

**THE BALOCHISTAN CANAL AND DRAINAGE
ORDINANCE, 1980**

(Baln. Ordinance XX of 1980)

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**¹THE ²BALUCHISTAN CANAL AND DRAINAGE
ORDINANCE, 1980**

(Balochistan Ordinance XX of 1980)

[10th December, 1980]

An Ordinance to regulate Irrigation, Navigation and Drainage.

Preamble.

WHEREAS throughout the territories to which this Ordinance extends, the Provincial Government is entitled to use and control for public purposes the water of all rivers and streams flowing in natural channels, and of all lakes, sub-soil water and other natural collection of still water;

AND WHEREAS the Government is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977³, read with the Laws (Continuance in Force) Order, 1977, (CMLA Order No. 1 of 1977)⁴, and in exercise of all powers enabling him in that behalf. the Governor of Balochistan is pleased to make and promulgate the following Ordinance: —

**PART – I
PERLIMINARY**

Short title, extant and commencement.

1. (1) This Ordinance may be called the Balochistan Canal and Drainage Ordinance, 1980.
- (2) It extends to the whole of the Province of Balochistan except the tribal areas.
- (3) It shall come in force at once.

Interpretation clause.

2. In this Ordinance, unless there be something repugnant in the subject; or context: —

¹ This Ordinance, was promulgated by the Governor of Balochistan on 3rd December, 1980; published in Balochistan Gazette (Extraordinary) No. 241, dated 10th December, 1980, Saved and validated by Article 270-A of the Constitution of the Islamic Republic of Pakistan (1973).

² Spelling of the word “Baluchistan”, wherever it appears in this Ordinance, is corrected by insertion of letter “o” instead of “u”; as per Government of Balochistan, S&GAD’s Notification No. SORI (4) 6/ S&GAD-89, dated 18th June, 1989.

³ Proclamation of Martial Law, published in the Gazette of Pakistan, Extraordinary, Part I, dated 5th July, 1977.

⁴ Chief Martial Law Administrator Order I of 1977, published in the Gazette of Pakistan, Extraordinary, Part I, dated 5th July, 1977.

- (1) "Canals" includes: —
 - (a) all canals, channels, tube-wells and reservoirs constructed, maintained, or controlled by the Provincial Government for the supply or storage of water;
 - (b) all works, embankments, structures, supply and escape channels or reservoirs;
 - (c) all water-courses as defined in the subsection (2) of this section;
 - (d) all parts of a river, stream, lake or natural collection of water or natural drainage, channel, to which the Provincial Government has applied the provisions of Part-II of this Ordinance, but does not include a *kareze* not constructed at the cost of the Provincial Government and not maintained or controlled by the Provincial Government or in the construction of which, the contribution of the Provincial Government does not exceed rupees ten thousand;
- (2) "Water-course" means any channel which is supplied with water from a canal, but which is not maintained at the cost of the Provincial Government and subsidiary works belonging to any such channel;
- (3) "Drainage-work" include escape-channels from a canal dams, weirs, embankments, sluices, drains and other works for the protection of lands from flood or from erosion, formed or maintained by the Provincial Government under the provisions of Part VII of this Ordinance, but does not include works for the removal of sewerage from towns;
- (4) "Vessel" includes boats, rafts, timber and other floating bodies;
- (5) "Board of Revenue" means the Board of Revenue established under the West Pakistan Board of Revenue Act, 1957 (Act XI of 1957) as applicable to Balochistan¹;

- (6) ²["District Coordination Officer" means the District Coordination Officer of a District] and includes any officer appointed under this Ordinance to exercise all or any of the powers of a Commissioner;
- (7) "Collector" means the ³[Executive District Officer (Revenue) of a District] or other officer appointed under this Ordinance to exercise all or any of the powers of a Collector;
- (8) "Canal Officer" means an officer appointed under this Ordinance to exercise control of jurisdiction over a canal or any part thereof;
- "Superintending Canal Officer" means an Officer exercising general control over a canal or portion of a canal;
- "Divisional Canal Officer" means an officer exercising control over a division of a canal;
- "Sub Divisional Canal Officer" means an Officer exercising control over a sub-division of a Canal;
- (9) "District" means a district as fixed for revenue purposes;
- (10) "Government" means the Government of Balochistan;
- (11) "Canal Outlet" means a work which passes water from a canal, including a tube well, to a water-course and is constructed, maintained or controlled by Government; *and*
- (12) "Internal Khal" means any channel supplied with water from a water-course for watering fields.

Power to appoint officer.

3. (1) The Government may from time to time declare, by notification in the official gazette, the officers by whom, and the limits within which all or any of the powers or duties hereinafter conferred or imposed shall be exercised or

¹ Adopted by Balochistan Laws (Adaptation) Order, 1975; published in Balochistan Gazette (Extraordinary) No. 17, dated 9th May, 1975.

² Substituted for the words "Commissioner means a Commissioner of a Division" by the Balochistan Ordinance XLVII of 2001; published in the Balochistan Gazette (Extraordinary) No. 181, dated 7th November, 2001. Declared continue in force by Article 270 AA (2) of the Constitution of Islamic Republic of Pakistan, 1973.

³ Substituted for the words "head Revenue Officer of a district and includes a Deputy Commissioner", *ibid*.

performed.

All officers mentioned in sub-section (8) of section 3 shall be respectively subject to the orders of such officers as the Government from time to time may direct.

(2) The Government may from time to time, by notification in the official Gazette, constitute irrigation Committee comprising of not less than three members from amongst the local cultivators for such outlet, or group of outlets and for a canal or portion of a canal, for the assistance of the canal officers for matters, mentioned in Section 64 of this Ordinance.

PART – II
OF THE APPLICATION OF WATER FOR
PUBLIC PURPOSES

Notification to issue when water supply is to be applied for public purposes.

4. Wherever it appears expedient to the Government that the water of any river or stream flowing in a natural channel, or of any lake or other natural collection or still water, or any sub-soil-water should be applied or used by the Government for the purpose of any existing or projected canal or drainage work, the Government may by notification in the official Gazette, declare that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof.

Power of canal officers.

5. At any time after the day so named, a Canal Officer, acting under the orders of the Government in this behalf, may enter on any land and remove any obstructions, and may close any channels, and do any other thing necessary for such application or use of the said water.

Notice as to claims for compensation.

6. As soon as is practicable after the issue of such notification, the Collector shall cause public notice to be given at convenient places, stating that the Government intends to apply or use the said water as aforesaid, and that claims for compensation in respect of the matter mentioned in Section 8 may be made before him.

No compensation to be awarded for an damage.

7. (1) No compensation shall be awarded for any damage caused by: —

(a) Stoppage or diminution or percolation of water or floods;

- (b) deterioration of climate or soil;
- (c) stoppage of navigation, or of the means of drifting timber or watering cattle;
- (d) displacement of labour;
- (e) stoppage or diminution of supply of water through any natural channel to any defined artificial channel, whether above or underground, in use whether constantly or at intervals at the date of the said notification;
- (f) stoppage or diminution of supply of water to any work erected for purposes of profit on any channel, whether natural or artificial, in use at the date of the said notification;
- (g) stoppage or diminution of supply of water through any natural channel which has been used for purposes of Irrigation, whether constantly or at intervals, before the date of the said notification;
- (h) interference with any right to a water-course or the use of any water to which any person is entitled under the Limitation Act, 1908¹, Part IV.

(2) No rights in respect of any of the matters referred to in clauses (a), (b) and (c) of sub-section (1) shall be acquired as against the Government under the Limitation Act, 1908¹, Part IV; and no right to any such supply of water as is referred to in clauses (e), (f) and (g) of sub-section (1) in respect of a work or a channel, as the case may be, not in use at the date of the notification shall be acquired, as against the Government, except by grant or under the Limitation Act, 1908¹, Part IV.

Abatement of rent on interruption of water supply.

8. Every tenant, holding under an unexpired lease, or having a right of occupancy, who is in occupation of any land at time when any stoppage or diminution of water-supply takes place, may claim abatement of the rent previously payable by him for the said land, on the ground that the interruption

¹ That is Act IX of 1908.

reduces the value of the holding.

Enhancement of rent on restoration of water supply.

9. If a water supply increasing the value of such holding is afterwards restored to the said land, the rent of the tenant may be enhanced, in respect of the increased value of such land due to the restored water-supply to an amount not exceeding that at which it stood immediately before the abatement.

Such enhancement shall be on account only of the restored water-supply, and shall not affect the liability of the tenant to enhancement of rent on any other grounds.

PART – III OF THE CONSTRUCTION AND MAINTENANCE OF WORK

Power to enter and survey etc.

10. Any Canal Officer, or other person acting under the general or special order of a Canal Officer, may enter upon any lands adjacent to any canal, or through which any canal is proposed to be made, and undertake surveys or levels thereon;

and dig and bore into the sub-soil;

and make and set up suitable land-marks, level marks and water-gauges;

and do all other acts necessary for the proper prosecution of any enquiry relating to any existing or projected canal under the charge of the said Canal Officer;

Power to clear land.

and, where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing crop, fence or jungle;

Power to inspect and regulate water supply.

and may also enter upon any land, building or water-course on account of which any water rate is chargeable, for the purpose of inspecting or regulating the use of the water supplied, or of measuring the lands irrigated thereby or chargeable with a water rate, and. of doing all things necessary for the proper regulation and management of such canal:

Notice of intended entry into houses.

Provided that, if such Canal Officer or person proposes to enter into any building or enclosed court or garden attached to a dwelling house not supplied with water flowing from any canal, he shall previously give the occupier of such building, court or garden at least seven days notice in writing of his intention to do so.

Compensation of damages caused by entry.

In every case of entry, under this section, the Canal Officer, shall at the time of such entry, tender compensation for any damage which may be occasioned by any proceeding under this section; and, in case of dispute as to the sufficiency of the amount 'so tendered, he shall forthwith refer the same for decision by the Collector and such decision shall be final.

Power to enter repair and prevent accidents.

11. In case of any accident happening or being apprehended to a canal, any Divisional Canal Officer or any person acting under his general or special orders in this behalf may enter upon any lands adjacent to such canal, and may execute all works which may be necessary for the purpose of preparing or preventing such accident.

Compensation for damage to land.

12. In every such case such Canal Officer or person shall tender compensation to the proprietors or occupants of the said lands for all damage done to the same. If such tender is not accepted, the Canal Officer shall refer the matter to the Collector, who shall proceed to award compensation for the damage as though the Government had directed the occupation of the lands under section 43 of the Land Acquisition Act, 1894 (I of 1894).

Application by person desiring to use canal water.

13. Any person desiring to use the water of any canal may apply in writing to the Divisional or Sub-Divisional Canal Officer of the Division or sub-Division of the canal from which the water course is to be supplied, requesting such officer to construct or improve a water-course at the cost of the applicants.

Contents of application.

14. The application shall state the works to be undertaken, their approximate estimated cost, or the amount which the applicants are willing to pay for the same, or whether they engage to pay the actual cost as settled by the Divisional Canal Officer, and how the payment is to be made.

Liability of applicants for cost works.

When the assent of the Superintending Canal Officer is given to such application, all the applicants shall, after the application has been duly attested before the Collector, be jointly and severally liable for the cost of such works to the extent mentioned therein.

Recovery of amount due.

Any amount becoming due under the terms of such application and not paid to the Divisional Canal Officer, or the person authorised by him to receive the same, on or before the

date on which it becomes due, shall, on the demand of such officer, be recoverable by the Collector as if it were an arrear of land revenue.

Government
provide means of
crossing canal.

15. There shall be provided, at the cost of the Government, suitable means of crossing canals constructed or maintained at the cost of the Government at such places as the Government thinks necessary for the reasonable convenience of the inhabitants of the adjacent lands.

On receiving a statement in writing, signed by not less than five of the owners of such lands, to the effect that suitable crossings have not been provided on any canal the Collector shall cause enquiry to be made into the circumstances of the case, and if he thinks that the statement is established, he shall report his opinion thereon for the consideration of the Government, and the Government shall cause such measures in reference to be taken as it thinks proper.

Persons using water
course to construct
works for passing
water across, road,
etc.

16. The Divisional Canal Officer may issue an order to the persons using any water course to construct suitable bridges, culverts or other works for the passage of the water of such water course across any public road, canal or drainage channel in use before the said water course was made, or to repair any such works.

Such order shall specify a reasonable period within which such construction or repairs shall be completed:

If they fail, Canal
Officer may
construct.

And if, after the receipt of such order, the persons to whom it is addressed do not, within the said period construct or repair such works to the satisfaction of the said Canal Officer, he may, with the previous approval of the Superintending Canal Officer, get constructed or repaired the same;

and recover cost.

And if the said persons do not, when so required, pay the cost of such construction or repairs as declared by the Divisional Canal Officer, the amount shall on the demand of the Divisional Canal Officer, be recoverable from them by the Collector as if it were an arrear of land revenue.

Adjustment of
claims between
persons jointly
using water course.

17. (1) If any person, jointly responsible with others for the construction or maintenance of a water-course, or jointly making use of a water course with others, neglects or refuses to pay his share of the cost of such construction or maintenance or to execute his share of any work necessary for such

construction or maintenance, the Divisional or Sub-Divisional Canal Officer, on receiving an application in writing from any person injured by such neglect or refusal, shall serve notice on all the parties concerned that on the expiration of a fortnight from the service, he will investigate the case accordingly, and make such order, thereon as to his seems fit.

(2) Such order shall be appealable to the Commissioner whose order thereon shall be final.

Recovery of
amount found due.

(3) Any sum directed by such order to be paid within a specified period may, if not paid within such period, and if the order remains in force, be recovered by the Collector from the person directed to pay the same, as if it were an arrear of land revenue.

Supply of water
through intervening
water course.

18. Whenever application is made to a Divisional Canal Officer for supply of water from a canal through an existing water course or change of source of water supply of any land and he considers it expedient, he shall give notice to all persons interested including the land owners through whose land and link water course is to pass, to show cause, on a day, not less than fourteen days from the date of such notice, why the said supply should not be so conveyed, or the source of supply be changed; and, after making enquiry on such day, the Divisional Canal Officer shall determine, whether and on what conditions the said supply shall be conveyed through such water course, or that the source of water supply shall be changed or the link water course shall be aligned and constructed. After the expiry of thirty days of the announcement of that decision of the Divisional Canal Officer, if no objection is received and after giving due opportunity of hearing if any objection is received, the Superintending Canal Officer may confirm or modify that decision. The decision of the Superintending Canal Officer shall be binding on the applicant, the person responsible for the maintenance of the said water course, all the persons affected by the change of course of water supply, and the land owners through whose land the link water course shall pass. Such applicant shall not be entitled to use the said water course until he has paid the expenses of alteration of such water course necessary in order to his beings supplied through it, and also such share of the first cost of such water-course as the Divisional Canal Officer or Superintending Canal Officer may determine. The applicant shall not be entitled to use the link

water-course if any, until;

- (a) he has paid to the land owners the compensation for the land occupied by such link water-course in whatever shape if it is determined through mutual agreement or,
- (b) possession of land for the said link water course has been acquired under the provisions of this Ordinance. Such applicant shall also be liable for his share of cost of maintenance of the water course as long as he uses it.

Special powers of Divisional Canal Officer to initiate case under section 17.

19. Whenever Government considers it expedient for specific purpose to empower a Divisional Canal Officer to undertake proceedings under section 17 on his own initiative, it may confer such powers by a general or special order issued in that behalf.

Cutting of supply for any land not being irrigated at site.

20. (1) Whenever, on an application or otherwise, the Divisional Canal Officer considers it expedient to terminate the water supply of any land which cannot be used for agriculture or has become un-irrigatable, he shall give notice of not less than fourteen days to the land owners and the persons responsible for the maintenance of the water course through which such supply is conveyed, to show cause why such supply should not be cut off and after making enquiry, the said canal officer may pass orders to stop the complete or partial supply of water.

(2) After the expiry of thirty days of the announcement of the Divisional Canal Officer, if no objection is received and after giving due opportunity of hearing, if any objection is received, the Superintending Canal Officer may confirm or modify it. The decision of the Superintending Canal Officer shall be final and binding on the parties concerned.

Application for acquisition of land and construction of works thereafter.

21. Whenever it is considered necessary to acquire land for construction of a link water course sanctioned under section 18 or under section 63 for deposit of soil from a water course clearance remitted under section 63 or for transfer of an existing water course sanctioned under section 18, the interested person may apply in writing to the Divisional Canal Officer, stating: —

- (i) that he has endeavoured unsuccessfully to acquire from the owner, the land required for the

construction of the link water course, or for the deposit of soil from the water course, or for the transfer of the existing water course;

- (ii) that he desires the said canal officer, in his behalf and at his cost to do all things necessary for acquiring such land; *and*
- (iii) that he is able to defray all costs involved in acquiring such land and constructed such water course with connected work.

Procedure of Canal Officer thereupon.

22. If the Divisional Canal Officer is satisfied that the statements in the application are true, he shall call upon the applicant to make such deposit as the Divisional Canal Officer considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation which he considers likely to become due under this Ordinance; and upon such deposit being made, he shall mark out the land which will be necessary to occupy for the purpose, and shall forthwith publish a notice in every village that so much of such land as belongs to such village has been so marked out, and shall send a copy of such notice to the Collector of every District in which any part of such land is situated.

Application for transfer of existing water course.

23. Whenever application is made to a Divisional Canal Officer for transfer of an existing water course from its present owner to the applicant, and it appears to him expedient that such transfer should be made in the interest of irrigation, he shall give notice to the person owning such water course to show cause on a day not less than fourteen days from the date of such notice, why the said water course should not be so transferred, and after making enquiry on such day, the Divisional Canal Officer shall determine whether and on what condition the said water course shall be transferred. After the expiry of thirty days of the announcement of the decision of the Divisional Canal Officer, if no objection is received and after giving due opportunity of hearing, if any objection is received, the Superintending Canal Officer may confirm or modify that decision. The decision of the Superintending Canal Officer shall be final and binding on the parties concerned. The applicant shall not be entitled to use the said water course, until: —

- (a) he has paid to the owner, the compensation thereof in whatever shape it is determined

through mutual agreement; or

- (b) possession of the water-course has been acquired under the provisions of this Ordinance.

Liability to acquisition.

24. Notwithstanding anything to the contrary contained in the Land Acquisition Act, 1894¹ or any other law for the time being in force, all land within the Province shall be liable to acquisition at any time under this Ordinance, for constructing a water course or an internal Khal.

When applicant may be placed in occupation.

25. (1) Within fourteen days of the publication of the notice under Section 22, any person interested in the land to which the notice refers may apply to the Superintending Canal Officer by petition stating his objection to the acquisition of land for which the application has been made. The Superintending Canal Officer may either reject the petition or may make alteration in the alignment of the proposed water course as he thinks fit after hearing the Divisional Canal Officer or his representative and the applicant or interested persons by giving them previous notice. Notwithstanding anything to the finality of orders made under Section 18, Section 23 and Section 73, the alteration made under this Section by the Superintending Canal Officer shall be construed as modification made in the orders already made under the said Sections to the extent of orders passed under this Section. The Superintending Canal Officer shall record in writing all orders passed by him under this Section and grounds thereof the orders of the Superintending Canal Officer shall be final and binding on all the parties.

The Superintending Canal Officer shall inform the Collector of the District, Divisional Canal Officer and the applicant of the order passed by him.

(2) After the expiry of fourteen days of the publication of the notice under section 22, if no appeal is preferred to the Superintending Canal Officer and on the announcement of the decision of the Superintending Canal Officer when appeal is preferred to him as aforesaid, the Collector shall proceed within fourteen days to acquire such land or transfer such water course and determine the necessary compensation; provided that the Collector shall take possession under this Section after giving to the occupier thereof notice of

¹ That is Act I of 1894.

fourteen days of this intention to do so.

Appeal against
awards and review.

26. (1) The person entitled to compensation under the awards may accept the award and intimate acceptance in writing to the Collector within fifteen days from the date of the announcement of award.

(2) Any person aggrieved by the award of the Collector may within one month of such award appeal to the ¹[District Coordination Officer]. Where the affected party had no intimation of the award, the appeal may be filed within six weeks of the award. The ²[District Coordination Officer] may after giving the person affected an opportunity of being heard make such order as he may deem fit.

(3) The order of the ³[District Coordination Officer] made on appeal shall be final and shall not be called into question in any Court.

(4) The Collector or the ⁴[District Coordination Officer] either on his own motion or on an application made to him in this behalf by an affected person may at any time review an order made by himself or his predecessor in so far as it corrects an arithmetical, clerical or patent error or mistake only.

Collector,
Commissioner and
Canal Officer to
have powers of
Civil Courts, etc.

27. The Collector, ⁵[District Coordination Officer] and a Canal Officer making any enquiry or conducting any proceedings or exercising the powers of appeal or review under Sections 22, 25 and 26 of this Ordinance shall have the same powers in respect of the following matters as are vested in a Civil Court when trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), namely: —

- (a) Summoning and enforcing attendance of any person, examining him on oath or affirmation;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any record from any court or office;
- (d) issuing commissions for examination of

¹ Substituted for the word "Commissioner" by the Balochistan Ordinance XLVII of 2001. See foot note 2 under section 2 (6) for more details.

² Substituted, *ibid.*

³ Substituted for the word "Commissioner" by the Balochistan Ordinance XLVII of 2001. See footnote 2 under section 2 (6) for more details.

⁴ Substituted, *ibid.*

⁵ Substituted, *ibid.*

witnesses, inspection of property or making any local investigation;

- (e) appointing guardians ad-litem or next friends;
- (f) adding or substituting representatives of deceased parties to proceedings;
- (g) adding or dropping parties from pending proceedings;
- (h) dismissal in default of appearance and restoration of cases dismissed for default;
- (i) consolidating and splitting up cases; *and*
- (j) any other matter connected with the holding of any inquiry or hearing of an appeal.

Expenses to be paid by applicant before receiving occupation.

28. On completion of proceedings under Section 25 and delivery of possession of land, the Divisional Canal Officer may allow the applicant to construct the water course but no such applicant shall be permitted to make use of such land or water course for the requisite purpose, until he had paid such amount as the collector determines to be due as compensation for the land or water course so occupied or transferred, and for any damage caused by the making out or occupation of such land, together with all expenses incidental to such occupation or transfer. If any part of compensation and expenses are not paid when demanded by the person entitled to receive the same, the amount may be recovered by the Collector as if it were arrear of land revenue, and shall, when recovered, be paid by him to the person entitled to receive the same.

Conditions binding on applicant placed in occupation.

29. When any such applicant is placed in occupation of land or of a water course or an internal Khal as aforesaid and permitted to use the same for the requisite purpose, the following conditions shall be binding on him and his representative-in-interest:-

First. All works necessary for the passage across such water course or water courses or land acquired for the deposit of soil, existing previous to its construction and of the drainage intercepted by it, and for affording proper communications across it, for convenience of the neighbouring lands, shall be constructed by the applicant, and be maintained by him or his representative-in-interest to the satisfaction of the Divisional Canal Officer.

Second. Land acquired for the purposes enumerated in Section 21 shall be used only for those purposes.

Third. The proposed water course shall be completed to the satisfaction of the Divisional Canal Officer within one year after the applicant is placed in occupation of the land, In cases in which land is occupied or a water course is transferred on the terms of, a rent-charge.

Fourth. The applicant or his representative-in-interest shall, so long as he occupies such land or water course, pay rent for the same at such rate and on such days as are determined by the Collector when the applicant is placed in occupation.

Fifth. If the right to occupy the land ceases owing to a breach of any of the conditions, the liability to pay the said rent shall continue until the applicant or his representative-in-interest has restored the land to its original condition, or until he has paid, by way of compensation for any injury done to the said land, such amount and to such persons as the Collector determines.

Sixth. The Collector may on the application of the person entitled to receive such rent or compensation, determine the amount of rent due or assess the amount of such compensation; and, if any such rent or compensation be not paid by the applicant or his representative-in-interest, the Collector may recover the amount, with interest thereon at the rate of ten percent per annum from the date on which it became due, as if it were an arrear of land revenue, and shall pay the same when recovered, to the person to whom it is due, if any of the conditions prescribed by this Section are not complied with, or if any water course constructed or transferred under this Ordinance is disused for three years continuously, the right of the application, or his representative-in-interest, to occupy such land or water course shall cease absolutely.

PART – IV OF THE SUPPLY OF WATER

In absence of written contract, water supply to be subject to rules.

30. In the absence of a written contract, or so far as any such contract does not extend, every supply of canal water shall be deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by the Government in respect thereof.

Conditions as to power to stop water supply.

31. Such contracts and rules must be consistent with the following conditions: —

(a) The Divisional Canal Officer may not stop the supply of water to any water course, or to any person, except in the following cases: —

(i) Whenever and so long as it is necessary to stop such supply for the purpose to execute any work ordered by competent authority and with the previous sanction of the Government;

(ii) Whenever and so long as any water course is not maintained in such proper customary repair as to prevent the wasteful escape of water therefrom;

(iii) Within periods fixed from time to time by the Divisional Canal Officer;

¹(iv) Whenever the tenant, occupier owner of land exceeds the area, permitted for cultivation with specified crop, in accordance with the cropping pattern under section 43-A to 43-D of this Ordinance.]

Claims compensation in case of failure of stoppage of supply.

(b) No claim shall be made against the Government for compensation in respect of loss caused by the failure or stoppage of the water in a canal, by reason of any cause beyond the control of the Government or of any repairs, alterations or additions to the canal, or of any measures taken for regulating the proper flow of water therein, or for maintaining the established course of irrigation which the Divisional Canal Officer considers necessary; but the person suffering such loss may claim such remission of the ordinary charges payable for the use of the water as is authorised by the Government.

claims on account of interruption from other causes.

(c) If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in the last preceding clause,

¹ New clause added by Balochistan Ordinance VIII of 2000; made by Governor on 13th November, 2000; and published in Balochistan Gazette (Extraordinary) No. 44, dated 17th November, 2000. Declared continue in force by Article 270 AA (2) of the Constitution of Islamic Republic of Pakistan, 1973.

the occupier or owner of such land may present a petition for compensation the Collector for any loss arising from such interruption, and the Collector may award to the petitioner reasonable compensation for such loss;

Duration of supply. (d) When the water of a canal is supplied for the irrigation of a single crop, the permission to use such water shall be held to continue only until that crop, comes to maturity, and to apply only to that crop; but, if it be supplied for irrigating two or more crops to be raised on the same land within the year, such permission shall be held to continue for one year from the commencement to the irrigation, and to apply to such crops only as are matured within that year;

Sale or sub-letting of right to use Canal water. (e) Unless with the permission of the Superintending Canal Officer, no person entitled to use the water of any canal, or any work building or land appertaining to any canal, shall sell or sublet or otherwise transfer his right to such use:

Provided that the former part of this clause shall not apply to the use by a cultivating tenant of water supplied by the owner of a water course for the irrigation of the land held by such tenant;

Transfer with land of contracts for water. But all contracts made between the Government and the owner or occupier of any immovable property, as to the supply of canal water to such property be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such property takes place;

No right acquired by user. (f) No right to the use of the water of canal shall be or be deemed to have been, acquired under the Limitation Act, 1877, Part IV, nor shall the Government be bound to supply any person with water except in accordance with the terms of a contract in writing.

**PART – V
OF WATER AREAS**

Liability when water is unauthorisedly taken from canal water course.

32. When the water of a Canal be used in unauthorised manner, the Divisional Canal Officer shall after holding an enquiry or causing the enquiry to be held including identification of the person committing the offence and considering the evidence of the Irrigation Committee whenever it exists, levy charges in the manner and to the extent provided in the rules framed under this Ordinance from the person by whose act such use has occurred and if such person cannot be identified, from the person on whose land the water has flowed and if such land has derived benefit therefrom: provided that where the water so used has been supplied through a water course, the charges shall be levied: —

- (a) from the person by whose act or neglect such use has taken place; *or*
- (b) if such person on whose land the water has flowed and such land has derived benefit therefrom; *or*
- (c) if such person cannot be identified or the land on which the water has flowed has derived no benefit therefrom, from all person chargeable in respect of the water supplied through such water course.

Liability when water runs to waste.

33. If water supplied through water course be suffered to run to waste, and if, after enquiry by the Divisional Canal-Officer, the person through whose act or neglect such water was suffered to run to waste cannot be discovered all the persons chargeable in respect of the water supplied through such water course shall be jointly liable for the charges made in respect of the water so wanted.

Charge recoverable in addition to penalties.

34. (1) All charges for the unauthorised use or for waste of water may be recovered in addition to any penalties incurred on account of such use or waste.

(2) All questions under Section 32 or 33 shall be decided by the Divisional Canal Officer.

(3) Any person aggrieved by an order passed by the Divisional Canal Officer in respect of a question under Section 32 may, within thirty days of the passing of such order, may prefer an appeal (i) to the Superintending Canal Officer when the special charges levied by the Divisional Canal Officer are upto three times the occupier's rates; or (ii) to the ¹[District

Coordination Officer] of the Division when the charges levied are more than three times. The Superintending Canal Officer or the ¹[District Coordination Officer] after giving such person an opportunity of being heard, may confirm, modify or set aside the order of the Divisional Canal Officer.

(4) Any person aggrieved by an order passed by the Divisional Canal Officer under Section 33 may, within thirty days of the passing of such order, prefer an appeal to the Head Revenue Officer of the District, who after giving such person an opportunity of being heard, may confirm, modify or set aside the order of the Divisional Canal Officer.

(5) The ²[District Coordination Officer], on an application made to him by any person aggrieved by an order passed in appeal under Sub-Section (4) and the Board of Revenue, on an application made to it by any person aggrieved by an order passed in appeal under sub-section (3) within ninety days of the passing of such order, and after giving such person an opportunity of being heard, may revise the order passed in appeal. The Order passed by the Commissioner or the Board of Revenue, as the case may be, in revision shall be final provided that before filing the revision under that sub-section, it shall be necessary to deposit the amount of charges and penalties with the revision authorities which according to the decision passed in revision shall be liable to be adjusted or refunded.

Charge on occupier for water how determined.

35. The rates to be charged for canal-water supplied for purposes of irrigation to the occupiers of land shall be determined by the rules to be made by the Government, and such occupiers as accept the water shall pay for it accordingly.

Occupier's rate.

A rate so charged shall be called the "Occupier's rate"

The rules hereinbefore referred to may prescribe and determine what persons or classes of persons are to be deemed to be occupiers for the purposes of this section, and may also determine the several liabilities, in respect of the payment of the occupiers rate, of tenants and of persons to whom tenants may have sublet their lands or of proprietors and of persons to

¹ Substituted for the words "Commissioner", by Balochistan Ordinance XLVII of 2001. See foot note 2 under section 2 (6) for more details.

¹ Substituted, *ibid.*

² Substituted, *ibid.*

whom proprietors may have let the lands held by them in cultivating occupancy.

Owner's rate. 36. In addition to the occupier's rate, a rate to be called the "owner's rate" may be imposed, according to rules to be made by the Government, on the owners of canal irrigated lands, in respect of the benefit which they derive from such irrigation.

Amount of owner's rate. 37. The owner's rate shall not exceed the sum which under the rules for the time being in force for the assessment of land revenue might be assessed on such land on account of the increase in the annual value or produce thereof caused by the canal irrigation. And, for the purpose of this section only, land which is permanently settled or held free of revenue shall be considered as though it were temporarily settled and liable to payment of revenue.

Owner's rate when not chargeable. 38. No owner's rate shall be chargeable either on the owner or occupier of land temporarily assessed to pay land revenue at irrigation rates, during the currency of such assessment.

Water rate by whom payable when charged or land held by several owners. 39. Where a water rate is charged on land held by several joint owners, it shall be payable by the manager or other person who receives the rents or profits of such land, and may be deducted by him from such rents or profits before division, or may be recovered by him from the person liable to such rate in the manner customary in the recovery of other charges on such rents or profits.

Certified dues recoverable as land revenue. 40. Any sum lawfully due under this Part, and certified by Divisional Canal Officer to be so due, which remains un-paid after the day on which it becomes due, shall be recoverable by the Collector from the person liable for the same as if it was an arrear of land revenue.

Power to contract for collection of canal dues. 41. The Divisional Canal Officer or the Collector may enter into an agreement with any person for the collection and payment to the Government by such person of any sum payable under this Ordinance by a third party.

When such agreement has been made, such person may recover such sum by suit as though it were a debt due to him; or an arrear of rent due to him on account of the land, work or building in respect of which such sum is payable or for or in which the canal water shall have been supplied or used.

If the person makes default in the payment of any sum collected by him under this section, such sum may be recovered from him by the Collector under section 40 and if such sum or any part of it be still due by the said third party, the sum or party so due may be recovered in like manner by the Collector from, such third party.

Lambardars may be required to collect canal dues.

42. The Collector may require the lambardar, or person under engagement to pay the land revenue of any estate, to collect and pay any sums payable under this Ordinance by a third party, in respect of any land or water in such estate.

Such sums shall be recoverable by the Collector as if they were arrears of land revenue due in respect of the defaulter's share in such estate;

and for the purpose of collecting such sums from the subordinate zamindars, riyats, tenants or sub-tenants, such lambardar or person may exercise the powers, and shall be subject to the rules, laid down in the law for the time being in force in respect to the collection by him of the rents of land or of shares of land revenue.

The Government shall provide —

- (a) for remunerating persons collecting sums under this section; or
- (b) for indemnifying them against expenses properly incurred by them in such collection; or
- (c) for both such purposes.

Fines excluded from sections 37, 38 & 39.

43. Nothing in sections 37, 38 and 39 applies to fines.

Cropping pattern.

¹43-A. (1) Whenever it is found expedient, for the purposes of checking water logging or salinity, or for complying with the designed parameters of the concerned canal system, or for any other good cause, the Government may, by notification lay-down a cropping pattern, for cultivation of crops.

(2) Such cropping pattern may lay-down percentage of total command area, or percentage of cropping intensity, to be followed for cultivation of specified crops, by each tenant,

¹ New sections 43-A to 43-D added by Balochistan Ordinance VIII of 2000. See footnote under section 31 (a) (iv) for more details.

occupier or land owner.

(3) The Government may lay-down such cropping pattern for periods exceeding one cropping season.

Ban of cultivation. 43-B. The Government may, by notification impose ban on cultivation of certain crops in lands situated out-side the canal command area.

Use of canal water. 43-C. Any canal water used for cultivation in Violation of the conditions laid-down under section 43-A, shall be deemed to be a use in an un-authorized manner, in terms of section 32 of this Ordinance.

Penalty. 43-D. Whoever cultivates specified crop in violation of the conditions laid down in the notification issued under section 43-A, shall be punished with imprisonment of either description for a term which may not exceed three months or with fine amounting to twenty thousand rupees per acre, or with both. The crop sown in the area, in excess of permissible limit, notified under this part, shall also be liable to forfeiture.]

PART – VI OF CANAL-NAVIGATION

Detainer of vessels violating rules. 44. Any vessel entering or navigating any canal contrary to the rules made in that behalf by the Government, or so as to cause danger to the canal or the other vessels therein, may be removed or detained, or both removed and detained, by the Divisional Canal Officer, or by any other person duly authorised in this behalf.

Liability of owner of vessels causing damage. The owner of any vessel causing damage to a canal or removed or detained under this section, shall be liable to pay the Government such sum as the Divisional Canal Officer with the approval of the Superintending Canal Officer, determines to be necessary to defray the expenses of repairing such damage or of such removal or detention, as the case may be.

Recovery of fines for offences in navigating canals. 45. Any fine imposed under this Ordinance upon the owner of any vessel, or the servant or agent of such owner or other person Incharge of any vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure, 1898¹,

¹ That is Act V of 1898.

or, if the Magistrate imposing the fine so directs as though it were a charge due in respect of such vessel.

Power to seize and detain vessels on failure to pay charges.

46. If any charge due under the provisions of this part in respect of any vessel is not paid on demand to the person authorised to collect the same, the Divisional Canal Officer may seize and detain such vessel and the furniture thereof, until the charge so due, together with all expenses and additional charges arising from such seizure and detention is paid in full.

Power to seize cargo or goods, if charges due thereon are not paid.

47. If any charge due under the provisions of this part in respect of any cargo or goods carried in a Government vessel on a canal, or stored on or in lands or warehouses occupied for the purposes of canal is not paid on demand to the person authorised to collect the same the Divisional Canal Officer may seize such cargo or goods and detain them until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

Procedure for recovery of such charges after seizure.

48. Within a reasonable time after any seizure under section 46 or section 47 the said Canal Officer shall give notice to the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will on a day to be named in the notice, but not sooner than fifteen days from the date of the notice, be sold in satisfaction of the claim on account of which such property was seized unless the claim be discharged before the day so named.

And, if such claim be not so discharged, the said Canal Officer may, on such day, sell the property seized or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale:

Provided that no greater part of the furniture of any vessel or of any cargo or goods shall be so sold than shall, as nearly as may be, suffice to cover the amount due in respect of such vessel, cargo or goods.

The residue of such furniture, cargo or goods, and of the proceeds of the sale, shall be made over to the owner or person Incharge of the property seized.

Procedure in respect of vessels abandoned and goods unclaimed.

49. If any vessel be found abandoned in a canal, or any cargo or goods carried in a Government vessel on a canal, or stored on or inlands or warehouses occupied for the purpose of a canal, be left unclaimed for a period of ¹[fifteen days), the

Divisional Canal Officer may take possession of the same.

The Officer so taking possession may publish a notice that, if such vessel and its contents, or such cargo or goods, are not claimed previously to a day to be named in the notice, not sooner than ²[three months) from the date of such notice, he will sell the same; and if such vessel, contents, cargo or goods be not so claimed, he may at any time after the day named in the notice, not sooner than ¹[three months] from the date of such notice, he will sell the same; and if such vessel, contents, cargo or goods be not so claimed he may at any time after the day named in the notice, proceed to sell the same.

The said vessel and its contents and the said cargo or goods if unsold, or, if a sale has taken place the proceeds of the sale, after paying all tools, charges and expenses incurred by the Divisional Canal Officer on account of the taking and sale, be made over to the owner of the same, when his ownership is established to the satisfaction of the Divisional Canal Officer.

If the Divisional Canal Officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold as aforesaid, and the proceeds to be paid into the District Treasury, thereto be held until the right thereto be decided by a Court of competent jurisdiction.

PART – VII OF DRAINAGE

Power to prohibit obstruction or order their removal.

50. Whenever it appears to the Government that injury to any land or the public health or public convenience has arisen or may arise from the obstruction of any river, stream or drainage-channel, such Government, may by notification publish in the official Gazette, prohibit, within limits to be defined in such notification, the formation of any obstruction, or may, within such limits, order the removal or other modification of the such obstruction.

Thereupon so much of the said river, stream or drainage channels as is comprised within such limits shall be held to be drainage work as defined in section 2.

Power to remove obstructions after

51. The Divisional Canal Officer, or other person authorised by the Government in that behalf, may, after such

¹ Words "two months" substituted by Balochistan Ordinance XVIII of 1984.

² Words "thirty days" substituted, *ibid*.

prohibition. publication issue an order to the person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in the order.

If, within the time so fixed, such person does not comply with the order, the said Canal Officer may get the obstruction removed or modified; and if the person to whom the order was issued does not, when called upon, pay the expenses involved in such removal or modification, such expenses shall be recoverable by the Collector from him or his representative in interest as an arrear of land-revenue.

Preparation of schemes for works of improvement. 52. Whenever it appears to the Government that any drainage works are necessary for the improvement of any lands, or for the proper cultivation or irrigation thereof, or that protection from floods or other accumulation of water, or from erosion by a river, is required for any lands;

The Government may cause a scheme for such drainage works to be drawn up and published, together with an estimate of its cost which the Government proposes to defray and a schedule of the lands which it is proposed to make chargeable in respect of the scheme.

Powers of persons employed on such schemes. 53. The person authorised by the Government to draw up such scheme may exercise all or any of the powers conferred on the Canal Officer by section 10.

Rate on lands benefitted by works. 54. An annual rate, in respect of such schemes, may be charged, according to rules to be made by the Government, on the owners of all lands which shall, in the manner prescribed by such rules, be determined to be so chargeable:

Provided that in the case of agricultural land no such rate shall be charged for the first two harvests immediately following the completion of the scheme.

Recovery of rate. 55. Any such drainage rate may be collected and recovered in the manner provided by sections 40, 41 and 42 for the collection and recovery of water-rates.

Disposal of claims to compensation. 56. Whenever, in pursuance of a notification made under section 50 any obstruction is removed or modified;

or whenever any drainage-work is carried out under section 52;

all claims for compensation on account of any loss

consequent on the removal or modification of the said obstruction or the construction of such work may be made before the Collector, and he shall deal with the same in the manner provided in section 12.

Limitation of such claims.

57. No such claim shall be entertained after the expiration of one year from the occurrence of the loss complained of, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

PART – VIII OF OBTAINING LABOUR FOR CANALS AND DRAINAGE-WORKS

Definition of "Labour".

58. For the purpose referred to in this Part, the word "Labour" includes persons who exercise any handicrafts specified in rules to be made in that behalf by the Government.

Power to prescribe number of labourers to be supplied by persons benefitted by canal.

59. In any district in which a canal or drainage work is constructed, maintained or projected, the Government may, if it thinks fit, direct the Collector: —

- (a) to ascertain the proprietors, sub-proprietors or farmers whose villages or estates are or will be in the judgement of the Collector, benefitted by such canal or drainage works, *and*
- (b) to set down in a list, having due regard to the circumstances of the District and of the several proprietors, sub-proprietors or farmers, the number of labourers which shall be furnished by any of the said persons, jointly or severally from any such village or estate for employment on any such canal or drainage work when required as hereinafter provided.

The collector may, from time to time, add to or alter such list or any part thereof

Procedure for obtaining labour for works urgently required.

60. Wherever it appears to a Divisional Canal Officer duly authorised by the Provincial Government that, unless some work is immediately executed, such serious damage will happen to any canal or drainage work as to cause sudden and extensive public injury,

and that the labourers, necessary for the proper execution thereof cannot be obtained in the ordinary manner

within the time that can be allowed for the execution of such work so as to prevent such injury.

the said officer may require any person named in such list to supply as many labourers (not exceeding the number which, according to the said list he is liable to supply) as to the said officer seems necessary for the immediate execution of such work.

Every requisition so made shall be in writing and shall state: —

- (a) the nature and locality of the work to be done;
- (b) the number of labourers to be supplied by the person upon whom the requisition is made; *and*
- (c) the approximate time for which and the day on which the labourers will be required;

and a copy thereof shall be immediately sent to the Superintending Canal Officer for the information of the Government.

The Government shall fix, and may from time to time alter the rates to be paid to any such labourers:

Provided that such rates shall not exceed the highest rates for the time being paid in the neighbourhood for similar work.

In the case of every such labourer, the payment shall continue for the whole period during which he is, in consequence of the provisions of this part, prevented from following his ordinary occupation.

The Government may direct that the provisions of this Part shall apply, either permanently or temporarily (as the case may be), to any district or part of a district for the purpose of effecting necessary annual silt - clearances, or to prevent the stoppage of canal or drainage work being stopped or so much interested with as to stop the established course of irrigation or drainage.

Liability of labourers under requisition.

61. When any requisition has been made on any person named in the said list, every labourer ordinarily resident within the village or estate of such person shall be liable to supply and to continue to supply, his labour, for the purposes aforesaid.

PART – IX

OF JURISDICTION

Jurisdiction under this Ordinance of Civil Courts.

62. Except where herein otherwise provided, all claims against the Government in respect of anything done under this Ordinance may be tried by the Civil Courts; but no such Court shall in any case pass an order as to the supply of canal-water to any crop sown or growing at the time of such order.

Settlement of differences as to mutual rights and or liabilities of person interested in the use of water from a canal outlet.

63. (1) Whenever a difference arises between two or more person with regard to the distribution of water from a canal outlet, construction, use maintenance of the water from the outlet, or deposit soil from water course, clearance or mutual rights and liabilities in that regard, any such person may apply in writing to the Sub-Divisional Canal Officer stating the matter in dispute. The Sub-Divisional Canal Officer shall thereupon proceed in the matter as laid down hereafter.

(2) Such officer shall give notice to all persons interested and liable to be affected that on a day to be named in such notice he will proceed to enquiry into the said matter and after such inquiry, he shall pass his order thereon unless he transfers (as he is hereby empowered to do) the matter to the Collector, who shall thereupon enquire into and pass his order on the said matter.

(3) Any person aggrieved by an order made by such Officer under sub-section (2) may within fifteen days of the passing of such order prefer an appeal against the order to the Divisional Canal Officer.

(4) Where an appeal has been preferred under sub-section (3) the Divisional Canal Officer: —

- (a) shall decide the appeal as expeditiously as possible ¹[after hearing the parties];
and
- (b) may pending the disposal of the appeal stay the operation of the order appealed against; provided that the stay order does not adversely affect any standing drops.

(5) The applicant shall not be entitled to use the water course that may be sanctioned under sub-section (2) or (3) above for conveyance of water to his land or the land required for the deposit of soil from water course clearance,

¹ Inserted by Balochistan Ordinance XVIII of 1984.

until: —

- (a) he has paid to the land owner the compensation for the land occupied for any of the aforesaid purpose in whatever shape it is determined through mutual agreement; *or*
- (b) possession of the land has been acquired under the provisions of this Ordinance.

(6) Any order passed under sub-section (2) if there be no appeal preferred against it and an order passed in appeal under sub-section (3) shall be final as to the use or distribution of water for any crop sown or growing at the time when such order is made and shall thereafter remain in force until it is set-aside by a decree of a Civil Court.

Power of Canal Officer to restore interrupted supply.

64. If canal water supply of any land is interrupted by dismantling a water course or internal khal, the Divisional Canal Officer may, upon application made to him in this behalf and after such enquiry as he may deem necessary order interim restoration of the dismantled water course or the internal khal and the interrupted supply of water at the cost of person who interrupted the supply, and if necessary by use of such agency or force as may be called for and such order shall remain in force until the dispute is finally settled under section 61 and if necessary a water course link is constructed under this Ordinance. Any charge determined for restoration of the water course or internal khal shall be recoverable from the person at fault as arrear of land revenue.

Power to summon and examine witnesses.

65. Any Officer empowered under this Ordinance to conduct any enquiry may exercise all such powers connected with the summoning and examining of witnesses as are conferred on Civil Courts by the Code of Civil Procedure¹ and every such enquiry shall be deemed a judicial proceeding.

PART – X OF OFFENCES AND PENALTIES

Offences under the Ordinance.

66. (1) Whoever, without proper authority does any of the following acts, that is to say: —

- (i) cuts through, pierces, damages, alters,

¹ That is Act V of 1908.

- enlarges or obstructs any canal or canal outlet or drainage work;
- (ii) interferes with, increases or diminishes the supply of water, in or the flow of water from, through over or under, any canal or drainage work, or by any means raises or lowers the level of the water in any canal;
 - (iii) interferes with or alters the flow of water in any river or stream, so as to endanger, damage or render less useful any canal or drainage work;
 - (iv) makes any dam or obstruction for the purpose of diverting or opposing the current of a river on the bank whereof there is a flood embankment or refuses or neglect to remove any such dam or obstruction when lawfully required so to do;
 - (v) prevents or interferes with the lawful use of a water-course by any person authorised to use the same;
 - (vi) being responsible for the maintenance of a water-course, or using a water-course, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorised distribution of water therefrom or uses such water in a unauthorised manner;
 - (vii) dismantles water-course or internal khal thereby interrupting or obstructing the irrigation of the land of another person;
 - (viii) corrupts or fouls the water of any canal so to render it less fit for the purpose for which it is ordinarily used;
 - (ix) causes any vessel to enter or navigate any canal contrary the rules for the time being prescribed by Government for entering or navigating such canal;
 - (x) while navigating on any canal, neglects

to take proper precautions for the safety of the canal and of vessels thereon;

- (xi) neglects, without reasonable cause, to assist or to continue to assist in supplying the labourers required of him or being a labourer to supply his labour for the execution of any work, when lawfully so bound to do under Part VI of this Ordinance;
- (xii) destroys, defaces or removes any land or level mark, rain-gauge or water-gauge fixed by a public servant;
- (xiii) destroys, tampers with or removes any apparatus, or part of any apparatus for hydrological observations or for controlling, regulating or measuring the flow of water of any canal, river or stream;
- (xiv) passes or causes animals or vehicles to pass, on or across any of the works, banks or channels of a canal or drainage work contrary to rules made under this Ordinance;
- (xv) causes or knowingly and wilfully permits cattle to graze upon any canal or drainage work or tethers or knowingly and wilfully permits cattle to be tethered upon any such canal or drainage work, or uproots grass or other vegetation growing on any such canal or drainage work, or removes, cuts or anyway injures or causes to be removed, cuts or otherwise injures any tree, bush grass or hedge intended for the protection of such canal or drainage work;
- (xvi) makes or in any manner voluntarily abets the making or an encroachment of any kind within the limits of a canal or drainage work or refuses or neglects to remove any such encroachment, when so

required to do by Canal Officer; *or*

- (xvii) violates any rules made under this Ordinance, for breach whereof a penalty may be incurred, shall be liable on conviction before a Magistrate of such class as the Government directs in this behalf, to a fine not exceeding three months or both.

(2) Whenever any person is convicted under this Section the convicting Magistrate may order that the cost, as certified by the Sub Divisional Canal Officer for removal of the obstruction or repairing the damage in respect of which the conviction is held, shall be payable by him, and if such person neglects or refuses to obey such order within the period to be fixed, the cost of such removal or repairs shall be recoverable from such person by the Collector as arrears of land revenue.

Compensation to person injured.

67. (1) Whenever any person is fined for an offence under this Ordinance, the Court which imposes such fine, or forms a part, may direct that the whole or any part of such fine, may be paid as compensation to the injured person or as reward to the informant.

(2) If the fine be awarded by a Court, whose decision is subject to appeal or revision, the amount awarded by way of compensation or reward, as the case may be, shall not be paid until the period prescribed which confirms, in appeal or revision, a sentence of which such fine for revision has elapsed and when an appeal or appeals or revision is filed till the same is finally disposed of.

Saving of prosecution under other laws.

68. Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Ordinance:

Provided that no person shall be punished twice for the same offence.

Power to arrest without warrant.

69. Any person incharge of or employed upon any canal or drainage work may, remove from the lands or buildings belonging thereto, or may take into custody without a warrant and take forthwith before a Magistrate or to the nearest Police Station, to be dealt with according to law any person who within his view, commits any of the following offences: —

- (1) wilfully damages or obstructs any canal or drainage work;
- (2) without proper authority interferes with the supply or flow of water in or from any canal or drainage-work, or in any river or stream, so as to endanger, or render less useful any canal or drainage work.

Definition of "Canal".

70. In this Part the word "Canal" shall (unless there be something repugnant in the subject or context) be deemed to include also all lands occupied by the Government for the purposes of canals and all buildings machinery, fences gates and other erections, trees, crops plantations or other produce occupied by or belonging to the Government upon such lands.

PART – XI OF SUBSIDIARY RULES

Power to make, alter and cancel.

71. The Government may, from time to time, make rules to regulate the following matters: —

- (1) the proceedings of any officer who, under any provision of this Ordinance, is required or empowered to take action in any matter;
- (2) the cases in which, and the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Ordinance, and not expressly provided for as regards appeal, shall be appealable;
- (3) the persons by whom, and the time, place or manner at or in which anything for the doing of which provision is made under this Ordinance, shall be done;
- (4) the amount of any charge made under this Ordinance;
- (5) generally to carry out the provisions of this Ordinance. The Government may, from time to time alter or cancel any rules so made;
- (6) rules made under sub-section (4) may be made to have effect retrospectively from any date not earlier than the date on which water has been supplied or the charge has otherwise become

leviable under this Ordinance; *and*

- (7) until such time the rules are framed under this section, the rules framed under the Canal and Drainage Act, 1873 (VIII of 1873) shall be deemed to be the rules framed under this Ordinance.

Publication of rules.

72. Such rules, alternations and cancellations shall be published in the official Gazette and shall thereupon have the force of law.

Repeal.

73. The Canal and Drainage Act, 1873 (VIII of 1873) as applicable to Balochistan, is hereby repealed.
