

Reports, etc.
Payment for printing.

SEC. 13. The printing of matter relating to river and harbor works, including all reports, compilations, regulations, and so forth, whose preparation is allowable under War Department regulations, may, upon recommendation of the Chief of Engineers and approval by the Secretary of War, be paid for from river and harbor appropriations.
Approved, July 25, 1912.

July 27, 1912.
[H. R. 11628.]
[Public, No. 242.]

CHAP. 254.—An Act Authorizing John T. McCrosson and associates to construct an irrigation ditch on the Island of Hawaii, Territory of Hawaii.

Hilo, Hawaii.
John T. McCrosson
granted right for irrigation ditch, etc.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right and power is hereby granted to John T. McCrosson and to his associates and assigns, and to such corporation as may be organized by him or them for the purpose of taking over and exercising the rights, powers, and privileges hereby conferred, hereinafter collectively referred to as the Ditch Company, to construct a ditch, together with the tunnels, dams, water heads, reservoirs, roads, trails, conduits, buildings, machinery, and other structures or appliances necessary or proper for conducting or storing water to flow through said ditch from any point in the district of Hilo (which term shall be held to include both North and South Hilo), Island and Territory of Hawaii, through the said district to and through the districts of Puna and Kau, in said island and Territory, and to any point or points therein: *Provided*, That said ditch shall be constructed at an elevation of not less than two thousand five hundred feet at its nearest point to the land of Hakalau, district of Hilo, and shall have a fall of not more than six feet to the mile within the limits of said district of Hilo.

Proviso.
Construction.

SEC. 2. That the right and power is also granted to the Ditch Company to develop, produce, use, sell, and transmit power produced by water within the district of Kau, but not elsewhere.

Power rights.

Purchase of lands,
etc.

SEC. 3. And also the right and power to buy, take on lease, or otherwise acquire by private purchase, and to hold all land or interests in land necessary, convenient, or proper for the purposes aforesaid, or any of them.

Condemnation, etc.

SEC. 4. And also the right and power to condemn and take any land, or interest in land, necessary or proper for rights of way or for dam or reservoir or building sites for the purposes aforesaid, or any of them, subject, however, in all respects, as near as may be, to the obligations, restrictions, payments, and procedure now or hereafter imposed or prescribed by the laws of the Territory of Hawaii for the exercise of the right of eminent domain by public railroads in the Territory: *And provided, however*, That nothing in this Act contained shall authorize or empower the condemnation of water or water rights nor permit the Ditch Company to take or divert water now used in the said district of Hilo.

Proviso.
Restriction of water rights.

Lease of public lands.

SEC. 5. That the commissioner of public lands for the Territory of Hawaii, hereinafter referred to as the "commissioner," is hereby authorized and directed to execute to the Ditch Company, and the governor of the Territory of Hawaii, hereinafter referred to as the "governor," is authorized and directed to approve a lease of all such public lands in the district of Kau, to be designated by the Ditch Company, as are capable of being economically irrigated from the ditches of the company, together with rights of way for ditch purposes over all Government lands situated in said districts of Hilo, Puna, and Kau. The lease shall provide that if within six months from the date of the first delivery of water in the said district of Kau by the Ditch Company it is ascertained to the satisfaction of the Ditch Company that any of the lands theretofore designated by it are inca-

Surrender of lands incapable of irrigation.

pable of being economically watered from its waterways, such lands, or any portion thereof, shall be surrendered by the said Ditch Company by notice in writing to the commissioner, and no rent for said lands so surrendered, if any, shall be charged or collected by the lessor, and that the surrender of a portion of such lands, as herein provided, shall in nowise affect the lessee's tenancy of the remaining lands under said lease; that the term of said lease shall be fifty years from the date hereinafter set forth; that the Ditch Company shall have the right and authority at all times after the execution of said lease to enter upon all such public lands in the district of Kau for the purpose of surveys, construction work, and so forth; that the rent to be paid for said lands shall be at the rate of one dollar per acre per annum, payable to the Territory, at its option, either in water from the waterways of the Ditch Company at the lowest rate payable by any consumer of water furnished by the company, or in cash, or partly in water and partly in cash, in such proportions as the Territory may elect; that the Ditch Company shall furnish to homesteaders or settlers along the line of the company's waterways, or such other person or persons along said waterways as the commissioner, with the approval of the governor, may direct, at a point or points to be designated by such officials, such water as the Territory at its option elects to take by way of rental for said public lands. The Ditch Company shall have full right to sublet the said lands or any part thereof, or to assign the lease in whole or in part, either by way of security or otherwise, subject, however, in all things to the provisions hereof. The lease shall be made subject to any unexpired and outstanding lease of any or all of such lands and shall contain appropriate provisions to secure the construction and maintenance of the necessary works for supplying such lands with water, and the reversion of such works to the Territory upon the termination of the lease, as hereinafter provided: *Provided, however,* That nothing herein shall authorize the withdrawal of any lands now open or applied for for settlement purposes.

Term, etc.

Rent, etc.

Existing leases.

Proviso.
Lands excluded.

SEC. 6. That not more than thirty per centum of the lands so held under lease by the Ditch Company may at any time after the expiration of six months from the date of the first delivery of water as aforesaid by the Ditch Company be withdrawn for public purposes or homesteaded or sold for other purposes under the laws relating to public lands in Hawaii, such withdrawal of lands to be, as far as practicable, in blocks of not less than five hundred acres, and the right of way of the Ditch Company through such land so withdrawn to be reserved to it, in which case the rent reserved shall be proportionately reduced at the rate of one dollar per acre for the land so withdrawn, homesteaded, and sold: *Provided,* That written notice of intention to withdraw any portion of such public lands, together with a proper description of the lands so to be withdrawn, shall be served upon the Ditch Company by the commissioner, with the approval of the governor, not less than three calendar months before such withdrawal is to take effect: *Provided also,* That growing crops, if any, upon said lands so to be withdrawn may be harvested by the Ditch Company or those holding under it before such withdrawal is or shall be operative: *Provided further,* That the Ditch Company shall furnish to the lands withdrawn, for the purposes aforesaid, the same proportionate quantity of water per acre as is contracted for by the larger leaseholders for the Government lands irrigated under this project, and at the same rates, if the homesteader or other person holding the beneficial use of the lands so withdrawn desires to contract for the same.

Limit on opening leased lands for homestead.

Proviso.
Notice of withdrawal.

Growing crops.

Water to lands so withdrawn.

Conditions.

SEC. 7. That the lease shall go into effect when the Ditch Company shall have constructed a ditch from said district of Hilo to Pahala, in said Kau, with a delivering capacity of one hundred million gallons of

water per day of twenty-four hours, and when fifty million gallons of water shall have been actually delivered by means of said waterway to said Pahala within a period of twenty-four consecutive hours, such date to be ascertained by the commissioner and fixed by him with the approval of the governor. Notice of the fixing of such date and the consequent beginning of the term of the lease shall be communicated in writing to the Ditch Company by said officials within ten days from the date thereof.

Amounts to be expended.

SEC. 8. That a sum not less than fifty thousand dollars in cash shall be actually expended by the Ditch Company in preliminary surveys, construction work upon said ditch or reservoirs, or for other good and useful purposes in that behalf within one year, one hundred thousand dollars within two years, and one million dollars within three years from the date of the approval of this Act by the President.

Completion.

SEC. 9. That the ditch shall be completed as far as said Pahala within four years, and as far as Waiohinu, in said Kau, within five years from the date of said approval.

Forfeiture for failure to expend sums, etc.

SEC. 10. That if the Ditch Company shall fail to expend such respective sums of money, or any of them, within the respective times aforesaid, for the purposes aforesaid, then, and in any such case, all of the rights, powers, and privileges hereby granted, and the said lease shall be forfeited and be null and void and of no effect, and all works and improvements up to that time erected or constructed shall immediately revert to and become the property of the Territory.

Compliance with terms, etc.

SEC. 11. That if after such expenditures shall have been made the Ditch Company shall fail to observe or perform any of the terms, requirements, or conditions herein contained or prescribed, the governor shall give the Ditch Company written notice to furnish to him, within three months from the date of such notice, assurances and proofs satisfactory to him that such breach or failure will be remedied and all terms, requirements, and conditions herein contained or prescribed observed, performed, or complied with within one year after the date of such notice. If the Ditch Company shall fail to furnish to the governor assurances and proofs as aforesaid within such term of three months, or if, having furnished the same, there shall at the end of said term of one year remain unperformed, unfulfilled, or unobserved any term, requirement, or condition herein contained on the part of the Ditch Company to be observed, kept, or performed, then and in such case all of the franchises hereby granted and the said lease shall be forfeited and be null and void and of no effect.

Forfeiture if unfulfilled.

Extension of time, etc., allowed.

SEC. 12. That the times herein fixed for completion of the said ditch to various points, for the expenditure of moneys in surveys, construction, and other work aforesaid, and for the doing of any other or different act required of the Ditch Company, may for good cause shown be extended by order of the governor for a time which he shall deem reasonable in view of such cause: *Provided*, That such action by the governor shall be subject to review by the Secretary of the Interior.

Proviso. Review by Secretary.

Freedom from taxes.

SEC. 13. That the corporation formed by the said J. T. McCrosson as aforesaid, for the purposes aforesaid, and its property used for or in carrying into effect the purposes aforesaid, or any of them, and its income shall be free from Territorial, municipal, and county property and income taxes for the term of ten years after the approval of this act.

Sale of water and power rates.

SEC. 14. That the rates at which water flowing along said ditch, and power produced thereby or incidental thereto, shall be sold to applicants shall be fixed and published from time to time by the Ditch Company, with the approval of the governor, and such rates shall be the same to all.

Basis of rates.

SEC. 15. That such rates shall be based upon the yielding of not more than sufficient revenues, in connection with all other revenues of the company, to pay the following, namely:

First. The reasonable expenses of maintenance and operation of the ditch and other plant and appurtenances.

Second. Interest on any bonds issued to procure money with which to construct the ditch and other plant and appurtenances at a rate not to exceed six per centum per annum, payable semiannually.

Third. An annual sinking fund to redeem all of such bonds within the term of the lease and franchises hereby granted.

Fourth. Dividends on the capital-stock issue of the Ditch Company at a rate not to exceed eight per centum upon the actual cost of the ditch and other plant and appurtenances.

SEC. 16. That if at any time the income of the Ditch Company shall exceed a sum sufficient for the purposes aforesaid the rates for water and such power shall be reduced to an estimated figure, approved by the governor, which will produce an income in compliance with the provisions of the section last aforesaid.

SEC. 17. That the Ditch Company shall at the end of each fiscal year ending June thirtieth file with the governor a report showing what its transactions have been during the previous year; what additions to the plant, if any, have been made; the actual cost thereof; its receipts and whence derived; and expenditures and for what made during the previous year. Such reports shall be open to public inspection. The books, papers, accounts, and records of said Ditch Company shall at all times be subject to the inspection of the governor or the commissioner and to any agent or representative of said officers or either of them.

SEC. 18. That at the end, or sooner determination, of the lease and franchises herein provided for the ditch and other plant and appurtenances shall revert to and become the property of the Territory of Hawaii, without payment therefor and free of all charges, expenses, liens, or obligations whatsoever.

SEC. 19. That the Territory of Hawaii may at any time after ten years from the completion of the ditch purchase from the Ditch Company the ditch, together with all property and rights of whatsoever nature appertaining thereto, or used in connection therewith, for a sum equal to the cost thereof plus twenty per centum of such cost. The amount to be paid to the Ditch Company for such purchase shall be determined by a commission of three persons, one to be appointed by the Ditch Company, or in case it should fail to do so within thirty days after requested to do so by the governor, then by the chief justice of the Supreme Court of Hawaii; one by the purchaser; and the third by the two so appointed, or in case they should fail to agree upon the third member within thirty days, then by said chief justice.

Either the Ditch Company or the Territory may appeal to the Supreme Court of Hawaii from the decision of such commission by filing a written notice of appeal with the commission within five days after the decision is rendered. It shall thereupon be the duty of the commission immediately to certify up to the supreme court the record of its proceedings, showing in such certificate the valuation claimed by the association, the valuation claimed by the purchaser, and the valuation as determined by the commission. Such certificates shall be accompanied by copies of all papers, documents, and evidence upon which the decision of the commission was based and a copy of such decision. Upon any such appeal the supreme court may, in its behalf, take or require further evidence to be introduced by either party.

Within six months after the determination of the purchase price as aforesaid the same shall be paid to the Ditch Company. In the event such payment is not made within the time limited, all proceedings theretofore had shall lapse and be of no further force or effect.

SEC. 20. Congress reserves the right to alter or amend this Act.

Approved, July 27, 1912.

Operation.

Interest on bonds.

Sinking fund.

Dividends.

Reduction of rates.

Reports required annually.

Property to revert to Territory at end of lease.

Purchase by Territory authorized after ten years.

Determination of price.

Appeal from decision.

Payment, etc.

Amendment, etc.