



CHAPTER 91.

**An Act respecting the Township of Chilliwack
Drainage Areas.**

[Assented to 18th April, 1951.]

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

Short Title.

Short title.

- 1.** This Act may be cited as the "Township of Chilliwack Drainage Act."

Interpretation.

Interpretation.

- 2.** In this Act, unless the context otherwise requires:—
- "Area" means a ditching area as established by the engineer:
 - "Clear days" means exclusive of the first and last days of any number of days prescribed:
 - "Construction" means the initial opening or making of a ditch by artificial means:
 - "Council" means the Council of The Corporation of the Township of Chilliwack:
 - "Ditch" includes a drain, open or covered wholly or in part, and whether in the channel of a natural stream, creek, or water-course or not, and all works and materials pertaining thereto:
 - "Engineer" means a civil engineer or British Columbia land surveyor appointed by the Council to carry out the provisions of this Act:
 - "Maintenance" means the preservation of a ditch and keeping it in repair:
 - "Owner" shall have the meaning set out in section 2 of the "Municipal Act," and, in addition, shall include the Council of The Corporation of the Township of Chilliwack in respect of highways and other lands under its jurisdiction.

Application.

"Ditches and Watercourses Act" not to apply.

3. Except as hereinafter provided, the "Ditches and Watercourses Act," being chapter 96 of the "Revised Statutes of British Columbia, 1948," shall not apply within the Township of Chilliwack.

Awards under existing schemes to be maintained under this Act.

4. Any ditching scheme for which an award has been made under the provisions of the "Ditches and Watercourses Act" shall, from and after the first day of January, 1951, be maintained and operated in accordance with the provisions of this Act.

Construction and maintenance charges due under existing schemes to be paid in accordance with provisions of this Act.

5. Owners within any of the existing ditching schemes for which construction or maintenance charges remained unpaid on the first day of January, 1951, as set out in Schedule 1 of this Act, shall complete repayment of such construction or maintenance costs in accordance with the award made by the engineer pursuant to the "Ditches and Watercourses Act," but such construction or maintenance costs shall be collected in accordance with the provisions of this Act.

Commencement of this Act.

6. This Act shall be deemed to have been in force on and from the first day of January, 1951.

Appointment of Engineer.

Appointment of engineer

7. (1) The Council shall name and appoint by resolution, according to Form A of Schedule 2, one or more engineers to carry out the provisions of this Act, and each such engineer shall be and continue an officer of the Corporation until his appointment is revoked by resolution and another engineer is appointed in his stead or until such engineer resigns.

Deputy engineer

(2) In case any engineer appointed under this section is unable to act on account of absence, sickness, or disability, the Council may appoint a deputy engineer who shall have all the power and authority and responsibility of such engineer, so that any works undertaken under authority of this Act shall not be unreasonably delayed.

Oath of engineer.

(3) Every engineer appointed by the Council under this section shall, before entering upon his duties, take and subscribe the following oath, and shall file the same with the Clerk of the municipality:—

IN THE MATTER OF THE "TOWNSHIP OF CHILLIWHACK DRAINAGE ACT."

I, [name in full], of _____, in the Province of British Columbia, engineer [or surveyor], make oath and say [or do solemnly declare or affirm] that I will, to the best of my skill, knowledge, judgment, and ability, honestly and faithfully, and without fear of, favour to, or prejudice against any owner or owners, perform the duties from time to time

assigned to me in connection with any work under the "Township of Chilliwack Drainage Act," and make a true and just award thereon.

Sworn [or solemnly declared or affirmed] before me at the _____ of _____, in the County of New Westminster, this day of _____ 19 _____.

A Commissioner, Notary Public
[or Municipal Clerk, or J.P.]

Establishment of Ditching Areas.

Establishment of areas.

8. (1) The engineer shall establish areas, which shall be numbered consecutively, each such area to comprise the lands drained by a common outlet; and shall prepare a separate plan of each such area, showing clearly the location, description, and course of each ditch within the area, and the boundaries of the area.

Approval and filing of plan.

(2) Each such plan shall by resolution be approved by the Council, and the Clerk shall forthwith apply to file a copy of the plan with the Registrar of the New Westminster Land Registration District. The Registrar shall file the plan and make a reference to it in the proper register against the titles of the land to which it relates, and thereupon any person dealing with the land shall have notice that the land is subject to being charged under the provisions of this Act.

Report of engineer.

9. The engineer shall prepare a report for each such area, listing all parcels of land benefited by the drainage and ditching within the said area, and shall indicate the relative benefit derived by each such parcel from the said drainage and ditching in terms of acreage, and shall file such report with the Council forthwith upon completion: Provided that if, in any area, in the opinion of the engineer or of the Council the relative benefit derived by each parcel cannot conveniently or equitably be stated in terms of acreage, the engineer may indicate the relative benefit derived by each parcel within such area as a fraction or percentage of the whole. In case of subdivision of any parcel, upon requisition by the Council, the engineer shall apportion the benefit derived amongst the parcels created by the subdivision.

Powers of Council.

10. The Council shall have the following powers:—

- (a) To maintain, preserve, repair, and operate, or cause to be maintained, preserved, repaired, and operated, all ditches in any ditching area in the municipality;
- (b) To enlarge, extend, reconstruct, or relocate any existing ditch within a ditching area which the Council may deem necessary or advisable for the efficient operation of the drainage in such area;
- (c) To appoint such officers and employees as may be necessary for the efficient carrying-out of the provisions of this Act, and to fix their terms of employment and their remuneration:

- (d) To construct a new ditch in accordance with the award of the engineer made pursuant to section 16 of this Act, and to levy by by-law on all the lands affected and upon the owners thereof, a special rate to defray the cost of such construction in accordance with the said award of the engineer:
- (e) To levy by by-law each year on all the lands within each area established pursuant to this Act, and upon the owners thereof as shown by the last revised assessment roll of the municipality, a special rate for each area to provide moneys to pay all expenses incurred in the exercise of any of the powers granted in this section, save and except those referred to in clause (d). Every such special rate shall be imposed and levied upon each separate parcel within the area on the basis of the acreage indicating the relative benefit derived by each such parcel as shown by the engineer's report which established the area. All special rates imposed in accordance with the provisions of this Act shall be owing and payable to The Corporation of the Township of Chilliwack, and shall be collected with interest at the like rate, in the same manner and with the like remedies as ordinary taxes upon land or improvements are collected under the "Municipal Act," provided that the Council shall keep in its books a separate account for said rates:
- (f) To advance moneys out of the general funds of The Corporation of the Township of Chilliwack to meet any or all of the costs incurred in maintaining and operating ditches within any ditching area in the municipality in anticipation of the levying or collection of the said special rate: Provided that, subject to the provisions of clause (h), the moneys so advanced shall be repaid to the general fund of the Corporation as and when the said special rate has been collected:
- (g) To enter upon any real property within the municipality with its servants and officers, and with all necessary equipment and machinery, for the purpose of exercising any powers granted to it under clause (a), without the consent of the owners and without compensation to the owners concerned, and to take and expropriate any real property permanently required or in any way permanently necessary or convenient for the exercise of any of the powers granted by this Act, subject to the provisions of Part XIV of the "Municipal Act":
- (h) To credit to any area from the general funds of the municipality, amounts in accordance with the engineer's report or engineer's award, as the case may be, for benefit derived by roads and municipal properties, and in case of emergency or under special circumstances such sums as the Council may deem to be just and proper.

By-law to borrow.

11. Should the Council decide that the cost of construction of a ditch in accordance with the award of the engineer, or the cost of work of an emergency nature, including reconstruction or relocation of ditches in any area in any year, is too great to be levied in a single year, the Council may by by-law borrow the necessary moneys on the credit of the municipality, and shall assess and levy upon the lands benefited and the owners thereof a special rate sufficient for the repayment both of principal and interest of the said loan within a period not to exceed five years, and such by-law shall not require the assent of the electors.

Procedure to obtain an Award for the Construction of Ditches.

Declaration of ownership.

12. Any owner other than the municipality shall, before commencing proceedings under this Act, file with the Clerk of the municipality a declaration of ownership thereof in Form B of Schedule 2, which may be taken before a Justice, a Commissioner for taking Affidavits, a Notary Public, or the Clerk of the municipality.

Filing of particulars of parcels affected

13. At the time of filing the declaration of ownership, the owner of any parcel of land who requires the construction of a ditch shall furnish to the Clerk of the municipality a list of all the several parcels of land that will be affected by the ditch and the respective owners thereof.

Notice to engineer and notice of appointment made by engineer.

14. The Clerk, upon receiving such list, shall forthwith send to the engineer, either by personal delivery or by registered mail, a requisition in Form C of Schedule 2, naming therein all the several parcels of land and roads that will be affected by the ditch and the respective owners thereof, and requesting the engineer to appoint a time and place in the locality of the proposed ditch at which the engineer will attend to make an examination as hereinafter provided. On receipt of the same the engineer shall notify the Clerk in writing, appointing a time and place at which he will attend in answer to the requisition, which time shall be not less than fifteen nor more than thirty clear days from the day on which he received the requisition; and on receipt of the notice of appointment from the engineer, the Clerk shall, at least six clear days before the time so appointed, personally deliver or send by registered letter to each of the owners named in the requisition, his agent, or the occupant of the land a notice in Form D of Schedule 2 requiring their attendance at the time and place fixed by the engineer, and shall, after serving such notice, endorse on one copy thereof the time and manner of service and leave the same with the endorsements thereon with the engineer not later than the day before the time fixed in the notice of appointment.

Service of notices.

15. (1) All notices under this Act may be served personally, or by leaving the same at the place of abode of the owner or of the occupant, with an adult person residing thereat, or by registered letter addressed to the owner at his last known place of residence, and, where that is not

known, may be served in such manner as a Judge of the County Court may direct.

Occupant to notify owner.

(2) Any occupant, not the owner of the land, notified in the manner provided by this Act shall immediately notify the owner thereof, and shall, if he neglects to do so, be liable for all damages suffered by the owner by reason of such neglect.

Endorsement of notice.

(3) Any notice served upon an occupant, not the owner of the land, shall be endorsed with a warning in the words of subsection (2) hereof.

Examination by and Award of Engineer.

Examination by engineer.

16. (1) The engineer shall attend at the time and place appointed by him in answer to the requisition, and shall examine the locality, and, if he deems it proper, or if requested by any of the owners, may examine the owners and their witnesses present, and take their evidence, and may administer an oath or affirmation to any owner or witness examined by him. If upon examining the locality the engineer is of the opinion that the lands of owners upon whom notice has not been served will be affected by the ditch, he shall direct that the notice required by section 14 shall be served on such owners by the Clerk, and shall adjourn the proceedings to a day to be named in the notice for continuing the same for the purpose of allowing such owners to be present and to be heard.

Award of engineer

(2) The engineer may adjourn his examination and the hearing of evidence from time to time, and if he finds that the ditch is required, he shall, within thirty days after his first attendance, or in case an adjournment has been had, then after such further time as may be reasonably necessary, but not exceeding sixty days from his first attendance, make his award in writing, specifying clearly the location, description, and course of the ditch, and its commencement and termination, and shall indicate the relative benefit to be derived by each parcel of land and each portion of road from the construction of the said ditch in terms of acreage and stating the amount of his fees and the other charges, and by whom the same shall be paid

Covering of ditch

(3) In case a ditch is to be covered, the engineer shall in his award specify the kind of material to be used in the covered portion of the ditch.

Provisions as to opening of ditch across lands not benefited

17. Where the engineer is of the opinion that the land of any owner will not be sufficiently benefited by the construction of the ditch to make him liable to pay any part of the cost thereof, the engineer may, by his award, relieve such owner from paying any part of the cost of the ditch, and if the engineer considers that the damage to the said land by the construction and operation of the ditch will exceed the benefits derived by that land therefrom, he may award to the owner such compensation as he deems just and reasonable, and the amount of such compensation shall form part of the cost of the ditch.

Filing of award and notice to persons affected.

18. The engineer shall forthwith, after making his award, file the same and any plan, profile, and specifications of the ditch with the Clerk

of the municipality who shall place the award, together with all such plans, profiles, and specifications, before the Council at its next meeting, and the Council shall decide whether the ditch shall be constructed or not, not later than thirty days after the date of the said filing. The Clerk of the municipality shall forthwith notify each of the owners affected thereby of the decision of the Council.

Filing of plans showing extension of areas.

19. It shall not be necessary for the engineer's award referred to in section 16 above to be filed in the Land Registry Office, but if any new construction, extension, or enlargement of any ditch has the effect of changing the boundaries of any area established under this Act or of making necessary the establishment of a new area, the engineer shall prepare plans showing the new boundaries of the established area or the boundaries of the new area, as the case may be, and after approval by the Council the said plans shall be deposited in the Land Registry Office in the City of New Westminster, and the provisions of section 8 shall apply.

"Ditches and Watercourses Act" to apply in certain cases.

20. Should any proposed or existing ditch originating in the Township of Chilliwack continue into any adjacent municipality, or vice versa, the provisions of the "Ditches and Watercourses Act" shall apply: Provided that such maintenance and operation costs as may be chargeable to owners of the land affected within the Township of Chilliwack shall be levied in accordance with the provisions of this Act.

Power to enter agreement with Chilliwack.

21. Notwithstanding the provisions of section 20, the Council may enter into an agreement with the Council of any adjoining municipality or with any duly constituted drainage or dyking authority as to the construction, operation, maintenance, and allocation of costs as between the Township of Chilliwack and such adjoining municipality or authority of any drainage scheme affecting lands within the Township of Chilliwack and such adjoining municipality or authority. Should lands within an area in the Township of Chilliwack be benefited as the result of any such agreement, the costs thereby incurred by the Council, or a reasonable portion thereof, may be charged against such area and levied against the owners pursuant to the provisions of this Act.

Agreement with railway company.

22. The Council may enter into an agreement with any railway company for the construction, enlargement, operation, or maintenance of any ditch within the municipality whenever it is necessary or desirable that such ditch enter upon or cross any lands of such railway company.

Appeal from award.

23. (1) Any owner dissatisfied with the award or report of the engineer made pursuant to the provisions of section 9 or of section 16 of this Act, and affected thereby, may, within fifteen clear days from the filing thereof, appeal therefrom to the Court of Revision of the municipality by serving upon the Clerk personally or by registered mail a notice of appeal in writing setting forth therein his grounds of appeal.

Court of Revision.

(2) Such Court of Revision shall be constituted in the same manner and have the same powers, and be subject to the same provisions in respect to appeal, as Courts of Revision constituted under sections 252 to 261 of the "Municipal Act," and the Court of Revision shall meet to consider the appeal not later than thirty days after the expiration of the time for appeal.

Inspection of premises by another engineer.

(3) Any appellant may have the lands and premises concerned inspected by any other engineer or person who for such purposes may enter upon the lands and premises.

Determination of appeal within thirty days.

(4) It shall be the duty of the Court of Revision to hear and determine the appeal within thirty days after receiving the notice of appeal, and the Court of Revision may examine the parties and witnesses on oath, and may inspect the premises, and may set aside, alter, or affirm the award, and may make such order as to the payment of the costs of the appeal as it may deem to be just.

Owner desiring to avail himself of ditch after construction.

24. In case any owner, during or after the construction of a ditch, desires to avail himself of such ditch for the purpose of draining other lands than those contemplated by the original award, he may avail himself of the provisions of this Act as if he were an owner requiring the construction of a ditch; but no owner shall make use of a ditch after construction, unless under an award pursuant to the provisions of this Act.

Reconsideration of Award.

Engineer to review report within five-year intervals.

25. The Council shall require the engineer, at intervals of not more than five years, to review the report for each ditching area referred to in section 9 of this Act, and if any change in the report is made by the engineer, the provisions for filing, notification, and appeal applicable to reports made pursuant to section 9 shall apply.

SCHEDULES.

SCHEDULE 1.

(Section 5.)

Ditching Scheme.	Account Balance, Dec. 31.
Annis	\$328.00
Annis-Brannick	653.20
Ashwell-Eckert	623.02
Brett	350.86
Brett Extension	279.00
Brown	127.79
Centreline	4,889.35
Chilliwack Central	4,516.10
Clark	1,453.66
Craven	619.12
Copeland	36.80
Cummings	140.13
Davis	244.15
Dixon	55.98
Dunville Outlet	297.84
Dunville North	114.28
Dunville South	58.48
Duthie	1,491.50
Elk Creek	2,771.86
Elk Creek Spillway	1,054.47
English	865.00
First Avenue	256.84
K. Fulton	532.00
W. Fulton	80.00
Gillespie	249.00
Hansen	53.25
Hooge	1,173.05
Interception	1,249.44
Kroop	960.13
Macken	626.90
Mitchell	311.71
McBean	343.53
Patterson	72.60
Prairie Central	6,854.37
Reimer	283.36
Rogers-Ford	675.55
Rosedale	346.21
Semiault	6,609.87
South Sumas	95.20
Spencer (Private)	40.00
Stewart	280.00
Tisman	72.60
Tranmer Extension	508.48
Gordon Wells	82.04
Yarrow (Old)	909.75
Yarrow (New)	6,344.16
Young	2.57
Total	\$49,983.20

SCHEDULE 2.

FORM A.
(Section 7.)

RESOLUTION FOR APPOINTMENT OF ENGINEER.

A Resolution for the Appointment of an Engineer under the "Township of Chilliwack Drainage Act."

Finally passed , 19 .

The Council of the Township of Chilliwack resolves as follows:—

1. Pursuant to the provisions of section 7 of the "Township of Chilliwack Drainage Act," [name of person], of , is hereby appointed an engineer to carry out the provisions of the said Act.

2. This resolution shall take effect from and after the passing thereof.

Clerk.

Reeve.

FORM B.
(Section 12.)

DECLARATION OF OWNERSHIP.

In the Matter of the "Township of Chilliwack Drainage Act," and of a Ditch in the Township of Chilliwack.

I, , of the Township of Chilliwack, do solemnly declare and affirm that I am the owner, within the meaning of the "Township of Chilliwack Drainage Act," of [description of land] in the Township of Chilliwack, and that as such owner I require a ditch to be constructed for the draining of my said land under the said Act.

Declared before me at Chilliwack, B.C.,
this day of , 19 .

Clerk.

Owner.

FORM C.
(Section 14.)

REQUISITION FOR EXAMINATION BY ENGINEER.

Township of Chilliwack, [date], 19 .

To [name of engineer],
[P.O. address].

SIR,—Whereas [name] has filed with me declaration that he is the owner, within the meaning of the "Township of Chilliwack Drainage Act," of [description of land] in the Township of Chilliwack, and that as such owner he requires a ditch to be constructed for the draining of his said land under the said Act, and whereas the following lands and roads will be affected: [description of lands and roads], I request that you, the engineer appointed by the municipality for the purpose of the said Act, appoint a time and place in the locality of the proposed ditch at which you will attend and examine the premises, hear any evidence of the parties and their witnesses, and make your award under the provisions of the said Act.

.....
Clerk.

FORM D.
(Section 14.)

NOTICE OF APPOINTMENT FOR EXAMINATION BY ENGINEER.

Township of Chilliwack, [date], 19 .

To [name of owner],
[P.O. address].

SIR,—You are hereby notified that the engineer appointed by the municipality for the purposes of the "Township of Chilliwack Drainage Act" has, in answer to requisition, fixed the hour of o'clock in the noon of day, the day of , 19 , to attend at [name the place appointed] and to examine the premises and site of the ditch required to be constructed under the provisions of the said Act [or as the case may be], and you, as the owner of lands affected, are required to attend, with any witnesses that you may desire to have heard, at the same time and place.

Yours truly,

.....
Clerk.

.....
VICTORIA, B.C.

Printed by DON McDIARMID, Printer to the King's Most Excellent Majesty
1951