STATUTORY INSTRUMENTS

1979 No. 1361

WATER, ENGLAND AND WALES

The Portsmouth Water (High Wood Reservoir) Order 1979

Made - - - - 26*th October* 1979

Coming into Operation 8*th November* 1979

The Secretary of State for the Environment, in exercise of powers conferred by section 23 of the Water Act 1945(a) as extended by section 3 of the Water Act 1948(b) and section 33(2) of the Compulsory Purchase Act 1965(c) and now vested in him(d), and of all other powers enabling him in that behalf, hereby orders as follows:—

Citation.

1.—(1) This order may be cited as the Portsmouth Water (High Wood Reservoir) Order 1979.

(2) The Portsmouth Water Acts and Orders 1857 to 1978 and this order may be cited together as the Portsmouth Water Acts and Orders 1857 to 1979.

Interpretation.

2.—(1) In this order, unless the context otherwise requires, expressions to which meanings are assigned by the Third Schedule have the same respective meanings; and—

"the Company" means the Portsmouth Water Company;

"the deposited plan" and "the deposited sections" respectively mean the plan and sections prepared in duplicate, signed by an Under Secretary in the Department of the Environment and marked "Plan and sections referred to in the Portsmouth Water (High Wood Reservoir) Order 1979", one set of which is deposited in the office of the Secretary of State and one in the office of the Company;

"Third Schedule" means the Third Schedule to the Water Act 1945;

"the undertaking" means the undertaking of the Company as from time to time authorised by any enactment.

(2) All distances and lengths stated in any description of works, powers or lands shall be construed as if the words "or thereabouts" were inserted after each such distance or length.

(3) Any reference in this order to a work identified by the number of such work shall be construed as a reference to the work of that number authorised by this order.

(a) 1945 c. 42. (b) 1948 c. 22. (c) 1965 c. 56.
(d) S.I. 1951/142, 1900, 1970/1681.

Incorporation of enactments.

3.—(1) There shall be excepted from Part I of the Compulsory Purchase Act 1965, as applying in relation to this order, the provisions of section 27 of, and paragraph 3(3) of Schedule 3 to, that Act, and the enactments relating to compensation payable in respect of the compulsory acquisition of land shall apply to the Company subject to the modification specified in Part III of Schedule 2 to the Acquisition of Land (Authorisation Procedure) Act 1946**(a)**.

(2) (*a*) The provisions of the Railways Clauses Consolidation Act 1845**(b)** with respect to the temporary occupation of lands near the railway during the construction thereof are hereby incorporated with this order.

(*b*) In the construction of the provisions of the said Act of 1845 so incorporated with this order—

(i) the expression "the special Act" shall mean this order;

(ii) the expression "the Company" shall mean the Company;

(iii) the expression "the railway" shall mean the works authorised by this order;

(iv) the expression "the centre of the railway" shall mean the centre of any such works respectively or, in relation to Work No. 1, any part of the embankment of that reservoir; and

(v) for the words "the period by the special Act limited for the completion of the railway" there shall be substituted the words "the period of ten years from the commencement of the construction of any of the works authorised by the special Act".

(3) For the purposes of this order the provisions of the Third Schedule set out in column (1) of the Schedule to this order shall, subject to the modifications set out in column (2) thereof, apply to the undertaking and, subject as aforesaid, are hereby incorporated with this order.

Purchase of lands.

4.—(1) Subject to the provisions of this order, the Company may purchase compulsorily such of the lands within the limits of deviation and of land to be acquired delineated on the deposited plan (not being lands mentioned in section 24(6) of the Water Act 1945), as may be required for the purposes of this order.

(2) The Company shall not, under subsection (1) of this section, purchase any land required only for the purpose of—

(*a*) the construction and maintenance of the line or lines of pipes and cables (Work No. 2);

(*b*) the construction and maintenance of the access road (Work No. 3);

if, within six months from the service by the Company on all persons on whom notice to treat would have to be served in respect of the compulsory purchase of that land of a notice specifying the easements or rights in or over that land which the Company require for the purposes of this order and requesting the grant to the Company of those easements or rights, agreement is made for the grant to the Company of those

---

(a) 1946 c. 49. (b) 1845 c. 20.

easements or rights at a price to be agreed or, failing agreement, to be determined under the provisions of the Land Compensation Act 1961(a).

Construction of works.

5.—(1) Subject to the provisions of this order, the Company may, when they have acquired such lands or rights therein as are sufficient for the purposes of the construction, maintenance and operation of the works authorised by this section, construct and maintain, in the lines and situations shown on the deposited plan and according to the levels shown on the deposited sections, the following works in the parish of West End in the Borough of Eastleigh in the county of Hampshire:—

Work No. 1—A raw water storage reservoir (to be known as "the High Wood Reservoir") constructed of reinforced concrete in the enclosures numbered 3500 and 3029 in the parish of West End on the 1/2500 ordnance maps SU 4616 (Edition 1963) and SU 4615 (Edition 1964);

Work No. 2—A line or lines of pipes and cables commencing at the reservoir (Work No. 1) and terminating at the existing treatment works of the Company authorised by the Portsmouth (River Itchen) Water Order 1970(b);

Work No. 3—An access road commencing by a junction with Allington Lane (C 194) at a point 40 metres from the south-west corner of the building known as Mirembe in Allington Lane and terminating at the reservoir (Work No. 1).

(2) The Company may from time to time renew, enlarge and alter the works described in subsection (1) of this section.

Works to form part of undertaking.

6. The works authorised by this order shall for all purposes form part of the undertaking, but no person shall be entitled to demand to be afforded a supply of water from the line or lines of pipes (Work No. 2).

Temporary stoppage of highways, etc.

7.—(1) The Company during, and for the purposes of, the execution of any of the works authorised by this order may temporarily stop up, alter, divert or otherwise interfere with any highway or drain or any private right of way and, in the case of any highway or right of way, may for any reasonable time divert the traffic therefrom and prevent all persons other than those bona fide going to or from any land, house or building abutting on the highway or right of way from passing along and using the same.

(2) The Company shall provide reasonable access for passengers, with or without animals, bona fide going to or from any such land, house or building and shall, wherever reasonably practicable, provide a proper temporary substitute way before interrupting the traffic on any highway.

(3) The powers of subsection (1) of this section shall not be exercised by the Company—

(*a*) in relation to a highway, without the consent of the highway authority, which consent shall not be unreasonably withheld but may be given subject to such reasonable conditions (other than a monetary payment) as the highway authority may require, and any question whether such consent is unreasonably withheld, or any conditions so imposed are unreasonable, shall be determined by arbitration;

(a) 1961 c. 33. (b) S.I. 1970/1621.

(*b*) in relation to any drain, without providing a proper substitute before interrupting the passage of water in or through such drain, and the Company shall make compensation for any damage caused to any person by the exercise of such powers in relation to any drain, the amount of such compensation being, in case of dispute, determined by arbitration.

(4) The exercise of the powers conferred by subsection (1) of this section in relation to a highway shall not affect the powers of the Post Office under the Telegraph Acts, as defined by section 21(2) of the Post Office Act 1969(**a**), to place, maintain, inspect, repair, renew or remove telegraphic lines or to open or break up that highway for any of those purposes.

For protection of water, electricity and gas undertakers.

8. For the protection of the Southern Water Authority, the Southern Electricity Board, the Central Electricity Generating Board and the British Gas Corporation the following provisions shall, unless in any case it is otherwise agreed in writing between the Company and the undertakers concerned, apply and have effect:—

(1) In this section—

"adequate alternative apparatus" means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously;

"apparatus" means—

(*a*) in the case of electricity undertakers, electric lines or works (as respectively defined in the Electric Lighting Act 1882(**b**)) belonging to, maintained by or lawfully laid or erected by, such undertakers; and

(*b*) in the case of water or gas undertakers, any apparatus belonging to such undertakers or for the maintenance of which they are responsible;

(not being in any such case apparatus in respect of which the relations between the Company and the undertakers are regulated by the provisions of section 26 of the Public Utilities Street Works Act 1950(**c**)) and includes any structure for the lodging therein of apparatus;

"in", in a context referring to apparatus, includes under, over, across, along or upon;

"undertakers" means any person authorised by any enactment to carry on an undertaking for the supply of water, electricity or gas.

(2) Notwithstanding anything in this order or shown on the deposited plan, the Company shall not acquire any apparatus otherwise than by agreement.

(3) If the Company in the exercise of the powers of this order acquire any interest in any lands in which any apparatus is placed they shall not seek to remove that apparatus, or to extinguish any right of the undertakers to use, maintain, repair, renew or inspect that apparatus in those lands, until adequate alternative apparatus shall have been constructed and be in operation to the reasonable satisfaction of the undertakers.

(**a**) 1969 c. 48. (**b**) 1882 c. 56. (**c**) 1950 c. 39.

(4) If the Company, for the purpose of exercising the powers of this order, require the removal of any apparatus and give to the undertakers notice of their requirement, or if in consequence of the exercise of the powers of this order the undertakers shall reasonably require to remove any apparatus, the Company shall afford to the undertakers the necessary facilities and rights for the construction of adequate alternative apparatus in other land of the Company and thereafter for the maintenance, repair, renewal and inspection of such apparatus:

Provided that if the Company are unable to afford facilities and rights as aforesaid the undertakers shall on receipt of a notice to that effect from the Company forthwith use their best endeavours to obtain the necessary facilities and rights in other land.

(5) The Company shall pay to the undertakers the amount by which the costs, charges and expenses reasonably incurred by the undertakers in connection with any removal or alteration of any apparatus or the construction of any new apparatus which may be required in consequence of the exercise of the powers of this order shall exceed the value (such value being calculated after removal) of any apparatus removed in consequence of alternative apparatus being provided, and shall also make compensation to the undertakers for any damage caused to any apparatus in consequence of the exercise of the said powers.

(6) The temporary stopping up or diversion of any highway under the powers of section 7 (Temporary stoppage of highways, etc.) of this order shall not prevent the undertakers from obtaining access to any apparatus nor prejudice or affect any right of the undertakers—

(*a*) to lay, erect, maintain, inspect, repair, renew or remove any apparatus in the highway; or

(*b*) for the purpose of such laying, erection, maintenance, inspection, repair, renewal or removal to enter upon or break up that highway.

(7) Any difference which may arise between the Company and the undertakers under this section shall be referred to arbitration.

For further protection of Southern Water Authority.

9. The provisions of paragraph (6) of section 8 (For protection of water, electricity and gas undertakers) of this order shall extend and apply for the protection of the Southern Water Authority as if the definition of "apparatus" included works belonging to, or maintained by, them for the purposes of their functions as the authority responsible for sewerage.

Costs of order.

10. All costs, charges and expenses of and incidental to the application for, and the preparation and making of this order may be paid by the Company in whole or in part out of revenue.

SCHEDULE

PROVISIONS OF THE THIRD SCHEDULE APPLIED

Provisions applied (1)	Modifications (2)
Part II (Works and Lands) (except section 3)	In section 2 for the words "plans submitted to the Minister" there shall be substituted the words "the deposited plan" and for the words "the said plans" wherever occurring there shall be substituted the words "the deposited sections". In section 4 the words from the beginning of the section to the words "abstract water" shall be omitted; for the words "any land for the time being held by them in connection with their water undertaking" there shall be substituted the words "the lands within the limits of deviation and of land to be acquired delineated on the deposited plan"; after the word "culverts" there shall be inserted the words "drains, drainage channels" and after the word "plant" there shall be inserted the words "chambers, washouts, junctions, valves, gauges, screens, strainers, cables, ground beds for cathodic protection, retaining walls, roads, means of access, piling, embankments, bridges". In section 7(1) for the words "underground works" there shall be substituted the words "works or of providing means of access."
Part IV (Minerals Underlying Waterworks)	In section 12 for the words "after this section is incorporated with their enactments" there shall be substituted the words "under the special Act"; for the words "all existing pipes or other conduits for the collection, passage, or distribution of water and underground works belonging to them" there shall be substituted the words "all such pipes or other conduits or underground works"; and the words "for the time being belonging to them" shall be omitted.
Part V (Power to lay mains, &c.) except section 21 (Power to lay service pipes, &c.)	After the words "their limits of supply" wherever those words occur in sections 19 and 20 there shall be inserted the words "and the Borough of Eastleigh"; and for the words "those limits" in section 19(1) there shall be substituted the words "that area".
Part VI (Breaking Open Streets, &c.)	—
Section 83 (Penalty for obstructing execution of special Act)	—

SCHEDULE—*continued*

Provisions applied (1)	Modifications (2)
Section 91 (Mode of reference to arbitration)	For the words "the Minister" there shall be substituted the words "the President of the Institution of Civil Engineers".
Section 92 (Liability of undertakers to pay compensation)	—
Section 93 (Protection for works of navigation authorities and for catchment boards and railways)	—
Section 94 (Copies of special Act to be kept by undertakers in their office, and deposited with certain officers).	—

Signed by authority of
the Secretary of State
26th October 1979.

D. C. Musgrave,
An Under Secretary in the
Department of the Environment.