

WATER RIGHTS LAW

Act of Jun. 24, 1939, P.L. 842, No. 365

Cl. 32

AN ACT

Relating to the acquisition of rights to divert water from rivers, streams, natural lakes, and ponds, or other surface waters within the Commonwealth or partly within and partly without the Commonwealth; defining various words and phrases; vesting in the Water and Power Resources Board certain powers and authorities for the conservation, control and equitable use of the waters within the Commonwealth in the interests of the people of the Commonwealth; making available for public water supply purposes, water rights heretofore or hereafter acquired but not used; providing for hearings by the Water and Power Resources Board and for appeals from its decisions; fixing fees; granting to all public water supply agencies heretofore or hereafter created the right of eminent domain as to waters and the land covered by said waters; repealing all acts or parts of acts inconsistent herewith, including Act No. 109, Pamphlet Laws 152, approved April 13, 1905, Act No. 307, Pamphlet Laws 455, approved June 7, 1907, Act No. 64, Pamphlet Laws 258, approved April 8, 1937.

WHEREAS, An adequate and safe supply of water for the public is a matter of primary concern affecting the life, health and comfort of the people of this Commonwealth; and

WHEREAS, The increase of the population makes it necessary that the available supply of water be conserved, controlled and used equitably for the best interests of all concerned; and

WHEREAS, The use of water for the supply of water to the public is the most essential of all public service, vital to life itself; and

WHEREAS, The public interest requires that public water supplies be developed not only for present needs but also for developing needs for a reasonable time in the future from and after any original appropriation or acquisition of a source of supply; and

WHEREAS, The public interest requires that sources of water supply appropriated or acquired but not used or not reasonably necessary for future needs should be available for appropriation or acquisition by others requiring such sources.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Definitions.--Hereafter in this act the following words and phrases shall be understood to have the meanings herein set forth, unless a contrary or different meaning be clearly indicated by the context.

(a) "Board" shall mean the Water and Power Resources Board of the Commonwealth of Pennsylvania, or any other board or commission of the Commonwealth of Pennsylvania hereafter created as successor to, or in substitution for, or vested with the authority now vested in, the Water and Power Resources Board.

(b) "Public water supply agency" shall mean any corporation or any municipal or quasi-municipal corporation, district, or authority, now existing or hereafter incorporated under the laws of the Commonwealth of Pennsylvania and vested with the power, authority, right, or franchise to supply water to the public in all or part of any municipal or political subdivision of the Commonwealth of Pennsylvania.

(c) "Acquire" shall mean to secure or become vested with rights, either by purchase, lease, gift, devise, adverse

possession, prescription, eminent domain, waiver of damages, settlement of damages, appropriation, or otherwise.

(d) "Acquisition" shall mean the act of acquiring or the rights acquired.

(e) "Water rights" shall mean the right to take or divert water from any rivers, streams, natural lakes and ponds, or other surface waters within or partly within and partly without the Commonwealth of Pennsylvania, except water rights heretofore or hereafter acquired under the Act of June 14, 1923, Pamphlet Laws, 704.

Regarding Water Rights Heretofore Acquired

Section 2. Any acquisition of water rights heretofore acquired by any public water supply agency, which acquisition has not been followed by an actual taking from the source acquired either heretofore or within a period of one year after the effective date of this act, is hereby declared null and void and of no effect to the extent required to make water rights from such source available for acquisition under the terms of this act.

Section 3. No acquisition of water rights from a source of supply by any public water supply agency shall be effective to prevent the acquisition of water rights from such source of supply in the future under the terms of this act, unless, within one year after the effective date of this act, the public water supply agency shall have produced to the board the record upon which such acquisition is founded or a statement of the facts relied upon to show that such acquisition has been lawfully accomplished, and shall have filed in the office of the board, duly certified and acknowledged, transcripts of corporate or other action or proceeding, or statement of facts or records relied upon as the basis of a claim of acquisition of water rights, and a sworn statement of an estimate of the amount of water reasonably necessary from said source of water supply for present purposes and future needs, and also such other or additional information as the board may deem necessary: Provided, That prior compliance with the provisions of the Act of 1937, Pamphlet Laws 258, Number 64, by any public water supply agency shall be deemed to be a full meeting of the requirements of this section of this act.

Section 4. It shall be the duty of the board to consider and to pass upon the validity of the claims of public water supply agencies making claim to prior acquisitions of water rights under the provisions of section three of this act, and to notify the claimant of its findings.

It shall also be the duty of the board to prepare and keep up to date a public record of all confirmed water right acquisitions, and of all permits for the acquisition of water rights, classified and indexed as the board may direct, and containing such detailed information as may be available to the board and which it shall determine should be recorded, which said public record shall be known as "Water Acquisition Records."

An actual taking of water from any source and the use thereof to serve the public shall be construed as prima facie evidence of the validity of the claim of any public water supply agency claiming an acquisition thereof; and the confirmation by the board of any acquisition claimed by any public water supply agency shall constitute a validation of the right of the public water supply agency to such water rights in the source as shall be reasonably necessary for its present purposes and future needs, subject to modification of said rights at a later date or later dates, only under the terms of this act.

Regarding Acquisition of Water Rights Hereafter

Section 5. No public water supply agency shall hereafter acquire any water rights except as provided in this act, and any acquisition of water rights hereafter, except as provided in this act, shall be deemed to be unlawful null and void.

Section 6. Hereafter no acquisition of water rights shall be made or taken by any public water supply agency except as follows:

Any such public water supply agency desiring to acquire new water rights, a new source of water supply, or to acquire an additional quantity of water or water rights from an existing source of water supply, beyond that confirmed by the board under the preceding sections of this act as being reasonably necessary for present purposes and future needs, shall make application to the board for a permit to acquire such designated waters or water rights, setting forth such of the following information as may be applicable:

1. The river or stream from which the supply is proposed to be taken and the necessity for such new water rights, new source, or additional quantity.

2. The amount of water which it is proposed to acquire for present purposes and future needs.

3. The district, municipality or political subdivision, and the population thereof, required the supply, and the necessity for such acquisition.

4. The plan for development or use of the water, including the capacities of any proposed impounding reservoirs.

5. Such other or additional applicable information as the board may require.

Section 7. It shall be the duty of the board upon receipt of an application under section six of the act, to make such investigation as may be necessary, including a search of the water acquisition record, to determine whether the approval of the application will affect water rights theretofore confirmed or approved, or water rights at that time the subject of application to the board, or water rights for the acquisition of which a permit shall theretofore have been issued. In case of apparent conflict of interests, the investigation shall include and consider the extent of the conservation development and use to the best advantage of existing sources of water supply. In case of established conflict of interests, the board, after receipt of an application or at any time or from time to time, shall have the power to issue, modify or impose conditions in permits or confirmed claims for, or to the acquisition of, water rights theretofore or thereupon issued when deemed necessary by the board in the public interest, and it shall be the duty of the board to issue and it shall issue all such permits and modification and conditioning orders as the public interest shall require.

However, if the board finds that the proposed new source or additional supply will not conflict with the rights to such water or to water rights held by any other public water supply agency which are reasonably necessary for its present purposes or future needs, and that the water or the water rights proposed to be acquired are reasonably necessary for the present purposes and future needs of the public water supply agency making application, that the taking of said water or the exercise of said water rights will not interfere with navigation, jeopardize public safety, or cause substantial injury to the Commonwealth, then, in that case, the board shall approve the application and shall issue a permit therefor.

Section 8. The board shall have the further power to revoke any permit granted under the terms of this act in case the water rights are not acquired within one year after the issuance of said permit, and said acquisition shall be null and void and of no effect, to the extent required to make water and water rights from such source available for acquisition under the terms of this act, if any actual taking of water be not made within the time specified in the permit not exceeding four years after the issuance of said permit. If the project required for the taking of water has been commenced in good faith or if the commencement thereof has been prevented by events beyond the control of the permittee, the board shall have the power, upon application of the permittee, to grant such extensions of said period as the board deems to be necessary to enable the permittee to complete the project required for the taking of water. If an actual taking is not made within the time specified in the permit or in any extension thereof, the water and water rights covered thereby shall become available for acquisition by other public water supply agencies under the terms of this act. (Amended, 1955, Act No. 612, P. L. 1848, Section 1)

Section 9. All public water supply agencies heretofore or hereafter incorporated under the laws of the Commonwealth of Pennsylvania and holding a permit issued by the board under the provisions of this act, shall have the power and may exercise the right of eminent domain as respects the appropriation of the water and the water rights authorized by said permit and land covered by said waters: Provided, however, That such right shall not apply to private spring and private water supplies.

Section 10. Any party or applicant who may be directly or adversely affected by any decision or finding of the board under any of the provisions of this act, shall be entitled, upon application, to be heard in person or by counsel in a public hearing, on reasonable notice, before the board or its duly designated agent. All members of the board and its duly designated agents shall have power to administer oaths to any witness appearing for any party in interest in said hearings. All testimony and argument shall be recorded and transcribed and shall be read and considered by the board before it shall make its decision. (10 repealed in part Apr. 28, 1978, P.L.202, No.53)

Compiler's Note: Section 508(a) of Act 223 of 1970 provided that the jurisdiction of the court named in section 10 is transferred to and vested in the Commonwealth Court and provided that section 10 is repealed insofar as it is inconsistent with Act 223.

Section 11. Fees.--Every statement, record, or application for permit filed under the provisions of this act or heretofore filed under the provisions of the act of April 8, 1937, Pamphlet Laws 258, shall be subject to filing fee of twenty-five dollars for the purpose of reimbursing the Commonwealth in part for the cost of administration of the act. All moneys so collected shall be paid into the State Forests and Waters Fund, by and through the Department of Revenue.

Compiler's Note: Section 6(a) of Act 48 of 1981, which provided for the fixing of fees charged by administrative agencies, provided that section 11 is repealed insofar as it establishes a set fee for any activity inconsistent with the fees set forth in Act 48.

Section 12. All acts or parts of acts inconsistent herewith are hereby repealed, and the following acts are hereby expressly repealed:

Act Number 109, Pamphlet Laws 152, approved April 13, 1905, being "An act providing that the right of eminent domain, as respects the appropriation of streams, rivers or waters, or the land covered thereby, shall not be exercised by water companies incorporated under law."

Act Number 307, Pamphlet Laws 455, approved June 7, 1907, being "An act to require all water and water-power companies hereafter incorporated, or hereafter formed by merger and consolidation, or hereafter purchasing the property and franchises of any other such company, to designate the exact source of their supply of water or water-power; and to require all existing water and water-power companies, merging and consolidating or purchasing the property and franchises of any other such company, to accept the provisions of this act, and of the act approved April thirteenth, one thousand nine hundred and five, entitled 'An act providing that the right of eminent domain, as respects the appropriation of streams, rivers, or waters, or the land covered thereby, shall not be exercised by water companies incorporated under law,' and providing the manner in which water and water-power companies, subject to the provisions of this act, may secure a new or additional source of supply for their water or water-power."

Act Number 64, Pamphlet Laws 258, Approved April 8, 1937, being "An act providing for the appropriation of certain waters of the Commonwealth to the Commonwealth for the benefit of the people thereof; declaring void certain condemnations and appropriations of water by municipalities, corporations, copartnerships or persons; providing for ascertainment of the validity and the filing of the records of certain condemnations and appropriations of water by municipalities, corporations, copartnerships or persons, and appeals therefrom; conferring jurisdiction on the court of common pleas of Dauphin County in relation thereto; providing for future condemnations and appropriations of waters by and allocation of waters to municipalities, corporations, copartnerships or persons, and for compensation for waters hereafter to be taken for public water supply purposes; and conferring powers and imposing duties upon the Water and Power Resources Board."

Section 13. Separability Clause.--If any provision of this act, or the application of any provision to any person or circumstances is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 14. Inconsistency With Other Acts.--In so far as any of the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

Section 15. Effective Date.--This act shall become effective immediately upon its final enactment.