

**SPECIAL LICENSE (WAROONA
IRRIGATION DISTRICT).**

23° GEO. V., No. XVI.

No. 16 of 1932.

AN ACT to enable a certain Special License to be granted in the Waroona Irrigation District under the Rights in Water and Irrigation Act, 1914, and for other purposes incidental thereto.

[Assented to 6th December, 1932.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same as follows:—

1. This Act may be cited as the *Special License (Waroona Irrigation District) Act, 1932*, and shall be read together with the Rights in Water and Irrigation Act, 1914 (No. 19 of 1914). Short title.

2. In this Act, subject to the context— Interpretation.

“The Act” means the Rights in Water and Irrigation Act, 1914.

“Licensee” means Nestlé and Anglo-Swiss Condensed Milk Company (Australasia), Limited, and includes its successors and permitted assigns.

“Minister” means the Minister of the Crown for the time being and from time to time appointed to administer the Act.

Authority to grant
special license.

3. Notwithstanding any provision to the contrary contained in the Act—

- (1) It shall be lawful for the Minister to grant to the licensee a special license, for a term of fifty years, to take water from the watercourse known as Drakesbrook Main Drain situated within the Waroona Irrigation District, as constituted under the Act and adjacent to the land described in the First Schedule to this Act, for the use of the licensee in the carrying on of its business upon such land.
- (2) Any license granted under the authority of this section shall be in the form of the agreement set out in the Second Schedule to this Act.

Provided, that the Minister may include in such agreement such further conditions as he may require and which are not inconsistent with or repugnant to any of the conditions set out in the said form of agreement.

- (3) The Minister may, in any such license, determine the daily quantity of water which may be taken by the licensee, and the hourly rate at which such daily quantity of water may be taken, at such quantity and at such rate as the Minister may think fit, having regard to the requirements of other owners and occupiers of land within the Waroona Irrigation District aforesaid.
- (4) The Minister may, in such license, determine the fees and charges to be paid by the licensee in respect of the water taken pursuant to the license.

FIRST SCHEDULE.

All that piece of land being portion of Murray Location 26 the subject of diagram 9116 being the whole of the land comprised in Certificate of Title Volume 1026 folio 982.

SECOND SCHEDULE.

The Special License (Waroona Irrigation District) Act 1932.

AN AGREEMENT made the.....day of.....
One thousand nine hundred and.....between.....
being the Minister of the Crown for the time being appointed to administer

the Rights in Water and Irrigation Act 1914 (hereinafter referred to as "The Minister") of the one part and.....
(hereinafter referred to as "the licensee") of the other part.

Whereas the licensee is the holder of certain land situate within the Waroona Irrigation District as constituted under the Rights in Water and Irrigation Act 1914 being portion of Murray Location 26 the subject of diagram 9116 volume 1026 folio 982 upon which land the licensee is carrying on business.

And whereas the licensee requires a regular supply of water for use in connection with its said business and has applied to the Minister for such supply of water to be drawn from the Drakesbrook Main Drain adjacent to the said land of the licensee and the Minister is willing to supply to the licensee water for the purposes aforesaid by means of the withdrawal by the licensee of water from the said Drakesbrook Main Drain at a point adjacent to the said land and upon and subject to the terms and conditions hereinafter contained.

Now therefore it is agreed by and between the said parties hereto as follows:—

1. The Minister acting under and by virtue of Section 3 of the Special License (Waroona Irrigation District Act 1932) hereby permits and authorises the licensee to take and use water in bulk from the Drakesbrook Main Drain situate on the southern boundary of the said land of the licensee for condensing purposes and use in its factory and business carried on upon the said land in the quantities and upon and subject to the terms and conditions hereinafter specified and upon and subject to the provisions of the Rights in Water and Irrigation Act 1914 as far as the same are applicable.

2. The licensee may at its own expense provide the necessary engine pumps material and pipes and lay and instal the same and shall at its expense maintain and keep in good repair and renew when necessary all connections mains pipes and other works and appliances as shall be necessary and proper for receiving and conveying the water supplied to it from the said drain by the Minister and thereafter for returning as much as possible of the water taken back into the said drain. The pipes shall be connected to the drain at such place or places abutting the said lands as the Minister may approve.

3. The license hereby granted is so granted upon the express condition that the licensee shall and will return and convey as soon as reasonably may be as great a quantity as possible of the water taken by the licensee from the main drain back into the said main drain and in such condition that it will not render the water in the main drain unfit or unsuitable for irrigation purposes and watering of stock.

4. As soon as the licensee is ready to take water as aforesaid and before it shall take any water it shall give notice in writing to the Minister who shall be at liberty then by his engineers workmen and servants to enter upon the land of the licensee and instal and set up at the expense of the licensee for the purpose of registering the quantities of water taken from the said drain by the licensee as herein provided for such meter as the Minister may approve and during the continuance of the agreement to replace at the expense of the licensee such meter with others of the same or different types or kinds as the Minister may deem necessary; provided that in replacing such

meters the Minister and his servants and agents shall interfere as little as practicable with the supply of water to the licensee and it is agreed that the cost of providing such meters shall not be borne by the licensee.

5. Subject to the licensee returning to the said drain after use by the licensee in its factory on the licensee's said land as much as practicable of the water taken by the licensee (in such condition that the water in the drains to which it is returned as aforesaid will not thereafter be rendered unfit and unsuitable for irrigation purposes and watering of stock) the Minister will after the expiration of fourteen days from the time when the licensee notifies the Minister that it is ready to commence to take water and at all times thereafter subject to the terms of this agreement permit the licensee who shall receive the same through and by means of the said meter to take a continuous supply of water in bulk for the factory aforesaid up to an amount ofgallons per day or more if practicable and at a rate per hour not exceeding.....gallons per hour unless it is found practicable to permit of a faster rate of drawing but the daily amount or maximum rate of drawing shall not be exceeded without the approval of the Minister or some duly authorised officer of the Minister.

6. The licensee shall and will pay to the Minister for the water taken a fee calculated at the rate of.....for each 100,000 gallons of water so taken as registered by the meter with a minimum fee of.....per month in any event and together with a meter rental of.....per annum for each meter installed.

7. The meter rentals shall be paid annually in advance and the payments for the supply of water taken and registered as aforesaid but subject to the said minimum payment monthly in any event shall be made on the first day of each and every month to the Minister's officer at Perth aforesaid.

8. (i.) The Minister will not except in case of drought or any other cause or accident deprive the licensee of the benefit of the license hereby granted under or by virtue of the immunity from obligation to supply water contained in section forty-five of the said Act but save as aforesaid nothing in this agreement contained shall in any manner whatsoever affect or prejudice the powers and authorities or take away the immunities of the Minister under the said Act and nothing in this agreement contained shall relieve the licensee of any obligations or liabilities under any of the provisions of the said Act to which it may be subject or by which it may be bound.

(ii.) If the water returned to the drain by the licensee shall in accordance with a decision obtained pursuant to the provisions of clause 15 hereof cause the water in the drain to be unfit for irrigation and watering of stock or if the licensee shall fail or neglect to make any payment for which it is liable hereunder at the time when such payment is due or within one month thereafter or if the licensee shall make any other default and such default continues for fourteen days after notice from the Minister to remedy the same or shall commit any offence against the said Act the Minister shall be entitled without giving any further notice whatsoever to the licensee to take such measures as may be necessary and available to disconnect or otherwise cut off the supply of water from the said drain to the land of the licensee and in such case the licensee will not thereafter take or attempt to take any more water under the license or permit hereby granted or otherwise howsoever without the written authority and consent of the Minister who may upon such payment or default being made good by the licensee reinstate the license

hereby granted or who may refuse to accept any further payment or observance of the terms and conditions hereof from the licensee and may by notice in writing to the licensee forthwith cancel and revoke the said license if in his opinion the circumstances so warrant.

(iii.) If in the opinion of the Minister's engineer the licensee is not returning to the said drain as much as practicable of the water taken by the licensee hereunder in conformity with the requirements of clause 3 hereof the Minister may at any time and from time to time by notice in writing to the licensee reduce the daily and hourly quantities of water to be taken by the licensee under clause 5 hereof by such amount as he shall consider the circumstances warrant and until such notice is revoked the licensee will in all respects and at all times comply with the terms thereof.

9. If and whenever the licensee shall cease to occupy the said land or factory the licensee shall forthwith give notice in writing to the Minister and in such case the Minister may forthwith terminate this license.

10. In case any payment which the licensee is liable to make to the Minister shall not be made within one month after the day herein provided for the payment of the water supplied and/or meter rent the licensee shall pay interest upon such amount at the rate of six pounds per centum per annum from the date same became due until payment. This clause shall be deemed to be supplementary to but shall not in any manner whatsoever prejudice or affect the powers of the Minister under clause 8 hereof.

11. The determination of this license by the Minister under the powers herein contained shall not affect the right of the Minister to enforce payment of any amount due to him by virtue hereof. On such determination the Minister shall be at liberty to remove any meter and to cut off the supply of water hereby agreed to be furnished.

12. The licensee shall upon demand from time to time repay to the Minister all costs and charges incurred by him in repairing maintaining and renewing any meter.

13. The register of any meter shall be *prima facie* evidence of the quantity of water taken from the said drain by the licensee through such meter. In the event of any difference or dispute arising between the Minister and the licensee as to the sufficiency or accuracy or state of repair or condition of any meter such difference or dispute shall be referred to and settled by arbitration under the provisions of the Arbitration Act 1895 or any statutory re-enactment or modification thereof for the time being in force.

14. If at any time any meter shall cease to register correctly or shall at any time be removed for the purpose of repair renewal or for any other reason then until the meter shall be repaired or replaced so as to register correctly the quantity of water passing through it in the case of the meter registering the quantity of water taken the Minister shall be entitled to charge and the licensee shall pay for a daily quantity of water equal to the average daily quantity of water for which the licensee shall have paid or been liable to pay in respect of the previous twelve months under the terms of this license.

15. If at any time a question arises as between the parties hereto as to whether or not the water returned to the drain as aforesaid by the licensee has been so polluted in the course of the use thereof by the licensee (although such pollution is not a contravention of section ten of the said Act) as to

render the water in the drain unfit for irrigation and stock watering purpose such question shall be referred to and reported upon by the State Government Analyst and if the licensee does not agree with the opinion of such analyst it may appoint an independent qualified analyst to inquire into and report upon such question. If such analyst and the State Government Analyst do not agree they shall appoint as their umpire another independent qualified analyst whose decision shall be final. The costs incurred in connection with the obtaining of an umpire's decision shall follow the event.

16. Subject to sooner determination as herein provided for this license shall continue in force for a period of fifty years computed from theday of.....One thousand nine hundred and.....

17. The licensee may at any time upon giving to the Minister on month's notice in writing surrender the within license.

18. Wherever the words "the said Act" or "the Act" appear herein the said words subject to the context shall mean the Rights in Water and Irrigation Act 1914 and any amendments for the time being in force thereof.

IN WITNESS WHEREOF etc.