polder <i>cum annexis</i>	16,211
La Grange	1,135
Nismes	653
Toevlugt	576
La Retraite	593
Ruby - 1 st Depth	200
Farm - 1 st Depth	294
Le Destin	300
Orangestein	625
Bushy Park	262.27
