

**WATER ACT**  
**NO. 54 OF 1956**

[ASSENTED TO 12 JUNE, 1956]

[DATE OF COMMENCEMENT: 13 JULY, 1956]

*(English text signed by the Governor-General)*

**as amended by**

- Water Amendment Act, No. 75 of 1957
- Water Amendment Act, No. 56 of 1961
- Water Amendment Act, No. 63 of 1963
- Water Amendment Act, No. 71 of 1965
- Water Amendment Act, No. 11 of 1966
- Agricultural Credit Act, No. 28 of 1966  
[with effect from 1 October, 1966—see title AGRICULTURE]
- Water Amendment Act, No. 79 of 1967
- Establishment of the Northern Cape Division of the Supreme Court  
of South Africa Act, No. 15 of 1969  
[with effect from 1 May, 1969—see title COURTS]
- Water Amendment Act, No. 77 of 1969
- Water Amendment Act, No. 36 of 1971
- Water Amendment Act, No. 45 of 1972
- General Law Amendment Act, No. 102 of 1972  
[with effect from 5 July, 1972—see title GENERAL LAW AMENDMENT ACTS]
- Water Amendment Act, No. 58 of 1974
- Water Amendment Act, No. 42 of 1975
- Expropriation Act, No. 63 of 1975  
[with effect from 1 January, 1977—see title LAND]
- Water Amendment Act, No. 27 of 1976
- Water Amendment Act, No. 108 of 1977
- Water Amendment Act, No. 73 of 1978
- Water Amendment Act, No. 51 of 1979
- Finance Act, No. 21 of 1980  
[with effect from 31 March, 1980—see title FINANCE]
- Water Amendment Act, No. 92 of 1980
- Water Amendment Act, No. 89 of 1981
- Water Amendment Act, No. 96 of 1984
- Transfer of Powers and Duties of the State President Act, No. 97 of 1986  
[with effect from 3 October, 1986—see title CONSTITUTIONAL LAW]
- Water Amendment Act, No. 110 of 1986
- Water Amendment Act, No. 68 of 1987
- Water Amendment Act, No. 37 of 1988
- Legal Succession to the South African Transport Services Act, No. 9 of 1989  
[with effect from 6 October, 1989—see title RAILWAYS AND HARBOURS]
- Water Amendment Act, No. 68 of 1990
- Water Amendment Act, No. 16 of 1991
- Expropriation Amendment Act, No. 45 of 1992  
[with effect from 1 May, 1992—see title LAND]
- Water Amendment Act, No. 92 of 1993
- General Law Second Amendment Act, No. 108 of 1993  
[with effect from 1 August, 1993—see title GENERAL LAW AMENDMENT ACTS]
- Water Laws Rationalisation and Amendment Act, No. 32 of 1994

## ACT

To consolidate and amend the laws relating to the control, conservation and use of water for domestic, agricultural, urban and industrial purposes; to make provision for the control, in certain respects, of the use of sea water for certain purposes; for the control of certain activities on or in water in certain areas; for the control of activities which may alter the natural occurrence of certain types of atmospheric precipitation; for the control, in certain respects, of the establishment or the extension of townships in certain areas; and for incidental matters.

[Long title amended by s. 8 of Act No. 71 of 1965 and substituted by s. 13 of Act No. 45 of 1972 and by s. 26 of Act No. 42 of 1975.]

1. **Definitions.**—In this Act, unless the context otherwise indicates—

“**area**” includes any number of areas, whether or not contiguous;

“**department**” means the Department of Water Affairs and Forestry;

[Definition of “department” substituted by s. 1 (a) of Act No. 96 of 1984, by s. 1 (a) of Act No. 68 of 1987 and by s. 1 (a) of Act No. 92 of 1993.]

“**director**” . . . . .

[Definition of “director” deleted by s. 1 (1) (a) of Act No. 56 of 1961.]

“**Director-General**” means the Director-General: Water Affairs and Forestry;

[Definition of “Director-General” inserted by s. 1 (b) of Act No. 96 of 1984 and substituted by s. 1 (b) of Act No. 68 of 1987 and by s. 1 (b) of Act No. 92 of 1993.]

“**effluent**” means residual water or any other liquid produced by or resulting from the use of water for industrial purposes, including any substance dissolved or suspended therein, but excluding any liquid produced for commercial purposes;

[Definition of “effluent” inserted by s. 1 (b) of Act No. 96 of 1984.]

“**existing right**” means—

- (a) any right protected by paragraph (a) or (b) of section *twenty-five*;
- (b) any right to water acquired by any person by deed of servitude, agreement or order of a competent court; and
- (c) any other lawfully acquired right to water in or upon a public stream;

“**Government water work**” means a water work constructed, acquired or maintained or proposed to be constructed, acquired or maintained by or under the control of the Minister, and includes water impounded and stored in such work, but does not include a water work constructed by the Minister under section 57;

[Definition of “Government water work” substituted by s. 1 of Act No. 51 of 1979.]

“**irrigation board**” means a board established by section *seventy-nine*;

“**irrigation district**” means any area declared under section 72 (3) or 73 to be an irrigation district, and includes any such area as reconstituted under subsection (1) of section 76 by excluding any portion thereof or including any additional area therein, and any portion of an existing irrigation district constituted as a separate irrigation district under the said subsection, either alone or together with any other area, including any such area forming part of an existing irrigation district;

[Definition of “irrigation district” substituted by s. 1 (c) of Act No. 92 of 1993.]

“**local authority**” means—

- (a) any institution or body contemplated by section 84 (1) (f) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961);

- (b) any regional water services corporation constituted under the Water Services Ordinance, 1963 (Ordinance No. 27 of 1963), of Natal, or any other institution which has powers similar to such a corporation in respect of the supply of water to other local authorities, the Government (including the South African Transport Services and any provincial administration), or other persons within its area of jurisdiction;
- (c) any water board constituted in terms of section 108;
- (d) any town council or village council contemplated in the Black Local Authorities Act, 1982 (Act No. 102 of 1982);
- (e) any development board within the meaning of the Black Communities Development Act, 1984 (Act No. 4 of 1984);

[Definition of "local authority" substituted by s. 1 (c) of Act No. 96 of 1984.]

**"Minister"** means the Minister of Water Affairs and Forestry;

[Definition of "Minister" substituted by s. 5 (a) of Act No. 32 of 1994.]

**"natural channel"** means any channel, other than an artificial channel or the channel of a public stream, used to convey water from one part of an area declared to be a Government water control area in terms of sub-section (1) of section *fifty-nine*, to any other part of that area or from one part of an irrigation district to any other part of that irrigation district;

**"normal flow"**, in relation to a public stream, and subject to the provisions of sub-section (2) of section *fifty-three*, means the quantity of public water actually and visibly flowing in that public stream which, under a system of direct irrigation from that stream, whether by furrows or otherwise, but without the aid of storage, can be beneficially used for the irrigation of land riparian to such stream;

**"owner"**, in relation to land, means the person registered in a deeds registry as the owner or holder thereof, and includes the State, the trustee in an insolvent estate, a liquidator or trustee elected or appointed under the Farmers' Assistance Act, 1935 (Act No. 48 of 1935), or the Agricultural Credit Act, 1966, the liquidator of a company which is an owner, the legal representative of any owner who has died or is a minor or of unsound mind or otherwise under disability and the agent in the Union of an owner who is absent from the Union or whose whereabouts are unknown, and, in relation to land which has been allotted or leased to any person under the laws relating to land settlement, subject to a right to purchase such land, or to Crown land which has been acquired by

continued on page 1203

purchase but in respect of which title has not yet been given to the purchaser, the person to whom that land has been so allotted, leased or sold; but for the purposes of Chapter IX “owner” shall not include a natural person;

[Definition of “owner” substituted by s. 57 of Act No. 28 of 1966.]

“**private water**” means all water which rises or falls naturally on any land or naturally drains or is lead on to one or more pieces of land which are the subject of separate original grants, but is not capable of common use for irrigation purposes;

“**public stream**” means a natural stream of water which flows in a known and defined channel, whether or not such channel is dry during any period of the year and whether or not its conformation has been changed by artificial means, if the water therein is capable of common use for irrigation on two or more pieces of land riparian thereto which are the subject of separate original grants or on one such piece of land and also on Crown land which is riparian to such stream: Provided that a stream which fulfils the foregoing conditions in part only of its course shall be deemed to be a public stream as regards that part only;

“**public water**” means any water flowing or found in or derived from the bed of a public stream, whether visible or not;

“**regulation**” means a regulation made and in force under this Act, and includes any regulation made under any of the laws mentioned in section *one hundred and eighty-one* and in force at the commencement of this Act, so long as it remains in force, but shall not include any regulation made under paragraph (g) of sub-section (1) of section *forty-five* of the Irrigation and Conservation of Waters Act, 1912 (Act No. 8 of 1912);

“**riparian land**”, in relation to a public stream, means—

- (a) land held under an original grant or deed of transfer of such a grant or under a certificate of title, whether surveyed in one lot or more than one lot, whereon or along any portion of any boundary whereof a public stream exists, and any sub-division of such land; and
- (b) Crown land in respect of which no original grant has been made, but the situation of which in relation to a public stream would have rendered it riparian thereto by virtue of the provisions of paragraph (a), if such a grant had been made;

“**riparian owner**” means the owner of riparian land;

“**subterranean water control board**” means any board established by section 32H;

[Definition of “subterranean water control board” inserted by s. 1 of Act No. 68 of 1990.]

“**subterranean water control district**” means any area declared under subsection (1) of section 32G to be a subterranean water control district or any such area reconstituted under subsection (2) of that section;

[Definition of “subterranean water control district” inserted by s. 1 of Act No. 68 of 1990.]

“**secretary**” . . . . .

[Definition of “secretary” inserted by s. 1 (1) (b) of Act No. 56 of 1961 and deleted by s. 1 (d) of Act No. 96 of 1984.]

“**surplus water**”, in relation to a public stream, means public water flowing or found in that stream, other than the normal flow, if any;

“**use for agricultural purposes**”, in relation to water, means use for the irrigation of land, and includes use by a riparian owner or any other person who has acquired a right to the use of water for the irrigation of land, for domestic purposes or for the purpose of water-borne sanitation or for the watering of stock or gardens or use for or in connection with an intensive animal feeding system or the breeding or keeping or growing, for commercial purposes, of any aquatic animal or plant or any amphibian;

[Definition of “use for agricultural purposes” substituted by s. 1 (d) of Act No. 92 of 1993.]



“**use for industrial purposes**”, in relation to water, means use of water (including effluent supplied by a person other than the user) for or in connection with—

- (a) the manufacture, alteration, processing, treatment, repair, decoration, painting, spraypainting, electroplating, corrosion prevention, cooling, dyeing, washing, polishing, cleaning, finishing or breaking up of any article or part thereof, whether that article or part is a solid, liquid, vapour or gas or a combination thereof;
- (b) the generation of power;
- (c) railway purposes;
- (d) mining or the winning or washing of sand, gravel or stone;
- (e) . . . . .  
[Para. (e) deleted by s. 1 (e) of Act No. 92 of 1993.]
- (f) the slaughtering of livestock;
- (g) any sewerage system or work or any water care work;
- (h) the conveyance of any substance;
- (i) printing or photographic work; or
- (j) any civil, mechanical or electrical engineering construction work,

and includes use for domestic purposes or for the watering of stock or of streets and gardens in so far as such use may be incidental to use for industrial purposes;

[Definition of “use for industrial purposes” substituted by s. 1 of Act No. 92 of 1980, by s. 1 (e) of Act No. 96 of 1984 and by s. 1 (c) of Act No. 68 of 1987.]

“**use for urban purposes**”, in relation to water, means use, by urban and rural people, for purposes for which water is ordinarily used by a local authority or by the inhabitants of such an area, including use for domestic purposes or for the purpose of water-borne sanitation or for the watering of gardens, the watering or cleaning of streets or for industrial purposes;

[Definition of “use for urban purposes” substituted by s. 1 of Act No. 79 of 1967 and by s. 5 (b) of Act No. 32 of 1994.]

“**water board**” means a board constituted in terms of sub-section (2) of section *one hundred and eight*;

“**water care work**” means any water work for—

- (a) the purification or treatment of water in order to render it fit for human consumption or for use in the foodstuffs industry; or
- (b) the purification, treatment or disposal of effluent;

[Definition of “water care work” inserted by s. 1 (f) of Act No. 96 of 1984.]

“**water court**” means a water court established under section *thirty-four*;

“**water work**” means—

- (a) a canal, channel, well, reservoir, protecting wall, embankment, weir, dam, borehole, pumping installation, pipeline, sluice gate, filter, sedimentation tank, road, telephone line or other work constructed, erected or used for or in connection with the impounding, storage, passage, drainage, control or abstraction of water, or the development of water power, including the generation, transmission and supply of electricity, or the filtration or purification of water or effluent, or the protection of water sources against pollution, erosion or siltation, or flood control, or the protection of any water work or irrigated land, or the use of water for any purpose, or the conservation of rain water;

- (b) land occupied for or in connection with the prevention of water pollution, the impounding, storage, passage, drainage, control, abstraction, filtration, purification, development of power (including generation of electricity), or any other use of water, and includes any area occupied or required or held for the purpose of being irrigated or for flood control purposes;
- (c) gauge posts, measuring weirs and any other appliances erected or used by the department of an irrigation board or a water board.

[Definition of "water work" amended by s. 1 of Act No. 36 of 1971 and substituted by s. 1 (g) of Act No. 96 of 1984.]

## CHAPTER I

### CENTRAL CONTROL

#### 2. General powers of the Minister.—The Minister shall have the power—

- (a) to acquire, construct, extend, alter, maintain, repair, control and dispose of water works or such other works as he may consider necessary in the exercise of his powers or the performance of his functions under this Act;
- (b) to sink boreholes and wells, obtain supplies of water from underground sources, conserve water so obtained and supply or deliver it to any person for use for any purpose without payment or upon payment of charges;
- (c) to sink boreholes or wells for any person on the application of such person;
- (d) to make regulations from time to time as to the matters referred to in paragraphs (b) and (c), including regulations fixing scales of charges and prescribing the extent to which and the basis and conditions on which rebates on such charges may be granted;

[Para. (d) substituted by s. 2 of Act No. 92 of 1993.]

- (e) to establish or maintain hydrologic and hydrographic stations and works and to record the observations obtained thereby, and generally to obtain and record information and statistics as to hydrographic and hydrologic conditions, and to control modification of precipitation in accordance with the provisions of Chapter IIIA;

[Para. (e) substituted by s. 1 of Act No. 45 of 1972.]

- (f) to obtain and record information as to the extent of land in the Union under irrigation, the quantity of water used or required for the irrigation of such land, and the extent, nature or value of the crops raised thereby;
- (g) to obtain and record information as to the extent of land in the Union which could be brought under irrigation;
- (h) to develop hydro-electric power, to obtain and record information as to the location, number and extent of hydro-electric or water-power schemes in the Union, and generally to obtain and record information and statistics as to hydro-electric possibilities in the Union;
- (i) to advise *bona fide* farmers, irrigation boards, local authorities and other persons as to the construction, alteration, maintenance, control or repair of water works, to furnish engineering assistance to such farmers, boards, local authorities or other persons in connection with such water works, and to assist in and advise on matters affecting the use of water in accordance with regulations and scales of charges to be made by him from time to time;
- (j) to inspect any water work and in writing to require any local authority, irrigation board or other person responsible for the work to do such acts or execute such repairs or alterations as he may consider necessary for the protection of life or the public safety or the protection of property, which in his opinion is or may be endangered by the existence of such work and, in default of compliance with such requirements within a reasonable time

specified in the order, himself to do such acts or execute such repairs or alterations and to recover the cost thereof from the local authority, board or person concerned by action in any competent court;

- (k) to examine and enquire into plans, specifications, estimates of costs and reports which may be submitted to him in connection with any proposed utilization of water for any purpose, and to furnish advice in connection with any such plans, specifications, estimates or reports which are in conformity with regulations made by him;
- (l) to examine and enquire into plans, specifications, estimates of cost and reports in connection with any proposed water work in respect of which application has been made for a Government loan or subsidy for the purpose of ascertaining whether or not it is expedient that such a loan or subsidy be granted;
- (m) to take such other steps as he may consider necessary for the development, control and utilization of water and for giving effect to the provisions of this Act.

### 3. Appointment of secretary and certain temporary employees.—(1) . . . . .

[Sub-s. (1) substituted by s. 2 of Act No. 56 of 1961 and deleted by s. 2 (a) of Act No. 68 of 1987.]

(2) The Minister may from time to time appoint such temporary engineers, surveyors, clerks or other employees as may be necessary to enable the functions of the department to be exercised: Provided that—

- (a) appointments made in terms of this sub-section shall be limited to duties performed at the site where the department is engaged in actual constructional or investigational work or which bear a direct relationship to specific projects or schemes under construction or under investigation;
- (b) the scales of the salaries, allowances, leave privileges and other conditions of employment applicable in relation to any employees so appointed shall be as laid down by the Minister from time to time after consultation with the Public Service Commission.

[Sub-s. (2) amended by s. 2 (b) of Act No. 68 of 1987.]

(3) . . . . .

[Sub-s. (3) deleted by s. 2 (c) of Act No. 68 of 1987.]

## CHAPTER II

### CONTROL AND USE OF PRIVATE AND PUBLIC WATER

4. **Saving of certain rights.**—(1) The provisions of this Act, except sections 27 up to and including 33 and section 62, shall not be construed as affecting or derogating from—

- (a) any right to water which at the commencement of this Act has been lawfully acquired, is possessed and is being beneficially exercised by any person;
- (b) any right to water lawfully acquired by any person before the commencement of this Act for the purpose of supplying water to the public and existing at such commencement; or
- (c) any right to water or to the use of water conferred upon any person or attaching to any piece of land by virtue of any private or special law not specifically repealed or amended by this Act.

[Sub-s. (1) amended by s. 3 of Act No. 68 of 1987.]

(2) Nothing in this Act contained shall be construed as affecting or derogating from any rights, powers, duties or functions vested in, conferred upon or assigned to the Rand Water Board under any law: Provided that this subsection shall not apply in respect of any provision of this Act which binds the State.

[Sub-s. (2) substituted by s. 6 of Act No. 32 of 1994.]

**5. Use of private water.**—(1) Subject to the provisions of subsection (2) and of sections 12, 21, 22, 23 and 24 and rights lawfully acquired and existing at the commencement of this Act, the sole and exclusive use and enjoyment of private water shall vest in the owner of the land on which such water is found: Provided that nothing in this section contained shall be construed as derogating from the right of an owner of land to a reasonable share of water which, rising on the land of an upper owner, flows in a known and defined channel on, or along the boundary of, land situated beyond that upon which such water rises, and has for a period of not less than 30 years been beneficially used by the owner of the land so situated.

[Sub-s. (1) substituted by s. 2 of Act No. 96 of 1984.]

(2) A person who is, as contemplated in subsection (1), entitled to the use and enjoyment of private water found on any land of which he is the owner, shall not, except under the authority of a permit from the Minister and on such conditions as may be specified in that permit, sell, give or otherwise dispose of such water to any other person for use on any other land, or convey such water for his own use beyond the boundaries of the land on which such water is found.

(3) The provisions of subsection (2) shall not apply to—

- (a) the South African Transport Services and to the selling, giving or disposal in any other manner of any water to the South African Transport Services;
- (b) the conveyance of private water by the owner of the land on which such water is found beyond the boundaries of that land for his domestic purposes, or for the watering of his stock, or in accordance with a direction of the responsible Minister under the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983), or in implementing any written advice from a competent officer of the State regarding the controlled run-off or drainage of rainwater for purposes of soil conservation or improvement;
- (c) any owner of land situated in the area of any municipal institution contemplated in section 84(1)(f) of the Provincial Government Act, 1961, or a local authority established under section 2 of the Black Local Authorities Act, 1982.

[Sub-s. (3) substituted by s. 2 of Act No. 92 of 1980 and by s. 4(a) of Act No. 68 of 1987.]

(3A) (a) The Minister may on the application of any municipal institution or local authority referred to in subsection (3)(c), by notice in the *Gazette* and subject to the conditions specified in the notice, declare the provisions of subsection (2) applicable in the area of that municipal institution or local authority, and thereafter the reference to “Minister” in the said subsection shall be construed as a reference to the town clerk or the chief executive officer, as the case may be, of the municipal institution or local authority concerned, and the Minister may at any time in like manner withdraw such notice or amend the conditions specified therein.

(b) A town clerk or chief executive officer referred to in paragraph (a) may at any time delegate the power to issue a permit in terms of subsection (2) to any other officer of the municipal institution or local authority concerned.

[Sub-s. (3A) inserted by s. 4(b) of Act No. 68 of 1987.]

(4) Any person who contravenes the provisions of subsection (2) or any condition of a permit issued thereunder or fails to comply therewith, shall be guilty of an offence.

[S. 5 substituted by s. 2 of Act No. 45 of 1972. Sub-s. (4) substituted by s. 4(c) of Act No. 68 of 1987.]

**6. Ownership of public and private water.**—(1) There shall be no right of property in public water and the control and use thereof shall be regulated as provided in this Act.

(2) Whenever an owner of land obtains, by artificial means on his own land, a supply of water which is not derived from a public stream, such water shall be deemed to be private water.

[Sub-s. (2) amended by s. 3 of Act No. 56 of 1961.]

(3) The said owner shall not be entitled to claim a share of any water to which he would otherwise have been entitled in accordance with section *nine* or *ten*, so long as the water court is of the opinion that the supply of water so created is of such volume and can be so utilized by such owner that the use by him of water from a public stream to which his land is riparian would be a wasteful use.

**7. Use of public water by authorized persons for certain purposes.—**Notwithstanding anything contained in his Act—

- (a) any person may, while he is lawfully at any place where he has access to a public stream, take and use water from such stream for the immediate purpose of watering stock or drinking, washing or cooking, or use in a vehicle at that place;
- (b) any officer or servant of a provincial administration, divisional council or other lawfully constituted body which is responsible for the construction, maintenance, repair or control of any road (other than a road within the area of jurisdiction of any municipal or other like institution) may, while he is lawfully at any place where he has access to a public stream, take and use so much of the water from such stream as may be necessary for the purpose of constructing, maintaining, repairing or controlling such road, provided no riparian owner along the course of such stream is thereby deprived of water from such stream for his own use for the irrigation of land which is then under irrigation or for domestic purposes or for the watering of his stock.

**8. Rights to public water in respect of sub-divisions of land.—**(1) The owner of any sub-division of land referred to in the definition of “riparian land” in section *one* is entitled to such share of the water of a public stream to which the owner of the original piece of land of which such sub-division formed a part was entitled immediately prior to the sub-division of such land, as may be agreed upon by the owners concerned or apportioned by the water court, even if that public stream does not flow on or along the boundary of such sub-division, except where the right to such share has been excluded by agreement, order of a competent court or other lawful means.

continued on page 1211

(2) Nothing contained in this section shall be construed as rendering riparian to a public stream any sub-division of land held under separate title at the commencement of this Act, but not riparian to that stream at such commencement.

**9. Use of normal flow of a public stream.**—(1) Subject to the provisions of this Act, and to any existing right, every riparian owner is entitled to the reasonable use of such share as may have been lawfully acquired by him from any other person and of his share (as determined under section *fifty-two*) of the normal flow of a public stream to which his land is riparian for use for agricultural and urban purposes on such land: Provided that—

- (a) a riparian owner shall not use such water wastefully or detain any portion thereof unreasonably or allow it to run off in unreasonable quantities to the detriment of lower owners;
- (b) a riparian owner who uses any portion of such normal flow for agricultural purposes shall on his own land, if practicable, or otherwise at the nearest convenient point elsewhere, return such water to the public stream from which it was abstracted with no other loss than that which has been occasioned by such use, unless he is legally obliged to pass the water on to other land;
- (c) a riparian owner shall not use any portion of such normal flow for the irrigation of land if thereby he deprives any lower riparian owner having a right to the use of such normal flow, other than an inhabitant within the area of jurisdiction of a local authority who is being supplied with water by that local authority, of water for domestic purposes or the watering of stock;
- (d) a lower riparian owner referred to in paragraph (c) shall satisfy his needs as to domestic use and the watering of his stock out of so much of the normal flow as he is entitled to use for agricultural purposes before he shall be entitled to demand, for the purposes of his domestic use or the watering of his stock, that any other riparian owner shall abate any of the share of the normal flow such last-mentioned owner is entitled to use for agricultural purposes;
- (e) subject to the provisions of this Act, and to any existing right, the owners of land riparian to a tributary to a public stream shall be entitled to so much of the normal flow of such tributary as they may require for any of the aforesaid uses in preference to any right of any other owner to the normal flow of such tributary for such uses on land which is riparian thereto only by virtue of its being riparian to the main stream into which the said tributary flows.

(2) (a) The reference to storage in the definition of “normal flow” in section *one* shall not be deemed to include a reference to the impoundment of such share of the normal flow of a public stream as a riparian owner is or may become entitled to by virtue of a lawful distribution of such normal flow, and a riparian owner having a right to the use of a portion of the normal flow of a public stream by virtue of such a lawful distribution of such normal flow, may impound and store such portion in any reservoir which he has lawfully constructed in the channel of such public stream for the impoundment and storage of surplus water to which he is entitled in terms of sub-section (1) of section *ten*.

(b) A riparian owner who has not constructed such a reservoir, shall not, except in pursuance of permission granted under sub-paragraph (i) of paragraph (b) of sub-section (2) of section *eleven*, impound and store the portion in question in the channel of a public stream, but may impound and store that portion in any reservoir lawfully constructed by him outside the channel of such stream.

**9A. Control, regulation, limitation or prohibition of impounding, storage, abstraction, supply or use of public water in certain circumstances.**—(1) Notwithstanding any provisions to the contrary in this Act or in any other law contained, and notwithstanding any right any person may have in respect of public water or the use thereof, the Minister may, whenever in his opinion a water shortage exists or is likely to arise, in his discretion from time to time by notice in the *Gazette* control, regulate, limit or prohibit, as he in the public interest may deem expedient and in the manner and subject to such conditions as he may think fit, the impounding, storage, abstraction, supply or use within any area specified in the notice (irrespective of whether that area consists of or is situated in an area which has been declared a Government water control area under section 59 (1) or includes such an area or a portion thereof or not) of water out of any public stream or natural channel for agricultural, urban or industrial purposes or specified agricultural, urban or industrial purposes.

(2) Any notice in terms of subsection (1) may be applicable in respect of a specified area or public stream or natural channel or any portion of such a stream or natural channel or in respect of two or more areas or public streams or natural channels or portions thereof, and may differentiate between different areas or public streams or natural channels or portions thereof or different periods of any year and may contain different provisions according to the times when, the places where, the manner in which and the water works by means whereof water of a specified public stream or natural channel or portion thereof is or may be abstracted, impounded or stored and the purposes for which and the manner in which such water is used or is intended to be used or in respect of the different persons or classes of persons to whom or the different water works or classes of water works to which such a notice relates, including a prohibition on the use of any specified water work or class of water work.

[Sub-s. (2) substituted by s. 5 (a) of Act No. 68 of 1987.]

(3) Any person authorized thereto by the Minister or the Director-General may at any time enter upon any land and inspect and test water works and carry out any other investigation which he may consider necessary for the purpose of establishing how much public water is abstracted, supplied or used on that land or of determining whether the provisions of a notice referred to in subsection (1) are being complied with.

[Sub-s. (3) substituted by s. 3 of Act No. 96 of 1984.]

(4) The Director-General may in writing direct any person who has constructed, altered or enlarged a water work in contravention of the provisions of a notice in terms of subsection (1) or is using a water work which has been constructed, altered or enlarged in contravention of such provisions or is using a water work in contravention of the provisions of such notice, to—

- (a) terminate such use of the water work concerned on a date specified in the direction; or
- (b) within a period specified in the direction, remove the water work concerned or to render it inoperable in a manner specified in the direction or to allow it to be removed or rendered inoperable by officers of the department.

[Sub-s. (4) added by s. 5 (b) of Act No. 68 of 1987.]

(5) Any person who contravenes any provision of a notice under subsection (1) or fails to comply therewith or with a direction under subsection (4), shall be guilty of an offence.

[S. 9A inserted by s. 2 of Act No. 79 of 1967. Sub-s. (5) added by s. 5 (b) of Act No. 68 of 1987.]

**9B. Control of impounding or abstraction of public water in excess of a certain quantity.**—(1) (a) Notwithstanding anything to the contrary contained in this Act or any other law but subject to the provisions of a notice under subsection (1C), no person shall construct, alter or enlarge any water work on one or more pieces of land which on the date of commencement of the Water Amendment Act, 1975, were registered in the deeds registry as a

separate piece or separate pieces of land or where such piece of land has been or will be subdivided subsequent to the said date, on one or more of those subdivisions or on any of those subdivisions and any other piece of land, if more than 250 000 cubic meters of public water are or, after completion of such construction, alteration or enlargement, will be capable of being impounded or stored or more than 110 litres of water per second are or, after such completion, will be capable of being abstracted or diverted from a public stream, in or by means of that water work, or that water work and any other water work or water works on the piece of land concerned or any of the subdivisions concerned, except under the authority of a permit issued by the Minister, and on such conditions as may be specified in that permit, which may include conditions relating to the operation of any of the water works concerned.

(b) The conditions subject to which the Minister may issue a permit referred to in paragraph (a) may in respect of two or more pieces of land of the same owner include a condition prohibiting the separate alienation of any of the relevant pieces of land, and the Minister may in writing order the registrar of deeds of the deeds registry in which the title deeds of that land are registered, to cause a note of such condition to be made free of charge in his registers and on the office copies of the respective title deeds.

(c) Whenever the original title deeds of the land concerned are at any time lodged in his office for any purpose, the registrar concerned shall cause the endorsement referred to in paragraph (b) to be effected thereon.

[Sub-s. (1) substituted by s. 1 of Act No. 42 of 1975, amended by s. 1 of Act No. 108 of 1977 and substituted by s. 6 (a) of Act No. 68 of 1987.]

(1A) The provisions of subsection (1) shall not apply in respect of the construction, alteration or enlargement of a water work with reference to which the Minister's permission is required under any other provision of this Act or any provision of any other law.

[Sub-s. (1A) inserted by s. 3 of Act No. 92 of 1980.]

(1B) The Director-General may in writing direct any person who has constructed, altered or enlarged a water work in contravention of the provisions of subsection (1), or is using a water work which has been constructed, altered or enlarged in contravention of the said subsection—

(a) within the period specified in the direction, to apply to the Minister for the issue to him under subsection (1) of a permit in respect of that water work as if that water work has not been constructed, altered or enlarged;

[Para. (a) substituted by s. 6 (b) of Act No. 68 of 1987.]

(b) within a period specified in the direction, to remove the water work concerned or render it inoperable in a manner specified in the direction or to allow it to be removed or rendered inoperable by officers of the department; or

[Para. (b) substituted by s. 6 (b) of Act No. 68 of 1987.]

(c) to terminate the use of such water work as from a date specified in the direction.

[Sub-s. (1B) inserted by s. 4 (a) of Act No. 96 of 1984.]

(1C) (a) The Minister may by notice in the *Gazette*, in respect of an area defined in the notice, amend the provisions of subsection (1) in respect of the impoundment, storage, abstraction or diversion capacity of any water work which may in terms of that subsection be constructed, altered or enlarged without a permit on land in such area and determine in its stead any other impoundment, storage, abstraction or diversion capacity, or prohibit the construction, alteration or enlargement of a water work for the impoundment, storage, abstraction or diversion of public water, except on the authority of such a permit.

(b) The provisions of subsections (1A) and (1B) shall apply *mutatis mutandis* in respect of the construction, alteration or enlargement of a water work on land situated in an area defined in a notice under paragraph (a).

[Sub-s. (1C) inserted by s. 6 (c) of Act No. 68 of 1987.]



(2) Any person who contravenes the provisions of subsection (1) or any condition of a permit issued thereunder or a notice in terms of subsection (1C) or fails to comply with a direction under subsection (1B), shall be guilty of an offence.

[S. 9B inserted by s. 2 of Act No. 36 of 1971. Sub-s. (2) substituted by s. 4 (b) of Act No. 96 of 1984 and by s. 6 (d) of Act No. 68 of 1987.]

**9C. Safety of dams.**—(1) In this section—

“approved professional engineer” means a professional engineer as defined in section 1 of the Professional Engineers’ Act, 1968 (Act No. 81 of 1968), and approved for the purposes of this section by the Minister after consultation with the South African Council of Professional Engineers established by the said Act;

“dam” means any structure capable of diverting or storing water;

“dam with a safety risk” means—

- (a) any dam having a storage capacity in excess of 50 000 cubic metres and a vertical height in excess of five metres measured, in the case of a dam consisting of a structure situated across a water course, from the natural level of the bed of the water course on the downstream face of the structure, and, in the case of a dam consisting of any other structure, from the lowest elevation of the outside limit of the structure to the top of the structure which is the level of the roadway or walk way, or, in the case of a structure consisting of a spillway only, is the crest level of the spillway; and
- (b) any other dam, or any other dam belonging to a category of dams, to which the provisions of this section have been declared applicable under subsection (2).

(2) The Minister may by notice in the *Gazette* declare the provisions of this section applicable to any particular dam, or to any dam belonging to a category of dams, specified in the notice, which is not a dam with a safety risk according to paragraph (a) of the definition of “dam with a safety risk”, if he is of the opinion that that dam or a dam belonging to that category poses or could pose a threat to human life or public safety.

(3) No person shall design, construct, put into operation, alter, enlarge or use a dam with a safety risk otherwise than in accordance with any regulation or direction made or issued under this section.

(4) Every person in control of a dam with a safety risk shall—

- (a) in the case of a dam constructed before the date of commencement of the Water Amendment Act, 1984, within 120 days of that date; or
- (b) in the case of a dam which on the said date was in the process of being constructed or is constructed after such date, within 120 days of the date on which it becomes capable of diverting or storing water,

register that dam with the Director-General in the manner prescribed by regulation under subsection (6).

(5) (a) The Minister shall establish—

- (i) a committee, which shall be known as the Advisory Committee on Safety of Dams, to advise him at his request on any matter in connection with the safety of dams or the making, amendment or withdrawal of any regulation under subsection (6); and

continued on page 1217

- (ii) a technical review committee whenever necessary for the purpose of the application of subsection (8) (b) or to advise him on a technical matter in connection with the safety of a particular dam.

(b) A member of a committee established in terms of paragraph (a) who is not in the full-time service of the State, shall be paid from money appropriated by Parliament for this purpose, the allowances and remuneration which the Minister may in general or in any particular case determine with the concurrence of the Minister of Finance.

(6) (a) The Minister may make regulations—

- (i) as to any matter which in terms of a provision of this section is required or permitted to be prescribed by regulation under this subsection;
- (ii) as to the constitution of the Advisory Committee on Safety of Dams or a technical review committee referred to in subsection (5), the appointment of the members, the person by whom and the manner in which meetings of those committees shall be convened, the appointment or election of the chairman of any such committee, the periods of office of the chairman and members of any such committee, the procedure to be followed at such meetings (including the quorum), the procedure to be followed in the event of an equality of votes, the powers and functions of any such committee and the purposes for which and the circumstances under which it shall be convened;
- (iii) prohibiting any person intending to construct, alter or enlarge a dam with a safety risk from constructing, altering or enlarging such dam unless such dam or the alteration or enlargement thereof is designed by an approved professional engineer;
- (iv) requiring any person who constructs, alters or enlarges a dam with a safety risk to appoint an approved professional engineer in order to ensure that the activities regarding the construction, alteration or enlargement of the dam are carried out in accordance with the design thereof;
- (v) requiring any person in control of a dam with a safety risk, from time to time to appoint an approved professional engineer to carry out such safety inspections with respect to that dam at such intervals as may be prescribed by regulation;
- (vi) prohibiting the construction, alteration or enlargement of a dam with a safety risk otherwise than under the authority of a permit issued by the Minister or in accordance with the conditions and requirements specified in the permit;
- (vii) prohibiting the putting into operation of a dam with a safety risk after it has been constructed, altered or enlarged otherwise than under the authority of a permit issued by the Minister or in accordance with the conditions and requirements specified in the permit;
- (viii) prescribing the conditions and requirements to be complied with in the operation and maintenance of a dam with a safety risk;
- (ix) prescribing the conditions and requirements to be complied with by a person in control of a dam with a safety risk before he may abandon that dam.

(b) A regulation under this subsection may differ in respect of different dams or dams belonging to different categories of dams or may relate to a particular dam or a dam belonging to a particular category of dams only.

(c) Regulations made under this subsection may in respect of any contravention thereof or failure to comply therewith, prescribe penalties not exceeding a fine of R10 000 or imprisonment for a period of six months, and, in the case of a continuing offence, not exceeding a fine of R50 or imprisonment of one day in respect of every day on which the offence is or has been persisted with.

(d) The Minister may indefinitely or for a period determined by him—  
(i) by notice in writing to a person exempt that person; or  
(ii) by notice in the *Gazette* exempt a person belonging to a category of persons, on such conditions as may be specified in the notice, from a provision of any regulation under this subsection.

(e) The Minister may at any time—

- (i) in the case of an exemption granted in terms of paragraph (d) (i), by notice in writing to the person concerned; or
- (ii) in the case of an exemption granted in terms of paragraph (d) (ii), by notice in the *Gazette*,

withdraw such exemption or render the continued validity of the exemption subject to such conditions as the Minister may then determine either by the imposition of further or new conditions or by the withdrawal or amendment of conditions then existing.

(7) The Director-General may for the purposes of the application of this section or any regulation thereunder authorize any person in writing to enter upon any land on which a dam with a safety risk is situated, contemplated, built, altered or enlarged and to conduct on such land such investigation as the Director-General may determine.

(8) (a) If the Director-General is of the opinion that the steps taken or required to be taken in terms of the regulations under subsection (6) for the safety of a dam with a safety risk, are in the particular circumstances inadequate or ineffective or, for any reason which he considers sufficient, inappropriate, he may, those regulations notwithstanding, in writing direct the person in control of the relevant dam to take such additional or other steps as in the opinion of the Director-General are in the particular circumstances necessary for the safety of the dam.

(b) Any person aggrieved by a direction issued to him under paragraph (a) may, within 60 days of the date of the direction and in the manner prescribed by regulation under subsection (6), lodge an objection against such direction with the Minister.

(c) Upon receipt of any such objection the Minister shall appoint a committee contemplated in subsection (5) (a) (ii) and shall refer such objection, together with a written explanation by the Director-General of the reasons for the direction, to the committee, and the committee shall, after it has considered the grounds of the objection and the Director-General's reasons for the direction and after such further investigation as the committee may deem fit, confirm, set aside or vary the direction or substitute for such direction any other direction which the Director-General in the committee's opinion ought to have issued in the particular circumstances.

(9) Any person who fails to comply with a provision of subsection (3) or (4) or to a direction under subsection (8) shall be guilty of an offence.

(9A) The Minister may, on application, out of moneys appropriated by Parliament for such purpose and on such conditions as he may determine with the concurrence of the Minister of Finance, in general by notice in the *Gazette* or in his discretion in any particular case, pay to any person a subsidy towards the cost connected with steps which have to be taken in terms of a regulation under subsection (6) or a direction under subsection (8) for the safety of a dam with a safety risk: Provided that, except in the case where cost has been incurred in connection with the carrying out of a safety inspection in accordance with a regulation made under subsection (6) (a), no subsidy shall be paid under this paragraph unless the Minister has approved the payment of the subsidy before the cost in question has been incurred.

[Sub-s. (9A) inserted by s. 7 of Act No. 68 of 1987 and amended by s. 2 of Act No. 68 of 1990.]

(10) The provisions of this section, except subsection (9), shall bind the State.

[S. 9C inserted by s. 5 of Act No. 96 of 1984.]

**10. Use of surplus water of a public stream.—**(1) Subject to the provisions of this Act, and to any existing right, every riparian owner is entitled to the use of so much of the surplus water of a public stream to which his land is riparian as he can beneficially use for

domestic purposes, for the watering of his stock, and for agricultural and urban purposes, and to impound and store such surplus water for those purposes.

(2) A riparian owner referred to in sub-section (1) shall not be compelled to curtail his use of any portion of the said surplus water to which he is entitled in terms of the said sub-section in favour of a lower riparian owner for such owner's domestic use or the watering of his stock or for agricultural or urban purposes, if such lower owner is not in terms of any agreement entitled to the use of such water for such purposes.

**11. Use of public water by certain persons subject to permission of water court.—**

(1) Save in so far as water is in terms of the provisions of this Act or any other law used by the Minister, no person shall use public water for industrial purposes except with the permission of a water court or in terms of a permit referred to in subsection (1A) (a): Provided that the permission of a water court shall not be required in the case of—

(i) a local authority or any other body constituted under any law which has the right to control and supply either public water or private water within its area of jurisdiction;

(ii) any person to whom such water is supplied by the Minister from a Government water work or by such a local authority or other body;

(iii) . . . . .

[Para. (iii) deleted by s. 8 (b) of Act No. 68 of 1987.]

(iv) any person who uses public water for industrial purposes in pursuance of a permission granted under section 62 (2I) (a); or

(v) the use for industrial purposes by any person in connection with any undertaking of a quantity of public water not exceeding during any month the largest quantity of such water lawfully used by him in connection with that undertaking during any month within the period of 12 months immediately preceding the commencement of this Act.

[Sub-s. (1) amended by s. 2 (a) of Act No. 108 of 1977, by s. 1 of Act No. 73 of 1978 and by s. 4 (a) of Act No. 92 of 1980, substituted by s. 6 (a) of Act No. 96 of 1984 and amended by s. 8 (a) of Act No. 68 of 1987.]

(1A) (a) The Minister may issue to a person who is entitled or has acquired a right to use public water for agricultural purposes, a permit authorizing him to use public water, subject to such conditions as may be determined by the Minister and specified in the permit for the development of power or the winning or washing of sand, gravel or stone.

[Para. (a) substituted by s. 6 (b) of Act No. 96 of 1984, by s. 3 of Act No. 68 of 1990 and by s. 3 of Act No. 92 of 1993.]

(b) Any person intending to apply for a permit referred to in paragraph (a) shall at least 30 days before lodging his application, give notice of his intention to interested persons in an Afrikaans and in an English newspaper circulating in the area in which he contemplates to use the public water in question, and call upon them to submit to the Minister in writing any objections against the proposed application within a specified period, which shall not be less than 30 days as from the date on which notice was thus given.

(c) A notice referred to in paragraph (b) shall be in such form and shall include such particulars as may be prescribed by regulation under section 26.

(d) If the Minister grants an application for a permit referred to in paragraph (a) the secretary shall, within 14 days after the permit has been issued to the applicant, send a copy thereof to each person who within the period specified in the notice submitted written objections against the application to the Minister, and thereupon such a person, provided he is entitled to the use of public water and is likely to be prejudiced in the exercise of his right relating to such public water by the use of water by the applicant in pursuance

of the permit, may not later than 60 days as from the date on which the permit was issued, lodge an objection with a water court against the issue of the permit or any matter in connection therewith.

(e) A permit referred to in paragraph (a) shall contain a notice drawing attention to the provisions of paragraph (d) that an objection against the issue of the permit or any matter in connection therewith may within 60 days as from the date of issue of the permit be lodged with a water court.

(f) A water court to which an objection has been lodged in terms of paragraph (d) may confirm or cancel the permit in question, or cancel or vary any conditions to which it may be subject, or substitute for such conditions, or add, new conditions, or make such order in connection with such permit as it may deem fit.

(g) Any conditions amended, substituted for other conditions or added by a water court under paragraph (e) shall for the purposes of this Act be deemed to have been so amended, substituted for such other conditions or added by the Minister.

(h) The Minister may by notice in writing to a person exempt that person, or by notice in the *Gazette* exempt a person belonging to a category of persons, from the provisions of this subsection on such conditions as he may specify in such notice and may at any time in like manner withdraw such exemption or render the continued validity of the exemption subject to such conditions as the Minister may then determine either by the imposition of further or new conditions or by the cancellation or amendment of conditions then existing.

[Sub-s. (1A) inserted by s. 4 (b) of Act No. 92 of 1980. Para. (h) inserted by s. 6 (c) of Act No. 96 of 1984.]

(2) A water court may on the application of a person (including the Government, the South African Railways and Harbours Administration and any provincial administration)—

- (a) who is entitled in terms of this Act to use public water for agricultural purposes or who has acquired a right to the use of such water, authorize the applicant to use the share of such water to which he is so entitled or to the use of which he has acquired such a right, or any part of such share, for agricultural, industrial or urban purposes or such other purposes as the water court may determine, either on riparian land or elsewhere;
- (b) who is not entitled to use public water—
  - (i) if the water court is of opinion that the grant of such permission will be in the public interest, permit the applicant to abstract from a public stream or to impound and store within or outside the channel of a public stream and to abstract, for use at any place for agricultural, urban or industrial purposes or such other purposes as the water court may determine, whether on land riparian to such stream or elsewhere, a stated quantity of public water, whether surplus water or normal flow of such stream;
  - (ii) if the water court is satisfied that during any period all the water of a public stream, whether normal flow or surplus water, is not or will not be used on land riparian to every stream in or into which such water naturally flows, permit the applicant to abstract from such stream or to impound and store outside the channel of such stream and to abstract during the said period so much of the water as in the opinion of the water court is not or will not be so used, for agricultural, industrial or urban purposes, either on riparian land within the catchment area of such stream or elsewhere.

(3) A water court shall not consider an application for permission to use for industrial purposes a quantity of water exceeding 150 cubic metres on any one day, unless the application is accompanied by a permit issued by the Minister under section 12 (1).

[Sub-s. (3) amended by s. 2 (b) of Act No. 108 of 1977 and substituted by s. 6 (d) of Act No. 96 of 1984.]

(4) Before granting any permission under sub-paragraph (i) of paragraph (b) of subsection (2), the water court shall determine in what manner and to what extent the rights of the persons or of any one or more of the persons entitled to the use of water from the stream in question shall be abated for the purpose of making available the water in respect of which such permission is to be granted: Provided that—

- (a) such abatement shall as far as practicable be made in the first instance in respect of the rights of persons who have not exercised such rights;
- (b) any rights to the water of the public stream in question vested in any person by virtue of any statute not specifically repealed or amended by this Act shall not be subject to any abatement;
- (c) the rights of a riparian owner to the use of the normal flow of such stream for domestic purposes and for the watering of his stock shall not be so abated or otherwise prejudicially affected without his written consent.

(5) Any permission under sub-paragraph (ii) of paragraph (b) of subsection (2) may be granted permanently or for such period as the water court may determine.

(6) The water court may—

- (a) in respect of a permission granted under paragraph (a) or sub-paragraph (ii) of paragraph (b) of subsection (2), impose such conditions as in its opinion will prevent lower riparian owners from being prejudicially affected; and
- (b) in respect of a permission granted under sub-paragraph (i) of paragraph (b) of that subsection, order the payment of compensation (the amount and manner of payment whereof shall be determined by the water court) to any person whose rights have been abated,

and may impose such other conditions in respect of any permission granted under the said subsection as it may deem desirable.

(7) Any permission for the use of a quantity of public water granted in terms of subsection (2) (b) by a water court, shall lapse if the quantity of water concerned or any portion thereof has not within five years from the date of the granting of the permission been used for the purpose referred to in the permission.

[Sub-s. (7) added by s. 8 (c) of Act No. 68 of 1987.]

**12. Use of water for industrial purposes.**—(1) Except under the authority of a permit issued by the Minister and in accordance with any condition subject to which such permit was issued, no person shall in connection with any undertaking use a quantity of water for industrial purposes exceeding during any day 150 cubic metres.

(2) An application for a permit under subsection (1), shall be in such form and shall include such particulars as may be prescribed by regulation under section 26.

(3) The Minister may—

- (a) subject to sections 9 and 10, reject any application referred to in subsection (2) or grant any such application subject to such conditions as may be determined by him: Provided that any person who during the period of 12 months immediately preceding the commencement of the Water Amendment

Act, 1984, for industrial purposes lawfully used in connection with any undertaking a quantity of water exceeding during any day 150 cubic metres, shall be entitled to a permit under subsection (1) entitling him, subject to any conditions determined by the Minister, to continue using in connection with that undertaking a quantity of water not exceeding during any month the largest quantity of water used by him during any month within the said period of 12 months;

- (b) at any time render the continued validity of a permit issued under subsection (1) subject to such conditions as the Minister may then determine, whether by the imposition of further or new conditions or by the cancellation or amendment of conditions then existing;
- (c) cancel any permit issued under subsection (1), if the person to whom the permit was issued, contravenes or fails to comply with any condition thereof or does not use any water in respect of which the use for industrial purposes is authorized by the permit.

[Para. (c) substituted by s. 9 (a) of Act No. 68 of 1987.]

(4) (a) If any person uses water for industrial purposes contrary to subsection (1) or a condition of a permit issued thereunder or any regulation made under section 26, the Minister may direct that the supply of water to such person for the said purposes, whether from a Government water work or any other water work, be suspended or be reduced to a quantity determined by the Minister.

(b) The State, the Minister or any person carrying out a direction under paragraph (a) shall not be liable for any loss or damage caused by the carrying out of the direction.

(5) The provisions of subsection (1) shall apply in respect of the use of any water, including private water and underground water and also sea water brought ashore, irrespective of whether or not such water or a portion thereof, in the case of water abstracted from a public stream, is returned to that stream after being used.

(6) The provisions of this section shall not—

- (a) be construed as exempting any person referred to in section 11 (1) to whom a permit was issued under subsection (1) of this section from applying to a water court for a permission referred to in the first-mentioned section;
- (b) apply to a person using water in pursuance of a permit issued or an exemption granted under section 11 (1A).

(7) (a) The Minister may—

- (i) by notice in writing to a person exempt that person; or
- (ii) by notice in the *Gazette* exempt a person belonging to a category of persons,

from the provisions of subsection (1) on such conditions as may be specified in the notice.

(b) The Minister may at any time—

- (i) in the case of an exemption granted under paragraph (a) (i), by notice in writing to the person concerned; or
- (ii) in the case of an exemption granted under paragraph (a) (ii), by notice in the *Gazette*,

withdraw such exemption or render the continued validity of the exemption subject to such conditions as the Minister may then determine either by the imposition of further or new conditions or by the cancellation or amendment of conditions then existing.

(8) Any person who contravenes or fails to comply with a provision of this section or of a direction, or a condition of a permit or notice, issued thereunder, shall be guilty of an offence.

(9) The provisions of this section except subsection (8) shall bind the State.

[S. 12 amended by s. 4 of Act No. 56 of 1961, by s. 2 of Act No. 42 of 1975 and by s. 3 of Act No. 108 of 1977 and substituted by s. 7 (1) of Act No. 96 of 1984. Sub-s. (9) added by s. 9 (b) of Act No. 68 of 1987.]

**12A. Water care works.**—(1) Except under the authority of a permit issued by the Minister and in accordance with any conditions subject to which such permit was issued, no person shall erect or enlarge any water care work or alter any process prescribed by regulation under section 26 and applied therein with respect to the purification, treatment or disposal of water or effluent.

(2) No person shall after a date fixed by the Minister by notice in the *Gazette* in general or in respect of an area defined in the notice, use a water care work unless the minimum number of persons with the minimum qualifications and experience prescribed by regulation under section 26 is employed for the operating thereof and that work and those persons have been registered in the manner prescribed by the said regulation with the department, or otherwise than in accordance with any condition subject to which that work or those persons are so registered.

[Sub-s. (2) substituted by s. 10 (a) of Act No. 68 of 1987.]

(3) An application for a permit under subsection (1) or for registration under subsection (2) shall be in the form and shall include such particulars as may be prescribed by regulation under section 26.

(4) The Minister may—

- (a) reject any application referred to in subsection (3) or grant any such application subject to such conditions as may be determined by him: Provided that no application for the registration of a water care work erected in accordance with a permit under subsection (1) or which immediately prior to the commencement of the Water Amendment Act, 1984, was already in existence or in the process of being erected, shall be rejected;
- (b) at any time render the continued validity of any registration under subsection (2) subject to such conditions as the Minister may then determine, whether by the imposition of further or new conditions or by the cancellation or amendment of conditions then existing; or
- (c) cancel any permit issued under subsection (1) or any registration granted under subsection (2) if the person to whom the permit was issued or the registration was granted contravenes or fails to comply with any condition thereof.

(5) Any person who contravenes or fails to comply with a provision of this section or any condition of a permit or registration issued or granted thereunder shall be guilty of an offence.

(6) The provisions of this section, except subsection (5), shall bind the State.

(7) (a) The Minister may—

- (i) by notice in writing to a person exempt that person; or
- (ii) by notice in the *Gazette* exempt a person belonging to a category of persons,

from the provisions of subsections (1) and (2) on such conditions as may be specified in such notice.

(b) The Minister may at any time—

- (i) in the case of an exemption granted under paragraph (a) (i), by notice in writing to the person concerned; or
- (ii) in the case of an exemption granted under paragraph (a) (ii), by notice in the *Gazette*,



withdraw such exemption or render the continued validity of the exemption subject to such conditions as the Minister may then determine either by the imposition of further or new conditions or by the cancellation or amendment of conditions then existing.

[S. 12A inserted by s. 8 of Act No. 96 of 1984. Sub-s. (7) added by s. 10(b) of Act No. 68 of 1987.]

**12B. Use of water removed from mine.**—(1) The owner of a mine where mining operations are lawfully pursued may, unless the Minister in writing directs otherwise, remove from the mining area any water found underground if he is of the opinion that it is necessary for the efficient continuation of mining operations or for the safety of employees of the mine and may dispose thereof in accordance with the provisions of this section.

(2) The owner of a mine who has removed water from that mine in terms of subsection (1), may—

- (a) subject to the provisions of sections 12 and 21, and unless the Minister directs otherwise, use such water in the operations of that mine or for domestic purposes connected therewith; or
- (b) under a permit from the Minister and in accordance with the conditions specified in the permit, use such water for any other purpose or sell or give the water to any other person for use on other land or otherwise dispose thereof.

(3) The conditions referred to in subsection (2) (b) may include conditions relating to the payment of compensation by the mine owner concerned calculated on a basis or determined in a manner specified in the permit, to any person who in the opinion of the Minister is or may be adversely affected by the removal of the said water from the mine concerned or the authorized use or the manner of disposal of the water.

(4) The Minister may by notice in writing to the owner of a mine, direct that water removed from that mine in terms of subsection (1) and which is not used in the operations of that mine or for domestic purposes connected therewith be disposed of in the manner specified in the direction.

(5) The Minister may at any time render the continued validity of a permit issued under subsection (2) (b) subject to such conditions as the Minister may then determine whether by the imposition of further or new conditions or by the cancellation or amendment of conditions then existing.

(6) The owner of a mine who removes water from the mining area in contravention of a direction by the Minister in terms of subsection (1), or uses water removed from the mining area in terms of subsection (1) in contravention of the provisions of subsection (2) or a direction by the Minister, or contravenes or fails to comply with a condition of a permit issued under subsection (2) (b) or to comply with a direction in terms of subsection (4), shall be guilty of an offence.

[S. 12B inserted by s. 11 of Act No. 68 of 1987.]

**12C. Information as to water found underground.**—(1) Any person who proposes to sink a borehole on land situated in an area defined by the Minister by notice in the *Gazette* as an area to which the provisions of this section shall apply, for the purpose of searching for or abstracting water, shall, before he commences to do so, give notice in writing to the Director-General of his intention to do so, and shall keep a journal of the progress of the work, which shall indicate—

- (a) the diameter and the final depth of the borehole;
- (b) measurements of the strata passed through and a description of such strata;
- (c) the levels at which water is struck and subsequently rests;
- (d) particulars of any test made and of the quantity and apparent quality of water obtained;

- (e) the rate of flow throughout the test and the duration of the test;
- (f) where applicable, the water levels during the test and thereafter until the water has returned to its natural level.

(2) Where any such borehole is sunk in connection with an existing pumping station or water supply, the particulars of any test required to be kept under subsection (1) (d) shall also include the rate of pumping at the existing works during such test.

(3) A person referred to in subsection (1) shall allow any person authorized thereto by the Director of Geological Survey or the Director-General, at all reasonable times—

- (a) to have free access to any such borehole;
- (b) to inspect the borehole and the material excavated or taken therefrom;
- (c) to take specimens of such material and of water abstracted from the borehole;
- (d) to take readings in or in the vicinity of any such borehole with geophysical instruments; and
- (e) to inspect and make copies of or extracts from the journal required to be kept under subsection (1).

(4) After completion or abandonment of any such borehole, the said person shall, within a period of 90 days after he has been requested in writing by the Director-General to do so, send a complete copy of the said journal having reference to the said borehole to the Director-General.

(5) Where the person sinking a borehole on any land is not the owner or occupier of the land, the obligation to allow a person authorized by the Director of Geological Survey or the Director-General, as the case may be, to exercise the rights specified in subsection (3) (a), (b), (c) and (d) shall be on the owner or occupier as well as on the person sinking the borehole.

(6) If any person contracts or proposes to sink any borehole on land belonging to or occupied by any other person, the contractor shall be deemed for the purpose of this section to be the person sinking the borehole.

(7) The owner or occupier of land on which a borehole referred to in this section is sunk, may by notice in writing to the Director of Geological Survey and the Director-General request that any copy of or extract from the journal referred to in subsection (1) or any specimen taken under subsection (3) (c), be treated as confidential, and the said Director and the Director-General shall thereupon not allow that copy, extract or specimen, except in so far as it contains or affords information as to water resources or supplies, to be published or shown to any person not being an officer of the department or of the Division of Geological Survey, unless the owner or occupier giving the notice consents thereto.

(8) Any person who contravenes a provision of this section or fails to comply therewith, shall be guilty of an offence.

[S. 12C inserted by s. 11 of Act No. 68 of 1987.]

**13. Use of public water by a local authority.**—(1) If an owner of land which is situated within the area of jurisdiction of a local authority is entitled to the use of the water of a public stream to which such land is riparian for the irrigation of that land, and the said local authority requires such water or any portion thereof for urban purposes, it may, with the consent of the Administrator of the province in which such local authority has been established and of the Minister, but subject to the provisions of subsection (3), take such water or any portion thereof which it may so require.

(2) A local authority shall, before exercising the power conferred upon it by sub-section (1), give to the owner concerned not less than six months' prior notice in writing of its intention to do so, and shall pay to such owner such compensation as may be agreed upon or, failing agreement, determined by a water court.

(3) (a) A local authority shall not—

(i) construct, alter or enlarge any water work in which more than one hundred and twenty-five thousand cubic meter of public water could be impounded or stored or by means of which more than five thousand cubic meter of water per day could be abstracted or diverted from a public stream, or alter or enlarge any other water work to such an extent that more than such quantity of public water could be impounded or stored therein or more than five thousand cubic meter of water per day could by means thereof be abstracted or diverted from such a stream;

[Sub-para. (i) amended by s. 4 of Act No. 108 of 1977.]

(ii) if it was using less than five thousand cubic meter of public water per day immediately prior to the commencement of the Water Amendment Act, 1969, increase its use of such water to more than five thousand cubic meter per day, or, if it was using more than five thousand cubic meter of such water per day immediately prior to such commencement, increase its use of such water, irrespective of whether or not such use is for agricultural, urban or industrial purposes,

[Sub-para. (ii) amended by s. 4 of Act No. 108 of 1977.]

unless the Minister has authorized such construction, alteration, enlargement or increase by permit.

(b) . . . . .

[Para. (b) deleted by s. 9 of Act No. 96 of 1984.]

(c) A water court shall not consider an application by a local authority to impound, store, abstract, divert or use public water in a manner contemplated in paragraph (a), whether for agricultural, urban or industrial purposes, or for any other purpose, and irrespective of whether or not such water is to be used on land riparian to the public stream in question, unless such application is accompanied by an appropriate permit referred to in paragraph (a).

(d) A permit granted in terms of this subsection shall not exempt the local authority concerned from obtaining such rights or servitudes as may be necessary to enable it to impound, store, abstract, divert or use public water in terms of such permit.

(4) The Minister may, in respect of the supply of water to any person by a local authority, make regulations under section 26 relating to the conditions subject to which such supply is undertaken, the exercise of control over the quality of any material or equipment used for or in connection with such supply and the persons by whom the installation of such equipment shall be done.

[Sub-s. (4) added by s. 12 of Act No. 68 of 1987.]

(5) For the purposes of this section "local authority" includes any regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act No. 109 of 1985).

[S. 13 substituted by s. 1 of Act No. 77 of 1969. Sub-s. (5) added by s. 4 of Act No. 68 of 1990.]

**14. Use of public water by Railways and Harbours Administration under special circumstances.—**(1) If the maintenance of railway services by the South African Railways and Harbours Administration is at any time rendered difficult owing to a temporary or partial failure of an existing supply of water which that Administration is lawfully using for railway purposes, the said Administration may in accordance with the provisions of sub-section (2) make application for a temporary order permitting it to use a stated quantity of public water for railway purposes.

(2) An application for an order under sub-section (1) shall be made to a judge of the division of the Supreme Court of South Africa which exercises jurisdiction in the area within which the water to which the application relates is to be abstracted.

(3) Any such judge may, notwithstanding anything to the contrary contained in this Act, make an order permitting the use of such water for such period and subject to such terms and conditions as he may determine.

(4) If the said judge makes an order in terms of sub-section (3), and owners of land riparian to the public stream from which the temporary supply of water is abstracted in pursuance of the order, or any other persons who are entitled to the use of the water of such stream, are adversely affected by being temporarily deprived of the use of such water and have suffered loss as a result thereof, the said Administration shall pay to those owners or persons such compensation as may have been agreed upon or as may, at any time subsequent to the making of the order, and after due notice to the parties concerned, be determined by the said judge or any other judge of the same division of the Supreme Court.

(5) Any proceedings under this section shall for the purposes of this Act be deemed to be proceedings before a water court, and the judge presiding at such proceedings shall be deemed to be a water court judge.

(6) The use of water by the aforesaid Administration for railway purposes in the exercise of any right to water lawfully acquired by it from any riparian owner or otherwise lawfully enjoyed by it immediately prior to the commencement of this Act, shall be deemed to have been permitted by a water court.

**15. Saving in respect of areas protected under repealed provisions of Act 8 of 1912.—** Notwithstanding the repeal by this Act of the unrepealed provisions of the Irrigation and Conservation of Waters Act, 1912 (Act No. 8 of 1912), and of the Irrigation Amendment Act, 1934 (Act No. 46 of 1934), any permission granted or determination made or order issued or other act performed by a water court, and any undertaking or security given by any person, under section *fifteen* or *sixteen* of the said Irrigation and Conservation of Waters Act, 1912, prior to the commencement of the said Irrigation Amendment Act, 1934, shall remain of the same force and effect as if this Act had not been passed.

continued on page 1223

**16. Limitation on construction of water works and abstraction of water in protected areas.**—(1) An owner of riparian land situated within the catchment to which any permission, determination or order referred to in section *fifteen* relates, which is registered under separate title deed at the date of commencement of this Act, may, notwithstanding such permission, determination or order, construct on such land—

- (a) water works of a storage capacity not exceeding one hundred and fourteen thousand cubic meter in the aggregate in which he may impound and store for his own use surplus water in any public stream to which his land is riparian; and  
[Para. (a) amended by s. 5 of Act No. 108 of 1977.]
- (b) diversion water works capable of diverting a flow of water not exceeding three hundred litre per second by means of which he may divert for his own use surplus water from any such public stream.  
[Para. (b) amended by s. 5 of Act No. 108 of 1977.]

(2) The provisions of sub-section (1) shall not apply in respect of an owner to whom permission has been granted by a water court to construct and who has constructed storage or diversion water works in the catchment referred to in the said sub-section: Provided that if such storage works are of a smaller capacity than one hundred and fourteen thousand cubic meter or such diversion works are capable of diverting a flow of less than three hundred litre of water per second, the owner of such works may, according to the circumstances—

- (a) enlarge such water works to impound and store not more than one hundred and fourteen thousand cubic meter of water therein or construct additional water works which, together with such works, will be capable of storing in the aggregate not more than one hundred and fourteen thousand cubic meter of water; or  
[Para. (a) amended by s. 5 of Act No. 108 of 1977.]
- (b) enlarge such water works to enable him to divert a flow of water not exceeding three hundred litre per second or construct additional water works which, together with such water works, will be capable of diverting a flow of water not exceeding three hundred litre per second.

[Sub-s. (2) amended by s. 5 of Act No. 108 of 1977. Para. (b) amended by s. 5 of Act No. 108 of 1977.]

**17. Construction of works and abstraction of water in protected areas with permission of water court.**—(1) If an owner of riparian land referred to in sub-section (1) of section *sixteen* desires to construct thereon water works of a capacity exceeding that mentioned in paragraph (a) or (b) of that sub-section, he may apply to a water court for permission to construct such works, and the water court may grant permission for the construction of such works, either unconditionally or subject to such modifications and conditions as it may deem necessary, if it is satisfied that the rights of persons who have been granted protection in respect of their works in terms of any order referred to in section *fifteen* will not be adversely affected thereby, and shall in that event at the same time determine the amount of water which the applicant may by virtue of such permission impound or divert.

(2) Before granting any permission under sub-section (1), the water court shall afford every riparian owner who is likely to be affected thereby an opportunity to raise any objection before it to the granting of such permission, whether as regards the amount of water proposed to be stored or diverted or as regards any other matter.

(3) An irrigation board which may be entitled to raise any objection under sub-section (2) may appear before the water court on behalf of the persons liable for the payment of rates to the board, and any notice required to be served on such persons in connection with any such objection shall be deemed to have been duly served on them if the said notice has been served on the board.

**18. Rights of Government and persons enjoying protection to construct works in protected areas.**—(1) If the storage capacity of a storage work in respect of which protection has prior to the commencement of the Irrigation Amendment Act, 1934, been granted by

a water court under section *fifteen* or *sixteen* of the Irrigation and Conservation of Waters Act, 1912, has become reduced by siltation or any other cause to less than the capacity authorized by such water court, the owner of such work may, with the permission of the water court, enlarge the said work or construct another storage work in the same public stream above or below the first-mentioned work in order to impound and store a total quantity of water not exceeding in the aggregate the capacity so authorized.

(2) The Minister may construct a Government water work in any catchment to which a permission, determination or order referred to in section *fifteen* relates, and any Government water work within such a catchment commenced or completed before the date of commencement of this Act shall be deemed to have been authorized by this section.

(3) If any work constructed in terms of sub-section (1) or (2) is situated above the work in respect of which protection has been granted by virtue of the provisions referred to in sub-section (1), and its construction has resulted in a diminution of the share of the water of the public stream in question which any lower riparian owner, whose land is situated in the catchment to which such protection relates, is entitled to impound or divert by means of water works existing and being beneficially used at the date of commencement of such construction, the owner who has constructed such work or the Minister, as the case may be, shall either—

- (a) pay to that lower riparian owner such compensation; or
- (b) in lieu of the water of the use whereof such lower owner has been deprived, supply such owner from time to time with such a quantity of water from the works so constructed,

as may be agreed upon or failing agreement determined by a water court.

(4) The Minister may, notwithstanding the provisions of any law which affords the protection contemplated in sections 14 and 15 of the Irrigation and Conservation of Waters Act, 1912 (Act No. 8 of 1912), in respect of the catchment area of any Government water work, authorize the construction, alteration or enlargement of any water work for the abstraction, impoundment or storage and use of surplus water for any purpose, in general by notice in the *Gazette* or in a particular case by notice in writing to the person concerned.

[Sub-s. (4) added by s. 13 of Act No. 68 of 1987.]

**19. Remedy against excessive storage, impoundment or diversion of surplus water.—** An owner of land riparian to a public stream who feels aggrieved by the storage, impoundment or diversion by an upper riparian owner along such stream of a greater quantity of the surplus water thereof than he could reasonably be entitled to use, may apply to a water court for an order determining the quantity of water which, in the opinion of the said court, the said upper owner shall be entitled to store, impound or divert, and thereafter the said upper owner shall not be entitled to store, impound or divert a greater quantity of water than the quantity so determined: Provided that no order of a water court under this section shall interfere with the use, enjoyment or exercise of any right previously held, or any permission previously granted in terms of an order made by a water court under this Act or any prior law to store, impound or divert surplus water, unless such permission was cancelled under sub-section (3) of section *sixteen* of the Irrigation and Conservation of Waters Act, 1912, prior to the commencement of the Irrigation Amendment Act, 1934, or has lapsed by virtue of the provisions of the said section.

**20. Alteration in the course of a public stream.—**(1) (a) Except under the authority of a permit issued by the Minister and in accordance with any condition subject to which such permit was issued, no person shall alter the course of a public stream.

(b) Paragraph (a) shall not apply in a case where the course of a public stream is altered—

- (i) in accordance with an order of a water court under subsection (9);
- (ii) by or on the authority of an irrigation board under section 89 (1) (e);
- (iii) by a local authority within its area of jurisdiction;
- (iv) by the construction of a soil conservation work in terms of the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983).

(2) Any person intending to apply for a permit referred to in subsection (1) (a) shall at least 30 days before lodging his application—

- (a) give notice in writing of his intention to every person in control of land adjoining the land on which such alteration is contemplated;
- (b) on two occasions in successive weeks give notice of his intention to other interested persons in an Afrikaans and in an English newspaper circulating in the area in which such alteration is contemplated;

and call upon them to submit to the Director-General in writing any objections against the proposed application within a specified period, which shall not be less than 30 days as from the date on which the relevant notice was thus given.

(3) An application for a permit referred to in subsection (1) (a) and a notice referred to in subsection (2) shall be in such form and include such particulars as may be prescribed by regulation under section 26.

(4) If the Minister grants an application for a permit referred to in subsection (1) (a), the Director-General shall, within 14 days after the permit has been issued to the applicant, send a copy thereof to each person who within the period specified in the notice submitted written objections against the application to the Director-General, and thereupon such a person, provided he is entitled to the use of water in the relevant public stream, is likely to be prejudiced in the exercise of his right by the proposed alteration in the course thereof and has given notice in writing of his intention to the Minister and the holder of the permit, may not later than 60 days as from the date on which the permit was issued, lodge an objection with a water court against the issue of the permit or a matter in connection therewith.

(5) A permit referred to in subsection (1) (a) shall include a notice drawing attention to the provisions of subsection (4) that an objection against the issue of the permit or a matter in connection therewith may within 60 days as from the date of issue of the permit be lodged with a water court.

(6) (a) A water court with which an objection has been lodged in terms of subsection (4) may confirm or set aside the permit in question, or cancel or vary any condition to which it is subject, or substitute for any such condition, or add, a new condition, or make such order in connection with such permit as it may deem fit.

(b) Any conditions amended, substituted for other conditions or added by a water court under paragraph (a) shall for the purposes of subsection (1) be deemed to be conditions subject to which the permit concerned has been issued.

(7) If a permit is set aside by a water court under subsection (6) the steps being taken to alter the course of the public stream in pursuance of such permit shall be discontinued, and if the course of the stream has already been altered, the person to whom the permit was issued shall, within such period as may be determined by the court, take such steps as are necessary to revert the stream to its previous course or as the court may order in the particular circumstances.

(8) If any alteration in the course of a public stream has occurred through natural causes or been effected in an artificial manner—

- (a) such alteration shall not affect any existing right or any right conferred by section 9 or 10 with respect to that stream or the water thereof and in force immediately prior to such alteration;
- (b) such alteration shall not give rise to the creation of any new rights to the stream or the water thereof;
- (c) any land which prior to such alteration was not riparian to such stream and which in consequence of that alteration became riparian to that stream, shall for the purposes of this Act be deemed not to be riparian to that stream;
- (d) such alteration shall not bring about any change in the boundary between two pieces of land where such stream, prior to the alteration in the course thereof, constituted the boundary or a part of the boundary between those pieces of land.

(9) At any time within five years after an alteration in the course of a public stream occurred through natural causes, any person entitled to the use of water from that stream and who due to the alteration in the course of the stream was cut off from the stream or is impeded in any other manner in the exercise of his right, may apply to a water court for an order authorizing him to construct such works which in the opinion of the court are necessary to revert the stream to its previous course.

(10) (a) The Minister may—

(i) by notice in writing to a person exempt that person; or

(ii) by notice in the *Gazette* exempt a person belonging to a category of persons, from any of or all the provisions of subsections (1), (2) and (3) on such conditions as may be specified in the notice.

(b) The Minister may at any time—

(i) in the case of an exemption granted under paragraph (a) (i), by notice in writing to the person concerned; or

(ii) in the case of an exemption granted under paragraph (a) (ii), by notice in the *Gazette*,

withdraw such exemption or render the continued validity of the exemption subject to such conditions as the Minister may then determine either by the imposition of further or new conditions or by the cancellation or amendment of conditions then existing.

(11) Any person who contravenes or fails to comply with a provision of this section or a condition of a permit or a condition of an exemption or an order of a water court issued thereunder, shall be guilty of an offence.

[S. 20 substituted by s. 10 of Act No. 96 of 1984.]

**21. Purification and disposal of water used for industrial purposes and effluent.—**

(1) Any person using for industrial purposes water, including sea water brought ashore, shall—

(a) purify or otherwise treat the water so used and any effluent produced by or resulting from such use, in accordance with such requirements as the Minister may from time to time, after consultation with the South African Bureau of Standards mentioned in the Standards Act, 1982 (Act No. 30 of 1982), prescribe by notice in the *Gazette* generally or in relation to water used for any particular industrial purpose, or in relation to water or effluent to be disposed of by discharging it into any particular public stream or into the sea, or in relation to water or effluent to be disposed of in any particular area;

(b) after he has complied with paragraph (a) discharge the purified or treated water, including water recovered from any effluent, in a manner and subject to any such requirements as may be prescribed by regulation under section 26—

(i) if the water so used was derived from a public stream, into that public stream at the place where such water was abstracted from the stream or at such other place as the Minister may indicate;

(ii) if the water so used was sea water, into the sea at the place where such water was abstracted from the sea or at such other place as the Minister may indicate;

(c) furnish the Director-general in writing with such particulars regarding such use and the disposal of the purified or treated water, including water recovered from any effluent, as may be prescribed by regulation under section 26.



(2) Unless the Minister otherwise directs, the provisions of subsection (1) shall not apply—

- (a) in respect of the use of water in any septic tank or French drain sewerage system which complies with the requirements of any law applicable thereto; or
- (b) to any person who, in accordance with an arrangement with the Minister or a local authority, body or person having authority to undertake the purification, treatment or disposal of water or effluent, discharges the water used by him for industrial purposes or the effluent produced by or resulting from such use, for purposes of the purification, treatment or disposal thereof into a canal, sewer or other conduit controlled by the Minister or the relevant local authority, body or person, as the case may be.

(3) For the purposes of subsection (1)—

- (a) water used for industrial, urban or domestic purposes and which is discharged for purposes of the purification, treatment or disposal thereof into a canal, sewer or other conduit controlled by a local authority, body or person having authority to undertake the purification, treatment or disposal of water or effluent, shall be deemed to be water used by that local authority, body or person for industrial purposes; and
- (b) effluent which is discharged into a canal, sewer or other conduit controlled by a local authority, body or person referred to in subsection (2) (b) shall be deemed to be effluent produced or which resulted from the use by that local authority, body or person, of water for industrial purposes.

(4) (a) The Minister may—

- (i) by notice in writing to a person exempt that person; or
- (ii) by notice in the *Gazette* exempt a person belonging to a category of persons,

on such conditions as may be specified in the notice from any of or all the provisions of subsection (1) or of a notice or regulation contemplated therein.

(b) No exemption under paragraph (a) which may result in water or effluent which does not comply with the requirements prescribed under subsection (1) (a) being discharged into a public stream or the sea, shall be granted by the Minister except after consultation with the South African Bureau of Standards.

(c) Any person prejudiced by any exemption granted under paragraph (a) may after written notice to the Minister and in the case of an exemption granted under subparagraph (i) of that paragraph, also to the person so exempted, lodge with a water court an objection against the continuation of the exemption or against any matter in connection with such exemption, and the water court may, after it has enquired into and considered the exemption or other matter against which the objection is lodged, confirm or withdraw the exemption or withdraw or amend any condition to which it may be subject, or substitute for such condition, or add, any new condition, or make such order in connection with such exemption as it may deem fit.

(d) If a water court in terms of paragraph (c) withdraws any exemption granted under paragraph (a) (ii) or withdraws or amends any condition to which it may be subject or substitutes for such condition, or adds, any new condition, the Minister shall, by notice in the *Gazette* and with effect from the date determined by the water court, withdraw the notice by which such exemption was granted or, as the case may be, amend such notice in order to give effect to the decision of the water court.

(e) The Minister may at any time—

- (i) in the case of an exemption granted under paragraph (a) (i), by written notice to the person concerned; or

- (ii) in the case of an exemption granted under paragraph (a) (ii), by notice in the *Gazette*,

withdraw such exemption or, subject to paragraph (c), render the continued validity of the exemption subject to such conditions as the Minister may then determine either by the imposition of further or new conditions or by the withdrawal or amendment of conditions then existing.

(5) Any person who contravenes or fails to comply with any provision of subsection (1) or any condition imposed under subsection (4) shall be guilty of an offence.

(6) The provisions of this section, except subsection (5), shall bind the State.

[S. 21 amended by s. 5 of Act No. 56 of 1961, by s. 3 of Act No. 79 of 1967 and by s. 3 of Act No. 42 of 1975 and substituted by s. 11 of Act No. 96 of 1984.]

**22. Prevention of water pollution.**—(1) Any person who has control over land on which any thing was or is done which involved or involves a substance capable of causing water pollution, whether such substance is a solid, liquid, vapour or gas or a combination thereof, shall take such steps as may be prescribed by regulation under section 26 in order to prevent—

- (a) any public or private water on or under that land, including rain water which falls on or flows over or penetrates such land, from being polluted by that substance, or if that water has already been polluted, from being further polluted by that substance; and
- (b) any public or private water on or under any other land, or the sea, from being polluted, or if that water has already been polluted, from being further polluted, by water referred to in paragraph (a) which became polluted in the circumstances described in that paragraph.

(1A) (a) The steps prescribed under subsection (1), may include steps which have to be taken on land other than the land contemplated in that subsection: Provided that such steps may only be taken by agreement with the owner of such other land.

(b) Any person referred to in subsection (1) who is unable to reach an agreement referred to in paragraph (a) with the owner of the other land concerned, shall inform the Minister accordingly in writing.

(c) The Minister may after receipt of such a notice and after such investigation as he may deem fit—

- (i) if he is convinced that the taking of the required steps on the other land concerned will be excessively onerous on the owner thereof, grant exemption from the obligation to take the steps concerned to the person referred to in subsection (1), and prescribe such other steps as he may consider expedient under the circumstances; or
- (ii) in terms of section 60 appropriate any property on behalf of the person concerned, or take the right to use temporarily any property which he considers necessary for the taking of the steps concerned, as if the expropriation of such property or the taking of such right is connected with a Government water work.

(d) Any expenditure connected with the expropriation of any property or the taking of any right referred to in paragraph (c) (ii), shall be recovered by the Director-General from the person referred to in subsection (1).

[Sub-s. (1A) inserted by s. 14 of Act No. 68 of 1987.]

(2) (a) The Minister may—

- (i) by notice in writing exempt any person; or
- (ii) by notice in the *Gazette* exempt a person belonging to a category of persons, on such conditions as may be specified in the notice, from the provisions of subsection (1) or of any regulation contemplated therein.

(b) The provisions of section 21 (4) (c), (d) and (e) shall *mutatis mutandis* apply in respect of an exemption granted under paragraph (a) of this subsection.

(3) . . . . .

[Sub-s. (3) deleted by s. 4 of Act No. 92 of 1993.]

(4) Any person who fails to comply with a provision of subsection (1) or who contravenes or fails to comply with a condition of his exemption under subsection (2) shall be guilty of an offence.

(5) The provisions of this section, except subsection (4), shall bind the State.

[S. 22 substituted by s. 12 of Act No. 96 of 1984.]

**22A. Minister may take steps to prevent pollution of water.**—(1) Notwithstanding the provisions of section 22 or any regulation under section 26, the Minister may, subject to the other provisions of this section, out of funds appropriated by Parliament for the purpose, cause such steps as he may consider necessary to be taken on land mentioned in subsection (1) of section 22 in order to prevent water mentioned in paragraph (a) or (b) of that subsection from being polluted in the circumstances described therein or, if that water has already been so polluted, from being further so polluted, and may instruct the Director-General to recover so much of the cost incurred in taking such steps as the Director-General may deem fit—

- (a) from any person who at any time did any thing on the land concerned which caused or contributed to the said pollution; and
- (b) from any other person who, directly or indirectly, has gained or is likely to gain any advantage from—
  - (i) any thing done as contemplated in paragraph (a); or
  - (ii) any such steps caused to be taken by the Minister,

and such advantage may include or consist of the enhancement of the value of any land.

(2) (a) Prior to any steps being taken by the Minister in terms of subsection (1), the Director-General shall give written notice of the Minister's intention to take such steps—

- (i) to the owner of the land concerned and to the holder of any registered right in respect of that land; and
- (ii) to any person contemplated in paragraph (a) or (b) of subsection (1) from whom he intends recovering the cost of the proposed steps,

specifying the steps proposed to be taken, the estimated cost of such steps, including the cost of the design and construction of any works and, where applicable, the grounds on which liability for the cost to be recovered is based.

(b) Any person so notified who feels aggrieved by the steps proposed to be taken may submit, for the Minister's decision, his objections in writing to the Director-General within 60 days of the date of the notice, whereupon the Minister shall, with due regard to such objections, determine the steps to be taken in terms of subsection (1), and the Director-General shall notify such person of the minister's decision.

(3) (a) The Director-General shall as soon as practical—

- (i) after the expiration of the 60 days mentioned in paragraph (b) of subsection (2), if no relevant objection has been received; or
- (ii) if such an objection has been received, after the notification in terms of the said paragraph (b),

notify the person in question of the amount involved, giving particulars of how the amount was determined in each case.

(b) A person mentioned in paragraph (a) who feels aggrieved by the proposed claim against him or the amount of such claim, may within 30 days after having been notified in terms of paragraph (a), in writing submit his objections to the Director-General, whereupon the Director-General shall, with due regard to such objections, determine the amount due by such person and notify him of his decision.

(c) An amount due by any person by virtue of the provisions of this subsection shall be payable within a period of 90 days from the date on which he was notified in terms of paragraph (a) or, if an objection was submitted by him in terms of paragraph (b), within 60 days after he was notified in terms of the last-mentioned paragraph, or within such other period as may be agreed upon by him and the Director-General, failing which the Director-General may recover the amount due by action in a competent court.

[S. 22A inserted by s. 5 of Act No. 92 of 1993.]

**22B. Emergency action in case of pollution incidents.**—(1) In this section “pollution incident” means any incident resulting in the likelihood of water being polluted in such manner as to be hazardous to human or animal life or cause material damage to the property of any person who has a right to the use of such water.

(2) On the occurrence of a pollution incident, the person in control of any substance involved therein shall immediately report the incident to any officer of the department, or to any police officer, who shall immediately report the incident to any officer of the department.

(3) The Director-General may, out of funds appropriated by Parliament for the purpose, cause such steps as he considers necessary under the circumstances to be taken to prevent water from being polluted as a result of a pollution incident and, if already polluted as a result thereof, from being further so polluted or to minimize the threat to human or animal life or property posed by the water so polluted.

(4) The Director-General may in his discretion recover the cost of any steps in terms of subsection (3), from any person who, at the time of the occurrence of the pollution incident, was the owner of any substance involved therein and from any person who through his negligent handling of that substance, caused or contributed to the occurrence of the pollution incident.

[S. 22B inserted by s. 5 of Act No. 92 of 1993.]

**23. Pollution of water to be an offence.**—(1) (a) Any person who wilfully or negligently does any act which could pollute public or private water, including underground water, or sea water in such a way as to render it less fit—

- (i) for the purpose for which it is or could be ordinarily used by other persons (including the Government, the South African Transport Services and any provincial administration);
- (ii) for the propagation of fish or other aquatic life; or
- (iii) for recreational or other legitimate purposes.

shall be guilty of an offence.

(b) If in any prosecution under paragraph (a) it is proved that the accused committed any act which could pollute water referred to in that paragraph in any manner mentioned therein, it shall be presumed, until the contrary is proved, that the accused committed such act wilfully or negligently.

(2) The provisions of subsection (1) shall not apply in respect of any act performed in accordance with section 21 or 22.

[S. 23 amended by s. 3 of Act No. 45 of 1972 and by s. 4 of Act No. 42 of 1975 and substituted by s. 13 of Act No. 96 of 1984.]

**23A. Prevention of pollution of water through farming operations.**—(1) If the Minister is of opinion that the concentration of any livestock or any substance or the carrying on of any farming operations on any land is causing or is likely to cause the pollution of public or private water, including underground water, he may require the owner of such land or the person carrying on such operations to take, at his own expense and within a period determined by the Minister, such steps as the Minister may deem necessary for the prevention of such pollution, and may, if such requirement is not complied with, cause the required steps to be taken and the expenses incurred thereby to be defrayed out of moneys appropriated by Parliament for the purpose, and may recover such expenses from the said owner or person.

(2) . . . . .

[Sub-s. (2) deleted by s. 7 of Act No. 92 of 1993.]

(3) Any person who wilfully fails to comply with a requirement of the Minister in terms of subsection (1) shall be guilty of an offence.

[S. 23A inserted by s. 3 of Act No. 36 of 1971.]

**24. Directions by Director-General in connection with water pollution.**—(1) (a) The Director-General may authorize any person in writing to enter upon any land referred to in section 22 (1) (a) or (b) or on which water is used for industrial purposes or any of the steps referred to in section 21 (1) are carried out and to conduct on such land such investigation as the Director-General may determine.

(b) If the Director-General, after a person who conducted an investigation under paragraph (a) has made a report to him on his investigation, is of the opinion that the steps required to be carried out in terms of the provisions of section 21 (1) or 22 (1) to prevent water pollution, are in the particular circumstances inadequate or ineffective or, for any reason which he considers sufficient, inappropriate, he may, those provisions notwithstanding, in writing direct the person responsible for carrying out those steps to take such additional or other steps as in the opinion of the Director-General are necessary in the particular circumstances to prevent the said pollution from taking place, or if pollution has already taken place, to prevent that pollution from continuing.

(c) Any person aggrieved by a direction issued to him under paragraph (b) may, within 60 days of the date of the direction, appeal in writing against such direction to the Minister, and the Minister shall, after he has considered the grounds of the appeal and after such further investigation as he may deem necessary, confirm, set aside or vary the direction or substitute for such direction any other direction which the Director-General in the Minister's opinion ought to have issued in the particular circumstances.

(d) If a person to whom a direction was issued under this subsection fails to comply with such direction within a period specified in the direction, the Minister may out of moneys appropriated by Parliament for the purpose, cause the steps specified in the said direction to be carried out and recover the cost so incurred or any part thereof from the person to whom the direction was issued.

(e) The Minister may in writing, for the purposes of the steps referred to in paragraph (d), authorize any person to enter upon any land with the necessary workmen, animals and equipment.

(1A) The provisions of section 22 (1A) shall apply *mutatis mutandis* in respect of any steps determined by direction under subsection (1) (b).

[Sub-s. (1A) inserted by s. 15 of Act No. 68 of 1987.]

(2) If any person fails to comply with a provision of section 21 (1) or 22 (1) or with a condition of his exemption under section 21 (4) or 22 (2) or with a direction issued under subsection (1) of this section, the Minister may direct that the supply of water to any land on which water is used by such person for industrial purposes, whether from a Government waterwork or any other waterwork, be suspended or reduced to a quantity determined by the Minister, until the said provision, condition or direction, as the case may be, is complied with.

(3) The Minister may by notice in the *Gazette* direct that the manufacture, marketing or use of any substance (including any solid, liquid, vapour or gas) which in the opinion of the Minister could cause pollution of any public or private water or the sea, be terminated or restricted or subject the manufacture, marketing or use thereof to the conditions specified in such notice.

(4) No person to whom a direction was issued in terms of subsection (1) or who may be affected by a direction under subsection (2) or (3) shall be entitled to recover from the State, the Minister, an officer in the service of the State or any person involved in

the execution of the direction, any cost incurred in complying with such direction or any damage or loss caused thereby.

(5) Any person who fails to comply with a direction under subsection (1) or (3) or who prevents a person authorized under subsection (1) from carrying out his functions under that subsection shall be guilty of an offence.

(6) The provisions of this section, except subsection (5), shall bind the State.

[S. 24 amended by s. 6 of Act No. 56 of 1961 and substituted by s. 14 of Act No. 96 of 1984.]

**25. Savings in respect of certain persons and soil erosion works.**—(1) Nothing in this Chapter contained shall be construed as—

- (a) compelling any person who, prior to the first day of July, 1912, constructed or had in course of construction, works for the use of water of any stream, to allow to flow down past his works water which he could beneficially use by means of or for the purpose of his works and which he was at that date entitled so to use; or

**continued on page 1233**

- (b) preventing any person who, prior to the first day of July, 1912, used and was entitled to use the water of any stream for agricultural purposes on non-riparian land, from continuing so to use such water; or
- (c) preventing any person from doing on his own land any act necessary to prevent the erosion thereof, provided he does not thereby waste public water through the unbeneficial storage or detention thereof or the unbeneficial flooding of veld.

(2) The storage or detention of public water or the use of public water for the flooding of veld, in so far as may be reasonably necessary in connection with any soil conservation work authorized in terms of the Soil Conservation Act, 1946 (Act No. 45 of 1946), shall not be deemed to constitute unbeneficial storage, detention or use of such water: Provided that the Minister may, in respect of any public stream, by notice in the *Gazette* prescribe such specifications and conditions subject to which any soil conservation works may be constructed, as he may consider necessary to ensure that public water will not be wastefully stored or detained or used for the flooding of veld to the prejudice of lower riparian owners or any owner of a water work in respect of which protection was prior to the commencement of the Irrigation Amendment Act, 1934, granted under section *fifteen* or *sixteen* of the Irrigation and Conservation of Waters Act, 1912.

(3) Any person who fails to comply with any specifications or conditions prescribed in terms of sub-section (2) shall be guilty of an offence.

**26. Regulations relating to the prevention of the pollution of water.**—The Minister may make regulations relating to—

- (a) any matter which under this Chapter is required or permitted to be prescribed by regulation under this section;
  - (b) the prevention of wastage or pollution of public water and private water, including underground water, of pollution of sea water, and of damage to the environment caused by water;
  - (c) the information to be furnished to the Director-General in connection with the operations of any mine or industrial undertaking in so far as such operations affect a matter to which this Chapter relates, and the persons by whom such information is to be furnished;
  - (d) the information to be furnished to the Director-General in connection with water used for industrial purposes and in connection with the purification, treatment or disposal of water so used and effluent produced by or resulting from such use, and the persons by whom such information is to be furnished;
  - (e) the manner and place of disposal of water used for industrial purposes and effluent, and the requirements to be complied with in connection with such disposal;
  - (f) the use or re-use for any purpose of water used for industrial purposes and effluent;
  - (g) the registration with the department and use of sites or portions of sites or any land where water used for industrial purposes or effluent or any waste is disposed of or will be disposed of with the purpose of discarding it and the control over and the disposal of such sites or portions of such sites or such land;
- [Para. (g) substituted by s. 16 of Act No. 68 of 1987.]
- (h) the administration or application of any provision of this Chapter or of a regulation made under this section, including a regulation relating to the inspection of land and of works and operations thereon and the persons by whom such inspection shall be undertaken;

- (i) generally in respect of any other matter which in the opinion of the Minister is necessary or expedient for the attainment of the objects of this Chapter,

and the Minister may, subject to such conditions as may be determined by him, grant exemption to any person from compliance with a provision of any regulation made under this section, or if he deems fit withdraw any such exemption.

[S. 26 amended by s. 3 of Act No. 73 of 1978 and by s. 5 of Act No. 92 of 1980 and substituted by s. 15 of Act No. 96 of 1984.]

## CHAPTER IIA

[Chapter IIA inserted by s. 7 of Act No. 32 of 1994.]

### WATER SUPPLY AND SANITATION

#### 26A. Definitions.—In this Chapter—

“committee” means any local water supply and sanitation committee established in terms of section 26C (1);

“water supply and sanitation service” means the provision, operation and maintenance of any facility—

- (a) permitting access to water of a quality suitable for use for domestic purposes and in sufficient quantities to satisfy basic human needs; and
- (b) relating to the removal of night-soil or sewage of domestic origin from a domestic environment and its disposal,

and includes measures intended to promote the effective use of such facility.

[S. 26A inserted by s. 7 of Act No. 32 of 1994.]

**26B. Rendering of water supply and sanitation services by Minister.**—(1) The Minister may, out of moneys appropriated by Parliament for the purpose, render or cause a water supply and sanitation service to be rendered to any community occupying land for residential and related purposes with a view to promoting the object of section 29 of the Constitution or to promoting public health, if, in respect of that community, no local authority exists or a local authority having jurisdiction is not able to render such service.

(2) Any facility provided, operated or maintained by or on behalf of the Minister for or in connection with the rendering of a water supply and sanitation service in terms of subsection (1) shall, for the purposes of sections 56 (4), 60 and 69, be deemed to be a Government water work.

(3) (a) In order to defray any expenditure incurred or to be incurred in connection with the rendering of a water supply and sanitation service, the Minister may from time to time assess such charges as he or she deems fit, and may recover the charges so assessed in accordance with the provisions of paragraph (c): Provided that such charges shall be assessed with due regard to the ability of the community or communities concerned to afford such charges, and that revenue resulting from such charges shall not exceed in any case the cost incurred in the rendering of such service.

(b) Charges under paragraph (a) may be assessed—

- (i) in general in respect of all water supply and sanitation services rendered by or on behalf of the Minister;
- (ii) in respect of a particular community or categories of communities as may be determined by the Minister, in relation to which a water supply and sanitation service is rendered;



- (iii) in respect of a facility or categories of facilities as may be determined by the Minister, that is provided, operated or maintained by or on behalf of the Minister for or in connection with the rendering of water supply and sanitation services.

(c) Charges assessed in terms of this subsection shall be recovered from such members of the community concerned on a basis and in a manner as may be determined by the Minister—

- (i) in general in respect of all communities in relation to which water supply and sanitation services are rendered;
- (ii) in respect of a particular community or categories of communities as may be determined by the Minister in relation to which water supply and sanitation services are rendered; or
- (iii) in respect of a facility or categories of facilities as may be determined by the Minister that is provided, operated or maintained for or in connection with the rendering of water supply and sanitation services.

[S. 26B inserted by s. 7 of Act No. 32 of 1994.]

**26C. Minister may establish local water supply and sanitation committees.—**

(1) Subject to section 26B (1), the Minister may, in accordance with the regulations made under section 26D, establish a local water supply and sanitation committee to render in accordance with the said regulations any water supply and sanitation service as the Minister may from time to time direct.

(2) A committee contemplated in subsection (1) shall only be established and any direction contemplated in that subsection shall only be issued after consultation with the community concerned, or any constituency of such a community and with such other persons or bodies, as the Minister may determine in general or in any particular instance, with regard to—

- (a) the nature and extent of the water supply and sanitation service to be rendered;
- (b) the area within which or the community in relation to which the water supply and sanitation service is to be rendered;
- (c) the composition of the committee and the manner in which members are to be identified and appointed;
- (d) any contribution, in kind or otherwise, to be made by the community or members of the community in respect of the provision, operation or maintenance of any facility involved in the rendering of the water supply and sanitation service under consideration; and
- (e) any other matter which the Minister or the community considers relevant to the rendering of the water supply and sanitation service under consideration.

(3) (a) The Minister may at any time, subject to the provisions of subsection (2), in writing direct a committee to undertake the supply of water under its control, to any person for use for any purpose, at any place and on such conditions as specified in the direction.

(b) Any direction under paragraph (a) may at any time be revoked or amended by the Minister or any condition specified therein be cancelled or amended, or the direction may be made subject to such new or additional conditions as the Minister may impose.

(4) Any committee established in terms of subsection (1) shall be a juristic person.

(5) The Minister may, in accordance with the regulations made under section 26D, disestablish any committee by notice in the *Gazette*.

[S. 26C inserted by s. 7 of Act No. 32 of 1994.]

**26D. Regulations.**—(1) The Minister may, subject to subsection (2), make regulations as to—

- (a) the manner in which a committee shall be established;
- (b) the constitution of a committee and the election or appointment of persons as members of such committee;
- (c) the qualifications for election or appointment as, the period of office of, and the vacating of their office as, members of a committee, and the filling of casual vacancies in a committee;
- (d) the election and the period of office of a chairperson and any other functionary of a committee;
- (e) the convening of and the procedure and quorum at meetings of a committee;
- (f) the remuneration of, and the payment of allowances for expenses to, a member of a committee;
- (g) the appointment, the salary, wage or other remuneration, and the rights, privileges and other conditions of service, of any officer or employee of a committee;
- (h) the powers, duties and functions of a committee, and the delegation or assignment of any power, duty or function entrusted to a committee by or under this Act to a chairperson or other functionary of a committee or an officer or employee of a committee;
- (i) charges to be assessed by a committee in relation to the water supply and sanitation service rendered by it, the recovery of any such charges and the steps that a committee can take on failure to pay any such charges on time, including the payment of interest on outstanding charges;
- (j) the keeping of records of moneys received or expended by a committee, and of its assets, liabilities and financial transactions, the preparation of its annual financial statements, the auditing and inspection of such records and statements, and the returns to be furnished to the department;
- (k) the convening of and the procedure at an annual general meeting and a special meeting of the members of the community in respect of which a water supply and sanitation service is rendered or to be rendered;
- (l) the investigation of the affairs of a committee by an officer of the department, any steps that may be taken by the Minister or the Director-General pursuant to such investigation and the representation of the department at meetings of a committee;
- (m) the procurement of any right, facility, material or service required by a committee for or in connection with the rendering of a water supply and sanitation service, the acceptance of donations in kind or otherwise by a committee and the disposal of any such right or asset by a committee;
- (n) the disestablishment of a committee and the winding up of its affairs;
- (o) the extent to, and the manner in, which any by-law made by a committee shall be published or otherwise made known in the community to which it is applicable; and
- (p) in general, any matter which the Minister may consider necessary or expedient to prescribe by regulation in order that the objects of this Chapter may be achieved.

(2) Different regulations may be made under subsection (1) in respect of different committees or categories of committees as may be determined by the Minister.

[S. 26D inserted by s. 7 of Act No. 32 of 1994.]

**26E. Committees may make by-laws.**—A committee may make by-laws not inconsistent with a provision of this Act or the regulations made under section 26D as to—

- (a) the method of supervising or controlling the use made by members of the community concerned of a water supply and sanitation service rendered by the committee or of any facility provided by the committee for or in connection with such service;
- (b) the supply of water as contemplated in section 26C (3);
- (c) the procedure at its meetings;
- (d) the appointment, salary, wage or other remuneration, and the rights, privileges and other conditions of service, of its officers and employees;
- (e) the powers, duties and functions of the various functionaries of the committee and of its officers and employees; and
- (f) in general, any matter which the committee may consider necessary or desirable to prescribe or regulate in order to exercise or perform its powers, duties and functions.

[S. 26E inserted by s. 7 of Act No. 32 of 1994.]

**26F. Validity of acts performed by committees.**—(1) Any act performed in good faith by a committee or any functionary or officer or employee thereof in the exercise or performance of any power, duty or function entrusted to a committee by or under this Act shall, although it may afterwards be discovered that there was some defect in the constitution, election or appointment of the committee, functionary, officer or employee, or that the committee, functionary, officer or employee was otherwise disqualified from so acting, be as valid as if the committee, functionary, officer or employee had been duly constituted, elected, appointed or qualified.

(2) A committee shall not be deemed to be defectively constituted merely by reason of any failure to elect or appoint the prescribed number of members thereof, or by reason of any vacancy existing therein, provided that there is a sufficient number of members on the committee to form a quorum.

[S. 26F inserted by s. 7 of Act No. 32 of 1994.]

**26G. Minister may render assistance to committees.**—(1) The Minister may out of moneys appropriated by Parliament for such purpose and on such conditions as he or she may by notice in the *Gazette* determine, with the concurrence of the Minister of Finance—

- (a) in general, in respect of all committees or in respect of different categories of committees; or
- (b) in any particular case,

subsidise a committee or committees in respect of any cost incurred by a committee or committees in rendering any water supply and sanitation service: Provided that no subsidy shall be paid under this subsection unless the Minister has approved the subsidisation before the cost in question has been incurred.

(2) The Minister may through officers of the department or through such other persons as the Minister deems expedient, at the cost of the department, render technical, administrative, accounting or other assistance to a committee in the exercise or performance of its powers, duties and functions.

(3) The Minister may out of moneys appropriated by Parliament for such purpose and on such conditions as he or she may determine, with the concurrence of the Minister of Finance, advance moneys to a committee to enable it to exercise or perform any of its powers, duties or functions in anticipation of revenue to be raised from charges assessed by the committee in respect of a water supply and sanitation service rendered by it.

[S. 26G inserted by s. 7 of Act No. 32 of 1994.]

**26H. Offences.**—Any person who—

- (a) contravenes or fails to comply with a provision of any regulation made under section 26D; or
- (b) contravenes or fails to comply with any provision of a by-law made under section 26E (a) or (b),

shall be guilty of an offence.

[S. 26H inserted by s. 7 of Act No. 32 of 1994.]

**CHAPTER III**

[Chapter III substituted by s. 17 (1) of Act No. 68 of 1987.]

**CONTROL OVER AND USE OF SUBTERRANEAN WATER IN SUBTERRANEAN  
GOVERNMENT WATER CONTROL AREAS**

[Heading substituted by s. 17 (1) of Act No. 68 of 1987.]

**27. Definitions.**—In this Chapter—

“existing water work” means any water work which at any time during the qualifying period applicable to any area declared as a subterranean government water control area was used for the abstraction of subterranean water in that area;

“piece of land” means a piece of land registered in the office of a registrar of deeds;

“qualifying period”, in relation to an area declared under section 28 as a subterranean Government water control area, means the period determined by the Minister in respect of that area, which shall not exceed 36 months, immediately preceding the declaration of the area as a subterranean Government water control area;

“subterranean water” means water naturally occurring underground or obtained from underground in an area declared in terms of section 28 as a subterranean Government water control area or deemed to have been so declared.

[S. 27 substituted by s. 17 (1) of Act No. 68 of 1987.]

**28. Minister may declare subterranean Government water control area.**—The Minister may by notice in the *Gazette* declare an area defined in the notice as a subterranean Government water control area if he is of the opinion that it is desirable in the public interest that the abstraction, use, supply or distribution of subterranean water in the area be controlled, and may from time to time in like manner withdraw or amend such notice.

[S. 28 amended by s. 5 of Act No. 42 of 1975 and by ss. 46 and 47 of Act No. 97 of 1986 and substituted by s. 17 (1) of Act No. 68 of 1987.]

**29. Control over abstraction and use of subterranean water vests in Minister.**—Notwithstanding anything to the contrary contained in this Act or any right which any person has to subterranean water but subject to the provisions of section 12B, the right to the use and control of subterranean water shall vest in the Minister, and no person shall—

- (a) abstract any quantity of the said water and use it inside or outside the subterranean Government water control area concerned for any purpose, except in terms of the provisions of section 30 (1), a permission under section 32A (1) or an allocation specified in a notice under section 32B (2); or
- (b) construct, alter, enlarge or use a water work for the abstraction of any quantity of the said water except in terms of the provisions of section 30 or an authorization under section 32C (1).

[S. 29 substituted by s. 17 (1) of Act No. 68 of 1987.]

continued on page 1237

**30. Existing use of subterranean water is acknowledged.**—(1) Any person who during the qualifying period abstracted subterranean water on a piece of land in a subterranean Government water control area and used it for any purpose on that land or used it on any other piece of land in terms of a permit issued under section 5 (2) or issued prior to the date of commencement of the Water Amendment Act, 1987, under section 30 (3), shall, from the date of inclusion of the first-mentioned piece of land in that subterranean Government water control area be entitled to continue, by means of an existing water work, with the abstraction and use of annually not more than the quantity of subterranean water actually used during the qualifying period applicable in respect of that area, or, if the qualifying period is longer than 12 months, the greatest quantity of subterranean water actually used for any purpose on that land during any continuous period of 12 months during the qualifying period.

(2) The Minister may at any time during the period in which subterranean water is used under subsection (1) on a piece of land, direct the owner or the person in control of that piece of land to effect at his own expense such adjustments to an existing water work as in the opinion of the Minister are necessary to bring the abstraction capacity thereof in accordance with the quantity of subterranean water which such person is under the said subsection entitled to use on that piece of land.

[S. 30 amended by s. 7 of Act No. 56 of 1961, by s. 4 of Act No. 36 of 1971, by s. 4 of Act No. 45 of 1972, by s. 6 of Act No. 42 of 1975, by s. 4 of Act No. 73 of 1978 and by s. 16 of Act No. 96 of 1984 and substituted by s. 17 (1) of Act No. 68 of 1987.]

**30A. . . . .**

[S. 30A inserted by s. 5 of Act No. 45 of 1972 and omitted by s. 17 (1) of Act No. 68 of 1987.]

**31. Survey by Director-General of use of subterranean water.**—(1) The Director-General shall as soon as may be practicable after the date on which an area was declared a subterranean Government water control area, in respect of each piece of land in that area determine the quantity of subterranean water which during the qualifying period applicable to that area was used lawfully or unlawfully on that land for any purpose.

(2) Any person controlling a piece of land referred to in subsection (1) shall at the request of a person designated by the Director-General, furnish the following particulars in writing to such designated person, namely—

- (a) his name and permanent residential address;
- (b) if he is not the owner of such land, the name and permanent residential address of the owner;
- (c) the description under which that land is registered in the office of a registrar of deeds;
- (d) a description and the location of each water work on that land which is used or can be used for the abstraction of subterranean water and the abstraction capacity thereof; and
- (e) the purpose for which any quantity of subterranean water is used, and if it was used for irrigation purposes the area and a description (including the location) of the portion of such land irrigated during the qualifying period.

(3) A person designated under subsection (2) shall satisfy himself that the particulars furnished to him in terms of that subsection are correct, and may at any reasonable time enter upon the land concerned and carry out any such investigation and take any such measurements upon it as he may deem necessary.

(4) If the particulars referred to in subsection (2) are furnished by the owner, he shall confirm in writing the correctness of those particulars, and if the particulars are furnished by any person who is not the owner of the piece of land concerned, the person designated under the said subsection shall submit the said particulars in writing to the owner, and unless the owner within 60 days after the date on which such particulars were submitted to him lodges an objection with the designated person on the ground that such particulars are incomplete, misleading or untrue, he shall be deemed to agree therewith.

[S. 31 repealed by s. 2 of Act No. 51 of 1979 and inserted by s. 17 (1) of Act No. 68 of 1987.]

**32. Investigation relating to occurrence of subterranean water.**—(1) Any person authorized thereto in writing by the Director-General may after reasonable notice to the owner and any other person controlling a piece of land in a subterranean Government water control area, enter upon that land with the necessary workmen and equipment and on that land make boreholes on the locations and to the depth he considers expedient in order to procure information relating to the occurrence of subterranean water in that area, and may during the period he considers necessary, abstract any quantity of water from such borehole or from any other existing borehole on land in that area to determine the yield thereof or to establish the effect of the abstraction of subterranean water therefrom on the occurrence of subterranean water on land inside or outside the subterranean Government water control area.

(2) When a piece of land referred to in subsection (1) is entered upon—

- (a) no building or enclosed space attached to a dwelling shall be entered without the consent of the occupier thereof; and
- (b) the Director-General shall pay to any person compensation in respect of any damage caused in the exercise of any power conferred by that subsection, as may be agreed upon with that person or, in the absence of an agreement, is determined by a competent court.

(3) The provisions of section 166 (6) shall *mutatis mutandis* apply to the exercise of any power conferred by subsection (1) of this section.

(4) The Director-General may at any time in his discretion destroy or seal any borehole made in terms of subsection (1), or make it available for use by the owner or person in control of the piece of land concerned, subject to such conditions as he may determine.

[S. 32 amended by s. 3 of Act No. 51 of 1979 and substituted by s. 17 (1) of Act No. 68 of 1987.]

**32A. Minister may grant permissions.**—(1) The Minister may at any time after the declaration of an area as a subterranean Government water control area, until a notice is published in terms of section 32B (2) (a) in respect of that area, grant permission to any person to abstract a quantity of subterranean water in that area and to use such water for a purpose specified in the permission: Provided that if a person in control of a piece of land in such area applies for a permission as aforesaid to abstract subterranean water by means of a water work which was in the process of erection immediately prior to the declaration of the area as a subterranean Government water control area, the Minister shall be obliged to grant such permission for the quantity of subterranean water which in his opinion it will be possible to abstract by means of that water work after the completion thereof.

(2) A permission under subsection (1) may relate either to a particular piece of land or to any category of pieces of land or to all pieces of land in a subterranean Government water control area: Provided that a permission relating to a category of pieces of land or to all pieces of land in a subterranean Government water control area shall be granted by notice in the *Gazette*.

(3) A permission under subsection (1) shall prescribe the maximum quantity of subterranean water which may during a particular period be abstracted on each piece of land concerned and shall specify the purpose for which it may be used as well as any conditions which the Minister may impose relating to such abstraction and use, including conditions relating to the measuring of subterranean water which is being abstracted.

(4) A permission under subsection (1) may at any time be amended or withdrawn by the Minister—

- (a) in the case of a permission relating to any particular piece of land, by notice in writing to the person controlling such piece of land; or
- (b) in the case of a permission relating to a category of pieces of land or to all pieces of land in a subterranean Government water control area, by notice in the *Gazette*.

[S. 32A inserted by s. 17 (1) of Act No. 68 of 1987.]

**32B. Minister shall make allocations.**—(1) As soon as may be practicable after the completion of the survey referred to in section 31 or any investigation undertaken in terms of section 32, the Minister shall with due regard to the results of such survey and investigation and any other relevant information at his disposal—

- (a) estimate the quantity of subterranean water which on a basis of consistency determined by him will annually be available in the subterranean Government water control area concerned and determine the portion of such quantity which may annually be abstracted on land within that area;
- (b) make in respect of each piece of land in that area, an allocation of a quantity of subterranean water which may annually be abstracted if available and—
  - (i) (aa) which in the case of a piece of land in respect of which a determination was made under section 31 (1) shall not be less than the quantity so determined together with any quantity which may by virtue of a permission under section 32A (1) be abstracted on that piece of land; or
  - (bb) which in the case of a piece of land on which the Director-General has determined under section 31 (1) that no subterranean water was abstracted, shall not be less than any quantity which may by virtue of a permission under section 32A (1) be abstracted on that piece of land; or
  - (ii) which in the opinion of the Minister will be adequate for use for domestic purposes and for the watering of stock on that piece of land, whichever is the greater; and
- (c) determine the conditions subject to which an allocation in terms of paragraph (b) is made.

(2) (a) The Minister shall by notice in the *Gazette* publish a list of all pieces of land in respect of which an allocation was made under subsection (1), stating opposite the description of each piece of land, the quantity of subterranean water which may annually, if available, be abstracted on the piece of land concerned.

(b) A notice under paragraph (a) shall further state—

- (i) the conditions on which the allocations were made; and
- (ii) the period for which the use of an existing water work used before the publication of the notice for the abstraction of subterranean water by virtue of section 30 (1), may be continued without an authorization under section 32C.

(c) An allocation under subsection (1) (b) shall commence on the date on which the notice in respect thereof is published in the *Gazette* under paragraph (a) of this subsection.

(d) A notice under paragraph (a) may be amended or adjusted by the Minister by similar notice—

- (i) to bring the description of any piece of land into accordance with any change of the description;
- (ii) if the Minister is convinced that the particulars taken into account in respect of any particular piece of land are erroneous and that the rectification thereof will not in his opinion affect the availability of the quantity of subterranean water which in terms of such notice was allocated to other land;
- (iii) to rectify a printing error.

[S. 32B inserted by s. 17 (1) of Act No. 68 of 1987.]

**32C. Authorizations in respect of water works.**—(1) (a) The Minister may on such conditions as he may determine, authorize in writing a person controlling a piece of land in respect of which he is by virtue of the provisions of this Chapter entitled to the abstraction of a particular quantity of subterranean water for use on that or any other piece of land, to construct, alter, enlarge or use a water work for the abstraction of that quantity of subterranean water.

(b) An authorization under paragraph (a) may relate to any particular piece of land or to any particular category of pieces of land or to all pieces of land in a subterranean Government water control area: Provided that an authorization relating to a category of pieces of land or all pieces of land in a subterranean Government water control area, shall be granted by notice in the *Gazette*.

(2) The Director-General may in writing direct any person who has constructed, altered or enlarged a water work in contravention of the provisions of section 29 (b), or who is using a water work which has been constructed, altered, or enlarged in contravention of any such provision—

- (a) within the period specified in the direction, to apply to the Minister for an authorization under subsection (1) (a) as if that water work has not been constructed, altered or enlarged;
- (b) within the period specified in the direction, to remove the water work concerned or to render it inoperable in a manner specified in the direction or to have it removed by rendered inoperable by officers of the department; or
- (c) to terminate the use of such water work as from a date specified in the direction.

(3) (a) The Minister may after notice in writing to the user of a privately owned water work situated in a subterranean Government water control area, make such adjustments or repairs to such water work or construct or erect additional water works or in writing direct that person to make such adjustments or repairs or construct or erect such additional water works, within a period stipulated by the Minister and at his own expense, as may in the opinion of the Minister be necessary for the proper measurement and control of subterranean water abstracted or conveyed by means of that water work.

(b) The Minister may recover from any person who in his opinion derives or is likely to derive any benefit from any adjustments or repairs made by him under paragraph (a), or any additional water works constructed or erected by him thereunder, such portion of the cost of such adjustments, repairs or water works as the Minister considers equitable.

(c) If any person fails to comply with a direction issued to him under paragraph (a), the Minister may cause such adjustments or repairs or additional water works to be made, constructed or erected, as the case may be, and recover the cost thereof, or such portion of that cost as the Minister may determine, from that person.

[S. 32C inserted by s. 17 (1) of Act No. 68 of 1987. Para (c) substituted by s. 5 of Act No. 68 of 1990.]



**32D. Conveyance of subterranean water.**—(1) No person shall convey subterranean water which may under the provisions of this Chapter be abstracted on any piece of land situated in a subterranean Government water control area, over the boundaries of that land, except on the authority of a permit from the Minister and in accordance with the conditions specified in such permit.

(2) The provisions of subsection (1) shall not apply to an owner of land situated in the area of any municipal institution contemplated in section 84 (1) (f) of the Provincial Government Act, 1961, or a local authority established under section 2 of the Black Local Authorities Act, 1982, unless the Minister directs otherwise in terms of subsection (3).

(3) (a) The Minister may on the application of a municipal institution or local authority referred to in subsection (2), by notice in the *Gazette* and subject to the conditions determined by him and specified in the notice, declare the provisions of subsection (1) applicable to the area of that municipal institution or local authority, after which the reference to “Minister” in the said subsection shall be construed as a reference to the town clerk or, as the case may be, the chief executive officer of the municipal institution or local authority, and he may at any time in like manner withdraw such notice or amend the conditions specified therein.

(b) A town clerk or chief executive officer referred to in paragraph (a) may at any time delegate the power to issue a permit in terms of subsection (1) to any other officer of the municipal institution or local authority concerned.

[S. 32D inserted by s. 17 (1) of Act No. 68 of 1987.]

**32E. Abstraction of subterranean water by Minister.**—The Minister may before or after the publication of a notice referred to in section 32B (2) (a), by means of a Government water work constructed in terms of section 56 (1), abstract any quantity of subterranean water on any piece of land in a subterranean Government water control area and supply such water to any person for use for any purpose on any land, if he is convinced that sufficient subterranean water is available in that area.

[S. 32E inserted by s. 17 (1) of Act No. 68 of 1987.]

**32F. Minister may restrict use of subterranean water.**—Notwithstanding any provisions to the contrary in this Act or any other law contained and notwithstanding any right which any person may have in respect of subterranean water or the use thereof in a subterranean Government water control area, the Minister may, if in his opinion a shortage of subterranean water exists or is likely to arise, in his discretion, from time to time by notice in the *Gazette*, regulate, curtail or prohibit as he may deem expedient in the public interest, the abstraction or use of subterranean water in a subterranean Government water control area for any purpose specified in the notice, in the manner and subject to such conditions as he may determine and which shall be specified in such notice.

[S. 32F inserted by s. 17 (1) of Act No. 68 of 1987.]

**32G. Subterranean water control districts.**—(1) The Minister may by notice in the *Gazette* declare any area which has under section 28 been declared as a subterranean Government water control area, or any portion of any such area specified in the notice, to be a subterranean water control district under a name so specified.

(2) After such enquiry as the Minister may deem necessary, he may by notice in the *Gazette*—

- (a) combine any subterranean water control district, or any portion thereof, with another subterranean water control district to which it is contiguous or any portion of such other subterranean water control district;
- (b) constitute any portion of a subterranean water control district as a subterranean water control district and sever that portion from the subterranean water control district of which it forms a part; or

- (c) exclude any area from a subterranean water control district or include any area which has under section 28 been declared as a subterranean Government water control area, or any portion thereof, therein.

(3) The provisions of section 76 (3) to (7) shall *mutatis mutandis* apply in respect of a reconstitution of any subterranean water control district under subsection (2), and for the purposes of such application the reference in the proviso to section 76 (4) to new members to be elected subject to section 80 (3) shall be construed as a reference to new members to be elected or appointed in terms of the regulations made under section 32K.

(4) Subject to the conditions prescribed by regulation, the Minister may by notice in the *Gazette* disestablish any subterranean water control district.

[S. 32G inserted by s. 6 of Act No. 68 of 1990.]

**32H. Subterranean water control boards.**—(1) For each subterranean water control district there shall be a subterranean water control board, which shall be known by the same name as the name given to the subterranean water control district concerned by the applicable notice under section 32G (1), except that “board” be substituted for “district” in the relevant name: Provided that, whenever a subterranean water control district is reconstituted under section 32G (2) and another name is given thereto, the name of the board of that subterranean water control district shall change accordingly.

(2) (a) A subterranean water control board shall consist of such number of members as the Minister may from time to time determine.

(b) The members of a subterranean water control board shall be elected or appointed in the manner prescribed by regulation.

(c) The provisions of section 99 shall *mutatis mutandis* apply to a member of a subterranean water control board or a member of any committee of the said board.

(3) A subterranean water control board shall be a juristic person.

[S. 32H inserted by s. 6 of Act No. 68 of 1990.]

**32I. Powers, duties and functions of subterranean water control boards.**—(1) The Minister may by notice in the *Gazette* assign to any subterranean water control board such powers, duties or functions as he may deem fit in order to invest or charge that subterranean water control board with the following functions, namely—

- (a) to protect the sources of subterranean water in the subterranean water control district in question from depletion;
- (b) to prevent the waste or unbeneficial use of subterranean water in that subterranean water control district;
- (c) to prevent the unlawful abstraction or use of such water; and
- (d) to supervise in general the abstraction or use of such water.

(2) A subterranean water control board may—

- (a) hire, buy or otherwise acquire such movable or immovable property as it may consider necessary for the exercise or the performance of its powers, duties and functions and let, sell or otherwise dispose of property so acquired: Provided that immovable property shall not be bought or otherwise acquired or sold or otherwise disposed of without the approval of the Minister; and
- (b) in such manner and on such conditions as may be prescribed by regulation, raise money by way of loan for the purpose of exercising or performing its powers, duties and functions, or for the purpose of redeeming any loan or any portion of a loan already raised under this paragraph, together with any interest due thereon.

(3) The Minister may at any time direct any subterranean water control board to provide by means of insurance for cover against any loss, damage, risk or liability which that subterranean water control board may suffer or incur.

[S. 32I inserted by s. 6 of Act No. 68 of 1990.]

**31J. Assessment of rates by subterranean water control boards.**—(1) In order to defray any expenditure incurred or to be incurred by it in the exercise or the performance of its powers, duties and functions, a subterranean water control board may, notwithstanding any right to subterranean water or to the use thereof or anything to the contrary contained in this Act or any other law, assess rates on each piece of land in the subterranean water control district in question on which subterranean water may be abstracted and may recover the rates so assessed from the owner of such piece of land.

(2) If a subterranean water control board assesses rates under subsection (1), it shall assess those rates on the basis prescribed by regulation.

[S. 32J inserted by s. 6 of Act No. 68 of 1990.]

**32K. Regulations in respect of subterranean water control boards.**—(1) The Minister may make regulations as to—

- (a) the constitution or reconstitution of a subterranean water control board;
- (b) the preparation, revision or certification of a preliminary voters' list or voters' list of a subterranean water control district, the nomination of candidates for the election of members of a subterranean water control board, the election of those members, and the procedure and method of voting at any such election;
- (c) the qualifications for election or appointment as, the period of office of, and the vacating of their office as, members of a subterranean water control board, and the filling of casual vacancies in any such board;
- (d) the election and the period of office of a chairman, a vice-chairman or an acting chairman or vice-chairman of a subterranean water control board;
- (e) the establishment and the constitution of committees of a subterranean water control board;
- (f) the convening of and the procedure and quorum at meetings of a subterranean water control board or any committee thereof;
- (g) the payment of allowances for expenses to a member of a subterranean water control board or to a member of any committee thereof;
- (h) the appointment, the salary, wage or other remuneration, and the rights, privileges and other conditions of service, of a secretary or any other officer or employee of a subterranean water control board;
- (i) the date or dates upon which rates assessed under section 32J (1), or any portion thereof, shall be due and payable, the recovery of any such rates or portion, and the payment of interest on failure to pay any such rates or portion on time;
- (j) the registration of rights or servitudes by a subterranean water control board;
- (k) the keeping of records of moneys received or expended by a subterranean water control board, and of its assets, liabilities and financial transactions, the preparation of its annual financial statements, the auditing and inspection of the said records and statements, and the returns to be furnished to the department;
- (l) the convening of and the procedure at an annual general meeting and a special meeting of the voters in a subterranean water control district;

- (m) the powers, duties and functions of, and the delegation or assignment of any power, duty or function entrusted to a subterranean water control board by or under this Act to, a chairman, a vice-chairman, a member, a committee, an officer or an employee of any such board;
- (n) the investigation of the affairs of a subterranean water control board by an officer of the department and the representation of the department at meetings of any such board;
- (o) the disposal of the rights, assets, obligations and liabilities of a subterranean water control board on the disestablishment of the subterranean water control district in question;
- (p) any matter required or permitted to be prescribed by regulation under this Act; and
- (q) in general, any matter which the Minister may consider necessary or expedient to prescribe or regulate in order that the objects of this Chapter, in so far as it relates to subterranean water control boards, may be achieved.

(2) Different regulations may be made under subsection (1) in respect of different subterranean water control boards.

[S. 32K inserted by s. 6 of Act No. 68 of 1990.]

**32L. Subterranean water control boards may make by-laws.**—(1) A subterranean water control board may make by-laws not inconsistent with a provision of this Act or the regulations made under section 32K as to—

- (a) the method of supervising or controlling the abstraction or use of subterranean water in the subterranean water control district in question;
- (b) the procedure at its meetings or the meetings of any committee thereof;
- (c) the appointment, the salary, wage or other remuneration, and the rights, privileges and other conditions of service, of its officers and employees;
- (d) the powers, duties and functions of a chairman, a vice-chairman, a member, a committee, an officer or an employee thereof; and
- (e) in general, any matter which the subterranean water control board may consider necessary or expedient to prescribe or regulate in order to exercise or perform its powers, duties and functions.

(2) The provisions of section 103 (2) and (3) shall *mutatis mutandis* apply to any by-law made under subsection (1), and for the purposes of such application the reference in section 103 (2) to a voters' list prepared in terms of section 83 shall be construed as a reference to a voter's list prepared in terms of the regulations made under section 32K.

[S. 32L inserted by s. 6 of Act No. 68 of 1990.]

**32M. Validity of acts performed by subterranean water control boards.**—(1) Any act performed in good faith by a subterranean water control board or a chairman, vice-chairman, a member, a committee, an officer or an employee thereof in the exercise or performance of any power, duty or function entrusted to the subterranean water control board by or under this Act shall, although it may afterwards be discovered that there was some defect in the constitution, election or appointment of the said board, chairman, vice-chairman, member, committee, officer or employee, or that the said board, chairman, vice-chairman, member, committee, officer or employee was otherwise disqualified from so acting, be as valid as if the said board, chairman, vice-chairman, member, committee, officer or employee had been duly constituted, elected, appointed or qualified.

(2) A subterranean water control board shall not be deemed to be defectively constituted merely by reason of any failure to elect the prescribed number of members thereof or by reason of any vacancy existing therein, as long as there is a sufficient number of members on the said board to form a quorum.

(3) The provisions of section 98 shall *mutatis mutandis* apply in respect of a subterranean water control board.

[S. 32M inserted by s. 6 of Act No. 68 of 1990.]

**32N. Expropriation of property by subterranean water control boards.**—(1) A subterranean water control board shall for the purposes of exercising any power conferred upon it under this Chapter, have the same power to expropriate or to take the right to use temporarily property within its subterranean water control district, as is by section 94 vested in an irrigation board in respect of property within its irrigation district.

(2) The provisions of section 60 (2) (b), (5) and (6) shall *mutatis mutandis* apply in connection with the expropriation of any property or the taking of any right in terms of this section, and any reference in the said provisions to “Minister” (except in section 60 (2) (b) (i), “Minister of Water Affairs”, “secretary” and “Director-General” shall be construed as a reference to a subterranean water control board.

[S. 32N inserted by s. 8 of Act No. 92 of 1993.]

**33. Offences.**—Any person who—

- (a) contravenes or fails to comply with any provision of section 29 or a notice under section 32F;
- (b) fails to comply with a direction under section 30 (2), 32C (2) (a) or (3) (a); or
- (c) contravenes or fails to comply with a condition or term of a permission, allocation or authorization under this Chapter,

shall be guilty of an offence.

[S. 33 substituted by s. 4 of Act No. 51 of 1979, by s. 6 of Act No. 92 of 1980 and by s. 17 (1) of Act No. 68 of 1987.]

#### CHAPTER IIIA

[Chapter IIIA inserted by s. 6 of Act No. 45 of 1972 and substituted by s. 7 of Act No. 42 of 1975.]

##### CONTROL OF ACTIVITIES WHICH MAY ALTER THE NATURAL OCCURRENCE OF CERTAIN TYPES OF ATMOSPHERIC PRECIPITATION

[Heading inserted by s. 6 of Act No. 45 of 1972 and substituted by s. 7 of Act No. 42 of 1975.]

**33A. Definitions.**—In this Chapter—

“advisory committee” means the advisory committee referred to in section 33F;

“licence” means a licence issued under section 33C;

“licence holder” means any person to whom a licence has been issued;

“modification of precipitation” means a modification of the natural occurrence of atmospheric precipitation which may have an effect on the run-off of water or on the quantity of underground water;

“permit” means a permit issued under section 33D;

“permit holder” means any person to whom a permit has been issued.

[S. 33A inserted by s. 6 of Act No. 45 of 1972 and substituted by s. 7 of Act No. 42 of 1975.]

**33B. Modification of precipitation by State and other persons.**—(1) The State may carry out or cause to be carried out operations to effect any modification of precipitation.

(2) No person shall wilfully effect any modification of precipitation or wilfully perform any act to effect any such modification, except in pursuance of an agreement with a permit holder and under the authority of a licence, or under the authority of an exemption granted under subsection (3), and subject to such conditions as may be specified in the relevant permit or exemption.

(3) (a) The Minister may, after consultation with the advisory committee, and if he is satisfied that compliance with any provision of this Chapter is impracticable in the particular circumstances, or that an exemption from such compliance in those circumstances is not likely to cause any loss or damage, or for any other reason deemed sufficient by him, grant to any person written exemption from compliance with the provision in question to the extent determined by the Minister, and subject to the conditions imposed by him.

(b) The Minister may at any time withdraw any exemption granted under paragraph (a), or amend or withdraw any condition subject to which any such exemption was granted.

[S. 33B inserted by s. 6 of Act No. 45 of 1972 and substituted by s. 7 of Act No. 42 of 1975.]

**33C. Issue of licences.**—(1) The Minister may, in consultation with the Minister of Transport and subject to the payment of such fee as the Minister may determine (if so), issue to any person who, in the opinion of the Minister, possesses adequate technical knowledge and skill, a licence authorizing such person to effect such modification of precipitation as may be authorized in any permit.

(2) The Minister shall not issue any such licence unless he is satisfied that the technical knowledge and skill referred to in subsection (1), possessed by the person concerned, are at least as adequate as the Minister of Transport may have recommended.

[S. 33C inserted by s. 6 of Act No. 45 of 1972 and substituted by s. 7 of Act No. 42 of 1975.]

**33D. Issue of permits, and furnishing of security by permit holders.**—(1) The Minister may, after consultation with the advisory committee, and subject to such conditions as he may deem fit, issue to any person who, in the opinion of the Minister, commands sufficient financial means, a permit authorizing him to cause such modification of precipitation to be effected by any licence holder in such area and during such period as may be specified in the permit.

(2) (a) An application for a permit in terms of subsection (1) shall be submitted to the secretary together with proof of the publication of the notices referred to in paragraph (b).

(b) Not earlier than six weeks and not later than three weeks before the date on which any person submits the application referred to in paragraph (a) to the secretary, he shall make known his intention to do so by notice in the *Gazette*, and in both official languages in a newspaper circulating in the area where he intends to cause any modification of precipitation to be effected.

(c) The said notices shall state—

- (i) the name and address of the applicant;
- (ii) the nature and anticipated consequences of the intended operations to effect any modification of precipitation;
- (iii) the area where and the period during which it is intended to cause such operations to be effected; and
- (iv) the date on which the application will be submitted to the secretary,

and shall also state that written representations supporting or opposing the application must reach the secretary not later than the date on which the application will be submitted to the secretary.

(d) The advisory committee shall only make a recommendation in terms of subsection (1) after the committee has considered all the representations received as a result of the said notices.

(3) The conditions referred to in subsection (1) may include conditions relating to the method, equipment and material which may be used to effect the modification of precipitation in question, the furnishing of information to the secretary during and after the operations in question, and any other conditions which the Minister may deem necessary, and different conditions may be specified in respect of different periods of any year.

(4) (a) Any permit holder shall, before causing the modification of precipitation in question to be effected by any licence holder, and for the purpose of paying compensation for any damage, furnish such security by way of insurance as may be determined by the Minister on the recommendation of the advisory committee.

(b) The security referred to in paragraph (a) shall be limited to security in respect of damage which may possibly arise within such area and within such period as the Minister may on the recommendation of the advisory committee determine in any particular case.

[S. 33D inserted by s. 6 of Act No. 45 of 1972 and substituted by s. 7 of Act No. 42 of 1975.]

**33E. Withdrawal of licences and permits.**—(1) The Minister may at any time withdraw a permit, or vary any condition specified therein, if in his opinion the method, equipment or material specified in such permit to be used to effect modification of precipitation has caused or may cause undesirable changes in the weather conditions or damage or if the permit holder has not observed any condition specified in such permit, and may, in consultation with the Minister of Transport, cancel any licence if in his opinion the licence holder no longer qualifies for a licence in terms of section 33C.

(2) The State or the Minister shall not be liable for any loss sustained by any person consequent upon any such variation of any condition or withdrawal of any permit, or cancellation of any licence.

[S. 33E inserted by s. 6 of Act No. 45 of 1972 and substituted by s. 7 of Act No. 42 of 1975.]

**33F. Advisory committee.**—(1) The Minister shall appoint an advisory committee consisting of such persons as he may determine, including any officer of a department of State, to advise him on any matter referred to in section 33B (3) (a), 33D or 33E.

(2) Members of the advisory committee who are not in the full-time employment of the State shall be paid in respect of the performance of their duties as such members, such remuneration and allowances as the Minister in consultation with the Minister of Finance may determine.

[S. 33F inserted by s. 6 of Act No. 45 of 1972 and substituted by s. 7 of Act No. 42 of 1975.]

**33G. Exemption from responsibility for compensation.**—The State or an officer of the State shall not be liable for any damage suffered as a result of the performance of any act authorized by a permit or a licence.

[S. 33G inserted by s. 6 of Act No. 45 of 1972 and substituted by s. 7 of Act No. 42 of 1975.]

**33H. Remedial steps.**—If the Minister is of the opinion that any person is unintentionally causing any modification of precipitation, the Minister may in writing direct such person to take such remedial steps at his own cost as the Minister may deem necessary and specify in such direction, and may, if such person fails to carry out such steps to the satisfaction of the Minister within the time specified in the direction, cause such steps to be carried out and recover the cost thereby incurred from that person.

[S. 33H inserted by s. 6 of Act No. 45 of 1972 and substituted by s. 7 of Act No. 42 of 1975.]

continued on page 1241

**33I. Offences.**—Any person who contravenes a provision of this Chapter, or neglects to comply with a condition imposed by the Minister under section 33D, or a direction given under section 33H, shall be guilty of an offence and liable on conviction to the penalties prescribed by section 170 (2).

[S. 33I inserted by s. 6 of Act No. 45 of 1972 and substituted by s. 7 of Act No. 42 of 1975.]

**33J. . . . .**

[Chapter IIIA inserted by s. 6 of Act No. 45 of 1972 and substituted by s. 7 of Act No. 42 of 1975. S. 33J inserted by s. 6 of Act No. 45 of 1972 and impliedly repealed by s. 7 of Act No. 42 of 1975.]

## CHAPTER IV

### WATER COURTS

**34. Establishment of water courts.**—(1) There is hereby established—

- (a) a water court to be known as the Transvaal Water Court, which shall have jurisdiction in the province of the Transvaal;
- (b) a water court to be known as the Orange Free State Water Court, which shall have jurisdiction in the province of the Orange Free State;
- (c) a water court to be known as the Natal Water Court, which shall have jurisdiction in the Province of Natal;
- (d) a water court to be known as the Cape Water Court, which shall have jurisdiction in that portion of the province of the Cape of Good Hope not included in the area referred to in paragraph (e) or (f) and, for the purposes of the application of the provisions of section *one hundred and six* and *one hundred and seventy-four*, and until the water court referred to in paragraph (g) is established, also in the territory of South-West Africa;
- (e) a water court to be known as the Eastern Districts Water Court which shall have jurisdiction in that portion of the Province of the Cape of Good Hope in which the Eastern Districts Local Division of the Supreme Court of South Africa exercises jurisdiction; and
- (f) a water court to be known as the Northern Cape Water Court, which shall have jurisdiction in that portion of the said province in which the Northern Cape Division of the Supreme Court of South Africa exercises jurisdiction;  
[Para. (f) substituted by s. 19 of Act No. 15 of 1969.]
- (g) . . . . .

[Para. (g) amended by s. 7 of Act No. 45 of 1972 and deleted by s. 7 (c) of Act No. 68 of 1990.]

(2) Any matter arising out of or in connection with the use or appropriation of the water of a public stream which forms a boundary or any part of a boundary between the areas of two or more water courts, shall be heard and determined by one or other of those water courts agreed upon between the parties or, failing agreement, determined by the Minister, and the decision of any such water court shall, in so far as it relates to the use or appropriation of the water of a public stream within the area of any other of those water courts, have effect as if it were a decision of that other water court.

**35. Constitution of water court.**—A session of a water court shall take place before a water court judge who shall be a judge of the division of the Supreme Court of South Africa which exercises jurisdiction in the area of that water court.

[S. 35 substituted by s. 5 of Act No. 73 of 1978.]



36. **Assessors.**—A water court judge may in any proceedings before a water court, invoke the assistance of not more than two persons who are skilled and experienced in the matter and are prepared to sit as assessors in an advisory capacity.

[S. 36 amended by s. 1 of Act No. 11 of 1966 and substituted by s. 6 of Act No. 73 of 1978.]

37. ....

[S. 37 repealed by s. 7 of Act No. 73 of 1978.]

38. ....

[S. 38 amended by s. 2 of Act No. 11 of 1966 and repealed by s. 8 of Act No. 73 of 1978.]

39. **Death or incapacity of assessor.**—If during the hearing of a case, or so shortly before the commencement of the proceedings in connection therewith that the vacancy cannot be filled in time for the hearing, an assessor dies or his estate is sequestrated or he otherwise becomes incapable or is not in a position to take his seat or, after he has taken his seat, is unable to carry on therewith, the water court judge concerned may at his discretion adjourn the proceedings in order to invoke the assistance of some other assessor or may proceed with the hearing with the remaining assessor, if there be one, or without any assessor should there be no remaining assessor.

[S. 39 substituted by s. 9 of Act No. 73 of 1978.]

40. **Jurisdiction, powers and authority of water court.**—A water court shall have power—

- (a) to make orders and awards, including orders for the payment of money, where necessary, upon—
  - (i) applications in connection with disputes regarding the use, diversion or appropriation of public water;
  - (ii) applications under the proviso to section *five* as to the right to a reasonable share of water referred to in that proviso;
  - (iii) applications in connection with claims for servitudes by means of which rights to use or dispose of public water or subterranean water are or may be exercised;
  - (iv) applications as to any matter which in terms of this Act or any other law may be brought before a water court;
- (b) on the application of any interested person, to investigate, define and record the rights to the use of public water of any particular stream and, subject to the provisions of section *forty-two*, and to the due recognition of all rights to the public water in question which have been defined and any apportionment which has been made by order of a competent court or by arbitration or agreement or in any other lawful manner, to apportion such public water for any of the purposes recognized by this Act;
- (c) to enquire into and, in its discretion, determine any existing, future or contingent right or obligation in respect of the use of public water or any right of servitude by means of which public water or subterranean water is being used or disposed of, notwithstanding that no person can claim any relief consequential upon such determination;
- (d) to investigate, determine and record whether any particular stream is a public or a private stream;
- (e) to investigate, define and record the normal flow of a public stream at any point along the course of such stream;
- (f) to determine and fix the place or places, either upon land riparian to a public stream or upon any land higher up the course of such public stream, at which an owner of such land shall be entitled to divert water from such stream, and

to determine, if required, the nature and extent of the right of use at such place or places, due regard being had to the rights of any other owners;

- (g) to investigate any application for the removal or alteration of any dam, weir or other obstruction in the course of a public stream and to make orders and awards thereon;
- (h) to grant permission for the use of public water;
- (i) to give such directions for the erection, maintenance, control and supervision of devices for the proper measurement and division of the normal flow of any public stream and as to payment of the costs thereof as may be necessary to give effect to its orders or awards; and
- (j) generally to do any act or thing which may under this Act or any other law be done by a water court.

**41. Powers of certain judges as to water court matters.**—(1) Any judge of any division of the Supreme Court of South Africa which exercises jurisdiction within the area of a water court, or, in the case of the territory of South-West Africa, of the High Court of South-West Africa, shall have power—

- (a) at any time after the lodging of an application for the hearing of a matter by that water court—
  - (i) to order substituted service of any process, including any application, on any particular person or class of persons;
  - (ii) to give any other directions as to the service of the application;
  - (iii) . . . . .  
[Sub-para. (iii) deleted by s. 10 of Act No. 73 of 1978.]
  - (iv) to adjourn the hearing or the further hearing of the application;
  - (v) to grant leave to take evidence on commission or on affidavit;
  - (vi) to grant leave to an applicant to withdraw his application upon such terms as to notice to any other party to the application as to such judge may seem necessary;
  - (vii) to grant leave to any person to intervene as a party to a suit;
  - (viii) to grant leave to an applicant to join further persons as respondents in a suit;
  - (ix) to grant any order permitting an applicant, a respondent or any party directly interested in the application to make surveys or take gaugings upon the land of a respondent or an applicant; and
  - (x) to make any special supplementary order as to any costs, fees or expenses referred to in sub-section (3) of section *forty-seven*;
- (b) at any time, whether prior to or after the lodging of an application for the hearing of a matter by that water court—
  - (i) to decide whether a pending dispute is one cognisable by that water court or by some other court;
  - (ii) to grant an interdict pending the decision of a matter by that water court; and
  - (iii) to grant any interlocutory order he may deem fit, the generality of this provision not being limited by anything contained in the preceding paragraphs.

(2) Any judge of the Supreme Court shall prior to the lodging of an application for the hearing of a matter by a water court have concurrent jurisdiction within its area of jurisdiction to grant an interdict pending the decision of any matter by a water court.

(3) A judge referred to in sub-section (1) or (2) shall have power to make such orders as to costs as the said judge may deem just in connection with any order or direction made by him.

(4) Any judge referred to in sub-section (1) shall have power upon application to declare any agreement made between all the parties to a dispute affecting water rights to be an order of court: Provided that—

- (a) any such application shall state the full names of the parties affected by the making of such order, the particulars of the rights which are the subject of the dispute and the grounds of the dispute; and
- (b) the judge shall be satisfied that every party affected by the application has been duly served with notice thereof and that the said agreement is clear and comprehensible and that the terms thereof are reasonable and are not in conflict with any provision of this Act.

(5) Any proceedings in terms of this section, except proceedings under sub-section (2), shall be deemed to be proceedings before a water court, and any order made by a judge in respect of such proceedings shall be deemed to be an order of a water court, and no order made under this section shall be subject to appeal to any court.

**42. Apportionment suits and orders.**—(1) Such part of any order made by a water court under paragraph (b) of section forty which determines the manner of distribution of the water apportioned in terms of the said order, shall be provisional and shall become final after the expiration of a period fixed by the said court in such order: Provided that if a variation of the said part of such order has before the expiration of the said period been sought and granted by the court, the court may make such order final.

(2) In respect of any application to a water court for the hearing of an apportionment suit and the distribution of water in terms thereof, it shall not be essential for the applicant to—

- (a) have searches made in a deeds registry of owners of land in respect of which an apportionment of public water of any particular stream is sought; or
- (b) take gaugings of the flow of such stream,

if the water court is satisfied by other evidence that sufficient proof has been submitted to it to enable it to adjudicate upon such application.

**42bis. Minister may cause certain evidence to be presented in suits.**—(1) If the Minister is of the opinion that it is desirable in the public interest that any evidence available to him should be presented in any suit before a water court, any person authorized thereto by him may, without the Minister becoming a party to such suit and notwithstanding anything to the contrary in any law contained, through witnesses called by that person present to the court any such evidence as is relevant to the proceedings before it.

(2) As soon as possible after it has been decided to present evidence in terms of subsection (1) and in any event not later than the date fixed in terms of the water court regulations for the filing of exceptions, pleas or counter claims, that person shall cause to be sent to the registrar of the court and to each of the parties to the suit whose addresses can be ascertained from the documents filed of record or to his legal representative in the suit, notice in writing informing them of the intention so to present evidence and indicating the nature of the evidence which is to be presented.

[S. 42bis inserted by s. 8 of Act No. 56 of 1961 and substituted by s. 18 of Act No. 68 of 1987.]

**42ter. Minister may make application to or institute suits in water courts.**—The Minister may at any time if he considers it desirable in the public interest—

- (a) apply to or institute any suit in a water court relating to any matter in which a water court has the power, in terms of section 40, to take any action or to do anything, regardless of whether the Minister in the absence of this provision could make such application or institute such suit; or
- (b) apply to a water court for a declaratory order relating to a determination or allocation which has to be made in terms of section 62 (2E) (c) (i) or (ii) or

relating to the extent of an existing right which has to be taken into consideration in terms of section 63 (2).

[S. 42ter inserted by s. 19 of Act No. 68 of 1987.]

**43. Original jurisdiction of water court as to water disputes.**—Except as provided in this Act or with the written consent of all the parties concerned, no court other than a water court shall have jurisdiction in the first instance to hear and determine any dispute or claim arising out of or in connection with any matter referred to in section *forty*, and no process shall issue out of any other court.

**44. Appearance of irrigation board or local authority before water court in certain circumstances.**—(1) If a party to any matter brought before a water court is the owner of land which has been included in the schedule of an irrigation board prepared or revised in accordance with section *eighty-eight*, the irrigation board concerned, shall, whether or not the board is a party to the dispute, be entitled to appear before the water court and with the consent of that court to produce such evidence as the board may consider necessary.

(2) A local authority which controls or distributes water within its area of jurisdiction to persons who are liable for the payment of rates or charges to such local authority and who have a right to the use of or use such water, shall be entitled to appear as applicant and be liable to be cited as respondent on behalf of such persons in connection with any proceedings in a water court: Provided that nothing in this sub-section contained shall be construed as preventing any such person from appearing in such proceedings.

**45. Representation in appearance before a water court.**—In any proceedings before a water court—

- (a) a party to such proceedings may appear personally;
- (b) a local authority or a company or an irrigation board, if a party to such proceedings, or, in the case of a local authority or an irrigation board, entitled to appear in accordance with section *forty-four*, may appear by the person nominated by such local authority, company or irrigation board;
- (c) a person or body, being a party to such proceedings or otherwise entitled under this Act to appear, may appear by an advocate or attorney.

**46. Summoning of witnesses and penalty for non-attendance.**—(1) A party to an application before a water court or an irrigation board or a local authority entitled to appear in accordance with section *forty-four*, may procure the attendance of any witness, whether such witness resides within the water court area in which the said court has jurisdiction or not, in the manner prescribed by regulations made under section *fifty-five*.

(2) If any person who has been duly subpoenaed to attend the proceedings in a water court for the purpose of giving evidence or producing any book, record, document or thing in his possession or under his control, fails without reasonable cause to attend or to give evidence or to produce that book, record, document or thing according to the subpoena or, unless excused by the water court judge, to remain in attendance throughout the proceedings, the water court judge may, upon being satisfied upon oath or by return of the person by whom the subpoena was served, that such person has been duly subpoenaed and that his reasonable expenses have been paid or offered to him, impose upon the said person a fine not exceeding one hundred rand, or in default of payment, imprisonment for a period not exceeding three months.

[Sub-s. (2) substituted by s. 6 of Act No. 108 of 1977.]

(3) If any person so subpoenaed fails to appear or, unless duly excused, to remain in attendance throughout the proceedings, the water court judge may also, upon being satisfied as aforesaid and in case no lawful excuse for such failure seems to him to exist, issue a warrant for the apprehension of that person in order that he may be brought up to give evidence or to produce any book, record, document or thing according to the subpoena, and on failure so to give evidence or produce that book, record, document or thing, to be dealt with in the manner prescribed in sub-section (2).

(4) The water court judge may on cause shown remit the whole or any part of any fine or imprisonment which he may have imposed under this section.

(5) The water court judge may order the costs of any adjournment occasioned by the default of a witness, or any portion of those costs, to be paid out of any fine imposed under this section.

(6) A penalty imposed under sub-section (2) or (3) shall be enforced *mutatis mutandis* as if it were a penalty imposed by a magistrate's court in circumstances such as are described in the relevant sub-section, and the provisions of any law which are applicable in respect of such a penalty imposed by a magistrate's court shall *mutatis mutandis* apply in respect of a penalty imposed under either of the said sub-sections.

**47. Order or award of a water court and fixing of costs.**—(1) A water court shall make such order or award in any proceedings brought before it as it may deem just, including any order as to costs of any such proceedings as it deems fit in accordance with a scale of costs prescribed by regulations made under section *fifty-five*: Provided that a water court shall not in any order for the payment of costs include any sum as fees for appearance before it (other than witness fees) unless the person so appearing is an advocate or an attorney referred to in paragraph (c) of section *forty-five*.

(2) Any order as to costs may include the costs of—

- (a) any necessary search made in a deeds registry;
- (b) making of surveys and plans;
- (c) taking gaugings of the flow of water;
- (d) transcripts of the evidence in the suit; or
- (e) necessary travelling expenses of parties or their representatives,

and any costs awarded by a water court shall be subject to taxation by the registrar of such court.

(3) Advocates' fees, the qualifying expenses of any professional witness and costs awarded in respect of any matter referred to in sub-section (2), shall not be included in the party and party costs of any proceedings of a water court unless a special order to that effect has been made by such court or by a judge in terms of sub-paragraph (x) of paragraph (a) of sub-section (1) of section *forty-one*.

**48. Contempt of a water court.**—(1) If during the sitting of a water court, any person wilfully insults a member of such court or any officer thereof attending at such sitting, or wilfully obstructs or interferes with an officer of a water court in the execution of his duties, or wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where the court is held, the water court judge may order such person to pay a fine not exceeding one hundred rand or in default of payment to be imprisoned for a period not exceeding three months, or to be so imprisoned without the option of a fine.

[Sub-s. (1) substituted by s. 7 (a) of Act No. 108 of 1977.]

(2) Any order made under sub-section (1) shall be executed *mutatis mutandis* as if it were an order made by a magistrate's court under circumstances such as are described in that sub-section, and the provisions of any law applicable in respect of such an order made by a magistrate's court shall *mutatis mutandis* apply in respect of an order made under the said sub-section.

(3) Any person who wilfully disobeys an order of a water court or fails to carry out any order which a water court has required him to carry out, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding one thousand rand or, in default of payment, imprisonment for a period not exceeding six months, or to such imprisonment without the option of a fine.

[Sub-s. (3) substituted by s. 7 (b) of Act No. 108 of 1977.]

**49. Appeals from orders or awards of a water court.**—(1) Save as is provided in sub-section (5) of section *forty-one* and in section *fifty*, any party to proceedings before a water court in which such court has given a final judgment may appeal against such judgment to the Appellate Division of the Supreme Court.

(2) Any such appeal shall be prosecuted as if it were an appeal from a decision of a provincial division of the Supreme Court, or in the case of an appeal from the South-West Africa Water Court, of the High Court of South-West Africa, and all the provisions

applicable in relation to an appeal from any such decision shall *mutatis mutandis* apply in respect of an appeal under this section.

(3) Pending the determination of such an appeal, the judge who presided over the water court which granted the order or award in respect of which such appeal is pending or, if such judge is not available, any other judge attached to the same division of the Supreme Court of South Africa or, in the case of the South-West Africa Water Court, of the High Court of South-West Africa, shall have power to grant a stay of execution in whole or in part of such order or award upon such terms and conditions as to him appear just.

**50. Agreement to accept decision of water court as final, and settlements during proceedings.**—(1) The parties to any dispute concerning the use, diversion or appropriation of water, may in writing agree to submit the matter in dispute for final decision to a water court, and thereupon any order or award made by the water court in regard to the matter in question shall be binding upon the said parties and shall not be subject to appeal to any court.

(2) If the parties to a dispute which is the subject of proceedings before a water court arrive at a settlement during the course of such proceedings, the water court may make such settlement an order of court, provided the water court is satisfied that the settlement is clear and comprehensible and that the terms thereof are reasonable and are not in conflict with any provision of this Act.

**51. Registration of orders and awards against title deeds of land concerned.**—(1) Any order or award of a water court affecting rights to water which is final and which is not subject to appeal, or as to which no appeal has been noted within the prescribed time, or as to which an appeal has been noted but has not been prosecuted or has been dismissed, or any order or award made upon appeal to the Appellate Division of the Supreme Court under this Act shall, if the water court or the said Appellate Division, as the case may be, so directs, upon production of the said order or award, be registered by the registrar of deeds in charge of the deeds registry concerned against the title deed of any land to which the order or award refers and recorded in the appropriate registers, and the owner of any such land shall produce his title deeds for the purpose.

(2) The cost of such registration shall be borne by one or other of the parties to the proceedings in pursuance of which such order or award was made, as the water court or the said Appellate Division may direct.

(3) If the title deed of any such land cannot readily be produced for purposes of registration, the registrar of deeds concerned shall note the said order or award on the duplicate title deed filed in his registry and in the appropriate registers in that registry, and no further transaction relating to the said land shall be registered until registration of the said order or award has been completed by endorsement thereof on the title deed, and the said registrar of deeds is hereby authorized to impound the said title deed and to make the necessary endorsement thereon whenever it may for any reason be lodged in his registry.

**52. Considerations to be applied in determining an owner's share of public water.**—(1) In determining a riparian owner's share of the normal flow of a public stream for the purposes of sub-section (1) of section *nine*, a water court shall take into consideration—

- (a) the nature of the soil which is to be irrigated;
- (b) the comparative extents of irrigable land on the respective pieces of land which formed the subject of original grants, the owners of which are entitled to the use of the water of the public stream to which such land is riparian;
- (c) any natural sources of water supply on the said respective pieces of land other than that derived from the public stream in question;

- (d) that the quantity of water which may reasonably be used for agricultural purposes should be regulated as between the riparian owners concerned according to the quantity of water flowing in the stream;
- (e) the depth of water required per unit of irrigable land for the beneficial irrigation of such land;
- (f) any other features which it considers necessary in order to arrive at a fair apportionment of the water in question:

Provided that, in applying the consideration described in paragraph (b), a water court shall not, for the purpose of apportioning the normal flow of a public stream, take into account a greater area of irrigable land on any piece of land referred to in the said paragraph than an area which it deems to be commensurate with the total area of land which might be irrigated if the total quantity of the water ordinarily available for apportionment were allotted to such piece of land.

(2) In adjudicating upon any application made in terms of section *nineteen* a water court shall take into consideration—

- (a) the annual rainfall in the area in which the applicant's land is situated;
- (b) the number of times during an average year that the public stream in question is likely to flow;
- (c) the evaporation in the area in question;
- (d) the depth of water required per unit of irrigable land for the beneficial irrigation of such land;
- (e) the quantity of water which, under the circumstances, should reasonably be stored for the purpose of obtaining crops or for such other purposes as are described in sub-section (1) of section *ten*;
- (f) any natural sources of water supply on the land affected other than that derived from the public stream in question; and
- (g) any other features which it considers necessary in order to arrive at a just decision in the matter.

(3) No riparian owner shall be entitled to divert onto his riparian land or to impound and store for use for the purposes for which he may lawfully use it, more water, whether normal flow or surplus water, than he can reasonably be expected to use for such purposes, and the quantity of water so diverted or impounded and stored shall not be greater than is required to apply such water efficiently and economically to such purposes.

[Sub-s. (3) substituted by s. 17 of Act No. 96 of 1984.]

(4) Any unbeneficial irrigation of veld by frequent and excessive flooding thereof, or the leading of public water onto or into places such as brak pans, hollows, swamps or any other places from which no advantage will be derived, shall be deemed to be unreasonable use of water.

(5) No water of any public stream shall be used for the irrigation of veld until all the irrigable land which is riparian to such stream and which is being cultivated and is capable of being supplied with such water by means of existing works has received sufficient water to meet reasonable requirements: Provided that the provisions of this sub-section shall not be construed as precluding the irrigation of pasture land in any area in which a soil conservation scheme is in operation in terms of the Soil Conservation Act, 1946 (Act No. 45 of 1946), in so far as may be necessary for the purpose of providing grazing required for stock or dairy farming purposes.

**53. Considerations in determining normal flow under varying conditions.**—(1) In determining the normal flow of a public stream, a water court shall do so in a manner best suited to the locality and to the local conditions pertaining in respect of the seasonal flow

of such stream, the climatic influences and the methods and requirements of irrigation and, subject to the provisions of sub-sections (2) and (3), shall take into consideration any other features which it considers necessary in the circumstances of each particular case in order to arrive at a just and equitable determination.

(2) A public stream shall not be deemed to have a normal flow unless a portion of the actual and visible flow is derived from springs, seepage of any kind, including return seepage from irrigated land, melting snow, the steady drainage from swamps, vleis, natural or indigenous forests, or other like sources of supply.

(3) In respect of any public stream in the Province of the Cape of Good Hope which has under any law been declared by a competent court to be perennial, the normal flow at any point along the course of such stream shall be fixed by a water court at such depth or volume as will ensure that a sufficient volume of water will flow down to lower riparian owners to satisfy the requirements as to reasonable use of all the water furrows and other direct means of irrigation within the limits along the course of such stream within which a distribution has previously been made, or to satisfy the reasonable requirements of all irrigable land below the said point which is dependent for such requirements upon water passing such point.

**54. Procedure to be observed by a water court.**—The procedure of a water court shall be in accordance with the provisions of this Act and regulations made under section *fifty-five*: Provided that if there be no such provisions or regulations applicable in any particular circumstances, a water court shall act in such manner and on such principles as it shall deem best fitted to do substantial justice and to carry out the objects and provisions of this Act.

**54A. Allowances payable to assessors of a water court.**—The assessors of a water court who are not in the full-time service of the State shall be paid such allowances as may be determined by the Minister with the concurrence of the Minister of Finance.

[S. 54A inserted by s. 8 of Act No. 42 of 1975 and substituted by s. 11 of Act No. 73 of 1978.]

**55. Water court regulations.**—The Minister may make regulations relating to—

- (a) the procedure in water courts, including the procedure to be adopted in connection with the registration of orders or awards in terms of section *fifty-one* and of servitudes in terms of section *one hundred and fifty-one*;
- (b) the fees which may be charged in water courts;  
[Para. (b) substituted by s. 9 of Act No. 42 of 1975.]
- (c) the appointment of a registrar and other officers of a water court;
- (d) the forms of and service of notices and other documents required under this Act to be given or served in connection with proceedings in a water court; and
- (e) generally any other matters which he considers it necessary or expedient to prescribe in so far as the functioning of water courts is concerned.

## CHAPTER V

### GOVERNMENT WORKS

**56. Construction and control of Government water works.**—(1) The Minister may, out of moneys provided by Parliament for the purpose and subject to the provisions of this Act, construct any Government water work which he may deem necessary or desirable for the purpose of conserving or utilizing any water or the drainage of land, or for abstracting or storing water, or for preventing the waste or pollution of water, or for controlling, or for the abstraction or supply of, any water derived from an underground source.

[Sub-s. (1) substituted by s. 18 (a) of Act No. 96 of 1984 and by s. 20 of Act No. 68 of 1987.]



(2) Any Government water work constructed or in the course of construction at the date of commencement of this Act shall be deemed to have been constructed or commenced under this section.

(3) Notwithstanding anything to the contrary contained in this Act, the Minister may at any time and for such period and on such terms and conditions as he may deem fit, supply or distribute water from or by means of—

- (a) any Government water work; or
- (b) any other water work in respect of which he has acquired the right to abstract or otherwise acquire water,

to any person, including any department of State, the South African Transport Services and any provincial administration, for use, subject to the provisions of sections 12 and 21, by any such person or by any other person to whom the said person may supply or distribute it, at any place and for any purpose approved by the Minister.

[Sub-s. (3) substituted by s. 5 of Act No. 36 of 1971, by s. 5 of Act No. 51 of 1979 and by s. 18 (b) of Act No. 96 of 1984.]

(4) The rights and privileges of ownership in any Government water work shall be vested in the State and shall be exercised by the Minister and shall not be transferred to any person except under the provisions of paragraph (b) of sub-section (1) of section *sixty-nine*.

(5) The control of any Government water work and the power to regulate or prohibit the abstraction of any water from any area submerged as a result of the construction of such work or the use of or entry into such work or any such submerged area shall be vested in the Minister, and the Minister may levy such fees as he may with the concurrence of the Minister of Finance determine for entry into any such area.

[Sub-s. (5) substituted by s. 13 (c) of Act No. 96 of 1984.]

(6) Whenever the Government has constructed any road for or in connection with a Government water work, or in connection with any holdings which have been established by the Government for the purposes of land settlement in terms of the laws relating to land settlement, and the control of such road has not been assumed by any local authority or other like institution which is lawfully entitled to exercise control over that road, the Minister may exercise control over such road and over the use thereof and the regulation of traffic thereon, and shall have power to make any regulations which he deems necessary for that purpose and to prescribe penalties for any contravention of or failure to comply with any such regulation or any direction or order issued thereunder and made known in such manner as may be prescribed in such regulations.

**56A. Restriction on abstraction of water from certain public streams.**—(1) If in the opinion of the Minister any portion of any public stream is continuously or from time to time augmented by purified or treated water derived from effluent resulting from the use for industrial purposes of water supplied or distributed by means of a Government water work or any other water work mentioned in section 56 (3) (b), and discharged into that public stream under an exemption, under section 21 (4), from the provisions of section 21 (1) (b), he may by notice in the *Gazette* prohibit, with effect from a date specified in the notice, the abstraction of water from the said portion of the public stream at any place along the course thereof.

(2) (a) No person shall abstract water from a portion of a public stream in contravention of a prohibition under subsection (1), except on the authority of a permit issued by the Minister.

(b) Any person who contravenes paragraph (a) shall be guilty of an offence.

(3) (a) An application for a permit under paragraph (a) of subsection (2) by a person who, but for the provisions of the said paragraph, would have been entitled to abstract water from the portion of the public stream concerned, shall be granted by the Minister for such quantity of water as such person would have been entitled so to abstract had the said portion not been augmented as contemplated in subsection (1).

(b) An application for a permit under subsection (2) (a) by any person may be granted by the Minister for the abstraction of water from the augmented portion of the said public stream for such period and on such terms and conditions as he may determine, for use at any place for any purpose specified in the permit.

(4) A permit under subsection (3) (b) may at any time, after reasonable notice to the permit holder, be withdrawn or amended by the Minister, and the State or the Minister or any officer of the department or any other person involved in the withdrawal or amendment of such permit, shall not be liable for any damage or loss arising from the withdrawal or amendment of that permit.

[S. 56A inserted by s. 9 of Act No. 92 of 1993.]

**57. Construction by Minister of water works for any person.**—(1) The Minister may, subject to any existing right, construct any water work for or on behalf of any person and may enter into agreements with such person relating to the construction of such work and any matter incidental thereto.

(2) The Minister may at any time before or after the commencement of the construction of any such work, by notice in the *Gazette* apply the provisions of section *sixty* to any area defined in the notice which in his opinion is or is likely to be affected by that work, and thereupon the said provisions shall *mutatis mutandis* apply as if the said area were a Government water control area and as if the said work were a Government water work.

(3) The Minister may from time to time by notice in the *Gazette* alter the boundaries of any area defined under sub-section (2) as he may consider necessary.

**58. Reports on certain proposed works to be laid on Tables of both Houses of Parliament.**—(1) The construction of a Government water work or any subsequent works in connection therewith whereof the estimated cost exceeds the amount which the Minister of Finance may from time to time determine, shall, subject to subsection (1B), not be

continued on page 1261

commenced unless the Minister has before the date on which the appropriation of money for the purposes of such work or works is first considered by Parliament laid upon the Table of Parliament a report in regard to such work or works containing the particulars required in subsection (2).

[Sub-s. (1) amended by s. 2 of Act No. 77 of 1969 and substituted by s. 8 of Act No. 108 of 1977, by s. 6 (a) of Act No. 51 of 1979, by s. 19 (a) of Act No. 96 of 1984 and by s. 1 (a) of Act No. 37 of 1988.]

(1A) If the Minister is at any time of the opinion that a substantial deviation is desirable with respect to the purpose or the capacity of any Government water work or subsequent works in respect of which a report contemplated in subsection (1) was laid upon the Table of Parliament, the construction of such work or works shall, subject to subsection (1B), not be continued with unless the Minister has laid upon the Table of Parliament a supplementary report containing the particulars required in subsection (3).

[Sub-s. (1A) inserted by s. 6 (a) of Act No. 51 of 1979, substituted by s. 19 (b) of Act No. 96 of 1984 and amended by s. 1 (b) of Act No. 37 of 1988.]

(1B) The Minister may, if he considers it essential in the public interest, with the concurrence of the Minister of Finance commence with the construction of any Government water work or subsequent works referred to in subsection (1) or continue with the construction of any Government water work or subsequent works referred to in subsection (1A) notwithstanding the fact that a report was not laid upon the Table of Parliament in accordance with subsection (1) or (1A), as the case may be.

[Sub-s. (1B) inserted by s. 6 (a) of Act No. 51 of 1979, substituted by s. 19 (c) of Act No. 96 of 1984 and amended by s. 1 (b) of Act No. 37 of 1988.]

(2) A report under subsection (1) shall contain particulars showing—

- (a) a description of the proposed works, including the capacity of any proposed storage reservoir, and any proposals in respect of any future works which may become necessary for the restoration of the capacity of any such reservoir which may be reduced by siltation;
- (b) the estimated cost of such works, the cost of any storage works or canal or distribution system being separately specified, a description and the estimated cost of any land or servitudes to be acquired for the purpose of the works or for any proposed land settlement scheme connected with the project, and the estimated cost of acquiring any existing right which it is deemed necessary to acquire for the purposes of the proposed scheme;
- (c) the estimated cost of deviating any existing road or railway which may be submerged as a result of the construction of the works;
- (d) the purpose and scope of the project;
- (e) the hydrographic data of the stream proposed to be exploited, including rainfall in and characteristics of its catchment area, its silt carrying properties and general conditions in regard to floods;
- (f) an estimate of the water resources which will become available for use as a result of the construction of the works, a statement of the estimated rate of siltation of any reservoir proposed to be constructed, and the storage capacity proposed to be set aside for siltation;
- (g) the area and location of the land which could be irrigated by means of the proposed works and the nature and suitability of the soil on such land for irrigation as disclosed by a comprehensive soil survey;
- (h) a description of such land;
- (i) the probable extent to which such land as well as other land is likely to become affected by brak as a direct result of irrigation by means of the works;

- (j) the number of owners of such land who are likely to benefit if such works are constructed and, if it is proposed to use any such land or any Crown land for the purpose of land settlement in terms of the laws relating to land settlement, the number of holdings proposed to be allotted and the estimated cost of improving such holdings before allotment;
- (k) the area of land on each such holding or in respect of which each such owner is likely to receive water from the scheme;
- (l) the annual quota of water for agricultural use which it is proposed to fix in terms of paragraph (b) of sub-section (2) of section *sixty-three*;
- (m) the kinds of crops for which the area in question is likely to be suitable;
- (n) the existing utilization of water in that area, the development which has taken place as a result thereof, and details of existing water rights within the said area and of the extent to which such rights are being exercised;
- (o) any use, other than use for agricultural purposes, for which it is proposed to supply water from the works or for which such water can be utilized, and the possible extent and scope of such utilization;
- (p) whether hydro-electric power could be developed by means of the works, whether it is proposed to develop such power, and, if so, the extent thereof, the proposed utilization of such power, and the charges likely to be made therefor;
- (q) the proposed method of repayment of the cost, or any portion of the cost of the works by users of water supplied by means of the works, and, if the whole of such cost is not to be repaid, the amount which is to be repaid and the reasons for the subsidization of the scheme by the Government;
- (r) the estimated annual administration and maintenance costs of the scheme, and the rates or charges which are likely to be assessed under section *sixty-six*;
- (s) a general summary of the revenue expected to be derived by the Government from the operation of the scheme;
- (t) whether it is proposed that the Minister will administer and control the scheme or dispose thereof or delegate the administration and control thereof as provided in section *sixty-nine*;
- (u) any other facts which may be relevant to the feasibility and practicability of the project; and
- (v) any other matters which the Minister may deem fit to include.

[Sub-s. (2) amended by s. 6 (b) of Act No. 51 of 1979 and by s. 19 (d) of Act No. 96 of 1984.]

(3) A supplementary report contemplated in subsection (1A) shall furnish particulars of the manner in which there is deviated from the originally proposed purpose or capacity of the Government water work or subsequent work concerned as set out in the report under subsection (1).

[Sub-s. (3) added by s. 6 (c) of Act No. 51 of 1979 and substituted by s. 19 (e) of Act No. 96 of 1984.]

**59. Minister may declare control areas.**—(1) The Minister may, by notice in the *Gazette*, declare the area defined in such notice, being—

- (a) an area comprising every piece of land which or a portion whereof is affected or likely to be affected by any Government water work constructed or deemed to have been constructed or in course of construction or intended to be constructed under this Act; or
- (b) an area (which may include non-riparian land) within which the abstraction, utilization, supply or distribution of the water of any public stream should in his opinion be controlled in the public interest,

[Para. (b) substituted by s. 9 of Act No. 56 of 1961.]

to be a Government water control area, and may from time to time in like manner amend or repeal any such notice.

[Sub-s. (1) amended by ss. 46 and 47 of Act No. 97 of 1986.]

continued on page 1263

(2) Whenever, in the opinion of the Minister—

- (a) the flow of a public stream in any particular area should in the national interest be regulated or controlled by damming, cleaning, deepening, widening, straightening or altering the course of the channel or by taking such other steps as may be necessary for the prevention or control of silt or for the purpose of lessening the possibility of damage to land which is riparian to such stream in the event of flood; or
- (b) any land is required for the protection of any portion of the catchment area of a public stream,

the Minister may, by notice in the *Gazette* declare the channel of any such stream or any portion thereof, together with such portion of the land on either side or on both sides of the said channel, or any other area situated within the catchment of such stream, as he may consider necessary for such purpose, and as may be defined in the notice, to be a catchment control area, and he may from time to time in like manner amend or repeal any such notice.

[Sub-s. (2) amended by ss. 46 and 47 of Act No. 97 of 1986.]

(3) (a) Any Government irrigation area defined under section 98 of the Irrigation and Conservation of Waters Act, 1912 (Act No. 8 of 1912), shall, as from the date of commencement of this Act, be deemed to have been declared a Government water control area under and for the purposes of subsection (1) (a) and (b) of this section, and any area declared under section 7ter of the firstmentioned Act to be a flood control area shall be deemed to have been declared a catchment control area under subsection (2) of this section.

(b) In like manner any area, or any extension of any Government water control area referred to in paragraph (a), which has since the said date of commencement by notice under subsection (1) been declared to be or to be part of a Government water control area, shall, as from the date of such notice, be deemed to have been so declared under and for the purposes of subsection (1) (a) and (b).

[Sub-s. (3) substituted by s. 4 of Act No. 79 of 1967. Para. (b) amended by s. 47 of Act No. 97 of 1986.]

(4) (a) Whenever in the opinion of the Minister it is in the public interest that any particular area, irrespective of whether or not such area includes a portion of the bed of a public or private stream, should be reserved for a dam, being a government water work to be constructed at some future date, he may by notice in the *Gazette* define such area and declare it to be a dam basin control area: Provided that such a dam basin control area shall not be greater than an area which, in the opinion of the Minister, is necessary for a dam capable of impounding and storing twice the total mean annual run-off of the catchment areas from which water may be expected to flow into or to be diverted to the dam envisaged.

[Para. (a) amended by ss. 46 and 47 of Act No. 97 of 1986.]

(b) No person (including a provincial administration) shall in such a dam basin control area establish any township or exercise any activity which involves the construction or alteration of any road, building, water work or any other work or structure of a permanent nature (excluding any activity connected with the ordinary carrying on of farming operations), without a permit from the Minister and otherwise than subject to such conditions as he may deem fit to impose in such permit.

(c) If the owner of any land situated in any such dam basin control area, or the holder of any right in respect of any such land, or the holder of any existing right, suffers or is likely to suffer any damage as a result of such area having been declared to be a dam basin control area, he shall be entitled to be compensated by the State in respect of such damage or anticipated damage, and if he and the State cannot agree on the amount of such compensation, or if the Minister deems it expedient that the State shall expropriate such land, the State shall expropriate such land, right or existing right, as the case may be, and for the purposes of such expropriation the provisions of section 60 shall *mutatis mutandis* apply.

(d) Any debt coming into existence by virtue of the provisions of paragraph (c) shall not be prescribed.

(e) Any person who contravenes the provisions of paragraph (b) shall be guilty of an offence.

[Sub-s. (4) added by s. 3 of Act No. 77 of 1969.]

(5) The Minister may by notice in the *Gazette* declare any area defined in the notice as a Government drainage control area, if he is of the opinion that the construction of water works in that area for the accumulation, abstraction, impoundment, storage or use of private water, including water referred to in section 6 (2), will result in a reduction of the availability of water in any public stream in an area which has been declared as a Government water control area in terms of subsection (1).

[Sub-s. (5) added by s. 21 of Act No. 68 of 1987.]

**60. Expropriation in certain areas.**—(1) The Minister may, subject to an obligation to pay compensation, expropriate, or take the right to use temporarily, any property, if he considers it necessary for or in connection with any Government water work or to enable him to construct access roads to a Government water work for use by the public or by any person or for the effective carrying out of any work which he may consider necessary in connection with any of the purposes mentioned in section 59 (2).

[Sub-s. (1) substituted by s. 7 of Act No. 92 of 1980.]

(2) (a) For the purposes of subsection (1) “property” means both movable and immovable property and “immovable property” includes a real right in or over land.

(b) The provisions of sections 6 to 15 and 18 to 24 of the Expropriation Act, 1975, shall *mutatis mutandis* apply in respect of the expropriation of any property or the taking of any right in terms of this section, and any reference in the said sections of that Act—

- (i) to “Minister” shall be construed as a reference to the Minister of Water Affairs;
- (ii) to “section 2” shall be construed as a reference to this section;
- (iii) . . . . .
- (iv) . . . . .
- (v) to “this Act” shall be construed as a reference to this Act, unless the context otherwise indicates.

[Sub-s. (2) amended by s. 41 (b) of Act No. 63 of 1975 and substituted by s. 28 of Act No. 45 of 1992.]

(3) . . . . .

[Sub-s. (3) deleted by s. 41 (b) of Act No. 63 of 1975.]

(4) . . . . .

[Sub-s. (4) amended by s. 10 of Act No. 97 of 1986 and deleted by s. 1 (a) of Act No. 108 of 1993.]

(5) If the Minister has expropriated any property under the provisions of this section and the provisions of section 31 (6) (a) or 32 (5) of the Deeds Registries Act, 1937 (Act No. 47 of 1937), do not apply in respect of such expropriation, the registrar of deeds in charge of the deeds registry in which the title deed to any land concerned is registered shall, if requested thereto by the Director-General and pending the transfer or registration of the property in question, make notes in the appropriate registers that such property has been acquired by the Minister.

[Sub-s. (5) substituted by s. 1 (b) of Act No. 108 of 1993.]

(6) The provisions of sections 141 (3), 142, 145 (1) (c) and 151 (2) shall *mutatis mutandis* apply in relation to any servitude acquired under this section.

[S. 60 amended by s. 1 of Act No. 75 of 1957, by s. 10 of Act No. 56 of 1961, by s. 1 of Act No. 71 of 1965, by s. 5 of Act No. 79 of 1967 and by s. 4 of Act No. 77 of 1969 and substituted by s. 8 of Act No. 45 of 1972. Sub-s. (6) substituted by s. 10 of Act No. 42 of 1975.]

**60A. Transfer of expropriated property.**—If the State President has under any prior law or the Minister has under this Act acquired by expropriation or otherwise any land or right in connection with any water which he is entitled to use, supply or control, or in connection with any water work which he has constructed or is constructing or intends to construct, whether on behalf of the Government or on behalf of any person, or in connection with the taking of any steps referred to in section 22 (1A) by any person, the Minister may at any time transfer such land or right to any person on behalf of whom he has constructed or is constructing or intends to construct such work or to whom the said work or the control thereof or the use, supply, distribution or control of the said water has been transferred in accordance with the provisions of this Act or the said prior law or to the person on whose behalf the property was expropriated or the right taken with a view to the taking of any steps referred to in section 22 (1A).

[S. 60A inserted by s. 9 of Act No. 45 of 1972 and substituted by s. 22 of Act No. 68 of 1987.]

**61. Suspension of owner's rights in or over land in a catchment control area for certain purposes.**—(1) Whenever any area has under sub-section (2) of section *fifty-nine*, been declared to be a catchment control area, the Minister may—

- (a) out of moneys provided by Parliament for the purpose, cause such work as he may deem necessary in connection with any of the purposes set out in the said sub-section to be carried out by the department on any land in that area;
- (b) by notice in writing suspend for a period to be specified in such notice (which period may from time to time in like manner be extended) all or any of an owner's rights in or over any land in the said area, and at the expiration of a period of three months from the date of such notice, enter upon and take possession of the land in order to carry out such work.

(2) The Minister may in respect of any land in a catchment control area in his discretion withdraw any suspension of rights under paragraph (b) of sub-section (1) in the case of an owner who has, within three months of the date of the notice referred to in that sub-section, entered into a written undertaking to construct or carry out at his own expense such works or measures (to be specified in the undertaking) as the Minister may require, and may if in his opinion an owner has failed to comply with the terms of any such undertaking, give that owner one month's notice in writing of the termination of such withdrawal.

(3) (a) The Minister may at any time by notice in writing cancel any suspension of rights under sub-section (1), and thereupon the suspended rights shall be restored to the owner or his successor in title subject to the provisions of paragraph (c) and to such conditions as to occupation and use of the land as the Minister may deem fit to impose, which conditions shall attach to the land and at the request in writing of the Minister be noted free of charge by the registrar of deeds in charge of the deeds registry in which the title deed to the land concerned is registered on the title deed of the said land and in the appropriate registers.

(b) For the purpose of paragraph (a) the owner or other person in possession of the title deed to the land shall upon demand deliver such title deed to the secretary, and the said registrar of deeds shall, if requested thereto by the secretary and pending the noting of the said conditions on the said title deed, make a note of such conditions in the appropriate registers.

(c) The Minister may from time to time assess rates on any land within a catchment control area in which any work has been carried out by him under this section whether or not such work has been carried out on that land, and may recover any rates so assessed from the owner of that land.

continued on page 1271



(d) The cancellation of any suspension of rights in terms of paragraph (a) of this sub-section shall not be deemed to prevent the Minister at any time thereafter from again suspending any such rights in respect of the land in question in terms of paragraph (b) of sub-section (1).

(4) The provisions of section 4 (1), (4), (5) and (6) of the Expropriation Act, 1965 (Act No. 55 of 1965) shall *mutatis mutandis* apply in respect of the service of any notice under subsection (1) (b) or (2) of this section.

[Sub-s. (4) substituted by s. 11 of Act No. 42 of 1975.]

**62. Control and use of public water in a Government water control area.—**(1) In this section—

“existing water work” means any water work which at any time during the qualifying period applicable to any area declared as a Government water control area was used for the abstraction, impoundment or storage of public water to irrigate a portion of land in that area;

“piece of land” means a piece of land registered in the office of a registrar of deeds;

“piece of land with existing irrigation development”, in relation to a Government water control area, means a piece of land in a Government water control area which—

- (a) at the date of declaration of such Government water control area was registered in the office of a registrar of deeds; and
- (b) at any time during the qualifying period applicable in respect of that area was entirely or partially, whether lawfully or unlawfully, irrigated with public water;

“qualifying period”, in relation to an area declared under section 59 (1) as a Government water control area, means the period of 12 months, or, if the Minister has determined a longer period not exceeding 36 months in respect of that area, such longer period, which immediately preceded the declaration of the area as a Government water control area.

[Sub-s. (1) amended by s. 11 (a) and (b) of Act No. 56 of 1961 and substituted by s. 20

(1) (a) of Act No. 96 of 1984.]

(2) Notwithstanding anything to the contrary contained in this Act and notwithstanding any existing right, the right to the use and the control of water in any public stream, or of public water in any natural channel, in a Government water control area shall vest in the Minister, and no person shall—

- (a) abstract, impound or store any quantity of the said water or use it on any land inside or outside such area except by virtue of a provisional right in terms of subsection (2A), a permission under subsection (2B) or (2I) or an allocation specified in a notice under subsection (2F); or
- (b) construct, alter, enlarge or use a water work for the abstraction, impoundment or storage of any quantity of the said water except by virtue of a provisional right in terms of subsection (2A) (a) or in pursuance of a direction under subsection (2A) (b), (2H) (d) (ii) or (iii) or (3) (b) or an authorization under subsection (2H) (a):

[Para. (b) substituted by s. 8 (a) of Act No. 68 of 1990.]

Provided that a right to use public water for agricultural purposes attached to a piece of land immediately before the declaration as a Government water control area of an area in which that land is situated, shall not be affected by this subsection in so far as that right authorizes the use of public water for other purposes than irrigation purposes and is exercised for the said other purposes otherwise than by means of a water work or by means of a water work—

- (i) which existed immediately before the declaration of such area as a Government water control area;
- (ii) the use whereof was authorized for irrigation purposes under a provision of this section; or

- (iii) the use whereof for the said other purposes was authorized by the Minister in writing under this paragraph.

[Sub-s. (2) amended by s. 11 (c) of Act No. 56 of 1961, by s. 3 (a) of Act No. 11 of 1966 and by s. 5 of Act No. 77 of 1969 and substituted by s. 20 (1) (b) of Act No. 96 of 1984.]

(2A) (a) A person in control of a piece of land with existing irrigation development in a Government water control area shall be provisionally entitled as from the date of declaration of such area as a Government water control area until a notice is published in terms of subsection (2F) (a) in respect of that area, to continue by means of an existing water work with the abstraction, impoundment, storage or use for irrigation purposes of annually not more than the quantity of public water actually used for irrigation on that land during the qualifying period applicable in respect of that area, or if the qualifying period is longer than 12 months, the greatest quantity of public water actually used for irrigation purposes on that land during any continuous period of 12 months during the qualifying period.

(b) The Minister may at any time during the period in which public water is used under paragraph (a) on a piece of land with existing irrigation development or abstracted, impounded or stored for such use, direct in writing the owner of or any person controlling that land at his own expense to make such adjustments to an existing water work as in the opinion of the Minister are necessary to bring the abstraction, impoundment or storage capacity thereof into accordance with the quantity of public water which such person is under the said paragraph entitled to use on that land.

[Sub-s. (2A) inserted by s. 20 (1) (b) of Act No. 96 of 1984.]

(2B) (a) The Minister may at any time after the declaration of an area as a Government water control area grant permission to any person to abstract, impound or store a quantity of public water in that area during the period up to the publication in terms of subsection (2F) (a) of a notice in respect of that area and to use such water for the irrigation of a portion of a piece of land in that area, or, in the case of a piece of land with existing irrigation development, for the irrigation of an additional portion of any such piece of land: Provided that if a person in control of a piece of land in such area applies for a permission as aforesaid to irrigate a portion of that land with public water by means of a water work which was in the process of erection immediately before the declaration of that area as a Government water control area, the Minister shall be bound to grant such permission, but the quantity of water allocated thereunder shall be determined by the Minister at his discretion.

(b) A permission under paragraph (a) may relate either to a particular piece of land or to a particular category of pieces of land or to all pieces of land in a Government water control area: Provided that a permission relating to a category of or to all pieces of land in a Government water control area shall be granted by notice in the *Gazette*.

(c) A permission under paragraph (a) shall prescribe the maximum quantity of public water which may during a particular period be used on the, or on each, piece of land in question or for the purposes of such use be abstracted, impounded or stored, and may contain such provisions and conditions as the Minister may deem fit, including provisions and conditions—

- (i) prescribing the circumstances or periods in which the maximum quantity of public water which may under the permission be used, may be decreased or increased by the Minister; and
- (ii) relating to the control over the said use of public water or the abstraction, impoundment or storage thereof.

(d) Different provisions and conditions may be imposed under paragraph (c) in respect of different periods of a year or in respect of different categories of pieces of land.

(e) A permission under paragraph (a) may at any time be amended or withdrawn by the Minister—

- (i) in the case of a permission relating to any particular piece of land, by notice in writing to the person controlling such piece of land; or
- (ii) in the case of a permission relating to a category of or to all pieces of land in a Government water control area, by notice in the *Gazette*.

[Sub-s. (2B) inserted by s. 20 (1) (b) of Act No. 96 of 1984.]

(2C) (a) The Director-General shall as soon as may be practicable after the date on which an area was declared a Government water control area—

- (i) in respect of each piece of land in that area—
  - (aa) which at the date of such declaration was registered in the office of a registrar of deeds;
  - (bb) in respect of which the owner was immediately prior to that date under section 9 or 10 or an existing right entitled to use public water for irrigation; and
  - (cc) which, within the limits prescribed by the Minister with respect to that Government water control area or any particular portion thereof in which that piece of land is situated, is in the opinion of the Director-General suitable for the cultivation of crops under irrigation,

determine the area in hectares of the portion of that land which within the said limits is in the opinion of the Director-General thus suitable; and

- (ii) in respect of each piece of land with existing irrigation development in that area, determine the area in hectares of the portion of that land which during the qualifying period applicable in respect of that area was irrigated with public water whether lawfully or unlawfully.

(b) Any person controlling a piece of land referred to in paragraph (a) (i) or (ii) shall at the request of a person designated by the Director-General furnish the following particulars in writing to such designated person, namely—

- (i) his name and permanent residential address;
- (ii) if he is not the owner of such land, the name and permanent residential address of the owner;
- (iii) the description under which that land is registered in the office of a registrar of deeds;
- (iv) a description of each water work which is used or capable of being used for the abstraction, impoundment or storage of public or private water for the irrigation of a portion of such land, and the abstraction, impoundment or storage capacity of each such water work;
- (v) in the case of a piece of land with existing irrigation development, the area and a description of the portion of such land irrigated during the qualifying period;
- (vi) the right in terms of which such land was irrigated or entitled to public water;
- (vii) if private or public water is abstracted, impounded, stored or used on such land for any purpose other than irrigation, the purpose for which the water is thus being abstracted, impounded, stored or used; and
- (viii) the area and a description of the portion of such land which in his opinion is suitable for the cultivation of crops under irrigation.

(c) A person designated under paragraph (b), shall satisfy himself that any particulars furnished to him in terms of that paragraph are correct, and may at any reasonable time enter upon land referred to in that paragraph and carry out any such investigation and perform any such survey as he may deem necessary.

(d) If the person furnishing the particulars referred to in paragraph (b) is not the owner of the piece of land concerned, the person designated under the said paragraph shall submit the said particulars in writing to the owner, and unless the owner within 60 days as from the date on which such particulars were submitted to him lodges an objection with the designated person on the ground that such particulars are incomplete, misleading or not the truth, he shall be deemed to agree therewith.

[Sub-s. (2C) inserted by s. 20 (1) (b) of Act No. 96 of 1984.]

(2D) (a) The Minister shall by notice in the *Gazette* publish a list of all the pieces of land in the relevant Government water control area in respect of which the Director-General has under paragraph (a) of subsection (2C) made a determination, specifying opposite the description of each piece of land the area determined by the Director-General under subparagraph (i) and under subparagraph (ii) of the said paragraph in respect of that piece of land, and in that notice request any person who feels aggrieved by the Director-General's determination or because no determination has been made in respect of any particular piece of land, to submit for the Minister's decision his objections in writing to the Director-General within 90 days of the date on which the notice was published.

(b) The Director-General shall within 14 days of the publication of a notice in terms of paragraph (a) send a reproduction thereof to the owner of each piece of land within the Government water control area concerned at the address referred to in subsection (2C) (b) (i) or (ii).

(c) Any person who has lodged an objection in terms of paragraph (a) and who feels aggrieved by the Minister's decision, may, after notice to the Minister, within 60 days from the date on which he was informed of the Minister's decision, appeal to the water court, and the water court may, after the investigation it deems desirable, confirm the Minister's decision or make such order as it may deem fit.

[Sub-s. (2D) inserted by s. 20 (1) (b) of Act No. 96 of 1984.]

(2E) As soon as may be practicable after termination of the period referred to in paragraph (a) of subsection (2D), or, if an objection or appeal has been lodged under that subsection, after such objection or appeal has been disposed of, the Minister shall with due regard to the Director-General's determinations under subsection (2C), and any decisions of the Minister or orders of the water court in connection therewith, and any other relevant information at his disposal—

- (a) estimate the quantity of public water which on a basis of consistency determined by him will annually be available in the Government water control area concerned and determine the portion of such quantity which may annually be utilized for irrigation purposes;
- (b) determine the quantity of water which in his opinion is annually adequate for the irrigation of one hectare of land in that area;
- (c) in respect of each piece of land with existing irrigation development in that area which, subject to subsection (2G) (a), was lawfully irrigated with public water during the qualifying period applicable in respect of that area—
  - (i) determine the area in hectares of the portion of that land which was so irrigated with public water during that period;
  - (ii) allocate, subject to subsection (2G) (b), a quantity of public water which, if available, may annually be abstracted, impounded or stored in that Government water control area for the irrigation of the portion of land determined in terms of subparagraph (i), and, in the case of an allocation of water in a public stream with both normal flow and surplus water, determine the portion of the quantity which may be abstracted from the normal flow and the portion which may be abstracted from the surplus water; and
  - (iii) determine the conditions subject to which such allocation is made;

(d) provided the quantity of water which may in terms of paragraph (a) annually be utilized for irrigation purposes and which remains after the quantities allocated in terms of paragraph (c) have been subtracted therefrom, is in the opinion of the Minister sufficient to make further allocation for irrigation purposes, in respect of each piece of land in that Government water control area which complies with the requirements mentioned in subparagraphs (aa) and (bb) of subsection (2C) (a) (i) and of which a portion, or, in the case of a piece of land in respect of which an allocation was made under paragraph (c) of this subsection for the irrigation of a portion thereof, of which an additional portion, within the limits referred to in subparagraph (cc) of subsection (2C) (a) (i) or such other limits as the Minister may have prescribed thereafter with respect to that Government water control area in general or that piece of land in particular, is in the opinion of the Minister suitable for the cultivation of crops under irrigation—

(i) determine, in accordance with a basis approved by him, the area in hectares of the portion of that land which may in terms of an allocation under this paragraph be irrigated with public water;

(ii) allocate, subject to subsection (2G) (b), a quantity of public water which, if available, may annually be abstracted, impounded or stored in that Government water control area for the irrigation of the portion of land determined under subparagraph (i), and, in the case of an allocation of water in a public stream with both normal flow and surplus water, determine the portion of the quantity which may be abstracted from the normal flow and the portion which may be abstracted from the surplus water; and

(iii) determine the conditions subject to which such allocation is made.

[Sub-s. (2E) inserted by s. 20 (1) (b) of Act No. 96 of 1984.]

(2F) (a) The Minister shall by notice in the *Gazette* publish a list of all the pieces of land in respect of which an allocation was made under subsection (2E) (c) or (d), stating opposite the description of each piece of land—

(i) the area in hectares of the land which is permitted to be irrigated under the allocation; and

(ii) the quantity of public water, or, if an allocation was made in respect of both the normal flow and the surplus water of a public stream, the quantity of the normal flow and the quantity of the surplus water, which may under the allocation be used annually for the irrigation of the said land.

(b) A notice under paragraph (a) shall further state—

(i) the conditions on which the allocations were made;

(ii) the quantity determined under subsection (2E) (b); and

(iii) the period for which the use of an existing water work used before the publication of the notice for the abstraction, impoundment or storage of public water by virtue of subsection (2A) may be continued without an authorization under subsection (2H).

(c) An allocation under subsection (2E) (c) or (d) shall commence on the date on which the notice in respect thereof is published in the *Gazette* under paragraph (a) of this subsection.

(d) The Director-General shall as soon as may be practicable after the publication of a notice under paragraph (a), forward a copy thereof to each owner of land in respect of which an allocation was made.

(e) A notice under paragraph (a) may be amended or adjusted by the Minister by notice in the *Gazette*—

(i) to incorporate any allocation made in terms of subsection (2I) (a) (ii);

- (ii) to give effect to any agreement, arbitration award, order of court or authorization by virtue of subsection (6);
- (iii) if the Minister is convinced that the particulars taken into account in respect of any particular piece of land are erroneous and that the rectification thereof will not in his opinion affect the availability of the quantity of public water which in terms of such notice was allocated to other land;
- (iv) to bring the description of any piece of land into accordance with any change therein; or
- (v) to rectify a printing error.

[Sub-s. (2F) inserted by s. 20 (1) (b) of Act No. 96 of 1984. Para. (e) substituted by s. 23 (a) of Act No. 68 of 1987.]

(2G) For the purposes of—

- (a) paragraph (c) of subsection (2E) it shall be deemed that a person has lawfully abstracted, impounded, stored or used a quantity of public water to the extent to which such quantity does not exceed the quantity which—
  - (i) was allocated under any order or award of a water court in respect of the piece of land on which it is used, together with any quantity which was likewise allocated in respect of any other piece of land and to which such person has become entitled;
  - (ii) where no such order or award is in force, in the opinion of the Minister would have been allocated in respect of the piece of land on which it is used had an allocation of the public water concerned been made by a water court; or
  - (iii) such person is in respect of the piece of land on which it is used, entitled to abstract, impound, store or use it under an existing right;
- (b) paragraphs (c) and (d) of subsection (2E) the quantity of water which is to be allocated thereunder in respect of a piece of land shall be calculated by multiplying the quantity determined in terms of paragraph (b) of that subsection by the number of hectares determined in terms of paragraph (c) (i) or (d) (i) of that subsection in respect of that piece of land.

[Sub-s. (2G) inserted by s. 20 (1) (b) of Act No. 96 of 1984.]

(2H) (a) The Minister may, on such conditions as he may determine, authorize in writing a person controlling a piece of land in respect of which by or under a provision of this section a provisional right has been conferred or a permission has been granted or an allocation has been made to abstract, impound or store a particular quantity of public water and to use it on that land, to construct, alter, enlarge or use a water work for the abstraction, impoundment or storage of that quantity of public water.

(b) An authorization under paragraph (a) may relate to any particular piece of land or to any particular category of pieces of land or to all pieces of land in a Government water control area: Provided that an authorization relating to—

- (i) a category of or to all pieces of land in a Government water control area shall be granted by notice in the *Gazette*; or
- (ii) one or more pieces of land in a Government water control area in respect of which an irrigation board intends to abstract, impound or store and make available for use on the said pieces of land, water to which the said pieces of land are entitled in terms of this section by means of a water work the construction, alteration or enlargement of which is to be undertaken by the irrigation board concerned, shall be granted to the irrigation board concerned.

[Para. (b) substituted by s. 23 (b) of Act No. 68 of 1987.]

(c) Any person who has constructed, altered or enlarged a water work for the abstraction, impoundment or storage of public water in pursuance of a direction under subsection (2A) (b) or (3) (b) or paragraph (d) (ii) or (iii) of this subsection or by virtue of an authorization under paragraph (a) of this subsection, other than a person referred to in paragraph (d) (i) of this subsection, shall within 30 days after the construction, alteration or enlargement of that water work was completed, furnish the Director-General or, if the Director-General has delegated the powers conferred upon him by paragraph (d) of this subsection to the chairman of the irrigation board in question, furnish that chairman in writing with particulars of the abstraction, impoundment or storage capacity of that water work.

[Para. (c) substituted by s. 8 (b) of Act No. 68 of 1990.]

(d) If any person has constructed, altered or enlarged a water work in contravention of any provision of subsection (2) (b), or is using a water work which has been constructed, altered or enlarged in contravention of any such provision, the Director-General may—

- (i) condone the construction of that water work, or the alteration or enlargement thereof, and in writing direct him to submit within the period specified in the direction to a person so specified an application for the granting to him of an authorization under paragraph (a) of this subsection as if that water work has not been constructed or that alteration or enlargement has not been effected, as the case may be;
- (ii) partially condone the construction of that water work, or the alteration or enlargement thereof, and in writing direct him to effect at his own expense and within the period specified in the direction the adjustments so specified to that water work, alteration or enlargement, as the case may be, in order to bring the abstraction, impoundment or storage capacity of the relevant water work into accordance with the particular quantity of public water which may by virtue of any provisional right, permission or allocation under this section be abstracted, impounded or stored and used on the piece of land in question; or
- (iii) reject the construction of that water work, or the alteration or enlargement thereof, and in writing direct him, irrespective of whether criminal proceedings in terms of this section have been or may be instituted against him, to—
  - (aa) remove at his own expense and within the period specified in the direction of that water work or that alteration or enlargement, as the case may be, or so to render it inoperable in the manner specified in the direction; or
  - (bb) terminate the use of that water work or that alteration or enlargement, as the case may be, from the date specified in the direction.

[Para. (d) substituted by s. 23 (c) of Act No. 68 of 1987 and by s. 8 (c) of Act No. 68 of 1990.]

(dA) If any person fails to comply with a direction issued to him under subparagraph (ii) or (iii) (aa) of paragraph (d), the Director-General may cause such adjustments to be effected to the water work, alteration or enlargement in question or cause such water work, alteration or enlargement to be removed or rendered inoperable, as the case may be, and recover the cost thereof from that person.

[Para. (dA) inserted by s. 8 (d) of Act No. 68 of 1990.]

(e) If a permission for the use of a quantity of public water on any particular piece of land is withdrawn under subsection (2B) (e), (2I) (e) (ii) or (3) (c), any authorization granted under paragraph (a) of this subsection for the use of a water work for the abstraction, impoundment or storage of that quantity of public water shall lapse as from the date on which the permission is withdrawn.

[Para. (e) substituted by s. 8 (e) of Act No. 68 of 1990.]

(f) An authorization under paragraph (a) for the use of a water work employed in the exercise of a provisional right conferred or permission granted in respect of any particular piece of land by or under subsection (2A) or (2B), shall not be affected by the fact that the provisional right or permission lapsed upon publication of a notice under subsection (2F) if an allocation under subsection (2E) is contained in that notice in respect of that piece of land.

[Sub-s. (2H) inserted by s. 20 (1) (b) of Act No. 96 of 1984.]

**continued on page 1273**



(2I) (a) If the Minister is convinced that sufficient public water is available in a Government water control area due to the occurrence of floods or seepage, the construction of a Government water work, the fact that rights to or permissions or allocations for the use of public water conferred by or granted or made under this section are not fully exercised, or any other reason, he may—

- (i) whether before or after the publication of a notice referred to in subsection (2F) (a), grant, on such conditions as he may determine, permission to any person to abstract, impound or store in that Government water control area a quantity of public water and use it on a piece of land in that Government water control area for a purpose specified in the permission, or to use it on a piece of land outside that Government water control area for urban or industrial purposes; or
- (ii) after publication of a notice referred to in subsection (2F) (a) in respect of that Government water control area, by notice in the *Gazette* relating to any category of pieces of land or to all pieces of land in that Government water control area, subject to the conditions, and in accordance with a basis, determined by him, determine the area in hectares of the portions of that land which may by virtue of an allocation made by him be irrigated with public water, in addition to any area which by virtue of an allocation referred to in the notice concerned is or may be irrigated in terms of subsection (2F) (a).

(b) The Minister may in addition to any other conditions determined by him under paragraph (a) (ii), impose a condition requiring the owner of each piece of land which may in pursuance of an allocation made under that paragraph be additionally irrigated, to pay to the State an amount of money in respect of each hectare of land which may be so additionally irrigated.

(c) When the Minister has made an allocation under paragraph (a) (ii) he shall amend the notice referred to in subsection (2F) (a) by adding thereto a list of all the pieces of land in respect of which the allocation has been made, showing opposite the description of each piece of land—

- (i) the area in hectares which may be irrigated by virtue of the allocation; and
- (ii) the quantity of public water, or, if an allocation was made in respect of both the normal flow and the surplus water of a public stream, the quantity of the normal flow and the quantity of the surplus water which, having regard to a determination made under subsection (2E) (b), may under the allocation be used annually for the irrigation of the said land.

(d) An allocation in terms of paragraph (a) (ii) shall commence on the date on which the amendment of the notice concerned in terms of subsection (2F) (a) is published in the *Gazette*.

(e) The Minister may at any time—

- (i) render the continued validity of a permission under paragraph (a) (i) subject to such conditions as the Minister may then determine whether by the imposition of further or new conditions or by the cancellation or amendment of conditions then existing;
- (ii) withdraw a permission granted under paragraph (a) (i), by written notice to the person controlling the piece of land in respect of which it was granted.

(f) A permission granted to any person under paragraph (a) (i) for the use of public water for industrial purposes shall not exempt such person from the provisions of section 12.

[Sub-s. (2I) inserted by s. 20 (1) (b) of Act No. 96 of 1984 and substituted by s. 23 (d) of Act No. 68 of 1987.]

(2)*bis* . . . . .

[Sub-s. (2)*bis* inserted by s. 11 (*d*) of Act No. 56 of 1961, amended by s. 3 (*b*) and (*c*) of Act No. 11 of 1966 and deleted by s. 20 (1) (*c*) of Act No. 96 of 1984.]

(3) If the Minister is of the opinion that public water which is abstracted, impounded or stored in pursuance of a provision of this section is not being used beneficially, he may—

- (a) in writing direct the person by whom the water is abstracted, impounded or stored, to terminate the non-beneficial use of such water;
- (b) in writing direct the said person to make at his own expense, within a period specified in the direction, such alteration to any water work used for the abstraction, impoundment or storage of the water or to take such other steps as may be specified in the direction which in the opinion of the Minister are necessary in order to prevent the non-beneficial use of the water;
- (c) suspend for a period specified in the direction the right under which that person abstracts, impounds, stores or uses the water, or if that right is a permission granted under subsection (2B) or (2I), withdraw such permission.

[Sub-s. (3) substituted by s. 20 (1) (*d*) of Act No. 96 of 1984.]

(4) (*a*) The Minister may after notice in writing to the owner of any privately owned water work situated within a Government water control area, or within the area defined as “the limits of the works” in section 1 of the Vaal River Development Scheme Act, 1934 (Act No. 38 of 1934), construct such additional works or make such adjustments or repairs to the said water work, or in writing direct any such owner to construct, at his own expense and within a period stipulated by the Minister, such additional water works or make such adjustments or repairs as may, in the opinion of the Minister, be necessary for the proper measurement and regulation of any public water abstracted or conveyed by or flowing over such water works.

[Para. (*a*) substituted by s. 1 of Act No. 27 of 1976.]

(*b*) The Minister may recover from any person who in his opinion derives or is likely to derive any benefit from any additional works constructed or any adjustments or repairs executed by him under paragraph (*a*), such portion of the cost of such works, adjustments or repairs as he may consider equitable.

(5) If any person fails to comply with any direction under sub-section (3) or (4) within the time stipulated in that direction or within such further period as the Minister may allow, the Minister may cause the adjustments or repairs specified in that direction to be made or, as the case may be, the additional water works so specified to be constructed by the department and recover the cost thereof from the person concerned.

(6) (*a*) Subject to the other provisions of this subsection and the provisions of subsection (6A), any provisional right, permission, authorization or allocation conferred by or granted or made under a provision of this section, shall attach to the piece of land in respect of which it is conferred, granted or made.

[Para. (*a*) substituted by s. 20 (1) (*e*) of Act No. 96 of 1984.]

(*b*) Notwithstanding the provisions of paragraph (*a*), the Minister may, subject to such conditions as he may deem fit—

- (i) in respect of a piece of land situated in a Government water control area in respect of which the owner concerned is entitled to the abstraction, impoundment, storage or use of a fixed amount of public water by virtue of a provisional right, permission or allocation conferred by or granted or made under a provision of this section and which after the date on which the area concerned was declared a Government water control area was or is being or is

to be subdivided, authorize the said owner to determine at his discretion, or, if a portion of the said piece of land created in pursuance of any such subdivision has been transferred, by agreement with the owner of that portion, that part of the said amount of public water which may in respect of each portion of that piece of land which was thus created, be abstracted, impounded, stored or used after such subdivision;

- (ii) on the application of the owner of any piece of land situated in a Government water control area in respect of which a provisional right, permission or allocation was conferred by or granted or made under a provision of this section, issue an authorization for that provisional right, permission or allocation wholly or partially to be transferred to any other piece of land in that Government control area for a particular period or permanently.

[Para. (b) substituted by s. 20 (1) (f) of Act No. 96 of 1984.]

(bA) (i) If a piece of land in respect of which the owner is entitled to the abstraction, impoundment, storage or use of an amount of public water by virtue of a provisional right, permission or allocation conferred by or granted or made under a provision of this section, is subdivided and the ownership in any portion is transferred to any person, the Minister may in writing direct the owners of the respective portions to determine by mutual agreement, to be entered into within a period determined by him, that part of the said amount of water which may in respect of each such portion be abstracted, impounded, stored or used.

(ii) If the said owners fail or are unable to reach such an agreement within the period so determined, the Minister may—

(aa) in writing direct those owners to submit, within a further period determined by him, the matter on which they failed or were unable to reach an agreement, for settlement by arbitration or to a competent court; or

(bb) make an application in connection with such matter to a water court.

(iii) In determining that part of the said amount of public water which may in respect of each such portion be abstracted, impounded, stored or used, the arbitrator, court or water court concerned, as the case may be, shall take into consideration—

(aa) the intention of the owner who has subdivided the piece of land referred to in subparagraph (i) and the intention of any person to whom he has transferred the ownership in any such portion, relating to that part of the said amount of public water which may in respect of any such portion be abstracted, impounded, stored or used;

(bb) the relative areas of such portions which were under irrigation immediately before the subdivision of the said piece of land, or which may be irrigated efficiently and economically;

(cc) such other circumstances as he or it may consider necessary in order to arrive at a just decision in the matter.

(iv) Upon the failure by the owners of the portions of a piece of land referred to in subparagraph (i) to comply with a direction issued by the Minister under subparagraph (ii) (aa) within the period determined by the Minister, any provisional right, permission or allocation conferred by or granted or made in respect of the said piece of land under a provision of this section shall, unless the Minister determines otherwise, be suspended until such direction is complied with or until the Minister makes an application to the water court concerned under subparagraph (ii) (bb).

[Para. (bA) inserted by s. 20 (1) (g) of Act No. 96 of 1984 and substituted by s. 8 (f) of Act No. 68 of 1990.]

(c) The Minister may in his discretion or on application by any person controlling a piece of land, or any portion of a piece of land, in respect of which a permission or an allocation was granted or made under a provision of this section, amend any permission

or allocation so granted or made in order to bring the permission or allocation or a provision or condition thereof into accordance with any agreement, arbitration award, order of court or authorization, as the case may be, contemplated in paragraph (b) or (bA) of this subsection, or grant such further permission or make such further allocation so as to give effect to any such agreement, award, order or authorization.

[Para. (c) substituted by s. 20 (1) (h) of Act No. 96 of 1984.]

(d) The conditions subject to which the Minister may issue an authorization referred to in paragraph (b) (ii), may in respect of two or more pieces of land of the same owner, include a condition in respect of the separate alienation of any of the relevant pieces of land, and the Minister may in writing order the registrar of deeds of the deeds registry in which the title deeds of that land are registered, to cause a note of such condition to be made free of charge in his registers and an endorsement on the office copies of the respective title deeds.

[Para. (d) substituted by s. 20 (1) (i) of Act No. 96 of 1984.]

(e) Whenever the original title deeds of the properties are at any time lodged in his office for any purpose, the registrar shall make the endorsement referred to in paragraph (d) also thereon.

[Sub-s. (6) substituted by s. 9 (1) (b) of Act No. 108 of 1977.]

(6A) The area of the land irrigated by any person by virtue of a provisional right, permission or allocation conferred by or granted or made under a provision of this section shall not be larger than the area in respect of which the right was conferred or the permission granted or the allocation made, unless such person convinces the Director-General that the water used or intended to be used by him during a period determined by the Director-General on a larger area of the land is not or will not be more than the quantity of water to which he is entitled in terms of such right, permission or allocation.

[Sub-s. (6A) inserted by s. 20 (1) (j) of Act No. 96 of 1984.]

(7) Any person who—

- (a) contravenes or fails to comply with a provision of subsection (2), (2H) (c) or (6A);
- (b) fails to comply with a direction under subsection (2A) (b), (2H) (d), (3), (4) or (6) (bA) (ii) or a request under subsection (2C) (b); or  
[Para. (b) substituted by s. 23 (e) of Act No. 68 of 1987.]
- (c) contravenes or fails to comply with a condition or provision of any permission, allocation or authorization under this section,

shall be guilty of an offence and on conviction be liable to the penalties mentioned in section 170 (1).

[Sub-s. (7) substituted by s. 6 of Act No. 79 of 1967 and by s. 20 (1) (k) of Act No. 96 of 1984.]

(8) . . . . .

[Sub-s. (8) deleted by s. 20 (1) (l) of Act No. 96 of 1984.]

**62A. Control over construction of water works for utilization of private water.—**

(1) (a) Notwithstanding anything to the contrary contained in any law, no person shall on land situated in a Government drainage control area, construct, alter, enlarge or use a water work for the accumulation, abstraction, impoundment, storage or use of private water, including water referred to in section 6 (2), except on the authority of an authorization from the Minister and in accordance with the conditions specified in the authorization.

(b) The conditions subject to which the Minister may issue an authorization referred to in paragraph (a), may—

- (i) in respect of two or more pieces of land of the same owner, include a condition relating to the separate alienation of any of those pieces of land;
- (ii) in respect of the land of two or more owners which in terms of an agreement will be entitled to water from the water work concerned, include a condition

- (b) the quantity of water which may be supplied annually in respect of each morgen of land as so determined,

and may, if he deem fit, at the same time or at any time thereafter determine the portion of any such piece of land or of the land belonging to any such owner which may be so irrigated.

[Sub-s. (2) amended by s. 6 (a) of Act No. 77 of 1969.]

(2A) For the purposes of this section any water flowing or found in or derived from a public stream or natural channel in any area referred to in paragraph (a) or (b) of subsection (1) shall be deemed to be water released from a Government water work.

[Sub-a. (2A) inserted by s. 6 (b) of Act No. 77 of 1969 and substituted by s. 8 (a) of Act No. 92 of 1980.]

(2B) (a) If at any time after a determination in respect of an area has been made under this section, the Minister is of opinion that the capacity of a Government water work from which land in that area is irrigated and the amount of water which is normally present therein justify the scheduling of further land for irrigation, he may, on such conditions as may be determined by him, determine in respect of each piece of land or land belonging to each owner in respect of which water may be supplied from the said water work under the said determination, the extent or maximum extent of land which may be additionally irrigated, and may, if he deems fit, at the same time or at any time thereafter determine the portion of any such piece of land or of the land belonging to such owner which may be so additionally irrigated.

[Para. (a) substituted by s. 9 (a) of Act No. 68 of 1990.]

(b) No water shall be supplied from a Government water work in pursuance of a determination made under paragraph (a) for the irrigation of any particular land, unless the conditions of that determination have in respect of that land been complied with.

(c) The Minister may in addition to any other conditions which he may determine under paragraph (a), impose a condition requiring the owner of each piece of land which may in pursuance of a determination made under that paragraph be additionally irrigated, to pay to the State an amount of money in respect of each hectare of land which may be so additionally irrigated.

[Sub-s. (2B) inserted by s. 8 (a) of Act No. 92 of 1980.]

(3) The Minister may from time to time vary any determination made under this section or make fresh determinations whenever alterations in the area to which any such determination relates or in the ownership of the land in any such area have taken place, or whenever in his opinion the available water is not sufficient for the proper irrigation of all the land in respect of which water is in terms of any such determination required to be supplied, or temporarily reduce the extent of the land (included in any piece of land or belonging to any owner) which may be irrigated whenever there is a temporary shortage of water, or vary any determination made in respect of any land scheduled under subparagraph (v) of paragraph (a) of sub-section (7) which in his opinion has become brak or is in danger of becoming brak or is otherwise unfit to be irrigated, so that the use of water thereon for irrigation purposes may result in the unbeneficial use or waste of such water or may cause other land to become brak or otherwise unfit to be irrigated.

(4) Any determination made under this section or any variation of such a determination shall be made known by notice in the *Gazette* and in a newspaper circulating in the area to which such determination relates, and shall be in force as from the date of publication of such notice.

(5) Whenever a water shortage is or is expected to be experienced in any area in which a determination is in force, the Minister may, instead of reducing the areas which may be irrigated in terms of such determination, temporarily suspend that determination and allocate any water available for supply and distribution in that area in such manner as he deems fit.

relating to the registration against the title deeds of the land concerned, of a notarial deed of agreement pertaining to the share of each of the owners concerned to water from the water work concerned, and the Minister may in writing direct the registrar of deeds of the deeds office in which the title deeds of that land are registered, to cause a note of such condition or notarial deed to be made free of charge, in his registers and on the office copies of the respective title deeds.

(c) Whenever the original title deeds of the land concerned are at any time lodged in his office for any purpose the registrar concerned shall cause the endorsement referred to in paragraph (b) to be effected thereon.

(2) An authorization under subsection (1) (a) may relate to any particular piece of land or any category of pieces of land or to all pieces of land in a Government drainage control area: Provided that an authorization relating to a category of pieces of land or to all pieces of land in a Government drainage control area, shall be granted by notice in the *Gazette*.

(3) The Director-General may in writing direct any person who has constructed, altered or enlarged a water work contrary to any provision of subsection (1), or who is using a water work constructed, altered or enlarged contrary to any such provision—

- (a) within the period specified in the direction, to apply to the Minister for an authorization under subsection (1) as if that water work has not been constructed, altered or enlarged;
- (b) within the period specified in the direction, to remove the water work concerned or to render it inoperable or to have it removed or rendered inoperable by officers of the department in a manner specified in the direction; or
- (c) to terminate the use of such water work from a date specified in the direction.

(4) Any person who contravenes any provision of subsection (1) or fails to comply with a condition of an authorization thereunder or a direction under subsection (3), shall be guilty of an offence.

[S. 62A inserted by s. 24 of Act No. 68 of 1987.]

**63. Determination of areas to be irrigated from Government water works.—**(1) The provisions of this section shall—

- (a) as from the commencement of this Act, apply in respect of every area in respect of which there is in force at such commencement a determination made under section *seven bis* of the Irrigation and Conservation of Waters Act, 1912 (Act No. 8 of 1912); and
- (b) as from a date to be fixed by the Minister by notice in the *Gazette*, apply in respect of any area specified in that notice which has under section *fifty-nine* been declared to be a Government water control area,

and for the purpose of such application in respect of an area referred to in paragraph (a), any determination purporting to have been made in respect of any area under the said section *seven bis* shall be deemed to be a determination duly made in accordance with the provisions of this section.

(2) Subject to the provisions of subsection (1), the Minister shall, in respect of every area specified in a notice issued under paragraph (b) of subsection (1), determine in such manner and subject to such conditions as he may deem fit, but with due regard to any existing right beneficially exercised at the date referred to in the said paragraph, and either generally or in any particular case—

- (a) the extent or the maximum extent of the land comprised in every piece of land included in that area which may be irrigated by means of water from a Government water work in that area, or the extent or the maximum extent of the land belonging to any owner of land in that area which may be so irrigated; and

continued on page 1281

(6) The Minister may, upon the application of an owner of any piece of land scheduled under sub-paragraph (v) of paragraph (a) of sub-section (7), and on such terms and conditions as the Minister may stipulate, permit the use of the water available in respect of that land upon any other piece of land in the area affected.

(6A) (a) If—

- (i) a piece of land in respect of which water may be supplied from a Government water work in pursuance of a determination made by the Minister under this section was at any time subdivided before the Minister made the determination in respect of that piece of land and the ownership in any portion was or is transferred to any person; or
- (ii) a piece of land scheduled under section 64 is subdivided and the ownership in any portion is transferred to any person,

the Minister may in writing direct the owners of the respective portions—

- (aa) to determine, in the case of a piece of land referred to in subparagraph (i), by mutual agreement, to be entered into within a period determined by the Minister, that part of the area which is in respect of each such portion to be scheduled; or
- (bb) to divide, in the case of a piece of land referred to in subparagraph (ii), by mutual agreement, to be entered into within a period determined by the Minister, the area for which that piece of land has been scheduled among those portions.

[Para. (a) substituted by s. 1 (a) of Act No. 16 of 1991.]

(b) If the said owners fail or are unable to reach such an agreement within the period so determined, the Minister may

- (i) in writing direct those owners to submit, within a further period determined by him, the matter on which they failed or were unable to reach an agreement, for settlement by arbitration or to a competent court; or
- (ii) make an application in connection with such matter to a water court.

[Para. (b) substituted by s. 9 (b) of Act No. 68 of 1990.]

continued on page 1283

(c) In—

- (i) determining that part of the area which is in respect of each such portion to be scheduled, the arbitrator, court or water court concerned, as the case may be, shall take into consideration—
  - (aa) the intention of the owner who has subdivided the piece of land referred to in paragraph (a) (i) and the intention of any person to whom he has transferred the ownership in any such portion, relating to that part of the amount of public water which may in respect of any such portion be abstracted, impounded, stored or used by virtue of any provisional right, permission or allocation under section 62;
  - (bb) the relative areas of such portions which were under irrigation immediately before the subdivision of the said piece of land, or which may be irrigated efficiently and economically;
  - (cc) such other circumstances as he or it may consider necessary in order to arrive at a just decision in the matter; or
- (ii) dividing the area for which the said piece of land has been scheduled, the arbitrator, court or water court concerned, as the case may be, shall take into consideration—
  - (aa) the intention of the owner who has subdivided the said piece of land and the intention of any person to whom he has transferred the ownership in any portion thereof, relating to the division of the area for which the said piece of land has been scheduled;
  - (bb) the relative areas of the portions in question which were under irrigation immediately before the subdivision of the said piece of land, or which may be irrigated efficiently and economically;
  - (cc) such other circumstances as he or it may consider necessary in order to arrive at a just decision in the matter.

[Para. (c) substituted by s. 9 (c) of Act No. 68 of 1990 and by s. 1 (b) of Act No. 16 of 1991.]

(d) Upon the failure by the owners of the portions of a piece of land referred to in paragraph (a) to comply with a direction issued by the Minister under paragraph (b) (i) within the period determined by the Minister, the scheduling of that piece of land shall, unless the Minister otherwise determines, be suspended until such direction is complied with or until the Minister makes an application to the water court concerned under paragraph (b) (ii).

[Sub-s. (6A) inserted by s. 21 (a) of Act No. 96 of 1984. Para (d) substituted by s. 9 (d) of Act No. 68 of 1990.]

(7) (a) Whenever the Minister has made a determination under this section, he shall cause to be prepared in respect of the area in question a schedule setting forth—

- (i) a description of every piece of land in that area in respect of which water is to be supplied;
- (ii) the extent of every such piece of land;
- (iii) particulars of the title deed according to which that piece of land was last transferred;
- (iv) the name of the owner of that piece of land;
- (v) the extent of the land forming part of that piece of land, in respect of which water may be supplied from the said water work or, as the case may be, the extent of the land of which any person is the owner, in respect of which water may be so supplied; and
- (vi) the extent of any land in that area intended for land settlement purposes but not yet allotted as holdings.

[Para. (a) amended by s. 8 (b) of Act No. 92 of 1980.]



(b) Unless the Minister otherwise directs, a schedule prepared in accordance with this sub-section shall be revised annually and any alterations made from time to time in any of the items set forth in paragraph (a) shall, subject to the provisions of section *sixty-four*, be reflected in the said schedule at such revision.

(c) Any schedule purporting to have been prepared under section *seven bis* of the Irrigation and Conservation of Waters Act, 1912, prior to the commencement of this Act, shall be deemed to be a schedule duly prepared in accordance with the provisions of this section.

(7A) (a) The Minister may notwithstanding anything to the contrary contained in this Act, on the application of the owner of land, amend an entry in a schedule referred to in subsection (7) (a) in regard to the land of such owner, so as to reduce or to increase the extent of the land in respect of which water may be supplied, or to terminate the scheduling of the land as land in respect of which water may be supplied.

(b) An amendment of any such entry in terms of paragraph (a) shall not prevent a scheduling board in the exercise of its powers under section 64 from increasing the extent of land which has been reduced, or from reducing the extent of land which has been increased, or from reinstating the scheduling of land which has been terminated.

[Sub-s. (7A) inserted by s. 7 of Act No. 51 of 1979.]

(8) . . . . .

[Sub-a. (8) amended by s. 1 of Act No. 63 of 1963, by s. 6 (a) of Act No. 36 of 1971, by s. 12 of Act No. 42 of 1975 and by s. 10 of Act No. 108 of 1977 and deleted by s. 12 of Act No. 73 of 1978.]

(9) (a) If land which is or at any time has been held under a deed of grant or transfer issued in terms of any law relating to land settlement and in respect of which water may be supplied in terms of subsection (7) (a) (v) from any Government water work, is alienated or leased for an indefinite period or for a period exceeding ten years or for periods (whether uninterrupted or not) exceeding in the aggregate a period of ten years, to a person who is—

- (i) an owner;
- (ii) a lessee under any law relating to land settlement; or
- (iii) a lessee for a period or periods as aforesaid,

of other land in respect of which water may be so supplied from the same or any other Government water work, the land so alienated or leased shall for the period during which it is held by or is so leased to that person cease to form part of the area in respect of which water may be so supplied and be excluded from the schedule prepared under subsection (7) in respect of that area, unless the Minister after consultation with the Agricultural Credit Board otherwise directs, and if a person who is not an owner or such a lessee as is referred to in subparagraph (ii) or (iii), of land in respect of which water may be supplied from Government water works, becomes an owner or such a lessee of more than one such piece of land in respect of which water may be so supplied from any such works, every such piece of land of which he thereafter remains the owner or such a lessee shall, so long as he is the owner or such a lessee of more than one such piece, cease to form part of any such area and be excluded from any such schedule, unless the Minister, after consultation with the said board, otherwise directs.

[Para. (a) substituted by s. 6 (c) of Act No. 36 of 1971 and amended by s. 12 of Act No. 42 of 1975.]

(b) The Minister may by notice in the *Gazette* declare the provisions of paragraph (a) to be applicable also where other land than such land as is referred to in that paragraph is alienated or leased as aforesaid, either generally or in any case where the area of any land so alienated or leased to an owner or lessee mentioned in that paragraph, and in respect of which water may be supplied from any Government water work, together with the area of any other land in respect of which water may be supplied to such owner or lessee from the same or any other Government water work, exceeds an area determined by the Minister and specified in the notice.

(c) A notice under paragraph (b) may apply in respect of any or all Government water control areas.

(10) If—

- (a) a person who is entitled to use for agricultural purposes water from any Government water work, acquires either permanently or for an indefinite period or for a period exceeding ten years or for periods (whether uninterrupted or not) exceeding in the aggregate a period of ten years, the rights of any other person to the use of water from the same or any other Government water work; or
- (b) a person who is not so entitled so acquires the rights of two or more persons to the use of water from Government water works,

all the rights so acquired shall be suspended until such time as the Minister after consultation with the Agricultural Credit Board otherwise directs.

[Sub-s. (10) substituted by s. 6 (d) of Act No. 36 of 1971 and amended by s. 12 of Act No. 42 of 1975.]

(11) Any Crown land situated in an area referred to in paragraph (a) or (b) of subsection (1), which the Government proposes to use for the purposes of land settlement or land within the area of jurisdiction of a local authority, may be excluded from any determination applicable to such area: Provided that, as soon as any portion of such Crown land has under the laws relating to land settlement been allotted as a holding, the provisions of this section shall immediately apply in respect of such holding and a determination shall be made accordingly.

[Sub-s. (11) amended by s. 12 (a) of Act No. 56 of 1961.]

(11A) The Minister may by notice in the *Gazette* prohibit the construction, alteration or enlargement and use of any water work for the abstraction, diversion, impoundment or storage of water from or in a stream or channel referred to in subsection (2A), except under the authority of a permit issued by him and subject to such conditions as may be specified in such permit or subject to such limitations or conditions as may be specified in such notice.

[Sub-s. (11A) inserted by s. 6 (c) of Act No. 77 of 1969 and substituted by s. 25 (a) of Act No. 68 of 1987.]

(11B) The Minister may by notice in writing take over the control and maintenance of any privately owned water work used for the abstraction, diversion, impoundment, storage or use of water from or in a stream or channel referred to in subsection (2A), if in his opinion such control and maintenance are necessary for the supply of water in accordance with the provisions of this section.

[Sub-s. (11B) inserted by s. 6 (c) of Act No. 77 of 1969.]

(11C) The provisions of section 62 (4) and (5) shall *mutatis mutandis* apply in connection with a water work referred to in subsection (11B) of this section.

[Sub-s. (11C) inserted by s. 6 (c) of Act No. 77 of 1969.]

(11D) If any person—

- (a) has constructed, altered or enlarged a water work in contravention of the provisions of a notice under subsection (11A), or is using a water work which has been constructed, altered or enlarged in contravention of the said provisions, the Director-General may—
  - (i) condone the construction of that water work, or the alteration or enlargement thereof, and in writing direct him to submit within the period specified in the direction to a person so specified an application for the issue to him of a permit under the notice as if that water work has not been constructed or that alteration or enlargement has not been effected, as the case may be;
  - (ii) partially condone the construction of that water work, or the alteration or enlargement thereof, and in writing direct him to effect at his own

expense and within the period so specified in the direction the adjustments so specified to that water work, alteration or enlargement, as the case may be, in order to bring the abstraction, impoundment or storage capacity of the relevant water work into accordance with the quantity of water supplied by virtue of a determination under this section in respect of the piece of land in question; or

(iii) reject the construction or that water work, or the alteration or enlargement thereof, and in writing direct him, irrespective of whether criminal proceedings in terms of this section have been or may be instituted against him, to—

(aa) remove at his own expense and within the period specified in the direction that water work or that alteration or enlargement, as the case may be, or so to render it inoperable in the manner specified in the direction; or

(bb) terminate the use of that water work or that alteration or enlargement, as the case may be, from the date specified in the direction; or

(b) is using a water work for the abstraction or diversion of any water from a stream or channel referred to in subsection (2A), while any amount in rates or charges levied under section 66 in respect of the land in question is due and payable but has not been paid, or is so using a water work after the quantity of water which may annually be abstracted or diverted in respect of that land has been fully abstracted or diverted, the Director-General may in writing direct him, irrespective of whether criminal proceedings in terms of this Act have been or may be instituted against him, to—

(i) render at his own expense and within the period specified in the direction that water work inoperable in the manner specified in the direction; or

(ii) terminate the use of that water work from the date specified in the direction or to use it in the manner specified in the direction.

[Sub-s. (11D) inserted by s. 21 (b) of Act No. 96 of 1984 and substituted by s. 25 (b) of Act No. 68 of 1987 and by s. 9 (e) of Act No. 68 of 1990.]

(11E) If any person fails to comply with a direction issued to him under paragraph (a) (ii) or (iii) (aa) or (b) (i) of subsection (11D), the Director-General may cause such adjustments to be effected to the water work, alteration or enlargement in question or cause such water work, alteration or enlargement to be removed or rendered inoperable, as the case may be, and recover the cost thereof from that person.

[Sub-s. (11E) inserted by s. 9 (f) of Act No. 68 of 1990.]

(12) The provisions of this section shall, notwithstanding anything contained in the Hartebeestpoort Irrigation Scheme (Crocodile River) Act, 1914 (Act No. 32 of 1914), the Marico-Bosveld Irrigation Scheme Act, 1932 (Act No. 10 of 1932), the Vaal River Development Scheme Act, 1934 (Act No. 38 of 1934), the Oliphants River Irrigation Works Act, 1943 (Act No. 10 of 1943), the Buffelspoort Irrigation Scheme Act, 1948 (Act No. 31 of 1948), or the Bospoort Irrigation Scheme Act, 1949 (Act No. 24 of 1949), apply in respect of the Government water control areas served by the Hartebeestpoort, Marico-Bosveld, Vaal River, Oliphants River, Buffelspoort and Bospoort Government water works and the provisions of sub-section (7) of section six of the Buffelspoort Irrigation Scheme Act, 1948, and sub-section (4) of section five of the Bospoort Irrigation Scheme Act, 1949, shall be deemed to have lapsed on the date of commencement of this Act.

[Sub-s. (12) amended by s. 12 (b) of Act No. 56 of 1961.]

(13) Any person who—

(a) abstracts or diverts from any stream or channel referred to in subsection (2A) any water to which he is not entitled by virtue of the provisions of this section;

**65. Conditions imposed on transfer of a water right may be noted on title deeds of land.**—Whenever, as a result of a permission granted by the Minister under sub-section (6) of section *sixty-three*, an alteration is made to a schedule in terms of paragraph (b) of sub-section (7) of that section by a scheduling board referred to in sub-section (1) of section *sixty-four*, the registrar of deeds in charge of the deeds registry in which the titles to the land affected by such permission are registered shall, if requested thereto by the said scheduling board and notwithstanding the provisions of any other law, register a unilateral deed against the title deeds of the land in question indicating the alteration and incorporating such conditions as the said scheduling board or the Minister may have imposed in regard to the said permission or alteration and make appropriate entries in his registers.

[S. 65 amended by s. 13 of Act No. 56 of 1961.]

continued on page 1285

**66. Levying of rates and charges.**—(1) (a) Notwithstanding anything to the contrary contained in this Act or any other law or any existing right or any other right to any water or to the use thereof, and notwithstanding any restriction imposed by or under any such law or right in respect of the powers of the Minister mentioned in this paragraph, the Minister may from time to time assess such rates as he may deem fit on land which may be irrigated with water abstracted, supplied or distributed from or by means of a government water work or a water work referred to in section 56 (3) (b), or from a public stream or natural channel which is in a Government water control area or into which water from a Government water work or such a work is released, or on land which is supplied with water from or by means of a Government water work for use for any purpose other than irrigation or which can be so supplied for such purpose by mere connection to a Government water work, or assess such charges as he may deem fit for water so abstracted, supplied or distributed for any purpose, or assess both such rates and such charges, and may recover the rates or charges so assessed, together with any interest which may be payable thereon in terms of subsection (2), from the owners of the said land or, as the case may be, from the persons by whom such water was abstracted or to whom it was supplied or distributed or who are entitled to use it.

(b) Rates or charges assessed in terms of paragraph (a) in respect of water used for agricultural purposes and interest which may be payable thereon in terms of subsection (2), shall be a charge upon the land in respect of which they have been assessed, and any person who becomes the owner of any such land shall be liable for any such rates or charges which remain unpaid at the time when he becomes the owner, and for any interest which may then be payable thereon or which may thereafter become payable thereon.

(c) Notwithstanding the provisions of section 31 (1) of the Exchequer and Audit Act, 1975 (Act No. 66 of 1975), the Minister may with the concurrence of the Minister of Finance exempt any person or any person belonging to a category of persons determined by the Minister from the obligation to pay rates or charges assessed under paragraph (a).

[Sub-s. (1) amended by s. 7 (a) of Act No. 36 of 1971, by s. 10 of Act No. 45 of 1972, by s. 13 of Act No. 42 of 1975 and by s. 8 (a) of Act No. 51 of 1979 and substituted by s. 9 of Act No. 92 of 1980. Para. (c) inserted by s. 23 (1) of Act No. 96 of 1984.]

(2) Interest at a rate equal to the rate determined in terms of section 179A, and which is applicable on the date determined for the payment of any rates or charges assessed in terms of sub-section (1), shall be payable from the said date in respect of any unpaid rates or charges so assessed, and the Minister may, in addition to any action he may take in terms of that subsection for the recovery of such rates or charges which have not been paid on due date, stop the supply of water from the Government water work or other water work in question, as the case may be, to the land in respect of which such water is supplied or, as the case may be, to the person who is being supplied with water, until the said rates or charges, together with the said interest thereon, have been paid, and the Minister shall not be obliged, after the amount due has been paid, to supply any water the supply of which was so stopped or to pay compensation for any loss sustained by any person consequent upon the stopping of the said supply of water.

[Sub-s. (2) substituted by s. 2 of Act No. 27 of 1976, by s. 8 (b) of Act No. 51 of 1979 and by s. 10 (a) of Act No. 92 of 1993.]

(3) . . . . .

[Sub-s. (3) deleted by s. 7 (b) of Act No. 36 of 1971.]

(4) No suspension under sub-section (2) of the supply of water to the land or person referred to therein shall relieve any person from any liability in respect of the period of such suspension for any rates or charges assessed by the Minister under this section.

(5) (a) The Minister may notwithstanding the provisions of subsection (1) recover rates or charges assessed under that subsection on land situated in an irrigation district or for water abstracted, supplied or distributed for use on such land, from the irrigation board of that district.

(b) The payment of such rates or charges, including interest thereon, by an irrigation board shall for the purposes of section 90 be deemed to be expenditure incurred by such board.

[Sub-s. (5) added by s. 8 (c) of Act No. 51 of 1979.]

(6) The provisions of this section shall apply *mutatis mutandis* in respect of land which may be irrigated with water abstracted on the authority of a permit under section 56A (3), and in respect of water so abstracted for use for any purpose, as if such water was water abstracted, supplied or distributed from or by means of a Government water work.

[Sub-s. (6) added by s. 10 (b) of Act No. 92 of 1993.]

**67. Minister may generate and supply electricity.**—(1) Notwithstanding the provisions of the Electricity Act, 1922 (Act no. 42 of 1922), but subject to the provisions of the succeeding sub-sections of this section, the Minister may, in connection with any Government water work, establish any undertaking for the generation of electricity and supply electricity so generated to any person at such rates or charges as he may from time to time determine: Provided that such rates and charges shall, as a general principle and as far as is practicable, be determined in such a manner as to enable the Minister to recover, from time to time, an amount not less than the actual cost of the generation and supply of such electricity.

(2) Whenever the Minister desires to establish an undertaking for the generation and supply of electricity by means of a Government water work or to enlarge an existing undertaking for such generation and supply, he shall consult the Electricity Supply Commission established under section *one* of the Electricity Act aforesaid, and no such undertaking shall be established by the Minister if that Commission notifies him that it desires to undertake the generation and supply of electricity by means of the Government water work in question.

(3) If the said Commission notifies the Minister in terms of sub-section (2), it shall, in collaboration with the Minister, undertake the construction of the necessary plant, or the Minister may undertake such construction on behalf of the said Commission, and the Commission shall thereafter work the undertaking in accordance with the provisions of the said Electricity Act.

(4) (a) The said Commission may, at any time after the Minister has under sub-section (1) established any undertaking for the generation and supply of electricity or has constructed or commenced to construct any works for the purpose, and after six months written notice to the Minister, take over the construction of such works or any additional works or the working of the undertaking, subject to the payment by the said Commission to the Government of the value of the works, machinery, materials and plant belonging to or used by the Government in respect of the said undertaking.

(b) For the purpose of such payment and the taking over of the said undertaking, the provisions of paragraphs (b) and (c) of sub-section (1) and sub-section (2) of section *thirty-one* and of section *thirty-four* of the Electricity Act aforesaid shall *mutatis mutandis* apply.

(5) Any plant for the generation of electricity constructed or erected by the Minister shall be in accordance with the regulations made under the aforesaid Electricity Act and shall comply with any requirements of the Electricity Control Board, constituted in terms of section *eighteen* of the said Act, which may be made for the purpose of facilitating co-ordination with other existing or with future undertakings for the supply of electricity, and for such purpose the Minister shall, before constructing or erecting any such plant as aforesaid, consult the said Board.

(6) The Minister shall not supply electricity generated by any one plant exceeding five million units per annum except on the authority of a licence issued by the said Board.

(7) The Minister shall not supply electricity to any person within the area of jurisdiction of any municipal council, borough council, town council, village council, village management board, town board, local board or health board, or construct transmission or distribution lines for such supply through or over any portion of such area, except with the consent of the body concerned: Provided that if such consent is withheld, the matter shall be decided by the Electricity Control Board after a public hearing of which not less than fourteen days' notice shall be given to the parties by the said Board.

**68. Advisory committees.**—(1) The Minister may in respect of any Government water work or any area which has under section 28 or 59 been declared to be a subterranean Government water control area, a Government water control area, a catchment control area or a Government drainage control area, or any catchment area or areas, appoint an advisory committee consisting of such number of members as the Minister may in each case from time to time determine, to advise him on matters connected with the preservation, conservation, utilization, control, supply or distribution of water resources and water, or any other matter which he may from time to time refer to such committee.

[Sub-s. (1) substituted by s. 2 of Act No. 71 of 1965 and by s. 26 (a) of Act No. 68 of 1987.]

(2) (a) One-half of the members of an advisory committee shall be selected from amongst persons nominated in such manner as may be prescribed by regulation.

(b) The officer of the department in charge of any Government water work shall be an *ex officio* member of the advisory committee constituted in respect of that water work.

(c) The chairman of an advisory committee shall be elected from their number by the members of such committee for a period not exceeding three years.

(d) The Minister may at any time by notice in writing to a member of an advisory committee and to that advisory committee, terminate the period of office of that member if he is of the opinion that good reasons exist therefor.

[Sub-s. (2) amended by s. 14 (a) of Act No. 42 of 1975 and substituted by s. 26 (b) of Act No. 68 of 1987.]

(3) The members of an advisory committee shall hold office for such period not exceeding three years as may be determined by the Minister upon their election or appointment.

(4) A casual vacancy on an advisory committee shall be filled by the appointment of another member for the unexpired portion of the period for which the member whose office has become vacant was appointed.

(5) The members of an advisory committee who are not in full-time service of the State may be paid such allowances by the department as may be determined by the Minister in consultation with the Minister of Finance.

[Sub-s. (5) substituted by s. 14 (b) of Act No. 42 of 1975.]

(6) Any officer of the department nominated thereto by the director shall be entitled to attend but not to vote at any meeting of an advisory committee and to assist such committee with his advice upon any matter relating to any question under discussion or consideration by such committee.

**69. Delegation of control or alienation of Government water works.**—(1) The Minister may—

- (a) at any time and for such period and on such terms and conditions as he may deem fit, delegate all or any of the powers of control, operation, administration or maintenance of any Government water work or any electricity undertaking referred to in section 67, or of control, supply and distribution of water from such Government water work or of electricity by means of such undertaking, assigned to him under this Act or any other law, to any person, including any local authority, irrigation board or other statutory body

or any department of State, including the South African Transport Services, any provincial administration or the government of a self-governing territory as defined in section 38 of the National States Constitution Act, 1971 (Act No. 21 of 1971), in terms of an agreement between the Government of the Republic and the government of that territory;

- (b) at any time after approval thereof by resolution of Parliament and on such conditions as may be set forth in such resolution, sell or otherwise dispose of any Government water work to any person, including any local authority or any such board, body, department, administration or government.

[Sub-s. (1) amended by s. 24 (a) of Act No. 96 of 1984 and substituted by s. 2 of Act No. 37 of 1988.]

(1A) For the purposes of any delegation of all or any of the powers of control, operation, administration or maintenance of a Government water work to an irrigation board under paragraph (a) of subsection (1), the terms and conditions referred to in that paragraph may include terms and conditions relating to the rendering of financial assistance by the Minister to that irrigation board.

[Sub-s. (1A) inserted by s. 2 of Act No. 16 of 1991.]

**continued on page 1283**



(2) The provisions of this Act or any other law relating to Government water works shall, save as otherwise provided in any conditions set forth in any resolution referred to in paragraph (b) of subsection (1), continue to apply in relation to a Government water work which has been sold or disposed of under that paragraph, as if such sale or disposal had not taken place, and for that purpose any reference in any such provision to the Minister shall be construed as a reference to the person to whom or the local authority, board, body, department or administration to which such water work has been sold or disposed of.

[Sub-s. (2) substituted by s. 24 (b) of Act No. 96 of 1984.]

**70. Minister may make regulations in connection with Government water works.—** The Minister may in respect of any Government water work, Government water control area, subterranean Government water control area, catchment area, catchment control area or Government drainage control area make regulations relating to—

- (a) the manner of regulating the flow of water into, the abstraction or distribution of water from, and the use of water in or from any portion of such work or area;
- (b) the protection or preservation of the work or area or any part thereof;
- (c) the control of and access to the work or any area submerged or to be submerged as a result of the construction of the work, including the use of boats of whatever description in or upon any such submerged area and the levying and collection of any tariff or entrance fee determined by the Minister in consultation with the Minister of Finance;  
[Para. (c) substituted by s. 25 (a) of Act No. 96 of 1984.]
- (d) the issue of permissions and authorizations under section 62 and the recording and registration thereof;  
[Para. (d) substituted by s. 25 (b) of Act No. 96 of 1984.]
- (e) the method of assessing and recovering rates or charges under section *sixty-one, sixty-six or sixty-seven*;
- (f) the manner in which the persons referred to in paragraph (a) of sub-section (2) of section *sixty-eight* shall be nominated;
- (g) the calling and conduct of meetings of an advisory committee referred to in section *sixty-eight*, and the quorum for and procedure at such meetings;
- (h) .....  
[Para. (h) deleted by s. 15 (b) of Act No. 42 of 1975.]
- (i) the supply and distribution of electricity under section *sixty-seven*; and
- (j) generally any other matters which he considers it necessary or expedient to prescribe in order that the objects of this Chapter may be achieved.

[S. 70 amended by s. 15 (a) of Act No. 42 of 1975 and by s. 27 of Act No. 68 of 1987.]

## CHAPTER VI

### IRRIGATION BOARDS

**71. Petition for constitution of irrigation district.—**(1) Any three or more owners of land who together own not less than one-tenth of the land in any particular area irrigated or proposed to be irrigated by means of public water may, if they consider it desirable that—

- (a) a combined system of water works should be constructed for the abstraction or the impoundment and storage of any public water for the purpose of irrigating the said land; or  
[Para. (a) substituted by s. 26 (b) of Act No. 96 of 1984.]
- (b) any existing water works used for the irrigation of such land and the distribution of water should be specially controlled, or that such works should be extended or enlarged or otherwise improved; or
- (c) the use of the public water should be specially controlled; or  
[Para. (c) substituted by s. 26 (c) of Act No. 96 of 1984.]
- (d) there should be a combined system of drainage for such land,

transmit to the Minister a petition requesting that the area comprising such land or such larger area as may be specified in the petition, be declared an irrigation district, whether or not such area is already comprised within an existing irrigation district.

[Sub-s. (1) amended by s. 26 (a) of Act No. 96 of 1984.]

(2) Such petition shall state—

- (a) the boundaries and approximate extent of the area proposed to be included in the irrigation district;
- (b) the approximate extent of the land within such area which is irrigated and which it is proposed to irrigate;
- (c) the purposes in connection with which it is proposed to constitute the district; and
- (d) the nature and class of any water works which it is proposed to construct.

**72. Enquiry into subject matter of petition.**—(1) As soon as may be practicable after the receipt of a petition referred to in section 71, the Minister shall cause to be investigated the question whether the signatories of the petition are owners of at least one-tenth of the land which within the area to which the petition pertains is irrigated or proposed to be irrigated and such other matters in connection with the contents of the petition as the Minister may deem fit.

[Sub-s. (1) substituted by s. 27 of Act No. 96 of 1984.]

(2) (a) For the purpose of any such enquiry the Minister may, if he deem fit, cause arrangements to be made for the holding of a public meeting of persons interested in the subject of such petition, for the purpose of ascertaining the views of such persons.

(b) Any such meeting shall be presided over by an officer of the department and notice of the time, date and place thereof shall be published in the *Gazette* and a newspaper circulating in the area in question not less than three weeks before the date on which the meeting is held.

(3) (a) After completion of any such enquiry the Minister may in his discretion by notice in the *Gazette* declare the area specified in the petition in question or such other area as he may determine an irrigation district under a name mentioned in the notice if he is satisfied—

- (i) that not less than two-thirds of the owners of land situated within the area so specified or within such other area, as the case may be, who together own not less than two-thirds of the land irrigated and proposed to be irrigated within such area; and
- (ii) where an area served by a tributary stream is included in any such area, that not less than two-thirds of the owners of land so served, who together own not less than two-thirds of the land irrigated and proposed to be irrigated from such stream, in the area in question,

are in favour of the declaration of such irrigation district.

(b) The Minister may in a notice under paragraph (a) divide the area declared an irrigation district, into sub-districts and define the area of each such sub-district.

[Sub-s. (3) substituted by s. 11 of Act No. 97 of 1986.]

**73. Constitution of irrigation district otherwise than on petition of owners.**—The Minister may at any time of his own motion by notice in the *Gazette* declare any area which has under section 59 been declared to be a Government water control area or a catchment control area or any portion of any such area, or any other area (which may include any such Government water control area or catchment control area or any portion

of any such area) which is specified in the notice, to be an irrigation district under a name mentioned in the notice and in such a notice divide an area so declared to be an irrigation district into sub-districts and define the area of each such sub-district.

[S. 73 substituted by s. 12 of Act No. 97 of 1986.]

74. ....

[S. 74 repealed by s. 13 of Act No. 97 of 1986.]

**75. Effect of declaration of Government water control area or catchment control area to be an irrigation district.**—(1) An area which has been declared to be a Government water control area or a catchment control area under section 59 or which forms part of any such area, shall not cease to be or to form part of such area by reason of the fact that it has been declared to be an irrigation district under section 72 (3) or 73 or has been included in any such district.

[Sub-s. (1) substituted by s. 14 of Act No. 97 of 1986.]

(2) (a) The Minister may assign to the irrigation board established in respect of an irrigation district which comprises or includes an area declared to be a catchment control area as aforesaid, or any portion of such an area, any or all of the powers vested in him in relation to such catchment control area or such portion thereof by virtue of the provisions of section *sixty-one*: Provided that any expenditure incurred by the board in carrying out any work which it may deem necessary to carry out in connection with any of the purposes set out in sub-section (2) of section *fifty-nine* shall be met by the board.

(b) For the purpose of the exercise by an irrigation board of any powers assigned to it under paragraph (a), any reference in the relevant provisions of the said section *sixty-one* to the Minister or the secretary shall be construed as a reference to the said board.

**76. Reconstitution of irrigation districts.**—(1) The Minister may after such enquiry as he may consider necessary by notice in the *Gazette*—

- (a) combine any irrigation district or any portion thereof with another irrigation district to which it is contiguous or any portion of such other irrigation district; or
- (b) constitute any portion of an irrigation district as an irrigation district and sever such portion from the irrigation district of which it forms a part; or
- (c) exclude any area from an existing irrigation district or include any additional area therein.

[Sub-s. (1) amended by s. 15 (a) of Act No. 97 of 1986.]

(2) The Minister shall not change the area of an irrigation district under subsection (1) unless he is satisfied—

- (a) in the case of a change whereby no additional land is included in an irrigation district, that owners representing a majority of votes, according to the latest voters' list of the said district, who would be qualified to vote at an election of members of the irrigation board of such district if an election were then held, are in favour thereof;
- (b) in the case of a change whereby additional land is included in any such district, that not less than two-thirds of the owners of such additional land who own not less than two-thirds of such land irrigated and proposed to be irrigated, and owners representing a majority of votes, according to the latest voters' list of such district, who would be qualified to vote at an election of members of the irrigation board of such district if an election were then held, are in favour thereof;

- (c) in the case of a change whereby an irrigation district or any portion thereof is combined with another irrigation district or any portion thereof or any portion of an irrigation district is constituted as an irrigation district and such portion is severed from the irrigation district of which it forms a part, that the requirements specified in section 72 (3) (a) (i) and (ii) apply in respect of both of the districts affected or, as the case may be, in respect of the area which is severed from any district as well as the remainder of that district,

or unless the Minister is of the opinion that the owners concerned in any particular case have unreasonably withheld their approval or that it is desirable to effect the change.

[Sub-s. (2) substituted by s. 15 (b) of Act No. 97 of 1986.]

(3) Any notice under subsection (1) shall indicate the name by which any irrigation district constituted thereby, including any such district constituted by excluding from an existing district any area forming part thereof or by including in an existing district any additional area, shall be known.

[Sub-s. (3) substituted by s. 15 (c) of Act No. 97 of 1986.]

(4) A change in the area comprised within an existing irrigation district shall not be deemed to constitute the establishment of a new irrigation district, whether or not the name of such district or of its irrigation board is altered, and, subject to the provisions of subsections (5) and (6)—

- (a) all assets, rights, liabilities and obligations vested in or devolving upon the board of such existing district on the date upon which the change takes effect, shall continue to vest in or devolve upon the board as if no change had taken place; and
- (b) any by-law made or decision given or rate or charge imposed by such board shall remain of full force and effect and shall, in so far as it can be so applied, apply also in relation to any additional area included in such existing district:

Provided that unless the Minister determines that the provisions of this proviso shall not be applicable in any particular case, the members of such board holding office at the date on which the change takes effect shall vacate their seats on that date or on such later date as the Minister may direct, and thereupon new members shall, subject to section 80 (3), be elected as if a new irrigation district had been established.

[Sub-s. (4) amended by s. 28 of Act No. 96 of 1984.]

(5) Whenever any portion of the area included within an irrigation district is combined with another such district or any portion of the area included in such other district, or any portion of the area included in any such district has, either alone or together with any other area, been constituted as an irrigation district, the Minister shall appoint a committee consisting of three officers of the department, one of whom he shall designate as chairman of the committee, to apportion the assets, rights, liabilities and obligations of all the irrigation boards affected amongst those boards in such manner as the committee may consider equitable, and any apportionment made by such committee shall be final and binding upon all such boards.

(6) The provisions of sub-section (5) shall apply also where a new irrigation district comprising the areas included in two or more existing districts is established if such new district is established in addition to and not in substitution for such existing districts.

(7) Where the areas or portions of the areas comprising two or more existing irrigation districts are, either alone or together with any additional area or areas, combined to form an irrigation district in substitution for such existing districts—

- (a) all assets, rights, liabilities and obligations vested in or devolving upon the board of any such existing district on the date upon which the substitution takes effect, shall vest in and devolve upon the board of the substituted district, and

- (b) any by-law made or decision given or rate or charge imposed by the board of any such existing district shall remain of full force and effect as if made, given or imposed by the board of the substituted district, and shall, in so far as it can be applied, and to the extent determined by the Minister and made known by notice in the *Gazette* apply also in relation to any additional area included in such substituted district.

**77. Major and minor irrigation districts.**—(1) Whenever an irrigation district comprises another irrigation district, the area so comprised shall, in relation to the irrigation district within which it is comprised, be known as the minor irrigation district, and the irrigation district comprising it shall, in relation to such minor irrigation district, be known as the major irrigation district.

(2) The schedule of rateable areas prepared in terms of section *eighty-eight* in respect of any minor irrigation district, shall be the schedule of those rateable areas for the major irrigation district within which the said minor irrigation district is included, and the total of the rates levied by the board of the said major irrigation district in respect of land within the minor irrigation district shall be a charge against the board of such minor irrigation district and shall, for the purposes of paragraph (a) of sub-section (1) of section *ninety*, be deemed to be expenditure incurred by the board of the minor irrigation district.

**78. Disestablishment of irrigation districts.**—(1) Whenever—

- (a) an irrigation board has not during any consecutive twelve months held any meeting; or
- (b) at a special meeting convened for the purpose in terms of sub-section (2) of section *one hundred and one*, persons representing a majority of votes, according to the latest voters' list of an irrigation district, who would be qualified to vote at an election of members of the board of such district if an election were then held, vote in favour of the disestablishment of such irrigation district and submit to the Minister a petition requesting that the said irrigation district be disestablished; or
- (c) the Minister has assumed the functions of an irrigation board in terms of section 95 (2) (a) (iii), or any power referred to in section 95A (1) (a) or (b) has been vested in him, and at any time thereafter he deems it desirable in the interests of the majority of the persons liable for the payment of rates to such board that the said board be disestablished,

[Para. (c) substituted by s. 16 of Act No. 42 of 1975.]

the Minister may after such enquiry as he deems fit, by notice in the *Gazette* disestablish the said irrigation district.

[Sub s. (1) amended by s. 16 of Act No. 97 of 1986.]

(2) The Minister may—

- (a) apply to any superior court having jurisdiction in the area concerned for directions as to the disposal of the property or the liquidation of the affairs of the board of an irrigation district disestablished in terms of sub-section (1), and the said court may make such order in the matter as it deems fit; or
- (b) appoint a committee consisting of three officers of the department, one of whom he shall designate as chairman of the committee, to advise him as to the liquidation of the affairs of the board, and may after consideration of the report of any such committee make such order in the matter as he deems fit and such order shall be final and binding on all persons affected.

**79. Establishment of irrigation boards.**—(1) For every irrigation district there shall be an irrigation board which shall be known by the same name as the name given to the irrigation district concerned in the relevant notice under section 72 (3) (a) or 73, except that “board” be substituted for “district” in the relevant name: Provided that whenever the area comprising an irrigation district is changed and another name is given thereto, the name of the board of such district shall change accordingly.

[Sub-s. (1) substituted by s. 29 of Act No. 96 of 1984 and by s. 17 (a) of Act No. 97 of 1986.]

(2) An irrigation board shall be a body corporate, capable of suing and being sued in its corporate name and of performing all such acts as are necessary for or incidental to the carrying out of its duties or the performance of its functions: Provided that an irrigation board shall not buy, hold or sell land without the approval of the Minister and that no land belonging to it shall be sold, except with the approval of the Minister and subject to such conditions as he may consider necessary, otherwise than by public auction.

[Sub-s. (2) substituted by s. 13 of Act No. 73 of 1978.]

(3) Any land owned by an irrigation board which is situated outside the boundaries of its irrigation district, shall be deemed to form part of the said district and shall be included in such district by the Minister by notice in the *Gazette*.

[Sub-s. (3) substituted by s. 17 (b) of Act No. 97 of 1986.]

**80. Number and appointment instead of election of members of irrigation board.**—(1) An irrigation board shall consist of the number of members which the Minister shall from time to time determine, or, in the case of the board of a district which is divided into sub-districts, of the number of members in respect of each such sub-district which the Minister may from time to time determine: Provided that if a local authority is supplied with water by an irrigation board in terms of section 89 (1) (j), the local authority may, unless a nominee of such local authority is elected as a member of the board and provided that local authority is authorized thereto by the Minister, appoint any person to represent it on the board for such period as such local authority may deem fit.

[Sub-s. (1) substituted by s. 30 (a) of Act No. 96 of 1984.]

(2) If an irrigation district which is divided into sub-districts ceases to be so divided, or any such district not divided into sub-districts is so divided, or the number of members of the irrigation board of an irrigation district is increased or reduced, the persons then holding office as members of the irrigation board of such district, shall vacate their offices on a date to be determined by the Minister, and an election of members of such board shall be held in the manner prescribed in this Act in respect of a first election of members of such a board, and all the provisions of this Act relating to such a first election and to the persons elected thereat shall apply in respect of such election and in respect of the members thereupon elected.

(3) The members of an irrigation board shall, subject to the provisions of subsection (1) of this section and section 84 (5), be elected in the manner hereinafter specified: Provided that one-half of the members of an irrigation board of an irrigation district established under section 72 (3), or, in the case of an irrigation board of an irrigation district established under section 73, two-thirds of the members of such board, may be appointed by the Minister: Provided further that the Minister may appoint any number of the members or all the members of the irrigation board of a major irrigation district: Provided further that such members shall be appointed from among members of the irrigation board or boards of the minor irrigation district or minor irrigation districts concerned nominated for the purpose by such board or boards.

[Sub-s. (3) amended by s. 18 (a) of Act No. 97 of 1986 and substituted by s. 11 of Act No. 92 of 1993.]

(4) If the Minister decides to exercise his right under subsection (3) to appoint any members of an irrigation board, he shall make known his decision—

- (a) in the case of a first election of members of such board, in the manner prescribed by regulation and before the date of such first election; or
- (b) in the case of an irrigation board the members of which have already been elected, by letter to such board, in which event the provisions of subsection (2) shall *mutatis mutandis* apply.

[Para. (b) substituted by s. 30 (b) of Act No. 96 of 1984.]

(5) (a) In the case of the irrigation board of an irrigation district established otherwise than under section 73, only a person qualified to be elected as a member of such irrigation board and who has not been elected as a member of such board, may be appointed by the Minister in terms of this section as a member of that board: Provided that the proviso to section 81 shall not apply in respect of any such appointment.

(b) The provisions of paragraph (a) shall not apply in the case where the irrigation board concerned—

(i) controls, operates, administers or maintains a Government water work by virtue of a delegation under section 69 (1) (a); or

(ii) owes money in respect of—

(aa) any loan granted under section 157 or 157bis; or

(bb) any loan granted by the Land and Agricultural Bank of South Africa the redemption of which is guaranteed by the Government,

in which case the Minister may appoint persons who in his opinion possess the necessary qualifications or experience to make a substantial contribution towards the management of the affairs of the board.

[Sub-s. (5) substituted by s. 18 (b) of Act No. 97 of 1986. Para. (b) added by s. 3 of Act No. 16 of 1991.]

(6) Any person appointed by the Minister in terms of this section as a member of an irrigation board shall be advised of such appointment by letter and shall hold office as such a member for such period as the Minister may specify in such letter.

[S. 80 substituted by s. 7 of Act No. 77 of 1969. Sub-s. (6) substituted by s. 30 (c) of Act No. 96 of 1984.]

**81. Qualifications of candidates for irrigation boards.**—Every person whose name is on the voters' list of an irrigation district prepared under section 83, other than a corporate body (including the State and a local authority), shall be eligible for election as a member of the irrigation board of the said district, unless he is disqualified from voting in terms of section 82 (1), or is without the permission of the Minister a party to any subsisting contract with the board exceeding R1 000 in value, or is without such permission interested in any such contract: Provided that, if an irrigation district is divided into subdistricts, a person shall be eligible for election as a member of the said irrigation board only in respect of the sub-district under which his name appears on the said list.

[S. 81 amended by s. 11 of Act No. 108 of 1977 and substituted by s. 10 of Act No. 92 of 1980.]

**82. Voting for members of irrigation boards.**—(1) Subject to the provisions of sub-section (3) of this section and of the proviso to sub-section (1) of section *eighty-three*—

(a) every person whose name is on the voters' list of an irrigation district prepared under section *eighty-three*, shall be entitled to nominate candidates for election as members of the irrigation board of the district and to vote at an election of members of such board, unless—

(i) any rates levied by the said board on the land in respect of which such person's name has been placed upon the said list are in arrear for three months or more at the date of such nomination or election, as the case may be; or

(ii) such person has ceased to be the owner of the land in respect of which his name appears on the said list; or

(iii) such person is the accredited representative of an owner who has ceased to be the owner of the land in respect of which that person's name appears on the said list or that person has ceased to superintend the operations carried out on such land; or

(iv) such person is the nominee of a company which has ceased to be the owner of the land in respect of which that person's name appears on the said list, or that person has ceased to be a director or shareholder of that company;

[Sub-para. (iv) added by s. 11 (b) of Act No. 92 of 1980.]

continued on page 1303

- (b) every person entitled to vote in terms of paragraph (a) shall have in respect of every vacancy to be filled at an election—
- (i) in the case of a person in whose name any land has been scheduled under sub-paragraph (ii) of paragraph (b) of sub-section (1) of section *eighty-eight*, or, in the case of a first election, under sub-paragraph (v) of paragraph (a) of that sub-section, one vote for every five hectare or part of five hectare of the land so scheduled; or
- [Sub-para. (i) amended by s. 12 of Act No. 108 of 1977.]
- (ii) in the case of any other person, so many votes as may, in respect of each irrigation district affected, be determined in the manner prescribed by regulation:

Provided that no person shall exercise more than ten votes in respect of any single candidate.

(2) The Government, including the South African Railways and Harbours Administration and any provincial administration, or a local authority or other corporate body included in the said voters' list may vote by a person duly nominated thereto by the Government department, administration, local authority or other corporate body concerned.

(3) A person whose name appears on a voters' list prepared in respect of a sub-district of an irrigation district shall be entitled to nominate candidates and to vote only in connection with elections of members for that sub-district.

**83. Voters' list.**—(1) The secretary shall, for the purposes of the first election of members of the irrigation board of an irrigation district, prepare a preliminary voters' list showing—

- (a) the names of the owners of land in relation to which the provisions of sub-paragraph (v) of paragraph (a) of sub-section (1) of section *eighty-eight* apply; and
- (b) the names of owners of other land, if any, within the district which, in the opinion of the Minister, is or is likely to be affected by any works constructed or intended to be constructed by the irrigation board concerned,

and the number of votes which each such owner is, in accordance with paragraph (b) of sub-section (1) of section *eighty-two*, entitled to exercise in respect of such first election: Provided that—

- (i) if the said irrigation district is divided into sub-districts, the voters' list of such district shall be divided into sub-districts and the names of the said owners shall be shown under the respective sub-districts in which the said land is situated;
- (ii) if land referred to in paragraph (a) is owned by two or more persons, each of whom does not own a separate and defined portion thereof, each such person shall be entitled to have his name included in the said voters' list in respect of an area determined by dividing the total extent of land so scheduled by the number of such persons, unless the area so determined is less than five hectare;
- [Para. (ii) amended by s. 13 of Act No. 108 of 1977.]
- (iii) if the area determined under sub-paragraph (ii) is less than five hectares, the said persons shall be entitled to have their names jointly included in such voters' list but shall only be entitled to exercise jointly the vote determined in accordance with section 82 (1) (b) (i) in respect of the land referred to and for that purpose they shall designate one of their number to vote on their behalf and give notice in writing of such designation to the returning officer for the election;

[Para. (iii) amended by s. 13 of Act No. 108 of 1977 and substituted by s. 31 (a) of Act No. 96 of 1984.]



(iv) the accredited representative of an owner of land so scheduled who, and so long as he, superintends the operations conducted on such land, shall for all purposes be entitled to have his name placed on the said voters' list in the stead of such owner;

[Para. (iv) substituted by s. 31 (b) of Act No. 96 of 1984.]

(v) a company which is the owner of land so scheduled may cause the name of a nominee to be placed on the said voters' list in the stead of such company.

[Para. (v) added by s. 12 of Act No. 92 of 1980 and substituted by s. 31 (c) of Act No. 96 of 1984.]

(2) (a) Any preliminary voters' list prepared under sub-section (1) shall as soon as may be practicable after an irrigation board has prepared a schedule under section *eighty-eight*, be revised by the said board in the manner prescribed by regulation.

(b) The voters' list as so revised shall show the names of all owners of land scheduled under section *eighty-eight* and the number of votes which each owner is, in accordance with paragraph (b) of sub-section (1) of section *eighty-two*, entitled to exercise in respect of any election of members of the said board, and the proviso to sub-section (1) shall apply *mutatis mutandis* in respect of such revised list.

(c) The said voters' list shall thereafter be revised by such board annually and also whenever the boundaries of the irrigation district in question have been altered or such irrigation district has been combined with another irrigation district, or any portion of such irrigation district has been constituted as an irrigation district.

(3) A copy of the list prepared or revised in accordance with sub-section (1) or (2) shall be kept by the secretary of the irrigation board concerned and may be inspected free of charge at any reasonable time by any person interested.

(4) If for any reason a voters' list prepared by the secretary under sub-section (1) has not been revised by the irrigation board concerned, the list so prepared shall be deemed to be the voters' list of the irrigation district to which it relates until it has been so revised.

(5) Whenever a voters' list has been prepared or revised by an irrigation board under this section, a copy thereof shall be transmitted by the said board to the department.

**84. Election of members of irrigation boards and duration of office of members.—(1)**

(a) The nomination of candidates for election as members of an irrigation board, the election of members and the procedure and voting thereat shall take place in the manner prescribed by regulation.

(b) The date of the first election shall be determined by the secretary, who shall, in respect of such election and the nomination of candidates in connection therewith, appoint a returning officer.

(c) In respect of a nomination of any candidate or any election of members other than the first nomination or election, the chairman of the irrigation board in respect of which such nomination or election is held or a member of the said board nominated by him shall act as returning officer, unless the Minister or the Director-General has designated another person to act as such: Provided that the chairman or a member or such other person shall not so act if he is a candidate for nomination or election.

[Para. (c) substituted by s. 3 of Act No. 71 of 1965 and by s. 32 of Act No. 96 of 1984.]

(2) Subject to the provisions of sub-sections (3) and (4), the members of an irrigation board shall hold office for a period of three years from the date of their election and a member vacating office shall, if qualified thereto, be eligible for re-election.

(3) After the first election of members of an irrigation board, an election shall be held whenever necessary to fill any vacancy and a person then elected shall hold office as if he had become a member of the board on the date on which his predecessor vacated his office owing to effluxion of time or (as the case may be) would, if he had remained in office for the full period prescribed in sub-section (2), have so vacated his office.

- (4) Of the members elected at the first election of members of an irrigation board—
- (a) of an irrigation district which is divided into sub-districts—
- (i) the member elected for any such sub-district who stands first on the poll shall hold office for a period of three years;
  - (ii) the member so elected who stands second on the poll shall hold office for a period of two years; and
  - (iii) the remaining member so elected shall hold office for a period of one year;
- (b) of an irrigation district which is not divided into sub-districts—
- (i) one-third of the members elected, who stand highest on the poll, shall hold office for a period of three years;
  - (ii) one-third of the members elected, who stand next highest on the poll, shall hold office for a period of two years; and
  - (iii) the remaining one-third of the members elected shall hold office for a period of one year.

Provided that if in any case no poll is required to be held, or if two or more candidates have received equal numbers of votes, the respective periods of office of the members affected shall be determined by lot under the supervision of the returning officer.

(5) If for any reason any vacancy existing on an irrigation board be not filled by the election of a member thereto, the Minister shall appoint any person whom he considers suitable to be a member of the board to fill the vacancy for such period as the Minister may deem fit, and any such person appointed in succession to a member of the board who has vacated office, shall hold office for the period in respect of which he would have held office had he been elected to fill the vacancy upon the expiration of the period of office of his last predecessor whose term of office expired by effluxion of time.

**85. Casual vacancies on irrigation boards.**—(1) If a member of an irrigation board ceases to possess the qualifications which would render him eligible to have his name included in the voters' list of the irrigation district in respect of which such board has been established if such list were then revised, or if any such member dies or resigns or becomes insolvent or of unsound mind or is convicted of an offence and sentence to imprisonment without the option of a fine or otherwise becomes disqualified to be a member of the board, or absents himself from three consecutive meetings of the board without having previously obtained its leave to do so, his office shall become vacant.

(2) As often as any such vacancy occurs, another person shall be nominated and elected to fill such vacancy and the provisions of this Act and the regulations relating to the nomination of candidates for election as members of an irrigation board, the election of members, and the procedure and method of voting thereat, shall apply *mutatis mutandis* in respect of the filling of such vacancy: Provided that—

- (a) the date for the nomination and election to fill such a vacancy shall be fixed by the returning officer referred to in section 84 (1) (c) as soon as practicable after the occurrence of the vacancy, and

[Para. (a) substituted by s. 33 of Act No. 96 of 1984.]

- (b) the member elected to fill the vacancy shall hold office for the remainder of the period for which the person who has died or otherwise vacated his office and whose place has been filled would otherwise have continued in office.

**86. Chairman and vice-chairman of irrigation board.**—(1) (a) The members of an irrigation board shall, as soon after the first election of members as is practicable, elect a chairman and a vice-chairman of the board.

(b) The chairman and the vice-chairman shall respectively hold office as such for a period of twelve months from the date of their election thereto and shall be eligible for re-election, and a chairman or vice-chairman whose period of office has expired shall, so long as he remains a member of the board in question, remain in office as chairman or vice-chairman, as the case may be, until the next succeeding meeting of the said board.

(c) An irrigation board shall annually elect a new chairman and a new vice-chairman of the board, and if the chairman or vice-chairman dies or otherwise vacates his office, the board shall proceed forthwith to elect another chairman or vice-chairman for the remainder of the period in respect of which the office in question has become vacant.

(d) The election of a chairman or a vice-chairman in terms of paragraph (a) or (c) shall take place in the manner prescribed by regulation.

[Para. (d) added by s. 4 of Act No. 71 of 1965.]

(2) If the chairman of an irrigation board be absent from any meeting of the board, the vice-chairman shall preside thereat, and if the vice-chairman be also absent from such meeting, the members of the board who are present thereat shall elect one of their number to preside at the said meeting.

(3) Any person who is entitled to preside at a meeting of an irrigation board in terms of this section shall, in the case of an equality of votes upon any matter which the board is determining, have a casting vote in addition to his deliberative vote as a member.

**87. Informalities in elections, etc., not to affect validity of acts done by an irrigation board.**—(1) An irrigation board shall not be deemed to be defectively constituted by reason of any failure to elect the prescribed number of members of such board, or by reason of any vacancy existing, so long as there is a sufficient number of members on the board to form a quorum.

(2) All acts done in good faith by an irrigation board or its chairman or vice-chairman or a person acting as chairman or vice-chairman or a member of an irrigation board or a committee of such board, or an officer of the department to whom the functions, powers and duties of an irrigation board have been delegated in accordance with sub-section (3) of section *ninety-five*, in the carrying out of any powers, functions or duties assigned to or imposed upon such irrigation board by this Act or the regulations made under section *one hundred and two*, shall, although it may afterwards be discovered that there was some defect in the constitution, election or appointment of the board, chairman, vice-chairman, committee, person or officer, or that the board, chairman, vice-chairman, committee, person or officer was otherwise disqualified from so acting, be as valid as if the board, chairman, vice-chairman, committee, person or officer had been duly constituted, elected, appointed or qualified.

**88. Schedule of rateable areas of irrigation districts.**—(1) (a) The secretary shall, in respect of every area declared to be an irrigation district after the commencement of this Act, prepare a preliminary schedule setting forth—

- (i) a description of every piece of land in the irrigation district;
- (ii) the extent of every such piece of land;
- (iii) particulars of the title deed according to which that piece of land was last transferred;
- (iv) the name of the owner of that piece of land; and
- (v) where applicable, the approximate extent of the land forming part of that piece of land which is irrigated and which is proposed to be irrigated by the owner thereof and in respect of which rates may be levied by the board of the said irrigation district in terms of paragraph (a) of sub-section (1) of section *ninety*,

and the extent so determined in respect of any such piece of land shall, until a schedule has been prepared by the said board, be deemed to be the rateable area of that piece of land.

(b) Every irrigation board shall prepare in manner prescribed by regulation a schedule of rateable areas in respect of its irrigation district, setting forth—

- (i) the particulars described in sub-paragraphs (i) to (iv) of paragraph (a); and
- (ii) where applicable the extent of the land forming part of every piece of land referred to in the said sub-paragraphs in respect of which water may be supplied by the board from any water works owned or controlled by the board and which will be rateable, and, in the case of a board to which the powers referred to in paragraph (f) or (g) of sub-section (1) of section *eighty-nine* have been assigned, the extent of the land forming part of every piece of land riparian to the public streams in relation to which the said powers have been assigned to the board, which is irrigated by means of water from water works belonging to the owner of such piece of land and which will be rateable: Provided that, in fixing such last-mentioned extent, the board shall have regard to the share or volume of water of the aforesaid public stream which the owner of the land has a right to use thereon, and to the number of hectare which could ordinarily and with due precaution against waste be efficiently and beneficially irrigated in the course of a year by that share or volume, irrespective of the number of hectare actually irrigated, or if such extent cannot be so fixed, the average number of hectare annually irrigated on the said piece of land from the said public stream as ascertained by measurement or enquiry.

[Sub-para. (ii) amended by s. 14 of Act No. 108 of 1977.]

(2) A schedule prepared by an irrigation board in accordance with paragraph (b) of sub-section (1), shall take the place of any preliminary schedule previously prepared by the secretary in terms of paragraph (a) of that sub-section.

(3) An irrigation board shall in manner prescribed by regulation from time to time revise the schedule prepared by it in terms of paragraph (b) of subsection (1): Provided that, whenever the boundaries of an irrigation district have been altered, or an irrigation district has been combined with another irrigation district, or any portion of an irrigation district has been constituted as a new irrigation district, new schedules in respect of the new irrigation district and of the remainder of the irrigation district of which such new irrigation district formed a part, shall forthwith be prepared in accordance with the provisions of the said paragraph: Provided further that if an irrigation board owes any money to the Government or the Land and Agricultural Bank of South Africa in connection with any loan or advance which it has received from the Government or the said Bank, no alteration shall be made to any of the particulars included in the said schedule in terms of sub-paragraph (ii) of the said paragraph without the consent of the Minister.

[Sub-s. (3) amended by s. 4 of Act No. 16 of 1991.]

(4) If an irrigation board has prepared or revised a schedule under this section, it shall transmit a copy thereof to the department and, if it is the board of a minor irrigation district, also to the irrigation board of the major irrigation district concerned.

[Sub-s. (4) substituted by s. 8 of Act No. 36 of 1971 and by s. 12 of Act No. 92 of 1993.]

(5) An irrigation board may, on the application of an owner of any piece of land scheduled under this section, and on such terms and conditions as it may stipulate, permit the use of the water available in respect of that land upon any other piece of land in its irrigation district.

(6) Notwithstanding anything to the contrary contained in this section, the rateable area of any piece of land scheduled under this section shall not exceed the area of that land which may be irrigated by virtue of any provisional right, permission or allocation under section 62 or by virtue of the scheduling of that land under sections 63 and 64, as the case may be.

[Sub-s. (6) substituted by s. 9 of Act No. 51 of 1979 and by s. 10 of Act No. 68 of 1990.]

(7) A schedule prepared or revised under this section shall be kept by the secretary of the irrigation board concerned and may be inspected free of charge at any reasonable time by any person interested.

(8) . . . . .

[Sub-s. (8) substituted by s. 14 of Act No. 56 of 1961, amended by s. 5 of Act No. 71 of 1965 and deleted by s. 14 of Act No. 73 of 1978.]

**89. Functions, powers and duties of an irrigation board.**—(1) The Minister may, by notice in the *Gazette* and notice in writing to the board of an irrigation district assign to that board such functions, powers or duties as he may deem fit enabling or requiring it—

- (a) to protect the sources of the water of any public stream in the said irrigation district;
- (b) to prevent the waste of the water of any public stream in the said district;
- (c) to prevent the leakage or flow of any public water from the surface into subterranean channels;
- (d) to prevent any unlawful abstraction or storage of public water or subterranean water or to cause to be removed any obstruction unlawfully placed in a public stream, and to prevent any unlawful act which is calculated to diminish the quantity of water in any part of the public stream;
- (e) to exercise general supervision over all public streams within the said irrigation district and, whenever that board considers it necessary or expedient, to regulate the flow of any particular public stream by clearing, deepening, widening or straightening its channel, by altering its course or by taking any other steps in order to prevent or control silt or reduce the risk of damage to land in the event of a flood, or to revert that public stream, if its course has altered as a result of natural causes, to its previous course;

[Para. (e) substituted by s. 11 of Act No. 68 of 1990.]

- (f) to investigate and record the quantity or share of water which, at different stages of flow in all or any public streams in the irrigation district, every person having any rights in respect of such water is entitled to use and the times at which such quantity or share may be taken;
- (g) subject to any existing right, to supervise and regulate the distribution and use of the water of all or any of the public streams in the irrigation district and for that purpose to erect and maintain such devices for measuring and dividing the flow of the said water or controlling diversion thereof as may have been ordered by a water court or, in the absence of any such order, as the said board may consider necessary, and generally to supervise within the said irrigation district the storage, diversion and use of water in public streams;
- (h) to construct, purchase or otherwise acquire and to maintain such water works as may be considered necessary for the drainage of land in the irrigation district or for the proper irrigation of any of the areas scheduled under subparagraph (ii) of paragraph (b) of sub-section (1) of section *eighty-eight*, and any other works which such board may deem necessary for the protection and preservation of such water works;

- (i) to control, operate, administer or maintain any Government water work and to control, supply or distribute water therefrom in accordance with section *sixty-nine*, the generality of this provision and of the terms and conditions which the Minister may impose in terms of the said section not being limited by anything contained in the preceding paragraphs;
- (j) subject to the provisions of this Act, to supply any water under the control of such irrigation board to any local authority or other person, including any department of State, the South African Railways and Harbours Administration and any provincial administration, for use at any place and for any purpose.

[Para. (j) substituted by s. 10 of Act No. 51 of 1979.]

(2) An irrigation board shall from time to time on the directions of the Minister enter into such contracts of insurance against any losses, damage, risks or liabilities which the board may incur, as the Minister may require.

(3) Whenever an irrigation board has constructed or acquired water works in terms of paragraph (h) of sub-section (1), it shall, subject to the provisions of sub-section (4), take such steps as it may deem necessary to ensure that there is delivered for use on every piece of land which has been included in the schedule prepared by the said board in terms of paragraph (b) of sub-section (1) of section *eighty-eight*, and in respect of which an area has been scheduled under sub-paragraph (ii) of that paragraph, and on every piece of land scheduled under sub-section (7) of section *sixty-three*, which is entitled to receive water from the said water works, a quantity of water, being portion of the water available for agricultural use from such works, which, as nearly as may be practicable, bears to the whole quantity of water available for such use, the same ratio as the ratio which the said area bears to the whole area so scheduled: Provided that, if any such land is subdivided and any such sub-divided portion is sold or otherwise disposed of to any other person, the person selling or disposing of such sub-divided portion shall make such provision as may in the opinion of the board be necessary to ensure the delivery on to such sub-divided portion of the quantity of water to which it may be entitled.

(4) If any privately owned water work within an irrigation district is used by one owner or a group of owners of contiguous holdings to convey water distributed by the board of that district in terms of this section to the land belonging to such owner or group of owners, such board may deliver the water to which the land in question is entitled into the said water work for the use of that owner or, as the case may be, for distribution by those owners amongst themselves in shares proportionate to the extent of each owner's land entitled to such water, or in accordance with existing rights, as the case may be, or may itself undertake the distribution of that water amongst such group of owners and in that event exercise in relation to such water work any of the powers which may under paragraph (b) or (c) of sub-section (5) be exercised by it in relation to any water work referred to in those paragraphs.

(5) If an irrigation board referred to in sub-section (3) uses the channel of any public stream or any natural channel within its irrigation district for the conveyance of any water from the water works referred to in the said sub-section for the purpose of supplying or distributing such water to the persons entitled thereto—

- (a) the said board shall during such conveyance, and notwithstanding any existing right, have the exclusive control of all water which is so conveyed in the channel of such public stream or in any such natural channel, together with all other water which may during such conveyance be flowing in that stream or natural channel;
- (b) the said board may exercise control over such portions of privately owned water work constructed within the irrigation district for the purpose of abstracting or conveying water from such public stream or natural channel, as it may from time to time deem necessary for the purpose of effecting a proper distribution of the water referred to in sub-section (3), and, may, with

the written consent of the Minister and after notice in writing to the owner concerned, take over for such period as the Minister may determine when granting such consent, the maintenance and control of any such privately owned water works, if in its opinion the water so abstracted or conveyed by means of such works is not being distributed among the persons entitled thereto in the manner provided in sub-section (4);

(c) the said board may—

- (i) after giving notice in writing to the owner of any such privately owned water works, construct such additional works, or make such adjustments or repairs to the existing water works; or
- (ii) give written notification to such owner to construct such additional works or to make such adjustments or repairs to existing works,

as may in the opinion of the board, be necessary for the proper measurement and regulation of the water abstracted or conveyed by such water works, and, if in the case of a notification to an owner under sub-paragraph (ii), such owner fails to construct, adjust or repair such works to the satisfaction of the said board within six months of the date of such notification, the board may undertake such construction, adjustment or repair at the expense of the said owner and may, by action in a competent court, recover the costs incurred from such owner;

- (d) (i) no person shall construct any new or materially alter or enlarge any existing water work on any such public stream or natural channel for the purpose of abstracting or conveying water from such stream or natural channel (other than water to which he is entitled in terms of any order, award, decision, permission, authority or apportionment given or made by a competent court) without the consent in writing of the said irrigation board;
- (ii) no decision of a water court on application under sub-section (1) of section *ninety-eight*, for relief from any decision made by an irrigation board under sub-paragraph (i), shall be construed as entitling any person to abstract from any such public stream or natural channel any water other than water to which he is entitled in terms of any order, award, decision, permission, authority or apportionment given or made by a competent court.

(6) Any person who contravenes the provisions of sub-paragraph (i) of paragraph (d) of sub-section (5) shall be guilty of an offence.

(7) Whenever the powers referred to in paragraph (g) of sub-section (1) have been assigned to an irrigation board—

- (a) the provisions of sub-section (4) and paragraphs (b), (c) and (d) of sub-section (5) shall apply *mutatis mutandis* in relation to any public stream within the irrigation district of the said board; and
- (b) such board may, with the previous sanction of the Minister, order any person to carry out such work and execute such repairs in relation to water works belonging to him or under his control as may be necessary for the protection of life or the public safety, and, in default of compliance with any such order, itself cause the work to be carried out or the repairs to be executed and recover the cost from such person by action in a competent court.

(8) An irrigation board may levy a rate upon the land served by any water work taken over by it in terms of paragraph (b) of sub-section (5), sufficient to defray the costs of maintenance and control of such work, and such rate shall be additional to and not in substitution of any rate levied by the said board in terms of paragraph (a) of sub-section (1) of section *ninety*.

(9) An irrigation board shall not be liable for the payment of any compensation to any person in respect of the exercise by the board of a power conferred upon it by paragraph (b) or (c) of subsection (5).

[Sub-s. (9) substituted by s. 34 of Act No. 96 of 1984.]

(10) Nothing in this section contained shall be deemed to authorize an irrigation board to arrange for the distribution and use of water within the area of jurisdiction of a local authority (other than a divisional council) referred to in paragraph (a) of the definition of "local authority" in section *one*, unless such local authority consents thereto, and if any such area is included in an irrigation district, such local authority shall have all the powers as to the distribution and use of water which are conferred in respect thereof by the law regulating the powers of that local authority: Provided that the provisions of this subsection shall not apply to any irrigation board which is, at the commencement of this Act, distributing water within any such area.

**90. Irrigation board may assess rates and charges.**—(1) (a) For the purpose of defraying any expenditure lawfully incurred or to be incurred by it in the carrying out of the functions, powers and duties assigned to or imposed upon it under this Act, or any expenditure involved in the payment of any rates and charges recovered or to be recovered from it under section 66 (5), an irrigation board may, notwithstanding anything to the contrary contained in this Act or any other law, or an existing right or any other right to water or to the use thereof—

- (i) assess rates on land scheduled under section 88 (1) (b) (ii) or, in the case of a preliminary schedule prepared under section 88 (1) (a), on land scheduled under section 88 (1) (a) (v), or assess charges for water supplied or distributed in respect of such land or to any person from water works belonging to the said board, or assess both such rates and such charges;

[Sub-para. (i) substituted by s. 12 of Act No. 68 of 1990.]

- (ii) assess rates on any land referred to in section 83 (1) (b) within its irrigation district,

and may recover the rates and charges so assessed from the owners of the said land or from any person to whom water is so supplied, as the case may be.

(b) If an irrigation board assesses rates, such rates shall be assessed annually by such board at a uniform sum per hectare of the land affected: Provided that the Minister may authorize an irrigation board, under special circumstances and in accordance with a basis approved by the Minister, to levy rates annually upon and in respect of any land at rates different from the rates in respect of any other land or to levy a special rate in addition to the rate assessed annually.

[Sub-s. (1) amended by s. 15 of Act No. 108 of 1977 and substituted by s. 35 of Act No. 96 of 1984.]

(2) Whenever an irrigation board is empowered to supply water in terms of paragraph (j) of sub-section (1) of section *eighty-nine*, it may from time to time assess such charges as the Minister may determine for water so supplied and may recover such charges from the persons to whom such water is so supplied.

(3) Nothing in this section contained shall be construed as preventing an irrigation board from entering into an agreement with one or more owners of land for raising a loan on the security of the rates which it may assess in terms of paragraph (a) of sub-section (1) for the purpose of constructing a water work for the sole benefit of such owner or owners, and from levying on the land affected an additional rate sufficient to cover the interest and other annual charges payable in respect of such loan.

**91. Irrigation board to prepare assessment rolls.**—(1) Whenever an irrigation board has assessed a rate in terms of sub-section (1) of section *ninety*, such board shall cause to be prepared an assessment roll setting forth—



- (a) the name of each person liable to pay rates;
- (b) a description of the piece of land in respect of which the rate is assessed;
- (c) the number of hectares on each piece of land which is scheduled under section 88 (1) (b) (ii) or under section 88 (1) (a) (v), as the case may be;

[Para. (c) amended by s. 16 of Act No. 108 of 1977 and substituted by s. 13 of Act No. 68 of 1990.]

- (d) the amount of the rate assessed; and
- (e) the date or dates upon which payment is due and the amount due on each such date.

(2) One copy of such assessment roll shall lie in the office of the secretary of the irrigation board concerned and shall be open to inspection at all reasonable times by any interested person.

[Sub-s. (2) amended by s. 15 of Act No. 56 of 1961.]

**92. Payment and recovery of rates or charges assessed by an irrigation board.**—(1) (a) A rate assessed by an irrigation board under sub-section (1) of section *ninety* shall be due and payable at the office of such board on the date or dates shown on the assessment roll in terms of paragraph (e) of subsection (1) of section *ninety-one*, and any charge assessed by such a board in terms of sub-section (2) of section *ninety* shall be due and payable on a date to be fixed by the board when the said charge is so assessed.

(b) If within one month after the date fixed for payment, the amount due and payable by any owner or other person liable to pay such amount has not been paid the irrigation board concerned may—

- (i) without further demand, recover such amount from such owner or person by action in a competent court, and the whole of the amount of the rate of which such amount due and payable forms a part shall forthwith become due and payable and may be recovered by such board in like manner; and
- (ii) by such means as it deems fit, stop any water flowing from any water work under its control on to the land in respect of which such amount is due and unpaid until the amount is paid, or in the case of an amount due and unpaid in respect of a charge assessed in terms of sub-section (2) of section *ninety*, suspend the supply of water to the person concerned until the amount has been paid, and the said board shall not be obliged after the amount due has been paid, to supply any water so stopped or to pay compensation for any loss sustained by any person consequent upon the stopping of the said water.

(2) No cessation under sub-paragraph (ii) of paragraph (b) of sub-section (1), of the supply of water to the land or person referred to therein shall relieve any person from any liability in respect of the period of such cessation for any rates or charges assessed by the irrigation board in question in terms of section *ninety*.

(3) (a) Rates or charges assessed by an irrigation board in respect of water used for agricultural purposes, and interest which may be payable thereon in terms of subsection (5), shall be a charge upon the land in respect of which they have been assessed, and any person who becomes the owner of any such land shall be liable for any such rates or charges which remain unpaid at the time when he becomes the owner, and for any interest thereon which may then be payable thereon or which may thereafter become payable thereon.

[Para. (a) substituted by s. 13 (a) of Act No. 92 of 1980.]

(b) . . . . .

[Para. (b) deleted by s. 9 of Act No. 36 of 1971.]



(aA) If—

- (i) after consideration of a report made by such officer the Minister is satisfied that the said works have not been or are not being executed or maintained in a satisfactory manner, or that the board has failed to carry out any of the functions, powers and duties assigned to or imposed upon it under this Act or the regulations made thereunder or any other law, or has been dilatory or negligent in carrying out such functions, powers and duties, or has not satisfactorily carried out or complied with any order of a water court whereby any duty has been imposed upon the said board; or
- (ii) at any time the board has for a period of 60 days or more failed to pay any moneys due and payable to the Government,

the Minister may by notice in writing direct the said board to take within a period specified in the notice such action as is therein set out, and if the board fails to comply with any such direction within the period so specified or such further period as the Minister may determine, the Minister may—

- (aa) cause such action as he may deem necessary to be taken at the expense of the board, or levy and recover rates and collect any dues payable to the board sufficient to cover the cost of any action so taken and to pay any amount payable by the board to the Government, together with all expenses incidental to the levying, recovery or collection of any rates he may so levy; or
- (bb) by notice in writing to the board, declare the period of office of the members of the board to be terminated, and assume the functions of the board for such period as he may deem fit, or upon such termination or at any time thereafter take all such steps as he may consider necessary for the election of new members to the board.

[Sub-s. (2) substituted by s. 36 of Act No. 96 of 1984.]

(3) The Minister shall, in respect of any period during which he assumes the functions of the board under subsection (2) (aA), be vested with all the powers, rights, assets, liabilities and obligations of the board and may delegate the control thereof to any officer of the department, and shall for the purposes of the levy and recovery of rates and the collection of dues under that subsection, have the same powers and rights as are in terms of this Act vested in the board concerned in connection with the levy and recovery of such rates or the collection of such dues by that board.

[Sub-s. (3) substituted by s. 5 (a) of Act No. 16 of 1991.]

(4) The Minister may, by action in a competent court or in such other manner as he may deem fit, recover the costs of any action taken by him under subsection (2) (aA) from the board concerned.

[Sub-s. (4) substituted by s. 5 (b) of Act No. 16 of 1991.]

**95A. Vesting in Minister of control of certain water works belonging to or controlled by irrigation boards, and control of supply of water.**—(1) Notwithstanding the provisions of this Act or of any other law, and notwithstanding the delegation by the Minister, in terms of paragraph (a) of section 69 (1), of any relevant power referred to in that paragraph, the Minister may by notice in the *Gazette* assume—

- (a) the power of control of the water works belonging to or controlled by any irrigation board of any irrigation district situated in an area defined in such notice, and of the distribution, supply or use of water in or from any such water work; or
- (b) the power of control of the distribution, supply or use of water which has in terms of section 89 (1) been assigned to an irrigation board,

and may in like manner from time to time amend or withdraw any such notice.

[Sub-s. (1) substituted by s. 19 (a) of Act No. 97 of 1986.]

(1A) The Minister may by notice in writing to an irrigation board in respect of which a power was assumed by him under subsection (1), terminate the period of office of its members, and thereupon, if the Minister so directs, new members shall, subject to section 80 (3), be elected as if a new irrigation district had been established.

[Sub-s. (1A) inserted by s. 37 of Act No. 96 of 1984 and substituted by s. 19 (b) of Act No. 97 of 1986.]

(2) The Minister may, in the exercise of any power vested in him in terms of subsection (1) repair, alter or enlarge any water work in question whenever he deems it to be in the interests of the community served or to be served with water by means of such work, and shall for that purpose utilize moneys voted by Parliament therefor.

(3) (a) Any water work the control of which has been assumed by the Minister in terms of subsection (1) shall for all purposes be deemed to be a Government water work: Provided that unless the irrigation board in question is not indebted to the State, rates shall in terms of section 66 (1) (a) be assessed on land irrigated with water abstracted, supplied or distributed from such a water work, or charges in terms thereof assessed for water so abstracted, supplied or distributed, only for the purposes of the recovery of any expenditure incurred by the Minister in terms of subsection (2) of this section in respect of such water work.

(b) If an irrigation loan has under the provisions of this Act been granted to an irrigation board in respect of any water work the control of which has been assumed by the Minister in terms of subsection (1), any amount still owing in respect of such loan, together with the amount of any interest payable in respect of such loan, may, with the approval, by resolution, of Parliament, on a report by the Minister, submitted after consultation with the Minister of Finance, be written off.

[Sub-s. (3) amended by s. 19 of Act No. 42 of 1975 and substituted by s. 19 (c) of Act No. 97 of 1986.]

(4) The Minister or any officer in the Department authorized thereto by him may by notice in writing to any irrigation board direct such board to take such steps in regard to the maintenance, repair or betterment of any water work belonging to or controlled by it, or in regard to the method of distribution, supply or use of water in or from any such water work, or water the distribution, supply or use of which is controlled by such board, as he may deem necessary to ensure the most economical and equitable distribution of water to the persons entitled to the use thereof, and if such board fails to take such steps in accordance with such directions the Minister or such officer, as the case may be, may by notice in writing to such board, take over the control of such work or the distribution or supply of such water for such period as he may deem necessary.

(5) The provisions of this section shall not be construed as precluding the Minister from delegating any of his powers in terms of paragraph (a) of section 69 (1) to an irrigation board contemplated in subsection (1) of this section, irrespective of whether or not prior to the issue of the relevant proclamation in terms of that subsection the Minister had delegated any of his powers to that board in terms of the said paragraph.

[S. 95A inserted by s. 8 of Act No. 77 of 1969.]

**96. Accounts of irrigation boards.**—(1) An irrigation board shall in manner prescribed by regulation, keep accounts of all moneys received and expended by it, and shall render to the department such statements of revenue and expenditure and such accounts or reports as may be prescribed by regulation, duly audited by the auditors of the board.

(2) Any officer of the department authorized thereto by the secretary may at any time examine the accounts, books and records of any irrigation board.

(3) Every irrigation board shall establish a reserve fund and shall from time to time deposit therein such amounts as may be determined by the Minister, being portion of the rates or charges assessed by it in terms of section *ninety*, and no amount so deposited shall be withdrawn from such fund except with the approval of the Minister.

(4) The Minister may exempt an irrigation board from the provisions of subsection (3).

[Sub-s. (4) inserted by s. 38 of Act No. 96 of 1984.]

97. **Registration of rights or servitudes with irrigation boards.**—(1) Every person entitled to any servitude or other right entitling him to the use of water within an irrigation district, acquired before the date on which such district was established, shall within a period specified in a notice served upon him by the irrigation board of that district, not being less than three months after the date of service of such notice, apply to such irrigation board to record that servitude or right, and in default of compliance with the requirements of this section within the period so specified, and as long as the servitude or right remains unrecorded, it shall not be recognized by the irrigation board for the purpose of the distribution of water by it for any purpose under this Act.

[Sub-s. (1) substituted by s. 20 of Act No. 97 of 1986.]

(2) (a) In considering whether it shall record any servitude or right referred to in sub-section (1), an irrigation board shall have regard to all servitudes or rights claimed in respect of the use of such water, whether registered against title or otherwise lawfully existing, and where there is no such servitude or right registered against title, the person aforesaid shall set forth the particulars of the servitude or right which he claims to have recorded under this section, and such particulars shall be published in manner prescribed by regulation.

(b) If within a period of three months after the date of publication of such particulars, written objection has not been lodged with the secretary of the board to the recording of any servitude or right, such servitude or right shall be recorded by the irrigation board, and if any such objection has been lodged, the servitude or right shall not be recorded except upon the order of a water court or other competent court or upon withdrawal of such objection by the person by whom it has been lodged with such irrigation board.

continued on page 1327

**98. Application to a water court against order or act of an irrigation board.—**

(1) Nothing in this Chapter contained shall be construed as preventing any person aggrieved by an order, act or decision, or a proposed order, act or decision of an irrigation board from making application to a water court for relief: Provided that where such order or act has been carried out or decision has been made by the said irrigation board, a person aggrieved thereby shall forfeit his right to make such application to the said court unless the application is made within a period of three months from the making of the order or decision or the doing of the act by the board, unless such person can prove to the satisfaction of the said court that owing to his absence from the Union or any other reasonable cause he has been unable to make such application within the said period.

(2) A water court may in making any order arising out of an application made to it under this section, fix such amount of compensation to be paid to the applicant by the irrigation board concerned, as it deems fit.

**99. Allowances to and contracts with members of irrigation boards.—**(1) A member of an irrigation board shall not, except in so far as the Minister otherwise directs, receive any salary, allowance, fee or reward for, on account of, or by reason of his being a member of such board, or, without the permission of the Minister, enter into a contract with such board exceeding one thousand rand in value or be directly interested in any such contract.

[Sub-s. (1) substituted by s. 17 of Act No. 108 of 1977.]

(2) Any person who contravenes any provision of this section shall be guilty of an offence and shall be disqualified from being a member of an irrigation board.

(3) Nothing in this section contained shall be construed as preventing a member of an irrigation board from receiving—

(a) in accordance with regulations an allowance in respect of expenses incurred by him in the performance of his duties as a member; or

(b) such remuneration as may be agreed upon for services rendered by him otherwise than as a member, in connection with the administration of the board's affairs.

[Sub-s. (3) substituted by s. 39 of Act No. 96 of 1984.]

**100. Ownership of water works constructed by irrigation boards.—**Whenever an irrigation board has, under the provisions of this Act or any prior law, constructed or otherwise acquired a water work, the rights and privileges of ownership therein shall be vested in such board, unless such board has constructed that work under paragraph (c) of sub-section (5) of section *eighty-nine* and has recovered the cost of such work from the owner concerned.

**101. Irrigation board to convene annual general meeting of voters.—**(1) An irrigation board shall, at least once in every year, convene a general meeting of the voters whose names appear on the voters' list of the irrigation district prepared or revised in terms of section 83 and shall at such meeting lay before the said voters a statement of its accounts in respect of the preceding year, including full particulars pertaining to any remuneration paid by the board to a member of the board during such year, and give an account of its activities during such year.

(2) If not less than 25 of the voters whose names are shown on the said voters' list or, where there are less than 75 such voters, not less than one-third of those voters, consider that it is in the interest of the majority of the voters liable to pay rates or charges to the said board that a special meeting of voters be held in order to debate any matter, the board shall convene such a meeting upon the submission to it of a request in writing by the said voters that such a meeting be held and in which particulars of the matter concerned are specified: Provided that such board may refuse such a request if during the preceding 12 months a special meeting had been convened at which the same or substantially the same matter was debated and dealt with.

[S. 101 substituted by s. 40 of Act No. 96 of 1984.]

**102. Regulations as to irrigation boards.**—The Minister may make regulations relating to—

- (a) the nomination of candidates and the election of members of an irrigation board, and the procedure and method of voting thereat;
- (b) the powers and duties of returning officers in connection with such elections and in connection with the first meeting of an irrigation board;
- (c) the quorum for meetings of an irrigation board;
- (d) the appointment of a secretary and other officers or servants of an irrigation board;
- (e) the allowances for expenses which may be made to a member;
- (f) the delegation by an irrigation board of any of its powers to committees and the constitution, quorum, powers and procedure of such committees;
- (g) the manner of summoning and the procedure to be observed at any meeting required to be called under section *one hundred and one*;
- (h) the service of notices under this Chapter;
- (i) the persons by whom, the place at which and the manner in which, anything shall be done for which provision is made in this Chapter;
- (j) the manner in which accounts shall be kept by an irrigation board, and the returns to be rendered in terms of sub-section (1) of section *ninety-six*; and
- (k) generally any other matter which he considers it necessary or expedient to prescribe for the carrying out of the objects of this Chapter.

**103. Irrigation boards may make by-laws.**—(1) Subject to the provisions of sub-section (2), an irrigation board may make by-laws not inconsistent with this Act, relating to—

- (a) the procedure at its meetings;
- (b) the powers and duties of its officers;
- (c) the method of supervising or controlling the diversion, distribution and use of water under its control, and the closing of any water works belonging to it at certain times and seasons, whether for the purpose of repairs or for the benefit of any adjoining lands or for any other reason;
- (d) generally any other matters which it is deemed necessary to prescribe for the carrying out by the said board of the functions, powers and duties assigned to or imposed upon it under this Act.

(2) (a) No by-law made by an irrigation board shall be valid unless it has been approved by the Minister, and no such by-law shall be approved until the expiry of one month after the board has given notice in writing to every voter whose name appears on the voters' list prepared in terms of section 83, of its intention to apply for the approval of such by-law and of the place where such by-law is available for inspection.

(b) A by-law approved by the Minister under paragraph (a) shall come into operation on a date fixed by the irrigation board concerned: Provided that no by-law shall come into operation unless the board at least 30 days before such date gave notice in writing to every voter whose name appears on the voters' list prepared in terms of section 83 of the commencement of such by-law.

[Sub-s. (2) substituted by s. 41 of Act No. 96 of 1983.]

(3) An irrigation board shall supply copies of all by-laws in force in its irrigation district to any person applying therefor, upon payment of such sum for each such copy as has been determined by the board, and a copy of all such by-laws shall be kept by the

secretary of the said board in the office of the board and shall be open for inspection at all reasonable times by any person free of charge.

(4) Any by-laws made by an irrigation board under any prior law and in existence at the date of commencement of this Act shall, unless inconsistent with the provisions of this Act, be deemed to have been made under this section.

**104. Rand Water Board not subject to jurisdiction of irrigation boards.**—The functions, powers and jurisdiction of any irrigation board whose irrigation district is situated within the area of jurisdiction of the Rand Water Board shall be exercised subject to rights lawfully acquired prior to the commencement of this Act by the Rand Water Board under the Rand Water Board Statutes (Private) Act, 1950 (Act No. 17 of 1950).

**105. Continuation of existing river and irrigation districts.**—(1) Any river district or irrigation district established under any law and in existence on the date of commencement of this Act, shall be deemed to have been declared to be an irrigation district under section 72 (3) (a) on that date, and the board established in respect of any such district under that law shall be deemed to be an irrigation board established under this Act, and shall, subject to the provisions of this Act and the directions of the Minister, have all the powers, duties and functions vested in it under the said law or any other law and such other powers, duties and functions as may be assigned to it by the Minister under this Act.

[Sub-s. (1) substituted by s. 21 of Act No. 97 of 1986.]

(2) All assets, rights, liabilities and obligations vested in any such board on the commencement of this Act shall remain so vested in it, and any by-laws made or decisions given or rates or charges imposed by such board prior to such commencement shall remain of full force and effect until amended or withdrawn under this Act.

(3) The members of any such board holding office at the commencement of this Act shall continue to hold office for such period as the Minister may determine, and upon the expiration of such period new members shall be elected in the same manner as in the case of the first election of members of an irrigation board under this Act, and thereafter all the provisions of this Act shall apply in connection with the constitution and the period of office of members of such board.

**106. . . . .**

[S. 106 amended by s. 22 of Act No. 97 of 1986 and repealed by s. 14 (1) of Act No. 68 of 1990.]

## CHAPTER VII

### WATER BOARDS

**107. Definitions.**—In this Chapter “consumer” means a person supplied or entitled to be supplied with water by a water board or a local authority.

**108. Establishment of water boards.**—(1) . . . . .

[Sub-s. (1) deleted by s. 23 (a) of Act No. 97 of 1986.]



(2) Whenever the Minister deems it expedient or desirable that a combined scheme be established for supplying water for urban, industrial or agricultural purposes within any area to local authorities, any department of State, including the South African Transport Services and any provincial administration, or other persons, or whenever the Minister has constructed or commenced the construction of a Government water work for any such purpose, he may by notice in the *Gazette* establish for the area in question, which shall be defined in the notice, a water board and assign a name to such board, and may in like manner at any time alter the boundaries of such area.

[Sub-s. (2) substituted by s. 23 (b) of Act No. 97 of 1986.]

(3) A water board shall be a body corporate, capable of suing and being sued in its corporate name, and of purchasing or otherwise acquiring, holding and alienating movable or immovable property, and of performing such acts as are necessary for or incidental to the exercise of its powers or the performance of its functions.

**108A. Disestablishment of water boards.**—(1) The Minister may after such enquiry as he may think fit, by notice in the *Gazette* disestablish any water board.

[Sub-s. (1) substituted by s. 24 of Act No. 97 of 1986.]

(2) The provisions of section 78 (2) shall *mutatis mutandis* apply in respect of the disestablishment of a water board.

[S. 108A inserted by s. 1 of Act No. 58 of 1974.]

**109. Appointment of members of water boards, and period of office of members.**—

(1) (a) A water board shall, subject to the provisions of paragraph (b), consist of so many members as the Minister may from time to time determine, to be appointed by him (after such consultation as he deems necessary) from amongst such persons that the appointment ensures, in the opinion of the Minister, reasonable representation of persons or classes of persons to whom water is or is to be supplied by that board.

(b) The Minister may appoint such persons to be members of a water board, in addition to the members referred to in paragraph (a), as he may deem fit.

(2) (a) Subject to subsection (4) (b) a member of a water board shall hold office for such period, not exceeding four years, as the Minister may determine at the time of the appointment and of which notice has been given to him in writing by or on behalf of the Minister.

[Para. (a) substituted by s. 3 of Act No. 27 of 1976 and by s. 42 of Act No. 96 of 1984.]

(b) A member of a water board shall, if qualified, be eligible for re-appointment on termination of any period for which he has held office.

(3) A person shall be disqualified from being appointed to or remaining a member of a water board if he has been convicted of an offence and sentenced to imprisonment without the option of a fine, or if he is insolvent or of unsound mind or has without the consent of the board absented himself from three consecutive meetings thereof.

(4) (a) Any casual vacancy on a water board caused by death, resignation, disqualification or otherwise shall be filled by the Minister after such consultation with the persons or classes of persons concerned as he may deem necessary.

(b) Any such vacancy shall be filled as soon as practicable after the occurrence of the vacancy, but the member appointed to fill the vacancy shall retain his office only for so long as the vacating member would have retained such office if no vacancy had occurred.

(5) Any member of a water board may be granted leave of absence from meetings of the board for such period as the board may deem fit, and the Minister may, after such consultation with the persons or classes of persons concerned as he may deem necessary, appoint another member to act in the place of the absent member during the period for which leave of absence has been granted by the board.

(6) No act of a water board shall be rendered invalid or illegal by reason only of any vacancy on the board or of any defect or irregularity in the appointment or qualification of any member of the board.

(7) The Minister shall designate one of the members of a water board as chairman and one of such members as vice-chairman, and at any meeting of such board the chairman

or, in his absence, the vice-chairman or, in the absence of both the chairman and the vice-chairman, another member of the board chosen by the members present shall preside, and if the chairman or the vice-chairman dies or resigns or becomes disqualified or is otherwise unable to serve as a member of the said board, the Minister shall designate another chairman or vice-chairman, as the case may be, and such chairman or vice-chairman shall serve as such for the remainder of the period for which his predecessor in office was so designated.

[S. 109 amended by s. 10 of Act No. 36 of 1971 and substituted by s. 11 of Act No. 45 of 1972. Sub-s. (7) substituted by s. 2 of Act No. 58 of 1974.]

**109A. Remuneration of members of water board.**—A member of a water board shall be paid, out of the funds of such board, such remuneration as may be determined by the Minister from time to time.

[S. 109A inserted by s. 3 of Act No. 58 of 1974.]

**110. Functions, powers and duties of a water board.**—(1) A water board shall have power—

- (a) to establish, construct, purchase or otherwise acquire and to maintain and control any scheme to provide and supply water for use for urban, industrial or agricultural purposes to local authorities, departments of State, including the South African Railways and Harbours Administration and any provincial administration, or other persons within the area for which such water board has been established;
- (aA) to establish, construct, purchase or otherwise acquire and to manage, maintain and control any scheme for the purification or disposal of waste water, effluent or waste resulting from the use of water in or mainly in the area for which such water board was established;  
 [Para. (aA) inserted by s. 1 (a) of Act No. 89 of 1981.]
- (aB) to supply water under its control to a consumer for use for a purpose mentioned in paragraph (a);  
 [Para. (aB) inserted by s. 43 (a) of Act No. 96 of 1984.]
- (b) to appoint such engineers, technical officers and other officers, workmen and servants as it may deem requisite at such salaries, wages and allowances as may be approved by the Minister in general or in any particular case;  
 [Para. (b) substituted by s. 4 of Act No. 58 of 1974 and by s. 43 (b) of Act No. 96 of 1984.]
- (c) to raise money by way of loans;
- (d) to acquire by purchase, lease or otherwise, land or rights or interests in land; water rights, and rights to property of any description, and to control or otherwise beneficially use any property or rights so acquired;
- (e) to acquire by purchase, lease or otherwise or to construct, and to maintain, alter or improve offices, buildings, machinery, plant, conduits, water-channels, cisterns, meters, watercocks, culverts, pipe-lines, water works, reservoirs, dams, filter-beds, wells, shafts, railway sidings, embankments, roads, bridges, vehicles and any other apparatus or works required for or in connection with any scheme referred to in paragraph (a) or (aA);  
 [Para. (e) substituted by s. 1 (b) of Act No. 89 of 1981.]
- (f) to exchange, let, sell or hypothecate any of the property or plant acquired or constructed under paragraph (d) or (e);
- (g) to cause surveys, plans, sections, maps, drawings and estimates to be made by or through its officers, servants or agents;
- (h) to cause entry to be made by or through its officers, servants or agents duly authorized thereto upon any land for the purpose of making plans and surveys thereof, the investigation of any water supply on or under such land, or investigations as to the suitability of any site for the construction of storage

or other works in relation to the supply of water or of any works in relation to the purification or disposal of waste water, effluent or waste, and any such survey or investigation made may include investigations into the purity and chemical composition of any such water or waste water, effluent or waste;  
[Para. (h) substituted by s. 1 (c) of Act No. 89 of 1981.]

- (i) to enter into contracts with local authorities, the Government, including the South African Railways and Harbours Administration and any provincial administration, companies and other persons for the supply of water within the area for which the board has been established or for the purification or disposal of waste water, effluent or waste resulting from the use of water by any such local authority, the Government, any such company or other person;  
[Para. (i) substituted by s. 1 (d) of Act No. 89 of 1981.]
- (iA) with the concurrence of the Minister, to enter into an agreement with any person, including the government of a self-governing territory as defined in section 38 of the National States Constitution Act, 1971 (Act No. 21 of 1971), for the supply of water outside the area for which the board was established or for the purification or disposal of waste water, effluent or waste arising from the use of water by such a person or government;  
[Para. (iA) inserted by s. 4 of Act of No. 37 of 1988.]
- (j) subject to the provisions hereinafter contained as to prices, to make and recover charges for water supplied;
- (k) to purchase or otherwise acquire supplies of water;
- (l) to insure with any company or person against any losses, damage, risks and liabilities which the board may incur;
- (m) to lay or carry through, over, under or across any land, public or private, or any public road, public place or outspan, either within or without the area for which that board was established, and from time to time to repair and maintain, any pipes or canals for the supply of water or for the purification or disposal of waste water, effluent or waste, together with any necessary valves, cocks, meters or other accessories in connection therewith and for that purpose to enter upon any such land, road or place;  
[Para. (m) substituted by s. 1 (e) of Act No. 89 of 1981.]
- (n) to establish a pension fund for its employees and to contribute to such a fund in accordance with by-laws made under section *one hundred and thirty-six*.

(2) A water board shall from time to time on the direction of the Minister enter into such contracts of insurance under paragraph (l) of sub-section (1) as the Minister may require.

(3) A water board shall in the exercise of the powers conferred by paragraph (h) of sub-section (1), have power—

- (a) to search, dig, excavate, bore or carry out any works or investigations which may be necessary for the discovery, gauging or measurement or the establishment of the chemical composition of any water rising from any spring, well or fountain, or flowing in any river, watercourse or channel;
- (b) to take any steps necessary to determine the levels, direction of flow or chemical composition of any water contained in or flowing in any underground reservoirs or channels; and
- (c) to search, dig, excavate, bore and carry out any works necessary to determine the suitability of any site for the construction of storage or other works in relation to the supply of water or of any works in relation to the purification or disposal of waste water, effluent or waste, and may for any such purpose enter upon any land: Provided that no entry shall be made into any building or upon any enclosed space attached to a dwelling, except with the consent of the occupier thereof.

[Para. (c) substituted by s. 1 (f) of Act No. 89 of 1981.]

(4) In the exercise of the powers conferred upon a water board by paragraphs (h) and (m) of sub-section (1) and sub-section (3), as little damage as possible shall be caused, and such compensation as may be agreed upon, or failing agreement determined by a competent court, shall be paid by the said board for all damage so caused, or otherwise the said board shall repair any such damage.

(5) The provisions of sub-section (7) of section *one hundred and forty-one* shall *mutatis mutandis* apply with reference to the exercise of any of the powers mentioned in paragraph (m) of sub-section (1) of this section in relation to any such road as is referred to in the first-mentioned sub-section.

(6) No scheme for the purification or disposal of waste water, effluent or waste shall be established or built by a water board within the area of jurisdiction of a local authority in exercising a power referred to in subsection (1) (aA) otherwise than with the consent of that local authority.

[Sub-s. (6) added by s. 1 (g) of Act No. 89 of 1981.]

(7) The conditions on which and the tariffs at which a water board may in exercising a power referred to in subsection (1) (i) undertake the purification or disposal of waste water, effluent or waste on behalf of any person, shall be determined by the water board in question with the approval of the Minister, and shall be published by such board by notice in the *Gazette*.

[Sub-s. (7) added by s. 1 (g) of Act No. 89 of 1981.]

**110A. Designation of medical aid fund or scheme for employees of water board.—**The Minister may, after consultation with the Administrator of any province, by notice in the *Gazette* designate any medical aid fund or medical aid scheme established for employees and retired employees, and their dependants, of local authorities in such province, as a fund or scheme also for employees and retired employees, and their dependants, of any water board specified in such notice of which the area for which it has been established falls wholly or partly within that province, and thereupon any water board so specified shall, for the purposes of such fund or scheme and any law in terms of which it has been established or has been approved for any purpose, and notwithstanding anything to the contrary in such law contained, be deemed to be and at all relevant times to have been a local authority as contemplated in such law.

[S. 110A inserted by s. 11 of Act No. 51 of 1979.]

**110B. Water board deemed to be local authority for purposes of Industrial Conciliation Act, 1956.—**A water board shall, in relation to the area for which it was established, for the purposes of the Industrial Conciliation Act, 1956 (Act No. 28 of 1956), be deemed to be a local authority within the meaning of that Act.

[S. 110B inserted by s. 11 of Act No. 51 of 1979.]

**110C. Power of water board to render water supply and sanitation service.—**(1) (a) A water board may, subject to subsection (2), render or cause a water supply and sanitation service to be rendered within the area for which it has been established to any community occupying land for residential and related purposes with a view to promoting the object of section 29 of the Constitution or to promoting public health, if in respect of that community, no local authority exists or a local authority having jurisdiction is not able to render such service.

(b) For the purposes of this section “water supply and sanitation service” shall have the meaning assigned thereto in section 26A.

(2) (a) The rendering of a water supply and sanitation service under subsection (1) (a) shall be subject to the approval of the Minister which may relate—

- (i) to the rendering of such service to all communities concerned within the area for which that water board has been established;
- (ii) to the rendering of such service to a particular community or to a category of communities within the area for which that water board has been established as may be determined by the Minister;

- (iii) to the capacity or any other typical feature, as may be determined by the Minister, of any facility to be provided, operated or maintained by or on behalf of that water board for or in connection with the rendering of a water supply and sanitation service,

and which approval shall be subject to such conditions as may be determined by the Minister and specified in the approval.

- (b) Conditions contemplated in paragraph (a) may include conditions relating to—
  - (i) minimum standards to be maintained or guidelines to be taken into account in the rendering of a water supply and sanitation service;
  - (ii) the financing of such service;
  - (iii) charges to be assessed in respect of such service and the persons from whom such charges shall be recovered.

[S. 110C inserted by s. 8 of Act No. 32 of 1994.]

**111. Establishment or acquisition of scheme by a water board.**—(1) A water board shall, as soon as possible after its constitution, proceed in consultation with the department, to investigate the question of establishing or acquiring a scheme or schemes for the purpose of supplying water within its area, and if it is of opinion that the establishment or acquisition of a scheme or schemes is necessary and feasible, it shall submit a report of its proposals to the Minister.

(2) If the Minister approves of any proposals submitted to him under sub-section (1), he may authorize the water board to raise by way of loans as hereinafter provided, the capital moneys necessary for financing the establishment or acquisition of such scheme or schemes in accordance with the provisions of this Chapter.

(3) No scheme shall be established or acquired by a water board, nor shall the proposals for the establishment of any scheme approved by the Minister be substantially departed from, nor shall any existing scheme be substantially extended or altered, without the prior approval of the Minister.

**111A. Transfer of employees of local authority to water board whenever water supply scheme of local authority is acquired by water board.**—(1) (a) Whenever a scheme referred to in section 110 (1) (a) is acquired by a water board from a local authority, such local authority shall second every person employed by it exclusively in connection with the scheme concerned to the service of such water board with effect from the date on which such scheme is acquired, and for such period, but not exceeding six months, as may be agreed upon between the local authority and the water board.

(b) Any person seconded to the service of a water board in terms of paragraph (a) shall, while so seconded, remain subject to the laws governing his employment under the local authority concerned.

(2) A water board to whose service any person employed by a local authority is seconded in terms of section (1), shall, during the period for which the person is so seconded, offer employment to such person in a post established under the water board on such terms and conditions and at such remuneration as the water board may determine, but which shall not be less favourable than any terms, conditions and remuneration applicable to him as a person employed by the local authority concerned.

(3) Any person to whom employment has been offered in terms of subsection (2) and who elects in writing to accept such employment, shall on the expiry of the period for which he was, in terms of subsection (1), seconded to the service of a water board, be appointed by the water board concerned in terms of section 110 (1) (b): Provided that—

- (a) every person so appointed who immediately prior to such appointment was a member of a municipal pension fund, shall remain a member of such pension fund until his service with such water board terminates or he, in terms

of a pension law, becomes a member of a pension fund established under section 2 of the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963);

- (b) any sick or vacation leave which stood to the credit of the said person immediately prior to his appointment by a water board, shall be deemed to be leave earned by him in the service of such water board;
- (c) the appointment by a water board of the said person shall not affect his membership of any trade union within the meaning of the Industrial Conciliation Act, 1956 (Act No. 28 of 1956), of which he was a member immediately prior to his appointment by such water board.

(4) (a) A water board shall from the date of appointment of a person in its service who in terms of paragraph (a) of the proviso to subsection (3) remains a member of a municipal pension fund, pay to the pension fund of which such person is a member, every amount which in terms of the law or rules governing such pension fund would have been payable in respect of such person by a local authority had such person remained in the service of a local authority, and the water board shall pay the said amount for as long as such person remains a member of the pension fund concerned and in its service.

(b) Notwithstanding the provisions of paragraph (a) of the proviso to subsection (3) a person's membership of a municipal pension fund shall not lapse at the termination of his service with the water board concerned if the person concerned is appointed in the service of any other water board without a break in the continuity of his employment or after such a break as the management of the municipal pension fund of which he is a member may approve, and the latter water board shall from the date on which that person is so appointed make the payments referred to in paragraph (a).

(5) (a) If the post of any person appointed in terms of subsection (3) by a water board, by formal resolution of such water board is declared to be redundant and any such person cannot suitably be retained in the service of such water board and the Minister determines that such post did not become redundant as a result of the unreasonable action or refusal of such person—

- (i) such water board shall give to such person notice of such redundancy; and
- (ii) such person shall, at the expiration of a period of six months, or such shorter period as may be agreed upon between such person and such water board, be retired as from the date upon which notice has so been given.

(b) There shall, subject to a pension law, be paid to any person referred to in paragraph (a) from the pension fund of which he is a member, the appropriate benefit prescribed by or under the law or rules governing such pension fund in respect of a member thereof who is dismissed on the grounds of redundancy.

(c) Any such person who at his retirement is a member of a municipal pension fund, shall for the purposes of the law or rules governing such pension fund, be deemed to have been retired by reason of redundancy by the local authority in whose service he was immediately prior to his appointment by the water board.

(d) A municipal pension fund which in terms of paragraph (b) paid a benefit to a person referred to in that paragraph, shall recover from the water board concerned—

- (i) where the benefit concerned is or includes any annuity, the full amount of each payment in respect of such annuity, with effect from the date of such person's retirement up to the date on which he attains the age at which he is required in terms of the said law or rules to retire from the service of the local authority concerned, or up to the date of his death, whichever date is the earlier;
- (ii) where any annuity referred to in subparagraph (i) remains payable in terms of such law or rules after the date on which such person is so required to retire, the amount (if any) by which every payment in respect of such annuity exceeds the amount which would have been payable in terms of such law or rules had such person, on the date on which he actually retired, attained the age at which he is so required to retire;

(iii) where the benefit concerned is or includes any gratuity, the full amount of such gratuity or any portion thereof, as an actuary designated by such municipal pension fund may at the expense of such water board determine, with due regard to the ratio which such person's period of service with the local authority concerned bears to his period of service with the water board concerned.

(e) No amount which in terms of the said law or rules may be recovered by a municipal pension fund from a local authority shall in any case to which this subsection applies be recoverable in respect of the retirement of any person on the ground of redundancy.

(6) (a) A person to whom employment has been offered in terms of subsection (2) and who elects in writing not to accept such employment, shall be dealt with by the local authority concerned in terms of the provisions governing his conditions of service, remuneration and pension rights: Provided that, notwithstanding anything contained in such provisions, if the Minister, after consultation with such local authority, is of the opinion that any person's election not to accept such employment or appropriate alternative employment without reduction in remuneration offered to him by such local authority is unreasonable, such person shall be deemed to have resigned from the service of such local authority in terms of such provisions.

(b) A decision of the Minister under paragraph (a) shall be final.

(c) Expenditure incurred by a local authority in connection with the retirement of any person in its service which it would not have incurred had the water supply scheme concerned not been acquired by a water board, may be recovered by the local authority from the water board concerned.

(7) For the purposes of this section—

“municipal pension fund” means a pension fund established for employees of one or more local authorities;

“pension fund” means a pension or provident fund or scheme;

“pension law” means any law relating to a pension fund administered by or under the control of the Minister of Social Welfare and Pensions.

[S. 111A inserted by s. 12 of Act No. 51 of 1979.]

**112. Expropriation of property by water boards.**—(1) A water board shall in the exercise of the powers conferred upon it under this Chapter have the same powers to expropriate or to take the right to use temporarily property within the area for which it was constituted, as are by section 94 vested in an irrigation board.

(2) The provisions of section 60 (2) (b), (5) and (6) shall *mutatis mutandis* apply in connection with the expropriation of any property or the taking of any right in terms of this section, and any reference in the said provisions to “Minister” (except in section 60 (2) (b) (i)), “Minister of Water Affairs” and “Director-General” shall be construed as a reference to a water board.

[S. 112 substituted by s. 15 of Act No. 92 of 1980. Sub-s. (2) substituted by s. 3 of Act No. 108 of 1993.]

**113. Supply of water by a water board.**—(1) Subject to the provisions of this Act, a water board may—

(a) supply water in bulk for urban use to any local authority within the area of the board which makes application therefor and undertakes to accept and distribute such water to consumers within the area of its jurisdiction;

- (b) supply water either in bulk or otherwise, to any department of State, including the South African Railways and Harbours Administration and any provincial administration, or to any person engaged in prospecting, mining, industry, agriculture or any other undertaking, or to any other person making application therefor and agreeing to accept the same: Provided that, unless the Minister otherwise directs, no water shall be supplied to any consumer who is within the area of jurisdiction of any local authority which is being supplied by such water board with water in bulk, or if such consumer is being supplied by such local authority with water from another source, except with the consent of that local authority.

(2) No person shall be entitled to a supply of water from a water board for any premises having a separate supply of water unless such person has agreed to pay, or has given security to pay such minimum annual sum as will in the opinion of the Minister give the water board a reasonable return on such expenditure as may be incurred by the board in order to meet the possible maximum demand for those premises.

**continued on page 1341**



**114. Non-payment for water supplied.**—(1) A water board shall not, except as provided in sub-section (2), reduce or discontinue the supply of water to a consumer, as stipulated in the contract of supply, without the prior approval of the Director-General and subject to such terms and conditions as he may impose.

[Sub-s. (1) amended by s. 44 of Act No. 96 of 1984.]

(2) If a consumer is insolvent or fails to pay any amount due to a water board in respect of a water rate assessed in terms of sub-section (1) of section *one hundred and twenty* or by way of charges payable in respect of water supplied or to be supplied to him by that board, or by way of any deposit or additional deposit required of him or other amount due by him to the board in respect of the supply of water or the installation or supply of fittings, apparatus, appliances or other appurtenant works in connection with such supply, the said board may discontinue the supply of water to that consumer until such water rate or such charges together with the charges for disconnection and reconnection of such supply are fully paid.

(3) No cessation under sub-section (2) of the supply of water to a consumer by a water board shall relieve any person from any liability in respect of the period of such cessation for any water rates or charges due by such person, and such board shall not be obliged, after the amount due has been paid, to supply any water so discontinued or to pay compensation for any loss sustained by any person consequent upon the discontinuation of the said water.

(4) The provisions of sub-sections (3) and (4) of section *ninety-two* shall *mutatis mutandis* apply in relation to any water rates or charges due to a water board.

**115. Schedule of standard prices of supply.**—(1) A water board shall not supply water to any consumer before it has submitted to the Minister and has obtained his approval of a schedule of standard prices, which may include minimum prices in respect of specified periods, chargeable by such water board for the supply of water to the various classes of consumers.

(2) A water board may with the approval of the Minister from time to time amend its schedule of standard prices, and if any alteration of the boundaries of the area of a water board is made in terms of sub-section (2) of section *one hundred and eight*, in accordance with which any new area is included in such area, the board may, with the approval of the Minister, issue a schedule of standard prices for the supply of water in such new area different from the schedule of standard prices applicable to the former area of the board, as though such supply were under a separate scheme as provided in section *one hundred and eighteen*.

**116. Charges for supply of water by a water board.**—(1) (a) Any charges made by a water board for the supply of water to consumers shall be those specified in the schedule of standard prices approved by the Minister: Provided that a water board may, subject to the provisions of subsection (2), either generally or with respect to a particular consumer or category of consumers and with the approval of the Minister vary its charges above or below the standard prices with due regard to—

- (i) the amount of water consumed;
- (ii) the uniformity or regularity of demand;
- (iii) the time when or during which the water is required;
- (iiiA) the quantity of water which a water board has available at any particular time;

[Para. (iiiA) inserted by s. 45 (1) (b) of Act No. 96 of 1984.]

- (iv) the expenditure of the water board in furnishing the supply; or
- (v) any special circumstances which may exist.

[Para. (a) amended by s. 45 (1) (a) of Act No. 96 of 1984.]

(b) If any dispute arises between the water board and any consumer or association of consumers as to any variation of prices for water supplied, the matter shall be referred to the Minister whose decision thereon shall be final.

(2) No arrangement between a water board and any consumer whereby any charge to that consumer will be reduced below the standard price shall be valid unless the reduction has been approved by the Minister.

(3) . . . . .

[Sub-s. (3) deleted by s. 45 (1) (c) of Act No. 96 of 1984.]

(4) No advantages, rebates, preferences or privileges shall be granted to any consumer except as provided in this Chapter.

**117. Prices to be charged.**—(1) The prices to be charged by a water board for water supplied by it shall be such as to cover—

(a) the cost of operation of all schemes undertaken by it, including costs of distribution, maintenance and administration; and

(b) the amount required for interest on moneys raised by way of loan (including advances referred to in sub-section (5) of section *one hundred and twenty-one*), redemption of such loans or advances and other expenditure incidental thereto.

(c) . . . . .

[Para. (c) deleted by s. 46 (c) of Act No. 96 of 1984.]

(2) The prices to be charged by a water board for water supplied to its various classes of consumers shall be regulated as prescribed in sub-section (1) of section *one hundred and fifteen* and in section *one hundred and sixteen*, and the water board shall increase or decrease its prices for all classes of consumers in equal proportions when making any adjustment of prices in accordance with the provisions of this section.

(3) If there be any surplus or deficit in any financial year of a water board, after providing for the cost and other amounts referred to in sub-section (1), such surplus or deficit shall be carried forward to the next financial year and allowance made therefor in adjusting the charges for water to be supplied during that year.

(4) It shall be a general principle of a water board that its schemes shall, as far as practicable, be carried on neither at a profit nor at a loss, and the charges for water supplied by such board and any rates assessed by it in terms of section *one hundred and twenty* shall be adjusted accordingly from time to time.

**118. Different prices for different schemes.**—(1) (a) If a water board carries on more than one water supply scheme, each such scheme shall, subject to the provisions of sub-section (2), be separately taken into account when the prices to be charged as provided in section *one hundred and seventeen* are being assessed or adjusted.

(b) Separate accounts shall be kept of the expenditure of each scheme showing the actual expenditure by the board relative thereto, and a fair adjustment of the overhead and administration charges, the amount of interest and redemption charges and other allowances for expenditure provided for in this Chapter shall be made between the various schemes.

(2) Whenever in the opinion of the Minister special circumstances exist which render it undesirable or impracticable for a water board to comply with the provisions of sub-section (1), he may authorize such board to take into account all or any of the water supply schemes carried on by it.

**119. Payment for water supplied and interest on payments in arrear.**—(1) (a) Payment for water supplied by a water board to any consumer shall be made within thirty days of the rendering of an account therefor by such board.

(b) Such payment shall be made at such board's office or, as the case may be, to any local authority with whom the said board may have entered into an agreement in terms of which such local authority has undertaken to collect such payment on behalf of the said board.

(2) On all sums which shall have become due in respect of water supplied during any month, and which are not paid as provided in subsection (1), interest may be charged by the water board at such a rate as the board may from time to time determine.

[Sub-s. (2) substituted by s. 47 of Act No. 96 of 1984.]

(3) Such interest shall be recoverable in the same manner as sums due in respect of water supplied.

**120. Water rates.**—(1) To defray any expenditure incurred or to be incurred by it under this Chapter or the regulations made under section 138, a water board may, subject to the approval of the Minister, assess and collect annually a rate, to be called a water rate, on any land within its area, in accordance with regulations made by the Minister in general or relating to a particular water board.

[Sub-s. (1) substituted by s. 28 (a) of Act No. 68 of 1987.]

(2) Any rate imposed under sub-section (1) shall be payable by the persons prescribed by regulation at such times as may be so prescribed.

(3) (a) A water rate shall be assessed at a uniform amount per hectare of land or on such other basis as the Minister may determine: Provided that the Minister may authorize a water board under special circumstances and in accordance with a basis determined by the Minister by regulation, to annually assess rates on and in respect of any land at rates different from the rates assessed upon and in respect of any other land, or to vary any such rate in respect of any land according to the purpose for which water is supplied for use on that land or is intended to be used or according to any other basis which the Minister may consider expedient.

[Para. (a) amended by s. 18 of Act No. 108 of 1977 and substituted by s. 28 (b) of Act No. 68 of 1987.]

(b) If a water rate is imposed upon any land within the area of jurisdiction of a local authority, such local authority shall be required and authorized to collect the same in such manner as may be prescribed by regulation, and to pay the moneys so collected to the water board concerned less such charges, if any, for collection as may be so prescribed.

(4) Any rate assessed in terms of sub section (1) shall be in addition to and not in substitution for any charges made by a water board for water supplied by it under this Chapter.

(5) A water board shall not, without the consent of the Minister, assess any rate on land under this section in respect of any period after the date on which it commences to supply water for use on the land.

**121. Borrowing powers of a water board and repayments of loans and advances.**—

(1) A water board may from time to time, after obtaining the approval of the Minister, raise moneys by way of loan in such amounts as the Minister may authorize and on such conditions as he may approve, for the purpose of—

- (a) establishing, constructing, acquiring or extending any scheme with all appurtenances thereto;
- (b) acquiring such land, rights or other property as is referred to in sub-section (1) of section *one hundred and ten*;
- (c) repaying any moneys advanced to it under sub-section (5);
- (d) redeeming any security for any part of a loan;
- (e) meeting the administrative and incidental expenses of the said board up to the date on which it commences to supply water, such loan being repayable on or before the last day of the financial year of the board during which it so commences to supply, or, with the approval of the Minister, on or before such later date as may be fixed by him, not being more than ten years after the said day;

[Para. (e) substituted by s. 19 (a) of Act No. 108 of 1977.]

- (f) redeeming any loan raised for the purposes of, or in connection with, the establishment of any water supply scheme or a scheme for the purification or disposal of waste water, effluent or waste, or the payment of any interest due in respect of such loan;

[Para. (f) substituted by s. 5 (a) of Act No. 37 of 1988.]

- (g) making loans, not exceeding in any case five hundred rand, to registered owners of immovable property for the installation thereon of water piping and fittings in connection with the supply of water for domestic purposes, every such loan being a debt due to the water board by the owner and his successors in title, bearing interest at a rate to be fixed by the said board

(which rate shall be sufficient to cover the costs incurred by the board in connection with such loan) and shall be repayable in equal monthly instalments together with interest over such period not exceeding five years from the date of the loan as may be determined by the water board.

[Para. (g) substituted by s. 19 (b) of Act No. 108 of 1977.]

(1A) . . . . .

[Sub-s. (1A) inserted by s. 4 of Act No. 27 of 1976 and repealed by s. 3 (1) of Act No. 21 of 1980.]

(2) (a) Provision shall be made by a water board for the redemption of every loan or advance made to or obtained by it by means of a terminable annuity or by the payment of yearly or half-yearly instalments of principal and interest or by means of a sinking fund.

(b) A water board shall cause a separate account to be kept of any sinking fund which it may establish.

(c) If a water board establishes a sinking fund, it shall in every year pay into the sinking fund such an amount as will, together with accrued interest, be sufficient to redeem every loan or advance to be redeemed out of the sinking fund within the period of the loan or advance, or within such further period as the Minister may determine.

[Para. (c) substituted by s. 6 (a) of Act No. 16 of 1991.]

(d) The first instalment in respect of moneys actually borrowed in any financial year shall be paid into the sinking fund not later than the last day of the financial year next succeeding that in which such moneys were raised, and thereafter an instalment shall be paid not later than the last day of each financial year, until the moneys so borrowed shall have been repaid or until the moneys in the sinking fund amount to a sum which, together with accrued interest, will be sufficient to redeem the relevant loan or loans on the due date.

[Para. (d) substituted by s. 6 (b) of Act No. 16 of 1991 and by s. 14 (a) of Act No. 92 of 1993.]

(e) . . . . .

[Para. (e) deleted by s. 48 (a) of Act No. 96 of 1984.]

(f) Any surplus of a sinking fund remaining after the redemption of the whole of the moneys for the repayment of which it was formed, shall be transferred to a reserve fund referred to in section 125.

[Para. (f) substituted by s. 48 (b) of Act No. 96 of 1984.]

(3) A water board shall invest all moneys paid into any sinking fund established by it, as and when received, in one or more of the following securities, namely—

(a) Treasury bills, debentures or other securities chargeable upon the revenue of the Government; or

(b) stock, debentures or other securities of any local authority or other statutory body (including the water board itself or any other water board) in the Republic which are quoted on a licensed stock exchange or have been approved by the Minister; or

[Para. (b) substituted by s. 48 (c) of Act No. 96 of 1984.]

(c) on fixed deposit at interest with any banking institution or building society in the Republic.

[Para. (c) substituted by s. 48 (d) of Act No. 96 of 1984.]

(4) (a) A water board may also borrow moneys by way of overdraft from its bankers, or otherwise—

(i) to defray its ordinary expenditure, not exceeding the total income of the board for its preceding financial year or, in the case of a new water work, the estimated income for the current financial year; or

(ii) to purchase, subject to such conditions as the Minister may with the concurrence of the Minister of Finance determine, stock, debentures or other securities issued by it, with a view to promoting the marketing thereof.

[Para. (a) substituted by s. 48 (e) of Act No. 96 of 1984 and by s. 14 (b) of Act No. 92 of 1993.]

(b) For the purposes of this sub-section “ordinary expenditure” includes expenditure in connection with the purchase of consumable stores for future use, but the cost of such stores shall be recorded against the appropriate account as and when the stores are issued for use.

(5) The Minister may out of moneys provided by Parliament for the purpose, and subject to such terms and conditions as the Minister may deem fit to prescribe—

- (a) advance moneys to a water board to enable it—
  - (i) to carry out any of its functions, duties or powers in anticipation of revenue to be raised under any scheme or schemes which in terms of this Chapter it is authorized to acquire or establish;
  - (ii) to investigate the feasibility of any proposed scheme; or
  - (iii) to acquire or establish a scheme which such board is authorized to acquire or establish in terms of this Chapter; or
- (b) grant a loan to a water board which intends acquiring or establishing a scheme primarily to supply water for use for agricultural purposes or which acquired or established such a scheme—
  - (i) in respect of the estimated cost of acquiring or establishing such scheme; or
  - (ii) for the redemption of a loan which has been taken up by that board to acquire or establish such scheme;

Provided that no advance for the purposes referred to in paragraph (a) (i) or (ii) for an amount exceeding the amount which the Minister of Finance may from time to time determine and no advance or loan, as the case may be, for the purposes referred to in paragraph (a) (iii) or (b) in respect of any scheme the total cost of which (as estimated by the Minister) will exceed when acquired or established as an independent scheme the amount which the Minister of Finance may from time to time determine, shall be made or granted unless a report on the purposes for which the advance is destined or the scheme in respect of which the loan is required, has been laid on the Table of Parliament and such advance or loan has been approved by resolution of Parliament.

[Sub-s. (5) amended by s. 11 of Act No. 36 of 1971 and by s. 19 (c) of Act No. 108 of 1977, substituted by s. 48 (f) of Act No. 96 of 1984 and amended by s. 5 (b) of Act No. 37 of 1988.]

(6) If the Minister is at any time of the opinion that a substantial deviation is desirable with respect to the capacity of a scheme as set out in a report referred to in subsection (5), the acquisition or establishment of such scheme shall, subject to subsection (7), not be continued with, unless the Minister has laid upon the Table of Parliament a supplementary report in connection with such scheme.

[Sub-s. (6) inserted by s. 48 (g) of Act No. 96 of 1984 and substituted by s. 5 (c) of Act No. 37 of 1988.]

(7) The provisions of sections 157 (1A) and (1B), 160 and 161 shall be *mutatis mutandis* applicable with respect to the granting of a loan referred to in subsection (5) to a water board.

[Sub-s. (7) inserted by s. 48 (g) of Act No. 96 of 1984 and substituted by s. 5 (d) of Act No. 37 of 1988.]

**122. Water board funds.**—(1) All moneys consisting of water rates, water charges and other charges or sums levied or imposed or recoverable by or payable to a water board in terms of this Chapter or the regulations made thereunder or the by-laws of any water board shall, if not appropriated to any other fund or account of the water board, form a fund to be called the water board revenue account.

(2) All moneys raised by a water board by way of loan, including advances made to it by the Minister in terms of sub-section (5) of section *one hundred and twenty-one* for capital purposes, shall be paid to the fund or account for which the loan was authorized and raised or for which the advance was paid, and if the purpose for which the loan was raised or the advance was paid, is completed or abandoned, any balance remaining unexpended of the moneys so raised or paid, may with the consent of the Minister be applied to any other purpose, whereupon such balance shall be transferred to the capital account concerned.

(3) All moneys received by a water board from the sale of immovable property or other assets acquired out of capital moneys, shall be paid to the capital account out of which the cost thereof was originally defrayed unless the Minister authorizes such board to utilize such moneys for any other purpose.

(4) All moneys raised or received by a water board for any specific purpose or in respect of any special fund or account shall be paid to the appropriate fund or account, and shall, save as is otherwise provided in this Act, be applied only to the purpose for which they were raised or received.

**123. Accounts.**—(1) The financial year of a water board shall end on a date in each year as determined from time to time by the water board.

[Sub-s. (1) substituted by s. 49 (1) (a) of Act No. 96 of 1984 and by s. 9 of Act No. 32 of 1994.]

(2) A water board shall cause to be kept such books of account as may be necessary to maintain a proper record of all matters relating to the financial transactions of the water board, including all cash receipts and cash payments, the revenue earned but not received, and expenditure incurred but not paid, clearly distinguishing in each case between capital and revenue, and generally showing the assets and liabilities of the board.

(3) (a) A water board shall as soon as may be practicable after the close of each financial year cause the aforesaid books to be closed and balanced as at the end of such year, and shall as soon as may be practicable thereafter cause to be prepared separate income and expenditure accounts and balance sheets of the revenue account and of all other funds or accounts.

[Para. (a) substituted by s. 49 (1) (b) of Act No. 96 of 1984.]

(b) Such board shall also cause to be prepared an aggregate balance sheet wherein shall be included in summarised form the whole of the liabilities and assets of the board.

(c) The said accounts and balance sheets shall clearly distinguish between capital and revenue in each case.

(4) A water board shall keep a register of all its assets.

[Sub-s. (4) added by s. 49 (1) (c) of Act No. 96 of 1984.]

**124. Estimates of revenue and expenditure.**—(1) A water board shall before the end of each financial year prepare estimates of its expected income and expenditure for the ensuing financial year.

[Sub-s. (1) substituted by s. 50 of Act No. 96 of 1984.]

(2) A water board shall, when framing the estimates mentioned in sub-section (1), also frame estimates of revenue and expenditure in respect of all other funds or accounts, distinguishing in each case between revenue and capital accounts.

(3) In no case shall the estimates of expenditure from any particular fund, including any deficit brought forward, exceed the estimate of income on the revenue account of that fund, unless provision is simultaneously made for the excess expenditure to be met: Provided that with the prior approval of the Minister and subject to such terms and conditions as he may prescribe, a water board may up to the end of the second financial year immediately following the financial year in which it commenced to supply water, meet the whole or any part of any annual deficit from loan moneys not exceeding in all five per cent of the board's expenditure from loan moneys.

(4) The estimate of expenditure on capital account shall in no case exceed the amount of capital moneys available for the particular service, including moneys still to be raised under borrowing powers for that service.

**125. General reserve funds.**—(1) A water board shall establish a general reserve fund to which shall be credited all moneys which the board does not immediately require or which are not set aside for any purpose in any particular fund.

(2) The money in a general reserve fund may be applied by the board at its discretion for any purpose for which it is permitted to apply its money.

[S. 125 amended by s. 12 of Act No. 36 of 1971 and substituted by s. 51 of Act No. 96 of 1984.]

(3) All moneys received by a water board from the sale of immovable property or other assets acquired out of capital moneys, shall be paid to the capital account out of which the cost thereof was originally defrayed unless the Minister authorizes such board to utilize such moneys for any other purpose.

(4) All moneys raised or received by a water board for any specific purpose or in respect of any special fund or account shall be paid to the appropriate fund or account, and shall, save as is otherwise provided in this Act, be applied only to the purpose for which they were raised or received.

**123. Accounts.**—(1) The financial year of a water board shall end on the last day of February in each year.

[Sub-s. (1) substituted by s. 49 (1) (a) of Act No. 96 of 1984.]

(2) A water board shall cause to be kept such books of account as may be necessary to maintain a proper record of all matters relating to the financial transactions of the water board, including all cash receipts and cash payments, the revenue earned but not received, and expenditure incurred but not paid, clearly distinguishing in each case between capital and revenue, and generally showing the assets and liabilities of the board.

(3) (a) A water board shall as soon as may be practicable after the close of each financial year cause the aforesaid books to be closed and balanced as at the end of such year, and shall as soon as may be practicable thereafter cause to be prepared separate income and expenditure accounts and balance sheets of the revenue account and of all other funds or accounts.

[Para. (a) substituted by s. 49 (1) (b) of Act No. 96 of 1984.]

(b) Such board shall also cause to be prepared an aggregate balance sheet wherein shall be included in summarised form the whole of the liabilities and assets of the board.

(c) The said accounts and balance sheets shall clearly distinguish between capital and revenue in each case.

(4) A water board shall keep a register of all its assets.

[Sub-s. (4) added by s. 49 (1) (c) of Act No. 96 of 1984.]

**124. Estimates of revenue and expenditure.**—(1) A water board shall before the end of each financial year prepare estimates of its expected income and expenditure for the ensuing financial year.

[Sub-s. (1) substituted by s. 50 of Act No. 96 of 1984.]

(2) A water board shall, when framing the estimates mentioned in sub-section (1), also frame estimates of revenue and expenditure in respect of all other funds or accounts, distinguishing in each case between revenue and capital accounts.

(3) In no case shall the estimates of expenditure from any particular fund, including any deficit brought forward, exceed the estimate of income on the revenue account of that fund, unless provision is simultaneously made for the excess expenditure to be met: Provided that with the prior approval of the Minister and subject to such terms and conditions as he may prescribe, a water board may up to the end of the second financial year immediately following the financial year in which it commenced to supply water, meet the whole or any part of any annual deficit from loan moneys not exceeding in all five per cent of the board's expenditure from loan moneys.

(4) The estimate of expenditure on capital account shall in no case exceed the amount of capital moneys available for the particular service, including moneys still to be raised under borrowing powers for that service.

**125. General reserve funds.**—(1) A water board shall establish a general reserve fund to which shall be credited all moneys which the board does not immediately require or which are not set aside for any purpose in any particular fund.

(2) The money in a general reserve fund may be applied by the board at its discretion for any purpose for which it is permitted to apply its money.

[S. 125 amended by s. 12 of Act No. 36 of 1971 and substituted by s. 51 of Act No. 96 of 1984.]

**126. Audit.**—The provisions of sub-sections (1) and (2) of section *ninety-six* shall *mutatis mutandis* apply in relation to any water board.

**127. Restrictions imposed on local authorities and others in defined areas.**—(1) No local authority in the area of a water board which is being supplied with water by such board shall have the right to supply water to any consumer outside the area of its jurisdiction except with the consent of such water board and at the tariffs and subject to the conditions determined by that board.

(2) No local authority and no person who supplies water to any other person within the said area shall, without the prior approval of the Minister, extend or increase the supply of water derived from any scheme under its or his control or enter into an arrangement for acquiring water otherwise than from the water board concerned.

(3) No consumer (other than a local authority within the area of its jurisdiction) shall, without the sanction of a water board, sell or supply any water purchased by him from such board to any person whom the board is for the time being empowered to supply, and if any consumer shall sell or supply water in contravention of this sub-section, the said water board may charge such consumer in addition to the charges made in accordance with this Chapter, at a rate not exceeding three times the standard rate in force from time to time in respect of water supplied to him during the period of such contravention.

continued on page 1353



**128. Breaking up of streets, etc., by a water board.**—(1) For the purpose of this section “street” includes any road, square or open or closed public place, the control or care of which is vested in any local authority.

(2) Subject to the provisions of this section, a water board may break up any street for the purposes of any authorized scheme and lay or construct conduits or pipe-lines along, under or over any street, and from time to time repair, alter or remove any conduits, aqueducts or pipe-lines so laid or constructed: Provided that the local authority having control of any such street may after notice in writing to such board, itself undertake such operations on behalf of that board, if the secretary is satisfied that the charges to be made for the work involved, as specified in such notice, are reasonable, and that such local authority will complete the work in question within a reasonable period.

(3) A water board shall not less than thirty days before it exercises any power conferred by this section, give to the local authority concerned notice in writing of its intention to do so, except in cases of emergency, and in such cases it shall give such notice as soon as possible after the emergency has arisen.

(4) The powers conferred upon a water board under this section shall, except in cases of emergency, be exercised only under the superintendence of the local authority concerned and according to such plan showing the route and such specifications as may be approved by that local authority or, if any dispute arises respecting such plan, route or specifications, as may be approved by the Minister: Provided that if the said local authority fails to exercise the powers of superintendence herein conferred after notice as aforesaid has been given, the water board may exercise those powers without such superintendence.

(5) Whenever a water board carries out any work authorized by this section, it shall comply with the by-laws or regulations of the local authority concerned and shall complete that work with reasonable despatch and reinstate and make good the street opened or broken up and remove the rubbish occasioned thereby, and shall, while the street is opened or broken up or obstructed, cause the works to be at all times fenced and guarded and, during the night, adequately lighted.

(6) If a water board fails to carry out any duty imposed upon it by sub-section (5), the said local authority may cause any work delayed or omitted to be executed at the expense of the said board.

(7) A water board shall pay to the said local authority the costs reasonably and necessarily incurred by it in exercising any superintendence under this section.

(8) Nothing in this section contained shall be construed as relieving a water board from any liability in respect of any loss or damage caused by its failure to comply with the provisions of this section.

**129. Entry of water board's premises for inspection, etc.**—(1) The secretary or any officer of the department authorized thereto in writing by him may—

- (a) at all reasonable times enter upon any premises of any water board and inspect any water works, plant, machinery, books and accounts and other documents found thereat;
- (b) call upon any water board or any person in its employ to furnish him with periodical or other returns in such form as may from time to time be prescribed by the Minister, and such particulars in respect of any scheme administered by that board as the secretary or such officer may from time to time demand.

(2) Any person who refuses to allow any such inspection or fails to comply with any such demand, or who wilfully obstructs or hinders the secretary or such officer in any such inspection shall be guilty of an offence.

(3) If any person divulges information obtained by him upon such inspection, except for the purpose of carrying out his duties under this Chapter or the regulations made thereunder or upon the order of or in answer to questions put to him as a witness in a court of law, he shall be guilty of an offence.

**130. Water board's powers of entry and inspection.**—Any person authorized thereto in writing by a water board may at all reasonable times enter any premises to which water is or has been supplied by such board in order to inspect the pipe-lines, meters, fittings, works and apparatus belonging to such board, or for the purpose of ascertaining the quantity of water consumed or, where a supply is no longer required, removing any pipe-lines, meters, fittings, works and apparatus belonging to the said board, and all damage caused by such entry, inspection or removal shall be repaired and made good by the board.

**131. Pipe-lines, meters, fittings, etc., not to be fixtures.**—(1) Any pipe-lines, meters, fittings, works or apparatus belonging to any water board lawfully placed in or upon any premises not in its lawful possession shall, whether or not fixed to any part of such premises, remain the property of and be removable by such board, and shall not be subject to the landlord's hypothec for rent of such premises nor liable to be taken in execution under any process of law or any proceedings in insolvency or liquidation against the owner or occupier of such premises.

(2) For the purposes of section *one hundred and thirty*, pipe-lines, meters, fittings and apparatus let or rented by a water board or disposed of by it on terms of payment by instalments shall, until such instalments have been paid, be deemed to belong to it.

**132. Unlawful abstraction of water.**—(1) Any person who without legal right (the proof of which shall be upon him) abstracts or causes to be abstracted or diverts or causes to be diverted any water from the scheme of any water board, or consumes or uses any such water which has been wrongfully or unlawfully abstracted or diverted knowing the same to have been wrongfully or unlawfully abstracted or diverted shall be guilty of an offence and liable on conviction to the penalties prescribed by sub-section (1) of section *one hundred and seventy* in respect of an offence mentioned in that sub-section.

(2) Any person who without legal right (the proof of which shall be upon him) cuts or damages or interferes with any works, including conduits, aqueducts or pipe-lines, belonging to any water board and used for the purpose of supplying water, shall be guilty of an offence and liable on conviction to the penalties prescribed by sub-section (2) of section *one hundred and seventy* in respect of an offence mentioned in that sub-section.

**133. Application of section 95 to water boards.**—The provisions of section *ninety-five* shall apply *mutatis mutandis* in relation to water boards.

**134. Annual and other reports.**—Every water board shall within one month after the receipt by it of a report in respect of any audit of its accounts submit to the Minister a report upon its operations and activities during the financial year to which the audit relates including *inter alia*—

- (a) a balance sheet and a complete statement of revenue and expenditure, duly audited;
- (b) the report of the auditors;
- (c) a statement of the revenue derived by the board and the expenditure incurred by it in respect of each scheme, and of the water supplied by it to each local authority and each particular class of consumers;
- (d) particulars as to the extent and value of all classes of property owned by the board;
- (e) a statement showing the amount of securities for loans still outstanding, and the interest thereon, whether paid or unpaid;

- (f) a statement showing the position of each of the funds required by this Chapter to be established and maintained;
- (g) particulars of the expenses of management and administration and all other expenses;
- (h) details in connection with the erection and construction, repair, improvement or alteration of water works, plant, machinery or buildings and the cost thereof;
- (i) particulars as to the price or rent of any land or rights or interests in or over land or any other property acquired or hired.

**135. Water board to comply with provisions of Act relating to use of water.**—Nothing in this Chapter contained shall be construed as authorizing a water board to take or use any water to which it is not, in accordance with the provisions of this Act, entitled or in respect of which it has not acquired a lawful right.

**136. By-laws of a water board.**—(1) A water board may make by-laws not inconsistent with this Act, relating to—

- (a) the proceedings and business of the board;
- (b) the duties of officers, servants and other persons in its employ, including the delegation of powers of appointment and dismissal to any particular officer: Provided that the chief administrative officer of a water board shall not, without his own consent, be removed from his office, nor shall his salary or emoluments be reduced, without the approval of the Minister: Provided further that a water board may suspend any such officer from the duties or emoluments of his office for gross incapacity, neglect or misconduct pending the sanction of the Minister to his dismissal, in which event such officer shall, upon sanction being granted, be deemed to have been removed from office as from the date of such suspension;
- (c) the scales of salaries, wages or other remuneration and the rights and privileges of persons in its employ, and the contributions to be paid by such persons towards any pension fund which may be established by the board;
- (d) the conditions which shall apply in connection with the supply of water to any person by the board;
- (e) the units or standards for the measurement of water supplied, the verification of meters, the fees to be charged therefor and the settlement of disputes as to measurements of water supplied and limits of error;
- (f) the construction, alteration, operation, protection and inspection of works, plant, machinery, apparatus, appliances and equipment required in connection with the conveyance, distribution, connection, installation or use of water supplied by the board;
- (g) the granting of discounts for prompt payment by consumers of water or the making of additional charges or the payment of interest in respect of delayed payments;
- (h) the payment and collection of moneys due for water supplied and rentals of meters and other apparatus;
- (i) the prevention of the waste or unlawful use of water supplied by the board;
- (j) the recovery and enforcement of payment of moneys due for water supplied by the board;
- (k) the fees to be charged by it under this Chapter.

(2) (a) No by-law made by a water board shall be valid unless it has been approved by the Minister.

(b) A by-law approved by the Minister under paragraph (a) shall come into operation on a date determined by the water board concerned: Provided that a by-law under subsection (1) (d) to (k) shall not come into operation unless the board at least 30 days before that date forwarded a copy of such by-law to every consumer in its area.

[Sub-s. (2) substituted by s. 52 of Act No. 96 of 1984.]

**137. Continuation of Regional Water Supply Corporations established under Ordinance 21 of 1945 (Natal).**—(1) No regional water services corporation shall be constituted under the provisions of the Water Services Ordinance, 1963 (Ordinance No. 27 of 1963), of Natal, without the prior approval of the Minister.

[Sub-s. (1) substituted by s. 53 (a) of Act No. 96 of 1984.]

(2) . . . . .

[Sub-s. (2) substituted by s. 53 (b) of Act No. 96 of 1984 and deleted by s. 25 (a) of Act No. 97 of 1986.]

(3) (a) The Minister may after consultation with the Administrator of the Province of Natal by notice in the *Gazette* apply the provisions of this Chapter to a regional water services corporation constituted under the said Ordinance, and such corporation shall thereupon become a water board under a name assigned to it in the said notice and shall be vested with all the powers, duties and functions conferred upon and assigned to a water board by this Chapter.

[Para. (a) substituted by s. 25 (b) of Act No. 97 of 1986.]

(b) All assets, rights, liabilities and obligations vested in any such corporation at the date on which a notice under paragraph (a) comes into operation shall remain so vested in that corporation in its capacity as such water board, and any rates or charges imposed or decisions given by such corporation prior to such date shall remain of full force and effect until amended or withdrawn under this Act as if they had been imposed or given by that corporation in its capacity as aforesaid.

[Para. (b) substituted by s. 25 (c) of Act No. 97 of 1986.]

(c) Any by-law or regulation made by such corporation prior to the date in question shall, in so far as it is within the powers conferred upon a water board by section *one hundred and thirty-six*, be deemed to have been made by that corporation in its capacity aforesaid under the said section, and shall remain of full force and effect until amended or withdrawn under this Act.

(d) The members of such a corporation holding office at the date in question shall remain members of that corporation in its capacity as aforesaid, and shall as such continue to hold office for such period not exceeding four years as from the said date as the Minister may determine, and the provisions of section *one hundred and nine* shall thereafter apply in connection with the appointment of members thereof, including any member appointed to fill any vacancy which may occur as a result of the death, resignation or disqualification of a member, and in connection with the appointment of any person to act in the stead of a member who has been granted leave of absence from meetings.

(e) Nothing in this Chapter contained shall be deemed to preclude any such corporation from continuing to employ in its capacity as aforesaid under the conditions of employment applicable to him at the date on which the relevant notice under paragraph (a) comes into operation, any employee on its establishment at that date, or from continuing to contribute in such capacity in respect of such employee towards any pension fund, and for that purpose any such pension fund shall be deemed to have been established under this Chapter.

[Para. (e) substituted by s. 25 (d) of Act No. 97 of 1986.]

**138. Regulations as to water boards.**—The Minister may make regulations relating to—

- (a) the assessment, levying and collection of water rates assessed in terms of section *one hundred and twenty*;
- (b) the exemption from payment of such water rates upon any land within the area of jurisdiction of any local authority or in any township in respect of which he deems it inequitable that a water rate should be imposed, or the variation of the water rate according to the purpose for which any land may or may be intended to be used;
- (c) the collection by a local authority, and the payment to a water board, of rates referred to in paragraph (b) of sub-section (3) of section *one hundred and twenty*, and the charges which such local authority may impose for such collections;

- (d) the number of members which shall constitute a quorum at any meeting of any water board and the allowances which may be paid to the chairman or any other member;  
 [Par. (d) substituted by s. 5 of Act No. 58 of 1974.]
- (e) the protection of the public from damage owing to the exercise of rights granted under this Chapter;
- (f) inspections and enquiries into the conduct and operation of schemes;
- (g) the standard of purity of water to be supplied;
- (h) the mode of supplying water;
- (i) the prevention of wastage or pollution in any manner whatsoever of any water supplies irrespective of the uses to which such water supplies are or may be put;
- (j) generally any matter which the Minister considers it necessary or expedient to prescribe for the more efficient administration and carrying into effect of the provisions of this Chapter.

#### CHAPTER VIIA

##### WATER WORKS IN TERMS OF TREATIES WITH OTHER STATES [Heading inserted by s. 1 of Act No. 110 of 1986.]

**138A. Establishment of bodies.**—(1) If the Government of the Republic and the government of any other state have entered into a treaty jointly to construct, operate or maintain a water work, the Minister may, with the concurrence of the Minister of Foreign Affairs and regard being had to the relevant treaty, by notice in the *Gazette* establish a body with the object of undertaking the construction, operation or maintenance of the water work or a portion thereof as set out in the notice.

(2) A notice contemplated in subsection (1) shall, regard being had to the relevant treaty, provide for—

- (a) the constitution of the body concerned;
- (b) the qualifications with which persons shall comply in order to be appointed as members of the body concerned;
- (c) the term of office and remuneration of members of the body concerned;
- (d) the filling of vacancies in the body concerned;
- (e) the appointment or election of a chairman of the body concerned;
- (f) the manner in which meetings of the body concerned shall be convened, and the quorum for such meetings;
- (g) the manner in which decisions shall be taken by the body concerned;
- (h) the management of the affairs of the body concerned;
- (i) the estimates and reports which shall be prepared by the body concerned; and
- (j) the books of account which shall be kept in respect of the financial transactions of the body concerned, and the auditing of those books.

(3) A notice contemplated in subsection (1), may, regard being had to the relevant treaty, provide for—

- (a) the insurance which shall be taken out by the body concerned against the risks of loss or damage which may arise out of the performance of its functions;
- (b) control and supervision over the affairs of the body concerned by an authority established in terms of the relevant treaty; and

(c) any other matter which the Minister may regard necessary or expedient in order to give effect to the relevant treaty.

(4) A body established under subsection (1) shall be a juristic person.

(5) Such a body shall not distribute any of its gains to any person, and shall utilize its funds solely for the object for which it has been established.

[S. 138A inserted by s. 1 of Act No. 110 of 1986.]

**138B. Powers of body.**—(1) A body established under section 138A shall, in order to achieve its object, have the power—

- (a) to employ persons and to appoint contractors and consultants;
- (b) to raise money by way of loans in terms of section 138D;
- (c) to purchase, lease or acquire under subsection (2) land or any rights in land;
- (d) to purchase, lease or acquire under subsection (2) any property or equipment required for or in connection with the construction, operation or maintenance of the water work in question;
- (e) to exchange, let, sell or hypothecate any land, property or equipment acquired under paragraph (c) or (d);
- (f) to cause entry to be made by its members, employees, contractors or consultants duly authorized thereto upon land belonging to someone else;
- (g) subject to section 141 (7), to construct and maintain a water work over, under or across a public road;
- (h) to perform its functions by virtue of the treaty outside the Republic, subject to the laws of the state in question; and
- (i) to perform any act which may be necessary for, or in connection with, the performance of its functions.

(2) (a) Such a body shall in order to achieve its object have the same powers to expropriate property or to take the right to use temporarily such property as are by section 94 vested in an irrigation board.

(b) The provisions of section 60 (2) (b), (5) and (6) shall *mutatis mutandis* apply in connection with the expropriation of property or the taking of any right in terms of this subsection, and a reference in those provisions to “Minister” (except in section 60 (2) (b) (i)), “Minister of Water Affairs” and “Director-General” shall be construed as a reference to a body established under section 138A.

[S. 138B inserted by s. 1 of Act No. 110 of 1986. Para. (b) substituted by s. 4 of Act No. 108 of 1993.]

**138C. Funds of body.**—(1) The funds of a body established under section 138A shall, regard being had to the relevant treaty, consist of—

- (a) income acquired out of the supply of water;
- (b) moneys appropriated by Parliament;
- (c) loans raised by it under section 138D; or
- (d) charges levied by the Minister under section 138F.

[Sub-s. (1) substituted by s. 29 of Act No. 68 of 1987.]

(2) Any funds of the body which are not immediately required for the object of the body, shall be invested in the manner determined by the Minister with the concurrence of the Minister of Finance.

[S. 138C inserted by s. 1 of Act No. 110 of 1986.]

**138D. Borrowing powers of body.**—(1) A body established under section 138A may, with the approval of the Minister granted with the concurrence of the Minister of Finance and regard being had to the relevant treaty, raise moneys by way of loans for the purposes of—

- (a) acquiring land, rights or other property with a view to the construction of the water work in question;

- (b) paying interest on or repaying a loan raised by the body;
- (c) meeting the administrative and incidental expenses of the body;
- (d) constructing, operating or maintaining the water work in question; and
- (e) complying with the obligations of the Government of the Republic in terms of the relevant treaty, if directed thereto by the Minister with the concurrence of the Minister of Finance.

(2) A body may with the approval of the Minister borrow moneys by way of overdraft from its bankers or otherwise—

- (a) to defray its current expenses; or
- (b) to purchase, subject to such conditions as the Minister may with the concurrence of the Minister of Finance determine, stock, debentures or other securities issued by it, with a view to promoting the marketing thereof.

[S. 138D inserted by s. 1 of Act No. 110 of 1986. Sub-s. (2) substituted by s. 15 of Act No. 92 of 1993.]

**138E. Report to Minister.**—(1) A body established under section 138A shall as soon as may be practicable after receipt by it of a report on the audit of its books of account, submit a report to the Minister on its functions and activities during the financial year to which the audit relates, together with duly audited financial statements.

(2) The Minister may appoint any person to report to the Minister on the affairs of a body established under section 138A, and such person may for that purpose—

- (a) attend any meeting of that body;
- (b) at all reasonable times enter upon any premises of that body and inspect the work, equipment, machinery, books, accounts and other documents on the premises; and
- (c) direct that body or any person in the service of that body to provide him with the returns, books or particulars on the affairs of that body which he may require.

(3) Any person who refuses such attendance or entry and inspection, or fails to comply with such direction, or who deliberately prevents a person appointed under subsection (1) from so attending or entering and inspecting, shall be guilty of an offence.

[S. 138E inserted by s. 1 of Act No. 110 of 1986.]

**138F. Levying of charges.**—(1) Notwithstanding anything to the contrary contained in any law but subject to the provisions of subsection (2), the Minister may with the concurrence of the Minister of Finance, by notice in the *Gazette* levy a charge on water which is supplied for use for any purpose by the State, an irrigation board, a water board, a local authority, the Rand Water Board or any other supplier in an area for the benefit of which a water work referred to in section 138A in the opinion of the Minister, has been, is being or will be constructed.

(2) (a) No charge shall be levied under subsection (1), unless the Minister not less than 60 days prior to the date on which he intends to publish the relevant notice in the *Gazette*, has tabled in Parliament a report containing the particulars required in paragraph (b).

- (b) The report in terms of paragraph (a) shall contain particulars relating to—
  - (i) the obligations derived by the State from the treaty concerned;
  - (ii) the water work concerned and the benefit it entails for the users of water who will be liable for the payment of the proposed charges; and
  - (iii) the rate at which the charges will be levied and the purpose for which the proceeds thereof are intended to be used.

(3) A charge levied under subsection (1) shall be payable before or on the date mentioned in the notice, and shall be recovered in the manner prescribed in the notice from the users mentioned therein by—

- (a) the Director-General if the water is supplied by the State; or
- (b) the other supplier of water concerned.

(4) (a) The amount of any charge recovered by a supplier referred to in subsection (3) (b), shall as soon as may be practicable be remitted to the Director-General.

(b) Duly audited statements substantiating the amounts referred to in paragraph (a) shall be submitted annually to the Director-General.

(c) . . . . .

[Para. (c) deleted by s. 15 of Act No. 68 of 1990.]

(5) A notice under subsection (1) may in respect of the amount of the charge differentiate between categories of users and may absolve any particular category of users from liability for the payment of such charge.

(6) Interest at a rate equal to the rate determined in terms of section 26 (1) of the Exchequer and Audit Act, 1975 (Act No. 66 of 1975), and in force on the date on which a charge is due, shall be due from that date.

(7) The Minister may with the concurrence of the Minister of Finance write off any amount due in respect of a charge or interest in terms of this section which in his opinion cannot be recovered.

(8) This section shall bind the State.

[S. 138F inserted by s. 30 of Act No. 68 of 1987.]

**138G. Obligations of State.**—In order to fulfil the obligations of the State under the relevant treaty, the Director-General shall remit, in accordance with such directions as the Minister may from time to time with the concurrence of the Minister of Finance determine, any charge recovered by or remitted to him in terms of section 138F to the government, body or person indicated in the said directions.

[S. 138G inserted by s. 16 of Act No. 68 of 1990.]

#### CHAPTER VIIB

[Chapter VIIB inserted by s. 17 of Act No. 68 of 1990 and substituted by s. 16 of Act No. 92 of 1993.]

#### JOINT WATER AUTHORITIES

[Heading inserted by s. 17 of Act No. 68 of 1990 and substituted by s. 16 of Act No. 92 of 1993.]

**138H. Definitions.**—In this Chapter, unless the context indicates otherwise—

“agreement” means any agreement referred to in section 138I;

“area”, in relation to a water authority, means the area of jurisdiction, if any, of that water authority described in the agreement;

“project” means any proposal set out in an agreement as to—

- (a) the irrigation or the drainage of land situated within the area of a water authority;
- (b) the control of water works situated within that area and used for the irrigation of the said land and the distribution of water, or the alteration, enlargement or improvement of such water works;
- (c) the construction, operation or maintenance of any water work, or any system of water works, within an area or elsewhere, for the abstraction or the impoundment and storage of water used for irrigation or any other purposes;
- (d) the control within an area of the abstraction, utilization, supply or distribution of water so used; or
- (e) the conducting of any investigation with a view to rendering advice to the governments concerned on any matter relating to the development or utilization of water resources in general or any particular water resource specified in the agreement;

“water authority” means any joint water authority established under an agreement.

[S. 138H inserted by s. 17 of Act No. 68 of 1990 and substituted by s. 16 of Act No. 92 of 1993.]



**138I. Application of Chapter.**—The provisions of this Chapter shall apply to any joint water authority established under an agreement entered into by the Government of the Republic and the government of any other country or the governments of other countries, as the case may be, in order to carry out any project within any part of the Republic and any such country or countries, or within any part of the Republic, as the case may be.

[S. 138I inserted by s. 17 of Act No. 68 of 1990 and substituted by s. 16 of Act No. 92 of 1993.]

**138J. Capacity of water authorities to perform acts within Republic.**—(1) The relevant water authority shall from the date fixed by the Minister by notice in the *Gazette* be a juristic person and be capable of suing and being sued within the Republic in the name under which it has been established and of performing all the acts which are necessary for or incidental to the exercise or the performance of its powers, duties and functions under this Act, the agreement or a notice referred to in section 138L: Provided that a water authority established for a particular area shall not hire, buy or otherwise acquire any immovable property in any area other than the area for which it has been established.

(2) In order to facilitate the service of any process or document, a water authority referred to in subsection (1) shall at all times maintain a postal address and an office within the Republic.

[S. 138J inserted by s. 17 of Act No. 68 of 1990 and substituted by s. 16 of Act No. 92 of 1993.]

**138K. Release of Government water works to water authorities.**—(1) The provisions of section 69 (1) shall *mutatis mutandis* apply in respect of a water authority.

(2) If any Government water work is sold or otherwise disposed of to a water authority under section 69 (1) (b) as applied by subsection (1), any provision of this Act or any other law relating to the control, operation, administration or maintenance of, and the control, supply or distribution of water from, a Government water work shall, notwithstanding the fact that the said sale or disposal has taken place, continue to apply, except in so far as is otherwise provided in any condition of a resolution referred to in the said section 69 (1) (b), to such Government water work as if the said sale or disposal has not taken place, and for the purposes of the latter application the administration of any such provision may be assigned to the water authority or to any person in its employ under section 138L (1) (b).

[S. 138K inserted by s. 17 of Act No. 68 of 1990 and substituted by s. 16 of Act No. 92 of 1993.]

**138L. Powers of Minister relating to water authorities.**—(1) The Minister may by notice in the *Gazette*—

- (a) declare that any provision of this Act or any other law relating to a Government water work or any provision of this Act relating to a Government water control area, a subterranean Government water control area, a Government drainage control area, an area in respect of which a determination has been made under section 63, an area for which a water board has been established, a subterranean water control district or an irrigation district applies to a water authority to the extent stated in the declaration;
- (b) assign the administration of any such provision which entrusts to the Minister, the Director-General, a subterranean water control board, a water board or an irrigation board any power, duty or function to the water authority or to any person in its employ;
- (c) in so far as he considers it necessary for the efficient carrying out of the assignment by such water authority or person or of this Act or any such other law in so far as its administration is not so assigned—
  - (i) amend or adapt this Act or any such other law in order to regulate its application or interpretation;

- (ii) repeal and re-enact, whether with or without any amendment or adaptation contemplated in subparagraph (i), those provisions of this Act or any such other law to which the assignment relates or in so far as the assignment relates to them; or
- (iii) regulate any other matter which is in his opinion necessary as a result of the assignment.

(2) The Minister may at any time amend or withdraw a notice referred to in subsection (1) by like notice in the *Gazette*.

[S. 138L inserted by s. 17 of Act No. 68 of 1990 and substituted by s. 16 of Act No. 92 of 1993.]

## CHAPTER VIII

### SERVITUDES

#### 139. Definition of servitudes.—In this Chapter—

“servitude of abutment” means the right to occupy by means of a dam, weir, protecting wall or embankment, pump, turbine or power house and its appurtenances, the bed or banks of a public stream or land adjacent thereto belonging to another;

“servitude of aqueduct” means the right to occupy so much of the land belonging to another as may be necessary for or incidental to the passage of water, and includes a right to use, share in the use of, or construct on such land works, including ancillary diversion works, necessary for the passage of water over, under or alongside another work, or to enlarge and extend an existing work;

“servitude of drainage” means the right to occupy so much of the land belonging to another as may be necessary for or incidental to the drainage of land or disposal of water whether into the nearest public stream or natural channel or otherwise, as may be practicable or desirable in the circumstances;

“servitude of storage” means the right to occupy land belonging to another by submerging it with water by means of a dam, weir or other work, whether or not such dam, weir or other work has been constructed on such land.

140. Point on a public stream at which water may be taken.—(1) (a) Any person entitled to the use of the water of a public stream may, subject to the provisions of this Act, acquire the right to divert such water at such point on the course of that stream as may be reasonably necessary to enable him to exercise his right to use the said water.

(b) A local authority shall, with the consent of the Minister, be entitled to construct and maintain any water works on or over any land for drainage purposes or for the purpose of conveying water to the area of jurisdiction of the said local authority for urban use in that area.

(2) Any such local authority shall in connection with the construction or maintenance of any such water works have the same powers as are by section *ninety-four* vested in an irrigation board, and for that purpose the provisions of that section shall *mutatis mutandis* apply.

#### 141. Rights of servitudes and of owners of dominant and servient tenements.—

(1) Any person who, having a right to or to the use of public water, water found underground as contemplated in section 12B or subterranean water (as defined in section 27), or being entitled to supervise or control the use or disposal of public or subterranean water or water found underground as contemplated in the said section, desires to employ it or to increase its employment for or in connection with any purpose for which such water may be used in accordance with the provisions of this Act, or to dispose of such water, whether by drainage or in any other manner, shall be entitled to claim under this Act, temporarily or in perpetuity, such servitudes of abutment, aqueduct, drainage or storage as may be necessary for or incidental to the said purpose or for the disposal or drainage of such water:

continued on page 1363

Provided that—

- (a) no such person, other than an owner of land or the owner of a mine to whom a permit has been issued in terms of paragraph (a) or (b) of sub-section (5) of section *thirty*, shall be entitled to a servitude of drainage over any land situated within the area of jurisdiction of a local authority (other than a divisional council) referred to in paragraph (a) of the definition of “local authority” in section *one*, except with the consent of such local authority;
- (b) a temporary servitude shall not endure for a longer period than three years;
- (c) no proceedings shall be taken for the acquisition of any servitude while a dispute exists as to the right to the water in respect of which the servitude is claimed and proceedings to determine the dispute are pending in a competent court, but if both such proceedings to acquire any servitude and to determine the said dispute are capable of decision by or are actually pending before the same court, nothing herein contained shall prevent both matters being decided at one and the same time;
- (d) no such servitude shall give the person acquiring it any right or interest in the land on, over or through which the servitude is acquired other than the rights connected with such servitude.

[Sub-s. (1) amended by s. 54 of Act No. 96 of 1984 and by s. 31 of Act No. 68 of 1987.]

(2) Whenever a servitude of abutment, aqueduct, drainage or storage has been acquired by agreement or an order of a competent court, or has otherwise been lawfully acquired under this Chapter or under any prior law, and the owner of the dominant tenement desires for any reason to alter or extend the water works in respect of which such servitude was acquired, such owner shall, notwithstanding any terms or conditions which may have been imposed in connection with the acquisition of the said servitude, be entitled to claim under this Act such new or additional servitudes as may be necessary for the said purpose.

(3) Any servitude acquired under this Chapter shall include the right of access to the area in respect of which the servitude has been acquired for the purpose of constructing, enlarging, renewing, replacing, fencing, inspecting, maintaining, repairing or cleaning the water work in respect of which the said servitude has been acquired or for any other purpose necessary for the effective enjoyment of the servitude.

(4) The owner of any land which is subject to a servitude of aqueduct or drainage may pass any water to which he is entitled or of which he wishes to dispose along the water work in respect of which such servitude has been acquired, on payment of such proportion of the cost of constructing, enlarging and maintaining the said work, and on such other terms as may be agreed upon or failing agreement as may be determined by a water court: Provided that the said owner shall not be entitled to pass any water along such water work in such a manner as to prevent or hinder the person who has acquired the said servitude from exercising his rights under such servitude.

(5) The owner of land over which a servitude of drainage exists, shall be entitled to use on such land the water contained or flowing in any water work constructed on such land or in any drain or other channel other than a public stream, used for the purpose of disposing of the said water, and the said owner shall be entitled to claim that any water work constructed in the exercise of the said servitude of drainage shall be so constructed as to make available for his use any water flowing therein on his land: Provided that no such water work shall be so constructed as to raise the water level to the detriment of an upper owner and that any additional expense which may be incurred for the purpose of making the said water available for use by the said owner shall be borne by such owner.

(6) (a) Whenever a person requires a perpetual servitude of storage or a perpetual servitude of abutment, the owner of the land over which such servitude is required may, before the servitude has been acquired, pay or give security for the payment of a share of the cost of acquiring such servitude and of the cost of construction of the water work in connection with which the said servitude is required, as determined by agreement between such owner and the person acquiring the servitude or in the absence of such agreement, by a water court, and shall thereupon, after completion of the said water work, so far as is consistent with the provisions of Chapter II, be entitled to receive the benefit of such work by using water therefrom to the extent so determined: Provided that no such benefit may be claimed by the owner of the servient tenement if the use of the said water by him would seriously impair the usefulness of the said water work to the person desirous of acquiring the servitude or if the said servitude was acquired by a local authority for the purpose of supplying the inhabitants within the area of its jurisdiction with water: Provided further that any dispute as to the usefulness of the water work in question, or the proportion of the water which the said owner of the servient tenement may use, or the total cost of the water work, or each party's proportionate share of such cost, shall be determined by a water court at the instance of either of the said owners.

(b) If the owner of a servient tenement has not acquired a right in terms of paragraph (a), he shall not be entitled to abstract or use any water from the water work in respect of which the said servitude of storage or abutment has been acquired, without the permission of the owner of the dominant tenement.

(7) A person who desires to construct a water work for the conveyance or the drainage or disposal of water shall not construct such work across a road for the construction, maintenance, repair or control of which a provincial administration, divisional council or other lawfully constituted body is responsible unless he has obtained the written permission of the said administration, council or body, and the said person shall construct such water works in accordance with such conditions as to construction, maintenance and repair as the said administration, council or body may impose in granting the said permission.

(8) Subject to the provisions of section *one hundred and forty-two*, a servitude of storage shall not, unless it be a condition of any agreement or order of a competent court establishing it, deprive the owner of the land subject to such servitude of the use of that part of the land which is not submerged, so long as such use is not detrimental to the enjoyment of the said servitude by the person in whose favour it has been granted or acquired.

**142. Servitude includes the right to take materials for water works.—(1) Any servitude acquired under this Chapter shall, unless otherwise provided in the deed of servitude or order of a water court, as the case may be, include a right—**

- (a) to take from the land subject to the servitude, any material or substance which may reasonably be required for the purpose of constructing, enlarging, renewing, replacing, maintaining or repairing any water work or any portion thereof in respect of which such servitude has been acquired, whether such material or substance is used on such land or elsewhere;
- (b) to cut down from the land subject to the servitude or remove and use any tree, bush, vegetation or other obstacle which may be detrimental to the enjoyment of the servitude by the person in whose favour it has been granted or acquired;
- (c) to deposit on the land subject to the servitude, any material or substance excavated or removed from the water work in respect of which the servitude has been acquired in the process of constructing, enlarging, renewing, replacing, repairing, maintaining or cleaning such work;
- (d) to occupy temporarily so much land subject to the servitude as may be reasonably required during the period of construction of the water work in respect of which the servitude has been acquired, for the construction of camps

or roads or for the erection on such land of such houses, plant, reservoirs or other buildings or structures as may be necessary in connection with the construction of the work, and to occupy permanently so much land as may be reasonably required for the residence of such persons and for workshops or storage purposes as may be necessary in connection with the control, operation and maintenance of the water works in question.

(2) (a) The taking of any material or substance in terms of paragraph (a) of sub-section (1), or the removal and use of any tree, bush, vegetation or other obstacle in terms of paragraph (b) of the said sub-section, or the depositing of any material or substance in terms of paragraph (c) of the said sub-section, or the occupation temporarily or permanently of land in terms of paragraph (d) of the said sub-section, shall be subject to an obligation to pay compensation to the owner of the land in question, unless such material or substance is taken or such tree, bush, vegetation or other obstacle is cut down or removed or such material or substance is deposited, within the defined area of the servitude, or such occupation is restricted to the defined area of the servitude.

(b) Compensation to be paid in terms of paragraph (a) shall in the absence of agreement be determined by a water court.

**143. Right to use a water work subject to obligation to contribute towards repairs.—**Any person who, by paying a proportionate share of the cost of constructing any water work in terms of sub-section (4), (5) or (6) of section *one hundred and forty-one*, or by agreement or in any other lawful manner, has acquired a right to use such work, shall be liable to pay a like proportion of the cost of the maintenance and repair of such work, unless such person has by notice in writing to the owner of the dominant tenement surrendered such right.

**144. Duty of person acquiring servitude to construct access bridges, etc.—**Every person who, under this Chapter, constructs water works for the passage, drainage, diversion or disposal of water which prevent any owner passing freely over or on to his land, or check the circulation of water in the irrigation or drainage of such land, shall at his own expense construct and maintain in repair such bridges and other works as will make communication reasonably safe and convenient, and such culverts, aqueducts and other works as are necessary to secure the free circulation of such water, unless he be exempt from such duty by agreement or otherwise.

**145. Mode of acquiring servitudes under this Chapter.—**(1) (a) Any person who proposes to claim a servitude of abutment, aqueduct, drainage or storage, may after notice to the owner of the land in question, enter upon that land and make any investigation and undertake any operations thereon which he may consider necessary for the purpose of determining the extent and nature of the servitude required, and shall in any notice claiming such a servitude set forth, according to the nature of the servitude—

- (i) the line of passage along which the water is to be conducted or diverted;
- (ii) the locality on which the water is to be stored and the approximate area which will be submerged;
- (iii) the nature and locality of any works, including works, if any, referred to in section *one hundred and forty-four*, which it is proposed to construct;
- (iv) the quantity and nature of the material required from the said land for the purpose of constructing water works and the place from which it is proposed to take such material;
- (v) the land required temporarily for construction camps and permanently for the residence of persons and for workshops or storage purposes necessary in connection with the operation and maintenance of the works in question;
- (vi) the compensation which is offered;
- (vii) whether a temporary or permanent servitude is claimed and, if temporary, the period of time during which he wishes to enjoy the servitude.

(b) The provisions of sub-sections (3) and (4) of section *one hundred and ten* shall *mutatis mutandis* apply in connection with any entry, investigation or operations referred to in paragraph (a) of this sub-section.

(c) There shall be attached to any notice under sub-section (1) in which a servitude is claimed, a plan showing the position, locality and nature of any proposed works in respect of which that servitude is claimed and, in the case of a servitude of aqueduct or a servitude of drainage, the line of passage of the aqueduct or drain to be constructed.

(2) If the owner does not within one month after the service of a notice claiming a servitude, agree to the claim, or to any particulars stated in the notice, or to any other matter necessary for the servitude, and consent to the embodiment of such particulars and other matters in a deed of agreement and to execute such deed notarially, the claimant may apply to a water court for the settlement of the several matters in dispute.

(3) The person claiming any such servitude shall when serving notice thereof upon the owner of the land affected transmit by registered post to every person shown upon the title deed of such land, or in the records of the Registrar of Mining Titles or of any other Government office in which rights granted under any law relating to prospecting or mining are recorded, to have any interest in such land and whose whereabouts he can readily ascertain, a copy of that notice and of every annexure thereto.

**146. Jurisdiction of water court as to claims for servitudes.**—(1) A water court may, upon the hearing of a claim to any servitude under this Chapter—

- (a) award the same with or without modifications, and subject to such conditions as it deems just;
- (b) award or refuse to award compensation for the right of servitude granted;
- (c) if the land on which the servitude is claimed is subject to a lease, mortgage, usufruct or other encumbrance, and the lessee, mortgagee, usufructuary or other person in whose favour the land is encumbered claims a share of any compensation awarded, determine the claim of the lessee, mortgagee, usufructuary or such other person and the amount (if any) of his share of the compensation;
- (d) dismiss the claim, but on the following grounds only, namely—
  - (i) that the servitude claimed does not fall within the provisions of this Chapter;
  - (ii) that the object for which the servitude is claimed could be better obtained in another manner;
  - (iii) that the claim is not made in good faith or that the person claiming such servitude has not satisfied the water court that he has taken all reasonable steps to ascertain the whereabouts of every person on whom any copy of a notice referred to in section *one hundred and forty-five* is, in terms of sub-section (3) of that section, required to be served, or to serve such a copy on any such person;
  - (iv) that the works appertaining to the servitude claimed are not of sufficient utility to justify the acquisition of the servitude;
  - (v) that the works appertaining to the servitude will seriously interfere with any Government water work or with any water work of the Rand Water Board or an irrigation board or a water board; or
  - (vi) that the damage likely to be caused by the proposed works would be greater than the benefits that would be derived therefrom.

(2) In fixing the amount of compensation a water court may deduct such amount as it thinks reasonable in consideration of any advantage which the owner, lessee or usu-

fructuary, as the case may be, of the land on which the servitude is acquired may derive by reason of the servitude.

(3) Compensation awarded by a water court for a temporary servitude shall not exceed an annuity equal to the rental value (as nearly as can be ascertained) of the land to be actually occupied by the work contemplated, together with such amount for actual inconvenience or loss likely to be suffered by the exercise of the right of servitude as a water court may in its discretion determine.

(4) Compensation awarded by a water court for a permanent servitude shall not exceed an amount assessed in accordance with the provisions of paragraph (b) of sub-section (3) of section *sixty*.

(5) In fixing the amount of compensation in the case of a servitude of aqueduct in respect of existing works, the water court shall take into account the cost of such works, including any ancillary diversion works, and the cost of acquiring any servitudes in respect of such works, and such compensation shall include a proportionate share of the cost or the value of such works, as the court deems equitable.

**147. Conversion of temporary servitude into permanent servitude.**—(1) A person who has under this Chapter or a prior law acquired a temporary servitude, shall be entitled to have such servitude converted into a permanent servitude on payment to the owner of the land of such compensation as may be agreed upon or failing agreement determined by a water court upon application made thereto.

(2) The provisions of section *one hundred and forty-six* shall, as far as possible, be applied in determining the amount of such compensation, but the water court shall in making any award of compensation have due regard to the amount previously paid in respect of the temporary servitude aforesaid.

**148. Construction and maintenance of works in respect of which servitude has been obtained.**—Subject to the provisions of this Chapter, works required for the enjoyment of a servitude acquired under this Chapter or any prior law shall be constructed and properly maintained solely at the cost of the person acquiring the servitude.

**149. Lapse of a servitude.**—A servitude acquired under this Chapter or any prior law in terms of an order of a water court, shall lapse if the work proposed to be executed be not completed and the water be not utilized within three years from the date of the order, or within such further period as the said water court may have fixed, or within any extended period agreed upon between the parties concerned.

**150. Repair and cleaning of channels constructed across the land of another person.**—(1) If any canal, furrow or other channel constructed under this Act or any prior law across the land of another person for the purpose of conveying, draining or disposing of water be out of repair or require cleaning, the person having or claiming the right of aqueduct, drainage or disposal in respect of such canal, furrow or other channel shall if required in writing by the owner of the land to repair or clean the said canal, furrow or channel, carry out the necessary operations within a reasonable time, and if he fails to do so, the owner may cause all such work to be done and recover in a competent court the cost thereof from the person having or claiming such right aforesaid.

(2) Any person having or claiming such a right who knowingly allows or suffers any such canal, furrow or other channel to be out of repair or to be in such a state as to require cleaning, shall be liable for all damage which may arise therefrom.

**151. Registration of servitudes.**—(1) (a) A servitude acquired under this Chapter or any similar servitude acquired under any prior law, other than a servitude acquired by expropriation by the Government, the Rand Water Board, an irrigation board or a water board, shall not be recognized until registered in manner prescribed by regulation against the respective title deeds of the land against and in favour of which it has been so acquired,

and the registrar of deeds in charge of the deeds registry in which the title deed to any such land is registered shall, upon production of a duly executed notarial agreement or an order of a water court, register the said servitude against the title deeds of such land.

(b) The provisions of sub-section (3) of section *fifty-one* shall *mutatis mutandis* apply in respect of the registration of servitudes under this sub-section.

(2) For the purposes of the registration of a servitude acquired under this Chapter, and notwithstanding the provisions of any other law, the registrar of deeds concerned shall, if ordered thereto by a water court, accept such plans showing the position of the servitude on the land subject to such servitude as may be indicated by the said court.

**152. Saving in favour of the Railways and Harbours Administration.**—Nothing in this Chapter contained shall be construed as affecting servitudes or other rights lawfully acquired by expropriation or otherwise, either before or after the commencement of this Act, by the South African Railways and Harbours Administration.

## CHAPTER IX

### IRRIGATION LOANS, LIABILITIES AND SUBSIDIES

**153. Applications for irrigation loans.**—(1) An irrigation board desiring to raise money on loan for the construction of a water work may make application to the Minister for an irrigation loan stating the purpose for which the loan is required, the nature of the proposed work, the estimated cost of the construction thereof, the position and extent of the land to be irrigated or drained thereby, the extent to which the value of the land will be enhanced by the work, and the extent to which the rates leviable by the board under this Act or any assets of the board have already been charged or hypothecated and the persons in whose favour the charges or hypothecations exist.

[Sub-s. (1) substituted by s. 55 (a) of Act No. 96 of 1984.]

(2) . . . . .

[Sub-s. (2) amended by s. 9 (a) of Act No. 77 of 1969 and deleted by s. 55 (b) of Act No. 96 of 1984.]

(3) . . . . .

[Sub-s. (3) amended by s. 9 (b) of Act No. 77 of 1969 and deleted by s. 55 (b) of Act No. 96 of 1984.]

(4) The chairman of an irrigation board shall in respect of an application referred to in subsection (1) certify that the provisions of section 93 (2) have been complied with in every respect.

[Sub-s. (4) substituted by s. 55 (c) of Act No. 96 of 1984.]

**154.** . . . . .

[S. 154 repealed by s. 56 of Act No. 96 of 1984.]

**155. Security for irrigation loans.**—The rates and charges which under this Act may be levied by an irrigation board and any property of an irrigation board designated by the Minister shall serve as security for an irrigation loan granted under section 157, and such loan shall be a charge against the proceeds of such rates and charges and a charge against such property having priority over any other charge in respect whereof the said proceeds or property has been hypothecated in favour of any other person.

[S. 155 substituted by s. 57 of Act No. 96 of 1984.]

**156. Investigation of applications for irrigation loans.**—The Minister shall on receipt of an application referred to in section 153 cause an estimate to be made of the probable cost of the proposed water work in respect whereof application is made for a loan and cause



to be investigated the question whether any improvement in the annual income expected to be derived from land which will be irrigated or drained by means of that water work, will exceed the estimated annual cost involved in the redemption of such loan.

[S. 156 substituted by s. 58 of Act No. 96 of 1984.]

**157. Power to grant irrigation loans.**—(1) Upon completion of the investigation referred to in section 156, the Minister may out of moneys appropriated by Parliament for such purpose, grant a loan to the irrigation board concerned for an amount and redeemable over a period determined by him: Provided that—

- (a) the period within which the loan is to be redeemed shall be fixed with due regard to the nature of the water work concerned and the estimated life thereof; and
- (b) a loan pertaining to a water work of which the cost as estimated by the Minister, when completed as an independent scheme, is likely to exceed the amount which the Minister of Finance may from time to time determine, shall not be granted unless such loan is approved by resolution of Parliament and shall not be so approved unless a report on the proposed water work has previously been laid upon the Table of Parliament.

[Sub-s. (1) amended by s. 10 of Act No. 77 of 1969, by s. 20 (a) of Act No. 108 of 1977 and by s. 16 of Act No. 92 of 1980 and substituted by s. 59 (a) of Act No. 96 of 1984. Para. (b) substituted by s. 6 (a) of Act No. 37 of 1988.]

(1A) The Minister may, at the request of an irrigation board to which an irrigation loan has been granted and whether or not the construction of the water work in respect of which such loan was granted has commenced or has been completed—

- (a) revise the total estimate of the probable cost of the said water work and, if the total estimate so revised exceeds the original total estimate, the Minister may, subject to the proviso to subsection (1), grant a further irrigation loan to the board for not more than the amount by which such revised estimate exceeds such original estimate: Provided that if—
  - (i) the original estimate or a previously revised estimate does not exceed the amount determined under paragraph (b) of the proviso to subsection (1) and such revised estimate exceeds the amount so determined; or
  - (ii) such revised estimate exceeds the original estimate or a previously revised estimate which exceeds the amount so determined, by at least the amount so determined,

such further irrigation loan shall not be granted unless the provisions of paragraph (b) of the proviso to subsection (1) have been complied with;

[Para. (a) amended by s. 6 (b) of Act No. 37 of 1988.]

- (b) subject to paragraph (a) of the proviso to subsection (1), amend the period within which any such irrigation loan shall be repayable.

[Sub-s. (1A) inserted by s. 11 of Act No. 102 of 1972, amended by s. 20 of Act No. 42 of 1975, by s. 5 of Act No. 27 of 1976, by s. 20 (b) of Act No. 108 of 1977 and by s. 16 of Act No. 92 of 1980 and substituted by s. 59 (b) of Act No. 96 of 1984.]

(1B) If the Minister is at any time of the opinion that a substantial deviation is desirable with respect to the purpose or the capacity of a water work in respect of which a report contemplated in subsection (1) was laid upon the Table of Parliament, the construction of such work shall not be proceeded with unless the Minister has laid upon the Table of Parliament a supplementary report relating to that work.

[Sub-s. (1B) inserted by s. 59 (c) of Act No. 96 of 1984 and substituted by s. 6 (c) of Act No. 37 of 1988.]

(1)*bis* If after an irrigation loan has been granted in respect of any water works any further irrigation loan is granted in respect of water works connected with such first-mentioned works such further loan shall for the purposes of paragraph (b) of the proviso to subsection (1) be regarded as being one in respect of a separate independent scheme.

[Sub-s. (1)*bis* inserted by s. 16 of Act No. 56 of 1961 and substituted by s. 6 (d) of Act No. 37 of 1988.]

(2) . . . . .

[Sub-s. (2) deleted by s. 59 (d) of Act No. 96 of 1984.]

(3) A certificate by the Minister that an irrigation loan, whether granted before or after the commencement of this Act, was ordered to be made by the Governor-General, shall be conclusive evidence that all requirements in respect of the said loan, whether in respect of the due constitution of an irrigation district or the due form of the application for the loan, or of any other matter whatsoever precedent or incidental to the issue of such order, have been duly complied with.

(4) Where an irrigation loan has before or after the commencement of this Act, been granted to an irrigation board, including any such board referred to in section *one hundred and five*, the schedule of the irrigable and rateable land within the irrigation district of that board existing at the date of the ordering of the loan, shall for all purposes be accepted as a schedule properly and legally framed.

**157bis. Granting of loans to irrigation boards.**—(a) A loan may, *mutatis mutandis* in accordance with the provisions of section 157, in so far as they can be applied, be granted to an irrigation board—

- (i) to acquire any land or an existing right for the purpose of exercising any function or power or carrying out any duty assigned to or imposed upon it by or under this Act; or
- (ii) to redeem any existing loan or any part of such loan together with any interest due thereon,

as if the acquisition of such land or right or the redemption of such loan were the construction of a water work.

(b) A loan so granted shall for the purposes of this Act be deemed to be an irrigation loan.

[S. 157bis inserted by s. 3 of Act No. 63 of 1963 and substituted by s. 7 of Act No. 37 of 1988.]

**158. Payment of irrigation loans to applicants.**—When an irrigation loan has been granted, the secretary may in his discretion and on such conditions as he may deem fit forthwith cause to be paid to the applicant an amount not exceeding one-fifth of the total amount of the loan, and may thereafter from time to time, upon a certificate by an engineer or other competent person as to the quantity and estimated value of the work done, cause to be paid to the applicant such further instalments of the loan as he deems fit.

[S. 158 amended by s. 60 of Act No. 96 of 1984.]

159. . . . .

[S. 159 repealed by s. 61 of Act No. 96 of 1984.]

**160. Redemption of an irrigation loan.**—(1) Subject to the provisions of section *one hundred and sixty-one*—

- (a) an irrigation loan shall be redeemed by the payment, on the first day of January and the first day of July in every year, of the amounts shown in a table compiled by the secretary for the purpose of the loan in question, and such payments shall continue to be made until the whole loan with interest has been paid; and

[Para. (a) substituted by s. 17 of Act No. 92 of 1980.]

- (b) the period of redemption of an irrigation loan shall begin from such first day of January or first day of July as the Minister may prescribe, being not later than five years from the date on which in the opinion of the Minister the works in respect of which the loan was granted ought to be completed.

[Para. (b) substituted by s. 32 of Act No. 68 of 1987.]

(2) The interest on an irrigation loan shall—

- (a) in the case of interest to be calculated for the purposes of subsection (3) between the date of the first advance on such irrigation loan and the date prescribed in terms of subsection (1) (b) for the commencement of the period of redemption, be calculated in respect of the different advances separately

and shall be so calculated at the same rate as the rate fixed by the Minister of Finance under section 26 of the Exchequer and Audit Act, 1975 (Act No. 66 of 1975), and applicable on the date on which the relevant advance is made;

- (b) in the case of interest to be paid from the date prescribed in terms of sub-section (1) (b) for the commencement of the period of redemption, be calculated at a rate determined by the Minister as the weighted average of the rates applicable in respect of the different advances on the loan concerned.

[Sub-s. (2) substituted by s. 62 (a) of Act No. 96 of 1984.]

(3) Interest payable between the date of the first advance on an irrigation loan and the date prescribed under paragraph (b) of sub-section (1) for the commencement of the period of redemption shall be added to the amount of the loan, and form part of it for the purposes of redemption but not for interest.

[Sub-s. (3) amended by s. 17 of Act No. 56 of 1961.]

(4) An irrigation loan may at any time be partially or entirely redeemed by payment of any sum in addition to the half-yearly payments and thereafter, if any balance be left, the half-yearly payments shall, if the irrigation board concerned so desires, be reduced accordingly.

[Sub-s. (4) substituted by s. 62 (b) of Act No. 96 of 1984.]

(5) The period of redemption may, at the request of the borrower, be reduced at any time, provided a corresponding increase be made in the half-yearly payments.

**161. Minister may modify redemption provisions for irrigation loans in special circumstances.**—Notwithstanding the provisions of section *one hundred and sixty*, the Minister may, whenever special circumstances (such as failure of water supply, damage to crops, depression of markets or excessive costs during development) have made difficult the half-yearly repayment of sums under the said section to redeem an irrigation loan, from time to time reduce, at the request of the debtor, those payments over a period not exceeding fifteen years: Provided that, at the end of the period in respect of which such redemption of payments has been allowed, the aggregate amount of the reductions, together with interest thereon, shall be added to the amount of the said loan and form part of it for the purpose of redemption, and the periodical payments required to redeem the loan within the period for which it was granted shall be raised accordingly until the loan is entirely redeemed: Provided further that interest shall not be payable on that portion of the amount so added to the said loan which represents interest.

**162. Subsidies on water works.**—(1) Subject to the provisions of subsections (2) and (3), the Minister may, on application, out of moneys provided by Parliament for the purpose, and on such conditions as he may determine in general by notice in the *Gazette*, or in any particular case as he may deem fit, grant to any person a subsidy towards the cost of constructing a water work, whether such work is constructed by such person or by the Minister in terms of section 57: Provided that no subsidy shall be granted under this subsection unless the Minister has approved the construction of the water work concerned before the construction of the water work has commenced.

[Sub-s. (1) substituted by s. 63 (a) of Act No. 96 of 1984, by s. 33 of Act No. 68 of 1987 and by s. 8 (a) of Act No. 37 of 1988.]

(2) Unless the total cost of the said water work and the amount of the subsidy and of any loan under this Chapter to be granted in respect thereof have been separately specified in estimates of expenditure approved by Parliament—

- (a) no subsidy shall be granted in respect of any water work the total cost of which in the opinion of the Minister is likely to exceed the amount which the Minister of Finance may from time to time determine;

[Para. (a) amended by s. 6 (a) of Act No. 71 of 1965 and by s. 13 (a) of Act No. 36 of 1971, substituted by s. 21 of Act No. 108 of 1977, amended by s. 18 of Act No. 92 of 1980 and substituted by s. 63 (b) of Act No. 96 of 1984 and by s. 8 (b) of Act No. 37 of 1988.]

- (b) the amount of the subsidy to be granted to any irrigation board or local authority shall not exceed thirty-three and one-third per centum of the cost of the work in respect of which it is granted;
- (c) the amount of the subsidy to be granted to any person or body, other than an irrigation board or a local authority shall not, except in respect of drilling work to be done for any such person or body, exceed thirty-three and one-third per centum of the cost of the work in respect of which it is granted, or the amount determined by the Minister for the purposes of this paragraph by regulation, whichever amount is the lesser: Provided that if a group of persons desire to construct a joint water work and the Minister is of the opinion that their purpose may be conveniently and efficiently achieved without the establishment of an irrigation district and the constitution of an irrigation board to carry out the said work, such group of persons may, subject to the provisions of paragraph (a), be granted a subsidy not exceeding the amount so determined, in respect of each such person, but not exceeding in the aggregate thirty-three and one-third per centum of the cost of such work.

[Para. (c) amended by s. 6 (b) of Act No. 71 of 1965, substituted by s. 11 of Act No. 77 of 1969 and by s. 21 of Act No. 42 of 1975 and amended by s. 6 of Act No. 27 of 1976 and by s. 17 of Act No. 92 of 1993.]

(3) A subsidy shall not be granted under this section to a local authority unless the Administrator of the province within which such local authority has been established, has recommended the grant of such subsidy, and an Administrator shall not so recommend unless he is satisfied that such local authority would not, for financial reasons, be able to construct the water work in respect of which the subsidy is required if such subsidy were not granted to it.

(4) Any board or other body constituted by any special law and empowered and required by such law to exercise such powers and carry out such duties as are or may be conferred and imposed upon irrigation boards and to control and maintain water works used for the irrigation of land within the area of jurisdiction of the board or body aforesaid, and to distribute the water from such works to such land, shall, for the purposes of this Chapter, be deemed to be an irrigation board, and the provisions of section 63 (9) and (10) and of sections 93, 95 and 95A shall *mutatis mutandis* apply in respect of such board or body, as if such board or body were an irrigation board.

[Sub-s. (4) substituted by s. 13 (b) of Act No. 36 of 1971 and by s. 15 of Act No. 73 of 1978.]

(5) No part of a subsidy granted under this section shall be expended for any purpose other than the carrying out of the water work in respect of which it is granted.

(6) . . . . .

[Sub-s. (6) deleted by s. 18 of Act No. 56 of 1961.]

**162bis. Subsidies on other costs incurred by irrigation boards.**—(1) The Minister may on application, out of moneys provided by Parliament for that purpose and on such conditions as he may, either generally by notice in the *Gazette* determine or in any particular case deem fit to impose, grant a subsidy to an irrigation board towards the cost incurred—

- (a) by that irrigation board in connection with the acquisition of any land or an existing right or the institution of any investigation in order to exercise or perform its powers, duties and functions; or

[Para. (a) substituted by s. 18 (a) of Act No. 92 of 1993.]

- (b) by that irrigation board in connection with the performance of any act contemplated in section 89 (1) (e).

(2) No subsidy shall—

- (a) be granted under paragraph (a) of subsection (1), unless the Minister has approved the acquisition of such land or right or the institution of such investigation before any liability in connection therewith has been incurred by the irrigation board in question; and

[Para. (a) substituted by s. 18 (b) of Act No. 92 of 1993.]

- (b) be granted under paragraph (b) of that subsection, unless the Minister has approved the performance of such act before it has been performed.

(3) No subsidy granted under subsection (1), or any part thereof, shall be expended for any purpose other than the purpose for which it was granted.

(4) The provisions of sections 162 (2) and 162ter shall *mutatis mutandis* apply in respect of a subsidy referred to in subsection (1).

[S. 162bis inserted by s. 4 of Act No. 63 of 1963 and substituted by s. 18 of Act No. 68 of 1990.]

**162ter. Extension of powers to grant subsidies in respect of certain water works.—**The Minister may, at the request of an applicant to whom a subsidy has been granted and whether or not the construction of the water work in respect of which such subsidy has been granted has commenced or has been completed, revise the total estimate of the probable cost of the said water work, and, if the total estimate so revised exceeds the original total estimate, the Minister may, subject to the provisions of this Chapter, grant a further subsidy in respect of the amount by which such revised estimate exceeds such original estimate.

[S. 162ter inserted by s. 22 of Act No. 42 of 1975.]

**163. Application of Act to loans and subsidies previously granted.—**Any irrigation loan made by the Governor-General and any irrigation subsidy granted by the Minister under any law prior to the commencement of this Act, shall be deemed to have been made under this Chapter and the provisions of this Chapter shall apply in respect of any such loan or subsidy.

**163A. . . . .**

[S. 163A inserted by s. 12 of Act No. 102 of 1972 and repealed by s. 23 of Act No. 42 of 1975.]

**164. Minister may make regulations as to irrigation loans and subsidies.—**The Minister may make regulations relating to—

- (a) the form of application to be used in applying for an irrigation loan or a subsidy;
- (b) . . . . .  
[Para. (b) deleted by s. 64 of Act No. 96 of 1984.]
- (c) the form and nature of the plans, estimates and other documents to accompany an application for an irrigation loan or a subsidy;
- (d) the manner in which an irrigation board may raise loans otherwise than under this Chapter;
- (dA) any matter which in terms of any provision of this Chapter is permitted or required to be prescribed or determined by regulation;  
[Para. (dA) inserted by s. 24 of Act No. 42 of 1975.]
- (e) generally any other matters which he considers necessary or expedient to prescribe for the carrying out of the objects of this Chapter.

## CHAPTER IXbis

### WATER SPORT CONTROL AREAS

[Superscriptions inserted by s. 7 (a) of Act No. 71 of 1965.]

**164bis. Establishment of water sport control areas.—**(1) The Minister may by notice in the *Gazette* declare any area defined in the notice in question to be a water sport control area if, in his opinion, such area or any portion thereof is or is from time to time or is likely to become submerged, whether naturally or artificially, by water of any kind whatever, and such water is or would be navigable or suitable for the practice of any water sport.

[Sub-s. (1) amended by ss. 46 and 47 of Act No. 97 of 1986.]

(2) Notwithstanding the provisions of this Act or any other law, and notwithstanding any existing right or other right in respect of water or land in any such water sport control area, the rights to and the control of the use of such water or land for the purposes of navigation or any sport which is practised in or upon water, or any activities arising therefrom or incidental thereto, shall vest in the Minister.

(3) The provisions of paragraph (a) of sub-section (1) of section *sixty-nine* shall *mutatis mutandis* apply in respect of the powers conferred upon the Minister by sub-section (2).

(4) For the purposes of sub-section (1) "area" includes any portion of the sea-shore as defined in section *one* of the Sea-Shore Act, 1935 (Act No. 21 of 1935).

[S. 164bis inserted by s. 7 (b) of Act No. 71 of 1965.]

**164ter. Making of regulations in respect of water sport control areas by Minister.—**

(1) The Minister may in respect of any area which in terms of section *one hundred and sixty-four bis* has been declared a water sport control area, make regulations as to—

- (a) the control over, and the use of such area for, navigation or any sport which is practised upon or in water;
- (b) the control over and the use of craft and appliances of whatever nature, upon or in water in such area;
- (c) the control in such area of any activity arising from or incidental to the use of such area for navigation or any sport contemplated in paragraph (a);
- (d) the use of the land in such area between the surface of the water therein and the boundary thereof, for any activity contemplated in paragraph (c);
- (e) the fees payable in respect of the use of such area for any activity referred to in paragraph (a) or (c), or in respect of the use therein of craft or appliances as contemplated in paragraph (b); and
- (f) generally, any other matter in respect of which he considers it necessary or expedient to make regulations in order that the objects of section *one hundred and sixty-four bis* may be achieved.

(2) If the provisions of any regulation so made conflict with the provisions of any law, the provisions of such regulation shall apply.

(3) Regulations in terms of paragraph (e) of sub-section (1) shall only be made after consultation with the Minister of Finance.

[S. 164ter inserted by s. 7 (b) of Act No. 71 of 1965.]

**164quat. Exercise of powers.—**In this Chapter, and in any regulations made in terms of section 164ter, "Minister" means the Minister of Sport and Recreation acting with the concurrence of the Minister of Water Affairs.

[S. 164quat inserted by s. 16 of Act No. 73 of 1978.]

## CHAPTER X

### GENERAL AND MISCELLANEOUS

**165. Delegation of powers.—**(1) (a) The Minister may by notice in the *Gazette* delegate to any officer of the department any power conferred upon him by this Act or a regulation on such conditions as he may deem fit.

(b) The Minister may by notice in the *Gazette* delegate to chairmen of irrigation boards in general, or to the chairman of a particular irrigation board, any power conferred

upon him by or under section 62 (2H) (a) and (b) and section 63 (11A) (in so far as it relates to the issuing of permits) on such conditions as he may deem fit.

(c) The Minister may by notice in the *Gazette* delegate to chairmen of subterranean water control boards in general, or to the chairman of a particular subterranean water control board, any power conferred upon him by section 32C (1) and (3) and section 32D (1) on such conditions as he may deem fit.

(2) (a) The Director-General may by notice in the *Gazette* delegate to any officer of the department any power conferred upon him by this Act or a regulation on such conditions as he may deem fit.

(b) The Director-General may by notice in the *Gazette* delegate to chairmen of irrigation boards in general, or to the chairman of a particular irrigation board, any power conferred upon him by section 62 (2H) (d) and (dA) and section 63 (11D) and (11E) on such conditions as he may deem fit.

(c) The Director-General may by notice in the *Gazette* delegate to chairmen of subterranean water control boards in general, or to the chairman of a particular subterranean water control board, any power conferred upon him by section 32C (2) on such conditions as he may deem fit.

[S. 165 substituted by s. 17 of Act No. 73 of 1978, by s. 65 of Act No. 96 of 1984 and by s. 19 of Act No. 68 of 1990.]

**166. Right to enter upon land and construct certain works.—**(1) Any person authorized thereto in writing by the Minister may—

- (a) after reasonable notice to the owner or occupier of any land, enter upon such land with such men and equipment and perform thereon any act as may be necessary for the purpose of—
  - (i) complying with any provision of this Act;
  - (ii) making any enquiries or undertaking any investigations with a view to determining the feasibility of constructing any water work;
  - (iii) erecting construction camps or other preliminary works which the Minister may consider necessary in connection with the construction of any contemplated water work;
  - (iv) constructing, equipping and maintaining any hydrological measuring station;
  - (v) making any borehole in order to establish whether water occurs underground on that land and to equip and use such borehole for research purposes;
- (b) at any time enter upon any land for the purpose of ascertaining whether any provision of this Act or any regulation made or condition imposed thereunder is being complied with,

and may, for the purpose of gaining access to such land, in like manner enter upon and cross any other land with the necessary men and equipment.

(2) In the exercise of a power under subsection (1) (a), no building or enclosed space attached to a dwelling shall be entered upon, except with the consent of the occupier thereof.

[Sub-s. (2) substituted by s. 20 (a) of Act No. 68 of 1990.]

continued on page 1387

(3) Any damage resulting to any person from the exercise of a power granted by subsection (1) shall be compensated to that person by the Director-General as agreed upon or, in the absence of agreement, as determined by a competent court.

(4) The provisions—

- (a) of subsections (1), (2) and (3) shall *mutatis mutandis* apply in relation to any member of an irrigation board or a water board or a person authorized thereto in writing by the chairman of an irrigation board or a water board; and
- (b) of the said subsections (1), (2) and (3), excluding the power referred to in subsection (1) (a) (ii), (iii), (iv) or (v), shall *mutatis mutandis* apply in relation to any member of a subterranean water control board or a person authorized thereto in writing by the chairman of a subterranean water control board.

[Sub-s. (4) substituted by s. 20 (b) of Act No. 68 of 1990.]

(5) A member of a water court may enter upon any land for the purpose of making any inspection which it may consider necessary in connection with the performance of its functions under this Act.

(6) Any person who prevents any entry or the exercise of any powers authorized by this section or wilfully obstructs or hinders any person so entering in carrying out such person's powers or duties under this Act or the regulations made thereunder, shall be guilty of an offence.

[S. 166 amended by s. 19 of Act No. 56 of 1961 and by s. 14 of Act No. 36 of 1971 and substituted by s. 34 of Act No. 68 of 1987.]

**166A. Disclosure of information.**—(1) No person shall disclose any information relating to any manufacturing process or trade secret used in carrying on any particular undertaking which has been furnished to or obtained by him in terms of this Act unless the disclosure is made—

- (a) with the consent of the person carrying on that undertaking;
- (b) in connection with the performance of his functions under this Act; or
- (c) for the purposes of legal proceedings arising out of this Act.

(2) Any person who discloses any information in contravention of the provisions of subsection (1) shall be guilty of an offence.

[S. 166A inserted by s. 66 of Act No. 96 of 1984.]

**167. Evidence.**—(1) A copy of the minutes of the proceedings of any meeting of a subterranean water control board or an irrigation board or a water board or of a committee of any such board purporting to be signed by the chairman of that meeting, and certified under the hand of the chairman for the time being of the said board or committee as a correct copy of the minutes of that meeting, shall be *prima facie* evidence in all courts of the proceedings of that meeting.

[Sub-s. (1) substituted by s. 21 (a) of Act No. 68 of 1990.]

(2) Until the contrary is proved every such meeting, of the proceedings of which minutes have been so signed and certified, shall be deemed to have been duly convened and held.

(3) Every contract made by a subterranean water control board or an irrigation board or a water board shall be deemed to be duly executed if signed by the chairman and by one or more members or the secretary of the subterranean water control board, irrigation board or water board, as the case may be, authorized thereto by resolution passed at a meeting of such board.

[Sub-s. (3) substituted by s. 21 (b) of Act No. 68 of 1990.]



(4) A notice, order, direction or other document issued under this Act purporting to be issued on the authority of a subterranean water control board or an irrigation board or a water board shall, until the contrary is proved, be deemed to have been issued on such authority if signed by the secretary of such board.

[Sub-s. (4) substituted by s. 21 (c) of Act No. 68 of 1990.]

**168. Service of documents.**—(1) Unless another method is prescribed, a notice, order, direction or other document issued under this Act or a regulation (other than a regulation made under section 55) shall—

- (a) if it is intended for a person, be served—
  - (i) by delivering it to that person;
  - (ii) by leaving it at the usual or last known place of residence of that person;
  - (iii) by sending it by registered post to the usual or last known place of residence or address of that person; or
  - (iv) where that person is absent from the Republic or his usual or last known place of residence or address is not readily ascertainable, by publishing it once in the *Gazette* and once a week during two consecutive weeks in an Afrikaans and in an English newspaper circulating within the Republic; or
- (b) if it is intended for a subterranean water control board, an irrigation board or a water board, be served—
  - (i) by delivering it to a responsible person at the office of the said board or to the chairman or secretary of the said board;
  - (ii) by leaving it at such office or at the usual or last known place of residence of such chairman or secretary; or
  - (iii) by sending it by registered post to such office or to the usual or last known place of residence or address of such chairman or secretary.

(2) A notice, order, direction or other document which, purporting to be lawfully made, is issued in good faith under this Act or regulation shall be valid, according to the terms thereof, notwithstanding any want or form or lack of authority on the part of any person to issue or authenticate it, provided the relevant authority be subsequently conferred upon that person.

[S. 168 substituted by s. 22 of Act No. 68 of 1990.]

**168A. Information relating to floods and polluted water.**—(1) The Minister may at any time in respect of any public stream or Government water work make available to the public in such manner as he may deem fit information relating to—

- (a) a flood which has occurred or which is expected to occur;
- (b) the presence in any water of any substance which is not ordinarily present in water or which is present therein in an abnormal concentration.

(2) The State or the Minister or any officer of the department or any other person involved in making available any information referred to in subsection (1), shall not be liable for any damage or loss arising either from the said information having been made available or from such information not having been made available.

[S. 168A inserted by s. 67 of Act No. 96 of 1984.]

**169. Exemption from local rates of enhanced value of irrigated lands.**—(1) If the value of a property liable to be assessed in respect of rates leviable by a divisional council or other local authority has been enhanced by a water work constructed and completed on a date not more than ten years prior to the date of commencement of this Act or after such

commencement, the amount by which the value of the said property has been so enhanced shall be specified in every valuation role framed for the assessment of the said rates, and a person liable to pay such rates in respect of any such property shall not, during a period of ten years from the date of completion of such water work, be liable to pay such rates on that enhanced value, and the provisions of any law relating to objections to the valuation of property for the purposes of any such rates shall apply to objections to the estimate of the said enhanced value: Provided that the provisions of this sub-section shall not apply in respect of rates levied by a water board in terms of section *one hundred and twenty*.

(2) . . . . .

[Sub-s. (2) deleted by s. 23 of Act No. 68 of 1990.]

**169A. Insertion of certain lines on certain plans, and approval by Minister in respect of establishment or extension of townships in certain areas.**—(1) No township shall, after the commencement of the Water Amendment Act, 1978 be established or extended under any law on any land unless—

- (a) the following particulars have been inserted on the relevant lay-out plan in a manner to the satisfaction of the authority empowered under the relevant law to approve of the establishment or extension in question—
  - (i) in respect of any water course with a known and defined channel and with a catchment area exceeding one square kilometre, the lines indicating the maximum level likely to be reached on an average every twenty years by flood-waters on the land in question, and
  - (ii) in respect of any lowlying land without surface drainage on which water from an area exceeding five square kilometres collects naturally, the lines indicating the maximum level likely to be reached on an average every fifty years by such water on the land in question; and
- (b) if the land in question is situated in an area which, in the opinion of the Minister, is likely to be inundated by flood-water and which he has defined by notice in the *Gazette*, the Minister has, subject to subsection (2), previously approved of such establishment or extension, and the establishment or extension in question is effected in accordance with the conditions which the Minister may have deemed fit to impose on giving the said approval.

[Sub-s. (1) amended by s. 7 of Act No. 27 of 1976 and substituted by s. 18 of Act No. 73 of 1978.]

(2) If the whole or any portion of an area which the Minister has defined under subsection (1) (b), is situated within any guide plan area as defined in section 1 of the Environment Planning Act, 1967, the Minister shall only grant the approval referred to in subsection (1) (b), in consultation with the Minister of Planning and the Environment.

[S. 169A inserted by s. 25 of Act No. 42 of 1975.]

**170. Offences and penalties.**—(1) Any person who, without lawful right or authority, the proof whereof shall lie upon him—

- (a) constructs, alters, enlarges or obstructs a water work, or destroys, defaces or moves any level mark, beacon or other structure or appliance erected or made in connection with any such work;
- (b) interferes with or alters the flow of the water contained in or flowing in or from a water work, or interferes with or alters the flow of the water of a public stream, or interferes with the distribution of any such water, or takes water in excess of the quantity he is entitled to take or at a time when he is not entitled to do so, or uses water in a manner or for a purpose contrary to this Act or regulations made thereunder;

[Para. (b) substituted by s. 7 of Act No. 79 of 1967 and by s. 35 (a) of Act No. 68 of 1987.]

- (c) while using or being liable for the maintenance of a water work, wastes or does not take due precaution to prevent waste of water from any such work, or fails to maintain the work and keep it in repair;
- (d) being an owner of land in respect of which rates or charges have been assessed in terms of paragraph (a) of sub-section (1) of section *sixty-six*, paragraph (a) of sub-section (1) of section *ninety*, sub-section (2) of section *one hundred and seventeen* or sub-section (1) of section *one hundred and twenty*, takes or uses water from the water works in connection with which such rates or charges have been assessed, after the supply of water from such works to the said land has been stopped by the Minister or, as the case may be, by the irrigation board or water board concerned by reason of a default on the part of the said owner to pay any such rates or charges;
- (e) wastes public water;

continued on page 1391

- (f) without the written permission of the Minister, alters or in any way interferes with any work referred to in paragraph (a) of sub-section (1) of section *sixty-one*;
- (g) aids or abets or permits any act or default referred to in any of the preceding paragraphs;
- (h) contravenes or permits the contravention of or fails to comply with any condition referred to in section 61 (3) (a),

[Para. (h) substituted by s. 68 (a) of Act No. 96 of 1984.]

shall be guilty of an offence and liable, in the case of a first conviction, to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine not exceeding one R4 000 or to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment.

[Sub-s. (1) amended by s. 22 (a) of Act No. 108 of 1977 and by s. 7 (a) of Act No. 16 of 1991.]

(1A) Any person who submits incorrect information, or allows incorrect information to be submitted on his behalf by any other person, to an officer of the department under circumstances where such information could result in an increased financial benefit accruing to him under a provision of this Act or a regulation made in terms of this Act, shall be guilty of an offence and on conviction liable to the penalties prescribed by subsection (1) for an offence mentioned therein.

[Sub-s. (1A) inserted by s. 19 of Act No. 92 of 1993.]

(2) Any person who is convicted of an offence under section 9A, 9C, 12, 12A, 12B, 20, 21, 22, 23, 24 or 166A shall be liable, in the case of a first conviction, to a fine not exceeding R50 000 or to imprisonment not exceeding two years or to both such fine and such imprisonment, and, in the case of a second or subsequent conviction, to a fine not exceeding R100 000 or to imprisonment for a period not exceeding four years or to both such fine and such imprisonment.

[Sub-s. (2) substituted by s. 22 (b) of Act No. 108 of 1977, by s. 68 (b) of Act No. 96 of 1984, by s. 35 (b) of Act No. 68 of 1987 and by s. 7 (b) of Act No. 16 of 1991.]

(3) Any person who contravenes or fails to comply with any regulation or any by-law made under this Act by a subterranean water control board or an irrigation board or a water board, or commits any offence under the provisions of this Act for which no penalty is expressly provided, shall be liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Sub-s. (3) substituted by s. 22 (c) of Act No. 108 of 1977, by s. 24 of Act No. 68 of 1990 and by s. 7 (c) of Act No. 16 of 1991.]

(4) Any person who has been convicted of any offence under this Act, and who after such conviction persists in the course of conduct which constituted the said offence, shall be guilty of a continuing offence and liable on conviction, in the case of an offence referred to in subsection (2), to a fine not exceeding R1 000, and, in the case of any other offence, to a fine not exceeding R100, in respect of every day that he so persists or has so persisted.

[Sub-s. (4) substituted by s. 22 (d) of Act No. 108 of 1977, by s. 68 (c) of Act No. 96 of 1984 and by s. 7 (d) of Act No. 16 of 1991.]

(5) If in any proceedings under paragraph (b) of sub-section (1) in which it is alleged that—

- (a) a person has interfered with the distribution of water contained or flowing in or from a water work or a public stream, or has taken more water than he is entitled to or has taken water at a time when he was not entitled to take it, it is proved that the said distribution was interfered with or that more water was taken than the said person was entitled to, or that the said water was taken at a time when such person was not entitled to take it, the said person shall be presumed, until the contrary is proved, to have interfered with the distribution of the said water or to have taken more water than he was entitled to or to have taken it at a time when he was not entitled to take it;

- (b) a person has taken water at a time when he was not entitled to take such water, it is proved that such water was running on to or found on any land or running into or found in any dam belonging to such person, the onus of proving that the said person was entitled to such water or that it was so taken or used without his knowledge shall be upon that person;
- (c) the provisions of paragraphs (a) and (b) of this sub-section shall *mutatis mutandis* apply in respect of any proceedings under a provision of the Hartbeestpoort Irrigation Scheme (Crocodile River) Act, 1914 (Act No. 32 of 1914), the Marico-Bosveld Irrigation Scheme Act, 1932 (Act No. 10 of 1932), the Vaal River Development Scheme Act, 1934 (Act No. 38 of 1934), the Oliphants River Irrigation Works Act, 1943 (Act No. 10 of 1943), the Buffelspoort Irrigation Scheme Act, 1948 (Act No. 31 of 1948), the Bospoort Irrigation Scheme Act, 1949 (Act No. 24 of 1949), or the Mooi River River District Adjustment Act, 1954 (Act No. 37 of 1954), or of any regulation made thereunder, which corresponds to a provision of paragraph (b) of sub-section (1) of this section.

[Para. (c) added by s. 5 of Act No. 63 of 1963.]

(5A) (a) Whenever any manager, agent or employee of any person (in this subsection hereafter called the employer) does or omits to do any act which it would be an offence under this Act for the employer to do or omit to do, then unless it is proved that—

- (i) in doing or omitting to do that act the manager, agent or employee was acting without the connivance or the permission of the employer; and
- (ii) all reasonable steps were taken by the employer to prevent any act or omission of the kind in question; and
- (iii) it was not under any condition or in any circumstances within the scope of the authority or in the course of the employment of the manager, agent or employee to do or omit to do acts, whether lawful or unlawful, of the character of the act or omission charged,

the employer shall be presumed himself to have done or omitted to do that act and shall be liable to be convicted and sentenced in respect thereof, and the fact that he issued instructions forbidding any act or omission of the kind in question shall not, by itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

(b) Whenever any manager, agent or employee of any such employer does or omits to do an act which it would be an offence under this Act for the employer to do or omit to do, he shall be liable to be convicted and sentenced in respect thereof as if he were the employer.

(c) Any such manager, agent or employee may be so convicted and sentenced in addition to the employer.

[Sub-s. (5A) inserted by s. 12 of Act No. 77 of 1969.]

(5B) Whenever any person is convicted of an offence under this Act, the court convicting him may summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by such person in consequence of that offence, and, in addition to any other punishment imposed in respect of that offence, impose on that person a fine equal to the amount so assessed or, in default of payment, imprisonment for a period not exceeding one year.

[Sub-s. (5B) inserted by s. 68 (d) of Act No. 96 of 1984.]

(6) A magistrate's court shall have power to impose any penalty prescribed by this Act.

**171. Award of damages against an accused in criminal proceedings.**—(1) Whenever any person is convicted of an offence under this Act or a regulation or a by-law made by a subterranean water control board or an irrigation board or a water board and it appears that such person has by that offence caused loss or damage to any subterranean water control board, irrigation board, water board or other person, the court may in the same proceedings at the written request of the board or other person concerned, and in the presence of the convicted person, inquire summarily and without pleadings into the amount of the loss or damage so caused.

(2) Upon proof of such amount, the court shall give judgment therefor in favour of the subterranean water control board, irrigation board, water board or other person concerned and against the convicted person, and such judgment shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted before a competent court.

[S. 171 substituted by s. 69 of Act No. 96 of 1984 and by s. 25 of Act No. 68 of 1990.]

**172. Use of water on proclaimed mining land.**—(1) Subject to the provisions of sub-sections (2) and (3), nothing in this Act contained shall be construed as derogating from any powers or jurisdiction conferred upon the Minister of Mines or any mining commissioner by any law relating to mining for precious or base metals or precious stones or for natural oil as defined in section *one* of the Natural Oil Act, 1942 (Act No. 46 of 1942), or for prescribed or restricted materials as defined in section *one* of the Atomic Energy Act, 1948 (Act No. 35 of 1948), nor shall any land proclaimed under or for the purpose of any such law or held under mining title in terms of such law, be included in an irrigation district save with the consent of the Minister of Mines and under such conditions as he may determine, and if land in an irrigation district be proclaimed under and for the purpose of any such law, so much of any public stream within that irrigation district as is within the area so proclaimed, shall cease to be subject to the jurisdiction of the irrigation board unless the Minister of Mines otherwise determines: Provided that nothing contained in this section shall be construed as—

- (a) entitling the Minister of Mines to use or permit the use of water of a public stream for agricultural purposes on land so proclaimed which is not riparian to such stream, or to permit any person to use more than a reasonable share of such water for those purposes on land riparian to such stream;
- (b) preventing any person entitled to the use of public water from making application to a water court after notice in writing to the Minister of Mines for the apportionment of such water between proclaimed and unproclaimed land for the granting of any servitude under this Act upon any land so proclaimed for the benefit of any owner of riparian land;
- (c) preventing any owner of proclaimed riparian land from making application to a water court for a re-apportionment of the water of such stream upon deproclamation of such land;
- (d) preventing any owner of deproclaimed riparian land from using a reasonable share of such water for agricultural purposes or entitling such owner to use more than such reasonable share after deproclamation of such land.

(2) Any person affected by any decision given or action taken by the Minister of Mines in terms of sub-section (1) may apply to a water court for relief, and the water court may make such order on the application as it may consider equitable.

(3) Notwithstanding anything contained in any law, no person shall abstract or distribute water within an area which has under section 59 been declared to be a Government water control area, or subterranean water within an area which has under section 28 been declared to be a subterranean water control area, except in accordance with the provisions of this Act.

[Sub-s. (3) substituted by s. 12 of Act No. 45 of 1972.]

**173. Validation of certain acts and rights of municipalities in Orange Free State.—** Any act performed or right purporting to have been acquired prior to the commencement of the Irrigation Amendment Act, 1934 (Act No. 46 of 1934), by the governing body of any municipal institution in the province of the Orange Free State in accordance with the provisions of any law or ordinance in conflict or inconsistent with any provision of this Act, shall be deemed to have been lawfully performed or acquired and is hereby validated.

**174. ....**

[S. 174 repealed by s. 26 of Act No. 68 of 1990.]

**174A. Supply of water at points on the borders of the Republic, and in territories outside the Republic.—**(1) Notwithstanding anything to the contrary contained in this Act or any other law, the Minister or, with the approval of the Minister any body empowered under this Act or any other law to supply or distribute water, whether private or public water, within the area for which it is established, may supply water in bulk or otherwise to any person (including any government or administration) at any point on the border between the Republic and any territory adjoining it or, with the approval of the government concerned, within such territory for use by such person in such territory or to supply or distribute on behalf of such person to others for use therein.

(2) Subject to the provisions of subsection (3), the provisions of this Act or any other law, shall, in so far as they can be applied, apply *mutatis mutandis* in connection with the supply or distribution of water in terms of subsection (1) at any point on the border of the Republic or at any place in such territory as if such point or place were an area within the Republic and, in the case of such supply or distribution by a body referred to in subsection (1), within the area of such body, and as if any water so supplied or distributed were intended for use in such an area.

(3) Notwithstanding anything to the contrary contained in this Act or any other law, the terms and conditions on which water may be supplied or distributed in terms of subsection (1), shall be such as may be mutually agreed upon between the Minister or, in the case of a body referred to in subsection (1), with the approval of the Minister, the body concerned and the person (including any government or administration) to be supplied with water or on whose behalf water is to be supplied or distributed.

[S. 174A inserted by s. 23 of Act No. 108 of 1977.]

**175. Special savings as to expropriation of water, etc., under railway expropriation laws.—**Nothing in this Act contained shall be construed as derogating from any powers granted under any law regulating expropriation of land for railways or harbours, save that before any powers conferred upon the South African Railways and Harbours Administration in respect of expropriation or rights to water are exercised, the consent of the Minister shall be obtained.

[S. 175 amended by s. 36 (6) of Act No. 9 of 1989.]

## 176. . . . .

[S. 176 substituted by s. 26 of Act No. 97 of 1986 and repealed by s. 5 of Act No. 108 of 1993.]

**177. Application of certain provisions of section 63 in respect of certain areas.—**The Minister may by notice in the *Gazette* apply the provisions of sub-sections (9) and (10) of section *sixty-three* to any area defined in the notice which in his opinion is or is likely to be affected by any water work in connection with which any loan or subsidy has at any time either before or after the commencement of this Act been granted out of public funds, and thereupon the said provisions shall *mutatis mutandis* apply as if the said area were a Government water control area and as if the said water work were a Government water work.

[S. 177 amended by s. 19 of Act No. 73 of 1978.]

**178. Exercising of votes of members of certain boards and advisory committees.—**Any member of a subterranean water control board or an irrigation board or a water board, or any member of an advisory committee appointed under section 68, shall exercise his vote in respect of any matter which is put to the vote by the said board or advisory committee.

[S. 178 substituted by s. 27 of Act No. 68 of 1990.]

**179. Consultation with Treasury.—**(1) No approval shall be granted or designation made in respect of any of the following matters, except after consultation between the Director-General and the Treasury, namely—

- (a) the amount of compensation to be paid to a lower riparian owner referred to in section 18 (3);
- (b) the amount to be recovered from any person referred to in section 62 (4) (b);
- (c) the terms and conditions referred to in section 69 (1) (a) or section 121 (5);
- (d) the property other than the rates or charges leviable by an irrigation board, referred to in section 155; or
- (e) the reduction of payments in respect of an irrigation loan over a period not exceeding 15 years referred to in section 161.

[Sub-s. (1) amended by s. 15 of Act No. 36 of 1971 and substituted by s. 70 of Act No. 96 of 1984.]

(2) Nothing in subsection (1) shall be construed as derogating from any regulations made from time to time by the Governor-General in terms of section *sixty-one* of the Exchequer and Audit Act, 1956.

(3) In this section “Treasury” means an officer in the Department of Finance designated for the purpose by the Minister of Finance.

**179A. Determining of interest rates in respect of rates and charges.—**The Minister shall from time to time, with the concurrence of the Minister of Finance, by notice in the *Gazette* determine an interest rate which shall be applicable to all rates and charges relating to the supply or distribution of water assessed under the provisions of this Act by the Minister, a subterranean water control board or an irrigation board, which have not been paid on the date determined for the payment thereof.

[S. 179A inserted by s. 20 (1) of Act No. 92 of 1993.]

## 180. . . . .

[S. 180 substituted by s. 13 of Act No. 77 of 1969 and repealed by s. 28 of Act No. 68 of 1990.]



**181. Repeal of laws and savings.**—(1) The laws mentioned in the Schedule to this Act are hereby repealed to the extent set out in the third column of that Schedule.

(2) Any proclamation, notice, rule, regulation or by-law made or issued under any such law and any order or determination made or decision given or other act performed under the provisions of any such law, shall be deemed to have been made, issued, given or performed under the corresponding provisions of this Act.

(3) The following provisions shall apply in connection with any application to a water court under the Irrigation and Conservation of Waters Act, 1912 (Act No. 8 of 1912), which had not been disposed of at the date of commencement of this Act, namely—

- (a) if at the said date the hearing of the application had already commenced, the application shall be dealt with in all respects as if this Act had not been passed; or

continued on page 1399

- (b) if at the said date the hearing of the application had not yet commenced, the application shall lapse, but without prejudice to the right of the applicant concerned to make a similar application to the appropriate water court under this Act, and if such an application is made within three months after the commencement of this Act, any costs reasonably incurred by any person in connection with the application which has so lapsed, as determined by such appropriate water court, shall be refunded to that person by the Minister out of moneys appropriated by Parliament for the purpose.

182. Short title.—This Act shall be called the Water Act, 1956.

Schedule  
LAWS REPEALED

No. and Year of Law	Short Title	Extent of Repeal
Act No. 8 of 1912	The Irrigation and Conservation of Waters Act, 1912	So much as is unrepealed
Act No. 32 of 1914	The Hartebeestpoort Irrigation Scheme (Crocodile River) Act, 1914	Section <i>fourteen</i>
Act No. 26 of 1916	The Irrigation and Conservation of Waters Act, 1912, Amendment Act, 1916	The whole
Act No. 18 of 1917	The Irrigation Works (Special Loans) Act, 1917	The whole
Act No. 38 of 1921	The Financial Adjustments Act, 1921 .. ..	Section <i>fourteen</i>
Act No. 38 of 1922	The Financial Adjustments Act, 1922 .. ..	Section <i>six</i>
Act No. 35 of 1923	The Financial Adjustments Act, 1923 .. ..	Sections <i>one to five and seven</i>
Act No. 2 of 1924	The Water Court Judge Act, 1924 .. ..	Section <i>two</i>
Act No. 43 of 1925	The Financial Adjustments Act, 1925 .. ..	Section <i>fifteen</i>
Act No. 44 of 1926	The Financial Adjustments Act, 1926 .. ..	Sections <i>twelve and thirteen</i>
Act No. 27 of 1927	The Financial Adjustments Act, 1927 .. ..	Section <i>twenty-three</i>
Act No. 21 of 1928	The Financial Adjustments Act, 1928 .. ..	Section <i>twelve</i>
Act No. 34 of 1930	The Financial Adjustments Act, 1930 .. ..	Section <i>eleven</i>
Act No. 10 of 1932	The Marico-Bosveld Irrigation Scheme Act, 1932	Section <i>four</i>
Act No. 25 of 1932	The Financial Adjustments Act, 1932 .. ..	Section <i>eight</i>
Act No. 46 of 1934	The Irrigation Amendment Act, 1934 .. ..	The whole
Act No. 49 of 1935	The Finance Act, 1935 .. ..	Section <i>four</i>
Act No. 35 of 1936	The Finance Act, 1936 .. ..	Section <i>eight</i>
Act No. 33 of 1939	The Finance Act, 1939 .. ..	Section <i>twenty-one</i>
Act No. 10 of 1943	The Olifants River Irrigation Works Act, 1943	Section <i>five</i>
Act No. 30 of 1944	The Irrigation Amendment Act, 1944 .. ..	The whole
Act No. 38 of 1946	The Irrigation Amendment Act, 1946 .. ..	The whole
Act No. 48 of 1947	The Finance Act, 1947 .. ..	Section <i>twenty-seven</i>
Act No. 34 of 1949	The Irrigation Amendment Act, 1949 .. ..	The whole, except section <i>eight</i>