
STATUTORY INSTRUMENTS

1979 No. 1471 (S. 122)

WATER SUPPLY, SCOTLAND

**The Borders Regional Council (Dod Mill Intake) Water
Order 1979**

Made - - - - 14th November 1979

Coming into Operation 21st November 1979

The Secretary of State in exercise of the powers conferred on him by sections 21(2) and 44(1) of the Water (Scotland) Act 1946(a) as read with section 148 of, and paragraph 1 of Schedule 17 to the Local Government (Scotland) Act 1973(b) and of all other powers enabling him in that behalf, on the application of the Borders Regional Council, hereby makes the following order:—

PART I

Citation and commencement

1. This order may be cited as the Borders Regional Council (Dod Mill Intake) Water Order 1979 and shall come into operation on 1979.

Interpretation

2. In this order, unless the context otherwise requires:—

“the Act” means the Water (Scotland) Act 1946;

“approved” means approved by the Secretary of State;

“Council” means the Borders Regional Council as water authority;

“day” means a period of 24 hours reckoned from midnight;

“deposited plans” means the plans, numbered Sheet 1 and Sheet 2, prepared in duplicate, sealed with the seal of the Secretary of State for Scotland, and marked “The Borders Regional Council (Dod Mill Intake) Water Order 1979” one copy of each of which is deposited in the office of the Scottish Development Department, New St. Andrew’s House, Edinburgh and the other in the office of the Chief Executive to the Borders Regional Council, Regional Headquarters, Newtown St. Boswells;

“gauge” includes a gauge weir or other apparatus for measuring the flow of water;

“undertaking” means the water undertaking of the Council for the time being;

(a) 1946 c. 42; section 21(2) was amended by the Water (Scotland) Act 1949 (c. 31), section 30(b) and section 39(4), Schedule 2, Part II and the Water (Scotland) Act 1967 (c. 78), section 35(1), Schedule 5, paragraph 27. Section 44(1) was amended by the Water (Scotland) Act 1967, section 4(3), Schedule 2, paragraph 11.

(b) 1973 c. 65; Schedule 17, paragraph 1 was amended by section 38(1), and Schedule 6, Part II, paragraph 56 of the Local Government (Scotland) Act 1975 (c. 30).

“works” means the works described in Schedule 1 to this order which the Council, in exercise of the powers conferred on them by section 24 of the Act, and in the lines and situations and according to the levels shown on the deposited plans, propose to construct and maintain for the purpose of providing a supply of water within their limits of supply when they have acquired the necessary lands or sufficient rights therein.

Incorporation and application of provisions of the Fourth Schedule to the Act

3. The provisions of section 10(3) and (4) of Part III of the Fourth Schedule to the Act modified and adapted in terms of section 44(1) of the Act and set out in Schedule 2 to this order apply to the undertaking in so far as affected by the provisions of this order.

PART II

Water rights

4. Subject to the provisions of this order, the Council may, for the purposes of the undertaking, take water, by means of the works, from the stream known as Boondreigh Water in the Ettrick and Lauderdale District of the Borders Region.

5. During the construction of the works the Council may take such water as they may require from the Boondreigh Water for such construction.

6.—(1) After the completion of the works the Council shall not, subject to the provisions of sub-paragraphs (2) and (3) below, take more than 1,750 cubic metres of water in any one day measured through or over an approved gauge incorporated in the pumphouse (Work No. 2), and in any event shall not reduce the rate of flow per day in the said Boondreigh Water to less than 2,750 cubic metres as measured through or over an approved gauge incorporated in the intake weir (Work No. 1).

(2) The Council may, but only if they consider it necessary for the maintenance of a supply of water to their consumers, take water up to a limit of 2,650 cubic metres in any one day measured through or over an approved gauge incorporated in the pumphouse (Work No. 2) but so as not to either—

- (a) reduce the rate of flow per day in the said Boondreigh Water to less than 1,850 cubic metres as measured through or over the approved gauge incorporated in the intake weir (Work No. 1); or
- (b) reduce the sum of the flow measured through or over the approved gauge incorporated in the intake weir (Work No. 1) and the approved gauge installed on the Earnsclough Water in accordance with Article 4 of the County Council of the County of Berwick (Earnsclough) Water Order 1952(a), to less than 3,250 cubic metres.

(3) The Council shall not continue to take water from the said Boondreigh Water in terms of sub-article (2) above for a period exceeding three consecutive days without the consent in writing of the Tweed River Purification Board, which consent shall not be unreasonably withheld.

7. If the power to take water conferred by this order has not been exercised within 10 years from the date on which this order comes into operation the said power shall cease.

Miscellaneous

8. The Council shall at all times after the expiration of 6 months from the date on which this order comes into operation keep at the office of the Chief Executive to the Council a copy thereof and of the deposited plans.

Given under the seal of the Secretary of State for Scotland.

(L.S.)

D. A. Campbell,
Assistant Secretary.

Scottish Development Department,
New St. Andrew's House,
Edinburgh.

14th November 1979.

SCHEDULE 1

The works referred to in this order and shown on the deposited plan marked "The Borders Regional Council (Dod Mill Intake) Water Order 1979 Sheet No. 2" are:—

Work No. 1

An intake weir, sill level 184.1 metres or thereby above Ordnance Datum, incorporating an approved gauge to measure residual flows, situated across the stream known as the Boondreigh Water 54 metres or thereby to the south of the centre line of the public road A697.

Work No. 2

A pumphouse situated 25 metres or thereby to the north west of the intake weir (Work No. 1) incorporating an approved gauge for measuring the quantity of water taken by the Council.

SCHEDULE 2

The provisions of the Fourth Schedule to the Act referred to in this order are:—

Section 10(3)

If the Council—

- (a) fail to instal or maintain in good order any such gauge as is mentioned in this order, or refuse to allow any person interested to inspect and examine any such gauge or any records made thereby or kept by them in connection therewith or to take copies of any such records; or
- (b) take any water contrary to the provisions of this order,

they shall, without prejudice to their civil liability, if any, to a person aggrieved, be liable, in the case of an offence under paragraph (a) of this subsection, on summary conviction to a fine not exceeding £50 in respect of each day on which the offence has been committed or has continued, and in the case of an offence under paragraph (b) of this subsection—

- (i) on summary conviction, to a fine not exceeding £50 in respect of each such day; and
- (ii) on conviction on indictment, to a fine not exceeding £500 in respect of each such day.

Section 10(4)

For the purposes of this order a fishery district board shall be deemed to be interested in the flow of water in any stream within their fishery district or any stream feeding such a stream and shall be deemed to be aggrieved by the commission of an offence under this order in relation to any such stream.