

IRRIGATION (DUNHAM RIVER) AGREEMENT.

No. 80 of 1976.

AN ACT to amend the Irrigation (Dunham River)
Agreement Act, 1968.

[Assented to 18th October, 1976.]

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

1. (1) This Act may be cited as the *Irrigation (Dunham River) Agreement Act Amendment Act, 1976.* Short title and citation.

(2) In this Act the Irrigation (Dunham River) Agreement Act, 1968 is referred to as the principal Act. Act No. 60 of 1968.

(3) The principal Act as amended by this Act may be cited as the Irrigation (Dunham River) Agreement Act, 1968-1976.

Section 2
amended.

2. Section 2 of the principal Act is amended—

- (a) by adding before the word “Schedule”, in line two of the interpretation “the Agreement”, the word “First”;
- (b) by deleting the passage “time.”, in line seven of the interpretation “the Agreement” and substituting the passage “time, and, except in section three of this Act, also includes the Agreement as altered by the Variation Agreement; ”; and
- (c) by adding at the end thereof the following interpretation—

“the Variation Agreement” means the Variation Agreement a copy of which is set out in the Second Schedule to this Act. .

Section 3A
added.

3. The principal Act is amended by adding after section 3 the following section—

3A. The Variation Agreement is approved and ratified. .

Approval
and
ratification
of the
Variation
Agreement.

Schedule
amended.

4. The Schedule to the principal Act is amended by deleting the heading “SCHEDULE.” and substituting the following headings—

THE SCHEDULES.

FIRST SCHEDULE. .

Second
Schedule
added.

5. The principal Act is amended by adding at the end thereof the following Schedule—

SECOND SCHEDULE.

THIS AGREEMENT is made the twenty-fifth day of August One thousand nine hundred and seventy six BETWEEN the HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A., Premier of the State of Western Australia

acting for and on behalf of the said State and its instrumentalities (hereinafter referred to as "the State") of the one part and GODDARD OF AUSTRALIA PTY. LTD. a company incorporated under the provisions of the Companies Ordinance Act, 1962 of the Australian Capital Territory the registered office of which in the State of Western Australia is at Law Chambers Cathedral Avenue Perth (hereinafter called "the Developer" which expression shall include the successors and assigns of the Developer including where the context so admits the transferees and assignees of the Developer).

WHEREAS:

- (a) The parties are the parties to an agreement between them defined in section 2 of the Irrigation (Dunham River) Agreement Act, 1968 of the State of Western Australia (which agreement is hereinafter referred to as "the principal agreement").
- (b) The Developer has carried out certain works under the provisions of the principal agreement to the satisfaction of the State.
- (c) The Developer has as a result of its experience in connection with the works carried out pursuant to the principal agreement in the pilot area concluded that the catchment area of Arthur Creek is incapable of providing sufficient water for irrigation of all farms as envisaged under the principal agreement.
- (d) The parties have therefore agreed:
 - (i) That the Developer's obligations in respect of Phase I of the principal agreement shall be varied as provided in this Agreement and that Phase 2 of the principal agreement being considered impracticable shall not be proceeded with.
 - (ii) That Crown Grants will issue to holdings known as "farm 7" and "farm 8" subject to certain restrictions referred to hereunder.
 - (iii) That provision be made for the future utilisation of the Arthur Creek Dam and the distribution system during Phase I for the benefit of certain farms which have already been improved and developed by the Developer pursuant to the principal agreement.

- (iv) That provision be made for the issue of new special leases in respect of the dry land holdings (as hereinafter defined) known as "farm 2", "farm 9" and "farm 10" respectively to the Developer.
- (v) That the Developer may transfer those holdings known as "farm 1", "farm 3", "farm 4", "farm 5" and "farm 6" to WEE COUNTRY DEVELOPMENT CORP a corporation incorporated in the United States of America the registered office of which in the State of Western Australia is at Law Chambers, Cathedral Square, Perth.
- (vi) That provision be made for the Developer to assign part of its interest in the principal agreement to Arthur Creek Irrigation Company Pty. Ltd. a company incorporated under the Companies Act of the State of Western Australia and having its registered office situate at care of Messrs. Parker & Parker of 162-164 Saint George's Terrace Perth.

NOW THIS AGREEMENT WITNESSETH

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purposes of the principal agreement.
2. The provisions of this Agreement shall not come into operation unless and until a Bill to approve and ratify this Agreement is passed by the legislature of the State and comes into operation as an Act.
3. The principal agreement is hereby varied as follows:
 - (1) by substituting for the definition of "Phase I" in clause 1, the following definition:

"the period from the commencement date until the tenure of the lessee for the time being under both the Arthur Creek dam site lease and the special lease or special leases of the dry land holdings (as hereinafter defined) and any renewals thereof has terminated;"
 - (2) by deleting sub-clauses (4), (5) and (6) of clause 5;
 - (3) by adding after clause 6 two new clauses 6A and 6B as follows:

Amendment
of
boundaries
of
"Farm 8"

6A. Notwithstanding anything contained in this Agreement Special Lease No. 3116/4529 issued pursuant to clause 6 hereof in respect of

the holding known as "farm 8" shall be deemed to include the area hachured green on the plan marked "E" (initialled by or on behalf of the parties hereto for the purposes of identification) and the provisions of section 18 of the Land Act shall be deemed to apply.

6B. (1) The Developer shall, not later than the 31st day of December, 1976: Dry Land Holdings.

- (a) surrender to the State all its right title and interest in Special Leases Nos. 3116/4523, 3116/4530 and 3116/4531 respectively being special leases in respect of holdings known as "farm 2", "farm 9", and "farm 10" respectively (hereinafter collectively referred to as "the dry land holdings"),
- (b) enter into a special lease or special leases of the dry land holdings in the form *mutatis mutandis* of the Twenty-First Schedule to the Land Act at a peppercorn rental for a term co-terminous with the term of the Arthur Creek dam site lease and containing rights to renew the term corresponding to such rights in the Arthur Creek dam site lease and such special lease or special leases may contain all or any of the modifications amendments or variations set out in sub-clause (2) of clause 6 of this Agreement.

(2) The Developer shall in a proper and workmanlike manner and with the most appropriate materials therefor construct or cause to be constructed to the satisfaction of the Minister, cattle-proof fencing on the boundaries of the dry land holdings in the manner following namely—

- (a) construction of such fencing shall be completed in respect of one half of the said boundaries not later than the 31st day of December, 1981,
- (b) notwithstanding the contents of paragraph (a) of this sub-clause, construction of such fencing shall be completed in respect of all the said boundaries not later than the 31st day of December, 1986 or at

(2) Notwithstanding the issue to the Developer of Crown Grants in respect of "farm 7" and "farm 8" pursuant to sub-clause (1) of this clause the Developer shall not sell transfer assign lease or otherwise part with the possession of "farm 7" or "farm 8" until the Minister has issued to the Developer the certificate referred to in clause 14 hereof, PROVIDED HOWEVER that the Developer may, prior to the issue of the said certificate, lease "farm 7" and "farm 8" or either of them for any term not exceeding three (3) years and shall within twenty one (21) days of the date upon which any such lease is entered into, notify the State of the name and address of the lessee thereunder. ;

(7) as to clause 9—

- (a) by deleting the passage "(subject however to the provisions of clause 12 of this Agreement)" in lines 6 and 7 of sub-clause (1);
- (b) by inserting after the word "clause" in line 2 of sub-clause (2) the words "without the consent of the Minister";
- (c) by substituting for paragraphs (i), (ii) and (iii) of sub-clause (2) the following three paragraphs:
 - (i) irrigating "farm 1", "farm 3", "farm 4", "farm 5", "farm 6", "farm 7" and "farm 8" for agricultural purposes,
 - (ii) watering stock depasturing on those holdings and the dry land holdings, and
 - (iii) for domestic purposes within the holdings referred to in paragraph (i) of this sub-clause, and; and
- (d) by substituting for the passage "area or the Dunham Area." in line 4 of paragraph (iv) of sub-clause (2) the passage "area.";

(8) by substituting for clause 10 a new clause 10 as follows:

10. The Developer shall, subject to the provisions of this Agreement, during the term of the Arthur Creek dam site lease and any renewals thereof make available to the owner or occupier of any holding (or owners or

Obligation
of
developer
to supply
water.

(2) Any consent given by the Minister pursuant to this clause may be on such conditions as the Minister thinks fit. ;

and

(17) by substituting for sub-clause (1) of clause 27 the following new sub-clause:

(1) The Developer will indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by the Developer in connection with the maintenance or use by the Developer or its servants agents or contractors of the Developer's improvements works or services the subject of this Agreement or the plant or equipment used in connection therewith.

IN WITNESS whereof these presents have been executed by or on behalf of the parties hereto the day and year first hereinbefore written.

SIGNED by THE HONOUR-
ABLE SIR CHARLES WALTER
MICHAEL COURT, O.B.E.
M.L.A. in the presence of:

} CHARLES COURT

K. A. RIDGE,
MINISTER FOR LANDS.

THE COMMON SEAL of
GODDARD OF AUSTRALIA
PTY. LTD. was hereunto affixed
by the Authority of the
Directors and in the presence
of:

} (C.S.)

H. E. PETERSON,
Director.

J. G. ORR,
Secretary.